	TYPE OF DIRECTIVE LINE PROCEDURES	NUMBER LP-12-11
	SUBJECT DRIVING UNDER THE INFLUENCE	EFFECTIVE DATE 05/04/11
	REFERENCE	RESCINDS LP-12-09

POLICY

The Division ***of Police*** will actively engage in programs that promote highway safety and education. Officers ***shall*** actively pursue***, arrest, and assist in the prosecution of*** all persons who drive ***a*** motor vehicle ***while under the influence of alcohol and/or drugs***.

PROCEDURES

I. DRIVING UNDER THE INFLUENCE OF ALCOHOL

A. There are four (4) instances when an officer will have the opportunity to contact a suspect driver and initiate part or all of the DUI processing procedure. These instances include:

1. The officer stops a vehicle after observing a criminal or traffic violation;

2. The officer stops a vehicle based upon reasonable and articulable suspicion that a driver is impaired or has committed a criminal violation;

3. The officer responds to the scene of an accident and observes that an involved driver may be impaired by alcohol and/or drugs;

4. Equipment, licensing, and sobriety checkpoints.

B. Upon contacting a driver suspected of being impaired/under the influence of alcohol and/or drugs, the officer shall:

1. Interview and observe the driver;

2. Note any unusual odor, behavior, speech, etc;

3. Ask if the driver takes any medications, including insulin, or if he or she has diabetes, disabilities or injuries.

C. Administer Standardized Field Sobriety Tests (SFST)

1. The SFST's ***are*** composed of the horizontal and vertical gaze nystagmus test, the walk and turn test, and the one leg stand test.

2. SFST's shall be used unless physical disabilities or injuries require the officer to use alternative sobriety tests such as number counts, alphabet recitation, finger dexterity etc.

D. Offer the suspect a preliminary breath test – PBT (§18.2-267). A PBT includes an Alco-Sensor or any other approved device. The suspect has the right to see the results of the PBT. An officer shall record the results of the PBT on their DUI Worksheet.

E. Place the suspect under arrest in accordance with G-57 if there is probable cause to believe that the driver is impaired/under the influence of alcohol and/or drugs. Charge the suspect with (22-2) §18.2-266, driving a motor vehicle while intoxicated. Always place the county code (22-2) in front of all DUI related statutes with the exception of §18.2-268.3 Refusal of Tests.

F. Implied Consent

1. Read the Implied Consent Card supplied by the Division of Police (which has been previously approved by the Commonwealth's Attorney).

2. If the person refuses to submit to a breath or blood test, the officer shall read the Acknowledgement of Refusal form (DC-233) to the arrested person. Indicate the time the DC-233 form was read on the DUI Worksheet.

3. The Acknowledgement of Refusal applies only to those vehicles operated on public highways or private property open to the public as defined in § 46.2-100.

4. Persons arrested for DUI on private property may elect to submit to a breath test; however, the Acknowledgement of Refusal does not apply to DUI on private property. Persons arrested for DUI on private property not open to the public <u>will not</u> be advised of the Certificate of Refusal.

G. Advise the suspect of the Miranda Warning. Miranda does not apply to verbal statements regarding submitting to a chemical test. Submission to a chemical test to determine the alcohol/drug content of a person's blood is a civil process concerning the privilege, not the right, to drive.

H. Dispose of the suspect's vehicle in accordance with LP-10.

I. Respond to the appropriate facility for further processing.

II. IF A BREATH TEST IS SELECTED

A. Notify Communications to have a breath test operator respond to administer the test. (Arresting officers may administer breath tests if they are properly licensed.)

B. The arrested person 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 (§18.2-268.2 B).

C. The arresting officer and the testing officer shall observe the suspect during the required twenty (20) minute waiting period.

D. Make no comment as to the operational procedures involved in administering the test.

E. If the equipment automatically produces a written printout of the breath test result, the printout, or a copy, shall be given to the suspect (§18.2-268.2 B).

F. Upon completion of the test, respond to the magistrate to obtain warrants.

III. WHEN A BLOOD TEST IS SELECTED BY THE OFFICER

A. The officer is encouraged to respond to either ***Parham Doctors' Hospital*** or Henrico Doctors' Hospital – Forest, unless the incident involves a crash and the suspect is transported to a different medical facility.

B. The officer shall ensure the test is administered according to §18.2-268.5.

1. Only the following cleaning solutions shall be used:

   a. Soap and water;
   b. Polyvinylpyrrolidone iodine (Betadine);
   c. Benzalkonium Chloride;
   d. PVP iodine; ***or***
   e. Povidone iodine.

2. Only the following persons may take blood samples:

   a. Physicians;
   b. Registered nurses;
   c. Licensed practical nurses;
   d. Phlebotomists;
   e. Graduate laboratory technicians; ***or***
   f. A technician or nurse designated by order of a circuit court.

C. <u>The person who seals the vial shall</u> complete the pre-numbered certificate of blood withdrawal form attached to the vial by the Division. The completed withdrawal certificate for each vial shall show:

1. The name of the accused;

2. The name of the person taking the blood sample;

3. The date and time the blood sample was taken; ***and***

4. The information identifying the arresting or accompanying officer;

D. The officer shall take possession of the blood vials.

E. Forward the blood vials as provided by law in a container provided by or approved by the Division of Forensic Science.

F. Respond to the magistrate to obtain a warrant.

IV. REFUSAL TO PROVIDE A TEST SAMPLE

A. Refusal to Provide Breath/Blood Sample - While at the Magistrates Office (Generally) (§18.2-268.3)

1. If the suspect refuses to perform the breath test due to a medical reason (asthma, etc.), or is incapable (spastic stomach, etc.), the suspect shall provide a blood sample. If a blood sample is not provided, it is considered a refusal.

2. The officer shall sign an Acknowledgement of Refusal form (DC-233) acknowledging they have read it to the arrested person.

3. The officer shall then acknowledge under oath before the magistrate that the form was read to the arrested person.

4. The magistrate will then promptly issue a warrant or summons charging the person with refusal.

5. The magistrate will execute the form and then attach it to the warrant or summons for subsequent forwarding to the court.

B. Refusal to Provide Breath/Blood Sample - While at Medical Facility (Motor Vehicles-Generally or Watercraft/Motorboats) (§18.2-268.3)

1. If a suspect is at a medical facility due to treatment or evaluation and a charge of DUI has been placed, and there is not a breathalyzer machine available, then the breath test will be made unavailable.

2. Officers may place a charge of DUI while at a hospital or medical facility, at the scene of a vehicular accident, or at any location within three (3) hours of the occurrence of any motor vehicle accident (§19.2-81). The maintenance of the chain of evidence of alcohol contained in the suspect's blood should be a consideration when pursuing a DUI charge.

3. The officer shall obtain a sample of the suspect's blood as outlined in section III. It should be noted that a suspect may not necessarily be at a preferred medical facility, such as ***Parham Doctors' Hospital*** or Henrico Doctors' Hospital – Forest, unless the incident involves a crash and the suspect is transported to a different medical facility.

4. If the suspect unreasonably refuses to provide a blood sample, the officer shall in accordance with 18.2-268.3, read and execute the appropriate Declaration or Acknowledgement of Refusal form (DC-233) in the presence of a witness (i.e. nurse, technician, doctor), not a law enforcement officer. The witness should then print and sign their name on the space provided on the form.

5. A legal requirement exists that an officer inform the suspect that if they are found by the court that they unreasonably refused to submit to a blood test, such a finding may be admitted as evidence during the trial of a Driving Under the Influence charge.

6. The officer shall then issue a Virginia Uniform Summons to the suspect for the charge of Refusal to Permit the Taking of a Breath/Blood Sample (18.2-268.3) and attach (staple) the appropriate Declaration or Acknowledgement of Refusal form (DC-233) to the Court Copy of the Virginia Uniform Summons.

   a. Since the Refusal charge carries a criminal penalty, if the suspect refuses to sign the Virginia Uniform Summons, the officer shall respond to a magistrate and obtain a warrant.
   b. The arraignment date should be set in accordance with established arrest procedures in LP-02.

7. If the arrestee is going to be admitted to the medical facility and ***they are*** capable of signing a VUS, only then should the officer release ***them*** on the VUS for DUI.

   a. Per the Commonwealth's Attorney's office, the admission to the hospital must be verified by the admitting physician.
   b. However, if the person is not able to sign or refuses to sign the VUS, the officer shall obtain a warrant for the Driving Under the Influence charge and serve it as soon as practical.

V. DRIVING UNDER THE INFLUENCE OF DRUGS (DUID)

A. Many factors may lead an officer to suspect that a driver is under the influence of drugs. These factors include impairment inconsistent with a preliminary breath test result, physical appearance, unusual behavior, drugs/paraphernalia found, driver statements, etc.

B. If there is no evidence of alcohol consumption (i.e. smell of alcohol, beer cans, statements, PBT results), the officer may skip the breath test and immediately proceed to ***Parham Doctors' Hospital*** or Forest and obtain the blood sample according to section III.

C. If there is evidence of alcohol and drug consumption, the officer shall administer a breath test. ***If the breath test indicates a blood alcohol content of less than .08 percent, the officer shall then proceed with obtaining a blood sample for the testing of drugs.***

D. When a blood test is taken pursuant to suspected drug influence:

   1. Forward the blood vials as provided by law in a container provided by or approved by the Division of Forensic Science.

   2. Respond to the magistrate to obtain a warrant.

E. See section XIV for mailing and delivery procedures of blood vial kits.

VI. DRIVING UNDER THE INFLUENCE – COMMERCIAL MOTOR VEHICLE DRIVERS (§46.2-341.24)

A. Officer's shall place a charge of § (22-2)46.2-341.24 when the driver's BAC is at a level of .04 to .07.

B. Officers shall place a charge of § (22-2)18.2-266 when the driver's BAC is .08 or higher.

C. If an officer is unsure if a driver qualifies as a commercial motor vehicle operator, they may refer to §46.2-100 or contact any Division Motor Carrier Inspector for verification.

VII. PERSONS UNDER AGE TWENTY-ONE (21) DRIVING AFTER ILLEGALLY CONSUMING ALCOHOL (§18.2-266.1)

A. This statute applies to those persons under the age of twenty-one (21) operating any motor vehicle after illegally consuming alcohol. Any such person with a blood alcohol concentration of 0.02 percent or more, but less than 0.08 percent as indicated by a chemical test, will be charged under this statute. The same breath test and procedures apply as a DUI.

B. Refusal of breath test procedures (§18.2-268.3) applies to illegal consumption of alcohol for persons under twenty-one (21) years of age.

VIII. TRANSPORTING A MINOR 17 YEARS OF AGE OR YOUNGER (§18.2-270)

When an officer arrests any person for a violation of §18.2-266 (DUI) and the arrested person was transporting a person 17 years of age or younger, or as authorized in §16.1-278.9 (Delinquent Children), the officer shall obtain a statement from the driver regarding his knowledge of the minor passenger. This information may be used to support an enhanced penalty against the arrested person. The officer should record this statement in his DUI Worksheet.

IX. VIOLATIONS OF ASAP RESTRICTIONS (§18.2-272)

A motor vehicle being driven by any person in violation of an offense listed in this section for driving after their license, learner's permit, or privilege to drive has been restricted shall be charged with one of the following:

A. If anyone is in violation of ASAP restrictions from a DUI or DUID conviction, the statute used to charge the driver must be §18.2-272.

B. If anyone is in violation of ASAP restrictions from a Drug Possession conviction, the statute used to charge the driver must be §46.2-301.

C. If anyone is in violation of a restricted operator's license who is a habitual offender, the statute used to charge the driver must be §46.2-357.

X. ALCOHOL-RELATED SUSPENSION CHARGES (§46.2-301.1).

A motor vehicle being driven by any person in violation of any of the following listed offenses shall be impounded or immobilized at the time the person is arrested for driving after his license, learner's permit, or privilege to drive has been so revoked or suspended.

A. A driver whose license, learner's permit, or privilege to drive a motor vehicle was suspended or revoked for a violation of §18.2-51.4 (Maiming, etc., of another resulting from driving while intoxicated); or

B. Driving while under the influence in violation of §18.2-266, §46.2-341.24, or a substantially similar ordinance or law in any other jurisdiction; or

C. Driving after adjudication as a habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense; or

D. Where such person's license was suspended administratively under the provisions of §46.2-391.2 (Administrative Suspension of License or Privilege to Operate a Motor Vehicle); or

E. Driving after such person's driver's license, learner's permit, or privilege to drive a motor vehicle was suspended or revoked for unreasonable refusal of tests in violation of §18.2-268.3 (Refusal of Tests), §46.2-341.26:3 (Refusal to Tests CMVs) or a substantially similar ordinance or law in any other jurisdiction.

XI. ADMINISTRATIVE IMPOUNDMENT OF VEHICLES UNDER §46.2-301.1 OR §18.2 272

A. The officer shall impound the vehicle for a period of thirty (30) days at the towing wrecker service storage lot, <u>not</u> at the Division's impound lot located on Woodman Road. Further guidance for the impounding of a motor vehicle can be found in LP-10.

B. The officer will serve notice of impoundment (DOP-011) on the arrested person. Notice shall include information on the right to petition for review of the impoundment.

C. The officer will deliver copies of the impoundment notice (DOP-011), VUS, and witness subpoena to the magistrate. The magistrate will promptly forward a copy of the DOP-011 to the clerk of the General District Court of the appropriate jurisdiction and to the Commissioner, Virginia Department of Motor Vehicles.

D. The officer will not impound leased or rental vehicles.

E. A driver whose vehicle was impounded may, during the impoundment period, petition the General District Court for redress. Officers may be summoned to court to testify accordingly. The arresting officer may electronically fax (501-4110) the Commonwealth's Attorney's Office, copies of the following:

1. The notice of impoundment;

2. The arrest summons/warrant;

3. Any field notes.

XII. ADMINISTRATIVE SUSPENSION OF LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE (§46.2-391.2)

A. A licensed person's, or any unlicensed person's, or any person whose license is otherwise suspended/revoked, or any person whose license is from another jurisdiction other than the Commonwealth of Virginia, privilege to operate a motor vehicle shall be suspended in accordance with §46.2-391.2. The Notice of Administrative Suspension (DC-202) form should be completed by the officer and is available at the magistrate's office.

1. A breath test is taken pursuant to §18.2-268.2 or similar local ordinance and shows a Blood Alcohol Content (BAC) of 0.08 percent or more; or

2. The person (including those under 21 years of age) refuses to submit to the breath test in violation of §18.2-268.3, and upon issuance of a warrant by a magistrate for a violation of §18.2-51.4 (Maiming while DUI), §18.2-266 (DUI) or §18.2-268.3 (Refusal), or similar local ordinance.

3. Any person under 21 years of age whose breath test is taken and shows a Blood Alcohol Content (BAC) of 0.02 or more.

B. After arresting the person, the officer shall:

1. Serve Notice of Administrative Suspension (DC-202) to the arrested person;

2. Complete a Criminal Complaint Form (DC-311) and present it to the magistrate;

3. Promptly take possession of the arrested person's Virginia OL (not out-of-state OL's) and give it to the magistrate;

4. Fax, or deliver in person, a copy of the suspension notice to the Communications Unit prior to completion of the arrest. Communications Unit personnel shall ensure the information is forwarded to DMV through their VCIN terminal.

C. An arrested person whose license is suspended through this section can ask the General District Court for a review anytime during the suspension period. Officers may be called into court to testify in these cases.

D. The court clerk will promptly return the license at the end of the suspension period either in person or by mail.

XIII. FELONY DRIVING UNDER THE INFLUENCE

A. An officer who arrests a suspect for DUI that is punishable as a felony shall follow the procedures for administering the breath and/or blood test as outlined in this directive.

B. If a suspect refuses to submit to a breath and/or blood test and after the officer obtains and serves a summons for refusal to submit to the test, the officer shall:

1. Obtain a search warrant in accordance with §19.2-56 and §19.2-57 to seize the suspect's blood;

2. Serve the search warrant and transport the suspect to ***Parham Doctors' Hospital*** where the blood seizure will be performed;

3. Obtain at least 10cc of blood and write the arresting officer's name (last name, first name, MI), the date and time of arrest, the report number, and the suspect's name (last name, first name, MI) on the vial provided or approved by the Division of Forensic Science.

4. The blood vial shall be maintained and stored as evidence in accordance with established Division procedures.

5. File the search warrants with the magistrate and the court as required in §19.2-57;

6. As soon as practical, submit the blood vial kit to the State Forensics Laboratory for examination;

7. Contact the Commonwealth's Attorney's Office so a representative from the State Laboratory can be subpoenaed as an expert witness for the Commonwealth.

XIV. MAILING AND DELIVERY PROCEDURES

A. Officers shall submit within ten (10) days from the date of arrest any blood vial kits to the Division of Forensic Science.

B. In instances of DUI/DUID cases, officers shall include with the submission of the blood vial kits a Request for Laboratory Examination and a photocopy of the DUI worksheet. All items are to be placed in one package when mailed or delivered to the State Lab.

C. Blood vial stamps are available from the Receptionist at the Public Safety Building during normal administrative working hours or Criminal Records Unit after normal administrative working hours.

XV. PUBLIC NUISANCES

A. In an effort to identify commercial establishments located in Henrico County that serve alcohol to suspects who are later arrested for DUI, officers shall:

1. Complete an ICR regarding any suspect who consumes alcohol at commercial establishment(s) in Henrico County and has submitted to a breath test;

2. List the offense type as "Public Nuisance";

3. List the offense location(s) as the address of the commercial establishment where the suspect consumed the alcohol;

4. Write in the narrative section of the ICR any information which would assist in the identification and prosecution of commercial establishment(s) as public nuisances, such as the suspect's BAC and the number of drinks consumed at the establishment(s).

B. Every January and July, the Commander, Community Policing will conduct an analysis of locations reported as public nuisances on an ICR and bring any repeat locations to the attention of the Virginia Department of Alcoholic Beverage Control for follow-up action.

XVI. INCIDENT CRIME REPORT/CASEBUILDER

A. All DUI Arrests require an ICR be completed. The arrestee's information, as well as vehicle information, shall be included on the ICR.

B. A CaseBuilder Prosecutive Report shall be completed for all DUI/DUID Arrests (refer to LP-63).Officers shall be diligent to include all pertinent documents in their electronic case file.

XVII. DOCUMENTATION FOR COMMONWEALTH'S ATTORNEY

A. To facilitate the processing of arrestees at arraignments and to reduce the need for officers to respond to motions for discovery, officers shall provide the magistrate with copies of the following documents:

1. DUI Worksheet;

2. Certificate of Analysis or Refusal; ***and***

3. Criminal Complaint Form.

B. Pursuant to a prior agreement, the magistrate will attach the above documents to the Commonwealth's Attorney's copy of the arrest warrant(s).

By Order of:

D. A. Middleton
Chief of Police