

POLICY INSTRUCTIONS

THE POLICY AND PROCEDURE GUIDELINES FOUND WITHIN THESE MANUALS SHALL SUPERSEDE ANY OTHER POLICY OR PROCEDURE THAT HAS BEEN ISSUED UP TO THE TIME OF THE PRESENTATION OF THESE MANUALS TO THE MEMBERS.

DATED: **MARCH 22, 1995**

ALL MEMBERS SHALL READ THESE MANUALS AND MAKE THEMSELVES FULLY AWARE OF THEIR CONTENTS AND ABIDE BY THE POLICY AND PROCEDURE GUIDELINES AS SET DOWN.

FROM TIME TO TIME ENTRIES WILL BE MADE TO THESE MANUALS. MEMBERS SHOULD STAY ABREAST OF THESE NEW OR REVISED POLICY AND PROCEDURE GUIDELINES BY CHECKING THE REVISION CHECK SHEETS;

ONCE READ,

MEMBERS WILL SIGN AND DATE THE PAGES FOLLOWING :

MEMBERS SIGNATURE SHEET

Members shall sign and date this sheet each time they read the Policies and Procedures contained in this manual.....

Member	Date
CST. Mark Egan #40	2001-12-28 A to D.
CST. Mark Egan #40	2001-12-29 D & E.
CST. MIKE SANDMAN #37	02-01-12
CST. Mark Egan #40	2002-02-25 Sec. 3 F & C - 3A
CST. M. SANDMAN #37	02-02-09
Col SOLTYS # 041	Sec. D Training
Col Mahoney	Pursuant to 02.07.04
[Signature] #33	02-12-19
Chris Drososki #42	Domestic Violence
Col Drososki #42	2003/08/01 Dom Violence
CST. Graham #43	04-01-10 Domestic
CST. CURRY #27	04/05/30 SECTIONS 2 & 4
CST. J.T. Woychuk #45	
CST. Graham #43	05-07-14
CST. Graham #43	05-12-12 MHA
CST. JASON Woychuk #45	05-12-12 MHA
Col. Knoch #44	06/01/31

IMPAIRED DRIVING

1. IMPAIRED DRIVING

When a Member determines through investigation/observation that there are reasonable grounds to believe that a person is committing or, at any time within the preceding two hours, has committed an offence under Section 253 CC, they may demand a sample of that person's breath or blood depending upon the circumstances. Members must be aware that Breathalyzer evidence or Blood Analysis only supports a charge and that the case should be prepared so that a charge would succeed in Court without it. For this reason the Investigating Member shall prepare the case based on their own investigations/observations of the driver such as appearance, speech, actions during activities requiring physical coordination and driving patterns, as they are of considerable value as determinants of impairment.

As much information as possible shall be recorded on the Impaired Driving Check Sheet, since this is the basis for the case and is of value to the Investigating Member when refreshing their memory prior to testifying.

a) Observation of Suspect at Scene of the Offence

A Suspect shall be observed at all times and the following noted:

- 1) Manner of walking - whether the Suspect was steady,
- 2) Attitude - cooperative, belligerent, friendly, amorous,
- 3) Speech - slurred, fluent, slow or fast, difficulty in pronouncing certain words,
- 4) Breath odour of alcoholic beverage,
- 5) Condition of clothing - dishevelled, neat, dirty,
- 6) Unusual actions,
- 7) Evidence of injury or illness.

The Member shall attempt to determine from the Suspect how much sleep they had, when they last ate and whether they are ill or taking medications.

b) Observation of Accused at Trial

If the case should go to Trial, the Member shall observe the Accused in the Court Room to note their way of walking, speech and attitude. Defence Counsel may question the Member as to a noticeable difference in the Accused, compared with their condition at the scene of the offence, the appropriate answers shall be available.

c) Inspection of Suspect's Vehicle

The vehicle involved shall be checked to determine if the Suspect's condition was the result of fumes from gas, solvents, etc. in the vehicle or from a faulty exhaust.

d) Demand for Breathalyzer

When the Member is satisfied that the condition of the Suspect warrants Breathalyzer Tests they shall then make the following Demand from the Breathalyzer Demand Card issued to each Member:

"In my opinion your ability to operate a motor vehicle is impaired as a result of the consumption of alcohol. You are required to provide samples of your breath suitable to enable an analysis to be made in order to determine the concentration, if any, of alcohol in your blood and to accompany me for that purpose."

e) Demand for Blood Samples

When investigations reveal that the Accused, through injury, would not be able to provide suitable Breath Samples or it would be impracticable to obtain them, a Demand for Blood Samples may be made in the following manner:

"In my opinion, your ability to operate a motor vehicle is impaired by alcohol. You are required to provide samples of your blood to enable an analysis to be made in order to determine the concentration, if any, of alcohol in your blood and to accompany me for that purpose. Blood samples will only be taken by or under the direction of a qualified Medical Practitioner and if the qualified Medical Practitioner is satisfied that the taking of the samples will not endanger your life or health."

The card or copy of the card shall be available for evidence purposes in Court and may be entered as an Exhibit. Members shall refer to the card in answer to relevant questions in Court.

f) Demand for Roadside Screening Device Test

Should the Member believe there are no reasonable grounds sufficient to pursue a charge under Section 253 CC and/or to Demand a Breathalyzer Test or Blood Test, but reasonably suspect that a person driving or having care or control of a motor vehicle has alcohol in their body, they shall Demand that the person submit to a Roadside Screening Device Test as described below in Section 2 of this Policy (Section 254(4) CC refers).

g) Determining if the Accused's Breathalyzer Reading Was Rising or Falling

Whenever a Member investigating an offence, contrary to Section 253(b) CC - Driving With More than 80 milligrams Percent of Alcohol in Blood, has reason to believe that expert evidence shall be required for a successful prosecution, they shall endeavour to learn from the Accused at what time they actually finished their last alcoholic beverage. This time shall be recorded in the Member's notebook. This procedure, required by the Crown to establish whether an Accused's Breathalyzer reading was rising or falling at the relevant time, shall always be necessary when both of the Breathalyzer Tests may be outside the three hour limit set by Section 254(3) CC.

h) Medical Disorders

Members shall be alert for possible medical disorders, which may display symptoms similar to alcohol impairment. Diabetics under an insulin attack or persons suffering Huntington's Disease (HD) may exhibit behaviour similar to alcohol or drug impairment. Look for any medic-alert identification (bracelets, tags, pendants, cards, etc.) which may assist to explain unusual behaviour.

i) Administering the Breathalyzer Test

It is preferable that the Breathalyzer Test be administered by a person independent of the actual arrest, wherever possible, though **Law does not require this procedure.**

Where the Arresting Member is a qualified/certified Breathalyzer Technician, the member may administer the tests or make reasonable attempts to have another **on-duty** Technician perform the Breathalyzer Test.

2. APPROVED ROADSIDE SCREENING DEVICE

a) Purpose of the Device

The Approved Roadside Screening Device is a hand-held portable device approved for roadside screening of drivers or persons having care or control of a motor vehicle who are suspected of having alcohol in their bodies (Section 254(1) CC). The device:

- 1) Indicates if a driver is over or under a prescribed alcohol level,
- 2) Determines if a driver requires a Breathalyzer Test,
- 3) Shall be used only by Members who have successfully completed the applicable authorized training course in the use of the Approved Roadside Screening Device.

b) When to Use the Device

Use of an Approved Roadside Screening Device is not required if sufficient physical evidence already exists to justify a Demand for a Breathalyzer Test. If impairment is not obvious, but significant presence of alcohol is suspected, an Approved Roadside Screening Device shall be used where feasible.

c) Procedures for Using Device

- 1) The Investigating Member, upon determining that a Roadside Screening Test is required, shall make the following Demand for a Breath Sample from the Approved Screening Device/Breathalyzer Demand Card issued to each Member:

"In accordance with the provisions of the Criminal Code, I demand that you provide a sample of your breath suitable for analysis."

Where the Demand has been made and the Roadside Screening Test is administered without delay, the Member is not required to read the Charter of Rights to the Suspect. If there is any delay in the administering the Roadside Screening Test, the Member making the Demand shall afford the Suspect their Charter of Rights pursuant to Section 10(b).

If the Suspect refuses the Demand, they shall be read the Refusal from the card as follows:

"You may be charged with refusing or failing to comply with a Demand made to you to accompany a Peace Officer for the purpose of enabling a sample of your breath to be taken, suitable to enable a proper analysis to be made by an approved Screening Device, in order to determine the presence of alcohol in your body. Will you accompany me for that purpose (or) will you now give a sample of your breath, suitable to enable an analysis to be made."

If after being read the Refusal and the response is still negative the subject shall be charged accordingly (Section 254(5) CC).

- 2) If the subject indicates willingness to comply, the Member shall immediately request the assistance of a Screening Device Operator, if the Member is not qualified. The Screening Device Operator shall respond to the scene and:
 - i) Administer the test in the presence of the Investigating Member,
 - ii) Advise the Investigating Member of the results registered by the test,
 - iii) Record the time and result in their notebook and the Approved Screening Device Log,
 - iv) Complete the portion of the Approved Screening Device Log pertaining to the Screening Device Test and hand it over to the Investigating Member.

d) **Results of the Device**

The result of an Approved Roadside Screening Device Test shall determine subsequent Police action as follows.

- 1) If the device indicates a reading of 000 to 049 , no further action need be taken.
- 2) If the device indicates a reading of "A" (050 to 100), the Investigating Member shall suspend the Drivers Licence of the operator for 24 hours pursuant to Section 265(6) H.T.A. The Investigating Member shall be governed by the Temporary Operators Licence Suspension Policy and Procedure outlined Section 8 of this Policy).

- 3) If the device indicates a reading of "F" (100 and up), the Investigating Member has reasonable grounds to believe that Section 253(a) CC applies and shall Demand a Breathalyzer Test in accordance with Section 254(3) CC and thereafter shall be governed by this Policy.

e) Maintenance of the Device

- 1) All Members trained as Screening Device Operators shall be responsible for continuity of possession, safekeeping and re-charging of the devices.
- 2) Maintenance and calibration of the device(s) shall be undertaken by a Breathalyzer Technician designated by this agency following the guidelines of the R.C.M.P. Forensic Laboratory. (Refer to Section 3 of this Policy).
- 3) Although the Screening Device used by this agency is known as an Approved Roadside Screening Device, it may be used at any location in keeping with the foregoing instructions.
- 4) Approved Roadside Screening Devices shall be maintained in the Breathalyser Room and a sign-out Log shall be completed every time a Screening Device is taken out or returned.
- 5) An Approved Roadside Screening Device Daily Use Log shall accompany each Approved Roadside Screening Device. In every case the use of the Approved Screening Device shall be documented in the Daily Use Log (even if its used to determine whether a passenger can drive the vehicle legally).

f) Twenty-Four Hour Suspension Notice

In the case of Section 2, Subsection d), Paragraph 2), where a Roadside Screening Device result indicates an "A" (050 to 100), the driver shall be suspended from operating a motor vehicle for 24 hours and shall be served a Suspension Notice (MG 5525) by the Investigating Member.

The Member issuing shall:

- 1) Place the subject on CPIC as a Prohibited Driver for 24 hours from the time of the test,
- 2) Keep the Suspension Notice/Drivers Licence and CPIC printout in the file until the 24 hours have elapsed,
- 3) Remove the information from the CPIC system at the end of the 24 hours and place it in the file in the appropriate location,
- 4) Leave the Suspension Notice/Drivers Licence where it can be obtained for release to the driver,
- 5) The member releasing the Drivers Licence to the owner after securing their signature of receipt on the back of the Suspension Notice, will then place the Suspension Notice into the file.

3. BREATHALYZER

The Breathalyzer is an investigative aid to support evidence in investigations under Section 253(a) CC. The Breathalyzer is an approved instrument pursuant to Section 254(1) CC, used to analyse samples of deep lung air from a subject. A Breathalyzer, along with a stand-by unit, is available. It measures the alcohol content of the breath in proportion to the blood alcohol content of the subject.

Subjects of Breathalyzer Tests shall be transported to the East St. Paul Police Headquarters Building and handled in accordance with the following:

a) Breathalyzer Technicians

Breathalyzer Technicians are designated by this agency. There may be a Technician on shift, if not Dispatch has a list of Technicians who are called upon to perform tests as required.

In compliance with recommended standards and procedures for the performance of breath testing for alcohol, qualified Technicians shall:

- 1) Actively engage in testing. Each Technician should conduct a breath test at least once in six months. This can be an actual drinking subject test or a simulator test. The actual test is preferred. A Technician who has not done a test and is coming up on the sixth month should be put on top of the call out list or should perform the next test while on duty.
- 2) Be responsible for the maintenance of Breathalysers.

b) Observation of the Subject at the Scene and in Transit

The subject shall be kept under observation from initial contact until completion of the Breathalyzer Tests. This is to ensure the subject has no opportunity to place any substance in their mouth that may endanger the test results or provide an argument for Defence Counsel.

c) Members' Responsibilities

When a Member, on reasonable grounds, believes that a driver is committing, or at any time within the last three hours, has committed the offence of Impaired Driving or Driving With Over 80 Milligrams of Alcohol, they shall, in the following order:

- 1) Arrest the driver,
- 2) Immediately inform the driver of the Charter of Rights with respect to their arrest and with respect to the Demand for the samples of breath or blood,
- 3) Read the appropriate demand from your card,
- 4) If the driver requests to speak to a Lawyer:
 - i) Provide them with a reasonable opportunity and time to exercise that right,

- ii) After the driver has had a reasonable opportunity to consult with a Lawyer, ascertain whether samples shall be provided.
- 5) However, if the driver at the scene of the investigation clearly waives the Right to Counsel:
- i) Immediately make a Demand for Breath or Blood Samples,
 - ii) If the driver refuses to comply with the Demand, then immediately read the Fail to Comply section of your card.

At the conclusion of the investigation and in appropriate circumstances, a driver may be released by way of a Promise to Appear.

Members are reminded of the need to take careful notes of conversations with Impaired Drivers.

d) Subject's Right to Legal Advice - Under Arrest

If the driver is not informed of the Right to Retain and Instruct Counsel and not given a reasonable opportunity to do so, evidence in support of the charges shall not be admissible at Trial.

- 1) The Accused should be allowed as many telephone calls as necessary for the purpose of contacting Counsel.
- 2) The Accused has the right to oral (*but not visual*) privacy in communicating with Counsel, whether or not this is requested. Denial of this right will constitute a reasonable excuse for failing to provide Breath/Blood Samples upon the Demand.
- 3) The Accused is not entitled to personal attendance of Counsel before complying with a Demand for Breath/Blood Samples. The failure or inability of the Accused to contact Counsel does not amount to a reasonable excuse for failing to provide samples.

e) Breathalyzer Room

Only one Member shall escort the subject to the Breathalyzer Room. After informing the Technician of the necessary particulars, they shall remain to observe the tests and *shall make no comment* on the operation of the tests, etc. that might raise issues for the Defence in Court.

NOTE: Do not ask the Technician for the test results during testing.

f) Certificate of Analysis

Preparation, examination and service of the Certificate of Analysis shall be done in accordance with the following:

- 1) On completion of the tests, the Breathalyzer Technician shall complete the top portion of the Certificate in respect to the test results and certification.
- 2) The Technician shall give the Certificate to the Member for completion of the bottom portion and service of a true copy on the subject.
- 3) If the subject is capable of understanding the Certificate contents, the Investigating Member shall complete the bottom portion of the Certificate, Notice of Intention to Produce Certificate, indicating the time of service, then
 - i) Serve one copy of the Certificate on the subject,
 - ii) Complete the Affidavit of Service,
 - iii) Attach the original Certificate with the Impaired Driving Check Sheet to the file,
 - iv) Indicate on the Impaired Driving Check Sheet that a copy of the Certificate has been served on the subject.
- 4) If the subject is "*grossly*" impaired, requiring continued detention, the Investigating Member shall not serve the Certificate copy at that time, or complete the Notice of Intention. The Member, for the purpose of continuity and identification, shall initial the margin on the face of each Certificate copy, lodge the subject and attend to serve the documents prior to release or have an oncoming member serve them.
 - i) When the subject is ready for release from custody (should be capable of understanding by that time), the Notice of Intention portion of the Certificate complete with the Affidavit of Service shall be completed by a Member prior to the subject being released. This Member shall:
 - serve one copy on the Accused,
 - be prepared to identify the Accused in Court as the person served with a true copy of the Certificate and to indicate the ability of the Accused to understand at the time of release,
 - ensure the completed original and remaining copy are placed directly into the file for further process.

g) Time Factors to be Considered

To enable use of Certificates for Court purposes, Section 258(1) CC requires that Breath Samples be taken as soon as practicable after the time when the offence was committed and, in any event, not later than two hours after that time. To meet legal and technical requirements, an interval of at least 15 minutes shall be allowed between samples. If there is any delay in placing the Accused before the Breathalyzer after the Demand is first made and, as a result, the breath tests cannot be completed within two hours, the Certificate method cannot be used. The Member shall then give an explanation under the details portion of the Impaired Driving Check Sheet and place the words Expert Witness Required in the space provided for Witnesses. Failure to do so could result in the dismissal of charges in Court.

h) Refusal to Provide Breath Samples

When a subject refuses to comply with a Demand for Breath Samples at any stage of the investigation, they shall be charged accordingly. However, the following steps shall first be taken by the Investigating Member:

- 1) Read the Refusal,
- 2) Explain the charge,
- 3) Enquire if the subject understands,
- 4) Ensure the subject is physically capable of performing the test,
- 5) Take the necessary action, for example:
 - i) A clear and unequivocal Refusal, will result in action at the scene,
 - ii) If the Member is uncertain about the Refusal, the subject shall be taken for a Breathalyzer Test.
- 6) Record all times and responses in their notebooks.

i) Refusal to Provide Blood Samples

When a subject refuses to comply with a Demand for Blood Samples perhaps due to injury requiring medical attention, or physical challenges, they shall be charged accordingly. Investigating Members shall:

- 1) Read the Refusal,
- 2) Explain the charge,
- 3) Enquire if the subject understands,
- 4) Take the necessary action, for example:
 - i) A clear and unequivocal Refusal, will result in action at the scene,

4. IMPAIRED DRIVING- ACCIDENTS

a) Accident Forms

If the Accused was involved in a reportable accident, Members shall take Accident Forms from the other parties involved and complete Page One of the Accident Forms as soon as possible. Prior to releasing the Accused, Members shall instruct them to make an Accident Report within seven days.

b) Impounding/Towing the Accused's Vehicle

If the Accused's vehicle is impounded for 30 days, arrange for the appropriate company to attend and tow the vehicle on issuing the Notice of Seizure and Impoundment of Motor Vehicle (MG 10648)

5. IMPAIRED DRIVING - BLOOD SAMPLES PURSUANT TO A DEMAND/WARRANT

Members can Demand that a suspected Impaired Driver provide Blood Samples where it is impractical for them to provide Breath Samples. Members shall ensure the following procedures are followed, whenever Blood Samples are being obtained pursuant to a Demand or Warrant.

a) Pursuant to a Demand Made by a Member

According to Section 254(3) CC, a Member can demand a person to provide a Blood Sample. If the person refuses, they are to be charged with Section 254(5) CC - Refusing to Provide a Blood Sample. The following Information shall be read from your card:

"You may be charged with refusing or failing to comply with a demand made to you (to accompany/by) a Peace Officer for the purpose of enabling an analysis to be made in order to determine the concentration, if any, of alcohol in your blood. Will you now give samples of your blood suitable to enable an analysis to be made?"

Blood Samples will only be taken by or under the direction of a qualified Medical Practitioner and if the qualified Medical Practitioner is satisfied that the taking of the samples will not endanger your life or health. Investigating Members shall:

- 1) Proceed to the closest Hospital,
- 2) Determine through the Nursing Staff at the Emergency Desk as to the identity of the Physician on duty and advise them that they which to speak to the Physician in regards to taking Blood Samples for Alcohol Analysis,
- 3) Explain to the Physician that a Demand has been made and that the Suspect has agreed to provide the Blood Samples,
- 4) Determine if the Physician shall take or authorize the Blood Samples to be taken.

NOTE: If the Physician refuses to take or authorize the Blood Samples, the Member shall disregard investigation for charges under Section 253(b) CC, Drive With Blood Alcohol in Excess of 80 Milligrams Percent.

- 5) Present our Blood Collection Kit; (check expiry date)
 - i) Have the Suspect sign the Permission Form For Collection of a Blood Sample.
- 6) Observe the extraction of two Blood Samples by the appropriate Medical Staff:
 - i) Ensure all Certificates are completed as the Blood Samples are extracted from the Suspect.

When the sample is taken by a Medical Practitioner, only a Certificate of Qualified Medical Practitioner (Blood Taken) Certificate is required. However, where the Blood Sample is taken by a Technician under direction of a Medical Practitioner, then it shall be necessary to complete two Certificates; the Certificate of Qualified Technician and Qualified Technician Authorization Form.

- ii) Ensure all Exhibits are sealed, marked accordingly and enclosed in the Blood Collection Kit.
 - iii) Serve the Suspect with a copy of the Certificates.
 - iv) Complete the information on the appropriate Certificate(s) and the Notice of Intention to Produce Certificate.
 - v) Process the Blood Samples outlined in the Forensic Laboratory Services Manual, Appendix 1-1, Section 1, Pages 1-4.
 - vi) The Suspect can either be released on an Appearance Notice or Promise to Appear or incarcerated.
- b) **Pursuant to a Warrant to Take Blood**

Where a suspected Impaired Driver is taken to the Hospital and their condition, (ie. Unconsciousness), does not permit them to give consent to a Blood Sample being taken pursuant to a Demand made by a Member, the Member may apply to a Judge or Justice for a Warrant authorizing a Physician to take the blood. If a Member must apply for a Warrant, the following procedures shall be followed:

- 1) Determine through Medical Staff at the Hospital:
 - i) Where the Suspect is being treated.
 - ii) Their present medical condition.

- 2) If it is determined that the Suspect cannot consent to providing a Blood Sample, consult with the attending Physician to determine if they will take the Blood Sample or authorize them to be taken if a Warrant is issued.

NOTE: If the Physician refuses, the Member shall disregard this method of obtaining the Blood Samples and determine if Blood Samples have been taken for medical reasons by the Hospital. If the Hospital has taken blood for medical reasons, the Member shall apply to a Justice to obtain a Warrant to seize the blood.

- 3) If the Physician agrees to take or authorizes the taking of Blood Samples, obtain the Physician's name, which is required on the Warrant,
- 4) Make every attempt to appear in person before a Judge or Justice and apply for a Warrant to be issued to take the Blood Samples. Information to Obtain a Warrant for the Taking of Blood Form shall be completed.
- 5) Execute the Warrant on the Physician and provide them with a duplicate copy of the Warrant,
- 6) Present our Blood Collection Kit; (**check expiry date**)
 - i) Observe the extraction of two Blood Samples by the appropriate Medical Staff,
 - ii) Ensure Certificates are completed as the Blood Samples are taken,
 - iii) Ensure all Exhibits are sealed, marked accordingly and enclosed in the Blood Collection Kit,
 - iv) Copies of the Certificate and Warrant shall be served on the Suspect only when they are conscious and able to understand what is being served upon them,
 - v) The back of the Certificates shall be completed and Notice of Intention to Produce Certificates,
 - vi) Process the Blood Samples outlined in the Forensic Laboratory Services Manual, Appendix 1-1, Section 1, Pages 1-4.

c) Pursuant to a Warrant to Take Blood - Telewarrant

Where all the requirements exist to apply for a Warrant, as defined in Section 256(1) CC, but the circumstances make it impracticable for the Member to appear personally before a Justice, the Member shall apply to a Justice by telephone for a Warrant authorizing a Physician to take blood. This shall be resorted to only when the legal requirement of commencing a Warrant application in front of a Justice cannot be met.

I have reasonable grounds for believing that the said things or some part of them are in the

_____ of at _____
place to be searched

in _____ in the Province of Manitoba. My grounds for so

believing are (ensure to disclose full grounds and link the items to be searched for with the offence and the place to be searched):

I further advise:

- To the best of my knowledge, no application for a search warrant in respect to this matter has been made previously, or
- An application was previously made for a search warrant relating to this matter on before _____ and was granted, or was denied for the following reasons:

NOTE: If you intend to execute the search warrant at night, advise the Justice: "I request permission to execute the search warrant at night because" (state reasons):

From the information previously stated, are you satisfied that the requirements of Section 487.1(4) of the Criminal Code have been met?

7. Record any further questions the Justice may have to clarify the information and your reply:
8. If the Justice answers in the negative ask him/her: "In what respect he/she feels the information is deficient".
Reply of Justice:

(supply the further information if available, otherwise conduct further inquires to justify warrant). Your reply to the Justice:

9. If the Justice answers "yes" he/she will issue a warrant completing and signing the search warrant in Form 5.1 noting on its face, the time, date and place of issuance.
10. On direction of the Justice, complete (duplicate) a facsimile of the search warrant in Form 5.1 noting on the face, name of Justice, time, date and place of issuance. If the Justice authorizes execution by night, both parties shall indicate this in the appropriate space on the warrant. Sign your signature in the space provided below that of the Justice.
- Check with an "X" indicating this step has been completed.
11. The Justice will ask you to read back your version of the warrant, correcting any discrepancies which may be noted.
- Check with an "X" indicating this step has been completed.
12. The list will then verify the audio quality of information and call you back at a telephone number to be arranged between yourself and the Justice.
13. When the Justice returns your call verifying the recording was acceptable, execute the search warrant.
NOTE: DO NOT EXECUTE THE WARRANT UNTIL THE JUSTICE VERIFIES THE RECORDING.

**SEARCH WARRANTS AND INFORMATIONS TO OBTAIN THEM
under section 256 of the Criminal Code**

SEMINAR NOTES

Warrants and Informations under Section 256 Of The Criminal Code

Section 256 permits the issuance of a warrant under specific circumstances. The forms used in this process are modified versions of Forms 1 and 5.

The warrant authorizes a peace officer to require a physician to take or supervise the taking of a sample of the person's blood for the purposes of analyzing the concentration of alcohol in the blood.

The officer must provide the person with a copy of the warrant (or a facsimile copy of the warrant if the warrant was obtained by telewarrant procedures), as soon as practicable.

The police officer is required to file a report to a Justice, under the provisions of s.489.1 of the Code.

The amendments to the *Criminal Code* which allow for this procedure under a warrant arose from a Supreme Court decision - *Pohoretsky v. The Queen 1987*.

"The non-consensual taking of a blood sample from an unconscious motorist without a warrant and without any statutory authority is a serious intrusion into the person's privacy and this violation of s. 8 of the Charter of Rights warrants exclusion of the evidence obtained."

Criteria for Obtaining and Granting a Warrant is Strict

You must be satisfied there are reasonable grounds to believe that:

(a) The person who is the subject of the warrant has committed a s.253 offence (impaired operation of motor vehicle, vessel, aircraft or railway equipment) and

(b) the offence was committed within the preceding four hours, and

Note: The *Criminal Code* was amended with respect to the number of hours. Watch for outdated forms, which will show "preceding two hours". Do not accept either the information or the warrant without making and initialling this change. All police agencies should have the updated forms.

(c) the offence was a result of the consumption of alcohol, and

(d) there was an accident resulting in bodily harm or death, and

(e) a qualified medical practitioner is of the opinion that

(i) the person isn't able to consent to the taking of a blood sample because of any mental or physical condition resulting from the consumption of alcohol or the accident, and

(ii) taking the blood sample is not going to endanger the person's health or life.

The warrant is only valid as long as (i) and (ii) exist. If, subsequent to the warrant being issued, the person is capable of consenting, the warrant lapses.

Key Point

It is not a matter of you being satisfied that the person is unable to consent or that taking samples would endanger the person's life or health - you must be satisfied on reasonable grounds that the qualified medical practitioner is satisfied.

The procedures to be followed are the same as the Warrant to take Blood Form except the Member shall:

- 1) Obtain a Procedure List to Obtain a Telephonic Search Warrant Form.
- 2) Contact a Justice who is designated for the purpose of issuing Telewarrants by telephone. The toll free number is marked on the Procedure List to Obtain a Telephonic Search Warrant Form. Telewarrants can also be obtained by Facsimile (Fax) request.
- 3) Produce, in duplicate, upon instruction from the Justice, a copy of the Warrant.
- 4) Execute the Warrant on the Physician and provide them with a duplicate copy of the Warrant.
- 5) Obtain Blood Samples and process the Telewarrant and Certificates.
- 6) Within seven days, file a Report to a Justice Pursuant to the Taking of Blood Samples Form with the issuing Judge or Justice outlining:
 - i) The time and date of execution,
 - ii) If not executed, the reason(s),
 - iii) A Statement of items (blood) seized pursuant to the Warrant,
 - iv) Where the seized items are being held,
 - v) A Statement of any additional items that may have been seized.

d) Seizing Blood Samples - Search Warrant

- 1) When a suspected Impaired Driver is transported to the Hospital following a motor vehicle collision and is incapable of giving consent to provide a Blood Sample and the examining Physician is unwilling or determines it is a danger to the Suspect to extract Blood Samples, the Member shall determine if Blood Samples have been taken for medical reasons. If such samples have been taken, the Member shall:
 - i) Establish where the blood is to be stored (usually in the Laboratory of the Hospital),
 - ii) As soon as possible, obtain a Search Warrant to seize the sample.
 - iii) You may request assistance from a representative of Hospital Security during the investigation at the Hospital,

- iv) Provide a copy of the Warrant to the person in charge of the area from which the Blood Sample has been seized,
 - v) Ensure that the Kit containing both samples is properly stored in the refrigerator (not deep freezer).
- 2) The Medical Profession uses standard 10 ml. vacutainers for the collection of blood with colour coded stoppers to indicate the presence or absence of preservatives.
- i) A grey stopper indicates that preservatives have been added to prevent fermentation and thus creating an increase in alcohol level of the blood.
 - ii) A red stopper indicates that the vacutainer contains no additives and that refrigeration is essential.
- 3) Analysis of samples taken non-voluntarily, without a valid Search Warrant, for prosecution purposes or solely at the request of Police are not admissible in Court.
- 4) The refrigerator in this agency shall provide temporary cold storage for all fluid Exhibits, (ie. blood, urine). Exhibits stored in this facility shall be sealed and properly labelled.
- 5) Containers for collection of fluid Exhibits, excluding blood, may be obtained as needed.
- 6) Blood Collection Kits are located in the rear of the main office. Members shall ensure that they use only approved and unexpired Blood Container Kits.
- 7) A Manual is located in the Investigations office outlining the process for obtaining and processing Blood Samples.
- 8) For Blood Alcohol Analysis, two containers of blood are required. For each Blood Sample taken an additional sample must be taken and retained for the Accused. These samples shall be delivered to the Forensic Laboratory, 621 Academy Road, Winnipeg, Manitoba, R3N 0E7, telephone 204-983-4267.
- i) Samples taken for the Accused must be retained for three months regardless of any Court disposition,
 - ii) The Accused can obtain their sample by applying to a Judge,
 - iii) If the three months have expired and the matter is still before the Courts, **do not** destroy the blood until the charge is disposed of and the Appeal period has expired,
 - iv) Notify the Forensic Laboratory in writing when the Blood Sample held for the Accused can be destroyed.

- 9) For Drug Analysis, refer to the Forensic Laboratory Services Manual, Appendix 1-1, Section 9, Pages 1-4. These samples shall be delivered to the Health Protection Branch Laboratory, Department of Health and Welfare, 510 Lagimodiere Boulevard, Winnipeg, Manitoba, R2J 3Y1.

Blood Exhibits will be hand delivered to either Laboratory by Members and a receipt obtained.

c) Obtaining Blood Samples from Young Offenders (Youths)

In all cases, Members shall ensure, when a youth is involved as a Suspect, that their guardian is notified if at all possible, prior to the seizure of Blood Samples. Even if the youth does not wish to consult with the guardian, they shall be contacted and advised.

Procedures to obtain a Blood Sample remains the same as an adult.

- 1) A Permission Form for Collection of a Blood Sample shall be completed by the Suspect and witnessed by the Investigating Member, only when the samples are voluntarily surrendered,
- 2) Immediately after advising the Suspect of their Right to Retain and Instruct Counsel in accordance with Section 10(b) of the Charter of Rights and caution, read the Blood Sample Demand
- 3) If the Suspect refuses after being read the appropriate Demand, the Suspect shall be given the Refusal information from your card and then processed accordingly if the suspect still refuses.

6. IMPAIRED DRIVING - CHARGES

a) Alcohol in the Blood

Section 253(b) CC states that it is an offence to operate or have care or control of a motor vehicle when the alcohol in the blood exceeds 80 milligrams in 100 millilitres of blood. However, it is this agency's Policy that charges be pursued only when the reading is 100 milligrams percent or more.

b) Laying Charges

The following shall be the procedure when laying charges under Sections 253(a) and (b), 254(5), 255(2) and (3) CC.

- 1) The inter-relationships of Sections 253(a), 253(b) and 254(5) CC make it essential that evidence of alcohol influence be properly ascertained and recorded. When Breath Samples obtained indicate a blood alcohol concentration of 100 milligrams percent or more (taking into account the lower of the two accepted test results) and there is substantive evidence of alcohol influence, charges shall be documented and preferred under both Sections 253(a) CC - Impaired Driving or Care or Control, and 253(b) CC. Only in those cases where sufficient evidence is confined to one of these offences shall a single charge be laid.

- 2) When Breath/Blood Samples are refused, the subject should be charged under both Sections 253(a) and 254(5) CC on one Information, the charge under Section 253(a) CC being the first count and Section 254(5) CC the second. Both charges should be proceeded with unless the evidence is insufficient.
 - 3) When the subject makes a clear and unequivocal refusal at the scene, the Member may take action under Section 254(5) CC along with Section 253(a) CC - Impaired Driving or Care or Control, without escorting the subject to the Breathalyzer for a Breathalyzer Test or to the Hospital for blood.
 - 4) Drivers stopped by random roadside Check Stops and found to have a Breath Analysis of 100 milligrams percent or more and where a driving pattern is not available, should be charged under Section 253(a) CC - Care or Control, rather than Impaired Driving - Section 253(b) CC.
- c) **Refusal to Provide a Roadside Screening Device Breath Sample**
- When a Demand for a Roadside Screening Device Breath Sample is refused, the subject shall be charged at the scene under Section 254(5) CC.
- d) **When Subject's Test Results Don't Exceed Legal Limit**
- Members should keep in mind that even if a subject's test results do not exceed the established legal limit, the evidence generally may still support a charge under Section 253(a) CC.
- e) **Refusal of Breathalyzer Test**
- Subjects shall not be permitted to decline the Breathalyzer by requesting a Blood Test instead. Refusal to take the Breathalyzer shall result in a charge under Section 254(5) CC. Physically challenged persons may be the exception. Ensure the subject is physically capable of performing the test.
- f) **Collisions Involving Injury**
- Charges should be preferred under Section 255(2) CC when a collision results in bodily injury to anyone other than the operator. Keep in mind that it is necessary to establish operator (driver) impairment, Section 253(a) CC before taking action for 255(2) CC. Bodily harm must be a hurt or injury that is more than merely transient, frivolous or trifling in nature.
- g) **Collisions Involving Death**
- Action may be taken under 255(3) CC only if the collision results in the death of another person and all requirements of impairment (Section 253(a) CC) are present. Arrest procedures are mandatory and not by way of an Appearance Notice, when pursuing charges under Section 255(3) CC.

h) Notice of Intention to Seek Greater Punishment

All persons charged with previous conviction under Sections 253(a), 253(b), 254(5) (Breath or Blood), 255(2) or 255(3) CC shall be served with a Notice of Intention Form designed to inform the Accused that an application shall be made to the Court to impose a greater punishment. Preparation, examination and service of the Notice of Intention shall be completed in accordance with the following:

- 1) Notices of Intention shall be served on all Accused/persons charged under Sections 253(a), 253(b), 254(5), 255(2) and 255(3) CC.
- 2) If the subject is capable of understanding the contents of the Notice, it shall be completed by the Member who shall:
 - i) Read the Notice verbatim (explain legal significance of the Notice),
 - ii) Instruct the Accused to sign, but if a Refusal to sign is expressed, write "*Refused Signature*" in the space provided,
 - iii) Serve one true copy on the Accused (time of service must be recorded in the twelve hour clock, (ie. AM or PM),
 - iv) If subject is unable to understand, explain the Notice to the subject in a manner in which they will understand as many times as reasonably necessary,
 - v) Attach and submit the original Notice of Intention with the Impaired Driving Check Sheet to the file,
 - vi) Indicate on the Impaired Driving Check Sheet that a copy of the Notice of Intention has been served on the subject.
- 3) If the subject is "*grossly*" impaired and requires continued detention, the Investigating Member shall not complete or serve the Notice of Intention at that time, but shall leave the Notice with the oncoming member for service.
- 4) When the subject is released from custody, Members shall complete the Notice of Intention Form and Affidavit of Service, then:
 - i) Read the Notice verbatim (explain the legal significance of the Notice),
 - ii) Instruct the Accused to sign, but if a Refusal to sign is expressed, write "*Refused Signature*" in the space provided.
 - iii) Serve one true copy on the Accused (time of service must be recorded in the twelve hour clock, (ie. AM or PM),

- iv) If subject is unable to understand, explain the Notice to the subject in a manner in which they will understand as many times as reasonably necessary,
 - v) Place the original of the Notice of Intention in the file,
 - vi) Be prepared to identify the Accused in Court as the person served with a true copy of the Notice of Intention and indicate the ability of the Accused to understand at the time of service.
- 5) It shall be the responsibility of the senior member on duty to,
- i) Ensure that the Accused is served with a copy of the Notice of Intention.
 - ii) Attach the original of the Notice of Intention to the Impaired Driving Check Sheet and place in the file.

7. APPEARANCE NOTICES - IMPAIRED DRIVING

Persons arrested for Impaired Driving related offences shall be released by way of Appearance Notice. In these cases, the following shall apply:

a) Issuing an Appearance Notice

If an Appearance Notice is issued, it shall not be necessary to present the Accused before the officer in charge, but Criminal Code Section 497(1) applies and the following points deserve particular attention amongst those criteria considered in arriving at this decision:

- 1) To prevent reoccurrence of the offence,
- 2) To ensure the Accused's attendance in Court, that person must be sufficiently coherent to understand the instructions of the Appearance Notice.

b) Information Required on an Appearance Notice

Each Appearance Notice requires the following information:

- 1) Identification processing time,
- 2) Appearance in the Court Room:
 - i) Location,
 - ii) Date,
 - iii) Time.

8. IMPAIRED DRIVING - DRIVERS LICENCE SUSPENSION

a) Impaired Driving/Refuse Breathalyzer/Blood Demand

Under the Highway Traffic Act (Sec. 265), a Member shall suspend the Drivers Licence of any driver who:

- 1) Operates or has care and control of a motor vehicle with a blood alcohol over 50 milligrams percent blood alcohol,
- 2) Refuses:
 - i) The Approved Road Side Screening Device
 - ii) The Breathalyzer,
 - iii) To have a Blood Test.

NOTE: When there is a reading over 100 milligrams percent blood alcohol, the Member shall:

Issue Form MG 1366 - Notice and Order of Suspension or Disqualification with a consequent suspension of 90 days resulting. A Certificate of Analysis shall be served on the driver and a copy of the Certificate forwarded to the Motor Vehicle Branch, Winnipeg in order for the suspension of the driver's privileges to occur,

And issue MG 10648 - Notice of Seizure and Impoundment of Motor Vehicle with proper service as indicated and the vehicle shall be seized and towed.

In cases where no Criminal Code charges are laid, however a subsequent reading are over 80 milligrams percent the Investigating Member shall:

Issue the Notice and Order of Suspension or Disqualification and Notice of Seizure and Impoundment of Motor Vehicle with proper service as indicated and the vehicle shall be seized and towed.

The Accused, if released on an Appearance Notice, shall be turned over to a sober, responsible adult. If such a person cannot be located, the Accused shall be lodged at the Main Street Project to be released when sober.

b) Procedures for Suspending a Subject's Drivers Licence

When the circumstances warrant the driver being suspended for alcohol related offences and/or in the unusual circumstances when Blood Samples are sent to the Laboratory for alcohol evaluation, or expert testimony is required as a result of a delay in getting a Breath Sample within the required two hour limit, the following shall apply.

1) Breathalyzer Demand

When a Breathalyzer Demand has been made by a Member and the Accused fails the Breathalyzer Test, the Member shall:

- i) Seize the Drivers Licence only. The Photo Identification Card shall remain with the Accused,

- ii) Complete the Notice and Order of Suspension or Disqualification, Notice of Seizure and Impoundment of Motor Vehicle
- iii) Complete the 24 Hour Suspension Notice if the offence involves Driving Over 80 milligrams percent,
- iv) Complete the reverse side of the Member's copy, first page,
- v) Issue the driver their copy of the Forms,
- vi) During the shift when the arrest is made, the following shall be entered into the file:
 - the Driver and Vehicle Licencing copy of the Notice and Order of Suspension and Notice of Seizure and Impoundment of Motor Vehicle
 - the Drivers Licence. *Do not seize the Photo Identification Card.*
 - a copy of the Impaired Driving Check Sheet,
 - a copy of the Certificate of Analysis.
- vii) If the driver holds an out-of-Province Drivers Licence the procedure is the same, except that the Licence is not seized.
- viii) Every person operating a Department of National Defence vehicle in Manitoba must possess a valid Department of National Defence - 404 - Driver Permit. The suspension procedure is the same, except that the Department of National Defence - 404 - Driver Permit is not seized. Military Personnel operating Military vehicles possessing a valid Department of National Defence - 404 - Driver Permit do not require a valid Manitoba Drivers Licence.

2) Refusal of Breathalyzer/Blood Sample Demand

When a Demand for Breath or Blood Samples is refused by the Accused, the Member shall:

- i) Seize the Drivers Licence only. The Photo Identification Card shall remain with the Accused,
- ii) Complete the Notice and Order of Suspension or Disqualification and Notice of Seizure and Impoundment of Motor Vehicle
- iii) Complete the reverse side of the Member's copy, first page,
- iv) Issue the driver their copy of the Forms,

- v) During the shift when the arrest is made, the following shall be placed into the file:
 - the Driver and Vehicle Licencing copy of the Notice and Order of Suspension and Notice of Seizure and Impoundment of Motor Vehicle,
 - the Drivers Licence. *Do not seize the Photo Identification Card,*
 - a copy of the Impaired Driving Check Sheet.
- vi) If the driver holds an out-of-Province Drivers Licence, the procedure is the same, except that the Licence is not seized.

3) Blood Samples Sent to the Forensic Laboratory for Alcohol Evaluation

When Blood Samples have been sent for Alcohol Evaluation, Members shall:

- i) Package and send the Exhibit in accordance with the procedure set out in the Alcohol Section of the Forensic Laboratory Services Manual,
- ii) Not serve documents until the results of the Laboratory Analysis have been confirmed,
- iii) Upon receiving evidence to substantiate a charge of Section 253(b) CC, serve the Accused their copy of the Appearance Notice, Certificate of Analysis and Notice To Seek Greater Punishment, if applicable,
- iv) Seize the Accused's Drivers Licence. Do not seize the Photo Identification Card,
- v) Complete the Notice and Order of Suspension or Disqualification and Notice of Seizure and Impoundment of Motor Vehicle,
- vi) Issue a seven day temporary permit,
- vii) Issue the Accused their copy of the forms,
- viii) If the driver holds an out-of-Province Drivers Licence, the procedure is the same, except that the Licence is not seized.

4) Breath Samples Obtained After the Two Hour Limit

Where Breath Samples are obtained after the two hour limit, the following is required to establish whether the Accused's blood alcohol content was increasing or decreasing at the relevant time.

- i) Endeavour to learn from the Accused or a Witness:
 - when the Accused had their last alcoholic beverage,
 - what it was and how much was consumed,
 - when their last meal was,
 - what their sleep habits are,
 - if they are on any medication and if so, what type and for what illness,
 - the Accused's height and weight.
- ii) Send a copy of the investigation to the Forensic Laboratory, Alcohol Section, Winnipeg, Manitoba including Breath Sample readings even if the two hour limit has been exceeded,
- iii) Do not serve documents until the results have been confirmed,
- iv) Upon receiving evidence to substantiate a charge of Section 253(b) CC, locate and serve the Accused their copy of the Appearance Notice,
- v) Seize the Accused's Drivers Licence. Do not seize the Photo Identification Card,
- vi) Complete the Notice and Order of Suspension or Disqualification and Notice of Seizure and Impoundment of Motor Vehicle,
- vii) Issue a seven day temporary permit,
- viii) Issue the Accused their copy of the forms,
- ix) If the driver holds an out-of-Province Drivers Licence, the procedure is the same except the Drivers Licence is not seized.

5) Investigating Member's Report

After the Member completes the Notice and Order of Suspension or Disqualification and has served the Accused a copy of it, the Member shall:

- i) Complete the Declaration portion of the Member's Report,
- ii) If the Accused was unable to surrender their Drivers Licence due to its loss or previous destruction, the Declaration of Lost or Destroyed Drivers Licence or Permit shall be completed,
- iii) If the Accused refused to sign the Notice and Order of Suspension or Disqualification, the Declaration of Service must also be completed.

c) Definitions

1) Suspension Notice Date

This is the date the Form is filled out and shall normally be the same date as the offence. The date will differ in the case of a Blood Test where the Member shall have to wait for the Laboratory Results before issuing the Form.

2) Occurrence Date

The actual date of the incident.

3) Suspension/Disqualification Start Date

Unless the driver is already suspended, this shall start seven days after the Suspension Notice date, (ie. if the Form is served on the 15th of May the suspension date would be the 22nd of May).

4) The Effective Date (for the temporary Licence)

This must be the same date as the Suspension Notice date.

d) Arresting Member's Responsibilities

The Member shall:

1) Place the 24-Hour Suspension on CPIC,

2) After the 24-Hour Suspension has expired, modify the Condition Field to show "DP Administrative Motor Vehicle Suspension". The Record shall show the Suspension/Disqualification start date and three months (90 days) from that date inclusive as being suspended or disqualified from applying for or holding a Drivers Licence or Drivers Permit in Manitoba or from operating a Motor Vehicle in Manitoba. CPIC expiry date of three months (90 days) after the Suspension/Disqualification start date.

3) Once the 24-Hour Suspension has expired, place the information into the file

e) Support Services Responsibilities

The Officer Manager or Police Clerk shall:

1) Ensure the Member's copy of the Suspension Notice is in the appropriate file,

2) Forward the following documents to the Motor Vehicle Branch the next working day:

- i) Driver and Vehicle Licencing copy of the Notice and Order of Suspension,
- ii) Drivers Licence,
- iii) A copy of the Impaired Driving Check Sheet,
- iv) A copy of the Certificate of Analysis.

f) Expert Testimony

This procedure is to be followed when the Investigating Member has sent containers of blood to the Royal Canadian Mounted Police Forensic Laboratory for alcohol evaluation or has requested the need for expert evidence in regards to a charge under Section 253(b) CC. This is when the first sample of breath introduced into the Breathalyzer exceeds the two hour limit.

Whenever a Member investigating an offence contrary to Section 253(b) CC (Drive With More than 80 Milligrams of Alcohol in Blood) has reason to believe that expert evidence shall be required for a successful prosecution they shall endeavour to learn from the Accused or Witnesses at what time the Accused actually finished their last alcoholic beverage. Also, when the Accused last ate and whether the Accused is on medication and if so, for what illness. This procedure is required by the Crown to establish whether the Accused's blood alcohol content was rising or falling at the relevant time. This shall always be necessary when the Blood/Breath Samples were obtained outside the two hour limit set by Section 254(3) CC. If there is any delay in placing the Accused before the Breathalyzer after the Demand is first made and as a result, the Certificate of Breathalyzer Analysis cannot be used, the Investigating Member shall send a copy of the investigation to the Royal Canadian Mounted Police Forensic Laboratory, Alcohol Section.

The Accused shall not be served with any documents until the results of the Laboratory Analysis have been confirmed or substantiated by an expert Witness. Members, upon receiving evidence from the Forensic Laboratory to substantiate a charge of Section 253(b) CC, shall:

- 1) Locate the Accused and serve the Summons portion of the Appearance Notice to attend Court to answer to the charge of 253(b) CC.
- 2) Where the Accused holds a valid Drivers Licence or Permit to Operate a Motor Vehicle:
 - i) Seize the Accused's Drivers Licence. Do not seize the Photo Identification Card,
 - ii) Suspend the Accused's Drivers Licence or Permit by serving the Accused with a Notice and Order of Suspension or Disqualification effective seven days from the date of issue,

b) Guidelines for Using the Program

To maintain the integrity of the Program and deal most effectively with the problem of the drinking driver, the following guidelines shall be adhered to:

1) Setting Up

- i)** Locations chosen shall permit easy entry and exit without obstructing the normal traffic flow,
- ii)** Locations chosen shall prevent a motorist from turning off prior to reaching the location.

2) Equipment

- i)** Two Check Stop signs - first sign at least 25 metres before the site, second sign at site turnoff,
- ii)** Reflector vests,
- iii)** Approved Roadside Screening Devices,
- iv)** Marked Police vehicles,
- v)** Availability of Breathalyzer and qualified Technicians.

3) Member/Motorist Contact

- i)** The Member shall be courteous at all times,
- ii)** Stopped drivers shall be informed that the purpose of the check is the S.T.E.P. Program,
- iii)** All pertinent documents may be requested without a demand for the driver to exit their vehicle,
- iv)** If there is no evidence of alcohol, (ie. smell, slurred speech, glossy eyes, etc.), the driver shall be permitted to leave forthwith,
- v)** The number of vehicles stopped at any time must be manageable. This shall prevent long and unnecessary delays for motorists.
- vi)** Motorists who are not suspected of any violation shall not be kept waiting while the Member obtains a name check by way of computer.

- 4)** S.T.E.P. shall always be under the direction of a Senior Constable.

c) Vehicle Check Records

Vehicle Check Records at each checkpoint operation shall be completed and include the following information:

- 1) Date and time of the check,
- 2) Location of checkpoint,
- 3) Number of vehicles checked,
- 4) Number of operator/vehicle documents not produced,
- 5) Number and type of offences detected (Criminal Code and H.T.A. Offences),
- 6) Public reaction - both positive and negative,
- 7) General observations and comments of Members,
- 8) Report compiles and given by the Traffic Section member who shall provide same to the Chief of Police for possible release,
- 9) Date, time, Units, Members assigned,
- 10) Number and results of Roadside Screening Device Tests,
- 11) Number of Impaired Driving Refusals and Breathalyzer charges.

10. CHECK STOP PROCEDURES

a) Conducting Check Stop Operations

Members may conduct Check Stop operations in the following situations:

- 1) As part of a formal S.T.E.P. being conducted by this agency,
- 2) On the initiative of the Senior Constable on shift or the Traffic Section member when sufficient staff levels, vehicles and equipment are available to conduct the Check Stop operation safely.

Roadblock Checks are permissible when they are preceded by advertising to the public that such Roadblock Checks will take place to curb Impaired Driving.

However, Members should be aware that the Supreme Court of Canada has ruled that Police Officers are not entitled to make routine unannounced Check Stops of motor vehicles without a reasonable belief that those drivers have been involved in an offence.

It is perfectly proper for Police Officers to pull over any motorist and request the production of a Drivers Licence where authorized in Provincial Regulatory Highways Acts. Such action may be taken without even a suspicion that a crime has been committed.

b) Members' Responsibilities

Members conducting a Check Stop operation shall:

- 1) Utilize a marked Police Vehicle with overhead emergency lights activated, on or near the roadway to draw the attention of motorists to the Check Stop.
- 2) Wear reflective safety vests,
- 3) When assigned as Point Officers directing traffic, use reflective traffic wand attachments on their flashlights,
- 4) Set up two Check Stop signs (the first sign at least 25 metres before the site and the second sign at the site turn off). These signs are stored in the Police garage.
- 5) Obtain permission from owners of private property if vehicles will be directed from the roadway onto private property.

* * * * *

East St. Paul Police

3021 Bird's Hill Road
East St. Paul, MB
R2E 1A7
204-668-8322
Fax: 204-669-8641

Date: 2003/02/05

Attention: To: ALL MEMBERS

Re: Suspension notices

Effective immediately, Suspension Notices (MG 1366)/Certificate of Analysis no longer have to be faxed to DVL. DVL only wants the original suspension notices and a copy of the certificate of analysis **mailed** to them. Members will fill out the details on the back of the suspension notice as usual and submit that along with a **copy** of the certificate of analysis for mailing to DVL on the next business day.

Vehicle impoundment notices will be submitted to Dept of Justice as we presently do(Fax copy with original being mailed later)

Norm



Manitoba

DATE: February 16, 1999

Memorandum

TO: ALL POLICE AGENCIES

FROM: Jacqueline St. Hill
Deputy Director, Intake
510 - 405 Broadway
Winnipeg MB R3C 3L6

PHONE: 204-945-3226
FAX: 204-945-1260
EMAIL: jsthill@jus.gov.mb.ca

SUBJECT: Breathalyzer Readings Following HTA Roadside Suspensions

As you are aware the provisions of the *Highway Traffic Act* which address the suspensions associated with approved screening devices allow for further breathalyzer testing at the option of the motorist.

Section 265(8) of the *Highway Traffic Act* provides as follows:

"When an analysis of the breath of a person is made under subsection(1), the person may require a further analysis to be performed in the manner provided in subsection (2), in which case the second analysis governs and any suspension or disqualification resulting from the analysis under subsection (1) continues or terminates accordingly."

The current suspension/disqualification form that is issued by police officers to motorists who register a "warn" on the A.S.D. refers to this option. This option is not of course, available to those who register a "fail" as the "fail" provides reasonable and probable grounds to make a formal breathalyzer demand.

CHARGING POLICY

Some police agencies have requested advice as to whether criminal charges should be laid where breath samples obtained in these circumstances are 90 mg% or more.

We have reviewed this issue in consultation with our Constitutional Law Branch. It is our position that given the complexity of the evidentiary and Charter issues the majority of such prosecutions are unlikely to result in conviction. Accordingly, the issue of whether such charges should be laid in any given case should be firstly reviewed by our office. A complete and comprehensive set of particulars where such charges are contemplated should be forwarded to the attention of the Deputy Director of the Intake Unit for Crown opinion.

24 HOUR SUSPENSION

Section 265(6) of the *Highway Traffic Act* provides for a 24 hour suspension where a "warn" or "fail" is registered on the A.S.D. (as well as a refusal):

"If a person to whom a request was made under subsection (1), (2) or (3) holds a driver's licence

- (a) issued in Manitoba, the driver's licence is suspended for 24 hours from the time the request is made; or
- (b) issued other than under this Act, the person is disqualified from operating a motor vehicle in Manitoba for 24 hours from the time the request is made;

whether or not the person surrenders his or her driver's licence."

3 MONTH SUSPENSION

Furthermore, in a case where a motorist who registered a "warn" chooses to exercise his/her option under s. 265(8) for a breathalyzer test and thereupon provides a single sample in excess of 80 mg%, an automatic 3 month suspension results. See s. 263.1 (1) and s. 263.1(6) in this regard. This suspension can be implemented regardless of whether the motorist is charged under the Criminal Code.

It is anticipated that the present suspension/disqualification form will be amended later this year. One of the expected changes is that the reference to the s. 265(8) option will be eliminated. This is the portion in the second box which provides "driver advised of right to breath analysis" etc. **Although that specific reference will be deleted from the form, s. 265(8) will still be effective. Accordingly, motorists who register a "warn" will still have the option of requesting a breathalyzer test. If they do so however, they run the risk of having a 3 month driving suspension automatically imposed against them, as set out in s. 263.1(1) and s. 263.1(6) indicated above. They further run the risk of criminal charges being laid depending on the circumstances of the case as assessed by the Department of Justice, Public Prosecutions.**



Jacqueline St. Hill

/sm

cc: Rob Finlayson, Assistant Deputy Attorney General
 cc: Lynn Stannard, Director of Prosecutions
 cc: Donna Miller, Q.C., Constitutional Law Branch
 cc: Don Lofendale, Civil Legal Services
 cc: Carolyn Halbert, MVB
 cc: Dr. A. Kraut, RCMP Lab Alcohol Section

Manitoba Justice

Information Bulletin

Manitoba



**TO ALL POLICE AGENCIES
DECEMBER 2004**