City of Virginia Beach
Police Department

DUI Procedure
Field Guide

A Guide for Department Personnel

- Guidelines for Handling DUIs

This Field Guide is Prepared and Updated by the Virginia Beach Police Department

Special Operations, Under the Approval of the Chief of Police
DUI PROCEDURE
Field Guide
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**DUI Investigation - Brief Overview**

For Suspects 18 Years of Age and Older

- **TRAFFIC STOP**
  - SFST's
  - IMPAIRMENT?
    - NO
      - RELEASE
    - YES
      - UNDER .08 (OVER 21) UNDER .02 (UNDER 21)

- **PBT**
  - BAC .08 OR HIGHER (21 OR OVER) OR BAC .02 to .07 (18-21) OR DRUGS SUSPECTED (SEE PAGE 16)
  - ARREST

- **BREATHE TEST**
  - REFUSAL (READ DC233)
    - BREATH TEST OPTIONAL FOR DEFENDANT
  - READ IMPLIED CONSENT

- **OMVICA 18.2-266**
  - CHARGE WITH DUI 18.2-266
  - SUBMIT PD6
  - MAGISTRATE

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**DUI / OMVICA PROCESS**

FOR SUSPECTS 18 YEARS OF AGE AND OLDER

O.M.V.I.C.A. IS APPROPRIATE WHEN ANYONE UNDER 21 YEARS OF AGE HAS A BAC OF OVER .02 BUT UNDER .08. IF BAC IS OVER A .08, REGARDLESS OF AGE, THE APPROPRIATE CODE IS DUI.
DUI Investigation - Brief Overview
For Suspects UNDER 18 Years of Age

DUI / OMVICA PROCESS
FOR SUSPECTS UNDER 18 YEARS OF AGE

O.M.V.I.C.A. IS APPROPRIATE WHEN ANYONE UNDER 21 YEARS OF AGE HAS A BAC OF OVER .02 BUT UNDER .08. IF BAC IS OVER A .08, REGARDLESS OF AGE, THE APPROPRIATE CODE IS DUI.
IS AN ADMINISTRATIVE LICENSE SUSPENSION NEEDED?

DID THE PERSON, WHETHER LICENSED BY VIRGINIA OR NOT, OPERATE A MOTOR VEHICLE ON A PUBLIC HIGHWAY, AND ARRESTED WITHIN THREE HOURS OF THE OFFENSE

YES

BREATH TEST?

NO

YES

RESULT OVER .08 (21 AND OLDER) OR .02 TO .07 (UNDER 21)

BLOOD TEST?

YES

NO

REFUSAL?

YES

NO

NO ALS

YES

ALS APPLIES
## FORMS NEEDED WHEN PROCESSING A DUI OR DRIVING AFTER ILLEGALLY CONSUMING ALCOHOL

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<td>If</td>
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<td></td>
<td>If Breath or Blood Test taken, Give defendant copy of PD-6 and file PD-6 with Magistrate</td>
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### Additional forms that may be needed:

1. PD71D Police Case Report for DUI Prosecutions –Office of the Commonwealth Attorney
2. PD3 Investigative Report (felony cases)
3. Tow form
4. Virginia Department of Forensic Science DUI/D Submission Information Sheet
5. Witness Subpoena (Juvenile)

**NOTE:** A PD18 is not required for DUI cases. Felony DUI cases must be screened by the CWA per G.O. 8.02

*Any person with a prior conviction of DUI Manslaughter or Maiming, or Boating Under the Influence Manslaughter or Maiming or a **felony DUI** should be charged with felony DUI, regardless of the length of time since the prior convictions.
Standard DUI Process

PRE-ARREST

1. Initiate video at first suspicious event
   a. Narrate only fact not opinion
   b. Allow ample space between vehicle when stopping

2. Start DUI process if warranted (follow checklist)
   a. Turn off forward flashing emergency lights (for HGN test)
   b. SFST’s – follow prescribed training
   c. PBT (request PBT and/or assist officer)
   d. Arrest or release

POST-ARREST

1. Place suspect in cruiser (leave camera and microphone on)

2. Obtain written witness statement(s) and information, if applicable

3. **Vehicle tow**
   1. Complete vehicle inventory, pursuant to policy
   2. Place additional evidence from vehicle in view of camera & describe for camera
   3. Designate assist officer to tow vehicle

4. **Prepare for transport**
   1. Turn camera to internal mode. (Consider need to turn off officers remote microphone)
   2. Read Miranda from pre-printed card & Implied Consent from the DUI check sheet
   3. If Refusal – Read Acknowledgement/Declaration of Refusal Form (DC233)
   4. Re-class case over MDT & obtain IBR#
   5. Contact NCIC for DMV abstract and CCH if applicable
   6. Arrange breath tech
   7. Complete DUI check sheet up to current time
   8. Complete summons for all traffic charges

5. **Transport**
   1. Pick up DMV abstract and CCH and check for previous convictions

6. **At jail**
   1. Turn off camera system and your portable radio
   2. Begin observation period with breath tech, unless Refusal
   3. Complete required paperwork (see chart on page 4 or 5)
   4. Obtain breath test results and give suspect their copy
   5. Give defendant copy of PD-6-3 and file PD-6-3 with Magistrate.
7. **Magistrate**
   1. Submit forms
      1. Adult Arrest/Juvenile Detention Worksheet (PD180)
      2. Sworn Report insert (if applies)
      3. Envelope with breath test results (if applies)
      4. Criminal Complaint form (if applies)
      5. Driver abstract
      6. Acknowledgement/Declaration of Refusal Form (DC-233) in cases of Refusal
      7. Summons
   2. Testify to probable cause (2\textsuperscript{nd}, 3\textsuperscript{rd}, etc.) from check sheet
   3. Once the warrant is issued, submit a copy of the ALS and the person’s license to the magistrate (if applies)

**Prosecution of DUI Cases**

**Guide to Prosecution of Driving While Intoxicated Charges by the Office of the Commonwealth Attorney**

On Monday, June 30, 2014, the Office of the Commonwealth Attorney (OCA) began prosecuting **all adult defendants arrested in the City of Virginia Beach as a result of driving while intoxicated related charges** [e.g. § 18.2-266 (Driving motor vehicle, engine, etc., while intoxicated), § 29.1-738 (boating while intoxicated), § 46.2-341.24 (driving a commercial vehicle while intoxicated), § 18.2-266.1 (Persons under age 21 driving after illegally consuming alcohol), etc.] and any associated companion charges.

All DUI charges will be prosecuted in a Traffic Court designated by the Commonwealth’s Attorney, so every officer’s assigned court for their secondary traffic court date will become Traffic C.

The officer’s primary traffic court date will remain unchanged and will be used for all non-DUI related traffic charges brought by the officer. If the officer routinely has a heavy regular traffic docket, upon request a third Traffic Court date can be assigned to them or they can use their current emergency date.

**The following procedures will be followed by officers when making a DUI arrest:**

A. Upon making an arrest for a DUI related charge, the magistrate will set the Determination of Counsel (DC) hearing 7-10 days from the date of arrest at the time and in courtroom designated by the OCA. This first court date is a Determination of Counsel (DC) hearing and **the officer does not need to appear**. The assigned prosecuting attorney will represent the Commonwealth at this hearing.
   a. In order to ensure companion charges to the DUI are properly associated with the DUI charge itself, the officer should note that fact on any handwritten Virginia Uniform Summons or Warrant.

B. The defendant will have the opportunity to postpone the case to a trial date or plead guilty or not guilty on the Determination of Counsel (DC) hearing. At the DC hearing the defendant will be made aware of their right to counsel and other administrative matters by the Court.
C. All DUI trial dates will be set by the OCA in a designated traffic courtroom at a designated time.

D. The procedure officers follow for DUI cases involving blood draws will be the same as those involving Breathalyzer tests. The only difference relates to when the trial date is set by the OCA. All blood draw trial dates will be set on Wednesdays in the traffic courtroom designated by the OCA. If there is an expectation that the defense will want to hear testimony from the person who collected the sample or the scientist that analyzed it, the case will be set for the officer’s original DUI date, time (08:30 or 11:00).

E. For every DUI arrest the arresting officer will need to create a case file to be sent to the OCA. This case file will contain at a minimum a completed Police Case Report for DUI Prosecutions Coversheet (PD71D), copies of the DUI Check Sheet (PD14), all arrest warrants & summonses, certificate of blood alcohol analysis or other related laboratory testing completed, the Notice of Intent to Offer a Certificate of Analysis into Evidence form (PD6-3) signed by the defendant, and any related PD18, PD3 or FR300. Other items that may be related for inclusion in the file are listed on the coversheet. DUI case files should be submitted in the same manner your command currently handles felony case files. This typically entails the arresting officer submitting the completed file to their supervisor for review and then to the designated person in each command who is responsible for hand delivery of all case files to the OCA.

A few points to keep in mind on this new process:

☆ Since the OCA will be handling prosecution of the case, the officer will coordinate all continuances and motions with the prosecuting attorney. The officer will not seek a continuance before the Court on any DUI related matter. In most circumstances the prosecuting attorney will act as the Commonwealth’s representative before the Court and will be the person who communicates these types of requests to the Court.

☆ If your vehicle is equipped with an in-car camera and any portion of the events leading up to the arrest or the arrest itself is captured on that system it is essential that this information is noted on both the DUI check sheet and the Police Case Report for DUI Prosecutions Coversheet (PD71D). A copy of the video should be made by the administrator and provided to the arresting officer who will ensure delivery to the OCA. In order for the COA to be able to provide the defense attorney with a copy of the video the arresting officer needs to obtain the video and attach a copy of the PD-71D as soon as practical. If the officer cannot send a copy of the video with the initial file an additional Police Case Report for DUI Prosecutions Coversheet (PD71D) should be completed noting the additional case file attachment and then delivered to the OCA by the designated person in each command who is responsible for hand delivery of all case files to the OCA.

☆ Officers should ensure that iPOAD is kept up to date with their anticipated unavailability dates. Entries to iPOAD should be made as early as possible when an officer becomes aware of a conflict as some DUI cases may be set for trial a number of months in the future. The OCA will make every effort to consult this listing prior to scheduling of a DUI trial date.
8. **Follow-up**

1. You may either hand-carry the ALS form to the NCIC clerk or FAX it to NCIC at 385-4098. If the ALS form is FAXED, you must send the original to NCIC through interoffice mail.
2. Complete all remaining paperwork.
3. Complete “Police Case Report for DUI Prosecutions [PD71D] (within 5-10 Days)
4. If needed, Request photos for court (PD89) using current FSU procedures.
5. Review video file and prepare for court.

**DUI Crashes**

**The following elements must be proven:**

1. The suspect was the operator of the vehicle
2. The time the crash occurred (in cases where Implied Consent applies or will be utilized)
3. The fact that the suspect has not had anything to drink since the crash (*)

(*) The suspect can still be charged with DUI even if they have consumed alcohol since the crash. Several factors should be taken into consideration before charging an individual in this situation. The amount of alcohol consumed should be compared to the B.A.C. and/or the level of impairment. The lower the level of impairment and/or the lower the B.A.C., the more difficult it is to prosecute an individual.

*In the case of a DUI crash, it is common practice to have one officer concentrate on the DUI investigation and one officer concentrate on the crash investigation and report.*

**If the suspect is still at the scene of the crash:**

Conduct the DUI investigation as you normally would. Remember to address the elements listed above. Note all witnesses and complete a Crash Witness Form (PD-284)

**If the suspect is not at the scene of the crash:**

You may, within three hours of the occurrence of any such accident involving a motor vehicle, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating such motor vehicle while intoxicated in violation of §18.2-266, §18.2-266.1, §46.2-341.24, or a substantially similar ordinance or any county, city, or town in the Commonwealth.

Conduct the DUI investigation as if the suspect was still at the scene of the accident. Follow the Department’s DUI Check Sheet. If probable cause exists, place the driver/operator under arrest.

**NOTE:** If you are unable to arrest the suspect within three hours of the crash, Implied Consent no longer applies. You may still arrest the suspect, but evaluate the circumstances as to whether it is appropriate to obtain a warrant first.

If the suspect is transported to the hospital & you anticipate they will be released within a short period of time:

1. Accompany them to the hospital and gather evidence
   (It is acceptable to administer the HGN test to a patient that is seated or laying down – see page 22 for more information)
2. Confirm that they will be treated and released
3. Place them under arrest within three hours of the offense
4. Proceed to the jail, conduct breath test and see magistrate

If the suspect is transported to the hospital & you anticipate long term care or they are unable to give a breath sample:
1. Gather any additional information or evidence from the suspect
2. Read Miranda Rights
3. Read Implied Consent from check sheet (3 hour rule applies)
4. Conduct blood test or read Acknowledgement/Declaration of Refusal form (DC233)
5. No ALS form, Sworn Statement, or Criminal Complaint is completed when a blood test is administered (see chart on pages 4 & 5)
6. If Refusal, complete Acknowledgement/Declaration of Refusal form (DC233), ALS form, Sworn Statement, and Criminal Complaint and give to Magistrate.
7. Release the subject on a summons* for DUI and/or Refusal at the Hospital

* If the subject is a risk for flight or a danger to society they should not be released on a summons but taken in front of a Magistrate. If you are unsure if the person should be released you should consult your supervisor for guidance.

DUI Juveniles

If a juvenile is arrested for DUI the procedures are the same as an adult, with the exception of the following:

1. After the test is completed, the juvenile is released to their parent or legal guardian with the issuance of a summons. Give juvenile copy of PD-6-3.
2. Attach the envelope containing the breath analysis certificate to the top copy of the DUI summons.
3. If Refusal, read the Acknowledgement/Declaration of Refusal Form (DC-233A) to the juvenile, then give to the Magistrate so they can sign it. Once signed, attach the form to the top copy of the DUI summons.
4. Sign Criminal Complaint and Sworn Report of DUI Insert in front of Magistrate and proceed normally to file breath test results, PD-6-3 and ALS paperwork.
5. Complete an Adult Arrest/Juvenile Detention worksheet (PD180) and turn it in to the PDO for input into the Police Records Management System (RMS).

NOTE: The breath rooms at the 1st and 2nd Precinct should not be used without prior approval from a supervisor. These two locations should only be used as a last resort when processing juveniles. No adults can be tested while the juvenile is there. All juveniles should either be brought to the Chesapeake Bay Bridge Tunnel, Oceana Base, or Little Creek Base.
Operating a Motor Vehicle After Illegally Consuming Alcohol
(“OMVICA”)
(Class 1 Misdemeanor)

§18.2-266.1

Elements of the crime:
1. Under 21 YOA
2. BAC of .02-.07 *If BAC results are over .08 then charge DUI
3. Operate a motor vehicle in the Commonwealth

Implied Consent applies and a breath test is required (If operating occurred on a public highway and arrest occurred within three hours of the operating). ALS applies with a .02 BAC or higher

The offense of Operating a Motor Vehicle after Illegally Consuming Alcohol (OMVICA) is handled just like a DUI investigation.

After the breath test or refusal:

If under 18 YOA, release the defendant on a summons for either DUI or Operating a Motor Vehicle After Illegally Consuming Alcohol, as appropriate, to their parent or legal guardian. Give defendant copy of PD-6-3 and file PD-6-3 with Magistrate.

If over 18, but under 21 YOA, and the results of the breath test are .02-.07, the subject should be charged with OMVICA and taken before a Magistrate.

If over 18 YOA and the results of the breath test are .08 or above, they should be charged with DUI and taken before a Magistrate.

NOTE: Illegal Possession of Alcohol §4.1-305 (Class 1 Misdemeanor), may also be an appropriate charge in addition to Operating a Motor Vehicle After Illegally Consuming Alcohol.

Arresting a DUI that did not occur in your presence

Beginning on July 1, 2010, officers who do not witness a DUI may arrest a DUI suspect anywhere he or she may be found, if (1) the officer has probable cause to believe the person is guilty of DUI (probable cause may developed from any combination witness statements, fellow officer statements or personal observation gained during any part of the DUI process such as field sobriety tests) and (2) the officer makes the arrest within three hours of the offense. If probable cause is based on any third party statements/observations where the arresting officer does not have independent knowledge regarding such statements or observations, then the persons providing such information used by the officer to establish probable cause must be subpoenaed to court.
DUI - Refusal

ELEMENTS OF THE CRIME & PROCEDURE
1. Arrest for a violation of §18.2-51.4, §18.2-266, §18.2-266.1, §18.2-272(B) or a similar ordinance (State or City Code)
2. Read Implied Consent from the DUI check sheet
3. If Refusal, read and complete the Acknowledgment/Declaration of Refusal form (DC233)
4. If suspect still refuses, sign and certify that the form was read, mark the appropriate box and give to the Magistrate.
5. The Magistrate will issue a summons or warrant for refusal and attach the refusal form to the warrant or summons

WHO MUST TAKE THE BLOOD/BREATH TEST?
1. Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a public highway, as defined in State Code §46.2-100, in this Commonwealth, if they are arrested for DUI, Driving After Illegally Consuming Alcohol, DUI Maiming, Drive in Violation of a Restricted/Suspended/Revoked-DUI Related license (Example: ASAP/ALS Restrictions) or of a similar ordinance within three (3) hours of the alleged operation.
2. They shall submit to a breath test. If the breath test is unavailable or the person is physically unable to submit to a breath test, a blood test shall be given.

NOTES:

If the equipment automatically produces a written printout of the breath test result, the printout, or a copy, shall be given to the accused.

6 State codes relating to Refusal and breath/blood test:

§18.2-268.3 Refusal of Breath or Blood Test
§18.2-268.4 Procedure for taking breath sample
§18.2-268.6 Procedure for packaging blood vials
§18.2-268.7 Procedure for handling of blood sample by DFS
§18.2-268.9 Requirements for breath test validity
§18.2-268.10 Evidence of violation of 266 or 266.1
§18.2-268.10 Substantial compliance
§18.2-269 Presumptions from alcohol content
**DUI - Hospital Refusal**

If the defendant refuses to take a blood test at the hospital, you may issue a summons for Refusal.

§18.2-268.3 Refusal of tests; procedures

“...If the person has been taken to a medical facility for treatment or evaluation of his medical condition, the arresting officer at a medical facility may issue, on the premises of the medical facility, a summons for a violation of subsection A in lieu of securing a warrant.”

Proceed to the Magistrate’s office and acknowledge under oath to a Magistrate that you read the form to the defendant. Attach the executed advisement form (DC233) to the summons for Refusal and provide to the Magistrate to file with the court.

NOTE: Remember to notate 2nd offense, 3rd offense, etc. The DC233 lists the criteria for subsequent offenses of Refusal.

Bring the Criminal Complaint Form, DUI Sworn Report Insert, a copy of the ALS, and the defendant’s license to the Magistrate for forwarding to the Clerk of Civil Court.

Consider obtaining a search warrant for the medical records from the date of treatment to ascertain their BAC. All your observations can be used to obtain the search warrant. Remember that hospital blood alcohol results are slightly higher than normal DFS blood or breath results (This is due to the hospital testing blood serum whereas DFS tests whole blood). Consult with the Commonwealth Attorney’s office prior to obtaining charges if there is a question of the results being sufficient.

**DUI - Blood Test**

Blood test kits can be obtained at Virginia Beach General Hospital, Sentara Independence Hospital, or through Special Operations. Do not take a blood test kit until needed. Limited quantities are available. Email any member of the Traffic Safety Unit or Fatal Crash Team if the blood kit supply is under five kits, so they can be replenished.

If the suspect previously provided a breath sample resulting in a BAC of .08 or greater **DO NOT** take them for a blood test unless significant impairment indicating drug usage is observed. In no case should a blood test be conducted if a breath test resulted in a .10 or greater.

*Sentara Princess Anne Hospital has a few kits for patients who are transported by EMS for medical purposes (ie. a crash). **DO NOT** take a suspect there for a routine blood draw. Sentara Princess Anne Hospital will only draw blood if the patient being transported there will not be released in a reasonable amount of time.

**STEP-BY-STEP INSTRUCTIONS:**

1. Read Implied Consent and determine if the defendant is willing to submit to a blood test. Do not open the kit unless the defendant has already consented. Follow your DUI Check Sheet and record the appropriate information during the blood draw process.
2. Look at the label on the outside of the kit on the right side. Make sure the date is not expired. If the date is expired, use another kit. If all of the kits are expired, you will need to substitute the vials in the kit for other gray top vacuum draw blood vials at the hospital. Notify a member of the Fatal Crash Team or Traffic Safety Unit prior to leaving the hospital (540 or 570 unit). (SEE PHOTO B & C)

3. Open the blood test kit marked, “Virginia Department of Forensic Science DUI/DUID

4. Open the box containing the blood vials. Check the expiration date on the vials. The expiration date should match the date on the outside of the kit. Inspect the vials for cracks or damage. You should see a powdered substance inside of both vials.

5. Make sure the kit contains the following items before proceeding:(SEE PHOTO A)

   a. Blood vials (QTY:2) in cardboard shipping tray
   b. Kit box shipping seal label
   c. Specimen security seal label (QTY:2)
   d. Povidone-Iodine U.S.P. Prep Pad
   e. Certificate of blood withdrawal label (QTY:2)
   f. Ziploc bag with liquid absorbing sheet
   g. Commonwealth of Virginia Blood Specimen Collection Instructions

6. If an item is missing, use another kit.

7. Request assistance from a member of the hospital staff that is authorized to collect DUI blood samples per 18.2-268.5. Record their name, professional title, and State card number information on your check sheet. Obtain a copy of their certification if possible, and observe the entire process of the blood draw. (Registered Nurses, ER technicians are not permitted to draw DUI blood)

8. Use protective gloves when handling blood vials.

9. The hospital staff member shall use the Povidone-Iodine pad included in the kit to cleanse the blood collection site.

10. Once the hospital staff member obtains the blood specimen, seal each blood vial by placing a Specimen Security Seal over the blood vial stopper. (SEE PHOTO D)

11. Complete both Certificates of Blood Withdrawal labels. Remove the sticker backing above the perforated line. DO NOT tear the bottom portion of the label off at the perforation. Attach one label to each blood vial. If you did it correctly, the top strip of the label will be stuck to the vial, and the portion of the label below the perforation will be hanging from the vial. Have the individual who drew the blood sign their initials next to their name. Record both of the six digit Certificate of Blood Withdrawal label numbers on your check sheet. (SEE PHOTO D)

12. Place each blood vial in the vial holder and place the Biohazard sleeve over the holder. Place the vial holder inside the ziploc bag, squeezing out excess air before closing the bag. DO NOT remove the liquid absorbing sheet from the ziploc bag.
13. Return the ziploc bag containing the vial holder to the kit container.

14. Complete a Virginia Department of Forensic DUI/D Submission Information Sheet and place it inside of the kit.

15. Close the kit container and seal with Kit Box Shipping Seal.

16. Place appropriate postage on the outside of the kit and drop into any USPS authorized mail box. Note on your check sheet the location and time that you drop the kit in the mail. Stamps can be obtained from the PDO at any precinct, or you may use the Automated Postal Center at the Post Office. Submit the receipt for reimbursement. DO NOT USE INTEROFFICE MAIL AT ANY TIME.

Both of the blood vials are sent to DFS in Norfolk.

See the chart on page 2 to determine what forms are necessary for a DUI blood case.

NOTE: When a DUI involves a blood test, ALS does not apply.

§18.2-268.5 details who can draw the sample and the authorized cleaning agent for the area of the blood draw:

“only a physician, registered nurse, licensed practical nurse, phlebotomist, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine, pvp iodine, povidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug or both alcohol and drug content.”

§18.2-268.6 details the procedure for collecting the blood sample:

“The blood sample withdrawn pursuant to §18.2-268.5 shall be placed in vials provided or approved by the Division of Forensic Science. The vials shall be sealed by the person taking the sample or at his direction. The person who seals the vials shall complete the prenumbered certificate of blood withdrawal forms and attach one form to each vial. The completed withdrawal certificate for each vial 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. The vials shall be placed in a container provided by the Division, and the container shall be sealed to prevent tampering with the vials. The arresting or accompanying officer 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 Division.”
PHOTO - A

PHOTO - B

PHOTO - C

PHOTO - D

Page 18 of 31
Virginia Department of Forensic Science
DUI/D Submission Information Sheet

Investigating Officer(s): ____________________________________________
Telephone #: (____) ____________________________________________
Email: __________________________________________________________
Agency Name/Address: ____________________________________________

Name of Suspect: _________________________________________________
Jurisdiction (Court): _____________________________________________

This sample was collected via the following process (choose one):
☐ Implied Consent
☐ Search Warrant
☐ Other (please explain): __________________________________________

Brief Statement of Facts: __________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

Revision Date: 05/01/2017
VA(IIA)SUB:1 9/17
Question and Answer

Q: I HEARD THERE IS A NEW CASE REGARDING “OPERATION”, WHAT DOES IT SAY?


The Virginia Supreme Court has issued a “bright line” rule regarding the definition of “operating” a motor vehicle. Under the new ruling an intoxicated person found behind the wheel of a vehicle parked on public property is deemed to be in actual physical control of the vehicle and may be convicted of DUI when the key is found in the ignition. It does not have to be in the “on/operation” position.

Officers should still note the position of the key in the ignition under the above circumstances for better courtroom testimony.

Q: MAY AN OFFICER ARREST A PERSON FOR A DUI THAT DID NOT OCCUR IN THEIR PRESENCE?

A: Beginning on July 1, 2010, officers who do not witness a DUI may arrest a DUI suspect anywhere he or she may be found, if (1) the officer has probable cause to believe the person is guilty of DUI (probable cause may developed from any combination witness statements, fellow officer statements or personal observation gained during any part of the DUI process such as field sobriety tests) and (2) the officer makes the arrest within three hours of the offense. If probable cause is based on any third party statements/observations where the arresting officer does not have independent knowledge regarding such statements/observations, then the persons providing such information used by the officer to establish probable cause must be subpoenaed to court.

Q: CAN I ARREST SOMEONE FOR DUI THAT IS UNDER A .08?

A: YES

§18.2-269 Presumptions from alcohol content of blood

If less than or equal to .05 grams per 210 liters of breath – presumed not under the influence

If over .05 but less than .08 – no presumption will be made and other evidence will be considered (No ALS or associated paperwork required) If .08 or more – presumed that the accused was under the influence The importance of driving clues, physical observations, and SFST’s is increased when the BAC is between .06 to .07. The judge will rule on whether or not the suspect was driving under the influence based on your presentation of that evidence.

The Certificate of Blood Alcohol Analysis will not win the case on its own merit.

Q: I FORGOT TO OFFER THE PBT, AM I GOING TO LOSE MY CASE NOW?

A: NO

Jones v. Town of Marion (1999)

Failure of the police officer to offer the PBT does not invalidate the arrest.
Q: WHERE CAN I TAKE THE DEFENDANT FOR A BREATH TEST?

A: Central Processing (City Jail)  
(Friday and Saturday nights from 1800-0400 the On-Duty Breath  
Tech will be signed on as unit 199X, ask dispatch to advise them you require a breath test)

Second Precinct  
Chesapeake Bay Bridge Tunnel  
Fort Story Base  
Oceana Base  
Little Creek Base

Q: WHAT IS THE PROCEDURE FOR OFFERING THE PBT?

A: Before you can administer the PBT you must read the person their rights under §18.2-267 of the Preliminary Breath Test. The person then has the option to take the test or refuse the test.

If they refuse the test, determine if there is probable cause for the arrest based on the evidence you have and make the appropriate decision.

If the person agrees to take the PBT, you will need to ensure that you have observed no drinking 15 minutes prior to administering the test. The traffic stop time on your MDT can be used to record your observation start time in most cases. Check your machine and make sure that it is at the default start point for that particular model and within operating temperature.

Once you have observed the person for 15 minutes, conduct the test. Ensure the person did not have anything in their mouth during this time. Explain the procedure and allow them to see the final result on the digital display.

Accurately record all times on the DUI check sheet.

Q: THE SUSPECT IS OBVIOUSLY IMPAIRED, BUT THE BREATH TEST RESULT IS NOT CONSISTANT WITH HIS IMPAIRMENT. WHAT DO I DO?

A: If the breath test result is below a .08, but the suspect’s level of impairment is obviously inconsistent with that reading, you may elect to administer a blood test. The suspect is required to take a blood test even if they took a breath test already. If you believe the person to be under the influence of a combination of drugs and alcohol you may want to go this route. In this situation, you first want to make sure a medical condition is not the cause of the symptoms you are seeing. Question the suspect about his medical history. Request rescue if necessary.

Q: I STOPPED THE OPERATOR OF A MOPED AND HE APPEARS TO BE INTOXICATED. CAN I CHARGE HIM WITH DUI OR ONLY DIP?

A: The appropriate charge is DUI. A moped is covered under §18.2-266

“For the purposes of this section, the term "motor vehicle" includes mopeds, while operated on the public highways of this Commonwealth.”

Q: COULD I CHARGE SOMEONE FOR BOTH RECKLESS DRIVING AND DUI?

A: YES, BUT NOT UNDER §46.2-852, RECKLESS GENERAL

§19.2-294.1 Dismissal of one of dual charges for driving while intoxicated and reckless driving

Prepared and updated by the City of Virginia Beach Police Department Special Operations  
“Whenever any person is charged with a violation of §18.2-266 or any similar ordinances of any county, city, or town and with reckless driving in violation of §46.2-852 or any ordinance of any county, city or town incorporating §46.2-852, growing out of the same act or acts and is convicted of one of those charges, the court shall dismiss the remaining charge.”

You may use any of the specific reckless code sections that apply (i.e. reckless speed, driving too fast for conditions, passing on curve, etc.)

**Q: CAN I CHARGE SOMEONE WITH SPEEDING AND DUI?**

A: YES

*Dennis Vernon White v. Commonwealth of Virginia (01/27/98) Circuit Court of Giles County*

The provisions of Code §19.2-294.1 do not bar the Commonwealth from convicting a person for DUI after the person was convicted of speeding, even where the charges arose out of the same course of driving and the act of speeding could have given rise to a charge and conviction for reckless driving under Code §46.2-862

**Q: MY DUI SUSPECT WAS TRANSPORTED OUT OF THE CITY DUE TO INJURIES SUSTAINED IN THE ACCIDENT IN WHICH HE WAS INVOLVED. HE IS NOW REFUSING TO TAKE THE BREATH TEST. DO I HAVE TO OBTAIN A WARRANT IN THAT CITY SINCE THE OFFENSE OF REFUSAL IS NOT OCCURING IN VIRGINIA BEACH?**

A: NO. THE VENUE WILL STILL BE VIRGINIA BEACH.

§18.2-268.3 Refusal

Section C states in part, “Venue for the trial of the warrant or summons shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants is to be tried”.

**Q: WHERE DO THE FOUR ALS FORMS GO?**

A: 1. Original to Magistrate with license  
2. Copy to suspect  
3. Copy for your records  
4. Copy to NCIC (deliver after arrest or FAX to 385-4098, then send actual copy by interoffice mail)

**Q: THE DRIVER OF THE VEHICLE I JUST STOPPED HAS A STRONG ODOR OF ALCOHOL, BUT HE IS CONFINED TO A WHEEL CHAIR. WHAT ARE MY OPTIONS?**

A: The HGN test can be administered from a seated or laying down position. The alphabet test may be an option. Physical observations and statements regarding alcohol consumption are important. The PBT will also assist in making the decision to arrest. Driving clues combined with the above observations and tests should give you the information you need to make the appropriate decision to arrest or release.
Q: I AM AT THE HOSPITAL WITH A SUSPECTED DUI. THE PATIENT IS IN NO CONDITION TO CONSENT NOR REFUSE TO A BLOOD TEST. THE HOSPITAL STAFF REPORTS THAT THE PATIENT WILL BE GOING THROUGH TESTS FOR THE NEXT SERVERAL HOURS. WHAT CAN I DO?

A: In cases of severe injury, the suspect may not be able to consent nor refuse to the blood test. Speak with the staff and confirm that the hospital will be conducting a blood test during their treatment of his injuries. If the hospital plans on drawing blood, note this on your check sheet and obtain a search warrant. The suspect should not be charged with Refusal in this circumstance.

Q: THE DEFENDANT STATES THAT HE HAS BEEN CHARGED AND CONVICTED OF DUI IN ANOTHER STATE. WHAT SHOULD I DO?

A: If the Officer reasonably believes the subject has been convicted of an out of state DUI by reviewing the DMV abstract/CCH, then the Officer can charge for the correct subsequent offence. The out-of- state DUI law must substantially conform to VA law to be applicable. Currently Federal DUls, Colorado, Delaware, Florida, Georgia, Iowa, Kentucky, Mississippi, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Utah, and Washington State do not apply met that standard.

Q: WHAT GOES IN THE SECTION “I BASE MY BELIEF ON THE FOLLOWING FACTS” PORTION OF THE CRIMINAL COMPLAINT FORM (DC-311)?

A: It is only necessary to write, “see attached” in this section of the form. The Sworn Report of D.U.I. Arrest will then be attached to the Criminal Complaint form along with the ALS form and the defendant’s license.

Q: THE DEFENDANT HAS AN OUT-OF-STATE LICENSE. DO I TAKE THAT LICENSE PURSUANT TO THE ALS SUSPENSION?

A: NO

The defendant will retain their out-of-state license, but their privilege to drive in Virginia will still be suspended.

Q: WHAT IS THE PURPOSE OF FILLING OUT A CRIMINAL COMPLAINT FORM? I THOUGHT THOSE FORMS WERE JUST FOR CITIZENS.

A: The Criminal Complaint form is required in cases where the defendant’s license will be administratively suspended in relation to a DUI or Driving After Illegally Consuming Alcohol arrest. The defendant has the right to appeal the administrative license suspension. The Criminal Complaint form and the Sworn Report of D.U.I. Arrest form will be utilized during that hearing to prove by a preponderance of the evidence that there was probable cause for the arrest (see last paragraph of ALS).

Q: I STOP A DRIVER THAT IS CURRENTLY SUSPENDED/REVOKED/RESTRICTED-DUI RELATED AND I SMELL AN ODOR OF ALCOHOL ABOUT HIS PERSON. HOW DO I HANDLE THIS SITUATION?
A: You handle it like a normal DUI. Conduct SFST’s and offer a PBT. If the PBT results are .02 or greater but under .08, the appropriate charge would be Driving in Violation of Restrictions §18.2-272(B). Place the defendant under arrest and proceed to the jail to conduct a breath test. If the driver is driving outside of their applicable restrictions you may still charge them with a violation of §18.2-272(A), regardless of their BAC. Implied consent applies in this case.

NOTE: If the person is .08 or greater, you can charge them with DUI and Driving in Violation of Restrictions

Q: I HAD CAUSE TO STOP A VEHICLE BEING OPERATED SOLELY ON PRIVATE PROPERTY. I NOW SUSPECT THE OPERATOR OF BEING DUI. IS THE PROCESS ANY DIFFERENT THAN IF I OBSERVED THE “OPERATING” ON A PUBLIC HIGHWAY?

A: YES

Implied Consent does not apply. Do not read Implied Consent or the Acknowledgement / Declaration of Refusal Form (DC233) to the defendant. Offer the defendant the take a breath test. If the Defendant refuses the Officer can seek a warrant for Obstruction of Justice. ALS will not apply.

Note: If you can establish through suspect questioning or witness testimony that the driver utilized a public highway within 3 hours to reach the private property where they were located then Implied Consent will apply.

Q: DOES IMPLIED CONSENT APPLY IF YOU OBSERVE SOMEONE OPERATING A VEHICLE ON A PUBLIC HIGHWAY, BUT THE ACTUAL STOP AND ARREST TAKES PLACE ON PRIVATE PROPERTY?

A: YES

Implied Consent is not affected by the location of the arrest. The determining factor in Implied Consent is if the “operating” at any time occurred on a public highway. If you observed the “operating” or a portion of the “operating” on a public highway, Implied Consent will apply.

Q: WHAT DO I NEED TO DO TO SUCCESSFULLY PROSECUTE DUI CASES RESULTING FROM A TRAFFIC SAFETY CHECKPOINT?

A:
1. Copy of G.O. 12.07
2. Copy of the patrol plan (approved by Commanding Officer or his designee)
3. Results of traffic safety checkpoint

Checkpoints are authorized in accordance with §46.2-103 of the State Code of Virginia.

NOTE: No vehicle may be stopped at random. Pre-designated criteria must be recorded for stopping vehicles and it shall be strictly followed unless an obvious violation is noted on a vehicle.
Criminal Complaint Example

Criminal Complaint

The statements above are true and accurate to the best of my knowledge and belief.

In making this complaint, I have read and fully understand the following:

- By accepting this fact, I agree to appear in court and testify if a warrant or summons is issued.
- The charge in this warrant cannot be dismissed except by the court, even at my request.

OFFICER, I.M. 

SIGN IN FRONT OF MAGISTRATE

DATE AND TIME

Page 25 of 31

Prepared and updated by the City of Virginia Beach Police Department Special Operations
Certificates of Analysis for DUI Cases

In response to the United States Supreme Court decision in Melendez-Diaz v. Massachusetts, 557 U.S. (June 25, 2009), the Virginia Legislature has passed House Bill 5007 and Senate Bill 5003 amending sections 19.2-187 and 19.2-187.1 of the code of Virginia.

Procedures when case is prosecuted by Commonwealth Attorney’s Office

1. At least 28 days prior to the date of court, the Commonwealth’s Attorney provides a copy of the certificate of analysis to the Court and to the defendant (or attorney of record.)
2. At the time that the certificate of analysis is provided to the defendant (or attorney of record,) the Commonwealth’s Attorney also provides notice to the defendant (or attorney of record) that the prosecution intends to present the Certificate of Analysis as evidence during the court proceeding. The notification also puts the defendant (or attorney of record) on notice that the defense has 14 days to object to the introduction of the Certificate of Analysis, and request that the person performing the analysis or examination be present for the trial of the case.
3. The defense must then either respond in writing objecting to the introduction of the Certificate of Analysis, requiring the person performing the analysis or examination to be present for the trial of the case. Or the defense may waive any objection. A failure by the defense to respond to the notice is considered to be a waiver.

Procedures when case is prosecuted by Officer (The following will only apply when the driver of the vehicle is a juvenile.)

In accordance with the new procedural requirements, officers must provide notice to defendants or the defendant’s attorney of record of the intent to present a Certificate of Analysis at trial. To facilitate this notification, officers are to utilize the following notification provided by the Office of the Commonwealth’s Attorney (PD-6-3). This notification must be provided at the time that a copy of the Certificate of Analysis is provided to the defendant, or to the court having jurisdiction over the case.

Procedures for Officers when the Defense enters an objection to the Certificate of Analysis

According to the legislation, the defense has 14 days to object to the introduction of the Certificate of Analysis, and request that the person performing the analysis or examination be present for the trial of the case. “Such objection shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no more than 14 days after the certificate and notice were filed with the clerk by the attorney for the Commonwealth or the objection shall be deemed waived.” Note that the defense has no obligation to respond to the officer, and to this point the Office of the Commonwealth’s Attorney has no involvement in the case. Therefore, unless the defense copies the officer as a courtesy on his/her objection, it is possible that the
first notification to the officer who is prosecuting the case may come in open court from the defense attorney. In order to avoid jeopardizing the case, prior to being sworn, the officer should verify that the defense has no objections to the introduction of the Certificate of Analysis. In either case, if an objection is filed before the court date, or made on the day of the trial, the officer is to ask the court for a continuance (at least 30 days,) and then seek the assistance of the Commonwealth’s Attorney’s Office.

Requests for assistance shall be made via a “Request for Prosecution Assistance - Commonwealth’s Attorney’s Office (PD-70) and the officer shall submit a Police Case report for Misdemeanor Prosecutions – Commonwealth’s Attorney (PD-71)

Procedural Steps for Cases Commonly Prosecuted by Officers involving a Certificate of Analysis

1. Defendant is arrested and provided with DC-304.
2. Defendant appears in Court, waives the request for an analysis.
3. Case is heard, officer testifies utilizing the results of field testing, training, and experience. or…

1. Defendant is arrested and provided with DC-304
2. Defendant appears in court, completes the DC-304 and asks for an analysis of the seized evidence
3. Officer requests a continuance
4. Officer sends the evidence for laboratory analysis
5. Officer receives the Certificate of Analysis
6. At least 28 days prior to the court date, the officer provides the court and the defendant (or the attorney of record) with
   a. A copy of the Certificate of Analysis
   b. Notification of the intent to use the Certificate of Analysis as Evidence at trial (PD-6-3)
7. The defendant of attorney of record responds by objecting to the introduction of the Certificate of Analysis (either by letter or in person.)
   a. The officer requests a continuance (at least 30 days) and seeks the assistance of the Commonwealth’s Attorney. The Commonwealth will then assume the responsibility of scheduling the case so that the analyst may be present.

8. The defendant or attorney of record responds waiving any objection, or does not respond
   a. Case is heard with the uncontested Certificate of Analysis being introduced as evidence.

Driving Under the Influence – Breath Analysis

1. Defendant is arrested for DUI and subjected to breath analysis
2. At the conclusion of the breath test, the defendant is provided with:
   a. Certificate of Analysis
   b. Notification of the intent to use the results of the examination as Evidence at trial (PD-6-3)
3. The defendant of attorney of record responds by objecting to the introduction of the Certificate of Analysis (either by letter or in person.)
   a. The officer requests a continuance (at least 30 days) and seeks the assistance of the Commonwealth’s Attorney. The Commonwealth will then assume the responsibility of scheduling the case so that the analyst may be present.

4. The defendant or attorney of record responds within 14 days waiving any objection, or does not respond
   a. Case is heard with the uncontested Certificate of Analysis being introduced as evidence.

*Driving Under the Influence – Blood Test*

The Office of the Commonwealth’s Attorney will handle all matters regarding the Certificate of Analysis. (UtilizePD71D)
NOTICE OF INTENT TO OFFER CERTIFICATE OF BLOOD ALCOHOL ANALYSIS

Virginia:
IN THE GENERAL DISTRICT COURT OF THE CITY OF VIRGINIA BEACH

Commonwealth of Virginia

v. 

Defendant

Docket # 

Defendant’s DOB: 

Pursuant to §19.2-187.1 of the Code of Virginia (1950) as amended, you are hereby notified that, in the event of a trial, the Commonwealth intends to introduce the attached Certificate(s) of Analysis. You have the right to object to having the certificate admitted without the person who performed the analysis or examination being present and testifying, so long as you file that objection in writing with the court no more than fourteen (14) days after the filing of this notice with the court, or the objection shall be deemed waived.

Signing this notice is merely an acknowledgement that you have received both a copy of the Certificate(s) of Analysis and this notification and in no way indicates you agree with its content.

Notification Made By: 

\[\text{Arresting Officer (please print name)}\] \[\text{Date}\]

I, \[\text{Defendant’s Name (please print)}\] acknowledge I have received a copy of this notification on: 

\[\text{Date Received}\]

\[\text{Defendant’s Signature}\]

Color Distribution:  White-Defendant or Attorney  Canary-Court  Pink-Officer

Prepared and updated by the City of Virginia Beach Police Department Special Operations
**SFST Pocket Record**

The following guide can be cut out and stapled together to provide you with a small booklet to notate clues during the SFST’s. It was made to fit in your shirt pocket.

<table>
<thead>
<tr>
<th>Balance in start position</th>
<th>Y</th>
<th>N</th>
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<tbody>
<tr>
<td>Start too soon</td>
<td>Y</td>
<td>N</td>
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<td>Improper turn</td>
<td>Y</td>
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<th>Stop walking</th>
<th>1st 9</th>
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<tr>
<td>Heel-toe (≥ ½&quot;)</td>
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<td>Off-line</td>
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<tr>
<td>Raise arms (≥ 6&quot;)</td>
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<td>Actual steps</td>
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**ONE LEG STAND**

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<th>Sways while balance</th>
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<td>Hopping</td>
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<td>Puts foot down</td>
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DECLARATION AND ACKNOWLEDGMENT OF REFUSAL — BREATH/BLOOD TEST
(MOTOR VEHICLES GENERALLY)
Commonwealth of Virginia  Va. Code § 18.2-268.3

INFORMATION ABOUT CONSEQUENCES OF REFUSAL

The Code of Virginia provides that if you, whether licensed by Virginia or not, operate a motor vehicle upon a highway in the Commonwealth and are arrested for a drug or alcohol-related driving offense in violation of §§ 18.2-51.4, 18.2-266, 18.2-266.1 or 18.2-272 (B) or of a similar ordinance, if arrested within three hours of the alleged offense, you shall be deemed to have agreed, as a condition of such operation, to consent to have a sample of breath, blood, or both breath and blood taken for chemical testing to determine the alcohol and/or drug content of your blood. You shall submit to a breath test. If the breath test is unavailable or you are physically unable to submit to the breath test, a blood test shall be given. If the arresting officer has reasonable cause to believe that you were driving under the influence of drugs or a combination of drugs and alcohol, you may be required to allow the taking of a blood sample for chemical testing to determine the drug content of your blood, even if a breath sample was previously provided.

If you refuse to permit the taking of a required sample of breath, blood, or both breath and blood, and your refusal is unreasonable, your refusal constitutes a separate offense. A first offense of refusal to permit the taking of breath, blood, or both breath and blood samples is a civil offense.

A finding of a first offense of unreasonable refusal will result in the revocation of your privilege of operating a motor vehicle upon the highways of the Commonwealth for a period of one year. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

Subsequent violations of unreasonable refusal to permit the taking of breath samples may be criminal offenses. A conviction of unreasonable refusal to permit the taking of breath samples within 10 years of you being found guilty previously of driving while intoxicated or unreasonable refusal will result in finding you guilty of a Class 1 misdemeanor, which is punishable by confinement in jail for not more than 12 months and a fine of not more than $2,500, either or both, and will also result in the court suspending your privilege to drive for a period of 3 years.

Subsequent violations of unreasonable refusal to permit the taking of breath samples within 10 years of you being found guilty previously of driving while intoxicated or unreasonable refusal will result in the revocation of your privilege of operating a motor vehicle upon the highways of the Commonwealth for a period of 3 years.

If it is found that you unreasonably refused to consent to a breath test or blood test, that finding may be admitted as evidence in a criminal trial for a violation of §§ 18.2-51.4, 18.2-266, 18.2-266.1 or 18.2-272 (B) or similar ordinance for the purpose of explaining the absence at trial of a chemical test of such sample or for the purpose of rebuttal. When admitted in a criminal trial for a violation of §§ 18.2-51.4, 18.2-266, 18.2-266.1 or 18.2-272 (B) or similar ordinance this evidence will not be considered as evidence of your guilt.

DECLARATION AND ACKNOWLEDGMENT OF ARRESTING OFFICER

I, ........................................................., an arresting officer in the City/County/Town of

.......................................................................................................................

PERSON ARRESTED

.......................................................................................................................

Virginia, do hereby certify that I have read this form to

.......................................................................................................................

who has been arrested pursuant to Virginia

Code §§ 18.2-51.4, 18.2-266, 18.2-266.1, or 18.2-272 (B), or a similar ordinance, and who, after having this form read
to him has refused to permit the taking of a [ ] breath sample and/or [ ] blood sample.

[ ] The person arrested has been convicted of .................................................... violation(s) of §§ 18.2-266, 18.2-268.3, or any

OFFENSE

NUMBER OF CONVICTIONS

.......................................................................................................................

described in 18.2-270 (E) within the last 10 years.

.......................................................................................................................

DATE

SIGNATURE OF ARRESTING OFFICER

The arresting officer acknowledged under oath before me that he or she had read this form to the person named
above.

.......................................................................................................................

DATE

FORM DC-535 REVISED 10/17

Prepared and updated by the City of Virginia Beach Police Department Special Operations