

CHAPTER 72

TRAFFIC OFFENSES INVOLVING ALCOHOL AND DRUGS

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PURPOSE

The offenses of driving a motor vehicle while under the influence of alcohol; driving while impaired by alcohol, drug(s), drug(s) and alcohol, or controlled dangerous substances (CDS); homicide by motor vehicle while under the influence of alcohol, and homicide by motor vehicle while impaired by alcohol or drug(s) are serious misdemeanors. Personnel arresting and charging individuals with these violations must insure that sufficient probable cause exists to support such allegations. All references to sections contained herein are from the Maryland Vehicle Laws, Courts and Judicial Proceedings Article, and Criminal Law Article, Title 2, Subtitle 5, Annotated Code of Maryland.

A. Arrest Procedures

The following procedures will be followed in making arrests for these offenses.

1. The arresting Deputy's attention must be drawn to some unusual or illegal operation of the motor vehicle or signs of intoxication in the driver's physical appearance.
2. Apprehension must be made by the Deputy at the earliest possible time.
3. Drivers detained for suspicion of driving while under the influence of alcohol; driving while impaired by alcohol, drug(s), drug(s) and alcohol, or CDS; homicide by motor vehicle while under the influence of alcohol; and homicide by motor vehicle while impaired by alcohol or drug(s) may be administered a preliminary breath test after being advised of their rights as provided by the Preliminary Breath Test Advisement of Rights (MSP Form 102). The right to communicate with an attorney prior to making a decision whether to submit to or refuse to submit to a preliminary breath test (PBT) test shall not be offered to the accused.
4. The results of a preliminary breath test will only be used by the arresting Deputy as a guide when developing probable cause to support these charges prior to the arrest. The preliminary breath test does not replace other methods of developing probable cause for the arrest.
5. If sufficient probable cause exists, the driver will be advised he is under arrest based on his driving and physical condition. Upon request, the results of the PBT may be given to the driver after he

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submits to an evidentiary test, or has refused any type of test for alcohol and the two hours from the time of apprehension has expired.

6. If, after observation of the driver, the driver's operation of the vehicle and a review of the PBT results, if taken, it is the Deputy's opinion that the individual's driving behavior was caused by the consumption of alcohol or drugs, the person will be placed under arrest and the Sheriff's Office will be notified to initiate a Complaint Control Card.

B. Administrative Per Se Law

1. Maryland law governing the arrest of persons suspected of operating a motor vehicle while under the influence of alcohol, or while under the influence of any drug or combination of drugs and alcohol is based on a concept called Administrative Per Se. This means that the arresting police officer is empowered to provide an immediate administrative sanction, through the Motor Vehicle Administration, (MVA) against the accused driver, independent of judicial processes. If the driver either refuses to submit to a test to determine the alcohol concentration in his blood, or consents to take a test and the results indicate an alcohol concentration of 0.08 or more, the police officer is authorized to confiscate the driver's license at the time of arrest. Additionally, certain expanded mandatory and automatic license suspensions will be imposed by MVA. This is the essence of Administrative Per Se, the effect of which has been dramatic in preventing alcohol related crashes.
2. The most critical element that governs the success of Administrative Per Se is the ability of the arresting police officer to follow the procedural elements of the arrest, particularly in regard to listing the reasonable grounds for arrest on the Advice of Rights (MVA Form DR-15.)
3. If a Deputy stops or detains any person who the Deputy has reasonable grounds to believe is, or has been driving or attempting to drive a motor vehicle while under the influence of alcohol, while under the influence of any drug or combination of drugs and alcohol, driving in violation of an alcohol restriction; or, driving in violation of §16-813 (relating to commercial motor vehicles); and, who is not unconscious or otherwise incapable to refusing to take a chemical test for alcohol, the Deputy shall:
 - a. detain the person

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- b. request that the person submit a chemical test to determine the alcohol concentration of the person's body, and
 - c. advise the person of the administrative sanctions that shall be imposed for refusal to take the test and for test results indicating an alcohol concentration of 0.08 or more at the time of testing.
4. If the person refuses to take the test or takes a test for alcohol which results in an alcohol concentration of 0.08 or more at the time of testing, the Deputy shall:
 - a. confiscate the driver's license issued by this state;
 - b. personally serve an order of suspension on the person;
 - c. issue a temporary license to drive;
 - d. inform the person that he/she has ten days to request a hearing to show cause why the driver's license should not be suspended concerning the refusal to take a test or for test results indicating an alcohol concentration of 0.08 or more;
 - e. advise the person of the administrative sanctions that shall be imposed in the event that he/she fails to request a hearing, or upon an adverse finding by the hearing officer, and;
 - f. within 72 hours after the issuance of the order, send any confiscated driver's license, copy of Officer's Certification and Order of Suspension (MVA Form DR-15A), and a sworn statement to the administration.
5. MVA Form DR-15 shall be read, word for word, in its entirety to the suspected driver **in all cases**. If the person refuses to take a test, the license suspension periods listed on the DR-15 are mandatory. For persons taking the test with a result of 0.08 or higher, restricted licenses may be issued under certain circumstances by the MVA.
 - a. For violations of §21-902 not involving the death or a life threatening injury to another, arrested individuals will:
 - (1) be advised of their rights to a test to determine the alcohol concentration of their body and will be read the MVA Form DR-15.
 - (2) not be advised of Miranda rights until after testing requirements are completed or refused.
 - (3) upon request of the arrestee, be permitted a reasonable opportunity to communicate with counsel before submitting to a test for alcohol concentration, as long as such communication will not substantially interfere with the timely administration of the testing process. The court has not established a definitive time period as to what constitutes an unreasonable delay, although the statute itself

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mandates that in no event may the test be administered later than two hours after the driver's apprehension. There is no requirement to wait the entire two hour period before requiring the arrestee to make an election regarding a test. However, the court has required that arrestees be given a "reasonable time" in which to contact and consult counsel.

- (a) DUI suspects requesting communication with an attorney or another individual when deciding to submit to an evidentiary test for alcohol concentration may be permitted telephonic and/or personal (face to face) communication with that individual. Personal contact may be permitted if the individual to be contacted is present at the time the test is offered or is capable of responding to the test location and completes the contact in sufficient time to permit testing within a reasonable time.
 - (b) An attorney may wish to administer a preliminary breath test on the arrestee prior to a decision to take or refuse a test. The court has ruled that such test cannot be prohibited. However, under no circumstances will CCSO equipment be used. The arrestee may not be given anything to eat, drink, smoke, or take orally or intravenously, and the arresting Deputy must be present in the same room to observe the arrestee. Deputies will not eavesdrop or otherwise attempt to overhear any discussions between the arrestee and counsel.
 - (c) After consultation with an attorney, or after the arrestee has been given a reasonable time to contact and consult with an attorney, the arrestee shall be advised that a decision to elect to take, or to refuse to take a test must be made. If the arrestee fails to make a decision, he will be advised that he has refused to submit to a test and MVA Form DR-15A will be submitted to MVA in accordance with established procedure.
 - (4) be permitted to have his attorney or a physician of his own choosing administer an additional test, utilizing privately owned equipment after submitting to the test administered at the direction of the arresting Deputy.
- b. If a person is involved in a motor vehicle collision that results in the death or a life threatening injury to another person and the Deputy has reasonable grounds to believe that the person has been driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, or while impaired by drugs or by drugs and alcohol, the individual will be:
- (1) advised of the charges being placed, or which may be placed

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- (2) advised that a test of breath or blood, as appropriate, is mandatory, that the person does not have a right to refuse a requested test, and that reasonable force may be used, if necessary, to obtain the test.
 - (3) upon request, granted an opportunity to communicate with an attorney as provided for in Subsection 5a(3).
6. The following will apply when a test is refused.
 - a. For violations of §21-902 not involving the death of or a life threatening injury to another:
 - (1) the arresting Deputy will complete the MVA Form DR-15A and forward it to MVA within 72 hours of the apprehension. A copy will be provided to the arrestee.
 - (2) The individual should be charged with “driving while under the influence of alcohol” §21-902 a(1). Depending upon the advice and policy of the State’s Attorney for the respective area, the individual may also be charged with “driving while impaired by alcohol” §21-902(b).
 - b. If a person is involved in a motor vehicle collision that results in the death of or life threatening injury to another person and the deputy has reasonable grounds to believe that the person has been driving or attempting to drive while under the influence of alcohol, driving while impaired by drugs or while impaired by drugs and alcohol.
 - (1) The investigating Deputy should consult with the local State’s Attorney for advise in obtaining the required test.
 - (2) The use of reasonable force to obtain the test required in subsection 16-205.1(c) of the Transportation Article is permitted.
 - (3) If the individual will not participate in the testing and ultimately no test is completed, the arresting Deputy will initiate the MVA Form DR-15A, and forward to MVA within 72 hours of the apprehension.
 - (4) The appropriate charges, i.e., driving while under the influence of alcohol, impaired by alcohol, homicide by motor vehicle while driving under the influence of alcohol or homicide by motor vehicle while impaired by alcohol will be placed against the individual based on policy established with the local State’s Attorney’s Office.
 - (5) Upon final adjudication of charges, the verdict, complete disposition and specific information about the admissibility of test results or the lack of testing will be communicated to the Chemical Test for Alcohol Unit (CTAU) on CCSO Memo Form 155A.

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7. If the individual agrees to take a test, the arresting Deputy shall notify the appropriate Agency of this fact so that qualified test personnel may be notified and be ready to give the test. All tests for alcohol, regardless of type, must be given within a period of two hours of the time of apprehension.
8. If an individual fails to take any of the required alcohol tests within two hours, or a Drug Recognition Expert (DRE) requested drug test within four hours of the time of apprehension, and it is apparent that such failure to comply is the result of intentional subterfuge or delaying tactics, he shall be presumed to have “refused” and proper action shall be taken.
9. All entries of results of breath tests will be completed by the breath test operator on both the Breath Test Operator Log (form MSP 36A) and Alcohol Program Testing Log (form MSP 36B), at the time of the test. All other entries (blood or refusal) will be completed by the installation Duty Officer or Breath Testing Supervisor on Form MSP 36B. All entries will be hand printed in black ink.
10. When an individual has been tested at a location other than that of the arresting authority, the breath test operator will provide the arresting officer with a copy of the test results and other necessary information for entry into Form MSP 36B of the arresting authority. Proper notation will be made in the Comments column of the testing log, indicating where the test was conducted, e.g. test conducted at Barrack M – JFK Highway Perryville, MD.
11. In those cases where the arresting authority is an agency which is not approved to conduct breath tests, the testing installation will record the arrest information on their Form MSP 36B. The original of the testing forms will be given to the arresting officer and copies will be filed with the testing installation.

C. Breath Test

1. The Sheriff will designate a breath test supervisor and will notify CTAU of the designation. In accordance with The Regulations of the Toxicologist, the supervisor must be a breath test operator with knowledge and understanding of the alcohol testing program. The supervisor will:
 - a. be responsible for the daily supervision of the field breath test equipment and related records, with particular attention to the

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- Alcohol Testing Program Log and the Operator's Logs for accuracy and timeliness.
- b. also coordinate with the CTAU on any problems arising with the breath testing equipment at the installation.
2. Only a properly certified breath test operator will make the examination. The operator will be held strictly accountable for the determination of what alcoholic concentration is present, and shall be prepared to testify in detail how this was determined.
 3. Driving Under the Influence of Alcohol Per Se
 - a. When making an arrest for DUI and the defendant tests a 0.08 or higher, the individual should be issued a citation with the charge written as follows:
 - (1) Transportation Article Title §21-902 (a)(2) Driving Under the Influence of Alcohol Per Se printed on the Uniform Citation should be checked, along with the must appear Block.
 - (2) A second citation should also be issued for §21-902 a(1).
 - b. The results of Field Sobriety Tests and any other relevant evidence in the preparation of DUI Cases for trial should be included. Each Deputy must be prepared in the event the defendant refuses the breath test or the test results are not available.
 4. If the results are 0.07 or more, but less than 0.08, the defendant should be charged only with “driving while impaired by alcohol,” §21-902(b)
 5. If the results are more than 0.05, but less than 0.07, the defendant should be charged with Driving While Impaired by Alcohol, §21-902(b). Results in this range may not give rise to any presumption that the defendant was or was not impaired by alcohol, but may be considered with other competent evidence in determining the guilt or innocence of the defendant.
 6. If the results are below 0.07, and the defendant appears to be extremely intoxicated, a DRE should be requested to conduct a drug evaluation upon the individual. It is an established fact that a substantial number of drivers use drugs either along or in combination with alcohol, which will significantly impair the individual's ability to operate a vehicle safely. If the defendant is found to be under the influence of drugs or a combination of drugs and alcohol, the defendant, consistent with the advise or policy of the State's Attorney for the respective area, should be charged with

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Driving While Impaired by Drugs or Drugs and Alcohol Combination, §21-902(c).

- a. If the defendant is found to be under the influence of a controlled dangerous substance, the defendant, consistent with the advice or policy of the State's Attorney for the respective area, should be charged with Driving While Impaired by a Controlled Dangerous Substance, §21-902 (d).
 - b. If a DRE is not available, the arresting Deputy may still charge the defendant with these violations if sufficient evidence of drug use exists.
7. If a DRE is not available, the results are 0.05 or below, and the individual appears to be extremely intoxicated, the individual should be examined by a physician to determine the reason for this physical and/or mental impairment. There are some physical infirmities which resemble alcohol and or drug intoxication. An examination by a physician will resolve the matter. If the individual arrested has tested less than 0.05, the individual should be charged with either driving while under the influence or driving while impaired, based upon the advise of the State's Attorney. Persons arrested for driving while under the influence or impaired shall not be released without being formally charged, unless the local State's Attorney has been consulted with and given consent for the release.
8. In every instance in which a driver under the age of 21 is suspected of operating a motor vehicle after consuming alcoholic beverages, a test for alcohol concentration should be requested. If the under age driver refuses the test, or takes the test with a result of 0.08 or more, the license may be confiscated in accordance with Administrative Per Se procedures. In cases where the young driver is charged with a §21-902 violation and there is a test result of 0.02 or higher, a charge for the alcohol restriction violation should also be placed.
9. All breath tests will be conducted in accordance with procedures established by the Toxicologist, Post Mortem Examiners Commission, State of Maryland, and adopted by the MSP. These procedures may be found in the "Regulations of the Toxicologist, Post Mortem Examiners Commission, State of Maryland, Regarding Tests of Breath and Blood for Alcohol."
- D. Blood Test
1. The test of blood will be administered in accordance with the

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Courts and Judicial Proceedings Article, §10-305.

2. Only the blood alcohol collection kit approved by the Toxicologist, Post Mortem Examiners Commission will be used for the withdrawal of blood.
3. Only those persons approved under the provisions of Courts and Judicial Proceedings, §10-304 (c) and/or the Toxicologist, Post Mortem Examiners Commission, will be utilized to withdraw blood.
4. The arresting Deputy should witness the withdrawal of blood to prevent the medical personnel from having to appear in court.
5. The arresting Deputy will be responsible for properly filling out all forms used in conjunction with the blood alcohol collection kit.
6. To assure prompt specimen analysis, Blood Analysis – Medical Personnel Payment Authorization (form MSP 34), will be completed by the arresting Deputy at the time of the blood withdrawal (including the social security number and signature of the medical personnel and the hospital federal tax identification number) and approved by the Duty Officer. The form will then be forwarded with the blood specimens, to the CTAU for approval and analysis. When forwarding blood specimens, procedures established by the CTAU will be followed.

The State of Maryland will not pay the medical personnel for drawing the blood and court appearances for local agency cases. To assure prompt payment of medical personnel, in addition to the MSP Form 34, the Cecil County Sheriff's Office Medical Personnel Payment Authorization, CCSO Form 203 will be completed by the arresting Deputy and forwarded to the DWI Enforcement Supervisor for approval and processing. If the medical personnel are needed for a court appearance, an additional copy of the CCSO Form 203 will be completed, referring to the original, and forwarded to the DWI Enforcement Supervisor.

7. The arresting Deputy will be responsible for sealing the blood kit and forwarding it to the CTAU via first class U.S. Mail unless the circumstances dictate personal delivery.
8. In an emergency, when a blood kit is requested by any other department, the person handling such request will be certain a summons has been written or a warrant has been issued for the

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persons suspected of being intoxicated. This person will also instruct the requesting party as to persons authorized to draw the blood. It should be noted that other law enforcement agencies are responsible for maintaining their own supply of blood alcohol collection kits.

9. Blood tests for drugs will only be requested by a DRE; only DRE blood kits issued by the State DRE coordinator will be utilized.

E. Preliminary Breath Test

1. Only the preliminary breath test equipment approved by the Toxicologist, Post Mortem Examiners Commission will be used.
2. Only those persons approved by the Toxicologist will be authorized to administer preliminary breath tests. A certificate issued to an individual will be evidence of satisfactory completion of the course of instruction.
3. The breath test supervisor will be responsible for preliminary breath testing and submission of required reports to the CTAU.
4. The results of preliminary breath tests, offered, refused, calibration, and subjects tested will be recorded on the Preliminary Breath Test Log (Form MSP 104), by the arresting/testing Deputy.
 - a. Pages of Form MSP 104 will be consecutive, starting with page 1. Pages will not be renumbered at the beginning of each new year, but will continue in numerical order.
 - b. A new page will be initiated to start a new year.
5. A summary of preliminary breath tests offered, refused, and subjects tested during each month will be forwarded to the CTAU by the tenth of the month for the preceding month on the Alcohol Influence and P.B.T. Use – Monthly Summary (Form MSP 34A).
6. All PBT devices used in Maryland for traffic law enforcement must be registered with the CTAU. The CTAU shall maintain records of all registered PBT devices.
7. Each PBT device used will be checked once each month using a 0.100 or 0.080 simulated alcohol solution. This test may be performed by any approved operator.
 - a. The results of this test must be recorded on Form MSP 104 by the operator.

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- b. The results of this test will be recorded in the Accused Name or Calibration Test column as Monthly Test.
 - c. The results of this test must be between 0.09 and 0.11 (inclusive), for a 0.100 solution and 0.07 and 0.09 (inclusive) for the 0.080 solution.
 - d. PBT devices that do not achieve this result must be withdrawn from use and recalibrated. Calibration and repairs to PBT devices must only be made by those persons trained for this purpose.
 - e. After recalibration, the results must be recorded in the PBT Log, and “Calibration Test” should be recorded in the “Accused Name or Calibration Test” column.
 8. PBT’s though primarily acquired to aid in alcohol intoxication determinations for suspected drinking drivers in DUI enforcement, may also be utilized effectively in other instances. For example, a passenger in a vehicle in which the driver has been arrested for DUI may be requested to voluntarily submit to a PBT test if the passenger intends to drive the vehicle and if there is suspicion the passenger has been drinking, the passenger may also be tested.
 9. PBT results can and should be included in the “Reasonable Grounds” section of MVA Form DR-15A, as supporting administrative documentation.
- F. Discretionary Release of DUI Violators
 1. When feasible, the intoxicated person shall be taken to the Sheriff’s Office where the Duty Officer will determine the condition of the intoxicated person. In those instances where, due to close proximity of the accused’s destination, it is not practical to transport the intoxicated person to the office, release may be authorized by the apprehending Deputy with approval of a supervisor or Duty Officer. The Duty Officer/Supervisor and the apprehending Deputy will consider the following in the decision to release:
 - a. The degree of intoxication of the accused
 - b. Whether the accused has previously been convicted of an alcohol related offense
 - c. Whether the accused is mentally and physically suitable for release to a responsible party
 - d. Utilization of transportation. (Any transportation is deemed appropriate, except a public conveyance such as a bus or taxi)
 - e. Disposition of the accused’s vehicle. Disposition of vehicle is to be accomplished according to CCSO procedure. Both the

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accused and the responsible party are to be specifically cautioned against returning to the vehicle and allowing the accused to drive until the accused's intoxicated condition has passed.

- f. The accused will be required to sign a citation in every case, prior to being released
 - g. Whether the individual in whose custody the accused will be released is a sober, responsible person.
2. Supervisory personnel, in exercising authority and discretion, should consider both the best interest of public safety and the desirability of minimizing time expended by law enforcement personnel.
 3. Persons intoxicated beyond a condition suitable for release or displaying a combative or belligerent attitude will be processed as follows:
 - a. Taken before the commissioner
 - b. If a commitment is issued (temporary or otherwise) the accused will be taken to the Detention Center for incarceration.
 - c. If a medical examination is required, prior to commitment, the Sheriff's Office will not be responsible for any medical costs incurred. Sheriff's Office personnel should caution hospital admitting authorities not to bill the CCSO for treatment/examination.

G. Form DR-15A Control

1. The Officer's Certification and Order of Suspension (MVA Form DR-15A) will be issued and controlled in the following manner:
 - a. DR-15A books will be controlled and issued by the breath test supervisor, and only to those personnel who perform duties that normally put them in enforcement contact with the motoring public.
 - b. The Deputy to whom the book is issued will complete the DR-15A form book receipt and tally sheet heading and will submit them to the breath test supervisor immediately upon issuance. The breath test supervisor will record the issuance of DR-15A form books on the DR-15A Book Issuance Control Ledger. DR-15A receipts and completed tally sheets will be mailed to the MVA Administrative Per Se Unit on a weekly basis by the breath test supervisor, who will also maintain the incomplete tally sheets.
 - c. If a Deputy to whom a DR-15A form book has not been issued

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has occasion to make a DUI arrest, he will be issued a DR-15A form by the Duty Officer/Supervisor. The receipt will be submitted to the breath test supervisor.

- d. When a Deputy to whom a DR-15A book has been issued is transferred to another unit/division, the book and tally sheet will accompany the Deputy to the new unit/division.
 - e. When a Deputy retires, the DR-15A Form book and tally sheet will be forwarded to the MVA Administrative Per Se Unit.
 - f. If it is necessary to void a DR-15A, the Chief Deputy or his designee will be responsible for forwarding the MVA copy (number 1 copy) to the MVA Administrative Per Se Unit, with the word “Void” written across the face of the form, and accompanied by a brief explanation as to the reason for voiding the form. The Chief Deputy will also be responsible for destroying all subsequent copies of the voided Dr-15A.
 - g. The arresting Deputy will submit the Law Enforcement copy of the completed DR-15A to the installation breath test supervisor, who will file the form in the local DUI case file.
 - h. Supervisors will review all DR-15A forms for accuracy and sufficiency before the MVA copy is mailed to the MVA, and will insure that the DR-15/DR-15A packet is mailed within the required 72 hours.
2. If a driver does not have a license in possession at the time of a DUI apprehension, and the MVA computer is out of service, a temporary license will not be issued by the arresting Deputy because of the inability to confirm whether or not the driver has a valid license. The driver will be advised to contact the Administrative Adjudication Office at the MVA headquarters in Glen Burnie, who can confirm the validity of the license and authorize a temporary license if warranted.
 3. If the driver has a license in possession that appears to be valid, but the MVA computer is out of service, the driver’s license will be confiscated and a temporary license will be authorized.

H. Additional information

1. The arresting Deputy will at all times be responsible for filling out the Alcohol Influence Report (Form MSP 32), except that in the case of breath tests, the qualified operator will be responsible for filling out that part of the report pertaining to the test. This form will be used in all cases regardless of whether or not a test is given when an individual is charged with a violation of §21-902.

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2. The arresting Deputy will be responsible for coordinating original trial dates, postponements, etc., with the courts, the Toxicologist, Post Mortem Examiners Commission, breath test operators and other witnesses.
3. As in all cases where it is necessary to incarcerate an accused, the transportation of the accused and the disposition of his vehicle is to be accomplished according to CCSO procedure. Proper entry shall be made in the Adult Arrest Control Sheet, CCSO Form 60 or Juvenile Arrest Control Sheet, CCSO Form 60A.
4. Tests for alcohol concentration, whether they are breath or blood, should never be used by themselves in prosecuting a case. They supplement but do not supplant normal investigative procedure.
5. The results of blood tests will not be immediately available; therefore the defendant should be charged initially with §21-902(a)(1), unless the State's Attorney wishes an additional summons issued for §21-902(b). Upon receipt of the results of tests of less than 0.08, the State's Attorney will be contacted before the trial date reference amending the initial citation.
6. The MVA Form DR-15A will not be completed until the results of blood tests indicating 0.08 or higher are received and the driver is then contacted by the arresting Deputy, who will serve the suspension notice and confiscate the defendant's drivers license. Established procedure will be followed regarding return of the license and the State of Maryland Notification to Defendant of Result of Test for Alcohol Concentration (Form MSP 33) to the MVA.
7. If a driver who has been administered a blood test lives or works outside of the county, and it is not practical for the Deputy to serve the DR-15A on the driver, the following procedure shall apply:
 - a. Complete the DR-15A with the exception of the order of suspension issue date; the surrender of driver's license and driver's certified statement blocks; and the temporary license block.
 - b. The breath test supervisor will forward all copies of the partially completed DR-15A and other associated forms to the appropriate Police Agency for service. The arresting Deputy should retain copies of all forwarded forms.
 - c. It will be the responsibility of the breath test supervisor at the receiving Agency to coordinate the service of the DR-15A, and to return the number 2 and 5 copies to the CCSO after

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- service. The police officer who actually serves the DR-15A on the accused will be responsible for forwarding the MVA copy of the DR-15A, the DR-15 and the Form MSP-33, along with any confiscated license, directly to the Motor Vehicle Administration immediately after service, but not later than 72 hours. To comply with the notice requirement in the Courts and Judicial Proceedings Article, §10-304 and §10-306, the serving officer must have the defendant acknowledge receipt of both forms MSP 33 and 34.
- d. If the driver cannot be located, or refuses to cooperate, the partially completed DR-15A will be forwarded to MVA with the notation “Unable To Serve” written on the Form.
 - e. The #2 and #5 copies of the DR-15A and other associated forms will then be returned to the arresting Deputy.
 - f. Whenever a DR-15A is received from an allied law enforcement agency for service in an area outside its jurisdiction, it will be the responsibility of the breath test supervisor to assign the DR-15A for service. A photocopy will be retained by the breath test supervisor.
8. For those initial MVA hearings at which a driver appears to show cause why his license should not be suspended, the Deputy and/or test technician will not be required to appear. However, the driver or driver’s attorney may request the appearance of the Deputy or test technician, or both, to appear at a subsequent hearing. It is extremely important that the arresting Deputy provide as much descriptive information as possible in the “reasonable Grounds” section of the DR-15A and ensure that all required paperwork is sent to MVA in a timely fashion.
 9. Transporting Minors While Under the Influence or Impaired by Alcohol.
 - a. There are enhanced penalties for drivers convicted of transporting a minor while under the influence or impaired by alcohol. Whenever an individual is charged with a violation of §21-902 while they are transporting a minor in the vehicle, this should be clearly articulated on Form MSP 32, including name, address, age and description of the minor.
 - b. Additionally, “Transporting a Minor” should be stamped on the top of the form MSP 32 so that the State’s Attorney is aware of the violation and the increased penalties can be secured.
 10. The breath supervisor will be responsible for notifying the State’s Attorney’s Office of those cases involving repeat drunk or drugged

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driving offenders, and cases where the offense occurred while transporting a minor.

I. Breath Testing Operation

To comply with the regulations as set forth by the Toxicologist, Post Mortem Examiners Commission, and to add weight to evidence resulting from the State Alcohol Testing Program, the following guidelines will be followed.

1. The number of operators at each installation is governed by the Toxicologist, Post Mortem Examiners Commission.
2. The maintenance technicians assigned to the CTAU will conduct an inspection of all breath testing equipment monthly, in accordance with the regulations of the Toxicologist. He will devote appropriate time to administration and inspection of records and conduct instrument preventive maintenance. In addition, he will:
 - a. conduct breath test equipment inspections in accordance with Field Maintenance Inspection Report (Form MSP 37A). A copy of the completed report will be forwarded directly to the CTAU within 24 hours of the inspection. The original will be maintained in the installation file.
 - b. report any deficiencies found during his inspection to the CTAU Supervisor. The CTAU Supervisor will advise of any deficiencies of sufficient gravity which would affect the alcohol testing program to the installation Commander. Every effort will be made to correct deficiencies as soon as possible.
 - c. prepare a premixed 0.080 grams/210 liters simulated breath alcohol solution for validation of the reliability of the breath testing equipment. The validation test solution will be renewed during the monthly inspection or when the tolerance of + or – 10% of the known concentration is not achieved. The results of this test will be printed in Form MSP 36B. If the instrument fails to produce the expected results, the technician will initiate repairs completing the Breath Test Instrument Repair Report (Form MSP 28) and one copy of the report forwarded to the CTAU. The original will be maintained in the local file. If the technician cannot repair the instrument in the field, a spare unit will be placed in service, and the technician will transport the instrument to the CTAU for repairs. If the instrument cannot be repaired at Headquarters, the CTAU will forward the unit to the manufacturer for repairs on the authority of the Quartermaster Division (QMD).

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- d. Prior to relocating any breath test equipment, the breath test supervisor will contact the CTAU Supervisor to have the proposed location checked for suitability to conduct breath testing.
3. Form MSP 34A will be completed by the breath test supervisor and forwarded to CTAU by the tenth of each month for the preceding month.
4. All instrument operators will be responsible for ensuring that the:
 - a. instrument is in the scrolling mode after utilization.
 - b. instrument is clean, spillages promptly cleaned up and reported to the CTAU.
5. A record of calibration tests, maintenance and general condition will be maintained for each instrument and recorded on Form MSP 37A by the maintenance technician.
6. No operator will test an accused person until authorized by the Sheriff and has successfully completed the Breath Test Operator's School as approved by the Toxicologist and the MSP, and is certified by the Toxicologist and the MSP as a qualified operator of the breath testing equipment.
7. A Form MSP 36A will be maintained by each operator and is subject to inspection by the Toxicologist or his representative at any time. This record will include every test the operator conducts, whether on an accused person or a simulated test of the equipment. Each operator is required to run a minimum of one test per month, which will be listed on the Operator's Log except when the operator is on vacation, sick leave, or when the instrument is unavailable. If an operator is on duty during that month, the monthly test must be conducted. In those cases where an operator is sick or on leave for one or two days in a month, the monthly test must be conducted, if there is sufficient time remaining, in the month. This is not meant to establish a limit on the number of tests conducted by the operator. Operators are encouraged to run as many tests as possible to improve their efficiency and their recorded testing background.
 - a. Numbered sheets will be in sequence for each operator beginning with #1. Sheet numbers shall be continuous from month to month and from year to year.
 - b. Log sheets will be kept in a binder at the breath test operator's place of assignment. Such logs shall be maintained by the

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installation breath test supervisor for the purpose of establishing an accessible permanent record of each operator's testing background.

8. The arresting Deputy and/or the breath test operator will make certain the accused does not eat, drink or smoke, or take any type of medication for a period of at least 20 minutes prior to the test.
9. Prior to testing an accused person, operators will ensure that the MVA Form DR-15 has been read to the accused and that he acknowledges same. Prior to conducting a breath test for another department, the person responsible for conducting the test will be certain a citation has been written or a warrant has been issued for the person suspected of being intoxicated. The DR-15 will be executed in every case.
 - a. If the person to be tested is willing to take the test but refuses to sign the waiver, the test will be administered and his refusal to sign will be noted on the waiver.
 - b. A person's refusal to take the test will be recorded on Form MSP 36B.
10. The breath test operator will conduct the test utilizing testing methods approved by the Toxicologist Post Mortem Examiners Commission.
11. The person tested will be given a copy of the Notification to Defendant of Result of Test For Alcohol Concentration (Form MSP 33). It is required by law that this information be furnished to the defendant. An original and three copies will be prepared and distributed to:
 - a. CCSO file (Deputy's court copy)
 - b. State's Attorney
 - c. Defendant
 - d. MVA (only if DR-15A is utilized)
12. Each Agency is required to keep a permanent log of DUI arrests and tests offered/refused on MSP Form 36B. The CTAU will notify the installation as to the type of log to be used and will pre-number and record the number of pages. Completed log pages, where all cases are closed, may be removed and filed. All arrests for violations of §21-902 shall be entered in the log. Additionally, all operator simulator tests and maintenance reliability tests must

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be entered in the log. The log will be available for inspection by the Toxicologist or his representative at all times.

- a. The purpose of the log is to insure the continuing accuracy of instrument.
- b. When the analysis of the monthly simulation test is entered in the log, the value of the simulator solution at the time of the test will be logged. Again, a tolerance of + or -10% must be obtained, or the CTAU will be notified.
- c. The terminology for all entries in Form MSP 36B conducting simulation tests and all arrest information will follow the guidelines established by the Toxicologist, Post Mortem Examiners Commission. These regulations state:
 - (1) Simulation Test (Operator) – This will be used when an operator conducts a monthly test when he has not tested a subject as required by the regulations. The results of this test will be recorded to the third decimal place, e.g., 0.080.
 - (2) Simulation Test (Maintenance) – This will be used by the breath test maintenance technician only to identify that he has tested the instrument in accordance with the Toxicologist's Regulations. The results will be recorded to the third decimal place, e.g., 0.080.
 - (3) The results of the validation test, conducted prior to evidentiary test, will be recorded to the third decimal place, e.g. 0.080.
 - (4) The State of Maryland Alcohol Testing Program has the methodology of replicate subject sampling. A completed test will require the subject to provide two or if necessary, three sufficient samples of breath for analysis. The final test result will be the lower of the two or three samples analyzed. This result will be recorded to the second decimal place with truncation of the third decimal place. There will be no attempt to round off the final result. A 0.299 BrAC will be reported as 0.29.
- d. All columns in the log shall be completed. If the column is not applicable to the testing being recorded, then place "N/A" in boxes not applicable. The breath test operator's certification number must appear after the operator's name. Information regarding court challenge, court acceptance, trial date, disposition and the results of blood analysis must be added to the log as soon as available by the arresting office/deputy or the breath test supervisor.
- e. The breath test supervisors will present forms MSP 36A and MSP 36B to the Sheriff for a monthly inspection to correct any errors prior to submission to the Toxicologist, Post Mortem Examiners Commission. The Sheriff will initial the respective

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logs beside the last entry.

13. By law, all breath test instruments must be certified by the Toxicologist, Post Mortem Examiners Commission.
 - a. The Toxicologist has ordered the following procedures:
 - (1) All new breath test instruments will be certified prior to assignments to Agency's.
 - (2) All breath test instruments will be recertified each year on a schedule to be established by the Toxicologist, Post Mortem Examiners Commission.
 - (3) All breath test instruments sent to the factory for repairs must be recertified prior to return to Agency.
 - b. To accomplish the above steps, the Maryland State Police will, upon receipt of new or repaired instruments from the factory, forward these instruments to the CTAU. The CTAU will take necessary steps for certification and arrange to forward the equipment to the appropriate installation.
14. The CTAU has published a Chemical Test for Alcohol Manual which contains the regulations set forth by the Toxicologist, the MSP and other necessary information.

J. Breath Test Operator Recertification Training

1. Continued certification of breath test operators shall be accomplished by attending an annual renewal training class for all certified breath test operators.
2. Prior to the expiration of an operator's certification, the CTAU will send a notification of retraining to the individual's commander. This notification will inform the Sheriff of the name of the individual(s) scheduled for retraining and the date, time and location of the training. The Sheriff or his designee will notify the individual(s) and schedule the individual(s) to attend the training class or will notify the CTAU by endorsement through the chain of command if the individual(s) cannot attend the training and the reason(s) or if the individual(s) will not be retained as a breath test operator.
3. Requirements for completion of annual retraining and certification:
 - a. Attend a course approved by the Toxicologist, Post Mortem Examiners Commission
 - b. Take a written exam achieving a passing score as determined by

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the Toxicologist, Post Mortem Examiners Commission.

4. Certification suspension and reinstatement of certification:
 - a. Any operator failing to achieve a passing score will have his certification suspended
 - b. Those operators whose certification is suspended will be required to attend another retraining class within thirty days
 - c. During this period of suspension, operators are restricted from performing any breath tests on individuals arrested for all alcohol related offenses
 - d. Failure to achieve a passing grade following the second retraining class will result in revocation of the operator's certification
 - e. Reinstatement of the operator's certification will be permitted only upon written recommendation of the Sheriff through channels to the supervisor of the CTAU, approval of the Toxicologist, Post Mortem Examiners Commission and completion of the forty hour basic Breath Test Operators School.