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DUI Enforcement Manual

D.U.I. ENFORCEMENT MANUAL FOR THE STATE OF COLORADO

Prepared By



**COLORADO ASSOCIATION OF
CHIEFS OF POLICE**

With Funds Provided By



**COLORADO DIVISION OF HIGHWAY SAFETY
ALCOHOL-DRIVING COUNTERMEASURES**

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COLORADO LAW ENFORCEMENT TRAINING ACADEMY ADVISORY BOARD

INTRODUCTION

Colorado is not unlike the rest of the United States — approximately 50% of all highway fatalities are alcohol related! The number killed on our nation's highways annually (over 50,000) is greater than all the Americans killed in Viet Nam in ten years. The National Safety Council conservatively states that the economic loss to society for a single highway fatality is \$150,000. It is clear that the economics involved is catastrophic and affects all of society. The drinking driver affects everyone through taxes for law enforcement services, ambulance services, medical facilities, costs of incarceration, rehabilitation agencies, social security and welfare costs for survivors, and increased insurance premiums for all.

It is clear that elements of the law enforcement community must work together to reduce the number of drinking drivers on our streets and highways — failure to do so, is only contributing to the serious problem that currently exists. As law enforcement officers, you are the first line of defense and without you, the rest of the system — prosecutors, judges, probation departments, treatment centers, and other governmental agencies — cannot perform their functions successfully.

This Manual was developed by The Colorado Association of Chiefs of Police with funds provided by the Colorado Division of Highway Safety, Alcohol-Driving Countermeasures. It was written to complement the "Prosecution Manual" which was produced through a joint effort of The Division of Highway Safety and The Colorado District Attorneys Council.

The goal of this Manual is to aid you, the Colorado peace officer, in detecting, apprehending, processing and testifying about the drinking driver. The intent is to establish common *guidelines* throughout the state which should bring about more alcohol-related driving arrests and convictions. If used properly you should find it a useful tool in clarifying and simplyfying some portions of the enforcement task. This document is not the last nor only word in procedure, and is not intended to dictate policy to any law enforcement agency. It is intended, however, to assist all agencies. Since this manual was first introduced in 1977, many Colorado law enforcement agencies have implemented it in its entirety as departmental policy, furthering the goal of statewide uniformity. It is the hope of the writers, that your department will do the same if they have not done so already. Lastly, we hope that you will find this Manual to be of personal value.

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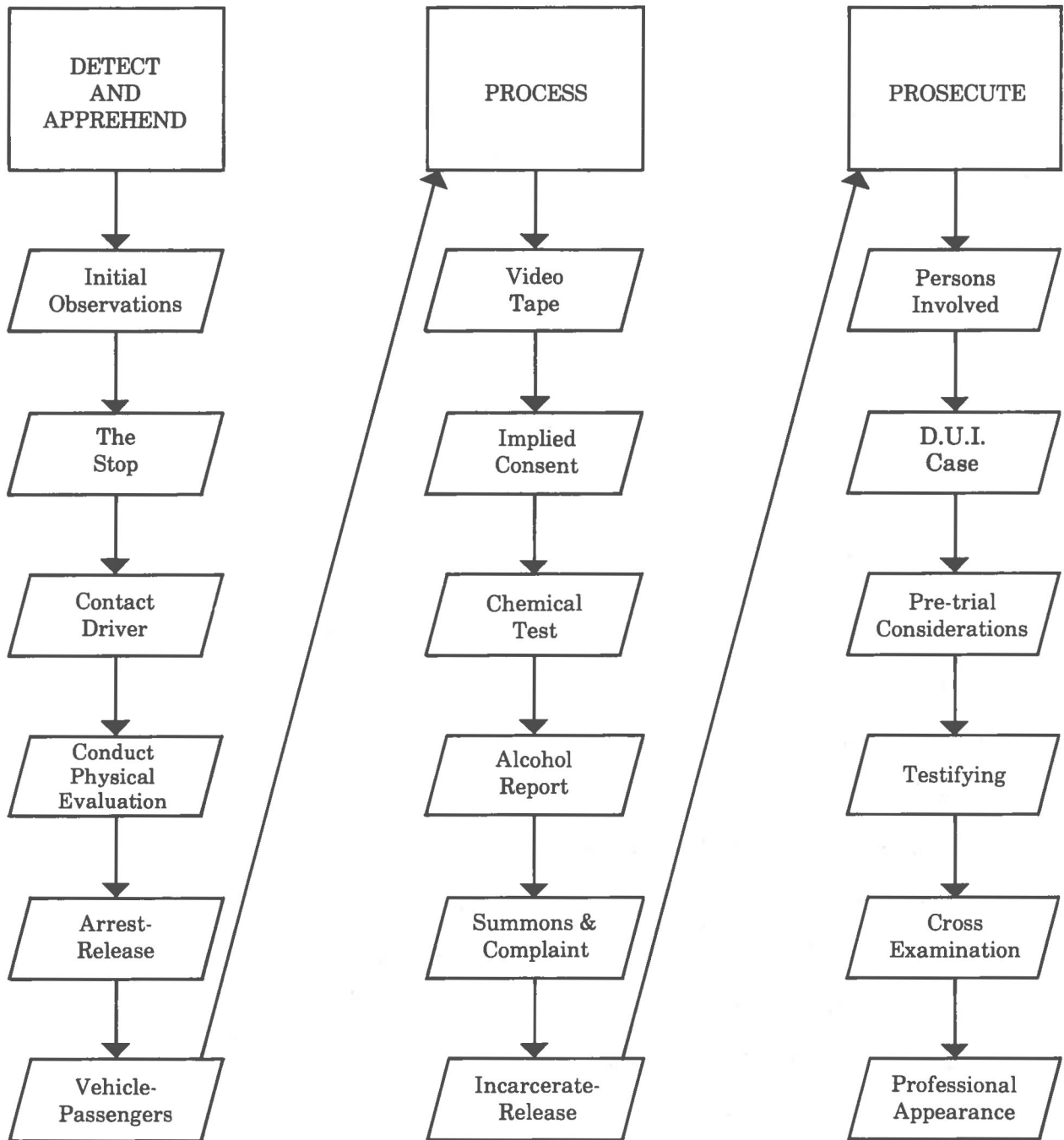
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D.U.I. DECISION FLOW CHART



**PHASE I
DETECTION AND APPREHENSION**

THE DETECTION AND APPREHENSION PHASE

We define detection and apprehension as that period of time commencing with the observation of the drinking driver and terminating when he has been arrested. It is during this phase that you will develop reasonable grounds to stop and probable cause to arrest the violator after observing the physical and mental effects of alcohol or drugs.

The detection of persons driving under the influence is considered the most important of the three phases. Without good detection, enforcement action cannot be taken. We often think that the detection process is easy; however, it is not. Anyone can spot a driver who is obviously under the influence. He may "weave" extremely, drive 10 miles per hour, run red lights - not even knowing they exist, or crash into anything in his path. It becomes an art, though, to spot the majority of drivers who fall into one of two categories: the *impaired driver* or the *problem-drinking driver*.

The driver who operates his vehicle while his ability is impaired can be a real threat for several reasons. Although he feels his driving ability is sound, his reaction time is slowed. He has a false sense of good control. Combine his slow reaction time with his feeling of good control and he is a very dangerous threat to himself, other motorists, and pedestrians. Often, the impaired driver can be more dangerous than the obviously intoxicated driver. Usually, the intoxicated, problem-drinking driver knows he is operating his vehicle below par and drives at slower speeds trying to compensate for his condition. However, the impaired driver feels that he is in control of his vehicle and often tries to prove a point to himself by driving at posted speed limits or higher.

The problem-drinking driver, who may include a person referred to as an alcoholic, can be extremely difficult to detect. Often, with many years of drinking experience behind him, he has developed the ability to partially compensate for his intoxication. He can often attempt to mask the visual effects of alcohol in such a way as to escape detection by the average person. Even though he appears to compensate well, his perception and awareness is altered to the point that he may run over a pedestrian without even knowing it.

So, if we think the *easy to detect* driver is the most serious of the violators driving under the influence, we must reconsider our opinions. The impaired or problem-drinking driver is not so easy to detect, and can often be the most dangerous.

MAKING INITIAL OBSERVATIONS (Note carefully-you will have to justify your stop later) - You can detect the drinking driver through the following:

Obvious Traffic Violations — Anytime you observe a driver running a red light or a stop sign, traveling at excessive or very slow speeds, especially during late evening or early morning hours, you should be alert to the possibility that he is under the influence.

Headlights — He often fails to turn on his lights, or dim them to oncoming traffic. The D.U.I. could be following you with his bright lights on.

Overdriving — The problem-drinking driver will often display this characteristic. He becomes very careful, very slow and deliberate in moving. He often *aims* rather than *drives* his vehicle.

Sitting at or Through Green Traffic Signals — The problem-drinking driver may not even be aware that the lights have changed and it is time for him to proceed. Likewise, he may stop for a green light and proceed on a red light.

Perception Problem in Stopping — The drinking driver often stops too short or too far into the intersection. It is not uncommon for him to jerk excessively when stopping, or to suddenly stop his vehicle when conditions do not call for it.

**ANY ABNORMAL
ACTION OF
DRIVER OR
VEHICLE MAY BE
A D.U.I.**

Weaving or Lane Hugging — Drifting from lane to lane, across center lines or even off the roadway is not uncommon. Lane hugging is also common, especially for the problem-drinking driver. He often hugs or stays exceptionally close to a lane line in order to give himself direction while driving.

Tailgating — Perception difficulties often develop when a person is under the influence. The drinking driver may have a distorted idea of how close he actually is to other vehicles or he may be totally indifferent.

Constant and Unnecessary Braking — As a result of perception deficiencies, a drinking driver often feels he is closer to objects which are considerably farther away or do not exist at all.

Drinking While Driving — At the present time, the State of Colorado has no law regulating open alcohol containers in vehicles. Many municipal governments do have ordinances that control this. Regardless of an open container law, open alcohol containers in vehicles are circumstantial evidence of drinking. If you observe open containers in a vehicle, you should be alert to the possibility that the driver is intoxicated, and begin focusing on possible abnormal driving behavior.

**IF HAZARDOUS
VIOLATION/
STOP
IMMEDIATELY**

Excessive and Erratic Backing — This occurs often in parking lots, especially at or near local bars. Anytime you observe backing movements on a traffic ramp, it is possible you have an intoxicated driver. Drinking drivers often take the wrong exits or entrances onto other traffic arteries.

STOPPING THE VEHICLE — After you have developed reason to make a valid traffic stop, be alert for the following *before* and *after* turning on your emergency lights:

Unusual Reaction to Emergency Light — Often the drinking driver may not even observe your efforts to stop him.

DOCUMENT HOW MUCH EMERGENCY EQUIPMENT YOU HAD TO USE

SOUND YOUR HORN PRIOR TO USING SIREN

IS HE HIDING CONTRABAND OR REACHING FOR WEAPON

NO STOP IS ROUTINE

BE COURTEOUS/ PUT THE DRIVER AT EASE

He may continue a considerable distance before he is aware you are behind him. On the other hand, he could make an immediate stop on the road or pull over quickly, making a sudden and hazardous stop.

Unusual Reaction to Siren — If it becomes necessary to activate your siren because the drinking driver does not react to your emergency lights, then do so with caution. Keep a safe, reasonable distance behind him; and if possible, select a safe location where traffic is light. Keep in mind your safety, that of the drinking driver, and the public. You cannot predict his reaction to your siren.

Selection of the Location — If possible, you should select the location of the traffic stop. Put the advantage on your side, not his. In selecting the location, consider the availability of lighting and the volume of traffic. Remember, you may have to conduct physical maneuvers (roadside sobriety tests), so you do not want a location where you or the drinking driver could be struck by passing motorists.

Driver Behavior — Just prior to and immediately after the stop, watch for suspicious movements on the part of the driver. Likewise, observe suspicious movement of passengers who may be in the vehicle. Do not rush up to the subject's vehicle after the stop. Sit back and observe for a few seconds before approaching the vehicle. His driving behavior, thus far, is a critical part of establishing your case, so do not think your case starts when you first smell an odor of an alcoholic beverage.

CONTACTING THE DRIVER — By now, in most cases, you will have some indication of a possible D.U.I. Consider the following when contacting the driver.

Approach to the Vehicle — Observe driver's hands as soon as possible and then keep them in view. Do not overlook the trunk or back seat when approaching. Keeping safety in mind, get close enough to attempt to smell the odor of an alcoholic beverage on the driver's breath. Often, the car itself will contain a heavy odor of an alcoholic beverage. You may also see containers of intoxicating beverages lying on the floor or on the seat.

Explanation for Stopping — Identify yourself, your agency, and why you stopped him. Do not say you suspect him of D.U.I. This may place him on the defensive. State only the actual reason for the stop such as lane hugging, speeding, etc.

Request for Driver's License and Registration — Watch closely how he attempts to search for his driver's license and registration. He may pass by them several times not even seeing them. If you ask for his license and he gives you a credit

card, record it in your reports. At this point, you should begin to notice and mentally record his verbal responses. Note if his speech is slurred.

Physical Observations of Driver — Begin your physical observations of the driver. Note his eyes, speech, clothing, etc. If, at this point, you have detected objective signs such as an odor of an alcoholic beverage, bloodshot eyes, slurred speech, etc., then you are ready for some physical maneuvers.

**LOOK FOR DRUGS
IN PLAIN VIEW**

CONDUCTING SOBRIETY EVALUATIONS — To this point, you have unusual driving behavior and physical observations of the driver that lead you to believe that he is under the influence.

Decision to Conduct — Consider the following prior to requesting physical maneuvers from the driver: the hostile attitude of the driver, passengers, or neighborhood, the availability of cover, if the location presents a traffic hazard, or if there are any adverse terrain or weather conditions present. If you feel that conducting the evaluation would be hazardous, and you feel the driver is under the influence - based on driving behavior and physical observations - arrest him and remove him from the scene. Do the physical maneuvers later in a safer atmosphere. *Always wait for cover when in doubt.*

**MENTALLY
RECORD FACTS
FOR LATER
REPORTS**

Asking The Driver Out Of His Vehicle — If you believe it is safe and justified to conduct the physical evaluation ask the driver to step out of his vehicle and observe how he does it. Frequently, the drinking driver will stumble in an attempt to get out. Watch for him to hold onto a part of his vehicle for support. He may know he is intoxicated and attempt to compensate for it. Have passengers remain in the vehicle. Conduct the maneuvers toward the right rear of the subject's car so that you can keep an eye on the passengers.

**PRESCRIPTION
DRUGS MAY
RESULT
IN A D.U.I.**

Elimination Of Medical Considerations — Before you request that he perform maneuvers, ask him if there is anything wrong with him medically. To eliminate medical excuses the driver might possibly bring up at a later date. Determine if he is under medication for any ailment that would affect his driving behavior. If you came to the scene after he ceased driving, make sure that you determine that he has not had anything to drink since he stopped driving. Ask these questions in such a manner as not to give him the idea of creating an excuse at the time. Just ask, "Do you have any serious illness," are you taking medication?" etc. You want to eliminate all possible medical and physical reasons that could affect his driving behavior except for alcohol.

Performance and Evaluation of Physical Maneuvers—

**ELIMINATE
FATIGUE AS AN
EXCUSE**

**ADDRESS
POLITELY. IF YOU
CANNOT
PRONOUNCE HIS
NAME, ASK HIM**

It is important that you establish a routine when conducting the physical maneuvers. A well organized routine will allow the process to flow smoothly and allow you to testify at a later date more effectively because you will remember exactly the sequence you followed in administering the maneuvers. It is necessary to administer only enough maneuvers to assist you in making your final determination to release or arrest. Immediately preceding the maneuvers, state the following: "Mr./Mrs. Doe, I am going to ask you to perform several simple physical maneuvers. I want you to perform each one to the best of your ability; if at any time you don't understand my instructions, please feel free to ask me to repeat them." In observing each maneuver, you must mentally note and later report the driver's ability to comprehend and follow your simple instructions as well as your evaluation of his physical performance. *The inability to understand or follow instructions is often as much evidence of intoxication as is the inability to perform a physical maneuver.*

Do Not Demonstrate Any of the Physical Maneuvers — Demonstrating such maneuvers is too likely to leave you off balance, with your weapon or yourself too exposed. Furthermore, the driver might simply mimick your demonstrations. Therefore, be specific and clear with your oral instructions.

Utilizing the following four maneuvers, in the order listed, is recommended.

**IMPORTANT TO
NOTE WHICH
LETTER OR
NUMBER MISSED**

1. The Rhomberg — state the following: "Now, would you stand erect, with your hands down at your sides, your feet together, heels touching, toes touching. Close your eyes and tilt your head back. Do not open your eyes until I ask you to." Allow thirty seconds before asking him to open his eyes. If he opens his eyes before this, restart the time. Persons under the influence will sway from side to side of front to rear. Persons not under the influence will move in a circular type motion. End this and all other "tests" by saying. "Thank you."
2. The Alphabet — state the following: "Now, would you please recite the alphabet." Sometimes, a person under the influence is not able to recite a correct alphabet and will skip or transpose letters. You can also ask the driver to count from one to ten and then count backward from ten to one with the same effect.
3. Walking A Line — state the following: "Now, I would like you to walk in a straight line towards me, touching your heel to your toe, keeping your toes pointing straight. Please start with your right foot, take five steps and turn around quickly to your left and walk back three steps." "Thank you."

**SAY MANEUVERS/
NOT TESTS**

4. **Finger to Nose, Ear Lobe** — state the following: “Now, extend your arms away from the sides of your body to shoulder height, keeping your elbows straight. Stand erect with your feet together. Extend the first finger on each hand. Please touch the very tip of your right index finger, to the very tip of your nose. Return that arm to the position it was in. Again, with your right index finger, touch the very tip of your nose and return your arm straight. Now, with your left index finger, please touch the very tip of your left ear lobe. Thank you, that will be all.

Although there are several other evaluations, these four are considered to be the most objective and informative in determining whether a person is incapable of safely operating a motor vehicle.

**IF MANEUVERS
REFUSED/
ARREST ON
PREVIOUS
OBSERVATIONS**

DECIDING TO ARREST OR RELEASE — At this point, you should be able to make a good decision either to arrest or release the driver. You have observed his driving behavior, his physical and mental condition in the vehicle, and observed his performance during the maneuvers. These factors, taken together, constitute probable cause for arrest, or should influence your decision to release him. “In order to find the defendant guilty of the charge of Driving Under the Influence of Intoxicating Liquor, the degree of influence must be substantial, so as to render the defendant incapable of safely operating a vehicle” or, “in order to find the defendant guilty of the charge of Driving While Ability Impaired, you must find that he was less able than he ordinarily would have been, either mentally or physically, to exercise a clear judgment, and lacked the steady hands and nerves necessary to operate a motor vehicle with safety to himself and to the public.” (The Thompson Instructions as given to a D.U.I. jury.)

**SAFETY/NEVER
TAKE CHANCES**

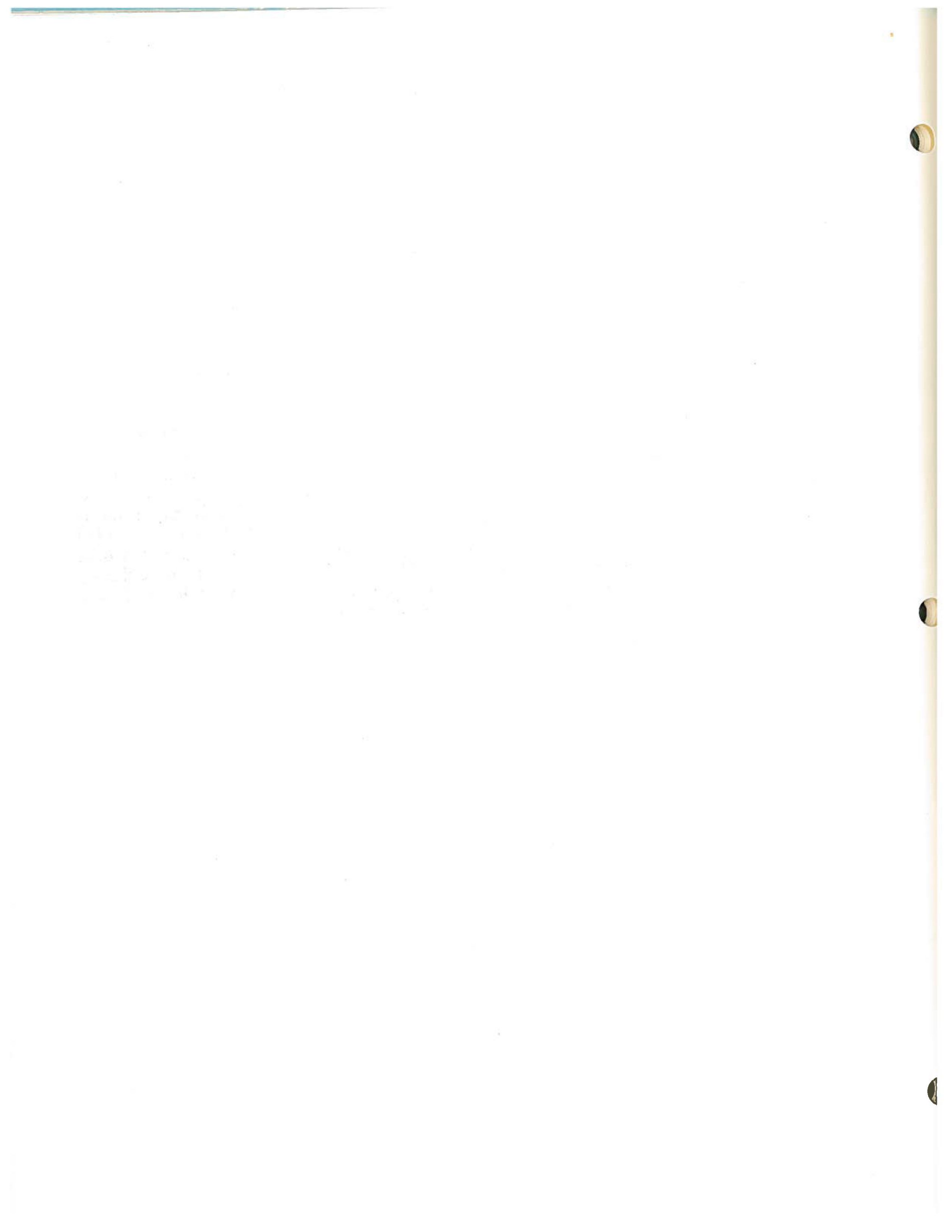
Arresting the Subject — If you decide that you have probable cause to arrest him for driving under the influence, consider the following recommended procedure: If possible, have another officer available at the time you advise the driver he is under arrest. People are very unpredictable when they think they are going to jail. *Always frisk and handcuff the arrested drinking driver.* By handcuffing him you are preventing him from possibly hurting himself as well as you. D.U.I.s have been known to jump out of moving patrol vehicles when they were not handcuffed and fastened securely into the seat by the use of a safety belt. *Again, people under the influence are unpredictable.*

Releasing the Subject — If you have not established probable cause to arrest the driver after conducting the physical maneuvers, then the appropriate decision is to release him. Possibly cite him for original violation. But remember, a

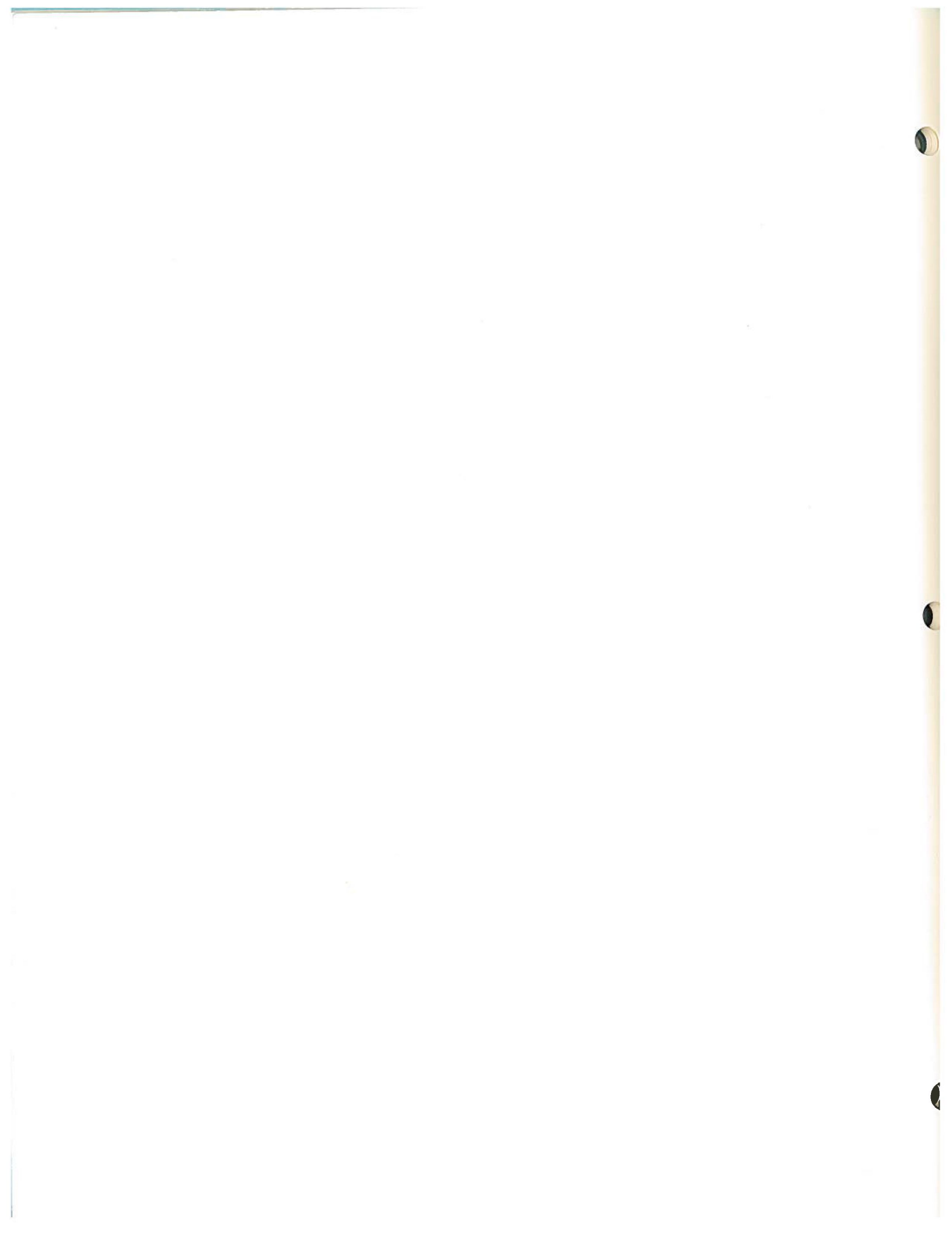
great deal rests on your effectiveness in properly detecting the drinking driver. As was stated before, the impaired or problem-drinking driver can be very dangerous, and you will have to be exceptionally alert in detecting him. If you fail in this detecting process and let him go, it could cost someone his life.

BE COURTEOUS AT ALL TIMES — Many of the people you contact while under the influence are perfectly pleasant persons when sober, however many personalities change when one is under the influence. If you go out of your way to be courteous and as pleasant as possible under the circumstances, you will save yourself many unnecessary trials. Courteous conduct, even in the face of occasional hostility, will often be appreciated when the defendant has sobered up.

DETERMINING DISPOSITION OF PASSENGERS AND VEHICLE — Anytime you make an arrest where the arrested person was in a vehicle, you must make arrangements for protecting his vehicle while he is in your custody. Departmental policy often gives you direction in this area. If you do not have a departmental policy, then it is recommended that the vehicle be towed to a secure location where it will be safe. If there is a sober friend or family member immediately available, he can take custody of the vehicle with the permission of the arrested person.



**PHASE II
PROCESSING**



THE PROCESSING PHASE

We define processing as that period of time commencing with the arrest of the drinking driver and terminating when he has been jailed, released on bond, or released on a Summons and Complaint to appear at a later date. It is during this stage that you fill in the necessary forms required to prosecute the case successfully in a court of law. *Note the exact times carefully on each form you fill in!*

We tend to associate the arrest of a drinking driver with the spending of a great deal of time and the filling in of numerous reports. However, you should eliminate duplicate or unnecessary reports in order to reduce the over-all time spent. The objective of the processing phase is to prepare accurate reports, insuring that all pertinent facts and information are recorded properly.

The number of reports required to process a drinking driver varies from agency to agency. Forms required by state law when processing the drinking driver are (1) the Colorado Implied Consent form, (2) the Colorado Implied Consent Affidavit form (only if subject refuses a chemical test), and (3) the Summons and Complaint form. Other forms, not required by law, but equally important, are a Permission for Chemical Test form, an Alcohol Influence Report form, and a Chain of Custody form. (See Appendix B) All agencies should examine their D.U.I. reporting system to eliminate any unnecessary forms in order to reduce the processing time. You can do much to expedite the processing phase if you will logically and effectively organize your work habits by eliminating the dead-time that typifies the processing phase; for example while sitting in your patrol car waiting for a tow, you could be completing the Implied Consent form or the Alcohol Influence Report form. While the arrestee is calling his attorney or a family member, you could be completing the Summons and Complaint form. *The key is to keep the processing phase moving.* The following recommended processing procedure is designed to help reduce the number of forms and the time required to process the drinking driver.

**VIDEO MAY BE
SUPPRESSED. IT
ONLY
SUPPLEMENTS
REPORTS**

**NEVER SAY "O.K."
IT IMPLIES
SATISFACTORY
PERFORMANCE**

USING VIDEO TAPE — Some jurisdictions may use video tape as part of D.U.I. processing. Juries often give great weight to the defendant's performance on such tapes. Therefore, only video tape a driver when he is still performing and/or behaving in the same or very nearly the same manner he was upon your initial contact. Remember, the ultimate issue is whether or not the driver was incapable of safely operating a motor vehicle due to the consumption of alcohol when you contacted him. Any evidence you gather should be directed to that issue. Not video taping a driver, therefore, might be appropriate, but report and be prepared to testify as to the reasons for your decision. For a video tape, you should utilize the same physical maneuvers that you did upon initial contact. Consider the camera as your jury; remember to present the proper impression regarding your attitudes towards the subject. Act as you would in the courtroom, testifying at trial. When administering the maneuvers, consider the following:

1. Give instructions that are simple and specific.
2. Do not demonstrate to avoid mimicking.
3. Be professional.

4. Be polite and courteous.
5. Be fair and concerned.
6. Speak clearly and in a normal tone of voice.
7. Do not block the camera's view of the subject.
8. If you ask questions, have the subject repeat his answers if necessary to insure they are picked up on the audio portion of the tape.
9. You should control the flow of taped maneuvers.
10. If a clock is not shown in the video, indicate the times when you begin and end the maneuvers.

COMPLETING THE IMPLIED CONSENT FORM —
Under state law, a person who drives a motor vehicle upon a public 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 alcohol content of his blood, if you have reasonable grounds to believe that he has been driving a motor vehicle while under the influence of or impaired by alcohol. If he refuses to submit to a chemical test after a valid request has been made, then his driver's license can be revoked for a period of either three or twelve months.

Required Information — The information required in this section to satisfy an implied consent hearing can basically be noted as follows:

**BE SURE ALL
COPIES ARE
LEGIBLE**

- A. Name.
- B. Reasonable grounds to stop.
- C. Evidence that a person was driving, operating, or had physical control of a vehicle.
- D. Odor of an alcoholic beverage, if detected.
- E. Results of the sobriety evaluations.
- F. Physical appearance and actions.
- G. Certification of the form.
- H. Reverse side of form if indicated.
- I. When to read.

Listed below is some of the more detailed information required in most cases to prosecute properly in court. Limited space is available on the Implied Consent form, and you will have to be brief and concise. More detailed information can be included in the comments section of an Alcohol Influence Report form. However, do not forget that you *may not testify* at an Implied Consent license revocation hearing to any probable cause observations which are not listed on the Implied Consent Advisement form!

**PRINT-BEAR
DOWN**

- A. *Name* — Print the subject's first, middle, and last name on the designated line.
- B. *Reasonable Grounds to Stop* — Note that you or another party observed the subject operating a vehicle, and indicate your reason for stopping him; e.g., speeding or

**IMPLIED
CONSENT
APPLIES ONLY TO
PUBLIC ROADS/
D.U.I.,
EVERYWHERE**

driving considerably below the posted speed limit, failure to use vehicle signals, involved in a traffic collision, etc. Note the location and direction of travel of the vehicle and the location of the actual traffic stop. When you have arrived at a collision situation and not observed the driving, locate possible witnesses and obtain verbal statements. The statements can be used in recording the reasonable grounds for this element. When a citizen advises you of a drinking driver, obtain the citizen's name and address and why he felt the subject was intoxicated. It is also important to interview passengers in the arrested subject's vehicle, as statements made by them might become crucial at trial. Report them accurately, quoting whenever possible.

- C. *The Element of "Driving"* — Your own observations will usually be sufficient to establish that a subject was "driving" a motor vehicle. However, further investigation is required when you have not made such observations, as when you are dispatched to the scene of a collision or a single car reportedly off of the road. In such situations, your initial investigation should include the question, "Who was driving this vehicle?" to all those at the scene. Always ask for witnesses who can establish that the subject was driving and note how each witness knows the subject was driving, e.g. he saw the subject driving his vehicle, he found the subject behind the steering wheel with the lights on and engine running, and/or the subject told him he had been driving.

**NECESSARY
ELEMENT
OF THE CHARGE**

Particularly in single vehicle situations, with only one party present when you arrive, look for evidence that this party had been in actual physical control of the vehicle. While Colorado law does not define "actual physical control," the phrase implies "the present physical ability of a person to control a vehicle." Therefore, always note situations such as an individual passed out behind the steering wheel and the location of the vehicle, its lights on, the transmission in gear, the keys in the "on" position in the ignition, or the subject trying to put the vehicle into gear. Be alert for any evidence that demonstrates the subject was in a position to either move or restrain the movement of the vehicle.

- D. *Odor of an Alcoholic Beverage* — Note that you smelled an odor of an alcoholic beverage on the subject's breath. Do not use the phrase "on or about the subject's person." It has to be *on his breath*. If necessary, get close enough to him so that you can smell any odor of an alcoholic beverage.

**INABILITY TO
PERFORM/
INABILITY
TO UNDERSTAND**

**BE DATE AND
TIME CONSCIOUS**

**DATE CHANGES
AT MIDNIGHT**

- E. *Results of The Sobriety Evaluation* — Note the results of the physical maneuvers and indicate the ones that he did not perform satisfactorily, e.g., finger to nose, Rhomberg, and inability to walk a straight line. Further details on how the subject performed the maneuvers can come out in the driver's implied consent hearing if necessary, for the Implied Consent form merely states which ones were not properly performed. If the driver refuses to perform the roadside tests, then list any visual signs of intoxication, e.g., watery eyes, swaying, slurred speech.
- F. *Physical Appearance and Actions* — Note the physical appearance of the subject with respect to his clothes and their condition, and any unusual actions such as swaying, staggering, falling down, needing support, etc.
- G. *Certification of the Form* — Write the date and time you advised the subject and gave him a copy of the Implied Consent form. Sign your name as the officer who advised the driver. Print the name of your law enforcement agency.
- H. *Reverse Side of the Form* — Check with your local implied consent hearing officer. It may be required that you complete the reverse side regardless of it being obvious that the subject can comprehend the English language. (Most jurisdictions do not require this).
- I. *When to Read the Form* — After you complete the form, hand a copy to the person and allow him to follow along as you read it to him. It is not necessary for the person to physically hold it in his hand. If he is handcuffed, laying it on his lap so he can see it is sufficient. Read the form in its entirety. Do not skip any part of it. The subject should indicate he understands. If he wishes to read it again independently, let him do so. Make sure the form is signed by you. If, while waiting for a tow truck to arrive at the arrest site, you have had time to complete the Implied Consent form, it would then be best to advise the subject immediately and proceed with the chemical test as soon as you have reached the testing area.

If the Subject Refuses — If the subject refuses to submit to a chemical test of his blood, breath, or urine, complete the Implied Consent Affidavit form and forward it to the Department of Revenue in order for the administrative hearing process to be initiated. Prior to its being forwarded, you must appear before a Notary Public, sign the form, and raise your right hand and swear that the information is true.

CONDUCTING A CHEMICAL TEST — The types of chemical tests are specified by statute, and certain procedures

**CHEMICAL TEST
IS YOUR
DECISION, NOT
SUBJECT'S RIGHT**

are spelled out for conducting each one. There should be only one procedure used throughout the state for each type of test.

Permission for Chemical Test form should be completed before any sample is taken. The form itself may vary from agency to agency but should require the same basic information. The subject is *not required* by law to sign the form giving his consent to take the sample. *If he verbally agrees to a chemical test, that in itself is sufficient.* It is not uncommon for a subject to refuse to sign a form - simply note his verbal agreement on the form. (See Appendix B5)

Blood Test — If a test is offered, you must offer a blood test first, and if the subject requests a blood test, then it *must* be given. The Department of Health standards in withdrawing blood must be followed. The only people who can draw blood samples are medical doctors, registered nurses, or persons whose duties include the drawing of blood. If the subject refuses the blood test, but is willing to take another, then *you* choose between breath or urine.

- A. *Withdrawing a Blood Sample* — There are several very important, yet simple steps to follow when obtaining a blood sample. Established procedures must be followed when withdrawing blood. Certain medical facilities have established procedures for withdrawing and maintaining custody. However, in other areas you may have to provide a kit for blood withdrawal *which must be a Board of Health approved kit.* In each blood alcohol test kit, the following should be found; a Permission for Chemical Test form, a Chain of Custody form, two test tubes containing sodium flouride, evidence seals, and a non-alcohol antiseptic towelette. Make sure that the person who withdraws the blood sterilizes the arm with a non-alcohol solution. The use of alcohol could result in an inaccurate blood alcohol concentration (BAC).
- B. *Maintaining Custody of Blood Sample* — Maintaining the chain of custody on the blood sample is very important if you expect to have the blood sample results admitted into evidence in court. If problems arise as a result of a broken chain of custody or improper procedures, then the sample may not be admitted into evidence, and you have lost a very important asset to your case.
- C. *Completing the Chain of Custody Form* — This form is used to record the custody of the blood sample from the time it is withdrawn from the subject until introduced into evidence at a court proceeding. The form should list the following:

**FOLLOW
PRESCRIBED
METHOD**

1. D.U.I. subject's name.
2. Offense charged. (If a felony situation exists, note that it is vehicular assault, etc., so the toxicologist can be aware of the potential importance of the case.)
3. Date and time the blood was drawn.
4. Print the name of the person who withdrew the blood.
5. *You must witness the blood being withdrawn.* If you retain the blood samples and deliver it to a lab for analysis, enter the name of the toxicologist who received the samples.

D. *Mailing the Blood Samples* — If it is your agency's policy to mail the blood samples to the lab for analysis, then it is important that the following steps be followed:

1. Make sure the Chain of Custody form is correctly completed.
2. Place the Chain of Custody form inside the protective case that contains the blood samples. (Two tubes).
3. Secure the protective case with two evidence seals.
4. Place the secured protective case containing the blood samples and Chain of Custody form in the mailing package, along with a Permission For Chemical Test form, and again seal both ends with two more evidence seals.
5. The mailing package should already have affixed to it the name and address of the toxicologist. If it does not, make sure you correctly address it before mailing. Place your agency's return address on the package.
6. Take the package to your local post office and place it in an inside mail depository. If the package is placed in an outside mail depository during cold weather, the sample tubes could freeze and break, thus destroying the blood samples.

If it is your agency's policy to deliver blood samples in person to the toxicologist, then follow the same procedures outlined for mailing with the exception of step #6.

**IS DRUGS
SUSPECTED/
URINE TEST
PREFERRED**

Urine Test — This test may take a little more time. The subject must be under constant supervision and not allowed to introduce foreign substances into the containers. The following procedure should be used:

Observe the subject void his bladder, then discard the urine. Wait 20 minutes, then have him urinate into a clean container. Pour the urine into 2 tubes from a blood test kit. Each tube contains sodium fluoride-leave it in the tubes-do not discard. After waiting another 20 minutes, repeat the process of collecting and dispensing the urine. Label and seal all 4 tubes. Send the samples to a certified laboratory for analysis.

Breath Test — A breath test is an accurate, reliable, and rapid means of determining a subject's blood alcohol concentration. The test must be conducted on a *certified* instrument by a *certified* operator following a *prescribed operating procedure*. The breath sample (alcohol contained in the sample) from the subject must be saved in a specified manner.

The Colorado Board of Health has established the guidelines for certified instruments, certified operators, and standard operating procedures for direct breath tests and saving breath samples. The Rules and Regulations of the Board of Health address each specific breath testing instrument and breath saving procedure used in Colorado.

If the subject can not satisfactorily perform the above procedure after a reasonable amount of time, note his comments and efforts. Such activity may constitute a refusal to comply with the implied consent law. *Do not over-rely on your blood, breath or urine test. If you have recorded accurate information as to the subject's intoxication and can testify to these observations, a court may still convict, even without a chemical test.*

**MAKE NOTES
THAT WILL "JOG"
YOUR MEMORY**

FILLING OUT THE ALCOHOL INFLUENCE REPORT FORM — This form is designed to provide specific and *accurate* information about the subject that will assist you later in testifying in court or at an implied consent hearing. It is also designed to allow the processing procedure to flow more smoothly and in a more logical fashion. The form should be completed as soon as possible after you have taken the subject into custody.

Observations and Performance Evaluations — All observations need to be recorded *specifically*, because you will rely heavily on them when testifying against the subject at a later date. Remember though, it is most important that you obtain a chemical test as soon after arrest as possible — so do not delay the process. A good time to complete these sections of the form is while you are waiting for a tow to respond prior to transporting the subject. In completing these two sections, write down in your own words what you have observed. The following examples may help you:

**BE SPECIFIC
WHEN
RECORDING
RESULTS**

- A. *Observations* — *eyes* — bloodshot, watery; *clothes* — dirty, shirt unbuttoned, high heels, trousers dragging, tie undone; *breath* — odor of an alcoholic beverage; *attitude* — combative, hostile, indifferent; *unusual actions* — had difficulty finding his driver's license in his wallet, flipped by it four times; *speech* — slurred.
- B. *Performance* — *balance* — swayed from side to side — front to rear while performing the Rhomberg test;

alphabet — was unable to pronounce letters correctly, skipped several or said them out of order; *walking* — when walking a straight line, swayed from side to side and stumbled twice; *turning* — when asked to turn around and walk back to me, hesitated and stumbled while making the turn; *finger-to-nose/ear lobe* — touched his upper lip with the right finger, and with the tip of his left finger, touched his cheek instead of his ear lobe.

BUILD YOUR CREDIBILITY

Ability to Understand Instructions — Be alert when asking the subject questions AND observe what he does when you ask him to perform the physical maneuvers. If you ask him for his driver's license, and he gives you a credit card, record it in this section. If you tell him to touch his nose with the tip of his first finger, and he uses the middle finger, record it. If you have to explain something to him several times before he understands it, record it; e.g., you have to explain three times how you want him to touch the tip of his nose with the tip of the right finger.

Miranda Advisement — This advisement is not required until the subject is in custody and questioning begins. Advise the subject of his Miranda rights by using the lower portion of the Alcohol Influence Report form. Ask him to sign both the advisement portion and the waiver portion, and sign the form yourself. If he refuses to sign, but wants to make a statement, let him. Note it in the signature section. Make sure you date and indicate the time that you completed the advisement process. In any case, the advisement of rights *must* precede the interview section of the Alcohol Influence Report form which is located on the back. However, *spontaneous* statements by the subject, made at any time during your contact, are not related to the Miranda warnings. Simply note the circumstances under which they were made and quote them. For example, when you ask, "Where were you going?" and he replies, "Mars," don't just note it, *quote it*.

BE OBJECTIVE BE FAIR

Comments — The last section on this form is the "Comments" section. You can write additional notes that might be helpful; e.g., more detail on observations, who towed the vehicle and where, and if subject was released on a Summons and Complaint, etc.

ISSUING THE SUMMONS AND COMPLAINT — Certain information is required when issuing a Summons and Complaint. If information is not accurate or is left off by mistake, the charge may be dismissed. The following is essential information when issuing the Summons and Complaint:

Name — Make sure you use the first, middle and last name of the subject, and ask if the name has changed and is correctly spelled.

Location of Offense — If subject was observed over an extended distance, the entire description should be entered; e.g., 100—700 South Main St.

Date — Write in the date on which the offense occurred.

Statute Number and Description — should be written in one of the following ways:

**YOU MAY
CHARGE D.U.I.
EVEN IF BAC IS
UNDER .10%**

D.U.I.

42-4-1202 (1) (a) 1973 C.R.S. as amended: Drove a motor vehicle while under the influence of an intoxicating liquor, or,

42-4-1202 (1) (c) 1973 C.R.S. as amended: Drove a motor vehicle while under the influence of a drug.

D.W.A.I.

42-4-1202 (1) (b) 1973 C.R.S. as amended: Drove a motor vehicle while ability impaired by intoxicating liquor.

The issuance of the Summons and Complaint is probably the last step that you will complete prior to the incarceration of the release of a D.U.I. subject. The Summons and Complaint can be completed anytime after you have made the decision to charge. The appropriate time is after testing.

Endorsing Witnesses — Some jurisdictions require endorsements of witnesses on the Summons and Complaint form. These witnesses will include persons at the scene, the instrument operator or any person administering a chemical test, and any expert required to testify as to the effects of alcohol on that individual.

**ALWAYS CHECK
FOR PRIOR
CONVICTIONS**

D.U.I. Prior Conviction — Always note, with special attention, in your report any information you obtain that suggests your D.U.I. subject has a prior D.U.I. conviction within five years (date of offense to date of offense). If necessary court records are adequate and available, the prosecutor may file a second, separate charge dealing with the prior conviction.

Upon a second or subsequent conviction within five years (date of offense to date of offense) the party shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than ninety days nor more than one year, or by both such fine and imprisonment. The minimum period of imprisonment shall be mandatory, and the court shall have no discretion to grant probation or to suspend the sentence.

DETERMINING TO INCARCERATE OR RELEASE —

The decision to incarcerate or release a D.U.I. subject is one that will have to rest on each agency's policy. The prudent action is to minimize the possibility of the person driving again, while still intoxicated. The average person "eliminates" alcohol at the rate of .015% per hour. Therefore it would take at least 14 hours for a person with a .20 BAC to "sober-up." Releasing a subject on his personal recognizance reduces the processing time considerably, however, the following should be considered prior to such action:

1. Do they qualify for a P.R. bond? Is he a resident of the area, etc.
2. Is there a responsible sober family member or friend who is willing to assume responsibility for the subject and will agree to not let him drive.
3. NOTE: If the BAC is known and is greater than .35 or if the subject lapses into unconsciousness or a deep sleep, he should receive immediate medical attention.

**PHASE III
PROSECUTION**

2000
10/10/00

THE PROSECUTION PHASE

We define the prosecution phase as that period of time commencing with the filing of a Summons and Complaint form for D.U.I. until final adjudication as arrived through court processes. If you followed the recommended procedure as described in the first two phases, you will have put together a solid case. You may be convinced that the defendant is guilty; so why have a trial? The answer lies in our American system of criminal justice. It is the defendant's constitutional right to request a trial. Therefore, if he does not plead guilty, it is the prosecutor's job to convince members of a jury or the judge that the defendant was driving under the influence *beyond a reasonable doubt*.

The issue at trial is whether the defendant was:

Driving Under the Influence "...the degree of influence must be substantial, so as to render the defendant incapable of safely operating a vehicle."* or

Driving While Ability Impaired "...he was less able, to even the slightest degree, than he ordinarily would have been, either mentally or physically, or both, to exercise a clear judgment, and lacked the steady hands and nerves necessary to operate a motor vehicle with safety to himself and to the public."* or

Guilty of a non-alcohol offense. or

Not guilty.

PERSONS INVOLVED IN PROSECUTION — The following persons may participate in a D.U.I. trial:

Judge — Determines the admissibility of evidence, oversees the conduct of the trial, instructs the jury as to the law that will govern the case, and ultimately, upon conviction, imposes sentence. In a trial to the court, the judge will also determine guilt or innocence.

Jury — Based upon what it concludes the facts to have been from the evidence presented and the believability of the witnesses, it applies those facts to the law and unanimously returns a verdict of "guilty" or "not guilty." In order to return a "guilty" finding, the jury must believe in the defendant's guilt "beyond a reasonable doubt." If the jury has such a "reasonable doubt," it MUST find the defendant not guilty.

Prosecutor — Presents all available evidence in the light most favorable to the People, with the additional obligation of insuring the defendant a fair trial.

Defense Attorney — Seeks the acquittal of his client.

*The Thompson Instruction as given to a D.U.I. jury.

Defendant — Answers the formal charges brought against him.

Arresting Officer — Testifies to the initial observation of erratic driving, the physical appearance of the defendant, observations of the scene and vehicle, the performance of “physical maneuvers,” any voluntary statements, arrest of the defendant, advisement of implied consent, administration of the chemical test, and statements made by the defendant.

Civilian Witness — Testifies to the observation of defendant’s driving, drinking or physical condition either just before or after the stop, and any statements made by the defendant. A civilian witness can be a passenger in the defendant’s car, an observer, or a victim of a collision.

Instrument Operator — Testifies to the storage of the standard solution, describes the instrument and the operation checklist used to take the breath sample, and may give the results of such test.

Medical Personnel — Testifies to the method of withdrawing defendant’s blood where a blood test is used. May be a nurse, doctor or other person authorized to withdraw blood.

Toxicologist — Analyzes and testifies to the results of the test given, effects of alcohol on a person’s ability to operate a vehicle, the reliability of the instrument used, the accuracy of the test results, and the amount of alcohol consumed based on the test results.

CHARACTERISTICS OF A D.U.I. CASE — Most D.U.I. cases involve the following:

**CORROBORATION
IS IMPORTANT
AND ADDS
CREDIBILITY TO
THE CASE**

Opinion of Another — A person can be convicted of D.U.I. based solely on the opinion of another as to his degree of intoxication. However, because most jurors would find a reasonable doubt based on the opinion of a single person, additional evidence is necessary.

Circumstantial Evidence — Generally, proof of a D.U.I. case is based upon circumstantial evidence. Such evidence is defined as “that proof of facts or circumstances from which the existence or non-existence of other facts may reasonably be inferred.” While direct or eye-witness evidence may be viewed as stronger evidence by some jurors, a jury can return a verdict of “guilty” based solely upon circumstantial evidence.

Additional Evidence — The use of video tapes, chemical tests and expert witnesses make proving this misdemeanor as complicated as any felony.

CONSIDERATIONS BEFORE TRAIL — Trial and/or suppression hearing dates are set by the court, usually without the knowledge of the prosecutor. Conflicts such as out-of-town schooling or a vacation should be brought to the prosecutor's attention as soon as you are made aware of them. Communication is the key - while the prosecutor can never guarantee he can arrange for another court date, the earlier you advise him of your conflict and the fewer "conflicts" you have, the more likely prosecutors and judges will be to accommodate you.

Plea Bargaining — The rules of criminal procedure allow people with similar offenses and records to plead to similar lesser charges, if allowed to plead to lesser charges at all.

Where the defendant was combative it will be considered by the prosecutor but will not be determinative on the disposition. If the defendant physically resists, charge him with either resisting arrest, 2nd degree assault, or any other appropriate charge. The prosecutor bases his plea bargain offer on a variety of factors, e.g., the sum total of offenses charged, defendant's prior records, any aggravated facts such as a collision and the degree of injury including damage, the defendant's attitude, the quality and quantity of evidence, number and availability of witnesses, provability of the case, possible defenses, and your feelings about the case. It is the prosecutor's function, and the decision is his responsibility alone.

YOUR TESTIMONY — The jury will be instructed to consider certain factors when determining the credibility of all witnesses. There are four areas which can make you a believable witness.

**DON'T GUESS—
ASK FOR YOUR
REPORT**

Knowledge of the Case — Be thoroughly familiar with the facts and all the evidence. Bring only original documents, when possible, and all other evidence to court without being asked. Disclose possible weaknesses and strengths of the case to the prosecutor prior to the trial. Do not take offense at questions put to you by the prosecutor prior to the trial; he is trying to help. Ask what to expect from him and from the defense attorney. A trial is a team effort. If you have played any part, however slight, you may be called to testify.

Recollection of that Knowledge — Make notes and reports thorough enough to recall facts clearly and accurately at the subsequent trial, which may not take place for months.

Thoroughly review your notes and the entire case file. Try to picture the scene by forming a mental image of what happened. As a general rule, you may ask to refer to notes or reports made at or near the time of the offense *to refresh your recollection.*

**REFERENCE TO
"REFUSAL"
CONSTITUTES
GROUNDS FOR A
MISTRIAL**

"May I refer to my notes?" you ask. "Did you make them in the course of your duties at or near the time of the offense?" asks the prosecutor. "Yes," you respond. The judge should then allow time for you to refresh your memory. If you remember something not in your reports, it is still evidence, and you may testify about it. If the defendant was offered a chemical test and refused, do not mention it, or it may result in a mistrial. Avoid testifying to any statements made to you by the defendant unless specifically asked. However, be certain to inform the prosecutor prior to trial of any statements made by the defendant not recorded in the reports. The prosecutor may not use statements which he has not disclosed to the defense or which the court has suppressed. Before testimony may be admitted regarding the results of any chemical tests and the defendant's statements, a legal determination of admissibility may be made by the judge, outside the presence of the jury.

Communication of the Knowledge — Information is generally obtained through one's eyes and ears. Oral testimony, however is an inefficient method of communicating a complicated situation to someone who has never heard it before.

- A. *Project Your Own Story* — Try to paint a word picture. Be descriptive. *Be accurate.* Convey and project your story, remembering that you are selling yourself as well as your testimony. Relax. If you are prepared, you will undoubtedly be a convincing witness. Be professional. Detach yourself from the case and relate what happened as if you were merely a bystander and not an officer.
- B. *Relate the Facts* — Do not display to the jury the *us against them* attitude. Let the prosecutor present and argue the case. You simply relate the facts. *Never* answer a question you do not understand. If you cannot understand it, how can the jury? Answer directly and simply only the question asked of you. Give only short, direct answers unless asked a question calling for a narrative answer. Help the jury to understand, use simple words: Car not vehicle; man, woman, child or person not male, female, juvenile or subject; go or arrive not respond; saw or met not contacted; red lights and siren not emergency equipment, etc. In so doing, the jury understands what you mean and can relate to your presentation. If they don't know what you mean, they worry; if they worry, they don't listen, and when they don't listen, they acquit.
- C. *Let Prosecutor Maintain Control* — The prosecutor must control the tempo with his questions to avoid opening the door to some matters better left alone and to avoid mistrials.

**EXCEPTION:
BREATH-TEST
INSTRUMENT/
NOT MACHINE**

Be Positive — Talk to the members of the jury frankly and openly, maintaining eye contact, as you would to a friend or neighbor. Listen to the questions put forth by the prosecutor or defense attorney, *but talk to the jury, not the attorney*. The following words should be avoided: a little, sort of, kind of, somewhat, impaired or it's possible. You arrested the defendant because, in your professional judgment, you would have been derelict in your duty as a peace officer if you had let him back in his vehicle to drive. You determined he could not drive with safety to himself and others. If you thought someone was under the influence and you issued a citation, stand on your word. Let the defense attorney make his points, don't do it for him.

Opinion of Intoxication — You have reached the point in your testimony where you will state your conclusions regarding the sobriety of the subject. These conclusions are based on erratic driving, bloodshot, watery eyes, smell of an alcoholic beverage on the breath, inability to satisfactorily perform the physical maneuvers, previous training and experience with drinkers and drinking drivers, etc. "Do you have an opinion with respect to the defendant's sobriety?" asks the prosecutor. "Yes I do," you reply. "What is that opinion?" **THE DEFENDANT WAS INTOXICATED** or **THE DEFENDANT WAS SUBSTANTIALLY UNDER THE INFLUENCE.**"

**SAY
"INTOXICATED" OR
"UNDER THE
INFLUENCE"/NOT
"DRUNK"**

CROSS EXAMINATION — Seemingly, the area most feared by you is that time when the defense attorney has the opportunity to ask you questions. Remember it is his job on cross-examination to put words in your mouth. Do not take it personally and become angry. If he is on you hard, chances are the jury will be sympathetic toward you. Hard questioning and arguments do not go down well with the jury. If you reported a fact, stick to it. You were there, not the defense attorney.

Think before you answer. Be on your guard for questions that attempt to discredit you regardless of your answer, such as: "You thought my client was under the influence as soon as you stopped him, didn't you?" A simple "yes" casts doubt on why you "investigated" further with such things as physical maneuvers. A simple "no" suggests his driving wasn't really that bad. Don't be lead - explain your actions. Never hesitate to ask for clarification or for the question to be repeated. Remember, an answer given in haste or based upon a question you misunderstood is still evidence for the jury to consider.

**THE
PROSECUTOR
CAN
REHABILITATE
YOUR
TESTIMONY ON
REDIRECT**

Don't fight the obvious. If the defense attorney catches a mistake you made on direct examination, admit it. *Do not argue*, no matter how absurd the questions are, e.g., if you did not see the defendant drinking, or you do not know whether

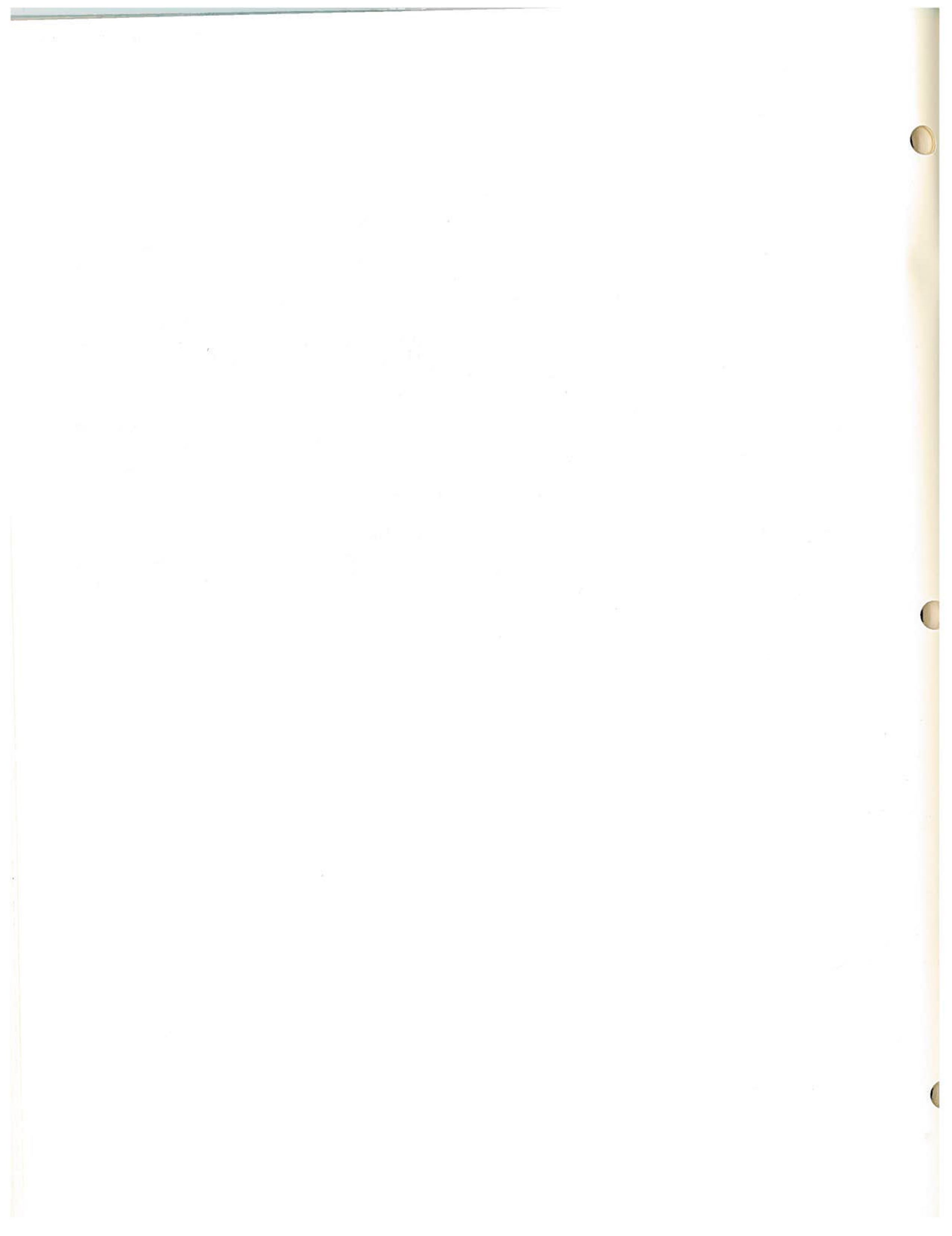
polio would effect a person's results on the physical evaluations, just answer, "no." *You* control the manner in which you testify; do not let the defense attorney upset you. When the defense attorney is shouting, keep talking to the jury in a pleasant conversational tone.

PROFESSIONAL APPEARANCE — Be neat in your appearance with proper dress. Avoid distracting mannerisms, such as gum chewing or holding a toothpick in your mouth. Do not give snap answers without thinking them out. Be courteous at all times. Do not exaggerate. Avoid looking at the prosecutor or judge for answers. When in the courthouse, be on guard. You never know when jurors may be observing your actions. Avoid the appearance of being cocky, however, project confidence and professionalism.

SUMMARY

Many thousands of manhours have been spent in completing this Manual. Experts in the area of D.U.I. enforcement have been consulted and have greatly assisted in establishing the procedures as set forth in this document. Although there are other publications in existence, this Manual is believed to be one of the best of its kind. It specifically addresses Colorado's problems, laws, and suggested procedures in dealing with the D.U.I. After you have completed reading this Manual, you will not necessarily be an expert in the area of D.U.I. enforcement. However, some areas that may have been of concern to you will have been clarified or perhaps reinforced. By stimulating your thinking, you can gain a more positive approach towards D.U.I. enforcement. *You alone are the key.* Without your initial contact of the suspected intoxicated driver and the decision to arrest, the identification and reduction of alcohol-related incidents cannot take place. Looking for reasons not to arrest is justifying lack of responsibility on your part, and amounts to contributing to a serious social problem — the intoxicated driver.

The following sections of this Manual are designed to give you additional information on situations and processes related to D.U.I. enforcement. It is strongly suggested that you become familiar with them. There are sections that are sure to contain answers to questions which you still may have. By becoming thoroughly familiar with the Manual and its appendices, you will also be enhancing your image as a professional peace officer.



APPENDICES

SECRET

THE LAW**42-4-1202. Driving under the influence - driving while impaired - implied consent to chemical tests - penalties — alcohol and drug driving safety programs.**

- (1) (a) It is a misdemeanor for any person who is under the influence of intoxicating liquor to drive any vehicle in this state.
 - (b) It is a misdemeanor for any person to drive any vehicle in this state while such person's ability to operate a vehicle is impaired by the consumption of alcohol.
 - (c) It is a misdemeanor 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 operating a vehicle or to drive a vehicle in this state. The fact that any person charged with a violation of this paragraph (c) 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 paragraph (c).
- (2) In any prosecution for a violation of subsection (1) (a) or (1) (b) of this section, the amount of alcohol in the defendant's blood at the time of the commission of the alleged offense or within a reasonable time thereafter, as shown by chemical analysis of the defendant's blood, urine, or breath, shall give rise to the following presumptions:
 - (a) If there was at such time 0.05 percent or less by weight of alcohol per volume in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor and that his ability to operate a vehicle was not impaired by the consumption of alcohol.
 - (b) If there was at such time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol per volume in the defendant's blood, such fact shall give rise to the presumption that the defendant's ability to operate a vehicle was impaired by the consumption of alcohol, and such fact may also be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.
 - (c) If there was at such time 0.10 percent or more by weight of alcohol per volume in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.
 - (d) The limitations of this subsection (2) shall not be construed as limiting the introduction, reception, or consideration of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor or whether or not his ability to operate a vehicle was impaired by the consumption of alcohol.
 - (e) As used in this subsection (2), "percent by weight of alcohol per volume" means the number of grams of alcohol per 100 cubic centimeters of blood.
 - (3) (a) Any person who drives any motor vehicle upon a public highway in this state shall be deemed to have given his consent to a chemical test of his breath, blood, or urine for the purpose of determining the alcoholic content of his blood, if arrested for any misdemeanor offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of, or impaired by, alcohol. If such person requests that the said chemical test be a blood test, then the test shall be of his blood; but, if such person requests that a specimen of his blood not be drawn, then a specimen of his breath or urine shall be obtained and tested, the election to be made by the arresting officer.
 - (b) The test shall be administered at the direction of the arresting officer having reasonable grounds to believe the person to have been driving a motor vehicle while under the influence of, or impaired by, alcohol and in accordance with rules and regulations prescribed by the state board of health, with utmost respect for the constitutional rights, dignity of person, and health of the person being tested. No person except a physician, a registered nurse, or a person whose normal duties include withdrawing blood samples under the supervision of a physician or registered nurse shall be entitled to withdraw blood for the purpose of determining the alcoholic content therein. At the time of making such request, the officer, orally and by written notice (which written notice shall be in both English and Spanish and signed by said officer), shall inform the person arrested of his rights under the law and the probable consequences of a refusal to submit to such a test. Such notice shall also state the circumstances on which he relies as reasonable grounds for believing the arrested person was under the influence of alcohol. No civil liability shall attach to any person authorized to obtain blood as provided in this subsection (3) as a result

of the act of obtaining blood from any person submitting thereto if the blood was obtained according to the rules and regulations prescribed by the state board of health; except that such provision shall not relieve any such person from liability for negligence in the obtaining of any blood sample.

- (c) If any person who has been so arrested refuses to submit to a chemical test when requested by the arresting officer, as provided in this subsection (3), the test shall not be given.
- (d) 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 paragraph (a) of this subsection (3), and the test may be administered subject to paragraph (b) of this subsection (3). Any person who is dead, in addition to the tests prescribed, shall also have his blood checked for carbon monoxide content and for the presence of drugs, as prescribed by the department of health. Such information obtained will be made a part of the accident report.
- (e) 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 a motor vehicle while under the influence of, or impaired by, alcohol and that the person had refused to submit to the test upon the request of the law enforcement officer, shall, as soon as possible, serve notice upon said person, in the manner provided in section 42-2-117, to appear before the department and show cause why his license to operate a motor vehicle or, if said person is a nonresident, his privilege to operate a motor vehicle within this state should not be revoked. The hearing held in accordance with the order to show cause shall not be continued unless the arrested person, or his representative, can establish to the hearing officer that there has been a recent death in the arrested person's immediate family, that the arrested person or a member of his immediate family has recently been hospitalized, that his attorney or a witness is unable to appear, or that a similar good cause exists which prevents the arrested person from appearing at a hearing. When such good cause is established, such hearing shall be held at the earliest possible date. Nothing in this paragraph (e) shall be construed to prohibit the department from rescheduling such hearing if good cause exists which prevents the hearing from being held at the time scheduled. At such hearing, it shall first be determined whether the officer had reasonable grounds to believe that the said person was driving a motor vehicle while under the influence of, or impaired by, alcohol. If reasonable grounds are not established by a preponderance of the evidence, the hearing shall terminate, and no further action shall be taken. If reasonable grounds are established and said person is unable to submit evidence that his physical condition was such that, according to competent medical advice, such test would have been inadvisable or that the administration of the test would not have been in conformity with the rules and regulations of the state board of health or in conformity with the provisions of this section or if said person fails to attend the hearing without good cause shown, the department shall forthwith revoke said person's license to operate a motor vehicle or, if said person is a nonresident, his privilege to operate a motor vehicle within this state for a period of three months for the first such revocation and for a period of twelve months for the second and each subsequent revocation or denial within any five-year period; or, if the person is a resident without such license, the department shall deny to such person the issuance of a license for a period of three months for the first such revocation or denial and for a period of twelve months for the second and each subsequent revocation or denial within any five-year period. All such periods of revocation or denial shall commence on the date of hearing. The revocation action provided for in this subsection (3) shall be in addition to any and all other suspensions, revocations, cancellations, or denials which may be provided by law, and any revocation taken under this subsection (3) shall not preclude other actions which the department is required to take in the administration of the provisions of this title. The hearings held by the department under this subsection (3) shall be at the district office of the department nearest the jurisdiction wherein the person was arrested.
- (f) If the revocation is sustained after such a hearing, the person whose license has been revoked under the provisions of this section shall have the right to file a petition for judicial review in the appropriate court in accordance with section 42-2-127.
- (g) Upon request of any person submitting to a chemical test pursuant to this subsection (3), or his attorney, the result of such test shall be made available to him forthwith.
- (h) For the purpose of a criminal prosecution for a violation of subsection (1) of this section, the refusal of a person to submit to a chemical test shall not be admissible.

- (4) (a) Every person who is convicted of a violation of subsection (1)(a) or (1)(c) of this section commits a class 1 traffic offense. Upon a conviction of a second or subsequent offense which occurred within five years of the date of a previous offense, the offender shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year and, in the discretion of the court, by a fine of not less than one hundred dollars nor more than one thousand dollars. The minimum period of imprisonment as provided upon a second or subsequent conviction for a violation of subsection (1)(a) or (1)(c) of this section shall be mandatory, and the court shall have no discretion to grant probation or to suspend the sentence therefor.
- (b) Every person who is convicted of a violation of subsection (1)(b) of this section commits a class 2 traffic offense.
- (5) (a) The division of highway safety shall establish in each judicial district an alcohol and drug driving safety program which provides presentence alcohol and drug evaluations on all persons convicted of a violation of paragraph (a), (b), or (c) of subsection (1) of this section. The alcohol and drug driving safety program shall further provide supervision and monitoring of all such persons whose sentences or terms of probation require completion of a program of alcohol and drug driving safety education or treatment.
- (b) The presentence alcohol and drug evaluation shall be conducted by such persons certified by the division of highway safety as qualified to provide evaluation and supervision services as described in paragraph (c) of this subsection (5). In establishing qualifications for such persons, the division shall consult with the alcohol and drug abuse division and shall also give consideration to those persons who have had practical experience in alcohol and drug treatment.
- (c) Upon the establishment of an alcohol and drug driving safety program, the presentence alcohol and drug evaluation shall be conducted on all persons convicted of a violation of paragraph (a), (b), or (c) of subsection (1) of this section. The report shall be made available to and shall be considered by the judge prior to sentencing. The report shall contain an evaluation of the defendant concerning his prior traffic record, characteristics and history of alcohol or drug problems, and amenability to rehabilitation. The report shall include a recommendation as to alcohol and drug driving safety education or treatment for the defendant. The presentence alcohol evaluation shall be prepared by a person who is knowledgeable in the diagnosis of chemical dependency. Such person's duties may also include appearing at sentencing and probation hearings as required, referring defendants to treatment agencies in accordance with orders of the court, monitoring defendants in treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referral to treatment, appearing at revocation hearings as required, and providing assistance in data reporting and program evaluation. For the purpose of this subsection (5), "alcohol and drug driving safety education or treatment" means either level I or level II education or treatment programs. Level I programs are to be short-term, didactic education programs. Level II programs are to be therapeutically oriented education, long-term out-patient, and comprehensive in-patient programs. Any defendant sentenced to level I or level II programs shall be instructed by the court to meet all financial obligations of such programs. If such financial obligations are not met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence. Nothing in this section shall prohibit treatment agencies from applying to the state for funds to recover the costs of level II treatment for defendants determined to be indigent by the court.
- (d) There is hereby created an alcohol and drug driving safety program fund in the office of the state treasurer to the credit of which shall be deposited all moneys as directed by this paragraph (d). Until July 1, 1980, in addition to any fines, fees, or costs levied against a person convicted of a violation of paragraph (a), (b), or (c) of subsection (1) of this section, sixty dollars shall be assessed by the judge against each such person for the cost of the presentence alcohol and drug evaluation and supervision services. After July 1, 1980, and each fiscal year thereafter, the amount shall remain at sixty dollars unless the division has provided to The General Assembly a statement of the cost of the program, including costs of administration for the past and current fiscal year to include a proposed change in the assessment. The General Assembly shall then consider the proposed new assessment and approve the amount to be assessed against each person during the following fiscal year in order to insure that the alcohol and drug driving safety program established in this subsection (5) shall be financially self-supporting. Any adjustment in the amount to be assessed shall be so noted in the appropriation to the Division of Highway

Safety as a footnote or line item related to this program in the long appropriation bill. The state auditor shall periodically audit the costs of the programs to determine that they are reasonable and that the rate charged is accurate based on these costs. Any other fines, fees, or costs levied against such person shall not be part of the program fund. The amount assessed for the alcohol and drug evaluation shall be transmitted by the court to the state treasurer to be credited to the alcohol and drug driving safety program fund. Upon appropriation by the general assembly, these funds shall be expended by the division of highway safety for the administration of the alcohol and drug driving safety program. In administering the alcohol and drug driving safety program, the division of highway safety is authorized to contract with any agency within the judicial system for such services as the division deems necessary. Moneys deposited in the alcohol and drug driving safety program fund shall remain in said fund to be used for the purposes set forth in this subsection (5) and shall not revert or transfer to the general fund except by further act of the general assembly.

- (e) The division of highway safety shall establish an alcohol and drug driving safety program suited to the needs of each judicial district. In establishing these programs the division shall consult with the alcohol and drug abuse division and with local treatment programs. The division shall also insure that qualified personnel are placed in the judicial districts and shall establish criteria for evaluation techniques, drinker classification, data reporting, client supervision, and program evaluation.
- (f) The alcohol and drug driving safety program shall cooperate in providing services to a defendant who resides in a judicial district other than the one in which the arrest was made. Alcohol and drug driving safety programs may cooperate in providing services to any defendant who resides at a location closer to another judicial district's program. The requirements of this subsection (5) shall not apply to persons who are not residents of Colorado at the time of sentencing.
- (g) The court shall consider the alcohol and drug evaluation prior to sentencing.
- (h) As used in this subsection (5), "convicted" includes a plea of no contest accepted by the court.
- (i) The provisions of this subsection (5) are also applicable to any defendant who receives a deferred prosecution in accordance with section 16-7-401, C.R.S. 1973, or who receives a deferred sentence in accordance with section 16-7-403, C.R.S. 1973.

FORMS RELATED TO D.U.I.

THE FOLLOWING SAMPLE FORMS HAVE BEEN COMPLETED TO SERVE AS A READY REFERENCE:

1. IMPLIED CONSENT FORM — ONLY FORM THAT CAN BE USED; PROVIDED TO LAW ENFORCEMENT AGENCIES BY THE DEPARTMENT OF REVENUE.

DR 657 (REV. 10/77)

**ADVISEMENT PURSUANT TO IMPLIED CONSENT
LAW OF THE STATE OF COLORADO**

NAME: WILLIAM THOMAS JONES (DOB 6-28-47)

1. You are advised that a person who drives a motor vehicle upon a public highway in this state shall be deemed to have given his consent to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood, if a police officer has reasonable grounds to believe that a person has been driving a motor vehicle while under the influence of, or impaired by, alcohol. You are further advised that proceedings under the implied consent law are civil in nature, not criminal, as a matter of law you have no right to consult with an attorney before deciding to submit to, or refuse, a chemical test of your blood, breath, or urine.

2. You are advised that:

A. The arresting officer has reasonable grounds to believe that you were driving a motor vehicle while under the influence of, or impaired by, alcohol.

(1) The reasonable grounds for my belief that you were driving a motor vehicle while under the influence of, or impaired by, alcohol are:

(State facts including, but not limited to, actions of subject observed prior to stopping subject, and the actions and conditions of the subject observed at scene of the arrest.)

I OBSERVED YOU DRIVING A RED FORD EASTBOUND ON MAIN STREET, AT WHICH TIME YOUR CAR CROSSED THE CENTER LINE THREE TIMES BETWEEN THE 6200 AND 6800 BLOCKS. UPON STOPPING YOU, HAVING TO USE ALL OF MY PATROL CAR'S EMERGENCY EQUIPMENT, I CONTACTED YOU AND SMELLED A MODERATE ODOR OF ALCOHOLIC BEVERAGE ON YOUR BREATH. I OBSERVED THAT YOUR SPEECH WAS SLURRED, YOUR EYES WERE BLOODSHOT AND THAT YOU HAD A SWAYING WALK. I THEN ASKED YOU TO PERFORM A SERIES OF FOUR PHYSICAL MANEUVERS TO WHICH YOU ATTEMPTED TO COMPLY BUT WERE NOT ABLE TO SATISFACTORILY COMPLETE THE RHOMBERG AND FINGER TO NOSE MANEUVERS

B. Misdemeanor charges have been or will be filed against you.

3. The results of the chemical test may be used in evidence against you in the misdemeanor proceedings of charges which have been or will be filed against you.

4. You may request that the chemical test be a blood test, in which case it shall be a blood test; you may request that a specimen of your blood not be drawn, in which case a specimen of your breath or urine shall be obtained and tested, the election to be made by the arresting officer.

5. You are advised that, if you choose to refuse to submit to a chemical test as requested by the arresting officer the test will not be given, provided further, that the Department of Revenue, upon receipt of a written report from the arresting officer stating your refusal, shall serve notice upon you to appear before the Department of Revenue and show cause why your license to operate a motor vehicle or your privilege to operate a motor vehicle within this state should not be revoked or denied for a period of three months, or if this is the second such revocation or denial within five years, a period of twelve months.

6. You are further advised that refusal to submit to a chemical test of your blood, breath or urine for the purpose of determining the alcohol content of your blood can not be used in the prosecution of the misdemeanor charged.

7. You are further advised that, upon the request of any person submitting to a chemical test pursuant to this act, or his attorney, the results of such test shall be made available to him forthwith.

I hereby certify that the above advisement has been read to the above named person and that the above named person has received a copy of this document.

JULY 14, 1980
Date subject advised and given a copy of this document

1:30 AM
Time subject advised and given a copy of this document

Cordell A. Smith
(Arresting Officer)

ANYTOWN POLICE DEPT.
(Agency)

2. IMPLIED CONSENT AFFIDAVIT — ONLY FORM THAT CAN BE USED; PROVIDED BY DEPARTMENT OF REVENUE.

STATE OF COLORADO
 COUNTY OF ANY COUNTY SS **AFFIDAVIT**

I, COADELL A. SMITH of lawful age, being first duly sworn upon oath, depose and state:

1. I am POLICE OFFICER for ANYTOWN POLICE DEPARTMENT

2. That on the 14th day of JULY, 19 80, in the performance of my duty I did arrest WILLIAM THOMAS JONES (hereinafter referred to as "subject"), whose address is 5829 S. EVANSTON ST., ANYTOWN, COLORADO, date of birth JUNE 28, 1947 who holds COLORADO OPERATOR'S license number H 96185, and did serve or will cause to be served a Summons and Complaint charging him/her with a misdemeanor offense committed while driving a motor vehicle in the County of ANYCOUNTY.

3. That prior to the arrest of the subject I had reasonable grounds to believe that he/she was driving a motor vehicle while under the influence of, or impaired by, alcohol.

4. That I requested the subject to submit to a chemical test of his/her blood, breath, or urine for the purpose of determining the alcohol content of his/her blood.

5. That I did verbally and by written notice, which written notice was both in English and Spanish, inform the subject of his/her rights under the law and the probable consequences of his/her refusal to submit to a chemical test of his/her blood, breath, or urine for the purpose of determining the alcohol content of his/her blood.

6. That the subject refused to submit to any chemical test of his/her blood, breath, or urine.

7. That the reasonable grounds, for my belief that the subject was driving a motor vehicle while under the influence of, or impaired by, alcohol are stated in 2 A (1) of the advisement form, DR 687.

Dated at ANYTOWN, Colorado, this 17th day of JULY, 19 80
Cordell A. Smith
 (Arresting Officer)

Subscribed and sworn to before me this 17th day of JULY, A.D., 19 80
 by CORDELL A. SMITH
P. J. Hines
 (Notary Public)

Witness my hand and official seal.
 My commission expires

ICA-3) @ M218

3. SUMMONS AND COMPLAINT FORM — RECOMMENDED INFORMATION REQUIRED; USE FORM SUPPLIED BY YOUR AGENCY OR ADOPT THIS FORMAT.

THE PEOPLE OF THE STATE OF COLORADO **SUMMONS AND COMPLAINT** COURT COPY

VS. DEFENDANT WILLIAM THOMAS JONES

ADDRESS 5829 S. EVANSTON ST. DATE & APPROXIMATE TIME OF OFFENSE JULY 14 1980 AM 1:00 21602

CITY, STATE & ZIP CODE ANYTOWN, COLORADO 80120 HOME PHONE 795-1662 COUNTY OF OFFENSE ANYCOUNTY STATE OF COLORADO

DATE OF BIRTH JUNE 28, 1947 AGE 33 MALE FEMALE BUSINESS PHONE 794-9611 APPROXIMATE LOCATION OF OFFENSE 6200-6800 S. EVANS DRIVE

WEIGHT 175 HEIGHT 5-9 HAIR BRO EYES BLU GLASSES CONTACT LENS EMPLOYED BY (NAME AND ADDRESS) JERRY BRANDT, 1000 STEELE ANYTOWN, COLO

DRIVERS LICENSE NO. TYPE & STATE OF ISSUE H96185 OPERATOR'S COLORADO OCCUPATION BLACKSMITH ACCIDENT YES NO

VEH. LICENSE NO. AND STATE OF ISSUE PH 704 Colorado I.D. NUMBER 12367HG2 COLOR RED MAKE & TYPE FORD CONVERTIBLE YEAR 1966

WITNESSES: NAME ADDRESSES PHONE NOS. WITNESSES: NAME ADDRESSES PHONE NOS.

1. CORDELL SMITH, A.P.D. (ARRESTING OFFICER) 4. AGENT / DEPT. OF HEALTH

2. THOMAS MOORE, A.P.D. (VIDEO TAPE) 5. MARION B. BONES, M.D., 101 EAST

3. ROBERT ROGERS, TOXICOLOGIST, 5501 S. WILLIAMS, ANYTOWN, COLO. 794-9811 RIVERSIDE DR., ANYTOWN, COLO 796-2000 (DREW BLOOD SAMPLE)

YOU ARE HEREBY SUMMONED TO APPEAR IN DIVISION A, ANYCOUNTY COUNTY COURT AT 2629 W. MAIN ST.

IN ANYTOWN COLORADO ON JULY 29 1980 AT 9:00 AM TO ANSWER CHARGES

92-4-1(A) CRS 1973 DRIVE A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF VIOLATION OF SECTION(S) 100

AS AMENDED OF AN INTOXICATING LIQUOR

CRS 1973 ANY OTHER CHARGES IF APPLICABLE

I HEREBY PROMISE TO APPEAR AT THE TIME AND PLACE INDICATED ABOVE FAILURE TO APPEAR CONSTITUTES A SEPARATE OFFENSE AND WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST

DEFENDANT WILLIAM THOMAS JONES (WRITE "IN CUSTODY" IF APPLICABLE) OFFICER'S DEPT. ANYTOWN POLICE

THE UNDERSIGNED STATES THAT HE HAS REASONABLE GROUNDS FOR BELIEVING THAT THE ABOVE MENTIONED OFFENSE OR OFFENSES WAS OR WERE COMMITTED IN FACT AND WAS OR WERE COMMITTED BY THE DEFENDANT AGAINST THE PEACE AND DIGNITY OF THE PEOPLE OF THE STATE OF COLORADO

DATED THIS 14th DAY OF JULY, 19 80 OFFICER Cordell A. Smith OFFICER'S NO. 211

THIS IS A LEGAL DOCUMENT - PRINT CLEARLY - COMPLETE FULLY AND CAREFULLY

4. ALCOHOL INFLUENCE REPORT FORM (NEW) — SIDE 1 — RECOMMENDED INFORMATION REQUIRED; (THIS FORM IS RECOMMENDED FOR ADOPTION BY YOUR AGENCY, REPRODUCTION SIZE SHOULD BE 8-1/2 X 11.)

ALCOHOL INFLUENCE REPORT FORM

NAME: WILLIAM THOMAS JONES D.O.B. JUNE 28, 1947 CASE OR 80-10000 SUMMONS #

OBSERVATIONS:	
EYES	BLOODSHOT AND WATERY
CLOTHES	DIRTY, TIE UNDONE, TOP THREE BUTTONS ON SHIRT NOT BUTTONED
BREATH	STRONG ALCOHOLIC BEVERAGE ODOR
ATTITUDE	HOSTILE - STATED HE WOULD FIGHT ME IF I WOULD TAKE OFF MY BADGE AND GUN STATED HE WILL HAVE MY JOB IN THE MORNING.
UNUSUAL ACTIONS	COULD NOT FIND REGISTRATION IN GLOVE BOX (I FOUND IT LATER WHILE INVENTORYING VEHICLE) PASSED OVER DRIVERS LIC. 4 TIMES IN WALLET.
SPEECH	SLURRED AND DID NOT COMPLETE MOST OF HIS SENTENCES.

PERFORMANCE TESTS:	
LOCATION OF TESTS: 6900 S. EVANS DR. TIME: 1 AM. DATE: 7-14-80	
RHOMBERG BALANCE	SWAYED SHARPLY FROM SIDE TO SIDE AND ALMOST FELL. SWAYED SHARPLY FROM FRONT TO BACK AND AGAIN ALMOST FELL.
RECITE ALPHABET	RECITED PROPERLY BUT SLURRED THE LETTERS TOGETHER.
WALKING AND TURNING	SWAYED WHILE JACKING AND STUMBLERD WHEN TURNING AROUND.
FINGER TO NOSE/ EAR LOBE	RIGHT - 1 ST TIME TOUCHED LIP, 2 ND TIME TOUCHED BRIDGE OF NOSE LEFT - TOUCHED LEFT CHEEK. TOUCHED NOSE WHEN ASKED TO
OTHER	NONE TOUCH RT. EAR LOBE.
ABILITY TO UNDERSTAND INSTRUCTIONS:	WHEN ASKED TO TOUCH RT. EAR LOBE HE TOUCHED NOSE DURING NOSE - EAR LOBE TEST

ADVISEMENT OF RIGHTS:	
A. You have the right to remain silent, you do not have to answer any questions if you so choose Any statement you do make can and will be used against you in court.	1. Do you understand each of these rights? YES <input checked="" type="checkbox"/> NO
B. You have the right to have an attorney present during questioning.	2. Do you wish to waive your right to remain silent and answer questions at this time? YES <input checked="" type="checkbox"/> NO
C. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning.	3. (If #2 Yes) Do you wish to have an attorney present during this questioning? YES NO <input checked="" type="checkbox"/>
D. You can decide at any time to exercise these rights and not answer any questions or make any statements.	William T. Jones Signature of Subject
	Cordell A. Smith Signature of Officer
	Time 1:45 A.M. Date JULY 14, 1980

ALCOHOL INFLUENCE REPORT FORM — (SIDE 2)

INTERVIEW: (Quote Answers) DATE: JULY 14, 1980 TIME: 1:50 A.M.
Were you driving a vehicle? YES Where were you going? MARS
What street or highway were you on? S. PRINCETON ST (ACTUALLY ON S. EVANS DRIVE)
Where did you start from? JOE'S BAR What time did you start? 12:30 AM.
Were you having any problem in the mechanical operation of your vehicle? NO
If so, what? N/A
What time is it now? 3:00 A.M. What city (county) are you in now? DOUGLAS (IN ANY COUNTY)
What is the date? 7-13-80 (7-14) What day of week is it? THURSDAY (FRIDAY)
When did you last eat? 12:00 NOON What did you eat? STEAK AND SALAD
What were you doing during the last three hours? DRINKING
Have you been drinking? YES What? BEER How much? 2 OR 3
Where? JOE'S BAR Started 9:00 a.m./p.m. — Stopped 12:30 a.m./p.m.
What is your occupation? BLACKSMITH When did you last work? TODAY
Do you have any physical defects? NO If so, what? N/A
Are you ill? NO Have you been injured lately? NO If so, what's wrong? N/A

Were you involved in an accident today? NO If so, explain. N/A

Are you taking medication of any kind? NO
If so, what kind? (Get sample) N/A Last dose? N/A a.m./p.m.

Do you have epilepsy? NO Diabetes? NO

When did you last sleep? LAST NIGHT

How much sleep did you have? 7 HOURS

COMPLETED — DATE: JULY 14, 1980 Time: 1:55 AM.

COMMENTS: WHILE TRANSPORTING THE DRIVER TO THE STATION HE STATED TO ME "I KNOW I AM DRUNK, GIVE ME A BREAK I WON'T DO IT AGAIN."

IN THE DRIVERS VEHICLE I OBSERVED AN EMPTY PINT BOTTLE OF "K.J." 86 PROOF SCOTCH ON THE DRIVERS SEAT

THE VEHICLE WAS TOWED BY JOHNSON'S TOWING SERVICE TO THE ANYTOWN CAR POUND.

5. PERMISSION FOR CHEMICAL TEST FORM--THIS FORM AND THE INFORMATION CONTAINED IN IT ARE RECOMMENDED FOR USE BY YOUR AGENCY, USING 8-1/2" X 11" THREE-PART NCR PAPER.

NOTE: As indicated on the form, a "consent signature" from the subject is not required in order for you to authorize withdrawal of blood samples. The subject's verbal consent to you is sufficient. If the party drawing the samples requests such a signature, before withdrawing any blood, advise him of the verbal consent you have already been given and that such a signature is not required under Colorado law. To satisfy any concerns about liability for withdrawing blood, your agency may wish to utilize a simple form that states that (a) the arresting officer has probable cause to believe that the subject was driving under the influence of an intoxicating liquor or drug, (b) the subject has given the arresting officer verbal consent to have samples of his blood withdrawn, and (c) the arresting officer authorizes the withdrawal of such blood samples from the subject. Such a form should be signed by the arresting officer and left with the party who draws the blood. To further avoid concerns over liability, be certain there is a valid contract for the withdrawal of blood samples and that all samples are withdrawn pursuant to proper medical procedures.

A MUTUALLY ACCEPTABLE PROCEDURE TO OBTAIN SPECIMENS SHOULD BE ESTABLISHED BETWEEN THE LAW ENFORCEMENT AGENCY AND HOSPITAL (CLINIC) IN EACH JURISDICTION.

PERMISSION FOR CHEMICAL TEST		
NAME	<u>WILLIAM THOMAS JONES</u>	DOB <u>JUNE 28, 1947</u> CASE OR SUMMONS # <u>90-10000</u>
Requesting Officer	<u>CORDELL A. SMITH</u>	
Requesting Agency	<u>ANYTOWN POLICE DEPARTMENT</u>	
County	<u>ANY COUNTY</u>	Date <u>JULY 14TH, 1980</u>
CONSENT		
<small>(SIGNATURE NOT REQUIRED BY LAW, VERBAL CONSENT IS SUFFICIENT)</small>		
I, <u>William T. Jones</u> <small>(Signature)</small>	hereby give my consent	
to have a sample Blood <input checked="" type="checkbox"/> Breath Urine taken for an alcohol and/or drug examination.		
		<u>Cordell A. Smith</u> <small>(Witness)</small>
Sample taken at <u>ANYTOWN HOSPITAL</u> by <u>Marion B. Boney, M.D.</u> <small>(Location) (Signature of Doctor, Nurse or Technician)</small>		
Date <u>JULY 14TH, 1980</u>		Time <u>2:30 AM</u>
Sample taken in my presence, after breaking seal, and placing in small mailing carton(s) and sealed with Seal No. <u>564B</u> . Seal No.		
by <u>CORDELL A. SMITH</u> (Requesting Agent or Officer)		
Determination Requested: <input checked="" type="checkbox"/> Alcohol; <input type="checkbox"/> Drugs (Urine preferred); <input type="checkbox"/> Marijuana (Via Swabs Only)		
Specimen Submitted: <input checked="" type="checkbox"/> Blood; <input type="checkbox"/> Urine; <input type="checkbox"/> Breath; <input type="checkbox"/> Swabs;		
REPORT OF ALCOHOL AND/OR DRUG DETERMINATION		
This is to certify that the undersigned removed, by breaking Seal No. _____ the specimen described on this sheet and analyzed it for alcohol and/or drugs, that during the analysis the specimen was constantly under observation by the undersigned, and that the results of the analysis are as follows:		
The specimen contained not less than		
_____ mg ethyl alcohol per 100 ml. of blood, or		
_____ mg ethyl alcohol per 1 ml. of blood, or		
_____ % ethyl alcohol and/or a drug level of _____		
Date: _____		Signature: _____

6. CHAIN OF CUSTODY FORM — RECOMMENDED INFORMATION REQUIRED; (THIS FORM IS RECOMMENDED FOR ADOPTION BY YOUR AGENCY, REPRODUCTION SIZE SHOULD BE 4 X 6).

CHAIN OF CUSTODY	
Subject:	<u>WILLIAM T. JONES</u>
Offense:	<u>D.U.I.</u>
Date Taken:	<u>7-14-80</u>
Time:	<u>1:35 AM</u>
Taken By:	<u>DR. MARION B. BONES</u>
Officer:	<u>Cordell A. Smith</u>
Received From:	<u>DR. MARION B. BONES</u>
Date:	<u>7-14-80</u>
Time:	<u>1:40 AM</u>
By:	<u>Cordell A. Smith</u>
Received From:	<u>CORDELL A. SMITH</u>
Date:	<u>7-15-80</u>
Time:	<u>2:00 pm</u>
By:	<u>Robert Rogers</u>
Received From:	_____
Date:	_____
Time:	_____
By:	_____

No. 0000

D.U.I. COLLISION INVESTIGATIONS

The handling of collisions involving D.U.I. drivers is not different from other collision investigations. If possible, finish dealing with all other drivers involved in the collision before attempting to deal with the subject as a D.U.I. Attempt to keep him under constant observation. Ideally, if assistance is available, allow one officer to investigate the collision and another to handle the D.U.I. driver.

CHECKLIST FOR DUI COLLISION INVESTIGATION

The following is a checklist of things to do at a D.U.I. Collision Investigation:

- A. Respond to and protect the scene quickly.
- B. Check for injured parties and assist them until medical aid arrives. You may have a felony situation.
- C. Determine who was driving the vehicles.
- D. Check these parties for any signs of D.U.I.
 1. As soon as possible assign an officer to be with the suspected driver at all times.
 2. Obtain blood test from suspected driver as soon as possible.
 3. Contact District Attorney's Office if felony suspected.
- E. Locate all possible witnesses.
 1. Interview them.
 2. Obtain written statements. Be certain to get their full name, current address and both work and home telephone numbers.
- F. Take photographs as soon as possible. Photographs may show many of the following elements:
 1. Vehicle damage.
 2. Injured parties and their position at scene.
 3. Locality, approaches, terrain.
 4. Traffic controls.
 5. Skid marks.
 6. Obstructions.
 7. Position of vehicles.
 8. Point of impact.
 9. Weather and lighting conditions.
 10. Road conditions.
 11. Headlight and windshield condition.
 12. Bits and pieces of wreckage.
- G. With tape or wheel take measurements of the following items:
 1. Position of vehicles at point of impact.
 2. Length of all skid marks. (you may want skid tests)
 3. Street widths.
 4. Distance traveled after impact.
 5. Distance of bodies from vehicles.
 6. Location of any object relevant to the accident.
 7. Dimensions of the vehicles.
- H. Interview the non-hospitalized parties.
 1. Obtain written statements.
 2. Obtain all information required on the State of Colorado Traffic Accident Report form.
- I. Draw a diagram of the scene with as much accuracy and detail as possible.
- J. Respond to the hospital after the scene investigation is completed. If possible, obtain written statements from all parties.
- K. Fatal accident victims.
 1. Fingerprint of victim's right index finger.
 2. Close-up photograph of face.
 3. Blood and Urine Samples-
 - a. Driver--*Blood and urine samples from every deceased driver must be obtained and preserved if the driver was 15 years of age or older and died within four hours after the collision.*
 - b. Pedestrian--Same as for deceased driver.
 - c. Other fatalities--Although not required by law, enforcement procedure would indicate that blood and urine samples should be obtained from all fatalities.
 4. Maintain chains of custody for the body, clothing and personal effects of the deceased.
- L. Other considerations.
 1. Miranda advisement.
 2. Charging.

FELONY CONSIDERATIONS

The differences between the elements of a D.U.I. case and one in which a felony is charged stemming from a collision in which the driver was "under the influence" are essentially twofold: in the felony case there must be serious bodily injury or death, and such injury or death must have been "proximately caused" by the defendant driving under the influence of an intoxicant or drug.

- A. VEHICULAR HOMICIDE (C.R.S. 1973, 18-3-106) is a class four felony, punishable by between two and four years in the Department of Corrections. The elements of vehicular homicide are: (1) driving, (2) recklessly or under the influence of an intoxicant or drug, that being (3) the proximate cause of (4) another's death.

B. VEHICULAR ASSAULT (C.R.S., 1973, 18-3-205) is a class five felony, punishable by between one and two years in the Department of Corrections. The elements of vehicular assault are: (1) driving, (2) wrecklessly or under the influence of an intoxicant or drug, that being (3) the proximate cause of (4) *serious* bodily injury to another. SERIOUS BODILY INJURY (C.R.S. 1973, 18-1-901 (3) (T) is defined as: "Bodily injury which involves the substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body."

C. PROXIMATE CAUSE--Driving under the influence of an intoxicant or drug must be the proximate cause of the death or serious bodily injury. While there may be other causes for the collision itself, you can only establish a felony if the evidence demonstrates, beyond a reasonable doubt, that "but for" the defendant's drinking or taking of drugs and subsequently driving while "under the influence," the victim would not have died or suffered serious bodily injury. Therefore, your investigation should include looking for evidence which indicates that some driving deficiency or conduct was the reason for the serious injury or death and deficiency or conduct can be related to the intoxicant or drug.

D. BLOOD SAMPLES--If you have (1) PROBABLE CAUSE to believe that the driver was "under the influence" and (2) death or serious bodily injury to another, you can authorize the withdrawal of blood from the driver *Without* his consent. However, it is good practice to explain (1) and (2) above to the driver and that you wish his consent for the withdrawal of his blood. Further explain that his consent is not required and that if not given, the samples will still be obtained. *DO NOT utilize the Implied Consent form in a potential felony situation* as it only relates to D.U.I. cases and only refers to misdemeanor charges.

Blood samples should be obtained and preserved in the same manner as those in a D.U.I. case. Some jurisdictions prefer taking another sample (two tubes) approximately one hour later. The second sample may be utilized by a toxicologist in determining the defendant's blood/alcohol concentration at the time of the collision. Check with your agency and District Attorney concerning how many samples should be obtained in felony cases.

E. URINE SAMPLES--If you have probable cause to believe the driver was under the influence of a drug, urine specimens should be obtained. If only blood can be obtained, four tubes should be drawn each time, rather than the standard sample of two tubes.

APPENDIX D

BREATH TESTING

This appendix is intended to develop some basic guidelines to assist you, and familiarize you with the basic concepts and suggested procedures. *Remember, when testifying in court about the subject of breath-testing, you are not an expert.* This is the responsibility of the implied consent specialist with the Department of Health or other certified experts throughout the state. Generally speaking, your level of expertise in the field of breath-testing is similar to that in the operation of radar. Which is to say, you are not expected to be an expert, but rather to follow the training, guidelines provided by the Colorado Department of Health.

A BREATH TEST MUST BE CONDUCTED ON
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A CERTIFIED INSTRUMENT BY A CERTIFIED OPERATOR FOLLOWING THE PRESCRIBED OPERATING PROCEDURES.

The Colorado Board of Health defines the following:

- 1) CERTIFIED EQUIPMENT. Personnel of the Colorado Department of Health will evaluate each instrument. If the instrument meets the standards of performance, a certificate of approval will be issued.
- 2) CERTIFIED OPERATORS. Personnel shall receive a minimum of 8 hours of instruction from a certified operator instructor. Upon successful completion of the instruction and testing (written and practical

examinations are administered by the personnel of the Health Department), a certificate will be issued.

- 3) **CERTIFIED OPERATOR INSTRUCTORS.** Personnel shall receive a minimum of 16 hours of instruction from personnel of the Health Department. Upon successful completion of the instruction and testing by the personnel of the Health Department, a certificate will be issued.
- 4) **STANDARD OPERATING PROCEDURES.** Each direct breath testing instrument and breath saving (alcohol content thereof) procedure are to be operated in a specific standard operating procedure promulgated in the Colorado Board of Health Rules and

Regulations. The use of system blanks and standard simulator solutions are set forth for direct breath testing instruments. Each officer should check that their agency is using the proper procedures. The procedures should be in check list form that is to be followed each time a test is conducted.

NOTE: Pre-mixed standard simulator solutions are available from the Colorado Department of Health. The use of the pre-mixed solutions will eliminate the need for an operator to prepare and testify to the procedures of preparing the standard solutions.

APPENDIX E

IMPLIED CONSENT HEARINGS

A person may have his driver's license revoked or if a non resident, *his privilege to operate a motor vehicle within Colorado revoked*, for refusing to submit to a chemical test for intoxication by alcohol. This authorization is established in the implied consent law as set forth in statute 42-2-1202(3)(a) C.R.S. 1973 which states:

"Any person who drives any motor vehicle upon a public highway in this state shall be deemed to have given his consent to a chemical test of his breath, blood, or urine for the purpose of determining the alcoholic content of his blood, if arrested for any misdemeanor offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of, or impaired by, alcohol."

The implied consent law, however, does not force a person to take the test, but rather makes him obligated to choose to take the test or refuse to take the test.

Upon refusal, a hearing will be set up by the Motor Vehicle Division, Colorado Department of Revenue. This hearing is an administrative proceeding following the Rules of Civil Procedure. This hearing is unlike the criminal action brought

against the person. The two are separate and independent of each other, and the result of one does not depend on nor affect the result in the other. In the criminal action the burden of proof is beyond a reasonable doubt. However, in an implied consent hearing, the burden of proof is by a preponderance of the evidence.

Hearings will be held at the district offices of the Department of Revenue nearest the jurisdiction wherein the person was arrested. Those present will be you, the hearing officer, the person who refused the chemical test, that person's attorney (if desired), and any witnesses pertinent to the incident. Subsection (3) (e) of the statute, in part, explains what is to take place at the hearing.

"At such hearing, it shall first be determined whether the officer had reasonable grounds to believe that the said person was driving a motor vehicle while under the influence of, or impaired by, alcohol. If reasonable grounds are not established by a preponderance of the evidence, the hearing shall terminate, and no further action shall be taken. If reasonable grounds are established and said person is unable to submit evidence that his physical condition was such that, according to competent medical advice, such test

would have been inadvisable or that the administration of the test would not have been in conformity with the rules and regulations of the State Board of Health or in conformity with the provisions of this section or if said person fails to attend without good cause shown, the department shall forth-with revoke said person's license...."

It should be noted that the following areas are critical at implied consent hearings in order to successfully obtain a revocation of a driver's license for refusal to take a chemical test as a result of an arrest for D.U.I:

1. The officer must follow the prescribed procedures regarding notarization of the affidavit, (you must raise your right hand and swear to the accuracy of your affidavit before a notary).
2. The officer must establish reasonable grounds

to stop the subjects car. He must further relate evidence obtained after the initial vehicle stop such as physical characteristics of the driver, statements made freely by the driver, physical maneuvers which led to additional basis for probable cause for the arrest.

3. The officer must show that the subject was given a copy of the completed implied consent form, and the form was read to him by the officer. Furthermore, the subject must indicate that he understood the form or showed indifference and total disregard.
4. The officer should concretely establish that the subject refused *all* forms of the chemical test. The ideal situation requires that the officer ask the subject the following and receive an answer on each:
 - a. Will you submit to a blood test? NO!
 - b. Will you submit to a breath test? NO!

The following is a possible format which might be used in an implied consent hearing:

IDENTIFICATION OF DOCUMENTS

The first document is the affidavit that I filled out on _____ in the county of _____, State of Colorado. I raised my hand and swore in front of _____, a notary public, that the information contained in this document and the advisement was true to the best of my knowledge.

The second document is the advisement pursuant to the Implied Consent Law of the State of Colorado, that I filled out on _____, serving _____, with a copy and reading it to him. Both documents are with regard to _____ and bear my signature.

BEGINNING TESTIMONY

State date and time of contact.

State location, including county and state.

BODY OF TESTIMONY

1. Reasonable grounds for contact. e.g. Was dispatched to accident, weaving, etc.
2. Reasonable grounds for believing driving while intoxicated e.g. Odor of an alcoholic beverage, slurred speech, bloodshot eyes
Physical evaluations - state individual maneuvers and respondent's performance on each, and inability to understand instructions
3. Arrested
4. Advisement Procedure
Filled out form

Served copy and advised gave subject opportunity to read by himself
Read verbatim.
Requested test-specify which tests.

5. Refusal - specify what respondent said and/or how refused.

APPENDIX F

CASE LAW

CHEMICAL TESTS

The Fourth Amendment of the U.S. Constitution and Article II, Section 7 of the Colorado Constitution require that normally no searches be conducted except upon a search warrant, after a finding of probable cause by a judge. A search is an invasion, without consent, of an individual's reasonable expectation of privacy. [*Katz v U.S.* 389, U.S., 347 (1967)] It has been held that people have an expectation of privacy with respect to their breath, blood and urine. [*Rochin v. California*, 342 U.S. 165, (1952)]

However, the warrantless search of a person's blood, breath or urine has been justified on two main grounds:

1. The line of cases following the ruling of *Schmerber v. California*, 384 U.S. 757 (1966).
2. The Colorado Implied Consent Law outlined at 42-4-1202(3)(a), C.R.S. 1973. - Any person who drives a motor vehicle while in this state shall be deemed to have given his consent to a chemical test.

A person does not have a constitutional right, per se, to drive. The condition of his consenting to a chemical test to maintain his driving privilege has been held to be a reasonable requirement and not a violation of his constitutional rights. This is due to the policy of helping to reduce collisions, deaths and injuries on our public highways. [*People v. Brown*, 174 Colo. 513 (1971)]

The taking of blood, breath and urine samples is also governed by *Schmerber v. California*. Although the taking of blood is a search within the meaning of the U.S. Constitution, it is not an unreasonable search and therefore does not violate the Constitution. The court recognized the emergency nature of the search in that the delay in obtaining a warrant could result in the "destruction of evidence," i.e., the dissipation of alcohol by the natural functions of the body. *Schmerber* held that as long as the method of taking the blood was a reasonable one, performed

in a reasonable manner, it was constitutionally permissible. Both the *Schmerber* line of cases and the Colorado Implied Consent Law require *probable cause* that the *accused* was driving under the influence of alcohol.

Failure to observe the implied consent law or conduct the chemical test properly, could result in the suppression of the test results.

In a D.U.I. case, refusal to submit to a chemical test bars the officer from giving the test or referring to the suspect's refusal in court. That right to refuse a chemical test is given to the subject by statute and is not a constitutional right.

In the felony situation of a vehicular homicide or assault, a warrantless seizure of the suspect's blood is permissible. However, prior to obtaining such blood, you must have *probable cause* to believe that such a crime has been committed. (SEE: APPENDIX C—FELONY CONSIDERATIONS) The implied consent form should not be utilized as the implied consent law does *not* apply to felony cases. (*People vs. Sanchez*, 173 Colo. 188) No consent of the suspect is required, and reasonable force may be used to restrain him in order to obtain the blood samples. In any case the Rules and Regulations of the Colorado Board of Health Relating to Chemical Tests for Blood Alcohol must be followed.

- A. *Random Stops/License Registration Checks* —When first read, C.R.S. 1973, 42-2-113 seems to require any citizen to display a driver's license upon demand by any peace officer. C.R.S. 1973, 43-5-113 (1) (b) also seems to authorize any officer of the Colorado State Patrol to stop any vehicle and demand from the driver a license and registration. However, the Colorado Supreme Court, in *People vs. McPherson*, 550 P2d 311, determined that such statutes do *not* "confer upon a peace officer unlimited discretionary authority to stop any car at any time for any reason as long as he asked contemporaneously for display of a driver's license." The Court concluded that the clear intent of 42-2-113 "is

simply to permit the officer to demand the license of the driver whose vehicle has been stopped for an *otherwise proper purpose*." The United States Supreme Court agreed with such reasoning in *Delaware vs. Prouse*, 99 S. Ct. 1391, concluding that randomly stopping vehicles to determine if the driver has a valid license and registration, and for no other reason, is unlawful. However, a D.U.I. case that began with a contact at, for example a CSP "safety check" station would be lawful.

B. *Traffic Violations* — Where you observe the driver violate a traffic law you do not have reasonable grounds to stop for D.U.I. It is only after contacting the driver that you begin to develop probable cause to arrest for D.U.I. Naturally, the initial violation is a factor to be taken into account in determining whether or not a driver is under the influence. If you determine that the person is not under the influence, you should be in the position to charge and testify to the offense which gave rise to the initial stop.

When a citizen complains to you about a traffic law violation not committed in your presence, you have probable cause to stop the violator. During the contact, your investigation into the originally alleged violation may extend into developing the probable cause to charge D.U.I.

C. *Suspicion* — You may encounter a situation in which all of the surrounding circumstances make you suspicious of a particular driver, e.g., a vehicle being driven very slowly at 3 a.m. through an area that has recently experienced numerous burglaries. The case of *Stone vs. People*, 174 Colo. 504, authorizes you to contact such a driver to determine (1) who he is and (2) what he is doing in that area. During such a contact, you may develop probable cause to charge D.U.I.

D. *Other* — When you observe a person getting into a vehicle and driving off, and your observations have given you grounds to believe him to be intoxicated, you have probable cause, on the initial stop, to arrest for D.U.I. NOTE: It is probably preferable for you to prevent him from driving in the first place, if you can. If you are unable to dissuade him from driving, it is arguable that you may arrest him for a violation of one of the following statutes, depending on the fact situation:

1) Obedience to Police Officers, C.R.S. 1973, 42-4-105, provides that no one "shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control or regulate traffic." Arguably then, you can order an intoxicated person not to drive as a form of controlling or regulating traffic. Willful failure or refusal to comply with your order, when you have probable cause to believe the person is "under the influence," would give you grounds to arrest under the statute.

2) Obstructing a Peace Officer, C.R.S. 1973, 18-104, provides that if such an intoxicated person, by threatening to use violence, force, or interference, intentionally obstructs or impairs enforcement of the penal law, he is subject to arrest under the statute.

Such a situation will generally arise when you contact an intoxicated individual on the street under circumstances that make it obvious to you that the individual intends to get into a vehicle and drive. You can offer to allow him to attempt to perform various physical maneuvers prior to allowing him to drive. If he is "under the influence," but refuses to find another means of transportation, consider taking him into custody, depending upon your facts, for violating one of the statutes set out above, and holding him on that charge, or until a responsible individual can take charge of him and his vehicle.

E. There are three situations which might be confusing when you conduct the chemical test.

1. *Waiver of liability*. Some hospitals and medical personnel may attempt to require the subject to sign a form releasing them from any liability arising from the administration of that test. You may have the subject's permission to administer the test but the subject may refuse to sign any waiver of liability. If this occurs, you should advise the party requesting the waiver of the following statute:

42-4-1202 (3) C.R.S. 1973: "No civil liability shall attach to any person authorized to obtain blood as provided in this subsection (3) as a result of the act of obtaining blood from any person submitted thereto if the blood was obtained according to the rules and regulations

prescribed by the State Board of Health; except that such provision shall not relieve any such person from liability for negligence in obtaining any blood sample."

If that party insists on a waiver, advise the subject that the only valid justification for not taking the test is that it would be medically inadvisable or that the test would not be conducted in compliance with the health standards. If the subject still refuses to waive liability, you should find an authorized party who will withdraw the blood without completion of the form as a last resort issue the summons without administering a chemical test. (See Appendix b5.)

2. In *Dolan v. Rust*, Colo., 576P.2d560(1978), the Supreme Court held that the determination of whether a person refused is to be based on an objective, not a subjective, standard; that it is the driver's external manifestations of unwillingness or his outright refusal to take the test which are relevant and not the driver's state of mind or later recollection of events. Rust was vomiting, moaning, unable to walk; although he initially agreed to take a breath test, he later refused to stand up for the test and said "I am too drunk, just throw me in jail." The court held that all the circumstances equalled a refusal.
3. In addition to samples taken for the prosecution, the law requires an additional sample of blood, urine, breath or the alcohol contained in the breath be taken and preserved for later defense testing. *Garcia v - District Court*, and *Feland v. People*, 589P2d924.

HABITUAL TRAFFIC OFFENDER

As a routine matter, you should determine whether the driver is driving under suspension, denial, or revocation and, if so, whether he is categorized as *revoked as an habitual offender*. If he is, felony charging procedures should be followed, and charges should be filed under 42-2-206 C.R.S. 1973, as amended. The proof of that charge requires only evidence that he was under an habitual offender revocation, had notice of that status, and was operating a motor vehicle. It is not even necessary to prove a specific traffic violation, only that he was operating a motor vehicle.

In this type situation, you should include in your reports as many details as possible to establish the fact that he was driving the vehicle. Lay witnesses to his driving can be very helpful for independent corroboration.

What constitutes an habitual traffic offender 42-4-202, C.R.S. 1973. By accumulating convictions for separate and distinct offenses, on separate dates, in the following manner:

- A. Within a seven year period, *three or more* convictions of any of the following:
 1. D.U.I., D.U.I.D. or D.W.A.I.
 2. Reckless Driving.
 3. D.U.S. or D.U.R. or D.U.D.
 4. False Affidavit or Swearing.
 5. Vehicular Assault or Vehicular Homicide.
 6. Manslaughter, Criminally Negligent Homicide or Joyriding.
 7. Hit and Run.
- B. Within a five year period, *ten or more convictions* involving moving violations which provide for assessment of 4 or more points each.
- C. Within a five year period, *eighteen or more* convictions involving moving violations which provide for assessment of three or less points each.

For how long is a person revoked as an habitual offender? (42-4-205 C.R.S. 1973.) 5 years.

Any person found to be an habitual offender, who is thereafter convicted of operating a motor vehicle in this state while the revocation of the department prohibiting such operation is in effect, is guilty of a *class 5 felony*. No probation can be granted, except if an emergency is established. No portion of the sentence can be suspended. The offender goes to prison for a term of one to three years.

In *Lucero v. Charnes*, Colo. App., 607P., 2d405(1980), the court held that at the license revocation hearing, the arresting officer could not supplement the reasonable grounds listed on the advisement given to the driver. If you don't list all your observations on the Implied Consent form, you will not be allowed to testify to unlisted symptoms at the Implied Consent hearing.

The court in *State v. Dayhoff*, Colo., opinion 79SD114, March 31, 1980, held that the implied consent law was not applicable to a person driving on private property. If it's not a "public highway" as defined in 42-1-102(33), Implied Consent is not applicable.

In *People v. Edwards*, Supreme Court No. 79SD285, March 31, 1980, the court held that Physical Maneuvers were not the same as a defendant's statement, and therefore the privilege

against self-incrimination does not extend to the results obtained from physical maneuvers. In other words, you must advise a defendant of his

Miranda rights before obtaining statements but *not before requesting Physical Maneuvers.*

APPENDIX G

DRIVING UNDER THE INFLUENCE OF DRUGS

The implied consent law does not address the problem of persons who drive while under the influence of drugs. However, state law does under Section 42-4-1202 (1) (c) 1973 C.R.S., as amended.

Establishing a good D.U.I. drug case varies little from establishing a good D.U.I. alcohol case. The area where most confusion exists is in obtaining the chemical test in the suspected drug case. You observe the vehicle weave, commit a traffic violation, etc. When contacting the subject and conducting the physical evaluation, you usually observe many of the physical and mental effects of alcohol, except there is no odor of an alcoholic beverage. It is obvious, though, that the driver is not normal and is under the influence of something.

After conducting the roadside sobriety tests and confirming in your own mind that the subject is not normal based on his physical and mental condition, begin to suspect drugs if the odor of an alcoholic beverage is not detected. Closely observe the subject's vehicle in an attempt to observe possible drugs or narcotics in plain view. If the drug is marijuana, you should be able to detect its odor in the vehicle and on the subject if it was used recently. If you do not locate any evidence other than your observations of the subject, arrest him if in your judgment he is under the influence. Make sure you search him thoroughly in an attempt to locate drugs or narcotics incident to the arrest.

Where there is an odor of alcohol, however slight, the implied consent procedure should be followed. Where there is a *clear indication* a person is under the influence of drugs either without the odor of alcohol or where a minimal blood alcohol content eliminates alcohol as the cause of the subject's condition, blood may be obtained without regard to implied consent.

If a breath test indicates that no alcohol is being used, then ask the subject to submit to a urine test. Also, do not eliminate drug abuse combined with alcohol abuse. If your breath test results read .02% and his driving actions as well as physical and mental reactions indicate that he was much more affected, proceed with the urine test. Alcohol and

drug usage often occur together. Urine is the best sample for determining drug influence. If he refuses to submit to the urine test, advise him that you will have blood drawn, following prescribed procedures, even if you have to use reasonable force to do so.

Have the doctor or technician draw four vials of blood in order for the toxicologist to have adequate testing samples. As long as you have probable cause to believe he is under the influence of drugs, you have the right to obtain chemical evidence before it dissipates. If he then decides to consent, obtain the urine as opposed to blood, if possible. In drug analysis, it is best to get a large test sample. Pint size lab bottles work well. In obtaining test samples from women, have a female representative of your agency monitor the process. Use a sanitized cup to facilitate the collecting of the sample and transfer the sample to the lab bottle.

After obtaining the sample, it is best to hand carry the sample to the toxicologist. Fill out the Permission for Chemical Test form just as you would for blood samples. Also, use the Chain of Custody form and the evidence seals provided accordingly. If you do discover pills, etc., send a sample with the urine or blood specimen for the toxicologist's use, or if a specific drug is suspected — indicate it.

If you suspect marijuana abuse, then use the "Marijuana Swab Test". The test will determine if the subject has been using marijuana prior to your arrest. It will not determine the degree of abuse, so it will be important for you to record accurately all driving, physical and mental observations of the subject and be able to testify to them later. You should have available a kit that has a divided plastic envelope with three swabs and a plastic vial containing isopropyl alcohol.

In conducting the marijuana swab test, the following procedures are recommended:

- A. Place several drops of the solution from the plastic vial onto the cotton of the applicator stick. Scrub the lips (upper and lower) while rotating the tip. Then place the swab back

into the appropriate slot in the plastic envelope.

- B. Repeat with the appropriate swabs on the inner side of the thumb and finger of each hand. Then place each swab in its correct position in the plastic envelope.
- C. Break the swab sticks in half. Fold the plastic envelope down and seal securely with scotch tape.
- D. Place the test samples in an envelope and mail or deliver in person to the toxicologist for analysis.

As has already been discussed, the Implied Consent Law applies only to persons suspected of Driving under the Influence of Alcohol. This statutory right to *refuse* a test does not accrue to a person driving under the influence of drugs. The preceding recommended procedure regarding Driving under the Influence of Drugs is based upon the current state of the law as indicated in Appendix "F" and the following:

In *People v. Claudine Longet Williams*, 557P2d 399, 192 Colo. 249 (December 13, 1976), the Court set out the standard for a warrantless search of body fluids. Although the Court suppressed evidence obtained from the defendant it recited the following:

"In *Schmerber v. California*, *Supra*, the United States Supreme Court squarely faced the issue of whether withdrawing a defendant's blood for a blood alcohol test incident to an arrest violated his Fourth Amendment rights. There the Court distinguished the usual searches of the person and clothing from those involving intrusions inside the body. With respect to these *internal* searches, *Schmerber* held that the inquiry regarding justification to proceed with an internal body search without a warrant is not obviated by the fact that the search is conducted incident to a lawful arrest based on probable cause.

Rather *Schmerber* established a higher, more protective standard for these attempts to find evidence within the body. To protect human dignity, such internal body searches may be made only where, in addition to the probable cause supporting the arrest, there exists a *clear indication* to believe that relevant evidence will be obtained. In the Court's words:

The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions (beneath the body's surface) on the mere

chance that desired evidence might be obtained. In the absence of a *clear indication* that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless that is an immediate search. (Emphasis added.) 384 U.S. at 769, 770, 86 S. CT. at 1835, 16 L. ED. 2d at 919.12.

Applying this rationale to the instant case, we conclude that probable cause to suspect guilt of a crime was the proper standard to justify arresting the defendant, and any external body search incident to that arrest. However, in the interest of protecting human dignity, an additional standard had to be met to justify extracting her blood and urine for testing. In determining whether forced production on bodily fluids is permissible, the appropriate standard is *clear indication* that evidence of intoxication or drug abuse will be found. Moreover, there must be some indication that evidence of drugs or alcohol, if found, will be relevant to a crime for which the defendant may be charged.

We turn next to the question whether Lieutenant Baldrige, when he ordered the blood and urine tests, had a *clear indication* that relevant evidence of intoxication would be found. This requires consideration of what the term *clear indication* means.

Because narcotics are sometimes smuggled into this country in body orifices, the Ninth Circuit, in border search cases has had occasion to interpret the *clear indication* standard. To justify a warrantless intrusion into the body incident to a border search, there must be clear indication that the intrusion will produce evidence. In *Rivas v. United States*, 368 F. 2d 703(9th Cir. 1966), the Court, citing *Schmerber*, said:

An honest 'plain indication' that a search involving an intrusion beyond the body's surface is justified cannot rest on the *mere chance* that desired evidence may be obtained. Thus we need not hold the search of any body cavity is justified merely because it is a border search, and nothing more. There must exist facts creating a clear indication, or plain suggestion, of the smuggling. Nor need those facts reach the dignity of nor be the equivalent of 'probable cause' necessary for an arrest and search at a place other than a border.

...The uncertainty of what constitutes a 'clear indication' over and beyond a 'mere suspicion' is difficult, but not impossible to resolve. 368 F. 2d at 710.

In *Rivas*, a previously convicted, registered user of narcotics, with "glary" eyes indicating the influence of narcotics, crossed the border. He was extremely nervous and had numerous recent needle marks on his arms. This evidence, in light of the well known practice of smuggling narcotics in the rectum, was held sufficient to constitute a *clear indication* that narcotics would be found in a physician's search of his rectum."

A *clear indication* for purposes of driving under the influence of drugs may be based upon the following factors which are mere examples and not intended to be exclusive.

A. Bloodshot, watery eyes, slurred speech and no discernable odor of an alcoholic beverage when considering the seemingly "intoxicated" condition of the defendant.

- B. Odor of marijuana on or about the defendant or within his vehicle.
- C. Drugs lying in plain view in the defendant's vehicle or found incident to a lawful search of the defendant or his vehicle.
- D. Needle marks on the defendant's arm.
- E. The defendant is known to you as a narcotics user.
- F. Statements or admissions by the defendant as to his use of drugs.

Any combination of (A) and one of the others listed should fulfill the *clear indication* requirement. The subject's physical coordination and appearance may indicate he is obviously intoxicated. However, if a blood alcohol test is negative or indicates a minimal amount of alcohol, then there is seemingly a *clear indication* the subject is under the influence of drugs, and urine may be obtained.

APPENDIX H

ALCOHOL AND ITS EFFECTS

PROPERTIES OF ALCOHOL - "Ethyl alcohol" or "ethanol" is the primary alcohol found in alcoholic beverages. Although there are numerous types of alcohol, ethanol is the least toxic for human consumption and consequently the type found in alcoholic beverages.

Ethanol, as a pure chemical, is a clear, colorless liquid, practically odorless, which causes a burning sensation when ingested. Ethanol mixes readily with water.

Ethanol is not found in 100% pure form in alcoholic beverages. Ethanol (4% in beer, 12% in wine, 40% in hard liquor), water, and flavorings (congeners) constitute the ingredients of an alcoholic beverage. There is no evidence that the congeners contribute to the depressant effect of alcoholic beverages.

ALCOHOL IN THE BODY - Alcohol is not normally produced in the body. There has been some controversy over this issue, but most experts agree that if alcohol is produced in the body it does not exceed .003%.

- (1) *Absorption.* Alcohol requires no digestion. Alcohol is absorbed into the blood through the mucous lining of the entire gastrointestinal tract; the mouth, esophagus, stomach, and small intestine. The rate of absorption from the various surfaces is not the same. Absorption from the mouth is very slow; from the stomach, somewhat more rapid (particularly when there is no food in the stomach to slow the process); and very rapid from the upper end of the small intestine. The rate of absorption varies slightly from person to person, and for the same person at different times. Some alcohol passes into the blood stream within minutes of consumption. Most of the alcohol (90%) is absorbed within one hour. The mouth of a person will be free of alcohol after waiting 20 minutes. If alcohol is introduced into the mouth during this 20 minute period, it could result in an inaccurate breath.

Alcohol is absorbed into the blood stream unchanged through the walls of the stomach and small intestine. The alcohol travels via

the circulatory system to all parts of the body. Organs such as the brain, liver, and kidney, which have a large supply of blood, initially receive a considerable amount of the circulating blood containing alcohol. When absorption and distribution are complete, alcohol is distributed in areas of the body proportional with their fluid/water content.

- (2) *Metabolism* - (elimination of alcohol from the body) After absorption the process of oxidizing the alcohol is started by the liver. The most important aspect of this process is that the alcohol is altered by oxidation in such a way that it no longer causes intoxication. Time is a significant factor here. Although alcohol is absorbed rapidly, the body will oxidize alcohol at a slow fixed rate (approximately .015% per hour). There is no known method of increasing the rate at which alcohol is oxidized. Neither hot coffee, cold showers, nor exercise speed up the process. Only time can sober the intoxicated person. Approximately 90% of the ingested alcohol is eliminated through the liver (.015% per hour). The other 10% of the alcohol is eliminated through the breath, urine, tears, saliva, and perspiration.

EFFECTS OF ALCOHOL ON BEHAVIOR - Alcohol is a depressant, and not a stimulant. The

major activity of alcohol is to numb, depress, and finally paralyze nerve activity. The brain is the organ that is affected by alcohol. The first step of impairment is on that part that controls a person's judgment, reasoning, morals, and powers of attention. If alcohol is ingested in sufficient quantities, functioning of that part of the brain which automatically controls a person's body functions can be affected. A person can lose complete control of himself, pass into a coma, and ultimately die if the respiratory center of the brain is depressed. Between the mild effects and severe effects of alcohol, there is a progression of deterioration in performance. It is impossible to state that all people will exhibit the same outward signs of intoxication at the same blood alcohol concentration. Most experts agree that no one can safely operate a motor vehicle when a person's blood alcohol concentration is 0.100% or greater. In some states and countries, a person is considered D.U.I. if the BAC is 0.08% or greater.

Some of the common symptoms of alcoholic influence are an odor of alcoholic beverage on the breath, swaying or unsteadiness, staggering, poor muscular coordination, confusion, lack of response to stimulation, sleepiness, disorderly appearance, speech impairment, dizziness, nausea, aggression, depression, visual disorders, and flushed face.

APPENDIX I

MEDICAL CONSIDERATIONS

During the course of a D.U.I. investigation, you may become concerned for the welfare of the subject because something just does not seem right. You may feel that he is just too intoxicated or may be exhibiting symptoms other than those of the routine D.U.I. driver. In either case, you, as the arresting officer, have an obligation to protect and safeguard the individual while he is in your custody. More importantly, if his condition is not caused by alcohol intoxication, other actions are immediately called for.

The first situation involves either the problem-drinking driver or a person who simply consumed large amounts of alcohol. In either case, a high

BAC will be a good indicator of this, which should also alert you to the fact that immediate medical attention may be necessary. If a person is arrested and you get immediate breath test results of a .35% BAC or higher, he should be seen by medical personnel or at the very least, closely monitored. His BAC could be rising and possibly result in his death. As in the case of any substance to which the problem drinker may become addicted, there are certain physiological effects that occur when that substance is withdrawn. If the driver is an alcoholic, he may need medical attention once the withdrawal symptoms begin if in your custody or that of a jail for long periods of time.

The second situation involves the fact that many so-called "alcoholic influence" symptoms could be associated with other illnesses. You should examine and question the subject carefully in order that his possible need for medical attention will not be overlooked. A low BAC or evidence of no alcohol may indicate that the driver's abnormal behavior is due to a serious condition other than alcoholic influence. Some of the various signs used to support your basis for believing the driver is intoxicated are as follows:

Odor of the breath, flushed appearance, lack of muscular coordination, speech difficulties, disorderly or unusual conduct, mental disturbance, visual disorders, sleepiness, muscular tremors, dizziness and nausea.

Physicians recognize that each of the accepted signs or symptoms of intoxication might well be a symptom of some disease or condition of the accused entirely unrelated to the ingestion of alcohol. The following is a description of some pathological conditions having symptoms in common with those of alcohol influence:

The first symptom similar to alcoholic influence is that of an acetone odor on the breath of the D.U.I. subject. This 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 or stomach ulcer.

In the course of a D.U.I. investigation, you may determine that the subject has experienced full or partial loss of memory (amnesia). This may be caused by consumption of alcohol or by such body conditions as epilepsy or traumatic injury of the brain (such as in a traffic collision).

Ataxia, or failure of muscle coordination, is given considerable weight as a measure of alcoholic influence, however, it may be caused by chemicals such as lead, drugs such as antihistamines, barbiturates and other sedatives, and gasses such as carbon monoxide. It may also be a case of traumatic ataxia due to injuries commonly sustained in traffic collisions.

The D.U.I. subject 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 head injuries such as a concussion or skull fracture.

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

Drowsiness is a symptom frequently noted. It may stem from the liberal consumption of alcoholic beverages, coupled with the late hour during which most drinking driver contacts are made. However, such drowsiness may be associated with a brain concussion (a common injury in traffic collisions), diabetes, or the use of many prescription and non-prescription drugs.

Inspection of the subject'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 alcoholic 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 you may consider to be significant in the identification of D.U.I. subjects. You may certainly be correct in recognizing that speech is often affected by alcohol, but you should keep in mind that facial paralysis, mental deficiencies, and Parkinson's Disease (shaking palsy) can be the cause of speech disorders as well.

Upon occasion, you may observe tremors or muscular twitching in D.U.I. subjects. 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 pareses (softening of the brain, usually of older people).

Finally vertigo or dizziness may be noted in the course of your D.U.I. 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, with so many conditions with symptoms resembling alcoholic influence, it could easily discourage you from placing much weight on your 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 since, if you don't make contacts of D.U.I. subjects, you are not faced with having to recognize those symptoms and determine their true cause. *The vast majority of D.U.I. arrests do not involve such medical problems.* Such cases are in the minority, but the possible consequences dictate that you know how to recognize basic symptoms of medical problems, problems that require some form of follow-up to protect the D.U.I. subject and you.

APPENDIX J

TREATMENT PROGRAMS

It is possible that an arrest for D.U.I. will result in getting a person into a treatment program for alcohol abuse. No single treatment program would be satisfactory for all persons. Therefore, each subject should be evaluated on an individual basis as set forth in criteria established by the U.S. Department of Transportation. These criteria are presented in the following section. They are designed to help the professional determine that fine line between social drinking and problem drinking. They do not necessarily determine the severity of the alcohol problem, although extreme cases are clearly evident by use of these criteria.

I. Problem Drinker:

A. He may exhibit *any one* of the following:

1. Self admission of problem drinking.
2. Two or more previous alcohol related arrests.
3. Prior diagnosis of problem drinking by a competent authority.
4. Loss of control of drinking.
5. BAC of .25% or above. (without logical explanation)

B. He may exhibit *two or more* of the following:

1. BAC above .15%

2. Employment problems due to drinking.
3. Previous contact with social or medical agencies due to problem drinking.
4. Blackouts.
5. Passed out because of drinking.
6. D.T.'s
7. Cirrhosis or fatty liver.
8. Shaking — especially before a drink in the morning.
9. Psychological dependence on alcohol.
10. Personality changes due to drinking.
11. One prior alcohol related arrest.
12. Family and/or social problems caused by drinking.

II. Incipient (potential) Problem Drinker — anyone exhibiting just *one* of the indicators listed under B above.

III. Social Drinker — anyone whose evaluation reveals *none* of the indicators listed above.

Traditionally, all D.U.I. offenders have been handled by means of punitive sanctions including fines and jail sentences. While sanctions of this variety do provide a deterrent for the social drinker, there is considerable evidence that *punitive sanctions have little effect on the problem-drinking driver.* Therefore, it is recognized that more positive rehabilitation

efforts must be attempted if the problem-drinking driver is to be helped.

It is true that the problem drinker cannot be helped until he is ready to help himself. However, it is also true that he will not make that decision until he reaches some kind of crisis. By early detection and arrest of the problem-drinking driver, law enforcement agencies can play their part in helping to create such a crisis for the individual.

Problem drinkers are treatable. Their problem should be approached in much the same way as are other chronic medical and physiological problems. The goal of treatment is then viewed as one of control rather than absolute cure. Abstinence is often sought as a primary objective, but other considerations such as improved social or job adjustments are often better guides in evaluating the success or failure of therapy. Thus, temporary relapses should not always be termed as failure any more than a diabetic's slip in his diet.

Treatment is designed to help the problem-drinking driver find, face up to and understand the problems or influences causing the inappropriate drinking behavior. The following types of programs are recommended:

1. Alcohol education/DUI schools. Level I programs are didactic lecture oriented schools, designed only for Social Drinkers. Level II are therapeutically oriented combining treatment with education and are designed for Incipient Problem Drinkers.
2. Group or individual therapy for problem drinkers. (The treatment of choice depends on the particular individual and his or her needs).
3. Chemotherapy. (Disulfiran/Antabuse — this is not treatment in and of itself, and must always be combined with group or one-on-one counseling.)

The goal of rehabilitation is to reduce the probability of another drinking driving offense. Treatment is not intended to take the place of traditional sanctions, but rather to work in conjunction with them. (See Appendix A(5a))

DETOXIFICATION CENTERS

As a result of legislation which decriminalized public intoxication, the "detox" center was instituted. Any person who is in an extremely

intoxicated condition may be taken directly to one of these centers. You may encounter such a person either walking in the street or in any public place, possibly causing a disturbance. This individual may be an obvious danger to himself or others and should receive professional help immediately.

The "detox" center is equipped and staffed to monitor and safeguard the problem drinker through the withdrawal period. Any person brought in is immediately given an in-take evaluation to determine his general health condition and the severity of his alcohol addiction. The person may be released after a few hours, if the evaluation shows the present intoxication to be isolated and not indicative of long term alcohol abuse or dependency. If the evaluation does indicate chronic or severe alcoholism, the patient may remain at the center for five full days. The center may then refer the individual to a longterm program.

Most drinking drivers encountered will not be in such an intoxicated state that referral to a "detox" center would be appropriate. However, if his condition does warrant referral, he should first be processed as any other person arrested for D.U.I. You should not only be familiar with those agencies available, but also with their particular procedures as well. There may be an occasion when no arrest will be made. However, that occasion may provide the opportunity for you to give the subject the name and telephone number of a treatment agency if he wishes to seek help on his own.

QUESTIONS OFTEN ASKED ON DIRECT EXAMINATION

These questions are similar to those asked of you when testifying at a D.U.I. trial. They are listed somewhat in a chronological order, however, the flow or sequence will be controlled by the prosecutor.

1. Name and occupation?
 2. How long so employed?
 3. Were you working on (date of the offense)?
 4. What type of duty?
 5. Were you in uniform? Were you driving a marked patrol vehicle?
 6. Were you working with anyone?
 7. Directing your attention to (date of offense) at time of offense), were you at the approximate location of (location of offense)?
 8. Was that location within the (state proper venue), State of Colorado on (date of alleged offense)?
 9. Describe what, if anything, unusual happened at that time.
NOTE: At this point the prosecutor may ask you to testify from a previously prepared diagram or one drawn while you testify.
 10. Directing your attention to People's Exhibit "A" (the diagram), can you identify it?
 11. Is People's Exhibit "A" a substantially accurate portrayal of the location as it appeared to you on the date of the offense?
 12. Is the diagram drawn to scale?
NOTE: When using the diagram to testify be certain to mark it clearly and accurately.
 13. Describe the weather conditions ... traffic conditions ... road conditions ... lighting ... etc.
 14. Describe the circumstances of stopping the defendant's vehicle.
NOTE: The description should be sufficient to support the proof of the traffic charges. The D.U.I. charge is usually accompanied by associated traffic violations.
 15. Describe what you did upon stopping the defendant's car.
 16. If the person who was driving the vehicle were in the courtroom could you identify that person?
Please point out that person and describe what that person is wearing.
 17. Was there anyone else in the vehicle?
 18. Describe the procedures you followed upon stopping the defendant's vehicle.
 19. Describe the defendant's appearance, demeanor and conduct.
 20. Was the defendant requested to perform any physical maneuvers at the location of the stop?
 21. What is included in this physical evaluation?
 22. Describe the defendant's performance.
 23. Did you arrest the defendant for D.U.I.?
 24. On approximately how many prior occasions have you seen people who you knew to be intoxicated? (professional and non-professional)
 25. Do you have an opinion as to the defendant's sobriety on (date of offense)?
 26. Describe what factors caused you to reach that opinion.
 27. Was the defendant taken to your headquarters?
 28. Approximately what time did you arrive there?
 29. What happened at your headquarters?
NOTE: If your jurisdiction takes a video tape of the defendant performing physical maneuvers, the following questions would be asked.
 30. Was a video recording made of the defendant performing a physical maneuvers?
 31. Describe the maneuvers.
 32. I hand you what has been marked as People's Exhibit ____; can you identify it?
 33. What is People's Exhibit ____? (The prosecutor will have you view the video prior to testifying, and will have you initial and date the video so you can identify it.)
 34. When did you last view the video?
 35. Does People's Exhibit ____ accurately portray the defendant as he was at the time the video was taken?
NOTE: Jury will view video if admitted.
 36. Are there any differences between the defendant's performance on the physical maneuvers given shortly after the stop and his performance on the video?
 37. Describe the differences.
- IF A BLOOD, BREATH, OR URINE TEST WAS TAKEN, THE FOLLOWING QUESTIONS MAY BE ASKED:
38. Did you advise the defendant of the implied consent law?
 39. When? Where? Who present? (Prosecutor will at some point ask questions that tend to show the defendant's ability to understand.)

40. Did you use a form to advise the defendant?
41. I hand you what has been marked for identification as People's Exhibit ____; can you identify it? (It should be identified as a copy of the form used to advise the defendant.)
42. How did you use the form to advise the defendant?
43. Did the defendant appear to understand the contents of the form?
44. Did the defendant ask you to repeat any part of the form?
45. Did the defendant ask any questions regarding the content of the form?
46. Did you ask the defendant if he understood the form?
47. What was the defendant's answer?
48. Do any signatures appear on the form? Whose? Describe the circumstances of signing.
49. Did you give a copy of the Implied Consent Advisement form to the defendant?
50. Did you ask the defendant if he wanted to take the test?
51. What was his answer?
52. Was a Permission for Chemical Test form used? (If your jurisdiction uses such a form)
53. I hand you what has been marked for identification as People's Exhibit ____; can you identify it?
54. Did you read the form to the defendant prior to the defendant signing it?
55. Describe the circumstances surrounding the defendant signing the form. (No inducements, threats, coercion, promises, force, intimidation, etc.)
56. Did anyone else sign the form? Who?
57. Was a chemical test given to the defendant?
58. Describe the test briefly.

If any interview was conducted, questions will be asked concerning the defendant's replies to each of your questions. Prior to this line of questions, the court may make a determination of admissibility of the testimony. This is done either at a pre-trial suppression hearing or once the trial starts, at an in-camera hearing out of the presence of the jury.

59. Was defendant advised of his rights?

MIRANDA HEARING

Initial Law Enforcement Contact:

60. Circumstances of law enforcement

contacting the defendant.

61. When? Where? Why? How?

Custody:

62. Circumstances surrounding defendant being placed under arrest.

Adequacy of Advisement of Rights:

63. Circumstances prior to advisement showing defendant's ability to understand.
64. Was the advisement oral or pursuant to form?
65. When? Where? Why? How?
66. Identify the Miranda advisement form used to advise the defendant.
67. Explain how the form was used. (Read each right to the defendant verbatim from the form — read in unhurried manner and in a normal voice — defendant read form as I read it to him).

Defendant's Understanding of Rights:

68. Did you ask defendant if he understood each and all of his rights?
69. Did defendant indicate that he understood his rights? How?
70. Did defendant ask any questions regarding his rights?
71. Did defendant sign the Miranda form indicating that he understood his rights?
72. Did defendant have any difficulty with the English language?
73. Describe factors that could affect defendant's ability to understand the advisement.

Waiver — Knowing, Voluntary and Intelligent:

74. Was the waiver portion of the Miranda form read to the defendant?
75. Did the defendant ask any questions or make any requests (attorney, bathroom, etc.) at this time?
76. Did the defendant sign the waiver portion of the form?
77. Did you ask the defendant if he wished to discuss the incident?
78. What was his response?
79. Did you or anyone make any threats or promises of any kind to induce the waiver or to get the defendant to discuss the incident?

Interrogation:

80. Did you question the defendant regarding

this incident?

81. What questions were asked and what answers were given?
82. Did the defendant make a written statement? Who wrote the statement? Who signed the statement?
83. Was defendant given an opportunity to read over the statement and make corrections to the statement?

Circumstances Involving Voluntary Statements:

84. How long did the questioning last?
85. Who was present during the questioning?
86. Were the officers in uniform?
87. Describe the location of the questioning. (Defendant was seated or standing ... lighting ... position of other parties ... defendant allowed to smoke ... etc.)
88. Was defendant injured or in pain? Any requests for medical aid?
89. Was the questioning done in normal tone of voice?
90. How many persons were doing the questioning?
91. Describe defendant's emotional state. (Calm nervous, upset, etc.)
92. Did the defendant make any requests? (Make a call, talk to family, friends or attorney.)
93. Were any requests made by defendant denied?

NOTICE

DUI APPREHENSION TRAINING FOR LAW ENFORCEMENT

The Division of Highway Safety conducts training programs around the state aimed at improving the ability of law enforcement personnel to detect and apprehend drinking drivers.

The training courses offered are:

<u>Title</u>	<u>Length</u>
1. "Basic"	8 hours
2. "Advanced"	8 hours
3. DUI Seminars for Supervisors	8 hours
4. DUI Enforcement	40 hours

Over 10,000 officers have received DUI training over the past six years.

Listed below is a schedule of "Basic" courses offered over the next few months.

You are invited to attend any of the sessions that your personal schedule will allow. We believe that your awareness of the importance of the enforcement function and its technical aspects will be greatly improved.

<u>Location</u>	<u>Date</u>
Ekert Law Enforcement Training Academy Ekert, Colorado	Wednesday, September 29 8:00 a.m. - 5:00 p.m.
Greenwood Village Police Department	Monday, October 4 8:00 a.m. - 5:00 p.m.
Durango (meeting place not determined)	Wednesday, October 13 8:00 a.m. - 5:00 p.m.
Greeley Police Academy Ed Beaty Hall, Aims Community College	Saturday, October 23 8:00 a.m. - 5:00 p.m.
Colorado Springs Law Enforcement Academy Colorado Springs	Thursday, November 4 8:00 a.m. - 5:00 p.m.
Eagle Law Enforcement Academy	Wednesday, November 10 8:00 a.m. - 5:00 p.m.

If we can be of further assistance, please call Dan Sinawski, Division of Highway Safety at 757-9481.

