

	POLICY & PROCEDURE	SERIES # 1129	PAGE 1 OF 11
	SUBJECT DUI CASE PROCESSING/ PREPARATION		EFFECTIVE DATE 07/17/17
			OVERSIGHT Operations
DISTRIBUTION ALL MANUALS	AMENDS/SUPERSEDES/CANCELS P&P 1129 dated 10/14/10.		

I. PURPOSE:

The purpose of this policy is to establish proper procedures for processing cases involving driving under the influence (Virginia State Code §18.2-266 and 46.2-391.2).

II. POLICY:

It is the policy of the Hampton Police Division to actively enforce State and City Codes regarding the operation of motor vehicles while under the influence of alcohol and/or drugs. The most recent revision of the Hampton Police Division DUI Worksheet will be utilized as the standard reporting format in all DUI cases. The DUI Worksheet shall be completed to include all evidence to be used in court including any evidential statements and video recordings of the incident.

III. PROCEDURE:

Evidence collection in DUI cases start with the observation of the suspect vehicle. The following procedures pertain:

- A. Observe actions of the vehicle as it is driven. For example, was the vehicle:
 - 1. Swerving from side to side?
 - 2. Starting and stopping in an erratic fashion?
 - 3. Accelerating / decelerating rapidly?
 - 4. Driving slower than appropriate?
 - 5. Making exaggerated turns?

- B. Stop the vehicle in an area where the investigation can be completed as safely as possible. Camera systems (both BWC and in-car camera) shall be utilized whenever available in an effort to capture the entire testing and arrest process.

APPROVED:
CHIEF OF POLICE



1. Observe whether or not the subject appeared to understand the emergency lights and siren.
 2. Make mental notes of the distance for which the driver was observed, and at what points erratic driving was observed.
- C. Ask the driver for his license and registration and observe any apparent coordination difficulties.
1. Ask the operator what their highest level of education was, if they know the alphabet from the letter A through the letter Z, and if they know the numbers 1 through 100. Also ask the operator if they have any physical impairments, are taking any medications, or are currently under doctor's care. At this time conduct the Pre-Exit Sobriety Tests listed on the DUI Evidence Form to include:
 - a. The alphabet test
 - b. The count backwards test
 - c. The finger count test

After explaining what is expected of the operator for each test, ask them if they understand your instructions. If further investigation is warranted continue with the following steps.
 2. Ask the driver to get out of the car and thereafter observe the subject's physical stability.
 3. Make it a point to get close enough to the driver (safely) to enable you to ascertain if the odor of an alcohol type beverage is on his breath (not just on the clothing or in the car).
 4. Observe the physical condition and speech of the driver to include:
 - a. Physical impairments
 - b. Bloodshot eyes
 - c. Facial flushing
 - d. Slobbering or drooling
 - e. Slurred and / or incoherent speech
 - f. Legitimate medication taken by the driver
 5. When assessing the driver's level of impairment, the officer will determine (1) the driver's ability to take the standard field sobriety tests (2) the most appropriate test based on the driver's physical and emotional abilities. Officers will use the

approved field sobriety tests listed on the evidence form:

- a. Walk and Turn (heel to toe)
- b. One Leg Stand
- c. Horizontal Gaze Nystagmus

Safety is the investigating officer's responsibility. Conduct the walk and turn and one leg stand tests on flat, level areas, not between vehicles or areas that present a danger to the officer / suspect.

6. Determine if the driver's observed level of impairment, (based upon both operation of the vehicle and field sobriety tests) established grounds for charging as Driving Under the Influence. If so, continue.
- D. Advise the driver of the Field Breath Test Law (§18.2-267), which is printed on the DUI Worksheet. Offer the suspect a preliminary breath test (alcosensor). If the driver submits to the test, record the results on the DUI Worksheet.
1. In court, the officer will not reveal the results of the Preliminary Breath Test unless under question of the defense attorney or if directed to do so by the court.
 2. Administer the preliminary breath test if the driver chooses, according to operating procedures for the alcosensor.
- E. Advise the driver that he is under arrest for Driving Under the Influence of Alcohol / Drugs and advise him/her of obligations/rights.
1. Under §18.2-268.2 the arrest must be made within 3 hours of the alleged offense. This section needs to be considered during accident investigations, as well as normal traffic stops.
 2. Once the arrest has been effected, advise the driver of the Implied Consent Law (Virginia Code §18.2-268.2) as printed on the DUI evidence form.
 3. "Under Virginia Law, any person who operates a motor vehicle on the highways of the state is deemed to have given his/her consent to have samples of breath, if arrested for driving under the influence or for operating a motor vehicle after illegally consuming alcohol or violating State Code 18.2-272. Any person after being arrested for DUI or

operating a motor vehicle after illegally consuming alcohol or violating State Code 18.2-272, shall submit to a breath test. Any unreasonable refusal to allow a sample to be taken constitutes grounds for revocation of privileges to drive on the highways of this state. A finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial.”

If a blood sample is needed for DUI related testing and the subject does not consent to provide the blood sample, a search warrant from the magistrate must be obtained.

4. Advise the Miranda Warning, if necessary, only after advising the suspect of the Implied Consent Law.
- F. If a blood test is to be administered, and the driver has consented, or a search warrant has already been obtained, take the driver to the nearest authorized medical facility for a blood test. The officer should first obtain a blood test kit from his supervision. Blood test kit supplies are secured and stored at both field offices. The following procedures should be fully documented on the DUI Worksheet:

NOTE: If the suspect is a juvenile his or her parent or legal guardian will need to be contacted to meet the driver at the medical facility to sign the consent for treatment forms. Then proceed with the following procedure. (If the parent or guardian refuses to respond, or to give the medical facility consent, the officer SHALL obtain a search warrant).

1. Note time of arrival at the medical facility.
2. Upon arrival, check to make sure that the test kit date is valid and that the integrity seal is properly secure. The Officer shall wait until the nurse is present before breaching the seal to gain access to the vials.
3. Only a physician, registered professional nurse, or graduate laboratory technician may take blood. Record the name and medical license number on the DUI Worksheet.
4. Determine if the left or right arm was cleansed with the provided alcohol free PVP prep pad or soap and water. If soap and water, check the brand of soap to be used to cleanse the part of the body from which the blood sample is to be taken. This soap must not contain any alcohol.
5. Inspect the syringe wrappers, needle packages, soap

wrapper and gauze package to insure they are sealed prior to their use for the test.

6. Portions of the blood sample are to be placed in each of the two blood vials and mixed with the anticoagulant as instructed. The vials are then sealed with the supplied evidence tape. Both of the Certificates of Blood Withdrawal labels are filled out showing:
 - a. Defendant's name
 - b. Name of person withdrawing the blood
 - c. Date and time blood sample was withdrawn
 - d. Arresting / accompanying officers name (printed)
 - e. Officer's CAD number
 - f. Name of court

The top portion of the certificate is then affixed to the separate vials. Officers must annotate the blood vial number in the appropriate place on the DUI Worksheet. A DFS request for laboratory examination must be completed and be included with the packaging.

7. The vials are then to be re-secured in the packaging provided by the Department of Forensic Science. Close the kit container and seal with tamper evident shipping seal provided.
8. Both blood vials are mailed to the Division of Consolidated Laboratories Services, Bureau of Forensic Science by the arresting officer.
9. The officer shall advise the defendant that either they or their attorney will have to file a motion in court within 90 days to have the sample independently analyzed (§18.2-268.7).
10. If the first blood sample is to be analyzed for drug content, the officer must provide to the Division of Consolidated Laboratory Services, attention (DUID) the following:
 - a. A completed request for laboratory examination.
 - b. Any information that would indicate the presence of drugs and the results of any field sobriety test that was administered.
 - c. A copy of the request of Independent Laboratory analysis, if the accused has elected an independent laboratory analysis of the second (blue) blood vial.

11. **When the suspect is a juvenile and after the blood test is completed, the officer will issue a summons for the DUI offense(s). (As outlined in §16.1-260 of the Code of Virginia). The officer will then release the juvenile to the parent or guardian who will receive a subpoena from the officer to appear in court with the juvenile.**

G. If the breath test is available the officer will proceed as follows:

1. If the officer is not a certified Intoxilyzer operator he will advise Communications of his need for one.
2. The officer will transport the suspect to Adult Intake where the breath test will be administered.
3. All prisoners, who are being given a breath test in the Intoxilyzer Room, will be handcuffed in the front with the use of a waist restraining belt. This belt will be placed on the prisoner, prior to leaving the lockup area and will remain on the prisoner until they are returned to the booking area.
4. The suspect must be observed for a full twenty minutes by the Intoxilyzer technician prior to administering the breath test. This waiting period is to ensure that the subject's mouth is clean of "residual" alcohol.
5. The arresting officer is solely responsible for the custody of the suspect and shall not assume that the suspect will be the responsibility of the examiner.

NOTE: The following three paragraphs apply specifically to juveniles:

6. If the results of the tests do not support the DUI observations, the officer should consider the DUID procedure, if applicable. Otherwise, a charge of driving after illegally consuming alcohol may be appropriate (§18.2-266.1 where BAC is between .02 and .07).
7. The officer may attempt to have the juvenile's parent or guardian respond to Intake. If not, after the test is completed, the officer will transport the juvenile home and issue them a summons for the DUI offense(s), as outlined in §16.1-260 of the Code of Virginia. The officer will release the juvenile to a parent or guardian. The parent or guardian will receive a subpoena from the officer to appear in court with the juvenile.

8. In the event the parent or guardian cannot be located, or is uncooperative, the officer will notify the Juvenile Intake Officer and, if instructed to do so, will transport the juvenile to the Juvenile Intake Office. The juvenile cannot be held in the adult facility without proper referral from juvenile authority.
- H. For formal booking, transport the accused back to Adult Intake facility to obtain warrant(s) from the Magistrate.
- I. Should the defendant refuse to allow a breath sample to be taken, transport him to Adult Intake and read the DC233 “Consequences for Refusal” to the defendant and if the defendant continues to refuse execute and present to the magistrate for his/her signature and processing.

If a juvenile so charged with a violation of §18.2-266 or 29.1-738 refuses to provide a sample of breath for chemical analysis, the provision of the foregoing sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on the parent or legal guardian and the juvenile.

- J. Presumptions from alcoholic content of blood:
 1. If there is less than .05% of alcohol in the blood, the accused is presumed not to be under the influence.
 2. If percentage is more than 0.05%, but less than 0.08%, then there is no presumption except with the existence of other competent evidence.
 3. If the percentage is 0.08% or more, the accused is considered to have been driving under the influence per se.
- K. Successful prosecution of cases involving drug impaired driving rely heavily on the officer’s ability to testify concerning the operation of the vehicle and the observed impairment of the driver, as there are no per se levels of intoxication with drugs.
 1. Reasonable cause must exist to indicate that the observed impairment is due to the presence of drugs in the driver’s body. Reasonable cause consists of a combination of the following:
 - a. A blood alcohol content less than 0.08%, not consistent with observed levels of impairment.

- b. Driver admission to using drug(s).
 - c. Drugs or drug paraphernalia found in possession.
 - d. Chemical odors present.
 - e. Observation of drug induced impairment.
 2. If the blood alcohol content is found to be 0.08% or higher, analysis for the presence of drugs will not be conducted since the driver is already considered to be Under the Influence, per se.
 3. The blood test for drug impairment is administered the same as the standard DUI blood test. Differences in handling the blood samples are noted under the blood test procedures.
- L. Accidents involving a “suspected” drunk driver.
 1. The investigating officer will attempt to determine if the accident is alcohol / drug related, and if so, begin DUI procedures.
 2. Additional information is required if a DUI / Accident investigation takes place:
 - a. The investigating officer must determine that the defendant was the driver of the vehicle at the time of the accident.
 - b. The investigating officer must determine whether or not the defendant consumed any alcohol after the accident occurred.
 3. In addition to the steps specified previously, the police accident report (FR-300) shall be completed and submitted. Alcohol use will be noted on the FR-300 in the appropriate blocks along with the completed area labeled “Offenses Charged”. If the accused is injured, he must be accompanied by the officer to a designated medical facility. The officer will continue with the DUI procedure.
- M. Administrative Suspension of a Driver’s License or privilege to operate a motor vehicle.
 1. Any person who has a valid Virginia Operator’s License, who is unlicensed, whose license is otherwise suspended or revoked, or whose license is from a jurisdiction other than the Commonwealth of Virginia shall have his privilege to operate a motor vehicle suspended immediately for seven

days, if:

- a. A breath test was taken pursuant to §18.2-268.2 or any similar ordinance of any county, city or town and the results show a blood alcohol content of 0.08% or more, or
- b. The person refuses to submit to the breath test in violation of 18.2-268.3, or any similar local ordinance.

2. If the previous conditions exist, the officer shall:

- a. Personally serve a Notice of Administrative Suspension of Driver's License form (DC-201) and take any driver's license issued by the Commonwealth which is in the possession of the person.

NOTE: The arresting officer will NOT take possession of an out of state driver's license.

- b. The officer shall then promptly deliver the driver's license, Notice of Suspension, (DC-201), and a sworn report of arrest document on the Criminal Complaint form (DC-311) to the Magistrate.

NOTE: Forms DC-201 and DC-311 are maintained and furnished in the Magistrate's office and the Intoxilyzer Room. In regards to form DC-210, the officer should complete the original and two copies (Original to magistrate to accompany paperwork to court; one copy for the officer's DUI Evidence Form, and one copy to be delivered to the Information Center for transmittal of information via VCIN).

- c. The officer shall then cause the administrative license suspension information (VCIN message format 459) and a copy of the Notice of Suspension to be sent forthwith to DMV. This will be accomplished by completing the lockup procedures and then delivering a copy of the Notice of Suspension to the Information Center. Information Center personnel shall, as soon as possible, enter the information in proper VCIN format and forward the DC-201 form to the Records Section where it will be sent to DMV on the next business day.

- d. **When a juvenile is arrested under the same conditions, the procedures will be similar to those for an adult with the following exception: The officer will notify the parent and issue a Uniform Traffic Summons to the juvenile and subpoena the parent to appear in court. The underlying charge will be forwarded to Juvenile and Domestic Relations Court.**
- N. All DUI/DUID cases shall be completed on an IBR from using the IBR codes 90D1 for Driving Under the influence of Alcohol, and 90D2 for Driving under the Influence of Drugs. The narrative portion shall be completed using the DUI Format in the DUI Worksheet.

A copy of the DUI Worksheet will be attached to and turned in to Records with the IBR form, casefile cover sheet, and copies of all related information (e.g., police accident reports (if applicable), sobriety checkpoint operation plans (if applicable), criminal complaint form, all warrants obtained, Virginia Uniform Summons, the Intoxilyzer checklist, Certificate of Analysis, Acknowledgement/Declaration of Refusal form, administrative license ~~revocation~~ suspension form, vehicle tow sheet, and Administrative Vehicle impoundment form. All case files will be provided to the Commonwealth's Attorney's office. Officers will turn in the completed forms as soon as possible to give prosecutor's sufficient time to prepare for trial.

In accordance with P&P 1137 "Audio/Visual Recordings" for video files not stored in Evidence.com, including, but not limited to, in-car cameras:

1. A "Data Disk" of every reported DUI will be attached to the DUI Case File. If the Commonwealth Attorney determines that a DVD Player compatible disk is needed for court, they will notify the Special Projects Supervisor of this request. At that time, Special Projects will arrange for the downloading of the DVD compatible disk.
 2. For video files stored in Evidence.com, including Body Worn Camera footage: The arresting officer will ensure the link of the video or case file from Evidence.Com is sent to the Commonwealth Attorney.
- O. In processing juvenile offenses, officers need to remember

that any juvenile that has been certified as an adult during a juvenile court procedure will be processed as an adult for ALL subsequent offenses.