



Virginia Association of Chiefs of Police

SAMPLE DIRECTIVE



DUI Checkpoints for Law Enforcement Agencies

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Preface

In 2002, Virginia Governor Mark Warner formed the Governor's Task Force To Combat Driving Under The Influence Of Drugs And Alcohol. The task force produced its report in July, 2003.

One of the recommendations of the task force addressed the use of sobriety checkpoints by law enforcement:

The use of sobriety checkpoints should be expanded across the Commonwealth. The Virginia Association of Chiefs of Police and the Virginia Sheriffs Association, with input from the Department of Criminal Justice Services and others, should create model sobriety checkpoint standards and guidelines and encourage adoption and implementation by all local law enforcement agencies, no later than 2005.

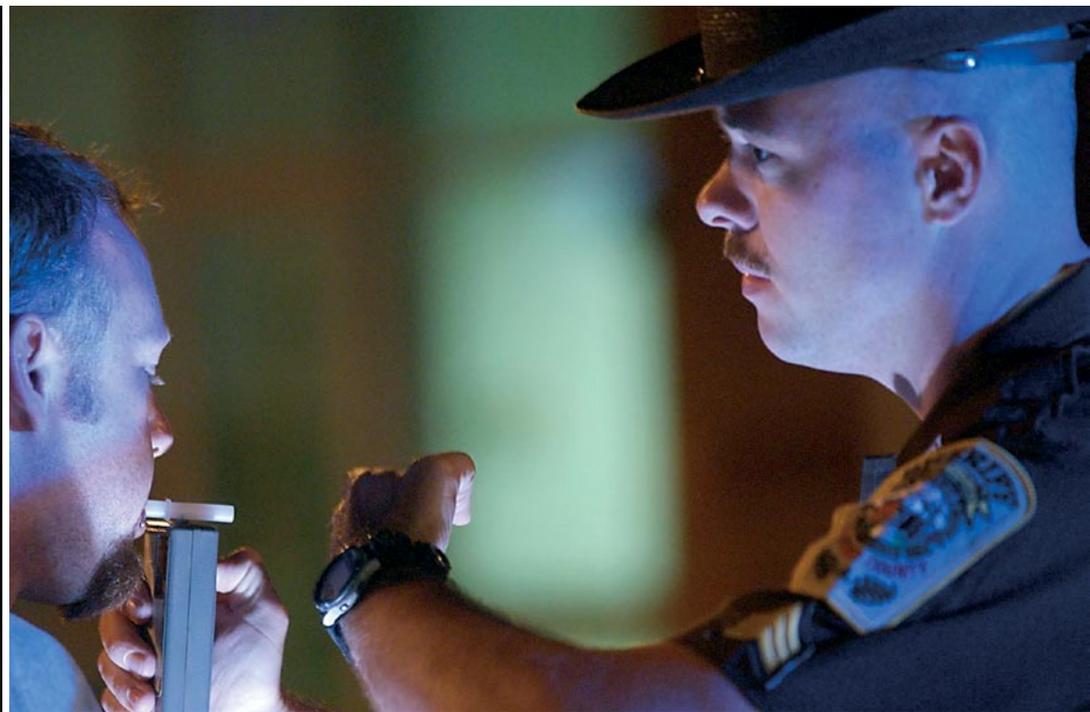
The Virginia Association of Chiefs of Police (VACP) was funded through a traffic safety grant from the Virginia Department of Motor Vehicles to develop a training program and a sample directive on DUI checkpoints for law enforcement agencies. In 2005, the VACP, in cooperation with the Commonwealth Attorneys Services Council, conducted a series of joint trainings across Virginia focused on best practices in DUI enforcement.

In 2006, the VACP formed a committee to develop a sample directive (also known as a model policy) on DUI checkpoints. This document is designed to help law enforcement agencies implement policies that incorporate legal guidelines and best practices.

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THE USE OF SOBRIETY CHECKPOINTS FOR IMPAIRED DRIVING ENFORCEMENT

*Prepared by the Virginia Association of Chiefs of Police
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Introduction

Impaired driving and impaired-related crashes constitute a major threat to the safety and well-being of the public, and as such have become one of Virginia's leading health problems.

This model policy has been designed to provide Virginia's law enforcement agencies with a uniform and successful method to plan, operate and evaluate sobriety checkpoints. When implemented in conjunction with departmental policy and any constraints imposed by state or local courts, sobriety checkpoints provide an effective enforcement tool to combat the impaired driving problem.

Any agency considering the use of sobriety checkpoints should integrate them with a continuing, systematic and aggressive impaired driving program, including vigorous enforcement, public information and education. The purpose of the program is to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while impaired by alcohol or drugs. There is significant evidence that the use of sobriety checkpoints reduces alcohol related crashes in a community.

The Virginia Association of Chiefs of Police wishes to express its appreciation to the following individuals:

- The Honorable Charles S. Sharp, Fredericksburg Commonwealth's Attorney
- Christopher S. Hession, Sergeant (Virginia Beach Police Department)
- Chad Trivitt, Lieutenant (Wythe County Sherriff's Office)
- Donald W. Allen, Law Enforcement Liaison (VACP)
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Sample Directive

I. PURPOSE

The purpose of this document is to provide guidelines for the physical construction and operation of a sobriety checkpoint in order to maximize the deterrent effect and increase the perception of “risk of apprehension” of motorists who would operate a vehicle while impaired by alcohol or other drugs.

II. POLICY

It shall be the policy of a law enforcement agency to implement a sobriety checkpoint program as part of a comprehensive impaired driving enforcement program. To ensure standardization of this program a clear and concise set of written guidelines should be developed governing procedures on how checkpoints will be operated within your jurisdiction.

To implement this policy, the agency must:

- Satisfy federal, state and local legal requirements.
- Conduct checkpoints with a minimal amount of intrusion or inconvenience to motorists.
- Ensure the safety of the general public as well as law enforcement officers who are involved.
- Provide for an objective site selection process based on relevant data.
- Provide for public information and education to maximize the deterrent effect and heighten awareness of the impaired driving problem.
- Provide for a systematic procedure for data collection.
- Provide an after-action analysis report to monitor and ensure standardization and consistency of the sobriety checkpoint program.

Officer selection should be based on experience and training. Operational procedures must be covered during a briefing period prior to each checkpoint.

III. DEPARTMENTAL GUIDELINES

Written guidelines, consistent with existing agency policies and prepared in advance of the sobriety checkpoint, must:

- Be approved by the agency's chief law enforcement official or designee prior to commencement of the checkpoint.
- Specify signing, safety equipment, warning devices, barriers, etc. that will be used, their placement and proper use.

- Specify the method for selecting motorists to be contacted to ensure consistency and objectivity.
- Provide for an operational briefing of personnel prior to each checkpoint. At this time, designate assignments and respective duties.
- Specify dialogue and educational material to be used by checkpoint personnel.
- Ensure that initial screening period is kept to a minimum to reduce unnecessary delay or intrusion.
- Provide for the removal of vehicles to the predetermined area when further investigation is required, and the disposition of vehicles subsequent to arrest.
- Require checkpoint be maintained for at least a one hour period, unless circumstances arise that would warrant cancellation or suspension of the checkpoint, as determined by the on-site supervisor.
- Require that all equipment, materials and litter be removed at the completion of the checkpoint.

IV. PROCEDURES

A. Site Selection

Each department must be able to objectively outline criteria utilized in the site selection process:

1. Examine the site for alcohol/drug related traffic incidents, such as,
 - a. Unusual incidence of alcohol/drug related crashes.
 - b. Alcohol/drug impaired driving violations.
 - c. Unusual number of single vehicle crashes.
 - d. Any other documented alcohol/drug related vehicular incidents.
2. Select locations which permit the safe flow of traffic through the checkpoint.
 - a. Consideration should be given to posted speed limits, traffic volume and visibility.
 - b. Ensure sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway for additional investigation.
 - c. Consider other conditions that may pose a hazard, such as weather.
3. The site should have maximum visibility from each direction and sufficient illumination. If permanent lighting is unavailable ensure that portable lighting is provided.

B. Personnel

1. A sworn, uniformed officer will be assigned to provide on-scene supervision of the checkpoint, and be ultimately responsible for overseeing operations.
2. The checkpoint will be staffed by a sufficient number of uniformed personnel to ensure a safe and efficient operation.
3. Civilian personnel may be utilized in support (non-law enforcement) positions.
4. Multi-jurisdictional operations are encouraged; one agency shall be designated as the lead law enforcement agency.

C. Advance Notification

1. For the purpose of public information and education, agencies may announce to the media that checkpoints will be conducted.
2. Agencies may encourage media interest in the sobriety checkpoint program to enhance public understanding of aggressive enforcement and to heighten the deterrent effect.

3. Agencies should provide advance notification of the checkpoint to public safety agencies expected to be affected.
4. Agencies also may provide advance notification to judicial, prosecutorial and government officials, as well as public interest groups.

D. Motorists Warnings / Safety Methods

1. Special care is required to warn approaching motorists of the sobriety checkpoint.
2. Basic equipment shall include, but is not limited to:
 - a. Warning signs placed in advance of the checkpoint.
 - b. Flares, fusees, or similar devices.
 - c. Safety cones or similar devices.
 - d. Permanent/portable lighting.
 - e. Marked patrol vehicles.
3. The use, placement and types of traffic control devices shall ensure “due regard” for public safety.
4. All personnel involved in the checkpoint operation shall wear approved reflective/safety materials or similar clothing.

E. Contingency Planning

Any deviation from the predetermined guidelines must be thoroughly documented. The reasons for deviation may include traffic backing up, intermittent inclement weather, emergency vehicle traffic, etc.

F. Data Collection And Evaluation

To monitor and ensure standardization and consistency of a sobriety checkpoint, a systematic method of data collection will be incorporated.

1. An after-action report should include, but is not limited to:
 - a. Time, date, and location of checkpoint.
 - b. Weather conditions.
 - c. Number of vehicles passing through checkpoint.
 - d. Predetermined order of selecting motorists.
 - e. Number and types of enforcement actions (e.g. arrests, summonses, and warnings).
 - f. Number of motorists detained for further investigation (e.g. field sobriety testing, etc.).
 - g. Identification of unusual incidents, such as safety problems/other concerns.
 - h. Names and assignments of all checkpoint personnel.
2. To assist in determining the effectiveness of a checkpoint operation, a periodic impact analysis of the site may include the following types of information:
 - a. Crash rate reduction.
 - b. Data on impaired driving offenses.
 - c. Public opinion survey to determine increased perception of detection and apprehension of impaired drivers. Public reaction to the use of sobriety checkpoints can be obtained by several different methods. Recommended procedures for obtaining feedback include, but are not limited to:
 - Mail in surveys.
 - Verbal feedback from motorists at checkpoint site.
 - Periodic public opinion polls.



APPENDIX: Legal Guidelines for Sobriety Checkpoints

The following outline of legal cases relevant to sobriety checkpoints was prepared by the Honorable Charles S. Sharp, Fredericksburg Commonwealth’s Attorney, as part of a training curriculum for prosecutors.

The cases cited in the outline were current law at the time of publication, and due diligence should be taken to consult any changes or updates in relevant statutes and case law.

I. OVERVIEW

- A. Constitutionality of roadblocks (sobriety checkpoints)
- B. Scope of detention
- C. When is a roadblock not a roadblock (“evading”)
- D. Miscellaneous considerations

II. CONSTITUTIONALITY OF ROADBLOCK

A. U.S. Supreme Court

1. Valid roadblocks are constitutional. **Delaware v. Prouse, 440 U.S. 648 (1979)**
2. But, according to **Brown v. Texas, 443 U.S. 47 (1979)**, must satisfy a balancing test to determine
 - a) gravity of public concerns
 - b) degree to which seizure advances public interest
 - c) severity of interference with individual liberty
3. Bottom line: “must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers”

B. Virginia Supreme Court

1. Valid roadblocks may be established for:
 - a) license checkpoint
 - b) DUI roadblocks

- c) fleeing felon checkpoint
 - d) not for general narcotics interdiction
2. **Lowe v. Commonwealth, 230 Va 346 (1985)**
 - a) a stop is a seizure (**Prouse**)
 - b) neutral criteria (no field officer discretion)
 - 1) Charlottesville plan: study of area, police training, supervisor control, previously designated sites, detailed stop procedures
 3. **Simmons v. Commonwealth, 238 Va. 200 (1989)**
 - a) bad plan
 - 1) no prior supervisor direction
 - 2) no plan
 - 3) total discretion in field officer
 4. **Crandol v. Newport News, 238 Va. 697 (1989)**
 - a) advance approval by supervisor is key
 - b) good plan
 5. **Burns v. Commonwealth, 261 Va. 307 (2001)**
 - a) exigent circumstances justify departure from plan
 - b) roadblock specifically designed to investigate particular homicide

C. Virginia Court of Appeals

1. Flaws in the plan may doom roadblock
 - a) **Hall v. Commonwealth, 12 Va. App. 972 (1991)**
 - 1) too much officer discretion (e.g., field officer allowed to set the time and the site)
 - b) **Raymond v. Commonwealth, 17 Va. App. 64 (1993)**
 - 1) get the plan into evidence
 - 2) official written statements hearsay exception for police procedures
 - c) **Brown v. Commonwealth, 20 Va. App. 21 (1995)**
 - 1) must comply with the guidelines (e.g., field officer cannot deviate)
 - 2) "light traffic and lack of arrests" does not justify roadblock move
2. But substantial compliance may be enough
 - a) **Sheppard v. Commonwealth, 25 Va. App. 527 (1997)**
 - 1) supervisor, not field officer, picked site not in plan
 - 2) a "minor, insubstantial deviation"
 - 3) aimed at a problem, not a person or group
 - b) **Crouch v. Commonwealth, 26 Va. App. 214 (1998)**
 - 1) plan left time selection to field officer
 - 2) reasonable basis (weather, availability of officers)
 - 3) prior supervisor approval required
3. Drug stops are different
 - a) **Wilton v. Commonwealth, 29 Va. App. 63 (1999)**
 - 1) checkpoint set up to address complaints about drug dealers: **NO**
 - 2) no empirical evidence of drug problems (e.g., no showing of public interest)
 - 3) **Edmond** case (U.S. Supreme Court 2000): narcotics roadblocks violate 4th amendment

- b) **Trent v. Commonwealth, 35 Va. App. 248 (2001)**
 - 1) narcotics interdiction not allowed
 - 2) a request for license at stop does not save roadblock
- 4. But reasonableness is always an issue
 - a) **Palmer v. Commonwealth, 36 Va. App. 169 (2001)**
 - 1) emphasis on traffic safety eliminates requirement of showing of a reason to set up roadblock
 - 2) but must be neutral and limit discretionary factors
 - b) **Wesley v. Commonwealth, 37 Va. App. 128 (2001)**
 - 1) reasonable field officer discretion is okay (e.g., plan may allow field officer to set duration of checkpoint with view to weather conditions, etc.)
 - c) **Archer v. Commonwealth, 02 Va. UNP 0327022 (2002)**
 - 1) okay for supervisor to alter plan to accommodate safety concerns

III. SCOPE OF DETENTION

- A. Detention must be brief and limited in scope unless otherwise justified by articulable suspicion**
Gilpin v. Commonwealth, 26 Va. 105 (1997)
- B. Price v. Commonwealth, 24 Va App. 496 (1997)**
 - 1) a warrant check is not a deviation from plan if it is a neutral component of the officer's procedure
- C. Hendren v. Commonwealth, 00 Va. UNP 1961992 (2000)**
 - 1) **Terry v. Ohio** may kick in (i.e., actions at checkpoint may give rise to reasonable articulable suspicion of criminal activity)
- D. Harris v. Commonwealth, 266 Va. 28, 581 S.E.2d 206 (2003)**
 - 1) an arrest case not a roadblock case
 - 2) but beware of invalidly extending a legitimate stop into a non-consensual encounter

IV. WHEN A ROADBLOCK ISN'T A ROADBLOCK ("EVADING")

The constitutionality of a roadblock is not an issue where stop doesn't occur at roadblock

- 1) **Stroud v. Commonwealth, 6 Va. App. 633 (1988)**
 - a) stops made away from roadblock on articulable suspicion are okay
 - b) driver's actions in response to roadblock may be basis for suspicion
- 2) **Murphy v. Commonwealth, 9 Va. App. 139 (1989)**
 - a) a lawful turn 350 feet away from roadblock does not give rise to articulable suspicion unless coupled with other facts
- 3) **Commonwealth v. Eaves, 13 Va. App. 162 (1991)**
 - a) sudden U-turn 100 feet away does give rise to reasonable suspicion of evasive action
- 4) **Brown v. Commonwealth, 17 Va. App. 694 (1994)**
 - a) reasonable suspicion justified: stop 450 feet away, switch of drivers, U-turn
- 5) **Thomas v. Commonwealth, 24 Va. App. 49 (1997)**
 - a) driver is not seized as a result of a roadblock if he never makes it to the roadblock

- b) question: has freedom of movement been “terminated” by the government?
- c) no such thing as “zone of checkpoint” (i.e., the “ but for the checkpoint” analysis)
- 6) **Bailey v. Commonwealth, 28 Va. App. 724 (1999)**
 - a) driver stopped 75 yards from roadblock after turning into a private drive, hesitating and looking at officers: okay for reasonable suspicion
- 7) **Bass v. Commonwealth, 259 Va. 420 (2000)**
 - a) beware treating evasion alone as basis for suspicion
 - b) driver going through gas station 500 feet from roadblock to change direction was not sufficient for stop
- 8) **Lovelace v. Commonwealth, 37 Va App. 120 (2001)**
 - a) a turn into and through private circular drive 35 yards from roadblock justifies stop

V. MISCELLANEOUS

A. **Commonwealth v. Davis, 97 Va UNP 0906971 (1997)**

- 1) driver must make it to roadblock for roadblock constitutionality to be an issue
- 2) “governmental termination of freedom of movement through means intentionally applied”

B. **Wilkins v. Commonwealth, 01 Va UNP 2758992 (2001)**

- 1) checkpoints are for vehicle laws not drug laws
- 2) court will look at “programmatically intent” of roadblock in ruling on validity (throw “traffic” language into plan)

C. **Lee v. Commonwealth, 00 Va. UNP 2181993 (1993)**

- 1) be careful of roadblocks with discriminatory effects: stay neutral



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