

CHAPTER 20.1-15 INTOXICATION TESTING OF HUNTERS

20.1-15-01. Implied consent to determine alcohol concentration and presence of drugs.

Any individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As used in this chapter, "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "chemical test" means any test or tests to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the individual, except individuals mentioned in section 20.1-15-04, under arrest and informing that individual that the individual is or will be charged with the offense of being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the individual charged that refusal of the individual to submit to the chemical test determined appropriate will result in a revocation for up to four years of the individual's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

20.1-15-02. Chemical test of hunter in serious bodily injury or fatal accident.

Notwithstanding section 20.1-15-01 or 20.1-15-06, when a hunter is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the hunter is in violation of section 20.1-01-06, the hunter may be compelled by a game warden or a police officer to submit to a chemical test.

20.1-15-03. Individuals qualified to administer chemical test and opportunity for additional test.

Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The individual tested may have an individual of that individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the individual charged. The failure or inability to obtain an

additional chemical test by an individual does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood or urine sample test taken at the direction of the game warden or law enforcement officer must be made available to that individual by the department or law enforcement agency that administered the chemical test.

20.1-15-04. Consent of person incapable of refusal not withdrawn.

Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal is deemed not to have withdrawn the consent provided by section 20.1-15-01 and the chemical test may be given.

20.1-15-05. Action following chemical test result for a hunter.

If a person submits to a chemical test under section 20.1-15-01, 20.1-15-03, or 20.1-15-04 and the test shows that person to have an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after being afield with a gun or other firearm or a bow and arrow, the following procedures apply:

1. The game warden or law enforcement officer shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny hunting privileges in this state.
2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by urine sample or by drawing blood as provided in section 20.1-15-03 and the individual tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the urine or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that individual's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the individual resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the individual's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the director. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the individual's hunting license serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny hunting privileges in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent and taking possession of the hunting license, shall forward to the director a certified written report in the form required by the director and the individual's hunting license taken under subsection 1 or 2. If the notice was given and the license was taken because of the results of a chemical test, the report must show that the game warden or officer had reasonable grounds to believe the individual had been afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06, that the individual was lawfully arrested, that the individual was chemically tested under this chapter, and that the results of the test show that the individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a

blood or urine test for all tests administered at the direction of the game warden or officer.

20.1-15-06. Revocation of privilege to hunt upon refusal to submit to testing.

1. If a person refuses to submit to testing under this chapter, no chemical test may be given, but the game warden or law enforcement officer shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the person's hunting license if it is then available. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the person's hunting license serves as the director's official notification to the person of the director's intent to revoke hunting privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's hunting license and a certified written report of the game warden or law enforcement officer in the form required by the director, forwarded by the warden or officer within five days after issuing the statement of intent and taking possession of the person's hunting license, showing that the warden or officer had reasonable grounds to believe the person had been afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06 or, for purposes of section 20.1-15-15, had reason to believe and had, through personal observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under this chapter, shall revoke that person's hunting privileges for the appropriate period under this section, or if the person is without hunting privileges in this state, the director shall deny to the person hunting privileges for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's hunting privileges the director shall give credit for time in which the person was without hunting privileges after the day of the person's refusal to submit to the chemical test. The period of revocation or denial of hunting privileges under this section is:
 - a. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have not previously been suspended, revoked, or issuance of a license denied for a violation of this chapter or section 20.1-01-06.
 - b. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have been once previously suspended, revoked, or issuance of a license denied for a violation of this chapter or section 20.1-01-06.
 - c. Four years if the person's record shows that within the five years preceding the most recent refusal under this section, the person's hunting privileges have at least twice previously been suspended, revoked, or issuance of a license denied under this chapter or for a violation of section 20.1-01-06 and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's hunting privileges are not subject to revocation under this section if:
 - a. No administrative hearing request is made under section 20.1-15-08;
 - b. The person mails an affidavit to the director within ten days after the game warden or law enforcement officer issues the statement of intent and takes possession of that person's hunting license. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 20.1-01-06 within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license;
 - (2) Agrees that the person's hunting privileges must be suspended;
 - (3) Acknowledges the right to a section 20.1-15-08 administrative hearing and section 20.1-15-09 judicial review and voluntarily and knowingly waives these rights; and

- (4) Agrees that the person's hunting privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 20.1-01-06 within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the game warden or law enforcement officer issues the statement of intent and takes possession of the person's hunting license; and
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's hunting privileges.
 3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to violating section 20.1-01-06 to the director within ten days after it is ordered. Upon receipt of the order, the director immediately shall revoke the person's hunting privileges as provided under this section without providing an administrative hearing.

20.1-15-07. Administrative sanction for being afield with a gun or other firearm or a bow and arrow while having certain drug concentrations.

1. After the receipt of a person's hunting license, if taken under section 20.1-15-05, and the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 20.1-15-08, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had reasonable grounds to arrest the person and chemical test results show that the arrested person had been afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after being afield with a gun or other firearm or a bow and arrow, the director shall suspend the person's hunting privileges as follows:
 - a. For one year if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-01-06 or the person's hunting privileges have not previously been suspended or revoked under this chapter.
 - b. For two years if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-01-06 or the person's hunting privileges have once previously been suspended or revoked under this chapter.
 - c. For three years if the person's record shows that within the five years preceding the date of the arrest, the person's hunting privileges have at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 20.1-01-06, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. In the suspension of the person's hunting privileges the director shall give credit for the time the person was without a hunting license after the day of the offense.

20.1-15-08. Administrative hearing on request.

1. Before issuing an order of suspension, revocation, or denial under section 20.1-15-06 or 20.1-15-07, the director shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the director within ten days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting

license. The hearing must be held within twenty-five days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license, but the hearing officer may extend the hearing to within thirty-five days after the date the game warden or law enforcement officer issued a statement of intent to revoke, suspend, or deny hunting privileges and took possession of that person's hunting license if good cause is shown.

2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had reasonable grounds to believe the individual had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the individual was placed under arrest; whether the individual was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if applicable, section 20.1-15-03; and whether the chemical test results show the individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the individual was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.
3. If the issue to be determined by the hearing concerns revocation of hunting privileges for refusing to submit to a chemical test under section 20.1-15-01 or 20.1-15-15, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a chemical test under section 20.1-15-01 may cover only the issues of whether a game warden or law enforcement officer had reasonable grounds to believe the person had been afield with a gun or other firearm or a bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; and whether that person refused to submit to the chemical test. The scope of a hearing for refusing to submit to a chemical test under section 20.1-15-15 may cover only the issues of whether the game warden or law enforcement officer had reason to believe and had, through the officer's observations, formulated an opinion that the person's body contains alcohol, other drugs, or a combination thereof and whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to hunt would be revoked or denied for refusal to submit to the test is not an issue.
4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory:
 - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer or a certified copy of the checklist and test records received by the director from a certified breath test operator; and
 - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of other drugs, or a combination thereof, received by the director from the director of the state crime laboratory or the director's designee that have

been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person of the revocation, suspension, or denial of hunting privileges in this state. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's hunting license.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on the revocation, suspension, or denial of hunting privileges will be based on the written request for hearing, game warden's or law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of hunting privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 20.1-15-09.

20.1-15-09. Judicial review.

Any person whose hunting privileges have been suspended, revoked, or denied by the decision of the hearing officer under section 20.1-15-08 may appeal within seven days after the date of the hearing under section 20.1-15-08 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-42, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

20.1-15-10. Credit for suspension of hunting privileges.

After conviction of a person for violating section 20.1-01-06, the director, in suspending the person's hunting privileges, shall give credit for the time in which the suspension or revocation of hunting privileges has been or is being imposed under this chapter in connection with the same offense.

20.1-15-11. Interpretation of chemical tests.

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any individual while being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol concentration or presence of other drugs, or a combination thereof, in the

individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, or urine is admissible. For the purpose of this section:

1. An individual having, at that time, an alcohol, other drug, or a combination thereof concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor, drugs, or a combination thereof.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol, other drug, or a combination thereof concentration in an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the individual was under the influence of intoxicating liquor, drugs, or a combination thereof.
3. An individual having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after being afield with a gun or other firearm or a bow and arrow is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of being afield with a gun or other firearm or bow and arrow.
4. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine.
5. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the individual requested to take the chemical test.
6. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the state crime laboratory division of the attorney general at the attorney general website, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
 - d. The certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental records have the same force and effect as the records that are supplemented.
 - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6 that have been electronically posted with the state crime laboratory division of the

attorney general at the attorney general website must be admitted as prima facie evidence of the matters stated in the records.

8. A certified copy of the analytical report of a blood or urine test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
9. Superseded by N.D.R.Ev., Rule 707.
10. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

20.1-15-12. Proof of refusal admissible in any action or proceeding.

If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was afield with a gun or other firearm or bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof.

20.1-15-13. Effect of evidence of chemical test.

This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

20.1-15-14. Liability.

Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

20.1-15-15. Screening tests.

Any individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the individual's body contains alcohol. An individual may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the individual's case is not first notified of the proposal to make the requirement or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 20.1-15-01. The officer shall inform the individual that refusal of the individual to submit to a screening test will result in a revocation for up to four years of that individual's hunting privileges. If the individual refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the individual's hunting privileges in the same manner as provided in section 20.1-15-06, and a hearing as provided in section 20.1-15-08 and a judicial review as provided in section 20.1-15-09 must be available. However, the director may not revoke an individual's hunting privileges for refusing to submit to a screening test requested under this section if the individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 20.1-15-01 for the same incident. This section does not supersede any provisions of sections 20.1-15-01 through 20.1-15-14, nor

does any provision of sections 20.1-15-01 through 20.1-15-14 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol, other drugs, or a combination thereof in an individual's blood, breath, or urine.