



PRELIMINARY BREATH TESTS

FC No.: 516

Date: 12-04-18

If a provision of a regulation, departmental directive, or rule conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Purpose

The purpose of this directive is to establish policy and procedure for the use of preliminary breath testing equipment prior to the arrest of an individual who is suspected of driving or attempting to drive a motor vehicle while under the influence of/while impaired by alcohol or drugs.

II. Policy

It is the policy of the Montgomery County Department of Police for certified officers to use the Preliminary Breath Test (PBT) instrument as a tool to determine the presence of alcohol in a person.

III. Definitions

- A. **Preliminary Breath Test Instrument (PBT)** – A portable hand-held instrument that measures the weight of alcohol on a person's breath.
- B. **Reasonable grounds** – Means 'reasonable articulable suspicion' and not preponderance of the evidence or probable cause. [*Motor Vehicle Administration v. Shepard*, 399 Md. 241, 255 (2007)]
- C. **Reasonable articulable suspicion** – legal standard less than probable cause but more than an inchoate and unparticularized suspicion or hunch.

IV. Arrest Procedures

- A. Maryland *traffic* law allows a police officer *to request an individual to submit to a preliminary breath test if the officer has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while under the influence of alcohol or while impaired by alcohol.*

- B.** The preliminary breath test is not an evidentiary test. However, the device has demonstrated the ability to obtain very accurate results when operated according to instructions. “The results of a preliminary breath test shall be used as a guide for the police officer in deciding whether an arrest should be made and may not be used as evidence by the State in any court action.” [Maryland Transportation Article 16-205.2(c)]
- C.** *The results of the preliminary breath test may be used as evidence by a defendant in a court action. Preliminary breath tests are admissible in administrative hearings.*
- D.** *The officer requesting the preliminary breath test shall advise the person to be tested that neither a refusal to take the test nor the taking of the test shall prevent or require a subsequent chemical test as described on the MSP 102, “Preliminary Breath Test Advisement of Rights Form.”*
- E.** The preliminary breath test is administered after the Standardized Field Sobriety Tests but prior to arrest. The preliminary breath test does not replace and is not a part of the establishment of probable cause for the arrest. The administration of the test is at the option of the stopping officer. Arrests can still be made without the test.
- F.** The results of the preliminary breath test will be provided to:
 - 1. The driver suspected of drinking, who is released without arrest, prior to the driver’s release, and
 - 2. The driver who is arrested after submission to or refusal of an evidentiary test (blood/ breath).
- G.** *Preliminary breath test results will be included in the Incident Report, and the “Reasonable Grounds” section of the MVA DR-15A.*

V. Preliminary Breath Test Procedures

- A.** Only the preliminary breath test (PBT) equipment approved by the Toxicologist, Office of the Chief Medical Examiner, shall be used.
- B.** Only those *officers who successfully completed a Montgomery County Department of Police hosted Preliminary Breath Test Operator Course* will be permitted to administer preliminary breath tests.
- C.** The MSP 102 will be distributed by the testing officer as follows:
 - 1. The original will be retained by the stopping/arresting officer.
 - 2. One copy will be given to the suspect/ defendant.
 - 3. One copy will be given to the *Chemical Test for Alcohol Unit Coordinator, Traffic Division.*
- D.** Testing officers will be responsible *for* completing the MSP 104, “Preliminary Breath Test Log.” The MSP 104 will be retained *by the testing officer while maintaining certification as a Preliminary Breath Test Operator.*

VI. Non-Traffic Use of Preliminary Breath Test Instrument

- A.** *The PBT has multiple uses for non-traffic related offenses to determine the presence of alcohol. Only certified Preliminary Breath Test officers will conduct these tests.*
- B.** *Preliminary breath test results do not establish probable cause for arrest for criminal offenses or issuance of a civil citation.*
- C.** *Testing officers shall not document non-traffic related preliminary breath tests on the MSP 104.*

VII. Accuracy Checks

- A. Each preliminary breath test ***instrument*** used to test drivers suspected of drinking will be checked for accuracy by any approved operator at least once per calendar month. The calibration of a PBT ***instrument*** may be checked more frequently at the operator's option.
- B. The results of this test must be recorded in the Preliminary Breath Test Log by the operator.
- C. The results of this test must be between 0.072 - 0.088 (***inclusive***) grams of alcohol per 210 liters of breath. PBTs that do not test within these parameters must be withdrawn from service until recalibrated to ***+/- 10% of the known 0.08 standard***. Calibration and repairs of PBTs will be made only by those persons trained and approved to ***service*** PBT ***instruments***. After recalibration, the results must be recorded in the Preliminary Breath Test Log.

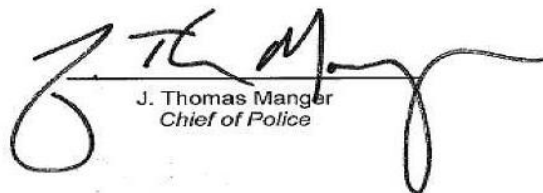
VIII. Issuance of PBTs

- A. Upon completion of a Montgomery County Department of Police ***hosted Preliminary Breath Test Operator Course***, each officer will be eligible to receive a PBT. Officers will retain their PBT as they move throughout the department. ***If an officer transfers, the officer should notify CTAU to determine the operational need of the instrument in their new assignment.***
- B. The CTAU officer will conduct periodic reviews of the breath test log to determine usage/adherence to policy for possible reassignment of the PBT.

IX. CALEA Standards: 1.2.1, 1.2.7, 12.2.1, 61.1.5, 61.1.7, 61.1.8, 61.1.10, 61.1.11, 82.1.3, 82.3.5

X. Proponent Unit: Alcohol Initiatives Unit

XI. Cancellation: This directive cancels Function Code 516, effective date ***08-21-02***.



J. Thomas Manger
Chief of Police