|  |  |
| --- | --- |
| **POLICE DEPT/SHERIFF'S OFFICE** | **GENERAL ORDERS** |
| **SUBJECT: DRIVING UNDER THE INFLUENCE OF ALCOHOL/DRUGS** | **NUMBER: 2-19A** |
| **EFFECTIVE DATE:** 01/01/2022 | **REVIEW DATE:** *annually* |
| **AMENDS/SUPERSEDES:**  12/01/12 | **APPROVED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **Chief of Police/Sheriff** |
| **VLEPSC STANDARDS:** OPR.07.01, OPR.07.03, ADM.02.02, OPR.07.05 | |

**NOTE:**

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**I. POLICY**

The **[agency name]** shall vigorously enforce all DUI laws in conformity with the *Code of Virginia*.

**II. PURPOSE**

The purpose of this order is to prescribe procedures for DUI law enforcement.

**III. PROCEDURES**

A. Laws

1. It is unlawful for any person to drive or operate any motor vehicle, engine, or train while under the influence of alcohol or while under the influence of any narcotic drug of any nature. The term motor vehicle includes pedal bicycles with helper motors (Mopeds), while operated on the public highways (§§18.2-266 and 18.2-268.1 to 18.2-268.12).
2. It is unlawful for any person under the age of twenty-one (21) to operate any motor vehicle after illegally consuming alcohol. Any such person with a blood alcohol concentration of .02 percent or more, but less than .08 percent, shall be in violation of §18.2-266.1.
3. It is unlawful for any person whose privilege to operate motor vehicle has been restricted, suspended, or revoked to drive with a blood alcohol content of .02 per cent or more (§18.2-272).

B. Responsibilities

Officers shall be alert for suspected DUI offenders. Officers shall use and document standardized field sobriety tests. In addition, the preliminary breath test, if available, shall be offered to each suspected driver. Officers must carefully document the behavior of the DUI beginning with observations of driving. Once the violator has been stopped, the officer shall note the suspect's appearance, responses to stimuli, speech, admissions of drinking, or drug ingestion.

C. Sobriety tests

1. Officers shall offer and make every attempt to administer the three Standardized Field Sobriety tests on a suspected DUI driver in this exact listed order:

a. Horizontal & Vertical Gaze nystagmus (only if properly certified).

b. Walk and turn.

c. One-leg stand.

Officers at their discretion may employ ONLY these additional listed field sobriety tests. They each must be instructed in the same manner every time.

1. ALPHABET

This technique requires the subject to recite a part of the alphabet. You instruct the subject to recite the alphabet beginning with a letter other than A and stopping at a letter other than Z.

1. FINGER COUNT

In this technique, the subject is asked to touch the tip of the thumb in turn to the tip of each finger on the same hand while simultaneously counting up one, two, three, four; then to reverse direction on the fingers while simultaneously counting down four, three, two, one.

1. FINGER TO NOSE

The subject will stand with his feet together and his arms outstretched, palms up, or with his hands by his side. His head will be back and his eyes closed. The subject will be instructed to touch the tip of his finger to the tip of his nose. No more than six attempts should be instructed.

2. If the operator fails the roadside tests, a preliminary breath test shall be offered, if available (§18.2-267). The person shall also be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. The operator may refuse the preliminary breath test, and shall be advised of his/her right to refuse. The failure to permit such analysis shall not be evidence in any prosecution for an offense of §18.2-266, §18.2-266.1 or subsection B of §18.2-272.

3. At the officer's discretion, or if the preliminary breath test is indicative of presumptive alcohol impairment levels (.08), the suspect shall be arrested for DUI and taken before the magistrate. If the suspect is under 21 years of age, and his alcohol level is above .02 percent, but below .08 percent, he will be released on a summons. In the case of a juvenile offender, refer to General Order 2-29.

1. The preliminary breath test shall only be offered after field sobriety testing and when the officer has observed the operator for at least 20 minutes.
2. The preliminary breath test shall be administered by documented trained officers and performed only on a preliminary breath device approved by the Virginia Department of Forensic Science.
3. If an officer suspects that the vehicle operator was driving under the influence of both alcohol and drugs, or drugs alone, he may require the operator to have a blood test performed **in addition to** testing for alcohol. Blood samples shall be analyzed by the Department of Forensic Science for evidence of alcohol and for various illegal, prescription, and over-the-counter drugs (§18.2-268.2).
4. The officer shall make a full written report of the circumstances of the DUI arrest, formation of probable cause, and witnesses' observations.
5. If, during the investigative stage (prior to being formally charged with a crime such as DUI), the officer receives information about the location of where the suspect consumed their last drink of alcohol, the officer may report this information to the Department of Alcoholic Beverage Control (ABC). Guidance on this topic is provided under Section J, below. The officer will document in his report the location where the suspect was drinking.

D. Arrest

The arresting officer shall perform the following:

*Miranda is not required before the driver takes sobriety tests, or otherwise before questioning.*

1. Advise the arrestee that any person, whether or not licensed by Virginia, who operates a motor vehicle in this state gives implied consent to have a sample of his blood, breath or both blood and breath, taken for a chemical test to determine the alcoholic content of this blood or for the presence of drugs if such person is arrested for violation of (§§ 18.2-266, 18.2-266.1, or subsection B. of 18.2-272).

2. If the arrest occurs as a result of operation of a motor vehicle on private property, the Implied Consent Law (§ 18.2-268.2) does not apply. Although it does not apply, the officer shall try to obtain consent from the arrested person to submit to a chemical analysis of the suspect's blood or breath. The officer shall make all reasonable attempts to obtain a blood or breath sample.

3. Advise the arrestee that any person so arrested for a violation of clause (i) or (ii) of § 18.2-266 or both, § 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance shall submit to a breath test. If the breath test is unavailable or the person is physically unable to submit to the breath test, a blood test shall be given. The accused shall, prior to administration of the test, be advised by the person administering the test that he has the right to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. A copy of the written printout of the breath test result shall be given to the accused.

4. If the arrestee refuses the available test, advise him or her that unreasonable refusal of the test constitutes grounds for the revocation of the driver's license and that a separate charge shall be placed to which he or she will have to answer in court.

5. If he or she still refuses, the arrestee shall be read the *Declaration and Acknowledgement of Refusal – Breath/Blood Test* form by the arresting officer.

6. The arresting officer shall sign the *Declaration and Acknowledgement of Refusal – Breath/Blood Test* form and acknowledge the refusal before the magistrate.

E. Breath Test

1. The security, care, and maintenance of the breath test equipment and all physical evidence obtained from it are every officer's responsibility.

2. The regulations of the Department of Forensic Science require that the breath test equipment be stored in a clean, dry location which is only accessible to licensees and other authorized individuals (defined in the DUI statutes listed above) for the purpose of administering a breath test, preventative maintenance check, or other official uses.

3. The breathalyzer is located at ***[name location]***.

F. Blood test procedure

1. Obtain a search warrant. Take the arrested person to a physician, registered professional nurse, graduate laboratory technician or other technician or nurse designated by order of the Circuit Court acting upon recommendation of a licensed physician, who shall withdraw blood for the purpose of determining its alcohol or drug or both alcohol and drug content. The blood sample shall be placed in vials provided or approved by the Department of Forensic Science.

2. The officer/deputy shall witness the doctor, nurse or technician taking the blood sample and ensure that the blood sample is taken following those procedures which are in compliance with the Code of Virginia. The officer/deputy shall follow the procedures as required by the Department and Virginia code.

a. The vials shall be sealed by the person taking the sample or at his direction. The person sealing the vials shall complete the pre-numbered certificate of blood withdrawal forms and attach one form to each vial. The completed certificate shall show the name of the accused, the name of the person taking the blood sample, the date and time the blood sample was taken and information identifying the arresting or accompanying officer/deputy.

b. The vials shall be placed in a container provided by the Department and the container shall be sealed to prevent tampering with the vials. The officer/deputy shall take possession of the container as soon as the vials are placed in the container and sealed and shall promptly transport or mail the container to the Department.

G. Breath analysis

1. Chemical analysis of a person's breath shall be performed by an individual possessing a valid license, issued by the Department of Forensic Science. This may include the arresting officer or anyone participating in the arrest.

2. The type of equipment and the methods used to perform breath analysis shall accord with the regulations of the Department of Forensic Science.

3. The testing officer shall issue a certificate of breath alcohol analysis which indicates that the test was conducted in accordance with the Department's specifications, the name of the accused, that prior to administration of the test the accused was advised of his right to observe the process and see the blood alcohol reading on the equipment used to perform the breath test, the date and time the sample was taken from the accused, the sample's alcohol content, and the name of the person who examined the sample.

H. Accident investigation

If the DUI suspect has been involved in a traffic accident, officers shall also undertake the following:

1. Identify any witnesses who saw the suspect operating a motor vehicle.

2. Question the witness about the suspect's condition, actions, and statements immediately after the accident.

3. Establish a time lapse from the time of the accident to the time of arrest. Consequences of refusal (§18.2-268.3) only apply if the suspect is arrested within three hours of the alleged offense.

4. Question the witnesses and the suspect about what, if anything, the suspect ingested between the time of the accident and the officer's arrival.

5. Any person who will be hospitalized as a result of his injuries may be released on a summons at the hospital. The officer will contact the magistrate and explain the circumstances. The magistrate will give the approval to release the suspect on a summons.

I. An administrative license suspension form will be prepared by the arresting officer.

The administrative license suspension will be issued if a warrant is issued based on a breath test for §18.2-266, or a warrant or summons is issued for refusal. The administrative license suspension will also be issued for those persons released on a summons for a violation of §18.2-266.1 The administrative license suspension will be entered into VCIN by dispatch.

J. Questioning those suspected of DUI regarding the location of their last drink

Officers receiving information from the suspect(s) and/or witness(s) regarding the location of where the suspect(s) consumed their last alcoholic beverage ***[SHOULD/SHALL]*** report this information to the Department of Alcoholic Beverage Control (ABC). ***[Agencies must determine whether the reporting of this information to ABC is mandatory or suggested]***

The information may be reported in one of the following manners:

1. Completing the online complaint form located on the Virginia ABC website at: [www.abc.state.va.us](http://www.abc.state.va.us) ; or,
2. By calling the Virginia ABC Crime line at: (866) 437-3155