

*Maryland-National Capital Park Police  
Prince George's County Division*

**DIVISION DIRECTIVE**

TITLE <b>DRIVING UNDER THE INFLUENCE</b>			PROCEDURE NUMBER <b>PG416.0</b>
SECTION <b>Operational Procedures</b>	DISTRIBUTION <b>A</b>	EFFECTIVE DATE <b>06/01/04</b>	REVIEW DATE <b>06/01/06</b>
REPLACES <b>PG416.0 "Driving Under The Influence", issued 02/15/02</b>			
RELATED DIRECTIVES <b>PG416.1</b>	REFERENCES <b>CALEA 1, 61</b>	AUTHORITY <b>Commander Larry M. Brownlee, Sr.- Division Chief</b>	

**I. PURPOSE**

The purpose of this Directive is to establish policy and procedures for the arrest of an individual for driving or attempting to drive a motor vehicle while under the influence of alcohol and/or drugs (DUI).

**II. POLICY**

In accordance with the requirements of the Transportation Article, officers of this Division shall vigorously enforce the serious misdemeanor offense of driving under the influence of alcohol and/or drugs.

**III. PROCEDURES**

**A. Detection**

All violators suspected of DUI will be apprehended at the earliest possible time once probable cause has been established. If a violator claims immunity officers will follow the procedures outlined in Division Directive PG410.0 – "Diplomatic Immunity", instead of this directive.

**B. Standardized Field Sobriety Testing**

1. Officers are encouraged to conduct pre-exit sobriety tests to assist them in establishing probable cause and to help them decide whether or not to proceed with further testing.

**DRIVING UNDER THE INFLUENCE**  
**PG416.0**

2. The following field sobriety tests may be given by officers of this Division:
  - a. Horizontal Gaze Nystagmus Test – Officers must be trained in the proper administering of this test prior to their using it.
  - b. Walk and Turn Test
  - c. One Leg Stand
  
- C. Preliminary Breath Testing (P.B.T.)
  1. Subject to availability, all suspected DUI drivers may be offered a Preliminary Breath Test (PBT).
  2. The PBT operator will advise the offender of the required information and will complete MSP 102 in triplicate.
    - a. The PBT operator will note the driver's name and the Incident number on the arresting officer copy and the PBT Coordinator copy.
    - b. If the test is taken, the results will be noted on these copies also.
  3. The PBT operator will complete the Log Book (MSP 104) filling in all of the required information and listing his/her name in the comments section.
  4. In all tests given for other agencies, the PBT operator will note the name of the other agency in the comment field in addition to Section III.C.3 above.
  5. Preliminary Breath Test's will only be operated by those officers who have been trained and certified in their proper use.
  6. Whenever a PBT operator discovers that a unit is not working properly, a note will be placed on it taking it out of service. It is that officer's responsibility to notify the PBT Coordinator as soon as practical. Under no circumstances will any PBT operator attempt to make any repairs to any PBT unit.
  7. All PBT operators are responsible for ensuring that each PBT unit is calibrated once per month.
  8. Shift supervisors are responsible for ensuring that all available PBT units are utilized whenever possible.

**DRIVING UNDER THE INFLUENCE  
PG416.0**

D. Arrest Procedures

1. Vehicle Disposition - There are three possible ways of disposing of the violator's vehicle:
  - a. If the vehicle is stopped in what the officer feels is a safe and legal location, it may be locked and left there if the operator so desires. Whether or not the vehicle contains any valuables should be considered when doing this.
  - b. The vehicle may be towed in accordance with established towing policy. See Division Directive PG430.0- "Vehicle Impounds".
  - c. The vehicle may be driven from the scene by a sober, licensed driver with the permission of the defendant. This person's name is to be noted in the report. See Section III.D.3 below.
  
2. Vehicle Keys
  - a. If the vehicle is towed, the ignition and door keys will be given to the tow truck driver. All other keys will be returned to the defendant.
  - b. If the vehicle is left at the scene of the stop, all keys will be retained by the officer pending disposition. See Section III.D.8.f below.
  
3. Occupants
  - a. If the vehicle is occupied by passengers when the driver is arrested, the officer may release the vehicle to one of them under the following conditions:
    - 1) The arrested driver has an ownership interest in the vehicle and gives permission to a sober, licensed driver to operate the vehicle.
    - 2) One of the passengers has an ownership interest in the vehicle and is a sober, licensed driver; or this person gives permission to another who is sober and licensed to drive the vehicle.
  - b. In all other circumstances the vehicle will be left at the scene and locked or towed.
  - c. The arresting officer or other officer at the scene shall make a reasonable attempt to obtain other transportation for the passengers if they so desire. Officers may transport these passengers a reasonable distance if no other alternative exists and with the permission of an on-duty Shift Supervisor or Operations Duty Officer (ODO).

**DRIVING UNDER THE INFLUENCE  
PG416.0**

4. Advice of Rights

All persons suspected of DUI and/or violations of an alcohol restriction should be informed of their rights per MVA form DR-15 "Advice of Rights". Advising a defendant of the Miranda rights is discretionary, but if they are given, it should only be done after the execution of the DR-15 but prior to asking questions from the DUI report concerning amount of alcohol consumed, when it was consumed, and so on.

5. Test Refusal

- a. Once a driver has refused to submit to a test, either by words or actions, the arresting officer will complete an "Officer's Certification of Driver's Refusal to Submit To Chemical Test" (form DR-15A).
- b. PBT results may be shown on this form because it is administrative and not evidentiary.
- c. It is the arresting officer's responsibility to give the defendant his/her copy and to mail the hard copy prior to the end of his/her tour of duty.

6. Alcohol Restrictions Violations

- a. For persons under the age of 21, it is a separate offense to have an Alcohol Concentration of .02% - .07%. Upon stopping a person under 21 and detecting any evidence of alcohol the following procedures shall be followed when a test is elected:
  - 1) If test result is .08% or above complete DR-15A and charge DUI and 16-113(h).
  - 2) If test result is below .08% complete DR-103, "Violation of Alcohol Restriction", and charge 16-113(h). You may also charge DUI if there is probable cause.
  - 3) When both charges are placed, list both charges on the Arrest/Juvenile Report if under 18.
  - 4) Anytime only 16-113(h) is charged, a photocopy of the citation, if 18 or older, is to be forwarded to the PBT Coordinator.
- b. Any person may have an alcohol restriction [16-113(j)] placed on their license. This means that they cannot have any alcohol in their system at all. Upon stopping a person and detecting any evidence of alcohol the following procedures shall be followed when a test is elected:

## DRIVING UNDER THE INFLUENCE

### PG416.0

- 1) If test result is .08% or above complete DR-15A and charge DUI and 16-113(j).
  - 2) If test result is below .08% complete DR-103, "Violation of Alcohol Restriction", and charge 16-113(j). You may also charge DUI if there is probable cause.
  - 3) When both charges are placed, list both charges on the Arrest/Juvenile Report, if under 18.
  - 4) Anytime only 16-113(j) is charged, a photocopy of the citation, if 18 or older, is to be forwarded to the PBT Coordinator.
- c. For any person operating/in control of a commercial vehicle it is a separate offense to have an Alcohol Concentration of .04% - .07% [16-813(a)]. Upon stopping a person and detecting any evidence of alcohol, the following procedures shall be followed when a test is elected:
- 1) If test result is .08% or above complete DR-15A and charge DUI and 16-813(a).
  - 2) If test result is .04% - .07% complete DR-102, "Commercial Motor Vehicle", and charge 16-813(a). You may also charge DUI, 16-113(h), and/or 16-113(j) if they apply and there is probable cause.
  - 3) Anytime only 16-113(h), 16-113(j), and/or 16-813(a) is charged, photocopies of the citations are to be forwarded to the PBT Coordinator.

#### 7. Charging Documents

- a. In most instances charges will be placed using a state citation. Exceptions are for persons under the age of eighteen (see below), and when probable cause for the stop is not a traffic violation (Park Rules, SERO, etc.). In all other instances, one citation should be issued for the probable cause for the stop, one for the DUI, and any others that may be necessary. All available charges should be placed due to the seriousness of the case.
- b. In some cases, charges cannot be placed immediately. Charges after investigation may be placed using a state citation if the defendant can be found in Prince George's County. If the defendant is not located in the county, it is necessary to complete an Application for Statement of Charges and present it to a Court Commissioner for issuance of a charging document. All charges after investigation must be placed within one year and one day of the violation date.

**DRIVING UNDER THE INFLUENCE**  
**PG416.0**

- c. No charges will be placed for manslaughter by auto or homicide while under the influence without first consulting with the State's Attorney's Office.
- d. All traffic charges, related to DUI, placed against persons under the age of eighteen shall be made on a Juvenile Arrest Report. No state citations are to be completed when incarcerable offenses are involved for Juveniles.

8. Release of the Defendant

- a. In cases where an adult defendant is a Maryland resident, has no prior DWI/DUI or FTA charges on his/her record, is cooperative during the arrest process AND has a responsible, sober adult to provide transportation, then the arresting officer may allow the defendant to sign the citation(s) and leave in lieu of going before a Court Commissioner.
- b. Division Directive PG1100.0 – "Juvenile Procedures", shall be followed for all persons under the age of eighteen.
- c. Allowing defendants to sign the citation(s) instead of going before the Court Commissioner is a matter of officer discretion and in keeping with the Reciprocity Agreement, as is referred to in the Uniform Complaint and Citation Book.
- d. In all instances, when the officer deems it necessary, the defendant may be taken before a District Court Commissioner for an initial appearance.
- e. In instances where the defendant's vehicle was left at the stop location and the defendant released to a responsible, sober adult, the arresting officer will advise that person that they are responsible for the defendant and that he/she is not to drive for eight hours.
- f. In instances where the defendant is released on his/her own recognizance by a Court Commissioner and no responsible, sober adult, is available and the vehicle was left at the stop location; the vehicle keys will be left with the dispatcher by the arresting officer with a note attached containing the defendant's name and the time after which they may be picked up (eight hours after the arrest). The defendant will be advised by the officer how to obtain the keys. If the defendant does not obtain the keys in a reasonable time period, after the eight hour time period, the arresting officer will place the keys into the property vault and attempt to notify the defendant.

E. Alcohol Concentration Tests

- 1. All drivers arrested under this directive will be advised of their rights via DR-15. This will be done before they are advised of their "Miranda"

**DRIVING UNDER THE INFLUENCE  
PG416.0**

rights. In every case this form will be read to the defendant, signed by the defendant and the arresting officer. A reasonable attempt will be made by the arresting officer to explain the DR-15 information to the defendant, if necessary.

2. All alcohol concentration tests must be administered within two hours of the time of arrest.
  - a. If the driver elects to take the test he/she will be transported to the nearest available Intoximeter location for the test to be administered.
  - b. All defendants will be given a reasonable opportunity, if they so request, to contact a lawyer before they decide whether or not to consent to take the test. They will be advised that any time spent doing this is counted in the two hour limit and should that time expire it will be considered a refusal.
  - c. The officer will remain with the defendant during the twenty (20) minute observation period to ensure that nothing has gone into the defendant's mouth.
  
3. Except in the following instances, only the breath test is available to the defendant:
  - a. The defendant is unconscious or otherwise incapable of refusing to take the Intoximeter test;
  - b. Injuries to the defendant require his/her removal to a medical facility; or
  - c. Equipment for administering the breath test is not available.

In these instances, the blood test will be offered. Unless the defendant is unconscious, he/she has the right to refuse this test.
  
4. In all cases where there is a Intoximeter test result of .00% or .35% or higher after two tests, the defendant will be transported to the nearest hospital for an examination.
  
5. Blood Tests
  - a. Only the blood alcohol collection kit approved by the State Toxicologist will be used for the withdrawal of blood. Check the expiration date before using.
  - b. Hospital emergency rooms (ER) may have approved, current, blood test kits in stock. If possible, officers should verify before responding to the hospital. If necessary check with the nearest county or state police facility for kit availability.

**DRIVING UNDER THE INFLUENCE  
PG416.0**

- c. Persons transported to hospitals due to injuries are routinely tested and, if no kits can be found in time, officers can request the State's Attorney's Office subpoena the hospital's records. This will require detailed justification to show seriousness of the offense.
- d. For persons transported to the University of Maryland Shock Trauma Center it is NOT necessary to have blood kit sent there for use. They will test all incoming patients. Officers can call them for the results and later subpoena their records, if necessary.
- e. There are two forms with the blood kit. One is the MSP 34 and the other is inside the kit and has a consent form with it.
  - 1) The consent form is to be signed by the defendant, if conscious, and kept by the officer.
  - 2) Complete the Blood Collection Report and include it with the sample in the inner box.
  - 3) The MSP 34 will only be completed in the "Arrest Information" section. All areas are self explanatory except:

Local Area Case Number	-	use Incident Number
Time	-	use the time of arrest
Installation Commander	-	leave blank
Send results to	-	arresting officers name and station address
  - 4) The officer will ensure that the "Medical Personnel Payment Authorization" is filled out by the medical personnel.
  - 5) Remove the last copy only of the MSP 34 and turn it in with the report. All other copies are put into the outer box with the test kit and mailed.
  - 6) The newer kits have four white seals and four orange seals. Fill out all eight seals. One white seal goes over each stopper and one goes on the side of each tube. Use three orange seals to close the clear plastic box, from the top down over the sides. Use the fourth orange seal to seal the outer box by placing it over the lock tab where it says "seal here".
  - 7) **ALL NEEDLES ARE TO BE DISPOSED OF AT THE TEST SITE. ALL OFFICERS WILL WEAR PROTECTIVE RUBBER GLOVES WHILE HANDLING ANY BLOOD AND/OR BLOOD KITS.**
- f. The officer will watch the process and will take custody of the completed kit.

## DRIVING UNDER THE INFLUENCE

### PG416.0

- g. The entire sealed kit will be forwarded to the Property Specialist for mailing. A Property Record shall be completed to accompany the blood kits. All blood kits will be mailed to:

Chemical Test for Alcohol Unit  
Maryland State Police  
1201 Reisterstown Road  
Pikesville, Maryland 21208-3899

- h. The MSP Chemical Test for Alcohol Unit will notify the arresting officer by mail of the test results. It is the officer's responsibility to send the results to the State's Attorney's Office AND hand deliver them to the defendant, or if not in the county, mail them to him/her by certified mail with return receipt. The defendant must receive the results at least fifteen days before the trial date.

#### 6. Unconscious Persons

Whenever probable cause exists to give a blood test to an unconscious person, the officer will first check with the attending physician for permission to have it done. If the test is given, insert the word "unconscious" in place of the signature on the consent form. If the physician refuses because it will jeopardize the condition of the patient, the officer will so note this in the report. In this case the officer should attempt to determine if the hospital has already done a test, if so, what the results were so that their records may be subpoenaed, if necessary. If the individual regains consciousness, he/she must then be given the opportunity to refuse the test. Refer to the Transportation Article for additional information.

#### 7. Drivers Involved in Fatal Accidents

- a. If a person is involved in a motor vehicle accident that results in the death of, or a life threatening injury to another person and the person is detained by a police officer who has reasonable grounds to believe that the person has been driving or attempting to drive while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, or in violation of the Transportation Article the person **will be required** to submit to a test, as directed by the officer. "Any medical personnel who perform any test required by this section are not liable for any civil damages as the result of any act or omission related to such test, not amounting to gross negligence." [Maryland Transportation Article]

**DRIVING UNDER THE INFLUENCE  
PG416.0**

- b. Do not complete the DR-15 when involved in a fatal accident. The detained person is required by law to submit to a chemical test as directed by the officer.
- c. If the breath test is selected, the officer will follow the procedures previously set forth in this directive. "Refusal of the detained person to cooperate in taking a breath test will require transports to the appropriate hospital for a blood test." The defendant has no right to refuse the blood test.
- d. If the blood test is selected, the officer will witness the withdrawal of blood (using an approved blood kit) by medical personnel.

8. Deceased Persons

As a matter of policy, the Medical Examiner's Office will conduct numerous tests on the deceased including an alcohol concentration. The test results are available to the investigating officer on request.

F. Paperwork Checklist

Below is a list of reports/forms that may be necessary for a DWI/DUI arrest. Those indicated by \* are required.

- 1. Arrest/Juvenile Report \*
- 2. Continuation Report
- 3. State Citation(s), \* if an adult
- 4. DR-15 (white copy) \*
- 5. DR-15A, \* if test refused, (first page)
- 6. MSP 33, Breathalyzer Results, two copies, \* if test taken
- 7. MSP 35, Breathalyzer Operational Checklist with two Test Records attached \* if test taken
- 8. MSP 34, last copy only, \* if blood test
- 9. Polaroid photograph
- 10. MSP 102, \* if PBT offered
- 11. Statement of Probable Cause, \* if taken before a Commissioner
- 12. Citation Transmittal Sheet, \* if taken before Commissioner
- 13. Application for Statement of Charges, \* if charged later and out of county
- 14. Property Record
- 15. Vehicle Impound \* if towed by officer

**IV. REFERENCES**

The following sections of the Maryland Vehicle Law are to be referred to when dealing with any alcohol related violation. All officers should familiarize themselves with these sections of the law.

TA Sec. 16-113 (a)(2)                      Alcohol Restrictions, general

**DRIVING UNDER THE INFLUENCE  
PG416.0**

TA Sec. 16-113 (b)	Alcohol Restrictions, under 21
TA Sec. 16-113 (h)	Alcohol Restrictions (charging section)
TA Sec. 16-205	Suspension/revocation, certain alcohol offenses
TA Sec. 16-205.1	Suspension for refusal to submit to chemical test
TA Sec. 21-902	DWI/DUI, alcohol, drugs or combination
TA Sec. 26-102	Owner knowingly permit violation
TA Sec. 26-103	Application of title 21 to government vehicles
TA Sec. 26-202 (a)(3)	DWI arrest on P.C.
TA Sec. 26-405	Lesser included offenses
TA Sec. 27-101	Penalties
CJ Sec. 10-302	Types of admissible chemical tests
CJ Sec. 10-303	Chemical test time limit
CJ Sec. 10-304	Qualifications of person administering test; equipment
CJ Sec. 10-305	Type of test administered
CJ Sec. 10-306	Admissibility of test results
CJ Sec. 10-307	Test Results
CJ Sec. 10-308	Other evidence
CJ Sec. 10-309	Test refusal
Criminal Procedure Article 6-220	PBJ for DWI
Criminal Law Article 2-209	Manslaughter by auto
Criminal Law Article 2-503	Homicide by motor vehicle while under the influence of alcohol
Criminal Law Article 2-504	Homicide by motor vehicle while impaired by alcohol
Criminal Law Article 3-211	Life-threatening injury by motor vehicle while under the influence of alcohol

**End of Document**