

52083

TRAFFIC LAW ENFORCEMENT: DWI

PART 4 Handling the Drinking Driver Suspect



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TRAFFIC LAW ENFORCEMENT PROCEDURES

DWI PART IV: HANDLING THE DRINKING DRIVER SUSPECT

ABSTRACT

This self-instructional unit focuses on the police officer's role in handling the drinking driver suspect. Throughout the unit, the student is presented with practical suggestions to ensure that he or she handles the suspect in a manner that not only protects the suspect's legal rights but also maximizes the possibility of a court conviction (assuming the suspect was indeed under the influence of an intoxicating substance).

Procedures for stopping the suspect's vehicle are briefly reviewed as are the observations the officer should make as he or she initiates contact with the violator. The duties of the officer, under Maryland law, are explained regarding such activities as: handling the intoxicated operator, searching the suspect's vehicle, and advising the suspect of his rights under the Miranda act and the implied consent law.

The importance of recording and documenting evidence is stressed as is the practice of conducting records checks. A final section presents information that would assist the police officer in recognizing a variety of symptoms that may require prompt medical care for the DWI suspect.

BEHAVIORAL OBJECTIVES

Upon completion of this self-instructional unit the student will be able to:

- Describe the legal considerations involved in how a DWI suspect's motor vehicle is stopped
- Identify the procedures that should be followed once violator contact is made
- Identify the duties, under Maryland law, of an arresting officer in a DWI case.
- Describe the guidelines for handling the intoxicated operator
- Identify the procedure to be followed by an officer under the implied (expressed) consent law
- Identify the DWI suspect's rights under the implied consent law
- Identify the procedure and considerations to be followed by an officer in regard to advising a suspect of his rights under the Miranda act
- Identify the procedure to be followed in completing Form DR-15 (Officer's Certification of Driver Refusal to Submit to Chemical Test)
- Describe the reasons for recording and documenting evidence as well as conducting records checks
- Identify those symptoms that indicate the suspect has a serious medical problem (alcohol and/or other related).

INTRODUCTION

After detecting a possible drinking driver, the officer must become familiar with the appropriate procedures for handling the suspect after he is stopped. It cannot be assumed automatically that the suspect is intoxicated. The officer must develop necessary competencies to determine to his satisfaction that the driver is indeed driving under the influence of alcohol and/or drugs; to observe clinical symptoms displayed by the suspect that will buttress the prosecution of the charge; to properly advise the suspect of his rights both with regard to chemical testing and to constitutional rights upon arrest; to provide adequate care for persons needing medical attention; to handle suspects whom he determines are not intoxicated; and to record and document evidence in the event an arrest is made, including the proper procedures for completion of appropriate forms.

A detailed introduction to procedures for detecting drinking drivers was given in the previous unit, while psychophysical testing is covered at length in the following unit. These issues will be dealt with in this unit only as they are relevant to handling suspects and developing evidence for prosecution purposes. Methods for pursuit and apprehension of traffic violators, including violator contact procedures and law enforcement actions, were covered in the previous units on Traffic Law Enforcement Procedures. The student officer should refer to these units as necessary.

OBSERVATION OF CLINICAL SYMPTOMS

General Considerations

The most important test for determining intoxication has always been the subjective conclusion of the officer making the determination based upon clinical symptoms displayed by the suspect. Clinical symptoms is the term used to indicate evidence of intoxication that can be detected simply by careful observation of the driver's actions. It is not restricted to examination by physicians or other specialists, but may be done by trained or untrained experienced persons.

Officers should not rely too heavily on the result of blood-alcohol testing for a conviction. Chemical tests are only supplementary evidence, that is, evidence that supplements the basis for the arrest, which is the clinical symptoms observed.

Because these symptoms may be manifested in subtle ways and are often difficult to describe, the common law has provided an exception to the rule against opinion testimony with regard to the opinion of a witness that a person was intoxicated. The law presumes that most persons have sufficient prior experience with drunks to enable them to form an opinion that has some worth. Many judges have indicated that the failure of the arresting officer(s) to lay a foundation for an arrest by careful observation of clinical symptoms to correlate blood-alcohol test results is perhaps the prime reason that drunk driving cases are lost or result in reduced charges.

Defense attorneys will frequently challenge officer's testimony on the actions of the defendant as having a "broken-record" sameness. To counter this approach, the officer should clearly respond when asked, "How do you describe the actions of a drunk?," by saying, "Alcohol manifests certain symptoms as the blood-alcohol level rises and most persons display similar symptoms."

The best evidence in a drunk driving case is the driver's operation of the motor vehicle--the particular action that attracted your attention to the vehicle--and the condition of the driver once the vehicle is stopped. The following unit (XXXII) gives a detailed description of observable symptoms displayed by intoxicated persons. Detection of drinking drivers was discussed in Unit XXX.

Stopping the Suspect's Vehicle

If a suspected driver is allowed to drive too far, the officer may allow the driver in his own defense to argue that operation of the vehicle was not so clearly erratic as to immediately indicate drunk driving. Allowing the driver to continue driving for several miles is grounds for legal criticism. In stopping the vehicle too soon, it must be remembered that the officer is not stating that the driver is intoxicated, but that observed unsafe operation required further investigation to determine if the driver was drunk, sick, etc.

Once the vehicle is stopped, the officer should observe how the maneuver was accomplished. Was the vehicle partially on the roadway?

Did the driver jump the curb? Any action not usually associated with normal driving behavior adds probable cause to arrest and strengthens clinical symptoms. Close attention to detail is important for later substantiation in court.

Violator Contact

The officer should approach the suspect's vehicle with caution. Alcohol dulls many senses, including reasoning. A drunk driver apprehension is always an unpredictable situation. In general, the officer should follow standard violator contact procedures. He should also be aware that when his investigation moves from general inquiry to focus on drunk driving as an offense that statement of the Miranda warning may become necessary. The use of Miranda will be discussed later in this unit.

Breath Odor. The officer should first be alert to the odor of alcoholic beverages in the vehicle or on the suspect's breath, and to the possible presence of beverage containers within the vehicle. He should also note any attempts at concealment or objects tossed from the car either before the suspect stops the vehicle or upon stopping. The odor of alcoholic beverage on the person's breath is important in establishing the case in court even though the defense has considerable room for cross-examination. The officer should be aware that the defense objectives with regard to his testimony on breath odor are:

To create doubt as to the accuracy of the officer's observation

- To show that even if his observations are accurate, they do not prove intoxication; and
- To lay groundwork for the jury that the only reason the client was charged is that he had the misfortune to be stopped for a minor traffic violation while the odor of alcohol was on his breath; that police officers are very suspicious, in general; and that the mere presence of alcohol odor leads them to jump to conclusions, in this case, that the driver is intoxicated.

The officer should not be intimidated at the prospect of testifying on breath odor, but must keep in mind that alcohol, in its purest form, is a colorless, odorless, semitasteless liquid and that odor is impartedduring the brewing and aging process (the chemical name being "esters").

Removal of Suspect from Vehicle. The officer should closely observe the actions of the driver as he leaves his vehicle. Does he have to use the car to hold himself erect? As he walks to the rear of the vehicle, does he sway and use the vehicle to hold himself up? How does he walk in an open area without any means of support? Does he stumble? Did the officer have to assist at this point? All such observations should be noted as part of the clinical symptoms observation.

Field Sobriety Test

The officer should be familiar with the policy and practice of his jurisdiction with regard to the use of the field sobriety test. In general, it is known that seasoned drinkers may have learned to compensate for their impairment sufficiently to pass; yet a poorly coordinated but sober person may have difficulty. The Maryland State Police Form 32 has been revised to eliminate the field sobriety test, but forms in use in various county and municipal jurisdictions may still include it.

Even where the tests are not included on the intoxicated driver form, the officer may administer the tests and make notes of the results. Two tests are highly regarded in showing alcohol impairment--the balance test and the walking-and-turning test. Both are described in detail in the following unit. The results of both these tests--and others--form part of the clinical symptoms the officer must observe in preparing his case.

NOTE: The remaining coordination tests are subject to much criticism. Experts have shown that, for example, many intoxicated subjects can successfully pick up coins, and that the finger-to-nose test with eyes closed may be difficult for an officer himself to perform, especially if defense counsel in court succeeds in making the officer nervous. (See - Defense of Drunk Driving by Richard E. Erwin.)

Observation After Arrest

After a person has been placed under arrest and advised of his rights under Miranda and of his rights to take or decline chemical tests, the observation of clinical symptoms continues and may be introduced into evidence. The driver's actions during a chemical test, while enroute to and at the commissioner's office, or at any time while in custody, are all clinical symptoms and may be used in evidence at the trial.

ARREST OF THE INTOXICATED DRIVER

General Considerations

Once the officer has arrived at the conclusion that the cause of the abnormal vehicle operation observed is an intoxicated operator, he must advise the suspect that he is under arrest for "driving while in an intoxicated condition and or while ability is impaired due to the consumption of alcohol" (Article 66 1/2, Section 11-902, Motor Vehicle Laws of Maryland).

Duties of the Officer under Maryland Law

The following duties of the officer once he has placed an individual under arrest are spelled out in the Motor Vehicle Laws of Maryland, Article 66 1/2, Section 6.205.1(c). He should, in summary:

- Detain the person

- Request that the suspect take a chemical test of his blood, breath, or urine to determine the alcohol content, if any, of his blood
- Advise the suspect that the person administering the test has been lawfully trained and certified and that the equipment used is approved for such tests by officer's jurisdiction and by the Chief Toxicologist of the Department of Post-Mortem Examiners, as required by law
- Advise the suspect of the administrative penalties that may be invoked by the State Department of Motor Vehicles should he refuse a test:
 - A 60-day operator's license suspension for resident operators
 - Notification on nonresident operator's licensing state of a 60-day suspension of the operator's privilege to operate in Maryland
- File with the State Department of Motor Vehicles within 48 hours after the detention a sworn report in the case of a refusal of the facts of the detention, the officer's conclusion that the driver was under the influence of alcohol, and of the driver's refusal to take a chemical test. (To comply with the law, the report (Form DR-15) must be postmarked but not necessarily received within the 48-hour period.)

Handling the Intoxicated Operator

The drunk driver is one of the most difficult subjects to handle,

although not usually among the more dangerous of offenders. The arresting officer should follow the suggested guidelines below in addition to the usual procedures for his jurisdiction in making arrests.

- If the suspect offers resistance, only that amount of force necessary to control him should be employed--and no more. The officer should bear in mind that an intoxicated person's reasoning powers and, hence, his common sense are affected and that he may engage in behavior which he would not ordinarily permit himself when sober. Usually, but not always, a gentle firmness will be sufficient. The officer should, however be prepared for violent resistance and ready to take appropriate measures in response
- Threats or promises for any purpose should not be made. This is of particular importance in obtaining the individual's permission to give the chemical tests
- Only the warnings as spelled out in Section 6-205.1 of the Motor Vehicle Laws of Maryland (and included on Form DR 15) and the Miranda statement should be employed
- The suspect's requests should be honored if possible, but he should be kept under constant observation. However, if a chemical test is to be administered, he should not be allowed to eat, drink, or smoke prior to the test. If the suspect asks to take medicine and there is alcohol in the medicine, the chemical test cannot be given. The officer must rely on his own judgment in deciding whether to permit

the accused to take medicine or whether the advise of a physician is necessary for this determination.

Handling the Suspect's Vehicle

The officer should become familiar with his jurisdiction's policies and procedures for securing or storing the suspect's vehicle and for disposing of any personal property that may require attention.

Search of Vehicle and Violator

The officer should conduct a standard search of the vehicle and the suspect for concealed weapons or evidence, including controlled substances. The courts have ruled that a full custodial search is proper in these cases.

Chemical Testing of Defendant

General considerations. A voluntary consent to chemical testing is not vitiated by the person's intoxicated condition. The courts have concluded that if the person is conscious enough to consent at all, they will hold him to the consent, absent any special factors of police behavior in obtaining consent or the arresting officer's failure to observe statutory or court-established requirements of the jurisdiction as to procedures in chemical test cases.

Two factors are expected to contribute to a declining frequency of willing consent to chemical testing in drunk driving cases:

- Recent more stringent standards for voluntariness or a waiver of constitutional rights developed in other types of cases are expected to exert their influence even though they do not strictly apply at present
- Greater public awareness of chemical testing and increased effectiveness of testing in law enforcement action against drunk drivers may result in a decline in the number of voluntary submissions to chemical tests.

Implied-Expressed Consent Law. Article 66 1/2, Section 6-205.1, contains what is referred to as the "implied-expressed consent" law, a provision that preconditions the issuance of an operator's license on the applicant's agreement to take a chemical test to determine alcohol content of blood, breath, or urine. The law permits the State Department of Motor Vehicles to suspend the driver's license for up to 60 days should he refuse to take a chemical test for alcohol and to suspend the driving privileges in Maryland of a nonresident for the same period. The passage of this law has aided law enforcement in drunk driving prosecutions, but officers have at times relied too heavily on the result of chemical testing for convictions.

Advising Defendant of Rights. When the defendant is told he is under arrest for driving under the influence of alcohol and/or drugs,

and after the Miranda statement is read, the officer must:

- Advise the alleged offender of his rights under the law to take or to decline to take a chemical test to determine alcohol-blood content and of the consequences of declining
- Remind the driver, if he is a Maryland-licensed operator, that he agreed to take such a test when he was issued his driver's license
- Ensure that the driver (resident or nonresident) is aware that he may decline to take a chemical test and that he is aware of the possible administrative penalties under the law in the event of a refusal.

The officer must be aware that the failure to advise person's arrested for drunk driving of their rights results in the restoration of driving privileges suspended for refusal to submit to chemical testing. A more complete treatment of "Advice of Rights" appears later in the arrest section of this unit.

Testing Without Consent. If a driver suspected of driving under the influence of alcohol is brought unconscious to a hospital by a police officer, a blood sample may be withdrawn and tested for alcohol content. This is the only situation in which a chemical test may be conducted without the tested person's consent. (Refer to *Mauldin v. State* 239 MD. 592.)

Driver Declines Testing. It should be reemphasized that the basis for the arrest has been established by the officer's observation of

erratic vehicle operation and of the defendant himself. The officer's observation, if carefully made, coupled with his knowledge gained through experience, should be sufficient to gain a conviction even if the defendant declines a chemical test.

It is worth repeating that the chemical test is supplementary evidence and that the arrest should not be dependent on the results or expected results of testing. Legal precedents make it clear that the Fourth Amendment to the U.S. Constitution (unreasonable search and seizure) does not bar the seizure of a person's blood, breath, or urine to determine alcoholic content, provided the search is incidental to a lawful arrest and is based upon the reasonable belief that the person is intoxicated.

Form DR-15, "Officer's Certification of Driver's Refusal to Submit to Chemical Test," is provided for certifying to the State Motor Vehicle Administration a driver's election not to submit to a chemical test. A copy of this form is to be given to the person arrested. The original is to be forwarded to the Motor Vehicle Administration within 48 hours of the arrest. A sample copy of the form, including the "Advice of Rights for Chemical Test" statement included on it, is included in this unit, together with instructions for its use.

Partial or Indecisive Consent. If an individual refuses any type of test, there is little ambiguity on the person's desires regarding testing. If an individual is indecisive, demands more than one test, or refuses to fully comply with testing procedures, then he is considered

to have refused testing. In this event, the procedures outlined above for refusal of consent are to be followed. For example, the procedure for performing the urine test requires that two urine samples are necessary for proper analysis. If an individual gives one sample but refuses the second, this is a refusal under Section 6-205.1. If a person chooses to take the breath test but states he will only submit to this test if a blood test is made to substantiate the findings, this too is considered a refusal.

Maryland law gives the accused the right to select the type of test for determining alcohol content. The requesting of another test to correlate the results of the test chosen is considered a refusal. However, the accused's insistence on his right to be tested by a private physician in addition to the police-administered test is not a refusal.

Test by Private Physician. If after selecting one chemical test and performing that test, the accused requests his private physician be allowed to give him a blood or other test, the law requires that the law enforcement agency permit the accused to communicate his desire to his physician in a timely manner. There is no requirement that the accused be provided transportation to the physician's office; the physician may, however, come to the individual's place of detention to administer the test.

Conduct of Chemical Tests. Procedures for conducting chemical tests are described in the following unit. Chemical tests are conducted at a predetermined location after transportation of the suspect under arrest to a place of detention.

TO CHECK YOUR PROGRESS PLEASE ANSWER THE FOLLOWING QUESTIONS.

Directions: Using your response sheet, circle the letter of the item which most accurately completes the following statement.

1. The term "clinical symptoms", as used in DWI cases, generally refers to:
 - a. Any evidence of intoxication that was detected by careful observation of the driver's actions
 - b. Observations made by the certified individual who administered the chemical test
 - c. Observations made during an examination by a physician
 - d. The results of any chemical test to which the suspect voluntarily submitted

2. The field sobriety test that is generally considered to be the most effective for showing alcohol impairment is:
 - a. The coin pick-up test
 - b. The balance test
 - c. The Ruane test
 - d. The finger-to-nose test (with eyes closed)

3. The DWI suspect who has been placed under arrest must be advised of:
 - a. His or her rights to take or decline a chemical test under Maryland law
 - b. His or her rights under the Miranda act
 - c. Both a. and b.
 - d. Neither a. nor b. since the suspect's comprehension is impaired

4. The motor vehicle laws of Maryland require the arresting officer in a DWI case to file a sworn report with the Motor Vehicle Administration
 - a. Within 48 hours after the arrest for those cases where the suspect refused a chemical test
 - b. Within 48 hours after the arrest for all DWI cases
 - c. Within five days after the arrest for all DWI cases
 - d. None of the above

5. Which of the following is NOT considered to be a refusal to submit to a chemical test on the part of a DWI suspect.
 - a. The suspect agreed to take the blood test only if a urine test were given to corroborate the breath test.
 - b. The suspect gave one sample of urine but claimed he or she was unable to give a second sample.
 - c. The suspect requested that he or she be tested by a private physician to corroborate the police-administered test.
 - d. All of the above.

TO CHECK YOUR ANSWERS TURN TO THE KEY ON PAGE XXXI - 56. REVIEW ANY ITEMS YOU MISSED BEFORE CONTINUING.

Advice of Rights

General Considerations. Two warnings must be given persons arrested for driving under the influence of alcohol and/or drugs:

- Statement of Constitutional Rights (Miranda warning)
- Advice of Rights for Chemical Test

In general, when the decision to arrest for drunk driving is made, the officer should advise the person arrested of his constitutional rights in accordance with the Supreme Court's Miranda ruling. A discussion of Miranda and a sample statement of rights is included in Unit XXVI, Traffic Law Enforcement Procedures, Part IV: Taking Law Enforcement Action. The Miranda statement should precede the statement of rights regarding chemical testing, although it need not be the first action upon contacting the violator. Generally, case law has permitted general inquiry into the reasons for a driver's erratic driving behavior. Thus, general questioning to determine the presence of an illness or injury, use of medicine, lack of sleep, etc., has been upheld by most courts. It is, however, becoming increasingly difficult to pinpoint where general inquiry ends and "focusing" on a specific offense for which the individual may be arrested begins, and thus when a Miranda warning is required.

Statement of Constitutional Rights (Miranda). It is essential that the officer be well-informed on this subject to assure insofar as possible that the suspect's rights are not violated in the eyes of the

court. There are three basic elements of the requirement that a suspect be advised of Miranda rights. They occur when the officer:

- Focuses his investigation of an offense on a specific person
- Takes the suspect into custody for the offense (This may or may not be a formal arrest situation; the prime consideration is whether or not a custodial environment exists, that is, the person has been deprived of his freedom of action in a significant way.)
- Attempts to elicit information from the suspect that may be incriminating and which may be used against him in court.

Focusing the Investigation. The question of when you "focus" your investigation on the offense of driving under the influence of alcohol is of prime concern. In all probability, a sharp defense counsel can, at trial, push back the focusing of your investigation of his client to a point much earlier in your field contact than you would like. Thus, it may be advantageous to advise the suspect of his rights early in your investigation.

It can be (and has been successfully) argued that your focus begins at the point where you first detect the odor of alcoholic beverages upon initial face-to-face contact with the driver. Thus, an immediate advice of Miranda rights is necessary. This would have you, almost in the same breath, asking for the suspect's driver's license and advising him of his rights.

In those few cases of obvious intoxication, this procedure is applicable. However, it is more likely that you will be faced with the driver that displays more subtle clues, requiring greater analysis and judgment on your part. The presence of these types of clues is precisely what makes difficult the pinpointing of where your general inquiry ends and focusing begins.

Thus, the best general rule that can be stated at present is that you have "focused" your investigation on the suspect by the time you are attempting to elicit incriminating verbal statements from him--and it is quite possible that the investigation may even have "focused" at some earlier point in the field contact. However, it is stressed that Miranda applies only to verbal statements. If none are asked, the officer need not be overly concerned with Miranda.

When to Advise of Rights. There are many points in the DWI field contact at which officers choose to advise the suspect of his Miranda rights. Officers have been observed to advise suspects of their rights at various points in the field contact-arrest process:

- Initial contact
- First mention of drinking
- At time of arrest
- Transportation
- Completion of A.I.R. form
- Advice of chemical test rights
- Videotaping
- Chemical test

Briefly, there are two conflicting philosophies concerning when to advise a suspect of his Miranda rights:

- First, it is argued that premature advising may result in poor cooperation in performing psychophysical tests, answering questions, and so on. Proponents of this philosophy would tell you to not advise of rights until absolutely necessary, thus keeping the suspect's cooperation for as long as possible. This group might also state that you should not be too concerned with what the suspect says but rather you should be guided by driving behavior, observed physical condition, and other nonverbal clues. They point to case law that indicates that Miranda only applies to verbal evidence, not physical evidence.
- Second, it is argued that delayed advising of rights will render incriminating statements inadmissible. This second group would advise of rights far earlier in the field contact than the former group. Their argument might lean heavily on the fact that proper investigative technique will always require that questioning be attempted to determine quantity of alcoholic beverages consumed, type of beverage, where and when it was consumed, etc. Since questioning will take place at some point, advising of rights should be done as soon as possible to insure that whatever statements are made will be admissible at trial. Proponents of this position would argue as well that prompt advising of rights tends to have a

favorable effect on judges and juries, leaving them with an impression of the officer as a fair and impartial investigator.

In view of the foregoing discussion, it is difficult to specify at what exact point you should advise a suspect of his Miranda rights. Well-defined departmental policies in this area, endorsed by the prosecuting attorney, provide some guidance to the individual officer. Even then, however, the ultimate application of such policy rests with the officer.

As an operational enforcement officer, you are the person who must balance the pros and cons of each philosophy, existing departmental policy (if any), and the circumstances you are confronted with in a specific field contact, arriving at what you feel is the most appropriate point to advise a particular DWI suspect of his Miranda rights.

Using a Printed Card. Many officers are skeptical about literally reading Miranda rights from a printed card. Unless still a recruit, the officer is likely to state that he doesn't need to read the rights--he can recite them from memory. In most cases he is absolutely right; he could recite them backward and forward. Nevertheless, there are several reasons for even the most experienced officer to read the rights:

- Less Chance of Error. Even the best of us make mistakes at times. In order for you to testify with 100 per cent accuracy that you advised John Doe of his rights through the

use of certain wording, it will usually be necessary for you to have read it to him.

- Expedites the Process. Instead of taking the time to think of the exact wording, it may well be quicker (and more impressionable) to simply read from a printed card contained in your notebook, taped to your clipboard, printed on the reverse of a business card, etc.
- Establishes Uniformity. Since all officers of your department would be using the same format and wording that you are using, a logical practice since the same rights apply to all persons in your jurisdiction.
- More Effective at Trial. Probably the most important reason for reading the Miranda rights is a clear demonstration of your use of the most accurate procedure that could be used.

Certainly, unusual circumstances encountered in field contacts may force you to recite the Miranda rights from memory. Since most field contacts are routine, reading the rights is usually feasible and may be especially helpful to your case at trial.

The Statement. The actual text of the Miranda statement may vary from jurisdiction to jurisdiction; but the following statement used by the Maryland State Police contains all necessary elements:

- You have the absolute right to remain silent.
- If you choose to answer, your answers can be used against you in court.

- You have the right to a lawyer; if you want a lawyer and cannot afford one, one will be provided for you.
- You have the right to talk privately with your lawyer before answering any questions, and to have him with you during questioning.
- If you elect to answer questions without having a lawyer present, you have a right to stop at any time and obtain the services of a lawyer.
- Do you understand your rights as explained?
- Do you knowingly waive these rights?

Advice of Rights for Chemical Test. Persons arrested for driving under the influence of alcohol (Section 11-902) must be advised of their right to take chemical tests of blood, breath, or urine. The statement is contained on the reverse side of both the officer's and motorist's copies of Form DR-15, "Officer's Certification of Driver's Refusal to Submit to Chemical Test," and shall be read to the suspect.

It is important to note that the suspect has not only the right to take a chemical test but to designate which test he will submit to. Attached is a copy of Form DR-15 that has been developed by the Motor Vehicle Administration in cooperation with the Maryland State Police and other law enforcement agencies in the state. The form is designed to expedite both the enforcement and administration of the implied-expressed consent law contained in Article 66 1/2, Section 6-205.1.

The three-part DR-15 form approximates the size of the Uniform Complaint and Citation for easier handling. The form is designed to be used in the following manner.

- Note that near the conclusion of the Advice of Rights is a box to be checked indicating whether or not consent for the chemical test is given. If consent is given and checked YES, on both the Officer and Driver's Copy, the officer need only complete the remaining information for court use. The DR-15 form NEED NOT be completed nor forwarded to MVA.
- Should the detained individual elect not to submit to a chemical test for blood alcohol, then the detaining officer should check the appropriate box and complete other information, such as: type of test, time, etc., on both the Officer and Driver's Copy. The MVA copy will then be prepared for mailing.
- In preparing his own copy as well as the driver's copy, the arresting officer also will be preparing a hard carbon copy (MVA copy) for the Motor Vehicle Administration. Since the law requires that the MVA be notified of refusal within 48 hours of detention, the MVA copy of the Certification of Refusal has been prepared for prompt mailing to MVA immediately following its completion. To mail, simply detach the MVA hard carbon copy and fold as indicated on the reverse side of the form. Remove the opaque transfer tape and seal. Postage is prepaid and the form is pre-addressed for prompt delivery to the appropriate section of MVA.

- In order to preclude officers having to appear at MVA hearings, it is essential that the Reasonable Grounds section of the form be completed.

It should be emphasized that when an operator of a motor vehicle refuses to submit to a chemical test, the "Officer's Certification of Driver Refusal to Submit to Chemical Test" (DR-15) is the basis for administrative action by the Motor Vehicle Administration under the law. Before a driver's license and/or privilege may be administratively suspended pursuant to the law, the report must demonstrate that the following conditions have occurred in the sequence set forth as follows. The police officer must:

- Have reasonable grounds to believe that the motorist was operating a motor vehicle in violation of Section 11-902 (a) or (b)
- Arrest the motorist for the above violation
- After reading Advice of Rights for Chemical Test, make a proper request of the motorist to submit a sample of his blood, urine, or breath for analysis, and the motorist must refuse.

The entries on the form must include the following information to be effective:

- Officer's full name, date of violation, location, and time of arrest

- Defendant's full name and date of birth (No initials unless person uses initial only; if there is no middle name, insert NMN in space provided)
- Complete Maryland operator's number (If person does not have a Maryland license, or does not have one in his possession, indicate by the word "None"; however, full name and date of birth must be provided)
- Manner of operation of vehicle, unusual actions or violations, reasons for detention; following manner of operation include any evidence of alcohol used by driver; include concise information as to (1) condition of driver (2) operation of vehicle
- Uniform Complaint and Citation number used for violation.

Transportation of Arrested Subjects

Basic Principles. Standard procedures and concerns apply to transporting drunk driving offenders as they do in any other arrest situation inasmuch as the objectives are the same:

- Protection of the officer
- Prevention of escape of the arrested person
- Protection of the person arrested.

Obviously, the first objective is of primary concern to the arresting officer. The following discussion is intended to emphasize that the three objectives are compatible, and that steps taken to

accomplish any one objective tend to facilitate accomplishment of the others as well.

Handling the Suspect. In handling persons arrested for drunk driving, officers frequently deviate from normal procedure. The subject's intoxicated condition may seem to make it unnecessary to handcuff him, but it must be remembered that the subject is, in part, being arrested because he is not in full control of his faculties. This in itself is sufficient reason for handcuffing him. Sudden changes in the drinker's emotions may result in an assault by a seemingly quiet, docile subject. The loss of inhibitions that drinkers often experience may also work against the interests of the officer in that it may lead to an assault or escape attempt attributable to the officer's failure to properly secure the prisoner. The safest procedure is to adhere to usual policies:

- Search the suspect carefully. The search should be always performed before transporting the suspect to locate additional evidence (for example, a pocket flask, a bottle, weapons, or evidence of other crimes)
- Restrain the suspect. Restraint is usually done with handcuffs behind the back.
- Transport the suspect safely. Standard procedures should be followed, usually with the person seatbelted in the right-front seat if the officer is alone, or with the person seatbelted

in the right-rear seat if a second officer is in the patrol car.

NOTE: The existence of a well-enforced departmental policy that all prisoners will be handcuffed can make the officer's job easier. With a well-publicized handcuffing policy, the officer has clear evidence to point to that all prisoners are handcuffed and that the subject has not been singled out for special or unusual treatment.

Female Suspects. The officer's conduct must ensure as far as possible that any allegations of misconduct cannot be substantiated. Experience has demonstrated that while fewer women than men drive in an intoxicated state, they are more likely to become belligerent. In fact, police officers are often intimidated by the possibilities of female belligerence, emotionalism, or allegations of misconduct, and, therefore, may be less inclined to arrest women who are driving while intoxicated.

If proper precautions are taken by male officers with female offenders, potential difficulties can be minimized or eliminated. Most police departments require that when an arrest is made by a male officer, a second officer be summoned to be present at all times. A second officer, especially a woman officer, for witness purposes as well as for search and handling, is especially important. A male officer should not allow traditional social attitudes of women as "the weaker sex" requiring greater protection to color his handling of female suspects, just as he must not become distressed or overreactive

as a result of a display of emotionalism that is more socially acceptable for women than for men.

Proper procedures for searching female prisoners will maximize officer safety and minimize the possibility of misconduct complaints. Keep in mind that it is policy, not law, that prevents full search of a female prisoner. Usually, the male officer will search only the woman's car, handbag, and outer garments, leaving the full search to a woman officer or matron. However, if the officer's judgment indicates a need for a full search, he should not hesitate if his safety or that of others may be uncertain. Situations where full search might be indicated would include an observed attempt to hide evidence, especially weapons, on the prisoner's person.

Female suspects are transported in the same manner as male prisoners. Time and mileage checks with the dispatcher should be made upon leaving the arrest scene and upon arriving at the detention location.

Juvenile Suspects. Procedures for juveniles are little different from those described for adults. It should be noted that restraints may be especially important in that the juvenile drunk driver is not typically an experienced drinker and can be expected to act less rationally than adults. The juvenile court has exclusive jurisdiction over any person 18 years or younger in drunk driving cases. This may require that the juvenile prisoner be transported to a location different from that used for adults, or that they be kept separate from adult prisoners during interrogation.

TO CHECK YOUR PROGRESS PLEASE ANSWER THE FOLLOWING QUESTIONS.

Directions: Using your response sheet, circle the letter of the item which most accurately completes the following statement.

6. After determining that he has probable cause for making a DWI arrest, the police officer should:
 - a. Advise the suspect of his or her rights regarding chemical testing followed by the statement of Miranda rights
 - b. Advise the suspect of his or her Miranda rights followed by the statement of rights regarding chemical testing
 - c. Advise the suspect of both statements of rights (Miranda and chemical testing) in any order
 - d. Advise the suspect of his or her rights regarding chemical testing--the Miranda rights being covered by this statement

7. The actual wording of the Miranda statement of rights may:
 - a. Not vary from the statement set forth by the Attorney General of the state
 - b. Not vary from the statement set forth by the U.S. Supreme Court
 - c. Vary from state to state but must be consistent within each state
 - d. Vary from jurisdiction to jurisdiction to jurisdiction as long as it has the required elements

Directions: Circle the letter E on your response sheet if a statement is an element of the Miranda statement. Circle the letters NE if it is not an element.

8. You have the absolute right to remain silent.
9. You may have your lawyer with you during questioning.
10. You have a right to a lawyer to be provided at your own expense.
11. Do you knowingly waive these rights?

Directions: The statements listed below pertain to the rights of DWI suspects and the procedures to be followed by law enforcement officers under section 11-902 of Maryland law. On your response sheet, circle the letter A if the statement is accurate. Circle the letter I if it is inaccurate.

12. The arrested DWI suspect should have his rights read to him as found on form DR-15.
13. The suspect has a right to a chemical test but only to the type of test available at the time of his arrest.
14. The DR-15 form must be completed and forwarded to MVA only if the DWI suspect refuses to consent to a chemical test.
15. To be effective one of the entries on the DR-15 form should include the Uniform Complaint and Citation number used for the violation.

TO CHECK YOUR ANSWERS TURN TO THE KEY ON PAGE XXXI - 56.

REVIEW ANY ITEMS YOU MISSED BEFORE CONTINUING.

Custodial Interrogation

Before conducting any in-custody questioning of the accused, the officer must advise the suspect of his rights by means of the Miranda statement. The Alcohol Influence Report Form (MSP Form 32) or similar forms used in various jurisdictions are useful in processing suspects and recording information necessary to substantiating the arrest in court and obtaining conviction.

From the time the accused is arrested, the exact statements of the individual should be noted in writing. If he uses profanity, it should be written down word for word. If the answer to a question does not seem related to the question, the answer should nevertheless be recorded.

At all times, the interrogation should be conducted in a business-like manner. During chemical testing the only persons present should be the arresting officer, the chemical test technician, and the accused. Questioning is not limited to information asked for on an alcohol influence report form, although the officer should not be concerned with areas which have no direct relevance to the case.

If the suspect is taking medication, every effort should be made to determine:

- The type of medication
- Frequency of dosage required

- The physician prescribing the medication
- The condition for which the medication was prescribed and possible consequences of the suspect's failure to take the medication as prescribed.

This information should be recorded by the officer. A physician should be consulted if necessary, especially in cases where questions regarding medical problems that might endanger the suspect's life or continued good health occur. If it is necessary for the suspect to take medication before chemical tests are conducted, no testing may be performed as the results would be unreliable.

RECORDING AND DOCUMENTING EVIDENCE

Purpose and Importance of Field Note-Taking

Notes are important in any type of investigation but especially so in alcohol-involved offenses. Adequate field notes are essential to the preparation of a well-documented case against an arrested DWI subject.

Proving impairment of driving ability due to consumption of alcoholic beverages is no easy matter. Despite the existence of chemical tests that accurately specify the alcoholic content of a person's blood, many subjective factors must be established in court before such chemical test results are even admissible.

Also, there is always the possibility (currently the odds nationally are 1 out of 5) that the chemical test will be refused, thus putting even greater reliance upon nonquantitative, subjective information (clinical symptoms) that you have collected pertaining to the case. In this event, your field notes take on added importance.

Recording information as soon as possible after it is acquired is beneficial for several reasons:

- First, the details are fresh in your memory, and you can be expected to have more comprehensive and meaningful notes

- Second, because the details are fresh in your mind, the chances of omitting information are reduced
- Third, the accuracy of your notes is increased--a very important advantage since there may come a time at trial when defense counsel will attempt to discredit you by close questioning concerning the specific wording of statements his client is alleged to have made, specific points concerning his physical condition and demeanor, etc.
- Fourth, adequate notes properly reviewed will permit rechecking questionable evidence while the case is still fresh
- Fifth, the proper use of notes permits obtaining overlooked evidence, serving to jog your memory concerning specific information that you, your superiors, the prosecutor, and others may feel is necessary or desirable.

For purposes of the trial that may result from the arrest, good notes may be vital to the outcome of the trial. Certainly you will wish to review them before trial and at times will need to refer to them during the trial. Procedural law permits the use of such notes as the courts generally recognize limitations to human memory. They also recognize that notes taken in the field at the time of occurrence tend to be the most accurate. The fact that your notes are permanent makes them invaluable when delays occur between arrest and trial.

Use of Recording Equipment

Since a DWI charge is so subjective, some police agencies have turned to using mechanical recording equipment to obtain the best documentation possible. Recording equipment so used may consist of only a tape recorder or an audiovisual recording unit, such as a film or videotaping unit. There is a wide variation of equipment that is in use in both of these categories.

Audio tape recorders used in the field are typically the cassette type; hence, they are simple to use, relatively inexpensive and can easily be used to record conversations during field contacts. The chief drawback is that there is no visual documentation of the subject's condition or behavior.

On the other hand, the audiovisual recording unit (usually the videotape) provides visual documentation but is more complex to operate, is considerably more expensive to acquire and operate and is generally used only at police headquarters.

Both types of recording equipment provide a means of collecting and preserving evidence that is superior to the officer documenting in writing only his observations. If properly used, these devices can be very helpful to your case since they offer the best documentation available at the present time--documentation that can be heard and sometimes seen by a judge and jury charged with hearing the case.

Recording evidence in this manner has several specific advantages in that it presents evidence of your patience and courtesy and can be used to impeach the defendant's testimony if need be.

Case law indicates that, at least for the present, it is not necessary to tell the subject that he is being tape recorded or videotaped. Most agencies do anyway as evidence that their officers are acting in a reasonable manner. Experience has shown that the reaction to being so informed may be evidence in itself (for example, obscene gestures and/or statements) or at least may document behavior that the subject would not want displayed in court.

Overall experience indicates that the use of recording equipment, whether in the patrol car or at the police station, tends to reduce not-guilty pleas. This is especially true when the recordings are made available to the subject and his counsel before trial.

Examination of Subject by Physician

Examination of the subject by a physician can serve two purposes:

- First, it can provide corroborative evidence to your case since, the physician is considered an expert witness (and a professional, unbiased one at that). His testimony can serve to nullify the defense argument that some condition other than alcohol impairment caused the subject to look and act the way he did

- Second, the physician's examination should be made when there is a question of illness, injury, or unusually high blood alcohol content. Arranging for such an examination may be time consuming and bothersome, but there is no question that it is advantageous for both the ill or injured subject and for you to have such a physician's examination performed.

CONDUCTING RECORDS CHECK

Checking Driving Record

It is to the officer's advantage to know as much as possible about the subject arrested. During field contact, the officer should avail himself of the technology that exists, conducting a prearrest status check on the person. Such a status check can be made by radio within minutes using state computer facilities.

The practice of obtaining the driving records of out-of-state drivers is encouraged since the data banks of the officer's state will typically contain little or no information on the suspect. In his home state, however, the subject might have a significant driving record. The National Crime Information Center (NCIC) terminal can be used to direct messages to the licensing authorities in other states.

Once obtained, the driving record can be used in several ways to aid in the preparation of the case against the subject:

- First, knowledge of the driving record enables the officer to seek prosecution for the proper charge, such as second or third offense DWI.
- Second, knowledge of the full driving record may increase the chances of obtaining prosecution on the charge. This might occur when the subject has a poor driving record when all convictions (nonalcohol-related as well as alcohol-related) are considered.

- Third, the arresting officer (or his representative) will have the full driving record available for court purposes. The driving record will not be admissible at trial as evidence (exception: may be used as evidence of previous conviction(s) in second and third offense cases); however, it may be used in the sentencing process. It would be available for incorporation into the presentence investigation report (if one is prepared) or simply be given to the judge for his review and consideration at the time of sentencing.

Checking Criminal Record

A source of information frequently overlooked in prosecuting a DWI offender is the individual's criminal record. Because of the nature of the charge (traffic), some officers and departments do not consider a check of the criminal history to be a worthwhile step in their case preparation. The officer must be guided by the policy of his jurisdiction.

Most persons arrested will be residents of both the state and the general area in which the arrest takes place. An adequate record check on this category of subject would involve checking the records of:

- State Identification Bureau files
- The arresting agency
- Other local agencies deemed appropriate.

Those persons arrested who are state residents but not residents of the local area should be record-checked through the above agencies plus the police agencies serving the area of his residence. The most time consuming check is that involving the out-of-state resident whereupon a record check of the appropriate state level agency in that state should be made.

The results of these criminal record checks must be put to good use to be worthwhile. There are numerous uses they can be put to; however, in the context of DWI, the officer should be most concerned with arrest and/or conviction entries relative to alcohol-related arrests (drunk and disorderly, public intoxication, etc.). The presence of these entries will often indicate that the subject is a problem drinker.

As in the case of the driving record, the criminal record check is useful for the pre-sentence investigation (if any) and is available for the judge's use at sentencing.

Experience around the nation reveals that the results of both driving and criminal record checks, taken together, are far more significant than the results of either check standing alone. Complete record checks aid in the identification of problem drinkers and problem drinking drivers. Inadequate record checks handicap the identification of these problem people, and without proper identification, referral to rehabilitation agencies cannot be made.

PROVIDING CARE FOR PERSONS NEEDING MEDICAL ATTENTION

General Considerations

The officer must develop an understanding of the nature of medical problems related or similar to intoxication and the proper procedures for providing assistance to persons needing medical attention.

Symptoms of Dangerous Medical Problems

Persons suspected of driving while intoxicated may well be exhibiting symptoms of medical problems rather than routine DWI behavior. Available statistics reveal that this type of situation does not happen frequently; however, because of the possible consequences, it is imperative that the officer know how to recognize various medical symptoms.

Dangerous medical problems that may be found in contacting drinking driver suspects are of two types: physiological and psychological.

Physiological Problems. Such conditions have observable symptoms; that is, they are capable of being noted by the officer who takes the time to look for them and recognizes what he sees. The first type involves evidence of impairment of circulation--impairment due to interference with normal respiration. The high blood alcohol content (BAC) has affected the body to the point where there is a noticeable decrease in both the rate and volume of breathing. The body is not receiving an adequate supply of oxygen, thus the ears and lips become

bluish (cyanosis), and the face very pale. These are caused by the subject's failing circulation.

Accompanying the respiratory symptom is subnormal temperature; the person feels cool to the touch. The sound of breathing becomes irregular in rhythm, the pulse slow and weak.

The person whose condition is as described here may lapse into a coma. If such coma continues untreated for approximately 5-10 hours, it usually is fatal. Death is due to paralysis of the respiratory system. Note that the usual 8-hour lodging in jail that most agencies require could fall within this 5-10 hour period. Death can occur despite the fact that nature is self-protective in several senses. First, coma frequently occurs before a fatal dose can be consumed, preventing the ingestion of such large amounts that may cause death. Second, the rapid consumption of large amounts of alcohol often induces vomiting, during which the potency of alcohol is reduced.

It takes a considerable amount of concentrated effort to attain such a high degree of intoxication that death may result. Nevertheless, experience reveals that people do drink to such proportions and that a small percentage of such drinkers do die as a result. These deaths indicate clearly that adequate screening of physiological symptoms was not performed during the arrest and custody process.

As in the case of any substance to which a person becomes addicted, there are certain physiological effects that occur when that substance

is withdrawn. It is the stress of withdrawal symptoms during periods of abstinence that lead alcoholics to seek relief by using more alcohol.

The major symptoms of abstinence include convulsions, delirium, tremors, marked weakness, hyperpyrexia (high body temperature) and hypertension (nervousness). Lesser symptoms include insomnia, anorexia (loss of appetite), vomiting, nausea, and diarrhea.

Psychological Problems. There are eight such categories, briefly described her:

- Acute alcoholism--alcohol-caused severe chronic behavior interfering with the drinker's health and his social or economic functioning, accompanied by a loss of control after drinking has begun
- Delirium tremens (DT's)--a nervous system disorder manifested by violent excitement or mania caused by excessive and continued use of alcohol or the abrupt termination of the use of alcohol after a period of prolonged use
- Korsakoff's Psychosis--disorientation or no appreciation of time or place; the victim talks freely and often plausibly about events that have never taken place
- Acute alcoholic hallucinations--alcohol-induced hallucinations, or seeing and hearing things that are not real
- Alcoholic paranoia--alcohol-induced feelings of persecution, that people are "out to get me"

- Chronic alcoholic deterioration--the deterioration of physical and mental processes caused by excessive long term use of alcohol
- Alcoholic epilepsy--epileptic seizure triggered by the use of alcohol, producing many symptoms resembling intoxication though the BAC may be as low as .02 per cent.
- Dipsomania--an uncontrollable desire for intoxicating drinks.

Pathological Symptoms Similar to Alcohol Influence

There are numerous body conditions that produce symptoms similar to symptoms of alcohol influence. The following information reflects these symptoms that are similar to those caused by alcohol influence; however, only a few of the pathological conditions that could cause these symptoms to be exhibited are discussed. An attempt has been made to indicate those pathological conditions that would be encountered most frequently.

An acetone odor on the breath of the DWI suspect is a fruity odor that can be mistaken for the odor of alcoholic beverages on the person's breath. Probably the most common pathological conditions causing an acetone odor are diabetes, vomiting, and stomach ulcer.

In the course of a DWI investigation, you may determine that the suspect has experienced full or partial loss of memory (amnesia). This may be caused by consumption of alcohol or by such body conditions as

epilepsy, traumatic injury of the brain (such as in a traffic accident) or Korsakoff's Psychosis.

Ataxia, or failure of muscle coordination, is given considerable weight as a measure of alcoholic influence; however, it may be caused by chemicals (e.g., lead), drugs (e.g., antihistamines, barbiturates and other sedatives), and gases (e.g., carbon monoxide). It may also be a case of traumatic ataxia due to injuries commonly sustained in traffic accidents (e.g., head injury).

The DWI suspect may be in a stupor, lapsing into a coma (unnatural, heavy, deep sleep sometimes ending in death). Such a coma may be a diabetic coma or, on the contrary, insulin shock due to an overdose of insulin. It may well be a coma brought on by such head injuries as concussion or skull fracture.

Cases may be encountered where delirium is present--hallucinations, incoherence, illusions, etc., may result from alcoholic influence, but the possibility should not be overlooked that it may stem from diabetes; the stopping of a drug habit or the use of legitimate and illegitimate drugs such as marijuana, cocaine, or opium derivatives; or from injections causing allergic reactions such as horse serum and penicillin.

Drowsiness is a symptom frequently noted by investigating officers. It may stem from the liberal consumption of alcoholic beverages, coupled with the late hour during which most drinking driver contacts are made.

Such drowsiness may be associated with a brain concussion (a common injury in traffic accidents), diabetes, or the use of many prescription and nonprescription drugs.

Inspection of the suspect's eyes may reveal one or more eye disorders, such as bloodshot eyes, dilated pupils, contracted pupils, etc. The general effect of alcohol on the eyes is to cause the pupils to dilate more than usual and to fail to constrict (when exposed to bright light) as quickly as they would normally. This occurs as part of the general depressant effect that alcohol has on the human body. It must be noted, however, that there are many pathological conditions which may similarly affect the eyes. Those most frequently found include glaucoma, hay fever, and other allergic disorders, farsightedness, nearsightedness, use of opium derivatives, concussion, and fright.

A flushed face is often interpreted as a sign of alcohol influence. Indeed, it may be caused by alcohol, but there are numerous body conditions that also produce a flushed face. They include chronic inflammations of the face, arteriosclerosis (hardening of the arteries), diabetes, emotions (blushing), and chemical or drug poisoning (e.g., carbon monoxide).

Shock and collapse may be caused by such things as heart trouble, skull fracture, insulin shock, and apoplexy (stroke).

Speech disorders are a clue that virtually all officers consider to be significant in the identification of DWI drivers. They are certainly correct in recognizing that speech is often affected by alcohol, but you should keep in mind that facila paralysis, mental deficiencies, and Parkinson's Disease (shaking palsy) can be the cause of speech disorders as well. In addition, missing teeth are frequently the cause of affected speech, especially in older persons.

Upon occasion, you may observe tremors or muscular twitching in DWI suspects. This can stem from numerous causes, the most frequent of which might be neurosis (functional disorder of the nervous system), senility, brain tumor, chemical or drug poisoning (e.g., narcotics, tobacco), and general paresis (softening of the brain, usually of older people).

Finally, vertigo or dizziness may be noted in the course of your DWI contact. This symptom obviously can be caused by alcohol influence but may stem from any one of a host of other causes as well. Some of these might be motion sickness; injuries to the brain; use of barbiturates, marijuana or opium; and Meniere's disease (congestion of the inner ear).

In summary, you might conclude that the fact that there are so many conditions with symptoms resembling alcohol influence it could easily discourage officers from placing much weight on their own observations. After all, some of these symptoms have been known to fool physicians. All of this is true and can be used as an excuse for

not performing drinking driver enforcement. However, the vast majority of DWI arrests do not involve such medical problems. Such cases are in the minority, but the possible consequences dictate that you need to know how to recognize basic symptoms of medical problems, problems that require some form of follow-up to protect the DWI suspect and the officer. The well-informed and conscientious officer is the one who is not deterred by the possibility of encountering a person with a possible medical problem, but rather is competent to properly handle this type of a situation.

Emergency Aid in Alcohol Enforcement

A small percentage of what are believed to be routine DWI contacts turn out to be either (1) a person who is not a drinking driver but one with medical problems; or, (2) a drinking driver whose condition is made more serious by the presence of a medical problem.

It is important that the officer become familiar with the few emergency situations that alcohol influence presents: failure of the respiratory system and failure of the circulatory system, both of which may be caused by the depressant effect of relatively large amounts of alcohol.

Failure of the respiratory system requires the use of rescue breathing or artificial respiration followed by medical treatment.

The second emergency situation that may occur will take place in conjunction with respiratory failure. The depressant effect of alcohol can result in cardiac arrest, in which case the application of cardiopulmonary resuscitation is imperative with subsequent transportation to the nearest emergency medical facility.

Other situations requiring first aid treatment that may be encountered in drinking driver enforcement contacts involve diabetic coma, insulin shock, carbon monoxide poisoning, inhalation of gasoline vapors, bee stings and sunstroke.

Procedures for Handling Persons with Medical Problems

If during the course of a field contact (nonaccident), the officer identifies possible medical problems, prompt notification should be made to his supervisor. Subsequently, the subject should be examined by a physician to insure that proper screening takes place to prevent needless loss of life.

Unless a chemical test shows that the subject's system contains sufficient alcohol to account for his condition, a person should never be jailed if:

- He cannot walk straight
- His balance is impaired
- His breathing is labored.

If the subject shows obvious impairment but has a relatively low BAC (e.g., .04 per cent), he may be ill in addition to having consumed alcohol, or he may have been taking drugs in addition to alcohol.

Proper custodial procedure calls for those who are lodged as intoxicated to be inspected at least twice an hour to insure that their bodily processes have not been depressed to dangerous levels. Often the possibility of combinations of injuries and alcohol influence will be found at the scene of traffic accidents. Proper procedures in this event call for any DWI suspect showing (or complaining) of any injury to be examined by a physician before being lodged in jail. Again, this is done for the protection of all concerned.

Community Medical Resources

There are several types of medical resources available, depending upon the nature of the jurisdiction. Probably the most commonly used resource is the hospital emergency room. Other resources may include emergency treatment clinics, detoxification centers (typically affiliated with hospitals), and the offices or homes of private physicians.

The availability of these medical resources is, of course, dependent upon the proximity of them to your jurisdiction and the seriousness of the emergency. Utilization of them should be dependent on prearranged planning for such emergencies. Transportation to such medical resources will be by means of ambulance, police car, air ambulance, etc.

CITATION OR RELEASE OF NON-DWI DRIVERS

Taking Law Enforcement Action

Not all investigations of suspected driving while intoxicated will result in the arrest of the apprehended motorist. It must be recognized that there are many field contacts where the officer's conclusion is that there is little or no evidence of alcohol impairment. This can result from the driver's having either consumed no alcoholic beverages or having consumed such a small amount as to leave the officer confident that no actual impairment has occurred. The officer who is conscientious in his drinking driver enforcement activities will encounter this circumstance often.

Any number of factors can lead to erratic driving behavior unconnected with alcohol consumption. Having decided not to arrest the driver on a DWI charge, however, the officer must decide whether there is a violation for which an appropriate law enforcement is to be taken.

Hazardous Violations

Momentary and continuing hazardous violations, including serious vehicle equipment defects, require arrest or the issuance of a Uniform Complaint and Citation or a Safety Equipment Repair Order (SERO), as discussed in previous units.

Nonhazardous Violations

Minor vehicle equipment defects, driver's license violations, registration violations, or momentary erratic driving behavior may, in the officer's judgment, require only a verbal or written warning, although the option of issuing a citation may be chosen. Depending on jurisdictional policy, officers will frequently admonish drivers for minor infractions in the interests of good will, the impact of a near-miss on the driver, or for the more practical reason of not "bogging down" the officer.

YOU HAVE NOW COMPLETED THIS UNIT. YOU MAY WISH TO REVIEW PARTS OF IT BEFORE PROCEEDING TO TAKE THE POSTTEST.

XXXI

KEY TO EMBEDDED QUESTIONS

Refer to
Page XXXI -

- | | | | |
|-----|----|--|-------|
| 1. | a. | Any evidence of intoxication that was detected by careful observation of the driver's actions. | 4 |
| 2. | b. | The balance test | 8 |
| 3. | c. | Both (a) and (b) | 9 |
| 4. | a. | Within 48 hours after the arrest for those cases where the suspect refused a chemical test. | 10 |
| 5. | c. | The suspect requested that he or she be tested by a private physician to corroborate the police-administered test. | 16 |
| 6. | b. | Advise the suspect of his or her <u>Miranda</u> rights followed by the statement of rights regarding chemical testing. | 19 |
| 7. | d. | Vary from jurisdiction to jurisdiction as long as it has the required elements. | 24 |
| 8. | E | | 24-25 |
| 9. | E | | 24-25 |
| 10. | NE | | 24-25 |
| 11. | E | | 24-25 |
| 12. | A | | 25 |
| 13. | I | | 25 |
| 14. | A | | 26 |
| 15. | A | | 28 |

APPENDIX

FORM DR 15

Advice of Rights for Chemical Test

Officer's Certification of Driver's
Refusal to Submit to Chemical Test

OFFICER'S COPY

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)(1) I, Trooper 1/C John W. Smith
Print Name

certify that I am a Law Enforcement Officer, and that on the

10 day, of September, 19 72, I detained inPrince George's County Time 1:00 a.m.
County or Baltimore City (Specify)(2) Name William Henry Water
First Name Middle Name Last NameDate of Birth (3) 09 09 41
Month Day YearAddress Route 5, Box 45, Accokeek
Street AddressMaryland Pr. Geo's 21037
City State County Zip Code(3) Driver's License No. none State n/aClass of License n/a Expiration Date n/aVehicle Tag No. EK-3222 State Md.

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 advised 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.

(4) Veh, traveling northbound in
REASONABLE GROUNDS the southbound lane of 495,
struck a guard rail, operator had strong odor of
alcoholic beverage on breath, unsteady on feet,
clothing disorderly array. Oper. had to be
helped into police veh.Refer Summons No. (5) 1130078

I certify, under penalty of law, pursuant to the provisions of Section 2-311(b) of Article 66½ of the Annotated Code of Maryland that the statements made herein are true and correct to the best of my knowledge and belief.

Signature of Officer MUST BE SIGNED IN LONG HAND J. W. SmithTitle of Officer Trooper 1/C I.D. No. 0000Law Enforcement Agency Md State PD Barracks L 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.

OR 15 (7-71)

Vehicle Operator Signature J. W. Smith

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;
- 6) 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 ☐ URINEDate Apprehended 09/10/72 Time 1:00 a.m.Date Test Administered none Time n/aRefer Summons No. 1130078

END