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REVIEW AND ANALYSIS OF ASAP ENFORCEMENT EFFORTS VOLUME 2

**Contract No. DOT-HS-4-00938
August 1975
Final Report**

PREPARED FOR:

U.S. DEPARTMENT OF TRANSPORTATION

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

WASHINGTON, D.C. 20590

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| 16. Abstract This Final Report recapitulates and summarizes the work of a contract on Review and Analysis of ASAP Enforcement Effort. The major sections of the report are contained in four volumes. Volume 1, <u>Methods for Recording the Behavior of Drinking Drivers</u> , describes the recording function of ASAP enforcement in terms of video tape recording, audio recording and the forms and documents which are used. Volume 2, <u>Sobriety Testing</u> , includes information on psychomotor tests, pre-arrest breath screening and evidentiary testing with emphasis on the last topic. Volume 3, <u>Deployment Strategies</u> , addresses the general question of how personnel and equipment were deployed for maximum enforcement effectiveness. This volume is primarily focused on administrative topics in contrast to the other three which are devoted to certain operational aspects of enforcement. Volume 4, <u>Overall Enforcement</u> , addresses the process of enforcement in sequential terms with chapters devoted to detection, apprehension, transport, incarceration, testimony and adjudication. This Final Report is based on information collected between September 1974 and March 1975 in 22 of the 35 ASAP enforcement countermeasures. The first chapter of each volume consists of a summary of the factual information encountered in the 22 sites. This is followed by conclusions and recommendations. | | 13. Type of Report and Period Covered June 1974- July 1975 Final Report |
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FOREWORD

The report contained herein, as well as the other 25 generated in this effort, is the end result of 14 months of technical research and empirical observation undertaken by the staff of Planning and Human Systems, Inc., in accordance with the requirements set forth under U.S. Department of Transportation Contract Number DOT-HS-4-00938. In the course of carrying out prescribed work requirements, researchers visited a total of 22 Alcohol Safety Action Project (ASAP) site locations and upward of 50 individual law enforcement agencies of varying sizes throughout the continental United States.

The following members of the P&HS professional staff were instrumental in accomplishing this task:

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The research staff of Planning and Human Systems, Inc., gratefully acknowledges the cooperation extended by the many agencies and individuals who contributed information solicited in the course of this survey. The process of naming each of the contributors, although perhaps desirable, is however a physical impossibility. It is necessary, therefore, to restrict specific recognition to those persons without whose authoritative approval, assistance, cooperation, and guidance this project would have been infinitely more difficult. In alphabetical order by site location they are:

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PREFACE

Purpose

The purpose of U.S. Department of Transportation Contract Number DOT-HS-4-00938 was "to obtain in-depth background information consistent with the objectives stated on ASAP enforcement activity to supplement summary reports and analytic studies currently required." In addition to other work requirements specified, the contractor was responsible for submission of a "separate, comparative evaluation of the testing function" as applied by the enforcement countermeasures of 22 Alcohol Safety Action Projects (ASAP's). This report is intended to describe and evaluate the state of the art of sobriety testing as practiced by ASAP enforcement countermeasures at the time when the actual site visits were conducted.

Scope

Law enforcement agencies participating in the enforcement countermeasures of 22 ASAP's scattered throughout the continental United States were surveyed. In the process, individual members of the research staff were able to devote an average of 4½ days to each specific ASAP site, during which the necessary interviews and observations were carried out. Although the survey focused on the ASAP enforcement countermeasures, non-enforcement personnel of the ASAP staffs, as well as of the criminal justice system in general, were also called upon to provide input whenever appropriate.

Design and Purpose of Alcohol Safety Action Projects

On the premise that drunk driving continues to be the greatest single menace to human life and safety on the nation's highways, the National Highway Traffic Safety Administration focused its attention on efforts to reduce this problem and conceived an Alcohol Countermeasures Program whereby 35 Alcohol Safety Action Projects (ASAP's) were to be established in as many states (Fig. I). These projects were based on "a new understanding of the nature of the drinking-driving problem in highway fatalities. The ASAP concept was designed as a systems approach to surround the problem drinker with a set of countermeasures designed to identify him on the road, make decisions regarding rehabilitative procedures, and

ALCOHOL SAFETY ACTION PROJECTS (ASAPs)

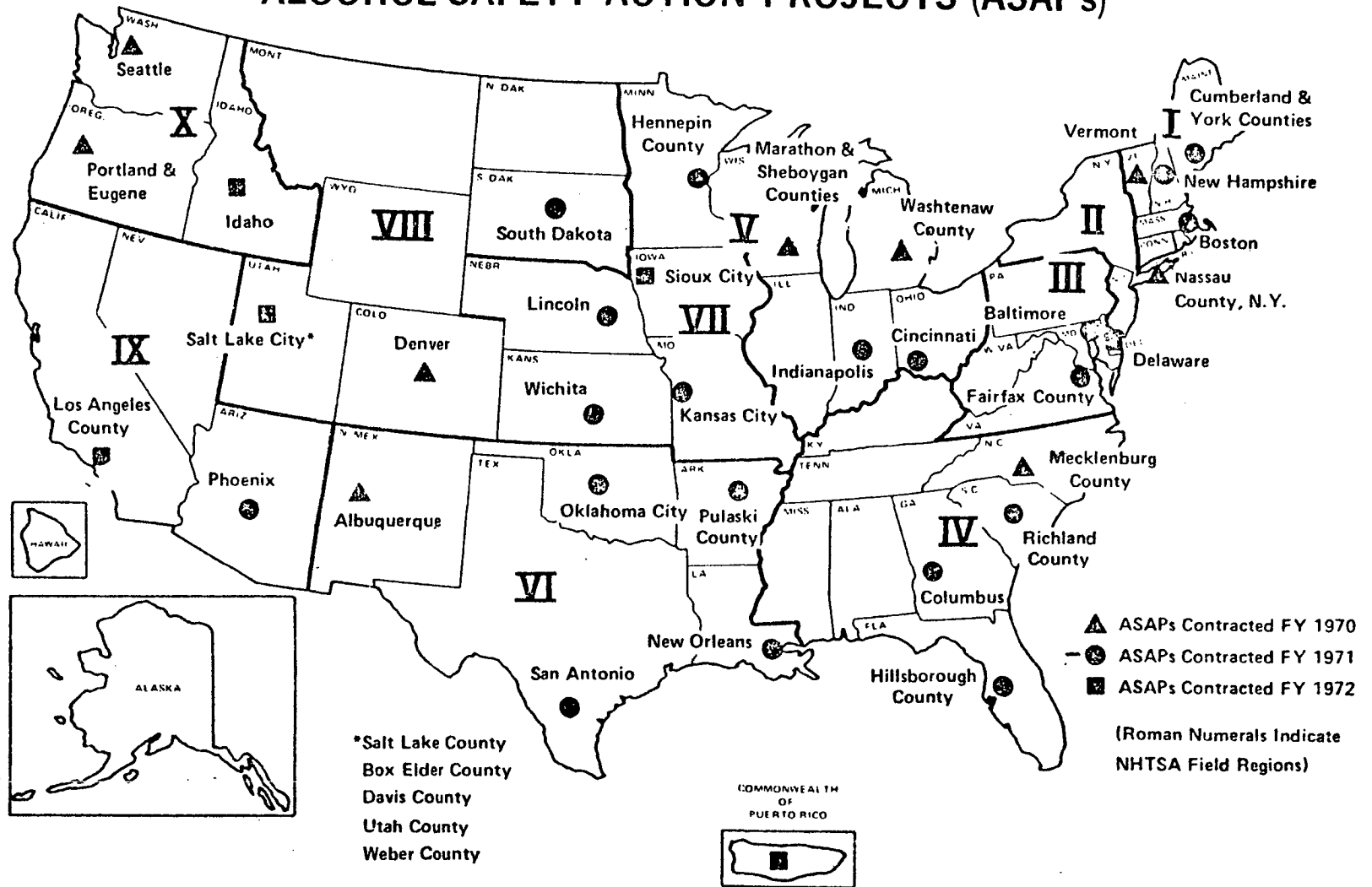


Figure I

then take action to put these measures into effect. At the same time, the program was planned to deter the social drinker by well-publicized increases in enforcement efforts, and by providing the social drinker who controls his use of alcohol with the information he requires to better regulate his drinking and driving."*

Fundamentally, these ASAP's had three major objectives:

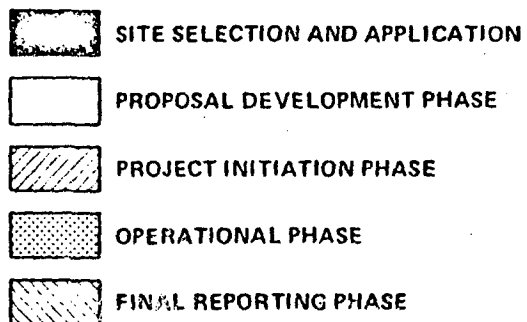
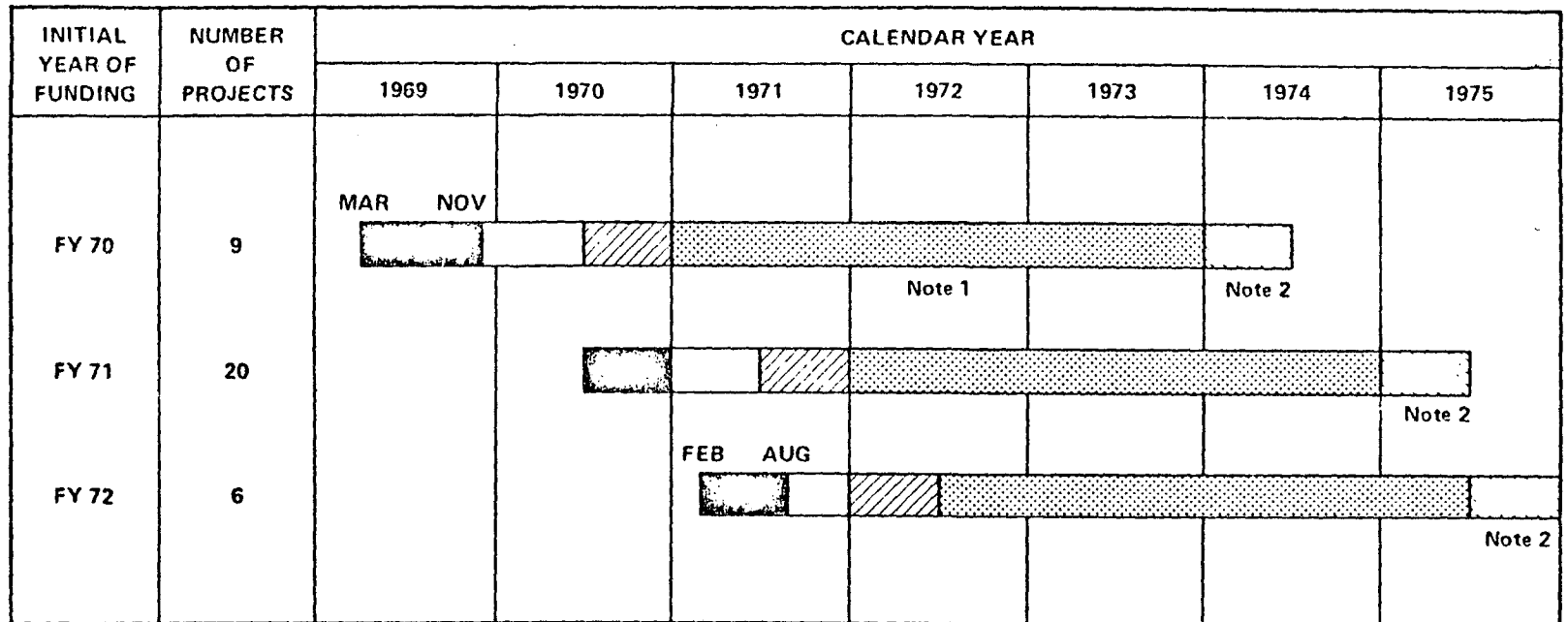
- To demonstrate the feasibility and practicability of a systems approach for dealing with the drinking-driving problem and, further, to demonstrate that this approach can save lives;
- To evaluate the individual countermeasures within the limits permitted by the simultaneous application of a number of different countermeasures at the same site; and especially,
- To catalyze each state into action to improve its highway safety program in the area of alcohol safety.

ASAP countermeasures encompassed the following interdependent areas: (1) Enforcement, (2) Judicial, (3) Rehabilitation, and (4) Public Information and Education. In addition to these countermeasures, of course, each ASAP was required to meet its obligations toward effective project management and meaningful project evaluation.

The 35 Alcohol Safety Action Projects were initiated in three groups. Each was implemented in five phases as shown in Figure II. Nine began operations in January 1971; twenty in January 1972; and a final group of six commenced operations between July 1 and October 1, 1972. These ASAP's differed widely in geographic and demographic characteristics; some were state-wide in their application, but most were restricted to a specific political subdivision of a state. Each ASAP contract provided for an operational period of three years or less. At the present time, at least half of the original 35 ASAP's have ceased to operate under federal funding, since their contracts with the NHTSA have expired.

*Alcohol Safety Action Projects: Evaluation of Operations - 1972, Vol. III: Project Descriptions (Washington, D.C.: U.S. Department of Transportation, National Highway Traffic Safety Administration).

ASAP SCHEDULE



Note 1. Operational period varies in ASAPs (9)

Note 2. Reporting period varies in ASAPs (35)

Figure II

The Enforcement Countermeasure

Each Alcohol Safety Action Project was supported by one or more law enforcement agencies, which, in turn, had been allocated a prescribed amount of federal monies. This permitted the agencies to commit the appropriate personnel and equipment resources to the effort of identification and apprehension of the drinking driver. Each participating law enforcement agency, in proportion to the amount of federal funding provided, was able to field a given number of additional officers, vehicles, and appurtenant equipment for the duration of the contract. The agencies usually followed one of two general plans in structuring their approach to the operational implementation of this selective enforcement countermeasure:

- Formation of a separate, distinct unit (usually under the direction of the Traffic Bureau) whose members were primarily responsible for enforcement of drunk driving and related statutes, with secondary emphasis on general traffic enforcement; or
- Utilization of regular patrol officers who undertook drunk driving enforcement as an extra-duty function and therefore were generally compensated at overtime rates or received a predetermined hourly wage. These officers usually volunteered for this assignment on a day-by-day basis.

Theoretically, police administrators were to evaluate and plan the most effective and productive strategy to be employed by which the dilemma of the drinking driver might be held in check and perhaps even show signs of receding.

In accordance with one of the major objectives of the ASAP concept (to demonstrate that the approach can save lives), it was incumbent upon the participating law enforcement agencies to work toward an overall reduction within their jurisdictions of those motor vehicle accidents where the consumption of alcohol was causative or where it was involved in any manner. Additionally, a gradual reduction in the average blood-alcohol concentration of drinking drivers and a general decrease in the number of drinking drivers were basic goals of the enforcement countermeasures.

The obvious means to these ends are detection and arrest of those who violate the drunk driving laws, under the presupposition that, as the probability of arrest increases for these offenders, the occurrence of such violations (and possible attendant motor vehicle accidents) is apt to decrease. The officers of the ASAP enforcement countermeasure were expected to contribute significantly to an overall increase of drunk driving arrests, as a result of concentrating primarily on that specific offense while patrolling those areas which had shown a high incidence of intoxicated drivers.

Basically, in a comparison of individual ASAP sites, the enforcement process varied little. The activity flow depicted in Figure III, as applied to the offense of Driving While Intoxicated, is relatively consistent in its general applicability to ASAP enforcement countermeasures as a whole.

The Testing Configuration

The testing function, in the general context of ASAP enforcement, includes both physical coordination tests and the use of chemical testing devices to ascertain the blood-alcohol concentration level of the DWI/DUI suspect as reflected in samples of bodily substances such as blood, breath or urine. The two principal types of breath testing equipment currently on the scene are: (1) evidentiary testing devices with a degree of reliability acceptable in court; and (2) preliminary breath pre-screening devices appropriate for roadside use at the scene of apprehension. The purpose of the testing function is to determine whether or not a suspect is legally intoxicated as may be indicated by his blood-alcohol concentration.

On the pages which follow, the activities, personnel and equipment involved in the ASAP sobriety testing configuration are examined and described in considerable detail. The major components are outlined in the section which follows.

Objectives of This Study

This report examines the sobriety testing function encountered in the 22 ASAP enforcement countermeasures surveyed. It describes the personnel involved in the testing function as well as the various processes of

**THE POLICE ENFORCEMENT PROCESS FOR THE
OFFENSE OF DRIVING WHILE UNDER THE INFLUENCE**

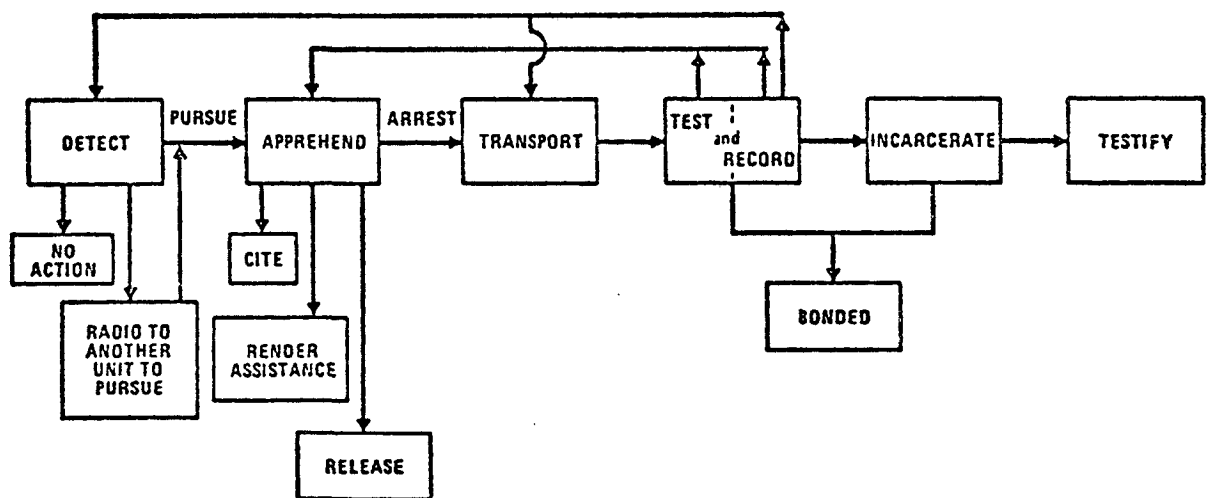


Figure III

sobriety testing.

The principal objectives of this report are reflected in the three major divisions of the summary which introduces this report:

- The application of physical coordination tests, the extent of use, the principal variations noted, and the major problems encountered;
- The sites which use pre-arrest breath screening, the devices used, the personnel who administer the tests, and the operational and training problems which have been acknowledged;
- The major aspects of evidentiary testing, including the bodily substances analyzed, the devices which are used, the process of breath testing as it is currently practiced at the sites, and personnel and their training.

In responding to the contract requirement for a separate report on the testing function, the pages which follow present the survey's results in four major divisions. This preface is followed by a factual summary of the findings. Next, conclusions and recommendations are presented. The final division consists of detailed information on the testing configuration at each of the 22 ASAP sites. The result is a comprehensive overview of the state of the art of sobriety testing. Pertinent documents are appended for the reader with more specialized information needs.

Methodology Overview

In order to accomplish the objectives defined in the Request for Proposal disseminated by the National Highway Traffic Safety Administration, two researchers were assigned the task of conducting the required site visits and collecting as much data as could be obtained at each which specifically related to the existing enforcement countermeasures. Both researchers were former law enforcement officers, and each had prior active experience with alcohol enforcement countermeasures.

An important facet of this survey dealt with actual observation and evaluation of the manner in which law enforcement officers - engaged principally in the enforcement of applicable drunk driving laws - carried out their duties, from the point of initial detection of a drinking driver

until his incarceration or ultimate release from custody. To do this, the researchers accompanied ASAP patrol officers during their normal tours of duty, and at the same time encouraged individual officers to express their own feelings concerning positive or negative aspects of the indigenous Alcohol Safety Action Project, law enforcement agency, and enforcement countermeasure. Suggestions and recommendations of all kinds pertaining to these areas of interest were also solicited.

A comprehensive Field Survey Instrument (questionnaire) was developed by the project staff as an aid in data collection. This FSI was intended to encompass, in detail, all phases of drunk driving enforcement, from detection through incarceration and beyond, including court disposition of offenders and the effect of the latter on enforcement activities. After the first ASAP sites had been surveyed, however, it became clearly evident that the FSI originally conceived was in need of a major overhaul. The final questionnaire was even more comprehensive and, in the opinions of its creators, a far more useful instrument for the purpose of the survey.

In addition to information elicited by means of the Field Survey Instrument, the researchers were to secure all available forms and documents, including policy statements when possible, from law enforcement agencies participating in the alcohol enforcement countermeasure.

The total data thus acquired (and the impressions gained from lacunae), in combination with inferences made by the researchers in accordance with their personal experiences, provided the grist for the reports which followed - including that presented in this format - in keeping with the work requirements of this contract.

No hard and fast rules were applied to the manner in which the information-gathering process was addressed, aside from the specific guidelines prescribed by the NHTSA. The two researchers, armed with the Field Survey Instrument, their previous experience, and clear objectives concerning the types of data which were to be collected, ventured into the diverse and often perplexing world of alcohol enforcement countermeasures with the hopes of attaining their goals in the most tenable fashion. Field conditions, however, presented unexpected ambiguities without regard for

preconceived plans and logical expectations.

It was discovered, for example, that it is one thing to establish well-defined standards for data collection, but quite another to see them through. More often than not, these standards proved to be excessively ambitious when applied to real situations. Frequently, complete documentation was simply not forthcoming. To the uninitiated, this observation may come as a surprise and prompt a certain amount of skepticism, but from those readers who have had extensive dealings with law enforcement agencies (or any other entrenched bureaucracy) - in a similar setting - it will probably evoke a knowing and melancholy nod of empathy. For the present, it is sufficient to point out that - in many situations - a great deal less documented information than was originally hoped for could be collected. It is important to mention here that the researchers had neither the time necessary nor the authority required to insist upon complete fulfillment of documentary requisites; this was a matter which depended upon the preparedness and willingness to cooperate of each individual ASAP. At each site, Project management and officials of the enforcement countermeasure were imbued with a clear understanding of the purpose and intent of this survey, and were expected to respond appropriately. Those sites which were consistently synergetic in responding to the documentary criteria established for the survey will become readily apparent to the reader, in contrast to those which may have been somewhat less than solicitous.

A serious handicap which faced the researchers was that of timing. Site visits to 20 of the 22 ASAP's were undertaken between September and December 1974. At each of these 20 sites, the contractual agreement for federal funding was set to expire by December 31, 1974. In the course of the on-site survey, therefore, it became quickly evident in some locations that no additional federal monies were expected to sustain operations of the ASAP beyond contract termination. In practically all of these situations, there appeared to be little, if any, planning for continuation of the special enforcement effort by the local jurisdiction, and members of the ASAP staff - along with personnel of the enforcement countermeasure - often conveyed an aura of resignation to the inevitable conclusion of the Project. Wherever such conditions prevailed, it became frequently appar-

ent that enthusiasm and interest relative to the ASAP concept and purpose were on the wane, and thus there was a tendency to greet the survey rather morosely. (Some Project Directors expressed open resentment of the fact that their ASAP's had been included in this survey.)

The preceding is offered in the hope that it may be of assistance in providing an insight into some of the constraints imposed upon the researchers. By no means does it encompass all of the varied and extensive factors which had a bearing on the outcome of this survey. Those will be cited in appropriate detail in the pertinent sections of the reports generated by this effort.

SUMMARY

Introduction

A major feature of the ASAP enforcement process is the chemical test for blood-alcohol concentration. In terms of operational procedure, an extra step is inserted between transportation of the prisoner and his incarceration. (Methods employed to record attendant information are discussed in a previous report, entitled Methods Employed by ASAP Enforcement Countermeasures to Record the Behavior of Drinking Drivers.)

The summary which follows contains three major divisions. The first two of these are devoted to physical coordination tests and pre-arrest breath screening, respectively. The third describes and summarizes evidentiary testing, as practiced at each of the ASAP sites surveyed.

Physical Coordination Tests

Most of the ASAP sites visited administer physical coordination (psychomotor) tests. Responses from five of the 22 sites (23%) indicated that no such tests are used. At four of the sites they are applied occasionally, as a discretionary practice by the individual officer.

At 13 sites (59%), the arresting officer administers the physical coordination tests. In Cincinnati, it may be the arresting or the processing officer. Of the nine responding enforcement agencies in Hennepin County, Minnesota, it is the breath test operator in seven jurisdictions and the arresting officer in four (in two of these jurisdictions, the tests are administered twice).

Responses from 14 sites (64%) indicated that physical coordination tests, when administered, are performed only once by the suspect. Kansas City, Missouri ASAP officers normally administer the tests twice, once at the scene and again at the testing facility. In Tampa, Florida, the policy is to have a witness present, which means that the tests are sometimes administered twice for the benefit of the observer.

Generally, officers prefer to administer physical coordination tests at the scene of apprehension, while still forming a conclusion concerning the suspect's state of sobriety. At eight sites, the tests are administered at the scene. At four others, the tests are administered at the scene of the arrest as well as at the testing facility. At three sites the tests are conducted only after the suspect has been taken to the testing facility.

While the range of physical coordination tests is limited, there are many local variations. Several sites indicated that they had discontinued the use of the test in which the suspect picks up coins or keys. These included Phoenix, Arizona; Tampa, Florida; Kansas City, Missouri; and Salt Lake City, Utah.

The two most widely-used physical coordination tests to indicate insobriety are the finger-to-nose test and the walking and turning test (sometimes called heel-to-toe). At some sites, walking and turning are considered separate tests. This is true in New Hampshire; Vermont; and

Lincoln, Nebraska.

In Vermont, instructions for the finger-to-nose test are: "Stand naturally. Raise arms straight from shoulder. Right forefinger to nose. Then left forefinger to nose." In a common variation of this test, the suspect stands with his head tilted back at a 45-degree angle.

Balance tests are also among the most widely-used physical coordination tests. The general idea is that steadiness indicates sobriety, while swaying, staggering, or falling indicates drunkenness. Some common instructions for balance tests are:

- Feet close together; stand up straight; tip head back; close eyes (5 seconds).
- One foot directly in front of other; half weight on each; close eyes (5 seconds).
- Stand on left foot; close eyes (5 seconds). Same on right foot.
- Eyes closed; feet close together; revolve in circle.

Two other balance tests, whose designators are rather self-descriptive, are the "one stiff leg stance" and the "stiff leg swing." Both of these are used by the Los Angeles County Sheriff's Department. However, the consensus there is that balance tests are poor indicators of impairment. An apparently much more useful and valid standard employed by the ASAP enforcement countermeasure of the Los Angeles County Sheriff's Department is lateral eye nystagmus (a rapid involuntary oscillation of the eyeball). This same countermeasure has also developed three tests in cooperation with UCLA in efforts to overcome the inadequacy of balance tests. These are alphabet recitation, number progressions, and finger count. (The use of alphabet recitation was also noted in the Phoenix, Arizona ASAP enforcement countermeasure.)

In general, the physical coordination tests considered to be the most useful by any enforcement countermeasure are indicated on the Alcoholic Influence Report Form (or similar form) in use by that jurisdiction. If no psychomotor tests are contained on the format, it is usually an indication that such tests are not considered essential. This would seem to be the case for ASAP enforcement in Baltimore, Maryland; Kansas City,

ASAP Enforcement Countermeasures
Employing PBT's

| Site | Comments |
|---|-----------------------|
| 1. California (Los Angeles County) | Experimental use only |
| 2. Florida (Hillsborough County) | Started 1/75 |
| 3. Georgia (Columbus) | |
| 4. Louisiana (New Orleans) | |
| 5. Maine (Cumberland and York Counties) | |
| 6. Minnesota (Hennepin County) | |
| 7. Nebraska (Lincoln) | |
| 8. South Dakota | |
| 9. Utah (Salt Lake County) | Experimental use only |
| 10. Vermont | Occasional use |
| 11. Virginia (Fairfax County) | |

Figure IV

Missouri; Columbia, South Carolina; South Dakota; and Fairfax County, Virginia.

In Salt Lake City, Utah, ASAP officers ask the suspect to put his finger on a flashlight spot as an additional test. The coin/key pick-up was eliminated there.

It should be pointed out that physical coordination tests are often challenged by defense attorneys in court. If two officers participate in the arrest and the tests, the defense attorney will often cross-examine them separately and point out any major or minor discrepancies in their individual versions of the test procedures and results. For example, in the absence of a diagram or detailed notes, two officers may have different recollections of just what happened during the finger-to-nose test.

Another tactic often employed by defense attorneys is to ask the officer to demonstrate the test as a sober person would perform it. Anything less than a perfect performance is, of course, called to the attention of the court. The results of word pronunciation tests may also be successfully challenged by the defense attorney, which has led to the discontinuation of these tests in Cumberland and York Counties, Maine.

ASAP officers in New Hampshire commented that the results of physical coordination tests do not always help the case. ASAP officers in Hennepin County, Minnesota generally prefer breath screening to physical coordination tests as potential evidence to establish impairment. In Oklahoma City, Oklahoma, the standard physical coordination tests were formerly used, but have now been discontinued. According to the ASAP Enforcement Coordinator, "They just weren't any good. Nobody failed."

Pre-Arrest Breath Screening

Eleven of the 22 ASAP sites visited either use or plan to use pre-arrest breath screening. During the site visit to Tampa, Florida, the indications were that pre-arrest breath screening would be implemented there in January 1975. In Vermont it was in occasional use and was experimentally employed in Los Angeles County, California, and Salt Lake County, Utah. (See Figure IV.)

At most of the sites surveyed, pre-arrest breath screening was permitted by language in state laws or local ordinances, but at the following sites it was not specifically sanctioned by statute:

- Georgia (Columbus)
- Louisiana (New Orleans)
- Utah (Salt Lake County)
- Vermont

In California, a bill (SB224) was introduced in the State Senate in January 1975 to permit the use of preliminary breath-screening devices. It is this legislation which has apparently prompted the use of such a device on an experimental basis in Los Angeles County. It should be noted that the bill does not sanction the use of pre-arrest testing, but rather the use of a preliminary screening device "incidental to a lawful arrest." The proposed legislation contains a provision which states that the portable preliminary breath-screening device may be used for the purpose of determining whether reasonable cause exists to believe that a DWI violation has occurred.

Four different kinds of devices were used at these sites for pre-arrest breath screening. Figure V indicates that the A.L.E.R.T. (Alcohol Level Evaluation Roadside Tester) was used at six sites (and experimentally at two others), Alco-Sensor was used at four, and Alcoyser was used at three. (The Sober-Meter was used at one site; it functions as a portable breath-collection device used at the scene of apprehension. The breath sample obtained is later analyzed in an evidentiary test. It is the only device which serves both of these functions.)

At the three sites which experimented with more than one portable

breath testing device (PBT), the question was asked as to which device was found to be most effective and reliable. The responses were:

| | |
|---------------------------|-------------|
| Georgia (Columbus) | Alco-Sensor |
| Nebraska (Lincoln) | A.L.E.R.T. |
| Virginia (Fairfax County) | Alcolyser |

Thus, among the three kinds of devices used in the sites visited, each had advocates for its strong points. Despite the predominance of the Borg-Warner A.L.E.R.T. (used at eight sites) there does not seem to be a consensus that one kind of device is clearly superior in all respects.

The cost of A.L.E.R.T. ranged from \$400 to \$450; the price of the Alco-Sensor fuel cell device was reported to be approximately \$125. Alcolysers were purchased at a cost of \$4-\$5 per box, each of which contained a balloon and ten non-reusable sample-collection tubes. In some cases, the PBT's were intended for both ASAP and regular patrol officers. In South Dakota, 43 A.L.E.R.T. units were purchased for ASAP officers and the Highway Patrol. In New Orleans, 30 of the A.L.E.R.T. units were purchased for both ASAP and other officers. However, at some sites smaller numbers of units were purchased for ASAP officers only.

At seven sites the suspect could refuse to cooperate in the pre-arrest breath test without fear of legal repercussion. However, sometimes the officer has the leverage of offering a choice between PBT at the scene or evidentiary testing after arrest. In Minnesota, the law (Sec. 169.121) states that the provisions of Implied Consent are to apply to those who refuse both PBT and evidentiary testing. However, the suspect may elect evidentiary testing instead of PBT without any sanction. In Lincoln, Nebraska, a person who declines pre-arrest breath screening may be convicted of refusal and fined from \$50 to \$100. Both in Minnesota and Nebraska, the consequences of such a refusal are explained by the officer.

Only six of the eleven sites where PBT's are used record the results obtained with the devices. In Columbus, Georgia, this recording is carried out in response to a request for the information from the manufacturer. In Salt Lake City, Utah, notes are kept on PBT results, but no formal records.

In general, PBT is not believed to require a great deal of training. The most stringent training requirements were found in the Lincoln, Nebraska Police Department, where approximately eight hours of training are allegedly provided by the manufacturer's representative (Borg-Warner). The training is required and officers must be certified by the State Department of Health. In New Orleans, four hours of training on the proper use of the A.L.E.R.T. pre-screening device are provided by two ASAP officers who have been trained by the manufacturer. In Columbus, Georgia, two hours of training on the use of the Alco-Sensor fuel cell are offered to ASAP officers by the manufacturer (Intoximeters, Inc.). At other sites, informal training only - which is suspected to be extremely brief - is furnished.

Reception of PBT devices by ASAP enforcement personnel ranged from "favorable" to "enthusiastic." Opinions of enforcement officers on the value of pre-arrest breath screening in DWI/DUI enforcement included "very useful," "very good," "generally favorable," and "alleviates doubt." At several sites, officers pointed out that PBT's used at the scene of apprehension serve as a form of on-the-job training, in that they provide officers with an indication of BAC levels for various gradations of impairment. Despite individual variations in behavior for specific BAC levels, many officers using PBT's were able to use their experience in application of the devices to improve their ability to predict a probable BAC level more accurately, based on driving behavior and other indicators. However, at no site were there specific indications that the use of pre-arrest breath screening was coordinated with instruction and training.

Some of the principal problems encountered in the use of these devices were:

| <u>PBT</u> | <u>Problem Cited</u> | <u>Site</u> |
|-------------|---|---------------------------|
| A.L.E.R.T. | Calibration | California (Los Angeles) |
| A.L.E.R.T. | Not used as extensively as originally planned | Louisiana (New Orleans) |
| A.L.E.R.T. | Obtaining adequate breath sample | Utah (Salt Lake County) |
| Alco-Sensor | Reliability of instrument | Vermont |
| Alcolyser | Costly; glass fragments are hazards | Virginia (Fairfax County) |

Another comment was that the Alco-Sensor required frequent calibration, and that there were significant difficulties in obtaining correct readings from the unit.

For the most part, those sites which are now using PBT's plan to continue to do so. In New Orleans, the future of pre-arrest breath screening was officially termed as uncertain, whereas in South Dakota there were definite plans to expand its use.

Evidentiary Testing

Bodily Substances Analyzed

Chemical sobriety tests involve the analysis of some bodily substance such as breath, blood, urine, or saliva to determine blood-alcohol concentration. On rare occasions, other bodily properties (e.g., spinal fluid; eyeball fluid) are also analyzed to achieve this objective. This section will examine the most widespread approaches to evidentiary testing, and will summarize the information gathered in this survey of 22 ASAP enforcement countermeasures.

Figure VI indicates that all of the sites surveyed are capable of analyzing breath samples, and 82% do blood analysis as well. Urine is analyzed at 59% of the sites, while saliva may be analyzed at only 23% of the sites visited. There were two sites where other bodily fluids are submitted for evidentiary analysis under certain circumstances.

Breath and blood tests account for most evidentiary testing. For example, Los Angeles County, California, reported that evidentiary testing of bodily substances ran as follows: Breath, 70%; blood, 20%; and urine, 10% of all tests administered. In Fairfax County, Virginia, the suspect has the option of submitting a breath or a blood sample, but not both (state law). There, about 55% are breath tests, and the remainder are blood analyses.

Sixteen other sites - in addition to the two just mentioned - reported that breath is predominantly submitted for analysis. A variety of reasons were offered for the popularity of breath testing. In Tampa, Florida, the law requires the officer only to offer a breath test. In San Antonio, Texas, the breath test is required by statute; a blood test is available only if the suspect is willing to pay for it. In Indiana, the breath test is the method officially accepted by the state legislature to determine blood-alcohol concentration. In New Hampshire (as in Phoenix, Arizona) the officer chooses the evidentiary test, and the breath test is most often selected.

At sites where no statute or departmental regulation required breath testing, other reasons were given for its popularity. Some of these were:

- Easy sampling, less processing time (Vermont).
- Process is simpler (Lincoln, Nebraska).
- Faster, more accurate (Oklahoma City, Oklahoma).
- Less complicated; less time-consuming (Columbus, Georgia).
- Convenience of test; availability of instruments (New Orleans, Louisiana).
- Availability of testing equipment (Pulaski County, Arkansas).
- Ease, convenience, speed (Los Angeles County, California).

Only one law enforcement agency - the Salt Lake County Sheriff's Office - reported that blood is most often submitted for analysis. The opinion there was that the blood test was more easily administered to the drunk driver.

Breath Analysis Devices

Five different evidentiary breath testing devices were found to be in use at the sites surveyed. Figure VII indicates the trade names of these devices and their present representation in ASAP enforcement countermeasures. The Breathalyzer is shown to be, by far, the most commonly-used device. It is employed at 15 sites, while the second most-popular unit is used only at four. With the Breathalyzer, blood-alcohol concentration is measured by the degree of oxidation produced by the quantity of alcohol in a measured sample. The greater the amount of alcohol in the sample, the greater the oxidation.

One of two models of the Breathalyzer (at some sites both) were found to be in use. The earlier model, the Breathalyzer 900, was observed at 12 sites, and its more up-to-date counterpart, the Model 900A, at eight. Five sites use both models.

The reported unit cost of the Breathalyzer ranged from \$689 to \$1,050 for instruments purchased in the course of several years. The number of units acquired ranged from two in New Hampshire to 19 in South Dakota. The median number of units purchased was seven. Some of the reasons given for the acquisition of Breathalyzers are:

- Decision by the Department of Public Health (New Hampshire).
- Approved by State Department of Health (Hillsborough County, Florida).

- State law specifies equipment (Oklahoma City, Oklahoma).
- Approved by state (Hennepin County, Minnesota).
- Approved by State Law Enforcement Division (Richland County, South Carolina).
- Approved by state legislature (Fairfax County, Virginia).

Thus, the selection of a particular type of breath testing equipment appears to have been largely contingent upon a decision by the state government rather than that of a particular law enforcement agency.

Next to the Breathalyzer, the Gas Chromatograph Intoximeter (GCI) ranked second in popularity. It was used by four of the 22 ASAP sites. Its reported unit cost of approximately \$2,700 was substantially greater than that of the Breathalyzer.

Six sites indicated that they had experimented with the Breathalyzer as well as with the GCI. This experience is summarized in Figure VIII. It shows one site where the GCI and the Breathalyzer are both being used, two sites where the GCI is currently being used and the Breathalyzer has been used previously or on a trial basis, and three sites where the Breathalyzer is the official evidentiary breath testing device. At two of these three sites the GCI has been used previously or on a trial basis; at the third (Tampa, Florida) the GCI was scheduled to replace the Breathalyzer in 1975.

At each site, the question was asked concerning problems encountered in the use of evidentiary breath testing devices. The four sites using the GCI responded as follows:

- None, except for occasional maintenance. Poor service by manufacturer (Lincoln, Nebraska).
- On occasion low readings are obtained on obviously drunk suspects; only one sample (Phoenix, Arizona).
- Calibration between the graphic printout and the digital readout (Los Angeles County, California).
- No significant problems have developed in the use of the GCI. Some minor problems were originally evident relative to the crimper templates used in the sample-taking process; specifically, leakage was noticed on occasion. This was attributed

primarily to faulty operation of the crimper by the officer (Vermont).

Of the ten sites using the Breathalyzer, eight reported no significant problems. The remaining two sites cited problems which are not equipment-related:

- Too few testing units (Cincinnati, Ohio).
- Problems moving the testing equipment around the state (New Hampshire).

Eighteen sites, comprising 82% of those surveyed, employ two differing breath testing devices. The Breathalyzer clearly dominates the field, but acceptance of the GCI as a practical evidentiary breath testing device was evident at several sites.

A court decision in California, which has influenced the choice of breath testing equipment, is worth mentioning: Prior to November 1973, the Breathalyzer Model 900 was used by the Los Angeles County Sheriff's Department. In the Hitch decision, the court ruled that all Breathalyzer sample ampules had to be preserved in order to ensure repeatability of the test and to guarantee due process of law. To avoid the extra expense of ampule preservation, the crime lab initiated use of the GCI, which provides a permanent graphic record of the evidentiary test. No other site was known to have made a change in evidentiary testing equipment influenced by a court decision.

In Vermont, the GCI is used in conjunction with the indium (crimper) encapsulator, which the police officer uses to collect breath samples on the spot for later chemical analysis. The encapsulation system retains a sample of deep lung breath, which is divided into three equal, separately sealed portions and which may be analyzed on the GCI at some later time. (Analysis requires only 70 seconds.)

The Photo-Electric Intoximeter (PEI) was being used at two sites - Columbus, Georgia, and New Orleans, Louisiana - and had also been used on a trial basis for a time in Vermont. The PEI (as well as the GCI) is manufactured by Intoximeters, Inc. It is a 22-pound apparatus which collects two breath samples and passes them into chemical absorbents. The

alcohol content of one of the samples can be read from the instrument's scale immediately. The remaining sample is preserved in the unit for possible subsequent laboratory analysis. In both sites where the PEI is in use, the GCI had been used previously on a trial basis.

Additional evidentiary breath testing devices were found at two other sites. These were the Alco-Analyzer Gas Chromatograph and the Sober-Meter. The Alco-Analyzer Gas Chromatograph, like the GCI and the PEI, is manufactured by Intoximeters, Inc. Thus only two manufacturers furnished evidentiary breath testing equipment for 21 of the 22 sites.

The Alco-Analyzer Gas Chromatograph is employed by the three ASAP law enforcement agencies in Pulaski County, Arkansas. Each agency has been provided with one of the units, which is capable of analyzing blood, urine, and other bodily fluids, as well as breath, for blood-alcohol concentration. The Alco-Analyzer Gas Chromatograph works on the principle of temperature change produced by alcohol when it passes over a sensor.

The Sober-Meter was applied by the ASAP enforcement countermeasure of Cumberland and York Counties, Maine. It is manufactured by Luckey Laboratories, Inc., of San Bernardino, California. The Sober-Meter is a portable breath collection kit which permits breath samples to be obtained at remote locations. Analysis for evidence is conducted on the Alco-Analyzer Gas Chromatograph previously described.

A portable breath screening capability is also provided with the Sober-Meter. It is contained in a box similar in size to a package of king-sized cigarettes, and provides an immediate crude estimate of blood-alcohol concentration by interpretation of three color bands:

Three color bands green - 0.30% BAC

Two color bands green - 0.20% BAC

One color band green - 0.10% BAC

The breath sample is collected in a balloon, which is then attached to the screening tester for one minute.

Other breath testing devices on the market, such as the Alco-Meter, Alco-Tector, and Drunkometer, although often approved by state governments, were not seen in use during this survey.

Evidentiary Test Process (Breath)

The configuration and deployment of breath testing equipment and personnel is a major factor in examining the evidentiary testing process. This section focuses on this process and the factors which bear upon it.

The limited number of evidentiary breath testing devices available for field use is a common constraint on the sobriety testing process, especially during the peak hours of operation. At most of the sites, two or three devices are normally available for field use. Only at a few sites is that number greater. San Antonio, Texas, reported seven evidentiary breath testing devices normally available for use and Indianapolis, Indiana, reportedly uses six. Phoenix, Arizona ASAP enforcement normally has five Breathalyzers in use, in addition to eleven encapsulators for roadside breath sample collection. In contrast, the Minneapolis Police Department reportedly uses only one testing device daily.

Security measures are usually informal and consist of locking the area housing the testing devices when they are not being used. Five sites reported no security precautions of any kind, and thus utilize no measures to restrict access to the testing devices. In most cases where this condition was discovered, the facility was thought by enforcement personnel to be sufficiently secure.

The evidentiary breath testing devices are commonly found at the headquarters building of the law enforcement agency, where the booking or jail area is often used for the testing process. At several sites, district stations and/or mobile vans serve as breath testing facilities. Some sites use hospitals, courthouses, or state laboratories.

The breath testing devices must be periodically inspected and calibrated to ensure reliability and accuracy, but the means for accomplishing this vary considerably. San Antonio, Texas, reported that the devices are inspected and calibrated weekly by the technical supervisor. Columbus, Georgia, and Tampa, Florida, reported monthly inspections of the equipment; and Fairfax County, Virginia, reported inspections and calibrations every six months by the State Department of Health, but a crime laboratory chemist or the ASAP Enforcement Coordinator may sometimes conduct less

formal equipment checks.

All of the 22 enforcement countermeasures indicated that DWI/DUI suspects are advised of the appropriate Implied Consent law before undergoing evidentiary testing. In New Orleans, pertinent provisions of the law are explained before testimony is taken; in Los Angeles County, the law is explained upon arrest; and in Fairfax County, Virginia, it is explained on the way to the testing facility, immediately after the suspect has been arrested.

Several major variations were encountered in the procedures used to inform the drinking driver of the Implied Consent law. Some enforcement agencies provide their officers with printed material containing the exact wording which is to be read to the suspect. Other agencies expect their officers to recite the key provisions of the statute from memory. In either case, if the offender seems to have difficulty understanding, the officer is obliged to explain the law in plain language. At some sites, such as Lincoln, Nebraska, and Hennepin County, Minnesota, the suspect is required to sign a statement indicating that he has been informed of the Implied Consent law, and that he understands the consequences of refusing to undergo a sobriety test.

Only minor local variations were found in the factors which determine what constitutes a refusal under the Implied Consent statute. All responding sites indicated that willful assertions of non-compliance, as well as devious or disguised attempts to undermine the sample-taking process, are considered to be refusals. At some sites, the suspect is asked to sign a statement indicating his refusal.

Eighteen of the sites surveyed treated refusal as an administrative matter which was usually handled by the indigenous Division of Motor Vehicles. However, four sites reported that refusal is treated as a separate offense under the purview of the local courts.

The severity of the penalty for refusal varies from a 60-day suspension of the driver's license in Baltimore, Maryland, to loss of license for one year in Indianapolis, Indiana; San Antonio, Texas; Salt Lake County, Utah; and Vermont. The average penalty - which is hypothetical

rather than actual in this case - falls between five sites requiring a three-month suspension and five sites with a six-month suspension period.

A usual prerequisite for obtaining a breath sample is to keep the drinking driver under observation for a specified period of time just before the breath sample is submitted, and during which he is not permitted to smoke, chew gum, etc. Nine sites reported a minimum observation period of 15 minutes, while eight others reported a 20-minute waiting period. Indianapolis, Indiana, requires only ten minutes of observation from the time of first detection.

Three major variations were noted in the time when the observation period begins. At some sites, it is begun at the time of arrest; at others, whenever the officer is able to begin close observation of the subject. At still other sites, the observation period does not start until the suspect arrives at the testing facility. The arresting officer is most commonly responsible for seeing that the minimum observation period is observed. Four sites hold the breath operator responsible, and at two others the officer and the operator share joint responsibility.

The arresting officer must witness the breath test at 13 of the sites surveyed. The test is usually administered by another ASAP officer, although in some cases it is a correctional officer or a civilian technician.

One-half of the ASAP enforcement countermeasures surveyed do not provide the suspect with a document containing the results of his breath analysis. In South Dakota it is not done, except upon the offender's request. In Columbus, Georgia, the offender's blood-alcohol concentration is recorded on the copy of the citation which he receives. In Cumberland and York Counties, Maine, the offender receives a document bearing this information by mail.

Eighteen sites reported that the suspected DWI/DUI offender is entitled to have an independent analysis undertaken to determine his BAC, after he has submitted a sample for evidentiary testing purposes. In Columbus, Georgia, the offender has no such right, and the three remaining sites provided no information on this aspect. At 13 of the

aforementioned 18 sites, the offender must pay for the independent analysis, but in Virginia and Maine the cost is absorbed by the state. Twelve sites reported that the defendant must preserve and document the chain of evidence in the event that such an independent analysis has been performed. In Lincoln, Nebraska, the physician withdrawing a blood sample for independent analysis is responsible for preserving the chain of evidence.

Seventeen sites reported that all individual breath tests are recorded in some kind of official log or journal, which is then used as a basis for summary information. The remaining sites did not respond. Most sites indicated that the log or journal is periodically inspected by either a supervisory officer or another agency such as the State Department of Health. In some cases the inspections are unannounced.

Breath testing devices are useful because practically all state laws now quantify drunkenness by defining intoxication and/or impairment by blood-alcohol concentration. At 19 of the sites visited, the defendant is presumed to be intoxicated if his BAC is .10% or greater. In Salt Lake County, Utah, the presumptive BAC level is .08%.

The Maryland law is somewhat more complicated; it defines a level of impairment (.10%), as well as a level of intoxication (.15%). Moreover, the Maryland law requires higher levels of blood-alcohol concentration in urine samples than in blood or breath samples; the BAC level for impairment in this case is .13%, and for intoxication it is .20%.

Vermont law does not provide for a presumptive level of intoxication, but does contain a statute defining a per se level. (Vermont is one of five sites with a per se statute; the others are Minnesota (Hennepin County), Nebraska (Lincoln), South Dakota, and Utah (Salt Lake County).) In each of these cases, the per se level of intoxication is fixed at .10% blood-alcohol concentration.

Blood Samples and Analysis

At 18 of the sites surveyed, the withdrawal of blood samples for analysis to determine blood-alcohol concentration is permitted by law. In addition, two sites allow analysis of blood specimens under special

circumstances. In Richland County, South Carolina, blood samples are obtained for analysis only at the request of the offender, never at the request of enforcement authorities. In San Antonio, Texas, blood samples are withdrawn for chemical analysis only at the request of the defendant, at his own expense.

Most commonly, physicians, nurses, and medical technicians are authorized to withdraw blood samples, but local requirements often restrict authorization to specified professionals. For example, in Phoenix, Arizona, blood samples may be withdrawn only by a physician; and in Tampa, Florida, only by physicians on duty at Tampa General Hospital. In Lincoln, Nebraska, samples are withdrawn by a registered nurse on duty at the jail; while in Baltimore, Maryland, a registered nurse is sent from a hospital to the state police barracks to withdraw the sample.

The quantity of blood withdrawn is usually five or ten cubic centimeters. However, in Salt Lake County, Utah, samples of only three or four cc are required; while at the other end of the scale, Fairfax County, Virginia, and Oklahoma City, Oklahoma, require two ten-cc samples.

Blood samples are most often analyzed by state personnel. Sites employing state personnel and facilities include:

| | |
|----------------------------------|--|
| Georgia (Columbus) | Department of Public Safety Crime Lab |
| Oklahoma (Oklahoma City) | Oklahoma State Crime Bureau |
| South Carolina (Richland County) | State chemist |
| South Dakota | University of South Dakota Laboratory |
| Vermont | State laboratory |
| Virginia (Fairfax County) | State laboratory |

At several sites, city facilities and personnel are favored. These include:

| | |
|-------------------------|--------------------------------|
| Arizona (Phoenix) | City chemist |
| Louisiana (New Orleans) | New Orleans Criminalistics Lab |
| Ohio (Cincinnati) | City chemist |

In Salt Lake County, Utah, the County Board of Health is responsible for analysis of blood samples; whereas in Tampa, Florida, laboratory

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| South Dakota | University of South Dakota Laboratory |
| Vermont | State laboratory |
| Virginia (Fairfax County) | State laboratory |

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| Louisiana (New Orleans) | New Orleans Criminalistics Lab |
| Ohio (Cincinnati) | City chemist |

In Salt Lake County, Utah, the County Board of Health is responsible for analysis of blood samples; whereas in Tampa, Florida, laboratory

are forwarded to both the police department and the prosecutor; in Phoenix, Arizona, they are transmitted to both the arresting officer and the court; and in Fairfax County, Virginia, the results are received by the Clerk of the Court.

Regardless of the person or office which receives the analysis results, there is almost always a method by which the arresting officer is informed of the offender's BAC before the trial. At the Covina, California Police Department, the arresting officer must check with the records supervisor to learn the results; in Fairfax County, Virginia, a list containing the name and BAC of the offender is periodically issued by the Clerk of the Court, for the arresting officers.

The degree of dependence by ASAP enforcement countermeasures on hospitals or other medical facilities for the processing of DWI/DUI offenders is generally limited. The Tampa, Florida Police Department, as previously mentioned, depends on one particular hospital for withdrawal and analysis of blood samples. The Los Angeles County Sheriff's Department maintains a contractual relationship with the medical facility, which provides the hospital with \$17 for each blood test administered.

Local medical facilities and staffs are not always well-prepared to cope with the processing of DWI/DUI offenders, but most sites reported at least adequate performance when their services are needed. A few sites reported that medical personnel are reluctant to cooperate, for fear of possible liability or of being subpoenaed to testify in court; but since the degree of involvement by hospital staff in DWI/DUI processing is relatively limited - at least at ASAP sites - such reluctance has caused only minor problems.

At eight of the sites, there are state or local statutes requiring coroners or medical examiners to withdraw blood samples for BAC analysis from deceased victims of motor vehicle accidents; seven sites reported no such provisions; and no information was to be had from the others. (See Figure IX.)

In South Dakota, blood analyses of fatally-injured victims are statutorily required in all motor vehicle accident cases, but are presently obtained only in approximately 65% of them. There was no

legal requirement in Richland County, South Carolina, at the time of the site visit, but an appurtenant statute, to become effective January 1, 1975, had been passed by the South Carolina legislature. In Tampa, Florida, state law stipulates that officers may request blood samples. In Hennepin County, Minnesota, where the statute is purportedly vague, local authorities expressed the belief that BAC analyses of deceased victims of motor vehicle accidents are not conducted routinely.

In jurisdictions requiring BAC analyses of persons fatally injured in motor vehicle accidents, the statute usually specifies a time period after the accident within which the blood sample must be obtained. Commonly this is a period of four hours from the official time of death, but in Vermont it is six hours and in New Orleans it is approximately twelve hours. Most of the time, BAC levels of accident victims are reported to ASAP management or its evaluation section.

Two of the sites surveyed - Lincoln, Nebraska, and Vermont - had a statutory provision which required a BAC analysis of all principals in a fatal crash.

Urine Samples and Analysis

Only six sites provided information on procedures concerning the analysis of urine samples to determine blood-alcohol concentration. The Tampa, Florida, and New Hampshire countermeasures reported that urine samples are very rarely obtained, and Vermont reported that urinalyses are no longer conducted. In Baltimore, Maryland, urine samples are analyzed only when the offender chooses this method of evidentiary testing. Samples are obtained at the Central Testing Unit and analyzed at the State Toxicology Laboratory. The Cincinnati, Ohio, enforcement countermeasure also reported that few urine samples are processed (analyses are conducted by the city chemist).

In Lincoln, Nebraska, urine samples are collected at police department headquarters and submission of the sample must be witnessed by the processing officer. The samples are then analyzed on the Gas Chromatograph Intoximeter. The Lincoln ASAP enforcement countermeasure reported the only advantage of urine samples to be that medical personnel are not

required to obtain them. A major disadvantage is that ASAP officers are often embarrassed by the circumstances of collecting urine specimens from "sloppy drunks." Also, the BAC results obtained from urinalysis are generally higher than those from breath samples, which may produce conflicting evidence.

It has already been mentioned that 10% of the evidentiary sobriety testing conducted by the Los Angeles County Sheriff's Department consists of urinalyses. A procedural memorandum issued by the department indicates seven steps to be followed by officers in obtaining a urine sample. The department considers that urinalysis produces the most accurate results in terms of blood-alcohol concentration, but notes as a disadvantage that the process requires two urinations within a 20- to 30- minute period, and suspects often find difficulty in submitting the second sample. Licensed criminalists of the department's Criminalistics Laboratory analyze the urine samples.

Thirteen other sites reported that evidentiary analysis of urine samples is permitted by statute, but provided little information on the extent of their actual use.

Other Bodily Substances

Although five sites reported having statutes which permit the analysis of saliva and other bodily substances for evidentiary purposes, there was no evidence that any of these sites carries out such analyses on a routine basis. In Lincoln, Nebraska, for example, a state statute permits the analysis of saliva, eyeball fluid, and spinal fluid for blood-alcohol concentration; and in South Dakota it was reported that "other bodily substances" could be submitted for evidentiary analysis. Tampa, Florida; Phoenix, Arizona; and Kansas City, Missouri also reported the existence of similar statutes.

In summary, it seems that although some ASAP sites have legal provisions for the analysis of additional bodily substances, and have the equipment and personnel to execute such analyses, they are very rarely conducted.

Training

Law enforcement officers operate either some or all of the breath testing equipment at practically every site visited during the survey. At 15 of them, they are responsible for all breath testing. At a few sites, officers share the responsibilities of breath testing with chemists, non-sworn medical technicians, or corrections officers. For example, in Phoenix, Arizona, where two different types of equipment are used, the officers conduct Breathalyzer tests, while chemists are responsible for analyses on the Gas Chromatograph Intoximeter.

In order to conduct evidentiary breath tests, officers must meet certain requirements which are usually established by a state agency. At the average ASAP site, successful completion of a 40-hour training course is necessary for certification. Overall, required training ranges from six hours in Los Angeles County, California, and eight hours in Vermont to 64 hours in Richland County, South Carolina. At some sites, breath testing is covered as part of a general course for newly-assigned officers; at others, the entire course is devoted to operation and maintenance of the breath testing devices.

In most cases, the State Department of Health is responsible for training and certification. In South Dakota, however, it is the state university, while in Oklahoma it is the Board of Chemical Tests for Alcohol Influence. In Columbus, Georgia, the Crime Laboratory of the Georgia Department of Public Safety conducts the training, including a two- or three-day refresher course each year for officers already certified.

Responses from 13 sites indicated that breath operators must be recertified there after a specified period of time. The average time period before recertification is one year, with a range which extends from only two months (Rapid City, South Dakota) up to two years (New Orleans, Louisiana; Indianapolis, Indiana; and Salt Lake City, Utah). In Pulaski County, Arkansas, operators are reexamined each 90 days by a senior officer.

The number of certified breath examiners at sites surveyed ranges from nine in Lincoln, Nebraska, to approximately 700 in Phoenix, Arizona. (See Figure X.)

NUMBER OF CERTIFIED BREATH EXAMINERS AT
SELECTED ASAP ENFORCEMENT COUNTERMEASURES

| Enforcement Countermeasure (Agency) | Number of Certified Breath Examiner Specialists | Total Number of Officers | Percentage of Certified Breath Examiner Specialists |
|--|---|-----------------------------|---|
| Lincoln (Nebraska) Police Department | 9 | 234 | 3.8 |
| Little Rock (Arkansas) Police Department | 18 | 168 | 10.7 |
| Kansas City (Missouri) Police Department | 33 | 1300 | 2.5 |
| Fairfax County (Virginia) Police Department | 37 | 564 | 6.6 |
| San Antonio (Texas) Police Department | 60 | 1115 | 5.4 |
| Minneapolis (Minnesota) Police Department | 64 | 931 | 6.9 |
| Phoenix (Arizona) Police Department | 700 | 1377 | 50.8 |

Figure X

The 24-hour training course leading to state certification in Arizona qualifies officers to use both the Breathalyzer and the encapsulator. (The GCI, used to analyze the breath collected in the encapsulator, requires a separate qualifying course.) The three-day Breathalyzer/encapsulator course is somewhat shorter than the five days of training which make up the average training course for prospective operators. Thus it would seem that Phoenix has selected a testing option which involves a smaller amount of training for a larger number of certified operators. Of the 150 encapsulators purchased by the Phoenix Police Department, 11 are constantly available to ASAP officers.

Selection criteria for training tend to fall into four general categories. At some sites, such as Pulaski County, Arkansas, current policy is to provide all incoming officers with such training. The Covina, California Police Department also uses this approach to selection for training. Another approach is to provide breath examiner training primarily for ASAP officers and secondarily for any other officers who may show an interest in such training. Lincoln, Nebraska, and Cincinnati, Ohio, as well as the Richland County (South Carolina) Sheriff's Office, are examples of this approach.

A third method is to use specialized selection criteria. In Kansas City, Missouri, potential trainees must be recommended by their supervisors. In New Hampshire, only experienced officers are eligible for training. And in the Los Angeles County Sheriff's Department, all departmental criminalists must qualify as breath examiners.

Finally, volunteers are sought for training at several sites, including Tampa, Florida; New Orleans, Louisiana; and Hennepin County, Minnesota. A variation employed in Fairfax County, Virginia, is to administer a preliminary test and accept for training only those who achieve a qualifying score. The pre-test is a rare screening technique for prospective trainees; a more common one is the recommendation of the officer's supervisor.

In most cases, a state agency administers the training program for certified breath examiners (most commonly the State Department of Public Health). However, there is considerable variation among ASAP sites in the certifying agency and the credentials of its instructors.

In Florida, the State Department of Health, through the Florida Department of Education, offers 80 hours of training to potential instructors, and those who successfully complete the course are then qualified to teach the 40-hour training course for incipient breath examiners. In some cases there is a specialized agency, such as the Oklahoma Board of Chemical Tests for Alcohol Influence. A somewhat similar situation is found with the Alcohol Testing, Approval and Permit Program of the Ohio Department of Health. Under this program, police officers are trained as instructors for the breath examiner specialist course. In Indianapolis, Indiana, licensed chemists from the State Department of Toxicology instruct police officers at the City-County Training Academy.

In other cases, the Department of Public Safety is responsible for breath examiner training, as in San Antonio, Texas, and Salt Lake City, Utah. In Georgia, the course is taught by certified chemists from the Crime Laboratory of the State Department of Public Safety. In South Carolina, chemists from the State Law Enforcement Division provide the necessary training in the 64-hour Breath Examiner Specialist Course.

In Los Angeles County, California, officers are trained by criminalists from the Crime Laboratory of the Sheriff's Department. The instructors in Phoenix, Arizona, are chemists and criminologists from the Crime Detection Laboratory. In South Dakota, training is conducted by the state chemist and instructor from the state university which, in this case, is the certifying agency for breath examiners. In Vermont, however, state police instructors are trained by the manufacturer of the breath testing equipment which is in use there.

The Louisiana Board of Health provides 80 hours of training for instructors, who are then qualified to teach the 40-hour basic operator course. In Virginia and Arkansas, there are similar arrangements whereby the State Health Department provides the necessary training for certification or licensing of instructors.

Finally, New Hampshire undertakes breath examiner training with instructors from a variety of sources. The Division of Public Health is responsible for administration of the training, but instructors in the basic course include public health officials, physicians, and state police officers.

Conclusions and Recommendations

Physical coordination tests, as observed in the course of this site visit, were not uniformly given between sites and varied greatly in the manner in which they were administered between officers of any given law enforcement agency. Officers used their own interpretations in administering physical coordination tests utilizing those tests that they felt were the most appropriate. The most frequently observed of physical coordination tests administered were the:

- 1) Heel-to-toe
- 2) Finger-to-nose (arms extended, toward back, eyes closed)

Officers repeatedly cited objection to the physical coordination tests as they felt the tests to be unreliable and poor indicators because "drunks practice" and experienced drinking drivers could pass the standard physical coordination tests even at high BAC levels. Although the various ASAP's initiated training for many law enforcement officers little if any guidance was provided in interpreting these test results.

Recommendation: The physical coordination testing configuration originally recommended by the National Safety Council and incorporated on most state Alcohol Influence Report Forms should be analyzed as there may be better methods than those which are presently employed. (i.e., the heel-to-toe, finger-to-nose tests, etc.)

It would be worthwhile for a separate study and evaluation to be conducted for the prime purposes of determining which physical coordination tests might be the most appropriate in DWI enforcement rather than just using those which were originally proposed by the National Safety Council. Such an analysis and evaluation could be conducted by the individual law enforcement agencies or by NHTSA.

Law enforcement agencies visited during the course of this study who are engaged in utilizing pre-arrest breath screening either as a countermeasure or on an experimental basis view the use of pre-arrest breath screening as a worthwhile endeavor. The Borg-Warner (A.L.E.R.T.) unit is the most popular pre-arrest breath screening device in use throughout the

ASAP sites. The major complaint with the A.L.E.R.T. unit, as stated by law enforcement officers interviewed, is the large amount of breath required to obtain an adequate sample to conduct the test. Another problem cited is the difficulty officers have in maintaining the proper calibration of the A.L.E.R.T. unit. In the opinion of the authors the difficulty in maintaining proper calibration is not due to the sensitivity of the A.L.E.R.T. instrument but rather inadequate training on the part of the officers who are to use the pre-arrest screening device. The pre-arrest screening device is often mishandled by the officers and this activity will also cause the pre-arrest screening device to lose its proper calibration.

The Hennepin County ASAP is conducting the most extensive use of pre-arrest breath screening among the ASAP sites visited. This site has also conducted an extensive evaluation of portable breath testing devices, their applicability in the law enforcement environment, and their community acceptance. The results have been encouraging.

Recommendation: Portable breath testing devices should be employed whenever possible for DWI/DUI enforcement.

It has been established that the use of pre-arrest breath screening eliminates the subjective analysis conducted by the officer in determining whether the suspect is in fact intoxicated. The general comment made by officers who conduct ASAP enforcement was that they would like to see an instrument which is closer to the evidentiary sobriety testing device and would provide both quantitative and qualitative results.

In the opinion of the authors such a device can be made available for field use by law enforcement officers providing that the manufacturer is given the impetus necessary to design such an instrument. Although the authors recognize that manufacturers feel that there is not enough of a market at this time for such a device the authors believe that the technical know-how exists for such an instrument to in fact be developed. Officers who are conducting DWI enforcement should be furnished with the pre-arrest breath screening device which is accurate and be given sufficient training in the operation of that device to include the calibration and utilization. Pre-arrest screening devices would be both extensively used by law enforcement officers and would establish itself as a viable

tool in the identification of alcohol-impaired drivers.

Recommendation: Pre-arrest screening devices should be relatively inexpensive so that the initial cost would not be prohibitive in the acquisition of the device by law enforcement agencies.

Recommendation: Pre-arrest breath screening should be used to underline and support a good police investigation rather than substitute for it.

Whenever possible pre-arrest breath screening should be used in conjunction with physical coordination tests.

Although the authors recognize that in order for pre-arrest breath screening to be implemented in any jurisdiction would require legislative enactment of a pre-arrest breath screening law. The authors also recognize that it is not uncommon for the sites who are experimenting with pre-arrest breath screening to do so at the authorization of a local state attorney or senior judicial representative who establishes the guidelines under which they may operate during the experimental phase of the pre-arrest screening program.

Recommendation: Cooperation with prosecutors and state attorney should be sought and procedures for experimental programs established in areas where there are as yet no pre-arrest breath screening laws.

Breath was the predominant bodily substance analyzed for evidentiary purposes utilizing the Smith & Wesson Breathalyzer Model 900 and Model 900A. The reception of breath testing for evidentiary purposes by law enforcement personnel appear to have been enthusiastic due to the convenience and ease of testing.

Recommendation: Wherever possible evidentiary breath testing should be the prime method of determining blood alcohol concentration in those situations where offenders are given a choice between breath, blood or urine analysis.

Law enforcement agencies are generally not providing a sufficient amount of training in the area of DWI enforcement to include sobriety testing. Additionally, there were a large number of agencies surveyed

which had a relatively small percentage of certified breath examiner specialists.

Recommendation: Law enforcement agencies should exert a greater effort in training their personnel in administering evidentiary breath tests.

The ultimate goal of each agency should be to eventually have each officer engaged in patrol/traffic services qualify as a certified breath test operator. Although many agencies interviewed stated that they would like to have all their law enforcement officers qualified Breathalyzer operators they are reluctant to do so (and officers are reluctant to volunteer for the assignment) due to excessive requirements for court appearances. It is the opinion of the authors that the widespread use of the Breathalyzer and the acceptance of Breathalyzer testing procedures should form the basis for a judicial policy of not requiring the attendance of the Breathalyzer operator at court hearings. The requirement of the Breathalyzer operator at court hearings is, to the authors, a technique used by defense attorneys in

- 1) inconveniencing police agencies and thus discouraging officers from making DWI arrests, and
- 2) backlogging caseloads in the courtroom to encourage judges to make expeditious dispositions of DWI cases coming before them and thus set up a more advantageous environment wherein plea bargaining procedures may be employed.

It was found in many locations that if a DWI offender pleaded "not guilty" at arraignment and subsequently went to trial the case would generally last an entire day before it was adjudicated. It is incomprehensible that DWI cases should require such an inordinate length of time. If judicial notice was given regarding the evidentiary breath testing procedure utilized DWI trials could be reduced in time significantly.

Insofar as blood samples were used, a common complaint voiced by law enforcement personnel engaged in DWI enforcement was the lack of cooperation on the part of local hospital personnel in withdrawing blood samples. The process is usually lengthy and involves hospital staff who are often reluctant to cooperate for the reason that they fear being subpoenaed to

the court for subsequent testimony.

With regard to the urine samples, the process is simply distasteful to the officers and in most cases officers are required to witness the sample collection and are required to handle the sample container. Police officers generally try to avoid utilizing urine analysis to determine BAC and as a result urine analysis is seldom used in determining BAC for evidentiary purposes.

The use of mobile evidentiary vans does not appear to be cost-effective. In most situations observed, the mobile vans which were originally purchased for ASAP for use in DWI enforcement, were not deployed on a mobile basis but rather remained stationary in one location and the arresting officer brought the suspect to the mobile van. In the opinion of the authors the same purposes could be accomplished utilizing fixed locations such as police substations, public buildings, or some other fixed facility such as fire houses. The funds expended on mobile processing vans could more effectively have been used in obtaining additional breath testing equipment, pre-arrest breath testing devices, etc.

As this survey progressed, it was apparent that in each instance where an ASAP site employed the use of mobile testing facilities for DWI enforcement the process deteriorated after a relatively short span of time and the vans were used in a manner heretofore described. It is simply not feasible, in most instances, to have the mobile vans respond to various locations throughout the jurisdiction in order to assist the arresting officer. ASAP sites which have used mobile testing facilities have found that it is more cost-effective to have the arresting officer respond to the van rather than vice-versa.

Recommendation: The role of mobile evidentiary testing vans in ASAP selective enforcement should be reevaluated keeping in mind that wherever mobile testing facilities have been employed they have proven not to be cost-effective.

ARIZONA (PHOENIX)

Section 1 - Legislative Provisions

ARS 28-691

A. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of section 23-692, to a chemical test or tests of his blood, breath or urine for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the direction of a law enforcement officer having reasonable ground to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The law enforcement agency which such officer represents shall designate which of such tests shall be administered, however only the breath test shall be administered in all cases except where circumstances preclude its use.

B. Following the arrest by a law enforcement officer, such officer shall allow a period of fifteen minutes to elapse from the time the violator is stopped before administering any test prescribed by the terms of subsection A of this section. During such period of time the law enforcement officer shall inform the violator that his license or permit to drive may be suspended or denied if he refuses to submit to the test.

ARS 28-691

C. Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection A and the test or tests may be administered, subject to the provisions of section 28-692.

D. If a person under arrest refuses to submit to a chemical test designated by the law enforcement agency as provided in subsection A, none shall be given. The department, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test, shall suspend for a period of six months his license or permit to drive, or any nonresident operating privilege. . . .

ARS 28-692

. . . .
B. In the trial of any civil or criminal action or proceeding for a violation of subsection A of this section relating to driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor, the amount of alcohol

in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.
2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
3. If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.
4. Paragraphs 1, 2 or 3 of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.

C. Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

*D. Chemical analyses of the person's blood, urine, breath or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the state department of health and by a person possessing a valid permit issued by the state department of health for such purpose. The state department of health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of persons to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state department of health.

E. When a person shall submit to a blood or urine test under the provisions of section 28-691, only a physician or registered nurse, or other qualified person, other than the arresting officer, may withdraw blood or take urine specimens for the purpose of determining the alcoholic content therein. Such limitations shall not apply to the taking of breath specimens.

F. The person tested may have a physician or a qualified technician, chemist, registered nurse or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

G. Upon request of the person who shall submit to a chemical test or tests, full information concerning the test or tests shall be made available to him or his attorney.

H. If a person under arrest refuses to submit to a chemical test under the provisions of section 28-691, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor.

I. It is unlawful and punishable as provided in section 28-692.01 for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this state. The fact that a person charged with a violation of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

Excerpts
Rules and Regulations for the Determination of Blood Alcohol Content
Arizona State Department of Health
Article 8
Part 4

Reg. 8-4-1.1 Legal Authority, Purpose and Scope

A. The following rules, regulations and standards relating to the techniques and methods to be used for the determination of the alcohol content of blood by chemical analysis and relating to the issuance of permits to conduct such determination have been adopted by the Arizona State Department of Health pursuant to authority granted in §28-692D., Arizona Revised Statutes.

B. The purpose of this Part is to provide standards and qualifications for the issuance by the Department of permits to operators and analysts and approve methods of determining the alcohol content of a person's blood under §28-692, Arizona Revised Statutes.

Reg. 8-4-1.2 Definitions

J. "Operator" means a person who operates a breath testing or collection instrument for the purpose of obtaining a determination of blood alcohol content from a specimen of breath.

K. "Operator Permit" means a certificate issued by the Department indicating the permit holder has been determined to be qualified and competent to utilize a breath testing or collection instrument.

Reg. 8-4-2.2 Approval of Breath Testing and Collection Devices

Devices used outside a laboratory to determine blood alcohol content of the breath or to collect a sample of breath for determination by an analyst, shall be approved for use by the Director upon application by any law enforcement agency or laboratory, using forms provided by the department showing that such device will be used in the state and that such device is an acceptable method of collecting samples or determining blood alcohol. Such application shall be accompanied by substantiating evidence of reliability and accuracy of the device.

The commissioner, upon specific findings that a device is not accurate, is unreliable, or is not an acceptable method of determining blood alcohol content or of collecting samples or that its use has been discontinued in the state, may disapprove further use of the device in the state for purposes described in § 28-692 Arizona Revised Statutes.

Reg. 8-4-2.3 Testing Procedures

Permit holders shall have access to written procedures for performing tests and collecting samples in the determination of blood alcohol content.

Sec. 8-4-3 Permits

Reg. 8-4-3.1 General

A. The Department shall issue operator permits to properly qualified applicants upon verification of training and experience. Such permits shall be valid until re-voked or until the permit holder ceases to be employed pursuant to Regulation 8-4-3.2, A.1.

Reg. 8-4-3.2 Qualifications

A. A person desiring an operator's permit shall:

1. Be employed by a law enforcement agency or by a laboratory which provides a breath testing or collecting instrument for his use as set forth in Reg. 8-4-2.2 and
2. have successfully completed a course approved by the Department in determination of blood alcohol content utilizing a method of breath testing or sample collection.

Section 2 - Physical Coordination Tests

ASAP enforcement officers routinely administer physical coordination tests to suspected DWI offenders at the scene of the arrest. The tests are those contained in the Alcohol Influence Report (Fig. 1-2), with the exception of picking up coins. The latter was discontinued by the ASAP enforcement countermeasure because it was found to be too subjective and unnecessarily complicated.

Results and conclusions are entered by the examining officer in the appropriate space on the Alcohol Influence Report. In general, ASAP officers were convinced that results obtained from this mode of testing were of value if introduced into evidence at the trial of the accused.

All physical coordination tests are administered only once, at the scene where the suspect was stopped. There is no requirement for the presence of witnesses while physical coordination tests are administered.

An improvisation noted at this particular site was that officers frequently asked drunk driving suspects to recite the alphabet. Apparently, members of the ASAP enforcement countermeasure were satisfied that this is a useful testing method indicative of impairment where that condition is manifested.

Conclusions: Observation of ASAP officers in the field tended to support the assertion that the physical coordination tests were generally faithfully administered, without undue discretion or deviation on the part of the individual officer. There appeared to be a general consensus by ASAP officers that physical coordination tests were useful in the determination of impairment.

Elimination of the coin pick-up test appears to be justified. In addition to this one, other sites have made a similar decision concerning this specific test, largely for identical reasons. In the course of several site visits, instances were cited where officers testifying in court with regard to physical coordination tests were requested by defense attorneys to demonstrate the coin pick-up test, and had difficulties in meeting the requirements of the test. Alphabet recital, although not intended to be a substitute for the

coin pick-up, was very well received by officers and is believed to be of considerable validity in demonstrating impairment.

Recommendations: In its present form, physical coordination testing as undertaken by the ASAP enforcement countermeasure in Phoenix appears to be a viable, functional element of that countermeasure. At this time, no changes are recommended.

Section 3 - Pre-arrest Breath Screening

Not applicable. The Phoenix ASAP enforcement countermeasure never experimented with pre-arrest breath testing devices.

Conclusions: Specific reasons for the non-use of pre-arrest breath screening devices in Phoenix were not provided. The impression formed by the author was that portable breath testing devices (PBT's) were not considered to be essential to DWI enforcement, and the additional expense of their purchase was felt to be unjustified.

Recommendations: In the opinion of the author, the use of PBT's by members of the Phoenix ASAP enforcement countermeasure could have a considerable impact on reducing the subjective judgmental decisions which officers presently are often forced to make in the field. Although none of the PBT's currently in use by other ASAP enforcement countermeasures approach the level of accuracy shown by some evidentiary breath testing apparatus, it can be reasonably assumed that PBT's do provide considerably better input concerning a suspected offender's state of sobriety than any other method presently used to arrive at a determination prior to the evidentiary test. In view of existing data concerning PBT's (other than those furnished by the manufacturer) which are available to any ASAP, it should not be overly difficult to arrive at an intelligent decision as to which of the devices is the most suitable and cost-effective for the individual site. The author recommends, therefore, that the Phoenix ASAP seriously study the potential value of PBT's to its enforcement countermeasure, with implementation at the operational level as the ultimate objective.

Section 4 - Evidentiary Sobriety Testing

Arizona law prescribes that the following bodily substances may be sampled and submitted for analysis to determine blood-alcohol concentration (BAC):

- Breath
- Blood
- Urine
- Saliva
- Any other bodily substances which will, upon analysis, indicate blood-alcohol concentration.

The arresting officer is empowered to determine which type of analysis is to be undertaken.

Breath samples are predominantly submitted for BAC analysis, for the simple reason that the ASAP enforcement countermeasure is geared for that kind of analysis only. The evidentiary breath testing devices listed below are currently employed:

- Smith & Wesson Breathalyzer (Models 900 and 900A)
- Gas Chromatograph Intoximeter (GCI); manufactured by Intoximeters, Incorporated.

For Breathalyzer analyses, DWI suspects are transported to the ASAP testing facility, where they then submit a breath sample directly into the apparatus. The GCI's are kept at the police department's Crime Detection Laboratory, where analyses are conducted by staff chemists. ASAP officers have also been provided with encapsulators which are used to obtain breath samples at the scene of the arrest. The encapsulated breath sample is then forwarded to the Crime Detection Laboratory for analysis on the GCI.

The Phoenix ASAP purchased the following breath testing apparatus for the enforcement countermeasure:

- Seven Breathalyzers (Model 900A), at an approximate cost of \$750 each

- Three Gas Chromatograph Intoximeters (GCI's), at an approximate cost of \$2,700 each
- 150 encapsulators, at an approximate cost of \$100 each

Of these, five Breathalyzers and eleven encapsulators are normally available for field use by ASAP officers. Each of the district stations, as well as the headquarters of the Phoenix Police Department, contains a Breathalyzer available for use at any time. The remaining encapsulators, which are equally dispersed throughout the district stations and the headquarters facility, are available to officers on regular patrol. With the exception of the GCI's (which are retained by the Crime Detection Laboratory), no visible measures are taken to restrict access to evidentiary breath testing devices (Breathalyzers and encapsulators), or otherwise to ensure their security. The Crime Detection Laboratory is responsible for ensuring that all necessary supplies are available so that evidentiary breath testing may be conducted properly and smoothly.

The presumptive level of intoxication in Arizona is .10% of blood-alcohol concentration. By statute, no presumption may be made at BAC levels ranging from .051% to .099%, but a suspected DWI offender may still be charged with the offense and could be convicted based upon other incriminating testimony and evidence. If the suspect's BAC is at the level of .05% or less, he is presumed not to have been intoxicated. As yet, there is no per se statute concerning levels of intoxication.

Arizona has an Implied Consent law which provides that anyone who willfully refuses to submit to an evidentiary sobriety test will have his privilege to drive suspended for a period of six months. Pertinent provisions of the statute are contained on the reverse side of the Officer's Affidavit (Fig. 1-3). These are read verbatim to the offender immediately prior to the test, and if the suspect still fails to comprehend the provisions, they are explained in lay terms by the officer.

A refusal under the provisions of the Implied Consent statute may take several forms:

- Willful assertion of non-compliance with mandates contained in the statute.

- Obstinate silence by the accused during advisement of Constitutional rights and Implied Consent provisions.
- Obvious or disguised attempts by the suspect to undermine the sample-taking process.

Anyone refusing to submit to the evidentiary sobriety test is charged with the original offense of Driving While Under the Influence, in addition to facing an administrative hearing by the Drivers License Service of the Arizona Highway Department. The arresting officer must also be present at the hearing and must establish the following to the satisfaction of the Hearing Officer:

- Did he have sufficient grounds to believe that the suspect was under the influence of intoxicants?
- Did the accused understand the provisions of the Implied Consent statute?
- Was the accused in physical control of his vehicle?

These are the key elements which must be brought out at the time, and little else appears to exert any influence on the outcome of the hearing. It was made plain that there are normally no problems on the part of the police officer in attesting positively to the above, and the operators' license of the accused is usually suspended for the six-month period. The latter has the option, however, of appealing the findings of the Hearing Officer to Superior Court.

Evidentiary breath testing devices, other than the GCI, are operated by law enforcement officers who have successfully completed a 24-hour training course which qualifies them to operate the Breathalyzer and encapsulator. Upon completion of the training course, the new operator is issued a permit by the Arizona State Department of Health. Training material and additional requirements for prospective breath test operators may be reviewed in Appendix A; Exhibit 1a. The GCI's are operated only by staff chemists of the Crime Detection Laboratory.

The DWI suspect is observed for a minimum of 15 minutes before the evidentiary breath test is administered. This observation, which may be carried out by the arresting officer, commences once the officer is

in a position to do so without interruption. If the arresting officer also happens to be a certified breath test operator, he may administer the evidentiary test to his own prisoner. As a matter of fact, it was mentioned that this procedure is generally followed in the case of ASAP officers. The suspected offender is not presented with any document which bears his blood-alcohol concentration, but is usually informed verbally by the examining or arresting officer.

Unless administering the evidentiary breath test, the arresting officer is not required to witness the procedure. Pertinent details concerning procedures followed in the Breathalyzer analysis, in addition to conclusions formed by the examiner and the arresting officer, are entered on the Alcohol Influence Report (Fig. 1-2).

If the Breathalyzer was used, the individual evidentiary test is recorded in a log book (one log book for each Breathalyzer) provided for that specific purpose. These logs are subject to periodic inspection by chemists of the Crime Detection Laboratory.

Samples collected by means of the encapsulator are forwarded to the Crime Detection Laboratory, along with a Request for Scientific Analysis (Fig. 1-4), which formally directs chemists at the Laboratory to conduct the analysis.

Breath is by far the substance preferred for analysis of blood-alcohol concentration. (The reasons for this development have been previously pointed out.) Blood samples are generally withdrawn only at the request of the DWI suspect (at his own expense), or if, for any reason, he is incapable of insufflating a breath testing device. In the event that a blood sample must be obtained, only a licensed physician (or registered nurse) is authorized to withdraw it. The sample is then forwarded to the Crime Detection Laboratory, where it is analyzed by a staff chemist. (If the sample was withdrawn at the suspect's request, it is analyzed by a private laboratory.)

The arresting officer, as well as the court of jurisdiction, is apprised of the results of the analysis, which may be as early as on the following day. The arresting officer receives a copy of the document

containing the offender's BAC, and another copy is forwarded to the police department's Traffic Bureau.

Knowledgeable sources indicated that local medical facilities, although certainly prepared to handle blood sample withdrawal, are usually not enthusiastic about DWI processing in that sense. It is felt that the medical staff prefer not to become involved, fearing the possibility of being subpoenaed to testify at the trial of the accused. (The police asserted that this fear is unwarranted, since the arresting officer is required to witness the withdrawal of the blood sample.) The consequence, of course, is that blood samples are usually not obtained unless there is no other alternative.

Blood samples of persons fatally injured in motor vehicle crashes are obtained only if requested by police. Apparently, at the time of this survey, there was no statutory requirement for standard application of this procedure. The same seemingly applies to principals in a crash resulting in fatalities.

From all indications, urine samples or bodily substances other than breath or blood are rarely submitted for BAC analysis. Urine samples are more likely to be obtained if the officer suspects drugs or narcotics as the intoxicating factor.

Conclusions: The ASAP enforcement countermeasure of the Phoenix Police Department consists entirely of motorcycle units, with the exception of one unmarked patrol vehicle which is principally used for prisoner transports. The breath encapsulators are portable and lightweight, thus being particularly adaptable for use by motorcycle officers.

Both the Breathalyzers and the encapsulators appear to have been well-received by officers engaged in ASAP enforcement. No problems of any magnitude associated with these devices could be recounted by any of the officers queried. With the gas chromatograph, however, an occasional problem surfaced concerning blood-alcohol readings. It was mentioned that, now and then, low readings were obtained from breath samples of obviously intoxicated suspects. (This may not

necessarily be attributable to the gas chromatograph, however. It should be remembered that the breath sample is collected by means of the encapsulator, and careless operation of the latter could be responsible for deficient samples.) It must be recognized, though, that in using the encapsulator only one sample of the suspect's breath is collected, regardless of the quality of that sample. Therefore, should the arresting officer fail to exercise scrupulous care in obtaining the sample, he may be left with something less than a specimen which is accurately indicative of the suspect's sobriety at the time of his arrest. The results are not immediately known to the arresting officer, because the sample must be forwarded to the Crime Detection Laboratory for analysis on the gas chromatograph. Consequently, use of the encapsulator precludes the opportunity for a re-test in the event that the sample provides a suspiciously low BAC reading.

The Phoenix ASAP enforcement countermeasure, along with practically all others examined in this survey, overwhelmingly endorses breath analysis as the most sensible approach to sobriety testing for evidentiary purposes. All necessary equipment and facilities are maintained by the police department, and officers are assured of relatively trouble-free processing with a minimum of delay.

The author was left with the impression that other methods of evidentiary sobriety testing are avoided when possible, mainly because extraneous facilities and/or personnel must usually be sought to carry them out. When this becomes necessary, the process is often more time-consuming, complex, and problematic.

Recommendations: The system for evidentiary sobriety testing in operation by the enforcement countermeasure of the Phoenix ASAP appears to be satisfactory in all respects and is unanimously accepted by those involved in the effort. The variety of breath examining apparatus in use provides an adequate capability to handle any situation which may arise involving this mode of sobriety testing. Resources for other methods of sobriety testing are sufficiently available to preclude any difficulties in this area.

It is not known whether the Arizona State Department of Health has ever issued regulations addressing security and access restrictions pertinent to evidentiary breath testing equipment, but it was evident that nothing of the kind is being observed in the use of the Breathalyzer. In the opinion of the author, tighter administrative control of the devices will serve to prevent abuse or tampering, thus helping to reduce maintenance and upkeep, in addition to enhancing the Breathalyzers' function as evidentiary instruments.

Some skepticism may be justified when considering the 24-hour Breathalyzer Operator's course currently offered to police officers. It appears that completion of a 40-hour course may be more appropriate as a minimum requirement, since there is some doubt whether prospective operators are sufficiently indoctrinated in the span of 24 hours of instruction. During this training, candidates are exposed to the decimal system of mathematics, the effects of alcohol on the human physiology, the principles of breath testing, and fault-free manipulation of the Breathalyzer. A 24-hour course of instruction may permit only a cursory examination of some of these aspects.

A statutory requirement directing medical examiners or coroners to analyze a blood sample of fatally-injured victims of motor vehicle crashes for blood-alcohol concentration would certainly be desirable. Ideally, such a statute should contain provisions for this kind of analysis in the case of all principals involved in a motor vehicle crash resulting in a fatality.

**CITY OF PHOENIX, ARIZONA
POLICE DEPARTMENT**

**ALCOHOL INFLUENCE
REPORT**

| | | | | | | | |
|--|--|---|--------|---|-----------|------------------------------------|------------------------------------|
| Name Last | | First | | Middle | | Arrest or Citation D.W.I. Only | |
| Address | | City | | State | | S.S.# | |
| Origin | | Sex | D.O.B. | Occupation | D.R. Lic# | State | Traffic Bureau Use Acc.# |
| Loc. of Arrest | | Date-Time of Arrest | | AM PM | | GRID | |
| Vehicle Description | | | | Vehicle released to: | | | |
| | | | | Removed or left: | | | |
| Were you operating this vehicle? | | YES NO | | Where were you going? | | From where did you start? | |
| What time did you leave? | | What time is it now? | | Actual time | | Where are you now? | |
| What have you been drinking? | | How much? | | Where were you drinking? | | | |
| Time you started drinking | | Time you stopped drinking | | Have you been drinking since the accident? | | YES NO What? | |
| Are you hurt? | | YES NO | | Did you get a bump on the head? | | YES NO Are you sick? YES NO | |
| Nature of illness | | Have you been to a Dr. or Dentist Recently? | | YES NO | | When Date-Time | |
| Name of Dr. or Dentist. | | Reason for visit | | Have you taken any medicine in past 24 hours? | | YES NO | |
| Type of Medicine | | Time of last dose or pill | | Date | Time | Do you have diabetes? | YES NO Do you take insulin? YES NO |
| Have you used a mouthwash or spray recently? | | YES NO | | Do you have false teeth? | | YES NO Do you wear glasses? YES NO | |
| Do you have any physical defects? | | YES NO | | If yes describe | | | |
| Are you under the influence of Alcoholic Liquor now? | | What is the date today? | | What day of the week is it? | | | |
| What location were you stopped by the officer? | | What direction is north? | | (Describe Accuracy) | | | |
| When did you last eat? | | What did you eat? | | How much sleep have you had in the last 24 hours? | | How much sleep today? | |
| How long have you been awake? | | From To | | Is the officer that arrested you here now (if asked at other than location of arrest) | | YES NO | |

EXAMINATION: (Draw circles around words describing observed condition - add other words of your own).

| | |
|-----------------|---|
| Breath | Odor of intoxicating liquor— Apparently none Faint Moderate Strong |
| Color of Face | Apparently normal Flushed Pale Other-Describe: |
| Clothes | Clean Orderly Disarranged Torn Bloody Vomit Urine Other: - Describe: |
| Attitude | Polite Excited Antagonistic Cocky Stuporous Other-Describe: Cooperative Indifferent Hilarious Talkative Insulting Sleeping |
| Unusual Actions | Profanity Hiccough Belching Vomiting Fighting Other - Describe: |
| Eyes | Apparently normal Watery Bloodshot Other-Describe: |

COORDINATION TESTS (Conduct in sequence if subject is willing) Circle appropriate words.

| SPEECH | CHOICE OF WORDS | BALANCE ON ONE LEG | | BALANCE | WALKING & TURNING | FINGER TO NOSE | PICKING UP COINS | FOUR ST. TEST |
|--|---------------------|--|---|---|--|---|---|--|
| Mumbled Natural Slurred Staggered Unsteady | Good Poor Bad | RIGHT Unable Sway Refused Steady | LEFT Unable Sway Refused Steady | Natural Poor Swaying Sagging Knees Falling Uncertain Need Support | Natural Poor Swaying Staggering Falling Uncertain | Right Sure Hesitant Uncertain Left Sure Hesitant Uncertain | Natural Stumbled Unsteady Fell Swayed Unsteady | Continued Stopped Unsteady Fell Swayed Unsteady |

| Attach Photograph Here | | | Attach Breathalyzer Test Record Here | | |
|--|---------------------|------------------|---|---------------------|---|
| BREATHALYZER OPERATIONAL CHECK LIST 1. <input type="checkbox"/> Check temperature (50° + 3°C). Breathalyzer No. _____ 2. <input type="checkbox"/> Insert ampul in left-hand holder. 3. <input type="checkbox"/> Gauge, open and connect test ampul. (Ampul Control Number _____) 4. <input type="checkbox"/> Turn to TAKE, flush out instrument with squeeze bulb, turn to ANALYZE and affix test record. 5. <input type="checkbox"/> When red empty light appears, wait 1½ minutes, turn on LIGHT and BALANCE. 6. <input type="checkbox"/> Ink pointer, align with start line and stamp test record. 7. <input type="checkbox"/> Turn to TAKE, affix mouthpiece, take breath sample turn to ANALYZE. (Record time of test.) 8. <input type="checkbox"/> When red empty light appears, wait 1½ minutes, turn on LIGHT, BALANCE and stamp test record. 9. <input type="checkbox"/> Turn valve to OFF, remove and dispose of test ampul, record result. Percent Blood Alcohol _____ %by wt. | | | INVESTIGATING OFFICER OPERATIONAL CHECK LIST 1. Read the standard "ADMONITION OF RIGHTS CARD" to the subject being charged, prior to questioning. 2. Call I Bureau for any prior bookings or similar charges on same subject within the past 24 hrs. Phone ext. 6116 and have the name entered on the I Bureau Log. 3. Obtain a driver's license check of subject, phone 261-7401 days or after 5 p.m. phone 261-7406. Enter this information on the line above "Arrestment Date" including source of information at the driver's license bureau. 4. Implied Consent Law explained. Subject observed minimum fifteen minutes immediately prior to chemical test by: _____ Observing Officer (Signature & Serial) _____ | | |
| DATE & TIME OF TEST | | LOCATION OF TEST | TYPE OF TEST | | <input type="checkbox"/> BREATHALYZER <input type="checkbox"/> BLOOD <input type="checkbox"/> G.C.I. KIT # _____ <input type="checkbox"/> OTHER _____ |
| Operator Comments | | | | | |
| Operators Name & Serial Number | | | | | |
| CONCLUSION OF OFFICER: That the subject examined <input type="checkbox"/> IS NOT <input type="checkbox"/> IS under the influence of <input type="checkbox"/> INTOXICATING LIQUOR <input type="checkbox"/> DRUGS | | | | | |
| What brought subject to Officer's attention? Accident <input type="checkbox"/> Speed <input type="checkbox"/> Changing Lanes <input type="checkbox"/> Traffic Control Viol. <input type="checkbox"/> Citizen <input type="checkbox"/> Other: _____ | | | | | |
| Unusual Statements: | | | | | |
| Signs of Injury, Illness or physical defects: | | | Location where examination made: | | |
| Witness Name | | Address | Phone # | | Obtain written statement testifying to the driving of the defendant. |
| Witness Name | | Address | Phone # | | Obtain written statement testifying to the driving of the defendant. |
| MVD Driver's Lic. Record | | | I-Bureau DWI Record Check (NCIC) | | |
| Arrestment Date | Court | Time: a.m. p.m. | Officers Next Two Court Dates: | #1 Date | Time: a.m. p.m. |
| | | | | #2 Date | Time: a.m. p.m. |
| CODE NUMBER | WRITTEN DESCRIPTION | CITATION # | CODE NUMBER | WRITTEN DESCRIPTION | CITATION # |
| 1. | | | 3. | | |
| 2. | | | 4. | | |
| DETAILS | | | | | |
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| Right Index | | | | | |
| | | | | | |
| | | | | | |
| Driver Released To: | | Name | Address | Phone | |
| Arresting Officer Name & Serial # | | | | | |
| STATUS: (Circle all that apply to this subject) Driver Passenger Pedestrian Non-Accident Fatality Property Damage | | | | | |
| Personal Injury Arrested Released Hospitalized If subject is 57 _____, indicate the responsible party and address of same. | | | | | |

Figure 1-2 (cont'd.)

Mail ORIGINAL ONLY to:
Driver License Service
2339 North 20th Avenue
Phoenix, Arizona 85008

ARIZONA HIGHWAY DEPARTMENT
DRIVERS LICENSE SERVICE
OFFICER'S AFFIDAVIT

_____, says
(OFFICER'S NAME - PLEASE PRINT)

On _____ at _____ M.
(MONTH-DAY-YEAR) (TIME)

on _____, in or near _____
(LOCATION-STREET OR HIGHWAY) (TOWN)

Arizona, _____ was arrested and cited
(ARRESTEE)

for the following violation(s): _____
(CITATION NO.) (VIOLATION) (CITATION NO.) (VIOLATION)

Arrestee's address: _____
(STREET) (CITY) (STATE) (ZIP CODE)

Dr. License No. _____ State _____ D.O.B. _____
(MONTH-DAY-YEAR)

Vehicle License No. _____ State _____ Year _____

Vehicle description _____
(COLOR) (YEAR) (MAKE) (MODEL)

I had reasonable cause to believe the person arrested had been driving a motor vehicle upon a highway while under the influence of intoxicating liquor. Among the actions which led me to that belief were:

1. The arrestee's driving behavior and the details of the pursuit and apprehension are as described: (or as described on the attached report which is incorporated herein by this reference): _____
2. After the arrestee was apprehended, I observed the following objective symptoms of intoxication, as described in the attached visual form which is incorporated herein and made a part hereof: (Or as described herein if a visual form is not attached): _____

EXAMINATION: (Draw circles around words describing observed conditions. Add other words of your own.)

| | | | | | | | |
|---------------------------------|--|-------------------|--|-------------|------------------------|---------------|-----------------|
| BREATH | Odor of alcoholic liquor - apparently none | Faint | Moderate | Strong | | | |
| COLOR OF FACE | Apparently Normal | Flushed | Pale | (Other) | | | |
| CLOTHES | Orderly | Mussed | Soiled | Disarranged | Disorderly | (Describe) | |
| ATTITUDE | Polite | Excited | Antagonistic | Cocky | Care-free | Stupefied | (Other) |
| | Cooperative | Indifferent | Hilarious | Talkative | Combative | Insulting | |
| UNUSUAL ACTIONS | Profanity | Hiccough | Belching | Vomiting | Fighting | (Other) | |
| EYES | Apparently Normal | Watery | Bloodshot | | | | |
| CHECK SQUARES IF TESTS ARE MADE | <input type="checkbox"/> PUPILS | Apparently Normal | Dilated | Contracted | Poor Reaction to Light | | |
| | <input type="checkbox"/> BALANCE | Fair | Sure | Swaying | Wobbling | Sagging Knees | Falling (Other) |
| | <input type="checkbox"/> WALK & | Fair | Sure | Swaying | Stumbling | Staggering | Falling (Other) |
| | TURNING | Fair | Sure | Swaying | Uncertain | Staggering | Falling (Other) |
| | <input type="checkbox"/> FINGER-TO-NOSE TEST | Right - Sure | Uncertain | Left - Sure | Uncertain | (Other) | |
| | <input type="checkbox"/> PICKING UP COINS | Sure | Slow | Uncertain | Unable | (Other) | |
| <input type="checkbox"/> SPEECH | Fair | Slurred | Stuttering | Confused | Incoherent | (Other) | |
| | | Choice of Words | Clearness and Correctness of Enunciation | | | | |

READ TO ARRESTEE:

1. A.R.S. § 28-691, as amended, requires you submit to a chemical test to determine the alcoholic content of your blood. If you refuse to submit to this test, your right to drive will be suspended for six months. I am, therefore, requesting you submit to a breath test.
2. Those rights of which you have just been advised, that is the right to remain silent or to speak with an attorney, have an attorney present during questioning, or to have one appointed for you, do not apply to this request.
3. If you remain silent, your silence will be considered a refusal to take the test. Likewise, you are advised that regardless of what an attorney may advise you regarding submission to this test, if you refuse to take the test, your right to drive will still be suspended for six months.

CHECK APPROPRIATE ANSWER:

Arrestee was informed that he was under arrest before a breath test was requested by officer. YES NO

Arrestee was advised that if he refused to submit to the test his right to drive would be suspended for six months. YES NO

Did arrestee appear to understand the consequences of refusal to take the test? YES NO

If no, explain why not. _____

Did arrestee refuse to submit to the test? YES NO

Indicate exactly how arrestee refused to submit to the test. _____

I certify that the foregoing is true and correct and that I read paragraphs 1, 2 and 3 under "READ TO ARRESTEE" to the person named herein.

Signature of Officer: _____ I.D. No. _____

Agency: _____

Address _____
(STREET) (CITY) (COUNTY) (ZIP CODE)

On the _____ day of _____, 19____, the person whose signature is affixed to this affidavit was placed under oath and swore to me the statements contained in this affidavit were true and correct and affixed his signature thereto in my presence.

(NOTARY PUBLIC)

My commission expires:

IMPORTANT INSTRUCTIONS TO ARRESTING OFFICER

1. This affidavit is to be submitted only when an arrested person refuses to submit to a breath test. If circumstances precluded the use of a breath test and a blood or urine test was requested and refused, you should request your legal advisor to prepare an affidavit to submit to the Department.
2. The language appearing under the heading "READ TO ARRESTEE" must be read to the arrestee when asking that person to submit to the breath test.
3. When you have completed this affidavit, take it to the Notary Public, have the Notary place you under oath, swear to the Notary the statements in the affidavit and sign it.

Figure 1-3 (cont'd.)

REQUEST FOR SCIENTIFIC ANALYSIS

| | |
|--|-----------------------------|
| SUSPECT NAME (LAST, FIRST, MIDDLE) | D. N. NO. |
| SUSPECT NAME (LAST, FIRST, MIDDLE) | TYPE OF REPORT |
| LOCATION OF OCCURRENCE | ARREST NO. OR P.P.D. NO. |
| OFFICER REQUESTING ANALYSIS | DATE & TIME OF OCCURRENCE |
| VICTIM NAME (LAST, FIRST, MIDDLE) FIRM NAME IF BUSINESS | DATE & TIME OF THIS REQUEST |
| ANALYSIS REQUESTED & SPECIAL INSTRUCTIONS TO CRIMINALIST | |
| | |
| | |

DO NOT WRITE BELOW THIS LINE

THE UNDERSIGNED IS PREPARED TO TESTIFY THAT HE IS A CRIMINALIST EMPLOYED BY THE CITY OF PHOENIX AND THAT HE DID ON THE _____ DAY OF _____ 19____ OBTAIN FROM _____ EVIDENCE CONSISTING OF:

THAT HE DID MAKE AN EXAMINATION AND ANALYSIS OF THIS EVIDENCE AND IN HIS OPINION:

AT THE CONCLUSION OF THE ANALYSIS THE EVIDENCE ON _____ DAY OF _____ 19____ WAS

| | | | |
|----------------------|-------------------|-------|-------------|
| SIGNATURE OF ANALYST | DATE & TIME TYPED | CLERK | D.N. NUMBER |
| | | | |

Figure 1-4

ARKANSAS (PULASKI COUNTY)

Section 1 - Legislative Provisions

From State Statute 75-1027:

It is unlawful and punishable as provided in Section 3 (75-1029) of this Act for any person who is under the influence of intoxicating liquor to drive or be in actual control of any vehicle within this State.

From State Statute 75-1031:

In any criminal prosecution of a person charged with the offense of driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

- If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, urine, breath or other bodily substance, it shall be presumed that the defendant was not under the influence of intoxicating liquor.
- If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, urine, breath, or other bodily substance, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
- If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, urine, breath, or other bodily substance, it shall be presumed that the defendant was under the influence of intoxicating liquor.

From State Statute 75-1045:

Any person who operates a motor vehicle upon the highways of this State shall be deemed to have given his consent..., to a chemical test or tests, of his blood, breath or urine for the purpose of determining the alcoholic contents of his blood, if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor...

From State Statute 75-1026:

It is unlawful for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this State...

Section 2 - Physical Coordination Tests

Judges and prosecutors of Pulaski County have identified four elements necessary to obtain a conviction for DWI in cases appearing in their jurisdiction:

- Observation of the officer, before and during the arrest.
- Field tests administered by the officer.
- Admissions by the arrestee.
- Chemical test evidence.

The following information is extracted from the Pulaski County Safety Action Project Training Program Lesson Plan. This document has been accepted as the training plan to be utilized in instructing new officers and its content has been recognized as accurately depicting the who, how, and what variations used by the law enforcement personnel of the Pulaski County ASAP. (See Appendix A; Exhibit 2a.)

After an officer stops a suspected DWI he has two (2) reasonable alternatives:

1. He may decide that the suspect is not intoxicated and, therefore, either issue a citation for another observed violation or release the driver.
2. He may determine intoxication and place the driver in custody. Before formal arrest the officer may wish to conduct further investigation to determine whether to dismiss the person stopped in error and, conversely, to make an arrest with more confidence. In most cases this investigation consists of "field tests." The administration of field tests prior to arrest, run the risk of violating the Fifth Amendment concerning self-incrimination and the Fourth Amendment concerning unreasonable search and seizure.

.....
Arrest is commonly defined as having four (4) elements as follows:

1. Intention to arrest.
 2. Actual or assumed authority.
 3. Actual or constructive restraint of the person to be arrested.
 4. Understanding by the arrested person that he is being arrested.
- At the moment of arrest or as soon as possible thereafter, the person arrested should be told of the constitutional rights available to him. Field tests administered following arrest are not as subject to legal challenge as tests administered prior to arrest. It is observed that the officer has the legal authority to release a person from arrest if he decides after the field tests that he is not DWI.

Field tests may be given prior to or after arrest.

1. Prior to arrest helps to establish probable cause. May be challenged on constitutional safeguards. [Jacksonville Police Department is the only agency that advises of Constitutional rights prior to the arrest/field test.]
2. After arrest requires Miranda Warning. [Only the Little Rock Police Department advised Miranda after the arrest; however, field tests are given prior to the arrest. All agencies advise Implied Consent after arrest.]

The physical coordination (psychomotor) tests are generally administered to all suspected DWI offenders. Those employed at this site are: finger to nose; coin lift; walking. Each test is administered once, at the scene of apprehension.

No problems were cited by enforcement personnel regarding the use of psychomotor tests.

Conclusions: Although officers of the Pulaski County ASAP receive training as to when to administer the field tests and how to complete the Alcohol Influence Report Form (Fig. 2-2), no instruction is provided on how to administer these tests or how to objectively interpret the results. Each officer has his own method of conducting the physical coordination tests and each makes his own subjective evaluation of the results.

A review of BAC results of ASAP and non-ASAP enforcement personnel shows a clear majority of readings in the .18-.24% range, indicating a reluctance on the part of arresting officers to make judgmental decisions at the lower BAC levels in evaluating physical coordination test results.

The training program itself may tend to undermine officers' confidence in judgments based upon observation and psychomotor testing, as suggested by the following rather disparaging and/or contradictory statements from Lesson Plan No. 7: Field Tests to Establish Intoxication (Appendix A; Exhibit 2a):

Alcohol Influence Report Form...leaves a great deal to be desired, but will be useful until science develops a reliable psychomotor testing instrument.

.....
Erratic driving behavior...which might not constitute a clear violation. In short, the driving is suspicious but an arrest

is not justified.

Roadside observation of the driver. This section is designed to separate those items of circumstantial evidence obviously not covered by Miranda...

Roadside check of vehicle...is of little value to the individual officer.

Performance tests. There is some question as to the legality of field tests...Legality is rarely ever challenged. These tests leave something to be desired.

Although the preceding statements may accurately depict the state of the art at this time in Pulaski County, the manner in which they are presented may result in a counterproductive influence on effective DWI enforcement at this site. Without a constructive alternative, such as pre-arrest screening, officers appear to have been trained to make arrests for DWI only when the suspect meets the classical "falling down drunk" model, and to shy away from the close observation necessary to identify symptoms of impairment - both in judgment and reaction - exhibited in persons with BAC's in the .10 to .15% range.

Recommendations: Lesson Plan No. 7 (Field Tests to Establish Intoxication) of the Training Program developed by the Pulaski County Safety Action Project should be rewritten, as soon as possible, deleting inaccurate statements and rephrasing cited passages in such a manner as not to confuse or demoralize the operational law enforcement reader. This revised lesson plan should be prepared in conjunction with the training officer of each law enforcement agency involved, with final copies given general distribution throughout each law enforcement agency.

Written guidelines for law enforcement officers, listing approved field tests and the manner in which these tests will be administered, should be developed by the agencies involved and approved by an appropriate judicial authority. The written/approved guidelines should be given general distribution throughout each law enforcement agency.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is not conducted at the Pulaski County,

Arkansas, site, nor is it provided for by legislative mandate.

Recommendations: Pre-arrest breath screening should be evaluated for use within this jurisdictional area on an experimental basis to determine its effect in reducing the average BAC of arrested persons.

Section 4 - Evidentiary Sobriety Testing

Evidentiary testing is regulated by the Arkansas Department of Health, Bureau of Environmental Health Services, Division of Blood Alcohol, Little Rock, Arkansas.

Regulations of the Department establish bodily substances to be sampled to determine evidentiary BAC as:

- Breath
- Blood
- Urine

Each law enforcement agency is given its choice of type of test(s) to be administered; however, due to cost-effectiveness and convenience, all evidentiary testing conducted by the Pulaski County ASAP consists of breath analyses.

Regulations of the Department further dictate that:

- Samples for alcohol analysis be collected from drivers over 15 years of age sustaining fatal injuries in highway crashes who die within four hours of such crashes; and, to the maximum extent practicable, from all surviving drivers in accidents fatal to others; and in other serious accidents, to include pedestrian accidents.
- The chain of evidence must be maintained in handling of samples; each sample container should bear:
 1. Name of suspect
 2. Arrest or slate number
 3. Date, time, and location of sample collection
 4. Name or initials of person collecting sample.
- Arresting officer shall observe collection of sample and initial or mark sample seal for further identification.

Chain of evidence and sample authenticity is maintained in BAC analyses through utilization of the Arkansas Department of Health Blood Alcohol Report Form (Fig. 2-3). The reverse of this form outlines the exact procedure to be followed in completing the face of the report.

The evidentiary breath testing apparatus used at this site is the Alco-Analyzer Gas Chromatograph Model 400. Each agency has one machine available to it for field use (except the Arkansas State Police, which employs the equipment belonging to the jurisdiction of arrest). These instruments were purchased by the respective agencies prior to implementation of the ASAP program at a cost of approximately \$800 each.

The Alco-Analyzer has the capability of testing breath, blood, and urine. It functions on the principle of temperature change produced by alcohol when it passes over a sensor after being separated from other components of the sample. The constant temperature of the system is affected in proportion to the quantity of alcohol in a measured sample, and this change induces an electrical impulse which is recorded on a graph. The height of the alcohol "peak" measures the BAC through comparison with a known standard.

The offender is advised of the state's Implied Consent provisions immediately prior to chemical testing (post-arrest) by the arresting officer, who recites from memory. It is emphasized that willful assertion of non-compliance or obvious attempts to undermine the sample-taking process will be deemed a refusal, resulting in a possible six-month license suspension should the court-held administrative hearing find cause to uphold the refusal.

It is required to keep the suspect under observation a minimum of 20 minutes prior to evidentiary testing. The observation period commences at the time of arrest and the arresting officer attests to the breath technician that he has fulfilled the observation requirement. The results of the BAC test are entered on the Blood Alcohol Report Form and also on the face of the citation.

Officers of the Arkansas State Police and Little Rock Police Department are authorized to administer the breath test to their own suspects,

as they are licensed breath technicians. Officers of the Jacksonville and North Little Rock Police Departments do not conduct evidentiary tests, but rather utilize the station-based breath technician, who also serves as agency "jailer." Each agency has designated one breath technician as a Senior Operator whose responsibility it is to ensure that all necessary supplies are available to support the evidentiary testing system.

In order to be certified by the State Department of Health as a breath technician, officers must satisfactorily complete the Department of Health 40-hour breath technician course. Refresher training is not conducted; however, operators must be rechecked for accuracy every 90 days by the designated Senior Operators of their respective agencies.

Conclusions: The present system of conducting evidentiary testing by enforcement personnel operates very smoothly. The testing instruments are housed at the lock-up of each agency (except the Arkansas State Police, which utilizes local facilities), which eliminates unnecessary transporting of the offender.

The location of the testing instrument within the jail area (generally behind a restraining screen) eliminates the possibility of tampering by the offender; however, no measures have been taken to secure the equipment from non-licensed agency personnel who might experiment with the equipment during unsupervised familiarization.

As stated in Section 2 - Physical Coordination Tests, judges and prosecutors require four elements of evidence for a DWI conviction - the chemical test evidence is considered only after officer observation, field tests, and offender's admissions have been considered.

Recommendations: Separate facilities within the jail area should be established for conducting evidentiary breath testing. This facility should allow for the safety of both suspect and officers, and should also deter unauthorized tampering with testing equipment by either offenders or unauthorized agency personnel.

Seminars should be developed and scheduled to demonstrate to judicial and prosecuting officials the value and accuracy of evidentiary breath test results as determiners of impairment.

A form should be developed and implemented to inform the offender of his BAC result upon conclusion of the testing process.

Written policy and procedural guidelines should be developed at the agency level, to be followed by arresting/testing officers in processing DWI offenders through evidentiary testing. This document should receive general distribution throughout the respective law enforcement agencies.

CHECK: CHECK:
☐ Driver ☐ Accident
☐ Pedestrian ☐ Violation
☐ Passenger ☐ Other

Date and Time of Accident or Violation:

A.M. _____

P.M. _____

ASAP-16

ALCOHOL INFLUENCE
REPORT FORM

Police Dept. _____

Arrest No. _____

Accident No. _____

Arresting Officer _____

Date and Time in Custody:

A.M. _____

P.M. _____

Name _____ Address _____

Sex _____ Race _____ DOB _____ Ht. _____ Wt. _____ D.L. No. _____ State _____

Vehicle Make _____ Model _____ Year _____

CHEMICAL TEST DATA: ☐ Blood ☐ Breath ☐ Refused ☐ Unable ☐ BAC _____

1. POLICE ACTION PREDICATED UPON:

- ☐ Routine Road Check
- ☐ Intuition of Officer
- ☐ Physical Appearance of Driver
- ☐ Actions of Driver
- ☐ Physical Appearance of Occupants
- ☐ Actions of Occupants
- ☐ Physical Appearance of Vehicle
- ☐ Erratic Driving Behavior
- ☐ Traffic Law Violations
- ☐ Other (Specify) _____

4. ERRATIC DRIVING BEHAVIOR:

- ☐ Weaving
- ☐ Driving on Shoulder
- ☐ Abnormal Stops
- ☐ Abnormal Starts
- ☐ Driving in Spurts
- ☐ Driving With Jerky Motions
- ☐ Over-reacting to Existing Conditions
- ☐ Driving Slower Than the Traffic Flow
- ☐ Other (Specify) _____

2. PHYSICAL APPEARANCE and/or ACTIONS
OF DRIVER:

- ☐ Flushed Face
- ☐ Sleepy Appearance
- ☐ Disorderly or Disarranged Clothing
- ☐ Abnormal Concentration
- ☐ Driving Without Lights
- ☐ Driving With Window Down In Cold Weather
- ☐ Failure to Use Signal Lights
- ☐ Failure to Dim Lights
- ☐ Driving While Holding Bottle or Cup

5. TRAFFIC LAW VIOLATIONS:

- ☐ Speeding
- ☐ Crossing Center Line
- ☐ Impeding Traffic
- ☐ Improper Passing
- ☐ Following Too Close
- ☐ Failure to Obey Traffic Control Devices
- ☐ Other Violations (Specify) _____

3. PHYSICAL APPEARANCE and/or ACTIONS
OF PASSENGERS:

- ☐ Distracting Driver
- ☐ Unusual Hilarity
- ☐ Holding or Passing Bottles or Cups
- ☐ Littering Highways
- ☐ Sleeping or Reclining
- ☐ Unusual Passenger Arrangement
- ☐ Disorderly or Disarranged Clothing
- ☐ Other (Specify) _____

6. ROADSIDE OBSERVATIONS OF DRIVER:

ODOR OF ALCOHOL

- ☐ Faint ☐ Moderate
- ☐ Strong ☐ Apparently None

CLOTHING

- ☐ Clean ☐ Orderly
- ☐ Mussed ☐ Disarranged
- ☐ Burned ☐ Soiled
- ☐ Torn

6. ROADSIDE OBSERVATIONS OF DRIVER (Cont'd.)

| ATTITUDE | |
|--------------------------------------|------------------------------------|
| <input type="checkbox"/> Polite | <input type="checkbox"/> Hilarious |
| <input type="checkbox"/> Cooperative | <input type="checkbox"/> Excited |
| <input type="checkbox"/> Talkative | <input type="checkbox"/> Insulting |
| <input type="checkbox"/> Carefree | <input type="checkbox"/> Combative |

| UNUSUAL ACTIONS | |
|--|------------------------------------|
| <input type="checkbox"/> None | <input type="checkbox"/> Belching |
| <input type="checkbox"/> Laughing | <input type="checkbox"/> Vomiting |
| <input type="checkbox"/> Crying | <input type="checkbox"/> Profanity |
| <input type="checkbox"/> Hiccoughing | <input type="checkbox"/> Fighting |
| <input type="checkbox"/> Other (Specify) _____ | |

7. ROADSIDE CHECK OF VEHICLE

| | |
|---|--|
| <input type="checkbox"/> No Inspection Sticker | |
| <input type="checkbox"/> Expired Inspection Sticker | |

| MECHANICAL DEFECTS | |
|-----------------------------------|-------------------------------------|
| <input type="checkbox"/> Brakes | <input type="checkbox"/> Tires |
| <input type="checkbox"/> Horn | <input type="checkbox"/> Visibility |
| <input type="checkbox"/> Lights | <input type="checkbox"/> Wipers |
| <input type="checkbox"/> Steering | |

| UPHOLSTERY OR SEAT COVERS | |
|----------------------------------|-----------------------------------|
| <input type="checkbox"/> Burned | <input type="checkbox"/> Streaked |
| <input type="checkbox"/> Spotted | <input type="checkbox"/> Torn |
| <input type="checkbox"/> Stained | |

| OTHER ITEMS | |
|---|---|
| <input type="checkbox"/> Litter in Seats and on Floorboards | <input type="checkbox"/> Visual Evidence of Vehicle Abuse |
| <input type="checkbox"/> Empty Drinking Containers | <input type="checkbox"/> Alcoholic Beverages |
| <input type="checkbox"/> Other (Specify) _____ | <input type="checkbox"/> Offensive Odors |

8. ROADSIDE INTERVIEW WITH DRIVER

| SPEECH | |
|--|--|
| <input type="checkbox"/> Apparently Normal | |
| <input type="checkbox"/> Confused | <input type="checkbox"/> Slurred |
| <input type="checkbox"/> Mumbled | <input type="checkbox"/> Thick-Tongued |

QUESTIONS

How long ago did you last drink alcoholic beverages?

Over what period have you been drinking?

What did you drink and how much?

| | Ounces |
|----------------------------------|--------|
| <input type="checkbox"/> Beer | _____ |
| <input type="checkbox"/> Wine | _____ |
| <input type="checkbox"/> Whiskey | _____ |
| <input type="checkbox"/> Gin | _____ |
| <input type="checkbox"/> Vodka | _____ |
| <input type="checkbox"/> Other | _____ |

How much did you eat during this time?

| | |
|--------------------------------------|-----------------------------------|
| <input type="checkbox"/> Full Meal | <input type="checkbox"/> Sandwich |
| <input type="checkbox"/> Very Little | <input type="checkbox"/> Nothing |

Do you have any physical ailments, such as Diabetes?

(Specify): _____

Are you taking medication or drugs? _____

(Name and Sample): _____

Please tell me the date? _____

Day _____ Time _____

Street or Highway _____

Direction of Travel _____

ACTUAL: _____

Where did you start from? _____

And at what time? _____

Where are you going? _____

Variances (Specify): _____

9. PERFORMANCE TESTS

| BALANCE | |
|-----------------------------------|---|
| <input type="checkbox"/> Falling | <input type="checkbox"/> Needed Support |
| <input type="checkbox"/> Wobbling | <input type="checkbox"/> Swaying |
| <input type="checkbox"/> Unsure | <input type="checkbox"/> Sure |

| WALKING | |
|------------------------------------|-------------------------------------|
| <input type="checkbox"/> Falling | <input type="checkbox"/> Staggering |
| <input type="checkbox"/> Stumbling | <input type="checkbox"/> Swaying |
| <input type="checkbox"/> Unsure | <input type="checkbox"/> Sure |

| TURNING | |
|-----------------------------------|-------------------------------------|
| <input type="checkbox"/> Falling | <input type="checkbox"/> Staggering |
| <input type="checkbox"/> Hesitant | <input type="checkbox"/> Swaying |
| <input type="checkbox"/> Unsure | <input type="checkbox"/> Sure |

| FINGER TO NOSE | |
|-----------------------------------|-----------------------------------|
| RIGHT: | LEFT: |
| <input type="checkbox"/> Missed | <input type="checkbox"/> Missed |
| <input type="checkbox"/> Hesitant | <input type="checkbox"/> Hesitant |
| <input type="checkbox"/> Sure | <input type="checkbox"/> Sure |

| COINS | |
|---------------------------------|-----------------------------------|
| <input type="checkbox"/> Unable | <input type="checkbox"/> Fumbling |
| <input type="checkbox"/> Slow | <input type="checkbox"/> Sure |

10. OBSERVER'S OPINION

☐ Physical Impairments

| EFFECTS OF ALCOHOL | |
|----------------------------------|----------------------------------|
| <input type="checkbox"/> Extreme | <input type="checkbox"/> Obvious |
| <input type="checkbox"/> Slight | <input type="checkbox"/> None |

| ABILITY TO DRIVE | |
|--------------------------------|---------------------------------------|
| <input type="checkbox"/> Unfit | <input type="checkbox"/> Questionable |
| <input type="checkbox"/> Fit | |

ACTION TAKEN: _____

COMMENTS: _____

This copy for
INSTALLATION

ARKANSAS DEPARTMENT OF HEALTH
Bureau of Environmental Health Services
Division of Blood Alcohol
4815 W. Markham, Little Rock, Arkansas 72201

Do not write
in this space

BLOOD ALCOHOL REPORT FORM

PART I. OFFICER'S REPORT

| | | | |
|--|---|---|---|
| A. SUBJECT TESTED (Last name, first, middle) | | B. SUBJECT'S HOME ADDRESS (if desired) | |
| C. SUBJECT'S BIRTHDATE Mo Day Yr | D. SUBJECT'S DVR LIC. NO. First 4 digits Second 4 digits | E. DATE OF INCIDENT Mo Day Yr | F. TIME OF INCIDENT Hr Min () AM () PM |
| G. CITY WHERE INCIDENT OCCURRED (Or nearest city) | | H. COUNTY IN WHICH INCIDENT OCCURRED | |
| Items I. through P.: Enter NUMBER of choice in blocks | | | |
| I. REASON FOR TEST 1. Violation (no accident) 2. Accident | | M. ACCIDENT CODE (If accident, enter Code from back of form. If no accident, enter "0") | |
| J. SUBJECT 1. Driver 2. Passenger 3. Pedestrian | | N. LOCATION OF INCIDENT (See item G.) 1. Inside city limits 2. Outside city limits | |
| K. SEX 1. Male 2. Female | | O. DAY OF WEEK INCIDENT OCCURRED 1. Sun 2. Mon 3. Tue 4. Wed 5. Thu 6. Fri 7. Sat | |
| L. CONDITION 1. Not injured 2. Injured 3. Dead | | P. OFFICER EMPLOYED BY 1. Police Dept. 2. Sheriff's Off. 3. State Police 4. Other | |
| Q. OFFICER EMPLOYED BY (Agency name) (Address if required) | | R. OFFICER'S SIGNATURE | |

PART II. COLLECTION OF SAMPLE

| | | | |
|---|---------------|--|------------------------|
| A. TYPE SAMPLE COLLECTED () Breath () Blood (Specify if other) | | B. ANTI-COAGULANT AND/OR PRESERVATIVES (If used) | |
| C. TAKEN BY (Signature and Title) | D. DATE TAKEN | E. TIME TAKEN () AM () PM | F. WITNESS (Signature) |

PART III. CHAIN OF POSSESSION (Necessary only if sample changes hands.)

| | | |
|---------------------------|---------------------------|---------------------------|
| RECEIVED | RECEIVED | RECEIVED |
| From _____ (Signature) | From _____ (Signature) | From _____ (Signature) |
| By _____ (Signature) | By _____ (Signature) | By _____ (Signature) |

PART IV. TEST RESULTS

| | | | |
|--|------------------------|---|--|
| A. NAME OF ALCOHOL TESTING INSTALLATION | | B. CERTIFICATION NO. OF INSTALLATION Enter all three digits assigned to installation by Division of Blood Alcohol in blocks to right | |
| Items C. and D.: Enter NUMBER of choice in blocks | | | |
| C. TYPE OF SAMPLE TESTED 1. Blood 2. Delayed Breath 3. Direct Breath 4. Urine 5. Other (Specify in REMARKS) | | | |
| D. METHOD OF TESTING 1. Alco-Tector 2. Breathalyzer 3. Gas Chromatograph 4. Photo Elec. Intoximeter 5. Other (Specify in REMARKS) | | | |
| E. SAMPLE NUMBER | F. DATE TEST COMPLETED | G. TEST RESULTS Report concentration in blocks to right (% W/V is defined as grams of ethyl alcohol per 100 ml. of blood) | |
| H. REMARKS | | | |

Figure 2-3

I. SIGNATURE OF ANALYST (Signature and Title) J. SUPERVISOR (Signature)

ACCIDENT CODES (See Part I., Item M.)

If the subject was involved in a traffic accident, enter (in Part I., Item M.) the Code that best describes the accident. Use the same Code for all persons involved in the same accident.

- Code 1 - Only one vehicle - its driver was fatally injured
- Code 2 - More than one vehicle involved, only one in motion - driver of vehicle in motion fatally injured
- Code 3 - More than one vehicle involved, only one in motion - driver of nonmoving vehicle fatally injured
- Code 4 - More than one vehicle involved and in motion - driver in responsible vehicle fatally injured
- Code 5 - More than one vehicle involved and in motion - driver in nonresponsible vehicle fatally injured
- Code 6 - More than one vehicle involved and in motion - responsibility of fatally injured driver unknown
- Code 7 - More than one vehicle involved and in motion - two or more drivers fatally injured
- Code 8 - No driver fatally injured - but pedestrian or passenger fatally injured as a result of the crash
- Code 9 - Traffic accident occurred - but no fatalities resulted within 4 hours

WHEN TO TAKE A SAMPLE

Samples of Blood, Breath, Urine, or Other Bodily Substances shall be collected from:

- a. All drivers fatally injured* as a result of a traffic accident
- b. All drivers arrested for DWI

and consistent with the legal rights of the individual, from:

- c. A surviving driver involved in an accident fatal to others
- d. A pedestrian fatally injured* in a traffic accident
- e. A surviving pedestrian involved in an accident fatal to others
- f. Drivers and pedestrians involved in serious non-fatal traffic accidents

*A person is to be considered fatally injured if death occurred within 4 hours of the accident.

COMPLETION OF THE FORM

NOTE: This form was designed to be completed by hand rather than typed. Please PRESS FIRMLY to make good copies. If errors are made, correct all three copies. After Part IV. has been completed, separate form and distribute copies. The green copy is to be sent to the Arkansas Department of Health no later than the 5th day of the following month.

PART I. is to be completed by the arresting or investigating officer. The word "incident" is used to describe a DWI arrest or a traffic accident.

All data for items C. thru F. are to be reported as numbers. All numbers are to be written clearly and inside the appropriate blocks. A zero is to precede any one digit number. For example, Jan. 1, 1974, is to be reported as Q1-Q1-74 and 2:05 P.M. is to be reported as Q2-Q5 P.M.

The name of the city where the incident occurred (or nearest city) is all that is required in item G., but the officer may also use this space to record the street address or exact location.

When the subject is involved in a traffic accident, choice 2. is always used in item I., even though he was later charged with DWI or other traffic violations. Choice 1. is to be used only when there was no accident and the subject is tested for DWI.

It is not necessary to give the address in item Q. unless the sample is to be analyzed by an Alcohol Testing Installation other than your own. (If the sample is to be analyzed by the Arkansas Department of Health, the complete mailing address is required so results can be returned. Please do not abbreviate the name of the Agency.)

PART II. is to be completed by the person collecting the sample from the subject. If the sample is breath, the operator of the instrument is to fill out items A. thru E. If the sample is other than breath, the physician, nurse, or other authorized person taking the sample is to fill out items A. thru E. When possible, the signature of a person witnessing the taking of the sample is to be obtained.

PART III. should be left blank if the subject blows directly into the alcohol testing instrument.

If, however, a sample of blood, urine, or other bodily substances is transferred from one person to another, both persons involved in the exchange are to sign on the appropriate line. Dates and times may be recorded if desired. If a sample is received thru the mail, the analyst is to indicate the sample was received "via mail".

PART IV. is to be completed by the person testing or analyzing the sample. The name of the installation where the instrument is located is to be written in item A. All installations certified by the Arkansas Department of Health, (Division of Blood Alcohol), have been assigned a three digit certification number. All three digits (including any zeros which may precede a one or two digit number) are to be written clearly and inside the blocks provided in item B.

The Sample Number (item C.) may be used to record a log or reference number to assist in retrieving forms after they have been filed.

Test Results (item G.) are to be reported to the second decimal place. A zero and a decimal point (0.) and a percent sign (%) are printed on the form. Between these are two blocks in which the results (two digits only) are to be written. Any digit in the third decimal place is not to be considered in reporting test results. For example, results of 0.053% are to be reported as 0.05% and results of 0.117% are to be reported as 0.12%. If no test results are available, indicate reason in item H.

The individual conducting the test or completing the analysis is to sign item I. and indicate his or her title assigned by the Division of Blood Alcohol for the particular Method of Testing used. Your departmental policy shall dictate who, if anyone, signs item J. as Supervisor. The Supervisor should be one who can reasonably attest to the information related to the test.

Figure 2-3 (cont'd.)

CALIFORNIA (LOS ANGELES COUNTY)

Section 1 - Legislative Provisions

Implied Consent for Chemical test

13353. (a) Any person who drives a motor vehicle upon a highway shall be deemed to have given his consent to a chemical test of his blood, breath or urine for the purpose of determining the alcoholic content of his blood if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor. The test shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe such person was driving a motor vehicle upon a highway while under the influence of intoxicating liquor. Such person shall be told that his failure to submit to or complete such a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of six months.

The person arrested shall have the choice of whether the test shall be of his blood, breath or urine, and he shall be advised by the officer that he has such choice. If the person arrested either is incapable, or states that he is incapable, of completing any chosen test, he shall then have the choice of submitting to and completing any of the remaining tests or test, and he shall be advised by the officer that he has such choice.

Such person shall also be advised by the officer that he does not have the right to have an attorney present before stating whether he will submit to a test, before deciding which test to take, or during administration of the test chosen.

Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn his consent and such tests may be administered whether or not such person is told that his failure to submit to the test will result in the suspension of his privilege to operate a motor vehicle.

(b) If any such person refuses the officer's request to submit to, or fails to complete, a chemical test, the department, upon receipt of the officer's sworn statement that he had reasonable cause to believe such person had been driving a motor vehicle upon a highway while under the influence of intoxicating liquor and that the person had refused to submit to, or failed to complete, the test after being requested by the officer, shall suspend his privilege to operate a motor vehicle for a period of six months. No such suspension shall become effective until 10 days after the giving of written notice thereof, as provided for in subdivision (c).

(c) The department shall immediately notify such person in writing of the action taken and upon his request in writing and within 15 days from the date of receipt of such request shall afford him an opportunity for a hearing in the same manner and under the same conditions as provided in Article 3 (commencing with Section 14100) of Chapter 3 of this division. For the purposes of this section the scope of the hearing shall cover the issues of whether the peace officer had reasonable cause to believe the person had been driving a motor vehicle upon a highway while under the influence of intoxicating liquor, whether the person was placed under arrest, whether he refused to submit to, or failed to complete, the test after being requested by a peace officer, and whether, except for the persons described in paragraph (a) above who are incapable of refusing, he had been told that his driving privilege would be suspended if he refused to submit to, or failed to complete the test.

An application for a hearing made by the affected person within 10 days of receiving notice of the department's action shall operate to stay the suspension by the department for a period of 15 days during which time the department must afford a hearing. If the department fails to afford a hearing within 15 days, the

suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as hereinafter provided. However, if the affected person requests that the hearing be continued to a date beyond the 15-day period, the suspension shall become effective immediately upon receipt of the department's notice that said request for continuance has been granted.

If the department determines upon a hearing of the matter to suspend the affected person's privilege to operate a motor vehicle, the suspension herein provided shall not become effective until five days after receipt by said person of the department's notification of such suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a physician and surgeon shall be exempt from the blood test required by this section.

(f) A person lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor may request the arresting officer to have a chemical test made of the arrested person's blood, breath or urine for the purpose of determining the alcoholic content of such person's blood, and, if so requested, the arresting officer shall have the test performed.

Added Ch. 138, Stats. 1966. Effective Oct. 6, 1966.

Amended Ch. 1438, Stats. 1969. Effective Nov. 10, 1969.

Amended Ch. 1103, Stats. 1970. Effective Nov. 23, 1970.

Chemical Test Procedure

13354. (a) Only a physician, registered nurse, licensed vocational nurse, or duly licensed clinical laboratory technologist or clinical laboratory bioanalyst acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath specimens.

(b) The person tested may, at his own expense, have a physician, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst or any other person of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(d) No physician, registered nurse, licensed vocational nurse, or duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, or hospital, laboratory or clinic employing or utilizing the services of such physician, registered nurse, licensed vocational nurse, or duly licensed laboratory technologist or clinical laboratory bioanalyst, owning or leasing the premises on which such tests are performed, shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(e) If the test given under Section 13353 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(f) The Department of the California Highway Patrol, in cooperation with the Department of Health or any other appropriate agency, shall adopt uniform standards for the withdrawal, handling, and preservation of blood samples prior to analysis.

This section shall become operative on the same date as Reorganization Plan No. 1 of 1970 becomes operative.

Added Ch. 138, 1966. Effective Oct. 6, 1966.

Amended Ch. 376, Stats. 1968. Effective Nov. 13, 1968.

Amended Ch. 188, Stats. 1972. Effective Mar. 7, 1973. Operative July 1, 1973.

Influence of Liquor and Drugs

13352. The department shall, except for a conviction or finding described in subdivision (a) where the court does not order the department to suspend, immediately suspend or revoke the privilege of any person to operate a motor vehicle upon receipt of a duly certified abstract of the record of any court showing that the person has been convicted of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or while under the combined influence of intoxicating liquor and any drug, or in violation of subdivision () (e) of Section 23105, or upon receipt of a report of a judge of the juvenile court, a juvenile traffic hearing officer, or a referee of a juvenile court showing that the person has been found to have committed the offense of operating a vehicle while under the influence of intoxicating liquor or any drug, or while under the combined influence of intoxicating liquor and any drug, or in violation of subdivision () (e) of Section 23105. The suspension or revocation shall be as follows:

(a) Upon a first such conviction or finding, other than under Section 23101 or 23106 such privilege shall be suspended for a period of six months, if the court orders the department to suspend such privilege.

(b) Upon a first such conviction or finding under Section 23101 or 23106 such privilege shall be suspended for one year and shall not be reinstated until such person gives proof of ability to respond in damages as defined in Section 16430.

(c) Upon a second conviction or finding of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or in violation of subdivision () (e) of Section 23105, or any combination of such convictions or findings within five years, such privilege shall be suspended for one year and shall not be reinstated unless and until such person gives proof of ability to respond in damages as defined in Section 16430.

(d) Upon a second such conviction or finding under Section 23101 or 23106 within three years, such privilege shall be permanently revoked.

(e) Upon a third or subsequent conviction or finding of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, or in violation of subdivision () (e) of Section 23105, or any combination of such convictions or findings within seven years such privilege shall be revoked and shall not be reinstated for a period of three years and until such person files proof of ability to respond in damages as defined in Section 16430.

For the purposes of subdivision (c), (d), and (e), the finding of the juvenile court judge, the juvenile traffic hearing officer, or the referee of a juvenile court, specified in the first paragraph of this section shall also be considered a conviction.

Each judge of a juvenile court, juvenile traffic hearing officer, or referee of a juvenile court shall immediately report such findings to the department.

Amended Ch. 1936, Stats. 1961, Effective Sept. 15, 1961.

Amended Ch. 914, Stats. 1963, Effective Sept. 20, 1963.

Amended Ch. 1530, Stats. 1971, superseding Ch. 1596, Operative May 3, 1972.

Amended Ch. 1129, Stats. 1972, superseding Ch. 92, Effective Mar. 7, 1973.

Amended Ch. 1128, Stats. 1973, Effective Jan. 1, 1974.

Amended Ch. 545, Stats. 1974, Effective January 1, 1975.

Storage of Vehicle

22850. Whenever an officer or employee removes a vehicle from a highway, or from public or private property, unless otherwise provided, he shall take the vehicle to the nearest garage or other place of safety or to a garage designated or maintained by the governmental agency of which the officer or employee is a member, where the vehicle shall be placed in storage.

Amended Ch. 57, Stats. 1960. Effective June 25, 1960.

Amended Ch. 1070, Stats. 1968. Effective Nov. 13, 1968.

Influence of Alcohol or Alcohol and Drugs Causing Death or Injury

23101. (a) It is unlawful for any person, while under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon a highway and when so driving do any act forbidden by law or neglect any duty imposed by law in the driving of such vehicle, which act or neglect proximately causes bodily injury to any person other than himself.

(b) It is unlawful for any person, while under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle other than on a highway and when so driving do any act, or neglect any duty imposed by law, which act or neglect proximately causes death or bodily injury to any person other than himself.

(c) Any person convicted under this section shall be punished by imprisonment in the state prison for not less than one year nor more than five years or in the county jail for not less than 90 days nor more than one year and by fine of not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

Amended Ch. 1239, Stats. 1965. Effective Sept. 17, 1965.

Amended Ch. 92, Stats. 1972. Effective Mar. 7, 1973.

Influence of Alcohol or Alcohol and Drugs

23102. (a) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 48 hours nor more than six months or by fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) or by both such fine and imprisonment. If, however, any person so convicted consents to, and does participate and successfully completes, a driver improvement program or treatment program for persons who are habitual users of alcohol, or both such programs, as designed by the court, the court shall punish such person by a fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(d) Any person convicted under this section shall be punished upon a second or any subsequent conviction, within five years of a prior conviction, by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000). A conviction under this section shall be deemed a second conviction if the person has previously been convicted of a violation of Section 23101.

(e) If any person is convicted of a second or subsequent offense under this section within five years of a prior conviction and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least two hundred fifty dollars (\$250) but not more than one thousand dollars (\$1,000).

(f) In no event does the court have the power to absolve a person who is convicted of a second or subsequent offense under this section within five years of a prior conviction from the obligation of spending at least 48 hours in confinement in the county jail and of paying a fine of at least two hundred fifty dollars (\$250), except as provided in subdivision (g).

(g) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under this section for purposes of sentencing in order to avoid imposing as part of the sentence or term of probation the minimum time in confinement in the county jail and the minimum fine, as provided in subdivision (f).

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior conviction it shall be conclusively presumed that such order was made only for the reasons specified in such order and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(h) The court may order that any person convicted under this section who is punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(i) If the person convicted under this section is under the age of 21 years and the vehicle used in any such violation is registered to such person, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days.

Amended Ch. 1252, Stats. 1959, Effective Sept. 18, 1959.

Amended Ch. 1950, Stats. 1963, superseding Ch. 117, Stats. 1963, Effective Sept. 20, 1963.

Amended Ch. 1662, Stats. 1965, Effective Sept. 17, 1965.

Amended Ch. 92, Stats. 1972, Effective Mar. 7, 1973.

Amended Ch. 1128, Stats. 1973, Effective Jan. 1, 1974.

Prior Conviction: Constitutional Validity

23102.2. (a) In any proceedings to have a prior judgment of conviction of a violation of subdivision (a) or (b) of Section 23102, or of subdivision (a), (b), or (c) of Section 23105, declared invalid on constitutional grounds, the defendant shall state in writing and with specificity wherein he was deprived of his constitutional rights, which statement shall be filed with the clerk of the court and a copy served on the prosecuting attorney at least five court days prior to the hearing thereon.

(b) The court shall, prior to the trial of any pending criminal action against the defendant wherein such prior conviction is charged as such, hold a hearing, outside of the presence of the jury, in order to determine the constitutional validity of the charged prior conviction issue. At such hearing the procedure, the burden of proof and the burden of producing evidence shall be as follows:

(1) The burden of proof remains with the prosecution throughout and is that of beyond a reasonable doubt.

(2) The prosecution shall initially have the burden of producing evidence of the prior conviction sufficient to justify a finding that the defendant has suffered such prior conviction.

(3) In such event, the defendant then has the burden of producing evidence that his constitutional rights were infringed in the prior proceeding at issue.

(4) If the defendant bears this burden successfully, the prosecution shall have the right to produce evidence in rebuttal.

(5) The court shall make a finding on the basis of the evidence thus produced and shall strike from the accusatory pleading any prior conviction found to be constitutionally invalid.

Added Ch. 1371, Stats. 1971, Operative May 3, 1972.

Repealed and added Ch. 1129, Stats. 1973, Effective Jan. 1, 1974.

Presentence Investigations

23102.3. (a) In the case of a first conviction of driving a motor vehicle upon a highway while under the influence of intoxicating liquor, any judge of a court may order a presentence investigation to determine whether a person convicted of such offense would benefit from treatment for persons who are habitual users of alcohol.

(b) Until January 1, 1974, in the case of a second or subsequent conviction of driving a motor vehicle upon a highway while under the influence of intoxicating liquor, any judge of a court may, and on and after January 1, 1974, shall, order a presentence investigation to determine whether a person convicted of such offense would benefit from treatment for persons who are habitual users of alcohol.

(c) In any case, the court may order suitable treatment for the person, in addition to imposing any penalties required by this code.

Added Ch. 900, Stats. 1972 and Amended Ch. 1196, Stats. 1972. Effective Mar. 7, 1973.
Amended Ch. 1131, Stats. 1973. Effective Oct. 2, 1973 by terms of an urgency clause.

Reckless Driving: Bodily Injury

23104. Whenever reckless driving of a vehicle proximately causes bodily injury to any person, the person driving the vehicle shall upon conviction thereof be punished by imprisonment in the county jail for not less than 30 days nor more than six months or by fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by both.

Influence of Drug or Addiction

23105. (a) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon any highway.

(b) It is unlawful for any person who is under the influence of any drug to drive a vehicle upon other than a highway.

The department shall not be required to provide patrol or enforce the provisions of this subdivision.

(c) It is unlawful for any person who is addicted to the use of any drug, except such a person who is participating in a methadone maintenance treatment program approved pursuant to () *Article 3 (commencing with Section 4350), Chapter 1, Part 1, Division 4 of the Welfare and Institutions Code*, to drive a vehicle upon any highway.

(d) Any person convicted under this section shall be punished upon a first conviction by imprisonment in the county jail for not less than 48 hours nor more than six months or by fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) or by both such fine and imprisonment. If, however, any person so convicted consents to participate, and does participate and successfully completes, a driver improvement program or a treatment program for persons who are habitual users of drugs, or both such programs, as designated by the court, a court shall punish such person by a fine of not less than one hundred fifty dollars (\$150) nor more than five hundred dollars (\$500) or by imprisonment in the county jail for not less than 48 hours nor more than six months or by both such fine and imprisonment.

(e) Any person convicted under this section shall be punished upon a second or any subsequent conviction, within five years of a prior conviction, by imprisonment in the county jail for not less than 48 hours nor more than one year and by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000). A conviction under this section shall be deemed a second or subsequent conviction if the person has previously been convicted of a violation of driving a vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug.

(f) If any person is convicted of a second or subsequent offense under this section within five years of a prior conviction and is granted probation, it shall be a condition of probation that such person be confined in jail for at least 48 hours but not more than one year and pay a fine of at least two hundred fifty dollars (\$250) but not more than one thousand dollars (\$1,000).

(g) In no event does the court have the power to absolve a person who is convicted of a second or subsequent offense under this section within five years of a prior conviction from the obligation of spending at least 48 hours in confinement in the county jail and of paying a fine of at least two hundred fifty dollars (\$250) except as provided in subdivision (h).

(h) Except in unusual cases where the interests of justice demand an exception, the court shall not strike a prior conviction of an offense under this section for purposes of sentencing in order to avoid imposing as part of the sentence or term of probation the minimum time in confinement in the county jail and the minimum fine, as provided in subdivision (g).

When such a prior conviction is stricken by the court for purposes of sentencing, the court shall specify the reason or reasons for such striking order.

On appeal by the people from such an order striking such a prior conviction it shall be conclusively presumed that such order was made only for the reasons specified in such order and such order shall be reversed if there is no substantial basis in the record for any of such reasons.

(i) The court may order that any person convicted under this section who is punished by imprisonment in jail, be imprisoned on days other than days of regular employment of the person, as determined by the court.

(j) If the person convicted under this section is under the age of 21 years and the vehicle used in any such violation is registered to such person, the vehicle may be impounded at the owner's expense for not less than one day nor more than 30 days.

Amended Ch. 363, Stats. 1971. Effective July 21, 1971 by terms of an urgency clause.

Repealed and added Ch. 1530, Stats. 1971. Operative May 3, 1972.

Amended Ch. 92, Stats. 1972 superseding Ch. 579. Effective Mar. 7, 1973.

Amended Ch. 1128, Stats. 1973. Effective Jan. 1, 1974.

Amended Ch. 545, Stats. 1974. Effective Jan. 1, 1975.

The 1974 amendment added the italicized material and at the point indicated deleted the following:

"Section 11655.7 of the Health and Safety Code"

Driving While Intoxicated; Presumption

23126. (a) Upon the trial of any criminal action, or preliminary proceeding in a criminal action, arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time of the test as shown by chemical analysis of his blood, breath, or urine shall give rise to the following presumptions affecting the burden of proof:

(1) If there was at that time less than 0.05 percent by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor at the time of the alleged offense.

(2) If there was at that time 0.05 percent or more but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor at the time of the alleged offense.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor at the time of the alleged offense.

(b) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 milliliters of blood.

(c) The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor at the time of the alleged offense.

Added Ch. 231, Stats. 1969. Effective Nov. 10, 1969.

Conviction of a Juvenile

13105. For the purposes of this chapter, "convicted" or "conviction" includes a finding by a judge of a juvenile court, a juvenile traffic hearing officer, or referee of a juvenile court that a person has committed an offense, and "court" includes a juvenile court except as otherwise specifically provided.

Added Ch. 753, Stats. 1972. Effective Mar. 7, 1973.

Certain Misdemeanors and Drug Use

13201. A court may suspend the privilege of any person to operate a motor vehicle, for a period not exceeding six months, upon conviction of any of the following offenses:

(a) Driving while under the influence of intoxicating liquor or under the combined influence of intoxicating liquor and any drug under subdivision (a) of Section 23102.

(b) Failure of the driver of a vehicle involved in an accident to stop or otherwise comply with the provisions of Section 20002.

(c) Reckless driving proximately causing bodily injury to any person under Section 23104.

(d) Failure of the driver of a vehicle to stop at a railway grade crossing as required by Section 22452.

(e) Driving while addicted to the use, or under the influence of, any drug under subdivisions (a) or (c) of Section 23105.

Amended Ch. 1530, Stats. 1971. Operative May 3, 1972.

Amended Ch. 92, Stats. 1972. Effective Mar. 7, 1973.

Record of Prior Convictions

13209. Before sentencing a person upon a conviction of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, other than under Section 23101 or 23106, the court shall obtain from the department a record of any prior convictions of that person for traffic violations. The department shall furnish such record upon the written request of the court.

Notwithstanding the provisions of Section 1419 of the Penal Code, in any such criminal action the time for pronouncement of judgment shall not commence to run until the time that the court receives the record of prior convictions from the department.

Added Ch. 1936, Stats. 1961. Effective Sept. 15, 1961.

Amended Ch. 1530, Stats. 1971. Operative May 3, 1972.

Procedure Upon Judgment

13210. Notwithstanding any other provision of this code, whenever any person is convicted for the first time of driving a motor vehicle while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug, other than under Section 23101 or 23106, the court shall order the department to suspend the person's driving privilege unless the person shows good cause why such order should not be made. If the court does not order such suspension, the court may limit the person's driving privilege as a condition of probation without notifying the department of such condition.

Added Ch. 1936, Stats. 1961. Effective Sept. 15, 1961.

Repealed and added Ch. 914, Stats. 1963. Effective Sept. 20, 1963.

Amended Ch. 1210, Stats. 1969. Effective Nov. 10, 1969.

Amended Ch. 1530, Stats. 1971. Operative May 3, 1972.

Amended Ch. 1129, Stats. 1972, superseding Ch. 92. Effective Mar. 7, 1973.

*From the State of California Vehicle Code, 1974.

Section 2 - Physical Coordination Tests

Physical coordination tests are administered by ASAP arresting officers to all suspected DWI offenders. The tests are administered once at the scene of apprehension and are generally recorded on videotape. See Appendix A; Exhibit 3a (Drunk Driving Enforcement - Video-Tape Techniques) for a complete discussion on physical coordination tests as applied in videotape procedures.

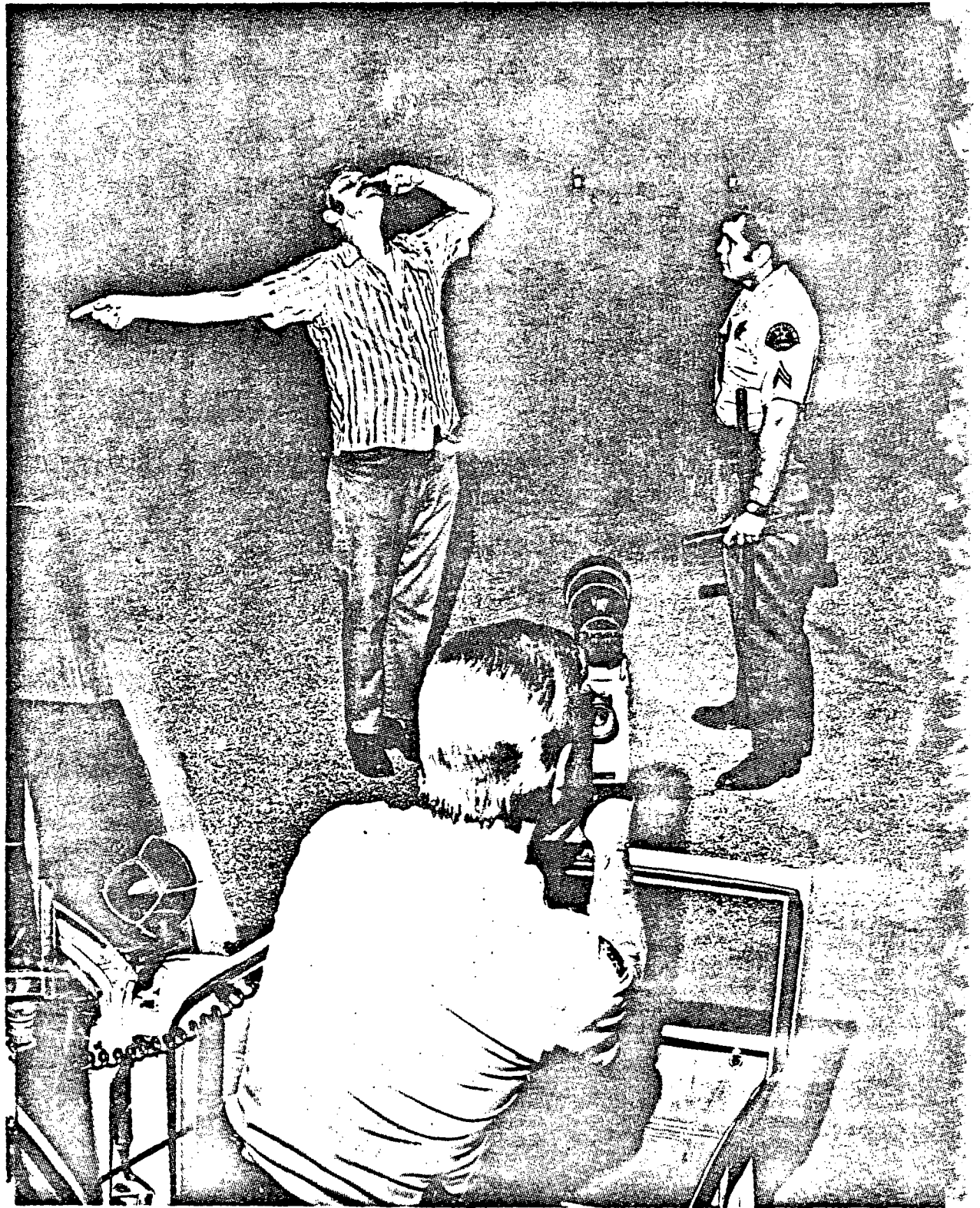
Physical coordination tests consist of nine variations:

- Semi-attention stance
- One stiff leg stance
- Heel to toe walking
- Finger to nose
- Stiff leg swing
- Finger count
- Alphabet recitation
- Number progressions
- Lateral eye nystagmus

The conventional finger to nose test has been modified by officers of the Los Angeles County Sheriff's Department by requiring the subject to extend his arms straight forward from his body and to touch his nose with the index finger of each hand. Officers contend that the conventional method of conducting this test (with arms straight out to the sides) gives the subject an advantage, in that - with the arms flexing shoulder-high along a horizontal axis - the finger will more naturally tend to come into contact with the nose.

The finger count was developed by ASAP officers in cooperation with Dr. Moskowitz of UCLA to compensate for the inadequacy of balance-type tests when recorded on videotape. The test consists of directing the subject to touch the thumb to the small finger (counting verbally "one"); to the ring finger (counting "two"); to the middle finger ("three"); to the index finger ("four"); extend thumb upward ("five"); and then repeat the sequence in reverse.

Alphabet recitation was also developed in cooperation with Dr. Mosko-



witz of UCLA and consists of requiring the subject to recite the alphabet A-Z. Officers note slurred pronunciation, errors, inability to complete, and confusion.

Number progressions (again, developed in cooperation with Dr. Moskowitz) require the subject to count either from one to ten or in multiples of two, five, or ten. Again, the officer notes slurred pronunciation, errors, inability to complete or follow instructions, and confusion.

According to officers assigned to the ASAP program, eye nystagmus has been found to be the best indicator of intoxication and is preferred over the other eight tests listed above.

In addition to recording field sobriety tests on videotape, officers of the Covina Police Department also enter the results of physical coordination tests on the City of Covina Field Sobriety Report (Fig. 3-7).

Conclusions: The Los Angeles County countermeasure has evidently applied a thorough and comprehensive effort to the utilization of physical coordination tests in DWI enforcement. The Los Angeles County Sheriff's Department, in addition to providing officers with explicit guidelines on videotaping of psychomotor tests (how to capture on film the most damaging evidence, when to zoom in, etc.), has also modified and adapted these tests in order to achieve a more effective portrayal of impairment on videotape.

Recommendations: The Los Angeles County Sheriff's Department has demonstrated the most comprehensive physical coordination test configuration of any of the sites surveyed. No recommendations are proposed at this time.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is not sanctioned by statute within the state of California; however, law enforcement officers assigned to ASAP from the Los Angeles County Sheriff's Department are experimentally utilizing, in field use, the Borg-Warner A.L.E.R.T. pre-arrest screening device (in addition to physical coordination testing).

Since no authorizing statute exists, suspected DWI offenders have the

option to refuse pre-arrest breath screening without fear of legal repercussion.

Pre-arrest screening is well-received by ASAP officers. Officers repeatedly cited the value of the A.L.E.R.T. unit (on loan/trial basis from Borg-Warner Corporation) as a training tool. Officers prefer to use their own judgment rather than the results of the A.L.E.R.T. test; however, they see the unit as a valuable aid in enabling them, over a period of time, to "fine tune" their judgment and identification abilities. However, officers find calibration requirements excessive. The Commander of the Los Angeles County Sheriff's Department ASAP patrol stated that the use of pre-arrest screening will be continued only if Senate Bill 224, authorizing its use, is passed (Appendix A; Exhibit 3b).

Conclusions: Deputies of the Los Angeles County Sheriff's Department stated that pre-arrest screening could replace the need for videotaping suspects. Deputies stated that with appropriate legislation, such as Senate Bill 224, and acceptance by local judicial authorities as to admissibility and reliability of screening results, the need for the cumbersome and lengthy video tape process could be eliminated, and a greater cost benefit could be realized to obtain evidence of impairment equal to that provided by videotaping.

Recommendations: Senate Bill 224 should be reviewed by ASAP, law enforcement personnel, and appropriate judicial/legislative personnel, to assess the implications of Section (g)* (i.e., whether subjects/drivers must first be under lawful arrest before a screening test may be administered).

Section 4 - Evidentiary Sobriety Testing

By statute, the following bodily substances may be sampled and submitted for analysis to determine blood-alcohol concentration:

*Senate Bill 224; Section (g): "The provisions of this section shall not be construed to prohibit a peace officer's use of a portable preliminary breath-screening device for the purpose of determining whether reasonable cause exists to believe that the person arrested had been driving a motor vehicle under the influence of intoxicating liquor." (Emphasis added.)

- Breath
- Blood
- Urine

The bodily substance most commonly submitted for analysis is breath. The relative frequency of analyses is (approximately): breath, 70%; blood, 20%; urine, 10%. Officers feel that breath analysis is given preference due to ease and speed of testing and convenience of test results. Breath alcohol analysis is conducted on one of six available Gas Chromatograph Intoximeters (GCI's), manufactured by Intoximeters, Inc.

Criminalists of the Los Angeles County Sheriff's Department recommended and selected this instrument for breath analysis, as they consider it to be more accurate than the Breathalyzer. Prior to November 1973, the Breathalyzer 900 was used. The Criminalistics Laboratory of the Los Angeles County Sheriff's Department converted to the GCI as the result of the Hitch vs. California decision, whereby the court ruled that Breathalyzer sample ampules, used in evidentiary testing, should be preserved in order to ensure repeatability of the test and to guarantee the defendant of "due process." To avoid the additional expense of ampule preservation, the Criminalistics Laboratory initiated use of the GCI, which provides a permanent graphic record of the evidentiary test process and results.

At the time of the site visit, the Los Angeles County Sheriff's Department reported five certified breath examiners; the Covina Police Department reported 49. The selection of personnel for breath analysis training is contingent upon assignment within the Los Angeles County Sheriff's Department. At present only criminalists assigned to the Criminalistics Laboratory are authorized to receive this training. The Covina Police Department, on the other hand, requires that all sworn law enforcement personnel be qualified breath analysis specialists.

Training is conducted by the Los Angeles County Sheriff's Department Criminalistics Laboratory and consists of six hours of training on the operation of the Gas Chromatograph Intoximeter. A certificate is issued by the Criminalistics Laboratory upon satisfactory completion of the course. Recertification is not required.

The following summary of evidentiary test procedures is derived from Procedural Memorandum 75-5, County of Los Angeles Sheriff's Department: Procedures for Drunk Driving Arrests:

After arrest, the subject is offered his choice of one of three chemical tests: blood, breath, or urine. Personnel are not to offer or suggest a particular chemical test to the subject. Following the subject's choice, officers may encourage the use of the GCI, as it is readily accessible and provides an instant reading of the blood alcohol level.

Should the subject desire a blood analysis, he is transported to the nearest contract hospital and the officer furnishes the hospital with a request for a withdrawal of blood sample. (The California Vehicle Code, Section 13554 (a) dictates that "Only a physician, registered nurse, licensed vocational nurse, or duly licensed chemical laboratory technologist or clinical laboratory bioanalyst acting at the request of a peace officer" may take blood samples.)

The arresting officer then hand carries the sample to the evidence refrigerator located at the ASAP van/office. Once a week the samples are taken to the Criminalistics Laboratory, where a licensed criminalist conducts the analyses and completes the Report of Criminalist Toxicology (Fig. 3-10), indicating BAC results. This report is then forwarded to the ASAP unit.

When urinalysis is required, the suspect is taken to a station house and directed to void his bladder (this specimen is discarded). A pre-prepared sample bottle containing preservative is obtained from the Physical Sciences Unit, Criminalistics Laboratory, and labelled with the subject's name, date and time of sample collection, the station, the arresting officer's name, and the nature of the charge. Twenty minutes after the original bladder voiding, the arresting officer accompanies the suspect to a restroom and the test sample is collected. The specimen bottle is then sealed and delivered to the Criminalistics Laboratory for analysis. The criminalist, upon analysis of the sample, completes the Report of Criminalist Toxicology (Fig. 3-10), indicating BAC, and forwards it to the ASAP unit.

Officers may not administer more than one chemical test to any subject except in the following circumstances:

- A BAC reading of .09% or less is obtained on the GCI test and there is evidence that an additional intoxicant may be involved. When barbiturates are suspected, a blood analysis should be obtained. If either amphetamines or opiates are suspected, a urine test is advised.
- The suspect desires that an independent chemical analysis be conducted at his own expense (Vehicle Code, Section 13354 (b)).

If the suspect refuses to submit to or complete any chemical test, the arresting officer completes the Officer's Statement, Section 13353 Vehicle Code (Fig. 3-8) and submits this statement to the patrol supervisor with the Complaint Report for review and approval. One copy of the statement is retained by the agency, and the original, with a copy of the Complaint and/or Traffic Collision Report, is mailed to the Drivers License Division of the Department of Motor Vehicles.

In cases where evidentiary testing is conducted on the Gas Chromatograph Intoximeter, the testing operator completes the Gas Chromatograph Intoximeter Check List (Fig. 3-9), which lists 33 steps that must be performed to properly analyze the breath sample. The graphic record produced by the GCI is attached to this report, which is submitted to the patrol supervisor with the Complaint Report for review and approval.

In addition, each station maintains a bound Daily Journal, in which the following information is recorded for each test given:

- Subject's name
- Charge
- GCI reading
- Name of test operator.

Suspects are presumed intoxicated when their BAC is .10% or greater. In cases where the BAC is between .05% and .09%, the patrol supervisor must be notified in order to approve the arrest upon reviewing other pertinent evidence (i.e., erratic driving, officer observations, etc.).

In cases where the BAC is .04% or less, and impairment is or is not evident, the watch commander must be notified; he will either cause the suspect to be released or recommend that he be transported to a hospital for examination.

Conclusions: The evidentiary testing process described for this jurisdiction is well-documented and comprehensive. Officer feedback was in support of the testing system and officers reported that they seldom encountered refusals to submit to chemical testing.

Officers stated that the only problem encountered with the use of the Gas Chromatograph Intoximeter was one of calibration in getting the visual digital BAC readout to agree with the graphic chart. Since the digital readout is primarily for the benefit of the subject, officers encounter difficulty in explaining to the subject why the instrument produced two differing results.

Recommendations: The BAC depicted on the graphic printout of the GCI and that of the digital (DCR) representation must be brought into accurate agreement. Operators should be thoroughly trained in this calibration procedure and the problem corrected by the manufacturer if necessary.

Recertification procedures for GCI operators should be instituted as soon as possible to assure a continuing high standard of professionalism in evidentiary analysis.

CITY OF COVINA FIELD SOBRIETY REPORT

ID Number _____

| Name | Last | First | Middle | Case Number | Booking Number |
|------|------|-------|--------|-------------|----------------|
|------|------|-------|--------|-------------|----------------|

| Address | Date | Time |
|---------|------|------|
|---------|------|------|

Sobriety Examination:

1. Are you sick or injured? _____
2. Do you have any physical defects? _____
3. Are you taking any medicine or drugs? _____
4. If answer to above is yes, what kind? _____
5. Where are you going? _____
6. Where have you been? _____
7. Where are you now? _____
Actual location: _____
8. What time is it now? _____ Actual time: _____
9. How much sleep did you have last night? _____
10. When did you eat last? _____ What did you eat? _____

Walk the Line Test:

Right foot ☐ Left foot ☒

Notes: _____

Balance Test:

Standing on right leg _____
Standing on left leg _____
Standing on both legs _____

Notes _____

Finger to Nose Test:

Right finger ☐ Left finger ☒

Notes: _____



Chemical Test: Blood _____ Breath _____ Urine _____ Refused all tests _____ 13353VC Form _____
BAC Reading _____

Officers' Opinion: Under the Influence? Yes _____ No _____

Video tape made and booked as evidence: Yes _____ No _____

Administering Officer _____ Witnessing Officer _____ Supervisor Approving _____

OFFICER'S STATEMENT, SECTION 13353 VEHICLE CODE

On _____ at _____ AM-PM at _____
DATE TIME LOCATION
 _____ was arrested, Citation No. _____ for _____
NAME VIOLATION

Address _____
CITY STATE

Vehicle license No. _____ Dr. Lic. No. _____ DOB _____ Traffic Accident: Yes ☐ No ☐

At the time of arrest, I had reasonable cause to believe the person arrested had been driving a motor vehicle upon a highway while under the influence of intoxicating liquor. Among those actions which led me to that belief were:

Driving observations: _____

Objective symptoms of alcoholic intoxication: _____

I read the following statement to the arrested person:

You are required by state law to submit to a chemical test to determine the alcoholic content of your blood. You have a choice of whether the test is to be of your blood, breath or urine. If you refuse to submit to a test or fail to complete a test your driving privilege will be suspended for a period of six months. You do not have the right to talk to an attorney or to have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the administration of the test chosen.

The person arrested refused to submit to or failed to complete any such test. His refusal or failure was evidenced by: _____

I certify, under penalty of perjury, that the foregoing is true and correct.

Date _____ City _____ County _____, California

Signature of Officer: _____ Badge No. or I.D. No. _____

Name of Officer (Printed or Typed): _____ Agency _____

NOTE: If the person arrested either is incapable, or states that he is incapable, of completing any chosen test, he shall then have the choice of submitting to and completing any of the remaining tests or test, and he shall be advised by the officer that he has such choice (Sec. 13353a V.C.).

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MAIL TO: Division of Drivers Licenses, P. O. Box 2590, Sacramento, CA 95812
 (Use reverse side for additional information.)

Figure 3-8

SHERIFF'S DEPARTMENT
COUNTY OF LOS ANGELES
GAS CHROMATOGRAPH INTOXIMETER
CHECK LIST

| | | | | |
|------------------|--|--------------------|----------------|----------------|
| NAME OF SUBJECT: | | BLOOD ALCOHOL % | INSTRUMENT NO. | NALCO SAMPLE # |
| | | LOCATION: | | DATE TESTED |
| WEIGHT | | VIOLATION | | TIME TESTED |
| FILE NUMBER | | | | |

PREPARING FOR THE TEST

1. () Wait at least fifteen minutes after last drink, eating, regurgitation, or smoking before giving test.
2. () Check that main gas valve is fully open (counter-clockwise).
 (NOTE: DO NOT TOUCH CARRIER GAS FLOW VALVE)
3. () Check that orange light is on.
4. () Deflate waste bag. (Waste bag should be connected to instrument)
5. () Switch STANDBY-OPERATE switch to OPERATE.
6. () Depress green button below STANDBY-OPERATE switch until green READY light comes on.

BLANK

7. () SELECT LEVER in BLANK position.
8. () Recorder turned on.
9. () Press ANALYZE button.
10. () When green READY light remains on, record Blank result. - _____ %
 If Blank result is greater than .00%, repeat steps 9 () and 10 () _____ %

TEST

11. () SELECT LEVER moved to SAMPLE position.
12. () Attach new mouthpiece.
13. () Take breath sample and press ANALYZE button while whistle has been sounding for 3 to 5 seconds.
14. () When green READY light remains on, record Test result. - _____ %
15. () Deflate waste bag.
16. () Take breath sample and press ANALYZE button while whistle has been sounding for 3 to 5 seconds.
17. () When green READY light remains on, record Test result. - _____ %
 If the results of the two samples of the subject's breath vary by more than .02% repeat steps 15 (), 16 (), and 17 () _____ %

BLANK

18. () SELECT LEVER moved to BLANK position.
19. () Press ANALYZE button.
20. () When green READY light remains on, record Blank result. - _____ %
 If Blank result is greater than .00%, repeat steps 19 () and 20 () _____ %

(GAS CHROMATOGRAPH INTOXIMETER CHECK LIST CONTINUED)

ANALYSIS OF STANDARD

- 21.() Open NALCO cylinder valve by turning fully counter-clockwise and check to see that right gauge reads more than 200 (on zero to 3000 scale).
- 22.() SELECT LEVER moved to SAMPLE position.
- 23.() NALCO tube connected to NALCO PORT.
- 24.() Green READY light on.
- 25.() Depress NALCO flow button for 5 seconds and then immediately press ANALYZE button.
- 26.() Disconnect NALCO from NALCO PORT.
- 27.() Close NALCO main cylinder valve by turning fully clockwise.
- 28.() When green READY light remains on, record NALCO result.-_____%

LEAVING THE INSTRUMENT

- 29.() Recorder turned off.
- 30.() Mouthpiece removed and discarded and breath tube returned.
- 31.() SELECT LEVER moved to BLANK position.
- 32.() STANDBY-OPERATE switch turned to STANDBY.
- 33.() Advance chart paper and remove.
(Mark for identification)

NOTE: The steps under LEAVING THE INSTRUMENT are to be done even if the test is not completed.

Operator(Name, Badge, Agency)

Witnessing Officer(if any)(Name, Badge, Agency)

Remarks:

ATTACH CHART PAPER HERE

Figure 3-9 (cont'd)

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT

Criminalistics Laboratory

REPORT OF CRIMINALIST
TOXICOLOGY

Laboratory
Receipt Number E 41573

Date Received 2-26-75

Agency ASAP

File Number _____

Defendant _____

The undersigned if called as a witness would testify that he is a qualified criminalist employed by the County of Los Angeles Sheriff's Department; as such, that he did on FEB 26 1975

examine the sealed listed items,



vial containing blood,



bottle containing urine,

that he opened the container in the Criminalistics Laboratory, analyzed the contents thereof, and that he formed an opinion of the material tested.

wj

The Blood-Alcohol level determined from the submitted specimen was found to

be 0.12 percent, which indicates the subject was ^{not} probably under the _{definitely}

influence of alcohol at the time the specimen was taken.



The barbiturate level was _____ mg % of



amobarbital



pentobarbital



secobarbital



phenobarbital



No barbituric acid derivative detected



Due to an insufficient quantity or clotting of the submitted specimen, analysis for blood-alcohol or drugs was not conducted.



Due to the blood-alcohol level found in the submitted specimen, analysis for drugs was not conducted.



Analysis for _____ not conducted at this laboratory.



that he prepared this report, replaced all items together into the original container, and sealed it with laboratory seals and caused them to be returned to the submitting agency or court.

Blood-Alcohol Examined by _____

Criminalist

Drugs Examined by _____

Criminalist

SH-CR-526 REV. 5/74

Figure 3-10

FLORIDA (HILLSBOROUGH COUNTY)

NOTE: It is necessary to point out that only officers of the Tampa Police Department's Selective Enforcement Unit (SEU) were observed while conducting ASAP enforcement. Troopers of the Florida Highway Patrol on ASAP assignment were not so observed. Consequently, unless there is a specific reference, none of the information contained herein applies to the Florida Highway Patrol.

Section 1 - Legislative Provisions

***316.028 Driving while under the influence of alcoholic beverages, narcotic drugs, barbiturates or other stimulants.—**

(1) It is unlawful and punishable as provided in subsection (2) for any person who is under the influence of alcoholic beverages, marijuana or narcotic drugs, as defined in chapter 398, model glue, or barbiturates, central nervous system stimulants, hallucinogenic drugs, or any other drugs to which the drug abuse laws of the United States apply, as defined in chapter 404, when affected to the extent that his normal faculties are impaired, to drive or be in the actual physical control of any vehicle within this state.

(2) Any person who is convicted of a violation of this section shall be punished:

(a) For first conviction thereof, by imprisonment for not more than 6 months or by a fine of not less than \$25 or more than \$500, or by both such fine and imprisonment.

(b) For a second conviction within a period of three years from the date of a prior conviction for violation of this section, by imprisonment for not less than 10 days nor more than 6 months and, in the discretion of the court, a fine of not more than \$500.

(c) For a third or subsequent conviction within a period of five years from the date of conviction of the first of three or more convictions for violations of this section, by imprisonment for not less than 30 days nor more than 12 months and, in the discretion of the court, a fine of not more than \$500.

History.—§1, ch. 71-135.

*Note.—Effective January 1, 1972.

Note.—See former §317.201.

322.261 Suspension of license; chemical test for intoxication.—

(1)(a) Any person who shall accept the privilege extended by the laws of this state of operating a motor vehicle within this state shall by so operating such vehicle be deemed to have given his consent to submit to an approved chemical test of his breath for the purpose of determining the alcoholic content of his blood if he is lawfully arrested for any offense allegedly committed while the person

was driving a motor vehicle under the influence of alcoholic beverages. The test shall be incidental to a lawful arrest and administered at the request of a peace officer having reasonable cause to believe such person was driving a motor vehicle within this state while under the influence of alcoholic beverages. Such person shall be told that his failure to submit to such a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of three months.

(b) Any such person who is incapable of refusal by reason of unconsciousness or other mental or physical condition shall be deemed not to have withdrawn his consent to such test. Any such person whose consent is implied as hereinabove provided and who, during the period within which a test prescribed herein can be reasonably administered, or who, being admitted to a hospital as a result of his involvement as a driver in a motor vehicle accident, is so incapacitated as to render impractical or impossible the administration of the aforesaid test of his breath shall be deemed to have consented also to an approved blood test given as provided for herein and shall be deemed not to have withdrawn his consent therefor. Under the foregoing circumstances, a blood test may be administered whether or not such person is told that his failure to submit to such blood test will result in the suspension of his privilege to operate a motor vehicle upon the public highways of this state.

(c) If any such person refuses the officer's request to submit to a chemical test herein provided, the department, upon receipt of the officer's sworn statement that he had reasonable cause to believe such person had been driving a motor vehicle within this state while under the influence of alcoholic beverages and that the person had refused to submit to the test after being requested by the officer, shall suspend his privilege to operate a motor vehicle for a period of three months. No suspension shall become effective until ten days after the giving of written notice thereof, as provided for in paragraph (d).

(d) The department shall immediately send notification to such person, in writing by cer-

tified mail to his last known address furnished to the department, of the action taken and of his right to petition for hearing as hereinafter provided and to be represented at the hearing by legal counsel. Such mailing by the department will constitute notification as required by this section, and any failure by the person to receive such notification will not affect or stay such suspension order. Upon his petition in writing, a copy of which he shall forward to the department, being filed within ten days from the date of receipt of the notice, directed to the municipal, county, or state court having trial jurisdiction of the offense for which he shall stand charged such person shall be afforded an opportunity for a hearing at a time to be set by the court, which hearing date shall be within twenty days of the filing of the petition with the court. For the purposes of this section, the question of whether such person lawfully refused to take a chemical test as provided for by this law and the issues determinative shall be:

1. Whether the arresting peace officer had reasonable cause to believe the person had been driving a motor vehicle in this state while under the influence of alcoholic beverage;

2. Whether the person was placed under lawful arrest;

3. Whether the person refused to submit to the test after being requested by a peace officer; and

4. Whether, except for the person described in paragraph (b) above, he had been told that his privilege to operate a motor vehicle would be suspended for a period of three months if he refused to submit to the test.

(e) A petition for a hearing provided in paragraph (d), filed by the affected person within ten days of receiving notice of the department's action, shall operate to stay the suspension of the department for the period provided for the said hearing. If the trial court fails to afford the hearing within the time herein prescribed, the suspension shall not take place until such time as the person has been granted such hearing. If within the prescribed hearing period the person affected requests a continuance of the hearing to a date beyond the expiration of the prescribed hearing period, the suspension shall become effective on the day immediately following the prescribed period or immediately upon receipt of the court's notice that the request for continuance has been granted, whichever is the later. In every event, the court shall forthwith rule on the question herein prescribed and forward a copy of its decision to the department.

**POLICY STATEMENT #10

Effective: 1 April 1974

SUBJECT: ENFORCEMENT OF DRIVING WHILE DRINKING LAWS

PURPOSE

To develop universal application to the enforcement of all drinking while driving laws enforceable by the Tampa Police Department.

DISCUSSION:

The enforcement of laws prohibiting operation of motor vehicles while under the influence of alcohol or drugs is a most important phase of our Department's accident prevention program.

While the severity of punishment is not a concern of the police agency, it is universally agreed that there is some correlation between severity of punishment and deterrence.

It is the police officer's responsibility to charge the violator with the most serious offense that can be supported by elements of proof.

Extenuating circumstances and conditions calling for leniency are left to the discretion of the Judiciary.

There are three (3) laws enforceable by the Tampa Police Department relating to intoxication while operating a motor vehicle. The comparisons by elements of proof reveal the scope of these laws.

1. Florida Statutes Annotated - 316.028
Driving while under the influence of intoxicating beverage, model glue or substances controlled by F.S.A. Chapter 893.
 - 1.1 Must be driving or be in actual physical control of vehicle.
 - 1.2 must be under the influence of alcoholic beverages, model glue or any substance controlled by the Florida Comprehensive Drug Abuse Prevention and Control Act, F.S.A. Chapter 893.
 - 1.3 Must be affected to the extent that his or her normal faculties are impaired.

Florida Statutes Annotated - 860.01
Driving vehicle while intoxicated.

- 1.1 Must drive or operate a motor vehicle on the public streets.
- 1.2 Must be intoxicated or under influence of intoxicating liquor, model glue, or any substance controlled under Chapter 893, to the extent that it deprives him of full possession of his normal faculties.

- 1.3 If any person dies, the driver is guilty of manslaughter.
3. Florida Statutes Annotated 316.030
Careless Driving
 - 1.1 Must be driving a vehicle.
 - 1.2 Must be on the streets or highways.
 - 1.3 Must fail to drive in a careful and prudent manner.
4. Florida Statutes Annotated 322.262
Presumption of intoxication.
 - 1.1 Chemical analysis of drivers blood is 0.05% Blood Alcohol or less - the driver is presumed not under influence of alcohol.
 - 1.2 Chemical analysis of drivers blood is more than 0.05% and less than 0.10% blood alcohol shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the driver is under the influence of alcohol to the extent that his normal faculties are impaired.
 - 1.3 Chemical analysis of drivers blood is 0.10% blood alcohol or more shall be prima facie evidence that the person is under the influence of alcohol to the extent that his normal faculties were impaired.

It should be noted that F.S.A. 316.028 is not limited to enforcement on streets, highways and alleys as is F.S.A. 860.01 and 316.030. This law is very broad in that the vehicle may be operated anywhere "within the state". (Naturally, our jurisdiction only includes that portion of the State of Florida located within the City limits.)

POLICY:

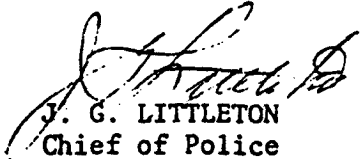
Arresting officers will employ objective tests to determine the impairment of normal faculties of an operator suspected of driving while under the influence. These objective tests will be made in order to determine if the suspect is under the influence of intoxicating liquor or drugs or if impairment is due to physiological causes.

Chemical tests to determine the degree of intoxication should be utilized when a suspect will submit to same. Suspects will be advised that evidence procured by chemical test will be used as evidence. Offenders will be advised of test results.

Page 3.

When all the elements of proof support a charge of Driving While Under the Influence, the offender will be charged with a violation of F.S.A. 316.028, except when a victim of an accident may become a fatality and F.S.A. 860.01 can be proved.

In those instances when an offense cannot be supported by elements of proof of either of the foregoing charges, the subject will be charged with the appropriate non-drinking charge, (i.e. Careless Driving).


J. G. LITTLETON
Chief of Police

OAB:mti

**Supersedes *Policy Statement #10 dated 1 May 1972

Section 2 - Physical Coordination Tests

Members of the Tampa Police Department's Selective Enforcement Unit (SEU) generally administer physical coordination tests to drunk driving suspects. The tests used are indicated on the Alcohol Influence Report (Fig. 4-1), which is utilized whenever a DWI arrest takes place. (Also see Figure 4-1-a.) Additional information and elaborate instructions for officers concerning procedural steps to be taken in the administration of the individual tests are found in Appendix A; Exhibit 4a. The coin pick-up test was eliminated because SEU officers and the Greater Tampa ASAP (GTASAP) agreed that it was not a good indicator of intoxication. The physical coordination tests are administered by the arresting officer at the scene of the traffic stop. Since it is departmental policy to have a witness present during the tests, the officer will usually wait until the back-up unit arrives on the scene before commencing the process.

Conclusions: SEU officers appear to be consistent in requiring suspected drinking drivers to undergo the physical coordination tests. The consensus seems to be that the tests are of value as additional evidence in demonstrating insobriety on the part of the accused.

Recommendations: In its present form, physical coordination testing as conducted by the enforcement countermeasure of the GTASAP appears to be a practical and functional element of that countermeasure. At this time, no changes are recommended.

Section 3 - Pre-arrest Breath Screening

Not applicable. The GTASAP enforcement countermeasure did not employ portable breath testing devices (PBT's). One reason cited was that there were no statutory provisions which sanctioned the use of PBT's by law enforcement officers. However, it was pointed out that a statute permitting the application of PBT's in drunk driving enforcement had been recently approved by the Florida legislature, to become effective January 1, 1975.

Conclusions: SEU officers prided themselves on their ability to identify and recognize drivers impaired by excessive ingestion of

alcohol, and expressed no overwhelming desire to implement PBT's within the enforcement countermeasure. A typical comment was that the devices were unnecessary for members of the Selective Enforcement Unit.

Recommendations: The self-confidence displayed by many SEU officers in their knack for accurate analysis of the various degrees of impairment found in suspected drinking drivers is believed to be somewhat unjustified. In view of the many and varied factors which bear upon individual behavior at given levels of blood-alcohol concentration, it appears highly improbable that officers would usually be in a position to reach relatively accurate conclusions concerning a particular suspect's condition. A more realistic finding would be that SEU officers encounter no difficulties in discerning impairment where most or all of the classic indicators are present, but the analysis becomes progressively more complicated as the suspect's blood-alcohol concentration level nears the legal presumptive base (in the case of Florida, .10%). Regardless of assertions made by officers of the enforcement countermeasure, any opinions formed in the field concerning the level of insobriety of a DWI suspect are intuitive and subjective and therefore always suspect. The author does not wish to imply here that the degree of experience in DWI enforcement is of no importance; it certainly is of value to the officer in identifying potential DWI suspects, in that he has learned to recognize some of the more subtle symptoms associated with impairment brought on by alcohol abuse. Experience does not qualify the officer, however, to attempt to diagnose the level of blood-alcohol concentration which may be present in a particular DWI suspect.

The author recognizes that none of the PBT's currently used by other ASAP enforcement countermeasures approach the level of accuracy shown by some evidentiary breath testing devices, but it does appear reasonable to assume that the PBT's are a vastly more objective method of determining whether a given DWI suspect may be legally impaired than a subjective analysis by the officer. For this reason, the enforcement countermeasure of the GTASAP may find it to its advan-

tage to study the potential value of PBT's to its mission, including initial experimental field application of the devices by SEU officers. In doing so, a complete review of the substantial quantity of literature pertaining to PBT's - particularly that dealing with the past experiences of other enforcement countermeasures - is urged.

The author is convinced that the combination of experienced officers and liberal application of effective PBT's by these officers will do much to enhance any enforcement countermeasure's operative capability.

Section 4 - Evidentiary Sobriety Testing

Florida law prescribes that the following bodily substances may be sampled and submitted for analysis to determine blood-alcohol concentration (BAC):

- Breath
- Blood
- Urine
- Saliva

Breath samples are predominantly submitted for BAC analysis, for the simple reason that officers are only required to offer a breath test to the suspect. If the latter refuses to undergo a breath test for reasons other than inability to submit a breath sample, it constitutes a refusal under the state's Implied Consent statute. When the site visit was ongoing, the GTASAP enforcement countermeasure used only the Stephenson Breathalyzer (Model 900) for breath sample analysis. It was estimated that perhaps eight Breathalyzers had been purchased by the GTASAP for use by the enforcement countermeasure (exact figures were not furnished), at an approximate cost of \$1,000 per unit. Commencing January 1, 1975, however, the plans were to replace the Breathalyzer with the Gas Chromatograph Intoximeter (GCI), which is manufactured by Intoximeters, Incorporated. The reasons for this development were not divulged, although it was acknowledged that no major problems had surfaced in the use of the Breathalyzer.

Generally, two Breathalyzers are available for use by SEU officers

during normal tours of duty. The units are maintained at the central booking (headquarters) facility of the Tampa Police Department. A small, separate room has been set aside solely for breath testing purposes. Arrested suspects are transported to this facility for the evidentiary test. The GTASAP Enforcement Coordinator (a member of the Tampa Police Department) is responsible for ensuring continuous availability of essential supplies for operation of the Breathalyzers.

The presumptive level of intoxication in Florida has been set by the legislature at .10% of blood-alcohol concentration. By statute, no presumption may be made at BAC levels ranging from .051% to .099%, but a suspected DWI offender may still be charged with the offense and could be convicted based upon other incriminating testimony and evidence. If the suspect's BAC is at the level of .05% or less, he is presumed by law not to have been intoxicated. As yet, there is no per se statute concerning levels of intoxication.

Florida has an Implied Consent law which provides that anyone who willfully refuses to submit to an evidentiary sobriety test will have his privilege to drive suspended for a period of 90 days. A condensed version of the statute is contained on the reverse side of the Alcohol Influence Report (Fig. 4-1). (Also see Section 1 - Legislative Provisions: 322.261; Suspension of license, chemical test for intoxication.) The pertinent provisions of the Implied Consent statute are issued verbally to the DWI suspect by the arresting officer, after the former has been placed into the patrol vehicle for transport to the central booking facility. SEU officers are careful in ensuring that the offender understands these provisions and the consequences of refusal. A refusal under the provisions of the Implied Consent statute may take the following forms:

- Willful assertion of non-compliance with mandates contained in the statute.
- Obvious or disguised attempts by the suspect to undermine the sample-taking process.
- Failure to perform the evidentiary test as instructed. (In the event that this occurs, officers retain the mouthpiece

used for the test. If its condition is subsequently questioned by the defense, the mouthpiece may then be produced to resolve any doubts.)

Anyone refusing to submit to the evidentiary sobriety test is charged with the original offense of Driving While Under the Influence, in addition to Refusal to Submit to a Sobriety Test. Both charges are adjudicated by the court of jurisdiction. SEU officers were quick to point out, however, that plea bargaining often negates the refusal charge. This development appears to hold true particularly in cases where the accused has retained an attorney for his defense. According to officers, it was rather common for defense attorneys to negotiate a dismissal of the refusal charge in exchange for a guilty plea on the charge of DWI.

For successful prosecution of refusal, the arresting officer must establish the following to the satisfaction of the court in his testimony:

- Did he have reasonable cause to believe that the accused had been driving a motor vehicle in Florida while under the influence of alcoholic beverage?
- Was the accused placed under lawful arrest?
- Did the accused refuse to submit to the test after being requested to do so by the officer?
- Was the accused informed that his privilege to operate a motor vehicle would be suspended for a period of three months if he refused to submit to the test?

The evidentiary breath testing device is operated by law enforcement officers who have successfully completed a 40-hour training course which qualifies them to operate the Breathalyzer. Certified breath examiners are issued licenses and certificates by the State Department of Education. Instructors of this training program underwent an 80-hour course to qualify in that capacity, in addition to 4-8 hours of maintenance and service of the Breathalyzer. The training for breath examiners and instructors is conducted under the auspices of the State Board of Health. Prospective breath examiners are principally instructed by the GTASAP Enforcement Coordinator, whereas prospective instructors receive their training from a number of experts, including designers of breath testing devices,

attorneys, and toxicologists.

The DWI suspect is observed for a minimum of 20 minutes before the evidentiary breath test is administered. This observation, which is required to assure that the suspect has not taken anything orally prior to breath testing, is commenced by the arresting officer upon transporting his prisoner to the central booking facility. Upon arrival there, the evidentiary test is administered by another officer of the Selective Enforcement Unit who generally remains with the Breathalyzer for the entire tour of duty. (The arresting officer, even if a certified breath examiner, is not permitted to administer the evidentiary test to his own prisoner.)

After the breath analysis is completed, the suspect receives a copy of the Chemical Test Report (Fig. 4-4), which contains his blood-alcohol concentration as indicated by the Breathalyzer. (A directive issued by the Tampa Police Department pertaining to chemical testing procedures is presented in Appendix A; Exhibit 4b.) The arresting officer always witnesses the evidentiary test.

Analyses conducted with the Breathalyzer are recorded individually in the breath test log provided for that purpose. The log is subject to unannounced inspections by the State Department of Health.

It has already been mentioned that breath is by far the substance preferred for analysis of blood-alcohol concentration. Blood samples are generally withdrawn only in cases involving motor vehicle accidents where personal injury was sustained and are therefore relatively rarely obtained. In such an event, a physician is called upon to withdraw the blood sample. (The facilities of the Tampa General Hospital are available to officers who encounter the need for this service.) The sample is then also analyzed at the hospital by a laboratory technician and the arresting officer is apprised of the result upon inquiry. It was indicated that generally no problems were encountered by officers who requested medical staff to withdraw blood samples from suspected DWI offenders. Apparently, the fact that this is a comparatively infrequent occurrence has an influence on this overall good rapport.

In response to questions concerning the average amount of time spent by the officer in seeing to it that the required blood sample has been obtained, no specific figures could be cited. Assurances were given, however, that relatively little time was consumed in the process.

It was indicated that officers are authorized by statute to request the analysis of blood samples of anyone fatally injured in a motor vehicle accident. Copies of the statute were not furnished, but apparently it contains no provision for mandatory blood analysis to determine BAC. Hospital staff or medical examiners withdraw the blood sample upon the officer's request as soon as practicable. Officers are also vested with the authority to require all principals in a fatal motor vehicle crash to submit to a chemical sobriety test. Results of such analyses are made available to the ASAP evaluative staff.

Urine samples intended for BAC analysis are seldom obtained. More than likely, urine samples would be requested only if the use of drugs other than alcohol were suspected. The introduction of saliva samples for analysis seems to be virtually non-existent.

Suspected DWI offenders are entitled to an independent BAC analysis, if they so desire. The cost of such an analysis is absorbed by the accused, however.

Conclusions: The Selective Enforcement Unit of the Tampa Police Department, which deploys ten officers in marked vehicles (one-man units) throughout the city, appears to be reasonably satisfied with the existing chemical sobriety testing system in force there. The entire city has a land area of 84.45 square miles; thus the centrally-located breath testing facility appears to suffice for processing requirements.

Officers indicated satisfaction with the Breathalyzer chemical testing device and could recall no significant problems in the use of the apparatus, although the ASAP definitely planned to replace the Breathalyzer with the Gas Chromatograph Intoximeter in 1975. One reason for the change in breath testing devices may have been the high cost of ampules required for the Breathalyzer. These were

purchased by the GTASAP at an approximate cost of 60¢ each and, considering that thousands of tests were performed since the advent of the enforcement countermeasure, the cumulative expenditure for ampules was sizeable. Some members of the Selective Enforcement Unit already expressed reservations about the GCI, however. The major disadvantage cited was that the GCI required lengthy and forceful breath samples with which some DWI suspects were expected to have difficulty.

SEU officers are greatly in favor of breath testing as opposed to other chemical sobriety testing techniques. With the former mode of BAC analysis, extraneous facilities and/or personnel need not be drawn into the process, since all of the necessary steps can be carried out by members of the police department. Less time is consumed in this manner and the overall complexity of the procedure is significantly reduced, since all necessary equipment and facilities are maintained by the police department. The fact that, in accordance with the applicable statute, the officer is required only to offer the breath test to the suspect makes it all the less likely that any other type of analysis will be performed.

Recommendations: Chemical breath testing procedures employed by the GTASAP enforcement countermeasure appear to be adequate in all respects when considering the sizeable number of DWI suspects who undergo breath testing annually. No recommendations of any magnitude are offered by the author in this area.

- BAC analyses of other bodily substances seem to be rarely undertaken. This, in itself, is indicative of the heavy reliance upon breath testing devices for evidentiary purposes, the reasons for which have already been examined. Enforcement countermeasures have found the breath testing capability to be the most expeditious means for evidentiary testing and are therefore applying it to the fullest extent possible. Samples of blood or urine are usually obtained only if the suspect is incapable of furnishing a breath specimen, or if the use of narcotics or drugs is suspected.

● In the way of legislation, a statute containing the following provisions would be of help:

- Mandatory analysis for blood-alcohol concentration on all persons fatally injured in a motor vehicle crash.
- Mandatory analysis for blood-alcohol concentration on all principals involved in a motor vehicle crash which resulted in a fatality.

| | | | | | | | | | |
|--|--|----------------------|-----------|--------------------------|---|--------------------------|---|--|--|
| REMARKS: | | | | | | | | | |
| <input type="checkbox"/> ACCIDENT SUPPLEMENT | | | | | <input type="checkbox"/> NON-ACCIDENT VIOLATION | | | | |
| ASSIGNMENT NO. | | GRID NO. | | TAMPA POLICE DEPARTMENT | | | OFFENSE REPORT NUMBER | | |
| [][][][][] | | [][][][] | | ALCOHOL INFLUENCE REPORT | | | _____ | | |
| DEFENDANT (LAST- FIRST- MIDDLE) | | | | COLOR/SEX | | D.O.B. | | BUS. PHONE _____ | |
| | | | | | | | | RES. PHONE _____ | |
| ADDRESS OF DEFENDANT | | | | | | LOCATION OF ARREST | | | |
| WITNESS TO FIELD TEST | | | | | | TIME OF OFFENSE.....HRS. | | | |
| VEHICLE: <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> RELEASED TO: (NAME & ADDRESS) | | | | | | DAY OF WEEK:..... | | | |
| | | | | | | DATE:..... | | | |
| 1ST OFFICER ON SCENE | | | | BADGE | | DIVISION | | TIME REPORTED.....HRS. | |
| | | | | | | DATE:..... | | | |
| INVESTIGATED BY | | | BADGE NO. | | DIVISION | | REFERRED TO: <input type="checkbox"/>(DIV.) | | |
| 1. | | | | | | | RETAINED BY: <input type="checkbox"/> | | |
| 2. | | | | | | | BY:.....DATE..... | | |
| HOW CLOSED: | | COPIES REQUESTED FOR | | NO. | | ROUTED | | LIGHT CONDITIONS | |
| DIVISION | | | | | | | | <input type="checkbox"/> DAYLIGHT | |
| DATE | | | | | | | | <input type="checkbox"/> DAWN | |
| PHOTOS TAKEN <input type="checkbox"/> | | | | | | | | <input type="checkbox"/> DUSK | |
| DIAGRAM DRAWN <input type="checkbox"/> | | | | | | | | <input type="checkbox"/> DARKNESS WITH | |
| INDEX CARDS <input type="checkbox"/> | | | | | | | | <input type="checkbox"/> NO ST. LIGHTS | |
| | | | | | | | | WEATHER | |
| | | | | | | | | <input type="checkbox"/> CLEAR | |
| | | | | | | | | <input type="checkbox"/> RAINING | |
| | | | | | | | | <input type="checkbox"/> CLOUDY | |
| | | | | | | | | <input type="checkbox"/> FOG | |
| | | | | | | | | <input type="checkbox"/> SMOKE | |
| | | | | | | | | <input type="checkbox"/> OTHER _____ | |

TPD 343

Figure 4-1

| | | | | | |
|-------------------------|-----------|-----------------------|-----------|--------|------------------|
| PHYSICAL REPORT ONLY | DEFENDANT | (LAST, FIRST, MIDDLE) | COLOR/SEX | D.O.B. | DATE OF ACCIDENT |
| | ON | | AT | | |

OBSERVATIONS:

| | | | | |
|----------|---------|------------------|---------------------|-----------------------------------|
| Breath | none | faint | moderate | strong |
| Face | normal | flushed | pale | scratched drooling bruised other: |
| Eyes | normal | watering | bloodshot | |
| Pupils | normal | dilated | contracted | |
| Clothing | orderly | mussed | soiled | |
| Speech | normal | confused | stutters slur | mumbles whispers other: |
| Behavior | normal | talky cocky | excited insulting | profane sleepy stuporous |
| | | hilarious vomits | confused frightened | hiccoughs quarrelsome fights |

ROADSIDE TEST:

| | | | |
|----------------|------------|------------|--------------------|
| Balance | sure | swaying | falling |
| Heel to toe | sure | swaying | staggering falling |
| Turning | sure | staggering | falling other: |
| Finger to nose | right hand | | |
| | left hand | | |
| Coin Test | coins used | | |

Prior to asking any question, read the following warning:

You have a right to remain silent. Anything you say can and will be used in court as evidence against you. You have a right to consult with a lawyer before any questioning and you have a right to have a lawyer present with you during any questioning. If you cannot afford an attorney one will be appointed for you without cost to you.

Do you understand these rights?

Yes ___ No ___

Do you want an attorney present now?

Yes ___ No ___

Knowing this, will you answer these questions?

Yes ___ No ___

I certify that I have read the above warnings word for word to the above named party prior to asking questions set out in this report, and he answered as shown below.

OFFICERS SIGNATURE

| | | | | |
|----------------------------------|---|---------------------------|---------------------|-----------|
| WHAT TIME IS IT? | ARE YOU HURT? | HAVE YOU BEEN DRINKING? | WHAT? | HOW MUCH? |
| WHEN DID YOU BEGIN? | WHEN DID YOU HAVE YOUR LAST DRINK? | WHERE? | ARE YOU TALKING? | |
| HAVE YOU USED A MOUTHWASH TODAY? | HOW LONG SINCE YOU HAVE SEEN A DOCTOR OR DENTIST? | WHOM? | | |
| WHAT FOR? | ARE YOU TAKING MEDICINE? | WHAT KIND? | DO YOU USE INSULIN? | |
| WHEN LAST DOSE? | WHEN DID YOU SLEEP LAST? | HOW LONG? | | |
| ARE YOU HURT? | WHERE? | WERE YOU HIT ON THE HEAD? | | |

AFTER the arrest, read the following advisement: "Upon arrival at the Police Station, you will be asked to submit to a Chemical Test of your breath for the purpose of determining the alcoholic content of your blood. Florida Law provides that your failure to submit to such a Chemical Test will result in the suspension of your privilege to operate a motor vehicle for a period of three months. Will you submit to the test?"

Yes ___ No ___ Officer's Initials ___

Breathalyzer Operator _____ BAC _____ Time _____

Breathalyzer Monthly Maintenance by _____ Date _____

Figure 4-1 (cont'd.)

STANDARD OPERATING PROCEDURE)

NUMBER

6)

Effective: 1 November 1973

ALCOHOL INFLUENCE REPORT
TPD FORM 343

1. Purpose and Scope. To establish a uniform method of documenting the incidents surrounding all arrests made by this Department for the offense of Driving While Under the Influence of Alcoholic Beverages and/or Narcotic Drugs (DWI).
2. General. Due to the notoriety frequently attached to a DWI arrest, it is imperative that documentation of the incident be made. Further, the report completed by the arresting officer may be used later in preparation for court testimony.
3. Definition. D.W.I. - Terminology used to refer to the offense of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages, model glue, or any substance controlled under F.S.A. Chapter 893, when affected to the extent that the driver's normal faculties are impaired.
4. Responsibility.
 - a. It shall be the responsibility of the arresting officer to accurately and legibly complete the Alcohol Influence Report (TPD Form 343) after making an arrest for DWI, and submit that report to his immediate supervisor prior to completion of the tour of duty.
 - b. It shall be the responsibility of the arresting officer's immediate supervisor to edit the report, make proper disposition of the report, and send or deliver the report to Records Section, Services Division, for processing.
 - c. It shall be the responsibility of the Records Section, Services Division, to properly process and/or file the report according to the Services Division Intra-Divisional procedures.
5. Procedure.
 - a. For DWI arrests made NOT in conjunction with an Accident Report:
 - 1) The arresting officer will complete both sides of the Alcohol Influence Report after making a non-accident DWI arrest, with the exception of that section at the top of the reverse side designated "TRFC ACC REPT ONLY".
 - a) An "X" must be placed in the block designated "Non-Accident Violation" on the face of the report.

Figure 4-1-a

b. For DWI arrests made in conjunction WITH an Accident Report:

- 1) The reverse side of the Alcohol Influence Report will, in this event, be used as a supplement to the Accident Report.
- 2) An "X" must be placed in the block designated "Accident Supplement" on the face side of the report, serving as notification that the report is being used as a supplement to an Accident Report.
 - a) In this event, no other parts of the face of the report need be completed.
- 3) That section at the top of the reverse side of the report designated "TRFC ACC REPT ONLY" will be completed.
- 4) The top half of the face side of the report may be utilized for additional comments and/or observations by the arresting officer.


J. G. LITTLETON
Chief of Police

VDF:il

All procedures, policies, General Orders, etc., in conflict with this SOP are hereby rescinded.

Figure 4-1-a (cont'd.)

Division of Florida Highway Patrol
CHEMICAL TEST REPORT

County of _____

City of _____

Name of Subject _____

Date and Time of Arrest _____ M.

Date and Time of Offense, If Different _____ M.

Date and Time of Test _____ M.

Blood Alcohol Level _____ %
Testing Instrument Serial # _____

Arresting Officer (s) _____

DEPARTMENT: City ☐ Sheriff ☐ Florida Highway Patrol ☐

Chemical Test Operator _____ Date _____

DEPARTMENT: City ☐ Sheriff ☐ Florida Highway Patrol ☐

NOTE: Prepared in triplicate. Deliver original to defendant and attach copy to citation. (Third copy to be mailed to the Records Section, Florida Highway Patrol, Department of Highway Safety and Motor Vehicles, Tallahassee, Florida 32304.

FHP-83

Figure 4-4

I, _____
received the results of the Chemical Test given me for intoxication.

Signed _____

Date _____ Time _____

Witness _____ Operator _____

Figure 4-4 (cont'd.)

GEORGIA (COLUMBUS)

Section 1 - Legislative Provisions

ARTICLE V.

Driving While Intoxicated, and Reckless Driving.

Section 47. (68-1625) Persons under the influence of intoxicating liquor or drugs. (a) It shall be unlawful and punishable as provided in subsection (g) of this section for any person who is under the influence of intoxicating liquor to drive, or operate any vehicle within this State.

(b) Upon the trial of any person accused of violating subsection (a) of this section, evidence as to the amount of alcohol in the defendant's blood at the time of the alleged offense as shown by a chemical analysis of the defendant's blood or breath shall be admissible as competent evidence bearing upon the question of whether the person was under the influence of intoxicating liquor and shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.

2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the defendant was under the influence of intoxicating liquor.

3. If there was at the time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

4. Per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

5. The foregoing provisions of subsection (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor.

6. The result of any such test shall not be admissible in evidence against the defendant, and no record thereof shall be preserved, and no notation of the result of the test shall be made on the driver's license of the person tested, if the test does not indicate that there was, at the time of the test 0.10 per cent or more by weight of alcohol in the blood of the person tested.

(c) Chemical analyses of the defendant's blood or breath to be considered valid under the provisions of this section shall have been performed according to methods approved by the State Crime Laboratory and by an individual possessing a valid permit issued by the State Crime Laboratory for this purpose. The State Crime Laboratory is authorized to approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct such analyses and to issue permits which shall be subject to termination or revocation at the discretion of the State Crime Laboratory.

(d) Only a licensed physician, registered nurse, medical examiner, or ASCP certified or qualified medical or laboratory technician or aide may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath specimens.

(e) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney.

(f) It is unlawful and punishable as provided in subsection (g) of this section for any person who is under the influence of any narcotic drug, or who is under the influence of any other drug to a degree which renders him incapable of safely driving or operating a vehicle, to drive or operate a vehicle within this State. The fact that any person charged with a violation of this subsection is or has been entitled to use such drugs under the laws of this State shall not constitute a defense against any charge of violating this subsection; provided, however, it shall be the duty of the arresting officer, if it shall become necessary to incarcerate a person suspected of violating the provisions of this subsection, to summon, as soon as possible, a licensed physician to examine the party so apprehended. The expense of such examination shall be borne by the court having jurisdiction of said alleged offense.

(g) Every person who shall be convicted of a violation of this section shall be guilty of a misdemeanor and, except as otherwise provided for herein, shall be punished as for a misdemeanor.

1. Those persons who are convicted of violating this Section for the first time or who shall enter a plea of nolo contendere for the second or any subsequent time shall have their drivers' licenses suspended for a period of at least 30 days and shall receive such other punishment as the judge shall deem appropriate.

2. Those persons who are convicted of violating this section for the second time within a period of three years may be sentenced to imprisonment for a period of at least 15 days, shall have their drivers' license suspended for a period of at least six months and shall receive such other punishment as the judge shall deem appropriate.

3. Those persons who are convicted of violating this section for the third or more times within a period of three years shall be sentenced to imprisonment for a period of at least 30 days, shall have their drivers' license suspended for a period of at least three years and shall receive such other punishment as the judge shall deem appropriate.

4. Notwithstanding the foregoing provisions of this subsection, if a person convicted of violating this section shall be less than 21 years of age, and the conviction is the second for violating the provisions of this section, the judge shall suspend such person's driver's license until he shall reach 21 years of age, or for a period of two years, whichever is greater, and impose such other punishment as he shall deem appropriate.

Section 47A. (68-1625.1) Implied consent to chemical tests. (a) Any person who drives or operates a motor vehicle upon a public road or highway of this State shall be deemed to have given his consent to a chemical test, administered pursuant to the provisions of section 47, of his blood or breath for the purpose of determining the alcoholic content of his blood if lawfully arrested for any offense allegedly committed while the person was driving or operating a vehicle under the influence of intoxicating liquor. No person shall be required to take a blood test if he objects thereto, and in such case such person shall be given a breath test. If such persons shall be minors, their parents or guardians shall also be deemed to have given such consent. The test shall be incidental to a lawful arrest and administered at the direction of a law enforcement officer.

having reasonable cause to believe such person was driving or operating a motor vehicle upon a public road or highway while under the influence of intoxicating liquor. Such person shall be informed by the arresting officer that his failure to submit to such a chemical test will result in the suspension of his privilege to operate a vehicle for a period of six months.

(b) If any such person refuses the request of a law enforcement officer to submit to a chemical test, the Department of Public Safety, upon receipt of the sworn statement of a law enforcement officer to the effect that he had reasonable cause to believe that such person had been driving or operating a motor vehicle upon a public road or highway while under the influence of intoxicating liquor and that the person had refused to submit to the test after being requested by the law enforcement officer, shall suspend his license to operate a motor vehicle for a period of six months. No such suspension shall become effective until ten days after the giving of written notice thereof as provided for in subsection (c).

(c) The Department of Public Safety shall immediately notify such person in writing of the proposed action to be taken. Within 15 days of the receipt by the department of the person's request in writing, the department shall afford him an opportunity for a hearing in the same manner and under the same conditions as provided in the Georgia Administrative Procedure Act, approved March 10, 1964 (Ga. L. 1964, p. 338), as the same may now or may hereafter be amended. For the purpose of this section, the scope of the hearing shall cover the issues of whether the law enforcement officer had reasonable cause to believe the person had been driving or operating a motor vehicle upon a public road or highway while under the influence of intoxicating liquor, whether the person was placed under arrest, whether he refused to submit to the test after being requested to do so by a law enforcement officer, and whether, except for the persons described in subsection (a) above who are incapable of refusing, he had been informed by the arresting officer that his driving privilege would be suspended if he refused to submit to the test.

An application for a hearing made by the affected person within ten days of receiving notice of the proposed action of the Department of Public Safety shall operate to stay the suspension by the department for a period of fifteen days during which time the department must afford a hearing. If the department fails to afford a hearing within fifteen days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the department's action as hereinafter provided. However, if the affected person requests that the hearing be continued to a date beyond the fifteen-day period, the suspension shall become effective immediately upon receipt of the department's notice that said request for continuance has been granted.

If the department determines upon a hearing of the matter to suspend the affected person's license to operate a motor vehicle, the suspension herein provided for shall not become effective until five days after receipt by said person of the department's notification of such suspension.

(d) Any person who is afflicted with hemophilia shall be exempt from the blood specimen test required by this section.

(e) Any person who is afflicted with a heart condition and is using an anticoagulant under the direction of a physician or surgeon shall be exempt from the blood specimen test required by this section.

(f) Only a licensed physician, registered nurse, medical examiner or ASCP certified medical or laboratory technician or aide acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath specimens. Only those persons provided for in subsection (c) of section 47 shall conduct the appropriate tests to determine the alcoholic content thereof.

(g) Any person who is arrested for driving or operating a vehicle while under the influence of intoxicating liquor shall have the right to demand a blood or breath test to determine the amount or weight of alcohol in his blood. It is mandatory upon the officials in whose custody he shall have been placed after arrest to have a blood or breath specimen taken for the purpose of determining the amount of alcohol in the person's blood, if the facilities for obtaining such specimens are available in the county of his confinement, and to have said specimen analyzed according to the procedures provided therefor by this section. The costs of such test shall be borne by the jurisdiction having custody of such arrested person.

(h) No licensed physician, registered nurse, medical examiner, or ASCP certified medical or laboratory technician or aide shall incur any civil or criminal liability as a result of the proper obtention of such specimens for the purpose of determining the alcoholic content thereof when requested in writing by a law enforcement officer to administer such a test.

All convictions and pleas of nolo contendere for violations of this law on second and subsequent offenses in any court of this State shall be promptly reported by said court to the Georgia Department of Public Safety. Any person who willfully fails to make such reports shall be guilty of a misdemeanor.*

*From The Uniform Act Regulating Traffic on Highways of the State of Georgia (Through 1972 Legislative Session).

68A-902. Drivers with ability impaired by alcohol or drugs. (a) A person shall not drive or be in actual physical control of any moving vehicle while:

- (1)** Under the influence of alcohol;
- (2)** Under the influence of any drug to a degree which renders him incapable of safely driving; or
- (3)** Under the combined influence of alcohol and any drug to a degree which renders him incapable of safely driving.

(b) The fact that any person charged with violating this Section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Section.

(c) Every person convicted of violating this Section shall be punished by imprisonment for not less than 10 days nor more than one year, or by fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment. On a second or subsequent conviction within three years, he shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than \$1,000. The foregoing limitations on punishment also shall apply when a defendant has been convicted of violating by a single transaction more than one of the four provisions of subsection (a). Provided that no provision of this Section shall be construed so as to deprive the court imposing the sentence of the power given by law to the court to stay or suspend the execution of such sentence or to place the defendant on probation.

68A-902.1. Chemical tests. (a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or drugs, evidence of the amount of alcohol or drug in a person's blood at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a chemical test is made, the following provisions shall apply:

(1) Chemical analysis of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this Section shall have been performed according to methods approved by the State Crime Laboratory and by an individual possessing a valid permit issued by the State Crime Laboratory for this purpose. The State Crime Laboratory is authorized to approved satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Crime Laboratory.

(2) When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of section 2 of an Act approved March 27, 1968 (Ga. L. 1968, pp. 448, 452, Ga. Code Ann., section 68-1625.1), as now or as hereafter amended, only a physician or registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(3) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(4) Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. The arresting officer at the time of arrest shall advise the person arrested of his rights to a chemical test or tests according to this Section.

(5) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a moving vehicle while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath or other bodily substance shall give rise to the following presumptions:

(1) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of the alcohol.

(2) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of alcohol.

*From the State of Georgia 1974 Uniform Rules of the Road.

Section 2 - Physical Coordination Tests

Not applicable. The Alcohol Safety Enforcement Unit (ASEU) of the Columbus Police Department never employed physical coordination tests as a method for sobriety testing.

Conclusions: Supervisors and officers of the ASEU offered no explanation concerning the non-use of physical coordination tests in drunk driving enforcement. Since pre-arrest breath testing devices were being applied at the scene in many instances, it is the opinion of the author that officers considered the results of the screening test in conjunction with personal observations to be sufficient in arriving at a determination regarding the suspect's sobriety.

Recommendations: Implementation of some physical coordination testing should perhaps be given consideration, if only to serve as an added evidentiary tool. It was noted that pre-arrest breath screening is by no means always administered to the suspect, and the results of physical coordination tests could, in such instances, fill a void in court testimony. In addition, consistent use of physical coordination tests at the scene of the traffic stop would assist in facilitating detection of those offenders whose psychomotor functions are impaired, but who have not ingested alcohol.

Section 3 - Pre-arrest Breath Screening

Although no state or local laws authorizing the use of pre-arrest breath screening existed, the Columbus Police Department issued an administrative regulation which permitted such testing. However, no written policy designed to regulate the application of pre-screening devices was formulated, and ASEU officers were left with their own discretion. Mostly, if the officer's observations confirmed that the suspect had been drinking, a pre-screening test would be administered at the scene to determine whether the offender might be legally intoxicated. The device employed by the Columbus ASEU for this purpose was the Alco-Sensor, manufactured by Intoximeters, Incorporated. The field pre-screening test was preceded by a verbal explanation by the officer -

no official statement was read - and the suspect then had the option of submitting to or refusing the test. (No legal sanctions could be imposed if he should decide to refuse.) The results obtained in individual pre-screening tests were not officially recorded, but the data were accumulated at the request of the manufacturer for the latter's reference.

ASEU officers received approximately two hours of training in proper operation of the pre-screening devices from a representative of the manufacturer, even though there were no administrative or statutory requirements for such training. The Columbus ASAP purchased the Alco-Sensor pre-screening devices at an approximate cost of \$225 each and issued one of the units to each of the ASEU officers. (Regular patrol officers did not have access to the devices.) At the time of this survey, 20 Alco-Sensors were available to the Columbus ASEU.

Although ASEU officers indicated reasonable satisfaction with the performance of the pre-screening devices, some persistent problems were cited:

- The units required frequent calibration.
- They were easily jarred out of adjustment.
- At times, the reliability of the devices was suspect.

A candid opinion expressed by the commander of the Alcohol Safety Enforcement Unit was that the Alco-Sensor was too costly and unreliable to warrant expanded application in enforcement.

Conclusions: Administration of field pre-screening tests by ASEU officers was discretionary, a development largely attributable to the lack of formal operational guidelines in this area. The officers were more inclined to employ the field test in situations where the suspect displayed none of the more obvious symptoms of impairment; in other words, in the case of "borderline" drinking drivers. Where, in the opinion of the officer, the suspect was obviously intoxicated, the pre-screening device was less likely to be used.

In addition to the Alco-Sensor, two other pre-screening devices (the Borg-Warner A.L.E.R.T. and the Alcoyser) had been experimentally used under field conditions by the Columbus ASEU. Although some

problems concerning use of the Alco-Sensor were cited, the officers nevertheless indicated a slight preference for that unit over the others. No specific reasons for this development were given and there was no evidence that any formal, evaluative comparisons had been undertaken.

In general, officers of the ASEU considered pre-arrest breath screening to be of value in drunk driving enforcement, although, as previously indicated, the process was not without its problems. Some officers indicated that, in their opinion, the state of the art of breath pre-screening is not sufficiently advanced and results obtained with the devices are too often questionable. For the purpose of improved drunk driving enforcement, ASEU officers believed that a portable evidentiary breath testing device, the accuracy of which is accepted by legislatures and courts, is ideal. Such a device could be readily employed at the scene where the offender was originally stopped, and the results obtained would eliminate any doubt on the part of the officer concerning the suspect's sobriety.

The prospect of future use of the portable breath testing devices by officers of the Columbus Police Department appeared to be bleak. The feeling expressed was that continued use would be made of the 20 Alco-Sensors which had already been purchased by the ASAP for the ASEU, but that no provisions had been made by the police department to acquire additional or replacement units with budgeted funds. It appeared unlikely that local funds would be allocated for this purpose.

Recommendations: Approval of pre-arrest breath screening by the state legislature or by the local governing body, as a legitimate means for preliminary determination of sobriety, appears desirable. Such a statute would provide a basis for action on the part of law enforcement agencies and perhaps would be the necessary catalyst for implementation of the concept in drunk driving enforcement. In the opinion of the author, pre-arrest breath screening - if properly administered - is of value in drinking driver enforcement and should be employed by police. A major point in its favor is that it tends to reduce the influence of subjective and judgmental conclusions reached by the

officer in determining whether the suspect before him may be, in effect, legally impaired. With legislative backing of pre-arrest breath screening, law enforcement agencies will then also be in a position to generate operational guidelines for officers who may have occasion to use the devices in the field. It is imperative that officers be given sufficient direction as to when and how and under what circumstances pre-arrest breath screening should be administered to suspects, so that the role of discretion in this process is substantially reduced. Along with that, requirements should be established for the recording of data (i.e., test results, equipment performance) relative to pre-arrest breath screening. If such data are diligently collected, they should prove to be immensely useful to the agency in determining which pre-screening devices appear to be most cost-effective and reliable, and what problems are apparent in the field application of the units.

With a systematic approach to the pre-screening process, the ASEU of the Columbus Police Department might have attained altogether different results. As it was, findings and conclusions were based upon strictly empirical observations characterized by "gut" reaction.

Section 4 - Evidentiary Sobriety Testing

The presumptive level of intoxication in Georgia is .10% of blood-alcohol concentration. No presumption may be made at BAC levels ranging from .051% to .099%, although a suspected DUI offender may still be charged with the offense and could be convicted based upon other incriminating testimony and evidence. If the suspect's BAC is at the level of .05% or less, he is presumed not to have been intoxicated. A per se statute addressing levels of intoxication in terms of blood-alcohol concentration is not in effect.

As mentioned, Georgia law provides that no presumption whatsoever may be made in the case of offenders who register a blood-alcohol concentration between .051% and .099%. Theoretically, it is the court's decision whether or not the offender was in fact impaired at the time of his arrest. According to ASEU officers, however, offenders in this category are rarely convicted of driving while under the influence.

Generally, a conviction may only be likely if the offender was involved in a relatively serious motor vehicle accident. As a rule, anyone who registered a BAC within that range is not prosecuted.

Georgia law prescribes that the following bodily substances may be sampled and submitted for analysis to determine blood-alcohol concentration (BAC):

- Breath
- Blood

Suspected offenders are presented with a choice: They may submit either a breath or a blood sample for BAC analysis. Breath samples are predominantly obtained, probably because officers usually attempt to convince the offender to follow this course of action. (The blood sampling process, which will also be discussed, is usually more complex and time-consuming.)

DUI suspects who consent to submit a breath sample are transported by the arresting officer to the testing facility, which is located in the rear of the jail within the headquarters of the Columbus Police Department. Those who choose to submit a blood sample are taken to the Columbus Medical Center for processing.

Georgia's Implied Consent statute was enacted by the state legislature in 1968, and provides for the suspension of driving privileges for a period of six months of anyone who willfully refuses to submit to an evidentiary sobriety test. (See Appendix A; Exhibit 5b.)

In the event of a refusal, an Implied Consent hearing is scheduled by the Georgia Department of Public Safety - specifically, by the Driver's Service Section of the Driver's License Bureau in Columbus. The hearing is attended by the offender and the arresting officer. The latter is notified of the date and time of the hearing by letter and is required to be present.

Pertinent provisions of the Implied Consent statute are explained to the suspect after he has been placed under arrest and is seated in the rear of the patrol vehicle (just before transport to the testing facility commences).

The ASAP enforcement countermeasure in Columbus employed the following evidentiary breath testing devices:

- Photo-electric Intoximeter, manufactured by Intoximeters, Incorporated
- Gas chromatograph

At the time of the site visit, only the Photo-electric Intoximeter was used to obtain evidentiary test results. After the suspect had submitted a breath sample into the Intoximeter, he was also asked to insufflate the gas chromatograph. Results obtained on the gas chromatograph were then compared with those shown by the Intoximeter. This comparison was conducted to determine whether the gas chromatograph was suitable to replace the Intoximeter eventually. (See Figure 5-3.)

Two Photo-electric Intoximeters are available to the Columbus Police Department for evidentiary sobriety testing. One of these is retained by the police department, and the other is kept by the Muscogee County Sheriff's Office, but may be used by Columbus police officers whenever necessary. At the time of the survey, only one gas chromatograph was in use. An approximate unit cost of \$800 was quoted for the Photo-electric Intoximeter. The commander of the Alcohol Safety Enforcement Unit is responsible for ensuring that all necessary supplies are available for evidentiary breath testing.

The suspected drinking driver is kept under observation for a period of 20 minutes before he is permitted to insufflate the breath testing device. This observation period commences as soon as he enters the processing facility and is monitored by the officer who will administer the evidentiary test. Even though he may be a certified breath examiner, the arresting officer is not permitted to carry out the breath test, but he must be a witness to it. The evidentiary test is conducted by another certified operator. After the results of the breath test are known, a notation of the offender's blood-alcohol concentration is entered on the arrest citation, a copy of which is turned over to the suspect. (See Figure 5-1.) BAC results obtained with individual breath tests are recorded and tabulated by members of the ASAP enforcement countermeasure.

(See Figure 5-2.) Supervisory officers of the Alcohol Safety Enforcement Unit are responsible for review of all pertinent documents and records turned in by officers of the Unit.

Measures designed to provide security for the evidentiary breath testing devices are informal. No administrative regulations pertaining to this aspect were evident, but by virtue of their location (within police department headquarters) the devices are accessible only to police officers. No one recalled any problems relative to tampering with or perhaps incapacitating the instruments.

Operators of the evidentiary breath testing devices, all of whom are police officers, must have successfully completed a 40-hour training course on the proper use and maintenance of the instruments before certification. This course is administered by the Georgia Department of Public Safety and instructors are drawn from the agency's Crime Laboratory. The permits issued to newly-certified operators are valid for a two-year period, after which they must be renewed if the licensee wishes to retain his breath examiner status. Annual refresher training sessions are held for a two- to three-day period. Once each month, the breath testing devices are inspected and calibrated by a member of the Georgia Highway Patrol who is qualified to perform this service.

No specific figures were obtained, but it was maintained by the ASEU commander and other officers of the Unit that a greater number of offenders opt for the evidentiary breath test rather than submission of a blood sample for BAC analysis. Apparently, however, a significant number of blood samples are still obtained from suspected DUI offenders, since the choice of a breath or blood analysis is provided by law.

In the event that a blood sample is to be withdrawn, ASEU officers avail themselves of the services of the Columbus Medical Center staff. Licensed physicians, nurses, or qualified medical technicians are authorized to collect the samples, which are then forwarded to the Crime Laboratory of the Georgia Department of Public Safety for analysis. Again, in this case, the arresting officer is required to witness the withdrawal of the blood sample. According to responses from various officers, the Columbus Medical Center appears to be sufficiently prepared

to handle this kind of processing, and no real problems seem to have cropped up in this particular area.

There are no statutory requirements which direct coroners or medical examiners to obtain blood samples of persons fatally injured in motor vehicle accidents. The investigating officer must initiate a request for this service, in order to have it performed. The same applies to principals in a fatal crash, who survived.

Conclusions: ASEU officers, as a matter of normal procedure, released any offenders who registered a BAC between .051% and .099%. Exceptions to this were likely to occur only in situations where the suspect was involved in a relatively serious motor vehicle accident where personal injury was sustained. This course of action appears to have been fostered by the attitude of the local courts, which were reluctant to prosecute such offenders.

The initial intent of the legislative provision which permits DUI suspects the choice of submitting either to a breath or blood test is, in the author's opinion, somewhat less than perspicuous. The average DUI offender, whose psychomotor functions are presumably already impaired, is needlessly confused by this selection process, the reasons for which he is not likely to perceive anyway.

Overall, Columbus ASEU officers appeared to be well-versed and knowledgeable in evidentiary testing techniques. Procedural requirements, as observed, were generally followed carefully and due care was exercised in explaining them, as necessary, to the offender. The evidentiary sobriety testing process in Columbus, at the operational level, appeared to run reasonably smoothly and without any visible snags.

Recommendations: The author suggests that more attention be paid to that provision of the DUI statute which states:

2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor,

but such fact may be considered with other competent evidence in determining whether the defendant was under the influence of intoxicating liquor.
[Emphasis added]

From all appearances, the local courts (and therefore the ASAP enforcement countermeasure) have decided to interpret the word "may" quite liberally and in effect have chosen to disregard that portion of the statute except where grave physical harm was suffered as a result of a motor vehicle accident. The result of this development is that a rigid line of demarcation is set at .10% blood-alcohol concentration, so that offenders with any BAC less than .10% but more than .05% are "home free." The question that remains, however, is whether the offender who registers a blood-alcohol concentration of .09% is really much less of a menace on the highway than the one with a BAC of .11%. (On this subject, it is interesting to note that the State of Utah has seen fit to set its presumptive level of intoxication at .08%.)

It must be pointed out, however, that Columbus is by no means the only ASAP where this condition has materialized. A considerable number of other ASAP sites which were surveyed displayed very similar symptoms.

Rather than offering the offender the ambiguous choice of submitting either to a breath or blood test, it would appear more logical to authorize arresting officers to select the evidentiary test to be performed. If the latter were the case, evidentiary breath testing, in all probability, would be even more predominant than it already is, because of its convenience and accessibility to police. Since the Georgia legislature has accepted and approved certain breath testing apparatus for evidentiary purposes in DUI cases, there appears to be no reason why breath testing cannot be the principal method for BAC analysis. Perhaps a more viable approach would be to have the arresting officer offer evidentiary analysis of the suspect's breath, and if the latter is physically unable to submit a breath sample, the natural recourse would be a blood specimen. Should the suspect deliberately attempt to foil the breath testing process, however, it

would constitute a refusal.

Under the present system, as already pointed out, ASEU and regular patrol officers generally attempt to persuade a suspected DUI offender to opt for breath analysis in favor of submitting a blood sample. Although it was not mentioned by any officers of the Columbus ASAP enforcement countermeasure, one of the most persuasive arguments against blood analysis is that BAC results often tend to be slightly higher than those obtained by means of a breath sample. Therefore, the DUI suspect, when informed of that fact, is easily convinced that it is to his benefit to choose breath analysis. Although some may question the ethics of this procedure, it is nevertheless a common phenomenon in Columbus.

While it was generally indicated that officers experienced no problems in dealing with the staff of the Columbus Medical Center for the purpose of DUI processing, it was apparent that the police prefer not to involve medical personnel whenever possible. Without question, obtaining a blood sample requires more processing time and draws on more personnel resources. In addition, a factor well worth consideration from a psychological viewpoint is that - in the case of breath testing - the offender is kept within the imposing law enforcement environment from the time of his initial contact with the officer until his ultimate disposition. Not so where a blood sample is required. The hospital atmosphere and inquisitive glances from spectators at the Medical Center may bring about an undesirable reaction from the suspect, which could range from stubbornness to belligerence. In addition, although there was no specific mention of it, it is likely that medical personnel have reservations about withdrawing blood samples from DUI suspects, for fear of the possibility of being subpoenaed to testify at a future time.

For these reasons, it may well be worthwhile to consider altering existing legislation to eliminate the choice of blood or breath sample analysis in favor of only breath analysis as the primary testing technique for all suspected DUI offenders. Blood sample

analysis could remain as an alternate recourse in the event that a breath sample cannot be obtained for valid reasons.

A waste of manpower is incurred by the legislative provision which prohibits the arresting officer - even when a certified operator - from carrying out the evidentiary breath analysis. With the current procedural system, another officer who is a qualified breath examiner must be summoned to conduct the breath test, and the 20-minute observation period commences when the breath examiner first meets the suspect. If the arresting officer were permitted to conduct the test, the observation period could begin upon transport of the prisoner and the testing process could be underway much sooner, involving only one police officer. Should a witness be required, the ASEU shift supervisor could fulfill that function.

Although no problems have apparently been encountered relative to security of the evidentiary breath testing instruments, it would appear advisable to institute formal regulations, at least at the agency level, concerning access restrictions. In the absence of such regulations, defense attorneys may have a basis for questioning the operational reliability of the instruments.

Statutory requirements of the following should be in effect:

- Directing coroners or medical examiners to analyze blood samples for blood-alcohol concentration of anyone fatally injured in a motor vehicle accident.
- Directing all principals in a fatal motor vehicle crash to submit a sample of the appropriate bodily substance for BAC analysis.

GEORGIA
UNIFORM TRAFFIC CITATION, SUMMONS, ACCUSATION
SS NR-GA 10601
NCIC NO. **41609**
CONSOLIDATED GOVERNMENT OF COLUMBUS
POLICE DEPARTMENT

SECTION I - VIOLATOR

Upon _____ Date _____ Time _____
Month _____ Day _____ Yr. 19____ at _____ A.M.
P.M.
☐ Operator ☐ Chauffeur ☐ Veteran ☐ Learner
License No. _____ Expires _____ State of Lic. _____
NAME _____
Last First Middle
CURRENT ADDRESS _____
Street City State Zip Code
Eyes Height Weight Sex Hair D.O.B.
Vehicle Year Make Style Color
Registration No. Year State Registration Decal No.
Business Address Phone No.

SECTION II - VIOLATION

Upon the public highway and/or street did unlawfully ☐ operate ☐ park said vehicle in the ☐ city
☐ county within the State of Georgia and did there commit the following offense.

EXCESSIVE SPEED MPH ☐ RADAR ☐ VASCAR ☐ 5-10 MPH ☐ OVER 15 MPH
MPH ZONE, OVER SPEED LIMIT ☐ 11-15 MPH ☐ BASIC SPEED

IMPROPER TURN ☐ LEFT ☐ NON SIGNAL ☐ FROM WRONG LANE
☐ RIGHT ☐ INTO WRONG LANE ☐ PROHIBITED

DISREGARDED TRAFFIC SIGNAL ☐ RED SIGNAL ☐ CAUTION SIGNAL ☐ STOP SIGN

FAILED TO YIELD AT ☐ STOP SIGN ☐ YIELD SIGN ☐ UNSIGNED INTERSECTION

IMPROPER PARKING ☐ Intersection ☐ On Right ☐ IMPROPER LANE USAGE ☐ Left of Center
☐ Left of Center ☐ Oncoming ☐ Wrong Lane

FOLLOWING TOO CLOSELY ☐ OTHER _____ ACCIDENT ☐

IN VIOLATION OF SECTION _____ OF ☐ STATE LAW ☐ LOCAL ORDINANCE

IMPROPER PARKING METER ☐ OVERTIME ☐ PROHIBITED AREA
NO _____ ☐ NIGHT ☐ DOUBLE PARKING

| WEATHER | HIGHWAY | TRAFFIC | LIGHT |
|---|---|---|--|
| <input type="checkbox"/> CLEAR <input type="checkbox"/> CLOUDY <input type="checkbox"/> RAINING <input type="checkbox"/> SNOWING <input type="checkbox"/> FOG <input type="checkbox"/> SLEET | <input type="checkbox"/> DRY <input type="checkbox"/> WET <input type="checkbox"/> MUDDY <input type="checkbox"/> SNOWY <input type="checkbox"/> ICY <input type="checkbox"/> LOOSE MATERIAL | <input type="checkbox"/> CONCRETE <input type="checkbox"/> BLACKTOP <input type="checkbox"/> GRAVEL <input type="checkbox"/> UNIMPROVED <input type="checkbox"/> DIVIDED LANES | <input type="checkbox"/> LIGHT <input type="checkbox"/> MEDIUM <input type="checkbox"/> HEAVY <input type="checkbox"/> VEHICLE <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> CROSS TRAFFIC |
| <input type="checkbox"/> DAYLIGHT <input type="checkbox"/> DARKNESS <input type="checkbox"/> DAWN/DUSK OTHER _____ | | | |

Other Offenses _____

SECTION III
LOCATION

In the County of _____ (at distance) _____ miles
(direction) _____ of City _____ on _____
Highway Road Street _____ at or near Mile Post _____
Signature of Complainant or Officer _____
Badge No. _____ Division _____

SECTION IV
SUMMONS

You are hereby ordered to appear in court to answer this charge on the _____ day of _____ Month _____
Year _____ at (Time) _____ (A.M.) _____ (P.M.) in the _____ Recorder's Court
Name of Court _____
at _____ 937 1st AVENUE
City _____ Street Number or Name _____
COLUMBUS Georgia Signature acknowledges service
of this summons, and receipt of copy of same
Signature _____

COUNTY COPY

COURT NO. _____
(IF NO RELATED OFFENSE REPORT
LEAVE THIS SPACE BLANK)

COLUMBUS POLICE DEPARTMENT
ARREST REPORT

CAJIS NO. _____

| | | | | | | | |
|--|--|-------------------------|-------|---|-------------------------|----------------------|------|
| NAME | | LAST | FIRST | MIDDLE | AGE | RACE | SEX |
| ALIAS | | | | NICKNAME | | | |
| SOCIAL SECURITY NO. | | DOB (MO., DAY, YEAR) | | JUVENILE _____ ADULT _____ | | | |
| ADDRESS | | | | | | | |
| OCCUPATION | | | | EMPLOYER | | | |
| ARRESTING OFFICERS | | | | | | | |
| CHARGE (CODE TITLE, NOT CODE NUMBER) | | | | | | | |
| OFFICERS RESISTED OR ASSAULTED YES _____ NO _____ | | | | WAS A WEAPON USED AGAINST THE OFFICER YES _____ NO _____ | | | |
| NATURE OF CASE (IF ARRESTED PERSON INDICATED, COMPLETE REVERSE SIDE) | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| OFFENSE OBSERVED BY OFFICERS | | | | WARRANT ARREST | | COMPLAINT OF WITNESS | |
| WITNESSES (NAME, ADDRESS AND PHONE) | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| LOCATION OF ARREST | | | | | BEAT | UNIT | ZONE |
| DATE OF ARREST | | | | TIME OF ARREST | | | |
| | | | | TIME | MONTH | DAY | YEAR |
| DATE AND TIME OF COURT APPEARANCE | | | | | | | |
| AMOUNT OF BOND | | SIGNED _____ CASH _____ | | | NAME OF BONDING COMPANY | | |
| REPORT APPROVED BY: | | | | WT. INDEX-IN | | PT. INDEX-OUT | |
| DISPOSITION OF CASE | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

Figure 5-2

131

COORDINATION-- NORMAL _____ STAGGERING _____ NEEDED ASSISTANCE TO WALK _____

CLOTHING--- NEAT _____ DISARRANGED _____ SOILED _____

ORIENTATION--- ALERT _____ SLEEPY _____ AWARE OF TIME AND SPACE---YES _____ NO _____

ANY EVIDENCE OF INJURIES--- YES _____ NO _____ (IF YES, EXPLAIN) _____

XXXXXXXXXXXXXXXXXXXXXX

ALCOLYSEY FIELD TEST GIVEN---YES _____ NO _____ REFUSED _____

INTOXIMETER TEST GIVEN AT HDQ---YES_____NO_____REFUSED_____RESULTS_____

BLOOD TEST GIVEN SUBJECT---YES _____ NO _____ RESULTS _____

[illegible]

DETAILS OF OFFENSE (WHAT ATTRACTED YOUR ATTENTION TO SUBJECT, DESCRIPTION OF SUBJECTS CLOTHING, MAKE, MODEL, YEAR, COLOR, TAG NUMBER OF SUBJECTS AUTO AND DIRECTION AND MANNER OF TRAVEL) _____

WAS SUBJECTS VEHICLE--- TOWED____DRIVEN BY OFFICER_____

LOCATION OF STORAGE _____

IF TOWED, NAME OF WRECKER COMPANY _____

LIST OF VALUABLES IN VEHICLE WHEN STORED

132

| Number | Operator | PEI Reading | Blank Reading | Subject Reading | Malco Reading |
|--------|---------------|-------------|---------------|-----------------|---------------|
| 278 | Sgt. Cummings | .11 | +000 | .107 | .10 |
| 279 | Sgt. Cummings | .18 | +000 | .196 | .10 |
| 280 | Maynard | .11 | +000 | .121 | .10 |
| 281 | Sgt. Cummings | .17 | +000 | .18 | .10 |
| 282 | Sgt. Cummings | .11 | +000 | .122 | .10 |
| 283 | Sgt. Cummings | .13 | +000 | .145 | .10 |
| 284 | Ginn | .15 | +000 | .157 | .099 |
| 285 | Phillips | .13 | +000 | .133 | .10 |
| 286 | Ginn | .16 | +000 | .147 | .10 |
| 287 | Phillips | .12 | +000 | .111 | .099 |
| 288 | Phillips | .15 | +000 | .150 | .094 |
| 289 | NONE | NONE | NONE | NONE | NONE |
| 290 | NONE | NONE | NONE | NONE | NONE |
| 291 | NONE | NONE | NONE | NONE | NONE |
| 292 | Phillips | .15 | +000 | .169 | .094 |
| 293 | Phillips | .11 | +000 | .128 | .094 |
| 294 | Phillips | .19 | +000 | .184 | .094 |
| 295 | Phillips | .18 | +000 | .161 | .094 |
| 296 | Anderson | .19 | +000 | .20 | .103 |
| 297 | Anderson | .15 | +000 | .160 | .094 |
| 298 | Dorsey | .35 | +000 | .39 | .11 |
| 299 | Sgt. Hamby | .15 | +000 | .19 | .10 |
| 01 | E. Jackson | .13 | +000 | .15 | .10 |
| 02 | E. Jackson | .21 | +000 | .25 | .10 |
| 06 | Phillips | .19 | +000 | .195 | .10 |
| 07 | Phillips | .18 | +000 | .188 | .10 |
| 08 | Ginn | .15 | +000 | .145 | .10 |
| 09 | Phillips | .15 | +000 | .160 | .10 |
| 11 | Phillips | .15 | +000 | .149 | .10 |
| 12 | Phillips | .17 | +000 | .173 | .10 |
| 13 | Maynard | .13 | +000 | .154 | .108 |
| 14 | Maynard | .26 | +000 | .295 | .111 |
| 6 | Phillips | .18 | +000 | .195 | .10 |
| 0 | Anderson | .15 | +000 | .167 | .119 |
| 1 | Anderson | .14 | +000 | .168 | .10 |
| 2 | Ginn | .18 | +000 | .221 | .10 |
| 3 | Ginn | .15 | +000 | .168 | .10 |

Figure 5-3

INDIANA (INDIANAPOLIS)

Section 1 - Legislative Provisions

As reported in the preliminary report, dated April 1975, documentation of the Legislative Base was not available at the time of this survey. Legislative information was to be provided by Lt. D. H. Elmore, SAVE Unit Commander; as of this writing the appropriate documentation has not been received by this investigator.

Section 2 - Physical Coordination Tests

Physical coordination tests are administered at the scene of apprehension to all suspected OMVUIL (Operating a Motor Vehicle Under the Influence of Liquor) offenders, by the arresting officer. Generally, the physical coordination tests consist of the following psychomotor tasks:

- Balance
- Walking
- Finger to nose
- Coin pick-up
- Handwriting specimen

In addition to the above psychomotor tasks, officers frequently record unusual actions of the suspect during the driver interview.

Officer observations may include any unusual actions or behavior exhibited by the suspect. The most frequently cited "unusual actions" are as follows:

- The manner in which the suspect exits the automobile.
- The degree of difficulty which the suspect encounters in producing his driver's permit.
- Obvious speech impairments (i.e., slurring, talking slowly and in a low tone of voice).

Where the officer is unable to establish alcohol involvement by either observation (during the driver interview) or the physical coordination tests, the suspected offender will be placed in the rear seat of the police cruiser for approximately two minutes. Upon conclusion of the two-minute period, the arresting officer will enter the police cruiser

and check for an odor of alcoholic beverage.

Where no odor of alcoholic beverage is detected by the arresting officer, the suspect is released. When the odor of alcoholic beverage is detected, the suspected offender will continue OMVUIL arrest processing toward the evidentiary BAC testing phase.

The arresting officer records all information gathered during the driver interview and physical coordination testing on either the Indiana State Police Alcoholic Influence Report Form (Fig. 6-3) or the more widely used Field Interview Form (Fig. 6-2). A general statement as to the officer's opinion regarding the state of sobriety of the suspected offender is also included in the narrative section of the Incident Report (Fig. 6-4). Certification of Breath Test Refusal (designated Form III by the IPD) also provides for the expression of the arresting officer's opinion as to the suspect's sobriety and is completed by the arresting officer should the suspected offender refuse evidentiary BAC testing. (See Figure 6-10.)

Conclusions: The Indiana State Police Alcoholic Influence Report Form (Fig. 6-3) is modeled after the Alcoholic Influence Report Form developed by the National Safety Council. The AIR is comprehensive and provides for the written documentation of:

- Observations by the arresting officer
- Recording of performance tests
- Observer's opinion as to effects of alcohol
- Observations of performance test
- Chemical test (evidentiary) data and chemical test check list
- Driver interview

In an attempt to save time, ASAP officers generally discard this report in favor of the Field Interview Form (Fig. 6-2). In addition to the data contained on the face of the Field Interview Form, officers note additional comments on the reverse of this form. The noted additional comments consist of information (in narrative form) similar to the information contained on the Alcoholic Influence Report Form (Fig. 6-3).

Recommendations: In the opinion of this investigator, the physical coordination testing configuration utilized by officers of the ASAP unit is satisfactory to meet current enforcement objectives. Officers' failure to use the Alcoholic Influence Report Form, in order to save time, results in the loss of pertinent evidentiary information. The Alcoholic Influence Report Form should be completed in all OMVUIL arrests.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is not conducted by enforcement personnel of the Indianapolis ASAP program.

Recommendations: The Indianapolis Police Department should explore the feasibility of implementing a pre-arrest breath screening program, on an experimental basis, to replace current procedures of placing a suspected offender in a police cruiser for two minutes to detect an odor of an alcoholic beverage.

Section 4 - Evidentiary Sobriety Testing

Should the arresting officer find probable cause (impairment or odor) to believe the suspect is under the influence of an intoxicating beverage, he will advise the suspect of the provisions of the Indiana Implied Consent law.

The Implied Consent law is advised to the suspect by the arresting officer, who recites the law from memory. Should the suspect either refuse evidentiary testing or state that he does not understand the consequences of refusal, the arresting officer will then read the Implied Consent advisement from the Certification of Breath Test Refusal (Fig. 6-10). This advisement will be re-read to the suspect until the suspect indicates either his willingness to submit to evidentiary testing or refuses to submit to chemical testing.

Analysis of the breath (to determine blood-alcohol concentration (BAC)) is the singular testing process used for evidentiary purposes by the Indianapolis Police Department. The equipment used to conduct this analysis is the Smith & Wesson Breathalyzer Model 900. The IPD has seven Breathalyzers, which were purchased by the IPD prior to the implementation of the ASAP

program.

Arresting officers who are licensed Breathalyzer operators may conduct evidentiary tests on suspects whom they arrest. Back-up assist officers who are licensed Breathalyzer operators may also be dispatched to conduct evidentiary testing. One of two mobile testing vans may be used, at the scene of apprehension. Each mobile testing van is operated by a policewoman who is also a licensed Breathalyzer operator.

Who will administer the evidentiary test is determined by the availability of the mobile testing vans and the location of arrest. (Officers are encouraged to utilize the closest testing facility.)

Breathalyzers are located geographically throughout the Indianapolis Police Department jurisdictional area.

- One at city-county lockup
- One at each of the three local hospitals
- One in each of the two mobile testing vans

The following arrest procedures are taken directly from IPD General Order No. 71-04, RCD-2: Implied Consent - Refusal to Submit to Test for Intoxication (Appendix A; Exhibit 6a):

II. Procedure to Follow When Driver Agrees to Submit to Breath Test and Is Not Under Arrest for Another Charge Which Requires Incarceration.

- A. Make sure that driver's car is parked safely and locked.
- B. Transport driver to lock-up [or closest BAC testing location if mobile van is not available] for breath test. (Note: While it is true the driver is being handled as if he were arrested, he has not been arrested and is voluntarily coming to the lock-up for a breath test. Remember that before you offer the driver the breath test you must have probable cause to arrest him. Actually, your arrest is only being postponed until after the breath test. It is possible that you may have the driver under arrest for another violation, which requires incarceration, that is willing to submit to a breath test.)

III. Procedure to Follow After Breath Test

- A. Above .10% blood alcohol - driver shall be arrested for O.M.V.U.I.L.
- B. Between .05% and .10% blood alcohol - based on your evidence (driver's unusual driving behavior, appearance,

behavior, odor of liquor, speech, etc.) you may arrest the driver for O.M.V.U.I.L.

- C. Below .05% blood alcohol - driver must be immediately released unless you have reason to believe that the man is under the influence of narcotics or is under arrest for a violation which requires incarceration. (Note: Since the officer had probable cause to believe the driver was under the influence before the test was offered, it is logical to assume that most drivers will not be below .05% blood alcohol.)

I. Procedure to Follow When Driver Refuses Breath Test

- A. Arrest driver for O.M.V.U.I.L.
- B. Tow driver's vehicle
- C. Take driver's Operators License and attach to Certification of Breath Test Refusal form...
- D. Transport driver to jail
- E. While at Headquarters the arresting officers shall obtain Forms I [Fig. 6-8], II [Fig. 6-9], and III [Fig. 6-10] and complete said forms. The completed forms shall be placed along with the traffic ticket in the lock-up to be processed to the Prosecutor's Office.

The driver shall then be given his copy of the form entitled Police Officer's Receipt for Document (Form II).

The arresting officer shall then confer with the Prosecutor's Office for their determination as to whether or not a hearing shall be requested by the Court on the issue of probable cause for refusal to submit to a breath test for intoxication. When the violator, having refused the chemical test, appears before the court, the first duty of the court is the determination of probable cause. If the court finds that probable cause for arrest of O.M.V.U.I.L. did exist, then it determines whether or not the officer offered to the defendant an opportunity to take a chemical test before the arrest was made, and if the defendant did, in fact, refuse to take the test when he was physically and mentally able to do so. If the court finds an effective refusal, it forwards such findings, along with the current driving license of the defendant, to the Commissioner of Motor Vehicles with the recommendation that the Commissioner suspend the driving license for a period of one year. The Commissioner is bound by said recommendation, and the suspension is effective from the date of the finding of refusal by the court.

If the Prosecutor's Office determines that the court will not be requested to have a hearing on the issue of probable cause for refusal to submit to a breath test for intoxication, then they will proceed with hearing of the O.M.V.U.I.L. charge.

Two mobile evidentiary testing vans are utilized by the ASAP enforcement countermeasure (see photograph). According to ASAP personnel (as reported in ASAP Analytical Study #3) the vans arrived in Indianapolis



Mobile evidentiary testing van: Indianapolis, Indiana (illustration)

on March 14, 1973; one van was rendered inoperative due to a fire in the engine compartment and was not returned to service until November 1973. During 1973 the two Mobile Breathalyzer Laboratories (MBL's) were used to test 1,073 suspects, or 22% of the total 4,829 breath tests conducted. ASAP accounted for 65% of these tests and the regular patrol for 35% of the MBL tests.

Mobile vans either respond to the site of arrest or (as needed) serve as stationary auxiliary testing stations. Each van is equipped with a Breathalyzer, Simulator, police reporting forms, and the standard emergency equipment.

Each mobile van is operated by a policewoman who serves as both driver and breath analyst. These officers are part of the total 19 ASAP-funded sworn field personnel.

There are currently 87 certified breath examiners within the Indianapolis Police Department. In order to be certified as a breath examiner a sworn police officer must respond to a call for volunteers by the IPD. Volunteers are then screened by the State Department of Toxicology. Those showing mathematical aptitude receive training in breath analysis at the City-County Training Academy, Indianapolis, Indiana. This course is staffed by state-licensed chemists supplied by the State Department of Toxicology. Upon completion of the 40-hour Breathalyzer course officers receive a certificate/license, issued by the State Department of Toxicology, to administer breath alcohol tests.

Operators are re-certified every two years by written and practical exams conducted by the State Department of Toxicology.

Officers record the results of the evidentiary BAC test in the following manner:

- The test operator completes, when used, the Indiana State Police Alcoholic Influence Report Form (Fig. 6-3).
Sections: Chemical Test Data; Chemical Test Check List.
- The test operator completes the Report of Alcohol Content (Fig. 6-6) in its entirety, whenever an evidentiary test is conducted.
- The arresting officer completes the Incident Report (Fig. 6-4),

indicating the BAC result in the Message or Comments section. In accident cases, the BAC is also recorded on the Motor Vehicle Accident Report (Fig. 6-11), in the section entitled Other Remarks - Ordered to Appear, etc. The arresting officer will also report the name of the chemical test operator in the Assisting Officer's section of the Incident Report. (Also refer to Appendix A; Exhibit 6b - Indianapolis Police Department Training Bulletin Number One - January 24, 1973: "You Asked for It! 1. When to request a Breath Test; 2. How to report a Breathalyzer Test.")

- Should the arresting officer elect to complete the Field Interview Form (Fig. 6-2), he will record the BAC result, time and test site in the appropriate section of the report.

Conclusions: The following is a time and task outline depicting an OMVUIL arrest observed by the investigator. The arrest was effected by an officer of the Indianapolis Police Department ASAP patrol. The arrest was described by the arresting officer as "typical" with regard to the time involved and the tasks required.

10:00 p.m. - Began DWI patrol.

10:40 p.m. - Observed and stopped violator for hazardous moving violation (cross center line - weaving).

- Conducted field sobriety tests and driver interview. Subject was unable to perform any of the physical coordination tests, his speech was obviously slurred and he had an obvious odor of alcoholic beverage about his person.
- Subject was advised Implied Consent by the arresting officer, who recited from memory. (Subject stated he would take the test.)
- Subject's vehicle was locked and left at scene.

10:55 p.m. - Enroute, with suspect in custody, to Community Hospital to conduct Breathalyzer test. (Hospital was 20 blocks from scene of arrest.)

11:05 p.m. - Arrived at Community Hospital.

- Subject refused to take breath test.
- Arresting officer read and completed Forms I, II, and III (Figs. 6-8, 6-9, 6-10).

11:15 p.m. - Enroute, with suspect, back to subject's auto.

11:25 p.m. - Arrived back at scene of apprehension.

- Subject was advised that he was under arrest for OMVUIL. Subject was then handcuffed and advised that his auto would be impounded.
- Tow truck called.

11:35 p.m. - Tow truck arrived.

11:45 p.m. - Enroute, with suspect, to police security area.

11:55 p.m. - Arrived police security area and subject was released to jail personnel.

- Arresting officer completed citation (Fig. 6-1), Field Interview Form (Fig. 6-2), checked Form I (Fig. 6-8) and Form III (Fig. 6-10) for completeness, and gave to jail personnel.

12:05 a.m. - Returned to DWI patrol.

Total elapsed time - one hour 25 minutes.

An additional 20 minutes would have to be added to the total elapsed time had the subject not refused the evidentiary test.

Significant within the evidentiary testing configuration is the constructive rapport created between the arresting officer and the suspected offender.

The questionable delay of "actual arrest" and vehicle impounding until after evidentiary testing has a calming effect on the suspect. The suspect feels his arrest (although he may still voice objection to the incarceration) is based upon the BAC test and other evidence, rather than the subjective speculation of the arresting officer.

It is this investigator's opinion that the arrest is effected as soon as the officer restricts the subject's movements. The additional 10 to 30 minutes required to transport and test the suspect appears well worth the effort. The policy of not officially "arresting" until after the BAC test appears to have created an observable rapport between the ASAP unit officer and the suspected offender and has done much to "humanize" the evidentiary testing process.

Community confidence in the ASAP enforcement unit's comprehension of the alcohol problem and its ability to effectively handle the problem is evidenced by the community's request that the ASAP Unit Commander, Lt. D. Elmore, play a key role (not defined) in establishing detoxification procedures and centers for the City of Indianapolis.

Recommendations: The "leading" of the suspect to believe his arrest occurs only after BAC testing is viewed by this investigator as a risky proposition to ASAP enforcement objectives. This investigator did observe excellent offender/officer rapport created by the "delay in arrest" procedure; however, this investigator recognizes that a well-organized judicial challenge to this procedure could damage the credibility of the ASAP evidentiary testing process. It is therefore recommended that the Indianapolis ASAP program, the Indianapolis Police Department and the appropriate judicial council reevaluate the OMVUIL arrest-test procedure utilized and delete references to misleading arrest procedure.

INDIANAPOLIS POLICE DEPARTMENT
INDIANA UNIFORM TRAFFIC TICKET, COMPLAINT & INFORMATION

CAUSE No. _____ DOCKET No. _____ PAGE No. _____
 STATE OF INDIANA }
 COUNTY OF MARION } SS: SUMMONS
 CITY OF INDIANAPOLIS }
 IN THE MUNICIPAL COURT OF MARION COUNTY, ROOM F 96812

THE UNDERSIGNED, BEING DULY SWORN, DEPOSES AND SAYS:

ON _____ THE _____ DAY OF _____, 19____ AT _____ M.
 NAME _____
 STREET _____
 CITY _____
 RACE _____ SEX _____ AGE _____ D.O.B. _____ HT _____ WT _____
 OP. LIC. # _____ STATE _____ DID UNLAWFULLY OPERATE
 VEH. COLOR _____ YEAR _____ MAKE _____
 VEH. LIC. YEAR _____ LIC. STATE _____ VEH. LIC. # _____
 UPON A PUBLIC STREET OR HIGHWAY, (LOCATION) _____

LOCATED IN THE CITY, COUNTY AND STATE AFORESAID AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:

| | | | |
|--|---|---|--|
| Sin Principal Cause of Accidents | SPEEDING (over limit) <input type="checkbox"/> 1-10 m.p.h. <input type="checkbox"/> 11-15 m.p.h. <input type="checkbox"/> over 15 m.p.h. <input type="checkbox"/> RADAR <input type="checkbox"/> CLOCK | NAME Last First Middle | |
| | (_____ m.p.h. in _____ m.p.h. zone) Improper LEFT TURN <input type="checkbox"/> No signal <input type="checkbox"/> Cut corner <input type="checkbox"/> From wrong lane Improper RIGHT TURN <input type="checkbox"/> No signal <input type="checkbox"/> Into wrong lane <input type="checkbox"/> From wrong lane Displayed TRAFFIC SIGNAL (When light turned red) <input type="checkbox"/> Past middle intersection <input type="checkbox"/> Middle of intersection <input type="checkbox"/> Not reached intersection Displayed YIELD SIGN <input type="checkbox"/> Wrong place <input type="checkbox"/> Wrong speed <input type="checkbox"/> Wrong side of pavement Improper PASSING <input type="checkbox"/> At intersection <input type="checkbox"/> Cut-in <input type="checkbox"/> On right <input type="checkbox"/> On curve LANE USAGE <input type="checkbox"/> Lane straddling <input type="checkbox"/> Wrong lane <input type="checkbox"/> Cut curve <input type="checkbox"/> Following too closely <input type="checkbox"/> Failure to yield Other Violation _____ | | |
| | In Violation of Section _____ of _____ <input type="checkbox"/> State Statute <input type="checkbox"/> Local Ordinance in such case as made and provided. | | |
| | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"> EMPLOYER Coordinates that improved Services to traffic </td> <td style="width: 40%;"> CAUSED PERSON TO LOSE 1. Pedestrian 2. Driver 3. Bicyclist 4. Horse 5. Other </td> <td style="width: 30%;"> TYPE ACCIDENT 1. Rear end 2. Side 3. Front end 4. Head on 5. Intersection 6. Single vehicle 7. Other </td> </tr> </table> | | EMPLOYER Coordinates that improved Services to traffic |
| EMPLOYER Coordinates that improved Services to traffic | CAUSED PERSON TO LOSE 1. Pedestrian 2. Driver 3. Bicyclist 4. Horse 5. Other | TYPE ACCIDENT 1. Rear end 2. Side 3. Front end 4. Head on 5. Intersection 6. Single vehicle 7. Other | |

THE UNDERSIGNED FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO RELIEVE, AND DOES BELIEVE, THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH CONTRARY TO LAW.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 19____

Signature of officer
or other complainant

Deputy Clerk

Identification No.

Division

COURT APPEARANCE: _____ DAY OF _____, 19____ AT _____ M.

ADDRESS OF COURT: 50 NORTH ALABAMA STREET, INDIANAPOLIS, INDIANA
 I PROMISE TO APPEAR IN COURT AT THE TIME AND DATE DESIGNATED ABOVE

SIGNATURE _____

F 96812

Figure 6-1

IMPORTANT -- PLEASE READ

FINES AND COURT COSTS

In addition to whatever fine the Court might assess against you, the court costs, as established by law, for city and state traffic offenses, are \$33.00 and \$44.00, respectively. Fines and court costs must be paid in cash, no checks will be accepted. Neither the judge nor any of the court's personnel receive any part of the fine or costs imposed.

NON-MOVING VIOLATIONS -- TRAFFIC VIOLATIONS BUREAU

If this summons was issued to you for a NON-MOVING traffic violation*, (without any accompanying citation for a moving traffic offense), and you intend to plead "GUILTY" to such non-moving offense, you may do so, without going to court, by appearing at the Traffic Violations Bureau, 50 N. Ala. St., (City-County Bldg.) Indpls., Ind. 46204, between the hours of 9:30 A.M. and 4:30 P.M., Mon. through Fri. Such appearance should be no sooner than 5 days after you received the citation, and no later than 5 days before you are scheduled to appear in court. Please be prepared to pay a charge of \$20.00, in cash, and bring this summons and any appropriate evidence of compliance, such as valid inspection or registration certificates, valid drivers license, or receipts for the repair of mechanical defects, etc., with you.

Should you fail to so appear at the Traffic Violations Bureau to dispose of your non-moving offense, you must go to court on the date and at the time set by the arresting police officer as it appears on the reverse side of this summons. Failure to dispose of your case at either the Traffic Violations Bureau or the Court, will result in a warrant being issued for your arrest.

*Offenses such as, Expired Inspection or Registration Certificate, Improper Plate, Expired Drivers License and Defective Lights or Other Vehicle Equipment. You may telephone 633-2877 for information concerning other non-moving traffic offenses which may also be disposed of at the Traffic Violations Bureau in this same manner.

NON-RESIDENTS OF INDIANA

If you have received this summons for any traffic offense for which your signature on the reverse side constitutes your promise to appear in court, but you are not a resident of the State of Indiana, and you intend to plead "guilty" to such charge, you may arrange to dispose of it by writing to the office of the Court Administrator, T-843 City County Bldg., Indpls., Ind. 46204, immediately. Include information concerning your name, address, summons no., Offense, Court no., and court date in your letter. You will then be notified of the amount of the penalty which is to be paid by mail. Such payment must be made by either money order or certified check and must be received prior to your original court appearance date.

In the event you fail to satisfactorily dispose of this case, the Motor Vehicle Bureau of the state in which you permanently reside will be notified.

Figure 6-1 (cont'd.)

Date _____ Time _____ Day of Week _____

Location Occ. _____

Type Premises Prop. Rm. No. Arr. No. Veh. Towed

Observed _____ Date & Time _____ Sector _____

Is Invest. Comp. _____ Agencies to Notify _____

Status Prsn. _____

Name _____

Race _____ Sex _____ Age _____ Add. _____

D.O.B. _____ Dr. Lic. No. _____

Court _____ Date _____ Time _____ Loc. Arr. _____ Sent to _____

Charges: _____ U.T.T.# _____

_____ U.T.T.# _____

_____ U.T.J.# _____

_____ U.T.T.# _____

Disp. Veh. _____ Veh. Type _____ Yr. _____

Make _____ Style _____ Color _____

VIN.# _____ Lic. Yr. _____ Lic. St. _____ # _____

Towed by _____ Mess. Comments _____ of %

Test Site _____ Time _____ Results _____

| | | | | | |
|-------------------------------------|---|---|------------------------------------|----------------------------------|--|
| SPEECH: | | <input type="checkbox"/> Not Understandable | <input type="checkbox"/> Mumbled | <input type="checkbox"/> Slurred | <input type="checkbox"/> Thick Tongued |
| | | <input type="checkbox"/> Confused | <input type="checkbox"/> Stuttered | <input type="checkbox"/> Accent | <input type="checkbox"/> Fair |
| | | <input type="checkbox"/> Good | | | |
| BALANCE: | <input type="checkbox"/> Falling | <input type="checkbox"/> Needed Support | <input type="checkbox"/> Swaying | <input type="checkbox"/> Unsure | |
| WALKING: | <input type="checkbox"/> Falling | <input type="checkbox"/> Staggering | <input type="checkbox"/> Stumbling | <input type="checkbox"/> Unsure | |
| TURNING: | <input type="checkbox"/> Falling | <input type="checkbox"/> Staggering | <input type="checkbox"/> Hesitant | <input type="checkbox"/> Unsure | |
| FINGER-TO-NOSE: | Right: <input type="checkbox"/> Completely Missed | <input type="checkbox"/> Hesitant | | | |
| | Left: <input type="checkbox"/> Completely Missed | <input type="checkbox"/> Hesitant | | | |
| ABILITY TO UNDERSTAND INSTRUCTIONS: | | <input type="checkbox"/> Poor | <input type="checkbox"/> Fair | | |

Figure 6-2

INDIANA STATE POLICE ALCOHOLIC INFLUENCE REPORT FORM

| | | | | |
|--|---|--|--|---|
| CHECK PROPER BLANK IN EACH COLUMN TYPE CASE: <input type="checkbox"/> FATAL ACC. <input type="checkbox"/> P.I. ACC. <input type="checkbox"/> P.D. ACC. <input type="checkbox"/> HOMICIDE <input type="checkbox"/> SUICIDE <input type="checkbox"/> OTHER: _____ | STATUS OF SUBJECT <input type="checkbox"/> DEAD <input type="checkbox"/> INJURED <input type="checkbox"/> NOT INJURED | TRAFFIC NON-TRAFFIC | INVOLVEMENT <input type="checkbox"/> DRIVER <input type="checkbox"/> PASSENGER <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> VICTIM <input type="checkbox"/> ACCUSED <input type="checkbox"/> OTHER: _____ | <div style="border: 1px solid black; padding: 5px;"> CASE NO. _____ DISTRICT _____ </div> |
|--|---|--|--|---|

OBSERVATIONS: Check appropriate square before each word best describing condition or observation.

| | | | | | |
|---|--|--------------------------------------|---------------------------------|---------------------------------|----------------------------------|
| CLOTHES: | <input type="checkbox"/> Disorderly | <input type="checkbox"/> Disarranged | <input type="checkbox"/> Soiled | <input type="checkbox"/> Mussed | <input type="checkbox"/> Orderly |
| Describe: _____ | | | | | |
| BREATH: | <input type="checkbox"/> Odor of alcoholic beverage <input type="checkbox"/> Strong <input type="checkbox"/> Moderate <input type="checkbox"/> Faint <input type="checkbox"/> None | | | | |
| ATTITUDE: | <input type="checkbox"/> Excited <input type="checkbox"/> Hilarious <input type="checkbox"/> Talkative <input type="checkbox"/> Carefree <input type="checkbox"/> Sleepy <input type="checkbox"/> Polite <input type="checkbox"/> Profanity <input type="checkbox"/> Combative <input type="checkbox"/> Indifferent <input type="checkbox"/> Insulting <input type="checkbox"/> Cooperative | | | | |
| UNUSUAL ACTIONS: | <input type="checkbox"/> Hiccoughing <input type="checkbox"/> Belching <input type="checkbox"/> Vomiting <input type="checkbox"/> Fighting <input type="checkbox"/> Crying <input type="checkbox"/> Laughing <input type="checkbox"/> Other: _____ | | | | |
| SPEECH: | <input type="checkbox"/> Not Understandable <input type="checkbox"/> Mumbled <input type="checkbox"/> Slurred <input type="checkbox"/> Thick Tongued <input type="checkbox"/> Confused <input type="checkbox"/> Stuttered <input type="checkbox"/> Accent <input type="checkbox"/> Fair <input type="checkbox"/> Good | | | | |
| Indicate other unusual actions or statements: _____ | | | | | |
| Signs or complaint of illness or injury: _____ | | | | | |

PERFORMANCE TESTS:

| | | | | | |
|---|---|---|------------------------------------|---------------------------------|-------------------------------|
| BALANCE: | <input type="checkbox"/> Falling | <input type="checkbox"/> Needed Support | <input type="checkbox"/> Swaying | <input type="checkbox"/> Unsure | <input type="checkbox"/> Sure |
| WALKING: | <input type="checkbox"/> Falling | <input type="checkbox"/> Staggering | <input type="checkbox"/> Stumbling | <input type="checkbox"/> Unsure | <input type="checkbox"/> Sure |
| TURNING: | <input type="checkbox"/> Falling | <input type="checkbox"/> Staggering | <input type="checkbox"/> Hesitant | <input type="checkbox"/> Unsure | <input type="checkbox"/> Sure |
| FINGER-TO-NOSE: | Right: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure Left: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure | | | | |
| ABILITY TO UNDERSTAND INSTRUCTIONS: | <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input type="checkbox"/> Good | | | | |
| Test Performed: Date _____ Time _____ am/pm | | | | | |

OBSERVER'S OPINION:

| | | | | | |
|---|----------------------------------|----------------------------------|---------------------------------|-------------------------------|--|
| EFFECTS OF ALCOHOL: | <input type="checkbox"/> Extreme | <input type="checkbox"/> Obvious | <input type="checkbox"/> Slight | <input type="checkbox"/> None | |
| ABILITY TO DRIVE: | <input type="checkbox"/> Unfit | <input type="checkbox"/> Fit | | | |
| Indicate what first led you to suspect alcoholic influence: _____ | | | | | |

OBSERVATIONS AND PERFORMANCE TESTS:

| | | |
|---------------------|------------|-------------|
| Given by: _____ | Rank _____ | Dept. _____ |
| Witnessed by: _____ | | |

CHEMICAL TEST DATA:

| | |
|--|--------------------------------------|
| Sample taken by _____ | Involuntary <input type="checkbox"/> |
| at _____ am/pm Date taken _____ | Voluntary <input type="checkbox"/> |
| Sample delivered by _____ | Date _____ Time _____ am/pm |
| Specimen: <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Saliva <input type="checkbox"/> Urine <input type="checkbox"/> None <input type="checkbox"/> Refused <input type="checkbox"/> Unable | |
| Analysis result: _____ If breath, what instrument? _____ | |
| Remarks or Data: _____ | |
| Sample was analyzed by _____ Date _____ | |
| Other person to be notified _____ | |

Investigating Officer _____ Department _____

Name _____ Age _____ Sex _____ Race _____
 Initial _____ Approx. Wt. _____ City _____ State _____
 Address _____ Date _____

INTERVIEW:

| | | | |
|---|-------|---|------|
| Were you operating a vehicle? _____ Where were you going? _____ | | | |
| What street or highway were you on? _____ | | Direction of travel? _____ | |
| Where did you start from? _____ | | What time did you start? _____ | |
| What time is it now? _____ | | What city (county) are you in now? _____ | |
| What is the date? _____ | | What day of the week is it? _____ | |
| INTERVIEWER TO FILL IN ACTUAL: _____ | | | |
| Time | am/pm | Day | Date |
| Interviewer's Name _____ | | | |
| When did you last eat? _____ What did you eat? _____ | | | |
| What were you doing during the last three hours? _____ | | | |
| Have you been drinking? _____ What? _____ | | How much? _____ | |
| Where? _____ | | Started? _____ am/pm Stopped _____ am/pm | |
| Are you under the influence of an alcoholic beverage now? _____ | | | |
| What is your occupation? _____ | | When did you last work? _____ | |
| Do you have any physical defects? _____ If so, what? _____ | | | |
| Are you ill? _____ If so, what's wrong? _____ | | | |
| Do you limp? _____ Have you been injured lately? _____ If so, what's wrong? _____ | | | |
| Did you get a bump on the head? _____ Were you involved in an accident today? _____ | | | |
| Have you had any alcoholic beverage since the accident? _____ | | If so, what? _____ | |
| Where? _____ | | How much? _____ When? _____ | |
| Have you seen a doctor or dentist lately? _____ | | If so, who? _____ When? _____ | |
| What for? _____ | | Are you taking tranquilizers, pills or medicines of any kind? _____ | |
| If so, what kind? (Get sample) _____ | | Last dose? _____ am/pm Do you have epilepsy? _____ | |
| Diabetes? _____ | | Do you take insulin? _____ If so, last dose? _____ am/pm | |
| Have you had any injections of any other drugs recently? _____ If so, what for? _____ | | | |
| What kind of drug? _____ | | Last dose? _____ am/pm When did you last sleep? _____ | |
| How much sleep did you have? _____ | | Are you wearing false teeth? _____ Do you have a glass eye? _____ | |
| HANDWRITING SPECIMEN | | | |
| Signature and/or anything _____ | | | |
| he chooses. _____ | | | |

CHEMICAL TEST CHECK LIST:

| |
|---|
| Breathalyzer: <ul style="list-style-type: none"><input type="checkbox"/> Turn ON, wait until therm. is 45-50°C.<input type="checkbox"/> Gauge and open ampoule, insert bubbler and connect to outlet.<input type="checkbox"/> Turn to take, flush, turn to analyze.<input type="checkbox"/> At red light, wait 1 1/2 min., balance.<input type="checkbox"/> Set scale pointer on start line.<input type="checkbox"/> Turn to take, take sample, turn to analyze.<input type="checkbox"/> At red light, wait 1 1/2 min., balance. Result _____ |
|---|

REMARKS:

| |
|--|
| |
|--|

INDIANAPOLIS POLICE DEPARTMENT

INCIDENT REPORT

| | | | | | | | | | | | | | |
|---|--|---|--|--|---|--|--|---|------------------------|-------------------------|----------------------------|-----------------------|--|
| ALL APPLICABLE ITEMS IN THIS SECTION MUST BE COMPLETED FOR ALL REPORTS | | | | | | | | | | | | | |
| <input type="checkbox"/> NEW CASE <input type="checkbox"/> ADDITION | CASE NO. IF ADD. | TYPE OF INCIDENT (Refer to Incident List) | | | INS. PURPOSES <input type="checkbox"/> YES | DATE AND TIME OF INVESTIGATION | | DATE AND TIME OCCURED | | DAY OF WEEK | | | |
| LOCATION OF OCCURANCE (Include Apt. No. Etc.) | | | TYPE OF PREMISES (Refer to Premises List) | | | ATTENTION PROPERTY ROOM <input type="checkbox"/> YES | IDENT. NOTIFIED <input type="checkbox"/> YES | NO PERSONS TO BE NOTIFIED | NO. ARRESTED | NO. DEAD | NO. SENT TO HOSPITAL | NO. VEHICLES TOWED | |
| NOTIFIED BY: <input type="checkbox"/> 01-RADIO RUN <input type="checkbox"/> 02-OBSERVE <input type="checkbox"/> 03-STOPPED ON STREET <input type="checkbox"/> 04-TELE-GRAM <input type="checkbox"/> 05-LETTER <input type="checkbox"/> 06-RADIOGRAM <input type="checkbox"/> 07-LONG DISTANCE CALL <input type="checkbox"/> 08-OTHER | | | | | DATE AND TIME NOTIFIED | | SECTOR | THIS INVESTIGATION <input type="checkbox"/> IF COMPLETE <input type="checkbox"/> NOT COMPLETE | | AGENCIES TO BE NOTIFIED | | | |
| CHECK APPLICABLE ITEMS FOR CRIMINAL INCIDENTS ONLY | | | | | | | | | | | | | |
| POINT OF ENTRY TO BUILDING: <input type="checkbox"/> 01- FRONT DOOR <input type="checkbox"/> 02- SIDE DOOR <input type="checkbox"/> 03- REAR DOOR <input type="checkbox"/> 04- THRU ROOF <input type="checkbox"/> 05- THRU WALL <input type="checkbox"/> 06- FRONT WINDOW <input type="checkbox"/> 07- SIDE WINDOW <input type="checkbox"/> 08- REAR WINDOW <input type="checkbox"/> 09- ANY OTHER | | | | | | | | | | | | | |
| POINT OF ENTRY TO VEHICLE: <input type="checkbox"/> 01- DOOR DRIVER SIDE <input type="checkbox"/> 02- DOOR PASSENGER SIDE <input type="checkbox"/> 03- WINDOW DRIVER SIDE <input type="checkbox"/> 04- WINDOW PASSENGER SIDE <input type="checkbox"/> 05- THRU CONV. TOP <input type="checkbox"/> 06- TRUNK <input type="checkbox"/> 07- ANY OTHER | | | | | | | | | | | | | |
| METHOD OF ENTRY TO BUILDING OR VEHICLE: <input type="checkbox"/> 01- FORCED <input type="checkbox"/> 02- ATTEMPT <input type="checkbox"/> 03- UNLAWFUL ENTRY <input type="checkbox"/> 04- LAWFUL ENTRY <input type="checkbox"/> 05- ANY OTHER | | | | | | | | | | | | | |
| IF ALARM WAS ACTIVATED-GIVE NAME OF COMPANY AND TIME OF ARRIVAL | | | | | | | | | | | | | |
| METHOD OF ENTRY TO SAFE: <input type="checkbox"/> 01-DRILL <input type="checkbox"/> 02-PUNCH <input type="checkbox"/> 03-PEEL <input type="checkbox"/> 04-BLOW <input type="checkbox"/> 05-TORCH <input type="checkbox"/> 06- CARRIED OUT <input type="checkbox"/> 07- NO FORCE NEEDED <input type="checkbox"/> 08- ANY OTHER | | | | | | | | | | | | | |
| WEAPONS OR FORCE USED BY PERPETRATOR OR CRIMES AGAINST PERSON: <input type="checkbox"/> 01- HAND GUN <input type="checkbox"/> 02- OTHER TYPE <input type="checkbox"/> 03-KNIFE <input type="checkbox"/> 04- ANY OTHER CUTTING INSTRUMENT <input type="checkbox"/> 05- ANY OTHER DANGEROUS WEAPON <input type="checkbox"/> 06- SEVERE BEATING <input type="checkbox"/> 07- AGGRAVATED ASSAULT <input type="checkbox"/> 08- A&B MADE THREATS <input type="checkbox"/> 09- NO FORCE <input type="checkbox"/> 10- OTHER | | | | | | | | | | | | | |
| AMOUNT OF STOLEN PROPERTY: MONEY \$ JEWELRY \$ FURS \$ CLOTHING \$ AUTO \$ MISC. \$ AMOUNT OF PROPERTY RECOVERED: MONEY \$ JEWELRY \$ FURS \$ CLOTHING \$ AUTO \$ MISC. \$ | | | | | | | | | | | | | |
| USE APPLICABLE ITEMS IN THIS SECTION FOR ALL PERSONS EXCEPT WANTED/MISSING PERSONS | | | | | | | | | | | | | |
| PERSON 1 | STATUS OF PERSON | | NAME (LAST NAME FIRST IF INDIVIDUAL) | | | RACE | SEX | AGE | ADDRESS | | | HOME PHONE AND HOURS | BUS. PHONE AND HRS. |
| | COURT | DATE | TIME | LOCATION OF ARREST (If different than above) | | | SENT TO: <input type="checkbox"/> CITY LOCKUP <input type="checkbox"/> JUV. BUR. <input type="checkbox"/> HOSP. <input type="checkbox"/> COURT (Reside) <input type="checkbox"/> EXPLAIN | | | CHARGES | | | |
| | INJURY CATEGORY | | <input type="checkbox"/> SENT TO HOSP. <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) | | HOSPITAL SENT TO | | CONVEYANCE USED | | MED. TECH. (Last Name) | | NATURE OF INJURY (ILLNESS) | | RELATIVES NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO |
| | DISPOSITION OF VEHICLE: <input type="checkbox"/> TOWED (Any Reason) <input type="checkbox"/> RELEASED ON SCENE | | <input type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED | | VEH. TYPE | YEAR | MAKE | MODEL | STYLE | COLOR | V.I.N. | | |
| | LIC. YR. | LIC. ST. | LICENSE NUMBER | | LOT TOWED TO-BY | | DET. HOLD <input type="checkbox"/> YES | | MESSAGE OR COMMENTS | | | | |
| USE APPLICABLE ITEMS IN THIS SECTION FOR ALL PERSONS EXCEPT WANTED/MISSING PERSONS | | | | | | | | | | | | | |
| PERSON 2 | STATUS OF PERSON | | NAME (LAST NAME FIRST IF INDIVIDUAL) | | | RACE | SEX | AGE | ADDRESS | | | HOME PHONE AND HOURS | BUS. PHONE AND HRS. |
| | COURT | DATE | TIME | LOCATION OF ARREST (If different than above) | | | SENT TO: <input type="checkbox"/> CITY LOCKUP <input type="checkbox"/> JUV. BUR. <input type="checkbox"/> HOSP. <input type="checkbox"/> COURT (Reside) <input type="checkbox"/> EXPLAIN | | | CHARGES | | | |
| | INJURY CATEGORY | | <input type="checkbox"/> SENT TO HOSP. <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) | | HOSPITAL SENT TO | | CONVEYANCE USED | | MED. TECH. (Last Name) | | NATURE OF INJURY (ILLNESS) | | RELATIVES NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO |
| | DISPOSITION OF VEHICLE: <input type="checkbox"/> TOWED (Any Reason) <input type="checkbox"/> RELEASED ON SCENE | | <input type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED | | VEH. TYPE | YEAR | MAKE | MODEL | STYLE | COLOR | V.I.N. | | |
| | LIC. YR. | LIC. ST. | LICENSE NUMBER | | LOT TOWED TO-BY | | DET. HOLD <input type="checkbox"/> YES | | MESSAGE OR COMMENTS | | | | |
| USE APPLICABLE ITEMS IN THIS SECTION FOR ALL PERSONS EXCEPT WANTED/MISSING PERSONS | | | | | | | | | | | | | |
| PERSON 3 | STATUS OF PERSON | | NAME (LAST NAME FIRST IF INDIVIDUAL) | | | RACE | SEX | AGE | ADDRESS | | | HOME PHONE AND HOURS | BUS. PHONE AND HRS. |
| | COURT | DATE | TIME | LOCATION OF ARREST (If different than above) | | | SENT TO: <input type="checkbox"/> CITY LOCKUP <input type="checkbox"/> JUV. BUR. <input type="checkbox"/> HOSP. <input type="checkbox"/> COURT (Reside) <input type="checkbox"/> EXPLAIN | | | CHARGES | | | |
| | INJURY CATEGORY | | <input type="checkbox"/> SENT TO HOSP. <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) | | HOSPITAL SENT TO | | CONVEYANCE USED | | MED. TECH. (Last Name) | | NATURE OF INJURY (ILLNESS) | | RELATIVES NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO |
| | DISPOSITION OF VEHICLE: <input type="checkbox"/> TOWED (Any Reason) <input type="checkbox"/> RELEASED ON SCENE | | <input type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED | | VEH. TYPE | YEAR | MAKE | MODEL | STYLE | COLOR | V.I.N. | | |
| | LIC. YR. | LIC. ST. | LICENSE NUMBER | | LOT TOWED TO-BY | | DET. HOLD <input type="checkbox"/> YES | | MESSAGE OR COMMENTS | | | | |
| USE APPLICABLE ITEMS IN THIS SECTION FOR ALL PERSONS EXCEPT WANTED/MISSING PERSONS | | | | | | | | | | | | | |
| PERSON 4 | STATUS OF PERSON | | NAME (LAST NAME FIRST IF INDIVIDUAL) | | | RACE | SEX | AGE | ADDRESS | | | HOME PHONE AND HOURS | BUS. PHONE AND HRS. |
| | COURT | DATE | TIME | LOCATION OF ARREST (If different than above) | | | SENT TO: <input type="checkbox"/> CITY LOCKUP <input type="checkbox"/> JUV. BUR. <input type="checkbox"/> HOSP. <input type="checkbox"/> COURT (Reside) <input type="checkbox"/> EXPLAIN | | | CHARGES | | | |
| | INJURY CATEGORY | | <input type="checkbox"/> SENT TO HOSP. <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) | | HOSPITAL SENT TO | | CONVEYANCE USED | | MED. TECH. (Last Name) | | NATURE OF INJURY (ILLNESS) | | RELATIVES NOTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO |
| | DISPOSITION OF VEHICLE: <input type="checkbox"/> TOWED (Any Reason) <input type="checkbox"/> RELEASED ON SCENE | | <input type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED | | VEH. TYPE | YEAR | MAKE | MODEL | STYLE | COLOR | V.I.N. | | |
| | LIC. YR. | LIC. ST. | LICENSE NUMBER | | LOT TOWED TO-BY | | DET. HOLD <input type="checkbox"/> YES | | MESSAGE OR COMMENTS | | | | |

Figure 6-4

WANTED OR MISSING PERSONS—Use Description of Wanted Persons, Runaways, Missing Persons, Escapees, Warrants & Capias

| | | | | | | | | | | | | | | | | | |
|-----------|--|-----|------|----------------------|--------|------------|------|------------|-------|-------|---------|--------------------|-------------|--------|------------------|---------------------------|--|
| SUBJECT 1 | STATUS (Refer to Wanted List) | | | NAME-Last Name First | | | | ADDRESS | | | | DRIVER LIC. NUMBER | | D.O.B. | | SOC. SEC. NUMBER | |
| | RACE | SEX | AGE | HEIGHT | WEIGHT | HAIR COLOR | EYES | COMPLEXION | | BUILD | | WEAPON ARMED WITH | | | | | |
| | CLOTHING DESCRIPTION AND OTHER DESCRIPTIVE REMARKS | | | | | | | | | | | CHARGE WANTED FOR | | | | COURT OF ISSUE ON WARRANT | |
| | AUTO BELIEVED TO BE IN | | YEAR | MAKE | | MODEL | | STYLE | COLOR | | LIC.YR. | LIC.ST. | LIC. NUMBER | | VEHICLE REMARKS: | | |
| SUBJECT 2 | STATUS (Refer to Wanted List) | | | NAME-Last Name First | | | | ADDRESS | | | | DRIVER LIC. NUMBER | | D.O.B. | | SOC. SEC. NUMBER | |
| | RACE | SEX | AGE | HEIGHT | WEIGHT | HAIR COLOR | EYES | COMPLEXION | | BUILD | | WEAPON ARMED WITH | | | | | |
| | CLOTHING DESCRIPTION AND OTHER DESCRIPTIVE REMARKS | | | | | | | | | | | CHARGE WANTED FOR | | | | COURT OF ISSUE ON WARRANT | |
| | AUTO BELIEVED TO BE IN | | YEAR | MAKE | | MODEL | | STYLE | COLOR | | LIC.YR. | LIC.ST. | LIC. NUMBER | | VEHICLE REMARKS: | | |

NARRATIVE—Include All Property and Its Description:

| ASSIGNED OFFICERS | | | ASSISTING OFFICERS | | | DATE AND TIME TO RECORDS | |
|-------------------|------------------------|----------|--------------------|------------------------|----------|--------------------------|--|
| UNIT | LAST NAME, FIRST INIT. | I.D. NO. | UNIT | LAST NAME, FIRST INIT. | I.D. NO. | | |
| | | | | | | | |

Figure 6-4 (cont'd.)

INDIANAPOLIS POLICE DEPARTMENT
REPORT OF ALCOHOL CONTENT

Name of subject _____ Date _____
Breathalyzer Operator _____ Time (of test) _____ A.M.
P.M.
Witness _____ Where taken _____

Ampoule Control No. _____ Blood Alcohol Per Cent 0. _____ %

- ☐ 1. Throw switch to on, wait until thermometer shows $50^{\circ} + 3^{\circ} \text{C}$.
- ☐ 2. Gauge test ampoule and insert in left-hand holder.
- ☐ 3. Gauge test ampoule, open, insert bubbler and connect to delivery tube.
- ☐ 4. Turn to take, flush out, turn to analyze.
- ☐ 5. When red light appears, wait 1½ minutes, turn on light, balance.
- ☐ 6. Set blood alcohol content pointer on start line.
- ☐ 7. Turn to take, take breath sample, turn to analyze, (Record time).
- ☐ 8. When red light appears, wait 1½ minutes, turn on light balance.
- ☐ 9. Record answer, dispose of test ampoule, TURN CONTROL KNOB TO "OFF".

IPD Form No. 2-5-3

Figure 6-6

POLICE OFFICER'S
RECEIPT FOR DOCUMENT

Receipt of _____
(Describe Type of Driver's License)

No. _____, issued to _____
(Name)

(Address) (Date of Birth)

is hereby acknowledged. I have possession of this license (as required by Statute) because of the driver's refusal to submit to a breath test for intoxication, for delivery to the _____ court

at _____ A.M.
P.M., on _____, at which time the
(Date)

driver is to appear. I assume full responsibility for the safekeeping of said document until so delivered. The surrender of this license in no way affects the privilege conferred by said license upon the licensee. The possession of this receipt by the person named above shall be evidence of the continuation of said driving privilege until the time and date for court appearance noted above or until earlier expiration on

(License Expiration Date)

(Signature of Police Officer)

(Ident. Number) (Department)

The receipt holder, defendant in cause number _____ which is pending before me, having shown good cause for continuance of this case, is granted a continuance and the validity of this receipt as evidence of said privilege, is continued until

_____ A.M.
P.M., on _____
(Date)

(Signature of Judge)

(Driver's Copy)

Figure 6-8

POLICE OFFICER'S
RECEIPT FOR DOCUMENT

Receipt of _____
(Describe Type of Driver's License)

No. _____, issued to _____
(Name)

(Address) _____ (Date of Birth)

is hereby acknowledged. I have possession of this license (as required by Statute) because of the driver's refusal to submit to a breath test for intoxication, for delivery to the _____ court
at _____ A.M.
_____ P.M., on _____, at which time the
(Date)
driver is to appear. I assume full responsibility for the safekeeping of said document until so delivered. The surrender of this license in no way affects the privilege conferred by said license upon the licensee. The possession of this receipt by the person named above shall be evidence of the continuation of said driving privilege until the time and date for court appearance noted above or until earlier expiration on

(License Expiration Date)

(Signature of Police Officer)

(Ident. Number)

(Department)

The receipt holder, defendant in cause number _____ which is pending before me, having shown good cause for continuance of this case, is granted a continuance and the validity of this receipt as evidence of said privilege, is continued until

A.M.

P.M., on _____

(Date)

(Signature of Judge)

(Driver's Copy)

Figure 6-9

On this date I received the driver's license described on the reverse side of this receipt.

Date: _____ (Signature of Court or Clerk)

Figure 6-9 (cont'd.)

CERTIFICATION OF BREATH TEST REFUSAL

On _____, at _____
(date & time) (place)

I had probable cause to believe that the accused _____
(name of accused)

had driven a vehicle while under the influence of intoxicating liquor (or drugs.) After determining that I had probable cause, but before placing the accused under arrest, I advised the accused as follows:

I have probable cause to believe that you have driven a vehicle while under the influence of intoxicating liquor (or drugs). Before I can place you under arrest I must offer you a breath test for intoxication to be given by a qualified chemical test operator. If you refuse to submit to the test, your license to drive in Indiana may be suspended for one year. Will you submit to a breath test for intoxication?

After offering the breath test to the accused, as indicated above, the accused refused to submit to a breath test for intoxication, and I placed the accused under arrest for the offense of driving while under the influence of intoxicating liquor (or drugs).

() In my opinion, the accused's refusal was because of a mental or physical incapacity which was not related to his intoxicated condition. (State nature of incapacity)

() In my opinion, the accused's refusal was made willfully and knowingly.

() In my opinion, the accused's refusal was made because of the state of intoxication.

(Arresting Officer)

(AFFIX DRIVING LICENSE HERE)

INDIANAPOLIS POLICE DEPARTMENT — MOTOR VEHICLE ACCIDENT REPORT

IPD Form No. 2-1-5-81

| | | | | | | | | | | | | | |
|---|--|---|--|---|--|-------------------------|--|-------------|--|---|--|----------------------------------|--|
| TYPE OF ACCIDENT | | CITY PROPERTY INVOLVED <input type="checkbox"/> YES | | DATE AND TIME ARRIVED AT SCENE | | DATE AND TIME OCCURRED | | DAY OF WEEK | | LOCATION OF OCCURRENCE (NEAREST INTERSECTION) | | NO. FEET N S E W OF INTERSECTION | |
| PROPERTY ROOM <input type="checkbox"/> YES | | IDENTIFICATION NOTIFIED <input type="checkbox"/> YES | | NO. PERSONS TO BE NOTIFIED | | NO. ARRESTED | | NO. DEAD | | NO. INJURED | | NO. VEH. TOWED | |
| HOW NOTIFIED OF ACCIDENT | | BEAT OCCURRED ON | | INVESTIGATION <input type="checkbox"/> IS COMPLETE <input type="checkbox"/> IS NOT COMPLETE | | AGENCIES TO BE NOTIFIED | | | | | | | |

| | | | | | | | | | | | | | | |
|----------------|----------|---|------|------|-------|-------|-------|----------|----------|-------------|------------------------|--|--------------|------------|
| VEHICLE NUMBER | VEH | TYPE VEHICLE | YEAR | MAKE | MODEL | STYLE | COLOR | LIC. YR. | LIC. ST. | LIC. NUMBER | DISPOSITION OF VEHICLE | CITY OWNED <input type="checkbox"/> YES | CITY ID. NO. | DEPARTMENT |
| | OWNER | NAME (LAST NAME FIRST) RACE SEX AGE ADDRESS PHONE NUMBER | | | | | | | | | | | | |
| | OPER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER OPER. LIC. NO. STATE TYPE | | | | | | | | | | | | |
| | ARREST | <input type="checkbox"/> ARRESTED <input type="checkbox"/> SUMMONED TICKET OR SUMMONS NO. COURT DATE TIME LOCATION OF ARREST (IF DIFFERENT THAN ABOVE) SENT TO <input type="checkbox"/> CITY LOCK-UP <input type="checkbox"/> JUVENILE BRANCH <input type="checkbox"/> HOSPITAL <input type="checkbox"/> OTHER (EXPLAIN) CHARGES | | | | | | | | | | | | |
| | INJURY | DEGREE OF INJURY <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> WENT TO HOSPITAL <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) HOSPITAL SENT TO CONVEYANCE USED MED. TECH. (LAST NAME) NATURE OF INJURY | | | | | | | | | | | | |
| PASSENGER | RELATIVE | <input type="checkbox"/> RELATIVE NOTIFIED <input type="checkbox"/> RELATIVE TO BE NOTIFIED NAME (LAST NAME FIRST) ADDRESS PHONE NUMBER RELATIONSHIP OTHER REMARKS - ORDERED TO APPEAR, ETC. | | | | | | | | | | | | |
| | OWNER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER | | | | | | | | | | | | |
| | OPER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER OPER. LIC. NO. STATE TYPE | | | | | | | | | | | | |
| | ARREST | <input type="checkbox"/> ARRESTED <input type="checkbox"/> SUMMONED TICKET OR SUMMONS NO. COURT DATE TIME LOCATION OF ARREST (IF DIFFERENT THAN ABOVE) SENT TO <input type="checkbox"/> CITY LOCK-UP <input type="checkbox"/> JUVENILE BRANCH <input type="checkbox"/> HOSPITAL <input type="checkbox"/> OTHER (EXPLAIN) CHARGES | | | | | | | | | | | | |
| | INJURY | DEGREE OF INJURY <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> WENT TO HOSPITAL <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) HOSPITAL SENT TO CONVEYANCE USED MED. TECH. (LAST NAME) NATURE OF INJURY | | | | | | | | | | | | |
| VEHICLE NUMBER | VEH | TYPE VEHICLE | YEAR | MAKE | MODEL | STYLE | COLOR | LIC. YR. | LIC. ST. | LIC. NUMBER | DISPOSITION OF VEHICLE | CITY OWNED <input type="checkbox"/> YES | CITY ID. NO. | DEPARTMENT |
| | OWNER | NAME (LAST NAME FIRST) RACE SEX AGE ADDRESS PHONE NUMBER | | | | | | | | | | | | |
| | OPER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER OPER. LIC. NO. STATE TYPE | | | | | | | | | | | | |
| | ARREST | <input type="checkbox"/> ARRESTED <input type="checkbox"/> SUMMONED TICKET OR SUMMONS NO. COURT DATE TIME LOCATION OF ARREST (IF DIFFERENT THAN ABOVE) SENT TO <input type="checkbox"/> CITY LOCK-UP <input type="checkbox"/> JUVENILE BRANCH <input type="checkbox"/> HOSPITAL <input type="checkbox"/> OTHER (EXPLAIN) CHARGES | | | | | | | | | | | | |
| | INJURY | DEGREE OF INJURY <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> WENT TO HOSPITAL <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) HOSPITAL SENT TO CONVEYANCE USED MED. TECH. (LAST NAME) NATURE OF INJURY | | | | | | | | | | | | |
| PASSENGER | RELATIVE | <input type="checkbox"/> RELATIVE NOTIFIED <input type="checkbox"/> RELATIVE TO BE NOTIFIED NAME (LAST NAME FIRST) ADDRESS PHONE NUMBER RELATIONSHIP OTHER REMARKS - ORDERED TO APPEAR, ETC. | | | | | | | | | | | | |
| | OWNER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER | | | | | | | | | | | | |
| | OPER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER OPER. LIC. NO. STATE TYPE | | | | | | | | | | | | |
| | ARREST | <input type="checkbox"/> ARRESTED <input type="checkbox"/> SUMMONED TICKET OR SUMMONS NO. COURT DATE TIME LOCATION OF ARREST (IF DIFFERENT THAN ABOVE) SENT TO <input type="checkbox"/> CITY LOCK-UP <input type="checkbox"/> JUVENILE BRANCH <input type="checkbox"/> HOSPITAL <input type="checkbox"/> OTHER (EXPLAIN) CHARGES | | | | | | | | | | | | |
| | INJURY | DEGREE OF INJURY <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> WENT TO HOSPITAL <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) HOSPITAL SENT TO CONVEYANCE USED MED. TECH. (LAST NAME) NATURE OF INJURY | | | | | | | | | | | | |
| VEHICLE NUMBER | VEH | TYPE VEHICLE | YEAR | MAKE | MODEL | STYLE | COLOR | LIC. YR. | LIC. ST. | LIC. NUMBER | DISPOSITION OF VEHICLE | CITY OWNED <input type="checkbox"/> YES | CITY ID. NO. | DEPARTMENT |
| | OWNER | NAME (LAST NAME FIRST) RACE SEX AGE ADDRESS PHONE NUMBER | | | | | | | | | | | | |
| | OPER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER OPER. LIC. NO. STATE TYPE | | | | | | | | | | | | |
| | ARREST | <input type="checkbox"/> ARRESTED <input type="checkbox"/> SUMMONED TICKET OR SUMMONS NO. COURT DATE TIME LOCATION OF ARREST (IF DIFFERENT THAN ABOVE) SENT TO <input type="checkbox"/> CITY LOCK-UP <input type="checkbox"/> JUVENILE BRANCH <input type="checkbox"/> HOSPITAL <input type="checkbox"/> OTHER (EXPLAIN) CHARGES | | | | | | | | | | | | |
| | INJURY | DEGREE OF INJURY <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> WENT TO HOSPITAL <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) HOSPITAL SENT TO CONVEYANCE USED MED. TECH. (LAST NAME) NATURE OF INJURY | | | | | | | | | | | | |
| PASSENGER | RELATIVE | <input type="checkbox"/> RELATIVE NOTIFIED <input type="checkbox"/> RELATIVE TO BE NOTIFIED NAME (LAST NAME FIRST) ADDRESS PHONE NUMBER RELATIONSHIP OTHER REMARKS - ORDERED TO APPEAR, ETC. | | | | | | | | | | | | |
| | OWNER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER | | | | | | | | | | | | |
| | OPER | NAME (LAST NAME FIRST) RACE SEX AGE DOB ADDRESS PHONE NUMBER OPER. LIC. NO. STATE TYPE | | | | | | | | | | | | |
| | ARREST | <input type="checkbox"/> ARRESTED <input type="checkbox"/> SUMMONED TICKET OR SUMMONS NO. COURT DATE TIME LOCATION OF ARREST (IF DIFFERENT THAN ABOVE) SENT TO <input type="checkbox"/> CITY LOCK-UP <input type="checkbox"/> JUVENILE BRANCH <input type="checkbox"/> HOSPITAL <input type="checkbox"/> OTHER (EXPLAIN) CHARGES | | | | | | | | | | | | |
| | INJURY | DEGREE OF INJURY <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> WENT TO HOSPITAL <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) HOSPITAL SENT TO CONVEYANCE USED MED. TECH. (LAST NAME) NATURE OF INJURY | | | | | | | | | | | | |

Figure 6-11

| | | | | | | | | | |
|--|--|--|--|--|---|---|---|--|-----------------|
| PEDESTRIAN BICYCLIST | <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> BICYCLIST | NAME | RACE | SEX | AGE | D.O.B. | ADDRESS | PHONE | SCHOOL ATTENDED |
| | <input type="checkbox"/> ARRESTED <input type="checkbox"/> CITED | <input type="checkbox"/> TRAFFIC SCHOOL | TICKET NUMBER | COURT | DATE | TIME | LOCATION OF ARREST (If different than above) | SENT TO: <input type="checkbox"/> CITY LOCKUP <input type="checkbox"/> HOSPITAL <input type="checkbox"/> OTHER (EXPLAIN) | CHARGES |
| DEGREE OF INJURY | <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 | <input type="checkbox"/> WENT TO HOSPITAL <input type="checkbox"/> MEDICAL RELEASE <input type="checkbox"/> OTHER (EXPLAIN) | HOSPITAL SENT TO | CONVEYANCE USED | MED. TECH. (Last Name) | NATURE OF INJURY | | | |
| | <input type="checkbox"/> RELATIVE NOTIFIED <input type="checkbox"/> RELATIVE TO BE NOTIFIED | NAME (Last Name First) | ADDRESS | PHONE | RELATIONSHIP | OTHER REMARKS | | | |
| OBJECT | OWNERS NAME (Last Name First) | RACE | SEX | AGE | ADDRESS | PHONE | | | |
| | NAME OF OBJECT | LOCATION OF OBJECT | NATURE AND EXTENT OF DAMAGE | | | DISPOSITION | | | |
| OBJECT | OWNERS NAME (Last Name First) | RACE | SEX | AGE | ADDRESS | PHONE | | | |
| | NAME OF OBJECT | LOCATION OF OBJECT | NATURE AND EXTENT OF DAMAGE | | | DISPOSITION | | | |
| NARRATIVE | | | | | | | | | |
| VIIOLATOR IS | VIIOLATORS AGE | VIIOLATORS SEX | DIRECTION OF VIIOLATORS TRAVEL | IF VIIOLATOR WAS DRINKING | PHYSICAL CONDITION OF VIIOLATOR | VIIOLATORS VISION BLOCKED | VIIOLATORS LICENSE | VIIOL. SPEED BEFORE ACC. | |
| <input type="checkbox"/> 1-MOTORIST <input type="checkbox"/> 2-PEDESTRIAN <input type="checkbox"/> 3-OTHER | | <input type="checkbox"/> 1-MALE <input type="checkbox"/> 2-FEMALE | <input type="checkbox"/> 1-N <input type="checkbox"/> 2-E <input type="checkbox"/> 3-W | <input type="checkbox"/> 1-DRUNK <input type="checkbox"/> 2-ABILITY NOT IMPAIRED <input type="checkbox"/> 3-ABILITY IMPAIRED <input type="checkbox"/> 4-UNKNOWN IF IMPAIRED | <input type="checkbox"/> 1-EYES DEFECTIVE <input type="checkbox"/> 2-WEARING DEFECTS <input type="checkbox"/> 3-ILL <input type="checkbox"/> 4-FATIGUED <input type="checkbox"/> 5-ADVANCED SENILITY <input type="checkbox"/> 6-OTHER DEFECTS <input type="checkbox"/> 7-ATTENTION DIVERTED <input type="checkbox"/> 8-APPARENTLY ASLEEP <input type="checkbox"/> 9-OTHER HANDICAPS | <input type="checkbox"/> 1-BUILDING <input type="checkbox"/> 2-SIGN <input type="checkbox"/> 3-HILL <input type="checkbox"/> 4-EMBANKMENT <input type="checkbox"/> 5-TREE <input type="checkbox"/> 6-OTHER | <input type="checkbox"/> 1-VALID <input type="checkbox"/> 2-EXPIRED <input type="checkbox"/> 3-NONE | | |
| VIIOLATORS MAIN CONTRIBUTING CAUSE | | | | VIIOLATORS ACTION BEFORE ACCIDENT | | | | VIIOLATOR VEHICLE TYPE | |
| <input type="checkbox"/> 1-DROVE LEFT OF CENTER <input type="checkbox"/> 2-FOLLOWING TOO CLOSE <input type="checkbox"/> 3-IMPROPER LIGHTS <input type="checkbox"/> 4-IMPROPER OVERTAKING <input type="checkbox"/> 5-IMPROPER TURN <input type="checkbox"/> 6-WAS DRINKING <input type="checkbox"/> 7-RAN STOP SIGN <input type="checkbox"/> 8-OTHER IMPROPER DRIVING <input type="checkbox"/> 9-SPEED TOO FAST <input type="checkbox"/> 10-RAN AUTO SIGNAL <input type="checkbox"/> 11-INADEQUATE BRAKES <input type="checkbox"/> 12-FAIL YIELD | | | | <input type="checkbox"/> 1-PASSING <input type="checkbox"/> 2-SLOW OR STOP <input type="checkbox"/> 3-SKID AFTER BRAKES <input type="checkbox"/> 4-RIGHT TURN <input type="checkbox"/> 5-STRAIGHT AHEAD <input type="checkbox"/> 6-START IN TRAFFIC <input type="checkbox"/> 7-PARKING <input type="checkbox"/> 8-LEFT TURN <input type="checkbox"/> 9-START FROM PARK POSIT. <input type="checkbox"/> 10-TURN <input type="checkbox"/> 11-REAR FROM PARK POSIT. <input type="checkbox"/> 12-BACKING <input type="checkbox"/> 13-AVOID OBJECT | | | | <input type="checkbox"/> 1-CAR <input type="checkbox"/> 2-MOTOR BIKE <input type="checkbox"/> 3-TRAIN <input type="checkbox"/> 4-TRUCK <input type="checkbox"/> 5-MOTORCYCLE <input type="checkbox"/> 6-BICYCLE <input type="checkbox"/> 7-BUS <input type="checkbox"/> 8-OTHER | |
| VEHICLE DEFECTS | | PEDESTRIAN ACTION BEFORE ACCIDENT | | TYPE ACCIDENT - A VEHICLE AND: | | TRAFFIC CONTROL | | ROAD LINE | |
| <input type="checkbox"/> 1-BRAKES <input type="checkbox"/> 2-STEERING <input type="checkbox"/> 3-OTHER <input type="checkbox"/> 4-LIGHTS <input type="checkbox"/> 5-PUNCTURE <input type="checkbox"/> 6-OTHER | | <input type="checkbox"/> 1-WALK IN ROADWAY <input type="checkbox"/> 2-STAND IN ROADWAY <input type="checkbox"/> 3-CROSS AT INTERSECTION <input type="checkbox"/> 4-CROSS AT INTERSECTION <input type="checkbox"/> 5-WORK ON VEHICLE <input type="checkbox"/> 6-WORK IN ROADWAY <input type="checkbox"/> 7-CROSS AT INTERSECTION <input type="checkbox"/> 8-OTHER ACTION <input type="checkbox"/> 9-GET ON/OFF VEHICLE <input type="checkbox"/> 10-PLAY IN ROADWAY <input type="checkbox"/> 11-OTHER ACTION | | <input type="checkbox"/> 1-PEDESTRIAN <input type="checkbox"/> 2-AUTO <input type="checkbox"/> 3-BUS <input type="checkbox"/> 4-MOTORBIKE <input type="checkbox"/> 5-OTHER IN ROADWAY <input type="checkbox"/> 6-PEDESTRIAN <input type="checkbox"/> 7-AUTO <input type="checkbox"/> 8-BUS <input type="checkbox"/> 9-MOTORBIKE <input type="checkbox"/> 10-OTHER IN ROADWAY <input type="checkbox"/> 11-PEDESTRIAN <input type="checkbox"/> 12-AUTO <input type="checkbox"/> 13-BUS <input type="checkbox"/> 14-MOTORBIKE <input type="checkbox"/> 15-OTHER IN ROADWAY <input type="checkbox"/> 16-PEDESTRIAN <input type="checkbox"/> 17-AUTO <input type="checkbox"/> 18-BUS <input type="checkbox"/> 19-MOTORBIKE <input type="checkbox"/> 20-OTHER IN ROADWAY <input type="checkbox"/> 21-PEDESTRIAN <input type="checkbox"/> 22-AUTO <input type="checkbox"/> 23-BUS <input type="checkbox"/> 24-MOTORBIKE <input type="checkbox"/> 25-OTHER IN ROADWAY <input type="checkbox"/> 26-PEDESTRIAN <input type="checkbox"/> 27-AUTO <input type="checkbox"/> 28-BUS <input type="checkbox"/> 29-MOTORBIKE <input type="checkbox"/> 30-OTHER IN ROADWAY <input type="checkbox"/> 31-PEDESTRIAN <input type="checkbox"/> 32-AUTO <input type="checkbox"/> 33-BUS <input type="checkbox"/> 34-MOTORBIKE <input type="checkbox"/> 35-OTHER IN ROADWAY <input type="checkbox"/> 36-PEDESTRIAN <input type="checkbox"/> 37-AUTO <input type="checkbox"/> 38-BUS <input type="checkbox"/> 39-MOTORBIKE <input type="checkbox"/> 40-OTHER IN ROADWAY <input type="checkbox"/> 41-PEDESTRIAN <input type="checkbox"/> 42-AUTO <input type="checkbox"/> 43-BUS <input type="checkbox"/> 44-MOTORBIKE <input type="checkbox"/> 45-OTHER IN ROADWAY <input type="checkbox"/> 46-PEDESTRIAN <input type="checkbox"/> 47-AUTO <input type="checkbox"/> 48-BUS <input type="checkbox"/> 49-MOTORBIKE <input type="checkbox"/> 50-OTHER IN ROADWAY <input type="checkbox"/> 51-PEDESTRIAN <input type="checkbox"/> 52-AUTO <input type="checkbox"/> 53-BUS <input type="checkbox"/> 54-MOTORBIKE <input type="checkbox"/> 55-OTHER IN ROADWAY <input type="checkbox"/> 56-PEDESTRIAN <input type="checkbox"/> 57-AUTO <input type="checkbox"/> 58-BUS <input type="checkbox"/> 59-MOTORBIKE <input type="checkbox"/> 60-OTHER IN ROADWAY <input type="checkbox"/> 61-PEDESTRIAN <input type="checkbox"/> 62-AUTO <input type="checkbox"/> 63-BUS <input type="checkbox"/> 64-MOTORBIKE <input type="checkbox"/> 65-OTHER IN ROADWAY <input type="checkbox"/> 66-PEDESTRIAN <input type="checkbox"/> 67-AUTO <input type="checkbox"/> 68-BUS <input type="checkbox"/> 69-MOTORBIKE <input type="checkbox"/> 70-OTHER IN ROADWAY <input type="checkbox"/> 71-PEDESTRIAN <input type="checkbox"/> 72-AUTO <input type="checkbox"/> 73-BUS <input type="checkbox"/> 74-MOTORBIKE <input type="checkbox"/> 75-OTHER IN ROADWAY <input type="checkbox"/> 76-PEDESTRIAN <input type="checkbox"/> 77-AUTO <input type="checkbox"/> 78-BUS <input type="checkbox"/> 79-MOTORBIKE <input type="checkbox"/> 80-OTHER IN ROADWAY <input type="checkbox"/> 81-PEDESTRIAN <input type="checkbox"/> 82-AUTO <input type="checkbox"/> 83-BUS <input type="checkbox"/> 84-MOTORBIKE <input type="checkbox"/> 85-OTHER IN ROADWAY <input type="checkbox"/> 86-PEDESTRIAN <input type="checkbox"/> 87-AUTO <input type="checkbox"/> 88-BUS <input type="checkbox"/> 89-MOTORBIKE <input type="checkbox"/> 90-OTHER IN ROADWAY <input type="checkbox"/> 91-PEDESTRIAN <input type="checkbox"/> 92-AUTO <input type="checkbox"/> 93-BUS <input type="checkbox"/> 94-MOTORBIKE <input type="checkbox"/> 95-OTHER IN ROADWAY <input type="checkbox"/> 96-PEDESTRIAN <input type="checkbox"/> 97-AUTO <input type="checkbox"/> 98-BUS <input type="checkbox"/> 99-MOTORBIKE <input type="checkbox"/> 100-OTHER IN ROADWAY | | <input type="checkbox"/> 1-POLICEMAN <input type="checkbox"/> 2-CENTER LINE <input type="checkbox"/> 3-WARNING SIGN <input type="checkbox"/> 4-AUTO SIGNAL <input type="checkbox"/> 5-OTHER LANE MARKINGS <input type="checkbox"/> 6-NO PASS ZONE <input type="checkbox"/> 7-YIELD SIGN <input type="checkbox"/> 8-OTHER | | <input type="checkbox"/> 1-STRAIGHT <input type="checkbox"/> 2-CURVE <input type="checkbox"/> 3-LEVEL <input type="checkbox"/> 4-ON GRADE <input type="checkbox"/> 5-HILL CREST | |
| ROAD SURFACE | | ROAD CONDITION | | WEATHER | | LIGHT | | LOCALITY | |
| <input type="checkbox"/> 1-CONCRETE <input type="checkbox"/> 2-SAND/DIRT <input type="checkbox"/> 3-OTHER <input type="checkbox"/> 4-BLACKTOP <input type="checkbox"/> 5-GRAVEL | | <input type="checkbox"/> 1-DRY <input type="checkbox"/> 2-SNOW/ICE <input type="checkbox"/> 3-OTHER <input type="checkbox"/> 4-WET <input type="checkbox"/> 5-OTHER | | <input type="checkbox"/> 1-CLEAR <input type="checkbox"/> 2-RAIN <input type="checkbox"/> 3-SNOW <input type="checkbox"/> 4-FOG <input type="checkbox"/> 5-OTHER | | <input type="checkbox"/> 1-DAYLIGHT <input type="checkbox"/> 2-DARK <input type="checkbox"/> 3-DUSK/DAWN | | <input type="checkbox"/> 1-SCHOOL PLAYGROUND <input type="checkbox"/> 2-INDUSTRIAL BUSINESS <input type="checkbox"/> 3-RESIDENTIAL <input type="checkbox"/> 4-OPEN COUNTRY | |
| LEGAL SPEED LIMIT | | EST. DAMAGE FOR ALL VEHICLES | | NUMBER ARRESTED FOR CIVIL | | NUMBER OF VEHICLES INVOLVED | | NR. OF VEHICLES WITH SEAT BELTS INSTALLED | |
| | | | | | | | | NR. OF VEHICLES WITH SEAT BELTS IN USE | |
| | | | | | | | | NR. OF MOTORCYCLISTS WITH HEAD INJURY | |
| ASSIGNED OFFICERS | | | | | ARRESTING OFFICERS | | | | |
| UNIT# LAST NAME, First Initial | | | | | UNIT# LAST NAME, First Initial | | | | |
| ID. NO. | | | | | ID. NO. | | | | |
| | | | | | | | | | |
| | | | | | DATE AND TIME TO RECORD | | | | |

Figure 6-11 (cont'd.)

LOUISIANA (NEW ORLEANS)

Section 1 - Legislative Provisions

Section 38-18. Power and Authority of Police and Fire Department Officials.

The officers of the Department of Police or such officers as are assigned by the Superintendent of Police to do so shall enforce all street ordinances of the City and all of the state vehicle and traffic laws applicable to street traffic in the City. Officers of the Department or such officers as are assigned may direct all traffic by voice, hand or signal in conformance with traffic laws and in the event of a fire or other emergency or to expedite traffic or safeguard pedestrians, such officers may direct traffic as conditions may require notwithstanding the provisions of the traffic laws.

Officers of the Fire Department, when entering or leaving a Fire Station, or when at a scene of a fire, may direct or assist the Police in directing traffic thereat or in the immediate vicinity.

It is a violation of this Chapter for any person to do any act forbidden or to fail to perform any act required herein.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or fire department official.

Section 38-23. Procedure Upon Arrest.

(a) Whenever any person lawfully possessed of a valid chauffeur's or operator's license theretofore issued to him by the Department of Public Safety of the State of Louisiana is issued a citation or arrested and charged with a violation of any municipal ordinance regulating traffic in the City of New Orleans, except driving while intoxicated or hit and run driving, he shall have the option of depositing his chauffeur's or Operator's license issued to him under Section 411 of Title 32 of the Louisiana Revised Statutes of 1950, with the arresting officer or the court, demanding bail in lieu of any other security required for his appearance in any court of New Orleans in answer to any such charge lodged or to be lodged before the said court.

(b) Whenever any person, as described in Sub-section (a) hereof, deposits his valid chauffeur's or operator's license as provided in said subsection, either the arresting officer or the Traffic Court shall issue said person a receipt for said license upon a form approved or provided by the Department of Public Safety of the State of Louisiana and thereafter, said person shall be permitted to operate a motor vehicle upon the public streets of the city during the pendency of the case in connection with which the license was deposited.

(c) The Clerk or Judge of the Traffic Court accepting the license, as provided in Sub-section (a) hereof, shall immediately forward to the Department of Public Safety, the license of a driver, deposited in lieu of bail if the driver fails to appear in answer to the charge filed against him.

38-29. Cost of Preparing Conviction Notice.

There shall be an additional charge of 50 cents added to the total of each fine excepting parking imposed by the Traffic Court for the purpose of defraying the cost of preparation of conviction notices to the State of Louisiana in accordance with State Law. No specific order shall be necessary for the collection of these costs, and the same shall be collected by the appropriate clerk-cashier of the Traffic Court on each ticket paid in said court or in the Violations Bureau of Said Court.

Section 38-110. Operating a Vehicle While Intoxicated.

Operating a vehicle while intoxicated is the operation of or having under his actual physical control any motor vehicle, aircraft, watercraft or other means of conveyance by a person under the influence of intoxicating liquor or beverages, or narcotic drugs; or under the influence of any drug that affects adversely the efficiency of the driver.

Whoever is convicted of operating a vehicle while intoxicated, upon the first conviction shall be fined not less than \$75.00 or imprisoned for not more than 90 days or both.

Upon a second conviction within five years of a prior conviction an offender convicted of operating a vehicle while intoxicated shall be fined not less than \$100.00 and shall be imprisoned for not less than 30 days.

Upon a third or subsequent conviction, an offender convicted of operating a vehicle while intoxicated shall be fined not less than \$100.00 and shall be imprisoned for not less than 60 days.

Section 38-111. Reckless operation of a vehicle.

Reckless operation of a vehicle is the operation of any motor vehicle, aircraft, watercraft, or other means of conveyance in a criminally negligent or reckless manner.

Whoever commits the offense of reckless operation of a vehicle shall be fined not less than \$50.00 or imprisoned for not less than 10 days or both.

Section 38-111.1. Careless Operation of a Vehicle.

Any person who operates any vehicle upon a highway or operates a streetcar upon a highway or neutral ground carelessly, and in disregard to the rights and safety of themselves or others, shall be guilty of careless driving.

*From Traffic Ordinance, City of New Orleans.

§ 98. Operating a vehicle while intoxicated

A. Operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, vessel or other means of conveyance while under the influence of alcoholic beverages, narcotic drugs, central nervous system stimulants, hallucinogenic drugs or barbiturates.

B. Whoever operates a vehicle while intoxicated is guilty of a crime and upon conviction shall be fined not less than one hundred twenty-five dollars and not more than four hundred dollars or imprisoned in the parish jail for not less than thirty days nor more than six months or both.

C. On a second conviction, the offender shall be fined not less than one hundred twenty-five dollars nor more than five hundred dollars and shall be imprisoned for not less than one hundred twenty-five days nor more than six months.

D. On a third conviction, the offender shall be imprisoned at hard labor for not less than one year nor more than five years.

E. On a fourth conviction, the offender shall be sentenced to imprisonment at hard labor for not less than ten nor more than thirty years.

F. Provided that any offense under this statute committed more than five years prior to the commission of the crime for which the defendant is being tried shall not be considered in the assessment of penalties hereunder.

§ 661. Operating a vehicle under the influence of alcoholic beverages; Implied consent to chemical tests; administering of test and presumptions; effect of refusal to submit to tests

A. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of R.S. 32:662, to a chemical test or tests of his blood, breath, urine or other bodily substance for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while believed to be under the influence of alcoholic beverages. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcoholic beverages. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

B. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by Subsection (A) of this section, and the test or tests may be administered subject to the provisions of R.S. 32:662.

C. When a law enforcement officer requests that a person submit to a chemical test as provided for above, he shall first inform the person of the consequences of a refusal. In addition, the law enforcement officer shall have the person sign a standard form advising such person of his constitutional rights; the law enforcement officer shall have the person sign a separate form advising such person of the consequences of his refusal to submit to a chemical test, provided however that a single combination of the two forms may be used. If the person is unable or unwilling to sign the form, the law enforcement officer shall certify that such person was informed of his constitutional rights and was unable or unwilling

to sign said form. If the above procedure is not complied with, the results of the test or any reference to it is inadmissible into evidence in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcoholic beverages.

§ 662. Administering chemical tests; use of results as evidence

A. The chemical test or tests as provided for by this Part shall be subject to the following rules and shall be administered as provided for hereafter:

1. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcoholic beverages the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath or other bodily substance shall give rise to the following presumptions:

- a. If there was at that time 0.05 per cent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcoholic beverages.

- b. If there was at that time an excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcoholic beverages, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcoholic beverages.

- c. If there was at that time 0.10 per cent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of alcoholic beverages.

B. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

C. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcoholic beverages. This section has no application to a civil action or proceeding.

§ 663. Approval of testing methods by department of health

Chemical analyses of the person's blood, urine, breath or other bodily substance, to be considered valid under the provisions of this Part, shall have been performed according to methods approved by the state department of health and by an individual possessing a valid permit issued by said department for this purpose. The state department of health is authorized to approve satisfactory techniques of methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the department.

§ 664. Persons qualified to make test

A. When a person submits to a blood test at the request of a law enforcement officer under the provisions of R.S. 32:662, only a physician, registered nurse, qualified technician or chemist may withdraw blood for the purpose of

determining the alcoholic content therein. This limitation shall not apply to the taking of breath specimens.

B. The person tested may have a physician or a qualified technician, chemist, registered nurse or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. After being advised of this right as provided in R.S. 32:661(C), he shall be given the opportunity to telephone and request the qualified person to administer such test. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

C. No person who administers any such test upon the request of a law enforcement officer as herein defined, no hospital in or with which such person is employed or otherwise associated or in which such test is administered, and no other person, firm or corporation by whom or which such person is employed or is in any way associated, shall be in any wise criminally liable for the administration of such test, or civilly liable in damages to the person tested.

§ 665. Furnishing of information to person tested

Upon the request of the person who submits to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney.
Added by Acts 1968, No. 273, § 14.

§ 666. Refusal to submit to test admissible as evidence

If a person under arrest refuses to submit to a chemical test under the provisions of this Part, evidence of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcoholic beverages.

This section has no application to a civil action or proceeding.

§ 667. Refusal to submit to test, effect of

If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in R.S. 32:661, none shall be given. In all such cases the law enforcement officer shall submit a sworn report in a form approved by the director of public safety to the department of public safety that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcoholic beverages, that he had informed the arrested person as provided in R.S. 32:661(C) and that the person had refused to submit to the test upon the request of the law enforcement officer. Upon receipt of the sworn report the department of public safety shall suspend the license of said person or his permit to drive, or any nonresident operating privilege for a period of six months from the date said license is delivered to the department of public safety. This suspension shall be in addition to any subsequent suspension or revocation of the license of any such person arising out of such actions for operating a vehicle while under the influence of alcoholic beverages. If the person is a resident without a license or permit to operate a motor vehicle in this state, the department of public safety shall deny the issuance of a license or permit to such person for a period of six months after the date of the alleged violation, subject to review as hereinafter provided.

Section 2 - Physical Coordination Tests

Upon stopping a violator, if the arresting officer suspects alcohol involvement, he administers physical coordination tests to the suspect to determine the suspect's degree of impairment. Four variations of tests are employed: 1) balance; 2) turning; 3) finger to nose; 4) picking up coins.

Although physical coordination tests are generally conducted at the scene of arrest or scene of apprehension, it is not uncommon for these tests to be conducted at the evidentiary testing location. In either case, it is the arresting officer who administers these tests, and the location is a matter of convenience rather than requirement.

Officers interviewed at this site stated that they encountered no problems in administering or interpreting the physical coordination tests. The acceptance by the courts of testimony based upon the physical coordination tests has been favorable, and officers do not anticipate problems in the future.

Conclusions: Officers of the New Orleans Police Department utilize the standard physical coordination tests found in use throughout the sites visited. No modifications of these tests have been made and none are anticipated.

Physical coordination tests are uniformly administered by arresting officers throughout the New Orleans Police Department and appear adequate to meet the needs of this law enforcement agency.

Recommendations: None.

Section 3 - Pre-arrest Breath Screening

The Borg-Warner Alcohol Level Evaluation Road Tester (A.L.E.R.T.) instrument is utilized by officers of the New Orleans Police Department for the purpose of determining the approximate blood-alcohol content of a person who is suspected of operating a vehicle while under the influence of alcohol.

Prior to testing, suspects are advised that submission to a pre-arrest breath screening test is voluntary and no penalty will be assessed should they refuse.

When a suspect agrees to pre-arrest breath screening and the results indicate a "failing" of the screening test, the suspect is presumed under the influence of alcohol and will be tested by the use of the Photo-electric Intoximeter for evidentiary purposes.

Those persons registering an indication of "warn" on the A.L.E.R.T. unit will be tested on the Photo-electric Intoximeter only when other evidence of intoxication is available (e.g., driving recklessly, strong odor of alcohol, unbalanced, slurred speech, flushed face, bloodshot eyes, etc.). Should there be no indication or competent evidence of intoxication, the suspect will be released.

The New Orleans Police Department currently has 30 A.L.E.R.T. units available for field use. These units are available to the ASAP unit, the Accident Investigation Unit, the Motorcycle Unit, Bridge Police, and are also available to District Patrol Commanders.

Pre-arrest breath screening is not sanctioned by statute within the state of Louisiana. Pre-arrest breath screening is accomplished through local interpretation of the present Implied Consent law.

The results of pre-arrest breath screening are recorded on the DWI Field Screening Test Report Form (Fig. 7-3) and on the Rights of DWI Arrestee or Suspect Form (Fig. 7-6).

All officers of the New Orleans Police Department receive four hours of training in the use of pre-arrest screening devices. Two members of the ASAP enforcement unit have been trained as instructors by a representative for the manufacturer of the A.L.E.R.T. unit. No state requirements for instructor or operator have been established.

Conclusions: Officers of the ASAP enforcement unit stated they found pre-arrest breath screening a valuable tool in DWI apprehension. Officers also stated that the device was particularly useful in

identifying offenders with low BAC readings. In general, pre-screening devices have been enthusiastically received by ASAP enforcement personnel, as well as non-ASAP enforcement personnel.

According to the ASAP unit commander, "While many men like the instrument, it is not used as extensively as we [the ASAP unit] would like. Presently we plan to have our personnel attend the various roll-calls and give training programs."

The New Orleans Police Department plans to continue the use of pre-arrest breath screening. Admittedly, the program of pre-arrest screening is primarily limited to traffic-conscious officers. However, the cause of this limitation is due to the difficulty which the officers have had in calibrating the A.L.E.R.T. unit.

Recommendations: Additional instructors should be trained in the use of the pre-arrest screening instrument. The training course provided these potential instructors should be comprehensive and should include calibration techniques.

All officers of the New Orleans Police Department who are assigned to field patrol should receive training in the use of and calibration of the pre-arrest screening devices through roll-call training sessions.

Additional pre-arrest screening devices should be purchased if feasible so that each officer would have available to him a pre-arrest screening device during his tour of duty.

Section 4 - Evidentiary Sobriety Testing

Chemical analyses of a person's blood, urine, or breath is permitted to determine blood-alcohol concentration for evidentiary purposes within the state of Louisiana.

The primary evidentiary test utilized by the New Orleans Police Department is the breath analysis test to determine blood-alcohol level. Evidentiary breath testing is accomplished through the use of the Photo-electric Intoximeter, of which the department has twelve available for field use.

No central listing of certified breath specialists could be located for the New Orleans Police Department. Each division commander will train new officers as the need arises. Officers are reluctant to volunteer, due to excessive court obligations. According to Captain Curole of Central Lock-up (the primary non-ASAP testing unit), there are currently 14 certified operators and the need exists for one additional operator in order to have five operators per shift. Lt. C. LaDell, commander of the ASAP unit, advised that all ASAP personnel are licensed operators, for a total of 27 documentable operators.

Officers who have been trained in the operation of the Intoximeter and who have been certified as proficient in such operation are qualified to conduct evidentiary breath analysis tests for the New Orleans Police Department. Evidentiary breath analysis training is conducted at the New Orleans Police Academy, New Orleans, Louisiana. The program is administered by Dr. Hauser, Director of the State Department Board of Health.

Instructors for the course are drawn from State Department Board of Health staff who have completed the 80-hour breath testing course for operator/instructor. The basic operator course is 40 hours.

Evidentiary breath testing devices are located as follows: one at the central lock-up facility and one in each of the three mobile testing vans. The location where the suspect will be offered the evidentiary test is a matter of convenience for the arresting officer and is not mandated by policy.

When an arrested person voluntarily agrees to submit to a breath analysis test, the arresting officer transports the suspect to the central lock-up, where the evidentiary test will take place. Arresting officers remain in the presence of the arrested person during the booking and during the testing process. During this process the subject will not be allowed to eat or drink for 20 minutes prior to the evidentiary test.

Immediately upon arrival at the testing location or at the field testing unit, the arresting officer advises the suspect of his Constitutional rights by executing in triplicate the Rights of DWI Arrestee or Suspect Form (Fig. 7-6). Should the suspect refuse the evidentiary test, the arresting officer makes the appropriate notation on the Signature of Arrestee line of this report and executes the refusal certification on the reverse side of the form.

The results of the evidentiary test administered at the central lock-up or field location are entered in the appropriate section of the Alcoholic Influence Report Form (Fig. 7-1). The Alcoholic Influence Report Form is not executed when the pre-arrest breath test is administered. Names of technicians administering the tests and witnesses to tests are also entered on this form.

The evidentiary breath test operator records the results of the Photo-electric Intoximeter test in the Intoximeter logbook, which is furnished by the Department of Public Safety.

Access to the evidentiary breath testing devices is restricted, as the devices are kept locked in a cage at the central lock-up. Evidentiary testing devices located in the mobile vans are also locked when operators are not on duty.

Lt. C. LaDell, Commander of the Alcohol Safety Enforcement Section, is responsible for ensuring that all the necessary supplies are available so that evidentiary breath testing may be conducted properly and smoothly.

Operators of the evidentiary breath testing apparatus consist of both law enforcement officers and non-sworn technicians. Operators located at the central lock-up are non-sworn technicians and are classified as correction officers. Operators in the mobile vans are sworn law enforcement officers. All operators are periodically re-certified at two-year intervals.

Should the arresting officer also be a licensed, certified breath examiner, he is authorized to perform the evidentiary breath test on the subject whom he arrested.

Unit supervisors review the records of individual breath tests on a daily basis to ensure that the proper documentation is being conducted.

If a blood sample is withdrawn for chemical analysis, a sample consisting of ten cc of the suspect's blood is withdrawn. The sample is then submitted to the New Orleans Criminalistics Laboratory for analysis. The results of the analysis are usually made known to the unit commander within 24 to 48 hours. The unit commander will in turn notify the arresting officer as to the test results.

Under Implied Consent law, medical authorities are not required to cooperate in the matter of blood testing. However, experience has shown that DWI blood tests are usually expedited by hospital personnel and are usually accomplished within 30 minutes from the time that the arresting officer arrives at the testing facility.

Coroners obtain blood samples of persons fatally injured in motor vehicle crashes within approximately twelve hours of time of death. The BAC of the deceased is disclosed to the ASAP. There is, however, no statutory requirement directing all principals in a fatal crash to submit to a chemical test in order to determine their blood alcohol concentration.

Although provided for by state statute, urine samples are not submitted for chemical analysis.

Suspected DWI offenders are entitled to an independent analysis for the purpose of determining BAC. The suspect assumes financial responsibility for this test. If these independent findings are introduced into evidence on behalf of the defendant, the same rules of evidence would apply as for the test administered by the law enforcement agency. To date, no such test case has ever been presented.

The defendant is presumed to be intoxicated at the .10% BAC level. There is no per se level of intoxication in the state of Louisiana.

Blood-alcohol concentration levels between .05% and .09% preclude any presumption of intoxication, but may result in a DWI conviction when entered into evidence along with other incriminating testimony and facts.

Mobile vans utilized in evidentiary breath testing: Upon special request by an arresting officer, a mobile testing van will respond to the scene of arrest to conduct evidentiary testing. It is not uncommon during peak hours (e.g., weekends, holidays, conventions, etc.) for the mobile van to assume a stationary post in the area of the ASAP patrol.

The mobile testing van is staffed by either a corrections officer who is a certified breath examiner or a law enforcement officer who is a breath examiner. This individual serves as driver/examiner and when possible will also serve as witness to the field sobriety tests.

The mobile vans utilized are of the "panelled van" type and are equipped with a Photo-electric Intoximeter, typewriter, official reports of the New Orleans Police Department, cabinets, chairs, built-in tables, VHF police radio, PA system, and emergency (blue) rotating lights.

Conclusions: Breath is the bodily substance primarily analyzed for evidentiary purposes at this ASAP site. Officers repeatedly cited "ease and convenience of testing" as the primary reason suspects choose the breath analysis as opposed to blood.

Officers offered little feedback regarding the evidentiary testing process. No significant problems were cited, nor were any suggestions for revisions in existing procedures made by the law enforcement officers comprising the New Orleans Alcohol Safety Action project.

Recommendations: None.

DEPARTMENT OF POLICE

NEW ORLEANS, LA.

ALCOHOLIC INFLUENCE

REPORT FORM

| | |
|--|------------------------------------|
| (Check) | (Check) |
| <input type="checkbox"/> Driver | <input type="checkbox"/> Accident |
| <input type="checkbox"/> Pedestrian | <input type="checkbox"/> Violation |
| <input type="checkbox"/> Passenger | <input type="checkbox"/> Other |
| A.M. P.M. | |
| Date and time of Accident or Violation | |

| |
|------------------|
| Case No..... |
| Accident No..... |
| Arrest No..... |

Name..... Address.....

Age..... Sex..... Race..... Approx. Weight..... Dr. Lic. No.....

QUESTIONS:

NOTE: Get witnesses to prove driving.

Were you operating this motor vehicle?..... Where were you going?.....

Where did you start from?..... When did you leave?..... Time now?.....

Have you been drinking?..... What?..... Quantities?.....

Commenced..... A.M. P.M. Stopped..... A.M. P.M. Where?.....

Are you ill?..... Have you been to a doctor or dentist recently?..... If so, when?.....

Who? (name of doctor or dentist)..... For what?.....

Are you taking medicine?..... If so, what?..... Last dose..... A.M. P.M.

Do you have diabetes?..... Are you taking insulin?..... Have you used a mouth wash recently?.....

Are you hurt?..... Did you get a bump on the head?.....

How much sleep did you have last night?..... How much today?.....

Have you been drinking since the accident?..... What?..... Quantities?.....

EXAMINATION:—(Draw circles around words describing observed conditions. Add other words of your own.)

| BREATH | | Odor of alcoholic liquor — Apparently none faint moderate strong | | | | | |
|---------------------------------|--|---|-------------|--|-------------|------------------------|------------|
| COLOR OF FACE | | Apparently normal | | Flushed | Pale | (Other) | |
| CLOTHES | | Orderly | Mussed | Soiled | Disarranged | Disorderly | (Describe) |
| ATTITUDE | | Polite | Excited | Hilarious | Talkative | Care-free | Sleepy |
| | | Cooperative | Indifferent | Antagonistic | Cocky | Combative | Insulting |
| UNUSUAL ACTIONS | | Profanity | Hiccough | Belching | Vomiting | Fighting | (Other) |
| EYES | | Apparently normal | | Watery | Bloodshot | | |
| CHECK SQUARES IF TESTS ARE MADE | <input type="checkbox"/> PUPILS | Apparently normal | | Dilated | Contracted | Poor reaction to light | |
| | <input type="checkbox"/> BALANCE | Sure | Fair | Swaying | Wobbling | Sagging Knees | Falling |
| | <input type="checkbox"/> WALK & | Sure | Fair | Swaying | Stumbling | Staggering | Falling |
| | <input type="checkbox"/> TURNING | Sure | Fair | Swaying | Uncertain | Staggering | Falling |
| | <input type="checkbox"/> FINGER-TO-NOSE TEST | Right—Sure | | Uncertain | Left—Sure | Uncertain | (Other) |
| | <input type="checkbox"/> PICKING UP COINS | Sure | | Slow | Uncertain | Unable | (Other) |
| | <input type="checkbox"/> SPEECH | Fair | Slurred | Stuttering | Confused | Incoherent | (Other) |
| | | Choice of words | | Clearness and correctness of enunciation | | | |

What first led officer to suspect alcoholic influence?.....

Unusual actions or statements..... (more space on other side)

Signs of illness or injury.....

| CONCLUSION | EFFECTS OF ALCOHOL—Apparently none Slight Obvious Extreme | | | |
|------------|--|--|------------------|------------------|
| | ABILITY TO DRIVE—Apparently fit | | Ability impaired | Greatly impaired |

Examined by..... A.M. P.M.

Signature Title Address Date Time Completed

Witnesses to examination.....

NOTE: USE OTHER SIDE FOR REMARKS. When physician's examination is made or sample taken for chemical test, record on other side.

REMARKS

.....

.....

.....

.....

.....

.....
Names of Officers or persons making the remarks

INSTRUCTIONS FOR COORDINATION TESTS

Do not have suspect perform any test action unless he is willing. When tests are made, record results and check squares on other side. When tests are not made, record conditions from general observations but do not check the squares. A square is to be checked only if test is made.

1. Pupils of eyes—flash a bright light in the eyes of the suspect and compare the reaction of his pupils with the reaction obtained when a light is flashed in the eyes of another person. There should be the same reaction.
2. Balance—Stand erect with heels together, eyes closed, and head back, to observe balance.
3. Walking and turning—Walk a straight line, toe of one foot against the heel of the other, then turn and walk back again. Watch closely for evidences of incoordination, especially when turning around.
4. Finger-to-Nose Test—Stand erect, eyes closed, extend arms horizontally to side, then, one arm at a time, touch the tip of nose with the tip of the index finger.
5. Coin Test—Pick up coins from floor. (If desired have suspect place coins on table and arrange in order, with largest sized coins on right. Identify heads or tails. Observe ability.)
6. Speech—Repeat the following test phrases: ELECTRICITY, METHODIST EPISCOPAL, AROUND THE RUGGED ROCK THE RAGGED RASCAL RAN.
7. Handwriting—Copy a sentence, or several words (such as the test phrases in No. 6 above), or sign name, so that handwriting can be compared. Space at top of this sheet may be used for this purpose.

PHYSICIAN'S REPORT

Examining physician, if any.....
A.M.
P.M.
Name
Address
Time Examined

Physician's Diagnosis.....

.....
Signature of Physician

CHEMICAL TESTS

| Sample No. | Material | Date and Time Collected | Taken in Presence of | Sample Sealed by | Date and Time Analyzed | Percent Alcohol |
|------------|----------|-------------------------|----------------------|------------------|------------------------|-----------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |

Tests made by.....

Witness.....

DWI FIELD SCREENING TEST REPORT FORM

DATE _____ TIME _____ LOCATION _____ MACHINE NO. _____
 ALERT OPERATOR _____ ASSIGNMENT _____
 ARRESTING OFFICER _____ VIOLATION(ORD. NO.) _____
 VIOLATOR'S NAME _____ RACE _____ SEX _____ DOB _____
 INSTRUMENT CHECK LIST (Last, First, Middle Init)

1. Subject:

_____ Time since last drink _____ (15 minutes)
 _____ Foreign matter in mouth _____ (5 minutes)
 _____ Time since last smoke _____ (5 minutes)
 _____ Check if non-smoker _____

2. START Switch on:

_____ On lamp on
 _____ WAIT lamp on

3. Ready:

_____ WAIT lamp off
 _____ READY and ON lamps on
 _____ BATTERY lamp off

4. Conduct test:

_____ "Take a deep breath and blow hard continuously until I tell
 you to stop." (Until TEST and READY lamps go out)

5. Results:

_____ Wait 20 seconds for reading
 _____ Record time of test: _____

_____ Circle result: Pass Warn Fail Released

6. Shut down:

_____ Turn off, discard mouthpiece

TEST REFUSAL Yes _____ No _____

ACCIDENT: Property Damage: Yes _____ No _____ Injury: Yes _____ No _____

Fatality: Yes _____ No _____

ITEM NUMBER _____ DWI ARREST: Yes _____ No _____

BAC (If known) _____ ASES Assisted with DWI: Yes _____ No _____

INSTRUMENT FAILURE (Describe) _____

Item No: _____ DEPARTMENT OF POLICE
DWI Ticket No: _____ NEW ORLEANS, LOUISIANA

RIGHTS OF DWI ARRESTEE OR SUSPECT

_____, you have been arrested for/
suspected of violation of operating a vehicle while intoxicated.

According to provisions in the Constitution of the United States and of
the State of Louisiana it is my duty to inform you that:

1. You need not make any statements; that is, you have a right to remain
silent;
2. Anything you say may be used against you in trial;
3. You have a right to consult with and obtain the advice of an
attorney, before answering any questions;
4. If you cannot afford an attorney the court will obtain an attorney
to represent you and advise you;
5. You have a right to have your attorney or an appointed attorney
present at the time of any questioning or giving of any statement.

----- ALSO -----

Under the provisions of Louisiana Revised Statutes R.S. 32:661 et. seq.
(Implied Consent Statutes) you are requested to submit to a test to determine
alcoholic content, if any, of your blood.

If you refuse to submit to testing to determine alcoholic content of your
blood, the department of Public Safety shall suspend you driver's license or
permit to drive for a period of six months from the date said license is
delivered to the department. This suspension shall be in addition to any
subsequent suspension or revocation of your license or any fine or jail
penalty arising out of any conviction for operating a vehicle under the
influence of alcoholic beverages.

In addition to chemical testing administered by the Department of Police,
You may contact any physician, registered nurse, or qualified medical tech-
nologist of your own choosing to administer additional chemical tests.

DO YOU UNDERSTAND WHAT I HAVE JUST READ TO YOU? _____ YES _____ NO

(Signature of Arrestee)

CONCLUDED: DAY _____ DATE _____ TIME _____

COPY GIVEN TO PERSON BY: _____
(Signature of Officer)

BADGE NO: _____ ASSIGNMENT: _____

PRINT NAMES OF OFFICERS AND/OR WITNESSES TO ABOVE: _____

REMARKS: _____

Distribution: Original - Records Section
Copy - Arrestee
Copy - Attached to Citation(s)
Copy - CO. CLU (In Refusal Cases Only)

NOPD FORM 152
Rev. 9/74

Figure 7-6

REFUSAL
CERTIFICATION IN REFUSAL TO SIGN CASES

Date: _____

I, _____, certify that after advising
(Officer's Name)
the arrested person of his constitutional rights and the provisions
of the Implied Consent Law, such person refused to sign same.

(Signature of Certifying Officer)

Figure 7-6 (cont'd.)

MAINE (CUMBERLAND AND YORK COUNTIES)

Section 1 - Legislative Provisions

§ 1312. IMPLIED CONSENT TO CHEMICAL TESTS: OPERATION UNDER THE INFLUENCE
OF INTOXICATING LIQUOR: PENALTIES

Any person who operates or attempts to operate a motor vehicle within this State shall be deemed to have given consent to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, if arrested for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor.

He shall be informed by a law enforcement officer of the test available to him, and said accused shall select and designate one of the tests. At his request he may have a test of his blood administered by a physician of his choice, if reasonably available.

1. PREREQUISITES TO TEST. Before any test specified is given, the law enforcement officer shall inform the arrested person of the consequences of his refusal to permit a test at the direction of the law enforcement officer. If the law enforcement officer fails to comply with this prerequisite, any test results shall be inadmissible as evidence in any proceeding before any administrative officer or court of this State.

2. HEARING. If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, none shall be given. The

Secretary of State, upon the receipt of a written statement under oath of the arrest of a person for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that such person had refused to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241 that his license or permit and his privilege to operate have been suspended. Such suspension shall be for a period of 3 months for a first refusal under this or any prior implied consent provision under Maine law. If such refusal is a 2nd or subsequent refusal under this or any prior implied consent provision under Maine law, such suspension shall be for a period of 6 months.

If such person desires to have a hearing, he shall notify the Secretary of State within 10 days, in writing, of such desire. Any suspension shall remain in effect pending the outcome of such hearing, if requested.

The scope of such a hearing shall cover whether the individual was lawfully placed under arrest and whether he refused to submit to one of the tests upon the request of a law enforcement officer.

If it is determined, after hearing when such is requested, that such person was not arrested or did not refuse to permit a chemical test to determine his blood-alcohol level by analysis of his blood or breath, any suspension in effect shall be removed immediately.

3. REVIEW. Any person, whose license, permit or privilege to operate is suspended for refusal to submit to a chemical test to determine his blood-

alcohol level by analysis of his blood or breath at the direction of a law enforcement officer after having been arrested for operating or attempting to operate while under the influence of intoxicating liquor, shall have the right to file a petition in the Superior Court in the county where he resides, or in Kennebec County, to review the order of suspension by the Secretary of State by the same procedure as is provided in section 2242.

4. RESULTS OF TEST. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney by the law enforcement officer.

5. BLOOD-ALCOHOL LEVEL.

A. If there was, at the time alleged, 0.05% or less by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

B. If there was, at the time alleged, in excess of 0.05%, but less than 0.10% by weight of alcohol in the defendant's blood, it is relevant evidence, but it is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor within the meaning of this section, but such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor.

C. If there was, at the time alleged, 0.10% or more by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was under the influence of intoxicating liquor within the meaning of this section.

D. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

6. ADMINISTRATION OF TESTS. Persons conducting chemical analysis of blood or breath for the purpose of determining the blood-alcohol level shall be certified for this purpose by the Department of Health and Welfare under certification standards to be set by that department.

Only a duly licensed physician, registered nurse or a person certified by the Department of Health and Welfare under certification standards to be set by that department, acting at the request of a law enforcement officer, with the consent of the defendant, may draw a specimen of blood for the purpose of determining the blood-alcohol level thereof. This limitation shall not apply to the taking of breath specimens.

A law enforcement officer, with the consent of the person from whom the sample is to be taken, may take a sample specimen of the breath of any person arrested for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, said sample specimen to be submitted to the Department of Health and Welfare or a person certified by the Department of Health and Welfare for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level thereof.

Only such equipment as is approved by the Department of Health and Welfare shall be used by a law enforcement officer to take a sample specimen of the defendant's breath.

Approved equipment shall have a stamp of approval affixed by the Department of Health and Welfare. Evidence that such equipment was in a sealed carton bearing said stamp of approval shall be accepted in court as prima facie evidence that such equipment was approved by the Department of Health and Welfare for use by the law enforcement officer to take the sample specimen of the defendant's breath.

7. LIABILITY. No physician, registered nurse or person certified by the Department of Health and Welfare in the exercise of due care shall be liable in damages or otherwise for any act done or omitted to be done in performing the act of collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this section.

8. EVIDENCE. The percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of his blood or breath shall be admissible in evidence.

9. PAYMENT FOR TESTS. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform chemical tests of specimens of blood or breath shall be paid from the General Fund.

10. PENALTIES.

A. Whoever shall operate or attempt to operate a motor vehicle within this State while under the influence of intoxicating liquor or drugs, upon conviction for a first offense, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 90 days, or by both; and whoever is convicted of a 2nd or subsequent offense shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 6 months, or by both. The license or permit and privilege to operate of any person convicted of a first violation of this section shall be immediately suspended for 4 months by the Secretary of State upon receipt of an attested copy of the court record of such conviction.

If any person found guilty of a violation of this section shall appeal from the judgment or sentence of a court, the operator's license or permit and privilege to operate a motor vehicle in this State shall be suspended during the time an appeal is pending, unless such court shall otherwise order, or unless the Secretary of State, after hearing, shall restore the license, permit or privilege to operate pending decision on the appeal.

Any person convicted of a 2nd violation of this section shall have his license or permit and privilege to operate a motor vehicle in this State suspended for a period of one year except after 6 months he may petition the Secretary of State for a license or permit, who, after hearing and after his determination that public safety will not be endangered by issuing a new license, may issue such license or permit, with or without conditions thereto attached.

The imposition of a fine or sentence for a person convicted of a 2nd or subsequent offense under this section shall not be suspended and probation shall not be granted, except that a fine or sentence may be suspended and probation granted when as a condition of probation the offender is required to participate in an alcohol treatment or rehabilitation program.

Any person convicted of a 3rd violation of this section shall have his license or permit and privilege to operate a motor vehicle in this State suspended for a period of 3 years, except that such person may petition the Secretary of State for a hearing to consider whether his license should be restored after 2 years from the date of said suspension of his license, permit or privilege to operate a motor vehicle. The Secretary of State, after hearing, may restore the license and privilege to operate a motor vehicle, with or without conditions or restrictions, and under such terms as he may deem advisable, having in mind the safety of the public and the welfare of the petitioner.

Any person convicted of a 4th or subsequent violation of this section shall have his license or permit and privilege to operate suspended and no subsequent license or permit or privilege to operate shall be granted to such person, except that such person may petition the Secretary of State after 5 years from the date of said suspension for a special license or the privilege to operate, and the Secretary of State, after being satisfied beyond a reasonable doubt that the petitioner has refrained from the use of intoxicating liquor or drugs for a period of 5 years next preceding the date of hearing

on said petition, may issue a license, permit or grant the privilege to operate, conditioned upon the continued nonuse of intoxicating liquor or drugs and such other conditions as he may deem proper.

For the purposes of this section, prior convictions of operating or attempting to operate while under the influence of drugs, operating or attempting to operate while impaired by the use of drugs, or operating or attempting to operate while intoxicated by the use of drugs, shall be considered prior convictions of operating or attempting to operate under the influence of drugs, provided that the prior conviction is within a 10-year period of the date of the last offense.

Any suspension of a license, permit and privilege to operate for conviction under this section shall run consecutively to any suspension imposed for refusal to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath, except where the conviction is the result of a plea of guilty in the District Court prior to trial or a waiver of trial and finding of guilty by the court.

B. Any officer authorized to arrest for violations of this section may arrest, without a warrant, any person involved in a motor vehicle accident, if the officer has probable cause to believe that such person has violated this section.

C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that the operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in this section.

D. In alleging a prior conviction under this section, Title 15, section 757, shall not apply. After a conviction for violation of this section the court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses which are considered to be prior offenses for the purposes of this section. Certified copies of the record of a prior conviction or convictions from the Secretary of State or any court of record shall be admissible and upon receipt of any such copy and upon being satisfied that the defendant is the person named in that certified copy, the court shall treat the present conviction as a subsequent conviction and sentence the defendant accordingly.

1967, c. 169; c. 408, § 2; c. 544, § 70. 1969, c. 439, § 1. 1971, c. 547.

1971, c. 590. 1973, c. 185, § 1, 2; c. 625, § 189.

Section 2 - Physical Coordination Tests

The administering of physical coordination tests is optional for each officer and no criterion exists for when they will be given and when they will not be given. As a rule, physical coordination tests are not administered by any of the participating law enforcement agencies comprising the Cumberland and York Counties, Maine, ASAP program.

Conclusions: The enforcement agencies participating in the Maine ASAP program are as follows:

- Maine State Police
- Sanford Police Department
- Westbrook Police Department
- Brunswick Police Department
- Scarborough Police Department
- Portland Police Department
- South Portland Police Department

During this site visit, officers of the Maine State Police and officers of the Portland Police Department were interviewed.

All officers of Cumberland and York Counties receive their initial police training at the Municipal Academy, which is conducted by the Maine State Police. This training sets forth the manner of patrol and identifies procedures to be followed in effecting an OUI (Operating Under the Influence) arrest. Therefore, little deviance exists between the seven agencies with regard to OUI arrest procedure techniques, as well as testing procedures and techniques.

Once the violator has been stopped the officer conducts an interview with the driver, at which time the officer makes observations as to the driver's condition. In the absence of formal roadside physical coordination tests, officers are requested to make detailed observations of the driver at the time of the driver interview. These observations are recorded on the OUI Offense Report (Fig. 8-17) and consist of the following:

- Detectable odor of alcoholic beverage on the breath
- Subject's ability to walk and turn
- Manner of speech
- General balance
- Condition of the eyes
- Ability to produce license and vehicle registration
- Manner of getting in and out of vehicle
- Subject's complexion
- Attitude of the suspect

Recommendations: An in-depth analysis should be undertaken by the Maine ASAP to determine what impact on judicial dispositions would occur should formal physical coordination tests be instituted as a standard operating procedure.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is not conducted by any law enforcement agency participating in the Cumberland and York Counties, Maine ASAP program.

Conclusions: Although pre-arrest breath screening is not conducted at this site, the evidentiary testing process is accomplished through the utilization of disposable sample-collection kits.

Borg-Warner A.L.E.R.T. units were provided to this site for experimental purposes. It was the decision of the ASAP project management staff not to institute pre-arrest breath testing as an experimental enforcement countermeasure of the Cumberland and York Counties, Maine ASAP program.

Recommendations: Due to the rural characteristics of the Cumberland and York Counties, Maine, jurisdictional area, the use of pre-arrest breath screening could reduce the cost associated with OUI arrests by eliminating the unnecessary transporting of suspects excessive distances. A pre-arrest breath screening program should be instituted on an experimental basis as soon as possible, and cost benefits of such a program analyzed.

Only licensed physicians, registered nurses, or licensed technicians who are certified by the Department of Health and Welfare, acting at the request of a law enforcement officer, with the consent of the defendant, may withdraw a specimen of blood to determine evidentiary blood-alcohol levels.

Law enforcement officers, with the consent of the person from whom the sample is being taken, may take a sample specimen of the breath of any person arrested for operating a motor vehicle under the influence of intoxicating liquor. This sample specimen is submitted to the Department of Health and Welfare or - as is generally the case - to a person certified by the Department of Health and Welfare for purposes of conducting a chemical test of the sample to determine the blood-alcohol level. Since the law enforcement officer is not conducting any analysis of the breath specimen, he is not required to be certified or attend any training in conjunction with the sample specimen collection process.

Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform chemical tests of specimens of breath are monetarily compensated for their service by the state of Maine.

If a person under arrest refuses to submit to a chemical test to determine BAC, no test is given. The arresting officer notifies the Secretary of State of the refusal by written statement, indicating subject's refusal and arrest for operating under the influence of intoxicating liquor. The Secretary of State will then notify the suspect - in writing - that his license has been suspended for a period of three months. If the refusal is a second or subsequent refusal, the Secretary of State will suspend the driving privilege for a period of six months.

Should the person desire a hearing, one will be provided and shall cover only whether the individual was lawfully placed under arrest and whether he refused to submit to one of the tests upon the request of a law enforcement officer.

Conclusions: During this site visit, law enforcement agencies were requested to produce copies of administrative regulations, general orders, etc., pertinent to the enforcement of and/or procedures used in effecting a OUI arrest, as well as those administrative regulations which bear upon the OUI enforcement function as a whole, to include sobriety testing. This investigator was advised that no such documents existed at this time.

In the opinion of this investigator, it is the general lack of aggressiveness of the ASAP law enforcement personnel at this site, and not necessarily the enforcement procedural process, that is the predominant problem of the Maine ASAP enforcement countermeasure. This lack of aggressiveness also affects the sobriety testing configuration by officers releasing individuals who appear to be at low BAC levels.

Recommendations: Law enforcement agencies comprising the Cumberland and York Counties, Maine ASAP should review available technical reports for other evidentiary testing systems used by law enforcement agencies throughout the United States, particularly those areas involved in the ASAP program.

Section 4 - Evidentiary Sobriety Testing

Upon conclusion of the driver interview, if the arresting officer suspects alcohol involvement, the suspect will be placed under arrest and advised of his Constitutional rights. The Miranda warnings are read to the suspect from the state-approved card provided all officers by the Criminal Division of the Attorney General's Department (see Fig. 8-18).

Upon completion of the Miranda warnings, the arresting officer reads (in its entirety) the Refusal Form (Fig. 8-4).

The subject is given the choice of either of two tests to determine blood-alcohol concentration: 1) breath; 2) blood.

Should the subject choose the breath test, the evidentiary test will be administered at that time, utilizing the Sober-Meter (see Fig. 8-6 and 8-7).

Upon collection of a satisfactory sample, the evidentiary box is sealed and deposited at a chemist's laboratory approved by the Department of Health and Welfare, State of Maine, for analysis.

It is the chemist's duty to report the BAC level to the officer via mail (See Exhibit 8e) who in turn must advise the subject via registered mail.

The above is also true for blood tests. The procedure differs from breath testing only in that the subject must be transported to a registered medical technician to extract the blood sample, utilizing the state-approved blood alcohol kit (see Fig. 8-8 and 8-9).

Persons conducting chemical analysis of blood or breath for the purposes of determining evidentiary blood-alcohol levels must be certified by the Department of Health and Welfare under standards established by that Department. For breath evidentiary testing, chemists who reside close to law enforcement jurisdictional areas are designated by the Department of Health and Welfare as qualified to conduct analysis of breath samples submitted to them by law enforcement officers. It is not uncommon for these chemists to conduct the evidentiary analysis in their homes.

MAINE STATE POLICE

REFUSAL FORM

Date _____ Time _____
(of offense)

PROCEDURE ON ARREST

MIRANDA WARNING at appropriate time.

You are under arrest for ☐ operating ☐ a motor vehicle while under the
influence of intoxicating liquor. attempting to operate

THE FOLLOWING WARNING MUST BE GIVEN TO COMPLY WITH IMPLIED CONSENT LAW:

You are entitled to a blood or breath test for the purpose of determining the alcoholic content of your blood. You must select and designate either the blood or breath test.

I must advise you that your refusal to take one of these tests, blood or breath, requested by me, will result in your license and/or right to operate being suspended. Such suspension shall be for a period of 3 months in the case of a first refusal or 6 months in the case of a second or subsequent refusal under the current law or any prior implied consent provision under Maine law.

The expenses for any test taken at my request will be paid for by the State.

The results of any test taken will be made available to you or your attorney, if requested.

-----DO NOT DETACH-----

Having been advised of the consequences for refusal to take a blood or breath test at the request of the arresting officer, I do not wish to submit to either a blood or breath test.

Signature of Person Arrested and Refusing Tests

-----DO NOT DETACH (This complete form is to be submitted to the MVD)-----

The undersigned officer arrested _____ DOB _____
Print Full Name

of _____
Street Town State

for ☐ operating ☐ a motor vehicle while under the influence of intoxicating
attempting to operate

liquor. After being advised of the tests available and the consequences of refusal to submit to such tests, I was advised by this person that he refused to submit to any such tests, and, therefore, none was given.

Subscribed and sworn before me.

Signature of Arresting Officer

Department

Notary Public/Justice of the Peace

BLOOD AND BREATH ALCOHOL ANALYSIS

COMPLETION OF FORM MANDATORY FOR LABORATORY REPORT

Name of Person Arrested _____

Address _____

Date of Birth _____ Sex _____ Sample: Blood ___ Breath ___

Name of Person Taking Sample _____

Address _____

Name of Arresting Officer _____

Address (Where report is to be sent) _____

Place of Arrest (City) _____ County _____ Date _____

Time of Arrest _____ Time of Sample _____ PHL 31

Figure 8-6

DIRECTION CHECK LIST SM-7 SOBER-METER® - WITHOUT SCREENING TESTER

- ☐ Before testing avoid smoking and wait 15 minutes after an alcoholic drink.
- ☐ Remove caps from ends of collection tube (tube with the white chemical) and attach the square plastic volumetric bag.
- ☐ Attach collection tube to balloon's clear plastic sleeve.
- ☐ Direct subject to inflate balloon with full, continuous, uninterrupted breaths. Waste first part of breath from each new expiration into waste bag to allow the last part of a prolonged expiration to enter balloon. (Squeeze the air out of waste bag before each new breath.) Repeat this procedure as needed to fill balloon to about a 9 inch diameter.
- ☐ Immediately remove collection tube and volumetric bag from balloon when volumetric bag is full.
- ☐ Replace all caps securely, seal carton and fill out data required.

Signature of Officer

LUCKEY LABORATORIES, INC.
San Bernardino, California 92404
Patents Granted

Figure 8-7

BLOOD COLLECTION REPORT

3

SUBJECT'S NAME AND ADDRESS _____

DATE AND TIME OF INCIDENT _____

PLACE OF BLOOD COLLECTION _____ DATE _____ TIME _____ AM-PM

I hereby certify that I drew blood samples from the above named person.

SIGNED _____ DATE _____

I hereby certify that I have witnessed the actual withdrawal of blood from the above subject by the person whose signature appears above.

SIGNED _____ DATE _____

DATE AND TIME OF DELIVERY TO LAB AND TO WHOM _____

HOW DELIVERED AND BY WHOM _____

DATE TEST MADE _____ RESULT _____ REMARKS _____

Figure 8-8

SEAL HERE

L-0315:

POLICE OFFICER'S REPORT

NAME OF SUBJECT _____
 OFFENSE _____
 DATE OF INCIDENT _____ TIME _____ AM-PM _____
 POLICE OFFICER _____
 DATE BLOOD DRAWN _____ TIME _____ AM-PM _____
 LOCATION OF DRAWING _____
 BLOOD DRAWN BY _____

CHAIN OF POSSESSION

RECEIVED FROM _____
 BY _____
 DATE _____ TIME _____ AM-PM _____
 ↓

RECEIVED FROM _____
 BY _____
 DATE _____ TIME _____ AM-PM _____
 ↓

RECEIVED FROM _____
 BY _____
 DATE _____ TIME _____ AM-PM _____

LABORATORY REPORT ON THE BLOOD SPECIMEN

Blood Alcohol content of Blood in terms of Percent (Grams of Ethyl Alcohol per 100 ml. of Blood)

SEAL HERE

Figure 8-9

**CUMBERLAND-YORK COUNTY
ALCOHOL SAFETY ACTION PROGRAM**
Congress Building, Suite 617
142 High Street
Portland, Maine 04101

0.11 Offense Report

| | | | | | | | |
|--|-----|---|---------------------|---|---------------------|---|------------|
| ARRESTING OFFICER | | | | DEPARTMENT | | | |
| DEFENDANTS NAME | | | ADDRESS | | | PHONE NO. | |
| OCCUPATION | AGE | SEX | DATE OF BIRTH | DRIVERS LIC. NO. | STATE ISSUED | STATUS | |
| DRIVING A MOTOR VEHICLE YEAR | | MAKE | COLOR | BODY TYPE | REGISTRATION NUMBER | | |
| REGISTERED OWNER | | | | ADDRESS | | RES. PHONE | BUS. PHONE |
| DRIVING UNDER INFLUENCE OF LIQUOR <input type="checkbox"/> DRUGS <input type="checkbox"/> | | INVOLVED IN COLLISION YES <input type="checkbox"/> NO <input type="checkbox"/> | | HAS ACCIDENT REPORT BEEN MADE YES <input type="checkbox"/> NO <input type="checkbox"/> | | REPORT NO. | |
| LOCATION OF OFFENSE | | | | DATE & TIME OCCURRED | | DATE & TIME POLICE ARRIVED | |
| DESCRIBE DRIVING AND CONDUCT PRIOR TO ACTUAL ARREST: | | | | | | | |
| MIRANDA WARNING GIVEN | | YES <input type="checkbox"/> NO <input type="checkbox"/> | WHERE? | | WHEN? | BY | |
| IMPLIED CONSENT GIVEN | | YES <input type="checkbox"/> NO <input type="checkbox"/> | WHERE? | | WHEN? | BY | |
| INTOXICATION TEST BREATH <input type="checkbox"/> BLOOD <input type="checkbox"/> REFUSAL <input type="checkbox"/> | | | SAMPLE TAKEN BY | | ANALYZED BY | | RESULT |
| WITNESS | | | | RESIDENCE ADDRESS | | RES. PHONE | BUS. PHONE |
| RELATION TO VIOLATION | | | NATURE OF TESTIMONY | | | | |
| IF ALCOHOLIC SPIRITS FOUND IN CAR DESCRIBE AND STATE QUANTITY | | | | WHERE IS EVIDENCE | | WERE PHOTOS TAKEN YES <input type="checkbox"/> NO <input type="checkbox"/> | |

| ORAL EXAMINATION | | | |
|---|----------------------|-------------------------|----------------|
| HAVE YOU BEEN DRINKING? WHAT? | | HOW MUCH? | WHERE |
| TIME LAST DRINK | | | |
| WHAT TIME IS IT? STATED M ACTUAL M | | WHAT DAY IS IT? | WHERE ARE YOU? |
| ARE YOU ILL? TAKING MEDICINE? WHAT KIND? | | TIME LAST DOSE? | |
| DO YOU HAVE DIABETES? | DO YOU TAKE INSULIN? | WHO IS YOUR DOCTOR? | |
| ARE YOU HURT? DID YOU GET A BUMP ON THE HEAD? | | WHERE ELSE DO YOU HURT? | |
| WHEN WAS YOUR LAST MEAL? | EATEN SINCE? | WHAT? | |
| HOW MUCH SLEEP LAST NIGHT? | | HOW MUCH SLEEP TODAY? | |
| WE YOU DRIVING VEHICLE? | | WHO WAS DRIVING? | |
| FROM WHERE DID YOU START? | | WHEN DID YOU LEAVE? | |
| HOW MANY STOPS MADE? | WHERE? | WHAT FOR? | |

Figure 8-17

ADDITIONAL QUESTIONS

| | | |
|--|--|--------|
| AGAIN, HAVE YOU BEEN DRINKING? | HOW MUCH? | WHERE? |
| ARE YOU IN FIT CONDITION TO BE DRIVING? | AS WELL AS IF YOU HAD NOT BEEN DRINKING? | |
| DO YOU FEEL AT ALL AFFECTED BY WHAT YOU HAVE HAD TO DRINK? | | |

IF ACCIDENT INVOLVED

| | |
|---|---------------------------------------|
| HAVE YOU HAD ANY LIQUOR OR BEER SINCE THE ACCIDENT? | WERE YOU DRIVING? |
| | HOW LONG AGO DID THE ACCIDENT HAPPEN? |

OFFICER'S OBSERVATION

| | |
|----------------|--|
| BREATH | MANNER OF PRODUCING LICENSE & REGISTRATION |
| | |
| WALK & TURNING | |
| | |
| | MANNER OF GETTING IN AND OUT OF VEHICLE |
| SPEECH | |
| | |
| BALANCE | COMPLEXION |
| | |
| EYES | ATTITUDE |
| | |

ADDITIONAL NOTES NOT COVERED ABOVE

| |
|--|
| |
| |
| |
| |
| |
| |
| |
| |

Figure 8-17 (cont'd.)

MIRANDA WARNING

"I am a Police Officer. I caution you that you have an absolute right to remain silent.

That anything you do say can be used in a court of law against you;

That you have the right of the advice of a lawyer before and the presence of a lawyer here with you during questioning, and

That if you cannot afford a lawyer, one will be furnished you free before any questioning if you desire."

(This warning must be given to all persons detained for questioning)

WAIVER

After the warning and in order to secure a waiver, the following questions should be asked and an affirmative reply secured to each question.

1. Do you understand each of these rights I have explained to you?
2. Having these rights in mind, do you wish to talk to us now without having a lawyer present?

*Compliments of CRIMINAL DIVISION,
ATTORNEY GENERAL'S DEPT.*

Figure 8-18

MARYLAND (BALTIMORE)

Section 1 - Legislative Provisions

ARTICLE 2C.

§ 310. Alcoholism policy for highway safety.

In collaboration with such agencies as the courts, police, and the Department of Motor Vehicles, the Division of Alcoholism Control shall propose appropriate programs of alcoholism education or treatment for individuals convicted of driving under the influence of alcohol under Article 66½, § 206. These programs shall be coordinated with and integrated into broad planning for comprehensive community health and welfare services. (1968, ch. 146, § 1.)

ARTICLE 27.

§ 388. Manslaughter by automobile, motorboat, etc.; indictment or warrant.

Every person causing the death of another as the result of the driving, operation or control of an automobile, motor vehicle, motorboat, locomotive, engine, car, streetcar, train or other vehicle in a grossly negligent manner, shall be guilty of a misdemeanor to be known as "manslaughter by automobile, motor vehicle, motorboat, locomotive, engine, car, streetcar, train or other vehicle," and the person so convicted shall be sentenced to jail or the house of correction for not more than three years, or be fined not more than \$1,000.00 or be both fined and imprisoned.*

ARTICLE 35.

§ 100. Use in prosecutions for driving under influence of intoxicating liquor or while driving ability is impaired.

(a) *Admissibility of amount of alcohol in blood as shown by analysis; presumptions.*—In any criminal prosecution for a violation of § 206 of

*Case note appended to Article 27, Section 388:

Driving while drinking to the extent of probably affecting one's judgment and discretion or probably affecting one's nervous system to the extent that there is a failure of normal coordination, although not amounting to intoxication, is a proper matter, with others, for consideration in determining possible gross negligence. *Clay v. State*, 211 Md. 577, 128 A.2d 634 (1957); *Montague v. State*, 3 Md. App. 66, 237 A.2d 816 (1968).

Article 66½ of this Code (1957 Edition, as amended from time to time) or for a violation of any other law of this State concerning a person who is under the influence of intoxicating liquor driving or attempting to drive any vehicle as specified in the other laws, the person may be given a chemical test of his breath, blood or urine or other bodily substance for the purpose of determining the alcoholic content of his blood; provided, that the specimen of blood, breath or urine must have been taken within two hours after the person being prosecuted was first apprehended by the arresting officer; and that the test is administered by qualified personnel with equipment approved by the toxicologist of the office of the chief medical examiner of the Department of Postmortem Examiners at the direction of a police officer having reasonable grounds to believe the person to have been driving while under the influence of intoxicating liquor or while his ability is impaired by the consumption of intoxicating liquor. Qualified personnel means a physician, or a police officer, or police employee who has received training in the use of the equipment in a training program approved by the toxicologist of the office of the chief medical examiner of the Department of Postmortem Examiners. In any summary proceeding or criminal proceeding for which the defendant is charged with driving a motor vehicle while under the influence of intoxicating liquor, or while his ability is impaired by the consumption of alcohol, the amount of alcohol in the defendant's blood, as shown by a chemical analysis as set forth in this section, which was conducted with equipment approved by the toxicologist of the office of the chief medical examiner of the Department of Postmortem Examiners, and operated by such qualified personnel, shall be admissible in evidence and shall give rise to the following presumptions:

(1) If there was at that time in his blood five one-hundredths of one per centum (0.05%) or less, by weight, of alcohol, as determined by an analysis of his blood or breath, or if there was in his urine eight one-hundredths of one per centum (0.08%) or less, by weight, of alcohol, it shall be presumed that the defendant was not in an intoxicated condition, that his driving ability was not impaired by the consumption of alcohol, and that he was not under the influence of intoxicating liquor;

(2) If there was at that time in his blood more than five one-hundredths of one per centum (0.05%), but less than ten one-hundredths of one per centum (0.10%), by weight, of alcohol, as determined by an analysis of his blood or breath, or if there was in his urine more than eight one-hundredths of one per centum (0.08%), but less than thirteen one-hundredths of one per centum (0.13%), by weight, of alcohol, this fact shall not give rise to any presumption that the defendant was or was not in an intoxicated condition or was or was not under the influence of intoxicating liquor, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(3) If there was at that time in his blood ten one-hundredths of one per centum (0.10%), or more, by weight, of alcohol, as determined by an analysis of his blood or breath, or if there was in his urine thirteen one-hundredths of one per centum (0.13%), or more, by weight, of alcohol, it shall be evidence that the defendant's driving ability was impaired by the consumption of alcohol, and this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

(4) If there was at that time in his blood fifteen one-hundredths of one per centum (0.15%), or more, by weight, of alcohol, as determined by an analysis of his blood or breath, or if there was in his urine, twenty one-hundredths of one per centum (0.20%), or more, by weight, of alcohol, it shall be prima facie evidence that the defendant was in an intoxicated condition.

(b) *Introduction of other evidence.*—The foregoing provisions do not limit the introduction of any other competent evidence bearing upon the question (1) whether or not the defendant was in an intoxicated condition, (2) whether or not his driving ability was impaired by the consumption of alcohol, or (3) whether or not he was under the influence of intoxicating liquor.

(c) *Refusal to submit to test; right to select type of test.*—No person shall be compelled to submit himself or any part of his body or bodily substance for the purpose of a chemical analysis provided for in this section and evidence of chemical analysis shall not be deemed admissible if obtained contrary to the provisions of this section; and no inference or presumption concerning either his guilt or innocence arises by reason of his refusal to submit as hereinbefore set forth, nor shall the fact of his refusal so to submit be admissible into evidence at his trial. This subsection in no way limits the provisions of § 92A of Article 66½ of this Code regarding the consequences of refusal to submit to a chemical test or tests. In any event, the defendant shall have the right to select the type of test administered, and if facilities or equipment are not available for such test then none shall be given, and this fact shall not create any inference or presumption concerning either his guilt or innocence by reason of his inability to take a test, nor shall the fact of his inability to take such a test be admissible in evidence at his trial, nor shall this fact be considered a refusal to take a test under § 92A of Article 66½.

(d) *Who may take blood specimen.*—Only a physician, or qualified medical personnel, acting at the request of a police officer, or a person acting at the request of a physician, can withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of a breath test or a urine specimen.

(e) *Additional test by physician chosen by accused.*—The person tested shall be permitted to have a physician of his own choosing administer a chemical test in addition to the one administered at the direction of the police officer.

(f) *Test results to be made available to accused.*—Upon the request of the person who was tested, the results of the test will be made available to him before trial by an official certificate which shall be admissible in evidence.

(g) *Proof of approved equipment.*—For the purpose of establishing that the test was administered with equipment approved by the toxicologist of the office of the chief medical examiner of the Department of Post-mortem Examiners, as required by subsection (a) of this section, a statement signed by the toxicologist certifying that the equipment used in the test has been approved by him shall be prima facie evidence of the approval and the statement shall be admissible in evidence without the necessity of the toxicologist personally appearing in court. This section shall not preclude the right to introduce any other competent evidence bearing upon the date of the certificate or change in the equipment since the date of the certificate. (1959, ch. 769; 1961, ch. 595; 1962, ch. 81; 1963, ch. 16; 1964, ch. 166; 1969, ch. 157; 1970, ch. 156; 1971, ch. 783.)

ARTICLE 66½.

§ 6-205. Mandatory revocation of license by Department.

The Department shall forthwith revoke any license issued hereunder upon receiving a record of the licensee's conviction of any of the following offenses, when such conviction has become final:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Undertaking to drive a vehicle while under the influence of any narcotic drug or any other drug to a degree which renders the person incapable of safely driving a vehicle;

(3) Any felony in the commission of which a motor vehicle was used;

(4) Failure to stop and render aid or identify himself as required under the laws of this State in the event of a motor vehicle accident resulting in the death or bodily injury of another;

(5) Perjury, the making of a false affidavit or statement under oath, or falsely certifying to the truth of any fact or information to the Department under this article or under any law relating to the ownership or operation of motor vehicles;

(6) Operating a motor vehicle upon a highway after a license or driving privilege has been refused or suspended by the Department;

(7) Violation of § 6-301, paragraph (8); or

(8) Violation of § 11-904. (An. Code, 1951, § 102; 1943, ch. 1007, § 94; 1949, ch. 39, § 94; 1950, ch. 10, § 94; 1954, ch. 12; 1955, chs. 424, 580; 1956, ch. 86; 1957, ch. 519; 1961, ch. 498; 1963, ch. 677; 1967, ch. 665; 1970, ch. 534, § 1.)

§ 6-205.1. Suspension of license in event of refusal to submit to chemical tests for intoxication.

(a) *Statement to be signed as condition to issuance or renewal of license.*—Prior to the issuance of any license or renewal thereof to exercise the privilege of operating a motor vehicle upon the highways of this State, the applicant, as a condition precedent to the issuance or renewal of said license, shall be required by the Department to sign a statement, under oath or affirmation, containing the following language:

"I hereby consent to take a chemical test to determine the alcoholic content of my blood, breath, or urine, as provided in the laws of the State of Maryland, should I be detained upon suspicion of operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor or while my ability is impaired by consumption of alcohol. I understand that I cannot be compelled to take a chemical test for alcohol but I consent, in return for the privilege of operating a motor vehicle on the highways of Maryland, that the Department of Motor Vehicles may suspend my license or privilege to operate a motor vehicle, for a period not to exceed 60 days, upon receipt of a sworn statement from the detaining officer and, after a hearing on said statement, that I was so charged and refused to take a chemical test for alcohol." The Department shall not issue or renew any license where the applicant refuses to sign an application containing the express consent to take the chemical test to determine the alcoholic content of his blood, breath, or urine.

(b) *Implied consent of nonresidents and unlicensed persons to chemical tests.*—In return for the privilege of operating a motor vehicle on the highways of this State given to a nonresident under this article, any nonresident who operates or attempts to operate a motor vehicle upon the highways of this State, shall be deemed to have given consent to take a chemical test for alcohol. Any unlicensed person who operates or attempts to operate a motor vehicle upon the highways of this State shall be deemed to have given consent to take a chemical test for alcohol. Such nonresident or unlicensed person shall not be compelled to take such chemical test for alcohol but shall be advised that his refusal is an abuse of the privilege granted by the State to operate on the highways thereof and the Department of Motor Vehicles may suspend said privilege for a period not to exceed 60 days upon receipt of the sworn statement from the officer that said nonresident was so charged and refused to submit to take a chemical test for alcohol.

(c) *Duty of police officer on stopping or detaining suspected person.*—It shall be the duty of any police officer who stops or detains any person who he has reasonable grounds to believe is or has been operating or attempting to operate a motor vehicle under the influence of alcohol, or who is or has been operating or attempting to operate a motor vehicle while his ability was impaired by the consumption of alcohol to do all the following things:

1. Detain the person.
2. Request that he take a chemical test or tests of his blood, breath or urine, for the purpose of determining the alcoholic content of his blood, to be administered by a person examined and certified as sufficiently equipped and trained to administer tests by the Department of Maryland State Police, which is authorized to promulgate rules and regulations for the examination and certification, if detained by a member of the Department of Maryland State Police or by a member of a local police agency which has a member examined and certified to administer the tests.
3. Advise the person of the administrative penalties that may be imposed for such refusal.
4. File with the Department of Motor Vehicles within 48 hours after detention, a sworn report that he had reasonable grounds to believe that said person had been operating or attempting to operate a motor vehicle upon the highways of this State while under the influence of alcohol, or that said person operated or attempted to operate a motor vehicle upon the highways of this State, while his ability was impaired by the consumption of alcohol and that said person refused to take the chemical test for alcohol, upon the request of the police officer and after having been informed of the administrative penalties that may be imposed for said refusal. A copy of this form shall be furnished to the defendant at the time of his detention, and he shall be informed that he signed such a statement when making application for a license.

(d) *Notice and hearing upon refusal to take test; suspension of license or privilege to drive.*—Upon receipt of the sworn statement of the police officer filed in compliance with subsection (c) above, the Department shall give notice to the detained person in accordance with § 2-317 of this article, to attend a hearing within 15 days of the person's refusal to take a chemical test to determine the alcoholic content of his blood, breath or urine, the purpose of said hearing being to show cause why the detained person's license should not be suspended for refusing to take said chemical test. Said hearing shall be held within 15 days of the detention,

or sooner upon agreement of the operator and the Department, but under no circumstances, after said 15-day period, except upon good cause shown to the satisfaction of the Department or by agreement of the parties. At said hearing the operator shall present evidence relating to his refusal to take the test, and he may be represented by an attorney. After a complete and thorough hearing, the Department shall have the right to suspend the operator's license for a period not to exceed 60 days. Failure to attend said hearing by the detained person shall be prima facie evidence of his inability to answer the sworn statement of the police officer, and the Department may summarily suspend said person's license or privilege to operate a motor vehicle on the highways of this State for a period not to exceed 60 days.

(e) *Court review of suspension of license or privilege to drive.*—If the suspension or determination that there should be a denial of issuance is imposed after a hearing, the person whose driver's license or nonresident operating privilege has been suspended or to whom a license or permit is denied, under the provisions of this section, may have a court review of the final order of suspension or denial as provided in § 6-211 of this article.

§ 6-205.2. Suspension and revocation of licenses of persons convicted of certain offenses involving alcohol.

(a) The Department ~~shall~~ ^{may} revoke the driver's license of any person who:

(1) Is convicted of operating a motor vehicle while in an intoxicated condition; or

(2) Is convicted of a third or subsequent violation committed within a period of 3 years, of operating a motor vehicle while driving ability is impaired.

(b) The Department may suspend for a period of not more than 60 days the driver's license of any person who is convicted of operating a motor vehicle while driving ability is impaired.

(c) The Department may suspend for a period of not more than 120 days the driver's license of any person who is convicted of a second violation, committed within a period of 3 years, of operating a motor vehicle while driving ability is impaired.

(d) At the expiration of any suspension imposed under subsections (b) and (c) of this section, the Department shall return forthwith the license or privilege of the driver, provided, however, the license or privilege shall not be returned if the driver's license or privilege has been refused, revoked, suspended or cancelled under any other provisions of this article. (1969, ch. 158; 1970, ch. 534, § 1; 1971, ch. 712.)

§ 6-205.3. Attendance at drivers rehabilitation clinic.

The Department may require any person under 21 years of age who has been convicted in this State of an offense under this article involving a motor vehicle actually in motion, to attend the drivers rehabilitation clinic as provided by the Department. (An. Code, 1951, § 102; 1943, ch. 1007, § 94; 1949, ch. 39, § 94; 1950, ch. 10, § 94; 1954, ch. 12; 1955, chs. 424, 580; 1956, ch. 86; 1957, ch. 519; 1961, ch. 498; 1963, ch. 677; 1967, ch. 665; 1970, ch. 534, § 1.)

§ 11-902. Driving while intoxicated ^{and} while driving ability is impaired by consumption of alcohol or under the influence of drugs.

— (a) It shall be unlawful for any person to drive or attempt to drive or to be in actual physical control of any vehicle within this State while he is in an intoxicated condition.

— (b) It shall be unlawful for any person to drive or attempt to drive or to be in actual physical control of any vehicle within this State while his driving ability is impaired by the consumption of alcohol.

(c) It shall be unlawful for any person to drive or attempt to drive or to be in actual physical control of any vehicle within this State while he is under the influence of any narcotic drug or while under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle. The fact that any person charged with a violation of this section is or has been entitled to use the drug under the laws of this State shall not constitute a defense against any charge of violating this section unless such person was unaware that the drug would render him incapable of safely driving a vehicle. (An. Code, 1951, § 171; 1943, ch. 1007, § 153; 1947, ch. 14; 1954, ch. 54; 1969, ch. 158; 1970, ch. 534, § 1.)

§ 17-101. Penalties for misdemeanor.

(a) It is a misdemeanor for any person to violate any of the provisions of this article unless the violation is by this article or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of Subtitles 10, 11, 12, 13 or 14 for which another penalty is not provided shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than 2 months or by both fine and imprisonment; except that:

(i) Every person who is convicted of violation of § 6-303 or of subsection (a) of § 11-902 shall be punished by imprisonment for not more than one (1) year or by fine of not more than one thousand dollars (\$1,000.00) or by both fine and imprisonment.

On a second or subsequent conviction he may be punished by imprisonment for not more than two (2) years, and in the discretion of the court, a fine of not more than one thousand dollars (\$1,000.00).

(ii) Every person who is convicted of a violation of subsection (b) of § 11-902 shall be punished by a fine of not more than five hundred dollars (\$500.00).

On a second or subsequent conviction he may be punished by imprisonment for not more than one (1) year, and in the discretion of the court, a fine of not more than five hundred dollars (\$500.00).

(c) Unless another penalty is in this article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any other provision of this article shall be punished by a fine of not more than \$500 or by imprisonment for not more than 2 months, or by both fine and imprisonment. (An. Code, 1951, § 300; 1943, ch. 1007, § 282; 1970, ch. 534, § 1; 1971, ch. 423, § 7; ch. 471.) *

*From the Motor Vehicle Laws of Maryland - 1972.

Section 2 - Physical Coordination Tests

Physical coordination tests, although not mandated by law, are administered by both the Baltimore City Police Department and the Maryland State Police. Maryland State Police troopers conduct the tests at the scene of apprehension, while Baltimore police officers transport the suspect to the Central District station house to be logged and then to the Central Testing Unit (C.T.U.) for testing.

In each instance the arresting officer administers the tests to those suspects who appear to be "under the influence" or who have a detectable odor of alcoholic beverage about their persons. The officer's observations are then recorded on the Baltimore City Police Department Officer's Observation Report at Scene (Fig. 9-5) or the Maryland State Police Alcoholic Influence Report Form (Fig. 9-2).

When used, the physical coordination tests consist of three performance tests:

- Balance
- Walking and turning
- Finger to nose

No explicit criterion or procedure is established defining the manner in which these tests are to be administered. The following general guidelines are quoted from Training Key #40: Driving Under the Influence (Appendix A; Exhibit 9a):

1. Ask the driver to step out of the automobile. Observe carefully his balance.
2. Request him to remove the operator's permit from his wallet. Watch closely for any fumbling or lack of finger coordination.
3. Have the driver walk away from you and turn around. Observe his movements for any unsteadiness of gait or stumbling.
4. Engage the driver in conversation to determine his manner of speech, especially any slurring of words. Stand close enough to be able to smell any odor of alcohol on his breath and to observe the condition of his eyes.

Conclusions: The uniformity of tests administered by both agencies is suspect, as not all of the "physical coordination tests" cited are administered as tests per se. Depending upon officer preference and degree of sobriety of the suspect, officers can - and do - make

subjective observations as to balance, walking, and turning capabilities.

Officers view the tests as a pass/fail proposition; they further state that the tests are unreliable, as practice would enable "hard alcoholics" to appear sober and "pass" the test.

Recommendations: Those tests should be identified which are most widely used by officers of each agency, and a standard manner of administering these tests to suspect offenders should be established through training and written departmental directives.

The respective departmental report forms pertaining to DWI enforcement should list identified tests, allowing for the officer to note the degree of difficulty the subject encounters in performing the task, such as:

1. Sure
2. Fair
3. Confused (unable to follow directions)
4. Unable to perform test (falling, etc.)
5. Refused

Section 3 - Pre-arrest Breath Screening

Pre-arrest screening or portable breath testing is not conducted at this site, nor is it sanctioned by the Motor Vehicle Laws of Maryland.

Recommendations: The Baltimore City Police Department and the Maryland State Police should review the available literature and successes of pre-arrest breath testing programs throughout the country to determine the cost-effectiveness and feasibility of demonstrating and implementing a pre-arrest screening program within these jurisdictions.

Section 4 - Evidentiary Sobriety Testing

Baltimore City Police Department: Upon completion of the physical coordination tests (at the C.T.U.) the subject is read the Maryland Express Consent law from the reverse of the Officer's Certification of Driver's Refusal to Submit to Chemical Test (Fig. 9-6). Should the suspect refuse to submit to an evidentiary test, this refusal form is completed by the

arresting officer and the suspect is taken directly to the Commissioner's Office for a bail hearing. If the suspect agrees to take the evidentiary test for intoxication he signs Figure 9-6, acknowledging that the officer has advised him of his rights and indicating his understanding of the state's Express Consent provisions.

The suspect is given his choice of either a breath, blood, or urine test. Evidentiary breath tests are administered on the Stephenson Breathalyzer, Model 900, by a civilian technician assigned to the C.T.U. The Breathalyzer operator completes the Breathalyzer Operational Check List (Fig. 9-5), and the arresting officer completes the State of Maryland Chemical Test Report (Fig. 9-4) and the Breathalyzer Test Record (Fig. 9-7).

Urine tests for evidentiary purposes require that the suspect give two urine samples within a twenty-minute period. (The first is discarded and the second sent for analysis to the State Toxicology Laboratory, which returns the results to the C.T.U.) Departmental lavatory facilities are used in the collection of all samples.

All blood analyses are performed by nursing personnel at a local hospital. Nurses are not required to sign their names to the State of Maryland Chemical Test Report (Fig. 9-4). This procedure has presented a problem with prosecution in DWI cases where blood samples were used to determine impairment, since the individual who withdrew the sample could not be identified.

Evidentiary testing must take place within two hours of the time of arrest. As a rule, testing is completed well within this required period.

Maryland State Police: While a suspect is being detained at the scene of apprehension, the arresting officer advises him - verbally, from memory - of his Constitutional rights. After the suspect acknowledges that he understands his rights, the trooper reads the Express Consent information from the reverse of the Officer's Certification of Driver's Refusal to Submit to a Chemical Test (Fig. 9-6). At this time the offender advises whether he will or will not consent to a chemical evidentiary test.

In cases of refusal, the offender is immediately transported, by the

arresting trooper, to the District Commissioner's Office for a hearing to determine whether he should be released or required to post bond. Upon conclusion of the hearing the arresting trooper completes Figure 9-6 (refusal form), indicating the suspect's refusal.

Should the suspect agree to submit to a chemical evidentiary test, he is transported by the arresting trooper to the Valley Barracks, where he is taken to the ASAP squad room for further interviewing and testing.

The subject is given the choice of submitting to either a breath, blood, or urine test. For both the breath analysis and urine test, an additional ASAP trooper is dispatched to the Valley Barracks to conduct the evidentiary testing or sample collection. When blood analysis is requested the arresting trooper telephones the local hospital and a registered nurse is sent to the Valley Barracks to withdraw the sample. The sample is then forwarded by the trooper to the State Toxicology Laboratory for analysis, and the results are returned to the Valley Barracks.

Breath analyses are conducted by a licensed trooper on the Breathalyzer Model 900, which is set up and shut down prior to and after each test. The Breathalyzer operator completes the following forms during the testing process:

- Breathalyzer Operational Check List (Fig. 9-5)
- State of Maryland Chemical Test Report (Fig. 9-4)
- Breathalyzer Test Record (Fig. 9-7)

Evidentiary urinalyses require two samples - collected 20 minutes apart - the first to be discarded and the second to be analyzed for BAC level. Departmental lavatory facilities are utilized in the collection process. (The subject is not supervised.) Samples are sent for analysis to the State Toxicologist, who returns the results to the ASAP-Valley Barracks.

All troopers and civilian C.T.U. personnel - of both agencies - who administer evidentiary breath testing are required to be certified operators; that is:

- Must be currently certified by the Medical Examiners Officer,

Office of the State Toxicologist; and

- Must have completed, successfully, 40 hours of breath analysis training conducted by the Maryland State Police, regulated by the Office of the State Toxicologist.

Periodic recertification of operators is required as follows:

- After two years, a two-day refresher course.
- Every 18 months thereafter, a one-day refresher course.

The Baltimore City Police Department currently has 31 civilian licensed operators assigned to the C.T.U. Section. (All civilian C.T.U. employees are trained and licensed as Breathalyzer operators.)

The Maryland State Police, Valley Barracks, has 14 licensed trooper/operators. Selection for training is either on a voluntary basis or by draft, as needed; however, officials of the Maryland State Police advise the almost exclusive use of volunteers. (Since a passing score of 90% is required to successfully complete the 40-hour course, unmotivated "draftees" could simply fail the final exam and thus avoid assignment as a Breathalyzer operator.)

Conclusions: Procedures utilized by the Baltimore City Police Department in processing a subject for evidentiary testing involve transporting the suspect "at least three different times":

- From scene to Central District to be logged
- To Central Testing Unit for testing (physical coordination and evidentiary)
- To traffic court to determine disposition of offender, on the basis of evidence and test results
- To substation located within the district of arrest, either for release or subsequent incarceration

According to officers of the ASAP patrol, this process may involve from 1½ to as long as three hours. Observations of officers engaged in selective DWI enforcement showed that they prefer to dispose of suspected DWI offenders by straight release or by arranging alternate transportation where possible, in order to avoid the lengthy testing/transporting procedures. Stop contacts appeared to cease after 1 a.m.

during the shift.

Procedures utilized by the Maryland State Police are direct and do not require excessive transporting as do those of the Baltimore City Police Department.

Pronounced within Maryland State Police testing procedures is the apparent honor system in sample collection of urine specimens. Suspects are neither "frisked" prior to transport nor prior to access to lavatory facilities at the Valley Barracks; thus, narcotic/alcohol violators may be provided with an opportunity to dispose of incriminating evidence.

Shutting down the Breathalyzer upon the conclusion of each test increases the amount of time Maryland State Police troopers must be out of service after an arrest (the "warm-up" period of the equipment can be as long as 30 minutes).

Recommendations: The Baltimore City Police Department should reevaluate the undated memo from the Alcohol Traffic Safety Unit, on Procedures of Arrest for Persons Charged with Driving While Intoxicated (Appendix A; Exhibit 9b), and implement where possible.

Procedures and policy regarding the drinking driver offender should be written, incorporating Alcohol Traffic Safety Unit experience and Training Key guidelines established by the International Association of Chiefs of Police, and this policy should be published and distributed throughout the Baltimore City Police Department.

Evidentiary breath testing familiarization and DWI arrest procedures should be included in roll-call training schedules of the Baltimore City Police Department.

An in-depth analysis of evidentiary test refusals should be undertaken to explain why nearly 40% of all subjects arrested by the Maryland State Police refuse evidentiary testing. In calendar year 1973, 154 of 332 alcohol-related arrests refused evidentiary testing, with this trend continuing throughout 1974.

| | |
|--|------------------------------------|
| (Check) | (Check) |
| <input type="checkbox"/> Driver | <input type="checkbox"/> Accident |
| <input type="checkbox"/> Pedestrian | <input type="checkbox"/> Violation |
| <input type="checkbox"/> Passenger | <input type="checkbox"/> Other |
| A.M. | |
| P.M. | |
| Date and time of Accident or Violation | |

ALCOHOLIC INFLUENCE REPORT FORM

Case No.
Accident No.
Summons No.

I. Name _____ Address _____

Lic. No. _____ Sex _____ Color _____ Hgt. _____ Wgt. _____ DOB _____

II. Sign of Illness or Injury _____

Taking Medication (If Any) _____

Date and Time Entered Emergency Room _____ Time Released _____

Physician's Diagnosis _____

Treatment _____

III. Unusual Actions that brought officers attention to Accused (include ALL Actions and comments by accused in driving and after being stopped. Also include actions at barrack, in your car, or at jail.)

Date and Time First Observed _____

Location and Direction of Travel _____

Where Accused was Stopped _____

IV. Observation of Accused: to include; breath, color of face, clothes, attitude, any unusual actions, eyes, balance, walking and turning, speech

After Accused was Stopped: Miranda Warning YES _____ NO _____ TIME _____
DR-15 Form Read YES _____ NO _____ TIME _____
Who and How Many Subjects with Accused - Include sobriety if known _____

Vehicle - Advise if Stored and Where _____

Evidence in Vehicle - Disposition (to include Prop. Held #) _____

Date and Time Arrived at Barrack _____ Departed _____

Chemical Test Personnel _____

Date and Time Test Given _____ Type Test _____ Alcohol % _____

V. Conclusions of Arresting Officer as to Sobriety _____

Driving Ability of Accused _____

VI. Trial Date _____ Court _____ Plea _____ Verdict _____ Fine & Cost _____

Disposition _____

Appeal Noted _____ Court _____

Trial Date _____ Plea _____ Verdict _____ Fine & Cost _____

Disposition _____

(Appeal Section to be completed only after case is adjudicated at the final appeal level.)

Arresting Officer _____ Signature _____

Witness _____

Witness _____

Reviewing Supervisor's Initials _____

Make Original Only (To be retained at installation)

Figure 9-2 (cont'd.)

STATE OF MARYLAND

DEPARTMENT _____
CHEMICAL TEST REPORT

NAME OF PERSON _____
DATE AND TIME OF ARREST _____ A.M.
P.M.
DATE AND TIME OF OFFENSE, IF DIFFERENT _____ A.M.
P.M.
DATE AND TIME OF TEST _____ A.M.
P.M.
TYPE OF TEST _____
BLOOD ALCOHOL LEVEL _____ %
ARRESTING OFFICER(S) _____

SIGNATURE _____ DATE _____

NOTE: DELIVER ORIGINAL TO DEFENDANT, ATTACH DUPLICATE TO ALCOHOLIC
INFLUENCE REPORT FORM.

Form #33, Revised 7-1-69

Figure 9-4

BREATHALYZER OPERATIONAL CHECK LIST

Name of subject _____ Date _____
Time (of test) _____ Blood Alcohol 0. _____ % Ampul Control No. _____
Operator _____ Witness _____
Instrument _____ No. _____

V

1. ☐ Observe subject for twenty minutes prior to testing to prevent oral intake of any material.

PREPARATION

2. ☐ Throw SWITCH to "ON", wait until THERMOMETER shows $50^{\circ} \pm 3^{\circ} \text{C.}$
3. ☐ Gauge TEST AMPUL and insert in left-hand holder.
4. ☐ Gauge TEST AMPUL, open, insert BUBBLER and connect to outlet.

PURGE

5. ☐ Turn to TAKE, flush out, turn to ANALYZE.
6. ☐ When RED empty signal appears, wait 1½ minutes, turn on LIGHT, BALANCE.
7. ☐ Set BLOOD ALCOHOL POINTER on START line.

ANALYSIS

8. ☐ Turn to TAKE, take breath sample, turn to ANALYZE, (record time).
9. ☐ When RED empty signal appears, wait 1½ minutes, turn on LIGHT BALANCE.

Record answer, dispose of test ampul, TURN CONTROL KNOB to "OFF"

Figure 9-5

OFFICER'S CERTIFICATION OF DRIVER'S REFUSAL TO SUBMIT TO CHEMICAL TEST
(As provided by Section 6-205.1 of Article 66½ of the Annotated Code of Maryland)

for the offense of operating or attempting to operate a motor vehicle under the influence of alcohol or operating or attempting to operate a motor vehicle while his or her ability was impaired by the consumption of alcohol, and prior to refusing to take a chemical test or tests of his or her blood, breath, or urine, for the purpose of determining the alcoholic content of his or her blood, I read to him or her the contents of the Advice of Rights for Chemical Test and advised him or her of the administrative penalties that may be imposed for refusal to take said test and, further, I had reasonable grounds which I have set forth below on this form, to believe that the person named herein had been operating or attempting to operate a motor vehicle upon the highways of this state, while under the influence of alcohol, or was operating or attempting to operate a motor vehicle upon the highways of this state, while his ability was impaired by consumption of alcohol.

Refer Summons No. _____

Signature of Officer _____

Title of Officer _____ I.D. No. _____

Law Enforcement Agency_____ Barracks_____ Dist_____

I have been read the Advice of Rights for Chemical Test set forth on the reverse side hereof and have been advised of administrative penalties that may be imposed for refusal to take chemical test.

DR 15 (7-71)

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ADVICE OF RIGHTS FOR CHEMICAL TEST

(Pursuant to the provisions of Section 6-205.1(a) of Article 66½ of the Annotated Code of Maryland)

The following advice of rights shall be read to all persons detained pursuant to the provisions of Section 6-205.1(a) of Article 66½ of the Annotated Code of Maryland.

"I am a law enforcement officer and pursuant to law, I am hereby advising you that you have been detained for the offense of operating or attempting to operate a motor vehicle under the influence of alcohol or that you have been operating or attempting to operate a motor vehicle while your ability was impaired by the consumption of alcohol. I am further advising you of your right to take a chemical test or tests of your blood, breath or urine, to determine the alcoholic content of your blood; and further, I am offering you such chemical test to be administered by a person examined and certified as sufficiently equipped and trained to administer such tests by the Department of Maryland State Police and requesting that you take such a chemical test. You are reminded that, upon applying for your driver's license or renewal, you signed a statement consenting to such tests. I further advise you of the following:

1. The results of such tests may be admissible and may be considered with other competent evidence in determining your guilt or innocence in any prosecution relating to your operating or attempting to operate a motor vehicle while either under the influence of alcohol or while your ability was impaired due to the consumption of alcohol;
2. That you have the right to refuse to take any such tests, and if you so refuse, no tests shall be given to you;
3. That your refusal to take a test may result in the suspension of your driving license and operating privilege for a period not to exceed 60 days;
4. That you shall have the right to select the type of test to be administered;
5. That after taking a chemical test, administered at the request of a law enforcement officer, you may have a physician of your choosing administer a chemical test in addition to the one administered at the direction of the police officer.

Having been so advised, do you now desire to take a chemical test to determine the alcoholic content of your blood?"

(OFFICER TO CHECK REPLY) ☐ YES ☐ NO

If consent given, which test was administered?

☐ BLOOD ☐ BREATH ☐ URINE

Date Apprehended _____ Time _____

Date Test Administered _____ Time _____

Refer Summons No. _____

Figure 9-6 (cont'd.)

TEST RECORD

PER CENT BLOOD ALCOHOL

.00 .05 .10 .15 .20 .25 .30 .35 .40

Breathalyzer®

SUBJECT _____

DATE AND TIME _____

BY _____

Figure 9-7

MASSACHUSETTS (BOSTON)

Section I - Legislative Provisions

§ 24. Reckless, Unauthorized or Operating under the Influence of Intoxicating Liquor or Narcotic Drugs; Fraud in Connection with License; Not Stopping after Collision; Prosecution for Second Offence; Penalties. —

(1) (a) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, as defined in section one hundred and ninety-seven of chapter ninety-four, or under the influence of barbiturates, amphetamines, or other hypnotic or somnifacient drugs, or under the influence of the vapors of glue, carbon tetrachloride, acetone, ethylene, dichloride, toluene, chloroform, xylene or any combination thereof, shall be punished by a fine of not less than thirty-five not more than one thousand dollars, or by imprisonment for not less than two weeks nor more than two years, or both. A court or magistrate, before imposing sentence upon a person found guilty of a violation of this paragraph shall ascertain by inquiry of the office of the registrar or of the board of probation, or of both of said offices, what records or other information said office has tending to show that said person has been convicted of a like offence by a court or magistrate of the commonwealth within a period of six years immediately preceding the commission of the offence with which he is charged.

(b) A conviction of a violation of the preceding paragraph of this section shall be reported forthwith by a court or magistrate to the registrar, who shall revoke immediately the license or the right to operate of the person so convicted, and no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or right to operate.

(c) The registrar, after having revoked the license or the right to operate of any person under the preceding paragraph of this section, shall not issue a new license or reinstate the right to operate to such person, except in his discretion if the prosecution of such person has terminated in favor of the defendant, until five years after the date of revocation following a conviction of a violation of paragraph (a) hereof committed within six years after conviction of a violation of said paragraph, nor until one year after the date of revocation following a conviction of any violation of said paragraph other than one committed within six years as aforesaid; but notwithstanding the foregoing, no new license shall be issued or right to operate be reinstated by the registrar to any person convicted of a violation of paragraph (a) of subdivision (1) of this section until ten years after the date of conviction in case the registrar determines upon investigation and after hearing that the action of the person so convicted in committing such offence caused an accident resulting in the death of another, nor at any time after a subsequent conviction of such an offence, whenever committed, in case the registrar determines in the manner aforesaid that the action of such person, in committing the offence of which he was so subsequently convicted, caused an accident resulting in the death of another.

(d) For the purposes of subdivision (1) of this section, a person shall be deemed to have been convicted if he pleaded guilty or nolo contendere or was found or adjudged guilty by a court of competent jurisdiction, whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file, and a license may be revoked under

paragraph (b) hereof notwithstanding the pendency of a prosecution upon appeal or otherwise after such a conviction. Where there has been more than one conviction in the same prosecution, the date of the first conviction shall be deemed to be the date of conviction under paragraph (c) hereof.

(e) In any prosecution for a violation of paragraph (1) (a) of this section, evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request, and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such test or analysis made by a person or physician selected by him. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in any civil or criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f). Blood shall not be withdrawn from any such defendant for the purposes of any such test or analysis except by a physician. If such evidence is that such percentage was five one hundredths or less, there shall be a presumption that such defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest, if such police officer had reasonable grounds to believe that the person arrested had been operating a motor vehicle upon any such way or place while under the influence of intoxicating liquor; if such evidence is that such percentage was more than five one hundredths but less than ~~ten~~ ¹⁰ one hundredths, there shall be no presumption; and if such evidence is that such percentage was ~~fifteen~~ ¹⁰ one hundredths or more, there shall be a presumption that such defendant was under the influence of intoxicating liquor.

(f) Whoever operates a motor vehicle upon any way or in any place to which the public has right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor. Such test shall be administered at the direction of a police officer, as defined in section one of chapter ninety C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon any such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, none shall be made, but the police officer before whom such refusal was made shall immediately prepare a written report of such refusal. Each such report shall be made on a form approved by the registrar, and shall be sworn to under the penalties of perjury by the police officer before whom such refusal was made. Each such report shall set forth grounds for the officer's belief that the person arrested had been driving a motor vehicle on any such way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to such chemical test or analysis when requested by such police officer to do so. Each such report shall be endorsed by the police chief, as defined in section one of chapter ninety C, or by the person authorized by him and shall be sent forthwith to the registrar. Upon receipt of such report, the registrar shall suspend any license or permit to operate motor vehicles issued to such person under this chapter or the right of such person to operate motor vehicles in the commonwealth under section ten for a period of ninety days. 150 days

(g) Any person whose license, permit or right to operate has been suspended under paragraph (f) shall be entitled to a hearing before the registrar which shall be limited to the following issues: (1) did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have a right of access as invitees or licensees, (2) was such person placed under arrest, and (3) did such person refuse to submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said issues in the negative, the registrar shall reinstate such license, permit or right to operate.

(2) (a) Whoever upon any way or in any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, operates a motor vehicle recklessly, or operates such a vehicle negligently so that the lives or safety of the public might be endangered, or upon a bet or wager or in a race, or whoever operates a motor vehicle for the purpose of making a record and thereby violates any provision of section seventeen or any regulation under section eighteen, or whoever without stopping and making known his name, residence and the register number of his motor vehicle goes away after knowingly colliding with or otherwise causing injury to any other vehicle or property, or whoever loans or knowingly permits his license or learner's permit to operate motor vehicles to be used by any person, or whoever makes false statements in an application for such a license or falsely impersonates the person named in such an application or procures such false impersonation whether of himself or of another, or whoever knowingly makes any false statement in an application for registration of a motor vehicle shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not less than two weeks nor more than two years, or both; and whoever uses a motor vehicle without authority knowing that such use is unauthorized shall for the first offense, be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than two years, or both, and for a subsequent offense by imprisonment in the state prison for not more than five years or in a house of correction for not more than two and one half years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment; and whoever operates a motor vehicle upon any way or in any place to which members of the public have access as invitees or licensees, and without stopping and making known his name, residence and the register number of his motor vehicle, goes away after knowingly colliding with or otherwise causing injury to any person shall be punished by imprisonment for not less than two months nor more than two years. A summons may be issued instead of a warrant for arrest upon a complaint for a violation of any provision of this paragraph if in the judgment of the court or justice receiving the complaint there is reason to believe that the defendant will appear upon a summons.

(b) A conviction of a violation of the preceding paragraph of this section shall be reported forthwith by the court or magistrate to the registrar, who may in any event, and shall unless the court or magistrate recommends otherwise, revoke immediately the license or right to operate of the person so convicted, and no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or right to operate. If it appears by the records of the registrar that the person so convicted is the owner of a motor vehicle or has exclusive control of any motor vehicle as a manufacturer or dealer or otherwise, the registrar may revoke the certificate of registration of any or all motor vehicles so owned or exclusively controlled.

(c) The registrar, after having revoked the license or right to operate of any person under the preceding paragraph of this section, in his discretion may issue a new license or reinstate the right to operate to him, if the prosecution of such person in the superior court has terminated in favor of the defendant, or, after an investigation or upon hearing, may issue a new license or reinstate the right to operate to a person convicted in any court of the violation of any provision of paragraph (a) of subdivision (2) of this section; provided, that no new license or right to operate shall be issued by the registrar to any person convicted of going away without stopping and making known his name, residence and the register number of his motor vehicle after having, while operating such vehicle upon any way or in any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, knowingly collided with or otherwise caused injury to any person, or to any person adjudged a delinquent child by reason thereof under the provisions of section fifty-eight B of chapter one hundred and nineteen, until one year after the date of his original conviction or adjudication if for a first offense or until two years after the date of any subsequent conviction or adjudication; or to any person convicted of using a motor vehicle knowing that such use is unauthorized, until two years after the date of his original conviction or adjudication if for a first offense or until three years after the date of any subsequent conviction or adjudication, or to any person convicted of violating any other provision of paragraph (a) of subdivision (2) of this section until sixty days after the date of his original conviction if for a first offense, or one year after the date of any subsequent conviction within a period of three years. But the registrar, after investigation, may at any time rescind the revocation of a license or right to operate revoked because of a conviction of operating a motor vehicle upon any way or in any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, negligently so that the lives or safety of the public might be endangered.

(3) The prosecution of any person for the violation of any provision of this section, if a subsequent offence, shall not, unless the interests of justice require such disposition, be placed on file or otherwise disposed of except by trial, judgment and sentence according to the regular course of criminal proceedings; and such a prosecution shall be otherwise disposed of only on motion in writing stating specifically the reasons therefor and verified by affidavits if facts are relied upon. If the court or magistrate certifies in writing that he is satisfied that the reasons relied upon are sufficient and that the interests of justice require the allowance of the motion, the motion shall be allowed and the certificate shall be filed in the case. A copy of the motion and certificate shall be filed in the case. A copy of the motion and certificate shall be sent by the court or magistrate forthwith to the registrar.

§ 5A. Person in Custody Charged with Operating under the Influence of Intoxicating Liquor; Right to have Immediate Medical Examination. — A person held in custody at a police station or other place of detention, charged with operating a motor vehicle while under the influence of intoxicating liquor, shall have the right, at his request and at his expense, to be examined immediately by a physician selected by him. The police official in charge of such station or place of detention shall inform him of said right immediately upon being booked, and shall afford him a reasonable opportunity to exercise it. Such person shall, immediately upon being booked, be given a copy of this section unless such a copy is posted in the police station or other place of detention in a conspicuous place to which such person has access.

§ 21. Arrest. — Any officer authorized to make arrests may arrest without warrant and keep in custody for not more than twenty-four hours, unless Sunday intervenes, any person operating a motor vehicle on any way who does not have in his possession a license to operate motor vehicles granted to him by the registrar, and who violates any statute, by-law, ordinance or regulation relating to the operation or control of motor vehicles and any officer authorized to make arrests, provided such officer is in uniform or conspicuously displaying his badge of office, may arrest without warrant any person, regardless of whether or not such person has in his possession a license to operate motor vehicles issued by the registrar, if such person upon any way or in any place to which the public has the right of access, or upon any way or in any place to which members of the public have access as invitees, operates a motor vehicle after his license or right to operate motor vehicles in this state has been suspended or revoked by the registrar, or whoever upon any way or place to which the public has the right of access, or upon any way or in any place to which members of the public have access as invitees, operates a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, as defined in section one hundred and ninety-seven or chapter ninety-four, or under the influence of barbiturates, amphetamines, or other hypnotic or somnifacient drugs, or under the influence of the vapors of glue, carbon tetrachloride, acetone, ethylene, dichloride, toluene, chloroform, xylene or any combination thereof, or whoever uses a motor vehicle without authority knowing that such use is unauthorized or any person who, while operating or in charge of a motor vehicle, shall refuse, when requested by such police officer, to give his name and address or the name and address of the owner of such motor vehicle, or who shall refuse on demand of such police officer, to produce his license to operate such vehicle or the certificate of registration for such vehicle for examination by such officer; or whoever operates a motor vehicle upon any way or in any place to which members of the public have a right of access as invitees or licensees and without stopping and making known his name, residence and the register number of his motor vehicle goes away after knowingly colliding with or otherwise causing injury to any person; and at or before the expiration of said period of time such person shall be brought before a magistrate and proceeded against according to law. An investigator or examiner appointed under section twenty-nine, may arrest without warrant, keep in custody for a like period, bring before a magistrate and proceed against in like manner, any person operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, as defined in section one hundred and ninety-seven or chapter ninety-four, or under the influence of barbiturates, amphetamines, or

other hypnotic or somnifacient drugs, irrespective of his possession of such license.

§ 22. Suspension or Revocation of Certificates of Registration, Licenses, Etc. — (a) The registrar may suspend or revoke without a hearing any certificate of registration or any license issued under this chapter whenever the holder thereof has committed a violation of the motor vehicle laws of a nature which would give the registrar reason to believe that continuing operation by such holder is and will be so seriously improper as to constitute an immediate threat to the public safety. Upon such suspension or revocation, the registrar shall forthwith send written notice thereof to the licensee or registrant, as the case may be. Such notice shall specify the time and place of the violation. The registrar may order the license of such operator or the registration certificate and number plates to be delivered to him; and neither the certificate of registration nor the license shall be reissued

unless, upon examination or investigation, or after a hearing, the registrar determines that the operator shall again be permitted to operate. Said operator shall be entitled to a hearing within thirty days of the suspension or revocation, and the registrar shall so advise him in his notice of suspension or revocation. The registrar, under the same conditions and for the same cause, may also suspend the right of any person to operate motor vehicles in the commonwealth under section ten until he shall have received a license from the registrar or until his right to operate has been restored by the registrar.

(b) The registrar may, after due hearing, suspend or revoke any certificate of registration or any license issued under this chapter, when he has reason to believe the holder thereof is an incompetent person to operate motor vehicles, or is operating a motor vehicle improperly. At least fourteen days prior to any such suspension or revocation, the registrar shall notify the operator in writing of his intention to suspend or revoke his license as of a specified date. Said notice shall specify the reasons for the intended suspension or revocation and shall inform the operator of his right to request in writing a hearing within seven days of his receipt of such notice on the question of whether there is just cause for such suspension or revocation. If he so requests, the registrar shall grant him a hearing, shall notify him of the date of such hearing and he shall not suspend or revoke the license or registration prior to the completion of the hearing. If, after such hearing, the registrar determines that there is just cause for suspension or revocation, he may suspend or revoke the license but, except as provided by law, or except when he finds that the operator is physically or mentally incapable of operating a motor vehicle, no suspension under this subsection shall be for a period in excess of thirty days. Failure on the part of the operator to request a hearing as aforesaid shall constitute a waiver of his right to a hearing and the registrar may thereafter suspend or revoke the license or certificate on the date originally specified.

(c) If the registrar shall receive official notice that any resident has been convicted in another state or country of operating under the influence of narcotic drugs and has had his right to operate in such state or country suspended, the registrar shall forthwith suspend his license, if any, or his right to operate in this commonwealth, and any reinstatement or renewal of such license or reinstatement of such right to operate shall be subject to the provisions of section twenty-four as if the operator had been convicted of operating under the influence of narcotic drugs in this commonwealth.

(d) Notice to any person whose license or registration certificate or right to operate is suspended or revoked under this section or notice to any person of intention to revoke or suspend his license or registration certificate under this section shall be in writing, shall be mailed by the registrar or any person authorized by him to the last address as appearing on the registrar's records or to his last and usual place of abode and a certificate of the registrar that such notice has been mailed in accordance with this section shall be deemed prima facie evidence and shall be admissible in any court of the commonwealth as to the facts contained therein.

If during the period of any such suspension or revocation and prior to its termination by the registrar a new or duplicate learner's permit, license or certificate of registration, or any renewal thereof, is issued, such learner's permit, license or certificate of registration shall be void and of no effect. *

*From Legislation, Rules and Regulations Relating to Motor Vehicles, January 1971.

Section 2 - Physical Coordination Tests

Physical coordination tests are not used by Boston law enforcement personnel in effecting an arrest for operating a motor vehicle under the influence of an intoxicant.

Conclusions: The Boston Police Department and the Massachusetts Registry of Motor Vehicles participate in the Boston Alcohol Safety Action Project.

Performance tests (i.e., balance, walking, turning, finger-to-nose, etc.) are not given unless the arrested person has been advised of his right to refuse such test. It has been the experience of these law enforcement officers that the majority of arrested persons refuse to take any performance test. It has become general unwritten policy throughout both participating law enforcement agencies that performance tests are not required in effecting an arrest of Operating Under the Influence.

The Alcoholic Influence Report Form (Fig. 10-2) is completed for every OUI violation; the form contains a section entitled Performance Tests listing balance, walking, turning, finger-to-nose, and coins. Arresting officers complete this section of the report utilizing subjective observations rather than recording the results of a formal psychomotor test.

It is the opinion of the Commonwealth that no statement should be made by a person, voluntarily or involunatrily, which may be used against him if such a statement were elicited by questioning of the person while he was in custody or otherwise deprived of his freedom of action in any significant way, unless the person has been given the advisement required by Miranda vs. Arizona (384 U.S. 436), and such person has intelligently waived these rights. The implications of this section are extended to officer/driver interviews of suspected OUI offenders

Recommendations: None.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is neither conducted nor provided for by state statute within the Commonwealth of Massachusetts.

Conclusions: None.

Recommendations: None.

Section 4 - Evidentiary Sobriety Testing

Evidentiary sobriety testing is conducted by both law enforcement agencies participating in the Boston Alcoholic Safety Action Program. The evidentiary sobriety testing program is limited to breath analysis only, unless the suspect specifically requests (at his own expense) either a blood test or urine test.

The Boston Police Department has four Breathalyzer units - two of the Model 900 series and two of the model 900A series.

Tests are administered by state-certified breath examiners who have completed the State Police Breathalyzer Course. According to an official of the ASAP staff "the Commonwealth does not have state requirements for Breathalyzer operation...[the] big drawback was the possible requirement of refresher training and the possibility that a machine would have to be designed by the manufacturer's brand name." Training for certification is limited to familiarization with the testing instrument procedures.

The evidentiary breath test is administered at the Boston Police headquarters booking section and is given to the defendant upon his arrival at the booking facility.

The offender is not given a copy of the test results. The suspect is advised verbally of the results and given access to the records should he forget the results.

The Commonwealth of Massachusetts does have an Implied Consent law. Chapter 90, Section 24F states that "whoever operates a motor vehicle upon any way or in any place to which the public has a right of access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor."

Offenders are advised of the Implied Consent law immediately prior to the taking of the evidentiary breath test. The offender is also advised at this time of his Constitutional rights, per Exhibit 10a.

In the event of a refusal to submit to the evidentiary test, officers complete the Report of Refusal To Submit To Chemical Test (Fig. 10-3). This form is then forwarded to the Massachusetts Registry of Motor Vehicles.

Neither blood nor urine analysis, for evidentiary BAC testing, is conducted at this site.

Currently, 18 sworn uniformed officers of the Boston Police Department are certified to administer evidentiary breath testing and were so qualified prior to the implementation of the Boston ASAP. No officers of the Registry of Motor Vehicles are certified to administer evidentiary breath testing. During the evidentiary breath test the test operator completes the Breathalyzer Operator Report (Fig. 10-4). The operator records information concerning the evidentiary test, including the name of the arresting officer, the Breathalyzer operator, witnesses, and the name of the suspect taking the test.

The Breathalyzer operator also completes the Breathalyzer Operational Checklist (Fig. 10-5) which includes the operator's name, the instrument number and subject's name, in addition to the nine steps of the checklist. The Test Record (Fig. 10-6) is also completed during breath analysis. This form records the offender's actual blood-alcohol concentration level.

As of June 23, 1972, the presumptive level for intoxication was lowered from .15% to .10% BAC. In instances where the suspect registers .06% to .09% BAC, the subject may be charged with OUI provided other competent evidence indicating impairment is present.

According to Captain Hogan of the Boston Police Department, in cases involving a BAC of .05% or less, the following procedure is followed:

In this instance, no release form is needed. You [officers] are complying with the statute, Chapter 90, Section 24, which reads 'if such evidence is that such percentage was five one hundredth or less, there shall be a presumption that the defendant was not under the influence of intoxicating liquor and he shall be released from custody forthwith.' The officer who placed him under arrest shall not be liable for false

arrest, if such officer had reasonable ground to believe that the person arrested had been operating a motor vehicle upon any way or place while under the influence of intoxicating liquor. In your good judgment, if you feel that the person is too incapacitated to be released you may hold him in protective custody. You may arrest if you have probable cause to believe that the person operated a motor vehicle under the influence.

Conclusions: This investigator was repeatedly advised, by subjects interviewed that the Commonwealth of Massachusetts was not a state of "records." Little documentation was available from sources interviewed. The problem of documentation was confounded due to the civil disorder existing within Boston during the site visit; on-site observation of the sobriety testing configuration was extremely limited.

Law enforcement officers of the Boston Police Department and Inspectors Registry of Motor Vehicles are not provided classroom instructions in the use of the evidentiary breath testing equipment. Reports relative to the evidentiary test procedures are not required of the arresting officer; other documentary means to record or corroborate the testing procedures do not exist at this site.

Coroners and medical examiners regularly obtain blood samples for analysis of all vehicular-related deaths. The regularity with which blood samples are required to be taken is not specified. The regularity with which samples are taken could not be documented during this site visit.

The results of quantitative alcohol tests on all drinking drivers are tabulated in a Breathalyzer log maintained by the Boston Police Department. Statistical analysis of these results is not conducted.

In overview, the general attitude prevailing at this site was best stated by the Enforcement Coordinator, "[We are] trying to help people who have been drinking; so what if a few of them do get away, you know, because of judge leniency or a good defense attorney, you couldn't possibly take everybody into the system, anyhow; you made the effort through enforcement."

Recommendations: Officials of the Boston Alcohol Safety Action Project should review in detail the sobriety testing configuration of other alcohol safety action programs throughout the United States. (Particular attention should be drawn to those ASAP's enjoying a favorable relationship with professional law enforcement labor organizations.) Upon conclusion of this review, officials of the Boston ASAP should seek the assistance of the Department of Transportation/National Highway Traffic Safety Administration in completely reorganizing their enforcement component countermeasures to be more responsive to the needs of the community and to more aggressively support the objectives of the other ASAP countermeasure programs.

| | | | |
|---|---|--|---|
| (Check) <input type="checkbox"/> Driver <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger Date and time of Accident or Violation _____ | (Check) <input type="checkbox"/> Accident <input type="checkbox"/> Violation <input type="checkbox"/> Other am _____ pm _____ | ALCOHOLIC INFLUENCE REPORT FORM Police Dept. Booked at _____ | Police Dept. _____ Arrest No. _____ Accident No. _____ Arresting Officer _____ Date and time in custody _____ |
|---|---|--|---|

Name _____ Address _____
 Age _____ Sex _____ Race _____ Approx. Wt. _____ Operator Lic. No. _____ State _____

OBSERVATIONS:

| | |
|--|---|
| CLOTHES | Describe: (Type & Color) Hat or Cap _____ Jacket or Coat _____ Shirt or Dress _____ Pants or Skirt _____ Condition: <input type="checkbox"/> Disorderly <input type="checkbox"/> Disarranged <input type="checkbox"/> Soiled <input type="checkbox"/> Mussed <input type="checkbox"/> Orderly (Describe) _____ |
| BREATH | Odor of Alcoholic Beverage: <input type="checkbox"/> strong <input type="checkbox"/> moderate <input type="checkbox"/> faint <input type="checkbox"/> none |
| ATTITUDE | <input type="checkbox"/> Excited <input type="checkbox"/> Hilarious <input type="checkbox"/> Talkative <input type="checkbox"/> Carefree <input type="checkbox"/> Sleepy <input type="checkbox"/> Profanity <input type="checkbox"/> Combative <input type="checkbox"/> Indifferent <input type="checkbox"/> Insulting <input type="checkbox"/> Cocky <input type="checkbox"/> Cooperative <input type="checkbox"/> Polite |
| UNUSUAL ACTIONS | <input type="checkbox"/> Hiccoughing <input type="checkbox"/> Belching <input type="checkbox"/> Vomiting <input type="checkbox"/> Fighting <input type="checkbox"/> Crying <input type="checkbox"/> Laughing |
| SPEECH | <input type="checkbox"/> Not Understandable <input type="checkbox"/> Mumbled <input type="checkbox"/> Slurred <input type="checkbox"/> Mush Mouthed <input type="checkbox"/> Confused <input type="checkbox"/> Thick Tongued <input type="checkbox"/> Sluttered <input type="checkbox"/> Accent <input type="checkbox"/> Fair <input type="checkbox"/> Good |
| Indicate other unusual actions or statements, including when first observed: _____ | |
| Signs or complaint of illness or injury: _____ | |

PERFORMANCE TESTS:

(Note—See departmental instructions for conducting these tests)

| Check Squares If Not Made | Check appropriate square before word describing condition observed |
|---|---|
| <input type="checkbox"/> BALANCE | <input type="checkbox"/> Falling <input type="checkbox"/> Needed Support <input type="checkbox"/> Wobbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> WALKING | <input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Stumbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> TURNING | <input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Hesitant <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> FINGER-TO-NOSE | Right: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure Left: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure |
| <input type="checkbox"/> COINS | <input type="checkbox"/> Unable <input type="checkbox"/> Fumbling <input type="checkbox"/> Slow <input type="checkbox"/> Sure <input type="checkbox"/> (Other) _____ (Balance during coin test) _____ |
| Ability to understand instructions: <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input type="checkbox"/> Good Tests performed: Date _____ Time _____ | |

OBSERVER'S OPINION:

| | |
|---|---|
| Effects of alcohol: <input type="checkbox"/> extreme <input type="checkbox"/> obvious <input type="checkbox"/> slight <input type="checkbox"/> none | Ability to drive: <input type="checkbox"/> unfit <input type="checkbox"/> fit |
| Indicate briefly what first led you to suspect alcoholic influence: _____ | |
| Observed by: _____ Assignment: _____ | |
| Witnessed by: _____ Date _____ Time _____ | |

CHEMICAL TEST DATA:

| | |
|---|---|
| Specimen: <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Saliva <input type="checkbox"/> Urine <input type="checkbox"/> None <input type="checkbox"/> Refused <input type="checkbox"/> Unable | Analysis result: _____ If Breath, what instrument? _____ |
| If refused, why? _____ | |

Figure 10-2



COMMONWEALTH OF MASSACHUSETTS
REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST

TO: The Registrar of Motor Vehicles
100 Nashua Street
Boston, Massachusetts 02114

FROM: _____
(Name of Police Unit)

(Address)

RE: _____
(Operator's Name)

(Address)

(City) (State)

(Date of Birth) (Exp. Date of Lic.)

(License Number-Indicate Issuing State)

(Vehicle Owner)

(Address)

(City) (State)

(Reg. No.) (State)

(Exp. Date of Registration)

Was the operator arrested on a charge of operating a motor vehicle while under the influence of intoxicating liquor upon a way or in a place to which the public has a right of access as invitees or licensees in violation of Section 24 of Chapter 90 of the General Laws?

YES _____ NO _____

Date of Arrest _____ Location _____

Name of Arresting Police Officer _____

State reasonable grounds as follows to believe that the said operator committed said violation:

(1) State operator's driving behavior and details of pursuit (if any) and apprehension:

(2) State symptoms of intoxication: _____

The said operator was offered a chemical test or analysis of his breath, but that said operator refused to submit to said test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the Commonwealth would be suspended for a period of ninety days for said refusal, in the presence of the undersigned and a third person witnessing such refusal.

At _____
(Place, Date and Time of Refusal)

Commonwealth of Massachusetts

(County) SS.

Signed under the penalties of perjury this _____

day of _____ 19____.

Signature and title of police officer
(before whom such refusal was made)

Police Chief or authorized person

Signature of third person witnessing refusal

MP-SUS 36 (rev.2)

Figure 10-3

**CITY OF BOSTON
POLICE DEPARTMENT**

IDENTIFICATION SECTION
BREATHALYZER OPERATOR REPORT

SUBJECT _____ DATE _____
ADDRESS _____ D.O.B. _____
ARRESTING OFFICER _____ DISTRICT _____
BOOKING NUMBER _____

OPERATIONAL CHECK LIST

UNIT SERIAL NUMBER _____ AMPOULE CONTROL NO. _____

SECTION ONE PREPARATION

TURN SWITCH TO 'ON', WAIT UNTIL THERMOMETER SHOWS 45-50° C
GUAGE, OPEN TEST AMPOULE, INSERT BUBBLER, CONNECT TO
OUTLET.

SECTION TWO PURGE

TURN TO TAKE, FLUSH, TURN TO ANALYZE.
WHEN RED APPEARS, WAIT 1- $\frac{1}{2}$ MINUTES, TURN ON LIGHT,
BALANCE.

SECTION THREE ANALYSIS

SET SCALE POINTER TO START LINE.
TURN TO TAKE, TAKE BREATH SAMPLE, TURN TO ANALYZE.
WHEN RED APPEARS, WAIT 1- $\frac{1}{2}$ MINUTES, TURN ON LIGHT,
BALANCE, RECORD ANSWER.

BLOOD ALCOHOL _____% TIME TEST GIVEN _____

BREATHALYZER OPERATOR _____

WITNESSES _____

SIMULATOR CHECK

DATE _____ TIME CHECK WAS MADE _____

TEMPERATURE _____ SIMULATOR RESULT _____

OPERATOR _____

BREATHALYZER OPERATIONAL CHECK LIST

Name of subject..... Date.....
Time (of test)..... Blood Alcohol 0.....% Ampul Control No.....
Operator..... Witness.....
Instrument..... No.....

V

1. ☐ Observe subject for twenty minutes prior to testing to prevent oral intake of any material.

PREPARATION

2. ☐ Throw SWITCH to "ON", wait until THERMOMETER shows $50^{\circ} \pm 3^{\circ} \text{C.}$
3. ☐ Gauge TEST AMPUL and insert in left-hand holder.
4. ☐ Gauge TEST AMPUL, open, insert BUBBLER and connect to outlet.

PURGE

5. ☐ Turn to TAKE, flush out, turn to ANALYZE.
6. ☐ When RED empty signal appears, wait 1½ minutes, turn on LIGHT, BALANCE.
7. ☐ Set BLOOD ALCOHOL POINTER on START line.

ANALYSIS

8. ☐ Turn to TAKE, take breath sample, turn to ANALYZE, (record time).
9. ☐ When RED empty signal appears, wait 1½ minutes, turn on LIGHT BALANCE.

Record answer, dispose of test ampul, TURN CONTROL KNOB to "OFF"

Figure 10-5

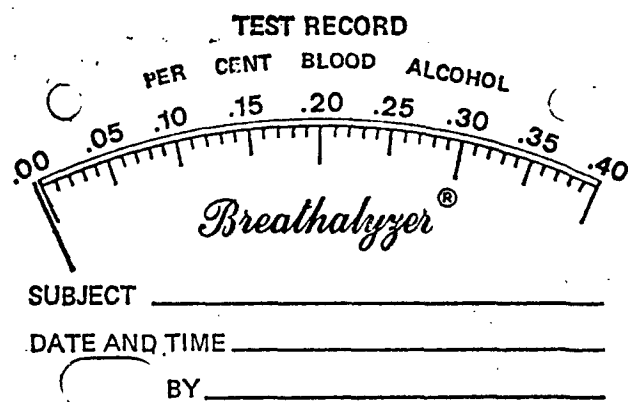


Figure 10-6

MINNESOTA (HENNEPIN COUNTY)

Section 1 - Legislative Provisions

169.121 INTOXICATION; PRELIMINARY SCREENING TEST.

Subdivision 1. It shall be a misdemeanor for any of the following persons to drive, operate or be in actual physical control of any vehicle within this state:

- (a) A person who is under the influence of an alcoholic beverage or narcotic drug;
- (b) A person who is an habitual user of narcotic drugs;
- (c) A person who is under the influence of a combination of any two or more of the elements named in subsections (a) and (b) hereof.
- (d) A person whose blood contains 0.10 percent or more by weight of alcohol.

When a police officer has reason to believe from the manner in which a driver is driving, operating, or actually controlling, or has driven, operated, or actually controlled, a vehicle that such driver may be violating this subdivision he may require the driver to provide a sample of his breath for an immediate preliminary screening test or analysis before an arrest is made, using a device approved by the commissioner for this purpose. The results of such a preliminary screening test or analysis shall be used only for the purpose of guiding the officer in deciding whether an arrest should be made, and shall not be used as evidence in any court action.

The driver of any motor vehicle shall furnish such a sample of his breath when required to do so. The provisions of Minnesota Statutes, Section 169.123, shall apply to any driver who refuses to furnish a sample of his breath; provided that the license or permit of a driver shall not be revoked pursuant to Minnesota Statutes, Section 169.123, Subdivision 4, for refusal to provide a sample of his breath for preliminary screening purposes, if he submits to a blood, breath or urine test to determine the alcoholic content of his blood pursuant to Minnesota Statutes, Section 169.123, Subdivision 2. Another test may be required of the driver following the screening test pursuant to the provisions of this chapter, which shall be admissible evidence in accordance therewith.

Nothing in this subdivision authorizing such preliminary screening test or analysis shall be construed as changing, limiting, or otherwise modifying the procedures, safeguards, and other provisions of sections 169.121 to 169.123 or ordinances in conformity therewith.

The provisions of this subdivision apply, but are not limited in application, to any person who drives, operates, or who is in actual physical control of any vehicle in the manner prohibited by this subdivision upon the ice of any lake, stream, or river, including but not limited to the ice of any boundary water.

Subd. 2. Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or in actual physical control of a motor vehicle in violation of subparagraphs a, c, or d of section 1 hereof, the court may admit evidence of the amount of alcohol in the person's blood, breath, or urine as shown by a medical or chemical analysis thereof; if said test is taken voluntarily or pursuant to section 169.123.

For the purposes of this subdivision:

- (a) evidence that there was at the time 0.05 percent or less by weight of alcohol in the person's blood is prima facie evidence that such person was not under the influence of an alcoholic beverage;
- (b) evidence that there was at the time more than 0.05 percent and less than 0.10 percent by weight of alcohol in the person's blood is rele-

vant evidence but it is not to be given prima facie effect in indicating whether or not the person was under the influence of an alcoholic beverage.

The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not such person was under the influence of an alcoholic beverage.

For the purposes of this section, an "alcoholic beverage" means any liquid containing more than one-half of one percent of alcohol by volume.

For the purposes of this section "percent by weight of alcohol" shall be defined as the number of grams of alcohol per 100 milliliters of blood.

Subd. 3. Every person who is convicted of a violation of this section shall be punished by imprisonment of not less than ten days nor more than 90 days, or by a fine of not less than \$10 nor more than \$100, and his driver's license shall be revoked for not less than 30 days, except that every person who is convicted of a violation of this section, when such violation is found to be the proximate cause of grievous bodily injury or death to another person, shall be punished by imprisonment for not less than 60 days nor more than 90 days, and his driver's license shall be revoked for not less than 90 days.

Subd. 4. Every person who is convicted of a violation of this section within three years of any previous conviction under this section shall be punished by imprisonment for not less than ten days nor more than 90 days, and his driver's license shall be revoked for not less than 90 days.

Subd. 5. Whenever a person is charged with a violation of this section within three years of a previous conviction hereunder, and he shall forfeit his bail, it shall be the duty of the prosecuting officer to immediately apply to the court for a bench warrant, and thereupon the court shall forthwith issue a warrant for the arrest of the accused.

Subd. 6. The court may stay imposition or execution of any sentence authorized by subdivision 3 or 4 of this section of Minnesota Statutes upon a medical recommendation and on the condition that the convicted person submit to medical treatment in a suitable public or private institution. A stay of imposition or execution shall be in the manner provided in Minnesota Statutes, Section 609.135. The court shall report to the commissioner of public safety any stay of execution of sentence granted under the provisions of this section.

169.123 CHEMICAL TESTS FOR INTOXICATION. Subdivision 1. Peace officer defined. For purposes of Laws 1961, Chapter 454, the term peace officer means a state highway patrol officer or full time police officer of any municipality, including towns having village powers under Minnesota Statutes, Section 368.01, or county having satisfactorily completed a prescribed course of instruction in a school for instruction of persons in law enforcement conducted by the University of Minnesota or a similar course considered equivalent by the commissioner of public safety.

Subd. 2. Implied consent; conditions; election as to type of test. Any person who drives or operates a motor vehicle upon the public highways of this state shall be deemed to have given consent subject to the provisions of Laws 1961, Chapter 454, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood. The test shall be administered at the direction of a peace officer. The test may be administered when the officer has reasonable and probable grounds to believe that a person was driving or operating a motor vehicle while said person was under the influence of an alcoholic beverage, and one of the following conditions exist: (1) the said person has been lawfully placed under arrest for alleged commission of the said described offense in violation of Minnesota Statutes, Section 169.121, or an ordinance in conformity therewith; or, (2) the person has been involved in a motor vehicle collision resulting in property damage, per-

sonal injury, or death. The test may also be administered when the officer has reason to believe that a person was driving or operating a motor vehicle in violation of Minnesota Statutes, Section 169.121 or an ordinance in conformity therewith and the person has either refused to take the preliminary screening test provided for by Minnesota Statutes, Section 161.121, Subdivision 1, or such preliminary screening test was administered and recorded a blood alcohol level of .10 percent or more by weight of alcohol. Any person may decline to take a direct blood test and elect to take either a breath, or urine test, whichever is available, in lieu thereof, and either a breath or urine test shall be made available to the arrested person who makes such an election. No action shall be taken against the person for declining to take a direct blood test unless either a breath, or urine test was available. At the time the peace officer requests such chemical test specimen, he shall inform the arrested person that his right to drive may be revoked or denied if he refuses to permit the test and that he has the right to have additional tests made by a person of his own choosing.

Subd. 3. Manner of making test; additional tests. Only a physician, or a medical technician, or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a breath or urine specimen. The person tested shall have the right to a physician, or a medical technician, or registered nurse of his own choosing administer a chemical test or tests in addition to any administered at the direction of a peace officer; provided, that the additional test specimen on behalf of said person be obtained at the place where such person is in custody and at no expense to the state. Said person shall have the right to immediately communicate with his attorney, doctor or any other person in order to secure a physician, medical technician or registered nurse, for the purpose of administering such additional test or tests; but this shall in no way delay the administering of the test at the direction of the peace officer. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission in evidence of the test taken at the direction of a peace officer unless the additional test was prevented or denied by the peace officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the peace officer shall be made available to him. The physician, medical technician or registered nurse drawing blood at the request of a peace officer for the purpose of determining alcoholic content shall in no manner be liable in any civil or criminal action except for negligence in drawing blood. The person administering such test at the request and direction of such peace officer shall be fully trained in the administration and interpretation of such tests pursuant to standards promulgated by rule by the commissioner of public safety.

Subd. 4. Refusal to permit test; revocation of license. If a person under arrest refuses to permit chemical testing, none shall be given, but the commissioner of public safety, upon the receipt of a certificate of the peace officer that he had reasonable and probable grounds to believe the arrested person had been driving or operating a motor vehicle upon the public highways while under the influence of an alcoholic beverage, and that the person had refused to permit the test, shall revoke his license or permit to drive and any nonresident operating privilege for a period of six months. If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner of public safety shall deny to the person the issuance of a license or permit for a period of six months after the date of the alleged violation, subject to review as hereinafter provided.

Subd. 5. Notice of revocation or determination to deny; request for hearing. No revocation under subdivision 4 shall be made until the commissioner of public safety notifies the person by certified or registered mail of the intention to revoke and allows said person a 20 day period after the date of receiving said notice to request of the commissioner, in writing, a hearing as herein provided. If no request is filed within the 20 day period the commissioner of public safety may then issue an order of revocation. However if a request for hearing is filed, no revocation hereunder shall be made until final judicial determination resulting in an adverse decision to said person.

Subd. 6. Hearing. The hearing shall be before a municipal judge, or probate judge if no municipal judge is available, learned in the law, in the county where the arrest occurred, unless there is agreement that the hearing may be held in some other county. The hearing shall be recorded and proceed as in a criminal matter, without the right of trial by jury, and its scope shall cover the issues of whether the peace officer had reasonable and probable grounds to believe the person was driving or operating a motor vehicle while under the influence of an alcoholic beverage; whether the person was lawfully placed under arrest; whether he refused to permit the test, and if he refused whether he had reasonable grounds for refusing to permit the test; and whether at the time of request for the test the peace officer informed the said person that his right to drive might be revoked or denied if he refused to permit the test and of his right to have additional tests made by a person of his own choosing. The municipal court shall order either that the revocation or denial be rescinded or sustained and refer such order to the commissioner of public safety for his further action.

Subd. 7. Review by district court. If the revocation or denial is sustained, the person whose license or permit to drive, or nonresident operating privilege has been revoked or denied, may within 20 days after notice of the determination by the commissioner of public safety file a petition for a hearing of the matter in the district court in the county where the hearing pursuant to subdivision 6 was held unless there is agreement that the hearing may be held in some other county. The petition shall be filed with the clerk of the said court together with proof of service of a copy thereof on the commissioner of public safety. It shall be the duty of the court to set the matter for hearing on a day certain with reasonable notice thereof to the parties. The matter shall be heard de novo with a right of trial by jury.

Subd. 8. Notice of action to other states. When it has been finally determined that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the commissioner of public safety shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which he has a license.

169.09 ACCIDENTS. Subdivision 1. Driver to stop. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle at the scene of the accident, or as close thereto as possible, but shall then return to and in every event, shall remain at, the scene of the accident until he has fulfilled the requirements of this chapter as to the giving of information. The stop shall be made without unnecessarily obstructing traffic.

Subd. 2. Driver to stop. The driver of any vehicle involved in an accident to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible, but shall forthwith return to, and in every event shall remain at, the scene of the accident until he has fulfilled the requirements of this chapter as to the giving of information. Every such stop shall be made without obstructing traffic more than is necessary.

Subd. 3. Driver to give information. The driver of any vehicle involved in an accident resulting in injury to or death of any person, or damage to any vehicle which is driven or attended by any person, shall stop and give his name, address, and the registration number of the vehicle he is driving, and shall, upon request and if available, exhibit his driver's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with, and shall render reasonable assistance to any person injured in such accident.

Subd. 4. Collision with unattended vehicle. The driver of any vehicle which collides with and damages any vehicle which is unattended shall immediately stop and either locate and notify the driver or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, shall report the same to a police

officer, or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking.

Subd. 5. Notify owner of damaged property. The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall, upon request and if available, exhibit his driver's or chauffeur's license, and make report of such accident when and as required by the provisions of this chapter.

Subd. 6. Notify police of personal injury. The driver of a vehicle involved in an accident resulting in injury to or death of any person shall, after compliance with the provisions of this section, by the quickest means of communication, give notice of such accident to the local police department, if the accident occurs within a municipality, or to a state highway patrol officer if the accident occurs on a trunk highway, or to the office of the sheriff of the county.

Subd. 7. Accident report to commissioner. The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of \$100 or more, shall promptly forward a written report of the accident to the commissioner of public safety. If, in the opinion of the commissioner of public safety, the original report of any driver of a vehicle involved in an accident of which report must be made as provided in this section is insufficient he may require the driver to file supplementary reports.

Subd. 8. Officers to report accident to the commissioner. Every law enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall, within 24 hours after completing such investigation, forward a written report of such accident to the commissioner of public safety.

Subd. 9. Accident report forms. The department of public safety shall prepare, and upon request supply to police departments, coroners, sheriffs, garages and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by persons involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the causes, conditions then existing, and the persons and vehicles involved.

Subd. 10. Use of form required. Every accident report required to be made in writing shall be made on the appropriate form approved by the department of public safety and contain all of the information required therein unless not available.

Subd. 11. Coroner to report death. Every coroner or other official performing like functions shall report in writing to the department of public safety the death of any person within his jurisdiction as the result of an accident involving a motor vehicle and the circumstances of such accident. Such report shall be made within five days after such death.

In the case of drivers killed in motor vehicle accidents and of the death of pedestrians 16 years of age or older, who die within four hours after accident, the coroner or other official performing like functions shall examine the body and make such tests as are necessary to determine the presence and percentage concentration of alcohol, and drugs if feasible, in the blood of the victim. This information shall be included in each report submitted pursuant to the provisions of this subdivision and shall be tabulated on a monthly basis by the department of public safety. This information may be used only for statistical purposes which do not reveal the identity of the deceased.

Subd. 12. Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet shall immediately report to the local police or sheriff and to the commissioner of public safety within 24 hours after such motor vehicle is received, giving, the engine number, registration number and the name and address of the owner or operator of such vehicle.

Subd. 13. Reports confidential. All required accident reports and supplemental reports shall be without prejudice to the individual so reporting and shall be for the confidential use of the department of public safety for accident prevention purposes, except that the department of public safety or any law enforcement department of any municipality or county in this state shall, upon written request of any person involved in an accident or upon written request of the representative of his estate, his surviving spouse, or one or more of his next of kin, or a trustee appointed pursuant to Minnesota Statutes, Section 573.02, disclose to such requester, his legal counsel or a representative of his insurer any information contained therein except the parties' version of the accident as set forth in the written report filed by such parties. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department of public safety shall furnish upon the demand of any person who has, or claims to have, made such a report, or, upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department of public safety solely to prove a compliance or a failure to comply with the requirements that such report be made to the department of public safety. Disclosing any information contained in any accident report, except as provided herein, is unlawful and a misdemeanor.

Subd. 14. Penalty. Any person failing to comply with any of the requirements of this section, under the circumstances specified, shall be guilty of a misdemeanor.

169.89 PENALTIES. Subdivision 1. Violation. Unless otherwise declared in this chapter with respect to particular offenses, it is a petty misdemeanor for any person to do any act forbidden or fail to perform any act required by this chapter; except that: (a) a violation which is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property; or (b) exclusive of violations relating to the standing or parking of an unattended vehicle, a third or subsequent violation of any of the provisions of this chapter, classified therein as a petty misdemeanor, within the immediate preceding 12 months period; is a misdemeanor to which the provisions of subdivision 2 of this section shall not apply.

Subd. 2. Penalty; jury trial. A person charged with a petty misdemeanor shall not be entitled to a jury trial but shall be tried by a judge without a jury. If convicted, he shall be punished by a fine of not more than \$100.

Subd. 3. Retroactivity. The provisions of this section and section 45 of this act, defining a petty misdemeanor, shall operate not only prospectively but retroactively to include therein all acts and violations, committed prior to the effective date of this act, which are pending before the courts of this state but not to include any matter which has been heard, tried and determined by the courts.

Subd. 4. Driver's record. When a person is arrested for a violation of any provision of this chapter, or a violation of any provision of a city or village ordinance regulating traffic, the court before whom the matter is heard shall determine the driver's record of the person from the commissioner of public safety before pronouncing sentence and the expense incident to the procurement of this information is taxable as costs upon the conviction.

Subd. 5. **Driver improvement clinics; attendance.** In conjunction with or in lieu of other penalties provided by law for violation of this chapter or a municipal ordinance enacted in conformance thereto, the trial court may in its judgment of conviction order the convicted person to attend and satisfactorily complete a course of study at an approved driver improvement clinic. The commissioner of public safety may, upon his own motion or upon recommendation of the court, suspend, for a period of not to exceed 30 days, the operator's license or permit or non-resident operating privilege of any person who fails or refuses to comply with an order to attend a driver improvement clinic. The requirement of attendance at a driver improvement clinic is not a fine, imprisonment, or sentence within the meaning of section 609.02. The court may not order a convicted person to attend a driver improvement clinic which is located more than 35 miles from the person's residence. For the purposes of this section "an approved driver improvement clinic" means a clinic whose curriculum and mode of instruction conform to standards promulgated by the commissioner of public safety.

169.971 DRIVER IMPROVEMENT CLINICS; DEFINITIONS. Subdivision 1. For the purposes of Laws 1965, Chapter 711 the terms defined in this section have the meanings given them.

Subd. 2. "Driver improvement clinic" means a formal course of study established under Section 169.972 designed primarily to assist persons convicted of traffic violations in correcting improper driving habits and to familiarize them with the provisions of the highway traffic regulation act.

Subd. 3. "Municipality" means any city, however organized, and any village, borough, county, or town.

Subd. 4. "Court" means a municipal court, however organized, and any district court, county court or justice court.

Subd. 5. "Commissioner" means the commissioner of public safety.

169.972 ESTABLISHMENT OF DRIVER IMPROVEMENT CLINIC; FEES. Subdivision 1. Subject to the provisions of this chapter, any court, municipality, association of municipalities, or any regularly established safety organization may establish and conduct a driver improvement clinic.

Subd. 2. The court, municipality or organization conducting a driver improvement clinic may establish reasonable tuition fees not to exceed \$15, but not to exceed the actual cost of the course.

169.973 REGULATION OF CLINICS; DIRECTOR. Subdivision 1. The commissioner of public safety shall supervise the administration and conduct of driver improvement clinics. The commissioner of public safety shall promulgate rules and regulations setting forth standards for the curriculum and mode of instruction of driver improvement clinics and such other matters as he considers necessary for the proper administration of such clinics. In the preparation of such standards the commissioner of public safety shall consult with the commissioner of education and state associations of judges. A driver improvement clinic established under this chapter shall conform to the standards promulgated by the commissioner of public safety. The course of study at a driver improvement clinic may not exceed a cumulative total of nine hours with no single class session lasting more than three hours.

Subd. 2. The commissioner of public safety may appoint a driver improvement clinic director within the department of public safety and such other employees as are necessary to accomplish the purposes of Laws 1965, Chapter 711. *

*From Minnesota Motor Vehicle and Traffic Laws and Motor Carrier Laws, 1971-1972.

MINNESOTA (HENNEPIN COUNTY)

Section 2 - Physical Coordination Tests

Physical coordination tests are administered to all suspected DWI offenders by the participating law enforcement agencies of the Hennepin County Alcohol Safety Action Project. The standard variations - balance, finger to nose, walking, and turning - are utilized by these agencies. No significant modifications to these tests were noted during this site visit.

Physical coordination tests may be administered by either the arresting officer or the Breathalyzer operator and may be given at the scene of apprehension, the breath test location, or at both locations. Figure 11-1 shows the various police departments participating in the Hennepin County ASAP program. It also indicates who administers the physical coordination tests, and the number of times and where the tests are administered.

The Minneapolis Police Department has utilized videotape in the recording of the physical coordination tests as a matter of policy since 1968. Videotaping has been used in the ASAP enforcement countermeasures since the inception of the program.

The videotaping equipment is generally operated by the breath operator, who is a sworn law enforcement officer.

There are currently 64 qualified videotape operators (generally also breath operators), who have satisfactorily completed four hours of instruction on the use of the video equipment. Each January, videotape operators are subject to a one- to two-hour refresher training course in the use of the video equipment.

The video cameras are mounted in a studio configuration located at the breath testing location. A separate room was constructed to store the used tapes. Each tape is logged and reels are assigned a control number (generally ten to twelve individuals are recorded on one tape).

The advising of Miranda and Implied Consent, coordination tests, driver interview and handwriting specimens (through the use of a chalk board) are generally recorded on the videotape. The number of tapes per

month varies greatly, but the best average according to law enforcement officers was estimated at 29 to 30 reels per month.

The only significant problem encountered in the use of the video equipment was, according to Sgt. Newenfeld, a defective tape received from the manufacturer, resulting in poor picture quality and playback as well as continual clogging of the heads of the recorders. This problem was rectified by the manufacturer through replacement of the defective tapes.

Videotapes are generally shown prior to trial; the defense attorney presents himself at the breath testing room and requests to see a tape, identifying it by defendant's name and date of arrest. The defense attorney views the film, taking whatever notes he desires.

Reels are erased only after all cases on a reel have been disposed. The Alcoholic Influence Report Form (Fig. 11-8) is used by arresting officers to indicate observations, performance test results, and opinions, as well as chemical test data. Although each agency comprising the Hennepin County ASAP maintains its own report forms, the information contained on Figure 11-8 is representative of the type of information recorded by law enforcement agencies of this site.

Conclusions: The physical coordination testing configuration utilized by law enforcement agencies comprising the Hennepin County ASAP appears adequate to meet the needs of those agencies. With the legally-sanctioned use of pre-arrest breath screening, law enforcement officers prefer utilizing the Borg-Warner A.L.E.R.T. portable breath testing unit over performance tests, in establishing driver alcohol impairment.

Recommendations: The Hennepin County ASAP should initiate a study of the cost-effectiveness of utilizing the videotaping capabilities of the Minneapolis Police Department for providing videotaping services to the smaller participating law enforcement agencies surrounding Minneapolis. According to Chief of Police Calvin Hawkinson of the Plymouth Police Department, Village of Plymouth, the Minneapolis Police Department charges \$25 per evidentiary test, plus the time of

the operator when the operator is required to testify. Under these circumstances, utilizing the Minneapolis Police Department's Breathalyzer and videotaping unit costs the Village of Plymouth between \$40-\$50 per test. This cost should be reduced.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is conducted by law enforcement agencies comprising the Hennepin County ASAP. The device utilized used for this purpose is the Borg-Warner A.L.E.R.T. portable pre-arrest breath tester. According to the Minnesota Motor Vehicle and Traffic Law and Motor Carrier Laws 169.121, Subdivision 1 (d-paragraph 2), the offender does not have the option to refuse pre-arrest breath screening.

Pre-arrest breath screening is sanctioned by state statute within the state of Minnesota.

Minnesota law permitting preliminary screening does not require a specific amount or kind of training before an officer can employ a portable breath testing (PBT) device.

Upon conclusion of the driver interview and physical coordination test, if given, the arresting officer administers a pre-arrest breath screen. Should the subject either "pass" or indicate "warn" on the pre-arrest screening device, the subject will be either cited or released. Should the subject indicate "fail" on the PBT test, he will proceed to other evidentiary testing.

Exhibit 11a, entitled Evaluation of Portable Breath Test Devices for Screening Suspected Drunken Drivers by Police in Hennepin County, Minnesota, provides a survey of police officer and supervisory personnel attitudes toward the portable breath screening device and provides feedback from enforcement officers concerning the value of pre-arrest breath screening in DWI enforcement.

Conclusions: The pre-arrest breath screening program developed by the Hennepin County ASAP is the most comprehensive program in operation of any of the sites visited during this survey.

The use of the Borg-Warner A.L.E.R.T. pre-arrest screening device has resulted in a lower average BAC in arrests following screening and has accented the unreliability of physical performance tests.

Recommendations: Additional funds should be sought to purchase a sufficient number of PBT units so that all law enforcement officers within the ASAP jurisdictional area would have access to pre-arrest screening devices during their tour of duty.

Section 4 - Evidentiary Sobriety Testing

Minnesota Motor Vehicle and Traffic Laws authorize the analysis of breath, blood or urine specimens for the purposes of determining blood-alcohol concentration for evidentiary purposes. For breath analyses, the Smith and Wesson Breathalyzer, Model 900, is utilized. The Hennepin County ASAP has six Breathalyzer units purchased through the use of Federal 403 funds.

Breathalyzer training is conducted under the supervision of the State Department of Health. Operators must possess this training to administer evidentiary breath tests, as specified in Minneapolis Police Department regulation 3.0111. This document was not presented to this investigator for review.

There are currently 64 certified breath examiner specialists in the Minneapolis Police Department. Any law enforcement officer wishing to receive breath examiner specialist training submits his name to Sgt. Newenfeld to the Minneapolis Police Department. Sgt. Newenfeld makes the final selection as to who will receive breath examiner specialist training.

The training facility is located in the Fifth Precinct of the Minneapolis Police Department and the instructor for the course is Sgt. Newenfeld, who is the area senior breath examiner instructor.

Minnesota's Statute 169.123, entitled Chemical Test for Intoxication, states that any person who drives or operates a motor vehicle within the state of Minnesota shall have been deemed to have given consent to a chemical test of his blood, breath or urine for the purposes of determining alcoholic content of his blood. The test may be administered when

the officer has reason to believe that a person was driving or operating a motor vehicle in violation of Minnesota Statute, Section 169.121; or when the preliminary screening test was administered and recorded a blood-alcohol level of .10% or more. Any person may decline to take a blood test and elect either a breath or urine test, whichever is available, and either a breath or urine test shall be made available to the arrested person who makes such an election. The arresting officer must inform the arrested person that his right to drive may be revoked or denied if he refuses to permit the test, and that he has the right to have additional tests made by a person of his own choosing.

Only physicians or medical technicians or registered nurses acting at the request of a peace officer may withdraw blood for the purposes of determining the alcoholic content. This limitation does not apply to breath or urine specimens. When a blood sample is withdrawn, a sample of five cc's is required for evidentiary analysis.

If a person under arrest refuses chemical testing, the peace officer completes a certificate of refusal. The Eden Prairie Police Department completes Figure 11-4, entitled Implied Consent Provisions and Constitutional Rights. The City of Golden Valley, Golden Valley Police Department, completes the Implied Consent Advisory (Fig. 11-10). The Minneapolis Police Department (Traffic Division Chemical Tests Section) Consent Form (Fig. 11-16) is completed by officers of the Minneapolis Police Department. The arresting officer completes this form and asks the defendant to sign it acknowledging his consent to chemical test. The Implied Consent Law: Peace Officer Certificate (Fig. 11-13) is used by arresting officers to indicate circumstances of DWI arrests under state law. It is this form that is primarily used for recording refusals.

Refusal to permit evidentiary testing results in loss of license or permit to drive for a period of six months. If a request for hearing is filed by the suspect, no revocation is made until final judicial determination resulting in an adverse decision against the suspect is made.

The hearing shall be before a municipal judge, or, if no municipal judge is available, an appointed judge who is learned in the law. The

hearing must be held in the county where the arrest occurred. The hearing is recorded and proceeded as a criminal matter without the right of trial by jury and covers the issues of: 1) Whether the peace officer had reasonable and probable grounds to believe that the person was driving or operating a motor vehicle while under the influence of an alcoholic beverage; 2) whether the person was lawfully placed under arrest; 3) whether he refused to permit the test and if he refused, whether he had reasonable grounds for refusing to permit the test; and 4) whether, at the time of request, the peace officer informed that person that his right to drive might be revoked or denied if he refused to permit the test. The municipal court shall order either that the revocation or denial be rescinded or sustained and refer such order to the Commissioner of Public Safety for his further action.

The "illegal per se" level of intoxication in the state of Minnesota is .10%. "Illegal per se" means that it is illegal to drive with a pre-determined blood-alcohol concentration of .10% regardless of the degree of impairment of the driver.

Breathalyzer locations throughout the seven-county metropolitan area encompassing the Hennepin County ASAP are as follow: the towns or villages of Plymouth, Mound, New Hope, Crystal, Chaska, Hopkins, Edina, Anoka, Savage, Maplewood Elk River, Richfield, Shakopee, Burnsville, Farmington, White Bear Lake, Golden Valley, St. Louis Park, Stillwater, Brooklyn Park, Brooklyn Center, Eden Prairie, Bloomington, West St. Paul, Coon Rapids, Columbia Heights, Cottage Grove, and Inver Grove Heights, (one Breathalyzer in each location); Hennepin County ASAP (6 Breathalyzers); St. Paul (4 Breathalyzers); Minneapolis (2 Breathalyzers) and Hastings (2 Breathalyzers).

- Evidentiary Test Process

Minneapolis Police Department: Upon conclusion of the driver interview and physical coordination tests, if the arresting officer suspects alcohol involvement, he institutes a radio communication requesting the services of the mobile evidentiary testing van. Generally, the suspect will be administered the pre-arrest screening test when the arresting

officer suspects a low BAC. It is not uncommon for the van to assume stationary posts and arresting officer transport their suspects to the van.

Either upon arrival of the evidentiary testing van or upon arrival at the evidentiary test location, the arresting officer advises the suspect of the implied consent provisions.

If the subject requests a blood test, the arresting officer transports him to General Hospital, where a nurse withdraws the blood sample for analysis.

If the subject elects the breath test, he is administered the Breathalyzer test; the entire procedure, including physical coordination tests and handwriting exercises, is recorded on videotape.

If the subject refuses evidentiary testing to determine his blood alcohol, the arresting officer completes the Implied Consent Law: Peace Officer's Certificate (Fig. 11-13).

Arresting officers of the Minneapolis Police Department complete the following form to record evidentiary sobriety testing:

- The Hennipen County ASAP Alcohol Related Traffic Arrest Form (Fig. 11-9). The arresting officer indicates the charge and results of the screening test and evidentiary test.

The Breathalyzer operator of the Minneapolis Police Department completes the following documents:

- The State of Minnesota Bureau of Criminal Apprehension Laboratory Breathalyzer Operational Checklist (Fig. 11-5), which lists 19 operating steps. This form is also signed by the arresting officer.
- the Test Record (Fig. 11-6). This is the standard Breathalyzer form which provides for direct graphic reporting on the concentration of alcohol in the blood.
- when the evidentiary breath test is conducted in the mobile breath van, the breath operator also completes the Breathalyzer Van Log (Fig. 11-15). This form was devised by the

Hennepin County ASAP to log all tests at this type of facility. This form includes information concerning the jurisdiction of the arresting officer and the results of each test.

Although videotape equipment was not purchased by the ASAP for application in any of the enforcement agencies in the county, the Minneapolis Police Department has used VTR in DWI enforcement since 1968, and videotaping has been used by the Minneapolis Police Department in ASAP enforcement since the beginning of the program. The VTR equipment is set up at the testing facility. The events recorded include the Miranda warning, the provision of information in the Implied Consent Law, the interview and coordination test, and the handwriting specimen.

Training includes four hours of instruction on the use of VTR equipment by the head of the breath testing unit. At the time of the site visit, there were 64 qualified operators. Generally, these are breath operators. Selection of personnel for training is from those who volunteer. Each January, one or two hours of refresher training is given to qualified operators.

The number of reels of tape per month varies greatly, but averages around 30 reels. Very few DWI cases ever go to trial; the primary use of the tape is in pre-trial showings to defense attorneys.

Recorded tapes are stored in a specially constructed room. Ten to twelve DWI cases are usually recorded on a reel. Each tape is logged and reels are assigned a control number. The system allows retrieval by the name of the DWI offender and the date. Taped reels are erased only after all cases on the reel have been adjudicated.

The major problem encountered was quantity of defective tapes, which resulted in poor picture quality, as well as the continual clogging of the heads of the recorders. The manufacturer replaced the defective tapes.

New Hope Police Department: Upon conclusion of the driver interview and physical coordination tests, if the arresting officer suspects possible alcohol involvement, he administers the pre-arrest breath screening test to the subject. A subject "failing" the pre-arrest breath screen is transported to headquarters, where he is advised of the Implied Consent

warning. If the subject elects a blood test, he is transported, by the arresting officer, to the medical center (a hospital facility) where the nurse withdraws five cc's of blood for the purpose of evidentiary blood alcohol analysis. The subject is then transported back to the station where the blood sample is mailed to the BAC.

If the subject requests a urine analysis for the purpose of determining blood alcohol content, the department laboratory facilities are utilized in the sample collection process. The sample is then submitted, by mail, to the BCA for evidentiary analysis. If the subject elects the breath test, he is administered the Breathalyzer. If the subject registers a BAC level of .00 to .09%, he is either released with or without condition or cited for hazardous moving violation.

The forms completed by the arresting officers and testing officers are similar in content to those completed by officers of the Minneapolis Police Department.

The New Hope Police Department has two portable breath testing devices at its disposal and one Smith and Wesson Breathalyzer, Model 900. Six sworn police officers of the New Hope Police Department are certified breath analysis operators.

Golden Valley Police Department: Upon conclusion of the driver interview, if the arresting officer suspects alcohol involvement, the suspect is given a preliminary breath screen test utilizing the ALERT unit. If the subject "fails" the pre-arrest screening test, he is advised of his Constitutional rights and transported, by the arresting officer, to North Memorial Hospital, where a nurse withdraws five cc's of blood for the purposes of evidentiary blood analysis. The arresting officer then transports the subject back to the station where he mails the blood sample to the BCA for evidentiary blood alcohol analysis. If the subject elects to take a breath test, one is administered. If the subject registers a BAC level of .00 - .09%, he is released with or without condition or cited for an appropriate lesser offense. (See Appendix A; Exhibits 11b and 11c.)

The Golden Valley Police Department has two portable breath testing A.L.E.R.T. units provided by the Hennepin County ASAP.

The arresting officer completes the following reports to record sobriety testing:

- The Offense Report (Fig. 11-7). The arresting officer provides the basic facts plus narrative of the events.
- the Alcoholic Influence Report Form (Fig. 11-8). Space is provided on this form to indicate observations, performance test results, and opinions, as well as chemical test data.
- the Implied Consent Advisory (Fig. 11-10). The officer making the request records the responses of the offender. This form is also used to read provisions of Implied Consent law to the offender.

Brooklyn Police Department: Upon conclusion of the driver interview and physical coordination tests, if the arresting officer suspects alcohol involvement, the violator is given a preliminary breath screening test. If the subject "fails" the preliminary breath screen test, he is transported to the station at which time he is advised of his Miranda warnings and the Implied Consent. If the subject elects a blood test, the arresting officer transports the violator to North Medical Center where the nurse withdraws five cc's of blood for the purpose of determining blood-alcohol content. There is a \$25 charge for this service. The Medical Center conducts the analysis and advises the Brooklyn Police Department within 24 hours of the evidentiary test results.

If the subject elects a breath test, one will be provided. If the subject registers .00 - .05% BAC, he is released with or without condition. If the subject registers .06 - 1.09% BAC, he will be charged with the offense of DWI if other competent evidence as to driver impairment exists.

The Brooklyn Police Department has two portable breath testing ALERT units provided by the Hennepin County ASAP. There are seven certified Breathalyzer operators on the Brooklyn Police Department.

Hennepin County Sheriff's Office: Upon conclusion of the driver interview and physical coordination tests, if the arresting officer suspects alcohol involvement, the violator is administered a pre-arrest

screening for alcohol involvement. If the subject "fails" the PBT screening, he is advised of the Implied Consent provisions. If the subject elects a blood test, he is transported by the arresting officer to the nearest hospital where the doctor at that facility withdraws five cc's of blood for the purpose of evidentiary blood alcohol analysis. The arresting officer then transports the subjects to the nearest lockup. The evidentiary blood sample is then transported, by the arresting deputy, to the Department of Public Health for evidentiary blood alcohol analysis.

If the subject elects to take a breath test, the deputy will cause to be transmitted a radio communication requesting the services of one of four mobile breath testing vans. If the subject registers .00 - .09% BAC, the subject may either be released, released with condition, or cited for an appropriate hazardous moving violation. If the subject registers .10% BAC or higher, the suspect is transported to the nearest lockup for incarceration.

The Hennepin County Sheriff's Office has five portable breath testing A.L.E.R.T. units provided by the Hennepin County ASAP.

The reports completed by arresting deputies and Breathalyzer operators do not differ significantly from those completed by the other law enforcement agencies participating in the Hennepin County ASAP.

Edina Police Department: After the driver interview and physical coordination tests, if the arresting officer suspects alcohol involvement, he administers to the suspect a pre-arrest screening test. If the suspect "fails" the pre-arrest screening test, the suspect is advised of his Miranda warnings and Implied Consent. If the suspect chooses either the blood test or a urine test, the arresting officer or a supervisor transports the suspect to the Southdale or Fairview Hospital where a nurse will withdraw five cc's of blood for the purpose of evidentiary blood alcohol analysis. Should the suspect have requested a urine analysis, a specimen will be collected at this medical facility. Upon obtaining an evidentiary sample, the arresting officer transports the suspect back to the station. Evidentiary samples are then sent to the BAC lab for evidentiary blood alcohol analysis. If the subject elects a Breathalyzer test, one will be provided. If the suspect registers a .00 - .09% BAC level,

he is either released with or without condition or cited for the appropriate offense. If the subject registers .10% BAC, or higher, he is charged with the offense of DWI.

The Edina Police Department has two portable breath testing devices provided by the Hennepin County ASAP.

St. Louis Park Police Department: After the driver interview, if the arresting officer suspects possible alcohol involvement, the suspect is administered a pre-arrest screening by the use of the A.L.E.R.T. PBT. (See Appendix A; Exhibit 11d.) If the subject "fails" the PBT test, he is advised of his Miranda warnings, and the arresting officer will transport the suspect to the station. At the station, the arresting officer advises the suspect of the Implied Consent law. If the suspect elects to take the blood test, the arresting officer transports the subject to the local hospital at which time a nurse withdraws five cc's of blood for the purpose of evidentiary blood alcohol analysis. The arresting officer then mails the sample to the BCA for evidentiary blood alcohol analysis.

If the suspect elects a breath test, one is provided. If the subject registers .00 - .09% BAC, he is released with or without condition or cited for an appropriate hazardous moving violation. If the suspect registers .10% BAC or higher, he is charged with the offense of DWI, and is administered the physical coordination tests.

For general DWI arrest guidelines and detailed instructions for completion of the Alcohol Influence Report at this agency, see Appendix A; Exhibit 11e.

Eden Prairie Police Department: Upon conclusion of the driver interview, if the arresting officer suspects possible alcohol involvement, he advises the suspect of his Miranda warnings and administers a pre-arrest screening test to determine alcohol involvement. If the suspect fails the PBT test, the arresting officer transports the suspect to the station where he is advised of the Implied Consent warnings.

If the suspect elects to take a blood test, he is transported to Fairview Hospital where a nurse withdraws five cc's of blood for the purpose of evidentiary blood alcohol analysis. Again, the arresting

officer must mail the sample to the BCA for evidentiary blood alcohol analysis.

If the suspect elects to take a breath test, one will be provided. If the suspect registers .00 - .09% BAC he is released. If the suspect registers .10% BAC or higher, he is charged with the offense of DWI. The physical coordination test is then administered to the suspect by the backup officer who is also the chemical testing officer.

The Eden Prairie Police Department has three A.L.E.R.T. PBT units, which were provided by the Hennepin County ASAP.

Conclusions: The sixteen law enforcement agencies which comprise the enforcement countermeasure of the Hennepin County ASAP differ significantly, not only in size but in resource, policy, and departmental priorities. These confounding variables limit the coordinating effectiveness of the Hennepin County ASAP. This ASAP must contend with a high degree of sensitivity in dealing with and effecting needed changes in the sobriety testing procedures of the various departments.

Sobriety testing services are duplicated throughout the jurisdictional area, and the need for consolidation of services is apparent. Effective coordination of the various programs is further confounded by the utilization of sworn law enforcement officers as the enforcement coordinators for the project. Apparently, not only is the enforcement coordinator reluctant to advocate change to another law enforcement agency, but also the participating law enforcement agencies are reluctant to accept the recommendations of the enforcement coordinator.

Recommendations: Additional funds should be provided to the Hennepin County ASAP for the purpose of expanding the enforcement coordinating staff in order to more closely monitor the activities of the enforcement component law enforcement agencies. These additional personnel should be civilian employees of the Hennepin County ASAP program and should preferably be former police officers possessing at least a baccalaureate degree in police administration or criminal justice. The primary responsibility of the additional staff would be to open,

on an impartial basis, the communication lines between the participating law enforcement agencies for the purpose of consolidating sobriety testing services, stream-lining reporting procedures, and establishing uniform evidentiary sobriety testing procedures throughout the jurisdictional area.

MINNESOTA (HENNEPIN COUNTY) PHYSICAL
COORDINATION TESTING CONFIGURATION

| | Minneapolis P.D. | New Hope P.D. | Golden Valley P.D. | Brooklyn P.D. | Hennepin County S.O. | Edina P.D. | St. Louis Park P.D. | Eden Prairie P.D. | Plymouth P.D. |
|----------------------------|---------------------|---------------|-----------------------|---------------|-------------------------|------------|------------------------|----------------------|---------------|
| Arresting Officer | | | | X | X | X | | | X |
| Breath Test Operator | X | X | X | | X | X | X | X | |
| Number of Times | 1 | 1 | 1 | 1 | 2 | 2 | 1 | 1 | 1 |
| At Scene | | | | X | X | X | | | X |
| At Breath Test Location | | X | X | | X | X | X | X | |
| At Lockup | X | | | | | | | | |

Figure 11-1

POLICE DEPARTMENT

Case No. _____

I, _____, living at _____
in the City of _____, State of Minnesota, do hereby
state that I was fully advised of the following:

1. That any test, chemical or otherwise, that I take for the purpose of determining whether or not I am under the influence of an alcoholic beverage must be voluntary and with my consent, and that the results of such test, or tests may be used for or against me in the event of a trial.
2. That I have the right to have additional tests made by a physician, medical technician, or registered nurse of my own choosing.
3. That I may refuse to take a blood test, or breath test to determine the alcoholic content of my blood, but that such refusal may result in my right to drive being revoked or denied.

Do you understand what I have read to you? _____
Do you consent to take a chemical test? _____

I do hereby voluntarily and of my own free will consent to take a chemical test to determine whether or not I am under the influence of an alcoholic beverage.

Signed _____

4. That I have the right to remain silent.
5. That anything I say may be used in court as evidence for or against me.
6. That I am entitled to talk to a lawyer now and have him present now or at any time during questioning.
7. That if I cannot afford a lawyer, one will be appointed for me without cost by the courts.

Do you understand these rights? _____

I have been advised of my rights and fully understand the same.

Date 9-12-74 Time 22⁴³

Charges DUI

State of Minnesota
Bureau of Criminal Apprehension Laboratory

BREATHALYZER OPERATIONAL CHECK LIST

Subject: _____ DOB: _____ Instrument: _____

Operator: _____ Serial No.: _____ Date: _____

OPERATING STEPS

- | | | |
|-------------|--|---|
| PREPARATION | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 1. Throw SWITCH to ON. Wait until THERMOMETER shows $50 \pm 3^{\circ}\text{C}$. Record temperature. _____ $^{\circ}\text{C}$ 2. Gauge TEST AMPOULE and insert in left hand holder. 3. Gauge TEST AMPOULE, record AMPOULE CONTROL NUMBER, open, regauge solution level. insert in right hand holder. Insert bubbler and connect to outlet. (Control No.) _____ |
|-------------|--|---|

(INSERT TEST RECORD)

- | | | |
|-------|--|--|
| PURGE | <input type="checkbox"/> <input type="checkbox"/> | 4. Turn to TAKE, flush out, turn to ANALYZE. 5. When RED empty signal appears, wait 1½ min., turn on LIGHT and BALANCE. |
|-------|--|--|

- | | | |
|----------------|--|---|
| ROOM AIR BLANK | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 6. Disengage BLOOD ALCOHOL POINTER and set on ZERO line. Stamp Record. 7. Turn to TAKE, collect ROOM AIR sample, turn to ANALYZE. Record time. _____ 8. When RED empty signal appears, wait 1½ min. Turn on LIGHT and BALANCE. Stamp Test Record. 9. Record BLOOD ALCOHOL READING (if reading is greater than 0.01% discard test ampoule and repeat procedure). 0. _____ % w/v |
|----------------|--|---|

(INSERT TEST RECORD)

- | | | |
|----------|--|---|
| ANALYSIS | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 10. Disengage POINTER and set on LEFT (ZERO) INDEX. Stamp Test Record. 11. Turn to TAKE, collect BREATH sample, turn to ANALYZE. Record time. _____ 12. When RED empty signal appears, wait 1½ min. Turn on LIGHT and BALANCE. Stamp Test Record. Record BLOOD ALCOHOL READING. 0. _____ % w/v |
|----------|--|---|

(INSERT TEST RECORD)


- | | | |
|----------------|--|--|
| SIMULATOR TEST | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | 13. Turn to TAKE, flush out, turn to ANALYZE. 14. When RED empty signal appears, wait 1½ min. Turn on LIGHT and BALANCE. 15. Disengage POINTER, set on ZERO line. Stamp Test Record. 16. Turn to TAKE and collect SIMULATOR sample, turn to ANALYZE. Record time. _____ Record simulator solution number. No. _____ 17. When RED empty signal appears, wait 1½ min. Turn on LIGHT and BALANCE. Stamp Test Record. Record BLOOD ALCOHOL READING. 0. _____ % w/v |
|----------------|--|--|

- | | | |
|---------------|--|---|
| DISCONNECTION | <input type="checkbox"/> <input type="checkbox"/> | 18. Turn to TAKE, flush out, turn to ANALYZE. Record Temperature. _____ $^{\circ}\text{C}$ 19. When RED empty signal appears, Dispose of TEST AMPOULE, BUBBLER and MOUTHPIECE. Remove REFERENCE AMPOULE. Turn CONTROL KNOB to OFF and cover instrument. |
|---------------|--|---|

REMARKS:

Officer's Signature

Witness

TEST RECORD 

PER CENT BLOOD ALCOHOL

.00 .05 .10 .15 .20 .25 .30 .35 .40

Breathalyzer®

SUBJECT _____

DATE _____ TIME _____

OPERATOR _____

Figure 11-6

VILLAGE OF GOLDEN VALLEY POLICE DEPARTMENT

Offense Report For All Crimes, Attempts & Incidents

CASE NO.

174-9366

| | | | | | | | |
|--|--|------------------------|--|--|--|-------|--|
| OFFENSE/INCIDENT DWI | | | | VICTIM (IF FIRM, NAME OF FIRM & NAME OF PROP.) | | | |
| TIME COMMITTED 0440 hrs. | | DATE 10/6/74 | | BUSINESS ADDRESS | | PHONE | |
| TIME REPORTED 0550 hrs. | | DATE 10/6/74 | | HOME ADDRESS | | PHONE | |
| LOCATION OF OCCURRENCE | | | | PERSON REPORTING INCIDENT | | | |
| REPORTING OFFICER Officer Harder | | | | BUSINESS ADDRESS | | PHONE | |
| INVESTIGATING OFFICER | | | | HOME ADDRESS | | PHONE | |

| | | | | | | | |
|--------------------------|------|-----|-----|-----|-----|------------|-------------|
| IF VICTIM IS A PERSON | RACE | SEX | AGE | HT. | WT. | OCCUPATION | WEAPON USED |
| | | | | | | | |

| | | | | | | | | |
|-----------|----|------|-----|-----|-----|-----|------------------------------|--------------|
| SUSPECTS: | 1. | RACE | SEX | AGE | HT. | WT. | CLOTHING & OTHER DESCRIPTION | VEHICLE USED |
| | 2. | | | | | | | MAKE/YR. |
| | 3. | | | | | | | LIC. NO. |
| | | | | | | | | COLOR |

HOW COMPLAINT RECEIVED (CHECK ONE):
 PHONE ☐ RADIO ☐ IN PERSON ☐ VISUAL ☐ MAIL ☐ ALARM ☐ OTHER ☐

| QUANTITY | LOSS: Complete & Detailed Description of Property | VALUE |
|----------|---|-------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

DETAILS OF OFFENSE: (State fully all circumstances, action taken, witnesses etc.)

While on routine patrol in unit 843 I observed a vehicle coming out of the parking lot at the
 onto the service drive at a very slow rate of speed. Estimated speed is
 approx. 3 to 4 miles an hour. The vehicle turned east on the service drive. At this time
 I was turning into the and swung around through the parking lot
 and then started east on the service drive myself. As I drove east I observed the same
 vehicle that had come out of the parking lot of the Carriage House now on the lawn in front
 of the business places just before getting to Field Drive. As I started to approach the

CONDITION: Unsubstantiated ☐ Cleared by arrest ☐ Esc. Ctd. ☐ Ref. other agency ☐ Inactive ☐ Other ☐

Figure 11-7

**GOLDEN VALLEY POLICE DEPARTMENT
FOLLOW UP/CONTINUATION REPORT**

Page 2

74-9366

CASE NO.

OFFENSE _____

COMPLAINANT _____

ADDRESS _____

ADDITIONAL DETAILS OF OFFENSE, PROGRESS OF INVESTIGATIONS, ETC.

vehicle, which was now standing still, all four wheels off the roadway, I turned on the red flashers and started to get out of the car when the vehicle I had observed started to pull away. He then crossed the service drive, and at that location the service drive curves to the right and then to the left just before going onto Hwy 12. The party drove across the service drive, then entering the ditch, crossing over the grass area, meeting a car at the intersection, stopped on the grass and when the car got out of his way he proceeded onto the service drive again and again headed east on the service drive. When he stopped on the grass I still had the red lights activated, I stepped out to take him then, so this was the second time he started driving away from me. The third time party pulled off the service drive and stopped, I stepped out of the car and at this time using the outside speaker asked the party to step out of the car, which he did. He started back towards the squad car with both hands inside his coat pockets. I told him to take his hands out of his pockets and place them up against the car, which he did. I told him to spread his legs and step back, which he would not do. I then approached him. At no time could I get him to get into a position where I could easily approach the party. I started approaching and frisking him down; the party started turning around on me. Again I told him to keep his hands above the roof. This time he started to swing around as though he was going to take a swing at me. Unsure of it, I shoved him up against the car again, taking his left arm behind him, and started to put the cuffs on him when the party started to swing around on me. With my right foot I pulled his right leg out from under him and at that time he fell down to the pavement. I then placed the cuff on his right hand and at the same time as he went down to the pavement and I was trying to get the cuff on him a car pulled up and a party jumped out and came back and gave me assistance. It was an off duty officer from Minneapolis, Badge #906. He had seen the

Figure 11-7 (cont'd.)

SIGNED _____

Officer _____

Date _____

REASON FOR DISCONTINUATION

Cleared by arrest ☐Exc. Clrd. ☐Ref. other agency ☐Inactive ☐Other ☐

259

GOLDEN VALLEY POLICE DEPARTMENT
FOLLOW UP/CONTINUATION REPORT

OFFENSE _____

COMPLAINANT _____

ADDRESS _____

CASE NO.

74-9366

ADDITIONAL DETAILS OF OFFENSE, PROGRESS OF INVESTIGATIONS, ETC.

scuffle from Hwy 12 as he was on his way home and circled around and came back to give me assistance. He then helped me place him in a squad car. I explained to him that he was under arrest for driving while under the influence of an alcoholic beverage. He used obscene language. I called for a tow, Tow sheet #7073. Car was towed to Golden Auto. Officer Zoupas sat on the tow for me while I transported the party back to the PSB and read him the implied consent sheet at which time he agreed to take both tests, blood & breath. Officer Zoupas administered the breathalyzer test which resulted as .19 BAC. Tags #21-043960 for over .10 BAC and 21-044063 for DWI. When the party was brought back to the station for observation, his eyes were very bloodshot, clothes were quite messed up. He also had a bruise on the right side of his face where he'd fallen to the pavement. This bruise had bled a little bit. After giving him the test he was given the opportunity to make a phone call. He stated he didn't want to call his wife at that time. Paper work was done and the party was placed in a cell until 0830 hrs. in the morning at which time he will be RPRed. While giving the tests to him (fingertips to nose, and walking a straight line) he was unable to walk a straight line; he also complained that his knee was hurting him from the fall to the pavement. No other information at this time.

SIGNED _____

Officer

DATE 10/6/74

DISPOSITION: Unfounded ☐ Cleared by arrest ☐ Exc. Cld. ☐ Ref. other agency ☐ Inactive ☐ Other ☐

Figure 11-7 (cont'd.)

| | |
|---|------------------------------------|
| (Check) | (Check) |
| <input checked="" type="checkbox"/> Driver | <input type="checkbox"/> Accident |
| <input type="checkbox"/> Pedestrian | <input type="checkbox"/> Violation |
| <input type="checkbox"/> Passenger | <input type="checkbox"/> Other |
| Date and time of Accident or Violation: <u>10-6-74 425 PM</u> | |

ALCOHOLIC INFLUENCE REPORT FORM

| |
|---|
| Police Dept. <u>COLORED VILLAGE</u> |
| Arrest No. _____ |
| Accident No. _____ |
| Arresting Officer: _____ |
| Date and time in custody: <u>10-6-74 435 PM</u> |

Name _____ Address _____

Age 42 Sex M Race _____ Approx. Wt. 160 Operator Lic. No. _____ State MINN

OBSERVATIONS:

| | | |
|--|---|------------------|
| CLOTHES | Describe: (Type & Color) | Hat or Cap _____ |
| | Jacket or Coat <u>RED</u> | |
| | Shirt or Dress <u>MAROON</u> | |
| | Pants or Skirt <u>BLUE KNIT</u> | |
| | Condition: <input type="checkbox"/> Disorderly <input checked="" type="checkbox"/> Disarranged <input type="checkbox"/> Soiled <input type="checkbox"/> Mussed <input type="checkbox"/> Orderly | |
| BREATH | Odor of Alcoholic Beverage: <input type="checkbox"/> strong <input checked="" type="checkbox"/> moderate <input type="checkbox"/> faint <input type="checkbox"/> none | |
| ATTITUDE | <input type="checkbox"/> Excited <input type="checkbox"/> Hilarious <input type="checkbox"/> Talkative <input type="checkbox"/> Carefree <input type="checkbox"/> Sleepy <input type="checkbox"/> Profanity <input checked="" type="checkbox"/> Combative <input type="checkbox"/> Indifferent <input checked="" type="checkbox"/> Insulting <input type="checkbox"/> Cocky <input type="checkbox"/> Cooperative <input type="checkbox"/> Polite | |
| UNUSUAL ACTIONS | <input type="checkbox"/> Hiccupping <input type="checkbox"/> Belching <input type="checkbox"/> Vomiting <input checked="" type="checkbox"/> Fighting <input type="checkbox"/> Crying <input type="checkbox"/> Laughing | |
| SPEECH | <input type="checkbox"/> Not Understandable <input type="checkbox"/> Mumbled <input checked="" type="checkbox"/> Slurred <input type="checkbox"/> Mush Mouthed <input type="checkbox"/> Confused <input type="checkbox"/> Thick Tongued <input type="checkbox"/> Stuttered <input type="checkbox"/> Accent <input type="checkbox"/> Fair <input type="checkbox"/> Good | |
| Indicate other unusual actions or statements, including when first observed: _____ | | |
| Signs or complaint of illness or injury: <u>LIMPOD - LEFT LEG WRENCHER</u> | | |

PERFORMANCE TESTS:

(Note—See departmental instructions for conducting these tests)

| Check Squares if Not Made | Check appropriate square before word describing condition observed |
|--|---|
| <input type="checkbox"/> BALANCE | <input type="checkbox"/> Falling <input type="checkbox"/> Needed Support <input checked="" type="checkbox"/> Wobbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> WALKING | <input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input checked="" type="checkbox"/> Slumbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> TURNING | <input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Hesitant <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> FINGER-TO-NOSE | Right: <input checked="" type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure Left: <input checked="" type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure |
| <input type="checkbox"/> COINS | <input type="checkbox"/> Unable <input type="checkbox"/> Fumbling <input type="checkbox"/> Slow <input type="checkbox"/> Sure <input type="checkbox"/> (Other) _____ (Balance during coin test) _____ |
| Ability to understand instructions: <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input checked="" type="checkbox"/> Good Tests performed: Date <u>10-6-74</u> Time _____ am/pm | |

OBSERVER'S OPINION:

| | |
|--|--|
| Effects of alcohol: <input type="checkbox"/> extreme <input checked="" type="checkbox"/> obvious <input type="checkbox"/> slight <input type="checkbox"/> none | Ability to drive: <input checked="" type="checkbox"/> unfit <input type="checkbox"/> fit |
| Indicate briefly what first led you to suspect alcoholic influence: _____ | |
| Observed by: _____ Assignment: <u>PATRIL</u> | |
| Witnessed by: _____ Date <u>10-6-74</u> Time <u>532</u> ^{am} / _{pm} | |

CHEMICAL TEST DATA:

| | |
|---|---|
| Specimens: <input type="checkbox"/> Blood <input checked="" type="checkbox"/> Breath <input type="checkbox"/> Saliva <input type="checkbox"/> Urine <input type="checkbox"/> None | Analysis result: <u>.19</u> |
| <input type="checkbox"/> Refused <input type="checkbox"/> Unable | If Breath, what instrument? <u>1 BREATHALYZER</u> |
| If refused, why? _____ | |

Figure 11-8

Were you operating a vehicle? YES Where were you going? HOME
 What street or highway were you on? HWY 12 Direction of travel? EAST
 Where did you start from? SOUTH HAVEN What time did you start? MIDNIGHT
 What time is it now? 520 What city (county) are you in now? GOLDEN VALLEY
 What is the date? 10-5-74 What day of the week is it? SATURDAY
 INTERVIEWER TO FILL IN ACTUAL: 535 am SUNDAY 10-6-74
 Time Day Date Interviewer's Name
 When did you last eat? 2100 What did you eat? FISH + CHIPS
 What were you doing during the last three hours? DRIVING
 Have you been drinking? SURELY What? BEER How much? 3 1/2 REERS
 Where? SOUTH HAVEN Started? 2200 am/pm Stopped? MIDNIGHT
 Are you under the influence of an alcoholic beverage now? I GUESS I AM
 What is your occupation? PRINTER When did you last work? FRIDAY NIGHT
 Do you have any physical defects? NO If so, what?
 Are you ill? NO If so, what's wrong?
 Do you limp? YES Have you been injured lately? YES If so, what's wrong? WRENCHED LEFT KNEE
 Did you get a bump on the head? YES Were you involved in an accident today? NO
 Have you had any alcoholic beverage since the accident? If so, what?
 Where? How much? When?
 Have you seen a doctor or dentist lately? NO If so, who? When?
 What for? Are you taking tranquilizers, pills or medicines of any kind? NO
 If so, what kind? (Get sample) Last dose? am/pm Do you have epilepsy? NO
 Diabetes? NO Do you take insulin? If so, last dose? am/pm
 Have you had any injections of any other drugs recently? NO If so, what for?
 What kind of drug? Last dose? am/pm When did you last sleep? 0800 SAT
 How much sleep did you have? 8 HRS Are you wearing false teeth? NO Do you have a glass eye? NO
 HANDWRITING SPECIMEN
 Signature and/or anything he chooses.

REMARKS:

SUPPLEMENTARY DATA:

(Note—Get witnesses, including officers who observed, to prove driving.)

| WITNESSES | | | Was Suspect Driving or Operating | What Was His Condition | Where Observed |
|---------------------------------|---------|----------|----------------------------------|------------------------|----------------|
| Name | Address | Tel. No. | | | |
| | | | | | |
| | | | | | |
| Passengers in Suspect's Vehicle | Name | Address | | Condition | |
| | | | | | |

National Safety Council, 425 North Michigan Ave., Chicago, Ill. 60611
 Printed in U.S.A.



Stock No. 204-70

Figure 11-8 (cont'd.)

HENNEPIN COUNTY
ALCOHOL SAFETY ACTION PROJECT
338-4756

ALCOHOL RELATED TRAFFIC ARREST FORM

ARRESTED:

Name: _____ Birthdate _____/_____/_____
(first) (middle) (last) (mo) (day) (yr)

Address: _____ Male _____ Female _____
(street) (city) (ZIP CODE)

ARRESTING OFFICER:

ARREST:

Date _____/_____/_____/ Time _____ Dept: _____
(mo) (day) (yr) (24 hr. clock)

Location:

Street: _____ Name or # _____

City: _____ ZIP CODE _____ Duty: _____ Regular _____ ASAP

Check if charged with:

- ☐ DWI
- ☐ DAS or Revocation
- ☐ Careless
- ☐ Open Bottle
- ☐ Ran Stop Sign or Light
- ☐ Speeding

List other traffic related:

If more, check here _____.

Was driver in accident?

- ☐ No
- ☐ Yes (see below)

FOR ACCIDENT ONLY:

- ☐ Only one driver involved
- ☐ Two or more drivers

Check each that applies:

- ☐ Fatal, non-pedestrian
- ☐ Injury, non-pedestrian
- ☐ Property damage
- ☐ Injury, pedestrian
- ☐ Fatal, pedestrian

_____ Number of fatalities

_____ Number of injured

SCREENING TEST:

- ☐ Breathalyzer (3)
- ☐ Alco-Limiter (4)
- ☐ Borg-Warner (5)
- ☐ (6)
- ☐ (7)
- ☐ (8)
- ☐ Driver refused,
under Implied Consent (9)
- ☐ No screening test offered (0)

Screening test results:

- ☐ Green ☐ Pass BAC or
- ☐ Yellow ☐ Fail digits
- ☐ Red _____

EVIDENTIARY TEST:

- ☐ Blood (1) BAC
- ☐ Urine (2)
- ☐ Breathalyzer (3) _____
- ☐ (4)
- ☐ (5)
- ☐ (6)
- ☐ (7)
- ☐ (8)
- ☐ Driver refused,
under Implied Consent (9)
- ☐ No evidentiary test made (0)
- Why? _____

Figure 11-9

IMPLIED CONSENT ADVISORY

(TO BE READ TO SUBJECT AT TIME OF REFUSAL)

_____, at this time you are under arrest, and are
(Name)
charged with the offense of driving or operating a motor vehicle while under the
influence of an alcoholic beverage.

I am requesting you at this time to give a sample of your blood to determine the
alcoholic content. If you do not wish to give a blood sample, you may instead give a
sample of your (breath) (~~urine~~) for that purpose.

The sample of blood would be taken at NORTH MEDICAL Hospital by qualified
(Hospital)
medical personnel. A sample of your (breath) (~~urine~~) would be taken in the following
manner.....(explain).

You have the right to have additional tests of your blood, breath or ~~urine~~ made by
someone of your own choosing. These test results can be used for your own purpose.
They must, however, be made at your expense and while in custody. If you want these
additional tests, you will be allowed to contact your attorney, doctor or any other
person you wish to arrange for these to be made.

If you refuse to give a sample of your blood, or (breath) (~~urine~~) instead, in the
manner in which I have indicated, your driver's license may be revoked by the State
solely because of your refusal. This revocation could occur regardless of whether you
are found guilty or innocent of the offense for which you have been arrested today.

This information I have just given you is called the "Implied Consent" law. Do you
understand this? YES SIR
(Note response)

Do you consent to give a sample of your blood as I have asked? YES
(Response)

Do you choose instead to give a sample of your (breath) (~~urine~~) instead of
blood? YES
(Response)

Is there any reason why you do not wish to give a sample of your blood or (breath)
(urine)? NO
(Note Response)

Time of request 0500

T. A. Anderson
Signature of Officer making request

(Complete reverse side if refusal.)

**IMPLIED CONSENT LAW
PEACE OFFICER'S CERTIFICATE***

I, _____, a member of the _____
(Printed Name) (Law Enforcement Agency)
_____ certify to the Commissioner of Public Safety, State of Minnesota, that:

1. I am a "peace officer" as provided in Minnesota Statutes Sec. 169.123, subdivision 1.
2. On _____, 19____ I had reasonable and probable grounds to believe that the person named below had been driving or operating a motor vehicle upon the public highways at _____ in _____ County, while under the influence of an alcoholic beverage, contrary to law.

(Name first middle last) (Date of Birth)

(Driver License No.) (State of Issue) (Address)

3. The following circumstance(s) existed (check applicable blocks):
 - () Said person was lawfully placed under arrest for the commission of the above described offense.
 - () Said person was involved in a motor vehicle collision resulting in property damage, personal injury, or death.
 - () Said person refused to take the preliminary screening test provided for by Minnesota Statutes 1969 169.121, subd. 1, as amended.
 - () The preliminary screening test provided for by Minnesota Statutes 1969 169.121, subd. 1, as amended, was administered to said person and recorded a blood alcohol level of .10 percent or more by weight of alcohol.
4. Said person refused on this occasion to permit a sample of blood, or breath in lieu thereof, to be taken, to determine the alcoholic content of his/her blood.
5. Said person was informed of the consequences of the refusal to permit a sample of blood, or breath or urine in lieu thereof, to be taken, and was so advised by reading the reverse of this form.

(Signature of Peace Officer)

(Peace Officer)

The undersigned attest that the statement of above is true to the best of their knowledge and belief.

(Witness Signature, Printed Name & Agency)

(Witness Signature, Printed Name & Agency)

* *SEND with copy of arrest report or memorandum of circumstances to:*

*Department of Public Safety
Driver License Division
State Highway Building
St. Paul, Minnesota 55101*

IMPLIED CONSENT ADVISORY

(To be used to request chemical test of individual and record his responses. Cross out references to any test not available.)

_____, I have reasonable grounds to believe that you have driven or operated a motor vehicle while under the influence of an alcoholic beverage.

In addition (cite applicable condition):

- ☐ You have been placed under arrest for this offense.
- ☐ You have been involved in a motor vehicle collision resulting in
(property damage) (personal injury) (death) (Cross out inapplicable items)
- ☐ You have refused to take the preliminary screening test provided for by law and requested of you.
- ☐ A preliminary screening test provided for by law has been administered to you, and has recorded your blood alcohol level to be .10 per cent or more by weight of alcohol.

At this time, I am requesting you to give a sample of your blood to determine the alcoholic content. This sample would be taken at _____, by a doctor, registered nurse, or medical technician. If you do not wish to give a blood sample, I request that you give a sample of your (breath) _____ for that purpose. Such a sample would be taken in the following manner. . . . (explain).

After you have made your election concerning tests requested by me, you have the right to have additional tests of your blood, breath, or urine made by someone of your own choosing. The results of such tests can be used for your own purpose. However, they would be at your own expense. If you wish such additional tests, you will be allowed to contact your attorney, doctor, or anyone else to arrange for them.

However, you may not avoid or delay responding to my request that you submit to a test of your blood or (breath) _____ in reliance on your rights to remain silent or to consult with an attorney. These rights do not apply merely to the taking of such tests.

If you refuse to give a sample of your blood, or (breath) _____ instead, as I have requested, your driver's license may be revoked by the State for a period of six months solely because of this refusal. Such revocation could occur regardless of whether or not you are convicted of the offense of driving or operating a motor vehicle under the influence of an alcoholic beverage.

The information I have given you is based on the Minnesota "Implied Consent" law. Do you understand this? _____
(Response)

Do you consent to give a sample of your blood as I have asked? _____
(Response)

Do you choose instead to give a sample of your (breath) _____ instead of blood? _____
(Response)

Is there any reason why you are unable or unwilling to give a sample of your blood or (breath) _____)? _____
(Response)

Time and Date of Request: _____

(Complete reverse side if refusal)

BREATHALYZER VAN LOG

HCASAP/10/1/72

DATE _____
 HOURS WORKED FROM: _____
 (24 HOUR CLOCK) TO: _____

MILEAGE END _____
 MILEAGE START _____
 MILES DRIVEN _____

DEPARTMENT _____
 OFFICER(S) _____
 COMMUNITIES _____
 PATROLED _____

| STOP | TIME CLEAR | INDEPENDENT ACTION OR CALLED | COMMUNITY OF ARRESTING OFFICER & LOCATION | REASON FOR STOP | SCREEN AND/OR EVID TEST | TIME OF TEST. | RESULT OF TEST | COMMENTS |
|------|---------------|------------------------------------|---|--------------------|-------------------------------|------------------|-------------------|----------|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
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| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Figure 11-15

MINNEAPOLIS POLICE DEPARTMENT
Traffic Division - Chemical Test Section

Case No. _____

I, _____, living at _____
in the City of _____, State of _____, so hereby
state that I was fully advised of the following:

1. That any test, chemical or otherwise, that I take for the purpose of determining whether or not I am under the influence of an alcoholic beverage must be voluntary and with my consent, and that the results of such test, or tests may be used for or against me in the event of a trial. _____
2. That I have the right to have additional tests made by a physician, medical technician, or registered nurse of my own choosing. _____
3. That I may refuse to take a blood test, or breath test to determine the alcoholic content of my blood, but that such refusal may result in my right to drive being revoked or denied. _____

Do you consent to take a chemical test? _____

I do hereby voluntarily and of my own free will consent to take a chemical test to determine whether or not I am under the influence of an alcoholic beverage.

Signed _____

DATE _____ TIME ARRIVAL _____

ARRESTING OFF. _____

WHERE ARR. _____ D.O.B. _____

DESC. HT. _____ WHT. _____ AGE _____ GLASSES _____

CLOTHING: Pants _____
Shirt _____
Coat _____

CONDITION: Torn Dirty Work Dress Casual
Orderly Disorderly Other _____

MISSOURI (KANSAS CITY)

Section 1 - Legislative Provisions

NOTICE OF PROMULGATION

In accordance with the authority vested by law in the State Board of Health of the Department of Public Health and Welfare, these rules and regulations are promulgated for the determination of the alcoholic content of blood from a sample of expired (alveolar) air. This action is taken in accordance with the provisions of Section 564.441 and Section 564.442, Missouri Revised Statutes.



IN WITNESS WHEREOF I have
hereunto set my hand and
caused the Seal of the
Missouri Division of Health
to be affixed.

Done at the CITY OF JEFFERSON
this 29th day of November in
the year of our Lord, Nineteen
Hundred and 72.

A handwritten signature in dark ink, appearing to read "Lester L. Cox". The signature is fluid and cursive, with the first name "Lester" being more prominent than the last name "Cox".

Lester L. Cox
Chairman
Missouri State Board of Health

NOTICE

In accordance with the authority vested by law in the State Board of Health of the Department of Public Health and Welfare, these rules and regulations are promulgated for the determination of the alcoholic content of the blood by a chemical analysis of the breath of a person arrested for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while intoxicated.

This action is taken in accordance with the provisions of Section 564.441 and Section 564.442 RSMo. These regulations were filed with the Secretary of the State of Missouri on December 8, 1972.

POWERS AND DUTIES OF THE DIVISION

The Division of Health is authorized to:

- (1) Approve methods to determine the amount of alcohol in a person's blood as determined by a breath test.
- (2) Determine the qualifications and competence of individuals to perform breath alcohol analyses.
- (3) Issue permits to qualified individuals to perform breath alcohol analyses, which permits shall be subject to termination or revocation.

SECTION 1

DEFINITIONS

Division - Is the Division of Health of the Department of Public Health and Welfare, State of Missouri.

Alcohol - Is ethanol, C_2H_5OH .

Blood Alcohol - The alcoholic content of blood as measured by the percent by weight of alcohol based upon grams of alcohol per one hundred milliliters of blood.

Breath Analyzer - A device approved by the Division which: (1) directly measures the alcohol in expired (alveolar) air and indicates the alcoholic content of the blood in grams per 100 milliliters of blood, or; (2) captures the alcohol in expired (alveolar) air and from which the alcoholic content of the blood can be calculated in grams per 100 milliliters of blood.

Permit - A written authorization from the Division to indicate that an individual is qualified and competent to perform analyses of breath for alcoholic content and/or to serve as an instructor in the operation of breath analyzers and who has met the requirements established in these regulations.

SECTION 2

PERMITS

- A. The following three types of permits shall be issued by the Division:
 - Type I – Permit to determine the alcoholic content of the blood from a sample of expired (alveolar) air utilizing standard quantitative chemical analyses as approved by the Division.
 - Type II – Permit to instruct and supervise operators of specified breath analyzer devices for the determination of alcoholic content of blood from a sample of expired (alveolar) air.
 - Type III – Permit to operate specified breath analyzer devices for the determination of alcoholic content of blood from a sample of expired (alveolar) air.
- B. Permits will be issued on a biennial basis and shall be terminated at the expiration of the period for which issued by the failure of permittee to renew.
- C. Permits may be terminated or revoked by the Division upon notice sent by registered or certified mail.
- D. Application for Type I, II or III Permits.
 - 1. Applications for permits or renewals shall be made on forms provided by and available from the Director of Bureau of Laboratory Services, Missouri Division of Health, Broadway State Office Building, Jefferson City, Missouri.
 - 2. Completed applications for permits shall be sent to the Director, Bureau of Laboratory Services, Missouri Division of Health, Broadway State Office Building, Jefferson City, Missouri.
- E. No approval or certification shall become effective until a permit has been issued to the applicant by the Division.

SECTION 3

QUALIFICATIONS FOR PERMITS

- A. For a Type I permit the applicant shall:
 - 1. Be not less than 21 years of age.
 - 2. Have knowledge of the chemistry of alcohol and of other substances of proper concern in the determination of alcoholic content of expired (alveolar) air and demonstrate his ability to perform satisfactory qualitative and quantitative determinations for alcohol as outlined in the Operating Rules, Section 4. Evidence of knowledge may consist of proof that the applicant has been licensed to practice medicine in Missouri, or graduated from a recognized college or university with a major in chemistry; or proof of equivalent education in chemistry; or the applicant may take an examination given by the Division and thereby prove his knowledge of the subject.
 - 3. Possess or have access to suitable apparatus and reagents to perform tests as approved by the Division.

- B. For a Type II permit the applicant shall:
 - 1. Be not less than 21 years of age.
 - 2. Possess the qualifications required for a Type III permit and in addition demonstrate to the satisfaction of the Division complete knowledge of the mechanical and theoretical operation of each and every breath analyzer for which a permit is issued.
- C. For a Type III permit the applicant shall:
 - 1. Be not less than 21 years of age.
 - 2. Have successfully completed a recognized training course conducted by a person in possession of a valid Type II permit issued by the Division, or have successfully completed a recognized training course which is approved by the Division, or offer proof of equivalent qualifications to the satisfaction of the Division.

SECTION 4

OPERATING RULES

- A. PERMITTEE, TYPE I, for the determination of the alcoholic content of the blood from a sample of expired (alveolar) air utilizing standard quantitative chemical analyses.
 - 1. The permittee shall accept for test only specimens properly identified and submitted in a manner so that reliable results are possible.
 - 2. He shall conduct all analyses in a fair, impartial and competent manner.
 - 3. He shall keep adequate records of receipts and analyses of all specimens.
 - 4. Permittee shall examine and report results on check specimens for alcohol, provided by the Division, at intervals deemed to be appropriate by the Division.
 - (a) The error in the analysis of check specimens by permittees or prospective permittees, shall be not greater than plus or minus 10% of the known value.
 - (b) Failure by a permittee to maintain the required degree of accuracy in (a) above will be considered cause for revocation of his permit.
 - (c) Prospective permittees shall be allowed two attempts to produce results of the accuracy stated in (a) above. In the event the prospective permittee does not produce the required degree of accuracy in the two attempts allowed he may then present to the Division a plan of remedial action. If, in the opinion of the Division, such plan justifies a further attempt at qualification, the applicant may be retested.
- B. PERMITTEE, TYPE II, for the instruction and supervision of operators of breath analyzers for the determination of alcoholic content of the blood from a sample of expired (alveolar) air.
 - 1. He shall be authorized by the Division to instruct and supervise operators of breath analyzers.

2. He shall conduct training courses which are of such duration of time as may be required to insure proficiency on the part of the trainee.
 3. He shall make recommendations to the Division for or against issuance of a permit for each individual he shall have trained.
 4. He shall conduct periodic evaluations of the proficiency of operators under his supervision and shall report his findings to the Division. In addition, he shall recommend the continuance or discontinuance of permits as his findings and judgment shall dictate. Upon receipt of such findings and recommendations the Division, may at its discretion, require the permittee to show cause within ten days of receipt of notice, why said permit should not be revoked.
 5. He shall conduct periodic calibrations of all breath analyzer devices under his supervision and report the results of his findings to the Division.
 6. He shall maintain complete records of all calibration data of breath analyzer devices under his supervision.
- C. PERMITTEE, TYPE III, for the operation of breath analyzer for the determination of alcoholic content of blood from a sample of expired (alveolar) air.
1. He shall adhere strictly to the operating procedures set forth by the manufacturer of the device for which he holds a permit.
 2. He shall effect no modifications of the device or its operating procedure without the written consent of the Division.
 3. He shall certify with each report of test:
 - (a) That there has been no deviation from procedures outlined by the manufacturer other than those approved by the Division.
 - (b) The manufacturer's identity and lot numbers, if any, of reagents used.
 - (c) That to the best of his knowledge the breath analyzer device was functioning properly.
 4. He shall maintain a complete record of all tests performed by him.
 5. He shall allow only a person, authorized by the Division, to repair, modify or otherwise alter the breath analyzer under his control.
 6. He shall suspend use of the breath analyzer under his control at any time that he has reason to believe it is functioning improperly.
 7. He shall employ only single test chemical reagents received in a sealed condition and from a source approved by the Division. Approved sources are: Smith & Wesson Electronics Company (formerly Stephenson Corporation), Eatontown, New Jersey, and Intoximeters, Incorporated, St. Louis, Missouri.
 8. He shall insure that the individual to be tested has ingested no alcoholic substance nor vomited within 15 minutes preceding collection of the sample of air to be tested.
 9. He shall identify, label and protect any preserved sample, if applicable, for subsequent chemical analysis in such a manner that legal continuity will be maintained.

10. The permittee shall submit to periodic examinations as requested by the Division.

D. SERVICE RECORDS, BREATH ANALYZER DEVICES

A permanent record for each breath analyzer shall be maintained to indicate all repairs, modifications, alterations and calibrations. This record must indicate dates and name of person or agent performing the repair, modification, alteration or calibration.

SECTION 5

REPORTING OF RESULTS FOR MEDICO LEGAL PURPOSES

Results of the determination of the alcoholic content of blood from a sample of expired (alveolar) air shall be recorded as hundredths of one (1) percent; for example, a determination of 0.149 percent shall be reported as 0.14 percent.

SECTION 6

APPROVAL OF TESTS

An applicant for a Type I permit shall, at the time of making application, state the analytical method or methods he plans to use and furnish details of the technique or make reference to scientific literature where the details of technique are readily available. Results obtained by the applicant in examination of check specimens for alcohol provided by the Division shall be considered in the determination of competency to perform such tests or techniques.

SECTION 7

ADVERTISING

No advertising is permitted which states or implies that a person holding a permit is approved by the Division to perform any tests other than those specified in the permit.

SECTION 8

LIST OF APPROVED BREATH ANALYZER DEVICES

The following devices are those approved for use in the determination of the alcoholic content of blood from a sample of expired (alveolar) air.

| <u>Name</u> | <u>Manufacturer</u> |
|--|--|
| Breathalyzer, up to and including Model 900A | Smith & Wesson Electronics Co. (formerly Stephenson Corporation) Eatontown, New Jersey |

D.P.C.

Intoximeters, Incorporated
St. Louis, Missouri

Photoelectric Intoximeter

" "

Gas Chromatograph Intoximeter

" "

ALCO-TECTOR

Decatur Electronics, Inc.
Decatur, Illinois

MISSOURI STATUTES REQUIRING BREATH ANALYZER TESTS

564.441 1. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to, subject to the provisions of this act, a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was driving a motor vehicle while intoxicated. The test shall be administered by or at the direction of a law enforcement officer whenever the person has been arrested for the offense.

2. Chemical analysis of the person's breath, to be considered valid under the provisions of this act, shall be performed according to methods approved by the state division of health by a person possessing a valid permit issued by the state division of health for this purpose. The state division of health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct analysis, and to issue permits which shall be subject to termination or revocation by the state division of health.

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a test in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test taken at the direction of a law enforcement officer.

4. Upon the request of the person who submits to a chemical test at the request of a law enforcement officer, full information concerning the test shall be made available to him.

Section 1. Section 564.442, RSMo. Supp. 1971, is repealed and one new section enacted in lieu thereof, to be known as section 564.442, to read as follows:

564.442 1. Upon the trial of any criminal action or violations of county or municipal ordinances arising out of acts alleged to have been committed by any person while driving a motor vehicle while intoxicated, the amount of alcohol in the person's blood at the time of the act alleged as shown by chemical analysis of the person's blood, breath, saliva or urine is admissible in evidence. Such evidence shall be construed as follows:

(1) If there was five-hundredths of one percent or less by weight of alcohol in his blood, it shall be presumed that the person was not intoxicated at the time the specimen was obtained;

(2) If there was in excess of five-hundredths of one percent but less than ten-hundredths of one percent by weight of alcohol in his blood, the fact shall not give rise to any presumption that the person was or was not intoxicated, but the fact may be considered with other competent evidence in determining whether the person was intoxicated;

(3) If there was ten-hundredths of one percent or more by weight of alcohol in the person's blood, this shall be prima facie evidence that the person was intoxicated at the time the specimen was taken.

2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

3. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was intoxicated.

564.444 1. If a person under arrest refuses upon the request of the arresting officer to submit to a chemical test, which request shall include the reasons of the officer for requesting the person to submit to a test and which also shall inform the person that his license may be revoked upon his refusal to take the test, then none shall be given. In this event, the arresting officer, if he so believes, shall make a sworn report to the director of revenue that he has reasonable grounds to believe that the arrested person was driving a motor vehicle upon the public highways of this state while in an intoxicated condition and that, on his request, refused to submit to the test. Upon receipt of the officer's report the director shall revoke the license of the person refusing to take the test for a period of not more than one year; or if the person arrested be a non-resident, his operating permit or privilege shall be revoked for not more than one year; or if the person is a resident without a license or permit to operate a motor vehicle in this state, an order shall be issued denying the person the issuance of a license or permit for a period of not more than one year.

2. If a person's license has been revoked because of his refusal to submit to a chemical test, he may request a hearing before a court of record in the county in which he resides or in the county in which the arrest occurred. Upon his request the clerk of the court shall notify the prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the arresting officer. At the hearing the judge shall determine only:

(1) Whether or not the person was arrested;

(2) Whether or not the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while in an intoxicated condition; and,

(3) Whether or not the person refused to submit to the test.

3. If the judge determines any issue not to be in the affirmative, he shall order the director to reinstate the license or permit to drive.

4. Requests for review as herein provided shall go to the head of the docket of the court wherein filed.*

*From Rules for Determination of Blood Alcohol by Breath Analysis, Missouri Division of Health.

FIRST REGULAR SESSION
SENATE BILL NO. 41
77TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WATERS.

Pre-filed December 17, 1972, and 1,000 copies ordered printed.

VINITA E. RAMSEY, Secretary.

223

AN ACT

Relating to coroners' duties and powers in certain deaths.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. If any driver or pedestrian within his jurisdiction dies within four hours of and as a result of an accident involving a motor vehicle, the coroner shall report the death and circumstances of the accident to the Missouri division of highway safety in writing. The report shall be made within five days of the conclusion of the tests required in section 2 of this act.

Section 2. The coroner shall make or cause to be made such tests as are necessary to determine the presence and percentage concentration of alcohol, and drugs if feasible, in the blood of the driver or pedestrian. The results of these tests shall be included in the coroner's report to the division.

Section 3. If a coroner is unable to determine who was a pedestrian or the driver of the motor vehicle, he may perform the tests required upon any deceased person involved if it appears to him in his judgment that such person was likely to have been the driver or a pedestrian. No test shall be required or performed upon any person under sixteen years of age. If a coroner is unable to determine whether a driver or pedestrian was sixteen years of age or older, he may in the exercise of his judgment perform or not perform the tests.

Section 4. The contents of the report and results of any test made pursuant to the requirements or authorizations of this act shall be used only for statistical purposes which do not reveal the identity of the deceased.

SECOND REGULAR SESSION

SENATE BILL NO. 472

77TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WATERS.

Pre-filed December 18, 1973, and 1,000 copies ordered printed.

VINITA E. RAMSEY, Secretary.

2032

AN ACT

To repeal section 302.302, RSMo 1969, relating to offenses for which points may be assessed against chauffeurs' or operators' licenses, and to enact in lieu thereof two new sections relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Section 302.302, RSMo 1969, is repealed and

2 two new sections enacted in lieu thereof, to be known as
3 sections 302.302 and 564.439, to read as follows:

302.302. 1. The director of revenue shall put into effect
2 a point system for the suspension and revocation of chauffeurs'
3 and operators' licenses. Points shall be assessed only after a
4 conviction or forfeiture of collateral. The initial point value
5 is as follows:

6 (1) Any moving violation of a state law or county or
7 municipal traffic ordinance not listed in this section, other than
8 a violation of vehicle equipment provisions 2 points
9 (except any violation of municipal stop sign ordinance where
10 no accident is involved 1 point)

11 (2) Speeding
12 In violation of a state law 3 points
13 In violation of a county or municipal ordinance 2 points

14 (3) Leaving the scene of an accident in violation of sec-
15 tion 564.450, RSMo 12 points
16 In violation of any county or municipal ordinance . 6 points

17 (4) Careless and imprudent driving in violation of sec-
18 tion 304.016, subsection 4, RSMo 4 points
19 In violation of a county or municipal ordinance ... 2 points

20 (5) Operating without a license after suspension or rev-
 21 ocation and prior to restoration of operating privileges which
 22 have been suspended or revoked12 points
 23 (6) Obtaining a license by misrepresentation .12 points
 24 (7) Driving while in an intoxicated condition or under
 25 the influence of narcotic drugs
 26 [In violation of state law]12 points
 27 [In violation of a county or municipal ordinance 6 points]
 28 (8) Driving with blood alcohol content ten-hundredths of
 29 one percent or more by weight
 30 In violation of state law 6 points
 31 In violation of a county or municipal ordinance 6 points
 32 [(8)] (9) Any felony involving the use of a motor ve-
 33 hicle12 points
 34 [(9)] (10) Knowingly permitting unlicensed operator
 35 to operate a motor vehicle 4 points
 36 2. An additional two points shall be assessed when per-
 37 sonal injury or property damage results from any violation
 38 listed in subsection 1 and if found to be warranted and cer-
 39 tified by the reporting court.
 40 3. When any of the acts listed in subdivision (2), (3),
 41 (4) or (7) of subsection 1 constitutes both a violation of a
 42 state law and a violation of a county or municipal ordinance,
 43 points may be assessed for either violation but not for both.
 564.439. 1. No person shall drive or be in actual phys-
 45 ical control of a motor vehicle when the person has ten-
 46 hundredths of one percent or more by weight of alcohol in his
 47 blood. As used in this section, percent by weight of alcohol in
 48 the blood shall be based upon grams of alcohol per one hun-
 49 dred milliliters of blood and may be shown by chemical anal-
 50 ysis of the person's blood, breath or other bodily substance.
 51 2. Any person who violates the provisions of this section
 52 is guilty of a misdemeanor and, upon conviction, shall be pun-
 53 ished as follows:
 54 (1) For the first offense, by a fine of not less than fifty
 55 dollars or by confinement in the county jail for a term of not
 56 more than three months, or by both such fine and confinement;
 57 (2) For the second offense, by confinement in the county
 58 jail for a term of not less than seven days and not more than
 59 six months;

60 (3) For the third and subsequent offenses, by confine-
61 ment in the county jail for a term of not less than forty-five
62 days and not more than one year.

63 3. Evidence of prior convictions shall be heard and de-
64 termined by the trial court, out of the hearing of the jury prior
65 to the submission of the case to the jury, and the court shall
66 enter its findings thereon.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is
not enacted and is intended to be omitted in the law.

SECOND REGULAR SESSION
SENATE BILL NO. 473
77TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WATERS.

Pre-filed December 18, 1973, and 1,000 copies ordered printed.

VINITA E. RAMSEY, Secretary.

2035

AN ACT

To repeal section 564.441, RSMo 1969, relating to chemical breath
test, and to enact in lieu thereof one new section relating to
the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Section 564.441, RSMo 1969, is repealed and
2 one new section enacted in lieu thereof, to be known as sec-
3 tion 564.441, to read as follows:

564.441. 1. Any person who operates a motor vehicle
2 upon the public highways of this state shall be deemed to have
3 given consent to, subject to the provisions of sections 564.441,
4 564.442 and 564.444, a chemical test of his breath for the
5 purpose of determining the alcoholic content of his blood if
6 arrested for any offense arising out of acts which the arresting
7 officer had reasonable grounds to believe were committed
8 while the person was driving a motor vehicle while intox-

9 icated. The test shall be administered by or at the direction
10 of a law enforcement officer whenever the person has been
11 arrested for the offense.

12 2. Chemical analysis of the person's breath, to be con-
13 sidered valid under the provisions of sections 564.441, 564.442
14 and 564.444, shall be performed according to methods ap-
15 proved by the state division of health by a person possessing
16 a valid permit issued by the state division of health for this
17 purpose. The state division of health is authorized to approve
18 satisfactory techniques or methods, to ascertain the qualifica-
19 tions and competence of individuals to conduct analysis, and
20 to issue permits which shall be subject to termination or revo-
21 cation by the state division of health. For the purpose of show-
22 ing the accuracy of instruments and the makeup of chemicals
23 used in such tests, affidavits of the person testing the instru-
24 ments or chemicals shall be admissable in evidence in all ju-
25 dicial or administrative proceedings in this state.

26 3. The person tested may have a physician, or a qualified
27 technician, chemist, registered nurse, or other qualified per-
28 son of his own choosing administer a test in addition to any
29 administered at the direction of a law enforcement officer. The
30 failure or inability to obtain an additional test by a person
31 shall not preclude the admission of evidence relating to the
32 test taken at the direction of a law enforcement officer.

33 4. Upon the request of the person who submits to a chem-
34 ical test at the request of a law enforcement officer, full in-
35 formation concerning the test shall be made available to him.

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

HOUSE BILL NO. 1497

76TH GENERAL ASSEMBLY

AN ACT

To repeal section 564.442, RSMo Supp. 1971, relating to certain chemical analyses of the blood of certain motor vehicle operators and to enact in lieu thereof one new section relating to the same subject.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. Section 564.442, RSMo Supp. 1971, is repealed

2 and one new section enacted in lieu thereof, to be known as
3 section 564.442, to read as follows:

564.442. 1. Upon the trial of any criminal action or vio-
2 lations of county or municipal ordinances arising out of acts
3 alleged to have been committed by any person while driving a
4 motor vehicle while intoxicated, the amount of alcohol in the
5 person's blood at the time of the act alleged as shown by chem-
5a ical analysis of the person's blood, breath, saliva or urine is ad-
5b missible in evidence. Such evidence shall be construed as
6 follows:

6a (1) If there was five-hundredths of one percent or less
7 by weight of alcohol in his blood, it shall be presumed that
8 the person was not intoxicated at the time the specimen was
9 obtained;

10 (2) If there was in excess of five-hundredths of one per-
11 cent but less than ten-hundredths of one percent by
12 weight of alcohol in his blood, the fact shall not
13 give rise to any presumption that the person was or was not
14 intoxicated, but the fact may be considered with other compe-
15 tent evidence in determining whether the person was intoxi-
16 cated;

17 (3) If there was ten-hundredths of one percent
18 or more by weight of alcohol in the person's blood,
19 this shall be prima facie evidence that the person was
20 intoxicated at the time the specimen was taken.

21 2. Percent by weight of alcohol in the blood shall be
22 based upon grams of alcohol per one hundred milliliters
23 of blood.

24 3. The foregoing provisions of this section shall not be
25 construed as limiting the introduction of any other competent
26 evidence bearing upon the question whether the person was
27 intoxicated.

**564.440. Driving motor vehicle while intoxicated—penalties—evidence
of prior convictions, how heard**

No person shall operate a motor vehicle while in an intoxicated condition. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor on conviction for the first two violations thereof, and a felony on conviction for the third and subsequent violations thereof, and, on conviction thereof, be punished as follows:

(1) For the first offense, by a fine of not less than one hundred dollars or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment;

(2) For the second offense, by confinement in the county jail for a term of not less than fifteen days and not exceeding one year;

(3) For the third and subsequent offenses, by confinement in the county jail for a term of not less than ninety days and not more than one year or by imprisonment by the department of corrections for a term of not less than two years and not exceeding five years.

Evidence of prior convictions shall be heard and determined by the trial court, out of the hearing of the jury prior to the submission of the case to the jury, and the court shall enter its findings thereon. As amended Laws 1963, p. 686, § 1; Laws 1967, p. 410, § 1.*

*From the Missouri State Code.

Sec. 34.116. Persons under influence of intoxicating liquor.

(a) It is unlawful for any person who is under the influence of intoxicating liquor to operate or be in actual physical control of any vehicle within this city.

(b) Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while operating or in actual physical control of a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor.
2. If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.
3. If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.
4. Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred milliliters of blood.
5. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor.
6. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the State Department of Public Health and Welfare and by an individual possessing a valid permit issued by the State Department of Public Health and Welfare for this purpose.

7. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of this section, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

8. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(c) Every person who is convicted under the provisions of this section shall be punished by imprisonment in the place designated by law for not less than thirty (30) days nor more than six (6) months, or by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00), or by both such fine and imprisonment.

(d) If a person convicted of operating a vehicle while under the influence of intoxicating liquor shall subsequently be convicted of operating a vehicle while under the influence of intoxicating liquor, he shall be punished by imprisonment in the place designated by law for not less than thirty (30) days nor more than six (6) months, and in addition thereto, in the discretion of the court, by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

(e) For the purpose of this section, the record kept by the clerk of the court in which the person was convicted, or certified copies of said records, or official records or copies thereof kept by any state, shall be admissible as prima facie evidence of such conviction. (R.O. S. 58.620(a),(b), added by Ord. No. 30154, 7-24-64; C.S. Ord. No. 41525, 10-20-72) *

*From the City of Kansas City, Missouri, Traffic Code.

Section 2 - Physical Coordination Tests

The Special Alcohol Safety Patrol (SASP) of the Kansas City ASAP enforcement countermeasure is generally consistent in administering physical coordination tests to suspected drinking drivers. The types of tests used are listed on the Alcoholic Influence Report Form (Fig. 12-1), but it should be noted that the coin pick-up was eliminated from that group. Again, as at several other ASAP sites where a similar decision was reached, this particular test was often found to be invalid and of poor reliability in approximating levels of impairment.

Frequently, physical coordination tests were administered twice - once at the scene of the arrest and again at the testing facility after the suspect had undergone the evidentiary breath test. They are, however, conducted at the arresting officer's discretion; there are no administrative or legal mandates requiring their use. Procedural aspects are vague; the Alcoholic Influence Report Form only lists the several varieties which may be used, without explaining how the tests should be administered.

The ASAP Studio (the processing facility which contains the breath testing apparatus and video tape gear) is spacious enough to permit carrying out physical dexterity tests, and a portion of the facility has been set aside for that specific purpose. Within that area, the floor is distinctly marked to indicate the lines which the DUI suspect is to follow while walking and turning. A video tape camera is trained on the area as well, and the suspect's actions and performance may be captured on videotape, if deemed necessary by the arresting officer. At the time of the site visit, videotape was rarely employed, however. Its use was largely restricted to cases where the suspect refused to submit a breath sample, or where he was believed to be under the influence of drugs other than alcohol.

The results of the physical coordination tests, which are recorded on the Alcoholic Influence Report Form, are admissible into evidence at the offender's trial.

Conclusions: Physical coordination testing, as employed by the Special Alcohol Safety Patrol of the Kansas City ASAP enforcement countermeasure, is apparently conducted more or less routinely in

the case of DUI offenses. Although at times the tests would not be administered at the scene of the arrest, it was highly probable that the suspect would be subjected to them after having undergone the evidentiary breath test. In Kansas City (as well as at most other ASAP sites which make use of physical coordination tests) the author was left with the impression that this method of sobriety testing is not one which is considered to be of great importance in DUI enforcement. Although physical coordination testing is dutifully carried out, it is often administered perfunctorily and sometimes negligently. Experienced ASAP enforcement officers usually quickly assess the suspected DUI offender's state of sobriety and normally arrive at a decision to effect the arrest before commencing physical coordination testing. In the entire sobriety testing configuration, only the results of the evidentiary testing process have a critical impact on the manner in which the arrest sequence is carried out, and then only in the sense that - should the offender's blood-alcohol concentration level fall below the legal presumptive limit - he is generally released from custody. Physical coordination tests are largely viewed as a supplement to other, more damaging evidence, and of limited value to the overall enforcement picture.

Recommendations: If the Special Alcohol Safety Patrol (SASP) of the Kansas City Police Department plans to continue the use of physical coordination tests in DUI enforcement, it may be worthwhile to review existing procedure for validity. In doing so, ASAP officials may wish to examine the possibilities of substituting other testing methods for some of the techniques currently suggested by the Alcoholic Influence Report Form (Fig. 12-1); i.e., alphabet recitation, etc. Audio recordings of the suspect's verbal responses may also be effective as evidence at a future trial. Although psychomotor tests do not carry as much weight as BAC analyses in court testimony, they may nevertheless serve as a significant asset to the prosecution if the tests are meaningful and have been properly administered. Of course, psychomotor tests are particularly useful in situations where the suspected offender refused to submit a sample of a bodily substance for BAC analysis.

Section 3 - Pre-arrest Breath Screening

Not applicable. The ASAP enforcement countermeasure of the Kansas City Police Department never employed pre-arrest breath screening, primarily because there is no statutory provision authorizing such procedure.

Conclusions: Little information was volunteered concerning the possible utility of pre-arrest breath screening to the DUI enforcement effort in Kansas City. The author concluded that SASP officers believe themselves to be sufficiently proficient in their ability to detect DUI offenders without having to resort to the use of pre-screening devices.

Recommendations: Pre-arrest breath screening is seen by the author as a useful and objective measure (useful to both the offender and the officer) in the decision-making process faced by the officer when confronted with a possible DUI suspect. In situations where impairment is not readily noticeable, or where the offender's blood-alcohol concentration is comparatively low, an effective breath pre-screening device tends to serve as an arbitral functor which usually dispels any doubts on the part of the officer and/or the suspected offender concerning the suspect's state of impairment (as long as that level of impairment was attained by ingestion of alcohol). Although it is recognized that the state of the art as pertains to breath pre-screening devices is not as advanced as in the case of evidentiary breath testing devices, the majority of those portable breath testing devices (PBT's) which are and have been experimentally employed by other ASAP enforcement countermeasures appear to be reasonably reliable and may be applied with some degree of confidence.

If effectively utilized, PBT's may prove to be instrumental in lowering the average blood-alcohol concentration of DUI offenders arrested by SASP officers. (It was noted that, in 1973, this average was .178%.) Without consistent pre-arrest breath screening, it is suspected that a number of DUI offenders who are legally impaired are released at the scene because officers observe no visible indicators of impairment and consider the drinking driver capable of resuming operation of his vehicle without endangering others.

Section 4 - Evidentiary Sobriety Testing

Section 34.116 of the Traffic Code of Kansas City sets the presumptive level of intoxication at .10% of blood-alcohol concentration. No presumption may arise at BAC levels ranging from .051% to .099%, although a suspected DUI offender may still be charged with the offense and could be convicted based upon other incriminating testimony and evidence. If the suspect's BAC is at the level of .05% or less, he is presumed not to have been intoxicated. (A state statute which has been approved by the Missouri legislature provides for a per se level of intoxication at .10% blood-alcohol concentration.)

By law, analyses for blood-alcohol concentration may be undertaken with the following bodily substances:

- Breath
- Blood
- Urine
- Saliva

Officers normally ask the suspected offender if he is willing to undertake an examination of his breath for evidentiary analysis. As a consequence, chemical analysis of the offender's breath is the predominant method of evidentiary sobriety testing in Kansas City.

When arrested by a SASP officer, the suspected DUI offender is transported by that officer to the "ASAP Studio," which is the facility containing all necessary equipment for physical coordination testing, videotaping, and evidentiary breath testing. (The ASAP Studio is located at 1125 Locust Street, not within the headquarters complex.) Should it become necessary to obtain a blood sample for chemical analysis, however, the offender must be taken to a hospital for that purpose. Only physicians, registered nurses, or other qualified persons are permitted to withdraw blood for the purpose of determining blood-alcohol concentration.

Missouri's Implied Consent statute provides for the revocation of the offender's operator's license for a period not to exceed one year, in the event that he willfully refuses to submit to an evidentiary sobriety test. When such a refusal takes place, the arresting officer completes the

Breathalyzer Refusal Form (Fig. 12-4), which is then notarized and forwarded to the Director of Revenue for the state. Upon receiving this information, the Director proceeds with the revocation, but the offender may have his case brought before a court of record (Circuit Court in Kansas City) if he wishes to contest the matter. Pertinent provisions of the Implied Consent statute are explained to the suspect by the arresting officer immediately after the former has been placed under arrest, and again just prior to the evidentiary testing process.

The ASAP enforcement countermeasure in Kansas City employed the Stephenson Breathalyzer for evidentiary breath testing. (See Appendix A; Exhibit 12d.) At the time of the survey, eight Model 900 and two of the more advanced Model 900A Breathalyzers were at the disposal of SASP officers and other members of the Kansas City Police Department. An approximate unit cost of \$745 for each of the Breathalyzers was quoted. The Desk Sergeant assigned to the SASP Unit is responsible for ensuring that all necessary supplies are available for evidentiary breath testing.

In the case of DUI arrests effected by officers of the ASAP enforcement countermeasure, the breath test is administered by the arresting officer. (All SASP officers are certified breath examiners.) In accordance with rules set forth by the Missouri Division of Health, a 15-minute observation period must be complied with immediately prior to submitting a breath sample, during which time the suspected DUI offender is not permitted to take anything orally. This period commences as soon as the arresting officer begins the transport, and is usually completed after the appropriate interviews have been conducted at the ASAP Studio. After the results of the evidentiary breath test are known, the DUI suspect is informed of them verbally. The breath testing procedure and sequence is recorded on the Alcoholic Influence Report Form (Fig. 12-1) by the arresting officer. BAC results are collected and tabulated by the supervisory officers of the SASP Unit. A Breathalyzer Log (Fig. 12-5) is maintained and appropriate entries are made whenever a breath test is administered. Supervisory officers of the Special Alcohol Safety Patrol are also responsible for review of all pertinent documents and records turned in by officers of the Unit.

Insofar as the ASAP Studio is concerned, security of the evidentiary breath testing devices and other related equipment appears to be excellent. When the office is unattended, it is locked and not accessible to unauthorized persons. The situation is drastically different at the various police substations throughout the jurisdiction, however. There, the Breathalyzers are generally exposed and are subject to careless treatment by regular patrol officers. No administrative regulations governing security of evidentiary breath testing devices appeared to be in evidence.

Certified breath examiners of the Kansas City Police Department are issued permits from the Missouri Division of Health upon successful completion of prescribed training. (See Figure 12-7.) A Type III permit (Fig. 12-8) is furnished those who underwent 40 hours of breath examiner training provided by police department instructors. (At the time of the survey, the KCPD had a total of 93 Type III breath examiners. The cost of this training averages \$5.50 to \$6.00 per hour per student.) A Type II permit is issued to those who have completed a more comprehensive training course, after which these individuals are authorized to repair and certify Breathalyzers (see Figures 12-10 and 12-11), as well as instruct prospective Type III permit holders. (In addition to Type III permit requirements, each Type II breath examiner must have completed a two-week course of instruction provided by the Missouri Division of Health at Jefferson City.) Further information concerning breath examiner training for Kansas City police officers is furnished in Appendix A; Exhibit 12c. All officers who have been selected for duty with the Special Alcohol Safety Patrol are required to complete Type III breath examiner training. In addition, those officers (other than SASP) specializing in accident investigation, and Desk Sergeants, are likely to be selected for breath examiner training. Along with the formal course of instruction offered to prospective breath examiners, the Kansas City Police Department also indoctrinates all new recruits in DUI processing and principles of Breathalyzer operations. (This indoctrination alone is not comprehensive enough, however, to qualify the trainee for certification by the Division of Health.)

As previously mentioned, officers must prevail upon local hospitals in the event that a blood sample is to be obtained for BAC analysis. Whenever possible, this process is avoided, since - according to the police - the hospital staff are generally reluctant to become involved with DUI offenders. No specific figures were quoted, but it was rather evident that comparatively few blood samples were submitted. The blood samples are analyzed by the regional criminalistics laboratory located at 2100 Noland Road, Independence. The regional law enforcement training academy is also equipped to undertake chemical analyses of blood samples for blood-alcohol concentration. Analyses of urine or saliva to determine BAC levels appear to be a rare occurrence. DUI offenders, by law, are permitted to have an independent analysis performed by a laboratory of their own choice, after the evidentiary test has been concluded.

Coroners or medical examiners are directed by statute to analyze an appropriate bodily substance of anyone fatally injured in a motor vehicle accident, as long as death occurred within four hours from the time of the accident. This provision, however, does not apply to anyone less than sixteen years of age. The results of the analysis are included with the coroner's report, which is forwarded to the Missouri Division of Highway Safety. (See Figure 12-9.) A similar statute requiring BAC analyses for all principals in a motor vehicle accident resulting in a fatality is not in effect.

Conclusions: SASP officers appeared to be content with the evidentiary sobriety testing process as practiced in Kansas City. No significant problems have been encountered in its application and, on an average, from the time of the arrest until completion of evidentiary testing, officers spend from 45 minutes to one hour. Moreover, in any routine DUI arrest, only one SASP officer need be involved, since the arresting officer may administer the breath test to the suspect in his custody. The convenient location of the "ASAP Studio," as well as the distribution of Breathalyzers throughout the police substations, permits commencement of the evidentiary testing process with a minimal loss of manhours. Insofar as the breath testing devices themselves are concerned, no complaints were

voiced by anyone about their durability and reliability. SASP officers, all of whom are certified breath examiners, conducted breath testing in a professional, adroit manner and generally experienced no difficulties in establishing rapport with the DUI suspect.

Bodily substances other than breath are infrequently obtained for BAC determination and therefore no problem of any magnitude exists in this area. Admittedly, the process of obtaining a urine specimen and particularly a blood sample is considerably more complex and time-consuming than the evidentiary breath test, but those disadvantages are not often encountered, due to the paucity of such occasions.

Procedural aspects applied in the case of refusals under the Implied Consent law appear to have been logically structured. Rather than requiring an administrative hearing or judicial proceedings in each and every case, a notarized Breathalyzer Refusal Form (Fig. 12-4) is forwarded to the Director of Revenue, upon which the offender's operator's license is revoked. If, however, the offender feels that he has a basis for contesting the revocation, he may appeal the case to a court of record.

The breath examiner training program for Kansas City police officers appears to be sufficiently comprehensive to ensure professionalism and competence in the administration of evidentiary breath tests.

Recommendations: Rather than informing the DUI offender verbally of his blood-alcohol concentration, it may be preferable to present him with a document bearing this information. The Missouri Uniform Traffic Ticket could be used for that purpose, with the proper entry on the copy received by the offender. The average DUI suspect is unlikely to recall his exact BAC on the day following his arrest and his attorney (if he retains one) will be forced to seek the information from the police.

Administrative policy concerned with physical security of the evidentiary breath testing devices would appear to be in order. As mentioned, no apparent problem was perceived in this category at the ASAP Studio, but the Breathalyzers maintained at the police substations

are subject to negligent treatment. At a minimum, security regulations should concern themselves with keeping the devices under lock and key, with access being restricted to certified breath examiners and/or supervisory officers. Observations, at least at one of the substations, also showed that the facilities there are inadequate for evidentiary processing of DUI offenders. The breath tests are performed in the cramped roll-call room, and interruptions and distractions are frequent. If at all possible, a small area somewhere in the building should be set aside exclusively for breath testing.

Within the legislative framework, the feasibility of initiating a statute mandating BAC analysis of all principals involved in a fatal motor vehicle crash may merit attention.

ALCOHOLIC INFLUENCE REPORT FORM

CASE# _____

NAME: _____ ADDRESS: _____

DOB: _____ RACE: _____ SEX: _____ WEIGHT: _____ DR. LIC.: _____ STATE: _____ TYPE: _____ LIC. NO.: _____

PLACE OF ARREST: _____ DATE: _____ TIME: _____ AM
PMVIOLATION: _____ DATE: _____ TIME: _____ AM
PM

LOCATION OF ACCIDENT IF INVOLVED: _____

* * * * *
QUESTIONS

TICKET # _____

WERE YOU OPERATING THIS MOTOR VEHICLE: _____ WHERE WERE YOU GOING: _____

WHERE DID YOU START FROM: _____ WHEN DID YOU LEAVE: _____

SUBJECTS ESTIMATE OF TIME: _____ ACTUAL TIME: _____

HAVE YOU BEEN DRINKING: _____ WHAT: _____ QUANTITIES: _____

COMMENCED: _____ AM PM STOPPED: _____ AM PM WHERE: _____

ARE YOU ILL: _____ ARE YOU HURT: _____ DID YOU GET A BUMP ON THE HEAD: _____

HAVE YOU BEEN TO A DOCTOR OR DENTIST RECENTLY: _____ IF SO, WHEN: _____

NAME OF DOCTOR OR DENTIST: _____ TREATMENT: _____

ARE YOU TAKING MEDICINE: _____ IF SO, WHAT: _____ LAST DOSE: _____ AM
PM

DO YOU HAVE DIABETES: _____ ARE YOU TAKING INSULIN: _____ HAVE YOU USED A MOUTH WASH RECENTLY: _____

HOURS OF SLEEP LAST NIGHT: _____ HOW MUCH TODAY: _____

HAVE YOU BEEN DRINKING SINCE THE ACCIDENT: _____ WHAT: _____

QUANTITIES: _____ WHERE: _____

EXAMINATION (Draw circles around words describing officer's observations; Add any remarks or phrases of your own selection)

| | | | | | | | | | |
|------------------|--|---------|--------------|----------------------|---------------|----------|------------------------|--------|------------------|
| BREATH | Odor of alcoholic liquor – Faint Moderate Strong | | | | | | | | |
| EYES | Normal | | Watery | | Bloodshot | | Glassy | | Staring |
| PUPILS | Normal | | Dilated | | Contracted | | Poor reaction to light | | |
| BALANCE | Sure | Fair | Swaying | Wobbling | Sagging Knees | Falling | (Other) | | |
| WALKING | Sure | Fair | Swaying | Stumbling | Staggering | Falling | (Other) | | |
| TURNING | Sure | Fair | Swaying | Uncertain | Staggering | Falling | (Other) | | |
| PICKING UP COINS | Sure | Slow | Uncertain | Unable | (Other) | | | | |
| SPEECH | Coherent | Slurred | Confused | Incoherent | Stuttering | Mumbling | (Other) | | |
| CHOICE OF WORDS | Good | Fair | Poor | Sentence Continuity: | | | Good | Fair | Poor |
| CLOTHING | Neat | Mussed | Work | Soiled by: | Dirt | Urine | Vomit | Saliva | Alcoholic Liquor |
| ATTITUDE | Polite | | Excited | | Hilarious | | Care-Free | | Cooperative |
| | Indifferent | | Antagonistic | | Cocky | | Sleepy | | |
| UNUSUAL ACTIONS | Profanity | | Hiccoughs | | Belching | | Vomiting | | (Other) |

UNUSUAL ACTIONS OR STATEMENTS: _____

SIGNS OF ILLNESS OR INJURY: _____

If Subject treated or examined by doctor list hospital, doctor's name, time. _____

| | | | | |
|------------|--|----------------------------|---------|-----------------------------|
| CONCLUSION | Effects of Alcohol Ability To Drive | Slight Ability Impaired | Obvious | Extreme Greatly Impaired |
|------------|--|----------------------------|---------|-----------------------------|

EXAMINED BY: _____ SERIAL# _____ DATE: _____ TIME: _____ AM
PMCOURT DATE: _____ Figure 12-1 295 _____ TIME: _____ AM
PM

BREATHALYZER: Yes: _____ No: _____ Administered By: _____ Results: _____

Was Car Towed: Yes: _____ No: _____ Where: _____

Hold Order: Yes: _____ No: _____ Explain: _____

Remarks: _____

Reporting Officer _____ Serial # _____ Unit _____

OPERATIONAL CHECK LIST

NAME OF SUBJECT: _____ DATE: _____

TIME (OF TEST) _____ A.M. _____ P.M. _____ BLOOD ALCOHOL O. _____ AMPUL _____
% CONTROL NO. _____

OPERATOR _____ WITNESS _____

INSTRUMENT _____ NO. _____

PREPARATION ☐ Throw switch to (On), wait until thermometer shows 45-50° C.
☐ Gauge test ampul, open, insert bubbler and connect to outlet.

PURGE ☐ Turn to take, flush out, turn to analyze.
☐ When red empty signal appears, wait 1 1/2 minutes, turn on light, balance.

ANALYSIS ☐ Set blood alcohol pointer on start line.
☐ Turn to take, take breath sample, turn to analyze, (record time).
☐ When red empty signal appears, wait 1 1/2 minutes, turn on light, balance.

RECORD ANSWER, DISPOSE OF TEST AMPUL, TURN CONTROL KNOB TO (OFF)

CERTIFICATION OF EXAMINATION BY PERMITTEE TYPE III

As set forth in rules for determination of blood alcohol by breath analysis, Section 4 Operating Rule, Paragraph C, Permittee, Type III, sub paragraph 3, established by the Missouri Division of Health, the permittee certifies the following:

A. There was no deviation from procedures outlined by the manufacturer and those approved by the Division of Health.

B. The manufacturers identity and lot number, if any, of reagent used is as follows:

_____ No. _____

C. To the best of my knowledge this breath analyzer device, a breathalyzer, model No. 900, was functioning properly.

Permittee Type III _____ OFFICER _____ RANK _____ Date: _____

Permit No. _____ Permit Expiration Date: _____

BREATHALYZER REFUSAL FORM

State of Missouri)
County of _____) ss

To: Director of Revenue
State of Missouri
Jefferson City, Missouri

I, _____ first being duly
sworn on my oath state that: On _____, at
(Date)
_____ in the county of _____
(Time)

I did arrest _____
(Name)

(Street) (City) (State)

CHF.() _____
OPR.() _____ Date of Birth _____
(License No.)

and that I have reasonable grounds to believe that said arrested person was driving a motor vehicle upon the public highways of this state while in an intoxicated condition, and I did then and there request said arrested person to submit to a chemical test of his breath for the purpose of determining the alcoholic content of his blood, and did then and there inform said arrested person that his driver license may be revoked for 1 year upon his refusal to take the test, and that said arrested person did in fact then and there refuse to take the test.

Signed _____
(Arresting Officer)

Badge Number _____

Department _____

Address _____

STATE OF MISSOURI
COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 19 _____

Notary Public

My Commission expires _____

BREATHALYZER LOG

[illegible]

DIVISION OF HEALTH

APPLICATION FOR TYPE III PERMIT
FOR OPERATION OF BREATH ANALYZERS
FOR DETERMINATION OF BLOOD ALCOHOL FROM
A SAMPLE OF EXPIRED (ALVEOLAR) AIR

(Type or print all entries)

Date _____

Name of Applicant _____ Age _____

Business Address _____ Telephone _____

Home Address _____

Title _____

EDUCATIONAL RECORD

Name & Location

High School _____ Year Graduated _____

College _____ Year Graduated _____ Degree _____

Specialized Courses _____

List all training courses for operation of Breath Analyzers which you have completed.

| Dates of Course | Location of Course | Name and Model of Breath Analyzer | Name of Instructor |
|--------------------|-----------------------|--------------------------------------|-----------------------|
| | | | |
| | | | |
| | | | |
| | | | |

I request a Type III Permit to operate the following Breath Analyzers:

| | Name | Manufacturer | Model |
|----|-------|--------------|-------|
| 1. | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ |

Signature of Applicant

Complete and return the application to the Director of Laboratories, Missouri Division of Health, State Office Building, Jefferson City, Missouri, 65102.

FOR ADMINISTRATIVE USE

Recommendation of Instructor Supervisor (Type II)

I certify that _____ has completed a course
(Name of Applicant)
under my supervision in the operation of the following breath analyzer devices:

| Name of Device | Manufacturer | Model | Qualified | Not Qualified |
|----------------|--------------|-------|-----------|---------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Remarks

(Signature of Type II Permittee)

Permit Number

If this application is for renewal of a Type III Permit, please fill in the following:

Previous permit Number _____

Expiration Date _____

Number of breath tests applicant has
performed during the past year _____

Figure 12-7 (cont'd.)

DEPARTMENT OF PUBLIC HEALTH AND WELFARE OF MISSOURI

DIVISION OF HEALTH

PERMIT
TYPE III



Is hereby authorized to operate the following breath analyzer device:

for the determination of the alcoholic content of blood from a sample of expired (alveolar) air,
based under the provisions of Section 554.441 and Section 554.442 R.S. Mo. Supplement 1905

Date

Number

Expires

E. P. Spencer, Jr., M.D.
Director Bureau of Laboratory Service

Herbert R. W. ...
Director, Division of Health

Lab. 6 - Rev. 2/71

Figure 12-8

BLOOD ALCOHOL REPORT

CASE REPORT NUMBER _____

Accident Investigation Agency _____

Time, Date and Location of Accident _____

Time, Date and Location of Death _____

Cause of Death _____

Name _____ Date of Birth _____

Address _____

Sex: Male _____ Female _____; Race: Black _____ White _____ Other _____

Role in Accident: Driver _____ Pedestrian _____ Passenger _____

Drugs or Medications Administered as a Result of Accident:

Yes _____ No _____ Unknown _____

Types and Amounts _____

Blood Sample Taken: Yes _____ No _____

If no, why _____

Sample Taken By Doctor _____

Nurse _____

Other _____ Title _____

Time, Date and Location of Sample _____

Analyzed By _____

Blood Alcohol Content _____

Other Signs of Alcoholism or Intoxication _____

Other Evidence Submitted for Testing (clothing, etc.), _____

Coroner or Deputy _____

Reporting Officer's Name (PRINT) _____ Radio No. _____

Signature of Reporting Officer _____

To: Director of Laboratories
Missouri Division of Health
State Office Building
Jefferson City, Missouri

I, _____, certify that the calibration
of Breathalyzer # _____ operated by the Kansas City, Missouri
Police Department is correct to the best of my knowledge on this _____
day of _____, 19_____.
(month) (day)

Signed _____

HEALTH DIVISION PERMIT # _____

To: Director of Laboratories
Missouri Division of Health
State Office Building
Jefferson City, Missouri

I, _____, certify that the calibration
of Breathalyzer # _____ operated by the Kansas City, Missouri
Police Department is correct to the best of my knowledge on this _____
day of _____, 19_____.
(month) (day)

Signed _____

HEALTH DIVISION PERMIT # _____

KANSAS CITY, MISSOURI POLICE DEPARTMENT
BREATHALYZER PREVENTIVE MAINTENANCE CHECK LIST

DATE _____

MODEL OF INSTRUMENT _____ SERIAL NUMBER _____

LOCATED AT KANSAS CITY, MISSOURI POLICE DEPARTMENT AT: _____

Output of Sample Chamber is 56.5 ml + 1.5 ml. _____

Temperature of Sample Chamber Rises to 50°C. + 3° _____

Optical System Balanced _____

Delivery Time _____

Simulator Test At _____ Ampule # _____

Solution Temp: C° _____

Result of Analysis _____

Correction Factor _____

Corrected Result _____

General Condition _____

Describe any repairs, modifications, or alterations: _____

Signed _____

Permit No. _____

Original to Division of Health

NEBRASKA (LINCOLN)

Section 1 - Legislative Provisions

39-727. It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or when that person has ten-hundredths of one per cent or more by weight of alcohol in his body fluid as shown by chemical analysis of his blood, breath, or urine. Any person who shall operate or be in the actual physical control of any motor vehicle while under the influence of alcoholic liquor or of any drug or while having ten-hundredths of one per cent by weight of alcohol in his body fluid as shown by chemical analysis of his blood, breath, or urine shall be deemed guilty of a crime and, upon conviction thereof, shall be punished as follows: (1) If such conviction is for a first offense, such person shall be imprisoned in the county jail for not more than three months, or shall be fined one hundred dollars, or be both so fined and imprisoned, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of six months from the date of his final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is the later, and shall order that the operator's license of such person be revoked for a like period; *Provided, in the event that the court shall suspend the proceedings and place such person on probation as provided by law, the court as one of the conditions of probation shall order such person not to drive any motor vehicle for any purpose for a period of thirty days from the date of the order, except as provided for in section 3 of this act;* (2) if such conviction is for a second offense such person shall be imprisoned in the county jail for not less than five days nor more than three months, and shall be fined the sum of three hundred dollars, and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of one year from the date of his final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is the later, and shall order that the operator's license of such person be revoked for a like period, and if the motor vehicle which such person was operating or was actually physically controlling, while under the influence of alcoholic liquor or any drug, is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the court for a period of not less than two months nor greater than one year at the expense and risk of the owner thereof; *Provided, any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lienholder for the purpose of foreclosing and satisfying his lien thereon;* and (3) if such conviction is for a third offense, or subsequent offense thereafter, such person shall be imprisoned in the Nebraska Penal and Correctional complex for not less than one year nor more than three years and the court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for a period of one year from the date of his final discharge from the Nebraska Penal and Correctional Complex, and shall order that the operator's license of such person be revoked for a like period. Such penalties as provided for in subdivisions (2) and (3) of this section shall be applicable regardless of whether the prior conviction or convictions was or were based upon violation of this section or upon violation of a city or village ordinance enacted pursuant to this section, or both. Any city or village may enact ordinances in conformance with this section and section 39-727.03. Upon conviction of any person of a violation of such a city or village ordinance, the provisions of this section with respect to the license of such person to operate a motor vehicle shall be applicable the same as though it were a violation of this section.

Source: Laws 1919, c. 190, tit. VVI, art. IV, § 32, p. 830; C.S. 1922, § 8396; Laws 1925, c. 159, § 13, p. 418; Laws 1927, c. 153, § 1, p. 411; Laws 1929, c. 144, § 1, p. 505; C.S. 1929, § 39-1106; Laws 1931, c. 103, § 1, p. 275; Laws 1935, c. 134, § 2, p. 484; Laws 1937, c. 140, § 1, p. 504; C.S. Supp., 1941, § 39-1106; R.S. 1943, § 39-727; Laws 1947, c. 148, § 1, p. 408; Laws 1949, c. 116, § 1, p. 310; Laws 1951, c. 118, § 1, p. 523; Laws 1953, c. 135, § 1, p. 422; Laws 1953, c. 214, § 1, p. 755; Laws 1961, c. 186, § 1; Laws 1971, LB-948, § 1; Laws 1972, LB-1095, § 1; Laws 1973, LB 290.

39-727.03. Drunken driving; implied consent of operator of motor vehicle to submit to chemical test to determine alcoholic content of blood, urine, or breath; when test administered; refusal; penalty. (1) Any person who operates or has in his actual physical control a motor vehicle upon a public highway in this state shall be deemed to have given his consent to submit to a chemical test of his blood, urine, or breath, for the purpose of determining the amount of alcoholic content in his body fluid.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor to submit to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his body fluid, when the officer has reasonable grounds to believe that such person was drinking or was in the actual physical control of a motor vehicle upon a public highway in this state while under the influence of alcoholic liquor.

(3) Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his actual physical control a motor vehicle upon a public highway in this state to submit to a preliminary test of his breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his body, or has committed a moving traffic violation, or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of ten-hundredths of one per cent or more shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars.

(4) Any person arrested as provided in this section may, upon the direction of a law enforcement officer, be required to submit to a chemical test of his blood, breath, or urine for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, breath, or urine test required pursuant to this section shall be guilty of a crime and, upon conviction thereof, shall be punished in the same manner as he would be if convicted for a violation of section 39-727 and shall be subject to the administrative revocation procedures of the Director of Motor Vehicles provided in this act.

(5) Any person who is required to submit to a preliminary breath test, or to a chemical blood, breath or urine test pursuant to this section shall be advised of the consequences of refusing to submit to such test.

Source: Laws 1959, c. 168, § 1, p. 613; Laws 1961, c. 187, § 2, 577; Laws 1963, c. 229, § 1; Laws 1971, LB-948, § 2; Laws 1972, LB-1095 § 2.

39-727.04. Drunken driving; choice of test; persons qualified to administer tests; privileges of person tested; results of test; available upon request. The law enforcement officer who requires a chemical blood, breath, or urine test pursuant to section 39-727.03 may direct whether the test shall be of blood, breath, or urine; Provided, that when the officer directs that the test shall be of a person's blood or urine, such person may choose whether the test shall be of his blood or urine. The person tested shall be permitted to have a physician of his choice evaluate his condition and perform or have performed whatever laboratory tests he deems appropriate in addition to and following the test administered at the direction of the law enforcement officer. If the officer shall refuse to permit such additional test to be taken, then the original test shall not be competent as evidence. Upon the request of the person tested, the results of the test taken at the direction of the law enforcement officer shall be made available to him.

Source: Laws 1959, c. 168, § 2, p. 613; Laws 1961, c. 187, § 3, p. 578; Laws 1963, c. 227, § 1; Laws 1971, LB-948, § 3; Laws 1972, LB-1095, § 3.

39-727.05. Drunken driving; chemical test; consent of person incapable of refusal not withdrawn. Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by section 39-727.03 and the test may be given.

Source: Laws 1959, c. 168, § 3.

39-727.06. Drunken driving; chemical test; violation of statute or ordinance; results; competent evidence. Any test made under the provisions of section 39-727.03, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor, or involving driving or being in actual physical control of a motor vehicle with an amount of alcohol in the blood in violation of a statute or a city or village ordinance. Tests to be considered valid shall have been performed according to methods approved by the Department of Health and by an individual possessing a valid permit issued by such department for such purpose. The department is authorized to approve satisfactory techniques or methods and to ascertain the qualifications and competence of individuals to perform such tests and to issue permits which shall be subject to termination or revocation at the discretion of the department.

Source: Laws 1959, c. 168, § 4, p. 614; Laws 1963, c. 228, § 2; Laws 1963, c. 229, § 2; Laws 1971, LB-948, § 4.

39-727.07. Drunken driving; chemical test; physician, nurse, or technologist; damages; immunity. No physician, registered nurse, or registered laboratory technologist shall be held liable, in damages or otherwise, for any act done or omitted in performing the act of withdrawing blood at the request of a law enforcement officer pursuant to section 39-727.03.

Source: Laws 1959, c. 168, § 5; Laws 1971, LB-948, § 5.

39-727.13. Drunken driving; violation of city or village ordinance; fee for tests; costs. Upon the conviction of any person for violation of the provisions of section 39-727, or of driving a motor vehicle while under the influence of alcoholic liquor in violation of any city or village ordinance, there shall be assessed as part of the costs the fee charged by any physician for the test administered and the analysis thereof under the provisions of section 39-727.03, if such test was actually made.

Source: Laws 1961, c. 188, § 1; Laws 1971, LB-948, § 6.

39-727.14. Repealed

Source: Laws 1971, LB-948, § 8.

39-727.15. Drunken driving; operation of motor vehicles; blood or urine test; required; refusal; penalty. Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor shall be required to submit to a chemical test of his blood, breath, or urine test as provided in section 39-727.03 without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him incapable of testing by a preliminary breath test. Only a physician, registered nurse, or registered laboratory technologist acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein, but this limitation shall not apply to the taking of a urine or breath specimen.

Source: Laws 1971, LB-948, § 7; Laws 1972, LB-1095, § 4.

39-727.16. Sect. 5. If a person arrested pursuant to section 39-727.03 refuses to submit to the chemical test of blood, breath, or urine required by that section, the test shall not be given and the arresting officer shall make a sworn report to the Director of Motor Vehicles. Such report shall state (1) that the person was validly arrested pursuant to section 39-727.03 and the reasons for such arrest, (2) that such person was requested to submit to the required test, and (3) that such person refused to submit to the required test.

Source: Laws 1972, LB-1095, § 5.

39-727.17. Sec. 6. Upon receipt of the officer's report of such refusal, the Director of Motor Vehicles shall notify such person of a date for hearing before him as to the reasonableness of the refusal to submit to the test. The notice of hearing shall be served by the director by mailing it to such person by certified or registered mail to the last-known residence address of such person, or, if such address is unknown, to the last-known business address of such person at least ten days before the hearing. After granting the person an opportunity to be heard on such issue, if it is not shown to the director that such refusal to submit to such chemical test was reasonable, the director shall summarily revoke the motor vehicle operator's license or nonresident operating privilege of such person for a period of one year from the date of such order. For the purpose of such hearing, the director may appoint an examiner who shall have power to preside at such hearing, to administer oaths, examine witnesses and take testimony, and thereafter report the same to the director.

Source: Laws 1972, LB-1095, § 6.

39-727.18. Sec. 7. If the Director of Motor Vehicles revokes the operator's license or the nonresident's operating privilege under the provisions of section 2 and sections 5 to 9 of this act, he shall reduce his order of revocation to writing, and shall notify the person in writing of the revocation. Such notice shall (1) set forth the period of revocation, (2) include a demand that the license be returned to the director immediately, and (3) be served by mailing it to such person by certified or registered mail to the last-known residence address of such person, or, if such address is unknown, to the last-known business address of such person. If any person shall fail to return his license to the director as demanded, the director shall forthwith direct any peace officer or authorized representative of the director to secure possession of such license and return the same to the director: *Provided*, that a refusal to surrender an operator's license on demand shall be unlawful and any person failing to surrender his license as required by the provisions of this section shall, upon conviction thereof, be punished by a fine of not to exceed five hundred dollars or imprisonment in the county jail not to exceed thirty days, or both such fine and imprisonment.

Source: Laws 1972, LB-1095, § 7.

39-727.19. Sec. 8. Any person who feels himself aggrieved because of such revocation may appeal therefrom to the district court of the county where the alleged events occurred for which he was arrested, in the manner prescribed in section 60-420. Such appeal shall not suspend the order of revocation unless a stay thereof shall be allowed by a judge of such court pending a final determination of the review: *Provided*, if a stay shall be allowed, and the final judgment of a court finds against the person so appealing, the period of revocation shall commence at the time of final judgment of the court for the full period of the time of revocation.

Source: Laws 1972, LB-1095, § 8.

39-727.20. Sec. 9. Any person operating a motor vehicle upon a public highway during the period for which his license was revoked under the provisions of section 2 and sections 5 to 9 of this act, or after such period of revocation but before issuance of a new license, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished as provided in section 60-430.01.

Source: Laws 1972, LB-1095, § 9.

39-727.21. The Director of Motor Vehicles shall within one hundred twenty days after the effective date of this act develop and certify to the state probation administrator a model probation program which shall generally comply with the ASAP Program of the National Highway Traffic Safety Administration as now in effect or amended from time to time. Thereafter any county or municipality desiring to have a program of probation certified shall submit the same to the probation administrator who shall examine the program to determine that the same has been in effect for at least ninety days and is generally in compliance with the model program prepared by the Director of Motor Vehicles. If the probation administrator shall find that the program meets those requirements, he shall then certify the program. In the event that the probation administrator shall at any time determine that the program is not being conducted in accordance with the plan as certified, he may suspend the certification of the program and the power of the court to suspend proceedings pursuant to the provisions of section 3 of this act.

Source: Laws 1973, LB 290.

39-727.22. If any county or municipality having jurisdiction of such offenses shall any time after the effective date of this act develop a certified program of probation as provided for in section 2 of this act and shall have conducted such program either before or after certification for a period of at least ninety days, then so long as the program remains certified the court within such county or municipality having jurisdiction over offenses covered by this act may waive the requirement that persons placed on probation shall not drive any motor vehicle for any purpose for a period of thirty days from the date of the order as provided for in section 1 of this act.

Source: Laws 1973, LB 290.

LEGISLATIVE BILL 679

Approved by the Governor March, 21, 1974

Introduced by Barnett, 26

AN ACT to amend sections 39-727.07, 39-727.15, and 39-727.17, Revised Statutes Supplement, 1972, relating to the implied consent law; to provide for tests by qualified technicians; to reduce the period of revocation for refusing to submit to the test; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 39-727.07, Revised Statutes Supplement, 1972, be amended to read as follows:

39-727.07. No physician, registered nurse, or ~~registered-laboratory-technologist~~ qualified technician shall be held liable, in damages or otherwise, for any act done or omitted in performing the act of withdrawing blood at the request of a law enforcement officer pursuant to section 39-727.03.

Sec. 2. That section 39-727.15, Revised Statutes Supplement, 1972, be amended to read as follows:

39-727.15. Any person arrested for any offense involving the operation or actual physical control of a motor vehicle while under the influence of alcoholic liquor shall be required to submit to a chemical test of his blood, breath, or urine as provided in section 39-727.03 without the preliminary breath test if the arresting officer does not have available the necessary equipment for administering a breath test or if the person is unconscious or is otherwise in a condition rendering him incapable of testing by a preliminary breath test. Only a physician, registered nurse, or ~~registered-laboratory-technologist~~ qualified technician acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic content therein, but this limitation shall not apply to the taking of a urine or breath specimen.

Sec. 3. That section 39-727.17, Revised Statutes Supplement, 1972, be amended to read as follows:

39-727.17. Upon receipt of the officer's report of such refusal, the Director of Motor Vehicles shall notify such person of a date for hearing before him as to the reasonableness of the refusal to submit to the test. The notice of hearing shall be served by the director by mailing it to such person by certified or registered mail to the last-known residence address of such person, or, if such address is unknown, to the last-known business address of such person at least ten days before the

hearing. After granting the person an opportunity to be heard on such issue, if it is not shown to the director that such refusal to submit to such chemical test was reasonable, the director shall summarily revoke the motor vehicle operator's license or nonresident operating privilege of such person for a period of one--year ~~six months~~ from the date of such order. For the purpose of such hearing, the director may appoint an examiner who shall have power to preside at such hearing, to administer oaths, examine witnesses and take testimony, and thereafter report the same to the director.

Sec. 4. That original sections 39-727.67, 39-727.15, and 39-727.17, Revised Statutes Supplement, 1972, are repealed. *

*From the Nebraska Motor Vehicle Laws.

Section 2 - Physical Coordination Tests

The supervisor of the Alcohol Countermeasure Squad maintained that officers administer physical coordination tests to suspected DWI offenders. The variations of this type of testing which are employed are listed on the Motor Vehicle Intoxication Report (MVIR - see Figure 13-3). Procedural steps are contained in a Training Bulletin issued by the Lincoln Police Department (see Appendix A; Exhibit 13b). Allegedly, physical coordination testing was conducted by ASAP officers, even in cases where the suspect was arrested by officers of the regular patrol force. The testing was performed once only, after the DWI offender had been transported to the headquarters facility for processing.

No significant problems were cited in the administration of physical coordination tests. Observation of the suspect's pupils (whether or not dilated) was discontinued, since this method was too often successfully challenged in court.

Conclusions: Although key personnel of the Alcohol Countermeasure Squad maintained that physical coordination testing was being conducted in the case of suspected DWI offenders, there was little evidence in the way of visual observation to support that assertion. It is suspected that officers relied upon results obtained with the portable breath testing devices (PBT's), and felt the physical coordination tests to be superfluous.

Recommendations: If properly administered, and provided that existing methodology is periodically evaluated for reliability and validity, physical coordination testing is thought by the author to be a valuable tool for prosecution of DWI offenders. It is recommended, therefore, that the Countermeasure Squad of the Lincoln ASAP retain physical coordination testing as an integral part of its enforcement techniques, in addition to pre-arrest breath screening and evidentiary testing.

Section 3 - Pre-arrest Breath Screening

A statute of the Nebraska Motor Vehicle Laws permits preliminary breath screening of anyone suspected by a police officer to be a drinking driver. An offender who is offered such a pre-arrest breath test and who refuses

to submit to it may be charged with refusal and, upon conviction, may be fined from \$50 to \$100. The offender is advised of that fact by the officer before arriving at a decision. Consequently, all officers of the Lincoln ASAP Countermeasure Squad are equipped with portable breath testing devices (PBT's) for that purpose. Any motorist stopped by an ASAP officer, who is suspected of having ingested alcohol, is requested to submit to this preliminary test.

The device employed by the Lincoln ASAP Countermeasure Squad is the Alcohol Level Evaluation Road Tester (A.L.E.R.T.), manufactured by the Alcohol Countermeasure Systems Department of the Borg-Warner Corporation. (For detailed information concerning this device, see Appendix A; Exhibit 13d.) Five units were purchased for use by ASAP officers only, at a unit cost of \$450. Overall comments concerning the utility of these devices were favorable. Other pre-arrest breath screening devices had been used in the past by Lincoln ASAP officers, including the Alco-Sensor (manufactured by Intoximeters, Inc.); the AlcoLyser (also known as the "balloon test"); and an older version of the Borg-Warner A.L.E.R.T. It was admitted, however, that the AlcoLyser was never employed under actual field conditions. Key personnel of the Countermeasure Squad indicated that ASAP officers were generally more satisfied with the Borg-Warner A.L.E.R.T. than with any of the other devices previously employed.

Offenders who are about to be subjected to a preliminary breath test are informed of the legal stipulations by means of a form from which the officer reads. The results of the pre-test are recorded by the officer in what is known as a "pre-test book," which accompanies the testing unit.

In order to administer pre-arrest breath testing, officers must be certified by the State Department of Health. For this certification, approximately eight hours of training is required, which is provided by a representative of the manufacturer.

Although the presumptive level of intoxication in Nebraska is fixed at .10% blood-alcohol concentration, the A.L.E.R.T. units are calibrated to show a positive (presumably intoxicated) reading at not less than .12% BAC. The reason for this is that apparently officers want to be certain that the suspect will prove to be still legally under the influence when

the evidentiary test is administered.

Conclusions: Officers considered the PBT's to be important tools in the identification of suspected drunk drivers. For this reason, the devices were rather faithfully administered in each instance where an officer thought himself to be confronted by a drinking driver suspect. Overall, ASAP officers appeared satisfied with the performance of the devices, and indications were that the police department is willing to continue their use in this area of enforcement. Frequently, ASAP officers were called to the scene of a traffic stop effected by a member of the regular patrol contingent, in order to administer a preliminary breath test. It was thought that the PBT's were instrumental in increasing the overall rate of DWI arrests in Lincoln during the time that they were in use. Although no documentation to that effect was produced, key personnel of the Countermeasure Squad were of the opinion that the devices contributed little to the overall reduction of BAC levels evidenced in drinking driver suspects.

No problems of any significance had been noted by the Lincoln ASAP Countermeasure Squad as related to the use and reliability of the devices.

Recommendations: In view of the fact that the application of preliminary breath testing by the Lincoln ASAP Countermeasure Squad appears to be a well-conceived, operationally functional process, no specific recommendations are offered.

Section 4 - Evidentiary Sobriety Testing

The presumptive level of intoxication in Nebraska is .10% of blood-alcohol concentration. In addition, the Nebraska Motor Vehicle Laws provide for a per se level of intoxication of, again, .10% blood-alcohol concentration. (Therefore, according to the statute, anyone who has been charged with the offense of Driving While Under the Influence, and who subsequently registers a blood-alcohol concentration of .10% or greater, is in violation of the law merely by virtue of his blood-alcohol concentration.) Anyone suspected of the offense, but whose blood-alcohol concentration is later found to be less than .10%, is not prosecuted, but

is released after the evidentiary test results have been obtained.

Nebraska law also prescribes that the following bodily substances may be sampled and submitted for analysis to determine blood-alcohol concentration (BAC):

- Breath
- Blood
- Urine
- Saliva
- Any other appropriate substances (i.e., spinal fluid, secretions from the eye, etc.)

Suspected DWI offenders predominantly submit breath samples for evidentiary analysis, principally because officers are authorized by statute to demand that the offender submit a breath sample. (Although officers are legally empowered to require breath samples, it was mentioned that there is seldom a need to invoke the statute.)

The Implied Consent provisions of the Nebraska DWI statute are read to the suspected offender prior to the administration of the evidentiary test. In addition, the offender is verbally informed of the provisions by the arresting officer at the scene of the traffic stop, before transport to the processing facility commences. Once having been formally apprised of the Implied Consent provisions, the offender is asked to place his signature upon a form to acknowledge that he understands all that applies. Should he refuse to submit to the evidentiary sobriety test, he is asked to give a reason for his refusal. Willful assertion of non-compliance with the Implied Consent provisions, as well as obvious or disguised attempts to undermine the sample-taking process, constitutes refusal. For a first offense, the accused may be subject to revocation of his driving privilege for a period of six months from the date of his final discharge from jail, or the date of payment or satisfaction of his fine, whichever is the later, or he may face imprisonment in jail for not more than three months or a fine of \$100 or both such fine and imprisonment. (For penalties on subsequent offenses and for proper authority relative to disposition of Implied Consent offenders, see Figure 13-5.)

The Lincoln Police Department employs the Gas Chromatograph Intoximeter, manufactured by Intoximeters, Incorporated, for evidentiary testing of bodily substances. (See Appendix A; Exhibit 13e.) Two of the units were purchased, at an approximate cost of \$2,700 each. No significant problems have been encountered with the Gas Chromatograph Intoximeter (GCI), except for the requirement of occasional maintenance. It was mentioned, however, that the manufacturer provided poor service. For a time, the Lincoln Police Department used the Breathalyzer for evidentiary breath testing, but the use of this device was discontinued. According to key personnel of the ASAP Countermeasure Squad, the GCI was thought to be more useful and versatile for testing purposes.

A separate room has been provided for evidentiary testing within the headquarters facility of the Lincoln Police Department. The room contains the GCI's and all appurtenant equipment and forms for the proper administration of the tests. The area is accessible only to police personnel. Security is no problem, because the testing facility is contained within the jail portion of the headquarters building and cannot be entered unless the door lock is released by someone from within. In addition, it is the department's policy to restrict access to the DWI processing room only to certified breath examiners. When the Countermeasure Squad is off-duty, the room is kept locked.

Only ASAP officers certified to operate the GCI are in fact permitted to administer evidentiary sobriety tests. The certified operators have all undergone a 40-hour training course conducted under the auspices of the State Department of Health, and have been certified by that agency. Allegedly, the operators also undergo 1½-2 hours of refresher training each week. GCI operators are re-certified once each year, at which time they are required to take a written examination, as well as analyze several unknown substances by means of the GCI. In addition, each six months these officers are also required to analyze six unknown substances as a measure of their proficiency in evidentiary sobriety testing.

The Sergeant in charge of the ASAP Countermeasure Squad is responsible for ensuring that all necessary supplies are available for the administration of evidentiary tests. He also inspects and calibrates both GCI's

each night, thereby verifying their accuracy and reliability.

Whenever a breath sample is obtained for BAC analysis, the DWI suspect must be kept under observation for a minimum of 15 minutes before insufflating the device, during which time he is not permitted to partake orally of anything. He may not smoke, chew gum, and even dentures should be removed before the observation period commences. This observation begins when an ASAP officer (GCI operator) becomes involved in the processing. (In the case of an arrest by an ASAP officer, observation may commence at the scene of the arrest.) If the arresting officer also happens to be a certified GCI operator, he may administer the evidentiary test himself.

After the offender's BAC becomes known on the GCI, he is informed of the reading verbally and is provided the opportunity to view it himself on the digital indicator of the GCI. As for the police, ample means for recording the results and any other pertinent information are utilized. A specimen log sheet, as well as an index card file and the arrest record, is maintained in the testing facility. In addition, the GCI check sheet and a handwritten supplementary report are completed. The Sergeant in charge of the Countermeasure Squad examines the specimen log sheet each night.

In the event that a blood sample is to be withdrawn from a suspected DWI offender, a registered nurse at the jail is available to perform that service. Two separate test tubes (probably containing 10 cc's of blood each) are filled and turned over to a certified GCI operator for analysis. The arresting officer can usually hope to know the results of the analysis after approximately 45 minutes, and these are then included in the appropriate reports. If the arresting officer has returned to patrol duty in the meantime, he is informed by radio or telephone of the suspect's BAC.

For the purpose of obtaining blood samples, hospitals or other medical facilities are not normally involved in the process. Only in occasions where the suspect sustained physical injuries would members of the hospital staff be requested to withdraw the necessary blood samples for evidentiary testing. In such cases, the required vials are furnished by the police.

Although such situations appear to be relatively infrequent, officers indicated that the medical staff is usually somewhat less than enthusiastic when presented with the request to withdraw blood samples from an injured DWI suspect. A fear of possible liability was cited, in addition to the fact that medical personnel are principally concerned with treatment of the patient, with a much lesser degree of importance placed upon the need for a blood sample. As much as one hour of processing time might be required whenever blood samples are to be obtained in this manner.

By statute, blood samples of persons fatally injured in a motor vehicle crash must be obtained for subsequent evidentiary analysis. Any physician, registered nurse, or qualified laboratory technician is authorized to withdraw the specimen. BAC results are made available to the ASAP Countermeasure Squad and are recorded. The statute goes one further in requiring any operator or principal in a fatal motor vehicle crash to submit to a chemical test for the purpose of analyzing his blood-alcohol concentration.

If a urine sample is obtained for chemical analysis, it must be submitted in the presence of the arresting officer. This process usually takes place at police headquarters. The container is sealed and its contents are subsequently analyzed by means of the GCI. The remainder of the sample is again sealed, tagged, and refrigerated. Any certified GCI operator may conduct the analysis. (If the officer has reason to suspect drugs other than alcohol, the sample is forwarded to the state laboratory for analysis.) Several disadvantages were attributed to urinalysis: (1) BAC results were generally higher than those obtained with breath samples; (2) the fact that the arresting officer is required to observe the suspect while the sample is collected is often acutely embarrassing to both parties; (3) particularly distasteful is the fact that suspected drunk drivers often have difficulty maintaining accuracy in voiding into the small containers, which in turn have to be given to the officer for further disposition. Police officers consider this aspect to be demeaning and make great efforts to avoid submission of urine samples whenever possible. The only

advantage of urinalysis mentioned was that non-medical personnel may obtain the required samples.

If saliva is furnished for evidentiary analysis, the offender is requested to salivate into a container until a sufficient amount is collected for the test (usually 2 ml). Insofar as spinal fluid or eye secretions are concerned, no specifics were obtained.

The arresting officer is not required to witness the evidentiary test, unless he also happens to be the processing officer administering the test. In that case, he must observe all procedures. The suspected DWI offender may have an independent analysis performed for the purpose of determining his BAC, but does so at his own expense. (It was indicated that this is a rare occurrence.) Even so, the blood kit (vials, etc.) is furnished for his use by the Lincoln Police Department. When such an independent analysis is undertaken, the physician who performed it must satisfy the court that the correct procedures were used.

Conclusions: Insofar as legislative provisions are concerned, the Nebraska Motor Vehicle Laws seem to encompass virtually every aspect which may be considered in terms of DWI legislation. The fact that Nebraska has a statute which requires pre-arrest breath screening of anyone suspected of drunken driving, with penalties for refusal, makes that state rather unique among those surveyed.

Those officers of the ASAP Countermeasure Squad who were certified GCI operators appeared to be knowledgeable and efficient in all respects with regard to the apprehension and processing of suspected drinking drivers. The fact that breath samples are given priority by statute facilitates the officers' tasks considerably, in that this is the least time-consuming process in evidentiary testing there. Facilities and equipment provided for the chemical testing process appeared to be highly adequate, and were kept in a neat and orderly condition.

In the case of breath analysis, the nature of processing is such that a minimum amount of time is required to obtain BAC results and to turn the suspected offender over to jail personnel. The central location of the headquarters building in which the testing facility

is housed reduces transport time. Since breath samples are predominantly processed, the disadvantages of analyses of some of the other bodily substances described do not seem to have any great effect on the overall configuration.

Recommendations: Consideration may be given to an amendment of the existing DWI statute providing for a level of blood-alcohol concentration between .051% and .099% where the accused is neither presumed to have been intoxicated nor presumed not to have been intoxicated, but may, in the face of additional competent evidence, be convicted of Driving While Under the Influence. Science has proven that psychomotor functions may be significantly impaired at blood-alcohol concentrations between .05% and .099%. It is not at all unlikely for someone registering a BAC within that range to display erratic and dangerous driving behavior, which may result in a serious or fatal motor vehicle accident. In prosecuting only those who register a BAC of .10% or greater, the statute provides for a rigid cut-off point which is inconsistent with the objective of countering the menace to the driving population which drinking drivers represent.

It would appear to be preferable to present DWI suspects with some document containing the offender's BAC after the results are known, rather than informing him verbally. It is not likely that the accused will remember his exact BAC on the following day, which means that his attorney must again inquire with the police. A simple notation on the arrest summons would alleviate that problem.

At the time of the survey, the Lincoln Police Department had a total of nine certified breath examiners (GCI operators). The department's actual strength is 234 sworn members. In view of this fact, it appears that considerably more emphasis could be placed on training GCI operators.

(Check)

☐ Accident

☐ Violation

☐ Other

Date and time of Accident or violation _____ A.M.
P.M.

TRAFFIC DIVISION

LINCOLN POLICE DEPARTMENT

Case No. _____

Arrest No. _____

Date _____

Time of Observation Tests _____ A.M. _____ P.M.

MOTOR VEHICLE INTOXICATION REPORT:

Name _____ Address _____

Involved in Accident _____ Where _____
Yes or No

Drivers License Number _____ Expiration Date _____

Age _____ Sex _____ Race _____

DIRECT QUESTIONS:

Have you been drinking _____ What? _____

How much have you had to drink? _____

Commenced _____ AM Stopped _____ AM
PM PM Where? _____

Were you driving a car just prior to arrest? _____ License No.? _____

Where were you going? _____

Where did you start from? _____ When did you leave? _____

Are you ill? _____ Have you been to a doctor or dentist recently? _____

If so, when? _____ Who? (Name of doctor or dentist) _____

For what? _____

Are you taking medicine? _____ If so, what? _____ Last dose _____ AM _____ PM

Are you subject to malaria? _____ Taking treatment? _____

Do you have diabetes? _____ Are you taking insulin? _____

Are you hurt? _____ Did you get a bump on the head? _____

Have you ever had any trouble with your eyes? _____

What is your name? _____ Approx. weight? _____

How old are you? _____ What is your work? _____

How long have you been in Lincoln? _____

Are you intoxicated (drunk)? _____

HAVE SUSPECT FILL IN THE FOLLOWING:

Date _____ Signature _____

Time (show watch) _____ Address _____

(Have suspect write a sentence in the above space)

Figure 13-3

Unusual actions or statements _____

Signs of illness or injury _____

Observation Report (Indicate with circle)

| | | | | | |
|---------------------|---------------------------------|--------------|-------------|------------|------------------------------------|
| BREATH | No liquor odor | Liquor Odor: | Faint | Moderate | Strong |
| COLOR OF FACE | Apparently Normal | Flushed | Pale | Bloated | |
| CLOTHES | Orderly | Disorderly | Liquor Odor | Soiled | Vomit Feces Urine |
| ATTITUDE | Polite | Excited | Belligerent | Impolite | Reserved Stupefied Hilarious |
| | Cocky | Sarcastic | Insulting | Talkative | Combative Dull Silent Delirious |
| | Confiding | Cooperative | | | |
| UNUSUAL ACTIONS | Hiccough | Vomiting | Sloberly | Belching | Drooling Punching Kicking Fighting |
| | Sleeping | Convulsions | Unconscious | | |
| EYES | Normal | Watery | Bloodshot | | |
| PUPILS | Normal | Dilated | Contracted | Equal | Unequal Poor light reactions |
| EQUILIBRIUM | (Do not check unless test made) | | | | |
| A. Balance Test | Normal | Fair | Swaying | Wobbling | Sagging Knees Falling |
| B. Walking | Normal | Fair | Swaying | Wobbling | Staggering Falling |
| C. Turning | Sure | Uncertain | Swaying | Staggering | Falling |
| FINGER TO NOSE TEST | RIGHT: | Sure | Uncertain | LEFT: | Sure Uncertain |
| PICKING UP COINS | Sure | Slow | Uncertain | Unable | |
| SPEECH | Fair | Slurred | Stuttering | Confused | Incoherent Whispering |
| | CHOICE OF WORDS: | | Good | Bad | |

NOTES OF OTHER TESTS: _____

| | | | | | |
|------------|---------------------|-----------------|------------------|------------------|---------|
| CONCLUSION | EFFECTS OF ALCOHOL: | Apparently none | Slight | Obvious | Extreme |
| | ABILITY TO DRIVE: | Apparently fit | Ability impaired | Greatly impaired | |

Name at least two other officers present at headquarters who observed the actions of the suspect _____

(Signature of Commanding Officer) _____

(Signature of Examining Officer) _____

CHEMICAL TEST OF URINE:

Urine specimen taken by whom? _____

Date taken _____ Time _____ AM _____ PM

Witnesses to taking of specimen _____

MOVIES

Taken by whom? _____

Date taken _____ Time _____ AM _____ PM

Witnesses _____

DISPOSITION OF CASE

Charges against suspect _____

Pleaded guilty _____ Sentence _____

Pleaded guilty _____ Yes or No

Pleaded guilty _____ Trial date _____ Bond _____

Changed plea to guilty, Date _____

Sentence _____

Found guilty, Date _____ Sentence _____ Appeal? _____

Disposition of Appeal _____

Found not guilty, Date _____ Reason _____

IMPLIED CONSENT ADVISEMENT

POST ARREST

Name _____

Mr. _____ you are under arrest for operating a motor vehicle while under the influence of alcoholic liquor. Pursuant to law, I am requiring you to submit to a test of your choice. It may be of your breath, blood or urine for determination of the alcoholic content in your body fluid. (Since breath testing equipment is not available, you may choose whether the test shall be of your blood or urine.)

I must advise you that if you refuse this test, the arresting officer is required to make a sworn report of the circumstances, and the refusal to the Director of Motor Vehicles, and the Director of Motor Vehicles is required to schedule a hearing at which time you must show that your refusal to submit to the test was reasonable. If the Director is not shown that the refusal was reasonable, he must revoke your driver's license for six months. This revocation may be appealed to the District Court.

I must further advise you that if you refuse to submit to this test, the law provides that you shall be guilty of an offense, and upon conviction, you are subject to the following consequences:

(1) FOR A FIRST OFFENSE:

- (a) Revocation of your driving privileges for six months from the date of your final discharge from jail, or the date of payment or satisfaction of your fine, whichever is the later, and
- (b) Imprisonment in jail for not more than three months or a fine of \$100.00 or both such fine and imprisonment.

(2) FOR A SECOND OFFENSE:

- (a) Revocation of your driving privileges for one year from the date of your discharge from jail or the date of payment or satisfaction of your fine, whichever, is the later, and
- (b) Imprisonment in jail for not less than five days nor more than three months and a fine of \$300.00.

(3) FOR A THIRD OR SUBSEQUENT OFFENSE:

- (a) Imprisonment in the Nebraska Penal Correctional Complex for not less than one year nor more than three years, and
- (b) Revocation of your driving privileges for one year from your final discharge from the Nebraska Penal Complex and Correctional Complex.

Signature of Person Advised

Date _____

Time _____

Signature of Advising Officer

NEW HAMPSHIRE

Section 1 - Legislative Provisions

262-A: 62 Intoxication or Under Influence of Drugs. Any person who shall be convicted of operating, or attempting to operate a motor vehicle upon any way while under the influence of intoxicating liquor, or any controlled drug shall be guilty of a misdemeanor. Where imprisonment is imposed, it may be served intermittently or weekend days, at the discretion of the court, his license shall be revoked for a period of sixty days and at the discretion of the court for a period not to exceed two years. Upon a second conviction his license shall be revoked and he shall be ineligible for a license for the next three calendar years, provided, however, that any prior conviction upon which a second offense complaint is founded, must have occurred within seven years preceding the date of said second offense.

262-A: 63 Evidence. Upon complaint, information, indictment or trial of any person charged with the violation of section 62, the court may admit evidence of the amount of alcohol in the defendant's blood at the time alleged, as shown by a chemical analysis of his breath, urine, or other bodily substance. Evidence that there was, at the time alleged, five-hundredths percent, or less, by weight of alcohol in his blood is prima facie evidence that the defendant was not under the influence of intoxicating liquor. Evidence that there was, at the time alleged, from five-hundredths percent to ten-hundredths percent by weight of alcohol in his blood is relevant evidence but is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. Evidence that there was, at the time alleged, ten-hundredths percent, or more by weight of alcohol in his blood, is prima facie evidence that the defendant was under the influence of intoxicating liquor. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

262-A: 69-a Implied Consent of Driver of Motor Vehicle to Submit to Chemical Testing to Determine Alcoholic Content of Blood. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent to a chemical test or tests of any or all or any combination of the following: blood, urine, or breath, for the purpose of determining the alcoholic or controlled drug content of his blood, if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or controlled drugs,

provided, however, any person who is afflicted with hemophilia, diabetes or any condition requiring the use of an anticoagulant under the direction of a physician shall not be deemed to have given consent to the withdrawal of his blood provided that any arrested person who refuses to give consent to the taking of his blood under this provision shall not be exempt from the provisions of RSA 262-A: 69-e unless he satisfies the director of motor vehicles after notice and hearing that he is afflicted with such a condition. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor or controlled drugs. A copy of the report of any such test shall be furnished by the law enforcement agency to the person tested within forty-eight hours of receipt of the report by the agency by registered mail directed to the address shown on such person's license or other identification furnished by the person. Results of a test of the breath shall be furnished immediately in writing to the person tested by the law enforcement officer conducting the test.

262-A: 69-b Additional Tests. Any person to whom section 69-a is applicable shall have the right at his own expense to have a similar test or tests made by any person of his own choosing and shall be so informed by the law enforcement officer at the same time as the person is requested to permit a chemical test under the provisions of section 69-a. The failure or inability of an arrested person to obtain an additional test shall not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Nothing herein shall require the release from custody of the arrested person for the purpose of having such additional test made. For the purpose of this section, the sample of blood or urine taken pursuant to section 69-a shall be of sufficient quantity to allow two tests and the testing laboratory shall retain for a period of thirty days subsequent to the test conducted pursuant to section 69-a, a quantity of said sample sufficient for another test, which quantity shall be made available to the respondent or his counsel immediately upon request.

262-A: 69-c Prerequisites to Tests. Before any test specified in section 69-a is given, the law enforcement officer shall (1) inform the arrested person of his right to have a similar test or tests made by a person of his own choosing, (2) afford him an opportunity to request such additional test, and (3) inform him of the consequences of his refusal to permit a test at the direction of the law enforcement officer. If the law enforcement officer fails to comply with the provisions of this section, the test shall be inadmissible as evidence in any proceeding before any administrative officer and court of this state.

262-A: 69-d Incapacity to Give Consent. Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusing shall be deemed not to have withdrawn the consent provided by section 69-a above and the test or tests may be administered. The provisions of section 69-c shall not apply to persons incapable of giving consent as provided for in this section.

262-A: 69-e Refusal of Consent. If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement officer as provided in section 69-a, none shall be given, but the director of the division of motor vehicles, upon the receipt of a sworn report of the law enforcement officer containing the following: (1) that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor or controlled drugs; (2) the facts upon which the reasonable grounds to believe such are based; (3) that the person had been arrested; (4) that the person had refused to submit to the test upon the request of the law enforcement officer; (5) that he informed the arrested person of his right to have a similar test or tests conducted by a person of his own choosing, and (6) that he informed the arrested person of the fact that refusal to permit the test will result in revocation of his license, shall revoke his license to drive or nonresident operating privilege for a period of ninety days; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the director of the division of motor vehicles shall deny to the person the issuance of a license for a period of ninety days after the date of the alleged violation, subject to review as hereinafter provided.

262-A: 69-f Administrative Review. Upon revoking the license or nonresident operating privilege of any person, or upon determining that the issuance of a license shall be denied to the person as directed in 69-e, the director of the division of motor vehicles shall immediately notify the person in writing and upon such person's request within thirty days after such notification shall within ten days after receipt of the request afford him an opportunity for a hearing before the director of the division of motor vehicles or his authorized agent. The scope of such a hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor, narcotics or drugs; whether the person was placed under arrest; whether he refused to submit to the test upon the request of the officer; whether the person was informed that his privilege to drive would be revoked or denied if he refused to submit to the test, and whether the person was informed of his right to have a chemical test or tests made by a person of his own choosing. The director of the division of motor vehicles shall order that the revocation or determination that there should be a denial of issuance be rescinded or sustained. A copy of such order shall be sent to the person affected thereby and shall contain a statement informing the person of his right of appeal.

262-A: 69-g Appeal. If the revocation or determination that there should be a denial of issuance is sustained after such a hearing a person whose license or nonresident operating privilege has been revoked or to whom a license is denied under the provisions of this subdivision shall have the right to file a petition in the superior court in the county wherein he was arrested to review the final order of revocation or denial by the director of the division of motor vehicles or his authorized agent. Juris-

diction to hear such appeals is hereby vested in the superior court and it shall be the duty of the court to grant a hearing as soon as practicable after notice to the director and the petitioner. The court shall hear the appeal de novo and shall order that the revocation or denial be rescinded or sustained.

262-A: 69-1 Blood Testing of Certain Motor Vehicle Fatalities. When a motor vehicle accident results in the death of any driver or adult pedestrian within four hours of the accident, the medical referee shall request a licensed physician or qualified laboratory technician to withdraw blood from the body of the deceased driver or pedestrian. All tests made under this section shall be conducted in the laboratory of the bureau of food and chemistry, division of public health. A copy of the report of any such test shall be kept on file by the medical referee. The filed report is not a public record under RSA 91-A. However, the report shall be made available to the following:

I. Any highway safety agency for use in compiling statistics to evaluate the effectiveness of its program, and

II. Any person including his legal representative, who is or may be involved in a civil, criminal, or administrative action or proceeding arising out of a motor vehicle accident in connection with which the test was performed.

diction to hear such appeals is hereby vested in the superior court and it shall be the duty of the court to grant a hearing as soon as practicable after notice to the director and the petitioner. The court shall hear the appeal de novo and shall order that the revocation or denial be rescinded or sustained.

262-A: 69-l Blood Testing of Certain Motor Vehicle Fatalities. When a motor vehicle accident results in the death of any driver or adult pedestrian within four hours of the accident, the medical referee shall request a licensed physician or qualified laboratory technician to withdraw blood from the body of the deceased driver or pedestrian. All tests made under this section shall be conducted in the laboratory of the bureau of food and chemistry, division of public health. A copy of the report of any such test shall be kept on file by the medical referee. The filed report is not a public record under RSA 91-A. However, the report shall be made available to the following:

I. Any highway safety agency for use in compiling statistics to evaluate the effectiveness of its program, and

II. Any person including his legal representative, who is or may be involved in a civil, criminal, or administrative action or proceeding arising out of a motor vehicle accident in connection with which the test was performed. *

*From The State of New Hampshire Motor Vehicle Laws, 1973.

Section 2 - Physical Coordination Tests

DWI suspects may undergo physical coordination testing at the scene of the arrest, if it is required by the ASAP trooper. The performance tests used are listed on the Alcoholic Influence Report Form (Fig. 14-2). This process is, however, a matter of the individual officer's judgment. Some troopers indicated that they preferred not to administer psychomotor tests at the scene, due to the fact that unsteady gait and otherwise abnormal response by the offender may be attributed to darkness, glaring lights, and obstacles in the terrain. (At least, these are points which some defense attorneys will not hesitate to bring to the court's attention.) It was generally found, therefore, that physical coordination tests are not administered until the suspect has been brought to the testing facility.

Conclusions: In the presence of this observer, psychomotor tests were consistently carried out. The suspect was asked to perform the tests before the evidentiary sobriety test was conducted. The coin pick-up phase was not utilized, presumably because too many problems had been encountered in administering this particular test. Overall, troopers appeared to make a conscientious effort to carry out physical coordination testing in a meaningful and effective manner.

Recommendations: No specific problems were cited concerning administration of physical coordination tests. Key personnel of the enforcement countermeasure may find it of benefit to establish a valid system for evaluation of the current methodology, which employs tests recommended by the National Safety Council. Along with such evaluation, other testing techniques should be explored. (Some ASAP sites, in collaboration with universities, have developed substitute methods for physical coordination testing, which are perhaps more effective than those presently employed in New Hampshire.)

Section 3 - Pre-arrest Breath Screening

Not applicable. Pre-arrest breath screening is not employed by the enforcement countermeasure of the New Hampshire ASAP.

Conclusions: To the present time, the New Hampshire legislature has not seen fit to incorporate a statute into the motor vehicle laws

which would permit law enforcement officers to employ pre-arrest breath screening devices in DWI enforcement. Consequently, these aids have not been and are not employed by any law enforcement agency in the state. The author was left with the impression that troopers of the ASAP monitor Team pride themselves in their ability to detect drinking drivers, and feel the portable breath testing devices (PBT's) to be unnecessary.

Recommendations: The same argument in favor of pre-arrest breath screening - as presented for other ASAP sites which did not employ the technique - is propounded here. In the author's opinion, the use of reasonably reliable PBT's in DWI enforcement significantly reduces the amount of subjective and judgmental decision-making which an officer is likely to invoke when effecting a DWI arrest. In order to employ the devices, however, officers should have the proper legislative backing.

Section 4 - Evidentiary Sobriety Testing

Evidentiary breath testing is conducted shortly following the suspect's arrival at the nearest law enforcement agency where Breathalyzer units are available. The Stephenson Model 900A Breathalyzer is used for this purpose. The ASAP Monitor Team has been furnished two of these devices by the New Hampshire Department of Public Health. When the Team commences DWI enforcement in a specific district, the Breathalyzers are installed in a centrally-located police station or sheriff's office, where suspected DWI offenders are then processed.

Under existing statutes in New Hampshire, breath, blood, or urine may be analyzed for evidentiary purposes in DWI cases. The overwhelming majority of tests performed within the past two years, however, have been analyses of breath samples. This is largely due to the fact that the arresting officer determines which evidentiary test will be made available to the offender. If the officer decides that breath testing will be utilized, the offender must comply with that decision, or else face being charged with refusal under the Implied Consent law. Since breath testing is always a much less complex and time-consuming process than either blood or urine analysis, and, more importantly, is always readily available, the officer's choice is obvious.

The offender has the option of requesting an analysis of his blood or urine, after having submitted to the evidentiary test prescribed by the officer. In that event, he may telephone a physician or nurse or a chemist who will either withdraw the blood sample or take charge of the urine sample, as the case may be. The sample, however, must be analyzed by a private laboratory and the accused (like the officer) must be consistently careful in observing the chain of evidence (i.e., maintaining required documentation, complying with official procedures and stipulations, etc.). It is uncommon for suspected DWI offenders to request such additional analysis; and even if it is performed, requirements inherent in the preservation of the chain of evidence, coupled with the layman's typical unfamiliarity with legal matters, make it nearly impossible for the accused to submit the results of the private analysis into evidence.

The arresting officer may administer the evidentiary breath test as long as he is a certified breath examiner specialist. This procedure is practically always followed by troopers of the ASAP Monitor Team. The attractive feature is that it reduces the number of man-hours which must be devoted to the processing of a DWI offender. Normally, all troopers of the ASAP Monitor Team are certified breath examiner specialists. Occasional exceptions may be officers recently assigned to the Team, who have not as yet had the opportunity to attend Breathalyzer training. These troopers are slated to undergo this training within a very short time, however, and usually commence within several weeks of their assignment to the Team.

New Hampshire law stipulates that suspected DWI offenders must be furnished with a copy of the results of their evidentiary test. This is accomplished by the police by means of the Blood-Alcohol Report Form (Fig. 14-4), the pink copy of which is turned over to the suspect. In addition, the officer completes the Alcoholic Influence Report Form (Fig. 14-2), a Violation Slip (Fig. 14-1), and an entry into the Instrument Log pertaining to his operation of the Breathalyzer unit. All of the preceding reports are prepared either during or immediately following the testing procedure. A Complaint Form, which is retained by the officer for use in court, is filled out from the Violation Slip. The officer also retains the completed Alcoholic Influence Report Form, as well as the green copy of the Blood-Alcohol Report Form. The Violation Slip is forwarded to State Police headquarters.

As a rule, blood samples are obtained only if the suspected DWI offender has suffered injuries and is admitted to a hospital, or if he is otherwise incapable of submitting a breath sample. If the suspect is fatally injured, it is statutorily mandatory that a blood sample be obtained from the deceased within four hours of the time of the crash. The preceding applies to all persons 15 years of age or older.

With the current state of the art of chemical analysis of bodily substances for blood-alcohol concentration in New Hampshire, urine samples are rarely obtained. The relatively few which are still submitted for analysis usually emanate from the more isolated, tiny law enforcement agencies in the rural regions of the state, where traditional practices are still followed. The urine sample is obtained by the arresting officer, and as many as two to three weeks may elapse until the sample has been analyzed by the state laboratory and the results are available to the officer.

In a general sense, then, two types of sobriety testing are employed by the ASAP Monitor Team. One is the physical coordination for psychomotor test which may be administered at the scene or at the facility prior to evidentiary testing (or at both locations); and the other is the evidentiary test which, in most cases, consists of breath analysis. (Under New Hampshire law, a simulator test must be performed after each evidentiary test, to ensure proper calibration of the Breathalyzer.) The results of the tests are recorded on the various forms provided for that purpose (i.e., Alcoholic Influence Report Form, Blood-Alcohol Report Form, Violation Slip, etc.). Viedotaping or other means of photographic recording of the testing process are not employed. (The New Hampshire ASAP never purchased equipment designed for such recording.) However, troopers of the ASAP Monitor Team are equipped with portable audio recording units which they may utilize if they think it advisable. For that matter, application of the physical coordination tests is also at the discretion of the individual trooper.

New Hampshire's Implied Consent statute is separate from the DWI statute; thus an offender may possibly be acquitted of Driving While Intoxicated and still be convicted of refusing to submit to a sobriety test in defiance

of the Implied Consent Law. Suspected DWI offenders are usually advised of the provisions of the Implied Consent statute immediately after having been placed under arrest by the officer. The officer quotes the applicable portions of the statute from memory.

All certified breath examiner specialists of the New Hampshire State Police have completed a 40-hour basic training course and have received certificates and licenses. The breath examiner specialist training course encompasses all phases of DWI enforcement as well as the proper operation of the breath testing device. (See Appendix A; Exhibit 14a.) Training is conducted under the auspices of the Division of Public Health Services of New Hampshire at Pembroke, and consists of a five-day session during which participating officers must remain at the facility. They are not permitted to return to their homes while undergoing training. The instructors, for the most part, are obtained from the Division of Public Health, but are augmented by other professional specializing in alcoholism and drinking drivers, as well as by physicians and officials of the Division of the State Police. (See also Appendix A; Exhibit 14b.)

The Director of the Division of State Police selects the troopers who will undergo breath examiner training. It was pointed out that generally only experienced officers are scheduled to attend. (As a rule, their experience was said to range from three to five years of service with the Division.)

Upon successful completion of the breath examiner specialist training course, the officer receives a certificate authorizing him to administer evidentiary tests on the Breathalyzer. Certified Breathalyzer operators are re-certified each six months. In the course of this survey, it was not determined whether in-service training which specifically addresses DWI enforcement is conducted to any extent.

Of a total of 183 troopers assigned to the uniformed division of the New Hampshire State Police, 114 were certified breath examiner specialists at the time when this survey took place. The average cost of training was quoted as \$200 per officer.

The Stephenson Breathalyzer is the only evidentiary breath testing device in use by law enforcement agencies in New Hampshire. Officers, as a whole, expressed confidence and enthusiasm when asked about the Breathalyzer's reliability and durability; and it was generally conceded that few problems had been encountered with the units.

Normally only two officers are involved in the process from the time of the offender's arrest through completion of evidentiary testing. One is the arresting officer and the other is the officer transporting the suspect's vehicle to the testing facility. (The latter is usually required only for a brief duration.)

The results of all quantitative blood-alcohol tests performed on suspected drinking drivers are tabulated by the ASAP staff.

Conclusions: The evidentiary testing system in effect in New Hampshire, whereby the arresting officer determines the type of test which is to be offered, appears to be well-accepted by troopers of the ASAP Monitor Team. In the rural expanses of the state, it eliminates the need to locate a medical facility for the purpose of obtaining blood samples (unless the situation requires it), and evidentiary breath testing devices are always at hand, since they are transported by the Monitor Team. The fact that the arresting officer, if a certified breath examiner specialist, is also permitted to administer the evidentiary test to the person whom he arrested, assists in reducing the total amount of time required for processing.

Overall, the evidentiary testing process as employed by the ASAP Monitor Team appears to be one which is highly suitable and practical for the enforcement countermeasure. Troopers assigned to the Team were judged to be sufficiently knowledgeable and committed to the objectives of the countermeasure, so that no discernible problems came to light insofar as the sobriety testing function was concerned. Overall, the testing configuration appeared to have been well conceived and was applied with optimum efficiency.

Recommendations: The evidentiary sobriety testing configuration employed by the New Hampshire ASAP appears to incorporate most, if not all, of the features desired in this aspect of the enforcement countermeasure. For this reason, no recommendations are offered.

Last name First name Middle initial

Address

Lic. No.

State

DOB

Owner

Address

Reg. No.

State

Make

Type

Eng. No.

Date

Place

Time
Violation

Route No.

Road conditions

Recommendation

Arrest

Summons

Warning

Checkup

Suspension

Officer's Signature

THE STATE OF NEW HAMPSHIRE
STATE POLICE

1063 A

| | |
|--|------------------------------------|
| (Check) | (Check) |
| <input type="checkbox"/> Driver | <input type="checkbox"/> Accident |
| <input type="checkbox"/> Pedestrian | <input type="checkbox"/> Violation |
| <input type="checkbox"/> Passenger | <input type="checkbox"/> Other |
| Date and time of incident or violation _____ am _____ pm | |

ALCOHOLIC INFLUENCE REPORT FORM

| |
|--|
| Police Dept. _____ |
| Arrest No. _____ |
| Accident No. _____ |
| Arresting Officer _____ |
| Date and time in custody _____ am _____ pm |

Name _____ Address _____

Age _____ Sex _____ Race _____ Approx. Wt. _____ Operator Lic. No. _____ State _____

OBSERVATIONS:

| | | |
|--|---|---|
| CLOTHES | Describe: (Type & Color) | Hat or Cap _____ Jacket or Coat _____ Shirt or Dress _____ Pants or Skirt _____ |
| | Condition: | <input type="checkbox"/> Disorderly <input type="checkbox"/> Disarranged <input type="checkbox"/> Soiled <input type="checkbox"/> Mussed <input type="checkbox"/> Orderly (Describe) _____ |
| BREATH | Odor of Alcoholic Beverage: <input type="checkbox"/> strong <input type="checkbox"/> moderate <input type="checkbox"/> faint <input type="checkbox"/> none | |
| ATTITUDE | <input type="checkbox"/> Excited <input type="checkbox"/> Hilarious <input type="checkbox"/> Talkative <input type="checkbox"/> Carefree <input type="checkbox"/> Sleepy <input type="checkbox"/> Profanity <input type="checkbox"/> Combative <input type="checkbox"/> Indifferent <input type="checkbox"/> Insulting <input type="checkbox"/> Cocky <input type="checkbox"/> Cooperative <input type="checkbox"/> Polite | |
| UNUSUAL ACTIONS | <input type="checkbox"/> Hiccoughing <input type="checkbox"/> Belching <input type="checkbox"/> Vomiting <input type="checkbox"/> Fighting <input type="checkbox"/> Crying <input type="checkbox"/> Laughing | |
| SPEECH | <input type="checkbox"/> Not Understandable <input type="checkbox"/> Mumbled <input type="checkbox"/> Slurred <input type="checkbox"/> Mush Mouthed <input type="checkbox"/> Confused <input type="checkbox"/> Thick Tongued <input type="checkbox"/> Stuttered <input type="checkbox"/> Accent <input type="checkbox"/> Fair <input type="checkbox"/> Good | |
| Indicate other unusual actions or statements, including when first observed: _____ | | |
| Signs or complaint of illness or injury: _____ | | |

PERFORMANCE TESTS:

(Note—See departmental instructions for conducting these tests)

| Check Squares If Not Made | Check appropriate square before word describing condition observed |
|---|---|
| <input type="checkbox"/> BALANCE | <input type="checkbox"/> Falling <input type="checkbox"/> Needed Support <input type="checkbox"/> Wobbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> WALKING | <input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Stumbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> TURNING | <input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Hesitant <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure |
| <input type="checkbox"/> FINGER-TO-NOSE | Right: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure Left: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure |
| <input type="checkbox"/> COINS | <input type="checkbox"/> Unable <input type="checkbox"/> Fumbling <input type="checkbox"/> Slow <input type="checkbox"/> Sure <input type="checkbox"/> (Other) _____ (Balance during coin test) _____ |
| Ability to understand instructions: <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input type="checkbox"/> Good Tests performed: Date _____ Time _____ am _____ pm | |

OBSERVER'S OPINION:

| | |
|---|---|
| Effects of alcohol: <input type="checkbox"/> extreme <input type="checkbox"/> obvious <input type="checkbox"/> slight <input type="checkbox"/> none | Ability to drive: <input type="checkbox"/> unfit <input type="checkbox"/> fit |
| Indicate briefly what first led you to suspect alcoholic influence: _____ | |
| Observed by: _____ Assignment: _____ | |
| Witnessed by: _____ Date _____ Time _____ am _____ pm | |

CHEMICAL TEST DATA:

| | |
|---|-----------------------------------|
| Specimen: <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Saliva <input type="checkbox"/> Urine <input type="checkbox"/> None | Analysis result: _____ |
| <input type="checkbox"/> Refused <input type="checkbox"/> Unable | If Breath, what instrument? _____ |
| 336 Figure 14-2 | |

INTERVIEW:

| | | | |
|---|-------------|---|------------|
| Were you operating a vehicle? _____ | | Where were you going? _____ | |
| What street or highway were you on? _____ | | Direction of travel? _____ | |
| Where did you start from? _____ | | What time did you start? _____ | |
| What time is it now? _____ | | What city (county) are you in now? _____ | |
| What is the date? _____ | | What day of the week is it? _____ | |
| INTERVIEWER TO FILL IN ACTUAL: | | | |
| Time _____ | am/pm _____ | Day _____ | Date _____ |
| Interviewer's Name _____ | | | |
| When did you last eat? _____ | | What did you eat? _____ | |
| What were you doing during the last three hours? _____ | | | |
| Have you been drinking? _____ | | What? _____ How much? _____ | |
| Where? _____ | | Started? _____ am/pm Stopped? _____ am/pm | |
| Are you under the influence of an alcoholic beverage now? _____ | | | |
| What is your occupation? _____ | | When did you last work? _____ | |
| Do you have any physical defects? _____ If so, what? _____ | | | |
| Are you ill? _____ If so, what's wrong? _____ | | | |
| Do you limp? _____ | | Have you been injured lately? _____ If so, what's wrong? _____ | |
| Did you get a bump on the head? _____ | | Were you involved in an accident today? _____ | |
| Have you had any alcoholic beverage since the accident? _____ If so, what? _____ | | | |
| Where? _____ | | How much? _____ When? _____ | |
| Have you seen a doctor or dentist lately? _____ | | If so, who? _____ When? _____ | |
| What for? _____ | | Are you taking tranquilizers, pills or medicines of any kind? _____ | |
| If so, what kind? (Get sample) _____ | | Last dose? _____ am/pm Do you have epilepsy? _____ | |
| Diabetes? _____ | | Do you take insulin? _____ If so, last dose? _____ am/pm | |
| Have you had any injections of any other drugs recently? _____ If so, what for? _____ | | | |
| What kind of drug? _____ | | Last dose? _____ am/pm When did you last sleep? _____ | |
| How much sleep did you have? _____ | | Are you wearing false teeth? _____ Do you have a glass eye? _____ | |
| HANDWRITING SPECIMEN | | | |
| Signature and/or anything he chooses. _____ | | | |

REMARKS:

SUPPLEMENTARY DATA:

(Note—Get witnesses, including officers who observed, to prove driving)

| WITNESSES | | | Was Suspect Driving or Operating | What Was His Condition | Where Observed |
|---------------------------------|---------|----------|----------------------------------|------------------------|----------------|
| Name | Address | Tel. No. | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Passengers In Suspect's Vehicle | Name | Address | | Condition | |
| | | | | | |

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Figure 14-2 (cont'd.)

BLOOD ALCOHOL REPORT FORM

Name _____ Date _____
Address _____ Test Location _____
D.O.B. _____ Sex _____ Arresting Department _____
Dear Sir:

This report is furnished you in compliance with RSA Chapter 262-A, paragraph 69-A, as amended by Chapter 64:1 of the New Hampshire Laws of 1971.

The results of your Breath Test for alcohol on (Date) _____
at _____ AM PM showed a blood alcohol content of _____ %.

Witness _____ Certified Breathalyzer Operator _____
Police Department _____

Receipt Acknowledged _____

(WHITE COPY - BREATHALYZER OPERATOR-YELLOW COPY - SUBJECT TESTED-PINK COPY - ARRESTING OFFICER)
(GOLD COPY - BUREAU OF FOOD & CHEMISTRY, CONCORD)

Figure 14-4

OHIO (CINCINNATI)

Section 1 - Legislative Provisions

OHIO REVISED CODE

Chapter 4511

§ 4511.191 § 4511.191 Implied consent.

(A) Any person who operates a motor vehicle upon the public highways in this state shall be deemed to have given consent to a chemical test or tests of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested for the offense of driving while under the influence of alcohol. The test or tests shall be administered at the direction of a police officer, having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways in this state while under the influence of alcohol. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

(B) Any person who is dead, unconscious, or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn consent provided by division (A) of this section and the test or tests may be administered, subject to sections 313.11 to 313.16, inclusive, of the Revised Code.

(C) Any person under arrest for the offense of driving a motor vehicle while under the influence of alcohol shall be advised at a police station of the consequences of his refusal to submit to a chemical test designated by the law enforcement agency as provided in division (A) of this section. The advice shall be in a written form prescribed by the registrar of motor vehicles and shall be read to such person. The form shall contain a statement that the form was shown to the person under arrest and read to him in the presence of the arresting officer and one other police officer or civilian police employee. Such witnesses shall certify to this fact by signing the form.

(D) If a person under arrest for the offense of driving a motor vehicle while under the influence of alcohol refuses upon the request of a police officer to submit to a chemical test designated by the law enforcement agency as provided in division (A) of this section, after first having been advised of the consequences of his refusal as provided in division (C) of this section, no chem-

real test shall be given, but the registrar of motor vehicles, upon the receipt of a sworn report of the police officer that he had reasonable grounds to believe the arrested person had been driving a motor vehicle upon the public highways of this state while under the influence of alcohol and that the person refused to submit to the test upon the request of the police officer and upon the receipt of the form as provided in division (C) of this section certifying that the arrested person was advised of the consequences of his refusal, shall suspend his license or permit to drive, or any non-resident operating privilege for a period of six months, subject to review as provided in this section; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the registrar shall deny to the person the issuance of a license or permit for a period of six months after the date of the alleged violation.

(E) Upon suspending the license or permit to drive or nonresident operating privilege of any person, as provided in division (D) of this section, the registrar shall immediately notify the person in writing, at his last known address, and inform him that he may petition for a hearing as provided in division (F) of this section. If a person whose license or permit to drive has been suspended petitions for a hearing or appeals any decision which is adverse to him, the suspension shall begin at the termination of any hearing or appeal unless the hearing or appeal resulted in a decision favorable to the person.

(F) Any person whose license or permit to drive or nonresident operating privilege has been suspended under this section, may, within twenty days of the mailing of the notice provided above, file a petition in the municipal court or the county court, or in case such person is a minor in the juvenile court, in whose jurisdiction such person resides, agreeing to pay the cost of the proceedings and alleging error in the action taken by the registrar of motor vehicles under division (D) of this section or in one or more of the matters within the scope of the hearing as provided in this section, or both. Such petitioner shall notify the registrar of the filing of the petition and send him a copy. The scope of such hearing shall be limited to the issues of whether a police officer had reasonable ground to believe the person had been driving a motor vehicle upon the public highways in this state while under the influence of alcohol, whether the person was placed under arrest, whether he refused to submit to the test upon request of the officer, and whether he was advised of the consequences of his refusal.

(C) The registrar shall furnish the court a copy of the registrar's affidavit as provided in division (C) of this section.

In hearing the matter and determining whether such person has shown error in the action taken by the registrar of motor vehicles under division (D) of this section, the court shall decide such issue upon the registrar's certified affidavit and such additional relevant, competent, and material evidence as either the registrar or the person whose license is sought to be suspended submits.

In such proceedings the registrar shall be represented by the prosecuting attorney of the county where such person resides.

If the court finds from the evidence submitted that such person has failed to show error in the action taken by the registrar of motor vehicles under division (D) of this section or in one or more of the matters within the scope of the hearing as provided in division (F) of this section, or both, then the court shall assess the cost of such proceeding against such person and shall impose the suspension provided in division (D) of this section. If the court finds that such person has shown error in the action taken by the registrar of motor vehicles under division (D) of this section or in one or more of the matters within the scope of the hearing as provided in division (F) of this section, or both, the cost of the proceedings shall be paid out of the county treasury of the county in which the proceedings were held, and the suspension provided in division (D) of this section shall not be imposed. The court shall give information in writing of the action taken to the registrar of motor vehicles.

(H) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the registrar shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

HISTORY: 122 v 11280 (Eff. 1-1-68); 122 v 5512 (Eff. 2-10-68); 123 v 1111 (Eff. 3-18-69).

Style deviations in this section were corrected by HB 1 (133 v --). No change in the meaning of the law was intended; see RC § 1.29.

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Underlining indicates new material; < indicates deletion

OHIO REVISION CODE

Question #2

Sec. No. 3701.143. The director of health shall determine, or cause to be determined, techniques or methods for chemically analyzing a person's blood, urine, breath, or other bodily substance in order to ascertain the amount of alcohol in a person's blood. The director shall approve satisfactory techniques or methods, ascertain the qualifications of individuals to conduct such analyses, and issue permits to qualified persons authorizing them to perform such analyses. Such permits shall be subject to examination and revocation at the discretion of the director.

OHIO REVISED CODE

Question #3

§ 4511.70 Driving with impaired alertness or ability; use of drugs.

(A) No person shall drive a "commercial car" or "commercial tractor," as defined in section 4501.01 of the Revised Code, while his ability or alertness is so impaired by fatigue, illness, or other causes that it is unsafe for him to drive such vehicle. No driver shall use any drug which would adversely affect his ability or alertness.

(B) No owner, as defined in section 4501.01 of the Revised Code, of a "commercial car" or "commercial tractor," or a person employing or otherwise directing the driver of such vehicle, shall require or knowingly permit a driver in any such condition described in division (A) of this section to drive such vehicle upon any street or highway.

HISTORY: 130 v. 11391, § 1. Eff. 10-10-65.

Penalty, RC § 4511.99(K).

At the present time, the State of Ohio does not have a per se law for the offense of DWI. It was learned, however, that preliminary work has commenced on such a statute at a level of .15% blood alcohol concentration. This is an interesting development since the present presumptive level of intoxication in Ohio is .10% blood alcohol concentration.

"[This section was amended three times in 1967. It is set out directly below as it appears in House Bill 330 (153rd p. -) which becomes effective 1-1-68.]

(A) Whoever violates section 4511.15 of the Revised Code shall be fined not more than five hundred dollars or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or both.

(B) Whoever violates section 4511.181 [4511.18.1] of the Revised Code shall be fined not more than five hundred dollars and imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one nor more than twenty years and no court shall suspend the first thirty days of any sentence provided for under this section.

(C) Whoever violates section 4511.19 of the Revised Code shall, in addition to the license suspension or revocation provided in section 4507.16 of the Revised Code, be fined not more than five hundred dollars and imprisoned in the county jail or workhouse not less than three days nor more than six months and no court shall suspend the first three days of any sentence provided for under this section.

(D) Whoever violates section 4511.251 [4511.25.1] of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than six months, or both.

(E) Whoever violates section 4511.63 of the Revised Code shall be fined not more than fifty dollars for a first offense; for a second offense such person shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(F) Whoever violates sections 4511.01 to 4511.76, inclusive, of the Revised Code, for which no penalty is otherwise provided in this section, unless such violation is made a felony by any section of the Revised Code, shall, for a first offense, be fined not more than fifty dollars; for a second offense within one year after the first offense, such person shall be fined not less than ten nor more than one hundred dollars or imprisoned not more than ten days, or both; for each subsequent offense within one year after the first offense, such person shall be fined not less than twenty-five nor more than two hundred dollars or imprisoned not more than thirty days, or both; provided that when any person is found guilty of a first offense for a violation of section 4511.91 of the Revised Code upon a finding that he operated a motor vehicle faster than thirty-five miles an hour in a business district of a municipal corporation, or faster than fifty miles an hour in other portions, or faster than thirty-five miles an hour while passing through a school zone during recess or while children are going to or leaving school during the opening or closing hours, such person may, in addition to the penalty by this section, be imprisoned for not more than six months.

OHIO REVISED CODE

Question #3

(G) Whoever violates section 4511.76 of the Revised Code shall be fined not more than fifty dollars for the first offense; for each subsequent offense such person shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(H) Whoever violates section 4511.761 [4511.76.1] or 4511.764 [4511.76.4] of the Revised Code shall be fined not more than fifty dollars for the first offense; for each subsequent offense such person shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(I) Whoever violates section 4511.732 [4511.73.2] of the Revised Code shall be fined not more than fifty dollars for the first offense; for each subsequent offense such person shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(J) Whoever violates section 4511.77 of the Revised Code shall be fined not more than fifty dollars for the first offense; for each subsequent offense such person shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(K) Whoever violates section 4511.78 of the Revised Code shall be fined not less than ten nor more than fifty dollars.

(L) Whoever violates section 4511.79 of the Revised Code shall be fined not more than fifty dollars for the first offense; for each subsequent offense such person shall be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(M) Whoever violates section 4511.80 of the Revised Code shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than six months, or both.

(N) Whenever a person is found guilty of violation of sections 4511.761 [4511.76.1], 4511.762 [4511.76.2], or 4511.77 of the Revised Code, the trial judge of any court of record may, in addition to, or independent of, all other penalties provided by law or ordinance, suspend for any period of time not exceeding three years, or revoke the license of any person, partnership, association, or corporation, issued under section 4511.763 [4511.76.3] of the Revised Code.

** HISTORY: 131 v 1109 (RC 9-4-63); 131 v 1107 (RC 9-22-63); 132 v 1111, 81 (RC 2-21-67); 132 v 837, 81 (RC 11-14-67); 132 v 11280, 81, 132 v 1-1-68.*

The effective date is set by section 5 of the act.

§ 4511.761

Penalty, failure to appear after release on own recognizance, RC § 2903.53.

Question 13

§ 512-1. Traffic Violation Misdemeanor.

It is a misdemeanor for any person to violate any of the provisions of the Traffic Code unless such violation is by a law of this state declared to be a felony.

Except as written pleas of guilty are accepted as provided by Section 512-1, every person convicted or found guilty of a violation of any of the provisions of the

Traffic Code for which another penalty is not provided shall, for a first offense thereof, be fined not more than \$50.00; and for a second offense within one year thereafter, not less than \$10.00 nor more than \$100.00, or imprisoned in the county jail or workhouse not more than ten days, or both; and for a third or subsequent offense within one year after the first offense shall be fined not less than \$25.00 nor more than \$200.00 or imprisoned in the county jail or workhouse not more than thirty days, or both, provided, further, that when any person is found guilty of a first offense for a violation of Section 506-8 upon a finding that he operated a motor vehicle faster than thirty-five miles an hour in a business district or faster than fifty miles an hour in other portions, or faster than thirty-five

miles an hour while passing through a school zone during recess or while children are going to or leaving school during the opening or closing hours, the court may, in addition to the penalty herein provided, sentence such offender to the county jail or workhouse for not more than five days. (RC §§ 4511.99, 4513.28, 4513.99)

(OC 74-140)

§ 512-2. Penalties, Miscellaneous.

Any violation of Sections 503-14, 511-10, or 512-3 shall be punishable by a fine of not more than two hundred dollars (\$200.00) or by imprisonment for not more than six (6) months, or both.

(OC 74-140; ordained by Ord. No. 118-

§ 512-3. Penalty, Driving While Intoxicated.

Any violation of Section 506-1 shall be punishable by a fine of not more than five hundred dollars (\$500.00) and by imprisonment for not less than three (3) days nor more than six (6) months and no court shall suspend the first three (3) days of any sentence provided for under this section.

(sC 74-140b; ordained by Ord. No. 118-1938; amended by Ord. No. 457-1951, effective Nov. 19, 1951; Ord. No. 353-1955, effective Sept. 8, 1955)

Sec. 506-1. Driving While Intoxicated. No person who is under the influence of alcohol, narcotic drugs, or opiates shall operate or be in actual physical control of any vehicle within this city.

Section 2. That existing Section 506-1 of the Code of Ordinances of the City of Cincinnati is hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed February 26, A.D. 1960.

§ 506-2. Defects or Infirmities in Driver.

It shall be unlawful for any person who is subject to epilepsy, vertigo, or other infirmity of mind or body which would render him incapable of the safe operation of a vehicle or trackless trolley, to operate any of the same. The foregoing provision shall not bar a person whose eyesight is defective from operating a vehicle, if his vision is brought to normal by a proper correction.

(OC 74-51; amended by Ord. No. 457-1951, effective Nov. 19, 1951)

AN ACT

To amend section 4511.19 of the Revised Code
relative to operating a vehicle while under
the influence of alcohol.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 4511.19 of the Revised Code be amended to read as follows:

Sec. 4511.19. No person who is under the influence of alcohol or any drug of abuse shall operate any vehicle, streetcar, or trackless trolley within this state.

In any criminal prosecution for a violation of this section, or ordinance of any municipality relating to driving a vehicle while under the influence of alcohol, the court may admit evidence on the concentration of alcohol in the defendant's blood at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance withdrawn within two hours of the time of such alleged violation. When a person submits to a blood test at the request of a police officer under section 4511.191 of the Revised Code, only a physician or a registered nurse shall withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath or urine specimens. Such bodily substance shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director of health pursuant to section 3701.143 of the Revised Code. Such evidence gives rise to the following:

(A) If there was at that time a concentration of less than ~~fifteen~~ TEN hundredths of one per cent by weight of alcohol, BUT MORE THAN FIVE HUNDREDTHS OF ONE PER CENT BY WEIGHT OF ALCOHOL, in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(B) If there was at that time a concentration of fifteen

OHIO (CINCINNATI)

Section 2 - Physical Coordination Tests

Physical coordination or psychomotor tests are given by the ASAP enforcement officers, as prescribed by administrative regulation, and the results are admissible into evidence in court. The psychomotor test may be administered by the arresting officer, his partner, or by the ASAP officer who processes the DWI offender. It is always administered at the central breath testing facility, and is usually witnessed by either the arresting officer, his partner, the ASAP officer, or all three, depending upon the situation. It was noted that the physical coordination tests are administered after the evidentiary breath test has been conducted. They are administered only once during the process.

These tests are conducted as follows: The DWI offender is told to stand erect with his head tilted slightly backward and eyes closed, upon which he is observed for approximately twenty seconds in this position. He is then told to bring his head back to a normal position, eyes remaining closed, and to extend his arms out from his body parallel to the floor with both index fingers extended. On command of the officer administering the test, the offender then endeavors to touch the tip of his nose with either the right or left index finger. Next, the offender is told to bend forward at the waist with both arms hanging limp, almost touching the floor, and eyes closed. He is again observed in this position for approximately twenty seconds. Finally, he is told to straighten up and to move to a straight line in the floor on either side of the room, where he is then ordered by the officer to place one foot directly in front of the other in heel-to-toe fashion moving forward and turning on command. Upon conclusion of this test, the offender is told to pick up a variety of coins which the officer has strewn on the floor and to place them "heads up" on a flat surface in order of denomination.

Any difficulties in the offender's performance of these dexterity tests are noted by the arresting officer, as well as by the ASAP officer who is completing the Intoxication Report (Fig. 15-2), and this information may be submitted into evidence in court.

Until video taping was discontinued in February 1974, most of the psychomotor tests administered were taped. Since that time, the test results have been recorded only on the Intoxication Report provided by the police department. Special reports or studies on the use, value, or procedures in administering the physical coordination tests apparently have not been originated.

Special training for officers in the field use of the physical coordination tests and their interpretation is provided in conjunction with the breath examiner training administered by the Cincinnati Police Department and the Ohio Department of Health.

Conclusions: Physical coordination tests are normally conducted in the case of persons charged with Driving While Under The Influence. Officers faithfully follow those methods prescribed on the Intoxication Report, which contains physical coordination tests originally developed by the National Safety Council.

Recommendations: Physical coordination testing should be administered prior to the evidentiary test, before the suspect has additional time in which to collect himself.

An evaluative study relating to the effectiveness of current techniques employed in physical coordination testing may perhaps be in order. Along with that, other, potentially more effective methods of physical coordination testing should be experimented with.

Section 3 - Pre-arrest Breath Screening

Not applicable. The Alcohol Safety Unit of the Cincinnati Police Department does not employ pre-arrest screening devices.

Conclusions: None.

Recommendations: Pre-arrest breath screening should be employed by the enforcement countermeasure of the Cincinnati ASAP. In order to implement this measure, an appropriate ordinance sanctioning the process needs to be introduced and approved by the governing body of the city.

Relatively effective portable breath testing devices (PBT's) are available and at least experimental use should be made of one or more of these. Field application of the PBT reduces the need for subjective conclusions by the officer, particularly in those cases where the suspected DWI offender has exceeded the presumptive level of intoxication only by a narrow margin.

Section 4 - Evidentiary Sobriety Testing

Upon commencing transport of his prisoner to the testing facility, the officer notifies the dispatcher of that fact, but is not required to furnish any additional information. The same applies if the person in custody is a female or a juvenile.

Breath testing is predominantly used at the Cincinnati ASAP for evidentiary purposes. The device utilized is the Smith and Wesson Breathalyzer (Model 900 or 900A). The central breath testing facility is presently equipped with two Model 900 and one Model 900A Breathalyzers. (The unit cost of the 900A is approximately \$1050.) Therefore three Breathalyzers are available to the police, but that number is insufficient during peak hours when the number of DWI offenders waiting to be processed frequently exceeds the number of available Breathalyzers. Appearances suggest that two additional Breathalyzers would be in order to alleviate that problem.

Aside from the Breathalyzer, no other type of chemical testing equipment has been used by the Cincinnati ASAP and no problems of any magnitude have been encountered in the use of this equipment. As a whole, everyone interviewed expressed satisfaction with the Breathalyzer units and their overall reliability. However, no special studies have been conducted relative to the use of these instruments by the Cincinnati Police Department.

Each officer of the Alcohol Safety Unit has completed the senior operator's training course and is therefore a qualified Breathalyzer technician (See Appendix A; Exhibit 15b). There were approximately 32 breath examiner specialists within the entire police department, including both senior and basic breath examiners.

There is only one centrally-located breath testing facility in the Cincinnati Police Department (at 314 Broadway), which houses the ASAP enforcement team and Breathalyzers. The facility has no lock-up or detection capability, which presents a security problem when several DWI offenders and attendant police officers are congregated in the room. As many as six DWI suspects at a single time were observed undergoing various stages of processing, and with the police officers present the total number of persons in the room at times was as high as 15. On extremely busy nights, even that number has in all probability been exceeded. The result is a volatile, potentially eruptive situation.

The central breath testing facility consists of a large, single room (floor plans not available) which serves as a common receptacle for all DWI offenders apprehended in Cincinnati, except those who had suffered injuries and were transported directly to a hospital. (In the latter case, a blood or urine sample may be obtained at the hospital.) It is intended for the use of all police officers - ASU as well as non-ASAP - for the purpose of evidentiary sobriety testing. The room contains file cabinets maintained by the ASU supervisors, two tables for three Breathalyzer units, two sets of videotape recording components, several racks of exposed videotape covering roughly two-thirds of the length and width of one wall (estimated to number approximately 1000), a computer terminal and teletype, and shelves containing numerous forms utilized by ASU officers. In addition, there are the necessary furnishings (desks, chairs, etc.) required by ASU officers and supervisors.

The suspected DWI offender is led into the room by the arresting officer and told to be seated in front of one of the Breathalyzers. He is told to read a copy of the Ohio Implied Consent statute which is posted on the table directly in front of him (Fig. 15-3). Portions of the statute which are not readily understood by the suspect are explained in layman's terms by the police officer. This is the offender's first introduction to the provisions of the Implied Consent statute. He is never administered his Constitutional rights in keeping with the Miranda ruling, since this procedure is not required statutorily or by precedent for offenders charged with DWI. (In Ohio, Constitutional rights are administered only in felony cases.) Upon the suspect's initiation to the Implied Consent statute,

he is then asked whether he will undertake a breath test. (Although Ohio law permits three types of samples - breath, blood, or urine, any of which may be submitted for testing of blood-alcohol concentration - the vast majority of tests conducted by the Cincinnati ASU are performed on Breathalyzer units.) It is interesting to note that the arresting officer is permitted by statute to administer the evidentiary breath test to his own prisoner, and ASU officers nearly always do so.

If the suspect consents to submit to a breath sample, the officer - who has usually already begun to prepare the breath testing equipment - completes the required preparations and obtains the sample. (A twenty-minute observation period prior to administering the evidentiary breath test, during which the person to be tested is not to smoke, drink, chew gum, etc., is prescribed by Ohio statute. It was observed that this requirement is often not stringently followed, and offenders may be subjected to the evidentiary process after a waiting period several minutes short of the time specified by law.) ASU officers generally appear to be well-versed in the manipulation of the Breathalyzer units.

A very interesting observation is the fact that DWI offenders whose blood-alcohol concentrations are less than .10% are virtually always released by the officer after testing. (Ohio law stipulates that between the level of .051 and .99% BAC, no presumption may be made concerning the offender's state of intoxication.) At least two cases were observed where a DWI suspect with a blood-alcohol concentration of .09% was released. This generally, but not always, occurs unless there are extreme circumstances involved, such as when the offender has been a principal in a serious injury or fatal crash. On one occasion a suspected DWI offender was brought to the testing facility after having been involved in a single-vehicle (property damage) crash. He registered a BAC of .09% and was released on the spot without citation or warning.

In addition, officers have experienced that convictions are infrequently obtained in cases of blood alcohol concentrations between .10% and .149%. Normally, the officer feels that the chances for conviction of the defendant at anything less than a BAC of .15% are remote. If the offender's level of blood-alcohol concentration is at .15% or higher, the likelihood

of a conviction is then substantially increased. Whether this phenomenon stems from the judges' lack of awareness concerning impairment at various BAC levels or whether other factors enter into this development was not determined.

ASU supervisors maintained that the officer does not have the authority to reduce the charge of DWI later in the arrest or testing process if, for example, the suspected offender only registers a BAC of .04%. This appears to be true only in the sense that under such conditions the officer will not reduce the charge, but rather he will release the offender on the spot without formally charging him with any offense, as previously mentioned.

It should be noted that prior to the inception of ASAP, only urine analysis was used as a BAC testing method in Cincinnati. At that time, only those with a blood alcohol concentration of .20% or higher were prosecuted, even though the legal presumptive level was at .15% BAC. This policy was apparently fostered by the courts and was well-known to police officers.

After the test has been performed, the DWI offender is given a copy of the Ohio Uniform Traffic Ticket, which contains the results of his evidentiary breath test (percent of blood-alcohol concentration). (See Figure 15-1.) From the point of the arrest to the point of the completion of the evidentiary breath test, three officers are normally involved in the overall process: the arresting officer, his partner who drives the offender's vehicle from the scene, and the ASAP officer who processes the offender at the breath testing facility. That number remains the same where the arrest is affected by an ASAP officer. In that event, the ASAP officer fulfills the roles of arresting as well as processing officer, but still requires another officer to transport the offender's vehicle, and a third to follow the transporting officer to his destination. On the average a cumulative total of two man-hours is expended by all officers involved in processing the offender from the time of the arrest to completion of the evidentiary breath test. (That average is reduced somewhat in arrests by ASAP officers, since those officers engaged in the vehicle transporting function resume normal patrol immediately after delivering the offender's auto to the testing facility.)

Informal arrangements exist with three or four hospitals in the area, including Cincinnati General, to obtain bodily substances such as blood or urine for BAC testing. Blood samples are obtained at a hospital, normally by a physician, medical technician or nurse. A urine sample may be obtained by the arresting officer. In either event, analysis would be conducted by the city chemist for blood alcohol concentration. However, the city chemist performs testing for blood-alcohol concentration only; if drugs are suspected, the urine sample is sent to the Hamilton County Laboratory for analysis. Generally, the urine sample would be collected at the central facility (314 Broadway), unless the suspected offender was injured, in which event the sample would be obtained in the hospital after his arrival.

The law enforcement agency is empowered by statute to designate the type of chemical test to be administered to the DWI suspect; which has a direct bearing on the predominance of breath testing by the Cincinnati Police Department. The offender is in no position to refuse the evidentiary test prescribed in favor of one of his own choice, without incurring sanctions imposed by the Implied Consent law.

Conclusions: As in the case of virtually all other enforcement countermeasures surveyed, evidentiary breath testing is preferred by officers over other methods for BAC analysis. The Breathalyzer (manufactured by Smith and Wesson, Inc.) is the device used for this purpose, and officers expressed overall satisfaction with its performance.

The number of certified breath examiner specialists of the Cincinnati Police Department appeared rather limited (approximately 32 total).

The breath testing facility seemed large enough to accommodate the needs of enforcement personnel, but is handicapped in the sense that provisions for personnel safety and security are lacking.

The fact that the arresting officer, if a certified breath examiner specialist, is permitted to administer the evidentiary breath test to his own prisoner is a time-saving procedure.

The total number of man hours expended by officers in a routine DWI arrest (nearly two hours) is excessively high.

The statute authorizing officers to designate the kind of chemical test to be administered considerably facilitates the enforcement process. It eliminates any options on the part of the DWI suspect to choose the type of analysis which is to be conducted, thereby opening the door to breath testing.

Recommendations: If the DWI enforcement effort is to be sustained in Cincinnati, greater emphasis may be placed on training police officers as breath examiner specialists. Since the arresting officer is permitted to administer the evidentiary breath test, a large number of certified breath examiners among members of the regular patrol force would reduce the number of man-hours required presently for processing.

At busy times of the week, many ASAP officers spend a great deal of time processing DWI suspects who have been arrested by regular patrol officers.

LICENSE NO. 1322 BIRTHDATE MONTH DAY YEAR

NAME _____

SEX ☐ M ☐ F COPE ☐ LEFT ☐ HAND ☐ CONT. ☐ STEER. ☐ DRIVE ☐ ONLY ☐ CHART ☐ PROB. ☐ T.P.

OTHER _____

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS THAT THE PERSON WHOSE NAME IS INSCRIBED ABOVE DID ON

THE _____ DAY OF _____, 197____ AT _____ M. UNLAWFULLY

☐ PASS. ☐ CYCLE ☐ COMM. YR. _____ MAKE _____

BODY TYPE _____ COLOR _____ LIC. _____ YEAR _____ STATE _____

UPON PUBLIC HIGHWAY, NAMELY _____

AT _____

IN THE CITY OF CINCINNATI, IN HAMILTON COUNTY AND STATE OF OHIO, AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:

☐ SPEED ☐ IMPROPER TURN ☐ IMPROPER PASSING ☐ CUT IN ☐ CHANGE OF LANE ☐ EXCESSIVE SPEED ☐ OTHER _____

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at Cincinnati, Ohio, this _____ day of _____, 197____.

PLEA _____ DATE CONVICTED _____ DATE BOND FORWARDED _____

SENTENCE IMPOSED _____

MOVING VIOLATION? YES ☐ NO ☐ F R O M T O _____

DRIVER'S LIC. CONFISCATED? YES ☐ NO ☐ F R O M T O _____

OTHER INFORMATION _____

☐ IN THE HAMILTON COUNTY MUNICIPAL COURT (TRAFFIC) 3120, CINCINNATI, OHIO 45202

☐ IN THE HAMILTON CO. JUVENILE TRAFFIC COURT 3102, COURT HOUSE, CINCINNATI, O. 45202

I, the undersigned, hereby certify that the above statements are taken from the records of this Court

DATED _____ SIGNATURE OF AUTHORIZED OFFICIAL _____

To Bureau of Motor Vehicles, Drivers' License Division
Columbus, Ohio 43211

0569801

Return on this warrant as follows:

to answer
warrant is, by
Judicial Court
Deputy Clerk

Figure 15-1 (cont'd.)

IN THE HAMILTON COUNTY MUNICIPAL COURT
IN THE HAMILTON COUNTY JUVENILE TRAFFIC COURT

LICENSE NUMBER _____ MONTH _____ DAY _____ YEAR _____

NAME _____

STREET _____

CITY, ST. _____

IDENTIFICATION NUMBER MO. ISSUED TR. EXPIRES STATE 1 2 3

HAIR _____ SEX _____ HEIGHT _____ WEIGHT _____ HAIR _____ EYES _____ (DRIV. RESID.) YES _____

TYPE _____

ONE- _____

CHAD. _____

PROB. _____

T.P. _____

OTHER _____

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS THAT
THE PERSON WHOSE NAME IS INSCRIBED ABOVE DID ON

THE _____ DAY OF _____, 197 _____ AT _____ M. UNLAWFULLY

PASS. _____ CYCLE _____

COMM. YR. _____ MAKE _____

BUS _____

YEAR _____

BODY TYPE _____ COLOR _____ LIC. _____ STATE _____

UPON PUBLIC HIGHWAY, NAMELY _____

AT _____

IN THE CITY OF CINCINNATI, IN HAMILTON COUNTY AND STATE OF OHIO, AND
DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:

☐ SPEED ☐ Unreasonable for conditions. (MPH in _____ MPH zone) ☐ Unable to stop in assured clear distance ahead. ☐ Slow speed ☐ Excessive speed

☐ IMPROPER TURN ☐ Left ☐ No signal ☐ U-Turn ☐ Right ☐ Wrong lane ☐ Prohibited

☐ DISGUISED TRAFFIC SIGNAL OR DEVICE ☐ Stop sign ☐ Yield sign ☐ Red light

☐ IMPROPER PASSING ☐ At intersection ☐ Hill ☐ Curve ☐ No passing zone ☐ Cut in ☐ On right

☐ IMPROPER LANE USAGE ☐ Change of course ☐ Cut out ☐ Lane straddling

☐ FAILED TO YIELD RIGHT OF WAY ☐ FOLLOWING TOO CLOSELY ☐ OPERATED WITHOUT REGARD TO SAFETY (DESCRIBE BELOW)

☐ Failed to furnish satisfactory proof that he has an operator's chauffeur's license.

DESCRIPTION OF OFFENSE _____

IN VIOLATION OF SSC. No. _____ CINCINNATI MUNICIPAL CODE _____ OHIO REVISED CODE _____

PAVEMENT ☐ Dry ☐ Wet ☐ Snow ☐ Ice

VISIBILITY ☐ Clear ☐ Night ☐ Dusk ☐ Rain ☐ Snow ☐ Fog

TRAFFIC ☐ Crossing ☐ Light ☐ Heavy ☐ Pedestrian ☐ One-way ☐ Same direction ☐ Moderate

AREA ☐ Rural ☐ Business ☐ School ☐ Residential ☐ Industrial

ROAD SURFACE ☐ Asphalt ☐ Concrete ☐ Gravel ☐ Brick ☐ Divided ☐ No. of lanes

ACCIDENT ☐ Yes ☐ Property damage ☐ Vehicle ☐ No ☐ Injury ☐ Fixed object ☐ Pedestrian

Acc. No. _____ Almost caused _____ Fatal _____

OFFICER (Print) _____ No. _____ Crp. _____ Unit _____

SWORN TO AND ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 197 _____

SIGNATURE OF OFFICER _____

1569801

Figure 15-1 (cont'd.)

1086997

358

LICENSE NUMBER MONTH DAY YEAR

NAME

STREET

CITY-STATE IDENTIFICATION NUMBER MO. ISSUED TO EXPIRES STATE 1 2 3

BIRTHDATE 19

MARK SEX HEIGHT WEIGHT HAIR EYES (ONLY 1 YES (REST))

☐ SGL ☐ CORN LENS ☐ HAND CONT. ☐ POW. STEER. ☐ AUTO. DRIVE ☐ DAYLITE ONLY

TYPE ☐ Oper. ☐ Chauff. ☐ Prob. ☐ T.P.

OTHER

THE UNDERSIGNED, BEING DULY SWORN, UPON HIS OATH DEPOSES AND SAYS THAT THE PERSON WHOSE NAME IS INSCRIBED ABOVE DID ON

THE DAY OF 197 AT M. UNLAWFULLY

☐ PASS. ☐ CYCLE ☐ COMM. TR. MAKE YEAR
☐ BUS

BODY TYPE COLOR LIC STATE

UPON PUBLIC HIGHWAY, NAMELY

AT

IN THE CITY OF CINCINNATI, IN HAMILTON COUNTY AND STATE OF OHIO, AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE:

OFFICER (PRINT) No. City Unit

SWORN TO AND ACKNOWLEDGED BEFORE ME THIS

DAY OF 197 SIGNATURE OF OFFICER

NOTARY PUBLIC MY COMMISSION EXPIRES

OFFICER'S COPY

NOTE IF PLASTIC DRIVER'S LICENSE USED TO IMPRINT NAME ADDRESS BE SURE TO VERIFY IF IS CURRENT "DRIVER'S IF NOT"

U569801

Figure 15-1 (cont'd.)

| | |
|--------------|------|
| ASAP No. | 9076 |
| Date: | |
| Time: | |
| Day of Week: | |

**CINCINNATI
POLICE DIVISION
INTOXICATION
REPORT**

| | |
|-------------------|--------|
| Court Date: _____ | |
| District | Sector |
| Court Case No. | |
| Accident No. | |
| O.U.T. No. | |

Name _____ Address _____

Sector No. _____ Phone No. _____ Sex _____ Race _____ Weight _____ D. O. B. _____

Sec. Sec. No. _____ Operator's Lic. No. _____ State _____ Type _____

Vehicle Info: Year _____ Make _____ Type _____ License No. _____ State _____ Year _____

Occupation _____ Employer/Address _____

Marital Status _____ Place of Arrest _____ Street Cont. _____ Weather _____

CHARGES:

1. _____

2. _____

3. _____

SUMMARY:

PERFORMANCE TESTS:

| | | | | | | |
|---|---|--------------------|-------------------|------------------|-------------------|---------------|
| BALANCE: | () falling | () needed support | () wobbling | () swaying | () unsure | () sure |
| WALKING: | () falling | () staggering | () stumbling | () swaying | () unsure | () sure |
| TURNING: | () falling | () staggering | () hesitant | () swaying | () unsure | () sure |
| FINGER-TO-NOSE: | Right: () completely missed | () hesitant | () sure | | | |
| | Left: () completely missed | () hesitant | () sure | | | |
| COIN: | () unable | () fumbling | () slow | () sure | () (Other) _____ | |
| (Balance during coin test) _____ | | | | | | |
| Ability to understand instructions: () poor () fair () good Tests performed: Date _____ Time _____ | | | | | | |
| BREATH: | Odor of Alcoholic Beverages: () strong () moderate () faint () none | | | | | |
| ATTITUDE: | () excited | () hilarious | () talkative | () carefree | () sleepy | () profanity |
| | () combative | () indifferent | () insulting | () cocky | () cooperative | () polite |
| UNUSUAL ACTIONS: | () hiccupping | () belching | () vomiting | () fighting | () crying | () laughing |
| SPEECH: | () not understandable | () mumbled | () slurred | () mush-mouthed | | |
| | () confused | () thick-tongued | () stuttered | () accent | () fair | () good |
| FACE: | () apparently normal | () red | () extremely red | () pale | | |
| EYES: | () apparently normal | () watery | () bloodshot | () glassy | () half closed | |
| Indicate other unusual actions or statements, including when first observed: _____ | | | | | | |

Figure 15-2

Were you operating a vehicle? _____ Where were you going? _____
 What street or highway were you on? _____ Direction of Travel? _____
 Where did you start from? _____ What time did you start? _____
 What time is it now? _____ What city, county are you in now? _____
 What is the date? _____ What day of the week is it? _____
 When did you last eat? _____ What did you eat? _____
 What were you doing during the last 3 hours? _____
 Have you been drinking? _____ What? _____ How much? _____
 Where? _____ Started? _____ Stopped? _____
 Are you under the influence of an alcoholic beverage now? _____
 Do you have any physical defects? _____ If so, what? _____
 Are you ill? _____ If so, what's wrong? _____ Do you want to go to the hospital? _____
 Do you limp? _____ Have you been injured lately? _____ If so, what's wrong? _____
 Did you get a bump on the head? _____ Were you involved in an accident today? _____
 Have you had any alcoholic beverages since the accident? _____ If so, what? _____
 Where? _____ How much? _____ When? _____
 Have you seen a doctor or dentist lately? _____ If so, who? _____ When? _____
 What for? _____ Are you taking tranquilizers, pills or medicines of any kind? _____
 If so, what kind? (get sample) _____ Last dose? _____ Do you have epilepsy? _____
 Diabetes? _____ Do you take insulin? _____ If so, last dose? _____
 Have you had any injections of any other drugs recently? _____ If so, what for? _____
 What kind of drug? _____ Last dose? _____ When did you last sleep? _____
 How much sleep did you have? _____ Are you wearing false teeth? _____
 Do you have a glass eye? _____

HANDWRITING SPECIMEN

Signature and/or anything
 a chooses.

BREATHALYZER TEST BY _____ Time _____ Date _____
 VIDEO TAPE BY _____ Time from _____ to _____
 WITNESSED BY _____

OBSERVER'S OPINION:

Effects of alcohol: () extreme () obvious () slight () none Ability to drive: () unfit
 () fit
 Indicate briefly what first led you to suspect alcoholic influence: _____
 Observed by: _____ Assignment: _____
 Witnessed by: _____ Date _____ Time _____

CHEMICAL TEST DATA:

Specimen: () blood () breath () saliva () urine Analysis result: _____
 () none () refused () unable If Breath, what instrument? _____
 If refused, why? _____
 Constitutional Rights Adv. by _____ Date & Time _____ Initials _____
 Section 4511.191 Read by _____ Initials _____

| Arresting Officers | Badge | Unit | Group | Arresting Officers | Badge | Unit | Group |
|--------------------|-------|-------|-------|--------------------|-------|-------|-------|
| 1. _____ | _____ | _____ | _____ | 3. _____ | _____ | _____ | _____ |
| 2. _____ | _____ | _____ | _____ | 4. _____ | _____ | _____ | _____ |

WITNESSES:

ADDRESS:

PHONE NO.

Figure 15-2 (cont'd.)

NOTIFICATION OF REFUSAL TO SUBMIT TO A CHEMICAL TEST

Person under arrest for the offense of driving a motor vehicle while under the influence of alcohol:

NAME _____ DRIVER LICENSE NO. _____
 (Lic. No. & State)
 ADDRESS _____ DATE OF BIRTH _____
 CITY & STATE _____ SOC. SEC. NO. _____
 DATE & TIME OF VIOLATION _____ DATE & TIME OF REFUSAL _____

AT A POLICE STATION, THE FOLLOWING STATEMENT PRESCRIBED BY THE REGISTRAR OF MOTOR VEHICLES MUST BE SHOWN TO AND READ TO THE PERSON UNDER ARREST.

-You are now under arrest for driving a motor vehicle while under the influence of alcohol and will be requested by a police officer to submit to the chemical test designated by the law enforcement agency. If you refuse to submit to the chemical test requested, the registrar of motor vehicles, upon being so notified, in the manner required by law, shall suspend your license, or permit to drive, or any non-resident operating privilege for a period of six months, subject to review as provided; or, if you are a resident without a license or permit to operate a motor vehicle in this state, to deny you the issuance of a license or permit for a period of six months after the date of this alleged violation.-

We, the undersigned, do hereby certify that the above written form of advice, prescribed by the registrar of motor vehicles, was shown to the above referenced person under arrest and read to him or her in the presence of the arresting officer and one other police officer or civilian police employee.

Signature of arresting officer _____
 Enforcement agency _____
 Signature of other witnessing
 police officer or civilian police employee _____
 Position _____

REPORT AND AFFIDAVIT OF ARRESTING OFFICER:
 STATE OF OHIO, COUNTY OF _____ SS:

I, hereby certify that I have placed the above referenced person under arrest, having had reasonable grounds to believe that this person was operating a motor vehicle upon the public highways in this state while under the influence of alcohol. I further certify that this person did refuse to submit to the designated (insert type test-blood, breath or urine) _____ chemical test when requested to do so after having been advised, in the prescribed manner, of the consequences of his or her refusal.

Arresting Officer: _____
 Signature

Sworn to before me this _____ day of _____ A.D., 19____
 Notary Public _____
 OR
 Deputy Clerk of Court _____ City of _____

BMV 09-389 (Rev. 10-68)

Section 4511.191, O.R.C.

Figure 15-3

OKLAHOMA (OKLAHOMA CITY)

Section 1 - Legislative Provisions

Sec. 34-77. Reckless driving.

No person shall drive any vehicle or animal in a manner which is calculated to endanger the rights, lives or property of others or which is without due caution or circumspection or which is at a careless, heedless or dangerous rate of speed.

(Ord. 1966, 21.6.26.1.)

Sec. 34-78. Driving while under the influence of liquor or drugs.

No person shall drive, operate, or be in actual physical control of any motor vehicle upon any highway who is under the influence of intoxicating liquor, or who is under the influence of any narcotic drug, barbiturate, amphetamine, marihuana, or any other drug or substance to a degree which renders him incapable of safely driving a motor vehicle. The fact that any person charged with a violation of this provision is or has been lawfully entitled to use such narcotic drug, barbiturate, amphetamine, marihuana, or other drug or substance shall not constitute a defense. *

(Ord. 1966, 21.6.27.1.)

§751. IMPLIED CONSENT TO CHEMICAL TEST FOR DETERMINING ALCOHOLIC CONTENT OF BLOOD.—Any person who operates a motor vehicle upon the public highways or streets of this state shall be deemed to have given consent subject to the provisions of this act to a chemical test or tests of his blood or breath, at the election of the person proposed to be tested, for the purpose of determining the alcoholic content of his blood. The test or tests shall be administered at the direction of a law enforcement officer after having arrested a person and having reasonable grounds to believe the person driving or in actual physical control of a motor vehicle upon the public highways was under the influence of alcohol or intoxicating liquor. (January 1, 1969)

§752. ADMINISTRATION OF TESTS—REPORTS—CIVIL ACTIONS.—Only a licensed medical doctor, osteopathic physician, qualified technician, technologist, or registered nurse acting at the request of a law enforcement officer may withdraw blood for purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath specimens. The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer, providing the specimen for testing is obtained at the same time as or is an aliquot of that obtained by the law enforcement officer, and provided further, that said aliquot specimen may be delivered to any person qualified to analyze such specimens as the subject may designate, and provided further that such subject makes arrangements for delivery thereof, in order for any evidence under this act to be admissible. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests taken at the direction of a law enforcement officer. The blood specimen shall be tested to determine the alcoholic content therein, and also for the presence of any other substances which might have influenced the behavior of the subject if he so requests. A written report of the results including full information concerning the test or tests taken at the direction of the law enforcement officer shall be made available to the subject. The results of the test or tests as provided for herein shall not be admissible in civil actions. (January 1, 1969)

*From Oklahoma City Code - Vehicles and Traffic.

§753. REFUSAL TO SUBMIT TO TEST.—If a conscious person under arrest refuses to submit to chemical testing, none shall be given, but the Oklahoma Commissioner of Public Safety, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways while under the influence of alcohol or intoxicating liquor, and that the person had refused to submit to the test or tests, shall revoke his license to drive and any nonresident operating privilege for a period of six months; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the Oklahoma Commissioner of Public Safety shall deny to the person the issuance of a license or permit for a period of six months after the date of the alleged violation, subject to review as hereinafter provided. (January 1, 1969)

§754. HEARING AFTER REVOCATION OF LICENSE.—Upon the written request of a person whose privilege to drive has been revoked or denied the Oklahoma Commissioner of Public Safety shall grant the person an opportunity to be heard within ten days after the receipt of the request, but the request must be made within thirty days after the revocation. The hearing shall be before the Oklahoma Commissioner of Public Safety or his authorized agent, in the county wherein the alleged events occurred for which the person was arrested, unless the Oklahoma Commissioner of Public Safety or his authorized agent and the person agree that the hearing may be held in some other county. The hearing shall be transcribed and its scope shall cover the issues of whether the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of alcohol or intoxicating liquor, whether the person was placed under arrest and whether he refused to submit to the test or tests. Whether the person was informed that his privilege to drive would be revoked or denied if he refused to submit to the test or tests shall not be an issue. The Oklahoma Commissioner of Public Safety or his authorized agent shall order either that the revocation or denial be rescinded or sustained. (January 1, 1969)

§755. APPEAL.—If the revocation or denial is sustained, the person whose license or permit to drive or nonresident operating privilege has been revoked or denied may file a petition for appeal in the county court in the manner provided in 47 O.S., Section 6-211, and the proceedings upon said appeal shall be the proceedings prescribed by 47 O.S., Section 6-211. (January 1, 1969)

§756. ADMISSION OF EVIDENCE SHOWN BY TESTS.—Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol or intoxicating liquor, evidence of the amount of alcohol in the person's blood as shown by a chemical analysis of his blood or breath is admissible. For the purpose of this section:

(a) evidence that there was five-hundredths (5/100) of one percent (1%) or less by weight of alcohol in his blood is prima facie evidence that the person was not under the influence of alcohol or intoxicating liquor;

(b) evidence that there was more than five-hundredths (5/100) of one percent (1%) by weight of alcohol in the person's blood is relevant evidence of operating a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol or intoxicating liquor; however, no person shall be convicted of the offense of operating a motor vehicle while his ability to operate such vehicle is impaired by consumption of alcohol or intoxicating liquor solely because there was more than five-hundredths (5/100) of one percent (1%) by weight of alcohol in the person's blood in the absence of additional evidence that such person's driving was affected by said consumption of alcohol to the extent that the public health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle;

(c) evidence that there was ten-hundredths (10/100) of one percent (1%) or more by weight of alcohol in his blood shall be admitted as prima facie evidence that the person was under the influence of alcohol or intoxicating liquor;

(d) percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

(e) To be admissible such evidence must first be qualified by establishing that such specimen was obtained from the subject within not more than two (2) hours of the arrest of the subject. (1972)

***67-756. b. IMPAIRED DRIVING. (FIRST, SECOND OR THIRD OFFENSE)**

§757. OTHER COMPETENT EVIDENCE—ADMISSIBILITY.—The provisions of this act do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol or intoxicating liquor. (January 1, 1969)

§758. NONRESIDENTS—NOTICE TO OTHER STATES.—When it has been finally determined under the procedures of this act that a nonresident's privilege to operate a motor vehicle in this state has been revoked or denied, the Oklahoma Commissioner of Public Safety shall give information in writing of the action taken to the official in charge of traffic control or public safety of the state of the person's residence and of any state in which he has a license. (January 1, 1969)

§759. BOARD OF CHEMICAL TESTS FOR ALCOHOLIC INFLUENCE —METHODS— PERMITS.—There is hereby established the Board of Chemical Tests for Alcoholic Influence, to be composed of the Dean of the University of Oklahoma School of Medicine, or his designate who shall receive his appointment in writing, as Chairman, and the State Commissioner of Public Safety, the Director of the State Bureau of Investigation, the State Commissioner of Public Health, and the Director of the Southwest Center for Law Enforcement Education at the University of Oklahoma, as members, to serve without pay other than necessary and actual expenses. Chemical analysis of the person's blood or breath to be considered valid under the provisions of this act shall have been performed according to methods approved by the Board of Chemical Tests for Alcoholic Influence and by an individual possessing a valid permit issued by the Board for this purpose. The Board of Chemical Tests for Alcoholic Influence is authorized to approve satisfactory techniques, methods, and equipment for chemical tests for alcoholic influence, to ascertain the qualifications and competence of individuals to conduct such tests, and to issue permits which shall be subject to termination or revocation at the discretion of said Board. (April 21, 1969)

§760. EFFECTIVE DATE.—The effective date of this Act shall be January 1, 1969. (January 1, 1969)

§761. OPERATION OF MOTOR VEHICLE WHILE ABILITY IMPAIRED BY CONSUMPTION OF ALCOHOL—PENALTIES—SUSPENSIONS—VIOLATION NOT BONDABLE.—(a) Any person who operates a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol shall be subject, for a first offense, to a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00).

(b) Any person convicted or who pleads guilty to a second or subsequent offense of subsection (a) of this section, shall be subject to a fine of not less than Three Hundred Dollars (\$300.00) nor more than Five Hundred Dollars (\$500.00).

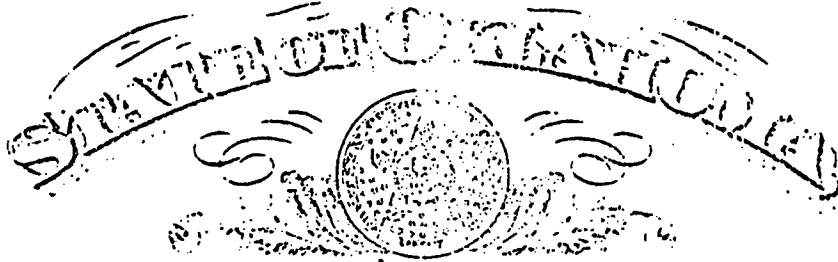
(c) Upon the receipt of a certified report from a court that a person has been convicted or has pleaded guilty to the provisions of subsection (a) of this section, the Commissioner of the Department of Public Safety shall suspend the driving privilege of such person for a period of three (3) months. Said suspension shall be subject to modification at the discretion of the Commissioner of Public Safety. No modification shall be granted to any person whose driving privilege has been previously suspended or revoked for any reason other than a violation of Chapter 7 of Title 47 of the Oklahoma Statutes.

(d) Upon the receipt of a certified report from a court that a person has been convicted or has pleaded guilty to a second or subsequent offense of subsection (a) of this section, the Commissioner of the Department of Public Safety shall suspend the driving privilege of such person for a period of six (6) months. Such suspension shall not be subject to modification.

(e) The violations as set out in this section shall not be bondable under Section 1114.9 of Title 22, Oklahoma Statutes. (1972) *

*From Chemical Test.

OFFICE OF THE SECRETARY OF STATE



CERTIFICATE OF TRANSCRIPT

I, the undersigned Secretary of State of the State of Oklahoma, do hereby certify that the annexed transcript has been compared with the record on file in my office of which it purports to be a copy, and that the same is a full, true and correct copy of:

BOARD OF CHEMICAL TESTS FOR ALCOHOLIC INFLUENCE

RULES AND REGULATIONS

PERTAINING TO BREATH-ALCOHOL ANALYSIS METHODS AND TECHNIQUES

Adopted April 23, 1973

PERTAINING TO APPROVAL OF EQUIPMENT FOR CHEMICAL TESTS FOR ALCOHOLIC INFLUENCE

Adopted April 23, 1973

*In testimony whereof, I have hereunto set
my hand and affixed the Great Seal of the
State of Oklahoma at the City of Oklahoma
City this 25th day of July, 1973.*

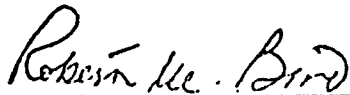
John Rogers
Secretary of State
J. W. Foster

APPROVAL OF EQUIPMENT FOR
CHEMICAL TESTS FOR ALCOHOLIC INFLUENCE

AS ADOPTED APRIL 23, 1973

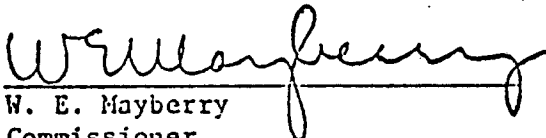
APPROVED

CHAIRMAN OF THE BOARD

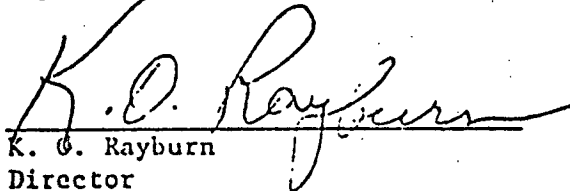


Robert M. Bird, M.D.
Dean
University of Oklahoma
College of Medicine

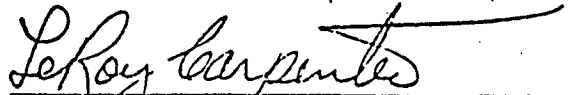
MEMBERS OF THE BOARD



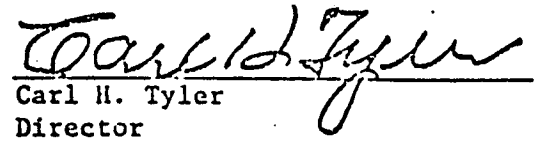
W. E. Mayberry
Commissioner
Department of Public Safety



K. O. Rayburn
Director
Southwest Center for Law
Enforcement Education



LeRoy Carpenter, M.D.
Commissioner
State Department of Health



Carl H. Tyler
Director
State Bureau of Investigation

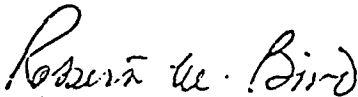
Date of Approval: April 23, 1973

BREATH-ALCOHOL ANALYSIS METHODS AND TECHNIQUES

AS ADOPTED APRIL 23, 1973

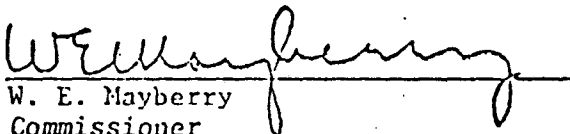
APPROVED

CHAIRMAN OF THE BOARD

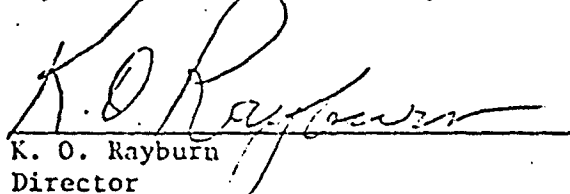


Robert M. Bird, M.D.
Dean
University of Oklahoma
College of Medicine

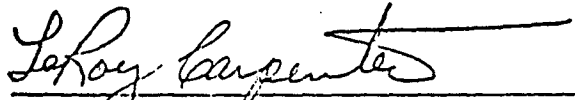
MEMBERS OF THE BOARD



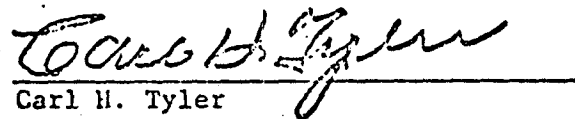
W. E. Mayberry
Commissioner
Department of Public Safety



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Director
Southwest Center for Law
Enforcement Education

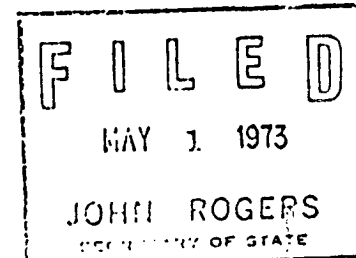


LeRoy Carpenter, M.D.
Commissioner
State Department of Health



Carl H. Tyler
Director
State Bureau of Investigation

Date of Approval: April 23, 1973



STATE OF OKLAHOMA
BOARD OF CHEMICAL TESTS FOR ALCOHOLIC INFLUENCE

RULES AND REGULATIONS

PERTAINING TO BREATH-ALCOHOL ANALYSIS METHODS AND TECHNIQUES

ADOPTED APRIL 23, 1973

The Board of Chemical Tests for Alcoholic Influence, having published notice of its intention to adopt certain rules and regulations pertaining to breath-alcohol analysis methods and techniques pursuant to 47 O.S., § 759, hereby adopts the following rules and regulations, which supersede and replace the rules and regulations pertaining to performance of chemical tests for alcohol upon specimens of breath adopted by the Board on August 14, 1969:

1. Analysis of breath specimens for the determination of the alcoholic content therein by means of the Model 900 or Model 900A Breathalyzer apparatus used in association with the Model 6000 or Model Mark II Alcoholic Breath Simulator device (all of which are manufactured by the Smith & Wesson Electronics Company, Eatontown, New Jersey 07724, or its successors) is hereby declared to be a satisfactory technique or method for performance of chemical tests for alcoholic influence, and is approved as a method for chemical analysis of breath for alcohol.

(a) The procedure for each such analysis shall include the following:

- (1) Continuous observation of the subject whose breath is to be tested for a period of at least fifteen (15) minutes prior to the collection of the breath specimen, during which period the subject shall not have ingested alcohol or alcoholic beverages, regurgitated, or vomited.

- (2) A blank analysis.
 - (3) Analyses for alcohol of one or more specimens of breath which prior to collection were substantially in equilibrium with pulmonary arterial blood with respect to alcohol.
 - (4) Analysis for alcohol of at least one suitable reference or control sample of known alcohol concentration, such as air equilibrated at a known temperature with a reference solution of known ethyl alcohol content, results of which analysis or analyses must coincide with the corresponding blood-alcohol concentration target value within $\pm 0.01\%$ w/v.
 - (5) Performance of the above steps (2), (3), and (4) shall be in accordance with the "Operating Procedure" set forth in the Breath Analysis Record and Report, a copy of which is attached hereto marked Exhibit "A".
 - (6) The operator performing each such analysis shall complete the Breath Analysis Record and Report and forward one copy thereof to the Department of Public Safety, Post Office Box 11415, Oklahoma City, Oklahoma.
- (b) The following maintenance shall be performed on the above listed equipment at least once during each thirty (30) day period or after every twenty-five (25) tests, whichever occurs first, by a person possessing a valid Breath Alcohol Analysis (Supervisor) Permit by this Board.

CITY OF OKLAHOMA CITY
POLICE DEPARTMENT

TO: All Officers

DATE: August 11, 1972

FROM: Sam D. Watson
Chief of Police

SUBJECT: Driving While Impaired By
Alcohol or Intoxicating
Liquor.

Chapter 34, Article VI of the Oklahoma City Code, 1970,
is hereby amended by adding the following sections:

Section 34-78.1. Driving while impaired by alcohol or
intoxicating liquor. No person within this city shall drive
or operate a motor vehicle while his ability to operate such
motor vehicle is impaired by the consumption of alcohol or
intoxicating liquor which renders said person's driving to
be affected by said consumption of alcohol to the extent that
the public health and safety is threatened or that said person
had violated a state statute or city ordinance in the operation
of a motor vehicle.

Penalty: Any person convicted of violating any of the
provisions of Section 34-78.1 of this Chapter shall be punished
by a fine and costs not to exceed Three Hundred (\$300.00)
Dollars.

The following guidelines are to be used when determining
whether to charge a person with "Driving Under the Influence,"
or with the lesser charge of "Driving While Impaired."

1. Evidence that there was five-hundredths (5/100) of
one percent (1%) or less by weight of alcohol in his blood
is prima facie evidence that the person was not under the

influence of alcohol or intoxicating liquor.

2. Evidence that there was more than five-hundredths (5/100) of one percent (1%) by weight of alcohol in the person's blood is relevant evidence of operating a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol or intoxicating liquor.

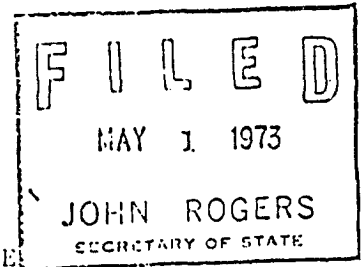
3. Evidence that there was ten-hundredths (10/100) of one percent (1%) or more by weight of alcohol in his blood shall be admitted as prima facie evidence that the person was under the influence of alcohol or intoxicating liquor.

a. In the event a person is arrested for a drinking offense and refuses to submit to a chemical test or requests a blood test, this person will be charged with "Driving Under the Influence."

NOTE: The rules governing chemical tests under the Implied Consent Law are in full effect when arresting persons for either charge.

A handwritten signature in black ink, appearing to read "S. Watson", with a horizontal line extending to the right.

Sam D. Watson,
Chief of Police



STATE OF OKLAHOMA
BOARD OF CHEMICAL TESTS FOR ALCOHOLIC INFLUENCE

RULES AND REGULATIONS
PERTAINING TO APPROVAL OF EQUIPMENT FOR CHEMICAL TESTS FOR ALCOHOLIC INFLUENCE
ADOPTED APRIL 23, 1973

The Board of Tests for Alcoholic Influence, having published notice of its intention to adopt certain rules and regulations pertaining to breath-alcohol analysis pursuant to 47 O.S. § 759, hereby adopts the following rules and regulations:

1. Any manufacturer of any apparatus, device, or equipment made for the purpose of analyzing the alcoholic content of breath, or for the purpose of simulating specimens of breath of known alcoholic content, may request this Board to approve such apparatus, device, or equipment. The Board will consider said request upon submission of such information, instructions for use, exemplars, and other pertinent data as the Board may request.

- (1) A thorough inspection of the equipment for cleanliness and determination that it is in proper operating condition shall be performed.
- (2) The reference ethyl alcohol solution in the alcoholic breath simulator device shall be replaced with new solution and one (1) or more verification analyses performed on the new solution. Each verification analysis shall be performed in accordance with the approved "Operating Procedure" set forth in the Breath Analysis Record and Report, a copy of which is attached hereto marked Exhibit "A", by first conducting a blank analysis, then analysis of the reference sample; the result of any such verification analysis must coincide with the corresponding blood-alcohol concentration target value within $\pm 0.01\%$ W/V.
- (3) Results of said verification analyses and the date of inspection shall be recorded in the maintenance log assigned to the equipment; and a written record of the inspection shall be prepared on the Technical Supervisor's Service Report, a copy of which is attached hereto marked Exhibit "B", and one copy of such written record shall be forwarded to the Department of Public Safety, Box 11415, Oklahoma City, Oklahoma 73111.

OKLAHOMA (OKLAHOMA CITY)

Section 2 - Physical Coordination Tests

Physical coordination tests are not administered by officers of the Oklahoma City Police Department.

Conclusions: No formal physical coordination tests are given by officers of the Oklahoma City Police Department. Officers stated that the value of physical coordination tests is limited because "drunks practice".

According to Major Gramlin of the Oklahoma City Police Department, "We tried the old stand-by tests. They just aren't any good. Nobody failed." Physical coordination tests were discontinued in favor of BAC results.

Officers note observations of the suspect during the driver interview and record their observations on the Arrest Report-Driving Under The Influence of Alcohol (Fig. 16-1) by describing the actions of the suspect in detail, including balance, gait, speech, eyes, attitude, etc.

Recommendations: According to officials interviewed during the course of this site visit, local judges favor strong officer testimony as opposed to evidentiary BAC results. Recommendations relating to physical coordination testing at this site will be made at the conclusion of the evidentiary testing section of this report.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is not conducted by officers of the Oklahoma City Police Department.

Conclusions: None

Recommendations: As with physical coordination testing, recommendations for the pre-arrest breath screening configuration will be made at the end of the evidentiary sobriety testing section of this report.

Section 4 - Evidentiary Sobriety Testing

Any individual who operates a motor vehicle within the State of Oklahoma is deemed to have given his consent to a chemical test for determining the alcoholic content of his blood. Individuals have the choice of either a blood or breath test to determine the evidentiary blood-alcohol concentration.

Analysis of breath specimens for the determination of BAC for evidentiary purposes is conducted utilizing the Stevenson Breathalyzer Model 900 in association with the Model 6000 Breath Simulator device. (See Fig. 16-5.)

The step-by-step procedure utilized in conducting breath analysis at this site is outlined on the Breath Analysis Record and Report (Fig. 16-4).

Evidentiary breath analysis is conducted at either a fixed site (Central Lockup) or through the utilization of one of two mobile breath testing vans. When mobile vans are employed, the van responds to the area where the officers are working. Generally officers work the perimeter of the van areas and arresting officers transport their suspects to a van for evidentiary testing.

Mobile breath testing vans are equipped with a fixed police radio and the standard emergency equipment. A video camera is also located in the mobile vans; however, the video camera has never been used to record any portion of the evidentiary testing process. In addition to a Breathalyzer, the mobile van is also equipped with a refrigerator (for storing blood sample specimens), a restroom, a dictaphone (for report transcribing), and a typewriter for completing administrative forms.

The mobile van is staffed by one sworn police officer who wears civilian clothing. Officers of the Oklahoma City Police Department felt that the sworn police officer/breath operator should wear civilian clothes in order that suspects would not feel that the evidentiary test was biased and to eliminate possible complaints when the officer obtained blood samples for analysis.

The evidentiary sobriety testing program is administered by the Oklahoma Board of Chemical Tests for Alcohol Influence. This agency

issues certification to candidates who satisfactorily complete the course for Breath Alcohol Analyst, conducted at the Oklahoma City Police Department, Oklahoma City, Oklahoma.

There are currently 33 officers of the Oklahoma City Police Department who are certified as breath alcohol analysts. Candidates for this training are selected by supervisory personnel who submit their list of potential candidates to Major Gramling, who in turn selects the officers who will actually receive the training.

Operators are periodically re-certified; they are required to successfully complete a written examination and perform three simulated breath alcohol tests utilizing alcohol solutions of unknown concentrations which are furnished by the Board of Training staff.

Exhibit 16a of Appendix A, entitled Breathalyzer Operator Requalification depicts the manner in which the Oklahoma City Police Department notifies certified Breathalyzer operators of the necessity to submit to requalification testing.

All officers receive an introduction to alcohol enforcement and alcohol testing during their basic police recruit training program. Exhibit 16b entitled Police Recruit Training Program states:

intensified instruction on alcohol-related driving activity will make the recruit a more competent witness when testifying regarding alcohol-related traffic arrests and all other arrests.

Sworn officers of the Oklahoma City Police Department who are licensed medical technicians are authorized to withdraw blood samples for the purpose of evidentiary analysis to determine BAC. Registered nurses and licensed physicians are also authorized to withdraw blood samples for the purpose of evidentiary BAC testing.

The authorized technician or licensed physician withdraws 20 cc's of blood for the purpose of conducting evidentiary alcohol analysis. The sample is then sent to the Oklahoma State Crime Bureau which conducts the analysis. Within seven to ten days the Oklahoma State Crime Bureau reports the results to the ASAP Enforcement Office. The results are then

placed in the arrest file and officers are free to check the file prior to court.

It is the opinion of law enforcement officials interviewed that the local medical facilities are not realistically equipped to cope with DWI offender processing. The extent of liaison between law enforcement agencies and hospitals was not favorable. The attitude of the medical staff is less than enthusiastic when presented with a suspected DWI offender from whom a blood sample is to be withdrawn. An explanation was not given to account for the apparent lack of cooperation on the part of the medical staff. The most frequently cited remark of law enforcement personnel was, "they don't like to mess with it".

It was for this lack of cooperation that the Oklahoma City Police Department instituted a program whereby sworn police officers would be qualified and certified to withdraw blood samples for evidentiary alcohol analysis.

Suspected DWI offenders are entitled to an independent analysis of either their blood or breath for the purpose of determining BAC. The independent analysis is conducted only upon the special request of the suspect and is conducted at the suspect's own expense.

All suspects are presumed to be intoxicated at the .10% BAC level and higher. The State of Oklahoma has no per se level of intoxication. Between the BAC levels of .06% and .099% a DWI conviction can result if this evidence is presented along with other incriminating testimony and facts. Blood-alcohol concentrations of .05% or less are considered to be evidence that the suspect is not under the influence of an intoxicating liquor and therefore the suspect is generally released.

Exhibit 16c entitled Procedure: Filing State D.U.I. Charges specifies the procedures officers of the Oklahoma City Police Department must follow in processing an offender through the evidentiary testing process. It was accented by officials of the Oklahoma City Police Department that these procedures are designed to prevent unnecessary delays in processing DWI offenders. Officials further stated that these procedures were adequate to meet the needs of their department.

Recording of the evidentiary test process is accomplished through the use of the Arrest Report Driving Under The Influence of Alcohol (Fig. 16-1).

The arresting officer dictates the Arrest Report, via telephone, to the complaint officer according to the outline that appears in Figure 16-1. Section 4 of the Arrest Report, entitled Body of Report, contains provisions for driver interview, officer observations, location of BAC testing, chemical test operator, and results of the BAC test. In addition, provisions for identification of the individual withdrawing blood for analysis, as well as test location and test refusals, are included for documentary purposes.

Conclusions: Judges rely heavily on officer testimony in the prosecution of DUI cases. Arresting officers are rarely consulted prior to "plea bargaining procedures" and their testimony generally consists of presenting the particulars of the case, the physical evidence and the results of the evidentiary tests. Innovative procedures beyond officer observations are not accepted favorably by the courts of jurisdiction within Oklahoma City, Oklahoma. This attitude severely limits the ability of the Oklahoma City Police Department to modify or change sobriety testing procedures.

Recommendations: It is recommended that officials of the Oklahoma City Police Department, the Oklahoma City Alcohol Safety Action Project, and the appropriate judicial representatives review the procedures utilized by other Alcohol Safety Action Project locations in effecting sobriety testing. Particular emphasis should be placed upon the effectiveness, validity and judicial acceptability of evidentiary BAC testing results.

ARREST REPORT - DRIVING UNDER THE INFLUENCE OF ALCOHOL

Form 1

OKLAHOMA CITY POLICE DEPARTMENT

| | | | | |
|--|---|---|-------|-----------------------------------|
| DATE & TIME OFFENSE Must correspond with actual time of incident | DATE & TIME ARREST Must follow time of incident | DATE & TIME BOOKED | CLERK | CASE NO. Include companion #'s |
| OFFENDER Last name first | ADDRESS | COLOR | SEX | AGE |
| B. R. NO. | | | | |
| OFFENSE Note DUI and companion offenses | | LOCATION OF OFFENSE | | |
| TAPE # _____ POSITION # _____ GRADE _____ PLACE OF EMPLOYMENT _____ | SOCIAL SECURITY NO. When available | TIME RETURNED TO SERVICE Allow time to complete report | | |

DETAILS (Report all facts in the following order) SPELL NAMES OF ALL PERSONS REFERRED TO HEREIN

1. Identify yourself, your partner and your unit number.
2. State nature of report.
3. Begin with date and time of offense and follow block outline as noted above. Move from left to right on each block line.
4. BODY OF REPORT:
 - (a) Note what you were doing and/or where you were going when this incident was brought to your attention. Example: while on patrol, traveling south on May Avenue in the 1300 block, observed.....or....received a call to.....
 - (b) Note make, model, color, and tag number (include year) of vehicle and what vehicle was doing. Example: Traveling in a certain direction while violating a traffic rule; or sitting in a certain position at a particular location following a collision.
 - (c) Note all violations which caused you to stop the vehicle described above. In accident cases note offenses committed by offender, with particular attention given to those which contributed to the collision.
 - (d) Upon direct contact with accused person, describe actions in detail, including balance, gait, speech, eyes, attitude, etc. Also note type clothing worn and general condition.
 - (e) List names of all persons in vehicle with accused person. Make note of the condition (with respect to alcohol) of each. Indicate what happened to each of these persons following arrest of accused.
 - (f) List names and addresses and telephone numbers of all witnesses to incident. Note witnesses opinion of accused person's condition and whether or not witness will be willing to appear in court.
 - (g) Note that accused person was transported to (Mobile Unit # _____, located at _____ (note location) or (City Jail), where a video tape interview was conducted, and that a breath test was performed by _____ (name of operator) and that result of breathalyzer test result was 0. _____ %.
 - (h) If accused person demands blood test, include in report the name of person who withdrew the blood; the location of withdrawal and whether or not video record of withdrawal was prepared.
 - (i) If accused person refuses tests, note whether or not video record of such refusal was made.
5. List all property of accused person.
6. Name and unit number of officer dictating this report.
7. Note disposition of suspect's vehicle (impounded, released to wife, etc).

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Figure 16-1

BREATH ANALYSIS RECORD AND REPORT

AGENCY _____ COUNTY _____ O.H.P. DISTRICT NO. _____
SUBJECT _____ SEX _____ RACE _____ D.O.B. _____
(Last) (First) (Middle Initial)
SUBJECT'S ADDRESS _____
Street City and State
ARRESTING OFFICER _____ AGENCY _____
Name Badge Number
IN CUSTODY _____ TESTED _____
Date Time (Military) Date Time (Military)
BREATHALYZER SERIAL NUMBER _____ SIMULATOR SERIAL NUMBER _____

OPERATING PROCEDURE

PREPARATION

Turn switch to "on", wait until thermometer shows $50^{\circ}\text{C} \pm 3^{\circ}\text{C}$. Make mechanical adjustment to galvanometer, if necessary.

BLANK ANALYSIS

1. Turn control knob to "TAKE", gauge standard ampoule and insert in standard ampoule holder.
2. Gauge test ampoule, open, insert bubbler, place ampoule in test ampoule holder, and connect.
3. Flush out, turn control knob to "ANALYZE".
4. When red signal light appears, wait 90 seconds, turn on reading light and balance galvanometer.
5. Set scale pointer on start line.

SUBJECT ANALYSIS

6. Turn control knob to "TAKE", collect breath sample, turn control knob to "ANALYZE", and repeat step 4.

SUBJECT'S TEST RESULT: O. _____ %W/V. BLOOD ALCOHOL CONCENTRATION

BLANK ANALYSIS

7. Turn control knob to "TAKE" and repeat steps 3, 4 and 5.

REFERENCE ANALYSIS

8. Turn control knob to "TAKE", collect reference sample, turn control knob to "ANALYZE", and repeat step 4.

REFERENCE TEST RESULT: O. _____ %W/V. B.A.C. SOLUTION VALUE: O. _____ %W/V. B.A.C.

9. Dispose of test ampoule. Remove standard ampoule from holder, turn control knob to "OFF".

☐ ABOVE LISTED OPERATING PROCEDURE FOLLOWED IN DETAIL.

☐ 15 MINUTE DEPRIVATION PERIOD OBSERVED (Subject's mouth was checked for improper substances and subject did not ingest any liquid or solid matter, smoke, regurgitate or vomit)

OPERATOR _____ PERMIT NUMBER _____

Pink Copy To . . . DEPARTMENT OF PUBLIC SAFETY
P. O. BOX 11415
OKLAHOMA CITY, OKLAHOMA 73111

White Copy To . . . PROSECUTOR

Yellow Copy To . . . SUBJECT

DISTRICT NO. _____ DATE OF REPORT _____

IMULATOR SERIAL NUMBER _____ EQUIPMENT OWNED BY _____

[illegible][illegible][illegible]

SOUTH CAROLINA (RICHLAND COUNTY)

Section 1 - Legislative Provisions

§ 46-344. Implied consent to chemical test to determine alcoholic content of blood; manner of administering test; presumptions from alcohol in blood; suspension of driver's license for refusal to take test.—(a) Any person who operates a motor vehicle upon the public highways of this State shall be deemed to have given consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of intoxicating liquor. The test shall be administered at the direction of a law-enforcement officer who has apprehended a person while driving a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor. The test shall be administered by a person trained and certified by the South Carolina Law Enforcement Division, using methods approved by the South Carolina Law Enforcement Division. The arresting officer shall not administer the test and no such test shall be administered unless the defendant has been informed that he does not have to take the test but that his privilege to drive will be suspended or denied if he refuses to submit to the test.

No person shall be required to submit to more than one test for any one offense for which he has been charged and the test shall be administered as soon as practicable without undue delay.

The person tested may have a physician, qualified technician, chemist, registered nurse or other qualified person of his own choosing conduct a test or tests in addition to the test administered by the law-enforcement officer. The failure or inability of the person tested to obtain an additional test shall not preclude the admission of evidence relating to the test taken at the direction of the law-enforcement agency or officer.

The arresting officer or the person conducting the chemical test of the person apprehended shall promptly assist that person to contact a qualified person to conduct additional tests.

The South Carolina Law Enforcement Division shall administer the provisions of this subsection and may make such rules and regulations as may be necessary to carry out the provisions of this subsection. The State Board of Health shall cooperate with the Division in carrying out its duties.

(b) In any criminal prosecution for the violation of § 46-343 relating to driving a vehicle under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time of the alleged violation, as shown by chemical analysis of the defendant's breath, shall give rise to the following presumptions:

(1) If there was at that time five one-hundredths of one percent or less by weight of alcohol in the defendant's blood, it shall be conclusively presumed that the defendant was not under the influence of intoxicating liquor;

(2) If there was at that time in excess of five one-hundredths of one percent but less than ten one-hundredths of one percent by weight of

alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant; and

(3) If there was at that time ten one-hundredths of one percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

The provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(c) Any person who is unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (a) of this section.

(d) If a person under arrest refuses, upon the request of a law-enforcement officer, to submit to a chemical test as provided in subsection (a) of this section, none shall be given, but the State Highway Department, upon the receipt of a sworn report of the law-enforcement officer that the arrested person had been driving upon the public highways of this State while under the influence of intoxicating liquor and that the person had refused to submit to the test and such refusal was witnessed and certified to on the sworn report by a person, other than the arresting officer, trained and certified by the South Carolina Law Enforcement Division to administer such test, shall suspend his license or permit to drive, or any non-resident operating privilege for a period of ninety days. If the person is a resident without a license or permit to operate a motor vehicle in this State, the South Carolina Highway Department shall deny to the person the issuance of a license or permit for a period of ninety days after the date of the alleged violation. The ninety-day period of suspension shall begin with the day after the date of the notice hereinafter required to be given, unless a hearing be requested as hereinafter provided, in which case the ninety-day period shall begin with the day after the date of the order sustaining the suspension or denial of issuance. The sworn report of the arresting officer shall include what grounds he had for believing that the arrested person had been driving upon the public highways of this State while under the influence of intoxicating liquor.

(e) Upon suspending the license or permit to drive or nonresident operating privilege of any person, or upon determining that the issuance of a license or permit shall be denied to the person, as hereinbefore in this section directed, the South Carolina Highway Department shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing as provided by § 46-184, except that the scope of such a hearing for the purposes of this section shall be limited to the issues of whether the person was placed under arrest, whether the person had been informed that he did not have to take the test but that his privilege to drive would be suspended or denied if he refused to submit to the test, and whether he refused to submit to the test upon request of the officer. The South Carolina Highway Department shall order that the suspension or determination that there should be a denial of issuance either be rescinded or sustained.

(f) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this State has been suspended, the South Carolina Highway Department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

(g) The person conducting the chemical test for the law-enforcement officer shall record in writing the time of arrest, the time of the test, and the results of the test, a copy of which shall be furnished to the person tested or his attorney prior to any trial or other proceedings in which the results of the test are used as evidence, and any person administering any additional test or tests shall record in writing the time, type and results of the test or tests and promptly furnish a copy thereof to the arresting officer.

(h) Any person whose driver's license or permit is suspended for failure to take the test required by this section and who is not convicted of driving under the influence of intoxicating liquor shall not be required to file proof of insurance as required by the Financial Responsibility Act and no record of such suspension shall be shown on any of his records. (1952 Code § 46-344; 1949 (46) 466; 1969 (56) 395.)

Effect of amendment.—The 1969 amendment rewrote this section.

The enactment of this section was a valid exercise of the police powers of the State. 1970-71 Op. Att'y Gen., No. 3066, p. 1.

The implied consent law applies only to operators of motor vehicles on public land highways. 1969-70 Op. Att'y Gen., No. 2851, p. 87.

Refusal to submit to test warrants suspension of license regardless of the outcome of the criminal prosecution. 1969-70 Op. Att'y Gen., No. 3017, p. 304.

But not confiscation of driver's license.—Law-enforcement officers may not confiscate the driver's license of a person refusing to submit to the breathalyzer test. 1969-70 Op. Att'y Gen., No. 2977, p. 248.

Effect of acquittal of criminal charge on suspension of license.—The acquittal of a defendant of criminal charge of driving under the influence has no effect upon suspension of his driver's license for refusal to submit to the breathalyzer test under the implied consent law. 1970-71 Op. Att'y Gen., No. 3173, p. 142.

The act of blowing into a breathalyzer does not constitute a "test" within the meaning of this section. 1969-70 Op. Att'y Gen., No. 2949, p. 208.

Intentional failure to give enough air to be

sampled constitutes a refusal. 1969-70 Op. Att'y Gen., No. 3022, p. 310.

Evidence that the defendant refused to take a breathalyzer test is not inadmissible under this section, which simply opts against forcible testing. State v. Miller, 257 S.C. 213, 185 S.E.2d 359 (1971).

Admission of testimony held not to violate privilege against self-incrimination.—The admission of testimony that a defendant, when charged with driving under the influence, refused to submit to a blood test, and the allowance of comment thereon before the jury, does not violate the defendant's privilege against self-incrimination. State v. Miller, 257 S.C. 213, 185 S.E.2d 359 (1971).

Prosecutor's statement held not to exceed fair comment.—The prosecutor's statement to the jury during his summation argument that only a drunk man would have refused to submit to the breathalyzer test, and that had the defendant been sober he would not have so refused, did not exceed fair comment. State v. Miller, 257 S.C. 213, 185 S.E.2d 359 (1971).

Fact that test results have been ruled inadmissible does not necessarily mean that the case should be dismissed. 1969-70 Op. Att'y Gen., No. 2950, p. 209.

Question of lawful arrest.—In a hearing pursuant to refusal to submit to the

breathalyzer test, the question of lawful arrest is an appropriate issue. 1969-70 Op. Att'y Gen., No. 2897, p. 141.

Failure to establish that defendant had had nothing to eat or drink for fifteen minutes prior to test may render breathalyzer results inadmissible. 1969-70 Op. Att'y Gen., No. 2950, p. 209.

Arresting officer may witness the breathalyzer test. 1969-70 Op. Att'y Gen., No. 3022, p. 310.

Duty to assist defendant.—Law-enforcement officers must assist defendant in contacting

a qualified person to render an additional chemical test. 1969-70 Op. Att'y Gen., No. 2837, p. 66.

A physician cannot be held civilly liable for furnishing the results of a blood test to law-enforcement officers pursuant to subsection (g) of this section. 1969-70 Op. Att'y Gen., No. 2908, p. 154.

Cited in *Moses v. South Carolina Highway Dep't*, 258 S.C. 233, 187 S.E.2d 888 (1972); *Adams v. Hunter*, 343 F. Supp. 1284 (D.S.C. 1972).

§ 46-345. Punishment.

An allegation in an indictment, etc.

In accord with original. See *Tyler v. State*, 247 S.C. 34, 145 S.E.2d 434 (1965).

Such allegation is necessary, etc.

In accord with original. See *Tyler v. State*, 247 S.C. 34, 145 S.E.2d 434 (1965).

Recorder's jurisdiction of second drunk driving offense.—A recorder has only

jurisdiction to issue an arrest warrant, hold preliminary hearing, and either throw out or send on a second drunk driving offense for disposition before the general sessions court. He would not have authority to try the case and dispose of it for all purposes. 1963-64 Ops. Att'y Gen., No. 1612, p. 29.

§ 46-346. Pleas of guilty or nolo contendere or forfeiture of bail same as conviction.

Applied in *Southern Farm Bureau Cas. Ins. Co. v. Ausborn*, 249 S.C. 627, 155 S.E.2d 802 (1967).

§ 46-347. Reports of convictions to Department.

When suspension of license for drunk driving begins.—Suspension of driver's license of a person convicted of drunk driving does not begin until affirmative action is taken by the Highway Department notifying such convicted person of the suspension. 1970-71 Op. Att'y Gen., No. 3107, p. 54.

Stated in *Brewer v. South Carolina*

State Hwy. Dep't, S.C. , 198 S.E.2d 256 (1973).

Cited in *Rabon v. South Carolina State Highway Dep't*, 258 S.C. 154, 187 S.E.2d 652 (1972); *Mathis v. South Carolina State Hwy. Dep't*, 260 S.C. 344, 195 S.E.2d 713 (1973).

§ 46-348. Suspension of convicted driver's license.

The word "violation" has an ordinary and popular significance. It means the act of breaking, infringing, or transgressing the law. *Rabon v. South Carolina State Highway Dep't*, 258 S.C. 154, 187 S.E.2d 652 (1972).

The word "violation," as used in this section, does not mean "conviction," thereby rendering the date of conviction the date for determining whether prior offenses fall within the preceding two-year period. *Rabon v. South Carolina State Highway Dep't*, 258 S.C. 154, 187 S.E.2d 652 (1972).

The phrase "date of the last violation" means the date of the actual driving under the influence. *Rabon v. South Carolina State Highway Dep't*, 258 S.C. 154, 187 S.E.2d 652 (1972).

Prior offenses determined from date of violation.—Prior offenses must be determined

under this section from the date of violation rather than from the date of conviction. *Rabon v. South Carolina State Highway Dep't*, 258 S.C. 154, 187 S.E.2d 652 (1972).

Suspension is mandatory.

In accord with original. See *Brewer v. South Carolina State Hwy. Dep't*, S.C. , 198 S.E.2d 256 (1973).

And holder of license, etc.

In accord with original. See *Brewer v. South Carolina State Hwy. Dep't*, S.C. , 198 S.E.2d 256 (1973).

Suspension is civil, etc.

In accord with original. See *Brewer v. South Carolina State Hwy. Dep't*, S.C. , 198 S.E.2d 256 (1973).

Length of suspension depends on number of previous convictions.—This section, requiring the suspension of the driver's

license of persons convicted under § 46-343, relates the length of the suspension to the number of convictions and not to the punishment imposed therefor. 1965-66 Ops. Att'y Gen., No. 2192, p. 336.

And it is not affected by previous suspensions.—The fact that a person was sentenced upon his third conviction as a second offender is an act of grace to him which he cannot interpose to prevent the suspension of his driver's license for the period required for a third conviction. 1965-66 Ops. Att'y Gen., No. 2192, p. 336.

When suspension of license for drunk driving begins.—Suspension of driver's license of a person convicted of drunk driving does not begin until affirmative action is taken by the Highway Department notifying such convicted person of the suspension. 1970-71 Op. Att'y Gen., No. 3107, p. 54.

Appeal from a conviction for violation of § 46-343 did not preclude the suspension of the license of the person so convicted until the determination of his appeal and an end of the prosecution. *Brewer v. South Carolina State Hwy. Dep't*, S.C., 198 S.E.2d 256 (1973).

Where the conviction for drunken

driving of the defendant is set aside and a new trial granted, there is no basis upon which the suspension of his driver's license can be sustained because the case against the defendant stands as if he had never been convicted. It follows that a trial judge is not in error in granting the restraining order restraining the State Highway Department from invoking this section. *Brewer v. South Carolina State Hwy. Dep't*, S.C., 198 S.E.2d 256 (1973).

An out-of-State driver convicted of drunk driving is in violation of State law if he continues to drive during the period for which his South Carolina license would have been suspended. 1969-70 Op. Att'y Gen., No. 2978, p. 248.

Confiscation of license.—Law-enforcement officers may not confiscate the driver's license of a person refusing to submit to the breathalyzer test. 1969-70 Op. Att'y Gen., No. 2977, p. 248.

Cited in *State v. Morris*, 249 S.C. 589, 155 S.E.2d 623 (1967); *Mathis v. South Carolina State Hwy. Dep't*, 260 S.C. 344, 195 S.E.2d 713 (1973).

§ 46-349. Copies of reports evidence of prior conviction; effect of stipulating subsequent offense.

Failure to use this section to remove allegations of prior convictions from an indictment barred defendant from attacking their inclusion by use of habeas corpus. *Tyler v. State*, 247 S.C. 34, 145 S.E.2d 434 (1965).

Cited in *Rabon v. South Carolina State Highway Dep't*, 258 S.C. 154, 187 S.E.2d 652 (1972). *

*From Code of Laws of South Carolina, 1973.

Section 2 - Physical Coordination Tests

In effecting apprehension, the officer may administer physical coordination tests at the scene, but their use is entirely up to his own judgement. It appears that as a rule officers do not administer physical coordination tests. The election to administer such tests at all would seem to be dependent upon the extent of training which the individual officers may have received in DUI apprehension and processing.

Conclusions: Physical coordination tests are normally not administered.

Recommendations: Physical coordination tests should be consistently used in each case when a suspected DUI offender has been stopped. The tests may be administered either at the scene or at the testing facility, prior to the evidentiary test. Various types of physical coordination tests should be employed, and evaluated, in order to determine which are most effective.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is not conducted; South Carolina law does not provide for it. However, ASAP officers queried indicated that such devices might be put to good use if available.

Conclusions: Portable breath testing is not conducted, principally because it is not authorized by legislation.

Recommendations: Introduction of a legislative provision authorizing officers to administer portable breath tests to suspected DUI offenders is desirable. The application of these devices under field conditions reduces subjective and judgmental decision-making on the part of the officer.

Section 4 - Evidentiary Sobriety Testing

The offender is advised of the Implied Consent statute just prior to undergoing the evidentiary test. The consequences of refusal to submit to testing are thoroughly explained by the arresting officer as well as the processing officer. Under the South Carolina Implied Consent statute,

refusal may be either willful assertion of non-compliance or obvious or disguised attempts to undermine the sample-taking process.

In cases of refusal, the arresting officer fills out a Report of Refusal to Submit to Breath-Alcohol Test (Fig. 17-4) and has it notarized. The Breathalyzer operator may sign the form if he is a witness to the refusal. Copies go to the Breathalyzer operator, the South Carolina Highway Department and the defendant.

If the offender refuses to undergo the evidentiary test, he may (under the provisions of the Implied Consent statute) request a hearing before officials of the Highway Department. He is asked three questions at the hearing;

- (1) Was he arrested for Driving Under the Influence?
- (2) Was he driving a vehicle?
- (3) Did he refuse to take the test?

If these questions are all answered in the affirmative, the offender is determined to be delinquent; the hearing is concluded and the offender's license is suspended for a period of 90 days.

By statute, breath is the only bodily substance which may be analyzed for evidentiary purposes. Evidentiary breath testing is conducted with the Stephenson Breathalyzer (Model 900A), and the tests are administered by a certified breath examiner specialist of the police department. The cost of the devices is approximately \$850 each. They were selected after having been approved by the South Carolina Law Enforcement Division (SLED). It was stated that there is overall satisfaction with the operation of the Breathalyzer, and no major problems have been encountered since use of the instrument began. No other kinds of testing devices have been used on a trial basis.

The evidentiary breath test is administered at the sheriff's office headquarters, 1400 Huger Street, Columbia. Although the sheriff's office headquarters is presently the only testing facility, district stations are being contemplated, and progress is being made on acquiring funds for one district station. The sheriff's ultimate goal is to erect three stations throughout the country.

Two Breathalyzers are maintained at the sheriff's office headquarters. One is for the exclusive use of sheriff's personnel; the other is maintained for the use of the South Carolina Highway Patrol, but also may be engaged by the sheriff's officers. The respective countermeasure supervisors are responsible for breath testing supplies. In all cases, it is law enforcement officers who operate the evidentiary breath test apparatus. Forms executed during the evidentiary testing process include the Breathalyzer Test Report (Fig. 17-5), the Breathalyzer Operational Check List (Fig. 17-6), and the Test Record (Fig. 17-7). In addition, daily and monthly logs of Breathalyzer tests are maintained (see Figures 17-8 and 17-9). In accident cases, appropriate observations concerning the sobriety of those involved are entered on the South Carolina Uniform Traffic Collision Report (For Investigating Officers) (Fig. 17-10), including type of test given and results.

Breathalyzer training is conducted at the South Carolina Criminal Justice Academy (the regional police academy) and consists of 64 hours of training. This training is conducted by professional chemists who also score and test; it is administered by the State Law Enforcement Division (SLED). A minimum score of 80 is required to achieve certification. At the time of the site visit the estimated number of certified Breathalyzer[®] operators within the sheriff's office was approximately 35. No information pertaining to recertification of either operators or devices was obtained.

By law, South Carolina prohibits the arresting officer from administering the evidentiary test, and it is administered by another officer who has not previously seen the suspected DUI offender. The arresting officer witnesses the test and completes his report during and after testing. If so desired, the suspect's attorney may witness the evidentiary breath test. This rarely takes place, however, if he were a witness to the test, the attorney could be called to the stand by the prosecution to testify concerning his client's relative state of sobriety at the time of the test.

Overall, law enforcement officers expressed satisfaction with the reliability and utility of the Breathalyzer. The device is relatively

simple to operate, and the results obtained are reasonably accurate. In the course of several years of operation, no major problems have developed in the use and maintenance of the Breathalyzer units employed.

If the offender's blood-alcohol concentration is .35% or higher, he is retested after an additional twenty-minute waiting period; if the reading is still the same or higher, he is referred to the hospital for medical examination. Doctors examine him for vital signs, upon which he is either released or transported to the jail, whose personnel are given specific instructions to watch him carefully.

Blood samples are obtained for analysis only at the request of the offender after he has undergone the evidentiary breath test. They are never undertaken at the request of enforcement authorities. If the offender requests a blood test, the arresting officer must transport him to the county hospital, and a physician, nurse or medical technician must withdraw the sample. In such cases, the blood test results are used for the offender's defense, and it is the offender who must preserve the chain of evidence. It was noted during the site visit that hospital officials or hospital staff are reluctant to become involved for fear that they may be required to give testimony in court. When blood samples are withdrawn, they are sent to the state chemist for analysis.

At the time of the site visit there was no statute which required blood samples of persons fatally injured in auto accidents, and any such blood analysis from medical examiners or coroners had been dependent upon such possible factors as the investigating officer's insistence upon analysis or the medical examiner's own curiosity. However, a law has now been passed by the South Carolina legislature, effective January 1, 1975, which requires analyses of blood samples from any person fatally injured in an auto accident, who dies within four hours of the accident.

Under applicable statutes, the defendant is presumed to be intoxicated if his blood-alcohol concentration is .10% or higher. It was found during the site inspection that anyone registering a BAC of less than .10% is not prosecuted and is released on the spot by the arresting officer.

Conclusions: None.

Recommendations: Revision of legislative provisions, authorizing the arresting officer to administer the evidentiary breath test (if a certified operator), would be desirable. The present system requires additional, unnecessary man-hours.

Occasionally, there is justification for charging offenders with DUI whose BAC is in the range of .051% to .099%. Such offenders should not be automatically released, but the circumstances of the arrest should be carefully considered and a decision made accordingly concerning arrest or release.

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

B- N^o 12339

Report of Refusal to Submit to Breath-Alcohol Test

PERSONALLY appeared before me _____
who, first being duly sworn, says that he is a law enforcement officer of the State or a
political subdivision thereof:

Deponent further says that _____
(name of defendant)

(date of birth) _____ (address) _____ (driver's license number) _____
_____ did on the _____ day of _____, 19 _____
(state)

operate a motor vehicle in the County of _____, or the Mu-
nicipality of _____ that the said _____
(name of)

_____ was on the same day placed under arrest by the affiant on the
defendant)

charge of violating Section 46-343, 1962 Code of Laws of South Carolina, or Section
_____ Ordinances of the Municipality of _____,

prohibiting operation of motor vehicles within the State or such Municipality while
under the influence of intoxicating liquor; that, while under such arrest, at approxi-
mately _____, on the day of _____, 19 _____, the said

_____ did refuse to submit to a chemical test of
(name of defendant)

his breath for the purpose of determining the alcoholic content of his blood; prior to
such refusal the said defendant was informed that he did not have to take the test but
that his privilege to drive would be suspended or denied if he refused to submit to the
test; and that such refusal was witnessed by and has been certified to on this report by

_____ , who has been trained and certified by the South
(name of witness)

Carolina Law Enforcement Division to administer such tests.

Deponent further says that he believed said _____
(defendant)

to be driving upon the public highway of this State while under the influence of intox-
icating liquor for the following reasons: _____

SWORN TO before me this _____ day of _____, 19 _____.

Notary Public for South Carolina

(Signature of Arresting Officer)

My Commission expires:

CERTIFICATION OF WITNESS

I, _____, hereby certify that I have been trained
and certified by the South Carolina Law Enforcement Division to administer chemical
tests of breath for the purpose of determining alcoholic content of blood of a human
being; and that I did witness the refusal of _____
(name of defendant)

to submit to such test as is set forth in the foregoing affidavit.

(date)

(name of witness)

WHITE: S. C. Hwy. Dept. - PINK: Breathalyzer Operator - GREEN: Defendant

South Carolina Law Enforcement Division
Breathalyzer Test Report

Name of Subject _____

Address _____

Driver's License Number _____ M F Age _____

Date and Time of Arrest _____

Date and Time of Offense, If Different _____

Date and Time of Test _____

Blood Alcohol Level _____ %

Arresting Officer(s) _____

Breathalyzer Operator _____ Date _____

I, _____, received

the results of the Breathalyzer Test given me.

Date _____

Witness _____ Operator _____

WHITE COPY Station - CANARY COPY Arresting Officer - BLUE COPY Defendant

Figure 17-5

BREATHALYZER OPERATIONAL CHECK LIST

Name of subject _____ Date _____
Time (of test) _____ Blood Alcohol 0. _____ % Ampul Control No. _____
Operator _____ Witness _____
Instrument _____ No. _____

V

1. ☐ Observe subject for twenty minutes prior to testing to prevent oral intake of any material.

PREPARATION

2. ☐ Throw SWITCH to "ON", wait until THERMOMETER shows $50^{\circ} \pm 3^{\circ} \text{C}$.
3. ☐ Gauge TEST AMPUL and insert in left-hand holder.
4. ☐ Gauge TEST AMPUL, open, insert BUBBLER and connect to outlet.

PURGE

5. ☐ Turn to TAKE, flush out, turn to ANALYZE.
6. ☐ When RED empty signal appears, wait 1½ minutes, turn on LIGHT, BALANCE.
7. ☐ Set BLOOD ALCOHOL POINTER on START line.

ANALYSIS

8. ☐ Turn to TAKE, take breath sample, turn to ANALYZE, (record time).
9. ☐ When RED empty signal appears, wait 1½ minutes, turn on LIGHT BALANCE.

Record answer, dispose of test ampul, TURN CONTROL KNOB to "OFF"

Figure 17-6

TEST RECORD

PER CENT BLOOD ALCOHOL

.00 .05 .10 .15 .20 .25 .30 .35 .40

Breathalyzer®

SUBJECT _____

DATE AND TIME _____

BY _____

Figure 17-7

NCIC Agency Identifier

Agency _____ County _____

Month of _____ 19____

[illegible]

REPORTING OFFICER

Figure 17-8

ALCOHOL SAFETY ACTION PROJECT

Reporting Agency _____

Month _____ 197 _____

County _____

Page _____ of _____ Pages

MONTHLY LOG OF DUI ARRESTS AND BREATHALYZER TESTS

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
|---------------|-------------|---------------------|-------------|--------------|---------------|-------------|-------------|----------------------|------------------------|--------------|---------------------|--------|-----------------|-------------------|--------------|-----------------------------|-----------------|------------------------------|------------------|
| Driver's Name | License No. | County of Residence | Sex (M, F.) | Race (W, NW) | Year of Birth | Arrest Date | Day of Week | Time of Day (AM, PM) | Grid Number at Pick Up | Crash (Y, N) | Refusal Slip Number | B.A.C. | Offense Charged | Arresting Agency | Citation No. | Arrest Time Involved (Hrs.) | Testing Officer | Testing Time Involved (Hrs.) | Court Assignment |
| | Occupation | | | | | | | | | | | | | Arresting Officer | | | | | |
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ASAP Form E-6
1/72

Use County Code
Listed in Instructions

Figure 17-9

Use Arresting Agency
Code Listed in Instructions

Use Court Assignment
Code Listed in Instructions

SOUTH CAROLINA UNIFORM TRAFFIC COLLISION REPORT


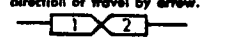
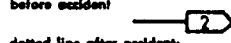

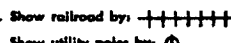
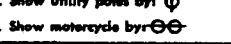


(FOR INVESTIGATING OFFICERS)

SOUTH CAROLINA
HIGHWAY DEPARTMENT
COLUMBIA
Form TR-310 Rev. 3-72

MAIL REPORTS TO STATE HIGHWAY DEPARTMENT, COLUMBIA, S. C. 29202

Sheet _____ of _____ Sheet(s)

| TOTAL NO. VEHICLES | | COLLISION INVOLVED | | 1 - SINGLE MOTOR VEHICLE | | 4 - PEDESTRIAN | | 7 - TWO OR MORE MOTOR VEHICLES | | 0 - FIXED OBJECT | |
|--|--|--|--|---|---------------|------------------------------|------------------|--------------------------------------|---|--|-----------|
| | | (CIRCLE ONE OR MORE): | | 2 - OVERTURNED IN ROAD | | 5 - BICYCLE | | 8 - RAN OFF ROAD & OVERTURNED | | <input type="checkbox"/> IN ROADWAY, OR | |
| | | | | 3 - RAN OFF ROAD | | 6 - MOTORCYCLE | | 9 - OTHER | | (If) FROM PAVEMENT EDGE | |
| DATE | | COUNTY | DAY OF WEEK | TIME | A.M. | ON | 1 - INTERSTATE | 4 - SECONDARY | ROUTE OR ROAD NUMBER (Also Street Name, If Any) | | MILE POST |
| AT | | INTERSECTION OF ROUTE OR ROAD NUMBER (Also Street, If Any) | | IF NOT AT INTERSECTION: | | 1 - FEET | | 2 - MILES | | N/E/S/W OF | |
| IN | | CITY OR TOWN | CONTROLLED ACCESS HIGHWAY LOCATION (Circle One): | | 1 - MAIN ROAD | | 3 - MAIN ROAD AT | | 4 - ENTRANCE RAMP | | N/E/S/W |
| | | | | | | 2 - FRONTAGE RD. | | INTERCHANGE | | 5 - EXIT RAMP | |
| | | IF OUTSIDE CITY LIMITS: _____ MILES | | N/E/S/W OF | | CITY OR TOWN | | | | 1 - BOUND LANE | |
| | | | | | | | | | | 2 - SIDE | |
| DRIVER'S FULL NAME | | STREET OR R.F.D. | | CITY AND STATE | | ZIP | | DATE OF BIRTH | | SEX | RACE |
| DRIVER LICENSE NUMBER | | STATE | TYPE: 1 - AUTO | 3 - MOTORCYCLE | | 5 - BEGINNER | | LICENSE RESTRICTION | | RESTRICTION COMPLIED WITH: | |
| OCCUPATION | | MEMBER OF ARMED FORCES: Y - YES N - NO | | DRIVER CONDITION: 1 - NO APPARENT DEFECTS 3 - ILL | | 5 - BODY DEFECT | | | | Y - YES N - NO | |
| DRIVER HAD BEEN DRINKING OR USING DRUGS: | | TYPE TEST GIVEN | | TEST RESULTS: | | REFUSED TEST: | | MOVING VIOLATION(S) INDICATED | | | |
| SOBRIETY: Y - YES N - NO U - UNKNOWN | | | | | | | | | | | |
| MAKE & IDENTIFICATION (SERIAL) NO. | | BODY | YR. MK. | INSPECTION CERTIFICATE: 1 - CURRENT 3 - NONE | | LICENSE TAG NUMBER | | STATE | YEAR | | |
| OWNER'S NAME | | STREET OR R.F.D. | | CITY AND STATE | | ZIP | | SPEED LIMIT | ESTIMATED SPEED | | |
| | | | | | | | | MPH | MPH | | |
| TYPE: 01 - AUTO | | 03 - STA. WAGON | | 05 - TR. TRACTOR | | 07 - FARM MACH. | | 09 - SCHOOL BUS | | 11 - M-CYCLE; Safety Equip. Used: Y - Yes N - No | |
| (CIRCLE ONE) 02 - BICYCLE | | 04 - PANEL-PICKUP | | 06 - OTHER TRUCK | | 08 - COMM. BUS | | 10 - OTHER BUS | | 12 - OTHER | |
| SPECIAL USE: 01 - NONE | | 03 - MILITARY | | 05 - AMBULANCE | | 07 - POLICE | | 09 - GOVERNMENT | | 11 - DRIVER TRAINING | |
| (CIRCLE ONE) 02 - TAXI | | 04 - CONSTRUCTION | | 06 - FARM USE | | 08 - WRECKER | | 10 - FIRE FIGHTING | | 12 - OTHER | |
| ATTACHMENT: 1 - NONE | | 3 - SEMI-TRAILER | | 5 - FARM TRAILER | | 7 - CAMPER TRAILER | | 9 - PETROLEUM TANKER | | | |
| (CIRCLE ONE) 2 - MOBILE HOME | | 4 - UTILITY TRAILER | | 6 - TRAILER WITH BOAT | | 8 - TOWED MOTOR VEH. | | 0 - OTHER | | | |
| DEFECTS: 1 - NONE | | 3 - LIGHTS | | 5 - STEERING | | 7 - TURN SIGNALS | | 9 - OTHER | | DEFECT CONTRIBUTED TO CRASH: Y - YES N - NO | |
| (CIRCLE ONE OR MORE) 2 - BRAKES | | 4 - HORN | | 6 - WIPERS | | 8 - TIRES | | 0 - NOT KNOWN | | VEHICLE TOWED AWAY: Y - YES N - NO | |
| DAMAGE SEVERITY: 1 - SLIGHT | | 2 - MODERATE | | 3 - SEVERE | | AREAS(D) DAMAGED (Use Codes) | | APPROXIMATE COST TO REPAIR: \$ _____ | | TOTAL OCCUPANTS THIS UNIT: _____ | |
| VEHICLE TOWED BY WHOM: | | | | TO WHERE: | | | | | | | |
| DRIVER'S OR PEDESTRIAN'S NAME | | STREET OR R.F.D. | | CITY AND STATE | | ZIP | | DATE OF BIRTH | | SEX | RACE |
| DRIVER LICENSE NUMBER | | STATE | TYPE: 1 - AUTO | 3 - MOTORCYCLE | | 5 - BEGINNER | | LICENSE RESTRICTION | | RESTRICTION COMPLIED WITH: | |
| OCCUPATION | | MEMBER OF ARMED FORCES: Y - YES N - NO | | DRIVER or PED. CONDITION: 1 - NO APPARENT DEFECTS 3 - ILL | | 5 - BODY DEFECT | | | | Y - YES N - NO | |
| DRIVER or PED. HAD BEEN DRINKING OR USING DRUGS: | | TYPE TEST GIVEN | | TEST RESULTS: | | REFUSED TEST: | | MOVING VIOLATION(S) INDICATED | | | |
| SOBRIETY: Y - YES N - NO U - UNKNOWN | | | | | | | | | | | |
| MAKE & IDENTIFICATION (SERIAL) NO. | | BODY | YR. MK. | INSPECTION CERTIFICATE: 1 - CURRENT 3 - NONE | | LICENSE TAG NUMBER | | STATE | YEAR | | |
| OWNER'S NAME | | STREET OR R.F.D. | | CITY AND STATE | | ZIP | | SPEED LIMIT | ESTIMATED SPEED | | |
| | | | | | | | | MPH | MPH | | |
| TYPE: 01 - AUTO | | 03 - STA. WAGON | | 05 - TR. TRACTOR | | 07 - FARM MACH. | | 09 - SCHOOL BUS | | 11 - M-CYCLE; Safety Equip. Used: Y - Yes N - No | |
| (CIRCLE ONE) 02 - BICYCLE | | 04 - PANEL-PICKUP | | 06 - OTHER TRUCK | | 08 - COMM. BUS | | 10 - OTHER BUS | | 12 - OTHER | |
| SPECIAL USE: 01 - NONE | | 03 - MILITARY | | 05 - AMBULANCE | | 07 - POLICE | | 09 - GOVERNMENT | | 11 - DRIVER TRAINING | |
| (CIRCLE ONE) 02 - TAXI | | 04 - CONSTRUCTION | | 06 - FARM USE | | 08 - WRECKER | | 10 - FIRE FIGHTING | | 12 - OTHER | |
| ATTACHMENT: 1 - NONE | | 3 - SEMI-TRAILER | | 5 - FARM TRAILER | | 7 - CAMPER TRAILER | | 9 - PETROLEUM TANKER | | | |
| (CIRCLE ONE) 2 - MOBILE HOME | | 4 - UTILITY TRAILER | | 6 - TRAILER WITH BOAT | | 8 - TOWED MOTOR VEH. | | 0 - OTHER | | | |
| DEFECTS: 1 - NONE | | 3 - LIGHTS | | 5 - STEERING | | 7 - TURN SIGNALS | | 9 - OTHER | | DEFECT CONTRIBUTED TO CRASH: Y - YES N - NO | |
| (CIRCLE ONE OR MORE) 2 - BRAKES | | 4 - HORN | | 6 - WIPERS | | 8 - TIRES | | 0 - NOT KNOWN | | VEHICLE TOWED AWAY: Y - YES N - NO | |
| DAMAGE SEVERITY: 1 - SLIGHT | | 2 - MODERATE | | 3 - SEVERE | | AREAS(D) DAMAGED (Use Codes) | | APPROXIMATE COST TO REPAIR: \$ _____ | | TOTAL OCCUPANTS THIS UNIT: _____ | |
| VEHICLE TOWED BY WHOM: | | | | TO WHERE: | | | | | | | |
| DRIVER INTENTIONS | | | | | | | | | | | |
| 1 2 | | 1 2 | | 1 2 | | 1 2 | | 1 2 | | 1 2 | |
| 01 01 - GO STRAIGHT AHEAD | | 04 04 - REMAIN STOPPED IN LANE | | 07 07 - REMAIN PARKED - LEGALLY | | 10 10 - TURN RIGHT | | 13 13 - U-TURN | | 16 16 - OTHER | |
| 02 02 - SLOW OR STOP | | 05 05 - PASS | | 08 08 - REMAIN PARKED - ILLEGALLY | | 11 11 - TURN LEFT | | 14 14 - MERGE | | 17 17 - OTHER | |
| 03 03 - START IN TRAFFIC LANE | | 06 06 - START FROM PARKED | | 09 09 - OTHER | | 12 12 - BACK | | 15 15 - PARK | | | |
| PEDESTRIAN ACTIONS | | | | | | | | | | | |
| 01 - CROSSING OR ENTERING INTERSECTION | | 04 - WALKING IN RDWY. AGAINST TRAFFIC | | 07 - PUSHING OR WORKING ON VEHICLE | | 10 - OTHER IN RDWY. | | | | | |
| 02 - CROSSING OR ENTERING OTHER | | 05 - STANDING IN RDWY. | | 08 - OTHER WORKING IN RDWY. | | 11 - NOT IN RDWY. | | | | | |
| 03 - WALKING IN RDWY. WITH TRAFFIC | | 06 - GETTING ON OR OFF VEHICLE | | 09 - PLAYING IN RDWY. | | 12 - OTHER | | | | | |
| DAMAGE TO PROPERTY OTHER THAN VEHICLE (Name Object, Show Ownership and Damage) | | | | | | | | | | APPROX. COST TO REPAIR \$ _____ | |
| WIT. WITNESS FULL NAME | | ADDRESS | | 399 | | | | AGE | | SEX | |
| WIT. WITNESS FULL NAME | | ADDRESS | | | | | | AGE | | SEX | |

| MODES | SEATING | | SEAT BELTS | | EJECTION | INJURY | FIRST AID BY | | | | | | | | | | | | | | | | | | | |
|--|---|--|---|--|--|--|---|--|------------------------|---------------------------|---|----------------------------------|---------------------------|------------------|-----------------|-----------------|-------------------------|-------------------------|-----------------------------|---------------------------|-------------|---------------------------|---|---|---|---|
| |  P—Pedestrian M—Motorcycle B—Bicycle O—Other U—Unknown | | LAP BELT ONLY N—None installed P—Fastened U—Unfastened D—Not reported | | LAP & SHOULDER BELT E—Not used G—Lap belt only used H—Both belts used L—Not reported | Y—Yes P—Partially N—No U—Unknown | K—Killed. A—Visible signs of injury, or bleeding wound or distorted member, or had to be carried from scene. B—Other visible injury, or bruises, abrasions, swelling, lacerations, etc. C—No visible injury but complaint of pain or momentary unconsciousness. | P—Police A—Amb. Attend. D—Doctor O—Other U—Unknown N—None | | | | | | | | | | | | | | | | | | |
| VICTIMS | 1. NAME _____ ADDRESS _____ | | TAKEN TO _____ TAKEN BY _____ | | | | <table border="1" style="width:100%; text-align: center;"> <tr> <th>AGE</th> <th>SEX</th> <th>VEH. NO.</th> <th>SEAT-ING.</th> <th>SEAT-BELTS</th> <th>EJECTION</th> <th>INJURY</th> <th>FIRST AID BY</th> </tr> <tr> <td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td> </tr> </table> | | AGE | SEX | VEH. NO. | SEAT-ING. | SEAT-BELTS | EJECTION | INJURY | FIRST AID BY | | | | | | | | | | |
| | AGE | SEX | VEH. NO. | SEAT-ING. | SEAT-BELTS | EJECTION | INJURY | FIRST AID BY | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | 2. NAME _____ ADDRESS _____ | | TAKEN TO _____ TAKEN BY _____ | | | | | | | | | | | | | | | | | | | | | | | |
| 3. NAME _____ ADDRESS _____ | | TAKEN TO _____ TAKEN BY _____ | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. NAME _____ ADDRESS _____ | | TAKEN TO _____ TAKEN BY _____ | | | | | | | | | | | | | | | | | | | | | | | | |
| NARRATIVE & DIAGRAM | DIAGRAM WHAT HAPPENED: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> INSTRUCTIONS 1. Follow dotted lines to draw outline of roadway at place of accident. 2. Number each vehicle and show direction of travel by arrow.  3. Use solid line to show path before accident; dotted line after accident.  4. Show pedestrian by:  5. Show railroad by:  6. Show utility poles by:  7. Show motorcycle by:  </div> <div style="width: 45%; text-align: right;"> INDICATE NORTH  </div> </div> <div style="margin-top: 20px;"> <table border="1" style="width: 100%; text-align: center;"> <tr> <th colspan="2">Direction of Travel</th> <th>N</th> <th>E</th> <th>S</th> <th>W</th> </tr> <tr> <td>Vehicle 1</td> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> <tr> <td>Vehicle 2</td> <td></td> <td>1</td> <td>2</td> <td>3</td> <td>4</td> </tr> </table> </div> | | | | | | | | Direction of Travel | | N | E | S | W | Vehicle 1 | | 1 | 2 | 3 | 4 | Vehicle 2 | | 1 | 2 | 3 | 4 |
| | Direction of Travel | | N | E | S | W | | | | | | | | | | | | | | | | | | | | |
| | Vehicle 1 | | 1 | 2 | 3 | 4 | | | | | | | | | | | | | | | | | | | | |
| | Vehicle 2 | | 1 | 2 | 3 | 4 | | | | | | | | | | | | | | | | | | | | |
| DESCRIBE WHAT HAPPENED (Refer to vehicles by number): | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | |
| ROADWAY & ENVIRONMENT | LIGHT (Circle One) 1—DAYLIGHT 2—DAWN 3—DUSK 4—DARKNESS 5—DARKNESS, RD. LIGHTED | | WEATHER (Circle One) 1—CLEAR 2—RAINING 3—FOG 4—SNOWING, SLEETING 5—HAULING | | LOCALE (Circle One) 1—OPEN COUNTRY 2—RESIDENTIAL 3—SHOP'G or BUSINESS 4—MFG. or INDUSTRIAL 5—SCHOOL or PLAY'D 6— | | CHARACTER (Circle One) 1—STRAIGHT-LEVEL 2—STRAIGHT-ON GRADE 3—STRAIGHT-HILLCREST 4—CURVE-LEVEL 5—CURVE-ON GRADE 6—CURVE-HILLCREST | | | | | | | | | | | | | | | | | | | |
| | CONSTRUCTION (Circle One) 1—ASPHALT 2—CONCRETE 3—BRICK 4—DIRT | | CONDITION (Circle One) 1—DRY 2—WET 3—SNOWY, ICY 4—MUDDY 5—HAZARDOUS MATERIAL | | VISION OBSCURED (Circle One For Each Veh.) <table border="1" style="width: 100%; text-align: center;"> <tr> <th>1</th> <th>2</th> </tr> <tr> <td>01 01—NOT OBSCURED</td> <td>02 02—RAIN, SNOW, ICE, Etc. ON WINDSHIELD</td> </tr> <tr> <td>03 03—TREES, CROPS, BUSHES, Etc.</td> <td>04 04—BUILDING(S)</td> </tr> <tr> <td>05 05—EMBANKMENT</td> <td>06 06—SIGNBOARD</td> </tr> <tr> <td>07 07—HILLCREST</td> <td>08 08—PARKED VEHICLE(S)</td> </tr> <tr> <td>09 09—MOVING VEHICLE(S)</td> <td>10 10—BLINDED BY HEADLIGHTS</td> </tr> <tr> <td>11 11—BLINDED BY SUNLIGHT</td> <td>12 12—OTHER</td> </tr> <tr> <td>13 13—UNKNOWN IF OBSCURED</td> <td></td> </tr> </table> | | | 1 | 2 | 01 01—NOT OBSCURED | 02 02—RAIN, SNOW, ICE, Etc. ON WINDSHIELD | 03 03—TREES, CROPS, BUSHES, Etc. | 04 04—BUILDING(S) | 05 05—EMBANKMENT | 06 06—SIGNBOARD | 07 07—HILLCREST | 08 08—PARKED VEHICLE(S) | 09 09—MOVING VEHICLE(S) | 10 10—BLINDED BY HEADLIGHTS | 11 11—BLINDED BY SUNLIGHT | 12 12—OTHER | 13 13—UNKNOWN IF OBSCURED | | | | |
| | 1 | 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| | 01 01—NOT OBSCURED | 02 02—RAIN, SNOW, ICE, Etc. ON WINDSHIELD | | | | | | | | | | | | | | | | | | | | | | | | |
| 03 03—TREES, CROPS, BUSHES, Etc. | 04 04—BUILDING(S) | | | | | | | | | | | | | | | | | | | | | | | | | |
| 05 05—EMBANKMENT | 06 06—SIGNBOARD | | | | | | | | | | | | | | | | | | | | | | | | | |
| 07 07—HILLCREST | 08 08—PARKED VEHICLE(S) | | | | | | | | | | | | | | | | | | | | | | | | | |
| 09 09—MOVING VEHICLE(S) | 10 10—BLINDED BY HEADLIGHTS | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 11—BLINDED BY SUNLIGHT | 12 12—OTHER | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13 13—UNKNOWN IF OBSCURED | | | | | | | | | | | | | | | | | | | | | | | | | | |
| DEFECTS (Circle One or More) 1—SHOULDERS LOW 2—SHOULDERS HIGH 3—HOLES, BUMPS, Etc. 4—LOOSE MATERIAL ON SURFACES 5—ROAD UNDER CONST. 6—NONE 7—OTHER | | TRAFFIC CONTROL (Circle One & Yes or No) 1—STOP SIGN 2—STOP & GO SIGNAL 3—YIELD SIGN 4—OFFICER OR FLAGMAN 5—RR CROSSING GATES 6—RR FLASHING LIGHTS 7—NONE 8—OTHER _____ FUNCTIONING: Y—Yes N—No | | ROADWAY LANES (Circle Two) ONE-WAY STREET: Y—Yes N—No 1—ONE LANE 2—TWO LANES 3—THREE LANES 4—FOUR LANES 5—FIVE LANES 6—SIX LANES OR MORE 7—UNPAVED (ANY WIDTH) | | ROADWAY DIVIDED BY: (Circle One) 1—GUARDRAIL 2—CONCRETE MEDIAN 3—EARTH MEDIAN 4—ROUGH MEDIAN 5—PAINTED MEDIAN OF 2 FT. WIDE OR MORE 6—OTHER 7—NO DIVISION | | | | | | | | | | | | | | | | | | | | |
| <table border="1" style="width: 100%; text-align: center;"> <tr> <td>SUMMONS NUMBER</td> <td>NAME OF PERSON CHARGED</td> <td>MOVING VIOLATION CODE(S):</td> </tr> <tr> <td>SUMMONS NUMBER</td> <td>NAME OF PERSON CHARGED</td> <td>MOVING VIOLATION CODE(S):</td> </tr> </table> | | | | | | | | SUMMONS NUMBER | NAME OF PERSON CHARGED | MOVING VIOLATION CODE(S): | SUMMONS NUMBER | NAME OF PERSON CHARGED | MOVING VIOLATION CODE(S): | | | | | | | | | | | | | |
| SUMMONS NUMBER | NAME OF PERSON CHARGED | MOVING VIOLATION CODE(S): | | | | | | | | | | | | | | | | | | | | | | | | |
| SUMMONS NUMBER | NAME OF PERSON CHARGED | MOVING VIOLATION CODE(S): | | | | | | | | | | | | | | | | | | | | | | | | |
| INVESTIGATION | POLICE AGENCY NOTIFIED A.M. : P.M. : | | POLICE ARRIVED A.M. : P.M. : | | AMBULANCE ARRIVED A.M. : P.M. : | | PHOTOS TAKEN BY OFFICER Y—YES N—NO | | | | | | | | | | | | | | | | | | | |
| | NAME OF REPORTING OFFICER BADGE NUMBER | | NAME OF OTHER OFFICER(S) AT SCENE BADGE NUMBER(S) | | POLICE AGENCY | | POLICE AGENCY | | | | | | | | | | | | | | | | | | | |
| | THE DATA ON THIS REPORT REFLECTS MY BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE ACCIDENT, BUT NO WARRANTY IS MADE AS TO THE FACTUAL ACCURACY THEREOF. | | | | | | | | | | | | | | | | | | | | | | | | | |
| | SIGNATURE OF REPORTING OFFICER: _____ | | | | DATE: / / | | | | | | | | | | | | | | | | | | | | | |

SOUTH DAKOTA

Section 1 - Legislative Provisions

MANUAL FOR PROCESSING OF ALCOHOL

RELATED TRAFFIC VIOLATIONS

South Dakota Highway Patrol
Dalton R. Shultz, Superintendent

1971

SECTION 1

CHEMICAL ANALYSIS OF BODY SUBSTANCES FOR ALCOHOL

Section 13-57-18 of the South Dakota Compiled Laws of 1967 provides that it shall be the duty of the State Chemist and his assistants, upon request of the Attorney General or any of his deputies or a States Attorney or any of his deputies, to make analysis of articles furnished by such officers in connection with the enforcement of the laws of this State. Section 13-57-22 of the South Dakota Compiled Laws of 1967 further provides that a copy of the results of any examination or analysis of any product or article by the State Chemist or his assistants, duly authenticated by the analyst, shall be prima facie evidence in all courts of the matters and facts therein contained.

All chemical tests help to protect the moderate driver who uses common sense in his drinking and whose blood alcohol level stays below the amount necessary to impair his ability to drive or to put him under the influence. More important, these tests are to protect the driver whose symptoms may be mistaken for those of intoxication when in fact they are actually due to illness or other causes. Precise investigation and prosecution protect the innocent and help convict the guilty, which is the real aim of conscientious police work.

The bodily substances used in the chemical analysis for alcohol in South Dakota are whole blood, urine and breath. The general methods of analysis used on these materials can be described as wet chemical or distillation, gas chromatography, enzymatic and diffusion. The methods which are used by the State Chemical Laboratory, and recognized as official for South Dakota, are the wet chemical or distillation method and the gas chromatography method for the determination of alcohol in whole blood and urine samples. We also recognize the use of the Breath-analyzer and Sober Meter tests for the testing of breath samples. In the case of the sober meters, or better known as MOBATS, the final determination of alcohol uses the wet chemical or distillation method. Presently in use in South Dakota is the Sober Meter model SM-II; it is contemplated that the use of the SM II sober meter may be discontinued and will be replaced by use of the SM VII sober meter which will provide that gas chromatography may also be employed in the analysis of the specimens.

The method used in the State for the determination of alcohol in whole blood, urine or for the final determination on the "mobat test", is the Harger Micro method, Journal of Laboratory and Clinical Medicine, 20:746, 1934-35. This method requires the precipitation of the protein, distillation of protein free filtrate in order to isolate the alcohol and then the determination of the alcohol by oxidation with standard potassium dichromate solution. The blood sample should consist of at least 5 ml.

The complete method appears as follows:

ALCOHOL IN BLOOD BY THE HARGER MICRO METHOD

Reagents

1. Concentrated Sulfuric Acid - C.P. reagent grade with very little reducing substances present.
2. Sulfuric Acid, 62% - Pour one volume of concentrated sulfuric acid into an equal volume of distilled water. Cool to room temperature before use.

3. Sulfuric Acid, N/12 – Place 4.7 ml. of concentrated sulfuric acid in a 200 ml. volumetric flask. Make to volume with distilled water.
4. Sodium tungstate, 10% – Dissolve 10 gm. of sodium tungstate in 100 ml. of distilled water.
5. Potassium dicarbonate Solution; 0434N – Dissolve 2.129 gm. of dry powdered reagent grade $K_2C_2O_7$, that has been recrystallized from water 3 times in sufficient distilled water to make exactly 1000 ml. One ml. will oxidize exactly 0.5 mg. of ethyl alcohol. 0.234 mg. of methyl alcohol.
6. Ferrous Sulfate, 20% – Dissolve 5 grams of $FeSO_4H_2O$ in 15 ml. distilled water and 3 ml. of concentrated H_2SO_4 . Make up to 25 ml. with water. Keep refrigerated.
7. Methyl Orange, 0.1% – Dissolve 0.5 gm. of methyl orange in 500 ml. of water in which 0.5 gm. of sodium hydroxide has been dissolved. Filter off any insoluble residue. The solution will keep indefinitely.
8. Red Reducing Fluid – Measure 35 ml. of 62% sulfuric acid into a clean glass stoppered 125 erlenmeyer. Add 5 ml. of 0.1% methyl orange solution and 1 ml. of 20% ferrous sulfate solution. The solution deteriorates slowly but may be used for 2 or 3 days but should be refrigerated after use.

PROCEDURE

Thoroughly shake the blood tube. Insert a 2 ml. pipet fitted with a cork that fits the blood tube. Weigh to the nearest milligram. Transfer exactly 2 ml. of blood into an erlenmeyer flask containing 16 ml. of N/12 sulfuric acid. Reweigh the tube and pipet. The difference is the weight of the sample. Mix the blood and sulfuric acid – add exactly 2 ml. of 10% sodium tungstate to precipitate the protein. Filter, using No. 2 Whatman, 9 cm. paper. Transfer 5 ml. of the filtrate to a distillation flask, add 20 ml. of distilled water, and distill about 20 ml. into a glass stoppered 25 ml. volumetric flask. Make to volume and mix. (It is desirable to use all ground glass connections in the distillation apparatus)

Distill a reagent blank using the same procedure as for blood sample, except use 2 ml. of distilled water in place of the blood.

Measure 5 ml. of the distillate from the reagent blank into a test tube (about 17mm x 150mm) and 5 ml. of distillate from the sample into a second test tube. To each tube add 1 ml. of 0434N standard potassium dicarbonate mix and add 5 ml. of concentrated sulfuric acid. The warm mixture is allowed to stand 10 minutes in order to complete the oxidation of the alcohol. Then cool the tubes to room temperature and titrate each with the red reducing solution, using a micro burette, until a pink color results. Because the sulfuric acid often contains a trace of reducing material, a second ml. of standard dichromate is added to one of the completed titrations and this is again titrated.

CALCULATIONS

The amount of alcohol is calculated in the following manner:

$$\text{Mg. Alc./gm. of sample} = \frac{W - U \times 0.5}{B \times Q}$$

Where,

W = titration figure for reagent blank

U = titration figure for sample

B = titration figure for extra ml. of dichromate.

Q = Weight of sample in aliquot used.

COLLECTING THE BLOOD SPECIMEN

1. BLOOD TUBES. The State Chemist Laboratory prepares the test tubes, which are used in submitting blood samples to the Laboratory for analysis of alcoholic content. These are sent to law enforcement officials upon request. The tubes are new, and are only used once. They are washed in the Laboratory with soap and water, rinsed with distilled water and dried. The three drops of saturated aqueous solution of potassium oxalate is added to each tube, which is then rotated in a horizontal position, in order to wet the sides of the tube. The tubes are then placed in a warm place, in order to dry, and as the water evaporates from the oxalate solution, small crystals of potassium oxalate are left adhering to the sides and bottom of the tube. These crystals act as an anti-coagulant and keep the blood from clotting. After inserting a new stopper, the tube is sealed. An identification card and seal is then wrapped around the test tube, and all three items are then inserted into a circular mailing carton. The carton contains a self addressed sticker, together with a place to write the name and address of the sender, and a place for first class postage.

2. TAKING THE SAMPLE. When an officer makes an arrest and has reasonable grounds to believe that such person has been driving while under the influence of intoxicating liquor, he shall advise this person of his Constitutional rights as set forth by the Miranda Decision and South Dakota Statute, and request that he submit to a blood test for the determination of his blood alcohol level. The Implied Consent Law, 32-23-10 of SDCL 1967, has made it much easier to obtain blood samples. Under this statute, only physicians, laboratory technicians, medical technicians, registered nurses or medical technologists, acting upon the request of law enforcement officials, can withdraw blood for the purpose of determining its alcoholic content. (If the sample is to be taken in the conduct of a search without the consent of the suspect, incidental to an arrest for a crime, one element of which is based on the sobriety of the accused; only a physician may take the sample in a medical or hospital like environment.)

Although these qualified persons should be aware of the fact that alcohol, or other volatile solvents, should not be used to cleanse the puncture area, sometimes this is overlooked. Soap and water or a quaternary ammonia germicide, such as zephiran chloride, should be used for the cleansing purposes. Ask and record what cleansing agent is used.

A disposable syringe, or one sterilized by steam in an autoclave, should be used for removing the blood from the arm.

The blood should then be placed in the test tube, provided for this purpose. The stopper should be reinserted tightly, and the seal, after filling in the required data, should be placed up one side of the tube, over the top of the stopper and down the other side of the tube. Shake the tube two or three times in order to dissolve the anticoagulant. The information on the seal is important for later identification.

The identification card should be completed and wrapped around the test tube with the blood, and then both inserted into the mailing carton. You should include on the card any information concerning the presence of substances other than alcohol, i.e. acetone, because of diabetes; if there is indicated any use of drugs, medically or otherwise, enter this information on the card and secure two tubes of the blood. Special tests would be required in these cases. (If you suspect drug abuse or presence try to also collect urine specimen as stated in the urine test section of this manual.)

3. SENDING TO THE LABORATORY. The return address should be filled in and first class postage should be placed upon the mailing tube, which is then placed in the United States Mail. Some officers deliver blood samples direct to the Laboratory. We will leave the method of delivery completely up to their discretion, but have found that sending samples through the mail is satisfactory for laying a proper foundation in order to get this type of testimony into evidence in a jury trial.

4. HANDLING IN THE LABORATORY. The following steps are followed in the Laboratory on receipt of specimens for blood alcohol determinations:

A. Preliminary. Upon arrival of the mail each morning at the Laboratory, the mailing cartons containing the blood samples are placed on the secretary's desk. The analyst, who is going to make the analysis, opens the mailing cartons and removes the blood sample, together with the data card. The secretary, under his direction, makes out the Laboratory analysis sheet, which is the permanent Laboratory record. A

number is assigned to the sample and is placed upon the tube on a white gummed label. This same number appears on the Laboratory analysis sheet. Other information on the Laboratory sheet gives the name of the person from whom the sample was taken and the name of the person or department submitting the sample for analysis. It is also indicated on the sheet how and when the sample arrived at the Laboratory. Upon the completion of this Laboratory analysis sheet, it, together with the blood sample, is taken by the Analyst to the Laboratory. The analyst, in his own hand-writing, notes on the sheet whether or not the sample was sealed and the date and the initials appearing upon the seal.

B. Analysis and Safekeeping. The sample is then ready for analysis, and the seal is broken at that time in order to remove the required sample. The Harger-Micro-method as stated before is used on all blood samples for the determination of alcoholic content. Upon completion of the test, the sample is resealed with a smaller seal. The date and initials of the analyst is placed upon this seal, and the sample is then placed in a steel locker accessible only to the analyst. We keep these blood samples for a period of nine months before they are discarded.

C. Reporting. Upon completion of the test, the results are placed upon the analysis sheet, and a radio report is sent to the officer if it has been requested. A written report is also sent on all samples. The written report carries the name of the analyst, so that it will be known to whom the call is to be made in case of a trial and testimony on the test is needed.

5. IMPENDING TRIAL. When a defendant enters a plea of not guilty and requests a jury trial, we wish to be advised of this fact as soon as possible. It may be wise to contact us concerning a proposed date; because of a conflict with another trial, or some other conflict which might result. A second test, using the same method, is always made prior to going to court on any blood sample. The gas chromatograph is also utilized to check samples that are suspected of contamination. The contamination might be from formaldehyde in samples received from coroners, or it could be acetone in samples of blood taken from persons who claim to be diabetic. The gas chromatograph is a very useful instrument in the determination of alcohol in such samples, because it gives results that are specific for alcohol.

If the chemist is called to testify in a case, the county or municipality making the request pays his mileage and expenses in accordance with state statutes. We suggest you issue a subpoena to be given to the chemist upon arrival for the trial. The subpoena is helpful in receiving payment and explaining absences from the Laboratory.

6. LAYING THE FOUNDATION. The analyst takes the blood sample, together with the identification card, to court and produces these for the States Attorney on request. This identification card and the blood sample is marked as an exhibit, and the foundation testimony is started with the arresting officer. He initially produced the tube, and probably helped fill out the identification card. He will also testify that he mailed the carton which is important. The foundation is extended with the doctor or technician, who actually took the blood sample, and is completed with the chemist, who made the analysis.

COLLECTING THE URINE SPECIMEN

1. APPROVED EQUIPMENT. The equipment to be used in obtaining a proper urine sample is as follows:

- a. Two 4 fl. oz. glass bottles with screw tops
- b. Mailing container
- c. Sealing strip for each bottle (Use same strip as used on Blood sample tubes)
- d. Identification card (Use same card as used on blood sample)

2. When an officer makes an arrest and has reasonable grounds to believe that such person has been driving while under the influence of intoxicating liquor and/or drugs, he shall advise the person of his Constitutional rights as set forth by the Miranda Decision and the South Dakota statute, and request that he submit to a urine test for the determination of his blood alcohol level or the presence of drugs. If the officer has reason to believe that the person's impairment is because of the use of drugs, a urine specimen should be obtained as it is easier to make such analysis from urine, such examination can not be made from breath specimens and it requires not less than twice as much blood to make drug analysis from blood specimen.

A. Method of obtaining specimen. Two samples must be taken to assure a valid urine-alcohol test. The subject should empty his bladder and a sample of this first excretion obtained. Within twenty (20) to thirty (30) minutes after the initial voiding of the bladder a second sample must be taken. The samples are to be captured in clean sterile dry containers. A new container will be used for each sample. The samples will be transferred to clean, sterile, dry bottles indicated in Section 1, a. above. The bottles will be tightly sealed and marked first (1) and second (2) sample. The seals will be completed, the identification card completed; and the bottles and the card will be placed in the mailing carton for transportation to the Laboratory. The officer should indicate on the identification the type of drug suspected of being used when he has such information. This will aid the analyst in determining which tests to utilize in making the determination. In many cases it will not be possible to secure more than an ounce or slightly more for the second specimen; this will not effect the capability of the analysis as long as he receives that which is available.

B. Witnessing the Sample. The collection of the urine sample will be witnessed by the arresting officer where possible in the case of male suspects. If the officer is not able to be present, then another officer should perform this function to assure evidence admissibility at the time of trial.

In the case of female suspects, the collection of the sample shall be witnessed by another female or a physician. If no female witness or physician is available then no urine test shall be given.

C. Transportation of Sample. The samples will be transported to the laboratory in the containers. All necessary forms will be filled out and the containers sealed. The sample may be sent by first class mail or hand carried by the officer to the laboratory.

3. When the specimen arrives at the Laboratory, the procedures for analysis, safekeeping, and reporting will be similar as that set forth for the blood analysis. The Harger-Micro method is also used in urine-alcohol analysis; drug determination requires additional analytical steps.

THE GAS CHROMATOGRAPH

The gas chromatograph can be used to make alcohol determinations of breath, blood and urine. The gas chromatograph is also utilized to check samples that are suspected of contamination. The contamination might be from formaldehyde in samples received from coroners, or it could be acetone in samples of blood taken from persons who claim to be diabetic. The gas chromatograph is a very useful instrument in the determination of alcohol in such samples, because it gives results that are specific for alcohol by differentiating alcohol from other volatile organic solvents.

In very simple form, we might think of the gas chromatograph as being broken down into three sections, which could be referred to as the separating section, the detecting section and the recording section. The separating section consists of a spiral column in an oven which has a temperature control. The column is filled with material which is capable of separating the substance being analyzed into the different component parts. A flow of gas through the column helps with this separation. When each of the component parts is swept from the column by the gas, it passes into the detecting section, which consists of various types of electronic detectors. This information from the detector is transferred to the recording section and is recorded on the chart paper in the form of peaks. In order to make the method quantitative, it is necessary to inject standards of known concentration in which the sample was injected. The alcohol from both samples will pass through the column at exactly the same time and will be recorded as a peak on the chart paper. The area under the respective peaks are measured, and the alcohol sample is calculated by proportion, knowing the concentration of the standard sample.

ALCOHOL DETERMINATION FROM BREATH SAMPLES.

1. INTRODUCTION. The use of breath to measure the amount of alcohol in the blood is based on the following principles: (1) the alcohol distribution between the circulating pulmonary blood and the alveolar air occurs by simple diffusion, similar to other volatile substances; (2) it also obeys Henry's Law, which is to say that the concentration of alcohol in the blood is proportional to the concentration of alcohol vapors in the alveolar air. Therefore, if a sample of alveolar air is available for analysis, the concentration of alcohol in the blood can be determined indirectly; (3) from many

analyses, the best available information indicates that this ratio between the blood and the alveolar air is approximately 1:2100. This means that 1 ml. of blood contains the same amount of alcohol as 2100 mls. of alveolar air. This ratio for total expired breath is approximately 1:3200. 2100 mls. of alveolar air also contains 190-224 milligrams of carbon dioxide.

2. THE BREATHALYZER. The breathalyzer, developed by Borkenstein, utilizes potassium dichromate in sulphuric acid solution as the reagent for oxidizing alcohol in alveolar breath. The method employed in the operation of the breathalyzer consists of three principle phases. (1) Collecting the specimen of breath to be analyzed, (2) passing the specimen through the hot dichromate sulphuric acid solution, and (3) measuring the amount of dichromate required to oxidize the alcohol, if any, in the specimen of breath being analyzed. The instrument is designed in such a way that the specimen of breath from the subject consists of 52.5 mls. of alveolar air. When the control knob is turned to analyze, a valve is opened and a piston pushes the sample of breath out of the cylinder, bubbling it through the potassium dichromate sulphuric acid solution, which is maintained at approximately 65° C. At this temperature, any alcohol is oxidized to acetic acid and a corresponding amount of potassium dichromate is used. Before the test is started, the solution in the test ampoule through which the breath is passed is photometrically balanced against a solution in another ampoule called the comparison ampoule. After the chemical reaction has reached completion, the instrument is again balanced photometrically by moving the pointer on the Blood-Alcohol scale. When the galvanometer is centered at the completion of the test, the place where the pointer rests on the scale indicates the alcohol concentration of the subject. All of this is mathematically and mechanically tied together by standard principles of chemistry and physics, and the instrument is calibrated to read the blood-alcohol concentration directly.

3. OPERATING THE BREATHALYZER.

A. PREPARATION OF THE INSTRUMENT.

(1) Warm up until the thermometer pointer is between 45-50°C. Thermometer should register this temperature, indicating that the sample chamber and all breath-carrying tubes are above body temperature. This prevents condensation of moisture from the breath that would cause loss of alcohol and also possible sticking of the piston. If the latter should occur, a brief pumping with the atomizer bulb will dry the cylinder and free the piston. The temperature is thermostatically controlled between 45-50° Centigrade.

(2) If necessary, adjust Null-Meter for mechanical Center. This adjustment is effected by turning the knob on the top of the null-meter until the pointer rests on the center line. It is made with the power switch "ON" and the reading light "OFF".

(3) Insert Ampoule into Left-Hand Well. This is an ampoule with the top intact. Gauge an Ampoule. Use the gauge provided. The meniscus should stand on the edge of the gauge or slightly above it. Open the ampoule. Remove the outlet sleeve from the Breathalyzer, connect to a bubbler, insert the bubbler into the ampoule, check to see that it comes to within about 1/8 inch of the bottom of the ampoule.

(4) Place the ampoule in the Right-Hand Well. Connect the sleeve to the outlet of the Breathalyzer.

B. PURGING THE INSTRUMENT.

(1) Flush out the System and turn selector to "ANALYZE" position. With the selector set on "TAKE", pump into the system with an atomizer bulb for about ten seconds, then turn to "ANALYZE". When the RED light appears, wait for about 90 seconds and the system is ready for use.

C. PREPARATION FOR THE TEST.

(1) Center Null-Meter with the Reading Light "ON". Press the button marked "LIGHT". Carefully turn the knob on right side of the panel until the null-meter pointer rests on its center line. This adjustment compensates for variations in strength of the solution in the ampoule.

(2) Align the Scale Pointer with the "START LINE". Adjust the scale pointer until the pointer coincides with the "START" line. Various models have different style clutches. Consult the instruction manual for the instrument you are using.

D. RUNNING THE TEST

- (1) Insert Mouth Piece into plastic Sample Tube.
- (2) Turn selector to "TAKE".
- (3) Take Sample.
- (4) Turn selector to "ANALYZE". With the selector on "TAKE" have the subject blow vigorously into the plastic sample tube. He need not start with a deep breath. If the sample is unsatisfactory, simply have the subject blow again. When he has finished emptying his lungs, turn the selector to "ANALYZE".
- (5) After RED light appears wait for about 90 seconds, then center null-meter with reading light "ON". Read answer on scale.
- (6) Dispose of Test Ampoule, Bubbler and mouthpiece.
- (7) Turn selector to the "OFF" position and the power switch to "OFF". This operation is important because besides turning off the electrical power it releases pressure on the rubber tubes.

4. GIVING EVIDENCE OF ALCOHOL CONCENTRATION BY USE OF BREATHALYZER.

The courts have held that only those persons who are qualified to explain the operation of the instrument, the mechanical functions of the instrument, the mathematical functions performed by the instrument, the chemical functions of the instrument, and are able to demonstrate the ability to make the calculations for interpreting the readings of the instrument may give testimony as an expert witness in giving evidence as to the alcohol concentration of alcohol in the blood of the person tested. Adequate training enables many police officers to fulfill this function. Departmental policy shall be examined to determine the adequacy of such training.

5. USUAL READINGS OF ALCOHOL CONCENTRATIONS.

- A. **High Blood-Alcohol Readings.** In those cases involving the use of the Breathalyzer where the subject is determined to have a blood alcohol level of 0.35% and above; a second test should be taken after 30 minutes has elapsed. If the second test indicates an increase in alcohol level the subject should be placed under medical care and supervision. The physician is to be advised of the results of the tests.
- B. **Low Blood-Alcohol Readings.** In those cases involving the use of the Breathalyzer and a subject is determined to have a blood alcohol level of below 0.10% and exhibits gross impairment a second test should be taken after 30 minutes have elapsed. If the second test indicates a low blood alcohol level and you have reason to believe the subject may have a disease, may have been injured (head injury); the subject should be placed under medical care and supervision.

6. THE SOBER METER. The principles of the Sober-Meter or "MOBAT" for breath testing depend, in general, upon the same fundamentals as the Breathalyzer. The size of the sample is based upon the amount of alveolar air, which is passed through the tube which absorbs the alcohol. However, the size of the sample is based upon the amount of carbon dioxide contained in the amount of breath that is passed through the absorbing tubes.

There are two tubes connected together through which the breath passes. First it passes over white crystals, which absorb the moisture and the alcohol, then goes through the darker crystals, which absorb the carbon dioxide. The principle used to obtain the sample size is based on the premise that 2100 ml. of alveolar air contains 200 milligrams of carbon dioxide. The weight of the carbon dioxide is determined by the increase in weight of the carbon dioxide absorbing tube, and this is used to calculate the equivalent milliliters of blood. The final determination of alcohol is made by dissolving the crystals which absorbed the alcohol into water, making up to a specific volume, and the distillation of a known amount, and then subjecting the distillate to the Harger-Micro method technique used for blood samples.

7. INSTRUCTIONS FOR COLLECTION OF BREATH ALCOHOL SPECIMENS - MOBAT.

The following instructions are adopted from the training manual for the SM-2 Sober-Meter (Mobat) developed by Luckey Laboratories. The following steps are included in the directions supplied with the MOBAT kits:

- A. Before testing, avoid smoking and wait 15 minutes after alcoholic drink has been taken.
- B. Remove caps from both ends of instant test (color) tube and discard loose white preservative crystals. Next attach either end to the clear plastic sleeve of the balloon and replace cap on the other end.

C. Remove the yellow cap from the end of the chemist tube and replace it securely with the yellow adapter.

D. Inflate balloon with deep continuous breath until the carton end fits between the two markers on the balloon. Then remove cap from instant test tube for EXACTLY ONE MINUTE. Replace cap, twist color tube to constrict air in balloon, then by firmly holding plastic balloon sleeve remove the instant test tube and replace it with the chemist test tube.

E. Remove the blue cap and allow breath to pass through the chemist test tube for three and a half minutes; at least it must be three minutes and not in excess of four minutes. Check washers and rescal firmly with caps.

F. Wait five minutes, read the color tube to the highest green position like a thermometer. Return Sober-Meter to its carton and rescal and record data.

We would like, now, to go through each step individually and answer questions that are frequently asked about the steps and the reasons for the steps. If these steps are not followed, the Sober-Meter is designed so that it will fail-safe. In other words, 90% of the time, if you make a mistake in the operation of the Sober-Meter, it will cause the alcohol to show less than was actually present in the subject.

Before testing avoid smoking and wait fifteen minutes after alcoholic drink. The reason for this step is to eliminate any possibility of alcohol from a recent drink of which some might still be in the mouth cavity. In actual testing, it has been found that the alcohol stays in the mouth only a matter of minutes. It was found by testing that a subject who had drank a glass of beer had the alcohol removed after three to five minutes from the mouth cavity. The test was repeated with cotton saturated with 100 proof alcohol held in the cheek; under this condition the alcohol remained as long as eight minutes. This situation is, of course, abnormal and would not be expected to occur under normal conditions unless the subject was purposely trying to increase his test results, which is not logical. Therefore, the fifteen minutes waiting period is adequate time and should be used. Another reason for the fifteen minutes is to cause the subject to quiet down in case he is breathing rapidly from exertion caused by exercise or other means. It is wise to never take a breath test of any type when the subject is gasping for air because of exertion or other causes that may make a person momentarily breathless. This condition of being out of breath also lasts only a few minutes, so that by the time the fifteen minute period is completed, the subject should be more than back to normal breathing.

The next item in this first step is to avoid smoking. Smoking in the Sober-Meter test is not disastrous as it is in other types of breath-testors. However, this advice is included since it is well to collect the specimen under the best conditions. The coal tars in the smoke could cause the screening test to be more difficult to read, because of the dark color that would collect on the yellow crystals. Eventually, these impurities can cause the yellow crystals to turn green, but this would take a much longer period of time than the suggested reading period that is given for reading the screening test. The CO₂ released in the smoke would be of advantage to the subject in that it could possibly increase the CO₂ content in the lungs. This restriction on smoking does not mean that the subject cannot smoke for fifteen minutes prior to the test. The smoking requirement simply means that there be no physical smoke in the balloon or through the tube. So therefore, prevent the subject from smoking at least a few minutes before you give the test.

When opening the kit, make sure the back of the box is marked indicating the serial number and the weight of the test assembly; it should be signed and dated with the past six months. (Do not use any MOBAT over six months old.) Remove the caps from both ends of the screening test (color) tube and discard loose white preservative crystals. Next, attach either end to the clear plastic sleeve of the balloon and place a cap on the other end. This just simply means to discard the white preservative crystals from the color test tube by removing both caps and then, since there is no wrong end to the screening test, replace one of the caps and attach the other end (the open end) to the clear plastic sleeve of the balloon. The screening test is then ready for use. Before starting the subject to blowing the balloon, we suggest that the third step be completed, which is to simply remove the yellow cap from the end of the chemist tube and replace it securely with the yellow adapter in the kit. If you do this now, it is easier than trying to do so when the balloon is inflated. The thing to remember here is yellow to yellow, or better yet, attach the adapter to the end containing the white crystals. If attached to the tube with the brown chemical, it will cause the instrument to come up with a low "fail-safe" reading.

At this point now, you are ready for step "D", which is having the subject inflate the balloon with deep continuous breaths until the carton end fits between the two markers on the balloon. Watch the subject when he is inflating the balloon and be sure he uses long continuous breaths. More than one exhalation will be needed. Some subjects may regurgitate into the balloon. The amount of regurgitated air in proportion to the amount of alveolar air is negligible if the balloon is adequately and properly inflated. (However, if in the regurgitation the subject injects any liquids or solids into the balloon, the accuracy of the test is compromised and shall require that the test specimen be discarded and after a wait of fifteen minutes a new test made.)

After the balloon is inflated, remove the cap from the instant test for exactly one minute. Replace the cap, and twist the color tube so as to constrict the air in the balloon, then by firmly holding the plastic balloon sleeve, remove the instant test and replace it with the chemist tube. Pass the air from the balloon through the chemist tube for three and a half minutes, at least three minutes and not more than four minutes are needed for an effective sample.

We repeat, the inflation of the balloon by the subject must be done with deep, full continuous breaths until it is big enough that the ends of the top carton lid fit between the two markers on the balloon. This gives enough air in the balloon for both tests plus the fact that at this point the pressure of the balloon matches the pressure of the screening tester tube. This is important because it is a volume control that has been built for the screening unit. That is to say that it is known that a certain volume will pass through the screening tester tube. This is why it is possible to get such good results from the screening tester; when the balloon is properly inflated and the amount of time the air is permitted to pass through the tester is accurately controlled. After the air from the subject's breath has flowed through the tester for exactly one minute, then recap the tube and do the "Mobat Twist", that means, take hold of the screening tester tube and turn it until you have constricted the balloon just below the adapter so that no air may escape from the balloon. Holding the adapter firmly, wiggle the color tube out of the adapter and replace it with the chemist tube. Check to see that all of the connections are tight; release the constriction and allow the air from the subject's breath in the balloon to flow through the chemist tube for a period of three and a half minutes. At the end of this time period, remove the balloon and adapter and replace the caps on the chemist tube, make sure that the caps are snug and tight on the respective ends.

When you remove the caps do not loosen the center section where the two chemist tubes are joined by a union. Grab the chemist tubes toward the end where you are removing the cap so that there is no chance for this to occur. Also determine that the chemist tube was tight before you use it and tight after the air has passed through the instrument. If you are able to make this statement, then the chemist can guarantee the accuracy of the analysis. The only thing to fear in breath testing is losing the gas, or leaks since it is impossible to determine leakage. Take the necessary precautions making certain that everything is tight both before and after use of the equipment.

The last direction deals with reading the color test tube and resealing the Sober-Meter unit. The field record is filled out on the bottom of the carton.

After you have completed the collection of the breath in the chemist tube and have sealed it and replaced it in the carton, then pick up the instant test tube, rotate it and find the highest position you can see any green in the tube, this then is the end point. The rest of the green will very quickly develop to this point if it hasn't at this time.

As you look at the instant-test you will notice it has three color bands, of amber stoplight color. If alcohol is present, the amber color bands turn to a stop-light green color. The higher the green goes, the more the alcohol present and you read the color tube just like a thermometer, each color band will be set at 0.10%, therefore, if one color band lights up green, or more, then you know that there is in the subject's blood, 0.10% or more alcohol; if there is evidence indicating driving impairment it should be possible to secure successful prosecution for driving while under the influence. If one and a half of the bands have lighted up green, we know that the blood alcohol level is near or above 0.15% and this is presumptive evidence of intoxication under South Dakota statutes. A subject with such a blood alcohol level should display symptoms of gross impairment under most conditions. The three color bands are conveniently placed at 0.10% each so that it will be easier for the officer to quickly determine the relative amount of alcohol present in the subject. If all three bands light up green indicating a blood alcohol level of 0.30% or above; the subject should be taken to a physician for medical attention.

With this system, the MOBAT Sober-Meter is always in the hands of an expert, and is above reproach from the court and defense attorney. The officer becomes an expert

In giving the test, his job is merely to collect a specimen that is later analyzed in the laboratory by an expert if the subject pleads not guilty.

The last part of the direction check list is to reseal the Sober-Meter carton and fill in the data on the bottom of the package. You will find each carton comes to you sealed, from the Laboratory of the State Chemist. Before using the instrument, you must break the seals at each end and inside you will find the direction check list and two orange seals for resealing. After using the instrument, reseal it with these stickers and fill in the right hand side of the bottom of the carton. This then will project your continuity of handling for court purposes.

During cool weather it is recommended that the Sober-Meter be warmed up before starting the test. This can be done during the fifteen minutes waiting period in the following manner. Open the carton, lay the carton containing the unit on the dash of your car with the lid so located that it will deflect the hot air from the defroster unit into the box, turn the heating unit of the patrol car to "DEFROST" and advance the heater or temperature control to full "HEAT". The most accurate results are obtained when the Mobat unit is at the same or higher temperature as the air of the breath of the subject. A cold unit will permit some condensation of water and alcohol vapor of the breath and will give a corresponding low reading in the instant test and in the chemist test or analysis.

SM-7 Sober-Meter Operation and Mechanics for Use with Gas Chromatograph

In order to make the gas chromatograph even more versatile and useful to law enforcement agencies, Luckey Laboratories, Inc., has developed a portable breath alcohol collection kit named Sober-Meter SM-7. These kits are designed to collect volumetrically the alveolar breath at remote locations for analysis by the Alco-Analyzer. The SM-7 also contains a portable screening test. The screening test is useful for eliminating the possibility of shock injury, disease or other drugs as casual agents of the behavior in question. These portable kits are not larger than a package of king-sized cigarettes, nor are they much greater in price. The officer can with a simple technique, analyze the collected sample on the gas chromatograph at any time later after it was taken. These portable SM-7 collection kits can be carried in the car so the officer would have a portable unit for collecting and testing breath alcohol.

In addition to the breath alcohol collection kit, a blood alcohol collection kit for the GC has also been developed. This essentially consists of two capillary tubes, a lance and disinfectant. Using the lance, a small drop or two of capillary blood is obtained. The capillary tubes are used to collect the specimen and transport it back to the gas chromatograph. Upon arriving at the gas chromatograph, the serum from the capillary tube is withdrawn and injected into the GC for analysis of the alcohol content. The Federal Highway Safety Agency Manual Volume 8, on this subject suggests that the serum or plasma of capillary blood be used as the specimen for measuring alcohol concentration in the body. This specimen correlates well with the breath alcohol. It is also representative of the amount of alcohol in the arterial pulmonary blood, which is indicative of the concentration of alcohol in the brain and lung tissues.

The second capillary tube can be preserved for the defendant in case he would like to have a specimen for personal analysis.

Urine alcohol can also be analyzed instantly in a similar manner by simply collecting the specimen and injecting a few microliters into the Alco-Analyzer.

A. DIRECTION CHECK LIST SM-7 SOBER-METER

Before testing avoid smoking and wait 15 minutes after an alcoholic drink.

Remove caps from ends of collection tube and attach the square terminal volumetric bag to one end of the tube.

Attach balloon to one end of the long waste bag, place finger over balloon end so no breath can enter.

Direct subject to inflate balloon with continuous uninterrupted breaths.

NOTE: Waste first part of breath, from each new expiration into waste bag before removing your finger to allow the last part of the prolonged breath to enter the balloon. Repeat this procedure as many times as needed.

NOTE: Place finger over balloon end and squeeze out the air in the waste bag before each new try.

When balloon is full, remove and attach it to the collection tube containing the volumetric bag. Keep balloon attached until bag is full.

Immediately remove balloon and attach it to the screening tester for one minute of flow. Prepare tube ahead of time as per direction check list.

B. DIRECTION CHECK LIST -- SCREENING TEST

Remove caps from color tube and dump white crystals.
Insert plastic tube into balloon and inflate until full.
Insert color tube into plastic tube for one minute of flow.
Read color tube like a thermometer observing the highest position of the green color. Color will deepen upon setting.

C. INTERPRETATION OF SCREENING TESTER

Three color bands green -- 0.30

Two color bands green -- 0.20

One color band green -- 0.10

The screening test is designed to eliminate instantly the possibility of shock, injury, disease or other drugs (besides alcohol) as the cause of the abnormal behavior of the subject, and to give a rough approximation of the alcohol content.

D. DIRECTIONS FOR ANALYSIS

1. Remove collection tube from sealed carton and take off caps from both ends.
2. Suspend tube inside a 10 ml. graduate. (Figure 1 below)
3. Using an eye dropper, add ten drops of distilled water into the tube. Wait 2-3 minutes and flush tube gently with air, using an aspirator bulb. Figure 2.
4. Add five more drops of water through tube and aspirate.
5. Repeat a third time without using bulb and continue to add water until exactly 1 ml is collected in the graduate.
6. Mix and pour into a small vial.
7. Inject 2 to 3 ul of the extracted material into the Alco-Analyzer and compare the average peak height or area with that of a known alcohol standard.
8. Compute the alcohol concentration as follows: The 1:2100 ration means 1 ml. of blood equals the alcohol content in 2100 ml of alveolar breath. Your SM-7 bag is 2100 ml.; therefore, extracting the alcohol from the collection tube until you have collected 1 ml. gives you this ratio. And the alcohol concentration in 1 ml. of blood, a blood alcohol of 20% would have 2.0 mg./ml. alcohol results. If you extract 2 ml., then multiply the results by 2, usually 1 ml. extraction is sufficient. 2 ml. can be used if you are not getting all the alcohol in 1 ml.

The SM-7 tester can also be analyzed by other means, such as the potassium dichromate method, enzymatic method or any standard chemical method for alcohol analysis. The collection tube saves the need for distillation. Simply suspend the tube in a 10cc. graduate and allow water to drop slowly through the tube until 2-5cc. are collected and then proceed with your normal standard method for alcohol analysis.

E. DIRECTIONS FOR ANALYSIS BY HEADSPACE TECHNIQUE

In addition to the method described in Par D; the collection tube of the SM-7 may be analyzed by the "Headspace technique". This method of determining the alcohol concentration is based on Henry's Law which states as follows: when the water solution of a somewhat volatile substance is brought to equilibrium with air, there is a fixed ratio between the concentration of the compound in the air and its concentration in water, and this ratio is constant for a given temperature. The "Headspace Technique" is conducted as follows:

1. Prepare the Gas Chromatograph for headspace analysis by removing the whistle and stopping the by-pass with a small rubber stopper. Place a small rubber injection cap over the "breath" port to inject the needle through.
2. Take an unused SM-7, or new SM-7 collection tube, and collect the alcohol from 2100 ml of air from a known simulator.
3. Remove the silica gel from the collection tube and place in a 35 ml rubber puncture capped bottle. Add 4 grains of potassium carbonate to bottle with gel and seal.
4. Inject 1 ml of distilled H₂O into bottle and place in a constant temperature heat block at 34°C. After 15 minutes remove 17 ml headspace gas and analyze.
5. Place the lever on the GC to "Take" and inject the gas into the port. Move the lever to "Analyze" and the results will be printed on the strip recorder.

6. This is your standard. Now do the same with each unknown SM-7 collection tube.
7. Compare peak heights for results.

F. FAIL SAFE DESIGN

All mistakes both in the operation and analysis of the SM-7 will favor the subject.
For example:

1. Taking specimen:
 - A. Not getting alveolar breath will cause alcohol to be lower in the tester by the ratio of 21/32. The normal expired breath contains about 62-70 volume per cent alveolar breath.
 - B. Any substantial temperature drop from the time breath leaves the mouth until it is deposited on the collection tube can cause a lower alcohol reading.
 - C. Any errors in giving the test will cause it to fail safe (lower alcohol reading) with one exception: the 15 minute waiting period before giving test should be observed so that no mouth alcohol is present.
2. Analysis of specimen:
 - A. Lack of extracting all the alcohol will cause a lower reading.
 - B. Age of specimen can only reduce the alcohol if there is any change at all.

SECTION II

ALCOHOL AND DRIVING ABILITY

Consumption of alcoholic beverages and operation of motor vehicles are two of the most common habits of our society, and it is not uncommon to observe an overlap in the exercise of these behaviors. It is consequently critical that law enforcement officials and agents, as well as the general public, be aware of the influence that the drug alcohol has upon the ability of the driver; and it is the responsibility of research workers from a variety of scientific disciplines to rigorously evaluate and disseminate this information. It is the intent of this chapter to present a brief over-view of the potential approaches to the problem of alcohol and driving and to provide a summary of currently available information regarding the effect of alcohol on driving ability. Three primary research areas appear to be particularly related to this problem and they will be treated separately in this chapter.

Pharmacological Effects

The most important pharmacological effect of alcohol concerns its depressant effect on the central nervous system, which is its primary site of action. The traditional view with respect to the action of alcohol on the central nervous system maintains that the "higher" centers of the brain are first affected, then with increasing concentrations of alcohol the depressant effect spreads to lower centers. A more recent view asserts that the primary site of action lies in the reticular formation, a core of grey matter which acts as a central regulatory and integrating system within the brain (Kalant, 1962). The reticular formation, when stimulated by sensory inputs, activates or inhibits various cortical or sub-cortical centers, which in turn control the behavioral responses to the original stimuli. When parts of the reticular formation are depressed by the action of alcohol a complex train of events is triggered which may produce a wide variety of behavioral outcomes. The apparent stimulant effect sometimes observed in persons under the influence of alcohol is due to the failure of the depressed portions of the reticular formation to inhibit or control the actions of lower centers of the nervous system.

The magnitude of the effect of alcohol on the central nervous system is determined by the concentration at which the alcohol reaches the brain tissue, and this in turn is dependent upon the rates of absorption, distribution and elimination from the body. Alcohol is rapidly absorbed from the alimentary canal, primarily the duodenum. The time required for absorption of alcohol is dependent upon a number of factors, the most important of which is the nutritional state of the stomach. On an empty stomach approximately 90% of the alcohol in a drink will be absorbed during the first hour following ingestion. The presence of food in the stomach will delay the course of absorption, primarily by retarding the passage of alcohol from the stomach to the intestine.

Once absorbed from the alimentary tract, alcohol is rapidly distributed to all bodily tissues by the blood stream. The extent to which alcohol enters bodily tissues is determined by their water content, and the alcohol is dissolved uniformly in all of the water in the body. The concentration of alcohol at its site of action, brain tissue, is closely approximated by the blood alcohol concentration, which is greater than the concentration in the body as a whole since the percentage of water in the blood is about 1.4 times as great as for other bodily tissues. One of the most important factors affecting the blood alcohol concentration following ingestion of a given amount of alcohol is body weight. Table 1 presents approximate blood alcohol concentrations for persons of different body weight, as a function of the number of drinks consumed. It must be noted, however, that these values are approximate and that other factors such as exposure to drinking (extent of habituation), nutritional state of the stomach, and type of drink may also influence the blood alcohol concentration.

Table 1

Blood-Alcohol Chart: Showing estimated % of alcohol in the blood by number of drinks consumed in one hour in relation to body weight. (taken from Ohio manual)

| DRINKS | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|---------|------|------|------|------|------|------|------|------|------|------|------|------|
| 100 lb. | .038 | .075 | .113 | .150 | .188 | .225 | .263 | .300 | .338 | .375 | .413 | .450 |
| 120 lb. | .031 | .063 | .094 | .125 | .156 | .188 | .219 | .250 | .281 | .313 | .344 | .375 |
| 140 lb. | .027 | .054 | .080 | .107 | .134 | .161 | .188 | .214 | .241 | .268 | .295 | .321 |
| 160 lb. | .023 | .047 | .070 | .094 | .117 | .141 | .164 | .188 | .211 | .234 | .258 | .281 |
| 180 lb. | .021 | .042 | .063 | .083 | .104 | .125 | .146 | .167 | .188 | .208 | .229 | .250 |
| 200 lb. | .019 | .038 | .056 | .075 | .094 | .113 | .131 | .150 | .169 | .188 | .206 | .225 |
| 220 lb. | .017 | .034 | .051 | .068 | .085 | .102 | .119 | .136 | .153 | .170 | .188 | .205 |
| 240 lb. | .016 | .031 | .047 | .063 | .078 | .094 | .109 | .125 | .141 | .156 | .172 | .188 |

The primary means of elimination of alcohol from the body is through oxidation (approximately 90%) while some of the alcohol (10%) is eliminated unchanged in breath and urine. The average rate of oxidation of alcohol from the human body has been found to be approximately .10 gram of alcohol per kilogram of body weight per hour, or as a general rule the rate of oxidation is approximately .015% of blood alcohol concentration per hour regardless of body weight. It is commonly assumed that administration of drugs, oxygen, or black coffee will hasten the elimination of alcohol and reduce intoxication. This assumption is largely unfounded. None of these agents will influence the process of oxidation, and if any beneficial effect is produced by such measures it is probably due to the action of the antidote as a stimulant on the central nervous system sites which have been depressed by alcohol.

The combination of absorption, distribution, and elimination of alcohol in the body gives rise to the commonly referenced "blood-alcohol curve". A blood alcohol curve represents (for a specified amount of a given alcoholic drink) the change in blood alcohol concentration over time. The magnitude of the blood alcohol concentration as a function of time from ingestion provides a convenient means of comparing the effects of various alcoholic beverages. Figure 1 represents one such comparison. The composite shown in this figure shows a good comparison between various types of beverages all containing the same amounts of alcohol, and also shows the difference between identical quantities of alcohol in the form of table wine and beer on an empty and a full stomach.

Figure 1

Typical blood-alcohol curves resulting from the ingestion of various spirits, wines and beer, each at amounts equivalent to 0.6 gm of alcohol per kilogram of body weight. (Taken from Leake, C.D. and Silverman, M. *Alcoholic Beverages in Clinical Medicine*, Chicago, Year Book Medical Publishers, Inc., 1966, page 54.)

Epidemiological Research

Research on the traffic safety related effects of alcohol has taken two distinct but hopefully related directions. On the one hand investigators have performed statistical analyses of data collected on accident victims and comparable non-accident drivers. The aim of this type of research has been to determine the relationship between blood alcohol levels and involvement in motor vehicle accidents. The other approach, which will be discussed in detail later in this chapter, has attempted to directly determine, usually by means of laboratory or field experiments, the specific characteristics of driving performance which are affected by alcohol and the relation of the magnitude of these performance effects to the blood alcohol levels of the experimental subjects.

Perhaps the most comprehensive and carefully conducted epidemiological study conducted to date is the Grand Rapids Study (Borkenstein, Crowther, Shumate, Ziel, and Zylman, 1964). In brief, the Grand Rapids Study collected information, including breath or blood test data for blood alcohol concentration, on 9353 accident involved drivers and 8008 control drivers who were not involved in motor vehicle accidents. The control group of non-accident drivers were matched to the accident involved group for time of day and geographic location. One of the most interesting treatments of the data from this investigation is reported by Hyman (1968). Hyman attempted to evaluate the relative accident vulnerability of drivers at various blood alcohol levels, and found that approximately the same proportions of accident and non-accident drivers tested had no measurable amounts of alcohol in the blood. He found, however, that a greater percentage of non-accident controls than accident involved drivers had blood alcohol concentrations between .01% and .04%. Thus, at this low blood alcohol concentration the accident vulnerability, or probability of accident involvement, was less than for the no alcohol condition. With increasing amounts of alcohol in the blood stream the accident vulnerability ratio was found to increase at an increasing rate until at blood alcohol levels above .10% the accident vulnerability ratio was approximately 8.3 indicating that more than 8 times as many accident involved drivers showed blood alcohol concentrations of .10% or greater than did non-accident controls.

Epidemiological research represents the actuarial treatment of accident data and is designed to provide information relative to statistical relationships between variables such as blood alcohol concentration, and accident involvement. This type of research is, by nature, limited to the assessment of the degree of association between variables and cannot be extended so as to make cause and effect statements. Although it may be intuitively obvious that increasing amounts of alcohol in the body will cause an increase in the probability of having an accident, survey research can only tell us that there is a relationship between the two phenomena or that high blood alcohol concentrations are associated, or tend to go along with, high rates of accident involvement. These data do not tell us, for instance whether the high blood alcohol levels cause accidents, or whether some other factor such as carelessness defines a particular group of drivers causing them to have accidents and to drink. If this were the case the causal agent might be carelessness and the drinking and accident involvement would be highly related but both influenced by a common cause. For all of its sophistication survey research cannot answer the cause and effect questions and it is left to controlled experimental research to do this job. This is not to say that epidemiological studies are not valuable and necessary. Survey research has a very definite and important role in the attack on the problems of alcohol and driving, and that role is primarily one of pointing out particular areas at which to direct controlled experimental attacks. In other words the main task of epidemiological research is to define and locate problems which may then be attacked with the appropriate weapons. Under ideal circumstances these two types of research activity should go hand in hand, each contributing to a common purpose.

Experimental Research

Unfortunately, the level of sophistication in much of the experimental work with alcohol and human performance has not, as yet achieved a very high level. It is of course known that at very high blood alcohol concentrations performance on virtually all tasks which the human engages in will deteriorate profoundly. Thus at blood alcohol levels of .15% or .20% and above it can reliably be predicted that most skills will suffer from the central nervous system depressant effects of alcohol. Of much more importance to an understanding of the role of alcohol in influencing driving performance, however, are the moderate and low blood alcohol levels which are seen with a great deal of frequency in the general driving population.

Much of the early work in this area has examined the effects of low doses of alcohol on relatively simple skills such as reaction time, muscular coordination and motor skills, perceptual functions, and intellectual functions. Results of studies conducted in these areas, when taken together show an alarming degree of contradiction. In some studies small amounts of alcohol (on the order of blood alcohol levels of .05%, for instance) produce significant decline in the level of performance, in other studies using the same blood alcohol concentrations findings of no deterioration and even improvement in performance have been reported. The major finding which these studies have in common is that there are tremendous individual differences in response to the ingestion of alcohol. At low and moderate amounts of alcohol one person may be severely affected while another may not be influenced at all. It has been demonstrated, however, that contrary to traditional assumptions intellectual functions and motor functions are more resistant than sensory functions (eg. reaction time) (Goldberg, 1943; Carpenter, Moore, Synder, and Lisansky, 1961).

The few studies which have attempted to relate alcohol to driving tasks per se present an even more confusing picture. Despite the small number of such studies and the poor research technique used by several of these investigations, the principal conclusion which is common to the results of these studies is that wide and important individual differences in performance are observed at the low and moderate blood alcohol levels (.02 to .10%). The statement made by the authors of one of the earliest, but still one of the most carefully conducted studies of alcohol and driving skill accurately describes the importance of the individual difference phenomenon: "It is most certainly true, however, that the highest blood alcohol levels we achieved (.15-.20%) were not effective in those individuals of higher initial ability in reducing performance below the average for the group when tested without alcohol" (Newman, Fletcher and Abramson, 1942).

Implications for Law Enforcement

Results of epidemiological and experimental research suggests that there is ample evidence to support the assumption as reflected in *prima facie* evidence laws, that at blood alcohol concentrations of .08 or .15% a driver's ability is impaired to the point where he may pose a threat to the rest of the driving population. It should be noted, however, that even at these relatively elevated blood alcohol levels some small proportion of drivers will retain sufficient levels of driving skill to classify them as superior to less skillful drivers who have consumed no alcohol. It is likely, however, that this group will be such a small minority as to present no problem to the administration of just enforcement policies.

Of particular importance to enforcement efforts designed to control the problem of drinking and driving is the treatment and control of the driver at low and moderate blood alcohol levels. There appears to be an urgent need for supplementary tools with which to detect impairment in the performance of drivers who operate motor vehicles with small or moderate amounts of alcohol present in their bodies. Unfortunately, clinical symptoms of intoxication (ie. body posture, speech characteristics, etc.) are not particularly reliable indices of intoxication and may justifiably be disputed as evidence. Cooperation between law enforcement personnel and experimental researchers is absolutely necessary to produce specific tests and test apparatus to accurately and reliably measure performance characteristics which relate to driving skill and which will differentiate between impaired and unimpaired drivers. Although a major burden of responsibility is placed upon the researcher to come up with such tests, it will be necessary to train enforcement agents in their use and in the implications of test findings to enforcement policies. Cooperation between these two specialties will also be necessary to win legal acceptance of these types of criteria for DWI offenses.

A final major and important area in which both the research community and the law enforcement agencies must join forces concerns the education of the drinking public both with respect to the magnitude of the drinking-driving problem and the contribution individual drivers and drinkers can make to its solution. It should be abundantly clear by this time that it will do no good to tell people not to drive after drinking. This type of propaganda has been with us for years, and still the numbers of alcohol involved accidents has continued to rise. We must instead teach people to recognize the symptoms of intoxication and unpaired driving performance and to control their drinking and/or driving behavior so as to eliminate alcohol as a cause of motor vehicle accidents. In short, we must emphasize the positive means of controlling the problem rather than recommending or imposing blanket prohibitions.

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SECTION III

DETECTION - APPREHENSION - PROSECUTION OF DRUNKEN DRIVERS

Despite present and future efforts in modification of driver's attitudes toward mixing alcohol and driving, some motorists will continue to operate motor vehicles while under the influence of intoxicating beverages. When they come to the attention of the enforcement authorities, either by apprehension or through post accident or incident investigation, the Law Enforcement emphasis tends to shift toward the investigative and prosecutive phases of enforcement. Successful prosecution requires effective and substantial evidence of commission of the offense charged. The general problem is particularly emphasized in "operating under the influence" cases. Many cases are lost in prosecution because of the failure to put together a coordinated, well-rounded, documented picture of the facts. Efforts to obtain convictions for operating a motor vehicle while under the influence of intoxicating liquor on the basis of testimony concerning driving behavior alone, physiological symptoms alone, witness testimony alone, or chemical tests alone have met with frequent failure.

This pattern of failure demonstrates the necessity for the development and use of a "Syndrome" or integrated approach to investigating cases involving, "Driving While Under the Influence of Alcoholic Beverages". The Syndrome approach integrates evidence of abnormal behavior with a chemical test to demonstrate whether the alcohol level of the accused is sufficiently high to account for these abnormalities.

The principal parts of the syndrome approach are threefold:

1. Unusual driving behavior.
2. Observation of police and lay witnesses.
3. Chemical Tests.

These can be further analyzed into five elements.

1. Behavior prior to arrest or accident.
2. Behavior immediately following arrest or accident.
3. Behavior while being subjected to psychosensory and psychomotor tests commonly used by police and physicians.
4. Response to the questionnaire.
5. Results of Chemical Test to determine blood alcohol level.

Available information and research point out repeatedly the fact that there are individuals whose driving ability is dangerously impaired at blood alcohol levels as low as 0.05 percent, yet unless every possible shred of available evidence is linked to this information to form a syndrome, without depending on the blood alcohol level, such individuals usually escape prosecution.

It therefore becomes imperative that the elements of the total evidence be formalized and properly utilized so each may carry its proper weight in case presentation. Effective evidence constitutes the answer to these questions.

1. WHAT HAPPENED BEFORE THE ACCIDENT OR APPREHENSION? This entails a description of the mode of driving, statements of credible witnesses who knew of, or observed, the activities of the subject for some time prior to the arrest or incident, and a careful description of the violation (in non accident cases) that attracted the officer's attention. The particular driving offense or behavior which might have been abnormal weaving, lurching or some readily definable offense such as improper passing. In accident investigation cases, the reconstruction of preimpact events, through examination of physical evidence and statements of eye-witnesses, can materially aid the officer in presenting this phase of the case. An investigation of the subjects activities for up to twelve hours preceding the arrest or accident can be most helpful, particularly if it demonstrates "bar hopping". Character and background investigations expose the personal habits and characteristics of the accused. Examination should be made of prior arrest and conviction records, if any. All this gives greater weight and meaning to the arrest. At this point alcoholic influence may or may not have been detected or even suspected. All that is necessary to provide meaning to this section is abnormal driving or a violation. It is a reversal of the usual enforcement activity. Here the officer has a suspect and his preliminary investigation is to determine if there has been a violation and what the violation actually is. In this instance the officer having reason to believe, has the obligation to go forward with his investigation to enable him to make the decision as to the existence of a violation and what the nature of that violation is.

2. HOW DID THE DRIVER BEHAVE IMMEDIATELY AFTER THE STOP OR THE ACCIDENT? This phase is of particular importance because it is generally at this point that the officer makes the decision to arrest or release the subject. In the course of investigation he evaluates the behavior and personality of the subject. He smells his breath. He looks for bottles or other evidence of drinking in the car (the search of the car is not made at this time). If the driver displays signs of undue aggressiveness, if he is overtalkative, if he exudes the odor of alcoholic beverage, if bottles or other drinking paraphernalia are present, the officer must decide whether or not to effect an arrest. This decision is made on the basis that he has reasonable cause to believe that the subject is under the influence of alcoholic beverages to an extent that materially impairs his driving ability. Further investigation in depth will prove the detailed elements, but by this point in time the officer must have observed enough to form an opinion as to the extent of influence and impairment.

If at this point in time, the officer has in his possession information from which he has "reasonable cause to believe" that the subject being investigated has committed a violation of law and that the specific violation can be charged, the officer must advise the subject of his rights as set forth in the Miranda Decision. The failure to advise the subject will render all statements of the accused invalid for use in the prosecution. The courts have held that the time of the warning comes when a reasonable man shall have reasonable cause to believe that there has been a violation of the law and that the subject is the one who has committed the violation.

3. HOW DID THE DRIVER BEHAVE WHEN SUBJECTED TO PSYCHOMOTOR AND PSYCHOSENSORY TESTS AND QUESTIONNAIRES? An attempt has been made to formalize this phase of the investigative process by the use of the so-called Alcoholic Influence Report Form. The questionnaire's value is to help bring out the reasons for the impairment that was previously observed or that might be brought out as a result of the physical tests described in the form. These tests are the well-known coordination tests - Finger-to-nose, walking a straight line, etc. The questionnaire portion is designed to elicit information from the subject as to whether he has been drinking; what, where, when, how much, etc. It makes inquiry into any possible illnesses, injuries, or pre-existent physical disabilities that might produce symptoms similar to alcoholic influence and thereby account for the subject's conduct and actions. Knowledge of time and place is tested. An inquiry is directed to the possibility of ingestion of something other than ethyl alcohol, or the use of medications that might interfere with the test. The value of all such questions is that they add to the specificity of the subsequent chemical test. It is invaluable in closing the door to any "alibi" that might follow. There is nothing produced spontaneously by the human body except the products of untreated diabetes that will give false positive results, and many methods are insensitive even to these. The questionnaire brings out possible interfering materials voluntarily taken by the subject.

Experience has shown that most alcohol-impaired subjects typically lose their sense of caution or reserve and will answer the questions to the limit of their ability if properly approached. The only notable deviation from this response will be to the inquiry as to amount of alcoholic beverage consumed. In this case the answers are usually low.

In many departments there are programs whereby the subjects behavior is recorded by the use of motion pictures, video tapes (both silent and sound), still photography and tape and wire recordings of the subject's voice during the examination. These approaches have been useful in eliciting guilty pleas from subjects in advanced stages of intoxication. Their draw-back lies in the fact that at the levels short of gross incoordination, they show little observable impairment and thus are not as dramatic as they might be. This poses a serious tactical problem in court room presentations. Once a department has instituted the practice of photorecording and presents it in evidence, courts expect to see this material in every case, even in those instances where the subject was not grossly incoordinated but yet dangerous as a driver.

4. THE CHEMICAL TEST. This part of the syndrome shows whether or not alcohol is present in the body of the subject in sufficient quantity to account for the rest of the evidence. Its significance is dependent on the entire mass of evidence in which it is included, especially when its results lie between 0.05 and .15%. Because of its high degree of objectivity, there is a great tendency to use it in place of the other evidence. This may be practical in very advanced levels, above .15% but at levels between 0.05 and .15% a number of courts and/or juries may insist on proof in other of the four areas unless they are not obtainable due to injury of the person whose condition is in question.

The use of breath tests to determine blood alcohol percentage enables the officer to have an answer to this decisive part of the evidence promptly, soon after arrest. It may cause him to send the subject to the hospital instead of to jail. It may reinforce his decision to charge the subject with driving under the influence of alcohol, or it may cause him to charge the driver with the observed violation only. When used under these conditions the chemical test for intoxication becomes an indispensable element of the proof.

SECTION IV

OFFICER'S GUIDE

So Law Enforcement Officers may better develop the investigative techniques to enable them to make court presentation of those cases involving the driver who operates while under the influence of intoxicating beverages under the syndrome or integrated evidence concept, the following guide lines are set forth:

1. IDENTIFICATION OF THE POTENTIAL DRIVER IMPAIRED BY ALCOHOL CONSUMPTION.

The officer observes an abnormal activity on the part of the driver, this may include but is not limited to those listed below:

A. Speed of Vehicle.

- (1) Unreasonably high speed.
- (2) Unreasonably low speed.
- (3) Driving in spurts, slow then fast then slow, etc.
- (4) Racing other vehicles.

B. Vehicle weaving.

- (1) Continuous weaving from lane to lane.
- (2) Spasmodic weaving from lane to lane.
- (3) Over center line but not on to shoulder.
- (4) Over center line and onto left shoulder.
- (5) Onto right shoulder or left shoulder but not over center line.
- (6) Straddle center line.
- (7) Flagrant weaving from side to side.
- (8) Slight or occasional weaving from side to side.

C. Passing another vehicle.

- (1) Almost strikes car being passed from rear.
- (2) Almost sideswipes car being passed.
- (3) Miscalculating speed or distance of oncoming traffic.

- (4) Takes too long in passing.
- (5) Cuts back into lane too soon.
- (6) Sudden swerve, jerky-type passing.
- (7) Over control in changing lanes and returning to lane.
- D. Vehicle Lights
 - (1) Driving at night without lights.
 - (2) Starting from parked position before turning on lights.
 - (3) Failure to dim lights for oncoming traffic.
 - (4) Failure to dim lights when overtaking a vehicle.
 - (5) Driving with only park lights on.
 - (6) Driving with dome or map light on.
- E. At Intersection.
 - (1) Disregards traffic signals or signs.
 - (2) Overshoots or stops unreasonably far from intersection.
 - (3) Approaches intersection unreasonably fast or slow.
 - (4) Jerky stopping and starting from stopped position.
 - (5) Fails to yield right of way.
- F. Turning.
 - (1) Fails to signal.
 - (2) Gives improper signal.
 - (3) Too wide of a turn.
 - (4) Cuts short on making turn.
- G. Approaching road block or accident.
 - (1) High rate of speed.
 - (2) Runs over flares or signs.
 - (3) Locks brakes and skids, loss of control of vehicle.
 - (4) Disregards or does not see person directing traffic.
- H. Other driver actions that may represent out-of-ordinary driver actions in relation to existing conditions.
 - (1) Driving with head partly or completely out of the window.
 - (2) Driving with windows down in cold or inclement weather.
 - (3) Driver slumped over the wheel.
 - (4) Driving car that has obvious vomit on side of car or window.
 - (5) Driving car that obviously has been involved in an accident.
 - (6) Driving in lower gears without apparent reason or repeatedly clashing gears.
 - (7) Other vehicles following, fearful of passing.
- I. In sparse or light traffic conditions, or in early hours of the morning on wet or fresh snow covered roads, drunk drivers can be "tracked". After noting the weaving tracks, speed up and you can often overtake the vehicle while it is being operated in the same manner.

The Law Enforcement Officer wishing to reduce the number of drinking drivers, will investigate vehicles parked along the highway to determine if the driver is sleeping it off, drinking more, passed out, sick, etc.

The experienced Law Enforcement Officer is particularly alert for the presence of the drinking driver while on patrol.

- 1. Near taverns, cocktail bars, bottle clubs and other night spots.
- 2. Outlying dance halls, particularly in or near small communities.
- 3. Large picnics "beer busts".
- 4. Conventions, festivals.
- 5. Graduation, all night affairs.
- 6. Large house parties, beach parties, large wedding receptions.
- 7. Christmas and New Years, large office parties.
- 8. Rock or jazz festivals.
- 9. Other locations where large groups of people are gathering for a social activity.
- 10. Late at night
- 11. On weekends.

2. STOPPING THE ALCOHOL IMPAIRED DRIVER SUSPECT.

The act of stopping the driver whose ability is impaired by alcohol exposes the officer, the subject and other motorists to certain risks. The officer should use great care in selecting the point at which he will attempt to make the "stop". He must recognize that the impaired driver may do any or several of the following:

- A. Look at the police vehicle and swerve into the side of, or the path of the intercepting vehicle.
- B. Turn abruptly to the side of the road, will run into the rear of a parked vehicle if one is present, run off the roadway and may strike any object located along the side of the road.

- C. Make a panic stop.
- D. Refuse to stop for the officer; either in disregarding the signals to stop or in an attempt to flee from apprehension.
- E. Other abnormal responses to the signal to stop.

The officer should note the manner of control of the vehicle exercised by the suspect when signaled to stop. The distance traveled, and the degree of control of the vehicle by the suspect from the time the signal is given and until the vehicle is stopped should be included by the officer in his presentation of alcohol impairment as part of the prosecution evidence.

3. PRELIMINARY INVESTIGATION OF THE ALCOHOL IMPAIRED DRIVER SUSPECT.

The investigation of the alcohol-impaired driver differs from other criminal investigation, in that, usually the officer knows what the violation is and is seeking the identity of the one committing the violation. Here we have a suspect and must determine what violation has, in fact, been committed. It is best not to arrest the subject at this time, unless it is necessary in order to maintain control of the situation. It is legally permissible and proper that you, the officer:

- A. Ask the driver to exhibit his drivers license.
- B. Note the manner of presentation of the drivers license, does the subject have difficulty in locating the license, fumbles, drops, or demonstrates other lack of coordination.
- C. Note the reaction of the subjects eyes to light conditions, is this reaction slow to adjust to changing conditions.
- D. Ask him if he has had any alcoholic beverages to drink in the recent past. How much? What kind?
- E. Ask him if he knows:
 - (1) Where he is?
 - (2) Where he has been?
 - (3) Where he is going?
- F. Note his speech, is it slurred, does he have trouble continuing speech patterns.
- G. Note if there is an odor of alcoholic beverages on his breath.
- H. Note the condition of his clothing.
- I. Look for bottles or other evidence of drinking on the seat, dashboard, or floor of the vehicle.
- J. Ask the subject to step out of his vehicle and have him walk to a point near the rear of his vehicle. (Do not take him out or have him get into your vehicle at this time.)
- K. Note the manner in which he moves; does he have difficulty in opening the door of his vehicle, getting out of the vehicle, standing erect, walking steadily, is there anything abnormal about his movements.
- L. Note any other abnormal conduct on the part of the subject, such as talkativeness, aggressiveness, etc.

All of the above are part of the alcohol-impairment syndrome that would be necessary for a presentation of the total mass of evidence in Court. By the development of the information to be gained through such inquiry, the officer will arrive at the point of decision. The Officer's "reason to believe" now becomes "reasonable cause to believe" that a violation has been committed and the subject is the violator. At this point the officer is justified in making his arrest.

Once the subject is notified that he is under arrest, or is taken from the vicinity of his vehicle and/or placed in the patrol vehicle; it has been held that he must be fully advised of his rights under the Miranda Decision in order to preserve the validity of any statements the subject might make, and their subsequent use in evidence against the suspect.

4. ARREST OF THE SUBJECT.

Inform the subject of the charge that will be presented to the Court. If you are making an arrest for a violation other than the driving while under the influence and anticipating that you may later add the charge of driving while under the influence, you may so advise him. In any event, he must be advised of the charge against him prior to being requested to submit to any test other than a roadside dexterity test.

5. STATUTORY AND CONSTITUTIONAL WARNING.

Advise the subject of the warning required by the South Dakota Compiled Laws of 1967 and the Miranda Decision, this warning must be given in its entirety.

6. POST ARREST INVESTIGATION.

The post arrest investigation should include but is not limited to the completion of the Alcoholic Influence Report Form. If the person arrested states that he does not wish to answer any questions, no questions may be asked of him. The post arrest investigation should include but is not limited to the following:

- a. Search of the vehicle of the suspect. The vehicle can be searched for liquor if the suspect was arrested for driving while under the influence; it cannot be searched if the arrest was for some other traffic offense. The vehicle can be searched for drugs if the suspect was arrested for driving while under the influence of drugs or a combination of drugs and intoxicating liquor and the arresting officer has reasonable cause to believe that the vehicle contains drugs from the facts at hand.
- b. If you are taking custody of the vehicle and will be impounding it, make an inventory of the vehicle as per departmental policy.
- c. Collect the specimen for the chemical test and advise the suspect of the requirements of the implied consent law. It is recommended that the form furnished by the department be read to the suspect.
 - (1) Select the type of test best suited for your situation.
 - (a) Blood
 - (b) Breath, Mobat or Breathalyzer
 - (c) Urine, recommended if you suspect the presence of drugs.
 - (2) If the actions of the suspect driver have been such as to have caused an accident that has resulted or may result in the death of another and thus indicating a prosecution for Second Degree Manslaughter under South Dakota Compiled Laws of 1967 section 22-16-21, you should proceed to have a blood specimen taken as rapidly as possible.
- d. Make inquiry to determine where, what and the amount the suspect has been drinking. Also attempt to locate witnesses at this time who can verify the condition of the suspect.
- e. Attempt to locate witnesses who can and will testify as to the manner of operation of the motor vehicle.
- f. Visit with the suspect some hours later, the next morning before court, to observe the differences in speech, walk, coordination, etc., so as to be able to compare these actions with those exhibited at the time of the violation. Make these compared observations part of your case presentation.

7. CHEMICAL TEST (implied consent).

1. Advise the suspect of the desire to have him submit a blood, breath, or urine sample for the determination of his blood-alcohol level. Also advise him of the effect of a refusal on his part. It is recommended that you read the form established by the department, however, if the form is not read, you must be certain that you have advised the suspect that in the event he refuses to submit to giving a specimen, his driver's license and driving privilege will be revoked by the Commissioner of the Motor Vehicle Department. The collection of the specimen should be made as soon as possible after the incident causing the arrest. The closer to the time of the arrest that the specimen is collected, the greater its relationship to the condition of the suspect.

There is a great deal of consideration given to the position that we are restricted to the taking of only one specimen to be tested. Thus, if a law enforcement officer requires the subject to give a breath sample on the scene, he will not be able to use the Implied Consent Statute to bind him to submit to a blood test at a later time.

8. RECORDING THE INVESTIGATION.

The officer should make a record of his actions and the results of his investigation. This record should be in such a form that it will permit him to testify to all the elements of the situation concerning the driver who has operated a vehicle while his ability has been impaired by alcoholic beverages. The material should be presented to the prosecuting attorney in its entirety. Often the officer fails to inform the prosecutor of the total evidence he has taken the time to gather. Included in the material recorded should be the completed Alcoholic Influence Report Form.

9. REPORT OF INVESTIGATION.

The report of the arrest and investigation of the driving while under the influence case should include a narrative condensation of the material recorded by the investigating officer plus those additional requirements set forth by the requirement of the department. This should include but is not limited to the following: (Forms included in Appendix "C").

- a. Alcoholic Influence Report Form
- b. "MOBAT" Test Program Report Form
- c. Blood-Alcohol Test Report
 - (1) Chemist Report of Blood Analysis
 - (2) Chemist Report of Urine Analysis
 - (3) Chemist Report of Analysis of Breath Specimen (MOBAT).
 - (4) Report of test results, Breathalyzer.
- d. Case Report as required by the department or district procedures.

10. TESTIFYING IN COURT.

The giving of testimony in court on the part of the officers and/or other witnesses commences with the prosecuting attorney. This preparation should be such that the case is presented to the court and the jury under the syndrome or integrated evidence concept.

11. ACCIDENT INVESTIGATION

The detection of the drinking driver in accident investigation requires that the officer be alert for certain evidence as he conducts the investigation. The physical evidence at the scene may reveal or indicate that the driver or drivers may have been under the influence at the time of the accident. It is realized that injury to a driver may seriously handicap the officer in the conduct of this part of his investigation especially with respect to the officer to have an opportunity to observe the actions and responses of the subject as indicants of impairment.

Some of the observations that the officer may note during his investigation that will tend to demonstrate that the driver or drivers may have been operating the vehicle while under the influence will include but is not limited to the following:

1. Point of impact on wrong side of road.
2. Lack of skid marks indicating a depreciation in reaction. (Particularly when visibility is good in the approach to the accident scene).
3. Excessive skid marks combined with an indication of great force of resistance on impact which would indicate a high rate of speed.
4. Account for the driver's actions from the time of the accident until you arrive on the scene.
 - a. Did he leave the scene at any time?
 - b. Did he discard any liquor bottles, beer bottles or cans?
 - c. Are there any bottles in the vehicle to be saved for evidence?
 - d. Any liquor on his person?
 - e. Obtain a self admission statement that he has had nothing to drink since the accident.
 - f. Where did he have his last drink, what was it, how much?
 - g. Was the last drink before or after the accident?
5. The statements of a person present at the scene of the accident are of great value and should be developed with great care.
 - a. Persons that were passengers in the accused car.
 - b. Persons that were in the other vehicle or vehicles involved in the accident.
 - c. Other persons that observed the driving actions of the accused prior to the accident.
 - d. Persons that observed the subject drinking prior to the accident.
6. Collection of a blood, breath or urine specimen is desirable when other elements of driving under the influence are present.
 - a. Collection of sample by voluntary submission of subject.

12. TRANSPORTING THE DRINKING DRIVER SUSPECT:

Much additional information becomes available to the officer when he is transporting the suspect to the hospital or to the place of confinement.

Be courteous to the subject at all times; encourage his cooperation. If he becomes abusive, ignore him. Your courteous and pleasant attitude will invite his cooperation in administering further tests. In many cases, your indication of sympathy will encourage him to tell you more about his problems, including the problem that led him to drink.

APPENDIX A

GLOSSARY OF COMMON TERMS

ALCOHOL

(Ethyl Alcohol, Ethanol). The term commonly applied to beverage alcohol

which is obtained through the fermentation and/or distillation of ingredients with a sugar content, i.e. grain mash, molasses, fruit or berry juice.

ALCOHOLIC BEVERAGES

Distilled spirits, wine and malt beverages, collectively. Beer is a malt beverage.

BLENDED WHISKEY

(Whiskey-A Blend). A mixture which contains at least 20% by volume of 100 proof straight whiskey and, separately or in combination, whiskey or neutral spirits, if such mixture at the time of bottling is not less than 80 proof. The word, mixture; as used in the government definition for blended whiskey, means the combining of whiskeys and neutral spirits, if such mixture at the time of bottling is not less than 80 proof. The word, mixture; as used in the government definition for blended whiskey, means the combining of whiskeys and neutral spirits, after which they are allowed to mingle together for a period of time. This is known as the marrying period.

BONDED WHISKEY

A whiskey (not blended) which has been stored continuously for at least four years in wooden barrels and which is bottled at 100 proof; it must all be the product of a single distillery, by the same distiller during a single season and year.

BOURBON

Under federal regulations bourbon is a whiskey distilled at not exceeding 160 proof from a fermented mash of not less than 51% corn - the balance of the mash may be any other grain but is generally rye and barley malt.

BRANDY

(Cognac-Armagnac) A distillation of fermented mash of fruit or fermented fruit juices, distilled at less than 190 proof, and bottled at not less than 80 proof.

CANADIAN WHISKEY

A distinctive product of Canada, in which corn and rye are the principal grains used in the mash, and which contains no distilled spirits less than two years old. Canadian distillers may blend their whiskeys either before aging or during aging, and most Canadian whiskeys exported to the United States are blends. There is no limitation on Canadian whiskeys with respect to proof of distillation.

CORDIALS or LIQUEURS

Distilled spirits treated with fruits, aromatic herbs, flowers, juices or other real or imitation flavoring materials, and containing at least 24% sugar by weight.

CORN WHISKEY

Whiskey distilled from a fermented mash of grain containing at least 80% corn. It need not be stored in "charred" wooden containers.

DISTILLED SPIRITS

Distilled spirits comprise the categories of whiskey, gin, rum, brandy, neutral spirits, cordials, or liqueurs, and other spirituous beverages as tequila, vodka, etc., made by a distillation process and usually containing at least 20% of alcohol by volume.

GIN

Gin is made from a base of neutral spirits and flavored during processing primarily with juniper berries to which other botanicals have been added. It is not aged. Dry Gin or London Dry Gin which are synonymous, is simply gin lacking sweetness. None of the grain taste or odor is retained. Holland Gin (Schnapps, Geneva or Schiedam) is gin produced in Holland from a low proof malt spirit base to which juniper and other botanicals are added resulting in a more heavy body than the dry gins produced in the United States and England. Old Tom Gin is gin that has been sweetened with simple syrup. Sloe Gin is a cordial deriving its flavor from the sloe berry.

GRAIN NEUTRAL SPIRITS

Alcohol distilled from a mash of grain at or above 190 proof.

IRISH WHISKEY

A distinctive product of Eire and Northern Ireland made from malted barley, plus other grains, and occasionally blended with grain spirits. The barley malt of Irish Whiskey is not impregnated with the smoke from burning peat, and thus does not have a smoky flavor as does Scotch Whiskey.

LIQUOR

Commonly taken to mean "distilled spirits". However, the federal government refers to liquor as synonymous with alcoholic beverages — that is distilled spirits, malt beverages and wines.

MALT

Grain which has been germinated, usually barley. The grain is soaked in water and kept damp until it begins to sprout; when the sprouting has proceeded to a certain point, the grain is dried and the process is thus halted.

MALT BEVERAGES

Comprise beer, ale, porter, stout and bock; produced from malt barley, hops, corn, sugar, water and other ingredients — sometimes rice or wheat.

MASH

A mixture of grain, molasses, or sugar with water and yeast, which is fermented and distilled to produce ethyl alcohol.

NEUTRAL SPIRITS

Distilled spirits distilled from any material at or above 190 proof, lacking any distinctive taste, color and odor — thus being neutral in character.

PROOF

The amount of alcohol in any alcoholic liquid. In liquor, the stated proof is twice that of the percentage of alcohol. Thus a whiskey of 100 proof is 50% alcohol.

RUM

An alcoholic beverage distilled from the fermented juice of molasses or other can products or by-products, which must be distilled at not less than 80 proof nor more than 190 proof.

RYE

Whiskey distilled at not more than 160 proof from a fermented mash of grain containing at least 51% rye grain.

SCOTCH WHISKEY

A distinctive product of Scotland, its primary base grain being barley (for heavy bodied whiskey) or corn (for light bodied whiskey), distilled by the pot still method, and aged for at least three years in uncharred oak barrels or used sherry casks. It has a smoky flavor resulting from the barley malt being dried over a peat fire.

SOUR MASH WHISKEY

A type of whiskey which is produced as a result of using a part of the previous day's mash instead of water to start and assist in the fermentation of a new batch of mash.

WHISKEY

An alcoholic distillate from a fermented mash of grain distilled at less than 190 proof in such a manner that the distillate possesses the taste, aroma and characteristics generally attributed to whiskey, withdrawn from the cistern room of the distillery at not more than 110 proof and not less than 80 proof, and aged in charred oak barrels.

VODKA

Neutral spirits distilled from any material at or above 190 proof, reduced to not more than 110 proof

and not less than 80 proof and after such reduction, filtered through or treated with charcoal so as to

be without distinctive character, aroma or taste. Vodka is customarily made from grain, not potatoes

as is commonly believed.

APPENDIX B

SOUTH DAKOTA STATUTES

The following Statutes of the South Dakota Compiled Laws of 1967 are applicable to this program.

THE STATE CHEMIST

13-57-18. ANALYSES MADE BY CHEMIST FOR LAW ENFORCEMENT PURPOSES.

It shall also be the duty of the state chemist and his assistants, upon request of the attorney general or any of his deputies or state's attorney or his deputy, to make analyses of articles furnished by such officers in connection with the enforcement of the laws of this state.

13-57-22. EVIDENTIAL VALUE OF REPORTS BY STATE CHEMIST.

A copy of the result of any examination or analysis of any product or article by the state chemist or his assistants, duly authenticated by the analyst, shall be prima facie evidence in all courts of the matters and facts therein contained.

HOMICIDE AND SUICIDE

22-16-21. DRIVING WHILE INTOXICATED.

Any person who, being under the influence of intoxicating liquor or narcotic drug or a combination thereof without design to effect death, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes a human being to be killed, is guilty of manslaughter in the second degree.

22-16-29. MANSLAUGHTER IN SECOND DEGREE - PUNISHMENT.

Every person guilty of manslaughter in the second degree is punishable by imprisonment in the state penitentiary not more than ten years and not less than two years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

CHAPTER 32-23

DRIVING UNDER THE INFLUENCE

32-23-1. DRIVING BY DRUG ADDICT PROHIBITED - OPERATION WHILE UNDER THE INFLUENCE OF LIQUOR OR DRUGS PROHIBITED - PHYSICAL CONTROL OF VEHICLE WHILE UNDER INFLUENCE OF INTOXICANTS.

It shall be unlawful and punishable as provided in section 32-23-2 to 32-23-4, inclusive, for any

person, whether licensed or not:

- (1) Who is an habitual user of narcotic drugs to drive any vehicle upon any highway in this state;
- (2) Who is under the influence of intoxicating liquor or of any drug to operate or drive any vehicle; or
- (3) Who is under the influence of intoxicating liquor to be in actual physical control of any vehicle within this state.

32-23-2. PUNISHMENT FOR PROHIBITED DRIVING - FIRST OFFENSE.

If conviction for a violation of 32-23-1 is for a first offense, such person shall be imprisoned in the county jail for not less than ten days nor more than ninety days, or shall be fined not less than fifty dollars nor more than three hundred dollars, or both, and the defendant be prohibited from operating a motor vehicle upon the public highways of this state under such restrictions and in such manner as the court may determine, for a period not exceeding one year.

32-23-3. SECOND OFFENSE - PUNISHMENT.

If conviction for a violation of section 32-23-1 is for a second offense, such person shall be imprisoned in the county jail for not less than thirty days nor more than six months, or shall be fined not less than one hundred dollars nor more than five hundred dollars, or both, and the court shall in pronouncing sentence make its order that the

defendant be prohibited from operating a motor vehicle upon the public highways of this state under such restrictions and in such manner as the court may determine, for a period of not exceeding one year, and if the motor vehicle which such person was operating while under the influence of alcoholic liquor or any drug is registered in the name of such person, the motor vehicle shall be impounded in a reputable garage by the court for a period of not less than two months nor greater than one year at the expense and risk of the owner thereof; provided, any motor vehicle so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such motor vehicle is requested in writing by such lien holder for the purpose of foreclosing and satisfying his lien thereon.

32-23-4. THIRD OFFENSE – PUNISHMENT.

If the conviction for a violation of section 32-23-1 is for a third offense, or subsequent offense thereafter, such person shall be imprisoned in the penitentiary for not more than three years, or in the county jail for not less than ninety days nor more than one year or shall be fined not less than two hundred dollars nor more than five hundred dollars, or both, and the defendant prohibited from driving any motor vehicle for such period of time as may be determined by the court, but in no event less than one year from the date of his final discharge.

32-23-5. DRIVING IN VIOLATION OF ORDER FOLLOWING CONVICTION – MISDEMEANOR – PUNISHMENT.

Any person who shall with the period fixed by the order of the court pursuant to any of sections 32-23-2 to 32-23-4, inclusive, prohibiting driving of a motor vehicle on the highways of this state, drive or operate a motor vehicle on the highways of this state shall be guilty of a misdemeanor and punished by a fine of not less than one hundred and fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for any term not exceeding one year, or by both such fine and imprisonment.

32-23-6. LAWFUL USE OF DRUGS NO DEFENSE.

The fact that any person charged with a violation of section 32-23-1 is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating said section.

32-23-7. PRESUMPTIONS ARISING FROM CHEMICAL ANALYSIS OF BODY FLUIDS.

In any criminal prosecution for a violation of section 32-23-1 relating to driving a vehicle while under the influence of section 32-23-1 relating to driving a vehicle while under the influence of intoxicating liquor, or a violation of section 22-16-21, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor;
- (2) If there was at that time in excess of five hundredths percent but less than ten hundredths percent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;
- (3) If there was at that time ten hundredths percent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

32-23-8. INTRODUCTION OF OTHER EVIDENCE RESPECTING DRUNKENNESS.

The provisions of section 32-23-7 shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

32-23-9. CHEMICAL ANALYSIS PRESUMPTION AS APPLICABLE IN PROSECUTIONS UNDER MUNICIPAL ORDINANCE.

The provisions of section 32-23-7 and 32-23-8 shall be applicable in any action for

the violation of a municipal ordinance relating to driving a vehicle while under the influence of intoxicating liquor.

32-23-10. OPERATION OF VEHICLE AS CONSENT TO ANALYSIS OF BODY FLUIDS - GROUNDS TO DEMAND ANALYSIS - ADVICE RESPECTING RIGHT TO REFUSE TO SUBMIT.

Any person who operates any vehicle in this state shall be deemed to have given his consent to a chemical analysis of his blood, urine, breath, or other bodily substance for the purpose of determining the amount of alcohol in his blood, as provided in section 32-23-7, provided that such test is administered at the direction of a police officer having reasonable grounds to believe such person to have been driving under the influence of alcoholic liquor and that such person has been charged with a traffic violation. Such person shall be requested by said officer to submit to such analysis and shall be advised by said officer of his right to refuse to submit to such analysis and the provisions of sections 32-23-11 and 32-23-12 in the event of such refusal with respect to the revocation of such person's driving permit.

32-23-11. REVOCATION OF DRIVER'S LICENSE FOR REFUSAL TO SUBMIT TO CHEMICAL ANALYSIS.

If any person described in section 32-23-10, after request and explanation as therein provided, shall refuse to submit to such chemical analysis, then such test shall not be given. In such event, the Commissioner of Motor Vehicles shall revoke for one year his permit to drive and any non-resident operating privilege.

32-23-12. COURT REVIEW OF REVOCATION - PROCEDURE - TRIAL DE NOVO.

Any person whose license has been canceled, suspended, or revoked by the commissioner under provisions of section 32-23-11 shall have the right to file a petition within thirty days thereafter for a hearing in the matter in circuit court in the county wherein such person was charged with the violation, and such court is hereby vested with jurisdiction and it shall be its duty to settle matter for trial de novo upon ten days written notice to the department, and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner's license is subject to cancellation, suspension, or revocation under the provisions of section 32-23-11.

32-23-13. FAILURE TO INVOKE REFUSAL PROCEDURE AS PERMISSION TO MAKE CHEMICAL ANALYSIS - PERSON ADMINISTERING ANALYSIS - AGE OF OPERATOR - LIABILITY OF PERSON ADMINISTERING TEST.

If any operator of a motor vehicle in this state who has been requested to submit to such chemical test fails to invoke the provision in section 32-23-11 which permits him to refuse to submit to such test; then the failure to invoke such provision permitting a refusal to submit to such test shall constitute consent and authority for any authorized physician, laboratory technician, or medical technician or medical technologist, or registered nurse to administer such test notwithstanding the age of the operator of such motor vehicle. Said duly authorized physician, laboratory technician or medical technician or medical technologist or registered nurse, shall in no way be liable or held to pay damages to the party to whom such chemical test is administered, provided that such test is administered with usual and ordinary care, and provided that such test is administered at the request of a law enforcement officer.

32-23-14. PERSONS AUTHORIZED TO WITHDRAW BLOOD FOR TEST - OTHER BODY SUBSTANCES.

Only a physician, laboratory technician, registered nurse, or medical technician to withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a urine, breath or other bodily substance specimen.

32-23-15. RIGHT TO HAVE TECHNICIAN OF OWN CHOOSING PRESENT.

The person tested pursuant to section 32-23-13 and 32-23-14 shall be permitted to have a physician, laboratory technician, or medical technician or medical technologist of his own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer.

32-23-16. RESULTS OF ANALYSIS AVAILABLE TO ACCUSED.

Upon the request of the person who was tested pursuant to section 32-23-13 and 32-23-14, the results of such analysis shall be made available to him.

APPENDIX C**LAW ENFORCEMENT REPORT FORMS****MOBAT "TEST PROGRAM" REPORT**

This report is to be submitted to the District Office every time a Mobat (Instant or Confirmatory) is used or at any time a chemical test is administered to determine the degree of blood-alcohol. In all instances where chemical tests (including Mobats) are used the INITIAL REPORT will be submitted as soon as the laboratory reports are returned to you. The DISPOSITION REPORT will be submitted as soon as the case has been adjudicated. Special attention must be given to use the "Serial No." that has been assigned to the Laboratory Confirmatory sample (on both the INITIAL and DISPOSITION REPORT). If the driver refused the Mobat test, check REFUSED on the INITIAL REPORT and mail both reports to the District Office. Reports will be collected in a Monthly file at the District Office. The Monthly file in which each report will be deposited will be determined by the date of the Officer's initial contact or arrest.

DISPOSITION REPORT

Driver's Name _____ MOBAT
Serial No. _____
Date of Arrest _____, 19____ Location of Court _____
Guilt of D.W.I. ☐ Case Dismissed ☐
Not Guilty of D.W.I. ☐ Charge Reduced to _____
Officer Reporting _____

MOBAT "TEST PROGRAM" REPORT**INITIAL REPORT**

Driver's Name _____ MOBAT
Serial No. _____
Address _____
Officer Contact by: Observation ☐
Violation ☐ REFUSED ☐
Date of Contact _____ Accident ☐ (Fatal, Injury, Property Damage)
Time Apprehended _____ M. Highway ☐
Time Administered _____ M. Where Administered:
Lab/Office Facility ☐
Instant test: COLOR ☐ 1st color band green .00 - 10%
CLANCE ☐ 2nd color band green .10 - 20%
☐ 3rd color band green .20 - 30%
Confirmatory
LAB REPORT _____
Other test administered: Blood ☐ Breath ☐ Urine ☐
Time administered: _____ M. Laboratory report of other analysis _____
Officer reporting _____ No. _____

SOUTH DAKOTA HIGHWAY PATROL

_____ Date _____

SUBJECT: Spot check

A spot check was held at _____ in _____

(Location) (County)

_____ from _____ M. to _____ M., a total of _____ hours.

(Date)

Approximately _____ vehicles and drivers were checked.

A total of _____ **WARNINGS** were made. As follows:

| | |
|--------------------------------|--------------------------------|
| Oper. License violations _____ | Compensation violations _____ |
| License plate violations _____ | Overweight violations _____ |
| Defective lights _____ | Ton-mileage collected \$ _____ |
| Defective brakes _____ | Other Equip. violations _____ |
| Defective muffler _____ | Other violations _____ |

A total of _____ **ARRESTS** were made. As follows:

| | |
|------------------------------------|-------------------------------|
| Dr. License susp. or revoked _____ | Compensation violations _____ |
| License plate violations _____ | Overweight violations _____ |
| Equipment violations _____ | Any other arrest _____ |

Participating Officers:

Other pertinent remarks _____

(REPORTING OFFICER)

(Patrol District)

SDHP TC 1

| | |
|---|--|
| (Check) <input type="checkbox"/> Driver <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger | (Check) <input type="checkbox"/> Accident <input type="checkbox"/> Violation <input type="checkbox"/> Other |
| A.M. P.M. | |
| Date and time of accident or violation | |

South Dakota Division of Motor Patrol

ALCOHOLIC INFLUENCE REPORT FORM

| |
|-------------------|
| Case No. |
| Accident No. |
| Arrest No. |

Name Address
Age Sex Race Approx. Weight Dr. Lic. No.

QUESTIONS:

NOTE: Get witnesses to prove driving.

Were you operating this motor vehicle? Where were you going?
Where did you start from? When did you leave? Time now?
Have you been drinking? What? Quantities?
Commenced A.M. Stopped P.M. Where?
Are you ill? Have you been to a doctor or dentist recently? If so, when?
Who? (name of doctor or dentist) For what?
Are you taking medicine? If so, what? Last dose A.M. P.M.
Do you have diabetes? Are you taking insulin? Have you used a mouth wash recently?
Are you hurt? Did you get a bump on the head?
How much sleep did you have last night? How much today?
Have you been drinking since the accident? What? Quantities?

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

| | | | | | |
|---------------------------------|--|---------------------|------------------------|-----------------|--|
| BREATH | Odor of alcoholic liquors - Apparently none faint moderate strong | | | | |
| COLOR OF FACE | Apparently normal | Flushed | Pale | (Other) | |
| CLOTHES | Orderly | Mixed | Soiled | Disarranged | Disorderly (Describe) |
| ATTITUDE | Polite Cooperative | Excited Indifferent | Hilarious Antagonistic | Talkative Cocky | Care-free Combative Sleepy Insulting (Other) |
| UNUSUAL ACTIONS | Profanity | Hiccough | Belching | Vomiting | Fighting (Other) |
| EYES | Apparently normal Watery Bloodshot | | | | |
| CHECK SQUARES IF TESTS ARE MADE | PUPILS | Apparently normal | Dilated | Contracted | Poor reaction to light |
| | BALANCE | Sure | Fair | Swaying | Wobbling Stepping knees Falling (Other) |
| | WALK | Sure | Fair | Swaying | Stumbling Staggering Falling (Other) |
| | TURNING | Sure | Fair | Swaying | Uncertain Staggering Falling (Other) |
| | FINGER TO NOSE TEST | Right-Sure | Uncertain | Left-Sure | Uncertain (Other) |
| | PICKING UP COINS | Sure | Slow | Uncertain | Unable (Other) |
| SPEECH | Few Choice of words Stuttered Stuttering Confused Incoherent (Other) | | | | |
| | Clearness and correctness of enunciation | | | | |

What first led officer to suspect alcoholic influence?

Unusual actions or statements (Draw across the other side)

Signs of illness or injury (Draw across the other side)

| | |
|------------|---|
| CONCLUSION | EFFECTS OF ALCOHOL - Apparently none Slight Obvious Extreme |
| | ABILITY TO DRIVE - Apparently fit Ability impaired Greatly impaired |

Examined by Signature Title Address Date Time Completed A.M. P.M.

Witnesses to examination

NOTE: USE OTHER SIDE FOR REMARKS. When physician's examination is made or sample taken for chemical test, record on other side.

Section 2 - Physical Coordination Testing

Whether or not physical coordination tests are given by ASAP officers varies with participating law enforcement agencies. Additionally, where they are conducted differs from agency to agency. In general these tests are administered at the arrest scene by the majority of the officers - at their discretion - utilizing standard performance, i.e., finger-to-nose, extension of arms, heel-to-toe walk and turn. These are generally not witnessed, but results are recorded on the South Dakota Uniform Drinking-Driver Investigator's Report (Fig.18-2). Training in the use of these tests is provided. (See Appendix A; Exhibit 18b.)

Conclusions: The use of physical coordination tests to determine driver impairment are not part of the formal arrest and/or reporting procedures utilized by the law enforcement agencies participating in the South Dakota ASAP. The decision whether to use or not to use physical coordination testing is a decision which lies with the officer. The frequency with which they are given could not be documented during the course of this site visit. It should be noted, however, that training in the use of these tests is provided to law enforcement officers of the South Dakota ASAP.

Recommendations: The physical coordination testing configuration utilized by the participating law enforcement agencies of the South Dakota ASAP appears to meet the needs of these agencies and it is therefore recommended that they be continued. The South Dakota ASAP should, however, encourage the participating law enforcement agencies to utilize physical coordination tests as a tool in determining prior alcohol impairment.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath test devices (PBT's) are utilized by some of the participating agencies. The Borg-Warner A.L.E.R.T. is the most prevalent device in use; there are 43 units issued to 15 local ASAP agencies and 28 to the highway patrol, purchased for approximately \$400.

Although no "statement of rights" is read to the suspect, the DWI offender has the option of refusing the statute-sanctioned screening test. If he takes the PBT test, it is administered by officers who have been trained in its use and the results are recorded on the Portable Breath Test (PBT) Report (Fig. 18-3). One particular jurisdiction calibrates results to aid in determining whether or not to effect an arrest. (Overall, DWI arrests have been made in 30.7% of cases in which PBT tests have been obtained.)

With the exception of one local law enforcement agency, PBT's have been used. Requests for them are increasing considerably. The Highway Patrol is especially enthusiastic. The prosecutors and courts also find PBT's valuable as the courts have taken judicial notice of PBT's in three separate circuit courts. Evaluation of the devices is continuing with the project. Thus far no significant problems have been encountered and plans are being made to expand the program.

Conclusions: The degree with which the use of non-evidentiary pre-arrest screening reflected the quality and quantity of DWI arrests could not be documented during the site visit. Although some agencies participating in the South Dakota ASAP utilized pre-arrest screening devices this investigator suspects the devices are not efficiently and aggressively used by the participating agencies in the field. It is believed that as officers become familiar with the pre-arrest screening device requests for and use of the device will increase significantly.

Recommendations: Evaluation of the use of pre-arrest screening devices by law enforcement agencies of the South Dakota ASAP should be ongoing and all significant problems encountered should be well documented. The results of this evaluation should be made available to all participating law enforcement agencies as well as prosecutors and courts of the participating jurisdictional areas.

Section 4 - Evidentiary Testing

After placing the DWI suspect under arrest, the officer advises him of the Implied Consent statute (except in municipalities which do not yet have one). This may be done at the arrest scene or in transport and is done before the Miranda warning. It is recommended that the statute be read (Fig. 18-7) as the text clearly states the consequences of a refusal to submit to the evidentiary test (operator license revocation for one year after appearing before a hearing officer to determine whether it shall be revoked). The Commission of Motor Vehicles has the authority to revoke the license upon conclusion of the hearing; the offender has the right to appeal the decision to circuit court. In refusal cases, the arresting officer completes the Affidavit of Refusal to Submit to a Chemical Test for Alcohol (Fig. 18-4).

By statute breath, blood, urine and other bodily substances can be submitted for analysis to determine blood-alcohol concentration (BAC). In actuality a breath sample is most usually submitted due to ease, time and availability of testing equipment; blood in cases of severe injury; and urine if involvement of drugs is suspected. The breath testing device most commonly used is the Breathalyzer 900 or 900A manufactured by Stephenson at approximately \$700 per unit. Of the 23 purchased, 19 are available for field use about the state - usually at local police departments or sheriff's offices. The Gas Chromatograph Intoximeter has also been tried on an experimental basis, but was discontinued, in most cases, for practical reasons.

Only those who have successfully completed Breathalyzer training, and have been issued a permit by the University of South Dakota, can administer the evidentiary tests. There are 162 certified breath testing specialists within the jurisdictional area of the ASAP and 25 are of the Highway Patrol. Many ASAP law enforcement team members are qualified and encouraged to conduct the tests whenever feasible. The arresting officer must witness the test.

If a suspect's BAC reading is inordinately high or surprisingly low, he will be observed for 30 minutes and given a second test. The results of the breath test are recorded in the Breathalyzer Log (Fig. 18-5) and in the arresting officer's report. The suspect will receive a document

bearing his BAC reading only upon special request; some officers will voluntarily notify him. (The offender has the right to have an independent BAC analysis at his own expense.)

There has been an increase in the number of evidentiary breath tests given, from 48% of DWI arrests in 1971 to 85% maintained during the project period (1972 - 1974); virtually all others were refusals. It is anticipated that there will be a further decline in refusals with the application of the new state law making DWI a state charge with its attendant Implied Consent provision.

In cases where blood is used for chemical analysis, only physicians or medical technicians are authorized to withdraw the sample. This is ordinarily done in a hospital. The sample is sent to the State Laboratory in Vermillion (University of South Dakota) for analysis. State law provides for obtaining blood samples of persons fatally injured in a motor vehicle crash within four hours of death. Approximately 65% compliance has been reported.

By statute, a DWI offender is presumed to be intoxicated if his BAC is .10% or higher. Levels of .05% to .099% preclude any presumption, but may nevertheless result in DWI conviction when entered into evidence along with other incriminating testimony and facts.

Conclusions: As a result of the effort of the South Dakota ASAP it appears, to this investigator, that an adequate chemical testing program has been developed resulting in an improved conviction rate compared to that rate preceding the implementation of the ASAP. According to officials interviewed, in the course of this site visit, the support and liaison between the enforcement coordinator of the South Dakota ASAP in their law enforcement agency is excellent and they are confident and appreciative of the quality of technical and training support activities which they have received to date.

Recommendations: The evidentiary testing configuration currently being used by the law enforcement agencies participating in the South Dakota ASAP appears adequate to meet the needs of the participating agencies and should be therefore continued.

| | | | | | | | |
|--|-------------------------------------|---|-------------|-----------------------------|----------------|----------------------------|-------|
| Nº 22153 | | SOUTH DAKOTA UNIFORM DRINKING – DRIVER INVESTIGATOR'S REPORT | | | | LE - 1.1 | |
| <div style="display: flex; justify-content: space-between;"> First Name Initial Last Name </div> | | | | | | Date of Birth/Sex/Race | |
| DEFENDANT: | | | | | | | |
| <div style="display: flex; justify-content: space-between;"> Street City County State </div> | | | | | | | |
| ADDRESS: | | | | | | | |
| Driver's License Number | | | State | Social Security Number | | Uniform Traffic Ticket No. | |
| Make of Vehicle | | Year | Color | Model | License Number | | State |
| Name of Owner of Vehicle | | | | Address of Owner of Vehicle | | | |
| <div style="display: flex; justify-content: space-between;"> <div> ARRESTED FOR: 1. Driving While Under the Influence 3. Other (Specify) </div> <div> 2. Second Degree Manslaughter </div> </div> | | | | | | | |
| Location of Violation | | Street or Highway | | City | | County | |
| Date | Day of Week | Time | ARRESTED BY | | | Department | |
| ACCIDENT INVOLVED (circle or specify) | | | | | | | |
| 1. None | 2. Pedestrian | 3. Fatal | 4. Injury | 5. One Vehicle | | 6. _____ Vehicles | |
| EXAMINATION OF DRIVER (circle) | | | | | | | |
| 1. Dr. Exam & Chem. Test | 2. Dr. Exam <u>NO</u> Chem. Test | 3. Blood Test | 4. Urine | 5. Breathalyzer | | | |
| 6. Breath Test by SM – 7 | 7. Breath Test direct on Gas Chrom. | 8. Chemical Test Refused | | | | | |
| CHEMICAL TEST TAKEN AS: | | 9. Search Incidental to Arrest | | 10. Voluntary | | 11. Implied Consent | |
| Specimen for Chemical Test collected by: | | | | Chemical Test completed by: | | B.A.C. = _____ % | |
| DESCRIBE WHAT HAPPENED BEFORE THE ACCIDENT OR STOPPING THIS VEHICLE: | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| DESCRIBE HOW THE DRIVER BEHAVED AFTER THE ACCIDENT OR UPON BEING STOPPED: | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| OBSERVATIONS OF THE DRIVER AT THE SCENE WERE: (Describe Briefly) | | | | | | | |
| DRIVER'S ABILITY TO WALK _____ | | | | | | | |
| DRIVER'S ABILITY TO STAND _____ | | | | | | | |
| DRIVER'S ABILITY TO SPEAK _____ | | | | | | | |
| DRIVER'S DEMEANOR _____ | | | | | | | |
| DRIVER'S ACTIONS _____ | | | | | | | |
| DRIVER'S EYES _____ | | | | | | | |
| DRIVER'S CLOTHING _____ | | | | | | | |
| DRIVER'S FACE _____ | | | | | | | |
| ODOR OF ALCOHOLIC BEVERAGE ON BREATH _____ 436 _____ | | | | | | | |

Figure 18-2

Nº 22153

SOUTH DAKOTA UNIFORM DRINKING—DRIVER INVESTIGATOR'S REPORT (con't)

LE - 1.2

INTERVIEW OF THE DRIVER:

Were you operating a vehicle? _____ Where were you going? _____
 Where did you start from? _____ What time did you start? _____
 What time is it now? _____ Where are we now? _____
 What is the date? _____ What day of the week? _____
 When did you last eat? _____ What did you eat? _____
 Have you been drinking? _____ What? _____ How much? _____
 Where? _____ Time started? _____ Time stopped? _____
 What is your occupation? _____ When did you last work? _____
 Are you ill? _____ What is wrong? _____
 Have you been injured recently? _____ When? _____ Where? _____
 Were you in an accident today? _____ Where? _____
 Were you struck on the head? _____ When? _____
 Have you seen a dentist recently? _____ Who? _____ When? _____
 Have you seen a doctor recently? _____ Who? _____ When? _____
 What for? _____ Are you taking any pills or drugs? _____
 Do you have epilepsy? _____ Do you have diabetes? _____
 Are you taking medicine of any kind? _____ Do you take insulin? _____
 When did you take your last dose? _____ Do you wear false teeth? _____
 When did you last sleep? _____ How much sleep did you have? _____
 What street (highway) are we on? _____ Direction you were going? _____
 Have you had a drink since the accident? _____ What? _____ How much? _____

DRIVER'S RECORD OF PRIOR CONVICTIONS FOR TRAFFIC VIOLATIONS AND ACCIDENTS:

NAMES AND ADDRESSES OF WITNESSES:

NUMBER OF PASSENGERS _____

| | | | |
|--|---|---|-------------------------|
| Date to Appear | PLEA OF (circle) 1. Guilty 2. Not Guilty | DISPOSITION (circle) 1. Guilty 2. Not Guilty 3. Amended to Other | |
| GIVE BRIEF DESCRIPTION OF PROBATION TERMS; or REASON FOR AMMENDING CHARGE OR DISMISSAL OF CASE | | | |
| | | | |
| | | | |
| Date of Disposition | Court | Before Judge | |
| Amount of Fine | Amount of Fine Suspended | Sentenced to Jail | Jail Sentence Suspended |

Figure 18-2 (cont'd.)

PORTABLE BREATH TEST (PBT) REPORT LE-6

LEA _____ DATE _____ TIME _____
 REG PAT _____ ROADBLOCK _____ ASAP PAT _____ ACCIDENT _____
 PBT: PASS _____ WARN _____ FAIL _____
 ENFORCEMENT ACTION: _____
 RELEASED _____, ARREST FOR _____
 LE-1 NO. _____ BAC _____ TIME TAKEN _____
 LOCATION _____ DEVICE NO. _____
 WEATHER _____ TEMPERATURE _____
 PBT LOCATION: IN PATROL VEHICLE _____ AT ROADSIDE _____
 COMMENTS: _____

SIGNED _____

 BADGE NO. _____

Figure 18-3

Secretary of Public Safety
Pierre, South Dakota

Dear Sir:

I wish to report that the following named person did refuse to submit to a Chemical Test for alcohol after being arrested for Driving Under the Influence, a violation of SDCL 1967 Section 32-23-1 as amended.

NAME _____

Drivers License Number _____ (State) _____

Date of Birth _____

Present
Address _____ (Street) _____ (City) _____ (State)

Occupation _____

Employed By _____

Address _____ (Street) _____ (City) _____ (State)

An affidavit setting forth that I did lawfully arrest the above named person and did advise him as required by the statutes is attached.

Name of Officer

Title of Officer

Department

Figure 18-4

COUNTY OF _____)
STATE OF SOUTH DAKOTA) ss

AFFIDAVIT OF REFUSAL TO SUBMIT
TO A CHEMICAL TEST FOR ALCOHOL

I, _____ depose and say that I am a Law
Enforcement Officer and that on the _____ day of _____ 19____ I did
arrest _____ Driving While Under the Influence of
Alcoholic Beverages, a violation of SDCL 1967 Section 32-23-1 as amended.

I did request the above named person to submit to a Chemical Test of his ^{her}
blood, breath or urine to determine the amount of alcohol in his or her blood.
Further, I did advise the above named person that:

He
She has the right to refuse to submit to such a Chemical Test and if such
refusal to submit to the Chemical Test is declared, the test shall not be
given, and

He
She has the right to have a physician, laboratory technician, medical tech-
nician, medical technologist or registered nurse of his or her own choosing
administer a chemical test in addition to the chemical test I have requested,
such additional test to be administered at his or her own expense, and

he
If she did refuse to submit to such Chemical Test, the Secretary of Public
Safety shall revoke his or her license to drive and any non-resident oper-
ating privileges he or she may have in his or her possession for a period of
one year, and

he
If she did refuse to submit to such Chemical Test, he or she shall have an
opportunity for a hearing before an Administrative Hearing Officer appointed
by the Secretary of Public Safety pursuant to the Administrative Acts of
this State if such hearing is requested, and

If the license to drive or any non-resident operating privilege is cancelled,
suspended or revoked by the Secretary of Public Safety under the provisions
of SDCL 1967 Section 32-23-11 as amended there is the right to petition the
Circuit Court of this County for a review of such cancellation, suspension
or revocation of the license to drive or any non-resident operating privilege.

After being advised of the right to refuse to submit to the Chemical Test as
stated above, the above named person, _____
did then and there refuse to submit to the Chemical Test I requested.

(Name of Officer)

(Title)

(Department)

Subscribed and sworn to before me this _____ day of _____ 19____

(Title)

IMPLIED CONSENT WARNING

1. I have arrested you for DWI, a violation of 32-23-1.
2. I request that you submit to a chemical test of your _____
to determine your blood alcohol concentration.
3. You have the right to refuse to submit to such test and
if you do refuse, no test will be given.
4. You have the right to a chemical test by a person of your
own choosing at your own expense in addition to the test
I have requested.
5. You have the right to know the result of any chemical
test.
6. If you refuse the test I have requested, your driver's
license will be revoked for one year after an opportunity
to appear before a Hearing Officer to determine if your
license shall be revoked.
7. If your driver's license is revoked by the Hearing Officer,
you have the right to appeal to Circuit Court.
8. Do you understand what I have told you?
9. Do you wish to submit to the chemical test I have re-
quested?

MIRANDA WARNING

1. You have the continuing right to remain silent;
2. Anything you say can be used as evidence against you;
3. You have the right to consult with and have the presence
of an attorney; and
4. If you cannot afford an attorney, an attorney will be ap-
pointed for you.
5. Do you understand these rights?
6. Do you wish to waive these rights and talk to us at this
time?

If the subject indicates in any manner, at any time prior to
or during questioning that he wishes to remain silent, or that
he wishes an attorney; the interrogation must cease until
permission to continue is given by his attorney.

Figure 18-7

TEXAS (SAN ANTONIO)

Section 1 - Legislative Provisions

V.C.S. 67011-5. Driving while intoxicated—chemical tests—consent.—Section 1. Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of this Act, to a chemical test, or tests, of his breath for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor. Any person so arrested may consent to the taking of any other type of chemical test, or tests, to determine the alcoholic content of his blood, but he shall not be deemed, solely on the basis of his operation of a motor vehicle upon the public highways of this state, to have given consent to any type of chemical test other than a chemical test, or tests, of his breath. The test, or tests, shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor.

Sec. 2. If a person under arrest refuses, upon the request of a law enforcement officer, to submit to a chemical breath test designated by the law enforcement officer as provided in Section 1, none shall be given, but the Texas Department of Public Safety, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this State while under the influence of intoxicating liquor and that the person had refused to submit to the breath test upon the request of the law enforcement officer, shall set the matter for a hearing as provided in Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), if, upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle on the highway while under the influence of intoxicating liquor at the time of the arrest by the officer, (2) that the person was placed under arrest by the officer at such time and before offering the person an opportunity to be tested under the provisions of this Act, and (3) that such person refused to submit to the test upon request of the officer, the Director of the Texas Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for the period ordered by the court, but not to exceed one (1) year. If the person is a resident without a license or permit to operate a motor vehicle in this State, the Texas Department of Public Safety shall deny to the person the issuance of a license or permit for a period ordered by the court, but not to exceed one (1) year. Provided, however, that should such person be found 'not guilty' of the offense of driving while under the influence of intoxicating liquor or if said cause be dismissed, then the Director of the Texas Department of Public Safety shall in no case suspend such person's driver's license; or, in the event that proceedings had been instituted resulting in the suspension of such person's driver's license, then the Director of the Texas Department of Public Safety shall immediately reinstate such license upon notification of such acquittal or dismissal by the county clerk of the county in which the case was pending. Notification to the Director of the Texas Department of Public Safety shall be made by certified mail.

Sec. 3. (a) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person

while driving or in actual physical control of a motor vehicle and while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by chemical analysis of his blood, breath, urine, or any other bodily substance, shall be admissible and if there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

(b) Chemical analysis of the person's breath, to be considered valid under the provisions of this section, must be performed according to methods approved by the Texas Department of Public Safety and by an individual possessing a valid certificate issued by the Texas Department of Public Safety for this purpose. The Texas Department of Public Safety is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analysis, and to issue certificates certifying such fact. These certificates shall be subject to termination or revocation, for cause, at the discretion of the Texas Department of Public Safety.

(c) When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse under the supervision or direction of a licensed physician may withdraw blood for the purpose of determining the alcoholic content therein. The sample must be taken by a physician or in a physician's office or hospital licensed by the Texas Department of Health. This limitation shall not apply to the taking of breath specimens. The person drawing blood at the request of a law enforcement officer under the provisions of this Act, or hospital where that person is taken for the purpose of securing the specimen, shall not be held liable for damages arising from the request of the law enforcement officer to take the specimen as provided herein, provided the blood was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample. Breath specimens must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety, and by such persons as the Texas Department of Public Safety has certified to be qualified.

(d) The person tested may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing administer a chemical test, or tests, in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test, or tests, taken at the direction of the law enforcement officer.

(e) Upon the request of a person who has submitted to a chemical test, or tests, at the request of a law enforcement officer, full information concerning the test, or tests, shall be made available to him or his attorney.

(f) If for any reason the person's request to have a chemical test for intoxication is refused by the officer or any other person acting for or on behalf of the state, such fact may be introduced into evidence on the trial of such person.

Sec. 4. Appeals from all actions of the Department under this Act in suspending, denying or refusing to issue a license shall be governed by Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes).

Sec. 5. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

P.C. Sec. 19.05. Involuntary Manslaughter

(a) A person commits an offense if he:

- (1) recklessly causes the death of an individual; or
- (2) by accident or mistake when operating a motor vehicle while intoxicated and, by reason of such intoxication, causes the death of an individual.

(b) For purposes of this section, "intoxication" means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body.

(c) An offense under this section is a felony of the third degree.

V.C.S. 6701d-21. Speed of vehicles on beaches; driving while intoxicated.—Section 1. It shall be unlawful for any person to drive or operate any motor vehicle or other vehicle upon any beach in the State of Texas at a rate of speed in excess of twenty-five (25) miles per hour during the daytime and in excess of twenty (20) miles per hour during the nighttime, or to operate same at any time while the operator of such vehicle is intoxicated or under the influence of intoxicating liquor. The term "beach" as used in this Act means that portion of the shore adjacent to the Gulf of Mexico, or any of its inlets, bays, lagoons, sounds, channels or canals, between the high and low water marks, over which the tides ebb and flow, where persons congregate at any time, which is not a public road or public highway within the meaning of Article 802 of the Penal Code of Texas 1925*, as amended by Chapter 507, Acts of the Regular Session of the Forty-seventh Legislature (47th), 1941; the term "daytime" as used in this Act shall mean the period of time beginning thirty (30) minutes before sunrise and ending thirty (30) minutes after sunset.

Sec. 2. Any peace officer is authorized to arrest without warrant any person found violating any provisions of this Act.

Sec. 3. Any person convicted of violating any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine in any sum not to exceed Two Hundred Dollars (\$200), or by confinement in the county jail for any period of time not more than thirty (30) days, or by both such fine and imprisonment.

Sec. 3a. The drivers license of any person shall be automatically suspended upon final conviction of the offense of driving or operating a motor or other vehicle while intoxicated, under this Act, as follows: Upon first conviction, for a period of six (6) months from and after the date of conviction; and upon any subsequent conviction for a period of twelve (12) months from and after the date of such conviction. Whenever any person is convicted of any offense for which this Act makes automatic the suspension of the drivers license, the suspension thereof shall be accomplished in the manner provided in Article IV, of Chapter 173, of the Acts of the Forty-seventh Legislature (47th), 1941. By the term "drivers license" as used herein is meant all "operators", "commercial operators", and "chauffeurs" licenses provided for in Chapter 173 of the Acts of the Forty-seventh Legislature (47th), 1941.

Sec. 4. The provisions of this Act shall not apply to those portions of beaches which are public roads or public highways, and nothing herein shall in any manner affect or alter existing laws governing the operation of motor vehicles upon public roads and public highways of this State.

Sec. 34. Driving while license suspended or revoked.—Any person whose operator's, commercial operator's, or chauffeur's license or driving privilege as a nonresident has been cancelled, suspended, or revoked as provided in this Act, and who drives any motor vehicle upon the highways of this State while such vehicle or privilege is cancelled, suspended, or revoked is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five Dollars (\$25), nor more than Five Hundred Dollars (\$500), and, in addition, there shall be imposed a sentence of imprisonment of not less than seventy-two (72) hours nor more than six (6) months.

Sec. 24. Automatic suspension of license.—(a) The license of any person shall be automatically suspended upon final conviction of any of the following offenses:

1. Negligent homicide resulting from the operation of a motor vehicle;
2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;
3. Any offense punishable as a felony under the motor vehicle laws of this State;
4. A conviction of a driver of a motor vehicle involved in an accident or collision, upon a charge of failure to stop, render aid, and disclose his identity at the scene of said accident or collision;
5. A conviction upon a charge of aggravated assault upon the person by means of a motor vehicle, as provided by law.

(b) The suspension above provided shall in the first instance be for a period of twelve (12) months. In event any license shall be suspended under the provision of this Section for a subsequent time, said subsequent suspension shall be for a period of eighteen (18) months.

(c) The suspension of any license shall be automatically extended upon licensee being convicted of operating a motor vehicle while the license of such person is suspended; such extended period of suspension to be for a like period as the original suspension, and is in addition to any other penalty assessed, as provided in this Act.

Sec. 24A. Rehabilitation schools. (a) The Department shall establish and develop a program of motor vehicle driver education and training for drivers whose licenses have been suspended or revoked or are subject to suspension or revocation.

(b) The Department shall instruct, educate, and inform all persons attending the driver training program in the proper, lawful, and safe operation of a motor vehicle. The Department shall include in the program study of and training in the rules of the road, and the limitations of persons, vehicles, roads, streets, and highways under varying conditions and situations.

(c) The Department may require a person to attend the education and training program as a condition to the reinstatement of a suspended license or the issuance of a new license to a person whose prior license has been revoked.

(d) In the interest of promoting safe driving, the Department may seek the advice and cooperation of the schools, courts, and other interested persons.

Sec. 50. Persons under the Influence of Drugs. (a) It is unlawful and punishable as provided in Subsection (b) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle to drive a vehicle within this State. The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this State shall not constitute a defense against any charge of violating this section.

(b) Every person who is convicted of a violation of Subsection (a) of this section shall be punished by imprisonment for not less than ten (10) days nor more than two (2) years, or by fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1,000), or by both such fine and imprisonment. On a second or subsequent conviction under this section he shall be punished by imprisonment for not less than ninety (90) days nor more than two (2) years, and, in the discretion of the court, a fine of not more than One Thousand Dollars (\$1,000).

Sec. 50A. Homicide by Vehicle. (a) Whoever shall unlawfully and unintentionally (with a conscious disregard for the rights of others) cause the death of another person while engaged in the violation of any State law or municipal ordinance applying to the operation or use of a vehicle or streetcar or to the regulation of traffic shall be guilty of homicide when such violation is the proximate cause of said death.

(b) Any person convicted of homicide by vehicle shall be fined not less than Five Hundred Dollars (\$500) nor more than Two Thousand Dollars (\$2,000), or shall be imprisoned in the county jail not less than three (3) months nor more than one (1) year, or may be so fined and so imprisoned; provided, however, that such person may be tried only upon indictment by a grand jury and may be tried only in the county where the violation occurred.

V.C.S. 67011-1. Driving while drunk; penalty—first offense.—Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty (\$50.00) Dollars nor more than Five Hundred (\$500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six (6) months.

V.C.S. 67011-4. Minors—Driving while intoxicated—Traffic Violations.—Section 1. Any male minor who has passed his 14th birthday but has not reached his 17th birthday, and any female minor who has passed her 14th birthday but has not reached her 18th birthday, and who drives or operates an automobile or any other motor vehicle on any public road or highway in this state or upon any street or alley within the limits of any city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949, while under the influence of intoxicating liquor, or who drives or operates an automobile or any other motor vehicle in such way as to violate any traffic law of this state, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Hundred Dollars (\$100.00). As used in this section, the term "any traffic law of this state" shall include the following statutes, as heretofore or hereafter amended:

Chapter 42, Acts of the 41st Legislature, Second Called Session, 1929 (Article 827a, Vernon's Texas Penal Code*), except Section 9a thereof; Chapter 421, Acts of the 50th Legislature, Regular Session, 1947 (Article 6701d, Vernon's Texas Civil Statutes); Chapter 430, Acts of the 52st Legislature, Regular Session, 1949, (Article 827f, Vernon's Texas Penal Code*).

(a) No such minor may plead guilty to any offense described in Section 1 of this Act except in open court before the judge. No such minor shall be convicted of such an offense or fined as provided in this Act except in the presence of one or both parents or guardians having legal custody of the minor. The court shall cause one or both parents or guardians to be summoned to appear in court and shall require one or both of them to be present during all proceedings in the case. However, the court may waive the requirement of the presence of parents or guardians in any case in which, after diligent effort, the court is unable to locate them or to compel their presence.

Sec. 2. No such minor, after conviction or plea of guilty and imposition of fine, shall be committed to any jail in default of payment of the fine imposed, but the court imposing such fine shall have power to suspend and take possession of such minor's driving license and retain the same until such fine has been paid.

Sec. 3. If any such minor shall drive any motor vehicle upon any public road or highway in this state or upon any street or alley within the limits of any corporate city, town or village, or upon any beach as defined in Chapter 430, Acts of the 51st Legislature, 1949, without having a valid driver's license authorizing such driving, such minor shall be guilty of a misdemeanor and shall be fined as set out in Section 1 hereof.

Sec. 4. The offenses created under this Act shall be under the jurisdiction of the courts regularly empowered to try misdemeanors carrying the penalty herein affixed, and shall not be under the jurisdiction of the Juvenile Courts; but nothing contained in this Act shall be construed to otherwise repeal or affect the statutes regulating the powers and duties of Juvenile Courts. The provisions of this Act shall be cumulative of all other laws on this subject.

Sec. 5 Chapter 436, Acts of the 52nd Legislature, Regular Session, 1951, is hereby repealed, but the repeal thereof shall not exempt from punishment any person who may have previously violated such repealed law, and persons convicted of a violation thereof shall be punished as therein provided.

Sec. 6. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.*

*From Texas Motor Vehicle Laws.

Section 2 - Physical Coordination Tests

Physical coordination tests are not administered to suspected DWI offenders by officers of the San Antonio Police Department.

Conclusions: At the scene of a traffic stop, the arresting officer determines the operator's state of sobriety by observing the suspect's appearance, behavior, speech, and by noting any detectable odor of an intoxicating beverage.

Prior to being placed under arrest, the suspected offender is verbally advised of his Constitutional (Miranda) rights. Having been advised of his Constitutional rights, the suspect generally refuses to submit to any physical coordination test for the purpose of determining his sobriety. As a rule, officers no longer offer physical coordination tests to suspected offenders based upon the historical number of refusals to submit to these tests.

The San Antonio Police Department DWI/DUID Traffic Case Report (Fig. 19-2) is a two-page report which is completed by the arresting officer. On the first page is space for observations about the clothes, breath, speech, etc. of the offender and information about the chemical test. The second page is devoted to interview items. Those items such as balance, walking and turning are based upon officer observations only and not the result of a formal physical coordination test employed to determine these capabilities.

Recommendations: The San Antonio Police Department should solicit an opinion from the State Attorney General to determine if the Miranda warning applies to the administering of physical coordination tests to determine driver impairment.

Section 3: Pre-arrest Breath Screening

Pre-arrest breath screening is neither conducted by the San Antonio Police Department nor sanctioned by state statute within the state of Texas.

Conclusions: Officers of the San Antonio Police Department stated that they had knowledge of other police departments throughout the country

who engaged in the use of pre-arrest breath screening; however, due to the San Antonio Police Department's relationships with the judicial countermeasure, no pre-arrest breath screening could be implemented (even on an experimental basis) until the program is sanctioned by state statute.

Recommendations: The Alcohol Safety Action Project of the City of San Antonio should review, in detail, the successes of pre-arrest breath screening programs in effect at other ASAP sites. The legislative countermeasure of the San Antonio ASAP should be an instrumental catalyst in the development of a pre-arrest breath screening program within the state of Texas.

Section 4 - Evidentiary Sobriety Testing

Texas Motor Vehicle Law V.C.S. 67011-5 states that any person who operates a motor vehicle upon public highways of the state of Texas shall be deemed to have given his consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood, if arrested for any offense committed while driving or in actual physical control of a motor vehicle under the influence of intoxicating liquor.

The evidentiary breath testing device utilized by the San Antonio Police Department is the Breathalyzer Model 900 and the Simulator Model 600. (See Appendix A; Exhibit 19a.)

The San Antonio Police Department has available for field use seven Breathalyzers: two located at police headquarters, one at the Department of Public Safety, one in Lion Valley, one in Curvey, one at district headquarters, and one mounted in the mobile breath testing van.

There are currently 60 certified breath examiner specialists within the San Antonio Police Department.

Any officer holding the rank of Detective Investigator may volunteer for assignment as a breath examiner specialist. The number of volunteers selected to receive training will vary according to departmental needs. The final selection of who is to receive training rests with Sergeant Taft of the Traffic Division.

The San Antonio Police Department Scientific Lab Director issues all licenses for certified breath examiner specialists, upon conclusion of breath examiner training. Training is conducted at the San Antonio Police Department headquarters. The program is administered by the Department of Public Safety, which approves the techniques and methods used as well as the qualifications and competence of individuals who are conducting evidentiary breath testing analysis.

At the scene of the traffic stop, the arresting officer determines the operator's state of sobriety by observing his speech, behavior, and appearance, and checks for a detectable odor of an intoxicating beverage. According to officers interviewed, the suspect is placed under arrest "immediately upon conclusion of the [above] observations (which may be instantaneous)." Miranda warnings are read to the suspect and he is transported by the arresting officer to the evidentiary breath testing station located at police headquarters. Upon arrival at headquarters, the suspected offender is advised of the Implied Consent provisions immediately prior to being offered the evidentiary breath test.

The Breathalyzer operator completes the Breathalyzer Operational Check List (Fig. 19-4) during the evidentiary breath testing process. The suspected offender must be observed for a minimum of 15 minutes prior to testing. This 15-minute period begins when the subject is first observed by the Breathalyzer operator. Should the suspected offender refuse evidentiary breath testing, the arresting officer completes, signs and notarizes the Refusal Form (Fig. 19-5).

Both willfull assertion of non-compliance and obvious and disguised attempts to undermine the sample taking process constitutes refusal under the Implied Consent statute. The penalty prescribed for refusal to submit to evidentiary testing is loss of license for one year. Refusal under the Implied Consent provisions is treated as an administrative matter under the perview of the state of Texas Department of Public Safety.

Upon conclusion of the evidentiary breath test, the Breathalyzer operator completes the City of San Antonio Breathalyzer Log (Fig. 19-7), listing subject's name, BAC result, and the date and time of test.

The arresting officer then completes the San Antonio Police Department DWI/DUID Traffic Case Report (Fig. 19-2), indicating the BAC test result and the name of the Breathalyzer operator administering the test. Page two of the DWI/DUID Traffic Case Report (Fig. 19-2) contains interview questions which the arresting officer asks the suspect upon conclusion of the evidentiary breath test.

Texas Motor Vehicle Law V.C.S. 67011-5 Section 3(d) states, "The person tested may, upon request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse of his own choosing administer a chemical test, or tests, in addition to any administered at the direction of the law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test, or tests, taken at the direction of the law enforcement officer."

The defendant is presumed to be intoxicated at the BAC level of .10% or higher. No one is charged with the offense of DWI who has a BAC level below .09%.

All evidentiary breath testing devices utilized by the San Antonio Police Department are inspected and calibrated, on a weekly basis, under the supervision of the San Antonio Police Department Technical Supervisor, Captain Fiske.

Under no circumstances is an arresting officer permitted to administer the evidentiary breath test, even though he may be a certified breath examiner.

Conclusions: According to law enforcement officers interviewed, cooperation is "good" between all legal personnel and the San Antonio Police Department. These law enforcement officers also stated that the courts have not taken judicial notice of the evidentiary testing device and techniques as "judges claim that the human element involved in breath testing leaves too great a margin for error." DWI convictions are generally difficult to obtain when the BAC level is .13% or lower due to the plus or minus .01% accuracy of the evidentiary testing equipment. In general, the law enforcement personnel interviewed expressed resignation to the system under which they operate. It

should be noted that during calendar year 1973, 66% of the 3804 subjects arrested for DWI had BAC levels in the .15-.24% BAC range.

As stated, the penalty prescribed for refusal to submit to evidentiary testing is described by statutes as loss of license for one year. Officers advised that this is seldom the case. Plea bargaining is a routine procedure - the DWI charge is reduced to Public Intoxication and the subject is fined \$75 to \$125 plus court costs.

Three video tape recording systems are purchased by the San Antonio ASAP in October 1971 with the intent of recording drinking driver behavior for use in DWI prosecutions (See Appendix A; Exhibit 19b). According to Sergeant Taft of the ASAP unit, videotaping was never used in ASAP enforcement. The equipment was considered a "toy" and was not used due to a lack of facilities, inability to catalogue tapes, and lack of manpower resources to operate the equipment. Also cited was the requirement by the local prosecutors stating that no more than one suspect should be recorded on any one tape. The total cost of the video taping systems (consisting of two portable units, one stationary unit, and 400 half-inch reel tapes) was \$10,424.87.

The San Antonio ASAP purchased a mobile van equipped to perform field evidentiary testing. This van is not used for evidentiary breath analysis, but rather for public information and education. When utilized, this van is staffed by a sworn police officer who is paid on an overtime basis for the purpose of conducting public relations. The van is equipped with a Breathalyzer, Simulator, police radio, and public information and education handout materials.

Recommendations: The City of San Antonio Alcohol Safety Action Project, in conjunction with the City of San Antonio Police Department and the Superintendent of Misdemeanor District Attorney's Office, should conduct judicial seminars for the specific purpose of demonstrating to local judges the validity of alcohol breath analysis results when performed on the Breathalyzer. If necessary, assistance should be sought at the regional or national level from U.S. Department of Transportation National Highway Traffic Safety Administration in accomplishing this objective.

A-No. _____

NAME _____ Address _____
Last First Middle
Height _____ Weight _____ Occupation _____ Birth Date _____ Sex _____ Race _____
Date _____ 19 _____ Day of Week _____ Hour _____
VEHICLE: Color _____ Year _____ Model _____ Make _____ Body Style _____
Registered _____ Year _____ State _____ Number _____
Elements of this case

DL No. _____

State _____

[illegible]

LOCATION
OFFENSE OCCURRED _____
County **BEXAR** City **SAN ANTONIO**

District of
Occurrence _____

| | | | |
|-------------------|------|-----------|----------|
| | Name | Address | |
| | Name | Address | |
| ARRESTING OFFICER | Name | Address | |
| ARRESTING OFFICER | | Ident No. | Activity |
| | | Ident No. | Activity |

OBSERVATIONS

CLOTHES - Describe type and color _____ Hat or Cap _____ Shirt or Dress _____
 Jacket or Coat _____ Pants or Skirt _____

Condition ☐ Disorderly ☐ Disarranged ☐ Soiled ☐ Mussed ☐ Orderly Describe _____

BREATH
 Odor of Alcoholic Beverage ☐ Strong ☐ Moderate ☐ Faint ☐ None

ATTITUDE ☐ Excited ☐ Hilarious ☐ Talkative ☐ Carefree ☐ Sleepy ☐ Profanity
☐ Combative ☐ Indifferent ☐ Insulting ☐ Cocky ☐ Cooperative ☐ Polite

UNUSUAL ACTIONS ☐ Hiccoughing ☐ Belching ☐ Vomiting ☐ Fighting ☐ Crying ☐ Laughing

SPEECH ☐ Not Understandable ☐ Mumbled ☐ Slurred ☐ Mush Mouthed ☐ Confused
☐ Thick Tongued ☐ Stuttered ☐ Accent ☐ Fair ☐ Good

BALANCE ☐ Falling ☐ Needed Support ☐ Wobbling ☐ Swaying ☐ Unsure ☐ Sure

WALKING ☐ Falling ☐ Staggering ☐ Stumbling ☐ Swaying ☐ Unsure ☐ Sure

TURNING ☐ Falling ☐ Staggering ☐ Hesitant ☐ Swaying ☐ Unsure ☐ Sure

CHEMICAL TEST

Test Offered (alcohol) ☐ Breath ☐ Urine ☐ Blood ☐ None ☐ Other, specify _____

Test Given (alcohol) ☐ Breath ☐ Urine ☐ Blood ☐ Refused ☐ Other, specify _____

Test Result _____ % Refusal form Submitted ☐ Yes ☐ No

☐ Urine and/or Blood Submitted for Drugs Is report complete? ☐ Yes ☐ No

Officer/Operator _____ Identification No. _____

Disposition of Suspect ☐ Booked for _____

☐ Ticketed for _____

☐ Released Outright

☐ Other, specify _____

Signature of Officer Making Report _____ Ident. No. _____ Date of Report _____
Investigating Officer's name, rank, and number 66-4420-1000 APD Form No. 24-1A (Rev. 1-1-72)

454 APD form No 24-1A (Rev. 1-1-72)

Figure 19-2

STATE OF TEXAS X

SAPD Form 24-4/-DIC-23
[Rev. 1 - 70]

COUNTY OF BEXAR X

Before me, the undersigned authority, on this day personally appeared _____
to me well known and known to me to be a credible person, who having been by me duly sworn, deposed and said:

My name is _____, and I am a duly constituted Law Enforcement Officer.

This is to certify that I arrested _____,
Driver License No. _____, Date of Birth _____, on the _____ day of _____
19_____, at City of San Antonio, Bexar County, Texas. Upon making the arrest, this person
was duly requested by me to submit to a chemical breath test to determine the alcoholic content of his/her blood.
This person was informed that his/her license and driving privilege could be suspended if he/she failed to submit
to a chemical test. He/she was further informed that he/she had the right, in addition to the breath test, to have a
physician, qualified technician, chemist, or qualified professional nurse of his/her own choosing administer a
chemical test, or tests, within a reasonable time (not more than two (2) hours) after the arrest. Subsequent to and
immediately after said request, this person refused to submit to such test.

It is further certified that prior to the arrest I had reasonable grounds to believe, and do believe, that this person
was driving or in actual physical control of a motor vehicle on the public highways of this State while under the
influence of intoxicating liquor. Facts in support of this belief are:

| Signature of Arresting Officer | Rank-Grade | Number |
|--------------------------------|------------|--------|
| San Antonio Police Department | | |
| City of San Antonio, Texas | | |

Sworn to and subscribed before me this _____ day of _____, A. D., 19____.

Notary Public in and for Bexar County, Texas.

My Commission Expires _____

456

Figure 19-5

BREATHALYZER OPERATIONAL CHECK LIST

SAPD Form No. 24-4 Assignment
[Rev. Aug 73] Number _____

| | | | |
|---------------------------------|----------------------|--------------------------|--------------------------|
| NAME of Subject _____ | | Date _____ | |
| BREATHALYZER Model 900 N? _____ | AMPUL N? _____ | TIME of Test _____ Hours | BLOOD ALCOHOL 0. _____ % |
| NAME of Operator _____ | | NAME of Witness _____ | |
| REFERENCE ANALYSIS: | Predicted 0. _____ % | Simulator 0. _____ % | Time of Test _____ Hours |

1. ☐ Observe subject for fifteen (15) minutes prior to testing to prevent oral intake of any material. OBSERVED from _____ Hours to _____ Hours.
2. ☐ Throw SWITCH to "ON", wait until THERMOMETER shows 50° ± 3° C.
3. ☐ Gauge TEST AMPUL and insert in left-hand holder.
4. ☐ Gauge TEST AMPUL, open, insert BUBBLER and connect to OUTLET.
5. ☐ 10. ☐ Turn to TAKE, flush out, turn to ANALYZE.
6. ☐ 11. ☐ When RED empty signal appears, wait 1½ minutes, turn on LIGHT, BALANCE.
7. ☐ 12. ☐ Set BLOOD ALCOHOL POINTER on: START LINE (Step 7); 0.0 LINE (Step 12).
8. ☐ 13. ☐ Turn to TAKE, take: BREATH SAMPLE (Step 8); SIMULATOR SAMPLE (Step 13); turn to ANALYZE, record TIME (as applicable).
9. ☐ 14. ☐ When RED empty signal appears, WAIT 1½ MINUTES, turn on LIGHT, BALANCE, record answer.
15. ☐ Dispose of test ampul, turn CONTROL KNOB to "OFF."

Figure 19-4

SAPD Form No. 24-3/A
(Rev. 4-72)

For week ending
8:00 A.M. Monday _____ 19__

458

Signed _____

PREVENTIVE MAINTENANCE CHECK LIST

| | | | |
|---|--|--|--|
| Output of Sample Chamber is 56.5 ml \pm 1.5 ml | | | |
| Temperature of Sample Chamber Rises to 50°C \pm 3° | | | |
| Optical System Balanced | | | |
| Delivery Time 20-30 Seconds | | | |
| Simulator Test Within Tolerance | | | |
| General Condition | | | |
| Checked By | | | |
| Date | | | |

Repairs Made, If Any

Figure 19-7 (cont'd.)

UTAH (SALT LAKE CITY)

Section 1 - Legislative Provisions

41-6-43. Powers of local authorities.

(a) Local authorities may by ordinance provide that it shall be unlawful for any person who is under the influence of intoxicating liquor or is an habitual user or under the influence of any narcotic drugs or any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of any vehicle, for the use of chemical tests and for evidentiary presumptions, and for penalties therefor as a first offense consistent with section 41-6-44.

(b) Local authorities may also by ordinance provide that any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving, and provide penalties therefor as a first offense consistent with section 41-6-45.

41-6-43.10. Negligent homicide — Death occurring within one year — Penalty — Revocation of license or privilege to drive.

(a) When the death of any person ensues within one year as a proximate result of injury received by the driving of any vehicle in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide.

(b) Any person convicted of negligent homicide shall be punished by imprisonment in the county jail for not more than one year or by fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment.

(c) The department shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of negligent homicide.

41-6-44. Driving under the influence of intoxicating liquor — Presumption arising from alcoholic content of blood — Driving under the influence of drugs — Criminal punishment — Revocation of license — Arrest without warrant.

(a) It is unlawful and punishable as provided in subsection (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state.

(b) In any criminal prosecution for a violation of subsection (a) of this section relating to driving a vehicle while under the influence of intoxicating liquor or in any civil suit or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor;

2. If there was at that time in excess of 0.05 per cent but less than 0.08 per cent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor;

3. If there was at the time 0.08 per cent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor;

4. The foregoing provisions of this subdivision shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the person was under the influence of intoxicating liquor.

(c) It is unlawful and punishable as provided in subsection (d) of this section for any person who is an habitual user of or under the influence of any narcotic drug or any other drug to a degree which renders him incapable of safely driving a vehicle to drive or be in actual physical control of a vehicle within this state. The fact that any person charged with a violation of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this subsection.

(d) Every person who is convicted of a violation of this section shall be punished by imprisonment for not less than thirty days nor more than 6 months, or by a fine of not less than \$100 nor more than \$299, or by both such fine and imprisonment; provided that in the event such person shall have inflicted a bodily injury upon another as a proximate result of having operated said vehicle in a reckless or negligent manner or with a wanton or reckless disregard of human life or safety, he shall be punished by imprisonment in the county jail for not more than one year, and, in the discretion of the court, by a fine of not more than \$1,000.

(e) A peace officer may, without a warrant, arrest a person for a violation of this section when such violation is coupled with an accident or collision in which such person is involved and when such violation has in fact been committed, although not in his presence, when the officer has reasonable cause to believe that the violation was committed by such person.

The department shall revoke the operator's or chauffeur's license of any person convicted under this section.

41-6-44.2. Driving with blood alcohol content of .10% or higher unlawful — Penalty.

(a) It is unlawful and punishable as provided in subsection (b) of this section for any person with a blood alcohol content of .10% or greater, by weight, to drive or be in actual physical control of any vehicle within this state.

(b) Every person who is convicted of a violation of this section shall be punished by imprisonment for not less than thirty days nor more than six months, or by a fine of not less than \$100 nor more than \$299, or by both.

41-6-44.5. Chemical test as evidence in action involving blood alcohol content of .10% or higher — Expert testimony not required.

In any action or proceeding in which it is material to prove that a person was driving under the influence of intoxicating liquor or that the blood alcohol level was .10% or higher, evidence of the amount of alcohol in the person's blood at the time in question as shown by chemical analysis of a sample of his breath or blood is admissible. The chemical analysis in the form of a certificate completed by the person performing the test shall be given effect without requiring expert testimony as to the scientific principles and basis of the chemical test given.

41-6-44.10. Implied consent to chemical tests for alcoholic content of blood — Refusal to allow — Revocation of license — Court action on revocation — Person incapable of refusal — Results of test available — Who may give test.

(a) Any person operating a motor vehicle in this state shall be deemed to have given his consent to a chemical test of his breath or blood for the purpose of determining the alcoholic content of his blood, provided that such test is administered at the direction of a peace officer having reasonable grounds to believe such person to have been driving in an intoxicated condition. The arresting officer shall determine within reason which of the aforesaid tests shall be administered.

(b) Any person operating a motor vehicle in this state shall be determined to have given his consent to a chemical test or tests of his blood or urine for the purpose of determining whether he was driving or was in actual physical control of a motor vehicle while under the influence of any narcotic drug or other drug if arrested for any offense where, at the time of arrest, the arresting officer has reasonable grounds to believe such person to have been driving or in actual physical control of a motor vehicle while under the influence of a narcotic drug or other drug.

(c) If such person has been placed under arrest and has thereafter been requested to submit to any one of the chemical tests provided for in subsections (a) or (b) of this section and refuses to submit to such chemical test, the test shall not be given and the arresting officer shall advise the person of his rights under this section. Within twenty days after receiving an affidavit from the arresting officer to the effect that such person has refused a chemical test the department shall notify such person of a hearing before the department. If at said hearing the department determines that the person was granted the right to submit to a chemical test and without reasonable cause refused to submit to such test, or if such person fails to appear before the department

as required in the notice, the department shall revoke for one year his license or permit to drive. Any person whose license has been revoked by the department under the provisions of this section shall have the right to file a petition within thirty days thereafter for a hearing in the matter in the district court in the county in which such person shall reside. Such court is hereby vested with jurisdiction, and it shall be its duty to set the matter for trial de novo upon ten days' written notice to the department and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner's license is subject to revocation under the provisions of this act.

(d) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any such chemical test or tests shall be deemed not to have withdrawn the consent provided for in subsections (a) or (b) of this section, and the test or tests may be administered whether such person has been arrested or not.

(e) Upon the request of the person who was tested, the results of such test shall be made available to him.

(f) Only a physician, registered nurse, practical nurse or duly authorized laboratory technician, acting at the request of a police officer can withdraw blood for the purpose of determining the alcoholic or drug content therein. This limitation shall not apply to the taking of a urine or breath specimen. Any physician, registered nurse, practical nurse or duly authorized laboratory technician who, at the direction of a peace officer, draws a sample of blood from any person whom the peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which such sample is drawn, shall be immune from any civil or criminal liability arising therefrom, provided such test is administered according to standard medical practice.

(g) The person tested shall be permitted to have a physician of his own choosing administer a chemical test in addition to the one administered at the direction of the peace officer.

Section 2 - Physical Coordination Tests

The Salt Lake City Police Department, Salt Lake County Sheriff's Office, Utah Highway Patrol, and the Ogden Police Department participate in the Alcohol Safety Action Program of Salt Lake City. The Salt Lake City Police Department and the Salt Lake County Sheriff's Office were visited during this site visit.

Physical coordination tests are administered to all suspected DWI offenders at the scene of apprehension. The arresting officer administers these tests, which generally consist of the following psychomotor tasks:

- Heel-to-toe
- Finger on flashlight spots, walk around twice
- Finger to nose
- Balance

The results of these tests are recorded on the Alcoholic Influence Report Form (Fig. 20-2). This report is a four-page form which includes eleven major sections, including Constitutional rights, chemical test, interview, and handwriting specimen.

The coordination tests listed on the Alcoholic Influence Report Form are used by the arresting officer to determine the possible degree of driver impairment. The officer's conclusion regarding the degree of impairment is based upon his observations of the driver's ability to respond to questions, ability to follow instructions, and his reactions to the tests.

Heel-to-toe. The heel-to-toe test is a conventional walking and turning test, where the suspect is asked to walk a straight line with the heel of one foot placed against the toe of the other. The individual is instructed to walk about 20 feet, stop, turn quickly and return. The arresting officer pays particular attention to the subject's ability to understand and the subject's ability to turn quickly and return walking heel-to-toe.

Finger-to-nose Test. The arresting officer instructs the suspect to stand erect with eyes closed and arms extended horizontally to the side. The subject is instructed to touch the tip of his nose with the designated finger on either the right or left hand. The arresting officer observes

where the finger touched the face or nose and records this action by circling the appropriate response on the Alcoholic Influence Report Form.

Balance Test. The arresting officer instructs the suspect to stand erect with his heels together, toes touching, pointing straight ahead with his head back and his eyes closed. The officer then observes whether the subject sways and, if so, whether the subject recovers with a jerky movement. Officers feel that all persons who stand erect with heel and toes together will sway. However, it is presumed that only intoxicated persons will exhibit excessive swaying and recover with jerky movements.

Finger on flashlight spot; walk around twice. This test was devised by officers participating in the ASAP program of Salt Lake City and is designed to replace the conventional coin or key lift. The arresting officer shines his flashlight on the ground causing a spotlight effect to appear on the ground. The arresting officer requests the subject to place his finger on the spotlight and walk around in a circle twice keeping his finger on the spotlight at all times. Particular notations are made of falling, aiding balance by placing the hand on the floor, or other such actions.

The coin or key lift test was eliminated when officers of this site found it difficult to perform this test in court.

Conclusions: In April of 1970, the Salt Lake City Police Department purchased one complete video taping unit at a cost of \$5,547.50. The video equipment purchased was Concord Model PTR-62A.

This video equipment has not been used since November 1970. During this site visit the investigator was advised by Salt Lake City Crime Lab personnel that it is the department's intent to utilize this equipment in the recording of the physical coordination test.

The proposed tests to be recorded on VTR consist of walking a line, heel-to-toe, one foot stand, turn around, driver interview, name writing on black board, and the drawing of a square, triangle, and circle.

The video cameras will be mounted in the Salt Lake City Crime Lab and will be operated by law enforcement officers who have received four hours of supervised on-the-job training. At the present time, there are six qualified operators assigned to the Salt Lake City Crime Lab.

At the time of this site visit, no written procedures have been established regarding the use of video taping physical coordination tests by the Salt Lake City Police Department.

Officers of the Salt Lake City ASAP recognize the necessity of the Miranda warning in the in-custody interrogation process. These officers state, however, that there is nothing that prohibits the evidentiary use of voluntary or spontaneous statements even though the person is arrested and in custody. On this basis, audio recording devices purchased and supplied by the Utah Highway Patrol Training Fund (402) are utilized by officers of the Salt Lake City ASAP. Sony TC45 recording units are used to record the driver interview and data contained on the Alcoholic Influence Report Form. Generally, the information recorded on the tape consists of the Implied Consent admonishment, recording of driver attitude through driver statements, the Miranda warning and refusals, if it should occur. The offender is not informed of his being recorded, as these tapes are seldom entered into evidence. The tapes are primarily used by officers as "memory joggers".

ASAP officers of the Salt Lake City Police Department do not use audio recording equipment. Deputies of the Salt Lake County Sheriff's Office (ASAP deputies) use audio recording equipment for report purposes only.

Officers testimony based upon the physical coordination test is well received by the courts of jurisdiction at this site.

Recommendations: The physical coordination testing configuration found at this site appears adequate to meet the needs of the participating enforcement agencies. The tests are performed with professional demeanor and the results are well documented. Recommendations: none.

Section 3 - Pre-arrest Breath Screening

ASAP officers of the Salt Lake City Police Department participate in a pre-arrest breath screening program on an experimental basis, utilizing the Borg-Warner A.L.E.R.T. pre-arrest screening device.

Conclusions: Pre-arrest breath screening is not a formal countermeasure of the Salt Lake City ASAP.

Pre-arrest breath screening tests are given in a haphazard manner and the results of the tests are recorded on rough notes which are forwarded to the ASAP Enforcement Coordinator for informational purposes only.

At the time of this site visit, law enforcement agencies interviewed had no plans to continue the use of pre-arrest breath screening beyond the experimental stages.

Law enforcement officers receive no training in the use of the portable breath testing device (PBT). The most frequently cited problem encountered in the use of the A.L.E.R.T. pre-arrest screening device was the difficulty officers had in obtaining an adequate breath sample.

Officers like the idea of pre-arrest breath screening and view it as a valuable training tool in helping them identify "what a drunk looks like".

Recommendations: Reporting procedures on the field use of the PBT should be improved to more accurately report frequency of use, results, and difficulties encountered. The PBT experiment should be reevaluated on the basis of this improved data.

Law enforcement officers who will be using PBT devices should receive comprehensive training in the proper use and maintenance of the device. The manufacturer of the device should provide instruction for this training.

Section 4 - Evidentiary Sobriety Testing

The General Highway and Traffic Laws of The State of Utah (41-6-44.10 (a); (b)) state that breath, blood, or urine may be analyzed for the purposes of determining evidentiary blood-alcohol concentration. Urine analysis for the purpose of determining blood-alcohol concentration is generally limited to those cases where drugs or narcotics are the suspected intoxicants.

Breath is the bodily substance predominantly submitted for evidentiary analysis by the Salt Lake City Police Department. The Salt Lake County Sheriff's Office predominantly submits blood specimens for analysis to determine blood-alcohol concentration.

The Salt Lake City Police Department cites the availability of testing equipment as the primary reason for the analysis of breath specimens for evidentiary purposes. The Salt Lake County Sheriff's Office states that they primarily give blood tests because "they (deputies) have less problems with the drunks when this test is offered."

The evidentiary breath testing device used for evidentiary purposes is the Breathalyzer Model 900. This equipment is provided and maintained by State Crime Lab personnel who also serve as expert witnesses as to testing principles of the Breathalyzers.

The evidentiary breath testing device is located, for operational purposes, at the Salt Lake County Jail, 251 East 5th South, Salt Lake City, Utah. There are two additional machines also available for field use - one located at the Crime Lab at the Police Department Headquarters and the other at the Marie City Police Department for use by deputies of the Salt Lake County Sheriff's Office.

The evidentiary breath analysis training program is administered by the State Department of Public Safety and certificates are issued by the Utah Highway Patrol upon completion of a three-day Breathalyzer course.

There are currently 27 certified breath examiner specialists on the Salt Lake City Police Department. All booking personnel at the Salt Lake County Sheriff's Office are qualified breath examiner specialists. All operators are recertified every two years upon satisfactorily completing a one-day refresher course.

Evidentiary breath testing devices are periodically inspected and calibrated by Sergeant Newell Knight and Trooper Clark Bowles of the Utah Highway Patrol.

The arresting officer is permitted to administer the evidentiary breath test if he is a certified breath examiner. Deputies of the Salt Lake County Sheriff's Office who are certified as breath examiners always conduct their own evidentiary test. Officers of the Salt Lake City Police Department who are certified breath examiners are authorized to conduct their

own tests but this is seldom the case. Generally, back-up assist officers will follow the arresting officer to Central Lockup and conduct the evidentiary test.

The arresting officer advises the offender of the Implied Consent statute immediately after arrest. Upon conclusion of evidentiary testing and prior to the completion of the Alcoholic Influence Report Form, the arresting officer advises the offender of his Constitutional (Miranda) rights. Deputies of the Salt Lake County Sheriff's Office then complete the Rights and Waiver of Rights Form (Fig. 20-3). The suspects sign this form, indicating his understanding of the Miranda rights. The form is then witnessed by another officer.

If the subject refuses to submit to evidentiary testing for the purposes of determining BAC, the arresting officer completes the Report of Refusal to Submit to Chemical Test (Fig. 20-6), which is then notarized and forwarded to the Director, Driver License Division, Department of Public Safety, Salt Lake City, Utah.

Individual evidentiary breath tests are recorded on the Breathalyzer Test Log (Fig. 20-15). Figure 20-15-a details the instructions for completing the log. The Breathalyzer Operator Checklist (Fig. 20-9) and the Test Record (Fig. 20-16) are completed for each evidentiary breath test by the Breathalyzer operator and returned to the officer requesting the test. The officer later submits the completed forms to his supervisor.

Blood samples may be withdrawn for chemical analysis to determine evidentiary BAC. The State of Utah, General Highway and Traffic Laws (41-6-44.10(f)) states that "only a physician, registered nurse, practical nurse or duly authorized laboratory technician, acting at the request of a police officer, can withdraw blood for the purpose of determining the alcoholic or drug content therein. This limitation shall not apply to the taking of a urine or breath specimen." Generally, three to four ccs. of blood are withdrawn. Blood samples are submitted to the County Board of Health and are hand-carried by the technician who withdrew the blood.

The results of the blood analysis are generally made known within 48 hours from the withdrawal of the sample.

According to operations personnel, the hospitals do not cooperate at all in the withdrawing of blood samples. Crime Lab technicians must respond to the hospital to take the sample as the medical staff refuses to do so. According to officers interviewed, the medical hospital staff fears liability suits as well as court appearance as witnesses. Board of Health technicians are used for the withdrawal of blood for evidentiary chemical analysis. These technicians are employed by the county. There are currently three technicians available for use by the participating enforcement agencies. One technician is also the chemist who actually performs the evidentiary analysis.

The results of the evidentiary blood analysis are then sent to the Prosecutor's Office and to the appropriate traffic division. Arresting officers are informed of the results prior to the trial data only upon special request.

There is no statutory requirement which directs coroners or medical examiners to obtain blood samples of persons fatally injured in motor vehicle crashes. Neither is there a statutory requirement directing all principles in a fatal crash to submit to chemical test in order to determine their blood-alcohol concentration.

State of Utah General Highway and Traffic Law (41-6-44(b-3)) states "If there was at the time .08 per cent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of an intoxicating liquor." Utah 41-6-44.2(a) states "It is unlawful and punishable as provided in subsection (b) of this section for any person with a blood alcohol content of .10% or greater, by weight, to drive or be in actual physical control of any vehicle within this state."

Blood-alcohol levels of .08% or more is presumption that the person was under the influence of intoxicating liquor. BAC's in excess of .05% but less than .08% do not give rise to any presumption but may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

Conclusions: Both the Salt Lake City Police Department and the Salt Lake County Sheriff's Office utilized "selective volunteers" in ASAP assignments. By "selective volunteers" it was meant that officers who wished to work ASAP submitted their names to Capt. Roberts of the Salt Lake City Police Department or to Lt. Taylor of the Salt Lake County Sheriff's Office. They selected the officers on the basis of their police traffic aggressiveness, administrative abilities, and performance record checks. The professional demeanor exhibited by the ASAP officers during the course of this site visit reflects favorably on the officers' selection criteria.

The management staff of the Salt Lake City ASAP program were extremely cooperative and helpful during the course of this site visit. The majority of information contained in this report would have been unavailable to this investigator had it not been for the invaluable assistance of the ASAP Enforcement Coordinator.

Both the Salt Lake City Police Department and the Salt Lake County Sheriff's Office were extremely courteous to this investigator; however, both agencies were extremely reluctant to release any substantial information regarding their enforcement effort, policies and procedures. It is the opinion of this investigator that more substantive information is available at this site.

Recommendations: The sobriety testing configuration currently utilized at this site appears to be sufficient to meet the needs of the participating law enforcement agencies. The courts of jurisdiction accept the evidentiary testing devices and techniques. Recommendations: none.

SALT LAKE COUNTY
SHERIFF'S OFFICE

ALCOHOLIC INFLUENCE REPORT FORM

I- CASE IDENTIFICATION

Case Number _____ Date _____ Accident _____ Day _____
Soc. Sec. # _____ Location _____
Subjects Name _____ Address _____
D.O.B. _____ Driver License # _____ Time of Arrest _____
Place of Arrest _____ Charges _____
Arresting Officer(s) _____

II- SUBJECT'S VEHICLE:

Year _____ Color _____ Make _____ Model _____ Type _____
License # and State _____ Disposition _____
Condition: Drivers Opinion _____

Tires _____ Brakes _____
Steering _____ Damage _____
Passengers: Name _____ Address _____ Age _____ Condition _____
1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

III- INCIDENT LOCATION:

Subject's Location When First Observed _____
Speed _____ Speed Limit _____ Driving Pattern _____

Where Stopped _____ Officer's Location Upon First
Observation _____ Distance Officer Followed _____
Subject _____

IV- FIELD SOBRIETY TESTS:

Where Given _____ When _____
Balance Test _____
Finger-To-Nose: Left _____
Right _____
Heel-To-Toe _____
Coins: Leg Used _____ Coins Or Objects Used _____
Balance _____
Were Tests Demonstrated By Officer _____ Subjects Ability To Follow
Instructions _____
Subjects Opinion as to his Condition and Balance _____

Figure 20-2

V- CONSTITUTIONAL RIGHTS:

Was subject advised of the following rights _____ When _____
Where _____

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
4. Even if you decide to answer questions now without having counsel present, you may stop answering questions at any time. Also, you may request counsel at any time during questioning.

Were the following Waiver questions asked _____

1. Do you understand each of these rights I have explained to you?

Response _____

2. Having these rights in mind, do you wish to talk to us now?

Response _____

VI- IMPLIED CONSENT LAW

Mr. or Mrs. _____, do you understand that you are under arrest for driving under the influence of alcohol? Response _____

I am obligated by law to advise you of your rights under Utah's implied consent law. (Section 41-6-44.10 of the Utah Code Annotated [Supp. 1969].)

Under the law, any person operating a motor vehicle in this state shall be deemed to have given his consent to a chemical test of his blood or breath for the purpose of determining the alcoholic content of his blood (or of his blood or urine for determining the presence of drugs in his blood) provided that such a test is administered at the direction of a peace officer having reasonable grounds to believe such a person to have been driving in an intoxicated condition (or in a condition under the influence of drugs).

In compliance with this law, I hereby request that you submit to a chemical test, either a breath test or a blood test (blood or urine if drugs are suspected); however, you have the right to refuse to take the test.

If you refuse the test, it will not be given and I will report by affidavit your refusal to the Department of Public Safety. They will notify you of a hearing before the Department, and at the hearing the hearing officer will be obligated to determine whether you were granted the right to submit to a chemical test and whether without reasonable cause you refused to submit to a chemical test. If the hearing officer determines that you refused to submit to a properly requested test, the Department will revoke your driver's license for one year. If you fail to appear at the hearing, your driver's license will be revoked automatically.

Should your license be revoked, you will then have the right to file a petition within thirty days thereafter for a hearing on the matter in the District Court in the county in which you reside.

Upon your request, I will make available to you the results of the test if you take it.

Only a physician, registered nurse, practical nurse or duly authorized laboratory technician, acting at my request, will draw your blood for the purpose of determining the alcoholic content therein, but this limitation does not apply to the breath test (or the urine test).

You will be permitted to have a physician of your own choice administer a chemical test in addition to the one I have requested you to submit.

Mr. or Mrs. _____, what is the response to my request that you submit to a chemical test? Response _____

VII- CHEMICAL TEST:

Was subject requested to submit to a Chemical Test _____ When _____
 Where _____
 Witness _____
 Did Subject Submit To A Chemical Test _____ Type of Test _____
 Test Administered By _____ Where _____
 When _____ Results _____ Was Subject Notified of Results _____

VIII- SEARCHES:

Was Subjects Vehicle Searched _____ Where _____
 Evidence Found _____
 Disposition _____
 Was Subject's Person searched _____ Where _____
 When _____ Authority _____
 Evidence Found _____

IX- Subjects Description:

General Description _____

 Clothes: Shirt or Dress _____
 Pants or Skirt _____
 Coat or Jacket _____ Shoes _____
 Hair: _____
 Color _____ Style _____ Condition _____
 Face: _____
 Eyes _____
 Pallor _____ Complexion _____
 Physical Description: _____
 Height _____ Weight _____ Build _____
 Speech _____
 Odor or Alcoholic Beverage _____
 Signs or Complaints of Injury or Illness _____
 Noticable Characteristics _____

X- INTERVIEW:

Were you Operating a Vehicle _____
 Where were you going _____
 What Street or Highway Were You on _____
 Direction of Travel _____
 Where did you start from _____
 When _____ What Time Is It Now _____
 What is Todays Date _____ Day of the Week _____
 Actual Time _____ Date _____ Day _____ What _____
 City/County you are in now _____
 When Did you last eat _____
 What were you doing during the last three hours _____

 Have you been drinking _____ What _____
 How Much _____ Where _____
 When did you have your first drink _____ Last drink _____
 Are you under the influence of an alcoholic beverage now _____

 What is your Occupation _____
 When did you last work _____
 Where do you work _____

Figure 20-2 (cont'd.)

Do you have a glass eye _____ Do you wear dentures or a partial
 plate _____
 Do you have any physical defects _____
 Are you ill _____
 Do You limp _____ Have you been Injured lately _____
 Where was the injury _____
 Have you had a bump on the head lately _____
 Were you involved in an accident today _____
 Have you had any alcoholic Beverage since the accident _____
 If so, How much _____ What _____ When _____
 Where _____
 Have you seen a doctor or dentist lately _____
 Who _____ When _____
 What for _____
 Are you taking Tranquilizers, Pills or Medicines of any Kind _____
 What Kind (get sample) _____
 When did you have the last dose _____
 Do You have Epilepsy _____ Diabetes _____
 Do You take Insulin _____ Last dose _____
 Have you had any injections of any other drugs recently _____
 What Kind of drug _____ What for _____
 Last dose _____ Amount _____
 When did you last sleep _____ How much sleep did you have _____

XI- HANDWRITING SPECIMEN:

XII- NOT UNUSUAL OCCURENCES INCLUDING STATEMENTS:

Figure 20-2 (cont'd.)

SALT LAKE COUNTY SHERIFF'S OFFICE

YOUR RIGHTS

PLACE _____

DATE _____

TIME _____

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

YOU HAVE THE RIGHT TO REMAIN SILENT.

ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.

YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING.

IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.

IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK TO A LAWYER.

WAIVER OF RIGHTS

I HAVE READ THIS STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST ME.

SIGNED _____

WITNESS _____

WITNESS _____

TIME _____

SO. 53

NAMES OF PERSON(S) WITH SUSPECT AT TIME OF INTERROGATION

REASON FOR INTERROGATION

DISPOSITION

OFFICER(S) REPORTING

DIVISION

DETAIL

REPORT OF REFUSAL TO SUBMIT TO
CHEMICAL TEST

TO: DIRECTOR, DRIVER LICENSE DIVISION,
DEPARTMENT OF PUBLIC SAFETY,
314 STATE OFFICE BUILDING, SALT LAKE CITY, UTAH 84114

(Note to Reporting Officer--Print Plainly in Ink)

| | | |
|--|--------------------------------|--|
| Operator of Motor Vehicle | | |
| Street Address | | |
| City | State | Zip Code |
| Driver License No. _____ | | |
| Date of Birth _____ | | |
| State of Utah _____ ss. | | |
| County of _____ | | |
| _____ being duly sworn, | | |
| Officer | | |
| That on _____, 19____ at _____ | | |
| Place | | |
| he arrested the above-named person having reasonable grounds to believe such person to have been driving in an intoxicated condition, or driving or in physical control of a motor vehicle while under the influence of drugs; | | |
| That thereafter he requested such person to submit to all available chemical tests consisting of: <u>[[Check applicable and available test(s)]]</u> | | |
| <input type="checkbox"/> Breath | <input type="checkbox"/> Blood | (For determining the alcoholic content of his blood) |
| <input type="checkbox"/> Blood | <input type="checkbox"/> Urine | (For determining presence of drugs in his blood) |
| but that such person refused to submit thereto; | | |
| That he informed such person that a refusal would constitute grounds for revocation of his driver license or permit to drive in the State of Utah. | | |
| Time of arrest _____ A.M. _____ P.M. Time of refusal _____ A.M. _____ P.M. | | |
| Witness, if any, to refusal: | | |
| Name _____ | | |
| Address _____ | | |
| City | State | Zip Code |
| Signature of Officer | | Title |
| Department | | |
| City or Town | | |
| Subscribed and sworn to before me this _____ day of _____, 19____ | | |
| Notary Public | | |
| Residing in _____ | | |
| My Commission Expires _____ | | |

(See reverse side for copy of law)

Figure 20-6

SEC. 41-6-44.10, UCA 1953, EFFECTIVE MAY 13, 1969, RELATING TO
CHEMICAL TESTS FOR PERSONS SUSPECTED OF DRIVING IN AN IN-
TOXICATED CONDITION OR DRIVING OR IN ACTUAL PHYSICAL CONTROL
OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS.

41-6-44.10 (a) Any person operating a motor vehicle in this state shall be deemed to have given his consent to a chemical test of his breath or blood for the purpose of determining the alcoholic content of his blood, provided that such test is administered at the direction of a peace officer having reasonable grounds to believe such person to have been driving in an intoxicated condition. The arresting officer shall determine within reason which of the aforesaid tests shall be administered.

(b) Any person operating a motor vehicle in this state shall be determined to have given his consent to a chemical test or tests of his blood or urine for the purpose of determining whether he was driving or was in actual physical control of a motor vehicle while under the influence of any narcotic drug or other drug if arrested for any offense where, at the time of arrest, the arresting officer has reasonable grounds to believe such person to have been driving or in actual physical control of a motor vehicle while under the influence of a narcotic drug or other drug.

(c) If such person has been placed under arrest and has thereafter been requested to submit to any one of the chemical tests provided for in subsections (a) or (b) of this section and refuses to submit to such chemical test, the test shall not be given and the arresting officer shall advise the person of his rights under this section. Within 20 days after receiving an affidavit from the arresting officer to the effect that such person has refused a chemical test the department shall notify such person of a hearing before the department. If at said hearing the department determines that the person was granted the right to submit to a chemical test and without reasonable cause refused to submit to such test, or if such person fails to appear before the department as required in the notice, the department shall revoke for one year his license or permit to drive. Any person whose license has been revoked by the department under the provisions of this section shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county in which such person shall reside. Such court is hereby vested with jurisdiction, and it shall be its duty to set the matter for trial de novo upon ten days' written notice to the department and thereupon to take testimony and examine into the facts of the case and to determine whether the petitioner's license is subject to revocation under the provisions of this act.

(d) Any person who is dead, unconscious, or in any other condition rendering him incapable of refusal to submit to any such chemical test or tests shall be deemed not to have withdrawn the consent provided for in subsections (a) or (b) of this section, and the test or tests may be administered whether such person has been arrested or not.

(e) Upon the request of the person who was tested, the results of such test shall be made available to him.

(f) Only a physician, registered nurse, practical nurse or duly authorized laboratory technician, acting at the request of a police officer can withdraw blood for the purpose of determining the alcoholic or drug content therein. This limitation shall not apply to the taking of a urine or breath specimen. Any physician, registered nurse, practical nurse or duly authorized laboratory technician who, at the direction of a peace officer, draws a sample of blood from any person whom the peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which such sample is drawn, shall be immune from any civil or criminal liability arising therefrom, provided such test is administered according to standard medical practice.

(g) The person tested shall be permitted to have a physician of his own choosing administer a chemical test in addition to the one administered at the direction of the peace officer.

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Figure 20-6 (cont'd.)

BREATHALYZER OPERATIONAL CHECK LIST

Name of subject _____ Date _____

Time (of test) _____ Blood Alcohol 0. _____ % Ampul Control No. _____

Operator _____ Witness _____

Instrument _____ No. _____

V

- | | |
|------------------|---|
| PREPA- RATION | 1. <input type="checkbox"/> Throw SWITCH to "ON", wait until THERMOMETER shows $50^{\circ} \pm 3^{\circ}$ C. |
| | 2. <input type="checkbox"/> Gauge TEST AMPUL and insert in left-hand holder. |
| | 3. <input type="checkbox"/> Gauge TEST AMPUL, open, insert BUBBLER and connect to outlet. |
| PURGE | 4. <input type="checkbox"/> Turn to TAKE, flush out, turn to ANALYZE. |
| | 5. <input type="checkbox"/> When RED empty signal appears, wait $1\frac{1}{2}$ minutes, turn on LIGHT, BALANCE. |
| | 6. <input type="checkbox"/> Set BLOOD ALCOHOL POINTER on START line. |
| ANALYSIS | 7. <input type="checkbox"/> Turn to TAKE, take breath sample, turn to ANALYZE, (record time). |
| | 8. <input type="checkbox"/> When RED empty signal appears, wait $1\frac{1}{2}$ minutes, turn on LIGHT BALANCE. |

P-350

Record answer, dispose of test ampul, TURN CONTROL KNOB to "OFF"

Figure 20-9

[illegible]

NPT-24 (P-334)

BREATHALYZER SERIAL # _____ LOCATED AT _____

Figure. 20-15

INSTRUCTIONS FOR FILLING OUT THE BREATHALYZER TEST LOG

As the problem of the drinking driver increases on our highways our effort to combat this problem must increase.

The attached log has been devised to enable us to gather more information.

Each of the columns on the page has been given a number. The following explanation should assist you in the completion of the form.

Column 1 - Test Number - The first number in this column is 1 and then each test should be listed consecutively - renumbering, beginning with number 1 should begin on 1 January of each year.

Column 2 - Date of Test - The date the test was conducted.

Column 3 - Name of Tested Subject - i.e. Richard J. Smith.

Column 4 - Test Result - This is the result of the Breath Test and should be listed as .19% or .19%+ if the result is over .19% but below .20%.

Column 5 - Time of Test - This is the actual time the test was taken.

Column 6 - DOB - Date of Birth of tested subject.

Column 7 - Driver license number and State - Give this information if the subject has a valid license, if none, suspended or revoked, so indicate.

Column 8 - Sex - Indicate either Male or Female.

Column 9 - Accident - Indicate by yes or no if accident was involved.

Column 10 - Tested by - Show the officers name who conducted the test.

Column 11 - Tested for Dept. & Officer - Show both the name of the officer requesting the test and his department, if the test is for the testing officer his name should be placed in this column with his department name.

Column 12 - Reason for Test - In this column indicate why the person was tested, i.e. DUI, reckless, public intox., Illegal consumption, etc.

Column 13 - Judge or Court - Indicate the Judge or Court to which the subject is being sent if the subject is not charged so indicate.

These report sheets are made of self-carboned paper, therefore care should be used to see that the sheet of cardboard is placed under the second sheet before making log entries.

The first copy will remain with the Breathalyzer as the permanent log, the second sheet will be removed as the sheet is filled and will be maintained by the Department of Public Safety.

Figure 20-15a

TEST RECORD

PER CENT BLOOD ALCOHOL

.00 .05 .10 .15 .20 .25 .30 .35 .40

Breathalyzer®

SUBJECT _____

DATE AND TIME _____

BY _____

Figure 20-16

Internal Security and Public Safety

Chapter 151. Vermont Law Enforcement Training Council

§ 2351. Purpose

In order to promote and protect the health, safety and welfare of the public, it is in the public interest to provide for the creation of "the Vermont law enforcement training council." The council will be created to encourage and assist municipalities, counties, and governmental agencies of this state in their efforts to improve the quality of law enforcement and citizen protection by maintaining a uniform standard of recruit and in-service training for law enforcement officers, and to offer continuing programs of instruction in up-to-date methods of law enforcement. It is the responsibility of the council to encourage the participation of local governmental units in the program and to aid in the establishment of adequate training facilities.—1967, No. 189, § 1, eff. April 17, 1967.

HISTORY

Study. 1967, No. 189, § 9, eff. April 17, 1967, provided: "The Vermont law enforcement training council is directed to review the need for the adoption of a statutory requirement for minimum training standards for sheriffs and deputy sheriffs of the counties of this state, as provided for municipal law enforcement officers by section 8 of this act [§ 2358 of Title 20], and to make recommendations with respect thereto to the 1968 session of the General Assembly."

§ 2352. Creation of council

(a) The law enforcement training council shall be attached to the department of public safety for administrative purposes. It shall consist of nine members. The commissioner of public safety, and the commissioner of motor vehicles shall be members. The attorney general of this state shall be a non-voting member. The special agent in charge of the district of the federal bureau of investigation in which this state is located or his designated representative shall be a member. The governor shall appoint two members from a list of at least four persons nominated by the Vermont state sheriffs' association, two members from a list of at least four persons nominated by the Vermont police chiefs' association, and two members from among the citizens of this state. Their terms shall be three years.

(b) Membership on the council does not constitute the holding of an office for any purpose, and members of the council shall not be required to take and file oaths of office before serving on the council. The council shall not exercise any portion of the sovereign power of the state.

(c) The members of the council shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(d) A member of the council shall not be disqualified from holding any public office or employment, and shall not forfeit any office or employment, by reason of his appointment to the council, notwithstanding any statute, ordinance, or charter to the contrary.—1967, No. 189, § 2, eff. April 17, 1967; amended 1971, No. 120, § 46(a), eff. July 1, 1971.

HISTORY

Amendments—1971. Subsection (a): Attached council to department of public safety.

§ 2353. Membership; temporary provision

The first members of the Vermont law enforcement training council shall be appointed as follows: two for a term of one year; two for a term of two years; two for a term of three years. One chief of police and one citizen appointee shall be appointed for the first one year term; one chief of police and one sheriff shall be appointed for the first two year term and one citizen appointee and one sheriff shall be appointed for the first three year term. The governor shall appoint an interim chairman until such time as the council elects a permanent chairman.—1967, No. 189, § 3, eff. April 17, 1967.

§ 2354. Meetings

The council shall meet at least four times each year. Special meetings may be called by the chairman and shall be called by him at the request of the commissioner of public safety or upon the written request of six members of the council. The council shall establish requirements as to quorum and procedures with respect to the conduct of its meetings and other affairs. However, all recommendations by the council to the commissioner of public safety under section 2355 of this title shall require the affirmative vote of five members of the council.—1967, No. 189, § 4, eff. April 17, 1967; amended 1971, No. 120, § 46(b), eff. July 1, 1971.

HISTORY

Amendments—1971. Substituted "commissioner of public safety" for "attorney general".

§ 2356. Adoption of regulations

The commissioner of public safety, in his discretion, may adopt any or all of the regulations recommended by the Vermont law enforcement training council to him under this chapter, which regulations when adopted shall have the force of law.—1967, No. 189, § 6, eff. April 17, 1967; amended 1971, No. 120, § 46(b), eff. July 1, 1971.

HISTORY

Amendments—1971. Substituted "commissioner of public safety" for "attorney general".

§ 2357. Powers and duties of the executive director

The executive director of the Vermont law enforcement training council, on behalf of the council, shall have the following powers and duties, subject to the supervision of the council and to be exercised only in accordance with regulations adopted by the commissioner of public safety under this chapter:

(1) To approve law enforcement officer training schools, to issue certificates of approval to those schools, and to revoke that approval or certificate;

(2) To certify, as qualified, instructors at approved law enforcement officer training schools and to issue appropriate certificates to those instructors;

(3) To certify law enforcement officers who have satisfactorily completed basic training programs and to issue appropriate certificates to those law enforcement officers;

(4) To cause studies and surveys to be made relating to the establishment, operation, and approval of law enforcement officer training schools;

(5) To consult and cooperate with law enforcement officer training schools for the development of advanced in-service training programs for law enforcement officers;

(6) To consult and cooperate with universities, colleges, and institutes for the development of specialized courses of study, where appropriate;

(7) To consult and cooperate with other departments and agencies of the state and federal government concerned with law enforcement officer training;

(8) To administer examinations and to provide courses for persons who wish to make application for licensing as a private detective as provided in section 9506 of Title 32, and to charge the applicant a reasonable fee, based on the cost of administering examinations or providing courses.

(9) To perform such other acts as may be necessary or appropriate to carry out his powers and duties as set forth in this chapter;

(10) To report to the council at each regular meeting of the council and at such other times as may be required.—1967, No. 189,

§ 2355. Powers and duties

(a) The Vermont law enforcement training council shall recommend to the commissioner of public safety regulations with respect to:

(1) The approval, or revocation thereof, of law enforcement officer training schools;

(2) Minimum courses of study, attendance requirements, and equipment and facilities to be required at approved law enforcement officer training schools;

(3) Minimum qualifications for instructors at approved law enforcement officer training schools;

(4) The requirements of minimum basic training which law enforcement officers appointed to probationary terms shall complete before being eligible for permanent appointment, and the time within which that basic training shall be completed following appointment to a probationary term;

(5) The requirements of minimum basic training which law enforcement officers not appointed for probationary terms but appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment, and the time within which that basic training shall be completed following appointment on a non-permanent basis;

(6) The requirements of minimum basic training which law enforcement officers appointed on a permanent basis should complete in order to retain their status;

(7) Categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements with respect to those categories or classifications.

(b) [Repealed.]

(c) The council shall appoint an executive director, with the approval of the commissioner of public safety, who shall hold office during the pleasure of the council. He shall perform such duties as may be assigned to him by the council. He is entitled to compensation, as fixed by the council, and reimbursement for the expenses within the amounts available by appropriation. The executive director may appoint such officers, employees, agents, and consultants as he may deem necessary, prescribe their duties, fix their compensation, and provide for reimbursement of their expenses within the amounts available therefor by appropriation and with the approval of the council.

(d) The council may, in addition;

(1) Accept and administer under this chapter and for its purposes contributions, capital grants, gifts, services, and other financial assistance from any individual, association, corporation or other organization having an interest in law enforcement training, and from this state and the United States and any of their agencies and instrumentalities, corporate or otherwise.

(2) Perform such other acts as may be necessary or appropriate to carry out the purposes of this chapter.—1967, No. 189, § 5, eff. April 17, 1967; amended 1971, No. 120, § 46(b), (c), eff. July 1, 1971.

HISTORY

Amendments—1971. Subsections (a), (c): Substituted "commissioner of public safety" for "attorney general".
Subsection (b): Repealed.

§ 7, eff. April 17, 1967; amended 1969, No. 282 (Adj. Sess.), § 4, eff. July 1, 1970; 1971, No. 120, § 46(b), eff. July 1, 1971.

HISTORY

Amendments—1971. Substituted "commissioner of public safety" for "attorney general".

—1969 (Adj. Sess.). Subdivisions (8), (9): Renumbered as (9) and (10) respectively and a new subdiv. (8) added.

§ 2358. Minimum training standards

(a) Notwithstanding any statute or charter to the contrary, after July 1, 1968, no person may receive an original appointment on a permanent basis as a regular police officer of any town, city or incorporated village unless he has previously been awarded a certificate by the executive director of the Vermont law enforcement training council attesting to his satisfactory completion of an approved training program; and every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a police officer of any town, city or incorporated village shall forfeit that position unless he previously has satisfactorily completed, or within the time prescribed by regulations made by the commissioner of public safety under this chapter satisfactorily completes, a basic law enforcement training program for temporary or probationary officers and is awarded a certificate by the director attesting thereto.

(b) Any town, city or incorporated village may adopt such rules as it may consider appropriate to further the purposes of this chapter; which rules may require a regular police officer serving on a permanent basis to complete satisfactorily the applicable in-service law enforcement training program adopted by the commissioner of public safety under this chapter and to receive a certificate from the executive director or the council. If those rules so state, the failure of the officer so to complete that program and receive the certificate shall constitute cause for dismissal or demotion.

(c) The term "regular police officer", as used in this section, means a member of a police force or other organization of a municipality who is responsible for the prevention or detection of crime and the enforcement of the general criminal laws of the state, but does not include any person serving solely by virtue of his occupying any other office or position, nor does that term include a sheriff or a deputy sheriff.—1967, No. 189, § 8, eff. April 17, 1967; amended 1969, No. 282 (Adj. Sess.), § 1, eff. July 1, 1970; 1971, No. 120, § 46(b), eff. July 1, 1971.

HISTORY

Amendments—1971. Substituted "commissioner of public safety" for "attorney general".

—1969 (Adj. Sess.). Subsection (a): Substituted "approved training program" for "approved basic training program".

Subsection (c): Deleted exception relating to supervisory personnel.

§ 2359. Training of constables

A constable may attend any law enforcement training school at his own expense or at the expense of his municipality if its legislative body approves.—Added 1969, No. 282 (Adj. Sess.), § 2, eff. July 1, 1970.

HISTORY

Revision note. Section was enacted without a catchline which was added.

§ 2360. Repealed. 1971, No. 7, § 3, eff. July 1, 1971.

HISTORY

Former § 2360 was derived from 1969, No. 302 (Adj. Sess.), § 1 and is now covered generally by § 311 of Title 24.

Temporary appointment. 1971, No. 7, § 1, eff. Feb. 1, 1971, provided: "Notwithstanding the provisions of 20 V.S.A. § 2360(b), a part-time deputy sheriff may be appointed to serve until May 1, 1971. A commission issued under the provisions of this section shall indicate:

"(1) that such deputy sheriff has not obtained a certificate required under 20 V.S.A. § 2360(b), and

"(2) that such appointment shall expire and become void on May 1, 1971."

Chapter 15. Powers of Enforcement Officers

SECTION

- 1601. Identification of motor vehicles.
- 1602. Traffic control.
- 1603. Investigation of accidents.
- 1604. Seizure of motor vehicles.
- 1605. Summons, service of warrant.
- 1606. [Repealed.]

HISTORY

Revision note. In §§ 1601-1605 of this title, "commissioner" apparently refers to the commissioner of public safety, since these sections were in the title of V.S. 1947 relating to that department. In § 1603, however, the commissioner to whom the state's attorney makes report is, apparently, the commissioner of motor vehicles, who has power to suspend or revoke licenses under §§ 671-674 of this title.

§ 1601. Identification of motor vehicles

The commissioner, his deputies and all enforcement officers may at all times, with or without process, stop any motor vehicle to examine identification numbers and marks thereon and raise the hood or engine cover if necessary to accomplish their purpose, and may demand and inspect the driver's license, registration certificate and permits. They may also at all times, with or without process, enter public garages, parking places and public buildings where motor vehicles are stored or kept, for the purpose of examining identification numbers and marks thereon and may also, in

like manner, examine any motor vehicle standing in any public place or way. They may in like manner examine any motor vehicle to ascertain whether its equipment complies with the requirements of law relating to motor vehicles.

HISTORY

Source. V.S. 1947, § 10,213. P.L. § 5012. 1927, No. 69, § 2. 1925, No. 70, § 12.

§ 1602. Traffic control

The commissioner and enforcement officers may control and direct motor vehicle traffic. They may arrest violators of the motor vehicle laws and the laws relative to lights on teams, on view without process, and take such persons before a court having jurisdiction of the offense. They may control and direct all vehicles in places of traffic congestion.

HISTORY

Source. V.S. 1947, § 10,214. 1939, No. 110. P.L. § 5013. 1933, No. 157, § 4717. 1927, No. 69, § 2. 1925, No. 70, § 13. G.L. § 4715. 1917, No. 234, § 4600. 1912, No. 148. P.S. § 4096. 1906, No. 113, § 3. 1904, No. 86, §§ 4, 9.

ANNOTATIONS

1. Arrest for local violations. State motor vehicle inspector has right to make arrest for violation of village ordinance. 1938 Op. Atty. Gen. 504.

2. Commitment. When court of record orders motor vehicle inspector, who made arrest of person charged with violation of motor vehicle laws, to commit such person, in default of bail, to keeper of jail until he finds good and sufficient securities, or is otherwise discharged in accordance with law, such commitment is lawful. 1940 Op. Atty. Gen. 433.

A motor vehicle inspector may commit to county jail person who has been convicted of a motor vehicle violation and sentenced to imprisonment in such jail; if sentenced to the house of correction at Windsor, commitment should be made by sheriff of county in which mittimus was issued as provided by 24 V.S.A. § 296. 1940 Op. Atty. Gen. 435.

§ 1603. Investigation of accidents

The commissioner shall forthwith after receiving notice of an accident where a personal injury occurs, and, in case of notice of an accident where an injury occurs to property, may cause such accident to be investigated by an enforcement officer, and where such investigation reveals facts tending to show culpability on the part of any motor vehicle owner or operator, he shall cause such facts to be reported to the state's attorney of the county where the accident occurred. The state's attorney shall further investigate the accident and may hold an inquest as provided by sections 5131-5137 of Title 13. After such investigation or inquest, he shall report forthwith to the commissioner the result thereof together with his recommendation as to the suspension of the license of the operator of any motor vehicle involved in the accident.

HISTORY

Source. V.S. 1947, § 10,215. P.L. § 5014. 1927, No. 69, § 2. 1925, No. 70, § 14. G.L. § 4712. 1917, No. 132, §§ 8, 9.

Cross references. Police report of arrest or accident, see § 1011 of this title.

Subchapter 4. Speed

§ 1141. Speed limits outside of cities and villages

Outside the limits of a city or incorporated village, the maximum rate of speed on all public streets and highways, except the national system of interstate and defense highways, for a motor vehicle shall be fifty miles per hour. However, when a traffic committee composed of the commissioner of highways and the commissioner of public safety and the commissioner of motor vehicles shall determine, upon the basis of an engineering and traffic investigation, that the maximum speed limit of fifty miles per hour outside the limits of a city or incorporated village, is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, except the national system of interstate and defense highways, the committee may determine and declare a reasonable and safe speed limit thereat and may alter or change existing speed limits and which shall, thereafter, be effective at all times when signs in such form as the traffic committee shall designate giving notice thereof are erected by the department of highways at such intersection, or other place or part of the highways. Outside the limits of a city or incorporated village, no signs changing a speed limit shall be effective on the state highways, except the national system of interstate and defense highways, unless approved by the traffic committee.—Amended 1961, No. 105; 1963, No. 61.

HISTORY

Source. 1949, No. 244, § 1. V.S. 1947, § 10,246. 1947, No. 94, § 2. 1937, No. 126, § 2.

Amendments—1963. Added commissioner of motor vehicles to the traffic committee.

—1961. Established maximum speed limit on all public streets and highways (outside limits of city or incorporated village) of 50 miles per hour for all motor vehicles, in lieu of 50 miles per hour for pleasure vehicles and 45 miles per hour for pleasure vehicles with trailers or semi-trailers attached, motor trucks or buses; and inserted exceptions with reference to national system of interstate and defense highways.

Cross references. Liability for damages resulting from infraction of section, see § 1492 of this title.

Lights creating hazards, power of traffic committee, see § 1454 of Title 19.

Municipal traffic regulations, approval by traffic committee, see § 1003 of this title.

§ 1143. Police and fire vehicles

The speed limitations set forth in section 1141 of this title shall not apply to vehicles when operated with due regard for safety under the direction of law enforcement officers in the performance of their duties, nor to fire department vehicles when traveling in response to an alarm, nor to public or private ambulances when traveling in emergencies.

HISTORY

Source. V.S. 1947, § 10,247. 1937, No. 126, § 3.

§ 1181. Negligent operation

A motor vehicle shall not be operated on a public highway, as defined in section 4 of this title, in a careless or negligent manner, nor upon a bet, wager or race, nor for the purpose of making a record, nor in a manner to endanger or jeopardize the safety, life or property of a person.

HISTORY

Source. V.S. 1947, § 10,283. 1947, No. 202, § 5447. P.L. § 5149. 1929, No. 69, § 1. 1925, No. 70, § 86. G.L. § 4697. 1917, No. 254, § 4591. 1908, No. 101. P.S. § 4091. 1906, No. 113, § 1. 1904, No. 86, § 8. 1902, No. 64, §§ 1, 2.

Cross references. Police report of arrest or accident, see § 1011 of this title.

ANNOTATIONS

| | |
|----------------------------------|-------------------------------|
| Burden of proof in negligence, 4 | Pedestrians, 6 |
| Common law, 1 | Pleading, 8 |
| Duty imposed, 2 | Races, 7 |
| Negligence, 3, 4 | Schoolhouse or school zone, 5 |
| Burden of proof, 4 | |
| Generally, 3 | |

1. Common law. Provision that motor vehicles shall not be operated on public highway in careless or negligent manner, is declaratory of common law of negligence. *Hunter v. Preston* (1933) 105 Vt. 327, 166 Atl. 17.

2. Duty imposed. Under this section driver of automobile has duty of exercising care and prudence that careful and prudent man would exercise in same circumstances. *McAndrews v. Leonard* (1925) 99 Vt. 512, 134 Atl. 710, 19 B.U.L. Rev. 330.

3. Negligence—Generally. Words “in a careless or negligent manner” as used in this section refer simply to ordinary negligence such as would impose civil liability and to support conviction thereunder there is no necessity for state to produce evidence tending to show criminal negligence, as it is commonly defined. *State v. LaBonte* (1958) 120 Vt. 465, 144 A.2d 792.

Although driving an automobile in excess of 25 miles per hour was prima facie evidence of negligence under this section, excess speed alone was insufficient to show proximate cause of injury. *Wellman v. Wales* (1923) 97 Vt. 245, 122 Atl. 659, same case 98 Vt. 437, 129 Atl. 317.

4. —Burden of proof. While section relieved plaintiffs in their opening from doing more to establish defendant's negligence than to show that he was driving his car in excess of the rate of speed prescribed, yet, when countervailing evidence was produced, the burden of establishing defendant's negligence on all evidence was upon plaintiffs. *Duprat v. Chesmore* (1919) 94 Vt. 218, 110 Atl. 305.

5. Schoolhouse or school zone. Motorist driving his vehicle near a schoolhouse or through a school zone is under duty to exercise a high or greater degree of caution, particularly at the hour when children may be expected to be going to, or returning from school, keeping his car under such control that it can be stopped on as short as possible notice; he must anticipate childish conduct and drive with the knowledge that children of tender years may be expected to act upon childish impulses; and he should drive at a reduced rate of speed, maintaining a vigilant lookout, and being alert to sound warnings of his approach. *Parker v. Gunther* (1960) 122 Vt. 68, 164 A.2d 152.

6. Pedestrians. While there is no specific statutory requirement that operator of motor vehicle approaching pedestrians on highway shall sound a signal, this section imposes obligation to give such signal if in the exercise of ordinary prudence it is necessary to warn pedestrians of approaching automobile. *Healy v. Moore* (1936) 103 Vt. 324, 187 Atl. 679.

Pedestrian crossing public highway has right to assume, nothing appearing to contrary, that driver of any approaching automobile will obey law and not drive in a careless or negligent manner. *Aiken v. Metcalf* (1916) 90 Vt. 196, 97 Atl. 669, same case 92 Vt. 57, 102 Atl. 320.

7. Races. Hill-climbing contest in state forest park is “race” and “for the purpose of making a record” conducted upon a public highway and, as such, is prohibited by this section. 1954 Op. Atty. Gen. 235.

8. Pleading. Complaint was insufficient, although following language of statute, where it did not specify the particular street on which alleged offense was committed. *State v. Aaron* (1916) 90 Vt. 183, 97 Atl. 659, 115 A.L.R. 357.

§ 1182. —Penalties

(a) A person who violates a provision of section 1181 of this title shall be imprisoned not more than three months or fined not more than \$300.00, or both, for the first offense, and for each subsequent offense shall be imprisoned not more than six months or fined not more than \$500.00, or both.

(b) If the death of any person results from the careless or negligent operation of a motor vehicle, the person convicted of such careless and negligent operation, in lieu of any other penalty imposed by subsection (a), shall be imprisoned not more than five years, or fined not more than \$2,000.00, or both. The provisions of this subsection shall not be construed to limit or restrict prosecutions for manslaughter.

HISTORY

Source. V.S. 1947, §§ 10,285, 10,286. P.L. §§ 5151, 5152. 1929, No. 69, § 1. 1925, No. 70, § 86. G.L. § 4698. P.S. § 4092. 1906, No. 113, § 2.

§ 308. Suspension and revocation of registration

The commissioner may suspend or revoke the registration of any motor vehicle, registered in this state, and repossess himself of the number plates assigned to it, when he is satisfied that:

(1) Such vehicle has been stolen and that the registrant thereof has no legal title thereto; or

(2) Such vehicle is in such poor mechanical condition as to make its operation and use a menace or danger; or

(3) Such vehicle is operated without proper equipment after the owner thereof has been notified to procure and use such equipment as is required by law or department regulations; or

(4) The owner of such motor vehicle has perpetrated some fraud upon the motor vehicle department; or

(5) The owner of such motor vehicle is an habitual user of intoxicating liquor to excess.

HISTORY

Source. V.S. 1947, § 10,053. P.L. § 4994. 1933, No. 157, § 4698. 1927, No. 69, § 2. 1925, No. 70, § 36.

§ 1011. Police to report

Every law enforcement officer who makes an arrest for a violation of the motor vehicle laws, or who investigates a motor vehicle accident, shall forward a written report on forms prescribed and furnished by the commissioners of motor vehicles and public safety and approved by the attorney general with respect to any matter affecting the substantive rights of any person, to the central records division of the department of motor vehicles within ten days after the arrest is made or the accident is investigated.—
Added 1967, No. 72.

§ 1709. Report of convictions to commissioner of public safety

Clerks of county and district courts and justices of the peace shall immediately report the conviction of each person adjudged guilty in their respective courts of violating this title, together with the sentence, the number of the operator's license of such convicted person, and such other facts as he may require, to the commissioner of public safety for filing in the criminal information center of the department of public safety.—Amended 1965, No. 85; No. 194, § 10, eff. July 1, 1965, operative Feb. 1, 1967; 1967, No. 138; 1969, No. 290 (Adj. Sess.), § 11, eff. July 1, 1970.

HISTORY

Source. 1965, No. 85. 1949, No. 240, § 3. V.S. 1947, § 10,282. P.L. § 5148. 1927, No. 69, § 2. 1925, No. 70, § 85. G.L. § 4720. P.S. § 4098. 1906, No. 113, § 3. 1904, No. 86, § 9.

Amendments—1969 (Adj. Sess.). Amended generally to provide for report to commissioner of public safety rather than department and commissioner of motor vehicles.

—1967. Amended section generally to provide for notification of conviction to department of motor vehicles only.

—1965, No. 85: Rephrased section generally requiring filing in quintuplicate rather than quadruplicate and added last sentence.

No. 194: Substituted "district courts" for "municipal courts".

For effective date, transitory provisions, see note set out under § 421a of Title 4.

Cross references. Police report of arrest or accident, see § 1011 of this title. Recommendation that operator be required to attend a driver re-training course, see § 722 of this title.

Subchapter 3. Suspension and Revocation

§ 671. Procedure

(a) In his discretion, the commissioner may suspend indefinitely or for a definite time, the license of an operator or the right of an unlicensed person to operate a motor vehicle upon not less than five days' notice. He may order the license delivered to him, whenever he has reason to believe that the holder thereof is an improper or incompetent person to operate a motor vehicle, or is operating improperly so as to endanger the public. If, upon receipt of such notice, the person so notified shall request a hearing, such suspension shall not take effect unless the commissioner, after hearing, determines that the suspension is justified. Not less than six months from the date of suspension and each six months thereafter, a person upon whom such suspension has been imposed may apply for reinstatement of his license or right to operate or for a new license. Upon receipt of such application, the commissioner shall thereupon cause an investigation to be made and, if so requested, conduct a hearing to determine whether such suspension should be continued in effect.

(b) In his discretion, the commissioner may suspend for a period not exceeding fifteen days the license of an operator, or the right of an unlicensed person to operate a motor vehicle, without hearing, whenever he finds upon full reports submitted by an enforcement officer or motor vehicle inspector that the safety of the public has been or will be imperiled as a result of the operation of a motor vehicle by such operator or unlicensed person.

(c) Except as otherwise provided in this title, in his discretion, the commissioner may suspend for a definite time the license of an operator, or the right of an unlicensed person to operate a motor vehicle whenever such person has been convicted of an offense specified in this title or of any other offense, the commission of which he has reason to believe may involve the operation of a motor vehicle or may render the person guilty thereof an unfit person to operate a motor vehicle, but such suspension shall not be for a period in excess of the maximum term of imprisonment provided by statute for the offense involved.

(d) The commissioner shall not suspend the license of an operator, or the right of an unlicensed person to operate a motor vehicle, while a prosecution for an offense under this title is pending against such person, unless he finds upon full reports submitted to him by an enforcement officer or motor vehicle inspector that the safety of the public will be imperiled by permitting such operator or such unlicensed person to operate a motor vehicle, or that such person is seeking to delay the prosecution, but if he so finds, he may suspend such license or right pending a final disposition of the prosecution.

(e) The commissioner shall not suspend the license of an operator, or the right of an unlicensed person to operate a motor vehicle for any cause which has constituted the subject matter of a prosecution in which the conviction of such person has not been obtained.

(f) The commissioner shall revoke licenses when required by law, and such revocation shall not entitle the holder of such license to hearing.

(g) Hearings under the provisions of this section shall be held in accordance with the provisions of sections 105-107 of this title and at such time and place as the commissioner may determine. It shall be in the discretion of the commissioner to determine as to the granting to a petitioner therefor of hearings and subsequent hearings upon suspension orders issued under the provisions of subsections (b)-(d) of this section.

HISTORY

Source. V.S. 1947, § 10,160. 1945, No. 104, §§ 1-3. 1939, No. 118. P.L. § 5108. 1933, No. 157, § 4806. 1927, No. 74, § 3. 1927, No. 69, § 2. 1925, No. 70, § 83. G.L. § 4715. 1917, No. 254, § 4600. 1912, No. 148. P.S. § 4096. 1906, No. 113, § 3. 1904, No. 86, §§ 4, 9.

Cross references. Police report of arrest or accident, see § 1011 of this title.

Suspension of license for failure to show adequate financial responsibility, see § 501 et seq. of this title.

Suspension of license for second infraction of speed laws, see § 1144 of this title.

ANNOTATIONS

1. Period of time. The period of time for which commissioner may suspend or revoke the license of persons convicted of driving while under suspension under § 674 of this title is graduated depending on the terms of imprisonment provided therein. 1958-60 Op. Atty. Gen. 235.

2. Penalty. Under prior law the penalty provided was the same whether the violation be the first or a subsequent one—a fine (maximum of \$500), a term of imprisonment (maximum of two years), or both. 1958-60 Op. Atty. Gen. 235.

§ 671a. Suspension or revocation for out-of-state conviction

(a) The commissioner of motor vehicles may revoke or suspend the license of an operator or the right of an unlicensed person to operate a motor vehicle when the operator or person has been convicted of an offense by a court of any other state when the offense, if committed in Vermont, would authorize the commissioner to make the revocation or suspension, provided, however, that the commissioner may not order the revocation or suspension based upon any conviction of the operator in any other state until after notice and due hearing, if the person or operator of the motor vehicle requests such a hearing within ten days from notice by the commissioner; if no request for a hearing is made, the commissioner may revoke or suspend such license for the statutory period.

(b) Documentary evidence from another state shall be prima facie evidence only of the commission of the offense charged.

(c) An appeal from the decision of the commissioner of motor vehicles shall lie to a district court in the county of the residence of the person or operator provided such appeal is taken within thirty days from the sending by certified mail to the person or operator of such decision. Hearing before the district court shall be de novo and upon the decision of the district court adverse to the appellant, the clerk of said court shall certify such decision to the commissioner of motor vehicles who shall suspend or revoke the right to drive a motor vehicle accordingly.—1959, No. 234, §§ 1-3; amended 1965, No. 194, § 10, eff. July 1, 1965, operative Feb. 1, 1967.

HISTORY

Amendments—1965. "District court" substituted for "municipal court".

Effective date, transitory provisions, see note set out under § 421a of Title 4.

§ 672. Suspending or revoking right of nonresident operator

The commissioner may suspend or revoke the right of any nonresident operator to operate a motor vehicle in this state for the same causes and under the same conditions and in the same manner that he could suspend or revoke the license of any resident operator. Thereupon the right of such nonresident operator to operate any motor vehicle in this state shall terminate and he shall be subject to the same penalties as a resident operator who operates after the suspension or revocation of his license.

HISTORY

Source. V.S. 1947, § 10,161. P.L. § 5109. 1927, No. 74, § 3. 1927, No. 69, § 2. 1925, No. 70, § 84.

§ 673. Repealed. 1967, No. 147, § 53(b), eff. Oct. 1, 1968.

HISTORY

Former section 673 related to suspension of license of aid recipients.

ANNOTATIONS UNDER FORMER § 673

1. Bankruptcy. Where overseer of poor requests suspension of operator's license of person who received assistance, because he had been discharged in bankruptcy, the commissioner of motor vehicles should hold a hearing on the question of suspension, and require the town to show its claim against the bankrupt was not affected by the discharge in bankruptcy before suspending the bankrupt's license to operate. 1964-66 Op. Atty. Gen. 169.

2. Hearing. Commissioner may, in his discretion and before hearing, suspend operator's license of any person receiving assistance as provided in section. 1940 Op. Atty. Gen. 291.

§ 673a. Habitual offenders

(a) The commissioner shall revoke the license of an operator or the right of an unlicensed person to operate a motor vehicle for a period of two years when the person is an habitual violator of the motor vehicle laws.

(b) The term "habitual violator" as used herein shall mean any person who has been convicted in any court in this state of eight or more moving violations arising out of different incidents within a consecutive period of five years.

(c) Upon receipt of the notice of revocation, the person may within five days request a hearing solely for the purpose of verifying the conviction record, and the revocation shall not take effect until the hearing has been held in accordance with the provisions of sections 105-107 of this title and the record has been verified.—Added 1969, No. 231 (Adj. Sess.).

§ 674. Operating after suspension, revocation or refusal of license, penalty

(a) A person whose license or whose right to operate a motor vehicle has been revoked, suspended or refused by the commissioner of motor vehicles shall not operate or attempt to operate a motor vehicle upon a public highway until the right of such person to operate motor vehicles has been reinstated by such commissioner by subsequent license or otherwise. A person who violates a provision of this section shall be fined not more than \$500.00 or be imprisoned not less than ten days nor more than thirty days for the first offense, not less than thirty days nor more than ninety days for a second offense, and shall be imprisoned not less than ninety days nor more than six months for a third offense and not less than ninety days nor more than two years for each subsequent offense.

(b) The provisions of subsection (a) of this section with respect to imprisonment shall not be enforced when the violation is based on a license suspension or revocation on account of the nonpayment of a poll tax.—Amended 1959, No. 205, §§ 1, 2, eff. May 29, 1959.

HISTORY

Source. V.S. 1947, § 10,295. P.L. § 5160. 1927, No. 69, § 2. 1925, No. 70, § 91. G.L. § 4719. 1917, No. 132, §§ 8, 9.

Amendments—1959. Subsection (a): Changed penalty provision.
Subsection (b): Added.

ANNOTATIONS

Knowledge of suspension, 1
Penalty, 2
Prior convictions, 5, 6
Generally, 5
Separate proceedings, 6

Right to counsel, 4
Separate proceedings, 6
Suspension of sentence, 3

1. Knowledge of suspension. Defendant's alleged failure to receive delivery of notice of suspension of driver's license, mailed by certified mail, two notices of the arrival of which were placed in defendant's mailbox, was not sufficient to bar conviction for operating a motor vehicle after suspension of license. *State v. Cattinach* (1970) — Vt. —, 271 A.2d 828.

Where the evidence supports a finding that the offender had knowledge that his license had been suspended, actual delivery and receipt of the registered mail is not essential to a conviction under this section for driving under suspension. *State v. Hebert* (1964) 124 Vt. 377, 205 A.2d 816.

2. Penalty. The 1959 amendment was clearly intended to graduate the penalty, making it increasingly severe as to maximum imprisonment for each subsequent violation, but maintaining the same maximum fine. 1958-60 Op. Atty. Gen. 235.

For a first and second offense the language of this section appears to give court the option of assessing a fine, but subsequent offenses are punishable only by imprisonment. *Id.*

A person convicted for a third, or subsequent, time of driving under suspension, when the initial suspension arose out of nonpayment of poll taxes, could not be penalized, at least under this section. *Id.*

3. Suspension of sentence. Court had power to suspend sentence pursuant to section 1003 of Title 28. 1958-60 Op. Atty. Gen. 235.

4. Right to counsel. The maximum sentence under this section is 30 days for a first offense and the fact that a person when fined could elect the alternative sentence under § 7221 of Title 13 would not bring the matter within the 6-months period of punishment set out in § 6503 of Title 13, relating to assignment of counsel. 1964-66 Op. Atty. Gen. 112.

5. Prior convictions—Generally. This section does not provide the procedure to be followed in a case involving a prior conviction or convictions, however it is clear that the penalty is to be graduated according to the status of the respondent as to prior similar convictions and the procedure to be followed in such cases is discretionary with the trial court. *State v. Cameron* (1967) 126 Vt. 224, 227 A.2d 276.

Defendant convicted under this section could not be sentenced as recidivist where information did not charge him with prior convictions. *Id.*

If prosecution intends to ask that greater punishment be imposed because of prior convictions under this section, allegation of prior convictions is necessary in order that accused be clearly informed of charge he is called to meet and complaint must allege every fact affecting degree of punishment. *Id.*

Notice of intention by prosecution to ask that greater punishment be imposed because of prior convictions under this section must be given before arraignment or trial to provide accused with opportunity to resolve propriety of insisting on constitutional and statutory rights and this must be done by charging principal offense and prior convictions in two parts in complaint. *Id.*

Fact of prior convictions does not become material until after conviction of accused on substantive offense on trial and then only for purpose of enabling trial judge to impose proper sentence. *Id.*

6. —Separate proceedings. Where accused denies prior convictions, question is to be withheld from jury trying principal charge. *State v. Cameron* (1967) 126 Vt. 244, 227 A.2d 276.

Separate proceeding to determine liability of accused to punishment as subsequent offender is criminal rather than civil one and procedure in such case is in general same as in trials of criminal offenses with accused having rights granted on trial for criminal offense. *Id.*

If accused denies sufficiency of record alleged as to prior convictions or his identity with person so convicted and waives jury trial, question of prior convictions is to be resolved by trial court after hearing and findings of fact. *Id.*

§§ 1182-1195. Repealed. 1969, No. 267 (Adj. Sess.), § 11. eff. July 1, 1970.

HISTORY

Former §§ 1182-1195, relating to drunken driving are now covered by § 1201 et seq. of this title.

Prior to repeal:

Former § 1191 was amended by 1967, No. 362 (Adj. Sess.), § 1.

Former § 1192 was amended by 1967, No. 35.

Former § 1194 was amended by 1967, No. 362 (Adj. Sess.), § 2.

ANNOTATIONS UNDER FORMER § 1183

| | |
|-------------------------------|--|
| Admissibility of evidence, 9a | Intoxication (cont.) |
| Burden of proof, 8 | Evidence of, 3 |
| Charge to jury, 11 | Refusal to take test, 4 |
| Defenses, 7 | Operation of vehicle, 5 |
| Degree of intoxication, 2 | Place of operation, 6 |
| Evidence generally, 9 | Questions for court, 10a |
| Admissibility, 9a | Questions for jury, 10 |
| Evidence of intoxication, 3 | Refusal to take test for intoxication, 4 |
| Intent, 1 | Subsequent conviction, 12 |
| Intoxication, 2-4 | |
| Degree of, 2 | |

1. Intent. In prosecution under this section no question of intent is involved. *State v. Hedding* (1945) 114 Vt. 212, 42 A.2d 433.

2. Intoxication—Degree of. Person operating motor vehicle while in the slightest degree under the influence of intoxicating liquors is within the prohibition of this section. *State v. Bradbury* (1955) 118 Vt. 380, 110 A.2d 710; *State v. Storrs* (1932) 105 Vt. 180, 163 Atl. 560, 142 A.L.R. 560, 47 A.L.R.2d 588, 46 Yale L.J. 1414.

3. —Evidence of. Testimony of service station attendant in prosecution of defendant for driving in an intoxicated condition, that attendant saw defendant drive the automobile into service station while defendant was in an intoxicated condition, sufficiently constituted direct evidence of operation of vehicle by defendant. *State v. Bruce* (1967) 126 Vt. 367, 231 A.2d 107.

Recognition of fact of intoxication requires no peculiar scientific knowledge or training and may be evidenced by predisposing circumstances, namely, drinking of intoxicants and by prior and subsequent condition of subject. *State v. Coburn* (1960) 122 Vt. 102, 165 A.2d 349.

A layman is competent, on the basis of observation, to testify as to the state of respondent's sobriety. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

Recognition of fact that person is in drunken or intoxicated condition requires no peculiar scientific knowledge. *State v. Demers* (1954) 118 Vt. 175, 102 A.2d 845.

4. —Refusal to take test. Refusal of motorist, charged with driving while under influence of intoxicating liquor, to submit to any test, cannot be used to create any unfavorable inference against him. *State v. Hedding* (1961) 122 Vt. 379, 172 A.2d 599.

A criminal trial on a charge of operating a motor vehicle while under the influence of intoxicating liquor is a distinct and separate proceeding from a hearing to determine whether an operator's license should be suspended because of the holder's refusal to submit to a sobriety test. *State v. Muzzy* (1964) 124 Vt. 222, 202 A.2d 267.

5. Operation of vehicle. Under this section attempting to operate and operation mean the same thing. *State v. Parker* (1963) 123 Vt. 369, 189 A.2d 540.

By admittedly sitting behind steering wheel of an automobile, with engine running while car was in motion, a motorist was operating a motor vehicle within provisions of this section. *State v. Hedding* (1961) 122 Vt. 379, 172 A.2d 599.

Turning of ignition switch which put self-starter of automobile in motion was operating motor vehicle, within meaning of this section. *State v. Storrs* (1932) 105 Vt. 180, 163 Atl. 560, 47 A.L.R.2d 580, 46 Yale L.J. 1414.

Section intended to forbid intoxicated person to do anything regarding mechanism of motor vehicle whether it has effect on engine or not. *Id.*

Where defendant, while under influence of intoxicating liquor, steered or attempted to steer his automobile while it was being towed, he "operated" such automobile within meaning of this section. *State v. Tacey* (1930) 102 Vt. 439, 150 Atl. 68, 68 A.L.R. 1353, 47 A.L.R.2d 581.

6. Place of operation. This section does not provide that the offense involved must have been committed on an established, laid out, or public highway and an offense under this section need not necessarily occur on a public highway. *State v. Bruce* (1967) 126 Vt. 367, 231 A.2d 107.

Section is designed to protect public from injury to person or property by drunken operation of vehicles on the public highways. *State v. Bromley* (1952) 117 Vt. 223, 88 A.2d 833. See also *State v. Sanford* (1954) 118 Vt. 242, 108 A.2d 513.

A parking space used for public and general circulation of vehicles may be a public highway hereunder. *State v. Bromley* (1952) 117 Vt. 223, 88 A.2d 833.

7. Defenses. In prosecution for driving while under influence of intoxicating liquor, it was proper for defendant to account for his abnormal locomotion and coordination, where these conditions are substantially relied upon by the state. *State v. Brisson* (1955) 119 Vt. 48, 117 A.2d 255.

8. Burden of proof. When evidence relied upon to show that respondent was under influence of intoxicating liquor when he operated his automobile is entirely circumstantial, circumstances proved must exclude every reasonable hypothesis except that the respondent is guilty, and such evidence must be so cogent as to exclude every reasonable theory consistent with respondent's innocence. *State v. Sanford* (1954) 113 Vt. 242, 108 A.2d 516.

9. Evidence generally. Conviction of driving while intoxicated would be sustained where breath test and persuasive evidence of defendant's symptoms showed him to have been intoxicated and he admitted having had beer and whiskey the afternoon of his arrest. *State v. Magoon* (1970) — Vt. —, 264 A.2d 779.

Evidence of a prior conviction is inadmissible and prejudicial. *State v. Fournier* (1963) 123 Vt. 439, 193 A.2d 924.

Exclusion of question asked on cross-examination of arresting officer as to what complaint the witness made against the respondent when the latter was brought to the jail, the officer having testified as to the respondent's inebriated condition and the evidence being offered as tending to show that the officer was uncertain what offense ought to be charged, since record showed no warrant was issued until two days later, did not constitute abuse of discretion, since offered evidence had only remote bearing upon issue and was speculative in nature. *State v. Windsor Schoolcraft* (1939) 110 Vt. 393, 8 A.2d 632.

9a. Evidence—Admissibility. Failure to give defendant who voluntarily took intoximeter test warnings as to his right to counsel and to remain silent did not preclude admission of evidence as to result of such tests. *State v. La Fleche* (1969) 127 Vt. 432, 253 A.2d 124.

Trial court's ruling that state police officer trained in use of photoelectric intoximeter was competent to testify to results of test of breath of defendant accused of driving when under the influence was not subject to revision on appeal unless record made it clear that reception of the testimony was error as a matter of law. *State v. Magoon* (1970) — Vt. —, 264 A.2d 779.

It is not essential that devices for testing breath, such as the photoelectric intoximeter, be operated by a scientist, or that the operator understood the technical and scientific functioning of the device before the operator can be found competent to testify to the results. *Id.*

Proper administration of a breath test must be fully established before results may be admitted in evidence, including full proof that the equipment was in proper order, the operator qualified and the test correctly given. *Id.*

Where officer administering breath test with photoelectric intoximeter had sufficient knowledge, experience and training to properly set up, operate and read the intoximeter, the fact that he was unable to explain the technical workings of the intoximeter or precisely identify the constituents of the chemical substances used did not render the results of the test inadmissible as a matter of law. *Id.*

The results of accepted chemical testing methods need not be infallible to be admissible, and if a test affords reasonable assistance to the triers of facts, technical shortages in the manner or method of proof may affect the weight of the results but do not control their admissibility. *Id.*

10. Questions for jury. In absence of proper objection, evidence that a motor vehicle operator, charged with driving while under influence of intoxicating liquor, refused to take a test under § 1191 of this title was for consideration of jury. *State v. Hedding* (1961) 122 Vt. 379, 172 A.2d 599.

Where there was substantial evidence fairly and reasonably tending to prove that parking space, on which offense occurred, was at time of alleged offense open to public and general circulation of vehicles, issue of whether parking space constituted public highway was for jury. *State v. Bromley* (1952) 117 Vt. 228, 83 A.2d 833.

In prosecution for driving motor vehicle while under influence of intoxicating liquor, whether respondent or another was driver of car at time in question was question for jury. *State v. Coomer* (1932) 105 Vt. 175, 163 Atl. 585, 94 A.L.R. 1038.

10a. Questions for court. Whether state police officer was a qualified operator of photoelectric intoximeter used to administer breath test and whether test was properly conducted was for the trial court to determine on the evidence at hand. *State v. Magoon* (1970) — Vt. —, 264 A.2d 779.

11. Charge to jury. In a prosecution for driving while under the influence of intoxicating liquor, where evidence that the driver had refused to take a test under § 1191 of this title was for consideration of the jury due to lack of proper objection, trial court's charge which clearly pointed out that driver has right to refuse the tests was proper. *State v. Hedding* (1961) 122 Vt. 379, 172 A.2d 599.

Where supplemental charge, for purpose of curing error in original charge, was given after consideration of case by jury and when they were ready to report their verdict, but before its delivery; and after such supplemental

charge, to which no exception was taken either as to time or circumstances of delivery or otherwise, jury gave case further consideration and returned verdict, claimed error in original charge could not be raised by motion to set aside verdict. *State v. Foss* (1926) 100 Vt. 32, 154 Atl. 636.

Where supplemental charge, to which no objection was made or exception taken, was more favorable to respondent than original charge, and delivered at time to emphasize its purport in minds of jury, it was assumed that jury after retirement gave it careful consideration and due weight in reaching their verdict; hence prejudice to respondent did not appear. *Id.*

12. Subsequent conviction. On subsequent conviction court in its discretion could impose fine, suspend jail sentence and place defendant on probation but had no authority to remit fine imposed or any part thereof. 1936 Op. Atty. Gen. 578.

ANNOTATIONS UNDER FORMER § 1184

1. Duplicate analysis. Where blood test to determine degree of intoxication is made, neither this section nor 18 V.S.A. § 504 requires state to make a duplicate for and at request of person whose blood is tested. 1958 Op. Atty. Gen. 99.

ANNOTATIONS UNDER FORMER § 1185

Conviction, 2
Nature of revocation, 1

Procedure, 3
Reinstatement, 4

1. Nature of revocation. It is mandatory that commissioner revoke license, without hearing, of person convicted under section. 1940 Op. Atty. Gen. 291.

2. Conviction. Where state's attorney entered nolle, after motor vehicle operator who had pleaded guilty to driving under influence, later filed motion to strike plea, which was granted and case set for trial, there was no conviction and revocation of license was vacated as not authorized by section. 1940 Op. Atty. Gen. 290.

3. Procedure. Under this section the revocation of a license of a person convicted of operating a motor vehicle while under the influence of intoxicating liquor is not accomplished by order of the convicting court, nor is mandatory suspension included in the penal sanction which may be imposed under section 1183 of this title; by operation of this section suspension is accomplished forthwith by administrative action when judgment of guilty has been entered and the licensee identified as the offender. In *re Bolio v. Malloy* (1967) 126 Vt. 424, 234 A.2d 336.

4. Reinstatement. Until the specified period of suspension has expired, the commissioner is without authority to reinstate an operator's license and then only upon adequate proof that the applicant is a proper person to whom a license should be granted. In *re Bolio v. Malloy* (1967) 126 Vt. 424, 234 A.2d 336.

ANNOTATIONS UNDER FORMER § 1187

1. Procedure. Failure to allege a prior conviction in an information charging violation of section 1183 of this title, operating under the influence, does not prevent the commissioner of motor vehicles from revoking the offender's driver's license upon conviction for the second offense and from refusing to reissue such license until the expiration of six years, as provided by this section, since the suspension is not penal in nature but is designed to promote public safety and therefore the "recidivist" statute, section 674 of this title, does not apply, and also because the revocation is not by the convicting court, but by the commissioner pursuant to valid regulations. 1966-68 Op. Atty. Gen. 136.

2. Reinstatement. Upon a second conviction the commissioner is without authority to re-license an offender for a period of six years and only upon due proof that the applicant is a proper person to exercise operating privileges on the public highways. In *re Bolio v. Malloy* (1967) 126 Vt. 424, 234 A.2d 336.

Where petitioner's identity with two offenses of operating motor vehicle while under influence of intoxicating liquor or drugs was established, commissioner of motor vehicles was without authority to hear and determine his application for reinstatement of his license to operate motor vehicle until expiration of six-year period specified by this section whether or not the first conviction was alleged and proved in prosecution for second offense. *Id.*

ANNOTATIONS UNDER FORMER § 1188

Arrest, 3
Consent required, 1
Evidence, 6
Offense, defined, 2

Questions for court, 8
Questions for jury, 7
Unconscious person, 5
Waiver of rights, 4

1. Consent required. Consent to the taking of any of the permitted tests is required to be real and nowhere do these statutes substitute an implication for an expressed consent to a test. *State v. Ball* (1962) 123 Vt. 26, 179 A.2d 466.

2. Offense, defined. When consideration is given to every word and phrase in this section, it is concluded that the legislature intended the words "any offense" as used herein to include a situation where a person is not actually seen driving but the arresting officer has taken him into custody for the offense of intoxication, under section 660 of Title 7, and has reasonable grounds to believe that the person was operating a motor vehicle while intoxicated. 1964-66 Op. Atty. Gen. 293.

3. Arrest. That defendant accused of driving under the influence of intoxicating liquor had not been arrested or taken into custody prior to the time he consented to a blood test to determine alcoholic content did not render the results of the test inadmissible. *State v. Bassett* (1970) — Vt. —, 266 A.2d 438.

Arrest is not a statutory prerequisite to the admissibility of a chemical breath test analysis under the provisions of this section if such test is administered with the respondent's consent. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

4. Waiver of rights. Agreement by a motorist to the taking of a blood sample under this section does not waive his rights under statutes dealing with the taking of blood in a prosecution for driving while under the influence of intoxicating liquor. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

5. Unconscious person. Under this and the following sections of this title, blood tests taken from those unconscious from injury or drink are inadmissible in evidence in a driving while intoxicated prosecution, unless the respondent consents, at some point, either to the taking or the admission of the results. *State v. Ball* (1962) 123 Vt. 26, 179 A.2d 466. But see, *State v. Pierce* (1958) 120 Vt. 372, 141 A.2d 419.

6. Evidence. Trial court's ruling that state police officer trained in use of photoelectric intoximeter was competent to testify to results of test of breath of defendant accused of driving when under the influence was not subject to revision on appeal unless record made it clear that reception of the testimony was error as a matter of law. *State v. Magoon* (1970) — Vt. —, 264 A.2d 779.

It is not essential that devices for testing breath, such as the photoelectric intoximeter, be operated by a scientist, or that the operator understood the technical and scientific functioning of the device before the operator can be found competent to testify to the results. *Id.*

Proper administration of a breath test must be fully established before results may be admitted in evidence, including full proof that the equipment was in proper order, the operator qualified and the test correctly given. *Id.*

Where officer administering breath test with photoelectric intoximeter had sufficient knowledge, experience and training to properly set up, operate and read the intoximeter, the fact that he was unable to explain the technical workings of the intoximeter or precisely identify the constituents of the chemical substances used did not render the results of the test inadmissible as a matter of law. *Id.*

The results of accepted chemical testing methods need not be infallible to be admissible, and if a test affords reasonable assistance to the triers of facts, technical shortages in the manner or method of proof may affect the weight of the results but do not control their admissibility. *Id.*

The blood analysis of a driver, who has consented to the taking of blood, without arrest, is admissible in evidence. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

7. Questions for jury. The identification and authentication of a blood sample taken under this section and sections 1189-1194 of this title is a factual issue, so long as enough is shown to allow the trial court to rule favorably on its relevance, and also on its admissibility as against any possible prejudice to the respondent. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

8. Questions for court. Whether state police officer was a qualified operator of photoelectric intoximeter used to administer breath test and whether test was properly conducted was for the trial court to determine on the evidence at hand. *State v. Magoon* (1970) — Vt. —, 264 A.2d 779.

ANNOTATIONS UNDER FORMER § 1189

1. Presumption. Statute establishing presumption of intoxication in connection with tests for intoxication does not limit the introduction of any other competent evidence on the question of whether or not defendant was under the influence of intoxicating liquor. *State v. La Fleche* (1969) 127 Vt. 482, 253 A.2d 124.

Testimony by pathologist concerning statistical data with reference to blood tests generally, not in any way related to the respondent, does not neutralize the presumption of subdivision (3) of this section. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

ANNOTATIONS UNDER FORMER § 1190

Burden of proof, 5
Construction, 1
Presumptions, 4

Questions on appeal, 6
Retention of sample, 3
Who may request, 2

1. Construction. A reworking of statutory language will not be undertaken if the statutory provisions, as they stand, are meaningful in connection with their avowed purpose. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

The provisions of this section pertaining to chemical tests of the blood and section 1194 of this title pertaining to urine and breath tests stand separately and are not to be read into one another. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

2. Who may request. Under this section, only an officer of the department of public safety may request the making of a chemical blood test. *State v. Hall* (1962) 123 Vt. 26, 179 A.2d 466.

Fact that physician was called by radio dispatcher rather than enforcement officer did not constitute fatal defect in statutory procedure where breath test was taken precisely as ordered by section 1194 of this title by enforcement officer of department of public safety. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

3. Retention of sample. This section and section 1194 of this title do not require the retaining of a blood sample by the doctor or state trooper. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

4. Presumptions. Under this section the state is entitled to the benefit of a presumption that the doctor carried out his duties in accordance with the statutory admonition, unless and until contrary evidence is introduced. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

5. Burden of proof. Under this section the state need not demonstrate in detail that each step in the withdrawal of blood was consistent with care and prudence. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

6. Questions on appeal. Objection, made for the first time after verdict, that blood sample taken pursuant to this section was taken at the request of an improper officer, may not be considered on appeal in the absence of any evidence as to the identity of the officer. *State v. Lumbra* (1962) 122 Vt. 467, 177 A.2d 356.

ANNOTATIONS UNDER FORMER § 1191

Alternative choice, 4
Appeals, 5
Construction with other laws, 6
Criminal offense, 3

Inference on refusal, 2
Review, 7
Unconscious persons, 1

1. Unconscious persons. Under this section, blood tests taken from a respondent who is unconscious from injury or drink are inadmissible in evidence in a prosecution for driving while intoxicated unless the respondent consents, at some point, either to the taking or the admission of the results. *State v. Hall* (1962) 123 Vt. 26, 179 A.2d 466. But see, *State v. Pierce* (1958) 120 Vt. 373, 141 A.2d 419.

2. Inference on refusal. Refusal of a motorist, charged with driving while under the influence of intoxicating liquor, to submit to any test, cannot be used to create any unfavorable inference against him. *State v. Hedding* (1961) 122 Vt. 379, 172 A.2d 599.

3. Criminal offense. Refusal of a motor vehicle operator to take the tests offered is a privilege given by the legislature and suspension of license resulting therefrom is not a conviction of a criminal offense. *State v. Hedding* (1961) 122 Vt. 379, 172 A.2d 599.

4. Alternative choice. A person charged with a violation of section 1183 of this title is not required to submit to a test under this section, but is given the choice of taking the chance that an unfavorable test result would aid in his conviction, or by refusing, lose his license for a period of six months. *State v. Muzzy* (1964) 124 Vt. 222, 202 A.2d 267.

5. Appeals. The supreme court has no jurisdiction to entertain an appeal from an order made under this section. *State v. Muzzy* (1964) 124 Vt. 222, 202 A.2d 267.

6. Construction with other laws. A person under arrest only for intoxication under section 562 of Title 7 but not for operating a motor vehicle while under the influence of intoxicating liquor, is not subject to the summary hearing and possible suspension of his driving privileges under this section. *State v. Laplace* (1966) 126 Vt. 171, 224 A.2d 911.

The jurisdiction of the court to hold the summary hearing provided for in this section extends only to persons "so arrested" under section 1183 of this title, and who refuse the test. *Id.*

The arrest, or otherwise taking into custody provided for in section 1188 of this title, is "for any offense involving his operation of a motor vehicle while under the influence of intoxicating liquor". *Id.*

The offense referred to is set forth in section 1183 of this title entitled "Operating under influence of intoxicating liquor or drugs". *Id.*

Where respondent was not under arrest for a violation of section 1188 of this title, nor was he otherwise in custody for any violation of the motor vehicle law involving operating a motor vehicle while under the influence of intoxicating liquor or drugs at the time he refused to submit to the various tests, the statutory prerequisites had not been complied with to make his refusal to take such test subject to the risk of losing his right to operate a motor vehicle under this section and section 1188 of this title. *Id.*

7. Review. Where record showed that motorist refused to submit to blood alcohol test while under arrest for public intoxication but not while under arrest for violation of law involving operating vehicle while intoxicated, whether municipal court exceeded its jurisdiction in suspending operator's license under statute providing for such suspension in event of refusal to submit to such test after arrest for driving while intoxicated presented substantial question of law affecting merits and writ of certiorari would issue. *State v. Laplace* (1966) 126 Vt. 171, 224 A.2d 911.

ANNOTATIONS UNDER FORMER § 1194

Construction, 1
Discretion of court, 3
Evidence, 5
Instructions, 6

Questions for court, 7
Retention of blood samples, 4
Who may test, 2

1. Construction. The provisions of section 1190 of this title pertaining to chemical tests of the blood and this section pertaining to urine and breath tests stand separately and are not to be read into one another. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

2. Who may test. Trained enforcement officers of the department of public safety are authorized to administer chemical breath tests by means of an intoximeter. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

3. Discretion of court. It was within discretion of court to determine that police officer who gave breath test was qualified operator of intoximeter and operated it properly in view of evidence that officer had undergone period of training in operation of instrument, that he had given test at least twenty-four times and that he had been found competent by the inventor of the machine. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

4. Retention of blood samples. This section and section 1190 of this title do not require the retaining of a blood sample by the doctor or state trooper. *State v. Auger* (1963) 124 Vt. 50, 196 A.2d 562.

5. Evidence. Evidence that officer had made some 25 intoximeter tests and that he had received instructions concerning its operation was sufficient to establish that he had knowledge necessary to properly set up, operate and read intoximeter. *State v. La Fleche* (1969) 127 Vt. 482, 253 A.2d 124.

It is not required that officer understand the scientific principles of the intoximeter test in order to testify as to the results of the test he gave. *Id.*

Where evidence that intoximeters were periodically tested to assure their proper functioning came into the case without challenge and issue of good working order of intoximeter was not raised in trial court, defendant was precluded from prevailing on the point that there was no showing that the intoximeter was functioning properly. *Id.*

Trial court's ruling that state police officer trained in use of photoelectric intoximeter was competent to testify to results of test of breath of defendant accused of driving when under the influence was not subject to revision on appeal unless record made it clear that reception of the testimony was error as a matter of law. *State v. Magoon* (1970) — Vt. —, 264 A.2d 779.

It is not essential that devices for testing breath, such as the photoelectric intoximeter, be operated by a scientist, or that the operator understood the technical and scientific functioning of the device before the operator can be found competent to testify to the results. *Id.*

Proper administration of a breath test must be fully established before results may be admitted in evidence, including full proof that the equipment was in proper order, the operator qualified and the test correctly given. *Id.*

Where officer administering breath test with photoelectric intoximeter had sufficient knowledge, experience and training to properly set up, operate and read the intoximeter, the fact that he was unable to explain the technical workings of the intoximeter or precisely identify the constituents of the chemical substances used did not render the results of the test inadmissible as a matter of law. *Id.*

The results of accepted chemical testing methods need not be infallible to be admissible, and if a test affords reasonable assistance to the triers of facts, technical shortages in the manner or method of proof may affect the weight of the results but do not control their admissibility. *Id.*

Testimony of physician was properly received in prosecution of defendant for driving while intoxicated where physician had examined defendant at police barracks, even though he was an osteopath rather than a medical doctor because he had had training in medical fundamentals including effects of alcohol. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

6. Instructions. Where defendant failed to introduce evidence in rebuttal, charge that if there was 0.15 per cent or more by weight of alcohol in blood created presumption of being under the influence was not erroneous. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

7. Questions for court. Whether officer was a qualified operator of intoximeter was a question for trial court to first rule upon as a matter of discretion. *State v. La Fleche* (1969) 127 Vt. 482, 253 A.2d 124.

Whether state police officer was a qualified operator of photoelectric intoximeter used to administer breath test and whether test was properly conducted was for the trial court to determine on the evidence at hand. *State v. Magoon* (1970) — Vt. —, 264 A.2d 779.

Whether officer who gave breath test was qualified operator of intoximeter was question for trial court. *State v. Brown* (1965) 125 Vt. 58, 209 A.2d 324.

§ 1201. Operating vehicle under the influence of intoxicating liquor

(a) A person may not operate, attempt to operate, or be in actual physical control of any vehicle while under the influence of intoxicating liquor.

(b) For purposes of this subchapter, "intoxicating liquor" includes "alcohol," "malt beverages," "spirituous liquors" and "vinous beverages," as defined in section 2 of Title 7, and any beverage or liquid containing any of the foregoing.

(c) For the purposes of this subchapter, "vehicle" means a motor vehicle as defined in subparagraph (15) of section 4 of this title; and shall also mean a snowmobile as defined in section 801 of Title 31 when on a public highway.

(d) A person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug, substance or inhalant other than intoxicating liquor to a degree which renders him incapable of safely operating a vehicle may not operate, attempt to operate or be in actual physical control of any vehicle. The fact that a person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

(e) For the purposes of this subchapter, "drug" means regulated drugs as defined in section 4201 of Title 18.—Added 1969, No. 267 (Adj. Sess.), § 1, eff. July 1, 1970.

ANNOTATIONS

1. Sufficiency of evidence. Defendant's admission that he had had several cans of beer prior to accident involving auto he was driving, evidence that blood test taken at hospital after accident showed a .18% alcohol content, and testimony of doctor who was a qualified medical expert that alcoholic content of defendant's blood was between .15% and .20% when the accident occurred sustained verdict of guilty of driving under the influence. *State v. Bassett* (1970) — Vt. —, 266 A.2d 438.

2. Instructions. In trial for driving under the influence of intoxicating liquor, charge that if father gave consent to test of 18 year old defendant son's blood, consent was given, even if son did not consent, was error, as consent to a test can be given only by the person requested to take it, but reversal was not required where no harm or prejudice to defendant was not demonstrated. *State v. Bassett* (1970) — Vt. —, 266 A.2d 438.

§ 1202. Consent to chemical test

Any person who operates, attempts to operate or is in actual physical control of any vehicle in this state is deemed to have given his consent to the taking of a sample of his blood, breath, urine or saliva for the purpose of determining the alcoholic or drug content of his blood, breath, urine or saliva. If a person is incapable of decision, unconscious or dead it is deemed that his consent is given and that a sample of his blood, breath, urine or saliva may be taken. A sample shall be taken whenever a state police officer, chief of police, or a police officer employed full time by a town, city or incorporated village or sheriff has reasonable grounds to believe that the person was operating, attempting to operate or was in actual physical control of any vehicle while under the influence of intoxicating liquor or drugs.—Added 1969, No. 267 (Adj. Sess.), § 2, eff. July 1, 1970.

ANNOTATIONS

Advice of rights, 4
Basis of consent, 6
Consent of others, 5
Construction, 1

Determination of reasonable grounds, 2
Opinion or innocence of driver, 3
Purpose, ½

½. Purpose. Purpose of implied consent law is to encourage availability of scientific evidence of presence of alcohol or drugs, and the law is an expression of the legislature's preference for the results of chemical analysis as a means to affirm or reject the uncertain opinion of a layman derived from observation of external symptoms. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

1. Construction. This section deems consent to be given provided the arresting officer has a reasonable basis for believing that the driver was under the influence. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

2. Determination of reasonable grounds. The responsibility for deciding whether reasonable grounds for a request to submit to a test are present resides in the first instance with the officer, subject to review by the court where the driver is brought for arraignment. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

3. Opinion or innocence of driver. Driver's belief that officer had no cause to request him to submit to test did not excuse him from submitting to test. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

A claim of innocence of offense charged, even if vindicated by acquittal, affords no legal justification for refusing a test; the questions at the summary proceeding to determine reasonableness and the issues at the criminal trial are distinctly different. *Id.*

4. Advice of rights. Police request that driver, who had not been arrested, taken into custody, or questioned regarding accident he had been involved in, submit to test for alcoholic content, made after driver was taken to hospital for treatment, did not have to be preceded by Miranda warning. *State v. Bassett* (1970) — Vt. —, 266 A.2d 438.

The Miranda warning does not apply to blood tests. *Id.*

5. Consent of others. In trial for driving under the influence of intoxicating liquor, charge that if father gave consent to test of 18 year old defendant son's blood, consent was given, even if son did not consent, was error, as consent to a test can be given only by the person requested to take it, but reversal was not required where no harm or prejudice to defendant was demonstrated. *State v. Bassett* (1970) — Vt. —, 266 A.2d 438.

6. Basis of consent. The granting of a Vermont license to operate a motor vehicle is a privilege granted by the state and is subject to reasonable conditions in the interests of public safety, among which is operator's implied consent to submit to blood tests for alcohol. *State v. Dellveneri* (1969) — Vt. —, 258 A.2d 834.

§ 1203. Sample; report of analysis for person

(a) When a person submits to a blood test, only a physician or a registered nurse or a medical technician may withdraw blood for the purpose of determining the alcoholic or drug content therein. This limitation shall not apply to the taking of breath, urine or saliva specimens. A sufficient amount of blood, breath, urine or saliva, as the case may be, shall be taken to enable the person, at his option, to have made an independent analysis of the sample, and shall be held for 60 days unless sooner collected by the respondent for purposes of permitting an independent analysis. All analyses of blood, urine or saliva under this section shall be made by the state health laboratory, unless the person desires that the independent analysis be made elsewhere at his expense.

(b) Upon the request of the person who submits to a chemical test or tests, full information concerning the test or tests shall be made available to him or his attorney.

(c) The state health laboratory, in the case of a test of blood or urine or saliva, and in the case of a breath test the police department which conducted the test, shall forward a copy of all tests conducted to the department of motor vehicles.—Added 1969, No. 267 (Adj. Sess.), § 3, eff. July 1, 1970; amended 1971, No. 14, § 8, eff. March 11, 1971.

HISTORY

Amendments—1971. Subsection (a): Added exemption relating to taking of saliva specimen.

§ 1204. —; Presumptions

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating, attempting to operate or in actual physical control of a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood or breath at the time alleged as shown by chemical analysis of the person's blood, breath, urine or saliva shall give rise to the following presumptions:

(1) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood or breath, it shall be presumed that the person was not under the influence of intoxicating liquor.

(2) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood or breath, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(3) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood or breath, it shall be presumed that the person was under the influence of intoxicating liquor.

(b) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

(c) The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor, nor shall they be construed as requiring that evidence of the amount of alcohol in the person's blood, breath, urine or saliva must be presented.—Added 1969, No. 267 (Adj. Sess.), § 4, eff. July 1, 1970.

§ 1205. Failure to submit to test

If the person refuses to submit to a chemical test, it shall not be given. If the person is charged with a violation of the vehicle laws and upon arraignment enters a plea of not guilty, the court at the arraignment or as soon thereafter as is practicable shall hold a summary hearing, and take evidence relating to the reasonableness of the officer's belief that the respondent was operating, attempting to operate or in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs. Upon a finding by the court that the officer had sufficient reason to believe that the respondent was so operating, attempting to operate, or in actual physical control of a motor vehicle, the respondent's operator's license or non-resident operating privilege or the privilege of an unlicensed operator to operate a motor vehicle shall be suspended for a period of six months and the respondent shall deliver his operator's license, if any, to the court and the court shall forward it forthwith to the commissioner of motor vehicles.—Added 1969, No. 267 (Adj. Sess.), § 5, eff. July 1, 1970; amended 1971, No. 14, § 9, eff. March 11, 1971.

. HISTORY

Amendments—1971. Added references to "attempting to operate, or in actual physical control of a vehicle".

ANNOTATIONS

Admissibility of evidence, 3
Advice of rights, 7
Consent of others, 8
Determination of reasonable grounds, 5

Nature of proceeding, 1
Opinion or innocence of driver, 6
Refusal as evidence, 2
Sufficiency of evidence, 4

1. Nature of proceeding. Summary district court hearing on reasonableness of refusal to take intoxication test, and possibility of resultant loss of operator's license for six months is not a criminal proceeding. *State v. Dellveneri* (1969) — Vt. —, 258 A.2d 834.

The summary hearing under this section is in the nature of an administrative proceeding and is the determination of a civil matter, involving only the question whether defendant should have his license suspended for six months. *Id.*

Suspension of operator's license for unreasonable refusal to take intoxication test is not, in itself a conviction of a criminal offense. *Id.*

2. Refusal as evidence. Refusal to take tests may not be used as evidence in a criminal proceeding against refusing party over his objection. *State v. Dellveneri* (1969) — Vt. —, 258 A.2d 834.

3. Admissibility of evidence. Evidence of other persons' opinions that a driver was not under the influence does not refute an officer's observations and judgment that he was under the influence and is foreign to the issue and properly excluded. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

4. Sufficiency of evidence. Officer's observance of nearly empty vodka bottle and unopened beer can on floor of auto involved in collision, driver's difficulty in producing identification, slow and distinct speech, contradictory answers, bloodshot eyes, flushed face and "yes" answer to question whether he had been drinking gave the officer adequate and reasonable grounds for belief that driver was under the influence. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

5. Determination of reasonable grounds. The responsibility for deciding whether reasonable grounds for a request to submit to a test are present resides in the first instance with the officer, subject to review by the court in which the driver is brought for arraignment. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

6. Opinion or innocence of driver. Driver's belief that officer had no cause to request him to submit to test did not excuse him from submitting to test. *McGarry v. Costello* (1969) — Vt. —, 260 A.2d 402.

A claim of innocence of offense charged, even if vindicated by acquittal, affords no legal justification for refusing a test; the questions at the summary proceeding to determine reasonableness and the issues at the criminal trial are distinctly different. *Id.*

7. Advice of rights. Since deciding whether to refuse to take a test is a decision upon a purely administrative matter, i.e. the possible resultant suspension of license for six months following a civil summary hearing on reasonableness of refusal, failure of an arresting officer to advise person arrested of his right to counsel before requiring him to decide whether he will take intoxication test does not violate his constitutional rights or prevent a finding that refusal to submit to test was unreasonable. *State v. Dellveneri* (1969) — Vt. —, 258 A.2d 834.

Police request that driver, who had not been arrested, taken into custody, or questioned regarding accident he had been involved in, submit to test for alcoholic content, made after driver was taken to hospital for treatment, did not have to be preceded by Miranda warning. *State v. Bassett* (1970) — Vt. —, 266 A.2d 438.

The Miranda warning does not apply to blood tests. *Id.*

8. Consent of others. In trial for driving under the influence of intoxicating liquor, charge that if father gave consent to test of 18 year old defendant son's blood, consent was given, even if son did not consent, was error, as consent to a test can be given only by the person requested to take it, but reversal was not required where no harm or prejudice to defendant was demonstrated. *State v. Bassett* (1970) — Vt. —, 266 A.2d 438.

§ 1206. Revocation of license for driving under influence

After being notified of the conviction of a person for having violated a provision of section 1201 of this title, the commissioner of motor vehicles shall forthwith revoke the license of such person, or revoke his right to operate a motor vehicle, as the case may be. A license shall not be issued to such person until the expiration of one year from the date of such revocation, and then only upon the presentation of due proof to the commissioner of motor vehicles that such person is a proper person to whom a license should be granted.—Added 1969, No. 267 (Adj. Sess.), § 6, eff. July 1, 1970.

§ 1207. Reinstatement of license

A person whose license or right to operate a motor vehicle has been heretofore revoked by the commissioner of motor vehicles pursuant to the provisions of section 1206 of this title may make application for the issuance of a license on and after the expiration of one year from the date of such revocation, and such license may be issued pursuant to the provisions of section 1206 of this title.—Added 1969, No. 267 (Adj. Sess.), § 7, eff. July 1, 1970.

§ 1208. —; Second and third convictions

Upon a second conviction of a person of violating section 1201 of this title a license shall not be issued to that person until the expiration of six years from the date of such revocation, and then only upon presentation of due proof to the commissioner of motor vehicles that the person is a proper person to whom a license should be issued. Upon a third conviction a license shall not be issued to the person so convicted.—Added 1969, No. 267 (Adj. Sess.), § 8, eff. July 1, 1970.

§ 1209. Restrictive probationary license

(a) Notwithstanding the provisions of sections 1206–1208 of this title, if the commissioner finds that revocation of the license of an operator or his right to operate a motor vehicle imposes an extreme hardship for which there is no other practical remedy and the safety of the public will not be impaired, he may issue a restrictive probationary license to the operator subject to the restrictions and conditions he may deem necessary and subject to immediate revocation by him whenever he determines the license has been misused. However, he shall notify the department of public safety and the probation and parole division of the department of corrections immediately upon receipt of the application and may not issue the probationary license unless those departments do not object within thirty days and the commissioner may grant the license only after:

(1) A period of six months of a revocation for one year, three years of a revocation for six years, or five years of a revocation for life has passed, if the subsequent offense has not happened within a five-year period of the prior offense.

(2) A hearing has been held by the commissioner in his discretion.

(3) The operator has exhibited to the commissioner proof of financial responsibility in the sum set forth in section 801 of this title.

(b) The license issued by the commissioner shall:

(1) Be marked as a restrictive probationary license;

(2) Contain the restrictions and conditions under which it is issued;

(3) Be the only type of license that the operator may obtain during the original period of revocation and after that period, at the discretion of the commissioner depending on the record of the operator during the period of the license.—Added 1969, No. 267 (Adj. Sess.), § 9, eff. July 1, 1970.

§ 1210. Penalties

(a) A person who violates a provision of this subchapter shall be fined not more than \$500.00, or imprisoned for not more than two years, or both.

(b) If the death or injury of any person results from a violation of section 1201 of this title, the person convicted of the violation in lieu of any penalty imposed by subsection (a) of this section shall be imprisoned not more than five years or fined not more than \$2,000.00 or both; however, this subsection shall not prevent the imposition of a greater fine or sentence against any person who is convicted of any degree of homicide including manslaughter.—
Added 1969, No. 267 (Adj. Sess.), § 10, eff. July 1, 1970.

*From Motor Vehicles Laws of Vermont, 1971.

Section 2 - Physical Coordination Tests

Physical coordination tests were administered to a suspected DWI offender on the scene by the arresting officer prior to the issuing of the Miranda and the explanation of Vermont's Implied Consent statute. If the officer deemed it appropriate, he would use his audio recorder in conjunction with test administration, particularly to substantiate the degree of speech impairment. (Introducing the results of the enunciation test into court in this manner was found to be an effective tool in the prosecution of the subsequent case.) The suspect was asked to repeat the following:

- Methodist
- Anodized aluminum
- Aluminum linoleum
- Around the rugged rock the ragged rascal ran.

Additional tests to determine balance, coordination, and the ability to walk, turn and pick up coins were conducted in a manner prescribed in the State's Attorney Field Processing for Suspected DWI form (Fig. 21-2). These tests required the offender to:

- Balance on each foot with closed eyes; tip head back with closed eyes
- Touch right and left finger to nose; touch forefingers before nose
- Walk heel to toe; turn and walk back heel to toe
- Pick up coin lying near toes.

These psychomotor tests would be given but once, the results of which were recorded by the officer on the State's Attorney form which was later admitted into evidence at the offender's trials. The arresting officer would generally be the only witness to the tests. Training in the administration of tests and test result interpretation was conducted at the State Police Academy. Instructions were also included in the manual furnished to each full-time law enforcement officer in the state.

Insofar as could be determined no special reports or studies regarding the tests and the testing procedures were ever conducted by Project CRASH (Countermeasures Related to Alcohol Safety on the Highways).

Conclusions: In addition to standard physical coordination tests (i.e., walking heel-to-toe, touching finger to nose, etc.) considerable

emphasis was placed on the suspect's ability to enunciate difficult words and phrases. This process was based upon the principle that the offender's speech functions would be noticeably impaired in proportion to the degree of intoxication. Portable audio recorders were employed to record the responses, and the tape could subsequently be introduced in court. In general, the tapes obtained at the scene of the arrest proved to be effective tools for the prosecution.

Recommendations: It would have been helpful if an evaluative study of physical coordination tests as employed by the enforcement countermeasure had been conducted, including a comparison of the effectiveness of testimony relative to the suspect's performance on standard physical coordination tests as opposed to his verbal dexterity, and their respective impact on the eventual outcome of the case. Other, perhaps more innovative techniques for determining impairment, should also have been introduced at least on an experimental basis.

Section 3 - Pre-arrest Breath Screening

Vermont does not have a statute authorizing pre-arrest breath screening devices, but CRASH enforcement personnel utilized eight such devices on occasion. During the last 8 months of the project, the Alco-Sensor, manufactured by Intoximeter, Inc. (approximately \$125 per unit), was thought to be a valuable tool in the decision-making process - to arrest or not to arrest - by some troopers. Others reported that they seriously questioned its reliability and consequently refused to use them. No other type of pre-arrest screening device was tried. Training in the use of the device was provided by the Enforcement Coordinator of Project CRASH (who had received his instruction from the manufacturer).

Participating in the pre-arrest screening test was strictly voluntary on the suspect's part. The process was explained to him and he could submit or refuse. If the test was administered, the results were not recorded in any way and thus were not entered into evidence at court.

No analyses or special studies were undertaken concerning positive and negative factors of pre-arrest breath screening test use. That coupled with the mixed reception of them by the troopers and the lack of statutory provisions for them indicated a poor prognosis for their inclusion as an integral part of DWI enforcement in Vermont.

Conclusions: Although not specifically authorized by statute, pre-arrest breath screening was at least employed experimentally by Project CRASH. Troopers who had used the portable breath testing devices (Alco-Sensor) offered mixed opinions concerning their utility and reliability. While some thought the devices to be useful and reasonably reliable, others were less than complimentary about the PBT's usefulness. While the devices were used under field conditions, there was no effort to record their performance; therefore problems which arose were not documented and went uncorrected.

Recommendations: It would have been of advantage to the enforcement countermeasure to experiment with several types of PBT's, rather than with only one brand. Had this been done and had accurate records been maintained relating to the performance of each, a particularly suitable device might have come to the forefront. Pre-arrest breath screening is an important aid to officers enforcing DWI statutes and should be integrated into any alcohol countermeasure. To be effective, however, determinations must be made as to which device will be employed; officers must be sufficiently trained in their use to employ them with confidence; and adequate measures must be taken to ensure calibration, proper service, and maintenance of the PBT's.

Section 4 - Evidentiary Sobriety Testing

When an officer decided to cite the offender or place under arrest (based on performance during the psychomotor tests, appearance, and perhaps the pre-arrest screening test), the Miranda warning and Implied Consent statute were read. If for any reason the offender did not understand the consequences of his refusal to submit to evidentiary testing (one-year suspension of operator's license upon court conviction of the refusal charge), the officer explained the statute in lay terms and elicited initials to indicate his comprehension of its provisions. The offender formally submitted to the sobriety test by signing the State's Attorney Implied Consent Form (Fig. 21-5). He also acknowledged his receipt of rights by signing the State's Attorney Miranda Warnings and Public Defender Rights Form (Fig. 21-7).

By statute breath, blood, urine or saliva can be submitted for analysis to determine blood-alcohol concentration, but in actuality only breath and blood tests are administered. Breath tests are by far the most prevalent, for

obvious reasons - withdrawals of blood, urine or saliva samples are usually more cumbersome, time-consuming, and/or distasteful. Also it is incumbent upon the officer to locate the proper facilities and equipment (depending on which type of body fluid is presented for analysis), which may not be an altogether simple undertaking in rural Vermont. In all cases the officer determines the evidentiary test to be used. If for some reason (e.g., severe injury due to a crash) a blood test has to be administered, arrangements are made for this with a local hospital. In the event of motor vehicle fatalities, coroners and medical examiners are required to obtain blood samples for analysis if death occurs within six hours from the time of the crash. Otherwise they may do so if it is requested.

The breath test currently being used for DWI enforcement in Vermont is the Gas Chromatograph Intoximeter (GCI), Mark II model, manufactured by Intoximeters, Inc., which is applied in two stages: (1) the sample taking process (Crimper Encapsulation System) is performed by the officer; and (2) the evidentiary analysis is done by chemists at the State Laboratory in Burlington, Vermont. The following qualities attributed to this device made it preferable to others for Project CRASH:

- It appeared to be more accurate than others used,
(the Photo-electric Intoximeter was used prior to
the GCI)
- There was less downtime stemming from malfunction
and disrepair
- Analysis could be done at a faster rate, making it
more cost-effective

No significant problems were incurred with GCI use; initially occasional problems relating to the crimper templates (leakage) were evident, then all but disappeared as the officers became proficient in their use with the onset of comprehensive training at state and local levels.

The arresting officer spent about 30 minutes in the sample-taking process, which usually occurred in the patrol vehicle. After waiting the prescribed 15 minutes, the offender submitted a sample into the Indium Crimper, which was then separated into three distinct samples and collectively sent to the State Laboratory (usually by mail). The officer noted the steps taken in the process on the form provided for that purpose, which was filled out at

the time when the sample was submitted by the suspected offender. The processing might be recorded on the officer's audio recorder. Forms employed by troopers to document this sample-taking process were forwarded to the State's Attorney for review and subsequent use at trial. The defendant did not receive a copy of the results of the evidentiary test because analysis was not done immediately. (It took approximately 3 weeks.)

In order to obtain a valid BAC reading the chemist analyzed two of the samples in the gas chromatograph. If he obtained different readings, he averaged them and that average was the BAC entered on his report. The third sample was retained at the State Lab for 30 days (as required by Vermont law) to allow the defendant the opportunity to have it analyzed by a laboratory of his own choosing. Should a defendant not make the request within that time, the sample was discarded.

The specific number of crimpers in use was not obtainable; however, there was one available for each of the CRASH troopers. The CRASH Enforcement Coordinator was responsible for ensuring that all necessary supplies were available and the breath testing devices were periodically inspected and calibrated. Any law enforcement officer could take breath samples by means of a crimper upon successful completion of an eight-hour training course conducted at the State Police Academy. The course provided instruction related to DWI detection, apprehension, and processing, as well as proper operation of the Crimper Encapsulation System. Each officer was issued a license certifying him as a qualified crimper operator. These licenses were designed by and issued through Project CRASH. It was estimated that over 100 troopers were so licensed. Special studies have been conducted relative to the use of the testing instrument and the procedures involved. The results of quantitative alcohol tests on all drinking drivers are tabulated at the State laboratory as well as at the Department of Motor Vehicles.

Conclusions: Project CRASH troopers employed a sample-taking process (Crimper Encapsulation System) which appears to have been particularly suitable for the region in which the enforcement countermeasure operated. This process, which generally required only an average of 30 minutes of the trooper's time from the point of stopping the offender until his release or incarceration, was well-received by CRASH troopers and

appeared to function smoothly. Operation of the crimper required little formal training and the device is relatively inexpensive. No problems of any magnitude were encountered in its use.

Recommendations: Saving in man-hours and dollars, in addition to the crimper's suitability to application in rural areas makes this sample-taking process practically ideal for Vermont. It is recommended that its application be continued there.

Case No. _____
Officer's Name _____
Department _____

Where going: _____ Where started: _____

Name: _____ Address: _____ Position: _____ Sober or impaired: _____ Sex: _____ Age: _____
Name: _____ Address: _____ Position: _____ Sober or impaired: _____ Sex: _____ Age: _____

**STATE'S ATTORNEY
IMPLIED CONSENT FORM**

Name: _____ Officer's Name _____

Date: _____

Time Explanation Begins _____

When you operate, attempt to operate, or are in actual physical control of any vehicle upon a highway of this State, you are deemed to have given your consent to the taking of a sample of your BREATH for the purpose of determining the alcoholic or drug content of your blood. If breath testing equipment is not reasonably available or if you are unable to give a sufficient sample of your breath for testing, you are deemed to have given your consent to the taking of a sample of your blood for the same purposes.

The law states that such a sample shall be taken whenever a State Police Officer, Chief of Police or a Police Officer employed full time by a Town, City or Incorporated Village or Sheriff has reasonable grounds to believe that you were operating, attempting to operate, or were in actual physical control of any vehicle under the influence of intoxicating liquor or drugs, or both.

My name is _____, and I am a _____
(type of officer)

I believe you have been _____ a vehicle while under the
(operating, attempting to operate or in actual physical control of)

influence of _____
(intoxicating liquor and/or drugs or both)

☐ Check here if the testing equipment for the taking of a sample of breath is NOT reasonably available at this time.

☐ Check here if the person is unable to give a sufficient sample of his breath for testing.

I hereby request you to give a sample of your _____
(breath or blood)

A sample of the material you submit shall be held for thirty days from the date of arraignment for independent analysis at your direction. Upon your request full information concerning the test and the results shall be made available to you or your attorney.

If you refuse to submit to a chemical test, it shall not be given, but such refusal may be introduced as evidence in a criminal proceeding. Furthermore, if you are charged with a violation of the vehicle laws, the Court, at the arraignment or as soon thereafter as is practicable shall hold a summary hearing and take evidence relating to the reasonableness of my belief that you were _____ a vehicle while under
(operating, attempting to operate or were in actual physical control of)

the influence of intoxicating liquor or drugs, or both. Upon a finding by the Court that I had sufficient reason to believe that you were so operating, attempting to operate, or were in actual physical control of a motor vehicle your operator's license, or if you do not have a Vermont license, your privilege to operate in this state, shall be suspended for a period of one year and you shall be ordered to give up your Vermont operator's license, if any, to the Court.

Do you understand the above? _____ Would you indicate your understanding by writing your initials here:
(response) _____

Do you have any questions? Yes _____ No _____

Do you consent to the taking of a _____ test? Yes _____ No _____
(breath or blood)

Signature: _____

Witness: _____

Time Sample Taken: _____

Sample kit No. _____

STATE'S ATTORNEY

Miranda Warnings and Public Defender Rights Form

Name _____ Officer's Name _____

Date: _____

Time _____

Before we ask you any questions you must understand your legal rights.

You have the right to remain silent.

Anything you say can be used against you.

Before we ask you any questions you have the right to talk to a lawyer and get his advice, and you have the right to have a lawyer here with you while we are questioning you.

You have the same right to the advice and presence of a lawyer while you are being questioned even if you cannot afford to hire one.

If you cannot afford a lawyer and you want one, you have the right to be represented by an attorney at public expense. In Vermont this attorney is called a "Public Defender" and the "Public Defender" will be contacted for you before we ask you any questions. If you decide to answer our questions now without a lawyer, you still have the right to stop answering our questions at any time and you still have the right to stop answering our questions at any time until you talk with a lawyer.

ACKNOWLEDGEMENT OF RECEIPT OF RIGHTS:

I have had the above statement of rights read to me and fully understand that I am entitled to be represented by an attorney at public expense if I cannot afford one.

Signature: _____

Date: _____ Time: _____

Officer who read Rights: _____

Person refused to acknowledge Receipt of Rights: ()

Person not physically or mentally competent to acknowledge Receipt of Rights: ()

Witness: _____

WAIVER OF RIGHTS:

I have been advised of my right to remain silent; that anything that I say can be used against me, and that I have the right to a lawyer to be present with me while I am being questioned. I understand these rights and am willing to answer questions and make a statement. I do not want a lawyer and I understand and know what I am doing. No threats have been made to me and no pressures of any kind have been used against me.

Signature: _____

If person wanted an attorney or "Public Defender" contacted at this time indicate who was contacted:

On the above date and time I notified the Public Defender that the person in custody was not represented by an attorney, and did not waive his right to have an attorney.

VIRGINIA (FAIRFAX COUNTY)

Section 1 - Legislative Provisions

§ 18.1-54. Driving automobiles, engines, etc., while intoxicated. — It shall be unlawful for any person to drive or operate any automobile or other motor vehicle, car, truck, engine or train while under the influence of alcohol, brandy, rum, whisky, gin, wine, beer, lager beer, ale, porter, stout or any other liquid beverage or article containing alcohol or while under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature. (Code 1950, § 18-75; 1960, c. 358.)

§ 18.1-54.1. Analysis of breath to determine alcoholic content of blood. — (a) Any person who is suspected of a violation of § 18.1-54 shall be entitled, if such equipment be available, to have his breath analyzed to determine the probable alcoholic content of his blood. Such breath may be analyzed by any police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county, in the normal discharge of his duties.

(b) The State Board of Health shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

(c) Any person who has been stopped by a police officer of the State, or of any county, city or town, or by any member of the sheriff's department of any county and is suspected by such officer to be guilty of a violation of § 18.1-54, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under § 18.1-54, provided, however, that nothing in this section shall be construed as limiting in any manner the provisions of § 18.1-55.1.

(d) Whenever the breath sample so taken and analyzed indicates that there is alcohol present in the blood of the person from whom the breath was taken, the officer may charge such person for the violation of § 18.1-54, or a similar ordinance of a county, city or town wherein the arrest is made. Any person so charged shall then be subject to the provisions of § 18.1-55.1, or of a similar ordinance of a county, city or town.

(e) The results of such breath analysis shall not be admitted into evidence in any prosecution under § 18.1-54, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of § 18.1-54.

(f) Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of § 18.1-54, advise such person of his rights under the provisions of this section. (1970, c. 511.)

§ 18.1-55.1. Use of chemical test to determine alcohol in blood; procedure; qualifications and liability of person withdrawing blood; costs; evidence; suspension of license for refusal to submit to test; localities authorized to adopt parallel provisions. — (a) As used in this section "license" means any operator's, chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

(b) Any person whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this State on and after January one, nineteen hundred seventy-three, shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, if such person is arrested for a violation of § 18.1-54 or of a similar ordinance of any county, city or town within two hours of the alleged offense. Any person so arrested shall elect to have either the breath or blood sample taken, but not both. It shall not be a matter of defense that either test is not available.

(c) If a person after being arrested for a violation of § 18.1-54 or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this State shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this State, then refuses to permit the taking of a sample of his blood or breath for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been further advised by such magistrate of the law requiring a blood or breath test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Division of Consolidated Laboratory Services (hereinafter referred to as Division), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j), then no blood or breath sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a court of record acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof. No civil liability shall attach to any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures; and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample.

(d1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the Division which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the Division, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the Division. The officer taking possession of the other container (hereinafter referred to as second container) shall, immediately after taking possession of said second container give to the accused a form provided by the Division which shall set forth the procedure to obtain an independent analysis of the blood in the second container, and a list of those laboratories and their addresses, approved by the Division; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at that time directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so) shall deliver said second container to the chief police officer of the county, city or town in which the case will be heard, and the chief police officer who receives the same shall keep it in his possession for a period of seventy-two (72) hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief police officer having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list. As used in this section, the term "chief police officer" shall mean the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city or the sergeant or chief of police of the town in which the charge will be heard.

(d2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the Division, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Division.

(d3) A fee not to exceed \$15.00 shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.1-54, or of a similar ordinance of any county, city or town, the fee charged by the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(d4) If the chief police officer having possession of the second container is not directed as herein provided to mail it within seventy-two (72) hours after receiving said container then said officer shall destroy same.

(e) Upon receipt of the blood sample forwarded to the Division for analysis, the Division shall cause it to be examined for alcoholic content and the Director of the Division or his designated representative shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the Division and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the clerk of the court in which the charge will be heard. The certificate attached to the container forwarded on behalf of the accused shall also be returned to the clerk of the court in which the charge will be heard, and such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the Division.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the Division, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificate as provided for in this section shall, when duly attested by the Director of the Division or his designated representative, be admissible in any court, in any criminal proceeding, as evidence of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood or breath sample was taken for a chemical test to determine the alcoholic content of his blood, the results of such test or tests shall be made available to him.

(h) A fee not exceeding ten dollars shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.1-54 or of a similar ordinance of any county, city or town, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(i) In any trial for a violation of § 18.1-54 of the Code or of a similar ordinance of any county, city or town, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood or breath test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood or breath to be taken for a chemical test to determine the alcoholic content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal.

(j) The form referred to in paragraph (c) shall contain a brief statement of the law requiring the taking of a blood or breath sample and the penalty for refusal, a declaration of refusal and lines for the signature of the person from whom the blood or breath sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this section. The warrant shall be executed in the same manner as criminal warrants.

(k) The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood or breath taken for the determination of the alcoholic content of his blood, the court shall fix a date for the trial of said warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood or breath to determine the alcoholic content of his blood. The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of 90 days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be computed as follows: the date of the first offense and the date of the second or subsequent offense.

(o) The court shall forward the defendant's license to the Commissioner of the Division of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shall return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors.

(q) No person arrested for a violation of § 18.1-54 or a similar ordinance of any county, city or town shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(r1) Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with the methods approved by the State Health Commissioner. Such breath-testing equipment shall be tested for its accuracy by the State Health Commissioner's office at least once every six months.

The State Health Commissioner is directed to establish a training program for all individuals who are to administer the breath tests, of at least forty hours of instruction in the operation of the breath test equipment and the administration of such tests. Upon the successful completion of the training program the Commissioner may issue a license to the individual operator indicating that he has completed the course and is authorized to conduct a breath test analysis.

Any individual conducting a breath test under the provisions of this section and as authorized by the State Health Commissioner shall issue a certificate which will indicate that the test was conducted in accordance with the manufacturer's specifications, the equipment on which the breath test was conducted has been tested within the past six months, the name of the accused, the date, the time the sample was taken from the accused, the alcoholic content of the sample, and by whom the sample was examined. The certificate, as provided for in this section, when duly attested by the authorized individual conducting the breath test, shall be admissible in any court in any criminal proceeding as evidence of the alcoholic content of the blood of the accused. In no case may the officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, make the breath test or analyze the results thereof.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood or breath samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

(t) The governing bodies of the several counties, cities and towns are authorized to adopt ordinances paralleling the provisions of (a) through (s) of this section. (Code 1950 (Suppl.), §§ 18-75.1, 18-75.2; 1954, c. 406; 1956, c. 557; 1956, Ex. Sess., c. 45; 1960, cc. 358, 548; 1962, c. 625; 1964, c. 240; 1966, c. 635; 1970, c. 622; 1972, cc. 741, 756; 1973, c. 511.)

§ 18.1-57. Presumptions from alcoholic content of blood. — In any prosecution for a violation of § 18.1-54, or any similar ordinance of any county, city or town, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcoholic content of his blood in accordance with the provisions of § 18.1-55.1 shall give rise to the following presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants;

(2) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight by volume of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused;

(3) If there was at that time 0.10 percent or more by weight by volume of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants. (Code 1950 (Suppl.), § 18-75.3; 1956, c. 557; 1960, c. 358; 1964, c. 240; 1966, c. 636; 1972, c. 757; 1973, c. 459.)

§ 18.1-58. Penalty; subsequent offense; prior conviction. — Any person violating any provision of § 18.1-54 shall be guilty of a misdemeanor and shall be punished, for a first offense by a fine of not less than two hundred dollars nor more than one thousand dollars or by confinement in jail for not less than one month nor more than six months, either or both in the discretion of the

jury or the court trying the case without a jury. Any person convicted within any period of ten years of a second or other subsequent offense under § 18.1-54, or convicted of a first offense under § 18.1-54 after having been convicted within a period of ten years prior thereto of an offense under former § 18-75, shall be punishable by a fine of not less than two hundred dollars nor more than one thousand dollars and by confinement in jail for not less than one month nor more than one year. For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under the provisions of § 18.1-54, former § 18-75, the ordinance of any county, city or town in this State or the laws of any other state substantially similar to the provisions of §§ 18.1-54 through 18.1-57 of the Code shall be considered a prior conviction. (Code 1950, § 18-76; 1954, c. 406; 1958, c. 357; 1960, c. 358; 1962, c. 302.)

§ 18.1-59. Same; forfeiture of driver's license; suspension of sentence. — The judgment of conviction, or finding of not innocent in the case of a juvenile, if for a first offense under § 18.1-54, or for a similar offense under any county, city or town ordinance, shall of itself operate to deprive the person so convicted or found not innocent of the right to drive or operate any such vehicle, conveyance, engine or train in this State for a period of not less than six months nor more than one year in the discretion of the court from the date of such judgment, and if for a second or other subsequent offense within ten years thereof for a period of three years from the date of the judgment of conviction or finding of not innocent thereof, any such period in either case to run consecutively with any period of suspension for failure to permit a blood sample to be taken as required by § 18.1-55.1. If any person has heretofore been convicted or found not innocent of violating any similar act of this State and thereafter is convicted or found not innocent of violating the provisions of § 18.1-54, such conviction or finding shall for the purpose of this section and § 18.1-58 be a subsequent offense and shall be punished accordingly; and the court may, in its discretion, suspend the sentence during the good behavior of the person convicted or found not innocent. (Code 1950, § 18-77; 1958, c. 496; 1960, c. 358; 1962, c. 625; 1964, c. 240; 1972, c. 757.)

§ 18.1-60. Driving after forfeiture of license. — If any person so convicted shall, during the time for which he is deprived of his right so to do, drive or operate any such vehicle, conveyance, engine or train in this State, he shall be guilty of a misdemeanor and shall be confined in jail not less than ten days nor more than six months and may in addition be fined not exceeding five hundred dollars; but nothing in this section or §§ 18.1-54, 18.1-58 or 18.1-59 shall be construed as conflicting with or repealing any ordinance or resolution of any city, town or county which restricts still further the right of such persons to drive or operate any such vehicle or conveyance. (Code 1950, § 18-78; 1952, c. 467; 1960, c. 358.)

§ 18.1-61. Report of conviction to Division of Motor Vehicles. — The clerk of every court of record and the judge of every court not of record shall, within thirty days after final conviction of any person in his court under the provisions of this article, report the fact thereof and the name, post-office address and street address of such person, together with the license plate number on the vehicle operated by such person to the Commissioner of the Division of Motor Vehicles who shall preserve a record thereof in his office. (Code 1950, § 18-79; 1960, c. 358.)

§ 46.1-421. Revocation of license upon conviction of driving while under the influence of drugs, intoxicants, etc.—(a) The Commissioner shall forthwith revoke and not thereafter reissue for three years the operator's or chauffeur's license of any person upon receiving a record of a conviction of such person for a violation of the provisions of § 18.1-54 pertaining to driving under the influence of drugs or intoxicants or of § 18.1-60 pertaining to driving while

the driver's license has been forfeited for a conviction under § 18.1-54, or upon receiving a record of a conviction for a violation of a federal law, or law of any other state or a valid ordinance of any city, town or county of this State, or of any other state similar to § 18.1-54 or § 18.1-60, either of such convictions being subsequent to a prior conviction for a violation of a federal law, law of any other state or town, city or county or ordinance of any other state similar to § 18.1-54 or § 18.1-60 as the case may be or of the provisions of § 18.1-54 or § 18.1-60; provided that the subsequent violation has been committed within ten years from the prior violation.

(b) Notwithstanding any other provision of law, the Commissioner shall forthwith revoke and not thereafter reissue the operator's or chauffeur's license of any person upon receiving a record of a third conviction of such person for a violation of the provisions of § 18.1-54 pertaining to driving while under the influence of drugs or intoxicants, or a federal law, or law of any other state or a valid ordinance of any city, town, or county of this State, similar to § 18.1-54, notwithstanding the length of time between violations; provided, however, that each of said convictions occurs after July one, nineteen hundred sixty-four. At the expiration of ten years from the date of the revocation hereunder, such person may petition any court of record having criminal jurisdiction in the county or city wherein such person resides, and for good cause shown, said license may in the discretion of the court be restored on such terms and conditions as the court may prescribe. (Code 1950, § 46-417; 1958, c. 541; 1960, c. 364; 1964, c. 194; 1968, c. 561.)

§ 46.1-387.1. Declaration of policy.—It is hereby declared to be the policy of Virginia: (1) To provide maximum safety for all persons who travel or otherwise use the public highways of the State; and

(2) To deny the privilege of operating motor vehicles on such highways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the Commonwealth, the orders of her courts and the statutorily required acts of her administrative agencies; and

(3) To discourage repetition of criminal acts by individuals against the peace and dignity of the Commonwealth and her political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of traffic laws. (1968, c. 476.)

§ 46.1-387.2. Habitual offender defined.—An habitual offender shall be any person, resident or nonresident, whose record, as maintained in the office of the Division of Motor Vehicles, shows that such person has accumulated the convictions, or findings of not innocent in the case of a juvenile, for separate and distinct offenses, described in subsections (a), (b) and (c), of this section, committed within a ten-year period, provided that where more than one included offense shall be committed within a six-hour period such multiple offenses shall, on the first such occasion, be treated for the purposes of this article as one offense provided the person charged has no record of prior offenses chargeable under this article, and provided further the date of the offense most recently committed occurs on or after June twenty-eight, nineteen hundred sixty-eight, and within ten years of the date of all other offenses the conviction for which is included in subsections (a), (b) or (c) as follows:

(a) Three or more convictions, or findings of not innocent in the case of a juvenile, singularly or in combination, of the following separate and distinct offenses arising out of separate acts:

(1) Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;

(2) Driving or operating a motor vehicle while under the influence of intoxicants or drugs in violation of § 18.1-54;

(3) Driving or operating a motor vehicle while impaired in violation of § 18.1-56.1;

(4) Driving a motor vehicle while his license, permit or privilege to drive a motor vehicle has been suspended or revoked in violation of §§ 18.1-60, 46.1-350 or 46.1-351;

(5) [Repealed.]

(6) Knowingly making any false affidavit or swearing or affirming falsely to any matter or thing required by the motor vehicle laws or as to information required in the administration of such laws in violation of § 46.1-15;

(7) Any offense punishable as a felony under the motor vehicle laws of Virginia or any felony in the commission of which a motor vehicle is used;

(8) Failure of the driver of a motor vehicle involved in an accident resulting in the death or injury of any person to stop close to the scene of such accident and report his identity in violation of § 46.1-176; or

(9) Failure of the driver of a motor vehicle involved in an accident resulting only in damage to an attended or unattended vehicle or other property in excess of two hundred fifty dollars to stop close to the scene of such accident and report his identity or otherwise report such accident in violation of law.

(b) Twelve or more convictions, or findings of not innocent in the case of a juvenile, of separate and distinct offenses, singularly or in combination, in the operation of a motor vehicle which are required to be reported to the Division of Motor Vehicles and the commission whereof requires the Division of Motor Vehicles or authorizes a court to suspend or revoke the privilege to operate motor vehicles on the highways of this State for a period of thirty days or more and such convictions shall include those offenses enumerated in subsection (a) above when taken with and added to those offenses described herein.

(c) The offenses included in subsections (a) and (b) hereof shall be deemed to include offenses under any valid town, city or county ordinance paralleling and substantially conforming to the State statutory provisions cited in subsections (a) and (b) hereof and all changes in or amendments thereof, and any federal law, any law of another state or any valid town, city or county ordinance of another state substantially conforming to the aforesaid State statutory provisions. (1968, c. 476; 1970, cc. 507, 724.)

§ 46.1-387.3. Commissioner to certify transcript or abstract of conviction record of habitual offender to attorney for Commonwealth; transcript or abstract as evidence.—The Commissioner of the Division of Motor Vehicles shall certify, substantially in the manner provided for in § 46.1-34.1, three transcripts or abstracts of the conviction record as maintained in the office of the Division of Motor Vehicles of any person whose record brings him within the definition of an habitual offender, as defined in § 46.1-387.2 to the attorney for the Commonwealth of the political subdivision in which such person resides according to the records of the Division or the attorney for the Commonwealth of the city of Richmond if such person is not a resident of this State. Such transcript or abstract may be admitted as evidence as provided in § 46.1-34.1. Such transcript or abstract shall be prima facie evidence that the person named therein was duly convicted, or held not innocent in the case of a juvenile, by the court wherein such conviction or holding was made, of each offense shown by such transcript or abstract; and if such person shall deny any of the facts as stated therein, he shall have the burden of proving that such fact is untrue. (1968, c. 476.)

§ 46.1-387.4. Information to be filed by attorney for Commonwealth.—The attorney for the Commonwealth, upon receiving the aforesaid transcripts or abstracts from the Commissioner, shall forthwith file information against the person named therein in the court of record having jurisdiction of criminal offenses in the political subdivision in which such

person resides. In the event such person is a nonresident of this State, the attorney for the Commonwealth of the city of Richmond shall file information against the accused person in the Circuit Court of the city of Richmond. The clerk of the Circuit Court of the city of Richmond shall be allowed a fee of five dollars for each such information filed against such nonresident accused to be paid out of the State treasury from the appropriation for criminal charges on the certificate of the court as provided in § 19.1-317 and to be taxed against the defendant as a part of the costs of such proceeding, if the defendant is found to be an habitual offender. In the event the accused is an inmate of the Virginia State Penitentiary, jurisdiction for the proceedings shall be as provided in § 53-295. (1968, c. 476; 1970, c. 724.)

§ 46.1-387.7. Period during which habitual offender not to be licensed to operate motor vehicle.—No license to operate motor vehicles in Virginia shall be issued to an habitual offender, (1) for a period of ten years from the date of the order of the court finding such person to be an habitual offender, and (2) until the privilege of such person to operate a motor vehicle in this State has been restored by an order of a court of record entered in a proceeding as hereinafter provided. (1968, c. 476.)

§ 46.1-387.8. Operation of motor vehicle by habitual offender prohibited; penalty; enforcement of section.—It shall be unlawful for any person to operate any motor vehicle in this State while the order of the court prohibiting such operation remains in effect, except that such an order shall not operate to prevent or prohibit such person from operating a farm tractor upon the highways when it is necessary to move such tractor from one tract of land used for agricultural purposes to another tract of land used for the same purposes, provided that the distance between the said tracts of land shall not exceed five miles. Any person found to be an habitual offender under the provisions of this article who is thereafter convicted of operating a motor vehicle in this State while the order of the court prohibiting such operation is in effect, shall be punished by confinement in the penitentiary not less than one nor more than five years and no portion of such sentence shall be suspended, except that in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle while his license, permit or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing such charge shall determine whether such person has been held an habitual offender and by reason of such holding is barred from operating a motor vehicle on the highways of this State. If the court determines the accused has been so held, it shall certify the case to the court of record of its jurisdiction for trial. (1968, c. 476; 1970, c. 507.) *

*From Selected Motor Vehicle Laws of Virginia.

Section 2 - Physical Coordination Tests

Physical coordination tests are administered to suspected DWI offenders by officers of the Fairfax County ASAP. According to officers interviewed during the course of this site visit, the following physical coordination test variations are utilized:

Fairfax City Police Department

1. Finger to nose
2. Walking
3. Balance

Falls Church Police Department

1. Finger to nose
2. Walking
3. Balance
4. Coin pick-up

Fairfax County Police Department

1. Finger to nose
2. Walking
3. Balance
4. Coin pick-up
5. Alphabet recitation

The manner in which these tests, when given, are administered by arresting officers is consistent with those methods used at other ASAP sites visited during this survey. No significant deviations were noted.

Physical coordination tests are generally administered once by the arresting officer at the scene of apprehension. Officers cited no significant problems in administering or interpreting the results of the physical coordination tests.

Results of physical coordination tests are recorded by the Falls Church Police Department on DWI Form (Fig. 22-5). This one-page form is completed by the arresting officer to record observations, performance tests, chemical test data, and BAC results of individuals arrested for DWI.

The Fairfax County Police Department utilizes a two-page form entitled Investigation Report (Fig. 22-2) for recording DWI arrest details, including officer observation of degree of impairment. This report may be supplemented by recording additional information or details on a one-page Supplementary Investigation Report (Fig. 22-3).

The Fairfax County Police Department records the details of a DWI arrest, in narrative form, on a departmental report entitled, Vehicle Report (Fig. 22-6). This report also contains vehicle tow-in information.

All officers participating in the Fairfax County ASAP also complete ASAP Form 3 (Fig. 22-12). The ASAP officers complete this four-copy form recording the particulars of each DWI arrest, including BAC result and breath screening result.

Conclusions: Physical coordination tests are not uniformly given by officers comprising the law enforcement countermeasure of the Fairfax County ASAP. Officers prefer to rely on the use of pre-arrest screening devices to determine alcohol impairment; since the inception of this program, the use of physical coordination tests has steadily declined.

Officials interviewed during the course of this site visit indicated that physical coordination tests were never considered reliable indicators of driver impairment. No written policy or procedures directing officers to administer physical coordination tests to suspected DWI offenders were developed by any of the law enforcement agencies interviewed.

Recommendations: The law enforcement agencies which comprise the Fairfax County ASAP should establish a uniform procedure for administering physical coordination tests and should conduct an evaluation of the effectiveness of these tests. The experience of the Los Angeles County Sheriff's Office physical coordination testing configuration should be reviewed by Fairfax County ASAP personnel in the development of this uniform policy procedure.

Section 3 - Pre-arrest Breath Screening

Pre-arrest breath screening is conducted by the law enforcement personnel comprising the Fairfax County ASAP.

Article 6 of the Selected Motor Vehicle Laws of Virginia, Section 18.1-54.1 states that any person who is suspected of a violation of 18.1-54 is entitled to have his breath analyzed to determine the probable alcoholic content of his blood. The results of such breath analyses are not to be admitted into evidence in any prosecution under Section 18.1-54, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of Section 18.1-54.

Law enforcement officers, upon stopping any person suspected of being under the influence of alcohol, must advise the individual of his rights under the provisions of Section 18.1-54.1. This section also specifies that a pre-arrest screening test must be offered to unsuspected DWI offenders only if pre-arrest screening equipment is available for use by the law enforcement officer in conducting this test.

Law enforcement officers of the Fairfax County ASAP have been utilizing three different types of breath screening devices since February 1972:

Alcoyser (balloon test), manufactured in Great Britain
by Lion Laboratories Limited, Cardiff, Wales

Alco-Sensor Intoximeter Fuel Cell Sensor, manufactured
by Intoximeters, Inc., 1901 Locust Street, St. Louis,
Mo. 61303

Borg-Warner Corporation, Wolf and Algonquin Roads,
Des Plains, Illinois 60018.

The Fairfax City Police Department and the Vienna Police Department have used only the Alcoyser in conducting pre-arrest breath screening. Pre-arrest breath screening devices are not available to officers of the Falls Church Police Department.

The Fairfax County Police Department purchases Alcoysers in quantities of 2,000 for use by its law enforcement personnel. It has been standard practice for the Fairfax County Police Department to order 2,000 of these pre-arrest screening devices at three-month intervals. These devices cost the Fairfax County Police Department 63¢ each and are boxed in quantities

of ten per box. Each marked police patrol unit of the Fairfax County Police Department has available for its use one box containing ten alcolyser devices.

The Fairfax County Police Department has four Borg-Warner A.L.E.R.T. units, on loan by the manufacturer, for use in administering pre-arrest breath screening. These units are available, however, only to officers on ASAP assignment.

The Fairfax County Police Department currently has two Alco-Sensors on loan by the manufacturer. These units are not available for use by non-ASAP officers.

Officers are not provided formal training in the use of pre-arrest screening devices. Officer R.D. Chambers of the Fairfax County Police Department provides a brief demonstration in the use of the devices. On-the-job training constitutes the majority of training officers of this site receive in the use of pre-arrest screening devices.

The role of pre-arrest breath screening and the reduction of the average BAC level among suspected DWI offenders could not be documented at the time of this site visit. This investigator was advised that an analysis/evaluation was underway to determine the effect of pre-arrest breath screening on BAC reduction, but, as yet, the analysis had not been completed.

When officials of the participating law enforcement agencies were interviewed, they stated that it was their plan to continue the use of pre-arrest breath screening by their respective departments.

Conclusions: The enforcement coordinator of the Fairfax County Police Department stated that of the three devices utilized by his department, none had been found to be effective and/or reliable. The coordinator further stated that "actually, the lack of effectiveness seems to stem from training problems and inadequacies" and not from product inferiority.

When pre-arrest screening was first introduced to the law enforcement personnel, the devices were enthusiastically received. Officers, however, feel that they lack adequate instruction in the use of the A.L.E.R.T. and the Alco-Sensor units. Officers prefer the Alcolysers for pre-arrest breath testing due to the simplicity of operation of this device.

Officers also feel that pre-arrest screening is valuable in identifying suspects with low or questionable BAC levels. Officers prefer to use their own judgment on obviously impaired driver suspects.

Officers of the Fairfax County Police Department complete the Contact Sheet and Pre-Arrest Screen Log Sheet (Fig. 22-7). This two-page form was designed by the ASAP Enforcement Coordinator for use by officers assigned to ASAP duty. The face of the report is used by officers to record their activity during their tour of duty. The reverse is used to record the administration of pre-arrest screening tests, including type of equipment used and results, and Breathalyzer or blood sample BAC results.

Recommendations: Each police cruiser within the jurisdictional area of the Fairfax County ASAP should be equipped with a pre-arrest screening device to be used in field testing suspected DWI offenders. Comprehensive training should be instituted in the use of these devices, particularly in the case of the A.L.E.R.T. unit where proper calibration is essential.

A cost analysis and evaluative study pertaining to pre-arrest breath screening devices field-tested by enforcement personnel of the Fairfax County ASAP should be undertaken as soon as possible to determine which of the three breath screening devices, in use since 1972, is best suited to meet the needs of the participating law enforcement agencies.

Section 4 - Evidentiary Sobriety Testing

The Selected Motor Vehicle Laws of Virginia (Article 6, Section 18.1-55.1) provides that any individual who operates a motor vehicle within the State of Virginia shall be deemed to have given his consent to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood if the individual is arrested for a violation of Section 18.1-54 or similar ordinance. Article 6, Section 18.1-55.1 also states that this test must occur within two hours of the offense. Any person so arrested may choose either the breath or blood analysis, but not both.

Unreasonable refusal to submit to evidentiary blood or breath analysis constitutes grounds for the revocation of the privilege to operate a motor

vehicle within the State of Virginia. If an individual refuses to permit the taking of a sample of his blood or breath for analysis, the arresting officer takes the individual before a committing magistrate where he is further advised by the magistrate. Should the subject again refuse to submit to evidentiary testing, the committing magistrate will cause the completion of the Declaration of Refusal to Permit Taking of Blood or Breath Sample (Fig. 22-8). This one-page form consists of two parts. The upper portion is signed by the suspect from whom the sample is sought, to affirm his refusal to submit to the test. The lower portion of the form consists of the certificate of committing justice affirming the refusal. This form is primarily completed by the magistrate; however, the arresting officer generally witnesses the refusal.

Only a physician, registered professional nurse, graduate laboratory technician, or a technician or nurse designated by order of the court of record, acting upon the recommendations of a licensed physician, may withdraw blood for the purpose of determining the alcoholic content. A blood sample consisting of 22 cc's is withdrawn and placed in two vials containing 10 cc's each. These vials are sealed and labeled by the person taking the sample, indicating the name of the subject, the name of the person taking the blood sample, the date and time the blood sample was taken. The arresting officer shall then cause one vial to be transported to the State Forensic Laboratory located in Richmond, Virginia. The other 10 cc vial will be sent to an independent laboratory, of the suspect's choosing, for analysis.

A fee of \$15 is allowed to the approved laboratory for making the analysis of the second blood sample and a charge of \$10 is assessed for the analysis of the blood sample by the State Forensic Laboratory in Richmond, Virginia. In either case, the results of the evidentiary blood-alcohol analysis will be forwarded in writing to the Clerk of the Court in the jurisdiction in which the charge will be heard. The results of the chemical test are not made known to the suspect except upon special request.

When the court receives the Declaration of Refusal and the appropriate warrant charging the defendant with refusing to submit to evidentiary testing, the court establishes a date for the trial subsequent to the suspect's

criminal trial for driving under the influence of intoxicant. The Declaration of Refusal is considered prima facie evidence that the defendant refused to submit a sample of his blood or breath to determine evidentiary BAC. If the court finds the subject guilty, it suspends the defendant's license for a period of 90 days for the first offense and six months for the second or subsequent offense.

Chemical analysis of a person's breath for evidentiary purposes must be conducted by an individual possessing a valid license to conduct such tests. The State Health Commission establishes the training program for all individuals who are to administer evidentiary breath tests. The training program consists of 40 hours of instruction in the operation of the breath test equipment and the administration of evidentiary breath test. Upon successful completion of the training program, the Commissioner may issue a license to the individual operator, indicating that he has completed the course and is authorized to conduct evidentiary breath test analysis.

Training in the operation of the breath test equipment and administration of evidentiary tests is conducted at the Northern Virginia Police Academy. This training program is administered by the State Department of Health in Richmond, Virginia.

The selection of individuals who will receive training varies among the participating law enforcement agencies of the Fairfax County ASAP. The Fairfax City Police Department solicits volunteers who are requested to submit their names directly to the Chief of Police. The Chief of Police will then determine who will receive the training to conduct evidentiary breath test analysis.

Officers of the Fairfax County Police Department are selected for evidentiary breath analysis training by their supervisor as needed. Their names are then submitted to the Northern Virginia Police Academy which, by utilizing a pretest indicating mathematical aptitude, makes the final selection of candidates.

The evidentiary breath testing device utilized by the law enforcement agencies comprising the Fairfax County ASAP is the Smith & Wesson Breathalyzer Model 900A. Twelve Breathalyzers are available for field use by the law

enforcement agencies comprising the Fairfax County ASAP. Each agency has available to it at least one of the units. However, the Fairfax County Police Department has an additional five Breathalyzer units located at each of the district stations and one in a mobile evidentiary testing van.

At the Fairfax County Police Department, the Falls Church Police Department, and the Vienna Police Department, access to the evidentiary testing devices by unauthorized personnel is restricted. The restriction is accomplished through the utilization of either combination padlocks or separate rooms which are locked when not in use.

The number of certified breath testing operators at each law enforcement agency is as follows: Fairfax County Police Department, 37; Fairfax City Police Department, 6; Falls Church Police Department, 6; Vienna Police Department, 4.

All the participating law enforcement agencies utilize sworn law enforcement officers as certified breath analysis operators, with the exception of the Fairfax County Police Department which may use either medical technicians who are non-sworn personnel or sworn law enforcement officers.

Exhibit 22a, entitled Policy and Procedures Issued by the State Health Commissioner of the Commonwealth of Virginia for the Administration of Blood Alcohol Tests, lists the general rules, methods of conducting breath tests, procedure for operation of breath test devices, licensing procedures, and comments on forms and records required. To accomplish recording of the evidentiary breath test to determine blood-alcohol concentration, several forms are completed. The breath test operator completes the Commonwealth of Virginia Department of Health Certificate of Breath Alcohol Analysis (Fig. 22-10) which constitutes the official record of the BAC results. The breath test operator attests to the accuracy and procedures used in testing by signing his name and license number. The form is then notarized. The Breathalyzer Operational Check List (Fig. 22-9) is also completed by the Breathalyzer operator. This one-page form contains nine steps which are checked off as they are completed during the evidentiary test process. A bound journal is also maintained for each individual evidentiary breath analysis conducted. This bound journal contains the defendant's name,

time of arrest and testing, the testing officer and the BAC results. This log is required by the State Health Commissioner and is kept with the breath test device. The Breathalyzer Log is subject to periodic inspection by the State Department of Health.

The committing magistrate also enters the BAC result on the Warrant of Arrest (Fig. 22-13).

In addition to evidentiary breath analysis being conducted at fixed sites throughout the Fairfax County ASAP jurisdictional area, two mobile evidentiary breath testing vans are also employed for the use by arresting officers. The mobile testing vans are maintained by the Fairfax County Police Department through funds supplied by the Fairfax County ASAP. One van is used per night in the northern section of the jurisdictional area (that area north of Route 50). The other van is used in the southern section of the jurisdictional area (that area south of Route 50). The mobile testing van either responds to the scene of arrest or assumes a stationary post (in the area of the ASAP patrol) as needed. The driver of the van is a sworn law enforcement officer. Evidentiary testing is conducted by a medical technician who is qualified to perform either breath analysis or the withdrawing of a blood sample for evidentiary analysis. The mobile evidentiary vans provide services for both ASAP and non-ASAP patrols and for any law enforcement agency located within the jurisdictional area of the Fairfax County ASAP.

The mobile evidentiary vans are equipped with a video camera, recorder and monitor, Breathalyzer 900A, Simulator, first-aid kit, support forms, refrigerator, hypodermic needles, vials for blood specimens, a police radio with scanning capabilities, red bar lights, electronic siren, and emergency lighting located on the front, rear and sides.

Each van was purchased by the Fairfax County ASAP at cost of \$29,500 each.

Any police officer who is a certified Breathalyzer operator in the State of Virginia may conduct evidentiary breath analyses utilizing the Breathalyzer located in the mobile testing van. The mobile evidentiary testing van is under the complete command of the Fairfax County ASAP Enforcement Coordinator or a supervisory officer of the Fairfax County Police Department.

Medical technicians assigned to the Fairfax County ASAP are non-sworn personnel employed in a civilian capacity.

The van operator and the medical technician are responsible for maintaining the mobile evidentiary testing van and the evidentiary testing equipment. In utilizing the mobile evidentiary testing van, personnel have been directed by the field operations bureau commander of the Fairfax County Police Department as follows: "unless there is a backlog of suspects to be processed or the mobile van must remain stationary at one location for other valid reasons, the van operator is to keep the vehicle in motion as much as possible. The purpose for acquisition of the vans was to provide a greater degree of accessibility and less time consumption in addition to enhance the public visibility of the operational facets of the Fairfax Alcohol Safety Action Project. That purpose has not been served to a substantial degree in the past. A greater effort must be made to process DWI suspects on the scene or at least to meet the arresting officer along his route of travel. The van operator is to ensure that reasonable efforts are made in this direction."

Within the State of Virginia, a suspect is presumed to be intoxicated at the .10% BAC level, or higher. There is no per se level of intoxication within the Commonwealth of Virginia. BAC's within the range of .05%-.099% preclude any presumption, but may nevertheless result in a DWI conviction when entered into evidence along with other incriminating testimony in facts.

Conclusions: Evidentiary sobriety testing is administered within the jurisdictional area of the Fairfax County ASAP in accordance with Section 18.1-54.1 of the Code of Virginia and the Police and Procedures issued by the State Health Commissioner of the Commonwealth of Virginia.

In June of 1972, the Fairfax County ASAP provided the Fairfax County Police Department with two complete videotaping units to be utilized in the mobile evidentiary testing vans to supplement evidence on DWI cases. The videotaping equipment provided by the ASAP consisted of two cameras, two recorders, two monitors, and twelve tapes at a total cost of \$5,400.

This equipment was installed in the mobile evidentiary testing vans and employed for a short period of time. Very few tapes were ever shot and none were ever shown in court. Although the units are still mounted in the mobile vans, videotaping has never become an operational tool in the ASAP enforcement program.

The decision not to use videotaping to supplement evidence on DWI cases was the result of an opinion by the court that videotapes would be accepted as evidence only if all suspects charged with the offense of DWI were so taped. This decision meant that videotaping facilities had to be made available to all law enforcement officers throughout this jurisdictional area on a 24-hour basis. The cost associated with this task prohibited the implementation of videotaping as an enforcement countermeasure of the Fairfax County ASAP.

The effective utilization of the mobile evidentiary testing vans, in the opinion of this investigator, is highly suspect. On the site visit, this investigator observed the operation of the evidentiary mobile testing van. During the course of the shift, the mobile van was kept in motion much in the same manner as a patrol cruiser on deterrent patrol. This patrol continued until the van operator was advised, via police radio, that an officer was in need of the evidentiary testing services provided by the van. The mobile van operator advised the arresting officer, via police radio, to meet him in the Courthouse parking lot in Fairfax, Virginia. This investigator then observed a marked police cruiser driving alongside the mobile testing van. This marked police cruiser continued to follow the mobile van for approximately five miles and upon arrival at the Fairfax County Courthouse, this investigator learned that it was this officer who had requested the services of the mobile testing facility.

Recommendations: The role of the mobile evidentiary testing van in the Fairfax County Alcohol Safety Action project should be reevaluated to determine if this countermeasure program should be continued. The mobile testing configuration should be closely monitored in accomplishing this

reevaluation to assure that the operators of the mobile testing facility are in fact deploying the van in accordance with the directives established by the Fairfax ASAP and the Fairfax County Police Department.

COUNTY OF FAIRFAX, VIRGINIA
POLICE DEPARTMENT

PAGE _____ OF _____

INVESTIGATION REPORT

(9) UNIT ASGD _____ (12) AREA _____ (13) PATROL _____

(1) CASE NO. _____

(17) DIVISION _____ DUTY STATION _____

DATE _____

COMPLAINANT _____ PHONE NO. _____

HOME ADDRESS _____

DATE RECEIVED _____ TIME RECEIVED HR. _____ MIN. _____ WEATHER _____ LIGHT _____

(20) DATE OF EVBNT _____ (26) TIME OF EVENT HR. _____ MIN. _____ (30) DAY OF WEEK _____ FEL - MISD _____

PLACE OF EVENT _____ (31) CLASS _____ CODE _____

NATURE OF CASE _____ (35) FND

SUBJECT NO. 1 _____ (36) OFF1

ADDRESS _____ (40) ACT1

SUBJECT NO. 2 _____ (41) TYP1

ADDRESS _____ (42) NRV1

DETAILS OF INVESTIGATION _____ (44) JUV1

_____ (45) OFF2

_____ (49) ACT2

_____ (50) TYP2

_____ (51) NRV2

_____ (53) JUV2

_____ (54) LOCN

_____ (56) MTHD

_____ (58) INST

_____ (60) VIOB

_____ (62) MOTV

_____ (64) MO1

_____ (67) MO2

_____ (70) MO3

(73) NRPC (75) STATUS (76) EFl or MFl (Circle) (79) SEQ

TIME NOTIFIED _____ TIME ARRIVED _____ TIME CLEARED _____ DATE _____

FOLLOW UP _____ INVESTIGATED BY _____ APPROVED _____

| PROPERTY MISSING OR STOLEN | | (16) JT _____ (31) JR _____ | (9) PC | (10) VS | (25) VR | EST. VALUE | |
|----------------------------|------|--------------------------------------|-----------|------------|------------|------------|-----------|
| QUANTITY | ITEM | DESCRIPTION | | | | STOLEN | RECOVERED |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| TOTAL VALUE | | | | | | | |

VEHICLE USED - STOLEN - INVOLVED ENTERED IN WALES ☐ YES ☐ NO STATE TT SENT ☐ LOCAL LOOKOUT BROADCAST ☐

YEAR _____ MAKE _____ MODEL _____ TAG NO. _____ STATE _____

COLOR _____ SERIAL NO. _____ MARKS _____

DESCRIBE VICTIM - VEHICLE - BUILDING _____

NAME OF DECEASED _____ RACE _____ SEX _____ AGE _____

HEIGHT _____ WEIGHT _____ HAIR _____ EYES _____ BIRTHDATE _____

BIRTHPLACE _____ TIME OF DEATH _____ DATE OF DEATH _____

NATURE OF DEATH _____ MEDICAL EXAMINER _____

UNDERTAKER _____ ADDRESS _____

MISSING - WANTED - SUSPECT

NAME _____ RACE _____ SEX _____ AGE _____

ADDRESS _____ PHONE _____

HEIGHT _____ WEIGHT _____ HAIR _____ EYES _____ BIRTHDATE _____

BIRTHPLACE _____ OCCUPATION _____ COMPLEXION _____

DRESS _____

MARKS _____ WHY WANTED _____

WITNESSES - REMARKS _____

TIME ARRIVED _____ TIME CLEARED _____ DATE _____

Figure 22-2 (cont'd.) 542

FALLS CHURCH POLICE DEPARTMENT D.W.I. FORM

Arrest Number _____

Complaint Number _____

Arresting Officer _____

Date and Time Arrested _____

NAME _____ ADDRESS _____

AGE _____ SEX _____ RACE _____ APPROX. WEIGHT _____ O.L.# _____

OBSERVATIONS: (Check one)

CLOTHES: (Describe type and color) _____

Condition of Clothing: () Disorderly () Disarranged () Soiled () Mussed
() Orderly

BREATH: (Oder of Alcoholic Beverage) () Strong () Moderate () Faint () None

ATTITUDE: () Excited () Hiliarious () Talkative () Carefree () Sleepy
() Profane () Combative () Indifferent () Insulting () Cocky () Polite
() Cooperative

UNUSUAL ACTIONS: () Hiccoughing () Belching () Vomiting () Fighting
() Crying () Laughing

SPEECH: () Not understandable () Mumbled () Slurred () Confused () Accent
() Thick tongued () Stuttered () Fair () Good

PERFORMANCE TESTS: Check one

BALANCE:() Falling () Needed support () Wabbling () Swaying () Unsure () Sure

WALKING:() Falling () Needed support () Wabbling () Swaying () Unsure () Sure

TURNING:() Falling () Staggering () Hesitant () Swaying () Unsure () Sure

FINGER TO NOSE: Right Hand: () Completely Missed () Hesitant () Sure
Left Hand: () Completely Missed () Hesitant () Sure

COINS: () Unable () Fumbling () Slow () Sure

ABILITY TO UNDERSTAND INSTRUCTIONS: () Good () Fair () Poor

TEST PERFORMED TIME: _____

OBSERVER'S OPINION: (Effects of Alcohol) () Extreme () Obvious () Slight () None

CHEMICAL TEST DATA: (Type) () Blood () Breath

TIME FIRST OBSERVED: _____ DATE OF TEST _____ TIME OF TEST _____

RESULTS BAC _____ EQUIPMENT TYPE _____ EQUIPMENT NO. _____

NAME OF OPERATOR _____ LICENSE NO. _____

SIMULATOR NO. _____ RESULT OF SIMULATOR TEST _____

(Signed) _____

City of Fairfax
Police Department

| VEHICLE REPORT | | | | 1. REGISTERED OWNER'S NAME (LAST, FIRST, MIDDLE) | | 2. COMPLAINT NO. | |
|--|--|---|--|--|--|--|--|
| 17. NO. EXTRA COPIES | | 18. DISTRICT | | 19. BEAT | | 20. REP. AREA | |
| 21. COMP'S OCCUPATION | | | | 22. HOURS OF EMPLOY. | | 23. SOBRIETY | |
| 24. DESCRIBE LOCATION OF OFFENSE OR TYPE OF PREMISE | | | | 25. COMP'S SEX-RACE-O.O.B. | | 26. LOCATION: STOLEN, RECOVERED OR TOWED FROM (ADDRESS) | |
| 27. VEHICLE USED BY SUSPECTS | | | | 28. LICENSE NO. | | 29. STATE | |
| 30. YEAR | | | | 31. MAKE | | 32. BODY | |
| 33. MODEL | | | | 34. COLOR(S) | | 35. IDENTIFYING CHARACTERISTICS OF VEHICLE | |
| 36. CODE: V-VICTIM (OTHER THAN IN BLOCK #1) AND SHOW SEX, RACE, AGE; W-WITNESS; P-PARENT OR GUARDIAN. | | | | 37. DATE/TIME STOLEN/TOWED | | 38. DATE/TIME REPORTED | |
| 39. NAME | | | | 40. CODE | | 41. RESIDENCE ADDRESS | |
| 42. CITY | | | | 43. RES. PHONE | | 44. BUS. PHONE | |
| 45. IDENTIFY SUSPECTS BY NO. (NAME-ADDRESS-SEX-DESCENT-AGE-HT-WT-EYES-HAIR-COMPLEX-CLOTHING-IDENTIFYING CHARACTERISTICS. IF ARRESTED, INCLUDE ARR. NO. AND CHARGE) | | | | 46. CRIME | | 47. CLASSIFICATION (OFC. USE) | |
| 48. STOLEN/TOWED VEHICLE DATA/VIN NO. | | | | 49. STATE/YEAR | | 50. REG. NO. | |
| 51. TYPE VEHICLE | | | | 52. YEAR | | 53. MAKE | |
| 54. BODY | | | | 55. MODEL | | 56. COLOR(S) | |
| 57. IGNITION LOCKED | | 58. KEYS IN IGNITION | | 59. DOORS LOCKED | | 60. WINDOWS CLOSED | |
| 61. BATTERY IN CAR | | 62. SPARE TIRE IN CAR | | 63. TRUNK LOCKED | | 64. RADIO IN CAR | |
| 65. DATE/TIME | | 66. RADIO NOTIFIED | | 67. TOTAL LOSS VALUE | | 68. BY WHOM RECOVERED (OFFICER'S NAME AND SERIAL NO.-IF CITIZEN, NAME-ADDRESS-RES. PHONE-BUS. PHONE) | |
| 69. LOCATION OF RECOVERY | | 70. METHOD OF THEFT (JUMP WIRES-TINFOIL-IGNITION LEFT OPEN, ETC.) | | 71. DESCRIBE EVIDENCE OF STRIPPING, TAMPERING | | 72. IF TOWED NAME OF GARAGE | |
| 73. OWNER NOTIFIED DATE/TIME | | 74. NARRATIVE: (1) CONTINUATION OF ABOVE ITEMS (INDICATE "ITEM NUMBER" CONTINUED AT LEFT). INCLUDE ADDITIONAL VICTIMS, WITNESSES AND SUSPECTS AS OUTLINED ABOVE. (2) DESCRIBE DETAILS OF INCIDENT. (3) DESCRIBE & INDICATE EVIDENCE AND PROPERTY & DISPOSITION. | | | | | |
| 75. REPORTING OFFICER NO. | | | | | | | |
| 76. STATUS (CHECK ONE) | | | | | | | |
| 77. SUPERVISOR APPROVING NO. | | | | | | | |
| 78. DATE/TIME TYPED NO. | | | | | | | |
| 79. UNIT REFERRED TO: | | | | | | | |
| 80. UCR DISPOSITION | | | | | | | |
| 81. REVIEWER NO. | | | | | | | |

PD-4 (Rev. 1-70)

Figure 22-6

545

DISTRIBUTION: WHITE COPY RECORDS
BLUE COPY REPORT TO VIOLENCE
YELLOW COPY DETECTIVE DIVISION
PINK COPY UNIFORM DIVISION

OFFICERS CONTACT SHEET - ASAP PROGRAM

DATE _____ HOURS OF ASSIGNMENT

OFFICER _____ FROM: _____ TO _____

RECORD ALL VEHICLES STOPPED.

AREA ASSIGNED _____

| TIME | TAG NUMBER | REASON FOR STOP | DISPOSITION OF STOP |
|------|------------|-----------------|---------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

TOTAL NUMBER OF CONTACTS _____

TOTAL NUMBER OF ARRESTS _____

TOTAL NUMBER OF WARNINGS _____

OFFICER'S SIGNATURE

TOTAL HOURS WORKED _____

TOTAL MILES TRAVELED _____

GALLONS OF GAS _____

COMMENTS

Figure 22-7 (cont'd.)

DECLARATION OF REFUSAL TO PERMIT TAKING OF BLOOD OR BREATH SAMPLE

Section 18.1-55.1 of the Virginia Code provides that any person, whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this State on and after Jan. one, nineteen hundred seventy-three, shall be deemed thereby to have agreed as a condition of such operation to consent to have a sample of his blood or breath taken for a chemical test to determine the alcoholic content of his blood, if he is arrested for operating a motor vehicle while under the influence of intoxicants within two hours of the alleged offense. If the person arrested refuses to permit the taking of blood or breath for such test, the arresting officer shall take the person arrested before a committing magistrate. If the person arrested, after having been advised by the arresting officer that the law of Virginia requires a person accused of operating a motor vehicle while under the influence of intoxicants to permit a sample of his blood or breath to be taken so that a test may be made of his blood or breath to determine the alcoholic content of his blood and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this State, then refuses to permit the taking of blood or breath for such test and does again so refuse upon being taken before a committing magistrate, and being further advised by such magistrate of the law requiring a blood or breath test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Division of Consolidated Laboratory Services, or refuses or fails to so declare in writing and such fact is certified by the committing magistrate, then no blood or breath sample shall be taken even though the person arrested may thereafter request the same. Conviction of the offense of unreasonably refusing to permit the taking of a blood or breath sample will result in the suspension of the arrested person's license for a period of ninety days for the first offense, and six months for a second or subsequent offense or refusal within one year of the first or other such refusals.

"Having read the above statement, and having been advised by the arresting officer and by the committing magistrate of the law requiring the taking of a blood or breath sample and the penalty for refusal, I refuse to permit the taking of a blood or breath sample and herewith make this declaration of refusal as prescribed by law."

Person From Whom Blood or Breath
Sample is Sought

Witness

Date

CERTIFICATE OF COMMITTING JUSTICE

(To be executed by the committing justice only if the person arrested for driving while under the influence of intoxicants refuses to permit the taking of a blood or breath sample and further refuses to execute the declaration of refusal inscribed above.)

I, _____, a committing justice of the _____ of _____,
(City or County)

Virginia, do hereby certify that I advised _____, who has been arrested for
(Person Arrested)

operating a motor vehicle while under the influence of intoxicants and has refused to permit the taking of a blood or breath sample, that his refusal to permit a blood or breath sample to be taken—if found to be unreasonable—constitutes grounds for the revocation of his license to operate a motor vehicle upon the highways of Virginia,

and I do hereby certify that _____ refused or failed to execute the declaration of refusal
(Person Arrested) inscribed above.

Committing Justice

BREATHALYZER OPERATIONAL CHECK LIST

Name of subject _____ Date _____

Time (of test) _____ Blood Alcohol 0. _____ % Ampul Control No. _____

Operator _____ Witness _____

Instrument _____ No. _____

V

1. ☐ Observe subject for twenty minutes prior to testing to prevent oral intake of any material.

PREPARATION

2. ☐ Throw SWITCH to "ON", wait until THERMOMETER shows $50^{\circ} \pm 3^{\circ} \text{C.}$
3. ☐ Gauge TEST AMPUL and insert in left-hand holder.
4. ☐ Gauge TEST AMPUL, open, insert BUBBLER and connect to outlet.

PURGE

5. ☐ Turn to TAKE, flush out, turn to ANALYZE.
6. ☐ When RED empty signal appears, wait $1\frac{1}{2}$ minutes, turn on LIGHT, BALANCE.
7. ☐ Set BLOOD ALCOHOL POINTER on START line.

ANALYSIS

8. ☐ Turn to TAKE, take breath sample, turn to ANALYZE, (record time).
9. ☐ When RED empty signal appears, wait $1\frac{1}{2}$ minutes, turn on LIGHT BALANCE.

Record answer, dispose of test ampul, TURN CONTROL KNOB to "OFF"

Figure 22-9

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF HEALTH

Madison Building
109 Governor Street
Richmond, Virginia 23219

CERTIFICATE OF BREATH ALCOHOL ANALYSIS

Date of Report

NAME OF ACCUSED: _____

ADDRESS: _____

NAME OF COURT: _____

ADDRESS: _____

BREATH ANALYSIS:

Analysis Conducted By: _____

Health Department License No.: _____ License Expires: _____

Date Test Conducted: _____ Time Sample Was Taken: _____

Test Equipment Instrument No.: _____ was tested for accuracy by State Health
Commissioner's Office on _____ and found to be accurate.

RESULTS:

Blood Alcohol Content _____ % by weight by volume.

ATTEST:

I certify that the above is an accurate record of the test conducted; that the test
was conducted with the type of equipment and in accordance with the methods approved
by the State Health Commissioner; that the test was conducted in accordance with the
manufacturer's specifications, that the equipment on which the breath test was conducted
has been tested within the past six months and found to be accurate, and that I possess
a valid license to conduct such test. Given under my hand this _____ day of
_____, 19____.

Breath Test Operator

License Number

State of Virginia, County or City of _____
Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

My Commission Expires _____

| | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|--|--|--------------------------|--|--------------------------|--|------------------------------------|--|-----------------------------|--|-------------------------------|--|-------------------------|--|-------------------|--|---------------|--|--|--|-------------------|--|--|--|
| NAME (last, first, middle) | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1 2 3 4 5 6 7 8 9 10 11 12 | | | | | | | | | | | | 13 14 15 16 17 18 19 20 21 22 | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| ADDRESS (street, & number, city & state, zip) (local, if applicable) FROM DRIVERS LICENSE | | | | | | | | | | | | | | | | | | | | | | | | | |
| CURRENT ADDRESS: | | | | | | | | | | | | | | | | | | | | | | | | | |
| SUBJECT'S PLACE OF RESIDENCE 23 24 | | | | | | | | | | | | AGE 25 26 | | | | SEX 27 | | DATE OF BIRTH | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| EXACT LOCATION OF OFFENSE | | | | | | | | | | | | TELEPHONE HOME: WORK: | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| IDENTIFICATION 28 | | | | REASON FOR CONTACT 29 | | | | INJURY 30 | | | | MILITARY | | | | BRANCH OF SERVICE | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| OPERATORS LICENSE NUMBER | | | | | | | | | | | | SOCIAL SECURITY NO. | | | | | | | | | | STATE OF ISSUANCE | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| DATE OF CONTACT 31 32 33 34 35 36 | | | | | | DAY OF WEEK 37 | | | | TIME OF CONTACT 38 39 40 41 | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| BREATH SCREENING DEVICE ADMINISTERED 42 | | | | | | TIME OF TEST 43 44 45 46 | | | | RESULTS 47 | | | | IF NOT GIVEN, REASON 48 | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| ARRESTED 49 | | | | TYPE 50 | | | | CHARGE(S) IF OTHER SPECIFY 51 + 52 | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| BLOOD TEST ADMINISTERED 53 | | | | TIME OF TEST 54 55 56 57 | | | | WHERE ADMINISTERED 58 | | | | IF NOT GIVEN, REASON 59 | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| BREATH ANALYSIS ADMINISTERED 60 | | | | TIME OF TEST 61 62 63 64 | | | | BAC LEVEL 65 66 | | | | IF NOT GIVEN, REASON 67 | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| SUMMONS NO. 68 69 70 71 72 73 | | | | | | COURT DATE | | | | | | OFFICER'S NAME AND BADGE NO. | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| TIME RETURNED TO DUTY 74 75 76 77 | | | | | | ON ASAP DUTY 78 | | | | AGENCY 79 | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |
| TECH/NURSE NAME | | | | | | | | | | | | PERSON SUBMITTING FORM | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | |
|--|--|---|
| SUBJECT'S PLACE OF RESIDENCE 01. Fairfax County 02. Fairfax City 03. Falls Church 04. Vienna 05. Herndon 06. Arlington County 07. Loudoun County 08. Prince William County 09. Alexandria 10. Ft. Belvoir 11. Other Virginia 12. Maryland 13. Washington, D.C. 14. All other SEX 1. Male 2. Female IDENTIFICATION 1. Driver 2. Passenger 3. Pedestrian 4. Cyclist REASON FOR CONTACT 1. Accident 2. Violation 3. Driving Behavior 4. Complaint 5. Other Observation | INJURY 1. Yes 2. No DAY OF WEEK 1. Sunday 2. Monday 3. Tuesday 4. Wednesday 5. Thursday 6. Friday 7. Saturday ADMINISTERED 1. Yes 2. No RESULTS 1. Positive 2. Negative IF NOT GIVEN, REASON 1. Subject Refused 2. Equipment Not Available ARRESTED 1. Yes 2. No TYPE 1. Non-Crash 2. Injury Crash 3. Property Damage 4. Pedestrian Crash 5. Fatal Crash | CHARGE 1. DWI 1+2 DWI & refusal 1+3 DWI & reckless 0+1 1 Other 0+2 2 Other WHERE ADMINISTERED 1. ASAP Van 2. Hospital 3. Physician's Office 4. Station House ON ASAP DUTY 1. Yes 2. No AGENCY 1. Fairfax Co. Police 2. Fairfax City Police 3. Falls Church Police 4. Vienna Police 5. Herndon Police 6. State Police 7. Military Police MILITARY 1. Active Duty 2. Retired BRANCH OF SERVICE 1. AF 2. Army 3. Navy |
|--|--|---|

ASAP Form 3, 3/7/73

Figure 22-12

WARRANT OF ARREST

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX:

To Any Law Enforcement Officer of the Commonwealth:

Whereas, _____ of _____
COMPLAINANT

has this day made proper complaint before me under oath, and

Whereas, on the grounds of said complaint I have found probable cause to believe that _____
DEFENDANT

a _____ born _____ who can be located at _____
RACE SEX BIRTHDATE ADDRESS

_____ did, in the County aforesaid, on or about the _____ day
of _____, 19 _____, unlawfully, in violation of County Ordinance/State Code, Section _____,
drive and operate over a public highway while under the influence of intoxicants, self-administered, an automobile, to-wit:

A _____

These, Therefore, are to command you in the name of the Commonwealth to forthwith apprehend
and bring before the Fairfax County General District Court at Fairfax _____, Virginia on
the _____ day of _____, 19 _____ at _____ o'clock _____ M. the
subject to answer the said complaint and to be further dealt with according to law and there have this
warrant with your return.

Given under my hand this _____ day of _____, 19 _____.

Special Magistrate

THE FAIRFAX COUNTY GENERAL DISTRICT COURT

ORDERS OF THE COURT

THE WITHIN NAMED defendant on this _____ day of _____, 19____ ☐ forfeited collateral in the amount of \$ _____, or ☐ was tried in his absence, or ☐ came before me, and, ☐ being represented by counsel, or ☐ not being represented by counsel and waiving his right to same, pleaded ☐ guilty ☐ not guilty, and upon hearing the evidence in this matter, I find him ☐ guilty ☐ not guilty and adjudge a fine of \$ _____ and costs and order the defendant confined in jail for a period of _____ days _____ months, suspending \$ _____ and _____ days _____ months on the following conditions: a) general good behavior for one year, b) that defendant violate no law of the Commonwealth for one year and, c) _____

And it is further ordered that:

- ☐ The case be dismissed;
- ☐ The case be terminated Nolle Prosequi;
- ☐ The case be certified to the Grand Jury;
- ☐ Defendant's operators license be revoked for _____ days _____ months, until fine is paid
- ☐ This disposition having been made upon recommendation of Commonwealth's Attorney _____;

And that:

- ☐ Execution of the sentence be suspended until _____, 19____, at _____ o'clock P.M.
- ☐ Operators license accepted in lieu of bond
- ☐ A pre-sentence investigation is ordered returnable _____, 19____, at _____ o'clock P.M.
- ☐ Defendant be placed on active probation for one year.

Judge

| | | | | | |
|------------------------------|----------|------------------------|-------|-------------------------------|-------|
| WARRANT OF ARREST | | COUNTY OF FAIRFAX, VA. | | Vs. | |
| Executed this, the _____ day | | of _____, 19____ | | by arresting the within named | |
| Officer | | COSTS | | | |
| Fine | ..... \$ | ..... | ..... | ..... | ..... |
| Trial | ..... \$ | ..... | ..... | ..... | ..... |
| Bail | ..... \$ | ..... | ..... | ..... | ..... |
| Warrant | ..... \$ | ..... | ..... | ..... | ..... |
| Abstract | ..... \$ | ..... | ..... | ..... | ..... |
| D. M. V. | ..... \$ | ..... | ..... | ..... | ..... |
| Commonwealth Attorney | ..... \$ | ..... | ..... | ..... | ..... |
| Clerk (Circuit Court) | ..... \$ | ..... | ..... | ..... | ..... |
| Commitment (Jail) | ..... \$ | ..... | ..... | ..... | ..... |
| Witness Attendance | ..... \$ | ..... | ..... | ..... | ..... |
| Summoning Witnesses | ..... \$ | ..... | ..... | ..... | ..... |
| Total | ..... \$ | ..... | ..... | ..... | ..... |

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

To-wit: We, _____

and _____ do hereby severally and respectfully acknowledge ourselves to be indebted to the Commonwealth of Virginia, in the sum of \$ _____ to be respectfully made and levied on our several goods and chattels, land and tenements, to the use of the Commonwealth, and we each waive all benefits under the homestead exemption laws of the State of Virginia as to this obligation, the conditions of this obligation being that _____ shall (1) personally appear before the Fairfax County General District Court on the _____ day of _____, 19____ at 9:30 o'clock A.M. and at any times thereafter when proceedings in this matter may be heard by any court or judge, (2) shall not depart hence without leave of said court, (3) shall refrain from violating any law of this Commonwealth during the pendency of this recognizance, which remains in full force and effect until terminated by operation of the law; and that (4) nonappearance before any court in this matter shall be deemed a waiver of defendant's right to have counsel appointed for him and (5) nonappearance before any Circuit Court may be deemed a waiver of the right to a trial by jury.

Given under our hand and seal this the _____ day of _____, 19____.

(SEAL)

(SEAL)

(SEAL)

(SEAL)

Acknowledged before me, in the said County, the day and year first above written.

553

Address of Surety

Figure 22-13 (cont'd.)

Special Magistrate for Fairfax County, Virginia

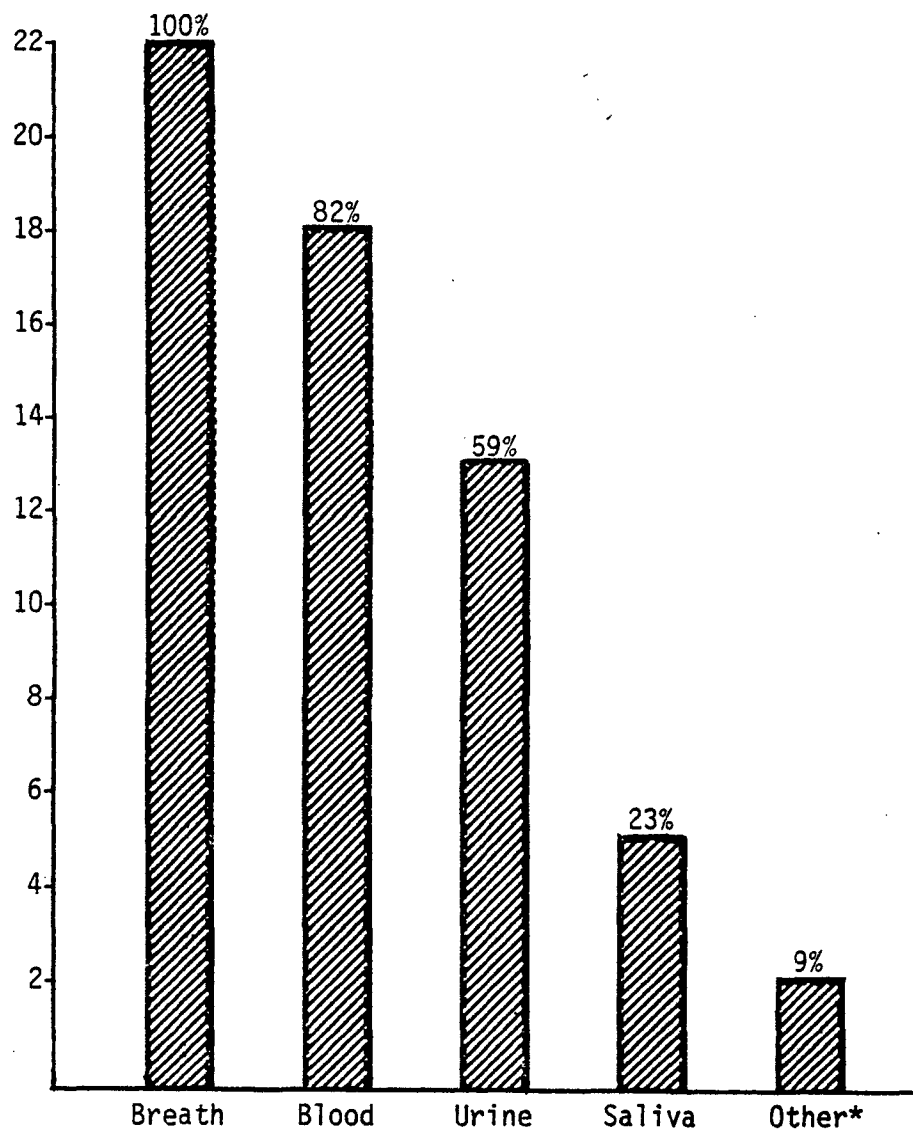
Use of Pre-Arrest Breath-Testing
Devices at Sites Surveyed

| ASAP Site | PBT | | | |
|--------------------------------------|------------|-------------|-----------|-------------|
| | A.L.E.R.T. | Alco-Sensor | Alcolyser | Sober-Meter |
| California (Los Angeles County) | Exp. | | | |
| Georgia (Columbus) | X | X | X | |
| Louisiana (New Orleans) | X | | | |
| Maine (Cumberland and York Counties) | | | | X |
| Minnesota (Hennepin County) | X | | | |
| Nebraska (Lincoln) | X | X | X | |
| South Dakota | X | | | |
| Utah (Salt Lake County) | Exp. | | | |
| Vermont | | X | | |
| Virginia (Fairfax County) | X | X | X | |
| Total | 8 | 4 | 3 | 1 |

Exp.: Experimental use only
X: Being used

Figure V

Bodily Substances for Which Evidentiary
Analyses Are Statutorily Authorized



*Spinal fluid, eyeball fluid, etc.

Figure VI

Evidentiary Breath Testing Devices
Found at Sites Surveyed

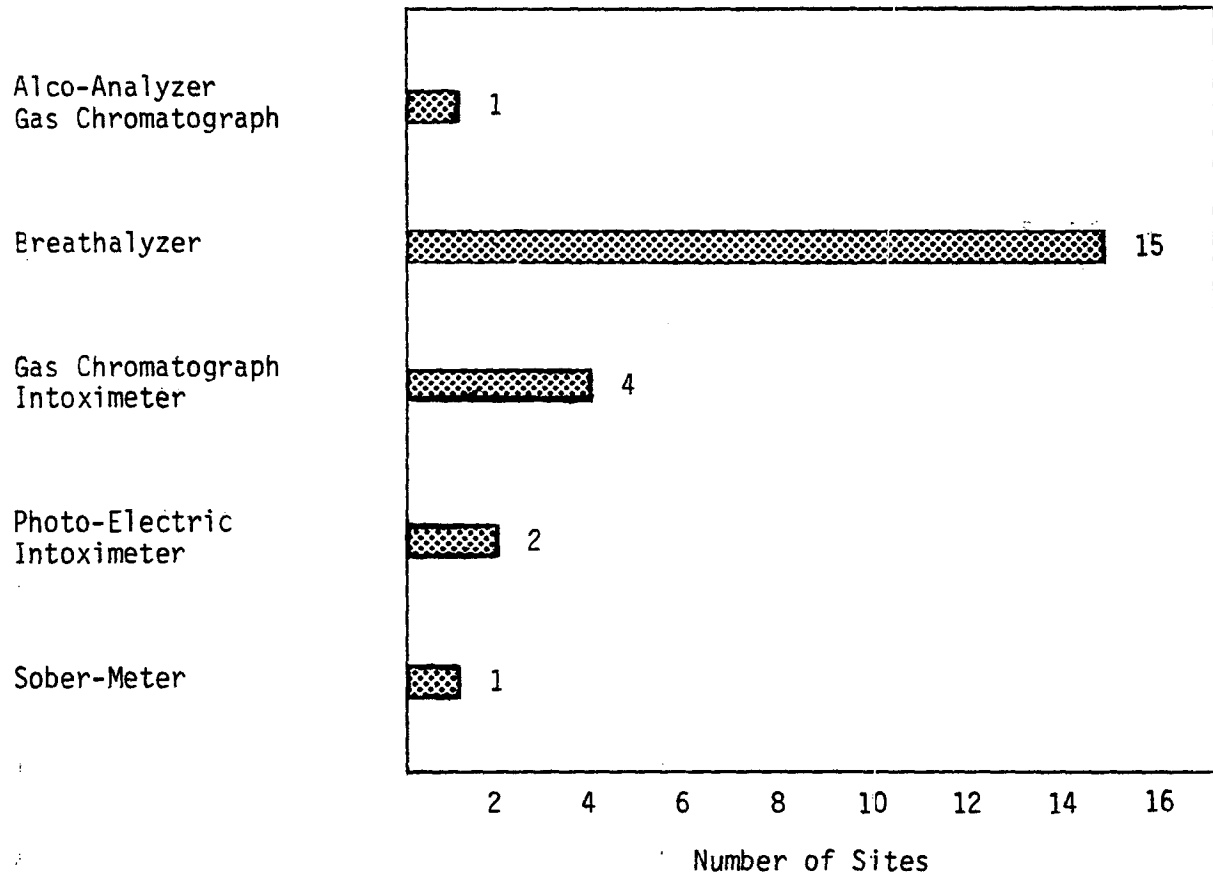


Figure VII

Sites Which Have Used Both Breathalyzer
and Gas Chromatograph Intoximeter

| ASAP Site | Device Currently Being Used | Device Used on a Trial Basis |
|---------------------------------|--------------------------------|---|
| Arizona (Phoenix) | GCI and Breathalyzer | None |
| California (Los Angeles County) | GCI | Breathalyzer (used previously) |
| Florida (Hillsborough County) | Breathalyzer | GCI (becomes official device in 1975) |
| Nebraska (Lincoln) | GCI | Breathalyzer |
| South Dakota | Breathalyzer | GCI |
| Virginia (Fairfax County) | Breathalyzer | GCI (used previously) |

Figure VIII

Overview of Legal Provisions for Bodily Substance Analysis
of Persons Fatally Injured in Motor Vehicle Accidents

| Statutory Requirement for Determination of Blood- Alcohol Concentration | No Statutory Requirements for BAC Analysis |
|---|---|
| Arkansas (Pulaski County) | California (Los Angeles County) |
| Louisiana (New Orleans) | Georgia (Columbus) |
| Massachusetts (Boston) | Indiana (Indianapolis) |
| Missouri (Kansas City) | South Carolina (Richland County)* |
| Nebraska (Lincoln) | Texas (San Antonio) |
| New Hampshire | Utah (Salt Lake County) |
| South Dakota | Virginia (Fairfax County) |
| Vermont | |

*In Richland County, South Carolina, there was no pertinent statute at the time of the survey, but one had been passed by the state legislature and was to become effective January 1, 1975.

Figure IX