

Impaired Driving

503.1 PURPOSE AND SCOPE

This policy provides guidance to Deputies who play a role in the detection and investigation of driving while impaired (DWI) offenses.

503.2 POLICY

The Montgomery County Sheriff's Office is committed to the safety of the roadways and the community and will fairly enforce North Carolina's impaired driving laws.

503.3 FIELD TESTS

Deputies will use the standardized field sobriety tests listed on the Driving While Impaired Report (DWIR) form. However, when injury may occur if an individual participates in certain sobriety tests, this must be taken into consideration. In this case a Deputy must use his/her best judgement if a sobriety test is feasible. Detailed documentation should be included with the report.

503.4 IMPLIED CONSENT

A person is deemed to have consented to a chemical analysis, and providing the associated chemical sample for an implied-consent offense.

503.4.1 STATUTORY NOTIFICATIONS

Before a chemical analysis may be administered to an arrested person, the person must be informed orally and in writing that:

- (a) The person has been charged with an implied-consent offense with the right to refuse any test, but that the person's driver's license will be revoked for one year and could be revoked for a longer period of time under certain circumstances. The person should also be informed that the deputy may be able to compel the person to be tested under other laws.
- (b) The test results, or the fact of refusal, will be admissible in evidence at any trial.
- (c) The person's driving privilege will be revoked immediately for at least 30 days if he/she refuses any test or if the test result is 0.08 or more, 0.04 or more if driving a commercial motor vehicle, or 0.01 or more if the driver is under 21 years of age.
- (d) The person may seek an additional test upon their release.
- (e) The person may call an attorney for advice and select a witness to view any testing procedures remaining after the witness arrives. Testing may not be delayed longer than 30 minutes from the time following notification of rights while waiting for an attorney or witness. Any witness should be referred to respond to gain entry through the magistrates' office to witness the testing procedures.

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If a person refuses a chemical analysis or has a prohibited alcohol concentration, or has an alcohol concentration restriction and the results violate such restriction, the charging law enforcement officer and chemical analyst shall execute the required affidavits or revocation reports and the law enforcement officer shall forward the affidavits to the Division of Motor Vehicles (DMV).

503.4.2 BREATH SAMPLES

Only authorized law enforcement officers who have a current permit to administer chemical analysis of the breath are authorized to read a person charged with an implied consent offense their implied consent rights and to operate the evidentiary breath testing instrument. If during the administration of the breath test, the chemical analyst is unable to complete the breath testing and obtain a valid result due to the operation of the breath testing instrument, the chemical analyst shall immediately contact the Forensic Test For Alcohol (FTA) branch by calling the toll-free number on the instrument and note any issue in the appropriate report.

503.4.3 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples. The blood draw should be witnessed by the assigned deputy who shall record the name, position and qualifications of the person withdrawing the blood. A deputy, even if properly certified, should not draw blood or not be a witness on their own arrest.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

A person requested to withdraw blood may refuse to do so only if it reasonably appears that the procedure cannot be performed without endangering the safety of the person collecting the sample or the safety of the person from whom the sample is being collected. If the deputy requesting the blood or urine requests a written justification for the refusal, the medical provider who determined the sample could not be collected safely shall provide written justification at the time of the refusal. The inability to safely obtain a blood sample should not be reported to DMV as a willful refusal.

503.5 REFUSALS

When the arrestee refuses to submit to the implied consent test, the deputy who arrested the arrestee shall complete and have notarized the AOC-CVR-1A/CHHS 3907 and obtain the same notarized form from the chemical analyst. The charging deputy shall notify the judicial official at the initial appearance of the refusal and shall send the appropriate copy of the AOC-CVR-1A/CHHS 3907 to DMV. Copies of the form shall also be filed in the criminal case files by the Records Manager.

503.5.1 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses to submit to a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained.

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503.5.2 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the deputy will request a supervisor to respond. If a person willfully refuses to provide a blood sample the deputy will seek a warrant to obtain the blood sample.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes, a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another deputy), and attempt to persuade the individual to submit to providing such a sample without physical resistance.
- (d) This dialogue may be recorded on audio and/or video.
- (e) Ensure that the blood sample is taken in a medically approved manner.
- (f) Ensure that the forced blood draw is recorded on audio and/or video when practicable.
- (g) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
 - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - 2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
 - 3. In felony cases, force that reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (h) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, deputies are expected to use sound judgment and perform the duties of a supervisor, as set forth above.

503.6 ARREST AND INVESTIGATION

A deputy may make a warrantless arrest of a person that the deputy has probable cause to believe has violated the DWI or DWI in a commercial motor vehicle laws of this State, whether or not the offense occurred in the presence of the deputy.

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A deputy arresting a person for a DWI offense shall inform the person arrested of the charges or cause for the arrest and take the person before a judicial official for an initial appearance, after completion of all investigatory procedures, crash reports and chemical analyses. Deputies are authorized to transport the arrested person to any place within the County of arrest for the purpose of conducting chemical analyses or identification of the person, as well as to take photographs or fingerprints.

In regards to the aforementioned, Montgomery County Deputies will remain in Montgomery County to conduct blood or breath alcohol testing procedures as well as to complete identification of the arrestee in question.

503.6.1 ALCOHOL SCREENING TESTS

A deputy may request that a person submit to an approved alcohol screening test if the deputy has reasonable grounds to believe that the person has consumed alcohol and either:

- (a) Committed a moving traffic violation.
- (b) Was involved in a traffic crash.
- (c) Was stopped at a driver license checkpoint or was otherwise lawfully stopped or encountered, and the deputy has articulable and reasonable suspicion that the person has committed a DWI offense.
- (d) Operated a vehicle while under 21 years of age or while in possession of an open container of alcohol.

503.6.2 RIGHT TO CHEMICAL TEST PRIOR TO ARREST OR CHARGE

Deputies investigating whether a person has committed a DWI offense shall afford the person, upon request, the opportunity to have a chemical analysis of the person's breath prior to arrest. The person must agree to be transported by the deputy to the place where the breath test is administered. Before the person is tested the person must confirm the request in writing and a chemical analyst shall inform the person that:

- (a) That the test results will be admissible in evidence and may be used against you in any implied consent offence that may arise;
- (b) Your driving privilege will be revoked immediately for at least 30 days if the test result is 0.08 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21;
- (c) If you fail to comply fully with the test procedure, the deputy may charge you with any offense for which the deputy has probable cause, and if you are charged with an implied-consent offense, your refusal to submit to the testing required as a result of that charge would result in revocation of your driving privilege. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant.

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Upon completion of the pre-arrest test the deputy shall arrest the driver if there is probable cause to believe an offense has occurred. The deputy shall complete or obtain the required affidavits and file them as in all other implied-consent cases.

503.7 RECORDS SECTION RESPONSIBILITIES

The charging deputy will ensure that all case-related records are transmitted according to current records procedures and as required by the District Attorney's Office.

503.8 ADMINISTRATIVE HEARINGS

The charging Deputy will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

A deputy called to testify at an administrative hearing should document the hearing date and the DMV file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified. The charging Deputy should forward this to the District Attorney as part of the case file.

