Herndon Police Department
Impaired Driving - Policy

HERNDON POLICE DEPARTMENT GENERAL ORDER §61.1.1 MANDATES OUR CRASH ANALYSIS AND SELECTIVE ENFORCEMENT CRITERIA. HERNDON POLICE DEPARTMENT GENERAL ORDERS SECTIONS §61.1.5, §61.1.10, §61.1.11, §44.2.2, AND §41-16 REQUIRES ALL DEPARTMENTAL PERSONNEL TO MAKE A CONCERTED EFFORT TO DETECT AND ARREST THE IMPAIRED DRIVER, TO INCLUDE JUVENILES. SECTION §41.3.8 ENSURES THAT OFFICERS USE IN-CAR DIGITAL RECORDINGS TO CAPTURE IMPAIRED DRIVING INCIDENTS TO BE USED FOR COURT PROCEEDINGS.

§61.1.1 Selective Traffic Enforcement.

Selective traffic enforcement is an activity of the Field Operations Division. Selective traffic enforcement functions include the following:

A. An annual analysis by the Traffic Section supervisor of traffic collisions. Analysis of traffic collisions will include at a minimum the following factors:
   1. Month, day and hour;
   2. Location, weather and road conditions;
   3. Driver action, to include violations;
   4. Types of vehicles involved.

   This information will be gathered from collision investigation reports submitted to the Records Section. The crime analyst will compile the data for the analysis and provide it to the Traffic Section supervisor for analysis on a monthly basis;

B. An annual analysis by the Traffic Section supervisor of traffic enforcement activities. The traffic complaints received during each month will be reviewed along with the summonses issued to determine if adequate enforcement is being applied to the identified high violation rate locations. The crime analyst shall assist by providing the necessary data for the analysis;

C. The scheduling of selective enforcement in areas where analysis of traffic collisions and violations indicates that special attention is needed. The Traffic Section supervisor shall issue a monthly schedule of selective enforcement locations based on the preceding analysis. The schedule shall be approved by the Field Operations Division commander prior to implementation. Patterns of similar causes or sudden increases in the severity or number of collisions or violations at a specific location are valid criteria for extra enforcement.

D. Selective Enforcement Assignments.
   1. The Traffic Section supervisor shall provide a monthly selective enforcement activities schedule. Selective enforcement sites shall be worked by a traffic enforcement unit when available. If a traffic enforcement unit is not able to monitor a selective enforcement site, squad supervisors shall assign a patrol officer to the assignment.
   2. Selective enforcement activities will be based on an analysis of traffic collision data, citizen complaints and officer knowledge. Enforcement efforts shall be directed toward driving behavior that contributes to collisions. These selective enforcement sites shall not be limited to the enforcement of speeding violations. These sites will be utilized for the enforcement of violations in proportion to the frequency with which they occur in collisions and for responding to traffic-related needs identified in the community.

E. On an annual basis, the Traffic Section supervisor will evaluate the selective enforcement program. This review shall be included in the annual analysis of traffic collisions and of traffic enforcement activities and should ascertain whether the enforcement efforts have met their objectives. A comparison of current accomplishments to past accomplishments shall be

included. Upon completion, the report shall be submitted to the Chief of Police through the chain of command.

F. Traffic Enforcement Unit.
All uniformed patrol officers are responsible for the safe flow of traffic throughout the Town; however, officers of the Traffic Enforcement Unit are tasked with this responsibility as their primary objective.

Officers of the Traffic Enforcement Unit are supervised by the Traffic Section supervisor. Specific duties of the Traffic Enforcement Unit will include but are not limited to:

1. Operations of speed measuring devices;
2. Parking control and enforcement;
3. Traffic law enforcement (to include truck safety and weight enforcement);
4. Traffic and speed studies and analysis;
5. Analysis of collision reports and records.

§61.1.5 Enforcement Policy.

A. The Herndon Police Department will strive to provide uniform enforcement action for traffic violations throughout the Town. Sound judgment by all officers in considering the circumstances and conditions at the time of the violation will ensure appropriate action and gain the public confidence in traffic enforcement.

B. The ultimate goal of traffic law enforcement is to achieve voluntary compliance with all traffic laws. To achieve this, the Herndon Police Department will:

1. Actively enforce the law as it pertains to driving while intoxicated. Officers will normally arrest any driver found to be in violation of this law. Arrests will be based on an individual's driving behavior, results of field sobriety tests, and results of blood alcohol tests;
2. Actively enforce the law as it pertains to speeding violations with discretion utilizing warnings and issuing summonses. Generally officers should issue a summons for violations of 10 mph or more over the posted speed limit. Lesser infractions should be issued a warning. Consideration should be given to the weather conditions, traffic volume, pedestrian traffic, and location in conjunction with the correlation of speeding and traffic collisions;
3. Actively enforce the law as it pertains to hazardous traffic violations, including seat belt violations and child restraint violations;
4. Actively enforce the law as it pertains to equipment violations. These shall be enforced when a vehicle is found to be in violation of several equipment requirements, a summons should usually be issued for the most serious violation. This action should be taken even when each violation independently is worthy of only a warning. Single equipment violations shall be enforced based on the seriousness of the offense and officer discretion;

§61.1.10 DWI Enforcement.

A. Motorists impaired by alcohol or drugs pose a serious threat to the safety of the motoring public. A comprehensive, coordinated, and continuing effort by all members of the Herndon Police Department involving education, enforcement, adjudication, and public support is

essential in combating the drunk-driving problem. All officers shall make an intense effort to detect and arrest the drunk driver.

1. Officers shall be alert for signs of alcohol or drug impairment in all contacts with motorists. After initial examination at the scene of a traffic contact and upon the determination that probable cause to arrest exists, officers shall effect a physical arrest of the subject.
2. Chemical tests will be performed in accordance with the Code of Virginia. §18.2-266-269, and Town Code 42-3, Department policy, and procedures established by the Fairfax County General District Court.
3. Officers must realize chemical tests are supplemental tools and a refusal to submit to a chemical test will not constitute cause to issue a summons for a lesser violation.
4. All supervisors will ensure that officers under their command are familiar with all aspects of DWI detection, field sobriety testing, and DWI prosecution.

B. Education is an important element in combating the drunk-driving problem. The Crime Prevention Officer has the primary responsibility for DWI and driver safety awareness programs for schools and other civic organizations.

§61.1.11 DWI Arrests.

A. The detection and arrest of drunk drivers differs from that of other traffic law violators. There are specific legal limits of drug or alcohol intoxication, and the law is specific with regards to the implied consent statute, and for guidelines regarding chemical tests. These laws in the Code of Virginia, §18.2-266-269, outline the officer's scope of authority and establish procedures for detection, arrest, and processing of an intoxicated driver.

B. Detection is the first step in DWI enforcement. This is when an officer establishes probable cause to arrest. Detection includes:

1. Recognizing and identifying specific driving behaviors that signify the driver may be impaired by alcohol or drugs;
2. Recognizing and identifying specific behavior occurring during traffic stops that provide evidence or suspicion that the driver may be intoxicated;
3. Documenting all observations, which lead the officer to believe that the driver may be intoxicated;
4. The use of caution when pursuing an intoxicated driver and always being alert for unpredictable reactions;
5. Avoiding prolonged pursuit and apprehending as soon as possible in a safe location;
6. Notifying the Communications Section of the vehicle description, location stopped and whether assistance is needed;
7. Approaching the vehicle with caution and obtaining appropriate documentation;
8. Interviewing the driver and passengers;
9. Having the driver exit the vehicle and move to a safe location where field sobriety tests may be conducted;
10. Administering appropriate field sobriety tests to assess impairment of the driver;
11. Not allowing the driver to move the vehicle once the driver is judged impaired;
12. Formulating appropriate arrest decisions based on the evidence accumulated. Test results and driving behavior should be collectively weighed in the decision to arrest. The

driver may refuse the field sobriety tests. Officers may arrest solely on the basis of driving behavior and personal contact with the driver.

C. Arrest and Processing.
If the officer has satisfied the elements of a DWI violation, a physical arrest shall be made.
1. The subject shall be handcuffed and searched.
2. The subject's vehicle may be released to a responsible party with the owner's approval or towed in accordance with General Order §61.4.3.
3. Inform the subject of their rights and responsibilities pursuant to §18.2-268.2.
4. Inform the subject of the evidential breath test and/or blood test and explain the procedures involved. To conduct the breath test to determine blood alcohol content, the subject will be transported to the police facility or jail where a state certified breathalyzer operator will perform the test. If the subject is physically unable to submit to a breath test, or a breath test is not available, a blood test shall be administered to determine the drug or both drug and alcohol blood content, and the subject will be transported to the police facility, jail, or hospital where a court-approved blood technician, a licensed physician, or a licensed nurse may withdraw blood for testing.
5. If a breath test is performed and the results are below the level of consumption by law, the officer may request a blood test if the officer has reasonable suspicion that the subject may test for a positive known specific narcotic drug. If the results show a blood alcohol content of 0.08 percent or more by weight by volume, the officer shall proceed according to the Code of Virginia, §46.2-391.2, for the administrative suspension of the subject's license.
6. If a blood test is administered, the blood sample withdrawn shall be placed in approved vials, sealed and appropriate forms completed by the person taking the sample. The arresting officer shall take possession of the sealed vials and forms and place in an approved container to be mailed to the Department of Forensic Science for analysis.
7. If the subject refuses to submit to a chemical test, the officer shall advise the subject of requirements of implied consent pursuant to §18.2-268.2. If the subject further refuses to submit to a chemical test, the arresting officer shall then have probable cause for the magistrate to issue a warrant for unreasonable refusal. The officer shall also proceed according to the Code of Virginia, §46.2-391.2, for the administrative suspension of the subject's license.

§44.2.2 Taking Juveniles into Custody/Juvenile Arrests.

A. Juvenile Arrests.
1. Juveniles may be taken into immediate police custody when one or more of the following conditions are present:
   a. There is probable cause to believe that the juvenile has committed an offense, which would be a felony if committed by an adult;
   b. In the presence of the officer, the juvenile commits an act which would be a misdemeanor if committed by an adult, and the officer believes that it is necessary for the protection of the public interest to take the juvenile into custody;
   c. When based on probable cause on a reasonable complaint of a person who observed the offense, the juvenile commits a misdemeanor offense involving (i)

shoplifting in violation of §18.2-103, (ii) assault and battery or (iii) carrying a weapon on school property in violation of §18.2-308.1;

d. On the authority of a detention order or warrant known to be on file in this or a foreign jurisdiction;
e. Probable cause exists that the juvenile has run away from home;
f. The officer determines the juvenile is truant;
g. Probable cause exists that the juvenile is without adult supervision at night and the lack of supervision causes a clear and substantial danger to the welfare of the juvenile;
h. Probable cause exists that the juvenile has escaped or run away from jail, detention home or any facility appointed by the court to care for and supervise the juvenile;
i. The juvenile agrees, voluntarily, without threat or coercion, to accompany the officer to the police station for the purpose of returning the juvenile to the home or providing for proper care and supervision.
j. When a child is believed to be in need of inpatient treatment for mental illness as provided in §16.1-340.

2. Without any of the preceding conditions, officers shall not unnecessarily detain juveniles. All reasonable efforts to release juveniles to a parent or a person acting as a parent, who is available, able, and willing to take custody of the juvenile, shall be exhausted before an attempt to detain is made. The following guidelines are provided to govern the release of juveniles after being taken into custody:
   a. When the juvenile has been detained under the authority of a detention order or warrant, the juvenile shall be taken to an intake counselor where the legal process is executed. If an intake counselor is unavailable the juvenile shall be taken to the nearest magistrate. As soon as possible the officer shall notify a parent or adult responsible for the juvenile of the detainment;
   b. When the juvenile has been detained based on an offense committed in the officer's presence or on probable cause, the juvenile shall be released to a parent or adult responsible for the juvenile as soon as practical. If the officer feels the juvenile should not be released, the officer shall immediately transport the juvenile to an intake counselor or to the nearest magistrate if a counselor is not available. The counselor or magistrate will then establish the release directions;
   c. When the juvenile has been detained based on probable cause that the juvenile has escaped from a jail, detention home, or appointed court facility, the officer may return the juvenile to the facility if practical, or take the juvenile to an intake counselor, or to the nearest magistrate if a counselor is not available;
   d. When the juvenile has been detained based on probable cause that the juvenile is a runaway, or to protect the child's welfare, the officer shall contact an intake counselor. The counselor will determine whether a petition or detention order will be issued. If neither are issued, the officer shall release the juvenile to a parent or an adult acting as a parent. If an adult cannot be contacted, the juvenile must still be released;
   e. When the juvenile is taken into custody for a truancy violation, the juvenile shall be released to the appropriate school personnel.

B. Officers will follow these procedures when taking a juvenile into custody:
   1. Ensure that the constitutional rights of the juvenile are protected;
   2. Release the juvenile, interrogate the juvenile in accordance with General Order §44.2.3, or transport the juvenile, without delay, to the holding or detention facility unless the juvenile is in need of emergency medical treatment;
   3. Notify the juvenile's parent or guardian as soon as practical.

C. Fingerprinting and Photographing Juveniles.
   1. The Code of Virginia, §16.1-299, requires that fingerprints and photographs be taken of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the CCRE pursuant to subsection A of §19.2-390.
   2. Fingerprints and photographs may also be taken when an officer obtains a Juvenile Court Order, which requires the juvenile to submit to such processes.
   3. Juvenile fingerprints and photographs shall be separately and securely maintained. Access to these records will be restricted to official use, and may be viewed by the public only on the authority of a court order.
   4. Destruction of fingerprints and photographs shall occur when:
      a. If no petition is filed against a juvenile whose fingerprints or photographs have been taken in connection with an investigation, the fingerprints and photographs shall be destroyed within sixty days after the fingerprints were taken;
      b. If a juvenile is found not guilty of a charge where fingerprints or photographs were obtained, or in any case resulting in a disposition which fingerprints are not required to be forwarded to CCRE, the court is responsible for ordering the fingerprints and photographs be destroyed within six months of the date of disposition of the case;
      c. The arresting officer shall notify the identification technician in the event that the fingerprints and photographs are required to be destroyed. The identification technician shall ensure that the destruction is carried out according to law.

D. Juvenile Case Reporting Procedures.
   1. Juveniles voluntarily in custody shall be documented by an Incident Report.
   2. Juveniles released from custody after a verbal warning shall be documented by an Incident Report and completion of a Virginia Uniform Summons noting the offense committed and the word "warning" below offense.
   3. Juveniles released from custody with the officer intending to secure a petition will be documented by an Incident Report and a Virginia Uniform Summons. A supplemental report shall be completed as soon as the officer appears before an intake counselor.
   4. Juveniles taken into custody for runaway or truancy will be documented with an Incident Report and a Virginia Uniform Summons.
   5. The summons is utilized as an internal Department form for recording that a juvenile was taken into custody for violating the law. In completing the summons on all non-traffic juvenile arrests, all copies go to the Records Section. A copy of the report shall be forwarded to the Youth Services officer. Juveniles taken into custody for their own protection shall not be documented with a summons. These cases will be documented with the Incident Report.
   6. In all cases when a juvenile is interviewed or in any of the preceding situations, all attempts to contact the parents shall be made.

7. Officers wishing to proceed under Virginia Code Section §16.1-260, shall, when making an arrest of a juvenile for any alcohol related offense, when a parent/legal guardian is available to take custody of the juvenile, issue a summons to the juvenile for the violation. In addition, the officer shall print the name of the parent/legal guardian below the signature block on the summons, and have the parent/legal guardian sign next to the violator's signature. The violator may then be released to the custody of the parent/legal guardian.
    a. Officers may not proceed under this section if a parent/legal guardian is not available to take custody of the violator, or is available but refuses to sign the summons. In such cases, the officer shall proceed as noted in §44.2.2, section D., paragraph 3. When proceeding under Virginia Code Section §16.1-260, for cases of misdemeanor DWI or refusal to submit to blood or breath testing, court dates shall be set for the officer's juvenile traffic date. For all cases of felony DWI, a petition shall be sought. For all other alcohol related cases under this section, court dates shall be set for any Thursday morning at 1000 hours, in the Fairfax County Juvenile and Domestic Relations Court.

E. Juvenile Petitions and Warrants.

1. A petition shall be sought in all cases in which a juvenile is taken into custody for an act which if committed by an adult would be a felony. If Juvenile Court is closed and no intake counselor is available, but the arresting officer feels the juvenile should be detained, a warrant shall be sought from a magistrate. When a warrant is issued it will be returnable to the Juvenile Court.
2. A petition may be sought or a warning issued in all other cases where a juvenile is taken into custody. The arresting officer will make this decision. However, the use of a warning is prohibited if:
    a. The complainant is committed to proceeding with a prosecution;
    b. The juvenile is known to have been arrested or warned the preceding year for an act which if committed by an adult would be a crime.
3. Juveniles physically arrested for traffic violations shall be issued a summons for the violation and released to their parent.
4. Juvenile status offenses include truancy, beyond parental control, and runaway. Limits on the authority of police officers to take custody of status offenders are governed by the Code of Virginia, §16.1-246. Reports of runaways shall be investigated in accordance with General Order, §41.2.6.

Section 306 – Operation of Police Vehicles (Pursuits Outside the Boundaries of Town, but within the Commonwealth of Virginia)

When an officer perceives the likelihood that a pursuit will necessitate movement into another jurisdiction within the state, the officer shall advise Communications.

1. Upon receiving such a notification, the Communications Technician shall immediately alert the affected jurisdiction and provide all known information. If the affected jurisdiction, based on their department's policy, refuses to participate in the pursuit, this fact should be immediately relayed to the pursuing officer and supervisor monitoring the pursuit.

2. It is the policy of the Herndon Police Department that a vehicle pursuit shall be permitted anywhere within the state and in compliance with this policy and Virginia state law if the pursuing officer(s) has established reasonable suspicion that the person being pursued has committed, has attempted to commit, or is committing any of the following:
    a. A felony involving violence or the threatened use of violence. Crimes under this definition are murder, manslaughter (to include hit and run fatality), mob-related felonies, malicious wounding, felony kidnapping or abduction, robbery, carjacking, felony criminal sexual offenses, escape with force, and any felonies involving the discharge of a firearm;
    b. The following misdemeanor violations: parental abductions, assault, exposure, peeping, and sexual battery; or
    c. Any offense involving the use, threatened use, display, or possession of a firearm or explosive device.
    d. Serious traffic offenses which pose a continuing threat to public safety, such as Driving While Intoxicated (DWI).

§41.3.8 Digital Video Recording.

It is the policy of the Herndon Police Department to use digital video recording devices, whether mobile or personal, for the purposes of recording audio and video accounts of events as they occur. Events to be recorded shall include, but are not limited to, traffic stops, vehicle searches, use of force, and traffic related arrests. Traffic related arrests can include driving under the influence, reckless driving, and narcotics related arrests. Officers may use digital video recording devices to record any police related incidents in the area of the device, and audio of incidents up to 1,000 feet from the device depending on terrain and physical obstructions.

A. Use and Inspection

All sworn personnel responsible for the use, inspection, and operation of the digital video recording devices shall be allowed to do so only after receiving Department approved training.

1. Care must be exercised at all times when using the equipment. Any damage or malfunction of the device must be reported immediately to the Squad Supervisor who will in-turn notify the digital video recording coordinator.
2. Officers will activate and inspect the device to ensure the microphone and camera is functioning properly.
3. The Squad Supervisor will be responsible for conducting random checks of the digital video recording equipment to ensure proper operation. These checks will be accomplished in accordance with Department training.

B. Data Security, Access and Operation – Mobile Device

1. At the beginning of each shift, the mobile digital video recording device will be inspected by the officer assigned to the device to ensure the unit is in good operating condition and working in accordance with manufacturer's specifications.
2. Officers assigned to a vehicle that has a digital video recording device will log on at the beginning of their tour of duty by turning on the microphone and identifying themselves by name, EIN and area of assignment.

3. The mobile device automatically adds date, time, and GPS (global positioning system) location data to each recording, which will be available during playback.
4. The mobile device continuously records data; however, images are only saved for 60 seconds prior to a trigger to record. The mobile device triggers recording upon the following events: activation of emergency equipment, activation of vehicle collision sensors, vehicle speed in excess of threshold settings, or upon manual activation. The recording continues until the officer presses the stop button. Officers will not tamper, alter, or attempt to erase any recordings.
5. Officers shall record all traffic stops, field sobriety tests, pursuits, prisoner transports, and where practicable, collision scenes. Officers shall also strive to record other circumstances and events, which include, but are not limited to, armed encounters, acts of physical violence, unusual contacts and the general recording of evidence in criminal and traffic offenses.
6. At the completion of each recording, the officer will classify the type of incident when turning off the mobile device. The classifications are:
    a. Non-Arrest Issues: summonses, field contacts, etc.
    b. Arrest Issues: any physical contact
    c. Pursuits: any pursuit
7. Once a recording is started, it will continue until the incident is complete. An incident is considered complete when a reasonable and prudent person would consider the recording to have concluded at a logical point
8. The digital video recording device may be manually stopped by an officer at a collision scene or while directing traffic with their emergency equipment activated and the scene has been stabilized or when logical.
9. When multiple vehicles are on a scene, all cameras should be in operation to provide the best coverage. If the backup vehicle is equipped with a device, the camera should be positioned to record the incident.
10. Use in D.U.I. Arrest.
    a. Officers will attempt to record and narrate the driving behavior of a suspected intoxicated driver prior to activating their emergency equipment by manually starting the camera.
    b. Officers should leave enough distance between the subject vehicle and their vehicle to ensure the entire subject vehicle is recorded. Officers will make all reasonable efforts to conduct field sobriety tests in view of a digital video recording device if it is safe for the officer and violator to do so.

C. Data Security, Access and Operation – Personal Device

1. Officers assigned a personal digital video recording device will activate the device at their discretion for purposes described in this policy. Once activated, the device should remain on until the incident has reached its conclusion or the officer leaves the scene. The intention to stop the device will be recorded by the officer either verbally or documented in the report.
2. Officers should strive to record circumstances or events which may be of evidentiary or factual value which include, but are not limited to, armed encounters, acts of physical violence, unusual contacts and the general recording of evidence in criminal and traffic offenses.

3. If utilizing the personal digital video recording device in D.U.I. arrests, officers will attempt to record and narrate the driving behavior of a suspected intoxicated driver prior to activating their emergency equipment by manually starting the camera.
4. Personal digital video recorders shall not be used for personal use or to record conversations of fellow employees without their knowledge during routine, non-enforcement related activities, or activated in places where a reasonable expectation of privacy exists, such as locker rooms, dressing rooms or restrooms.

D. Storage and Retention Schedule
1. Recordings that contain information on incidents such as an arrest, physical or verbal altercations, pursuits, assaults or any other incident that the officer feels will be helpful to the investigation, will be treated as evidence. The digital video recording coordinator will create folders and assign names to maintain recordings as evidence. Names assigned should reflect case numbers or IA numbers when appropriate.
2. All recordings made by digital recording devices are the property of the Herndon Police Department. Copies of recordings will not be released, except in compliance with a court order and the approval of the Chief of Police. Copies for court use will be released in accordance with evidence guidelines.
3. Recordings and folders tagged for evidence will be maintained or destroyed in accordance with records retention schedules or current evidentiary requirements.

E. Use of Recordings for Training.
1. Recordings that contain material useful for training can be used for that purpose with the authorization of the Chief of Police.
2. Supervisors should conduct periodic reviews of recordings of subordinate officers for evaluation of that officer's performance. Supervisors may review the recordings through the in-house computer system whenever necessary. A folder will be created for any recordings requested by Internal Affairs. This folder will be named with the internal affairs number and marked private.
3. A record of training in the use of the digital video recording devices will be kept by the Personnel and Training Section Supervisor.

F. Request for Recordings Retained as Evidence.
1. The copy of a recording will only be released to attorneys upon the presentation of an original valid subpoena issued by the court that has jurisdiction. The Personnel and Training Section Supervisor, in accordance with Department policy, will handle the request and release of the copies of recordings after approval by the Chief of Police.
2. Copies of recordings will be provided to the Fairfax County Commonwealth Attorney and Town Attorney upon request. Delivery of the copy will be handled in the same manner as requests for copies of police reports are handled.

G. Quarterly Review of Incidents
1. The Support Services Division Commander will review random recordings on a quarterly basis for proper usage and submit a memorandum to the Chief of Police with his findings.