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**TRAFFIC LAW ENFORCEMENT
DWI**

PART 5

**Psychophysical Testing
and Chemical Testing Evaluations**



52084

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DWI PART V: PSYCHOPHYSICAL TESTING
AND CHEMICAL TESTING EVALUATIONS

ABSTRACT

This unit provides the student with a rationale for psychophysical evaluation of DWI suspects. The common psychophysical tests are described and classified according to their level of difficulty. The procedures involved in the administration of each test are described.

Students are given a rationale for using the Alcoholic Influence Report Form (AIR) with particular emphasis on the form as it is used in Maryland.

A discussion of chemical testing as it relates to psychophysical evaluation is presented. Practical guidelines as to the selection and administration of chemical tests are provided. The legal responsibilities that must be observed by an arresting officer in DWI cases under Maryland law are summarized.

BEHAVIORAL OBJECTIVES

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

- Describe the purpose of psychophysical and chemical tests
- Identify the types of psychophysical tests available for use by the arresting officer
- Identify the procedures that should be followed when administering psychophysical tests
- Describe the content and use of the Alcoholic Influence Report Form (AIR) in Maryland
- Describe the types of chemical tests available to DWI suspects in Maryland
- Identify the procedures that must be followed when administering chemical tests
- Identify the legal responsibilities that must be observed by the arresting officer in a DWI case.

DWI PART V: PSYCHOPHYSICAL TESTING
AND CHEMICAL TESTING EVALUATIONS

Nature and Purpose of Psychophysical Evaluation

Previous units have discussed in detail the many vehicle clues available to the alert police officer for the detection of the drinking driver. These initial clues, generally manifested in erratic driving behavior, are important to the initiation of enforcement and may not be in themselves sufficient evidence for conviction of DWI. Once a suspect is apprehended, it is necessary for the arresting officer to investigate further in order to confirm his suspicions and collect adequate evidence of driver impairment.

Research has shown that alcohol ingested into the blood stream will cause a depressing or anesthetizing (numbing) influence on the human brain or nerve center functions. The extent of influence is proportionate to the concentration of alcohol in the blood.

Because the relationship between brain function and alcohol concentration is known, it is possible to observe much of the influence of alcohol as manifested in the impairment of our basic mental and physical processes. By using an evaluation procedure that keys on selected mental and physical (psychophysical) functions, a police officer can observe and collect fairly reliable evidence of impairment.

Therefore, psychophysical tests, as used by the police officer, are selected and administered for the purpose of providing identifiable, non-vehicle related symptoms of driver impairment.

Purpose of Psychophysical Tests

In current DWI enforcement, these types of tests serve two major purposes for the officer.

First, they aid in the decision-making process that he must go through in establishing "probable cause" subsequent to the DWI arrest. Psychophysical tests can also be beneficial in detecting some forms of drug impairment.

Second, psychophysical testing provides important corroborative evidence for chemical test results.

Use of Psychophysical Tests

The use of psychophysical tests is generally a policy decision by the police department, the prosecutor or the courts. Many jurisdictions have strong feelings as to what tests should be given, when and where they should be given, and even whether they should be given at all. THE STUDENT SHOULD BE AWARE OF THE POLICY IN EFFECT IN HIS JURISDICTION.

Today, because of the new emphasis on low blood alcohol concentrations, the officer using psychophysical testing must be sensitive to the more subtle signs of impairment. This is particularly necessary since defense counsels have always attacked psychophysical test evidence. The arresting officer can be prepared for such attack by carefully following good case preparation procedures.

The degree of psychophysical impairment by drugs is varied and inconsistent depending largely on the kind and amount of drug and upon the personality of the individual. Presently the observable manifestations of drugs are not nearly as predictable or identifiable as they are for alcohol.

The arresting officer should make certain that he is familiar with and considers the many other non-alcohol or drug related conditions which may show impairment of mental and physical functions. Included are medical and physical disabilities such as injuries, shock, epilepsy, arthritis, and natural conditions such as old age, which can diminish physical ability or even bring senility and everyday fatigue. Any of these conditions when combined with alcohol can be misleading if the arresting officer is not informed and prepared.

CLASSIFICATION OF PSYCHOPHYSICAL TESTS

Psychophysical tests can be grouped into three general categories or types of testing. The number and kinds of tests utilized will vary in degree depending upon the particular need of the arresting officer for a given situation. Most Alcoholic Influence Report Forms (AIR), as described later in this unit, are designed so that the police officer has a logical and convenient way to record the observations he makes as a result of these tests.

Category One: Initial Evaluation

Tests in this category consist of the initial evaluation of the driver's general physical appearance and condition while he is still seated in the vehicle, utilizing minimum directed effort on the part of the officer. Most of the elements of the first type of tests are standard evaluations made by police officers for all traffic stops as a matter of good police work.

Tests include the quick evaluation of:

- Odor of breath
- Condition of eyes
- Color of face
- Demeanor
- Dexterity
- Speech
- Clothing.

This type of testing quite often produces the initial suspicion that DWI is involved. In most cases the officer will continue into a second type of testing.

Category Two: Non-structured Evaluation

Tests in this category involve a more specific effort on the part of the driver in order that basic mental and physical conditions may be evaluated. They also provide a re-evaluation of first type of tests.

Tests of the second type require the cooperation of the driver to exit from the vehicle and walk to a designated area for further investigation. At night, the officer should make certain that the spot selected has good visibility. The officer should also be certain that maximum safety precautions are exercised when moving the driver.

Tests include simple, non-structured evaluations of:

- Body coordination
- Judgment
- Balance or equilibrium
- Mental awareness
- First type elements of odor, eyes, face, speech and appearance.

At this point the officer has merely observed and conversed with the suspect but has not attempted to conduct any special routine or exercise. Adequacy of evidence at this point will determine whether or not the officer continues beyond this type of test.

Category Three: Structured Evaluation

Tests of the third type are specially structured performance tests of more complicated physiological coordination and require maximum officer-suspect involvement. They are given outside the vehicle and in an area suited for standing or walking. At night a location of good visibility should be selected. The area should be safe from traffic and preferably free from unsympathetic observers.

These tests include mental and physical exercises given singly or in combination to evaluate:

- Coordination
- Equilibrium
- Judgment
- Comprehension
- Concentration.

Tests of the third type should always be administered with clear and demonstrated instructions to the suspect.

The degree to which psychophysical testing must be applied for decision making will vary according to the suspect's blood alcohol concentration (BAC) and tolerance. Generally speaking, the lower the BAC the greater the degree of testing necessary.

TO CHECK YOUR PROGRESS PLEASE ANSWER THE FOLLOWING QUESTIONS.

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

1. The major purpose of psychophysical tests is:
 - a. To identify the chronic drunk driver.
 - b. To establish probable cause prior to the DWI arrest.
 - c. To provide identifiable, non-vehicle related symptoms of driver impairment.
 - d. All of the above.

Directions: Identify which of the following tests are either Category One: Initial Evaluation, Category Two: Non-Structured Evaluation, or Category Three: Structured Evaluation by circling the correct number (I, II, III) on your response sheet.

2. Dexterity
3. Mental awareness
4. Odor of breath
5. Concentration
6. Clothing

Directions: Circle A on your response sheet if the following statement is accurate. Circle I if it is inaccurate.

7. The cooperation of the DWI suspect is required by all the psychophysical methods of evaluation.

TO CHECK YOUR ANSWERS TURN TO THE KEY ON PAGE XXXII - 43.

REVIEW ANY ITEMS YOU MISSED BEFORE CONTINUING.

ADMINISTRATION OF PSYCHOPHYSICAL TESTS

General Considerations

Although the value of psychophysical tests is somewhat controversial at times, it remains as another method currently available to the officer for demonstrating evidence of driver impairment.

When using psychophysical tests, especially the more complex ones (third category of tests), the officer should be certain that his choice is fair and his procedure correct. Any tests utilized should be such that they can be performed successfully by the average, sober individual.

When evaluating performance or conditions, the officer must continually keep in mind that many other medical and physical conditions can also cause the observed impairment.

The decision reached by the arresting officer should not be made by any one, single test, but rather by a combination or summation of results of an organized inquiry involving a series of related tests and observations.

The police officer should remember that when combining the traffic stop (which is recognized as one of the most dangerous events in law enforcement) with face-to-face contact with someone potentially under mental influence, extreme caution must be continually exercised.

Category One: Initial Evaluation

The evaluation begins with the officer's first personal contact with the driver, generally while the suspect is still seated in his vehicle. The clinical symptoms which the officer should observe and record are listed below.

- Odor of breath. The officer may detect the odor of alcoholic beverages emanating from the vehicle. Although the odor may be from passengers or from a beverage spilled on the driver's clothing, there should be little trouble in determining if the odor is originating, at least in part, from the driver.

The officer should be suspicious of the driver who avoids talking directly to him. He should also mentally catalogue the associated odor of alcoholic beverages mixed with gum, breath conditioners and cigarettes.

- Condition of eyes. Bloodshot eyes are probably the most common symptom of alcohol indulgence due to the dilation tendency of the blood vessels.
- Color of face. The flushing, or reddening of the facial tissue is common to alcohol indulgence for much the same reason as bloodshot eyes.

A pale face could indicate the need for medical attention.

Speech. If the suspect does not voluntarily begin talking, attempt to engage him in a conversation of more than just one or two word responses. What is said will vary according to conditions (when, where, who and his attitude). Consider clearness and correctness of enunciation. In the follow-up interview, consider possible natural speech impediments or use of dentures.

Attitude. Being stopped by a police officer can do a lot to the emotions of most everyone, especially if they've done something wrong. This should be kept in mind when making the initial assessment of attitude or demeanor displayed by the suspect.

More than one description may be necessary. The initial attitude displayed by the suspect may change later in the investigation, especially after he is informed that he is under arrest. Make note of and distinguish between every attitude change.

Dexterity. Many departments request the driver to produce the required credentials immediately after contact. When this is done, this procedure can afford an excellent opportunity for the officer to observe and evaluate the suspect's coordination or dexterity of hand movements. It is possible, however, for the suspect to brace his wallet (or her purse) and hands in the lap. If this is done, some of the value of this test is lost.

This test can also show loss of perception or judgment to a certain degree. The suspect may pass over his otherwise obvious driver's license, or may not see it at all, requiring the assistance of the officer. Once the license is found, the driver may not be able to figure out how to remove it. If the suspect must retrieve something from the glove compartment, the process should be evaluated (e.g., use of the key, sorting through items, etc.).

More than one description may be necessary. If the suspect's fingers are swift and sure, it may be a good indication that his nervous system has not been too adversely affected by alcohol. This test (producing the driver's license, etc.) is also effective as a second type of test where other dimensions can be added.

Clothing. The condition of clothing is a fairly weak indicator of impairment unless there are gross symptoms present such as: wearing a tie without a shirt; few clothes on or clothing open during cold weather; signs of vomitus or urine; torn or bloody, etc.

Whether or not the officer uses clothing as an indicator of impairment, he should always make note of the suspect's condition of dress for comparison purposes at the time of trial. Many times the defense will use the way the defendant was dressed at the time of arrest to test the arresting officer's memory.

Category Two: Non-structured Evaluation

Tests in this category usually provide the first opportunity for the officer to evaluate neuromuscular coordination, balance, equilibrium and mental awareness. The evaluation and observations made by the officer should include the following:

• Exiting vehicle. Ask the suspect to step from the vehicle, observing closely as he does so. There are distinct considerations: 1) the movement of the suspect from the seat to his feet, and 2) the suspect's movement when closing the vehicle door. Although many persons utilize the door for support when exiting a vehicle, note the suspect's difficulty in rising to his feet and his ability to balance once he is on his feet. The initial steps taken to move away from the doorway should be observed for balance and coordination. Let the suspect close the door himself. Persons with medium to high blood alcohol concentration may lose their balance slightly as the door swings shut.

Make certain there is no danger of the suspect stepping into the path of traffic.

• Walking to roadside. Select a flat area off the roadway out of traffic and direct the suspect to walk to it. Make certain the suspect hears and understands the instructions. Repeat them if necessary. (Inability to easily understand these simple directions

could itself be indicative of impairment). Observe the manner in which the suspect walks and whether or not he seeks support as he walks. If there is a curb he must step up to, note his ability to do so.

- Standing. After moving to the roadside, instruct the subject to stand in one spot. During any subsequent questioning or examination, note the effect on balance and equilibrium as manifested in the suspect's ability to stand without support, swaying or falling.

- Sensation of time and space. Certain questions can be asked to evaluate any distortion of the sensation or perception of time and memory. Two questions in particular should be asked:
 - A. Do you know where you are now?
 - B. Do you know what time it is now?

- Dilation of pupils. Shine a flashlight into each of the suspect's eyes. Note the dilation movement of the pupil. Next shine the light into each of the eyes of your partner; compare the speed of his pupil dilation with that of the suspect. Alcohol and some drugs will influence the normal dilation of the pupil causing it to contract slower at low or medium blood alcohol concentrations.

- Dexterity. If this evaluation has been made, as described under category one, it can be repeated by asking the suspect to produce additional identification.

Re-evaluation of first type of tests. While the suspect is in the open and in better light, re-evaluate speech, condition of eyes, attitude and clothing. Many of the elements may change considerably.

If the arresting officer, after completing first and second category evaluations, feels additional evidence of a third category of test will improve his case in court, then he should continue into the third type of examination.

Category Three: Structured Evaluation

These tests deal with more complicated psychophysical performance and require maximum cooperation of the suspect. It is important that the location for conducting these tests should be level and well lighted.

All tests in this category must be thoroughly explained and demonstrated. The officer must be able to perform any test he asks the suspect to perform; he may have to prove this in court. The suspect should be asked to wait until the officer has completed his instructions before attempting the test. After the instructions are given, the officer should ask the suspect if he understands what he is to do. If there is any doubt, the instructions should be repeated.

The distortion of comprehension and concentration as well as of judgment and perception will generally begin to emerge at this time. A person under the influence of alcohol, especially the low and medium BAC's, tends to feel mentally expanded and able to rise to any situation. The following may occur and should be noted:

- Suspect may begin test simultaneously with instructions.
- Suspect may disregard or stop instructions, claiming he knows what the officer wants and then proceed without complete instructions.
- Suspect may have trouble comprehending instructions as indicated by his questions or his inability to begin.
- Suspect may not comprehend or remember instructions as indicated by his performance.
- Suspect may hurry through test with a display of "cocksureness".

The specific tests listed under category three are described below.

- Walking. This test can be administered in three different ways.
 - Instruct the subject to walk in his normal manner, turn on command and walk back.
 - Establish a line, using any markings available but with a clearly visible end point and approximately 10-15 feet long. Ask the suspect to walk, heel-to-toe to the end point (or turn on command) and return heel-to-toe to the starting point.

- Ask the subject to walk, heel-to-toe, in a straight line. Identify the number of steps he is to take going forward, whether he is to turn around to the right or left at the end of the forward steps, and the number of steps (different number) he should take when returning. When using this more complex method of walking, record the number of steps and the turn, as instructed and as performed.

In all three forms this test can show balance and coordination of walking and turning movement. In the more complicated forms, it can show the suspect's ability to concentrate on more than one thing at a time by adding the need for following simple but explicit instructions while walking and turning.

- Romberg Method. Have the suspect stand at "attention" position, heels and toes together, arms at side, head tilted back and eyes closed for approximately 10 seconds. Make certain suspect's eyes are closed and be prepared to catch him if he begins to fall.
- Finger-to-nose. This test can be administered in two different ways, the first being the traditional method and the second a modification to provide additional instruction and precise procedure.
 - Suspect stands erect with feet together, eyes closed, arms stretched out to the side at shoulder height with the index finger of each hand extended and the rest of the hand closed to a fist. With the left hand first, the suspect is

instructed to touch the tip of his nose with the tip of his finger by swinging his arm in at the elbow. The process is repeated for the right hand.

- Standing in the same position with his arms and hands in the same manner as "A", the suspect is requested to:
 - Swing right arm at the shoulder, directly in front of him, as if pointing straight ahead
 - With arm extended, roll hand until fisted palm is upward
 - Bend fist backward at the wrist until finger points straight up
 - Bend the arm at the elbow; bring the hand back touching the end of the finger on the end of the nose
 - Return the hand to the starting position in lock step fashion by reversing the procedure
 - Repeat the process a second time
 - Follow the same procedure with the left hand.

It is important that the suspect sees and hears a clear demonstration of instruction. Do not allow him to begin until he has acknowledged that he understands the procedure.

If the suspect fails when attempting to touch the nose the first time, and subsequent efforts are acceptable, the officer should minimize the value of any error on the first try.

- Balance. Suspect stands erect, feet together, arms at side while looking straight ahead. He is directed to raise and extend his left foot forward, without bending his leg at the knee. With the heel approximately 6-12 inches off the ground, the subject maintains this position for approximately 10 seconds. Repeat the process for the opposite foot. Do not ask the suspect to close his eyes during this test.

- Alphabet. The suspect is asked to repeat aloud the English alphabet (A, B, C's). This test can demonstrate memory and concentration. Besides incorrect order, note speech pattern and periods of hesitation. Hesitation can be an indication of loss of concentration. If the suspect fouls the first try, ask him to try again. If the second try is successful, the officer should minimize the value of any minor error made in the first. The officer need not demonstrate this test.

TO CHECK YOUR PROGRESS PLEASE ANSWER THE FOLLOWING QUESTIONS.

Directions: Listed below are a number of statements about psychophysical testing. On your response sheet, circle the letter A if the statement is accurate. Circle the letter I if it is inaccurate.

8. The officer should not rely on any one test, rather he or she should use a combination of related tests.
9. Chemical testing, because of its scientific accuracy, is now considered a better way to demonstrate driver impairment than the use of psychophysical tests.
10. The officer should only utilize tests that could be performed successfully by the average sober individual.

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

11. The officer's initial evaluation

- a. Begins while suspect is still in vehicle.
- b. Includes an assessment of speech patterns.
- c. Includes a check on clothing conditions.
- d. All of the above.

12. Non-structured evaluation includes the suspect's ability to:

- a. Perform routine exercises such as walking and standing.
- b. Focus his/her eyes on distant object.
- c. Follow a detailed set of instructions.
- d. All of the above.

13. Structured evaluation includes the Romberg method which is

- a. The finger-to-nose test.
- b. A stand-at-attention with eyes closed test.
- c. A test of balance with the left foot raised and extended.
- d. None of the above.

TO CHECK YOUR ANSWERS TURN TO THE KEY ON PAGE XXXII - 43.

REVIEW ANY ITEMS YOU MISSED BEFORE CONTINUING.

THE ALCOHOLIC INFLUENCE REPORT FORM

Need for the AIR Form

Proper case preparation for the prosecution of DWI is a major key in successful drinking driver enforcement. Throughout the entire arrest process, the arresting officer must observe and record all information relevant to establishing the elements of the arrest.

In those cases that ultimately go to trial, the arresting officer may have to recall the facts of an arrest that took place eight months to a year earlier. If an organized, thorough method of collecting and recording evidence has not been used, it is highly unlikely that the officer's testimony of facts as he remembers them will be sufficient to convince a jury.

Many law enforcement agencies, large and small, utilize a pre-printed form especially designed for the recording of observations and information during a DWI investigation. These forms which are unique to drinking driver enforcement, are often referred to as Alcoholic Influence Report forms.

Samples of different types of forms used can be found in Appendix A of this unit. Included is a copy of the universal form provided by the National Safety Council. This form, or a modification of it, is used by most law enforcement agencies. A copy of the form used by the Maryland State Police is also included. The student is encouraged to

compare a copy of the form used in his or her jurisdiction with these forms.

The AIR form can serve to collect and preserve two types of information for case preparation:

First, it provides a place and means of recording the officer's observations and any comments made by the suspect during the psychophysical testing phase of the arrest procedure. Second, the form contains pertinent questions (to be used during the interview stage of investigation) which are relative to the circumstances surrounding the suspect's condition. The answers to these questions are the defendant's own admissions, not interpretations by the officers. Consequently, they can become extremely important during trial for contradicting any of the defendant's "alibis". The student may wish to read the section marked "Interview" on the AIR forms found in the appendix.

Use of the AIR Form in Maryland

There are two principal variations of the Alcoholic Influence Report Form (AIR) in use in the state of Maryland. One of these, the form used by the Maryland State Police, may be found in Appendix A.

The first variation is seen in the form that has a list of suggested questions to ask the accused as well as a series of coordination tests. The police officer using this type of form should be sure to read the suspect his rights (Miranda warning) before asking any of the questions.

However, if an individual has been arrested and formally charged, there is no need to give a warning prior to administering the coordination tests.

The second variation is reflected in the form that has eliminated both the questions and the coordination tests. In their place, the arresting officer is to record his or her observations of the accused. If any questions are used in conjunction with this form, the Miranda warning must be read to the suspect.

In all DWI cases, the AIR form should be completed irrespective of whether the accused submits to a chemical test or not. The AIR may still furnish good information in prosecuting the accused. It also serves the officer as a valuable reference at the time of the trial.

Use of the AIR Form--General Considerations

Much of the information relative to the observations made during psychophysical testing will be transferred to the AIR form after the suspect is arrested. The arresting officer should be thoroughly familiar with the form as well as with testing procedures in order to eliminate any loss of evidence.

Included on, or supplemental to, the AIR form should be a section in which the officer can include a narrative of the various events that occurred prior to and subsequent to the arrest. This narrative should be as detailed as possible including street names, weather and road conditions, witnesses and the defendant's vehicle condition.

An often overlooked or minimized use of the AIR form is its value in assisting the arresting officer in determining the need for medical attention. The officer should mentally digest, as well as record, the information he receives in order to provide maximum consideration to the health and safety of the suspect.

While most AIR forms provide for the recording of the most often needed information, the arresting officer should not feel restricted to its format. There may be a great deal of additional information that would be relative to a particular incident which the officer should elicit and record.

Even though the answers provided on the form may only require the checking of a "yes" or "no", the officer should record in a supplemental area the exact answer given by the defendant if it has testimonial value in establishing the subject's impairment. The exact reply to the officer's questions, repeated by the officer to the jury, is often more convincing evidence of impairment than testimony as to certain psychophysical manifestations. Inappropriate answers to normal questions, asked in a serious vein, indicate the subject's judgment is impaired.

The format of an AIR form may provide several methods or combinations of methods of recording the various observations and responses. The officer may have only to check or circle a particular word that best describes an observation to a psychophysical test or to a response to a question. Or, he may write in the complete answer to a question.

TABLE 1

GLOSSARY OF TERMS FOR USE ON AIR FORMS

Demeanor - Attitude

Fighting
Excited
Indifferent
Hilarious
Jovial
Antagonistic
Cooperative

Un-cooperative
Polite
Calm
Sleepy
Crying
Resisting
Profane

Threatening
Argumentative
Arrogant
Abusive
Belligerent
Sarcastic

Walking and Standing

Falling
Veering
Swaying

Holding onto _____ for stability
Staggering
Wobbling

Stiff, rigid
Stumbling
Sagging

Speech

Shouting
Rambling
Slobbering
Incoherent
Boisterous
Whispering

Slurred
Hoarse
Whining
Crying
Stuttering
Accent

Slow, deliberate
Confused
Thick
Profane
Misusing words
Hissy

Actions

Hiccoughing
Belching

Vomiting
Dropping ashes

Some forms provide a space for the officer to write his own word or phrase describing his observations of a particular event. The officer is then provided a typical list of adjectives from which to select. These same words can also be used in the narrative portion of the report. Table 1 provides a partial listing of typical words or phrases that can be used in completing the influence report.

In using any of these words, the officer must be prepared to explain in court what they mean. Some of these terms will not stand alone. The list is by no means complete and can undoubtedly be expanded upon as the experience of the officer increases.

TO CHECK YOUR PROGRESS PLEASE ANSWER THE FOLLOWING QUESTIONS.

Directions: Listed below are a number of statements about the use of the Alcoholic Influence Report Form (AIR). On your response sheet, circle the letter A if the statement is accurate. Circle the letter I if it is inaccurate.

14. The arresting officer should not confine himself to just the information asked for on the AIR form if he feels he needs additional relevant information.
15. The AIR form should be completed only in those cases where the DWI suspect refuses to submit to a chemical test.
16. Before asking the DWI suspect to perform any coordination tests or answer any questions listed on the AIR form, the suspect must be advised of his or her rights (Miranda warning).
17. If a DWI suspect has been arrested and formally charged, the officer does not have to give a warning of rights prior to administering any coordination tests that might be listed on the AIR form.

TO CHECK YOUR ANSWERS TURN TO THE KEY ON PAGE XXXII - 43.

REVIEW ANY ITEMS YOU MISSED BEFORE CONTINUING.

CHEMICAL TESTING IN DWI ENFORCEMENT

Nature and Purpose of Chemical Testing

The primary use of chemical analysis is to verify the observations, examinations, and tests performed upon a subject arrested for DWI by the arresting officer. In addition to confirming the officer's opinion, the results also give rise to certain statutory presumptions. With increased use of drugs in recent generations, chemical testing in DWI law enforcement is assured of being more popular than ever.

The basis for chemical testing in the enforcement of implied consent statutes is found in the fact that the intoxicating effects of ethyl alcohol are caused by the depressing influence of alcohol on the brain or nerve centers. Since the blood is the method by which the alcohol is distributed to the brain, after it is absorbed from the digestive tract, a direct relationship can be established between the degree of depressing influence and the amount of alcohol in the blood. (The more alcohol there is in the blood, the greater the influence on the brain.)

The Article of Courts and Judicial Proceedings, Section 10-307 sets forth the following blood alcohol concentration (BAC) as indicative of intoxication. The BAC, it should be remembered, represents the amount of alcohol by weight in the volume of a person's blood.

- A BAC of .05% or less on the blood or breath tests or .08% or less on the urine test shall require the presumption that the defendant was NOT under the influence of intoxicating liquor or that his psychophysical condition was impaired.
- A BAC of more than .05% but less than .10% on the blood or breath tests or more than .08% but less than .13% on the urine test should give rise to no presumption but may be considered along with other competent evidence in determining the defendant's innocence or guilt.
- A BAC of .10% or more on the breath or blood tests or of .13% or more on the urine test shall be considered prima facie evidence that the suspect's ability to operate a motor vehicle was impaired by the consumption of alcohol.
- A BAC of .15% or more on the breath or blood tests or .20% or more on the urine test is considered prima facie evidence that the defendant was in an intoxicated condition.

In most states chemical test results are not conclusive proof of driving under the influence. They merely serve as corroborative evidence that previously observed signs of impairment were caused, at least in part, by the presence of alcohol or drugs. It is important to keep in mind, however, that the results of chemical testing are indicative of the time the test was given (sample collected) and not the time of arrest or when the driving occurred.

The current popularity and abuse of drugs has escalated the importance of chemical analysis in law enforcement. When a specimen of blood or urine (breath is not used for drug analysis) discloses the presence of a drug, the amount found may or may not be stated by the laboratory. Sufficient research work has not been done to establish a correlation between drug levels in blood or urine and their effect upon driving performance. So at the present time no presumptions can be made in this respect. Therefore, officers should not submit samples for drug analysis to the Chemical Test for Alcohol Unit, unless under extreme cases, such as fatal accidents.

Types of Chemical Tests Available

The statutes of the state of Maryland will allow evidence of a person's alcohol concentration as determined by chemical analysis of blood, urine, or breath.

Results of the analysis of blood, breath, and urine, when properly collected and analyzed, are accepted in most courts as reliable scientific evidence. Nevertheless, many judges and juries hesitate to convict on the evidence of a blood alcohol concentration. This problem stems from the lack of a true understanding of the relationship of a BAC and the impairment of safe driving ability. It is evident that increased educational efforts are needed if this problem is to be solved.

TO CHECK YOUR PROGRESS PLEASE ANSWER THE FOLLOWING QUESTIONS.

Directions: Listed below are a number of statements about the blood alcohol concentrations (BAC) established by the Office of the Chief Medical Examiner (Maryland). On your response sheet, circle the letter A if the statement is accurate. Circle the letter I if it is inaccurate.

18. A BAC of .20% or more on the urine test is considered prima facie evidence that the defendant was intoxicated.
19. A BAC of .08% on the breath test shall be considered as evidence that the suspect's ability to operate a motor vehicle was impaired.
20. A BAC of .05% on the urine test should give rise to no presumption but may be considered along with other competent evidence.
21. A BAC of .13% on the blood test shall be considered prima facie evidence that the suspect's ability to operate a motor vehicle was impaired.

TO CHECK YOUR ANSWERS TURN TO THE KEY ON PAGE XXXII - 43.
REVIEW ANY ITEMS YOU MISSED BEFORE CONTINUING.

ADMINISTRATION OF THE CHEMICAL TESTS

General Considerations

All chemical tests should be provided as soon after the arrest as possible in order to minimize the interval between the time the test was taken and the time the officer observed the suspect driving. Under Maryland law (CJ, 10-303) all chemical tests must be given within two hours after the person accused is apprehended.

All chemical tests should be conducted within the guidelines laid down by the state toxicologist, Office of the Chief Medical Examiner and the Maryland State Police as they have been charged with this responsibility under the law.

Only the equipment approved and certified by the state toxicologist, Office of the Chief Medical Examiner and the Maryland State Police may be used to conduct the tests. (See Appendix B-XXXII-Ab-1 for list of approved blood and urine alcohol collection kits.)

Under section 10-305 of the Article of Courts and Judicial Proceedings, the suspect must be given the right to choose the type of test to be administered. If the test he or she chooses is not available, then no test may be given. The guilt or innocence of the suspect cannot be presumed or inferred because the test he requested was not available. Under such circumstances, the fact that he was unable to take the test he requested is not admissible evidence in court. (See CJ, 10-305.) Similarly, the suspect cannot be charged, under section 6-205.1, with refusal to take a test.

The suspect should have the results of any chemical test made available to him or her by official certificate prior to trial. The results of the breath test may be given to the suspect immediately after the test. As soon as the results of the blood or urine test are available from the laboratory, they should be sent to the defendant by first class mail or they may be hand carried in cases where the accused lives in the area.

Regardless of the choice of chemical tests, there are certain procedures and considerations within the administration of each for which the arresting officer is responsible. The following outlines these various procedures and considerations for each of the chemical tests as they relate to the arresting officer, notwithstanding policy by individual departments, prosecutors, or judges.

Breath Test

Subjects must not be allowed to drink any liquid, smoke, eat, or otherwise place any mints or sprays in their mouths for at least 20 minutes prior to the test. It is the policy of the Maryland State Police to have the arresting officer observe and verify this fact beginning with the time of the arrest. If the subject vomits or belches, the mouth should be rinsed and the 20-minute waiting period repeated.

The breath testing operator should be aware of any severe medical problems, such as acute emphysema, or abnormally high body temperature of the subject.

In the State of Maryland, the Breathalyzer is the only approved instrument for testing breath. All operators of this equipment must be certified and licensed to give the tests. Hence, it is the operator of the instrument who is responsible for the chemical test procedure. The arresting officer, however, should witness the entire procedure in order to provide support or other relevant testimony to the test. Whenever possible the test should be given in private and without interruption. The only people who should be present are: the accused, the Breathalyzer operator and the arresting officer.

Blood Test

All blood tests must be given with the approved equipment and the withdrawal of blood must be done by qualified medical personnel. For a complete and detailed description of the procedure to be used in this test, the student is referred to Appendix B of this unit.

The apprehending officer must witness the taking of blood. He must also receive the blood sample for transportation or shipment to the laboratory. It is generally not necessary for the medical personnel to appear in court if the officer witnesses the process.

It is important to contact the laboratory to make sure the chemist who did the BAC analysis is available to give "expert testimony" on the date of the trial, only when necessary. The official results provided by the Chemical Test for Alcohol Unit may be sufficient evidence for trial.

Urine Tests

The taking of the urine samples should be witnessed by the apprehending officer except in cases where the suspect is of the opposite sex. In such cases the apprehending officer should arrange to have the sample taking witnessed by an officer or police employee of the same sex as the suspect.

In all cases, only approved urine kits will be used. These kits contain two plastic disposable cups for voiding the bladder, two 19 ml tubes in which to transport the specimen, evidence seals, forms, and mailing containers.

Two samples must be obtained from the accused in order to have a valid test. The first sample is taken in the plastic cup from which the 19 ml tube is filled and a label is attached. It is important that all information on the label be properly filled out including the sample number.

Approximately 20-30 minutes after taking the first sample, a second sample should be taken using the same procedure as followed in collecting the first sample. A new plastic cup must be used for each sample.

As with the blood test, the chemist who conducts the analysis should be contacted to insure his availability for the trial, only when necessary.

Appendix B includes further important details regarding procedures to be followed in obtaining and processing a urine sample.

Regardless of what test is administered, the officer should record any comments or actions on the part of the subject which may occur during the testing procedure. The officer should be especially aware of the general condition of the subject at the time of the test as compared to the time of the arrest.

LEGAL RESPONSIBILITIES RELATING TO CHEMICAL TESTING

The following is a brief summary of the key legal responsibilities that must be observed by the arresting officer as they relate to drinking driver statutes:¹

Prior to Requesting a Chemical Test

- Subject must be under arrest.
- Subject has a right to a chemical test.
- Officer has the right to request a chemical test.

Requesting a Chemical Test

- Subject must be advised of his rights concerning a chemical test.
- Subject has right to refuse test.
- Subject has the right to choose the type of test.
- After submission to the chemical test provided by the police officer, subject has the right to an additional test by a physician of his own choosing.
- Under normal circumstances, the subject shall be allowed sufficient time from the time of his advisement of the implied consent rights in which to decide if he wants to refuse or submit to a chemical test.

¹The student is encouraged to read sections CJ, 10-302 to 10-309 of Motor Vehicle Laws of Maryland for additional specific legal responsibilities.

Providing a Chemical Test

- Samples and specimens of urine, breath, or blood shall be taken and collected in a reasonable manner. Only a duly licensed physician, or other qualified medical personnel, acting in a medical environment, at the request of a police officer, can withdraw blood with the purpose of determining the alcohol content
 - Breath tests must be given by an operator certified by the State Toxicologist and the Maryland State Police
 - Blood and urine samples must be handled in accordance with proper chain of evidence procedures.

TO CHECK YOUR PROGRESS PLEASE ANSWER THE FOLLOWING QUESTIONS.

REVIEW ANY QUESTIONS YOU MISSED BEFORE TAKING THE POSTTEST.

THIS IS THE END OF SELF-INSTRUCTIONAL UNIT XXXII.

Directions: On your response sheet, circle the letter of the response you feel correctly completes the following statements.

22. A DWI suspect apprehended in Maryland and agreeing to submit to a chemical test must be given the test within what period of time after the apprehension:
- a. Half an hour
 - b. One hour
 - c. One hour and a half
 - d. Two hours

23. Your role as the arresting officer in a DWI case where the suspect has agreed to submit to a breath test would be to:
- a. Witness the test as given by an operator certified and licensed by the Maryland State Police.
 - b. Administer the test under the supervision of a certified (licensed) operator.
 - c. Insure that the process is witnessed by another officer whenever possible.
 - d. Administer the test using approved equipment (the Breathalyzer).
24. Select from the alternatives listed below the procedure that would be correct for administering the chemical tests required by the implied consent law.
- a. Administer two tests of any one type (blood, breath, or urine) as soon as convenient.
 - b. Witness the collection of two samples of breath with a minimum of 30 minutes between samples.
 - c. Witness the collection of two samples of urine with a minimum of 20 minutes between samples.
 - d. Provide the physician who takes a blood sample with the proper equipment for mailing the sample to the laboratory.

TO CHECK YOUR ANSWERS TURN TO THE KEY ON PAGE XXXII - 43.

REVIEW ANY ITEMS YOU MISSED BEFORE CONTINUING.

XXXII

KEY TO EMBEDDED QUESTIONS

	Refer to Page XXXII -
1. b. To establish probable cause prior to the DWI arrest.	4
2. I	6
3. II	7
4. I	6
5. III	8
6. I	6
7. A	7
8. A	11
9. I	11
10. A	11
11. d. All of the above.	12-14
12. a. Perform routine exercises such as walking and standing.	15-17
13. b. A stand-at-attention with eyes closed test.	17-21
14. A	27
15. I	26
16. A	25
17. I	26
18. A	32
19. A	32
20. I	32
21. A	32
22. d. Two hours.	40
23. a. Witness the test as given by an operator certified and licensed by the Maryland State Police.	42
24. c. Witness the collection of two samples of urine with a minimum of 20 minutes between samples.	43

APPENDIX A

ALCOHOLIC INFLUENCE REPORT FORMS



KNOWLEDGE KEY TO SUCCESS

VOLUME XIII

March 1, 1974

NO. 12

ALCOHOL INFLUENCE (NEW REVISED MSP FORM 32)

READING TIME 2 min 10 sec

There have been complaints received from our field Troopers concerning the present Alcohol Influence Report Form (MSP Form 32). A new form has been developed in cooperation with the field forces in an effort to reduce or eliminate the problem.

The main change in the new form has been to eliminate the use of the stereotyping. Check the appropriate block section in describing the actions and conditions of the accused. Many times the blocks failed to properly describe the accused, thus causing trouble in prosecution. It also caused some Police officers to become lazy and simply check a block rather than make good observations of the accused.

Most of the new form is self-explanatory. However, some sections need to be elaborated upon so that uniformity will exist throughout the Agency.

- Section I. No change
- Section II. Note time in dealing with treatment and release
- Section III. This section is new and very important. Much of the criticism of the old form was that it did not allow the Trooper enough opportunity to describe the actions of the accused in his own words. This section should have the information which helps the Trooper to establish a good "prima facie" case against the accused. Many courts feel that Police officers in general are not properly establishing this, thus causing cases to be lost, even though high blood alcohol levels are presented from chemical tests.
- Section IV. This section is perhaps the most significant change in the form. All of the observations of the accused and post arrest contacts are left up to the descriptive opinion of the arresting Trooper. Instead of trying to make the accused fit the descriptions listed on a form, the form now is designed to allow the Trooper to use his own words to describe the accused. It is stressed that the Trooper should be careful to fully cover all of the areas listed, because they are of utmost importance in the prosecution of the case.
- Section V. This section has also been revised because of problems in court. It is up to the Trooper to give his own opinion of the sobriety and ability of the accused to operate a motor

vehicle. The question of sobriety is a difficult one. However, it is felt by most judges that the opinion should be that which deals with the charge against the accused; i.e., intoxicated or ability impaired due to the consumption of alcohol. This may not hold true in all cases. Therefore, the form allows the Trooper to form his own opinion. The opinion should be one which is acceptable in court.

Section VI.

This section covers all of the court action taken against the accused. It will enable the Barrack Commander to be able to determine the results of a DWI program in his area without having each Trooper check back on all of his summons. The appeal section is to be used only after the final appeal is adjudicated.

It is hoped that the revised Alcohol Influence Report Form will be of more value to the field than the old form. Much time has been spent by field personnel, both Troopers and supervisory, to have a good form developed. How, ever, the success of the form lies with the Troopers alone. If used properly, the new form should be a valuable tool in prosecuting one of the most difficult and serious motor vehicle cases.

Ar Accused was Stopped: Miranda Warning
DR-15 Form Read

YES _____ NO _____ TIME _____
YES _____ NO _____ TIME _____

Who and How Many Subjects with Accused - Include sobriety if known _____

Vehicle - Advise if Stored and Where _____

Evidence in Vehicle - Disposition (to include Prop. Held #) _____

Date and Time Arrived at Barrack _____ Departed _____

Chemical Test Personnel _____

Date and Time Test Given _____ Type Test _____ Alcohol % _____

V. Conclusions of Arresting Officer as to Sobriety _____

Driving Ability of Accused _____

VI. Trial Date _____ Court _____ Plea _____ Verdict _____ Fine & Cost _____

Disposition _____

Appeal Noted _____ Court _____

Trial Date _____ Plea _____ Verdict _____ Fine & Cost _____

Disposition _____

(Appeal Section to be completed only after case is adjudicated at the final appeal level.)

Arresting Officer _____ Signature _____

Witness _____

Witness _____

Reviewing Supervisor's Initials _____
Make Original Only (To be retained at installation)

(Check)	(Check)
<input type="checkbox"/> Driver	<input type="checkbox"/> Accident
<input type="checkbox"/> Pedestrian	<input type="checkbox"/> Violation
<input type="checkbox"/> Passenger	<input type="checkbox"/> Other
Date and time of accident or violation _____ am _____ pm	

ALCOHOLIC INFLUENCE REPORT FORM

Police Dept. _____
Arrest No. _____
Accident No. _____
Arresting Officer _____
Date and time in custody _____ am _____ pm

Name _____ Address _____

Age _____ Sex _____ Race _____ Approx. Wt. _____ Operator Lic. No. _____ State _____

OBSERVATIONS:

CLOTHES	Describe: (Type & Color)	Hat or Cap _____
		Jacket or Coat _____
		Shirt or Dress _____
		Pants or Skirt _____
	Condition:	<input type="checkbox"/> Disorderly <input type="checkbox"/> Disarranged <input type="checkbox"/> Soiled <input type="checkbox"/> Mussed <input type="checkbox"/> Orderly (Describe) _____
BREATH	Odor of Alcoholic Beverage:	<input type="checkbox"/> strong <input type="checkbox"/> moderate <input type="checkbox"/> faint <input type="checkbox"/> none
ATTITUDE	<input type="checkbox"/> Excited <input type="checkbox"/> Hilarious <input type="checkbox"/> Talkative <input type="checkbox"/> Carefree <input type="checkbox"/> Sleepy <input type="checkbox"/> Profanity <input type="checkbox"/> Combative <input type="checkbox"/> Indifferent <input type="checkbox"/> Insulting <input type="checkbox"/> Cocky <input type="checkbox"/> Cooperative <input type="checkbox"/> Polite	
UNUSUAL ACTIONS	<input type="checkbox"/> Hiccoughing <input type="checkbox"/> Belching <input type="checkbox"/> Vomiting <input type="checkbox"/> Fighting <input type="checkbox"/> Crying <input type="checkbox"/> Laughing	
SPEECH	<input type="checkbox"/> Not Understandable <input type="checkbox"/> Mumbled <input type="checkbox"/> Slurred <input type="checkbox"/> Mush Mouthed <input type="checkbox"/> Confused <input type="checkbox"/> Thick Tongued <input type="checkbox"/> Sluttered <input type="checkbox"/> Accent <input type="checkbox"/> Fair <input type="checkbox"/> Good	
Indicate other unusual actions or statements, including when first observed: _____		
Signs or complaint of illness or injury: _____		

PERFORMANCE TESTS:

(Note—See departmental instructions for conducting these tests)

Check Squares if Not Made	Check appropriate square before word describing condition observed
<input type="checkbox"/> BALANCE	<input type="checkbox"/> Falling <input type="checkbox"/> Needed Support <input type="checkbox"/> Wobbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> WALKING	<input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Stumbling <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> TURNING	<input type="checkbox"/> Falling <input type="checkbox"/> Staggering <input type="checkbox"/> Hesitant <input type="checkbox"/> Swaying <input type="checkbox"/> Unsure <input type="checkbox"/> Sure
<input type="checkbox"/> FINGER-TO-NOSE	Right: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure
	Left: <input type="checkbox"/> Completely Missed <input type="checkbox"/> Hesitant <input type="checkbox"/> Sure
<input type="checkbox"/> COINS	<input type="checkbox"/> Unable <input type="checkbox"/> Fumbling <input type="checkbox"/> Slow <input type="checkbox"/> Sure <input type="checkbox"/> (Other) _____
	(Balance during coin test) _____
Ability to understand instructions: <input type="checkbox"/> Poor <input type="checkbox"/> Fair <input type="checkbox"/> Good Tests performed: Date _____ Time _____ am _____ pm	

OBSERVER'S OPINION:

Effects of alcohol: <input type="checkbox"/> extreme <input type="checkbox"/> obvious <input type="checkbox"/> slight <input type="checkbox"/> none	Ability to drive: <input type="checkbox"/> unfit <input type="checkbox"/> fit
Indicate briefly what first led you to suspect alcoholic influence: _____	
Observed by: _____ Assignment: _____	
Witnessed by: _____ Date _____ Time _____ am _____ pm	

HEMICAL TEST DATA:

Specimen: <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Saliva <input type="checkbox"/> Urine <input type="checkbox"/> None <input type="checkbox"/> Refused <input type="checkbox"/> Unable	Analysis result: _____ If Breath, what instrument? _____
If refused, why? _____	

INTERVIEW:

Were you operating a vehicle? _____ Where were you going? _____

What street or highway were you on? _____ Direction of travel? _____

Where did you start from? _____ What time did you start? _____

What time is it now? _____ What city (county) are you in now? _____

What is the date? _____ What day of the week is it? _____

INTERVIEWER TO FILL IN ACTUAL: _____

Time am/pm Day Date Interviewer's Name

When did you last eat? _____ What did you eat? _____

What were you doing during the last three hours? _____

Have you been drinking? _____ What? _____ How much? _____

Where? _____ Started? _____ am/pm Stopped? _____ am/pm

Are you under the influence of an alcoholic beverage now? _____

What is your occupation? _____ When did you last work? _____

Do you have any physical defects? _____ If so, what? _____

Are you ill? _____ If so, what's wrong? _____

Do you limp? _____ Have you been injured lately? _____ If so, what's wrong? _____

Did you get a bump on the head? _____ Were you involved in an accident today? _____

Have you had any alcoholic beverage since the accident? _____ If so, what? _____

Where? _____ How much? _____ When? _____

Have you seen a doctor or dentist lately? _____ If so, who? _____ When? _____

What far? _____ Are you taking tranquilizers, pills or medicines of any kind? _____

If so, what kind? (Get sample) _____ Last dose? _____ am/pm Do you have epilepsy? _____

Diabetes? _____ Do you take insulin? _____ If so, last dose? _____ am/pm

Have you had any injections of any other drugs recently? _____ If so, what far? _____

What kind of drug? _____ Last dose? _____ am/pm When did you last sleep? _____

How much sleep did you have? _____ Are you wearing false teeth? _____ Do you have a glass eye? _____

HANDWRITING SPECIMEN	
Signature and/or anything he chooses.	

REMARKS:

SUPPLEMENTARY DATA:

(Note—Get witnesses, including officers who observed, to prove driving)

WITNESSES			Was Suspect Driving or Operating	What Was His Condition	Where Observed
Name	Address	Tel. No.			

Passengers in Suspect's Vehicle	Name	Address	Condition

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APPENDIX B

MARYLAND STATE POLICE - PROCEDURES FOR
SUBMITTING BLOOD AND URINE SAMPLES
IN DWI CASES



MARYLAND STATE POLICE
CHEMICAL TEST FOR ALCOHOL UNIT

PROCEDURES FOR SUBMITTING
BLOOD AND URINE SAMPLES FOR
ALCOHOL DETERMINATION IN
DRIVING WHILE INTOXICATED CASES.

COLONEL THOMAS S. SMITH
SUPERINTENDENT



PIKESVILLE, MARYLAND 21208

MARYLAND STATE POLICE

On February 1, 1975, the Maryland State Police Crime Laboratory will assume the responsibility for analyzing blood and urine specimens which arise from Driving While Intoxicated arrests. The new facility will be under the approval and supervision of the Toxicologist, Office of the Chief Medical Examiner, Department of Post Mortem Examiners, who, by law, must approve the personnel and equipment.

Since the laboratory will be a new service rendered to all law enforcement agencies, the Chemical Test for Alcohol Unit has prepared this booklet to acquaint all agencies with the new facility and the proper procedures for submitting samples.

It is sincerely hoped that this new addition to our laboratory will expand the services of the State Police to all law enforcement agencies.

A handwritten signature in cursive script, appearing to read "T. S. Smith".

T. S. Smith
Superintendent
Maryland State Police

PROCEDURES FOR SUBMITTING
BLOOD AND URINE SAMPLES FOR
ALCOHOL DETERMINATION IN
DRIVING WHILE INTOXICATED CASES.

A. Approved Equipment.

All blood and urine samples submitted to the laboratory must, by law, be with approved equipment. No sample will be processed which is not in the approved container. The following blood/urine collection kits have been approved for use by the Toxicologist in accordance with Section 10-304 of the Article of Courts and Judicial Proceedings.

1. Blood - The Becton-Dickinson Blood Alcohol Kit, manufactured by Becton-Dickinson, Division of Becton, Dickinson and Company, Rutherford, New Jersey 07070, is the only approved kit. The kit may be ordered through local distributors.
2. Urine - The urine alcohol kit distributed by Maryland Police Supplies, Inc., 7112 Darlington Drive, Baltimore, Maryland 21234, is approved. The urine alcohol kit issued by the Maryland State Police is also approved.
3. All blood and urine samples must be collected in accordance with the Regulations of the Toxicologist, effective January 1, 1975, and the Article of Courts and Judicial Proceedings, Sections 10-302 through 10-309.

B. Method of Submitting Sample.

1. In an effort to reduce the amount of paper work performed by the submitting officer, the MSP Form 34 has been revised. This form replaces the Medical Personnel Payment Voucher, Police Officers Report contained on the front of the Blood Collection Kit, the Police Officers Report contained in the urine collection kit, and the Request for Laboratory Examination form. The proper completion of the revised Form 34 is necessary before the sample can be received by the laboratory. Several new sections have been added, consequently, the form will be explained below. It is emphasized here that the Form 34 does not eliminate the use of the other material contained within the kits. All of the other forms, seals, and labels contained in the kit must be completed.

a. MSP Form 34 (10-74).

- (1) Law enforcement agency requesting alcohol analysis.
- (2) Assignment of arresting officer.
- (3) Accused complete name.
- (4) Arrest date.
- (5) Arrest time.

- (6) Type sample submitted for analysis.
- (7) Date and time 1st sample taken. (Blood and Urine).
- (8) Date and time 2nd sample taken. (Urine Only).
- (9) Location sample taken at - Barrack, Police Station, Hospital.
- (10) Arresting officer and I.D. No.
- (11) Installation Commander - his official representative may initial for his signature (ie, Duty Sgt., Lieutenant, etc.).
- (12) Where copy of official results will be sent and the name of the individual. (Arresting officer's name will also be placed on official results, but this insures that the proper agency officials will receive the communication for proper dissemination).
- (13) The complete name and title of the medical personnel to include the certificate number issued by the State Police. As will be noted, the block requiring the certificate number is no longer shown on the form. This information must be included by the officer. In case of a M.D. (physician), no certificate number is necessary because the law provides for his approval. This block is only filled in when the medical personnel is off duty.
- (14) When the medical personnel is on duty at one of the participating hospitals or when a doctor is on duty at a hospital, this section is completed. Again, the certificate number will be included. If an accused has blood withdrawn from a hospital not approved but a "physician" withdraws the blood, the amount to be paid for such withdrawal is \$7.50. This price is fixed and cannot be increased. The arresting officer should be sure that a non-participating hospital is aware of this fact.
- (15) Total time used for specimen collection. This includes travel time when nurse/physician is off duty. No medical technician of an approved hospital pathology laboratory is approved or allowed to withdraw blood while off duty. He must be on duty at the hospital.
- (16) Total time spent in court, to include travel time. It will be necessary that an additional form be completed and forwarded to the Chemical Test for Alcohol Unit after each court date. Do not hold until the case is finally adjudicated.

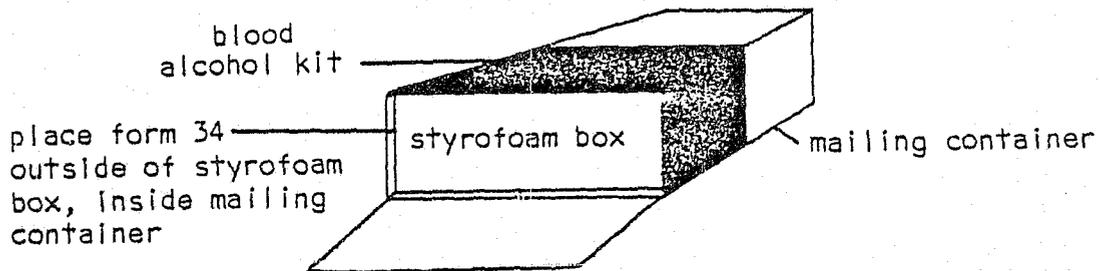
- (17) Court Date - This section completed each time the medical personnel appears in court for the case. If additional court appearances are required, additional forms must be submitted.
- (18) This section is used when the evidence is personally delivered to the Chemical Test for Alcohol Unit, or when transferred from one officer to another. No other sections in the "LABORATORY USE ONLY" part will be used by the law enforcement agency.

MARYLAND STATE POLICE CHEMICAL TEST FOR ALCOHOL UNIT ALCOHOL ANALYSIS - MEDICAL PERSONNEL PAYMENT AUTHORIZATION				CASE NO. (MSP HQ ONLY)	CASE NO. (LOCAL AREA USE)
ARREST INFORMATION					
DEPARTMENT			BARRACK/STATION		
ACCUSED NAME			ARREST DATE	TIME	TEST TYPE
			14	5 <input type="checkbox"/> AM <input type="checkbox"/> PM	<input type="checkbox"/> V <input type="checkbox"/> URN
1ST SAMPLE DATE & TIME		<input type="checkbox"/> AM <input type="checkbox"/> PM	2ND SAMPLE DATE & TIME		<input type="checkbox"/> AM <input type="checkbox"/> PM
11/7			1/8		
ARRESTING OFFICER & ID. NO.			LOCATION SAMPLE TAKEN		
10			9		
INSTALLATION COMMANDER			SEND RESULTS TO		
11			12		
MEDICAL PERSONNEL PAYMENT AUTHORIZATION					
MEDICAL PERSONNEL NAME - IF OFF DUTY HOME ADDRESS (INCLUDE ZIP CODE)					
13					
IF ON DUTY (HOSPITAL ADDRESS)					
14					
SPECIMEN COLLECTION TIME			COURT APPEARANCE TIME & DATE		
<input type="checkbox"/> ON DUTY _____ HR. 15 <input type="checkbox"/> OFF DUTY _____ HR.			<input type="checkbox"/> ON DUTY _____ HR. 16 <input type="checkbox"/> OFF DUTY _____ HR. 17 /		
LABORATORY USE ONLY					
CHAIN OF CUSTODY					
RECEIVED: FROM	BY		DATE	TIME	
	18		/ /	: <input type="checkbox"/> AM <input type="checkbox"/> PM	
			/ /	: <input type="checkbox"/> AM <input type="checkbox"/> PM	
CONDITION OF KIT (SEALS & MARKINGS)					
TESTED BY	DATE	1ST SAMPLE	2ND SAMPLE	ANALYSIS CONTROL NO.	CASE NO.
	/ /	0. % ETHYL ALCOHOL	0. % ETHYL ALCOHOL		

MSP FORM 34 (10-74)

HEADQUARTER'S FILE COPY

2. When the form is completed, the last copy, Arresting Officer, will be removed by the submitting agency and retained. The remaining four (4) copies will be forwarded with the blood/urine alcohol kit. Should the kit be hand carried, the officer's copy will not be removed until the chain of custody is completed by Chemical Test for Alcohol Unit personnel at Maryland State Police Headquarters.
 - a. Blood Alcohol Kit - The form will be placed in the cardboard mailing container outside the styrofoam box. Do not place the form inside the sealed styrofoam box with the blood kit.

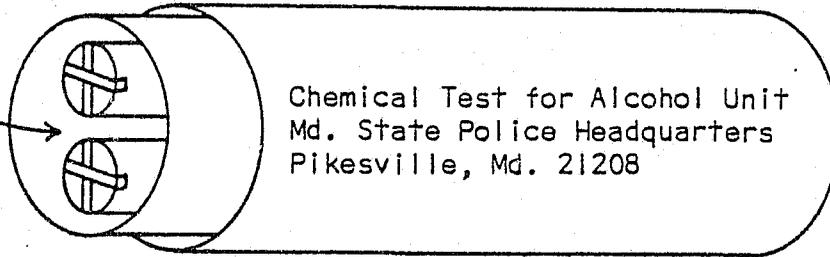


- b. Urine Alcohol Kit - The form will be placed in the large telescoping mailing box. It is of utmost importance that submitting officers have the two cardboard snap tubes, which contain the urine specimen, properly sealed. This will be of utmost importance for courtroom evidence.
3. All samples of blood and urine being submitted for alcohol analysis will be mailed by 1st Class Mail to:

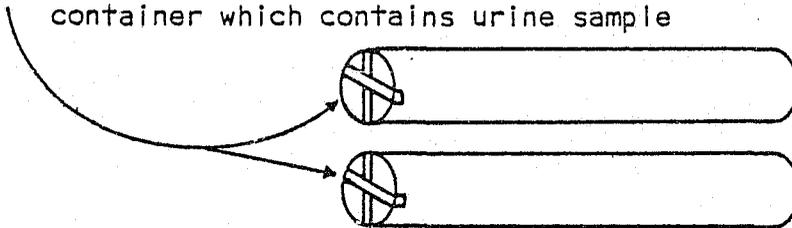
Chemical Test for Alcohol Unit
Maryland State Police Headquarters
Pikesville, Maryland 21208

- a. Samples may be hand carried to the Chemical Test for Alcohol Unit between 8:30 A.M. and 4:30 P.M., Monday through Friday. Arrangements should be made before hand carrying samples.
 - b. It is urged that samples be mailed when possible.

place form 34
in a large telescoping
mailing container



evidence seals placed over ends of cardboard
container which contains urine sample



(URINE ALCOHOL KIT)

C. Reporting Results of Blood and Urine Alcohol Analysis.

1. Two (2) copies of the results of blood/urine analysis will be mailed to the submitting agency as provided in B-(12). The original copy is to be retained by the police agency for court purposes; the other copy should be mailed or personally delivered to the accused in accordance with Section 10-304 of the Article of Courts and Judicial Proceedings. Both copies will be signed and are admissible as evidence in court. (A sample copy of a Blood and Urine Analysis Report is provided with this notice).
2. No sample will be received or analyzed which fails to meet the above procedures. Whenever a sample is received which fails to meet any provisions as provided by law, or the Regulations of the Toxicologist, a letter explaining such rejection will be forwarded to the submitting agency. (A sample copy of the letter of rejection is provided with this notice).

3. Additionally, a letter from the Toxicologist approving the equipment, ie, blood alcohol kit, urine alcohol kit, laboratory equipment, and the chemist will be provided with each blood/urine alcohol analysis report. This letter should also be taken to court as evidence of equipment approval, as outlined in Section 10-304 of the Article of Courts and Judicial Proceedings. (A sample copy of the Toxicologist's letter is provided with this notice).

D. Disposition of Alcohol Chemical Test Case.

1. MSP Form 171, Disposition of Alcohol Chemical Test Case, will be completed when the case is finally adjudicated.
2. This form is very important as samples are retained for any possible appeal. Having limited storage space, it is important that officers submit the form at the completion of the case. This enables the proper destruction of evidence no longer necessary for prosecution. (A sample copy of the Disposition of Alcohol Chemical Test Cases is provided with this notice.).

DISPOSITION OF ALCOHOL CHEMICAL TEST CASE

- (1) DEFENDANT _____
- (2) DATE OF ARREST _____
- (3) TYPE OF TEST _____
- (4) SUMMONS NUMBER _____
- (5) ARRESTING OFFICER _____
- (6) DEPARTMENT _____
- (7) DISPOSITION _____
- (8) DATE OF DISPOSITION _____
- (9) COURT _____

THIS FORM TO BE RETAINED BY ARRESTING OFFICER UNTIL FINAL DISPOSITION OF CASE. IT MUST THEN BE FORWARDED TO THE CHEMICAL TEST FOR ALCOHOL UNIT, MARYLAND STATE POLICE HEADQUARTERS, PIKESVILLE, MARYLAND 21208.

MSP Form 171

This form is included in all blood and urine test kits. It is important that the arresting officer fill the form out and mail it to the Chemical Test for Alcohol Unit, Maryland State Police Headquarters, Pikesville, Maryland 21208 upon disposition of the case so that specimen samples retained by the laboratory may be destroyed.

- (1) Defendants full name
- (2) Date of arrest
- (3) Type of test - blood/urine
- (4) Uniform Traffic Summons Number
- (5) Arresting officers name and number
- (6) Arresting officers Department
- (7) Disposition of case - Guilty, Not Guilty, Nolle Prosequi, Probation, etc.
- (8) Date case heard or disposition made
- (9) Court where case is heard or States Attorney's Office instituting Nolle Prosequi

KNOWLEDGE KEY TO SUCCESS

TRAINING



BULLETIN

VOLUME IX

January 1, 1974

NO. 10

ATTORNEY GENERAL'S OPINIONS RELATING TO CHEMICAL TESTING

This bulletin has been prepared in an effort to clarify some of the problems arising from the application of Article 66¹, Section 6-205.1. Several Attorney General's Opinions have been given which will guide the Trooper when advising a suspected drunk driver of his rights to a chemical test. It is pointed out that these opinions are only guidelines and each case will be judged on its particular circumstances.

Occasions arise when a suspect desires to change his mind as to the type of chemical test he wishes to be administered. A person could conceivably continue to change his mind until the two-hour time period has expired, but at no time refuse to submit to the test. The law enforcement officer has fulfilled his responsibility under the law when he offers a choice of tests to the driver and makes arrangements for the type of test selected to be conducted. If the driver selects one test and thereafter changes the selection to another type of test before any test is administered, the officer should note the time such election was made and the steps taken to comply with the defendant's request. If the defendant selects a blood test and after first selecting a breath test and only 20 minutes remain before the expiration of the two-hour period, there would most likely be insufficient time to administer the test. In this case, the defendant should be advised that his request cannot be granted because of the lack of time and that he would have to submit to the first test selected. If the defendant continues to elect different tests, or fails to submit to any test, causing the two-hour time limit to expire, the Motor Vehicle Administration should be notified by use of the DR-15 form. It is important that the Trooper document all times and requests for different tests.

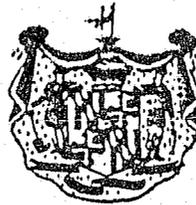
Another question which has caused considerable problems is: if a defendant refuses to sign the consent form enclosed in the blood kit, prior to having blood withdrawn but verbally consents, would the doctor or nurse be protected in a criminal suit for assault and battery, and in a civil suit for malpractice, if the blood was withdrawn upon oral rather than written authorization?

There is no requirement anywhere in the law for a defendant to sign a statement consenting to the blood withdrawal. If the driver consents to the withdrawal of blood, such consent may be oral or written. If a civil suit alleging malpractice was filed, the critical question is whether such blood withdrawal was performed with the requisite skill or care, or was such blood withdrawn done negligently resulting in injury to the motorist. Under the Maryland law there is a presumption that a doctor has performed his medical duties with the requisite care and skill, and the plaintiff has the burden of proof to show both lack of requisite skill or care and that such want of skill or care was a direct cause of injury. *Riley v. U. S.*, 248 F. Supp. 95 (1965). However, neither the consent form nor oral consent would protect medical personnel from civil suit

if the blood was withdrawn in a grossly negligent manner directly resulting in injury to the driver. Suburban Hospital Association, Inc. Meuhinney 230 Md. 480, 187 A. 2d 671 (1963)

In the application of Section 6-205.1 the Trooper must use common sense. If it appears the defendant is attempting to avoid the test by trickery, the Trooper should document the facts and submit the DR-15. In this manner a definite ruling will be established by the Courts.

RUSSELL S. FISHER, M.D.
CHIEF MEDICAL EXAMINER
IRVIN M. SOPHER, M.D.
DEPUTY CHIEF MEDICAL EXAMINER
CRAIG E. DUNCAN, M.D.
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THE MARYLAND POST MORTEM
EXAMINERS COMMISSION

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ROBERT H. HEPTINSTALL, M.D.
COL. THOMAS S. SMITH
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STATE OF MARYLAND
DEPARTMENT OF POST MORTEM EXAMINERS
OFFICE OF THE CHIEF MEDICAL EXAMINER

111 PENN STREET
BALTIMORE, MARYLAND 21201

February 1, 1975

TO WHOM IT MAY CONCERN:

I hereby certify that:

The Maryland State Police Crime Laboratory is approved to perform chemical tests of blood and urine for the purpose of determining their alcohol concentration.

The equipment located at the Maryland State Police Crime Laboratory has been personally inspected by me and is suitable for the chemical analysis of blood and urine to determine their alcohol concentration.

Ronald M. Dannelly, B. S., Chemist, is qualified to perform tests of blood and urine to determine their alcohol concentration.

The Beckton Dickinson Blood Alcohol Kit distributed by the Chemical Test for Alcohol Unit, Maryland State Police is approved for the collection of blood samples for the purpose of determining the blood alcohol concentration.

The Urine Alcohol Kit as distributed by the Chemical Test for Alcohol Unit, Maryland State Police is approved for the collection of urine samples for the purpose of determining the urine alcohol concentration.

I HEREBY CERTIFY THAT THIS IS A TRUE
AND ACCURATE COPY OF THE REPORT IN THE
FILE OF THE CHEMICAL TEST FOR ALCOHOL
UNIT, MARYLAND STATE POLICE EXAMINERS
PHYSICIAN, MARYLAND

Yale H. Caplan
Yale H. Caplan, Ph.D.
Toxicologist

YHC:db

David G. Van Ormer
DAVID G. VAN ORMER, Ph.D.
SUPERVISOR
CHEMICAL TEST FOR ALCOHOL UNIT



DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONAL SERVICES

MARYLAND STATE POLICE
PIKESVILLE, MARYLAND 21208
AREA CODE 301 486-3101

MARVIN MANDEL
GOVERNOR

ROBERT J. LALLY
SECRETARY
PUBLIC SAFETY AND
CORRECTIONAL SERVICES

EDWIN R. TULLY
DEPUTY SECRETARY
FOR PUBLIC SAFETY

COLONEL THOMAS S. SMITH
SUPERINTENDENT
MARYLAND STATE POLICE

Case Number:

Dear

This is to certify that the urine samples obtained using equipment approved by the Toxicologist in the Office of the Chief Medical Examiner, Department of Post Mortem Examiners from under the direction of at (Sample #1) and on at on (Sample #2) were received at the Chemical Test for Alcohol Unit on and were tested by me with equipment approved by the Toxicologist on in accordance with the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (1974) Section 10-304 and in accordance with approved chemical analysis procedures.

Said samples were found to contain ethyl alcohol in the following concentrations: percent (Sample #1) percent (Sample #2).

Ronald M. Dannelly, B.S.
Chemist

I, Lieutenant Edward V. Clark, certify that the above record is a true copy taken from the original, now on file, and a part of the records maintained at the Chemical Test for Alcohol Unit, Maryland State Police, Pikesville, Maryland.

Edward V. Clark, 2nd Lieutenant
Liaison Officer
Chemical Test for Alcohol Unit

Original-officer retain for court.
Copy-to defendant.



DEPARTMENT OF
PUBLIC SAFETY AND CORRECTIONAL SERVICES

MARYLAND STATE POLICE
PIKESVILLE, MARYLAND 21208
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DEPUTY SECRETARY
FOR PUBLIC SAFETY

MARVIN MANDEL
GOVERNOR

ROBERT J. LALLY
SECRETARY
PUBLIC SAFETY AND
CORRECTIONAL SERVICES

COLONEL THOMAS S. SMITH
SUPERINTENDENT
MARYLAND STATE POLICE

Case Number:

Dear

This is to certify that the blood sample obtained using equipment approved by the Toxicologist in the Office of the Chief Medical Examiner, Department of Post Mortem Examiners from _____ under the direction of _____ on _____ at _____ was received at the Chemical Test for Alcohol Unit on _____ and was tested by me with equipment approved by the Toxicologist on _____ in accordance with the Courts and Judicial Proceedings Article of the Annotated Code of Maryland (1974) Section 10-304 and in accordance with approved chemical analysis procedures.

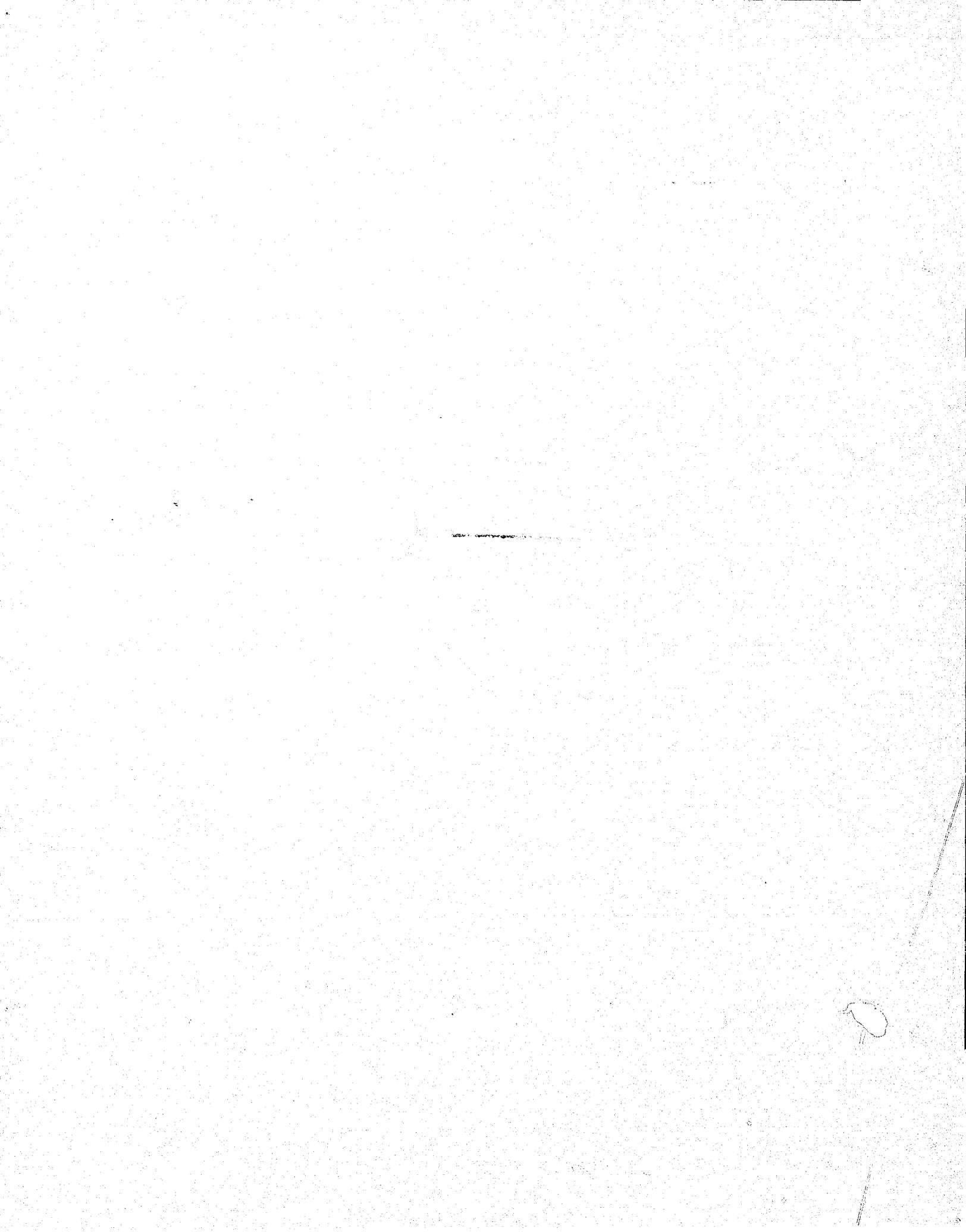
Said sample was found to contain _____ percent ethyl alcohol.

Ronald M. Dannelly, B.S.
Chemist

I, Lieutenant Edward V. Clark, certify that the above record is a true copy taken from the original, now on file, and a part of the records maintained at the Chemical Test for Alcohol Unit, Maryland State Police, Pikesville, Maryland.

Edward V. Clark, 2nd Lieutenant
Liaison Officer
Chemical Test for Alcohol Unit

Original-officer retain for court.
Copy-to defendant.



END