



INSTRUCT

AMENDS

Intoxicated Driving Arrests

REFERENCE

House Bills 302 & 38, 144 & 46; 577 of the Revised Missouri State Statutes;
P.I. – Juvenile Apprehension; P.I. – Recovered Property; P.I. – Ambulance
Calls and Arrests; P.I. Towing and Protective Custody of Vehicles and
Contents
D.M. – City Pick-Ups

RESCINDS

Procedural Instruction 01-7

I. PURPOSE

To provide detailed procedures for:

- A. Arrest and Testing
- B. Administrative Suspension/Revocation
- C. Refusal/Revocation
- D. Filing of State Charges on Offenders with Prior Alcohol-Related Contacts
- E. Arrests of Commercial Vehicle Operators
- F. Drug Recognition Expert (D.R.E.) Program
- G. False Identity Given by Arrestee
- H. Operation and Security of Breath Testing Equipment

II. DEFINITIONS

- A. **Commerce** - Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a state and a place outside of such state, including a place outside the United States.
- B. **Commercial Driver's License (CDL)** – A license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual to operate a class of a commercial motor vehicle.
- C. **Commercial Motor Vehicle** - Refers to any self-propelled or towed vehicle used on public highways in commerce to transport passengers or property when the vehicle:
 - 1. Has a gross vehicle weight rating (G.V.W.R.) or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

- * 2. Is designed to be used to transport more than eight passengers, including the driver, for compensation; or
 - * 3. Is designed to be used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
 - 4. Is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Department of Transportation under the Hazardous Materials Transportation Act.
- * D. **"Drive," "Driving," "Operating"** - Physically driving or operating a motor vehicle. Persons may be considered to be operating a motor vehicle if, under the surrounding circumstances, there is evidence that they had been operating the vehicle. For example, a person may be considered the operator of a vehicle if the vehicle is parked on or near a roadway, the keys are in the ignition and the engine is running or has been running, the driver is observed starting or turning off the car, it is the suspect's vehicle, etc. Physical control alone is no longer a valid basis to support a conviction.
- * E. **Implied Consent** - Any person who operates a motor vehicle in the State of Missouri will be deemed to have given consent to a chemical test, or tests, if the person is arrested for any offense arising out of acts which the arresting officer had reasonable grounds to believe were committed while the person was driving a motor vehicle, and while in an intoxicated or drugged condition. A chemical test of the person's breath, blood, or urine will be conducted for the purpose of determining the alcohol or drug content of his/her blood. "Implied consent" is not withdrawn because of unconsciousness or other physical incapacitation.
- F. **Log Book** - Every motor carrier will require every driver used by the motor carrier to record his/her duty status for each 24-hour period. "Log Books" are not required for commercial vehicles operated within a 100 air mile radius of their office.
- G. **On-Duty Time** - Time from when a driver begins to work or is required to be in readiness to work until he is relieved from work and all responsibility for performing work.
- H. **Out-of-Service** - This phrase means the commercial vehicle operator is officially advised by the arresting officer not to operate any commercial vehicle for the next 24-hour period. Violation of this warning may result in additional enforcement action being taken against the operator by the Department of Transportation.

I. **Refusal** - An arrestee, after having been requested to take the breath analyzer test, declines to do so of his/her own volition. The refusal may consist of verbally saying, "I refuse," by remaining silent, by not providing a valid chemical sample, or by vocalizing some sort of qualified or conditional consent or refusal. The volitional failure to do what is necessary in order that the test can be done is a refusal. (Spradling vs. Deimeke, 528 S.W.2d 759, Supreme Court of Mo., 1975.)

* J. **Valid Chemical Sample** - A person being tested will furnish a complete and adequate chemical sample for the chemical test to be valid. Law enforcement officers may demand two valid chemical tests for determining blood alcohol content. Chemical samples include breath, blood, urine, or any combination of these, however, no more than two (2) tests may be given and both tests may be the same.

III. PROCEDURE

This directive has been arranged in annexes for easy reference.

Annex A	Arrest and Testing
Annex B	Administrative Suspension/Revocation
Annex C	Refusal/Revocation
Annex D	Filing of State Charges on Offenders with Prior Alcohol-Related Contacts
Annex E	Arrests of Commercial Vehicle Operators
Annex F	Drug Recognition Expert (D.R.E.) Program
Annex G	False Identity Given by Arrestee
Annex H	Operation and Security of Breath Testing Equipment

Richard D. Easley
Chief of Police

Adopted by the Board of Police Commissioners this _____ day of _____ 2003.

Dr. Stacey Daniels-Young
President

DISTRIBUTION: Law Enforcement Personnel
Civilian Supervisory Positions
Department Element Manuals
Post on all bulletin boards for two weeks.

ARREST AND TESTING*** A. Field Sobriety Testing**

1. When a motor vehicle is stopped for a traffic violation or a car check, and the officer has reasonable grounds to believe that the driver of the vehicle is under the influence of alcohol or other drugs, the officer will have the driver perform field sobriety tests. Field sobriety tests will be given to support court testimony. Officers will select a location to perform the field tests, which is free from danger and away from roadway traffic when practical. Field testing will consist of the standardized walk-and-turn, one-leg-stand, and the Horizontal or Vertical Gaze Nystagmus tests, provided these tests can be safely performed by the subject and there are no justifiable reasons (i.e., medical or physical reason) why the subject cannot comply. Additional indicators, such as the person's physical impairments observed during field testing procedures, test results affected due to extended elapsed time from arrest to testing procedure completion, etc., should be considered.
2. If the driver fails any of the field sobriety tests, or refuses to complete any of the tests, and the officer believes probable cause exists that the driver was driving or operating a motor vehicle while in an intoxicated condition, the arresting officer will advise the driver that he/she is "under arrest." The driver will be advised that they are under arrest for driving while under the influence of alcohol or other drugs and be requested to submit to a chemical test within a reasonable amount of time.

*** B. The Miranda Warning**

The Miranda Warning will be read verbatim to the arrestee prior to any chemical test or questioning. For the procedures dealing with minors under the age of 15 ½, refer to Annex B, Section B, 2. Should the arrestee be of a Spanish speaking origin and appear not to fully comprehend the arrest process when instructed in the English language, the use of an interpreter is mandatory. The D.U.I. Miranda Rights Waiver, Form 341A P.D., printed in Spanish, will be completed. Officers are to ensure that the arrestee completely understands his/her rights prior to any questioning. If no officer is available to assist with the Warning/Waiver, the Communications Unit Supervisor, who maintains a current list of approved interpreters, should be contacted for assistance. (Interpreters of foreign languages, as well as for those who are hearing impaired, are also available through the Communications Unit Supervisor or by referring to the Department Memorandum entitled, "Language Interpreting Services.") An interpreter will be utilized to ensure the civil rights of the arrestee are not violated.

* C. The Implied Consent Law

- * 1. The Implied Consent Law will be read verbatim to the arrestee prior to any chemical test, utilizing the Implied Consent Portion of the Alcohol Influence Report, (DOR-2389).
2. In addition to the Implied Consent Law, the “Zero Tolerance” section will be read to arrestees under 21 years of age. Officers will advise the arrestee that if the test indicates they are under the influence, the information can and will be used against them in Adult/Juvenile Court, however, if they refuse to take a chemical test, the State Statute will allow officers to complete refusal paperwork.
- * 3. The “Non-DWI Arrest for Fatality or Serious Physical Injury Only” section **will be read** to arrestees who have been involved in a motor vehicle collision, involving serious physical injury or fatality, and have been ticketed for a traffic violation in connection with the accident.
 - * a. **The “Non-DWI Arrest for Fatality or Serious Physical Injury Only” section will not be used solely for D.U.I. arrests.**
 - * b. Officers can mandate arrestees to submit to a chemical test. Tests may be conducted at a hospital if the arrestee is injured and requires medical treatment.
 - * (1) The officer can request the arrestee to submit to two (2) tests. Both tests can be either the same or different.
 - * (2) If the arrestee agrees to one, but not the other, the officer may administratively suspend or revoke the arrestee’s driver’s license on one and complete refusal paperwork on the other.
 - * c. If the arrestee refuses to submit to a chemical test, the officer will complete the refusal section of the Alcohol Influence Report (DOR-2389). In addition, the officer will contact a sergeant or detective in the Traffic Investigation Section to determine if a search warrant is needed.
 - * d. If an arrestee is not injured and does not require medical attention, officers should contact the Traffic Investigation Section, Vehicle Crimes Section, or D.U.I. Section for direction on conducting chemical tests.
 - * e. If a person is involved in an accident that causes death to another person and they are not placed under arrest or ticketed, they can still be requested to take a blood test. The Implied Consent Law does not have to be read in these cases. If the person refuses to submit to a blood test, officers will contact the Traffic Investigation Section for direction.

- D. The chemical breath test will remain the primary method for determining blood alcohol content. The arrested person does not have a choice of which statutory chemical test to take. The decision of testing methods will be at the discretion of the arresting officer following current applicable department procedures. If an arrest refuses to take a chemical breath test, the arresting officer will begin completing refusal paperwork.
- E. Arrestees may request an attorney at any time during the arrest process.
- * 1. Prior to allowing the arrestee to contact his/her attorney, the officer must read the Miranda Warning and the Implied Consent Law.
 - * 2. Once the arrestee requests an attorney, no chemical test will be given, and the arrestee will be given one 20 minute period in which to attempt to contact an attorney. This time period begins when there is access to a telephone.
 - * 3. Arrestees are not permitted to call anyone other than an attorney.
 - * 4. If the arrestee abandons his/her attempts to contact an attorney, even though 20 minutes have not elapsed, or the arrestee contacts an attorney and the attorney requests to speak to the officer, the officer **must still** ask the arrestee if they wish to submit to a blood alcohol test.
 - * 5. The arrestee does not have a constitutional right to have an attorney present when deciding to take the chemical test or during the actual test, however, an attorney may be present prior to and during any questioning related to the arrest. An officer **must always** be present during the 15-minute observation period even if the arrestee is talking to their attorney.
- * F. A person is presumed to be under the influence of intoxicants when a chemical test reveals his/her blood alcohol content at a .08% level or greater. If a person's blood alcohol content registers below .05%, it will be presumed that the person is not under the influence of alcohol, however, officers may use discretion charging a person and issuing UTTs when a person's blood alcohol content registers between .05% and .08%. Indicators, such as the person's physical impairments observed during field testing procedures, test results affected due to extended elapsed time from arrest to testing procedure completion, etc., should be considered when determining if a person is under the influence of alcohol. Detailed supportive documentation is essential for later court testimony.
- G. The arresting officer, as soon as possible after the arrest, will complete Alcohol Influence Report, D.O.R. Form 2389, whenever a chemical test is required. The arresting officer will ensure:
- 1. The Breath Test Record is taped with clear tape to a separate sheet of paper, which will become the final page of the completed Alcohol Influence Report, D.O.R. Form 2389, and will be numbered accordingly.

2. A photocopy of the Alcohol Influence Report, D.O.R. form 2389, is notarized, has the original signature of the arresting officer, and is mailed to the Department of Revenue, Driver's License Bureau, utilizing the pre-printed mailing envelopes.
- * 3. A copy of the Alcohol Influence Report, D.O.R. Form 2389, is forwarded to the Mail Room.
- * 4. The State Form 2385, Notice of Suspension is completed.
 - * a. The Notice of Suspension must be completed on all persons whose test results are obtained. A signature of the arrestee is required on the Notice of Suspension.
 - * b. If the arrestee refuses a chemical test, the officer will note "refused to sign" in the signature block of the Notice of Suspension and document the reason for the refusal in the report.
 - * c. The Notice of Suspension will not be served if blood is taken and the results are not available.
- H. A mandatory court appearance date will be required when officers book a subject for driving or operating a motor vehicle, including a commercial vehicle, while in a drugged/intoxicated condition. Officers will follow the procedures in accordance with the current written directive entitled, "Court Procedures."
- I. Test result information will be made available to the subject verbally by the officer conducting the breath test.
- J. Each breath test, or refusal, will be logged on the patrol division Breath Test Log, Form 166 P.D. In addition, officers will maintain a complete record of all tests they performed in accordance with the requirements of Type III permits.
- K. A blood/urine test will be administered when a subject is transported to a medical facility due to injury or illness and a breath test is not feasible or another type of drug is suspected. (*Exception: The Veterans Administration Hospital at 4801 E. Linwood Blvd. will not draw blood or other body fluids specifically for law enforcement purposes*, however, unused blood or other body fluids already drawn from a VA patient for treatment purposes may be provided to law enforcement.) When requesting a blood/urine test, the officer will:
 1. Advise the arrestee that he/she is under arrest.
 2. Advise the arrestee of the Implied Consent Law.

- * 3. Advise the arrestee that a blood/urine sample will be used to determine the alcohol/drug content.
- * 4. Complete a Request for Chemical Sample, Form 26 P.D. Hospitals require a copy of this form to collect blood or urine samples for law enforcement purposes.
- 5. Ensure that a non-alcoholic antiseptic is used to clean the subject's skin prior to blood withdrawal.
- 6. Witness the blood/urine sample collection at the medical facility.

NOTE: Two sterile tubes containing an anticoagulant are required when collecting a blood sample. Only gray or blue capped 10 milliliter size tubes are acceptable for blood alcohol content. Lavender or purple cap tubes are used for DNA analysis. Red top tubes cannot be used for the collection of blood samples. Specimen cups are required when collecting a urine sample.

a. If a blood specimen is collected:

- (1) Place information including the officer's initials, complaint number, date, and the name of the person the blood was drawn from, on the label of the tubes.
- * (2) Place the tubes in a protective carrier. Protective carriers (50 milliliter tubes) are available at the Kansas City Police Crime Laboratory/Crime Scene Investigation Section or at the Traffic Investigation Unit.
- (3) Place the protective carrier(s) in a 6 X 9 envelope and seal it with orange tape and mark it for identification. (Refer to the Procedural Instruction entitled, "Recovered Property Procedure.")

NOTE: Do not seal or tape the capped top of the recovered blood tubes or the protective carrier.

b. If a urine specimen is collected:

- (1) Place information including the officer's initials, complaint number, date, and the name of the person the urine was collected from, on the label of the specimen cup.

- (2) Place the specimen cup in a plastic bag with a good seal. The plastic bag must then be placed in either a brown paper bag or envelope. Seal it with orange tape and mark it for identification. (Refer to the Procedural Instruction entitled, "Recovered Property Procedure.")

NOTE: Do not seal or tape the lid on the specimen cup. Attempt to keep the cup in an upright position.

- * 7. Deliver the specimen and the Physical Evidence/Property Inventory Report, Form 236 P.D., to the Kansas City Police Crime Laboratory for refrigeration and processing. When the Kansas City Police Crime Laboratory is closed, the specimen will be transported to the Traffic Investigation Section for refrigeration.
8. Request their immediate supervisor to respond when authorized medical personnel refuse to collect a specimen or refuse to release the collected specimen to the officer.
 - a. The supervisor will respond and contact the Nursing Supervisor first to discuss the reason for the refusal.
 - b. If the Nursing Supervisor continues to refuse collection or the release of a specimen, the supervisor will then contact the Director of Shift Operations (DSO).
 - c. The arresting officer will note the refusal and pertinent details in the remarks section of the Alcohol Influence Report, Form 2389, and forward a photocopy to the Traffic Investigation Section Commander if medical personnel still refuse to collect a specimen or release the collected specimen.
9. Not take the driver's license when blood is obtained.
10. Complete the blood draw section on the Alcohol Influence Report, D.O.R. Form 2389, when a blood sample is collected.
- L. Sick, injured, or unconscious arrests will be handled in accordance with the current directive entitled, "Ambulance Calls and Arrests Taken to Hospitals."
 1. Arrests for D.U.I. which test a **.30%** B.A.C. level or greater **will be** transported to the Truman Medical Center for examination of possible alcohol poisoning. Officers are reminded that individuals react differently to alcohol and/or drugs. Any time an officer believes an arrest is in need of medical attention, regardless of B.A.C. level results, it is the officer's responsibility to ensure the arrest is medically examined.

2. In the event the arrest is admitted and either **felony** or **municipal** charges exist, the arrest will be handled in accordance with the Procedural Instructions entitled, "Ambulance Calls and Arrests Taken to Hospitals" or "General Ordinance Summons, Municipal Court Subpoena, and Municipal Warrant Booking Record."

M. The arrestee's vehicle will be handled in accordance with the current directive entitled, "Towing and Protective Custody of Vehicles and Contents."

N. Breath Tests Administered to City Employees

There is an agreement between this department and Kansas City, Missouri city officials that breath tests will be administered to city employees who are believed to be under the influence of alcohol by their supervisors. **This agreement deals only with city employees who are intoxicated at work.** If a city employee is determined to be intoxicated, the incident will be handled as a civil matter. Officers conducting breath tests of city employees will:

1. Determine whether or not the request for a breath test is made by a supervisor with appropriate credentials.
2. Ensure the city employee fully understands that while the breath test is a mandatory condition of their employment, taking the breath test is voluntary on the employee's part and that the police department has no control over existing employee/employer requirements or conditions.
3. Provide a record of test results to the accompanying supervisor.
4. Record the name of the person tested, name of the requesting supervisor, city department, and test results or refusal in the breath test log.
5. Not complete an Alcohol Influence Report, D.O.R. Form 2389, unless the city employee is observed driving. City employees who are **driving** while intoxicated will be handled as outlined in this directive.

NOTE: Employee breath tests will not be administered to individuals not employed by the City of Kansas City. Private companies or supervisors (such as taxi cab or trucking companies) will be advised to contact a medical facility to obtain a blood test for alcohol content. **Complaint numbers are not required when testing city employees on the Intoxilyzer 5000 instrument.**

ADMINISTRATIVE SUSPENSION/REVOCAATION

- * A. Drivers licenses will be administratively suspended or revoked for any person, regardless of age, whose **blood alcohol content is .08% or greater**.

- B. Persons less than 21 years of age
 - * 1. Drivers licenses will be administratively suspended or revoked for any person less than 21 years of age who has been **stopped** while driving with a **blood alcohol content of .02% or more**.
 - * a. The officer can request a person less than 21 years of age to submit to a chemical test if the officer has probable cause to believe the person has committed a **moving violation** and has consumed intoxicants. (The officer does not have to observe the person to be driving under the influence of intoxicants before they are stopped.)

 - b. If the officer requests the person to take a breath alcohol test, that person **will be** mandated to take the test.

 - * c. Once it is determined the person is under the influence of intoxicants, the officer will:
 - * (1) Administratively suspend or revoke the person's driver's license.

 - * (2) Issue UTTs for the initial moving violation(s) and any other violations observed.

 - (3) Take possession of any Missouri driver's license when a breath alcohol test reveals a BAC level of .02% or greater. The driver's license will be mailed to the Department of Revenue with the appropriate paperwork.

 - * (4) Charge the driver with a D.U.I. if the BAC is .08% or greater.

NOTE: The officer has the discretion of charging the driver with a D.U.I. if the BAC is less than .08% and the person exhibits signs of intoxication.

- * 2. Juveniles under 15 ½ years of age must be transported to the Juvenile Section. **A Deputy Juvenile Officer and the juvenile's parents must be contacted and present** before any questioning is conducted. Once the Deputy Juvenile Officer has been notified and the minor agrees to take the chemical test, the apprehending officer will arrange to complete the test.
- * 3. Juveniles over 15 ½ years of age will be treated in court as an adult traffic violator. Officers do not need to notify a Deputy Juvenile Officer nor the parents of a juvenile over 15 ½ years of age who has allegedly violated a municipal traffic ordinance or non-felony state traffic violation. They will be read the Miranda Warning prior to any chemical test or questioning. (Refer to the Procedural Instruction entitled, "Juvenile Apprehension Procedures.")
4. If a juvenile/minor is released at the scene, they must be released to the custody of a parent or legal guardian. The officer will note on their Daily Activity Log, Form 112 P.D., to whom the juvenile/minor was released. If no parent or legal guardian is present, the juvenile/minor will be transferred to the Juvenile Section.
5. A juvenile Custody Report or Juvenile Apprehension Report **will not** be completed. Officers will note the probable cause for stopping the juvenile/minor and that the juvenile/minor was apprehended and transported to the Juvenile Section in the narrative portion of the Alcohol Influence Report, D.O.R. Form 2389.
6. Minors who are certified as adults will fall under the same procedures outlined in this directive as it pertains to their age, however, they will be mandated to appear in adult court, regardless of their age.

REFUSAL/REVOCAION

- A. Arrestees must be transported to a district station with a breath test instrument, **even** if the arrestee refuses to take a chemical test. Only those refusals that are so physically combative that they pose a threat to officers and/or the Intoxilyzer 5000 instrument may be taken directly to the Detention Unit at Headquarters.
- * B. Whether or not an arrestee is combative, if the arrestee refuses to take a chemical test, officers are still required to read the Miranda Warning and the Implied Consent Law.
- C. The Alcohol Influence Report, D.O.R. Form 2389, will be completed even if a chemical test is not administered.
- D. When there is a refusal to submit to a chemical test, the arresting officer will complete the Chemical Test Refusal Section on the Alcohol Influence Report, D.O.R. Form 2389, and the Missouri Department of Revenue Refusal to Submit to Alcohol Chemical Test, Notice of Revocation of Your Driving Privilege/15-Day Driving Permit, Form 4323. (The 15-Day Driving Permit area of the Form 4323 will not be completed unless the driver has a valid Missouri driver's license.)
- * E. If a person is under 21 years of age and is stopped for a traffic violation, and if after the stop the officer believes the subject is impaired but the subject refuses to submit to a breath alcohol test, the officer **will**:
1. Complete refusal paperwork and issue UTTs. The officer need not have had probable cause to believe that the subject was intoxicated prior to stopping the subject.
 - * 2. Take possession of any Missouri driver's license. The driver's license will be mailed to the Department of Revenue with the appropriate paperwork. Officers will not take possession of any out-of-state driver's license.
 - * 3. Follow the arrest procedures outlined in Annex B.
- F. The State in which a subject is licensed to drive may revoke the subject's driver's license for up to one year on a refusal. A subject, whose license has been revoked, may also request an administrative hearing. It is imperative that the arresting officer be able to prove:
1. The arresting officer had reasonable grounds to believe the subject was driving or operating a motor vehicle while in an intoxicated condition.

2. The subject was advised that he/she was under arrest and advised of the reason for the driving under the influence (D.U.I.) arrest.
- * 3. The Miranda Warning and the Implied Consent Law were read verbatim.

NOTE: Officers should not give legal advice nor explain the legal consequences of submitting to a chemical test.
4. The subject actually refused to submit to the test.
5. Whether an attorney was requested and the twenty (20) minute time limit was observed.

NOTE: If all conditions are not proven by the arresting officer, by a preponderance of evidence, the judge can order the Director of Revenue to reinstate the subject's license or permit to drive.

**FILING OF STATE CHARGES ON OFFENDERS WITH PRIOR
ALCOHOL-RELATED CONTACTS**

- * A. Persons who have two (2) or more previous alcohol related arrests in the Kansas City metropolitan area are identified in the ALERT computer system as “**PRIOR ALCOHOL OFFENSE CONTACTS.**” This identity alone is not reasonable grounds to stop an occupied motor vehicle.

- B. Some outside agencies do not contribute traffic information to the ALERT computer system, but will provide information to the Department of Revenue (DOR). ALERT, DOR, and KDOR should **always** be viewed when checking for prior alcohol related arrests.

- * C. Certain criteria **must** be met before state charges can be filed on offenders with prior alcohol-related arrests. Offenders who meet the below listed criteria and have a blood alcohol content of .08% or greater, will be arrested on state charges.
 - * 1. In Cass, Clay, Jackson, and Platte Counties, offenders will be arrested for **state charges** when their record reveals they have two (2) or more prior D.U.I. arrests. (No time frame is required and the arrest can be from any State.)

 - * 2. **First time offenders with a breath test of .30% or greater** will be arrested for state charges. Officers should attempt to contact a member of the Traffic Investigation Section (during Watch II and Watch III) or the D.U.I. Section (Watch I) for guidance in these situations.

- D. When officers observe the computer notation “PRIOR ALCOHOL OFFENSE CONTACTS,” or are advised by department personnel that the subject under arrest for an alcohol related traffic charge has previous alcohol related arrests, the arresting officer will adhere to the following procedures:
 - 1. Arresting officers will ensure that all arrests are based on "probable cause" and not merely on previous offender information provided by dispatchers. Officers **must** document the "probable cause" clearly and in a detailed manner in their reports, as this is very important in the pursuit of state charges.

 - 2. Prior to any D.U.I. arrest, officers **must** have the arrestee attempt to perform the three (3) mandatory standardized field sobriety tests (One Leg Stand, Walk-and-Turn, and the Horizontal or Vertical Gaze Nystagmus). Officers will thoroughly document in the narrative section of the Alcohol Influence Report, D.O.R. Form 2389, any reasons why the tests could not be performed.

3. Whenever possible, request a D.U.I. Section sergeant or officer to handle the testing/arrest process of the offender.

E. When no D.U.I. Section sergeant or officer is available to assist, the officer(s) will conduct the breath test according to procedures as normally required.

* F. When a breath test with results of .08% or above is completed, or there is a refusal and it is determined that the situation met the criteria outlined in Annex D, Section C, the officer(s) will:

1. Obtain a printout of the arrestee's computer record from a closed record terminal.

* 2. Be attentive to previous ordinance numbers related to alcohol/drug arrests (i.e., 34.116a, 34.116b, 34.119, BAC, 34.120, 70.302a, 70.302b, and 70.304) and dispositions.

3. Check for convictions.

4. Check entries (multiple entries can be for the same incident).

* 5. Obtain an Investigative Arrest Approval Form, Form 176 P.D. During Watch I, officers will first attempt to contact a D.U.I. Section sergeant or officer to approve the form. During Watch II and Watch III, a Traffic Investigation Section sergeant or detective should be contacted for approval. If a D.U.I. or Traffic Investigation Section sergeant or officer is not available, any desk sergeant may approve the Investigative Arrest Approval Form, Form 176 P.D.

NOTE: The D.U.I./Traffic Investigation Section sergeant or officer, or desk sergeant, **must review** the arrestee's computer record and verify prior alcohol arrest information.

* G. **No Uniform Traffic Ticket(s) or General Ordinance Summons (GOS) will be issued by the arresting officer for any charges related to the arrest, unless directed by a D.U.I. Section sergeant or officer, or any desk sergeant, if no D.U.I. personnel are available.**

H. Officers are required to complete all reports normally applicable for a D.U.I. arrest. Applicable reports will be notarized as per current procedures. Copies of reports will be disseminated as follows:

- * 1. A copy of the Alcohol Influence Report, D.O.R. Form 2389, (which does not need to be notarized), Record of Arrest, Form 5201 P.D., printout of the arrestee's computer records, and all other applicable reports **must be completed and either "FAXED" to the Traffic Investigation Section (TIS) after the subject is booked or hand-carried to TIS prior to the officer's end of tour-of-duty.** Due to the "twenty hour" time limitation for investigation of state charges, all reports must be available for detectives to complete arraignment proceedings.
- * 2. The original Alcohol Influence Report, D.O.R. Form 2389, will be retained at the respective element for a period not less than 90 days. (The original does not need to be notarized.)
- * 3. One notarized copy of the Alcohol Influence Report, D.O.R. Form 2389, and copies of all other applicable reports, will be mailed to the Department of Revenue and a second copy of all reports will be forwarded to the Mail Room where it will be disseminated to the City.

NOTE: Desk sergeants will ensure reports are signed by the officer and the refusal box is checked where applicable.

* In the event that questions arise regarding State booking procedures of D.U.I. offenders, officers are advised to contact Traffic Investigation Section (TIS) detectives between 0700 – 1500 hours, Vehicular Crimes Section (VCS) detectives between 1500 – 2400 hours, or D.U.I. Section between 2400 – 0600 hours. If unable to reach VCS or DUI personnel during their duty hours, contact the on-call TIS detective through the Communications Unit.

ARRESTS OF COMMERCIAL VEHICLE OPERATORS

A. General Information regarding Commercial Vehicle Operators

- * 1. Officers coming into contact with a driver possessing a Commercial Driver's License (CDL) but who is operating a privately owned (non-commercial) vehicle must abide by current procedures for arrest of intoxicated drivers using the .08% blood alcohol content level.
2. Officers may come into contact with a commercial vehicle operator who is operating a commercial vehicle requiring a CDL in an "off-duty" capacity. Companies may allow their employees to operate their commercial vehicle "off-duty," as it is their only means of transportation while in transit. When doing so, the operator may possess alcoholic beverages in the vehicle as long as the alcohol remains sealed and unopened. "Off-duty" status can be determined by reviewing the "Log Book," asking the operator, or contacting the operator's company.
- * 3. Commercial vehicle operators, who are operating vehicles weighing in excess of 10,001 G.V.W.R., or with a license weight over 10,001 pounds, are subject to **additional restrictions** regarding alcohol-related driving offenses.
 - a. Commercial vehicle operators are deemed intoxicated (while driving a commercial vehicle) when the chemical test results show a blood alcohol concentration of .04% or more.
 - b. Any alcohol breath test reading of a commercial vehicle operator registering between .001 and .039 requires that the operator be placed "OUT-OF-SERVICE" for a 24-hour period.
 - * c. Commercial vehicle operators may not have any alcoholic beverage in their possession, open or unopened, inside the immediate cab area, while operating a commercial vehicle in an "on-duty" or "off-duty" status.
 - * d. If a commercial vehicle operator is in possession of an alcoholic beverage, opened or sealed, or is under the influence of an intoxicated beverage or drugs, officers should contact the on-call Commercial Vehicle Enforcement Officer for direction.

- B. Prior to testing for impairment or sobriety testing, the arresting officer will advise the driver of the Implied Consent Law.
1. If the driver consents to the testing, all normally required testing procedures will be followed.
 2. If the subject refuses to take the test, an Affidavit of Chemical Test Refusal, D.O.R. Form 4232, and all other applicable D.U.I. report forms will be completed. (The Affidavit of Chemical Test Refusal, D.O.R. Form 4232, is to be used for commercial vehicle operators only.)
 3. A photocopy of the Affidavit of Chemical Test Refusal, D.O.R. Form 4232, and a photocopy of the Alcohol Influence Report, D.O.R. Form 2389, will be notarized and mailed to the Department of Revenue, Driver's License Bureau, utilizing the pre-printed mailing envelopes.
 - * 4. A photocopy of the Affidavit of Chemical Test Refusal, D.O.R. Form 4232, and photocopy of the Alcohol Influence Report, D.O.R. Form 2389, will be forwarded to the Mail Room.
- C. In either instance, possession or intoxication, the reporting officer will contact the operator's company dispatcher, advise them that the operator is being placed "OUT-OF-SERVICE" for a 24 hour period and request that the company make appropriate arrangements to secure the commercial vehicle.
- D. Should the effort to contact the carrier to have another operator respond fail, the vehicle will be handled in accordance with current directive entitled, "Towing and Protective Custody of Vehicles and Contents."
- E. Officers may contact a member of the Commercial Vehicle Enforcement Section or a Vehicular Crimes Section Supervisor for further information whenever questions arise concerning commercial vehicle operators.

DRUG RECOGNITION EXPERT (D.R.E.) PROGRAM

The Drug Recognition Expert (D.R.E.) examination and evaluation is designed to detect signs of impairment and establish probable cause for further investigation. Officers are trained to examine persons believed to be under the influence of drugs. A request for either urine or blood from the subject, for toxicological screening and confirmation, can be made by the D.R.E. officer based upon the results of the evaluation.

D.R.E. officers will be available to assist not only Patrol Bureau officers with subjects suspected of driving under the influence of drugs, but may also respond for evaluations for other elements within the department. Evaluations may be conducted on suspects, victims, witnesses, or any subject(s) believed to be under the influence of drugs.

In order for the D.R.E. officer to be able to conduct an evaluation of the subject regarding traffic related arrests, the following guidelines must be met:

- A. The "Implied Consent" Statute of the State of Missouri allows officers to request a maximum of two (2) valid (complete) samples from a subject to determine alcohol or drug content. An officer requesting the assistance of a D.R.E. officer **will not** conduct more than one (1) breath test of the subject. This will legally allow for the testing evaluation and procedures required by the D.R.E. officer.
- * B. Officers may request a D.R.E. officer when they have determined, by breath testing, that the subject's blood alcohol level is below .08% and the signs of physical impairment are not consistent with the blood alcohol test results.
- C. Personnel may request a D.R.E. officer to conduct an evaluation after receiving approval of their supervisor.
 1. D.R.E. officers will conduct a preliminary alcohol and drug evaluation prior to conducting a complete 12-point evaluation. The D.R.E. officer will also provide the requesting element with copies of all pertinent reports.
 2. D.R.E. officers will be responsible for the completion of all reports involved in their examinations and evaluations and the proper collection of any evidentiary samples obtained.

Requests for a D.R.E. officer will be made through the Traffic, Administrative, and Detective (T.A.D.) dispatcher. In the event that no qualified D.R.E. officers are available and the situation is justifiable, an "on-call" officer may be requested through the Communications Unit Supervisor.

FALSE IDENTITY GIVEN BY ARRESTEE

- * A. When the Fingerprint Identification Section determines an arrested subject has given a false name, the arresting officer will be notified by receiving a Miscellaneous Investigation/Fingerprint Identification Report, Form 100 P.D. If the Miscellaneous Investigation/Fingerprint Identification Report, Form 100 P.D., contains the true identity information of the arrested person, the arresting officer will initiate a City Pick-Up, and complete and mail the following information to the Department Of Revenue, Drivers License Bureau:
1. A notarized Missouri Department of Revenue Report entitled, "Affidavit to Withdraw Alcohol Influence Report", D.O.R. Form 4479.
 2. A corrected, notarized photocopy of Alcohol Influence Report, D.O.R. Form 2389, showing true identity information of the driver.
 3. A photocopy of the Miscellaneous Investigation/Fingerprint Identification Report, Form 100 P.D.
 4. A photocopy of the Uniform Traffic Ticket(s).
 - * 5. A photocopy of the City Wanted/Cancellation Notice, Form 42A P.D.
- B. If the Miscellaneous Investigation/Fingerprint Identification Report, Form 100 P.D., does not contain the true identity information of the arrested person, the arresting officer will:
1. Complete and notarize Affidavit to Withdraw Alcohol Influence Report, D.O.R. Form 4479.
 2. Mail the notarized Affidavit to Withdraw Alcohol Influence Report, D.O.R. Form 4479, to the Driver's License Bureau.
 3. Forward photocopies of the Affidavit to Withdraw Alcohol Influence Report, D.O.R. 4479, and the Miscellaneous Investigation/Fingerprint Identification Report, Form 100 P.D., to the Records Unit.
 4. Request the original Uniform Traffic Tickets be voided in accordance with the current directive entitled, "Uniform Traffic Ticket."

OPERATION AND SECURITY OF BREATH TESTING EQUIPMENT

- * A. A valid Type I permit allows the permittee to determine the alcoholic content of blood from a sample of breath, blood, or urine utilizing standard quantitative chemical analytical methods as approved by the Department of Health. (This permit is held by Kansas City Police Crime Laboratory personnel.)

- B. A valid Type II permit allows the permittee to operate, repair, modify, or otherwise alter the breath analyzer. D.U.I. personnel hold these permits, and only D.U.I. personnel, or their designee, will perform maintenance and/or repairs to department-owned breath analyzers.

- C. A valid Type III permit allows the permittee to operate breath analyzers to determine alcoholic content of blood from a sample of expired (alveolar) air. These permits must be renewed every two years. A minimum of 10 tests in the previous 12 months is required. A Type III permittee will:
 - 1. Adhere strictly to the operating procedures set forth and approved by the Department of Health for the breath analyzer for which they hold a permit.
 - 2. Not modify any breath analyzer or its operating procedure.
 - 3. Certify with each report of test:
 - a. That there has been no deviation from procedures set forth and approved by the Department of Health.
 - b. That to the best of his/her knowledge the breath analyzer was functioning properly.
 - 4. Maintain a complete record of all tests performed.
 - 5. Suspend use of the breath analyzer if at any time it is believed to be functioning improperly. Officers who discovered the functioning problem will post an out-of-order notice on the instrument, notify the facility desk sergeant, and prepare an Interdepartment Communication, Form 191 P.D., with the circumstances surrounding the damage.
 - 6. Record the results of the breath test in the patrol division Breath Test Log, Form 166 P.D.
 - 7. Notify the D.U.I. Section six weeks in advance for renewal of their permit.

- D. Breath analyzers will be kept in designated areas of the patrol divisions where they can be monitored. The patrol division Breath Test Log, Form 166 P.D., and all supplies for the breath analyzer will be issued by and are the responsibility of the desk sergeant.
- E. If damage to the breath analyzer is discovered or occurs, the desk sergeant will be notified. The D.U.I. Section will be notified immediately to inspect or replace, if necessary, the damaged analyzer. The supervisor will forward the report through the chain of command ensuring that a copy is sent to the D.U.I. Section.