

Policy 1108



Subject	
DUI/DWI ARREST PROCEDURES	
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By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department (BPD) to arrest and charge persons who violate the alcohol and/or drug related subtitles of the Maryland Transportation Articles. Members who arrest and charge these persons must ensure that sufficient probable cause exists to support such charges. Any test for alcohol concentration, whether of breath or blood, should not be the sole basis for arrest and charging but should be supported by the arresting officer's observations of the driver, the driver's operation of a vehicle or vessel, and the results of any field sobriety testing that may be conducted.

DEFINITIONS

Alcohol – As defined in §11-103.1 of the Maryland Transportation Article, alcohol is any substance or substances containing any form of alcohol, including ethanol, methanol, propynol, and isopropynol.

Alcoholic Beverage – As defined in §21-903 of the Maryland Transportation Article, an alcoholic beverage is any spirituous, vinous, malt, or fermented liquor, liquid, or compound that contains at least 0.5% alcohol by volume and is fit for beverage purposes.

Competent Evidence – Legally admissible evidence that tends to prove a particular allegation. In DUI/DWI enforcement, competent evidence can include an officer's observations of illegal, unsafe, or unusual operation of a vehicle. Signs of intoxication, impairment in a driver's speech, physical appearance, and results of standardized field sobriety tests are considered signs of component evidence as well.

Drug Recognition Expert (DRE) – A law enforcement officer with specialized training who has been nationally certified to recognize impairment in drivers under the influence of drugs other than, or in addition to, alcohol, and to identify the category or categories of drug(s) causing the impairment.

Implied Consent – In the state of Maryland, any person who drives or attempts to drive a vehicle, including a commercial vehicle, on a highway or on any private property used by the public in general, is deemed to have consented to take, as appropriate, either a test of breath or blood to determine alcohol concentration when a police officer has reasonable grounds to believe the person is impaired by alcohol, a controlled dangerous substance, or any combination thereof.

Officers should note a person may not be compelled to take either test for alcohol concentration, except in a case where the person is involved in a collision that results in the death of, or life-threatening injury to, another person.

Per Se – A legal phrase meaning an act is inherently illegal. As applied to DUI/DWI enforcement, "per se" refers to occasions where certified testing of a sample of a person's blood or breath reveals an alcohol concentration greater than or equal to that specifically stated in the law.

Reasonable Grounds – A legal standard that is less than probable cause but more than an un-particularized suspicion or hunch that allows a police officer to draw rational inferences from specific, articulable facts and observations.

Standardized Field Sobriety Tests (SFST) – A battery of three tests administered to a person by a law enforcement officer and evaluated in a standardized manner so as to obtain validated indicators of impairment and assist in establishing probable cause for arrest. The three tests are: Horizontal Gaze Nystagmus (HGN); Walk-and-Turn (WAT), and; One-Leg Stand (OLS).

Vessel – A watercraft bigger than a rowboat.

PRIMARY DUI / DWI OFFENSES

§21-902-(a)1 Driving or Attempting to Drive Vehicle While Under the Influence of Alcohol.

§21-902-(a)2 Driving or Attempting to Drive Vehicle While Under the Influence of Alcohol Per Se - Driving or attempting to drive any vehicle with a breath or blood alcohol concentration of 0.08 or more, as measured by grams of alcohol per 210 liters of breath or grams of alcohol per 100 milliliters of blood.

§21-902-(b)1 Driving or Attempting to Drive Vehicle While Impaired by Alcohol - Driving or attempting to drive a vehicle with a breath or blood alcohol concentration equal to 0.07, as measured by either grams of alcohol per 210 liters of breath or grams of alcohol per 100 milliliters of blood.

§21-902-(c)1 Driving or Attempting to Drive Vehicle While Impaired by Drug(s) or Drug(s) and Alcohol - Driving or attempting to drive any vehicle while under the influence of drugs, any combination of drugs, or a combination of one or more drugs and alcohol.

§21-902-(d)1 Driving or Attempting to drive vehicle while impaired by a controlled dangerous substance (CDS).

§16-113-(h) Driving Vehicle in Violation of Restricted License Requirement - Driving a vehicle in violation of a license restriction. For example, a Maryland license that bears the restriction code “J” prohibits the holder of that license from driving a vehicle with a blood alcohol concentration of 0.02 or higher.

§16-133-(j) Driving or Attempting to Drive Vehicle With Alcohol in Blood in Violation of Court Order - Driving or attempting to drive any vehicle with alcohol in the blood (as determined by chemical testing) in violation of a court order. For example, a violation of this type would be a motorist who has been ordered by the District Court to operate only a motor vehicle equipped with an ignition interlock system, and is then found to have been driving that vehicle with an alcohol concentration of 0.02 or greater.

REQUIRED ACTION

Member

1. Develop the necessary probable cause prior to placing an individual under arrest for any DUI/DWI offense. Consider the following:
 - 1.1. Observations that a vehicle is being operated in an unusual or illegal manner.

- 1.2. Signs or physical indicators that the operator of a vehicle is impaired by, or under the influence of, alcohol, drugs and/or CDS.
- 1.3. Evidence observed within a vehicle while speaking with the driver such as open alcoholic beverage containers or CDS.
- 1.4. The results of SFST.

NOTE: Members participating in Sobriety Checkpoints shall adhere to Sobriety Checkpoint Guidelines.

2. When sufficient probable cause exists, place the driver under arrest. Note the time at which the arrest is effected for use in determining breath or blood test time limits.
 - 2.1. A breath alcohol test must be administered within two hours of the time the driver is arrested.
 - 2.2. A blood sample taken when only impairment by alcohol is suspected must be taken within two hours of the time the driver is arrested.

NOTE: Prior to attempting to obtain a blood alcohol test, all members shall contact the Crash Team for notification and guidance.

- 2.3. A blood sample taken when impairment by drugs or CDS is suspected must be collected from the driver within four hours of the time the driver is arrested. This blood sample may only be ordered by a certified DRE.
3. Medical treatment will always take priority over investigative efforts.
 - 3.1. If an officer is assigned to handle a traffic crash or other traffic related call for service and in so doing makes observations that lead him/her to suspect an involved driver is under the influence of, or impaired by, alcohol and/or CDS, DUI/DWI enforcement efforts must not interfere with the prompt rendering of medical aid.

NOTE: If the involved driver is transported to a hospital, a breath alcohol test may no longer be administered. Only a blood test may be administered, regardless of whether or not the driver is admitted to the hospital. Be guided by the section of this policy entitled Blood Test.

4. Obtain a central complaint number from the police dispatcher, Communications Section, for all required reporting.
5. In accordance with Policy 902, *Towing Procedures*, arrange for the release of, or impounding of, the arrestee's vehicle.
6. Determine if the arrestee has a valid license and any open arrest warrants.
 - 6.1. If the arrestee's privilege to drive is not valid, for example he/she has a State soundex number identification only, or is suspended or revoked, note this information and refer to it later when completing Form DR-15A, Officer's Certification and Order of Suspension (see Appendix B).

7. Transport the arrestee to a location that has been designated as the site where a breath alcohol test will be administered.
 - 7.1. In general, this will be the front lobby of the Central District.
 - 7.2. If the testing equipment at the Central District is unavailable, or if no Crime Laboratory Technician or certified breath test operator can be located within the necessary time frame to administer the test, consult with a permanent-rank supervisor as to transporting the arrestee to another police agency's station, precinct, or barrack, for use of that agency's testing equipment.
8. Upon arrival at the testing site, read Form DR-15, Advice of Rights (see Appendix A) to the arrestee in its entirety. Do not skip or shorten any sections. The form must be read word-for-word to the arrestee.
 - 8.1. After Form DR-15 has been read to the arrestee, he/she may elect to consult with an attorney prior to making a decision on whether or not to consent to the breath alcohol test or DRE examination.
 - 8.2. This consultation can include an in-person meeting at the testing site with the attorney, and the attorney can actually administer an informal breath test to the arrestee with a device such as a Preliminary Breath Test (PBT).
 - 8.3. Regardless of what form any arrestee/attorney consultation takes, it cannot interfere with the two-hour time limit. If the time limit expires due to the arrestee's insistence upon first consulting with an attorney, or if the consultation itself continues long enough for the time limit to expire, either of these circumstances is considered a refusal.
9. Complete the Officer's Observation Report, Form 94/54 (see Appendix E). Retain the yellow copy for the case folder and place the white copy in the Crime Scene Science's tray at the testing site.
10. If the arrestee consents to the breath alcohol test, have him/her sign where necessary on Form DR-15, then contact the Crime Scene Science/Evidence Section or the Police Dispatcher, Communications Section, and request a Crime Laboratory Technician or certified breath test operator respond to administer the breath test.
 - 10.1. If a DRE is required, make that request via the Shift Commander, Communications Section.

REFUSAL TO CONSENT TO BREATH/BLOOD TEST

1. If the arrestee refuses to consent to the breath alcohol test, or if the arrestee appears unable to understand the DR-15 due to his/her suspected level of intoxication/impairment and therefore cannot give a clear answer:
 - 1.1. Consider either case to be a refusal.
 - 1.2. Attempt to have the arrestee sign where necessary on Form DR-15. If the arrestee refuses to sign, or if he/she is unable to sign, mark the form accordingly.

- 1.3. Confiscate the arrestee's Maryland Driver's License if it is in his/her possession.

NOTE: Arresting officers may only confiscate a Maryland Driver's License. A driver's license issued by any other state, territory, etc., may not be confiscated.

- 1.4. Complete Form DR-15A, Officer's Certification and Order of Suspension.
 - 1.4.1. If the arrestee does not have his/her Maryland Driver's License at the time of arrest, ensure that the sections entitled "Surrender of Driver's License" and "Driver's Certified Statement" on Form DR-15A are completed properly.
- 1.5. Record the "Control Number" printed at the top-right of the Form DR-15A on the appropriate line at the bottom-right of the Form DR-15.
- 1.6. Attempt to have the arrestee sign where necessary on Form DR-15A. Use the following items to determine whether or not the arrestee will be issued a Temporary Driver's License:
 - 1.6.1. If the arrestee is willing to sign Form DR-15A as directed, and you have verified he/she has a valid driver's license, both the arresting officer and the arrestee must sign where indicated under the section entitled Temporary Driver's License on Form DR-15A.
 - 1.6.2. If the arrestee refuses to sign Form DR-15A, OR if the arresting officer has determined that the arrestee does not have a valid driver's license, do not issue a Temporary Driver's License to the arrestee.

NOTE: Do not issue a Temporary Driver's License via Form DR-15A if the arrestee's license is not valid or is suspended and/or revoked.

- 1.6.3. If the arrestee's suspected level of intoxication/impairment leaves him/her unable to sign, consider this a refusal to sign.
2. Distribute copies of the various forms as follows:
 - 2.1. Give the arrestee the "Driver" copy of both Form DR-15 and Form DR-15A. If he/she meets the criteria described, the "Driver" copy of Form DR-15A will serve as his/her Temporary Driver's License.
 - 2.2. Make a copy of Form DR-15, Advice of Rights, for the case folder.
 - 2.3. Place the following documents in the DWI REFUSAL tray at the testing site:
 - 2.3.1. White copy of Form 94/54, Officer's Observation Report;
 - 2.3.2. Officer copy of Form DR-15, Advice of Rights; and
 - 2.3.3. Law Enforcement copy of Form DR-15A, Officer's Certification and Order of Suspension.

NOTE: Do not mail any DUI/DWI Refusal paperwork to the Crime Scene Science/Evidence Section.

- 2.4. Place the following documents into the postage-paid envelope attached to the back of the Form DR-15A packet:
 - 2.4.1. The arrestee's Maryland Driver's License, if one was confiscated;
 - 2.4.2. The MVA copy of Form DR-15, Advice of Rights; and
 - 2.4.3. The MVA copy of Form DR-15A, Officer's Certification and Order of Suspension.
- 2.5. Immediately following the completion of the DUI/DWI process, deposit this envelope in any United States Postal Service mailbox.
3. In accordance with Policy 906, *Maryland Uniform Complaint and Citation*, issue all appropriate citations. Mark all citations as "Must Appear" and either have the arrestee sign each one, or mark the bottom of each as "Defendant Arrested."
4. Consider the following elements when evaluating what charge(s) will apply:
 - 4.1. Did the offense involve only alcohol?

NOTE: If the arrestee refused to submit to a breath/blood test, §21-902 (a)2, "Driving/Attempting to drive vehicle while under the influence of alcohol per se," cannot be charged. This "per se" offense requires the arrestee submit to an alcohol concentration test and the test produce a result of 0.08 or higher.

- 4.2. Did the offense involve a combination of alcohol and drugs and/or CDS?
- 4.3. Was the driver/arrestee transporting a minor at the time of the offense?

WITHDRAWN REFUSAL TO CONSENT TO BREATH/BLOOD TEST

1. An arrestee who initially refuses to consent to a breath alcohol or blood test may withdraw that refusal.
2. Arresting officers must provide a DUI/DWI arrestee who withdraws his/her initial refusal with an opportunity to submit to a breath alcohol or blood test, if the withdrawal of the initial refusal meets all of the following criteria:
 - 2.1. The withdrawal is unequivocal and is made by the arrestee alone;
 - 2.2. The withdrawal is not made at the insistence of, or upon the advice of, any member of the BPD;
 - 2.3. The withdrawal is made while the arrestee is still in the custody of the arresting officer, but not at a time where operational priorities of the BPD will be unreasonably impacted (e.g., DUI/DWI arrestee attempts to withdraw his/her initial refusal upon arrival at the Baltimore Central Booking and Intake Center (BCBIC));

- 2.4. The withdrawal is made before any delay caused by the initial refusal will materially affect the outcome of the test (e.g., the arrestee appears to be delaying in the hopes that his/her suspected blood alcohol content will decrease);
 - 2.5. The withdrawal does not interfere with the timely and functional administration of any test. Factors that define timely and functional can include:
 - 2.5.1. Whether a certified breath test operator is still available to administer the test;
 - 2.5.2. Whether the testing equipment is available;
 - 2.5.3. Whether the delay between the arrestee's initial refusal and subsequent withdrawal of that refusal has, or will, interfere with the administration of any test to another DUI/DWI suspect; and
 - 2.5.4. Whether or not the delay between the arrestee's initial refusal and subsequent withdrawal of that refusal has, or will, unreasonably interfere with other duties and assignments of the arresting officer, the certified breath test operator or Crime Laboratory Technician, who must administer any test.
 3. DUI/DWI suspects may not withdraw their initial refusal if so much time has elapsed since they were taken into custody that:
 - 3.1. Any required testing or evaluation cannot be completed within the time limits established by law, and/or;
 - 3.2. Any required breath and/or blood samples cannot be collected within the time limits established by law.
- NOTE:** Arresting officers should consult with the Crime Laboratory Technician or a certified breath test operator in any case where there is a question of sufficient time remaining to honor a DUI/DWI arrestee's withdrawal of his/her initial refusal.
4. If an arrestee withdraws his/her initial refusal after Form DR-15 and Form DR-15A have been marked as "REFUSED," and it is possible to administer the appropriate tests, the arresting officer will:
 - 4.1. Draw one single line through the refusal blocks on each form;
 - 4.2. Check the appropriate blocks to indicate the arrestee has consented to the testing; and
 - 4.3. Write his/her initials next to the changed portions on each form.

BREATH ALCOHOL TEST RESULT IS 0.08 OR HIGHER

If an arrestee consents to a breath alcohol test which reveals a blood alcohol content of 0.08 or higher:

1. Ensure the certified breath test operator who administered the test:

- 1.1. Completes the entire section entitled Certification of Test Technician or Analyst on Form DR-15A, to include his/her signature, and;
 - 1.2. Completes his/her portions of MSP Form 33, Notification to Defendant of Result of Test for Alcohol Concentration (see Appendix C).
 - 1.3. Records the Central Complaint Number at the top-right of MSP Form 33.
2. The arresting officer will complete the remainder of Form DR-15A, and:
- 2.1. Confiscate the arrestee's driver's license, if he/she has one in his/her possession and it is a license issued by the State of Maryland.
 - 2.2. Determine whether or not the arrestee is eligible for a Temporary Driver's License. If an arrestee does not have a valid license, or his/her license is suspended/revoked, he/she is not eligible for a Temporary Driver's License.
 - 2.3. If the arrestee is eligible for a Temporary Driver's License:
 - 2.3.1. Have the arrestee sign the appropriate line on Form DR-15A under the section entitled Temporary Driver's License.
 - 2.3.2. Provide the arrestee the "Driver" copy of the form and explain that it will serve as his/her Temporary Driver's License.
 - 2.4. Copy the "Control Number" printed on the top-right of Form DR-15A onto the appropriate line at the bottom-right of Form DR-15.
3. Issue the following traffic citations:
- 3.1. If applicable, any citation for any moving violation that may have provided an original justification for stopping the arrestee.
 - 3.2. The following DUI/DWI citations:
 - 3.2.1. §21-902-(a)1: Driving/Attempting to drive vehicle while under the influence of alcohol.
 - 3.2.2. §21-902-(a)2: Driving/Attempting to drive vehicle while under the influence of alcohol per se.
 - 3.2.3. §21-902-(b)1: Driving/Attempting to drive vehicle while impaired by alcohol.
 - 3.3. If the arrestee's age is 18 - 20, inclusive, also issue the following citation:
 - 3.3.1. §16-113-(h): Driving vehicle in violation of restricted license requirement.

- 3.4. Any other related citations from §21-902 of the Maryland Transportation Article that might apply.
4. Record the number of the primary citation on both Form DR-15A and MSP Form 33.
5. Place the following documents into the postage-paid envelope attached to the back of the Form DR-15A packet:
 - 5.1. MVA copy of Form DR-15.
 - 5.2. MVA copy of Form DR-15A.
 - 5.3. MVA copy of MSP Form 33.
 - 5.4. If applicable, any confiscated Maryland Driver's License.
6. Immediately following the completion of the DUI/DWI process, deposit this envelope in any United States Postal Service mailbox.
7. Make or retain copies of all DUI/DWI-related forms, test results, etc., for the case folder. Release to the operator of the testing equipment any copies that he/she requests.
8. Transport the arrestee to the BCBIC for booking, or follow the procedures outlined in the section of this policy, entitled Discretionary Release of DUI/DWI Violators.

BREATH ALCOHOL TEST RESULT IS 0.07

If an arrestee consents to a breath alcohol test which reveals a blood alcohol content of 0.07:

1. Form DR-15A, Officer's Certification and Order of Suspension, is not needed. That form is used only for test results of 0.08 or greater.
2. On the bottom-right of Form DR-15, write "N/A" on the line entitled "DR-15A Control #."
3. If the arrestee holds a Maryland Driver's License, that license is not subject to a DUI/DWI-related confiscation.
4. Ensure the certified breath test operator who administered the test:
 - 4.1. Completes his/her portions of MSP Form 33, Notification to Defendant of Result of Test for Alcohol Concentration.
 - 4.2. Records the Central Complaint Number at the top-right of MSP Form 33.
5. Make or retain copies of all DUI/DWI-related forms, test results, etc., for the case folder. Release to the operator of the testing equipment any copies that he/she requests.
6. Issue the following traffic citations:

- 6.1. If applicable, any citation for any moving violation that may have provided an original justification for stopping the arrestee.
- 6.2. The following DUI/DWI citations:
 - 6.2.1. §21-902-(a)1: Driving/Attempting to drive vehicle while under the influence of alcohol.
 - 6.2.2. §21-902-(b)1: Driving/Attempting to drive vehicle while impaired by alcohol.
- 6.3. If the arrestee's age is 18 - 20, inclusive, also issue the following citation:
 - 6.3.1. §16-113-(h): Driving vehicle in violation of restricted license requirement.
- 6.4. Any other related citations from §21-902 of the Maryland Transportation Article that may apply.
7. Record the number of the primary citation on MSP Form 33.
8. Transport the arrestee to BCBIC for booking, or follow the procedures outlined in the section of this policy entitled Discretionary Release of DUI/DWI Violators.

BREATH ALCOHOL TEST RESULT IS UNDER 0.07

If an arrestee consents to a breath alcohol test which reveals a blood alcohol content of less than 0.07, there are two potential courses of action:

1. If the arrestee's breath alcohol test reveals a blood alcohol content between 0.02 and 0.06, and the arresting officer believes alcohol is the only cause of the arrestee's impairment (i.e., the arrestee is displaying signs of impairment solely due to having consumed ONLY alcoholic beverages and NOT prescription drugs, CDS, etc.):
 - 1.1. The arrestee may still be charged with DUI/DWI offenses;
 - 1.2. The arresting officer will consider other competent evidence in determining whether the arrestee was impaired or under the influence of alcohol;
 - 1.3. Other competent evidence will include, but is not limited to:
 - 1.3.1. Observations made during administration of SFSTs;
 - 1.3.2. Physical evidence observed at the scene; and
 - 1.3.3. Information recorded by the arresting officer on the Officer's Observation Report.
 - 1.4. The arresting officer's ability to articulate this competent evidence both in a Statement of Probable Cause and when testifying in court will be vital to his/her case.
 - 1.5. Issue citations for whatever DUI/DWI offenses and other moving violations may be appropriate based on observations and competent evidence.

2. If the arrestee's breath alcohol test reveals a blood alcohol content between 0.00 and 0.06, and the arresting officer believes the arrestee is under the influence of prescription drugs/medication and/or CDS:

2.1. Request a DRE via the Shift Commander, Communications Section as soon as possible;

NOTE: Arresting officers should consider seeking the assistance of a DRE anytime an arrestee's breath alcohol test results seem to be inconsistent with the level of physical impairment displayed by the arrestee.

2.2. A DRE must be able to perform his/her evaluation of the arrestee and obtain a blood sample within four hours of the time the arrestee was taken into custody;

2.3. If a BPD DRE is not available:

2.3.1. The Shift Commander, Communications Section, will attempt to locate an on-duty DRE in another jurisdiction; and

2.3.2. If a DRE is located in another jurisdiction, but he/she cannot respond to the arresting officer's location, the arresting officer is required to transport the arrestee to the out-of-jurisdiction location for the DRE evaluation and blood work.

2.4. Arresting officers are responsible for all non-DRE examination related paperwork.

2.5. Issue any appropriate citations.

SPECIAL CIRCUMSTANCE – BREATH ALCOHOL TEST RESULT IS 0.27 OR HIGHER

If an arrestee consents to a breath alcohol test which reveals a blood alcohol content of 0.27 or higher:

1. Obtain one extra set of test result print-outs from the certified breath test operator who administered the test;
2. Have the arrestee transported to the nearest emergency room to be examined for potential alcohol poisoning;
3. Provide the hospital staff with the extra set of test result print-outs from the arrestee's breath alcohol test; and
4. Complete the remainder of the arrestee's processing in accordance with the procedures given in the section of this policy entitled Breath Test Result is 0.08 or Higher.

SPECIAL CIRCUMSTANCE – ALCOHOL RESTRICTION ON LICENSE

If an arrestee consents to a breath alcohol test which reveals a blood alcohol content of 0.02 or more and the arrestee has an alcohol restriction on his/her driver's license:

1. Carry out the procedure listed previously in this policy for the arrestee's breath alcohol test results;

2. In addition, complete MVA Form DR-103, Certification of Police Officer Violation of Alcohol Restriction;
3. Issue citations for whatever DUI/DWI offenses apply;
4. Issue any citations from §16-113 of the Maryland Transportation Article that may apply, giving consideration to the following:
 - 4.1. §16-113-(h) prohibits driving a vehicle in violation of any license restriction, which includes the alcohol restriction that all Maryland drivers under the age of 21 will have on their licenses
 - 4.2. §16-113-(j) prohibits driving or attempting to drive a vehicle in violation of a court order prohibiting a driver from driving or attempting to drive with any alcohol in his/her blood. A driver with multiple previous DUI/DWI convictions, an Ignition Interlock Device, etc., might have this restriction.

DISCRETIONARY RELEASE OF DUI/DWI VIOLATORS

1. Under certain circumstances, arresting officers may release a DUI/DWI arrestee upon completion of all reports, paperwork, citations, etc. In exercising discretion as to releasing an arrestee with citations only, or processing him/her through BCBIC, officers must consider both the best interests of public safety and the desirability of minimizing the time expended by law enforcement personnel. Every arrestee will have a different tolerance for alcohol consumption, so it is imperative that arresting officers give full consideration to their arrestee's current mental and physical state prior to any decision to release the arrestee. If there is any reasonable doubt as to the advisability of releasing a particular arrestee, the arrestee shall not be released.

NOTE: Juvenile DUI/DWI arrestees are never eligible for discretionary release and will always be processed through the Baltimore City Juvenile Justice Center (BCJJC).

2. An adult DUI/DWI arrestee may be released when all of the following criteria have been met:
 - 2.1. The arrestee is a Maryland resident and has in his/her possession a valid Maryland Driver's License;
 - 2.2. The arrestee has been cooperative and non-combative, and has signed all necessary paperwork and traffic citations;
 - 2.3. The arrestee's degree of impairment is not obviously excessive, such that medical care due to alcohol, drug, and/or CDS intoxication/poisoning is, or likely will be, required; and
 - 2.4. A permanent-rank supervisor has approved the discretionary release.
3. Complete Discretionary Release of DWI/DUI Violators, Form 450 (see Appendix D), in addition to any citations/reporting related to the incident.
 - 3.1. Provide the arrestee with copy number one.
 - 3.2. Submit copy number two to your supervisor with all related BPD reporting.

COMMERCIAL VEHICLE DRIVER

1. All members shall process the operator of a commercial vehicle in the same manner as any adult person operating or attempting to operate a vehicle while under the influence of alcohol, drug(s) and/or CDS.
2. If the arrestee submits to a breath alcohol test and the breath/blood alcohol content is 0.08 or above, the member shall complete the required paperwork and citations, and check all appropriate blocks relating to Commercial Vehicles and/or Commercial Driver's License (CDL).
3. If the arrestee submits to a breath alcohol test and the breath/blood alcohol content is 0.07, the arresting officer and the Crime Laboratory Technician or certified breath test operator shall complete MVA Form DR-102, Certification of Police Officer Alcohol Test Result of 0.04 to 0.09 Commercial Motor Vehicle. The officer might issue the following citations:
 - 3.1. Driving, Attempting to drive vehicle while under the influence of alcohol, TA 21902 (a)(1).
 - 3.2. Driving, Attempting to drive vehicle while impaired by alcohol, TA 21-902 (b).
4. If the arrestee submits to a chemical test and the breath/blood alcohol content is between 0.04 and 0.07, the member and the Crime Laboratory Technician or certified breath test operator shall complete MVA Form DR-102. Issue the following citations:
 - 4.1. Individual, driving operating, or in physical control of commercial vehicle with any alcohol concentration in blood or breath, TA 16-813 (a).
5. No person within 4 hours of going on duty, operating, or having physical control of a vehicle shall consume or possess an intoxicating beverage regardless of alcoholic content, Motor Carrier Safety Inspection Regulations - MR 392.5 (a).

OPERATOR OF VESSEL

1. All members shall use the same arrest procedures for the operator of a vessel who is found to be under the influence of, or impaired by, alcohol, drugs or controlled dangerous substances, as that of an operator driving or attempting to drive a vehicle under the influence of, or impaired by, alcohol, drugs or controlled dangerous substances, with the following exceptions:
 - 1.1. The defendant shall be given the opportunity to take the SFST on land after being given the opportunity to get reoriented to land in a timely manner.

NOTE: This exception cannot interfere with the two-hour time limit to administer the breath alcohol test.

2. Transport the defendant to the designated testing site to complete all paperwork. All citations shall be on Maryland Department of Natural Resources police standard forms and citations, when applicable.
 - 2.1. The vessel will be properly secured and released to the owner or other sober and responsible adult per current established procedures of the BPD Marine Unit.

- 2.2. As there is no requirement to possess a Maryland driver's license to operate a vessel, the DR-15A will not be completed in any circumstance. No driver's license will be confiscated for charges of operating a vessel under the influence/while impaired.
3. Contact the Marine Unit for assistance when necessary.

Supervisor

1. Ensure all reports and forms are accurately completed.
2. Ensure all procedures are followed before juveniles are released to parent or guardian.
3. Upon request, respond and approve discretionary release of DUI/DWI offenders.

NOTE: Only a permanent-rank supervisor may authorize a DUI/DWI release.

Commanding Officer, Traffic Unit

1. Appoint with the approval of the Commanding Officer, Special Operations Section, a DRE Coordinator and a Sobriety Checkpoint Coordinator for the BPD.
2. The DRE Coordinator and Sobriety Checkpoint Coordinator shall be responsible for regular communications with the Traffic Unit Commander to receive directions and provide updates on their respective programs. Failure to do so will result in revocation of their coordinator status.
3. The DRE Coordinator shall be responsible for:
 - 3.1. Recruitment, training, scheduling and certification of all BPD DRE's and their equipment; and
 - 3.2. Recruitment, training, and certification of all departmental SFST and their equipment and records.
4. The Sobriety Checkpoint Coordinator shall:
 - 4.1. Approve and ensure that Sobriety Checkpoint operations are conducted in a lawful manner; and
 - 4.2. Provide a Standard Operating Procedure for members participating in Sobriety Checkpoint operations.

Director, Crime Scene Science/Evidence Section

1. Ensure Form 54, the "Law Enforcement" Copy of the DR-15A, and the Officer's Copy of the DR-15 are collected from the member.
2. Send appropriate forms and Blood Test Kits to the Chemical Test Alcohol Unit, Maryland State Police.

3. When results of a blood alcohol test are received from the Chemical Test Alcohol Unit, forward a copy to the arresting/charging member.
4. Submit a Requisition for Supplies, Form 128, including the appropriate individual Jurisdiction Code, to the Supply Unit, when requesting DR-15A books.
5. Ensure an adequate supply of Form DR-15, and any other required forms, are kept at the testing site in a secure location for accountability.

Crime Laboratory Technician/Certified Breath Test Operator

1. Upon request, respond to the testing site and administer the breath alcohol test with the arresting/charging member present.
2. If the subject's breath alcohol test results are .27 or higher, print out an additional copy of the breath alcohol test results for the arresting officer to be presented to medical personnel.
3. Ensure all forms are completed and signed by the arrestee. Assist the arresting/charging member with any paperwork or forms pertaining to test results or refusals to take the tests.
4. Receive and prepare for analysis completed Blood Test Kits from arresting/charging officers.

APPENDICIES

- A. Advice of Rights, Form DR-15.
- B. Officer's Certification and Order of Suspension, Form DR-15A.
- C. State of Maryland - Notification to Defendant of Result of Test for Alcohol Concentration, MSP Form 33.
- D. Discretionary Release of DWI/DUI Violators, Form 450.
- E. Officer's Observation Report, Form 94/54.

ASSOCIATED POLICIES

Policy 902, *Towing Procedures*
Policy 905, *Traffic Crash Investigation and Reporting*
Policy 906, *Traffic Citations*

RESCISSION

Remove from files and destroy/recycle K-8, *DUI/DWI Arrest Procedures*, dated 2 February 2005 and all amendments.

COMMUNICATION OF POLICY

This Policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Advice of Rights, Form DR-15

ADVICE OF RIGHTS – (Maryland Transportation Article §16-205.1)

DR-015 (10-16)

You have been stopped or detained and reasonable grounds exist to believe that you have been driving or attempting to drive a motor vehicle under circumstances requiring that you be asked to submit to a test under Maryland Transportation Article §16-205.1. In this situation, the law deems that you have consented to take a test to measure the alcohol concentration or drug or controlled dangerous substance content in your system. You may refuse to submit to the test(s), unless you were in a motor vehicle accident resulting in the death of or life-threatening injury to another person.

Suspension of Your Maryland Driver's License or Driving Privilege:

If you refuse to submit to the test, or if you submit to the test and the result indicates an alcohol concentration of 0.08 or more at the time of testing, your Maryland driver's license shall be confiscated, you will be issued an Order of Suspension and, if eligible, a temporary license valid for 45 days. The following periods of suspension shall be imposed against your license or privilege to drive in Maryland:

If you refuse to submit to a test, your suspension shall be 270 days for a 1st offense and 2 years for a 2nd or subsequent offense.

If your test result is an alcohol concentration of at least 0.08 but less than 0.15, your suspension shall be 180 days. If the offense involves a motor vehicle accident that resulted in the death of another person, your suspension shall be 6 months for a 1st offense and 1 year for a 2nd or subsequent offense.

If your test result is an alcohol concentration of 0.08 but less than 0.15, your suspension may be modified or a restricted license may be issued at a hearing.

If your test result is an alcohol concentration of 0.15 or more, your suspension shall be 180 days for a 1st offense and 270 days for a 2nd or subsequent offense. If the offense involves a motor vehicle accident that resulted in the death of another person, your suspension shall be 1 year for a 1st offense and for a 2nd or subsequent offense your license shall be revoked.

If you refuse a test, or take a test with a result of 0.15 or more, you shall be ineligible for modification of your suspension or the issuance of a restricted license, unless you participate in the Ignition Interlock System Program under Maryland Transportation Article §16-404.1.

If you hold a commercial driver's license (CDL) and were driving a non-commercial motor vehicle when you were stopped, and you refuse to submit to a test, your CDL or privilege shall be disqualified for 1 year for a 1st offense or for life if your CDL or privilege has been previously disqualified for at least 1 year under Maryland Transportation Article §16-812 (a) or (b), a federal law, or any other state's law.

If you were operating a commercial motor vehicle and your test result indicates an alcohol concentration of 0.04 or more, or if you refuse to submit to a test, your commercial driver's license or privilege shall be disqualified for a period of 1 year for a 1st offense, 3 years for a 1st offense committed while transporting hazardous materials required to be placarded, and disqualified for life if your commercial driver's license has been previously disqualified for at least 1 year and/or you have incurred 2 offenses of Maryland Transportation Article §16-812 (a) or (b), a federal law, or any substantially similar offense(s) under any other state's law.

If you are convicted of a drunk or drugged driving offense under Maryland Transportation Article §21-902, and the judge or jury finds beyond a reasonable doubt that you knowingly refused to take a test of breath arising out of the same circumstances, an additional criminal penalty of not more than \$500 or imprisonment for not more than 2 months, or both, may be imposed under Maryland Transportation Article §27-101 (x).

If you are convicted of a drunk or drugged driving offense under Maryland Transportation Article §21-902 (b) or (c), and the judge or jury finds beyond a reasonable doubt that you knowingly refused to take a test of breath arising out of the same circumstances, the Court shall require you, under Maryland Transportation Article §27-107.1, to participate in the Ignition Interlock System Program for 1 year pursuant to Maryland Transportation Article §16-404.1.

You may request an Administrative Hearing at any time within 30 days of the date of the Order of Suspension to show cause why your driver's license or privilege should not be suspended. You must request a hearing within 10 days of the date of the Order of Suspension to ensure that your privilege to drive is not suspended prior to your hearing. Your request for a hearing must be made in writing. You may use the "Hearing Request" form if available. Send your request to the Office of Administrative Hearings at 11101 Gilroy Rd., Hunt Valley, MD 21031-1301. You must include a check or money order for \$150.00, which is the required filing fee, made payable to the "Maryland State Treasurer." Your request for a hearing will be invalid if submitted without the required \$150.00 filing fee or applicable fee waiver.

Your driver's license or privilege will be suspended on the 46th day after the Order of Suspension if you do not request a hearing within 10 days of the date of the Order of Suspension or, if eligible, you do not elect within 30 days of the Order of Suspension to participate in the Ignition Interlock System Program. In order to receive credit for the suspension, you must surrender your driver's license or certify that you no longer have the license in your possession. If you submit a valid hearing request, a suspension will not be imposed unless a decision is rendered against you, or if you fail to appear for the hearing.

Instead of requesting a hearing or upon the suspension or revocation of your driver's license, you may elect to participate in the Ignition Interlock System Program if the following conditions are met: 1) your driver's license is not currently suspended, revoked, canceled, or refused; and 2) within 30 days of the date of this Order of Suspension you a) elect in writing to participate in the Ignition Interlock System Program for 1 year if your test resulted in an alcohol concentration of 0.15 or more or you refused the test or 6 months if your test resulted in an alcohol concentration of at least 0.08 but less than 0.15; and b) surrender a valid Maryland driver's license or sign a statement certifying that the license is no longer in your possession. An Ignition Interlock Election form is located on the reverse side of the driver's copy of the Order of Suspension.

Certification: I, the Undersigned Police Officer, certify under the penalties of perjury, that I have advised the driver of the above stated rights and sanctions and have provided the driver with the aforementioned advice in: English and Spanish.

Certificación: Yo, el oficial de policía abajo firmante, certifico bajo pena de perjurio que he aconsejado al conductor acerca de sus derechos y sanciones arriba mencionados, y que le he proporcionado la notificación arriba mencionada al conductor en: inglés y español.

Signature of Officer _____ I.D. No. _____ Police Agency _____
Firma del Oficial *N.º de Identificación* *IE Agencia de Policía*

Read before Signing: I, the undersigned driver, acknowledge that I have been read or I have read the above stated Advice of Rights as certified by the police officer. I understand that in addition to this requested test is in addition to any preliminary tests that were taken.

Leer Antes de Firmar: Yo, el conductor abajo firmante, reconozco que me han leído o he leído la Notificación de Derechos arriba mencionada según lo certifica el oficial de policía. Comprendo que esta prueba solicitada es adicional a cualquier prueba preliminar que se haya realizado.

Having been so advised, do you now agree to submit to a test? (Officer check driver's reply)

Habiendo sido de este modo notificado, está Usted de acuerdo ahora en someterse a la prueba? (Oficial, revise la respuesta del conductor)

- Yes - Agree to submit to an alcohol concentration test** **Yes - Agree to submit to a test for drug or controlled dangerous substance (CDS)**
Sí - Acepta someterse a una prueba de concentración de alcohol en la sangre *Sí - Acepta someterse a una prueba de drogas o sustancias peligrosas controladas (CDS)*
- No - Alcohol concentration test, refused** **No - Drug or CDS test refused (DRE must complete & submit DRE Certification Form)**
No - La prueba de concentración de alcohol en la sangre ha sido rechazada *No - La prueba de drogas o CDS ha sido rechazada*

Signature of Driver _____ Date _____ Time _____ DR-015A Control # _____
Firma del conductor *Fecha* *Hora*

APPENDIX B

Officer's Certification and Order of Suspension, Form DR-15A

"MVA" COPY

Officer's Certification and Order of Suspension Please read and complete both sides. DR-15A 10-16										
(as provided in § 16-205.1 of the Maryland Vehicle Law)										
(FOR OFFICIAL USE ONLY)										
OCCURRENCE (MONTH/DAY/YEAR/TIME) _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.					COMMERCIAL LICENSE? <input type="checkbox"/> YES <input type="checkbox"/> NO COMMERCIAL VEHICLE? <input type="checkbox"/> YES <input type="checkbox"/> NO HAZARDOUS MATERIAL? <input type="checkbox"/> YES <input type="checkbox"/> NO			CONTROL NUMBER AJ		
LOCATION (SPECIFY COUNTY OR BALTO. CITY AND ADDRESS):										
DRIVER'S NAME: LAST			FIRST			MIDDLE				
RESIDENCE STREET ADDRESS				CITY		STATE		COUNTY		ZIP CODE
DRIVER'S LICENSE NUMBER				STATE	ISSUE DATE		SP. CODE	RESTRICTION		ENDORSEMENT
LICENSE CLASS	LICENSE TYPE	HGT.	WGT.	SEX	RACE	BIRTH MONTH/DAY/YEAR		VEHICLE TAG NO.	STATE	
ORDER OF SUSPENSION - ISSUE DATE: (MONTH / DATE / YEAR): _____										
Pursuant to Transportation Article, Section 16-205.1; of the Maryland Vehicle Law, you are hereby notified that your Maryland Driver's License/Privilege will be suspended effective on the Forty-sixth (46) day from the above "Issue Date" because:										
<input type="checkbox"/> You refused to take a test to determine alcohol concentration when requested by the Police Officer.					<input type="checkbox"/> Offense Involved Death Of Another Person					
<input type="checkbox"/> You submitted to a test indicating an alcohol concentration of at least 0.08 but less than .15										
<input type="checkbox"/> You submitted to a test indicating an alcohol concentration of .15 or more										
<input type="checkbox"/> You refused to take a blood test for drug or controlled dangerous substance content when requested by a Drug Recognition Expert. (See attached Drug Recognition Expert's Certification Form)										
SURRENDER OF DRIVER'S LICENSE					TEMPORARY LICENSE					
By law, the officer is required to take your Maryland driver's license and if valid, issue a temporary license to allow you to continue driving 45 days from the above "Issue Date". <input type="checkbox"/> License was confiscated. <input type="checkbox"/> License was not confiscated because: _____					The "Driver's Copy" of this entire form, signed by you and the police officer, serves as a Valid Temporary license which expires on the 45th day after issuance of the Order of Suspension or upon completion of a hearing, whichever occurs first.					
DRIVER'S CERTIFIED STATEMENT					SIGNATURE OF DRIVER (If Temp. Authorized)					
I hereby certify under penalty of perjury, that I do not possess a Maryland driver's license to surrender to the police officer and should the license come into my possession I will immediately forward it to the Motor Vehicle Administration.					SIGNATURE OF OFFICER (if Temp. Authorized)					
SIGNATURE _____ DATE _____					I acknowledge that a temporary license was not authorized.					
CERTIFICATION OF POLICE OFFICER					SIGNATURE OF DRIVER					
I, the undersigned officer, had reasonable grounds to believe that the driver described and named above had been driving or attempting to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State while under the influence of alcohol, while impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of Section 16-813 of the Maryland Vehicle Law.										
REASONABLE GROUNDS: _____										

Odor Of Alcoholic Beverage on Driver's Breath: <input type="checkbox"/> None <input type="checkbox"/> Faint <input type="checkbox"/> Moderate <input type="checkbox"/> Strong Refer Summons No. _____										
I certify under penalty of perjury that the contents of the foregoing document are true and correct to the best of my knowledge, information and belief, and after being fully advised of sanctions that shall be imposed as provided in the Advice of Rights Form DR-15, the person described above (1) refused to take a test to determine alcohol concentration when requested by this officer, (2) was tested and the test result indicated an alcohol concentration of 0.08 or more as indicated above, or (3) refused to take a blood test for drug or controlled dangerous substance content when requested by a Drug Recognition Expert.										
OFFICER'S SIGNATURE			DATE			OFFICER'S PRINTED NAME				
LAW ENFORCEMENT AGENCY						ID NUMBER				
ADDRESS										
CERTIFICATION OF TEST TECHNICIAN OR ANALYST										
I do solemnly declare and affirm, under penalty of perjury, and upon personal knowledge that I performed a test for alcohol concentration on the person described above and the test results were 0._____ from the Intox EC/IR. <input type="checkbox"/> Testing procedure was explained. <input type="checkbox"/> Person appeared in good health.										
<input type="checkbox"/> Refusal - Insufficient Breath. I further certify that the driver refused to take a test when the driver failed to provide sufficient breath samples for analysis.										
EXPLANATION: (Specify Instructions issued and behavior of driver): _____										

SIGNATURE OF TEST TECHNICIAN/ANALYST			DATE			PRINTED NAME OF TEST TECHNICIAN/ANALYST				
FACILITY NAME AND ADDRESS										

APPENDIX C

State of Maryland – Notification to Defendant of Result of Test for Alcohol Concentration, MSP Form 33



**STATE OF MARYLAND
NOTIFICATION TO DEFENDANT OF
RESULT OF TEST FOR ALCOHOL CONCENTRATION**

Case No: _____

Citation No: _____

NAME OF PERSON ARRESTED: _____

DATE OF ARREST: _____ TIME OF ARREST: _____

DATE SPECIMEN COLLECTED: _____ TIME SPECIMEN COLLECTED: _____

This is to certify that the above specimen was obtained and tested using equipment approved by the Toxicologist under the Post Mortem Examiner’s Commission from the above named person at the direction of the arresting officer. The serial number of the test equipment is _____.

Blood specimen was found to contain an alcohol concentration of _____ grams of alcohol per 100 milliliters of blood.

Breath specimen was found to contain an alcohol concentration of _____ grams of alcohol per 210 liters of breath.

The above named defendant is hereby notified that the results of the test for alcohol will be presented as evidence at the criminal trial without the presence or testimony of the technician or analyst who performed the test unless the defendant or defense attorney notifies the State’s Attorney and the court in writing no later than twenty (20) days before trial that the defendant desires the technician or analyst to be present in court.

I, the undersigned technician or analyst, certify under penalty of perjury that I am a “qualified person” as defined in Section 10-304 of the Courts and Judicial Proceedings Article, that the result of the test for alcohol concentration is as stated above, and that all other information contained in this document is true and correct to the best of my knowledge, information and belief.

Test Technician or Analyst and Operator No. Police Dept. or Agency Station/Barrack

Arresting Officer/Trooper and ID No. Police Dept. or Agency Station/Barrack

Defendant Signature Date and Time Defendant Received Copy

MSP 33 (REV. 12/96)

ARRESTING OFFICER / TROOPER FOR COURT

APPENDIX D

Discretionary Release of DWI/DUI Violators, Form 450

DWI/DUI Discretionary Release Notice
Form 450/04

BALTIMORE POLICE DEPARTMENT
DWI/DUI DISCRETIONARY RELEASE NOTICE

The citation(s) you have been issued charges you with a crime. Read the instructions on the reverse side of the citation(s) for a full explanation of the procedures to be followed. All persons charged with an alcohol-related traffic offense **MUST APPEAR IN COURT**. Your failure to appear can result in the issuance of a warrant for your arrest. The Maryland District Court will notify you of a trial date.

You have the right to have an attorney. An attorney can be helpful to you for the following reasons:

- A. Explaining the charge(s) in your case.
- B. Telling you of possible penalties.
- C. Assisting you at trial.
- D. Protecting your Constitutional Rights.
- E. Assuring a fair penalty, if convicted.
- F. Even if you plan to enter a guilty plea, an attorney can be helpful.

If you desire to have an attorney, but you do not have the funds to retain one, a Public Defender will provide representation for you. The Public Defender's Office for Baltimore City may be contacted by phone at (410) 333-4900, and/or in-person at their offices located at 1400 E. North Avenue. You must contact the Public Defender's Office at least ten (10) working days before your trial date.

Do not wait until the date of your trial to obtain an attorney. If you do not have an attorney before the trial date, you may have to go to trial without an attorney.

When you have been charged with a DWI or DUI, Maryland State Law prohibits you from driving a motor vehicle for 12 hours from the time of the arrest (T/A 21-902.1.b). Further attempts to operate a vehicle at this time may result in additional charges being placed against you.

YOU WERE ARRESTED AT _____ a.m./p.m. ON _____ (DATE).
YOU ARE NOT PERMITTED TO DRIVE A MOTOR VEHICLE UNTIL _____ a.m./p.m. ON _____ (DATE).

I, _____,
have read/been advised the above information.

Affixing my signature IS NOT an admission of guilt. I also understand that by signing this form I agree not to drive a motor vehicle until _____ a.m./p.m. on _____ (date).

Defendant's Signature

Name, address and signature of responsible person to whom the defendant was released:

Name Address Signature

Arresting Officer's Name (print) Signature

Sequence Number Date Command CC#

Copy #1 - Defendant Copy #2 - Arresting Officer

APPENDIX E

Officer's Observation Report, Form 94-54

Laboratory Division
OFFICER'S OBSERVATION REPORT
Form 94/54
1160-25-48

POLICE DEPARTMENT
BALTIMORE, MARYLAND

CC# _____ *

(Check all that apply)

Driver Accident

Violation Other

_____ A.M.

_____ P.M.

Date and time of Accident or Violation

Name _____

Address _____

DOB _____ Age _____ Sex _____ Race _____ Weight _____

Driver's License # _____ State _____ DWI Citation # _____

Location of Offense _____

What first led the officer to suspect alcoholic influence? _____

Unusual actions or statements _____

What time did Officer begin observing the subject to assure that nothing was taken by mouth? _____

OBSERVATION - (Draw circles around words describing observed conditions. Add other words of your own)

BREATH	Odor of alcoholic liquor: Strong Moderate Faint Apparently none
CLOTHES	Disorderly Disarranged Soiled Mussed Orderly (Describe)
ATTITUDE	Sleepy Care-free Talkative Hilarious Excited Polite (Other)
	Insulting Combative Cocky Antagonistic Indifferent Cooperative
UNUSUAL ACTIONS	Fighting Profanity Hiccough Belching Vomiting (Other)
WALK	Falling Staggering Stumbling Swaying Fair Sure (Other)
SPEECH	Incoherent Confused Stuttering Slurred Fair (Other)
EFFECTS OF ALCOHOL	Extreme Obvious Slight Apparently none

Printed Name of Officer

I.D. No.

Signature of Officer

PRINT IN DUPLICATE

NOTE: USE OTHER SIDE FOR REMARKS.

* NOTE - CC # MANDATORY FOR B.P.D. ARREST