Impaired Driving

Directives Manual

National Law Enforcement Challenge

2015 Arlington County Police Department

75 Years of Excellence

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	Arlington County Police Department Directive Manual		**DISTRIBUTION: ALL EMPLOYEES**
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			By Authority of the Chief of Police Chief M. Douglas Scott

541.05 DUI Arrests

I. **Policy** - Enforcement of *Driving Under the Influence* (DUI) is a complex and demanding law enforcement responsibility. The objective of DUI enforcement is to detect, arrest, and sustain a conviction of all persons charged with driving or operating a vehicle under the influence of alcohol or drugs. This is accomplished by a thorough investigation and an officer's ability to clearly articulate the gathering of evidence and probable cause in support of a decision to arrest for driving under the influence.

II. **Procedure**

A. **Reasonable Suspicion** - Officers must be able to clearly articulate the reasonable suspicion (i.e. erratic driving behavior, accident, semblance of intoxication) for stopping any driver who is suspected of driving or operating a vehicle while under the influence.

B. **Pre-arrest Screening**

1. **Initial Interview** - When a driver is stopped for suspicion of DUI, an officer will conduct an initial interview in an attempt to identify any indication of alcohol impairment. The initial interview also provides officers the opportunity to identify individuals who may be suffering from a medical problem that produces symptoms similar to alcohol impairment.

   During the initial interview, the officer should ask questions, which at a minimum, indicates the driver has consumed intoxicants and/or medication, and whether the driver is physically able to perform any field sobriety tests.

2. **Field Sobriety Tests** - Field sobriety tests focus on those dexterities essential for safe driving. They are identified as the capability to divide attention between tasks, balance, coordination, and information processing. The following tests have been accepted by the Arlington Courts:

- Alphabet test.
- Countdown test.
- Finger Count test.
- Walk and Turn test.
- One Leg Stand test.
- Horizontal Gaze Nystagmus (Requires specialized training to administer).

A minimum of three (3) tests should be administered when conducting a DUI investigation. These should include walk and turn, one leg stand, and at least one additional test. Ideally, an officer should routinely conduct the same tests in the same order in each instance of a DUI investigation for purposes of clarity and recollection in courtroom testimony.

3. **Preliminary Breath Test** - After administration of the initial interview and field sobriety tests the officer must offer the suspect a PBT, if available, prior to making an arrest for DUI. The Code of Virginia requires that the officer advise the person:

- Of the right to take the test if the equipment is available.
- Of the right to refuse the test.
- That neither the results of the test nor the refusal to take it can be used in a DUI trial.
- Of the right to see the test and its results.

A preliminary breath test should not be conducted prior to the administration of any field sobriety tests or after an arrest for DUI has taken place.

C. **Arrest Procedure**

1. **Traffic Stop** - When a DUI arrest is made on a public roadway, the arrestee should immediately be read the Implied Consent law and then transported to the Arlington County Detention Facility for a breath test.

Arrestees must voluntarily consent to provide breath or blood samples (if breath test is not available) for analysis and should complete a Consent to Search form.

The arresting officer should stay with the arrestee, if possible, for chain of custody issues. If applicable, the arresting officer should note the names of attending medics and what medications, if any, were administered to the arrestee.

Once a person is placed under arrest for DUI, the arresting officer should handcuff the suspect with his/her handcuffs. The handcuffs, when possible, should remain on the arrestee while in booking until the arresting officer arrives at the jail and removes the handcuffs.

The arresting officer must be able to identify his or her handcuffs either by

serial number or other markings, such as a name or administrative number. The arresting officer should check the transport vehicle, before and after transport, for alcohol or other substances and note whether or not other arrestees were transported in the same vehicle or compartment. To avoid any chain of custody issues, the arresting officer must place the arrestee in handcuffs, follow the transporting wagon or prisoner transport car to booking, and then remove the arrestee's handcuffs.

The arrestee should be taken before a magistrate only after the completion or refusal of a breath or blood test. ACPD Written Directive *522.05 Juvenile Offenders* provides additional guidance in reference to juvenile offenders.

In cases where the DUI suspect is operating a Commercial vehicle, refer to the Code of Virginia §46.2-341.24, *Driving a commercial motor vehicle while intoxicated, etc.* Handle the arrest as stated in procedure III of this Directive; however, know that there are different penalties for a DUI driver with a BAC of .04 and a BAC of .08 and greater. If the commercial vehicle driver has a BAC between .04 and .08, the driver may be charged with a Class 3 misdemeanor. If the commercial vehicle driver has a BAC of .08 or greater, the driver will be charged with a Class 1 misdemeanor.

The officer should complete any paperwork routinely associated with a criminal arrest and show the magistrate a copy of the following:

a. The Certificate of Breath Alcohol Analysis.

b. The Criminal Complaint form - include the following information:
   - Reason for the stop.
   - Field tests given and overall performance.
   - Results of preliminary breath test.
   - Advisement of Implied Consent.
   - BAC result.

c. The arrestee's DMV driver transcript.

d. The court copy of a completed *Virginia Uniform Summons* (VUS).

e. The top two copies of the *Administrative License Suspension* form if the BAC is greater or equal to .08 or a refusal.

The magistrate will keep a copy of the criminal complaint form, the court copy of the VUS and an *Administrative License Suspension* form.

Upon issuance of a warrant for DUI, or refusal, an officer must complete a *Notice of Administrative Suspension of Driver's License/Driving Privilege* form and place the arrestee's driver's license in a white envelope with the arrestee's return mailing address. Officers will not take possession of out of state licenses for purposes of administrative suspension. The arresting officer shall forthwith provide the ECC with a copy of this form and the ECC will electronically transmit this information to the DMV.

The arresting officer must also complete a DUI report along with a copy of the *Certificate of Breath Alcohol Analysis*, (white and yellow copies), *Notice of Administrative Suspension of Driver's License/Driving Privileges* and the operational checklist for the EBT device or blood checklist.

The arresting officer will also turn in a copy of the VUS (yellow copy) and an IBR report documenting the arrest to the ACPD Records Management Unit.

The arrestee should be provided with a copy of the DUI warrant, *Certificate of Breath Alcohol Analysis* (green copy if applicable), the *Notice of Administrative Suspension of Driver's License/Driving Privilege* form and information regarding the return of the arrestee's vehicle and any property held for safekeeping. If blood was drawn, the laboratory request form for the arrestee's sample of blood should also be given.

2. **Accident** – Code of Virginia §19.2-81(C) *Arrest without warrant authorized in certain cases* includes the definition of an accident as:

"A reasonable location where a vehicle or person involved in an accident has been moved at the direction of a law enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public."

In addition to the other facts and circumstances, Code of Virginia §19.2-81(D) provides:

"Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated in violation of §18.2-266, (*Driving motor vehicle, engine, etc., while intoxicated, etc.*), §18.2-266.1 (*Persons under age 21 driving after illegally consuming alcohol; penalty*), §46.2-341.24, or subsection B of §29.1-738 (*Driving a commercial motor vehicle while intoxicated, etc.*), or a substantially similar ordinance of any county, city, or town in the Commonwealth, whether or not the offense was committed in such officer's presence. Such officers may, within three hours of the alleged offense, arrest without a warrant at any location any person whom the officer has probable cause to suspect of operating a watercraft or motorboat in violation of an order issued pursuant to §29.1-738.4 (*Additional penalty for reckless or intoxicated operation of a watercraft or motorboat.*), whether or not the offense was committed in such officer's presence.

When a DUI suspect is involved in an accident, the officer may arrest at the scene or at any medical facility located in Arlington County. The arrest must occur within three hours of the accident for the Implied Consent law to apply. After three hours have passed from the time of the alleged offense, the Implied Consent law is inapplicable and breath or blood samples should be obtained based on a search warrant.

A VUS may be issued for DUI when exigent circumstances prevent

transportation of an arrestee to the Detention Facility, such as in the case of a serious accident where the arrestee is the injured party.

Within three hours of the alleged offense, an officer may arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating a motor vehicle, watercraft or motorboat while intoxicated. However, if a suspect involved in an accident flees the scene prior to the arrival of police and is not at a medical facility, a warrant must be obtained from the magistrate prior to the arrest. ACPD Written Directive *542.01 Motor Vehicle Accidents* provides additional guidance in reference to motor vehicle accidents.

D. **Miranda warning** - A person under arrest must be advised of their rights prior to any custodial interrogation. However, questions related to a motor vehicle accident report do not require a Miranda warning as long as the individual is not in custody or the questions are administrative in nature.

The administration of a breath test or the taking of blood for chemical analysis are forms of physical evidence collection. An arrestee has no right to counsel prior to a hearing by a magistrate.

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513.03 Specialized Training

I. **Policy** - Specialized training is available to all employees in order to enhance the employee's skills, knowledge, and abilities and to provide awareness of career opportunities.

Specialized training may address supervisory, management, or executive development training, or it may include technical and job-specific subjects such as crime scene processing or criminal investigation. Employees in specialized assignments or performing certain functions are required to receive specialized training.

II. **Procedure**

A. Specialized training and a certificate of satisfactory completion are required before engaging in the following functions:

- Radar/LIDAR operator
- Breathalyzer operator
- Polygraph examiner
- Motor carrier safety inspector
- Firearms instructor
- Academy instructor

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541.06 Sobriety Checkpoints

I. **Policy** - The Arlington County Police Department's primary purpose for implementing DWI checkpoints is to deter drunk drivers and raise public awareness about the problem of drunk driving

The Department's secondary purposes are to assure that drivers are properly licensed to drive, to arrest all intoxicated drivers contacted at the checkpoints, and ultimately to reduce the number and seriousness of DWI-related traffic accidents.

The Department recognizes that most drivers entering DWI checkpoints will be sober, properly licensed, and not in violation of any law. Consequently, the degree of intrusion or inconvenience experienced by drivers at checkpoints must be kept to a minimum.

Extended interviews, DWI-related motor skills tests, and electronic verification of driver's license status, etc. shall be reserved only for those drivers who display overt signs of intoxication, cannot produce a driver's license, or otherwise appear to be in violation of a law.

II. **Procedure**

A. **Checkpoint Supervision** - The Deputy Chief of the Operations Division (or his designee) shall assign a supervisory officer the rank of Sergeant or higher to plan DWI checkpoint operations, provide on-scene supervision, and subsequently file related after-action reports.

The supervising official shall also ensure that the following agencies or entities are notified prior to the implementation of the checkpoint:

- Commonwealth's Attorney's Office
- Sheriff's Office
- Magistrate's Office
- MADD (Mothers Against Drunk Driving)
- ECC (Emergency Communications Center)
- News media.

Notification to the news media shall include the hours when the checkpoint will be in operation, but shall not identify the specific location where the checkpoint will be located.

B. **Site Selection** - The officer assigned to supervise a DWI checkpoint shall review the traffic accident and DWI traffic citation data stored in the Department's "Records Management System" database prior to the selection of the checkpoint site.

When selecting a site, the supervisor shall bear in mind that the Department's paramount concern at a DWI checkpoint is always the safety of officers and motorists. Further, the supervisor must understand that in order for a DWI checkpoint to be constitutionally valid, the degree of intrusion upon typical motorists must be minimal.

C. **Operational Plan** - Prior to deployment, the checkpoint supervisor shall draft an operational plan that includes:

D. **Roll Call** - Immediately before deployment of personnel to the checkpoint site, a roll-call shall be conducted for training and assignment purposes. Copies of the operational plan shall be disseminated to all involved officers at this roll-call, and the following training shall occur:

- review of the procedures, tasks, and diagram included in the operational plan
- discussion of the legal issues associated with checkpoint operation (e.g., constitutional requirements to keep the intrusion upon motorists to a minimum, and to treat all vehicles in a consistent manner, etc.)
- review of alcosensor procedures
- review of field sobriety test procedures, as those procedures are identified in directive 541.05
- any additional training that may be appropriate or necessary for the particular checkpoint in question.

B. **Uniforms & Equipment** - The supervisor shall ensure that all warning signs, traffic cones, flares, and similar equipment are in place before any motorists are stopped. The supervisor shall also ensure that all officers involved in checkpoint activities wear reflective vests (with metal badges attached) and uniform hats when not seated inside a police vehicle.

C. **Operation of the Checkpoint**

1. **General Provisions** - All vehicles and motorists shall be treated consistently. Except when operations have been temporarily and uniformly suspended, all vehicles entering the checkpoint shall be stopped and all drivers interviewed. Inconsistent and/or preferential treatment of any vehicle or motorist (e.g., stopping one vehicle while letting others pass without stopping) potentially invalidates the entire operation, and is therefore strictly prohibited.

2. **Motorist Interviews** - Interviews of motorists shall be as brief as possible, consistent with their purpose. Generally, interviews should last for no longer than 30-40 seconds. To protect the constitutionality of the checkpoint, it is imperative that the degree of intrusion experienced by typical motorists is kept to a minimum.

   If there are no apparent signs of intoxication, the officer shall hand the motorist a brochure explaining the checkpoint program and direct him to proceed on his way.

3. **DWI Investigation** - If signs of possible intoxication are present, the officer shall direct the driver to a safe location away from the flow of traffic. A preliminary DWI investigation shall then be conducted.

   The investigation may include:

   - additional personal observation of the motorist
   - questions regarding his use of intoxicants during the hours immediately preceding the checkpoint
   - administration of field sobriety tests, as appropriate
   - administration of a preliminary breath test, as appropriate.

   If probable cause for a DWI offense develops, the driver shall be arrested. If probable cause does not develop, the driver shall be released.

4. **Vehicles Avoiding the Checkpoint** - If a motorist approaching the checkpoint turns around or leaves the highway, his driving behavior shall be observed and assessed for signs of possible intoxication. If the behavior suggests that intoxication may be an issue, or if a traffic violation is observed, the motorist may be stopped.
5. The decision whether to pursue and/or stop such a vehicle shall be made by the checkpoint supervisor, or by an officer explicitly delegated by the supervisor to make this type of decision.

   Officers shall bear in mind that deliberately avoiding a checkpoint is not an illegal act. Consequently, if the traffic stop fails to reveal signs of DWI or another traffic or criminal violation, the motorist shall be released.

6. **Event Log** - All significant events and occurrences at DWI checkpoints shall be recorded at the scene, and subsequently reported in an after-action report (see After-Action Report subsection of this directive).