# Alexandrina Police Department

## Directive 11.8

### DWI Enforcement

**Effective Date:** 01-27-2016  
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### 11.8.01 POLICY/PURPOSE

It is the policy of this Department to fully enforce all laws applicable to operation of vehicles by drivers under the influence of alcohol/drugs. Removing intoxicated drivers from the roadways eliminates the possibility of accidents being caused by these persons and results in the prevention of death, injury and/or property damage. It is also the policy of this Department to strictly enforce laws pertaining to the use or possession of alcoholic beverages by persons not legally permitted to purchase or possess them (i.e., juveniles; interdicted persons).

The purpose of this directive is to provide a uniform policy for enforcing laws prohibiting operation of vehicles by drivers under the influence of alcohol/drugs, and to establish the Department’s alcohol/drug enforcement countermeasures program. This directive
also establishes procedures for use of Alco-sensors to preliminarily determine if persons may have consumed alcohol in excess of the legal limit (which may include prohibition of mere possession in certain cases). EC/IR II, the new name of the breath analysis machine, is inserted in places that formerly referenced the Breathalyzer/Intoxilyzer 5000.

[61.1.5.a; 61.1.10; 61.1.11]

### 11.8.02 AUTHORITY

A. It is unlawful for any person to drive or operate any motor vehicle (including pedal bicycles with helper motors – Mopeds - while operated on the public highways of this state) engine, or train while under the influence of alcohol, or while under the influence of any narcotic drug or any self-administered intoxicant or drug of any nature (Code of Virginia §18.2-266). The following rebuttable presumptions apply:

1. 0.05% or less - presumption the accused is not under the influence of alcohol intoxicants *(Code of Virginia §18.2-269)*;

2. In excess of 0.05% but less than 0.08% - no presumption the accused is under the influence of alcohol intoxicants but may be considered with other evidence in determining guilt or innocence *(Code of Virginia §18.2-269)*;

3. 0.08% or more – permissible inference as under the influence of alcohol intoxicants *(Code of Virginia §18.2-269)*;

4. 0.02% or more for persons under 21 years of age *(Code of Virginia §18.2-266.1)* are presumed to be under the influence;

5. 0.02% or more for any person who is driving under the authority of a restricted license based on a prior DUI *(Code of Virginia §18.2-272)*;

6. 0.08% or more for drivers of commercial vehicles (or 0.04% or more for a lesser included offense when driving a commercial vehicle), *(Code of Virginia §46.2-341.24)*.

B In some cases enabling statutes are Virginia Code, but Alexandria City Code also applies.

[61.1.11]

### 11.8.03 RULES/RESPONSIBILITIES

**Alcohol/Drug Enforcement Countermeasures Program** *(61.1.10)*

A. The Traffic, Special Events and Parking Division Commander will maintain a database on DWI arrests and accidents to identify selective enforcement areas, and will make this information available to the Patrol Sector Commanders.
B. Commanders assigned to operational units charged with traffic enforcement responsibilities will analyze all available data to determine appropriate areas for selective enforcement efforts. Commanders should arrange training for officers in methods of detecting those persons under the influence of alcohol/drugs. Then staffing permits, commanders should field units specially trained and equipped to apprehend and process alcohol/drug impaired drivers. Commanders should also take advantage of alternative approaches for fielding enforcement personnel (e.g., grant funding, overtime authorizations) when possible.

C. The Traffic, Special Events and Parking Division Commander will submit quarterly reports to the Deputy Chief of the Operations Support Bureau, detailing: the enforcement areas identified; the level and location of staffing; and the number of arrests. The report will also include an evaluation of the various elements of the Department’s alcohol/drug enforcement countermeasures program as compared to the previous quarter.

D. The FTO Coordinator will ensure that all recruit officers are trained in proper roadside sobriety testing, the use of the Alco-sensor, and DWI recognition, and will ensure that they receive this training prior to being released to work by themselves.

E. Officers will be alert for suspected DWI offenders, both on patrol and in selective enforcement areas. They will utilize the standardized roadside sobriety tests (see 11.8.06) when a suspected DWI offender has been stopped. In addition, Virginia law requires that officers offer the Alco-sensor, if available, to each suspect before making an arrest for DWI. If the suspect indicates consuming alcohol in the prior 20-minutes, or there is evidence of such consumption, a 20-minute non-consumption time of the suspect should be completed before the Alco-sensor is given, to ensure the dissipation of residual alcohol in the mouth. Do not allow the suspect to smoke, eat, or drink during this period.

11.8.04   EC/IR II SECURITY

A. The Virginia Division of Forensic Science (DFS) owns and regulates the EC/IR II, trains and licenses EC/IR II operators and instructors, and is responsible for the administration of the Breath Alcohol Program (Code of Virginia § 18.2-268.9).

B. The EC/IR II system is permanently installed in a locked room in the Alexandria Correctional Center and will only be moved by a DFS technician or designee.

11.8.05   EC/IR MAINTENANCE

A. EC/IR II Custodian (designated in October of each year by the Patrol Operations Bureau Commander) will coordinate the maintenance and care of the EC/IR II and ensure its security by taking the following actions:
1. Send a copy of the “Certificate of Instrument Accuracy” that accompanies each EC/IR II six-month certification to the Assistant Commonwealth’s Attorney handling traffic cases, and retain the original.

2. Requisition forms and supplies (operational checklists, certificates of analysis, mouthpieces, simulator solution, etc.) from DFS as needed. No supplies for the EC/IR II will be purchased by the Police Department.
   a. DFS arranges for scheduled supplies to be delivered by a commercial parcel delivery service. Usually, the custodian will be the person to accept these deliveries. When not available to do so, the custodian may arrange for an on-duty EC/IR II operator to receive the delivery and place it in the locked supply cabinet. Only EC/IR II operators will open these packages.
   b. DFS can be contacted at 1-804-786-6971, for any questions during business hours (090-1700 hours, Monday through Friday) or to order supplemental supplies. If supplies are needed, call the EC/IR II custodian.

3. Maintain a list of all current EC/IR II operators, which includes their date of license expiration. The list will also identify the current EC/IR II Custodian and will be updated in October of each year and again thereafter as often as necessary.

4. The EC/IR II operators list will be distributed to all Patrol Division Commanders, the Patrol Operations Bureau Commander and the Department of Emergency Communications (DEC).

B. EC/IR II operators will follow the procedures of the DFS as outlined in the EC/IR II operator’s manual. In the event of EC/IR II malfunctions, a certified EC/IR II operator will adhere to the following procedures:

1. Check the troubleshooting/instrument messages section in the EC/IR II operator’s manual to attempt to resolve the problem. Call the EC/IR II Custodian if no on-duty EC/IR II operators are able to correct the problem.

2. Notify DEC, the Watch Commander and the EC/IR II Custodian when the EC/IR II is out of service and when it is placed back in service.

3. If the problem is still not resolved, the operator will make arrangements to have a DFS technician respond to place the machine in service, or replace it, by calling DFS and notifying the EC/IR II Custodian.

11.8.06 ROADSIDE SOBRIETY TESTS
B. An Alco-sensor, if available, will be offered to the driver. (Code of Virginia §18.2-267 states the person is entitled to have his breath analyzed if the equipment is available.) Virginia law also requires that the driver must be advised of his or her right to refuse the Alco-sensor, and that the results of the Alco-sensor cannot be used as evidence in any prosecution for DWI. If the driver so requests, he or she is entitled to view the results of any Alco-sensor test.

C. If the Alco-sensor indicates that alcohol is present in the driver’s blood, the officer may arrest the driver for DWI (Code of Virginia §18.2-267 D.). The Alco-sensor test alone is sufficient probable cause to arrest for DWI. The results of the Alco-sensor are rebuttable; therefore strict compliance with operating instructions (monthly calibration and 20 minute non-consumption period) must be adhered to.

D. If probable cause exists, the suspect may be arrested for DWI and taken before a magistrate.

E. Alco-sensors may also be used to preliminarily determine if persons have consumed alcohol in excess of the legal limit, which may include prohibition of mere possession in certain cases (i.e., juveniles and persons interdicted from purchasing or possessing alcohol). Again this is evidentiary use; therefore the requirements in “C” above will apply.
11.8.07 SOBRIETY CHECKPOINTS

A. Commanders may authorize sobriety checkpoints in accordance with the Department’s Alcohol/Drug Enforcement Countermeasures Program (see 11.8.03). Such checkpoints will only be staffed by personnel who have been trained in the detailed procedures in 11.8 Addendum, Stationary DWI Checkpoints.

11.8.08 ARRESTS

A. Officers arresting persons for Driving While Intoxicated will charge under the appropriate section of the Code of Virginia.

1. For implied consent to apply (§18.2-268.2), the person must be arrested for driving on a highway in violation of Code of Virginia §18.2-266 or 18.2-266.1 within three hours of the alleged offense. This means that the arrest must take place within three hours of the driving behavior itself. If the arrest is not made within three hours, Implied Consent does not apply. However, this does not preclude the officer from getting voluntary breath/blood tests and/or getting search warrants. For regular traffic stops, this means three hours from the time of the stop. For accidents, this means three hours from the time that the accident actually occurred.

2. The Code of Virginia defines “highway” as every way or place open to the use of the public for purposes of vehicular travel. Thus, for example, even a private road through an apartment complex or shopping area can be considered a highway for the purposes of the statute if:

   a. There is 24 hour, unrestricted access to the area. This does not mean there can be no signs at all. There can be signs designating the area as private property - the test is whether cars can pass all day and all night without being blocked or charged for trespassing.

   b. There are no signs indicating that vehicles cannot traverse the area after certain hours. This is important. The parking lot and/or driving area of a business that does not allow cars on its property after certain hours is clearly not a highway, such as a gas station that closes at sundown and has posted signs indicating no entry after closing.

   c. There is clear ingress and egress from the area to a clearly defined highway. This is not required in all circumstances - roads running through a complex may still be highways under the above two guidelines anyway, but it is a good indicator. An example might be the service road to an apartment complex that runs next to a marked street.
B. Officers will advise arrestees that all persons, whether or not licensed to operate a motor vehicle in the Commonwealth of Virginia, who operate a motor vehicle in this State have given implied consent to have a sample of breath (or a sample of blood, if the breath test is not available) taken for analysis to determine the intoxicant level of their blood or breath (Code of Virginia §18.2-268.2). In certain cases, a blood test may be required to measure both the alcohol and drug content of the blood.

C. If the arrestee refuses to provide a breath or blood sample as requested, the arresting officer must read the suspect the information regarding implied consent from a Form-DC-233A; sign the form, and must attest under oath to the magistrate that this has been done. The magistrate signs the form, but is no longer required to again read the implied consent information to the suspect.

D. If an arrest results from the operation of a motor vehicle on a location other than a highway, or the operation of a Moped anywhere, the Implied Consent Law (18.2-268.2) does not apply. This does not preclude officers from attempting to obtain consent from arrestees, using a Consent Search form (APD-122), to submit a sample of blood or breath for analysis. Officers will make all reasonable attempts to obtain a blood or breath sample.

E. If an arrestee refuses the required test(s), the officer will advise the arrestee that unreasonable refusal to submit to the test(s) constitutes grounds for revocation of the operator's license in Virginia for a period of one year, and that a separate charge (Code of Virginia §18.2-268.3) will be placed for that offense. Additionally, if the suspect has a prior DUI offense within a ten-year period, a subsequent refusal is deemed a Class 2 misdemeanor. If the suspect has two prior refusal convictions, it becomes a Class 1 misdemeanor. All subsequent refusals carry a mandatory three-year suspension of the defendant’s license. (Reminder: the refusal charge only applies when the implied consent law does. For arrests at locations other than a highway as defined above, if the defendant refuses to give up blood or breath evidence even when faced with a search warrant, no refusal charge can be brought.)

F. Code of Virginia §46.2-391.2 provides for an immediate seven day suspension of the driver's license, or the privilege to drive in Virginia, for any person who is arrested for a DWI violation if such person unreasonably refuses to submit to a breath test, or registers a 0.08 or higher on a breath test, upon issuance of a warrant by a magistrate. For persons under the age of 21, a breath test of 0.02-0.07 will also result in administrative license suspension. If a blood test is administered this code section does not apply. If the DUI is the suspect’s second offense, the immediate suspension is for 60 days. If it is a third or subsequent DUI, the suspect’s license is automatically suspended until the trial date.

1. After establishing probable cause and placing an individual under arrest for Driving While Intoxicated, the officer will retain the driver's license until appearing before the magistrate. Once a warrant has been issued for DWI, the officer will complete a Notice of Administrative Suspension (DMV form DC-201) and serve it upon the arrested person if the above criteria are met. The officer will then present the person’s Virginia driver’s license, together
with the warrants, the results of the breath test, if any, the completed Criminal Complaint form and the notice of suspension to the magistrate, who will forward these documents to the court.

2. At the time an officer requests a warrant charging an individual with Driving While Intoxicated, the officer will complete a Criminal Complaint (DMV Form DC-311), to establish probable cause for the arrest. It is necessary that the officer include enough detail to establish probable cause of a violation of 18.2-266. This would entail establishing that the defendant was operating a motor vehicle on a public highway, that the defendant was under the influence of alcohol (i.e., Smelled of alcohol, admitted to a certain number of drinks, failed the one-legged stand/9-step walk and turn, submitted to an Alco-sensor which gave a reading of .15, etc.), that the defendant was arrested within 3 hours of the alleged offense, and that the alleged offense occurred in the city of Alexandria. The Criminal Complaint is given to the judge to review when the person asks the General District Court for a review of the suspension. To avoid unnecessary court time by officers and to provide information when there is insufficient time to summon them, it is essential that complete documentation be on the complaint form.

3. Arrestees who meet the criteria above and possess out of state licenses will retain their license, but will be served with a DMV Form DC-201 advising that their privilege to drive in Virginia has been suspended for seven days.

4. The officer is further required to notify the Commissioner of the Division of Motor Vehicles of the license suspension; this may be done by electronic means. After completing the booking process, the arresting officer will promptly report to the Information Services Section with a copy of the DC-201 and have a Special Police Officer or other certified VCIN operator make the entry into VCIN, in the Administrative Suspension File set up by DMV for this purpose. If there is no SPO or other certified VCIN operator at ISS, the arresting officer will call DEC and advise of the needed entry. The arresting officer will note in the appropriate block on the incident report the date, time and name of the person notified. After DEC personnel have made the entry, the copy of the DC-201 must be returned to ISS.

5. The reverse side of the DC-201 allows for the license to be mailed back to the arrestee after the seven-day period. The driver has the option to sign the form or to pick up the license at the Clerk of the General District Court’s office.

G. Code of Virginia § 46.2-301.1 (A) governs the impoundment of a motor vehicle being driven by a person whose license or learner’s permit has been suspended or revoked for driving while intoxicated, or who is caught driving after having been adjudicated as a habitual offender where the adjudication was based, in whole or in part, on an alcohol-related offense. However, the statute referenced above prohibits the impoundment of leased or rented automobiles in such situations. And, the amendment also requires the arresting law enforcement
officer to notify the rental or leasing company to pick the vehicle up (see Directive 11.22, Impounded Vehicles).

H. Officers are required to turn in all DWI related paperwork to the Information Services Section as soon as the arrest is completed.

**11.8.09 BREATH TESTS**

Code of Virginia §18.2-268.2 eliminates the option of a blood test unless the breath test is unavailable or the driver is not physically capable of taking the breath test. The blood test option remains when testing for the presence of drugs, or drugs and alcohol.

A. Any person possessing a valid EC/IR II Operator’s license issued by the Virginia State Division Forensic Science can perform chemical analysis of an arrestee’s breath. This may include the arresting officer and/or anyone participating in the arrest. In the event the EC/IR II instrument is inoperable the arrestee may be transported to an EC/IR II in a neighboring jurisdiction. It is preferable that an Alexandria EC/IR II operator performs the test, however, if necessary, any licensed EC/IR II operator may do so. If a licensed operator is not available, this test is deemed not available.

B. The type of equipment and the methods used to perform breath analysis will be in accordance with the regulations of the Virginia State Division of Forensic Science (DFS).

C. The EC/IR II operator will produce a Certificate of Breath Alcohol Analysis (DGS-70-018) which will indicate that:

1. The test was conducted in accordance with DFS specifications;
2. The name of the arrestee;
3. The date and time the sample was taken from the arrestee;
4. The alcohol level of the sample; and
5. Name of the operator and signature.

D. Certificate of Breath Alcohol Analysis (DGS-70-018) is a three-copy form. The copies will be handled as follows:

1. **White copy** - will be given to the magistrate to be forwarded to the General District Court along with the VUS and warrant;
2. **Green copy** - will be given to the arrestee; and
3. **Yellow copy** - is for Department use, to be forwarded to Information Services along with the PD-7B and the agency copy of the VUS.
11.8.10 BLOOD TESTS (WITH ALCOHOL AS THE SOLE INTOXICANT)

A. The arresting officer will:

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C. The arresting officer will then:

1. Take possession of the container holding the vials;
2. Exercise caution when handling blood vials to reduce the potential for contracting communicable diseases;
3. Obtain the proper postage from the Patrol Division Commander on duty;
4. Immediately (prior to end of tour of duty) mail the container to the Virginia State Division of Forensic Science.

**11.8.11 BLOOD TESTS (INVOLVING INTOXICANTS OTHER THAN ALCOHOL)**

The procedures are the same as with alcohol except for the following changes:

A. There are numerous substances that are capable of intoxicating the human body; officers should not limit their considerations to alcohol or commonly abused street drugs.

B. If an officer develops reasonable cause to believe that a substance other than alcohol is involved in the intoxication of the arrestee, the **Code of Virginia (§ 18.2-268.2)** provides for the mandating of a blood test.

C. The arrestee has the right to take an EC/IR II test; the officer in addition, may then require the taking of a blood test. The **EC/IR II is not required in cases where no alcohol is present (.00 reading on a Preliminary Breath test)**.

D. If the probable cause for another intoxicant exists and the arrestee refuses the second test, he or she can still be charged with Unreasonable Refusal. If this occurs follow the same procedure as listed in **11.8.08, Sections D, E and F**.

E. In all cases of suspected mixed usage of alcohol and other substances, if possible, the officer should pre-screen the arrestee. An Alco-sensor should be used to determine if sufficient alcohol is in the arrestee’s system to go forward with the DWI charge based solely on alcohol intoxication. If the B.A.C. is less than .08% and there is an articulable reason to suspect drug presence, a blood test may be required. If the B.A.C. is .08% or greater, the State Laboratory will not test for other drugs without prior written request from the Commonwealth Attorney.

F. If drug analysis is required, the State Laboratory technicians will first test for alcohol. They will then do preliminary testing to identify the intoxicating substance(s) that are present in the sample. Once the substance(s) are identified, a scientifically precise test will determine the exact level present.

G. If the arresting officer develops information concerning a possible identity of the intoxicating substance(s) involved, he or she will advise the State Laboratory by making a notation on the Request for Laboratory Examination (DGS-70-001) and forward a copy of the DWI field worksheet or report with the sample.
H. The officer must complete the Request for Laboratory Examination form (DGS-70-001).

11.8.12 ACCIDENT INVESTIGATION

A. When an arrest for DWI is made as the result of an officer investigating a traffic crash which he or she did not witness, the officer will investigate and document the following:

[Redacted text]
C. In accident cases, where a suspect is arrested for DWI on the scene, or at another location, they should be taken to booking first, unless medical evaluation on the scene by medics determines that transportation to the hospital is medically necessary or requested by the suspect.

1. If the suspect is transported by ambulance to the hospital, the officer will then have to use a blood test as the implied consent test since the breath test is not available at the hospital. The name, work address, and phone number of the medic treating the suspect in the rear of the ambulance will be obtained and listed in the officer’s report.

2. If the suspect is transported to booking and is refused by the booking deputies/jail nurse, then the suspect may be transported by the officer to the hospital and a blood test taken under implied consent. The officer will obtain the deputies and jail nurse’s name, address, and phone number and list them as a witness in the officer’s report.

It should be noted that Virginia law now allows a law-enforcement officer to arrest a DWI suspect at any location within three hours of a motor vehicle accident as long as the officer has probable cause to suspect that the person was driving or operating a motor vehicle while intoxicated (Code of Virginia § 19.2-81).

BY AUTHORITY OF:

Earl L. Cook
Chief of Police