

# CHARLOTTESVILLE POLICE DEPARTMENT



Note: This directive is for internal use only and does not enlarge an officer’s liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by the Charlottesville Police Department and then only in a non-judicial administrative setting.

Type of Directive: GENERAL ORDER	Number: 92-99
<b>DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS</b>	Date: July 13, 2019
VLEPSC Number: OPR.07.03	Manual Number: 541.31
	Effective Date: 07/13/19
Authorization: Chief R.M. Brackney <i>Rm Brackney</i>	Follow-up Date: As Needed

**I. POLICY**

It is the policy of this Department to actively and aggressively enforce the laws of the Commonwealth that prohibit the operation of motor vehicles while under the influence of alcohol or drugs.

When an officer observes a vehicle being operated in such a manner as to give the officer reasonable and articulable suspicion that the operator of the vehicle may be under the influence of either alcohol or drugs, it is that officer’s responsibility to stop the vehicle and investigate further. In addition, if an officer at the scene of an automobile accident or during a traffic stop observes that the operator of the involved vehicle may be under the influence of alcohol or drugs, the officer shall investigate further.

**II. PURPOSE**

The purpose of this directive is to establish the Department’s policy regarding Driving Under the Influence of Alcohol (DUI)/ Driving Under the Influence of Drugs (DUID) enforcement and driver license sobriety check points.

**III. DEFINITION**

Chief Police Officer - For the purpose of the directive the “chief police officer” shall be the Shift Commander.

Gender – the word “he” or any other word importing the masculine gender shall extend and be applied to females as well as males.

**IV. PROCEDURE**

**A. Driving Under the Influence of Alcohol (DUI)**

An officer should arrest the operator of any motor vehicle, engine or train upon probable cause to believe that the operator is under the influence of alcohol.

1. Initial Contact With a Driver Suspected of Being DUI
  - a. Interview and observe the driver
    - i. Note any unusual odor, behavior, speech, etc.
    - ii. The driver should be asked if he has diabetes, other medical problems (e.g. physical and/or mental), is taking insulin or any other medication that might effect the drivers ability to operate a motor vehicle.
  - b. Administer the standard field sobriety test and record the results.
  - c. Read the Advice of Rights to a Preliminary Breath Test (PBT), offer the PBT, if available, as provided under Code section 18.2-267 and record the results if given.
  - d. If there is probable cause to believe the subject is under the influence of alcohol, as specified in Code sections 18.2-266, 18.2-266.1 or 46.2-341.24, the officer should place the suspect under arrest. The officer will then read the arrestee the Implied Consent Law and the Miranda Warnings if applicable and document the arrestee's decisions.
2. Implied Consent - if the offense of DUI has occurred on a highway, as defined in Code section 46.2-100, the operator of the vehicle is deemed by such highway operation, to have consented to the taking of his breath, blood or both to determine the alcohol, drug or alcohol/drug level. For the Implied Consent to be applicable, the officer will have to make an arrest for 18.2-266 or 18.2-266.1 or of a similar ordinance within three (3) hours of the alleged offense. The officer should obtain a blood, breath or both blood and breath sample as soon as possible after the arrest, but there are no specific time restrictions. However, the more time that elapses from the arrest of the alleged offense in obtaining a blood, breath, or both blood and breath sample, the increase in litigation in court as to the accuracy of the test as it relates to the levels of alcohol or drug content in the suspects body at that time of the offense. (Code sections 18.2-268.2 and 46.2-341.26:2.)
  - a. When the DUI/DUID offense occurs on a public highway, the suspect shall be advised of the options available under the Implied Consent Statutes.
  - b. If the DUI/DUID offense occurs on private property, the suspect may voluntarily submit to a chemical test, however the subject shall not be advised of the provisions of "Implied Consent".
  - c. If a subject is arrested and Implied Consent Statute is read, he shall take the breath test, or if the breath test is unavailable or the person is physically unable to submit to the breath test, the subject shall then submit to the blood test. Refusal of the breath or blood test before a magistrate shall cause an additional charge of Refusal Blood or Breath Test in addition to the original DUI charge (Code section 18.2-268.3).

**Note: Submission to a chemical test to determine the alcohol or drug content of a person's blood or breath is a civil process concerning the subject's privilege to drive a vehicle and not the right to drive a vehicle. Miranda warnings do not apply to verbal decisions to submit to a chemical test under Implied Consent. However, after an arrestee makes the decision to submit to a chemical test Miranda applies and the officer shall warn the arrestee accordingly.**

3. Arrest of subject for DUI.

a. Breath Tests

- i. Secure the suspect's vehicle or have the suspect's vehicle towed in accordance with Departmental policy.
- ii. Transport the subject to either the Charlottesville/Albemarle Jail (breath test) or the designated hospital emergency room (blood test).
- iii. If a breath test is to be administered and the arresting officer is not a Breathalyzer Technician, advise ECC to have an intoxilyzer operator dispatched to the Charlottesville/Albemarle Jail breath testing room.
- iv. The breath test shall be conducted in accordance with procedures set forth by the Division of Forensic Science. After the test result is received {whether the result of the test rises to the level of legally intoxication or falls below the legal limit} the subject shall be brought before the magistrate.

b. Blood Tests

- i. If the circumstances require that a blood test be administered, the officer shall take the arrestee to the designated hospital emergency room to have a blood sample drawn in accordance with the existing state law (Code section 18.2-268.6). The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the pre-numbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial shall show the name of the suspect, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer. The vials shall be placed in a container provided by the Division, and the container shall be sealed to prevent tampering with the vials.
- ii. A law enforcement officer shall take possession of the container as soon as the vials are placed in such container and sealed, and shall promptly mail the container from a U.S. Post Office to the Division of Forensic Science.
- iii. A completed Request for Laboratory Analysis (RFLE) form is only necessary for DUID cases.
- iv. After the blood samples have been drawn, the officer shall obtain the necessary warrant(s) from the magistrate.

- c. In the event an offender is hospitalized and expected to remain in the hospital for an extended period of time, nothing in this policy is meant to preclude the issuance of a summons for DUI, DUID or Refusal.
4. Driving Under the Influence of Drugs or Other Self-Administered Intoxicants
- a. An officer can require that a subject submit to a blood test when the:
    - i. officer has reasonable cause to believe that the operator of a motor vehicle is under the influence of drugs or drugs and alcohol (must follow guidelines of stated in the Implied Consent Law);
    - ii. offense has occurred on a highway, per Code section 46.2-100; and
    - iii. operator of the vehicle was arrested pursuant to Code section 18.2-266, 18.2-266.1 or a similar offense, and arrest was within three (3) hours of the alleged offense.
  - b. Officers may develop reasonable suspicion to believe that an operator of a motor vehicle is under the influence of drugs when he has observed erratic or unsafe driving, and upon stopping the subject or upon arriving at the scene of an accident, the officer observes physical impairment that is absent any odor of an alcoholic beverage or other physical appearance of alcohol consumption. Officers may also develop reasonable suspicion of drug use from:
    - i. the physical appearance of the subject;
    - ii. the subject's unusual behavior;
    - iii. statements made by the subject or witnesses; and
    - iv. finding drugs or drug paraphernalia on the subject or at the scene.
  - c. When an officer arrests a suspect for DUID, the officer shall follow the procedure stated in above section IV, A, 3, (b), as it pertains to DUI arrests where a blood test is required. However, a variation will occur in the packaging for mailing of the blood sample.
  - d. The mailing procedure for DUID blood sample is as follows:
    - i. The subject's blood sample contained in the secure mailing box with the pre-printed address label will be mailed First Class in a suitable mailing envelope to the Division of Forensic Science, Attention DUID. In addition to the subject's blood sample, the mailing envelop shall also contain:
    - ii. a completed and original Request for Laboratory Examination form (DGS-70-001);
    - iii. one copy of the Division of Forensic Science Request for

Laboratory Examination form (DFS-70-001).

5. Reporting requirements

- a. All DUI/DUID arrests shall require an incident report containing the following information:
  - i. time of stop;
  - ii. reason for stop;
  - iii. admission of consumption;
  - iv. field Sobriety Tests utilized and results;
  - v. preliminary Breath Test results (if applicable);
  - vi. time that Implied Consent was given (if applicable);
  - vii. time of arrest;
  - viii. BAC results; and
  - ix. date of any previous DUI/DUID.
- b. If DUI/DUID was accident related the following information shall be included on the incident worksheet as well:
  - i. time of accident;
  - ii. consumption since accident;
  - iii. admission of driver; and
  - iv. names/addresses/contact info for others involved or witnesses.