

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: IMPAIRED DRIVER CASES 4.1

SUBJECT:	Impaired Driver Cases
AZ POST DESIGNATION:	4.1
HOURS:	12
COURSE CONTENT:	A description of the effects of alcohol and drugs on drivers and techniques for obtaining evidence for successful prosecution. Scientific tests, standardized field sobriety tests and accurate reporting are emphasized. Driving Under the Influence, implied consent and administrative per se suspension cases are discussed.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will:
4.1.1	Identify the elements of “driving or in actual physical control while under the influence of intoxicating liquor or drugs,” as per A.R.S. §28-1381(A).
4.1.2	Identify that impairment under A.R.S. §28-1381(A)(1) means, “The person’s ability to operate a motor vehicle is impaired to the slightest degree.”
4.1.3	Identify the presumptions associated with different blood alcohol levels, as per A.R.S. §28-1381(G).
4.1.4	Identify driving behaviors commonly exhibited by persons who are under the influence of alcohol or other drugs.
4.1.5	Identify violations with respect to the consumption of alcoholic beverages in a motor vehicle, as per A.R.S. §§4-244.34, 4-251(A)(1) and 4-251(A)(2).
4.1.6	Identify behaviors commonly exhibited by persons under the influence of alcohol or other drugs.
	A. Slurred/altered speech.
	B. Odor of Alcohol/Drugs.

- C. Poor Balance.
- D. Poor coordination.
- E. Lack of concentration.
- F. General disorientation.
- G. Altered breathing.
- H. Bloodshot/glassy eyes.
- I. Tremors.
- J. Nausea/vomiting.
- K. Facial complexion/color.
- L. Unconsciousness.
- M. Slow reaction time.
- N. Impaired vision.

4.1.7 Identify the following non-alcohol or drug-related factors that may affect an individual's ability to operate a motor vehicle:

- A. Age.
- B. Emotional status.
- C. Mental status.
- D. Physical status.
- E. Distractions.

4.1.8 **Demonstrate** the ability to conduct the following field sobriety tests:

- A. Walk and turn.
- B. One (1)-leg stand.
- C. Romberg-modified.

- D. Finger to nose.
 - E. Finger count.
- 4.1.9 Identify indicators of impairment for each of the following field sobriety tests:
- A. Walk and turn.
 - B. One (1)-leg stand.
 - C. Romberg-modified.
 - D. Finger to nose.
 - E. Finger count.
- 4.1.10 Given a simulated situation and/or written, verbal or visual description of a possible DUI violation, explain why probable cause to make an arrest does or does not exist.
- 4.1.11 Identify the obligations of the arrested person and the arresting officer under the implied consent to test provisions of A.R.S. §28-1321.
- 4.1.12 Identify the test options available under A.R.S. §28-1321 for purposes of determining the presence of alcohol or other drugs.
- 4.1.13 Identify the circumstances under which an officer may lawfully obtain a blood sample, as per A.R.S. §28-1388(E).
- 4.1.14 Identify the requirement to suspend the license of a driver whose blood alcohol is at, or above, .08 and the arresting officer's responsibilities with regard to suspending the driver's license, per A.R.S. §28-1385.
- 4.1.15 Describe how a person arrested for DUI shall be informed of his/her right to obtain an independent blood alcohol test as per A.R.S. §28-1388(C) and case law.
- 4.1.16 Given a simulated situation in which an individual is driving under the influence of alcohol, **demonstrate** the proper techniques for approaching the vehicle, interviewing the driver, administering field sobriety tests, arresting the driver and maintaining officer safety.

4.1.17

Given a simulated situation and/or a written, verbal or visual description of a DUI arrest, **complete** the arrest report and any additional, relevant paperwork.

DATE FIRST PREPARED: August 1995

PREPARED BY: Lt. J. Klima and T. Sills, Phoenix PD

REVIEWED – **REVISED**: Sergeant Giles Tipsword, Phoenix PD DATE: May 1999
REVIEWED – **REVISED**: SME Committee, Officer Walt Peeling DATE: May 2002
REVIEWED – **REVISED**: Sergeant Bill Peters, Officer Tim Lafferty, Mesa PD.,
Sergeant Scott Elliott, PCSO DATE: September 2003
REVIEWED – **REVISED**: Officer Tim Lafferty, Mesa PD.
Lt. Tim Lane, Arizona DPS. DATE: March 2004
REVIEWED – **REVISED**: Officer Tim Lafferty, Mesa PD.
Lt. Tim Lane, Arizona DPS. DATE: June 2005
REVIEWED – **REVISED**: Tim Gaffney, Arizona GOHS
Officer Scott Sullivan, Tucson PD DATE: October 2007
REVIEWED – **REVISED**: Scott Sullivan, SME Committee DATE: March 2009
REVIEWED – **REVISED**: SME Committee DATE: January 2010
REVIEWED – **REVISED**: SME Committee DATE: October 2010
REVIEWED – **REVISED**: SME Committee DATE: November 2011
REVIEWED – **REVISED**: SME Committee DATE: November 2012
REVIEWED – **REVISED**: SME Committee DATE: June 2014
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REVIEWED – **REVISED**: AZPOST and SME group DATE: October 2018
REVIEWED – **REVISED**: AZPOST and SME group DATE: July 2019
REVIEWED – **REVISED**: SME Committee DATE: February 2021
REVIEWED – **REVISED**: AZPOST (DocX) DATE: December 2021
AZ POST – APPROVAL: Stephen Enteman DATE: July 2019
AZ POST – APPROVAL: Mandy Faust DATE: February 2021
AZ POST – APPROVAL: Lori Wait DATE: December 2021

INSTRUCTOR REFERENCES:

CLASS LEVEL: Student

TRAINING AIDS: Handouts: Alcohol Influence Report, Implied Consent Affidavit, N.H.T.S.A. Visual Detection of DUI Motorists and N.H.T.S.A. Visual Detection of DUI Motorcyclists.
<http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture, class discussions and practical exercises.

SUCCESS CRITERIA: 70 % or above on a written, multiple-choice examination.

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I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.

II. PROBLEMS OF THE IMPAIRED DRIVER IN SOCIETY

- A. DUI problem.
 - 1. Each year, tens of thousands of people die in traffic collisions.
 - 2. Throughout the nation, alcohol and drug impairment are the major contributors to traffic fatalities.
 - a. Nearly half ($\frac{1}{2}$) of all fatal crashes involve drinking and or drug impaired drivers.
 - b. Most dead drinking drivers were DUI at the time of the crash.
 - c. Alcohol-related crashes are nine (9) times more likely to result in death.
- B. Statistics of driving while impaired:
INSTRUCTOR NOTE: These statistics come from NHTSA studies.
 - 1. On an average, at any given time “two percent (2%).”
 - a. Daytime – one percent (1%) or less.
 - b. Weeknights – about five percent (5%).
 - c. Weekend nights – 10% or more.
 - 2. When are most DUI drivers on the road?
 - a. In a special study of drivers leaving bars between 9:00 p.m. and 2:00 a.m. on Friday and Saturday nights, one (1) in seven (7) had a BAC of .10 or more.
 - 3. The average DUI violator.
 - a. In an opinion survey conducted by Psychology Today, 41% of respondents reported they occasionally drove while “drunk”.
 - b. Studies indicate the average DUI violator drives while intoxicated approximately 80 times each year.

- c. The first faculty affected by alcohol is judgment.

III. DUI LAW

- A. A.R.S. §28-1381(A): “It is unlawful for any person to drive or be in actual physical control of a vehicle within this state under any of the following circumstances”: **P.O. 4.1.1**
- B. All DUI laws apply to vehicles on the roadway and also to vehicles operated on private property. **INSTRUCTOR NOTE:** *Define vehicle per §28-101 – definitions. §28-101*
 1. A.R.S. §28-1381(A)(1): “While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substance if the person is impaired to the slightest degree.”
 2. Elements: **P.O. 4.1.2**
INSTRUCTOR NOTE: *Explain impairment to the slightest degree.*
 - a. To drive or be in actual physical control of a vehicle.
 - b. Within this state. **INSTRUCTOR NOTE:** *Define actual physical control as used in prosecuting DUI cases.*
 - c. Under the influence of intoxicating liquor, drugs, toxic vapors or any combination.
Read law verbatim.
 3. A.R.S. §28-1381(A)(2): “If a person has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.”
 4. Elements:
 - a. To drive or be in actual physical control of a vehicle.
 - b. Within this state.
 - c. 0.08 or more alcohol concentration within two (2) hours of driving.
 5. A.R.S. §28-1381(A)(3): “While there is any drug defined in Section 13-3401 or its metabolite in the person’s body.”
 6. Elements:
INSTRUCTOR NOTE: *“DRE” Read Definition for 13-3401, covers both legal and illegal drugs. If legal drugs are used: Investigate for more than prescribed use*

and/or illegal prescription.

- a. Within this state.
- b. With any of the specified drugs or their metabolites in their body.
INSTRUCTOR NOTE: *Follow your agency's policy for charging criteria.*

7. A.R.S. §28-1381(A)(4): "If the vehicle is a commercial motor vehicle and the person has an alcohol concentration of 0.04 or more."

- a. Elements:
- b. To drive or be in actual physical control.
- c. A commercial motor vehicle.
- d. Within the state.
- e. Have an alcohol concentration of 0.04 or more.

8. A.R.S. §28-1382(A): "If the person has an alcohol concentration as follows within two hours of driving or being in actual physical control of the vehicle."

- a. 0.15 or more but less than 0.20.
- b. 0.20 or more.

C. Aggravated DUI (felony).

1. A.R.S. §28-1383(A): "A person is guilty of AGGRAVATED DRIVING OR ACTUAL PHYSICAL CONTROL WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS if the person does ANY of the following:
2. A.R.S. §§28-1383(A)(1): Commits a violation of §28-1381 and/or §28-1382 his privilege to drive is suspended, canceled, revoked, or refused, or the person's driver's license or privilege to drive is restricted as a result of violating §28-1382 or under §28-1385. ***INSTRUCTOR NOTE:*** *Read law verbatim. Point out the same elements as misdemeanor DUI. Follow your county attorney charging criteria. A1/A2 Class 4 Felony.*
3. A.R.S. §28-1383(A)(2): WITHIN A PERIOD OF EIGHTY-FOUR MONTHS commits a THIRD OR SUBSEQUENT violation of §§28-1381, 28-1382 OR THIS SECTION, OR IS CONVICTED OF A VIOLATION OF §§28-1381, 28-1382 OR THIS SECTION, AND HAS PREVIOUSLY BEEN CONVICTED OF ANY COMBINATION OF CONVICTION OF §28-1381, 28-1382 OR THIS SECTION, OR ACTS committed in this state would be a violation of §§28-1381, 28-1382 or this section.

4. A.R.S. §§28-1383(A)(3): Commits a violation of §28-1381 and/or §28-1382 while a person under 15 years of age is in the vehicle.” This A3 Class 6 Felony
 5. A.R.S. §28-1383(A)(4): While the person is ordered by the court or required pursuant to section 28-3319 by the department to equip any motor vehicle the person operates with a certified ignition interlock device (IID), commits a violation of section 28-1381, section 28-1382 or this section. This is a A4 Class 4 Felony **INSTRUCTOR NOTE:** *A driver with an IID requirement may be in violation of the IID statute. See A.R.S. §28-1464.*
 6. Commits a violation of section 28-1381, section 28-1382 or this section while driving the wrong way on a highway. See wrong way definition in A.R.S. 28-694.
- D. Presumptive levels relating to alcohol concentrations A.R.S. §28-1381(G):
- P.O. 4.1.3**
1. 0.05 or less, “. . .it may be presumed that the defendant was not under the influence of intoxicating liquor.” **INSTRUCTOR NOTE:** *these presumptions are absent any other evidence.*
 2. In excess of .05 but less than .08, such fact shall not give rise to any presumption that the defendant was, or was not, under the influence of intoxicating liquor.
 3. 0.08 or more, “. . .it may be presumed that the defendant was under the influence of intoxicating liquor.”
- E. Suspension requirements for “Admin Per Se” and “Implied Consent.” **Distribute copy of Admin Per Se / Implied consent.**
1. Explain that test(s) may include a breath test, blood test, urine test or other bodily substance. **INSTRUCTOR NOTE:** *Admin per se 90 days. Implied consent suspension 1-2 years* **P.O. 4.1.11**
 2. If the chemical test (breath) result is 0.08 or above, serve suspension (A.R.S. §28-1385). **INSTRUCTOR NOTE:** *Explain that there is no impairment required. Explain that this is not a DUI violation and does not count as a prior DUI conviction. Read verbatim.* **P.O. 4.1.12**
 3. If chemical Test (blood or urine) results are not available at the time of arrest, suspension is still served.
 4. Read the implied consent advisement verbatim and initial appropriate boxes. (A.R.S. §28-1381). **P.O. 4.1.14**
 5. Discuss the law regarding refusal to submit to chemical test(s) and driving privilege.
 6. Explain Implied consent (refusal) suspensions, apply only to chemical tests.

There is no provision in the Admin Per Se/Implied Consent Law to suspend a driver's license for refusal to submit to FST's. If the violator refuses the Admin Per Se/Implied Consent, proceed with getting a search warrant.

- F. There are three (3) state liquor statutes that pertain to drinking alcoholic beverages while being in, or driving, a motor vehicle. They are: **P.O. 4.1.5**
1. A.R.S. §4-244.34 – “It is unlawful for a person under the age of twenty-one (21) years to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body.” **INSTRUCTOR NOTE:** Read §4-244.34, Class 1 misdemeanor.
 2. A.R.S. §4-251(A)(1) – “Consumption of liquor while operating or riding in a vehicle.” **INSTRUCTOR NOTE:** Read §4-251(A)(1), Class 2 misdemeanor.
 3. A.R.S. §4-251(A)(2) – “Possession of an open container of liquor within the passenger compartment.” **INSTRUCTOR NOTE:** Read §4-251(A)(2), Class 2 misdemeanor.
- G. Explain to the class that this statute is often referred to as the “Zero Tolerance” law.
1. If any officer suspects that a person under 21 years old has been consuming spirituous liquor and driving, he/she can now require this person to take a test(s) of breath, blood, urine or other bodily substance. **INSTRUCTOR NOTE:** The “ADMIN PER SE” statute applies to this scenario.
 2. If the person refuses, his/her driver's license will be suspended for one (1) year under A.R.S. §28-1321 or for two (2) years with prior implied consent refusal within the past 84 months.
 3. If impairment is also detected, the person should be cited for both DUI and the liquor violation.

IV. DETECTION PHASES

P.O. 4.1.4

- A. DUI detection problems.
1. Studies show that for every DUI violator arrested, three (3) others are contacted by police and are not arrested. **INSTRUCTOR NOTE:** According to the Fort Lauderdale Study in 1975.
 2. Mainly due to: Lack of training and/or manpower.
- B. Phase one: Vehicle in motion.
1. Divided attention concept: “The ability of a person to perform two (2) or more tasks at the same time.” **INSTRUCTOR NOTE:** Solicit students' ideas of how this

relates to driving.

2. Things to look for: **INSTRUCTOR NOTE:** *Solicit recruit participation in defining a-f.*
 - a. Moving violation.
 - b. Equipment violation.
 - c. Other violations.
 - d. Unusual operation.
 - e. Normal operation.
 - f. Anything else.
 - i. Reasonable suspicion of a crime.
3. Probability values:
 - a. Studies show that a person with a BAC of 0.08 or more commits some type of violation more often than others.
 - b. N.H.T.S.A. driving clues. N.H.T.S.A. motorist and motorcycle driving clues.
INSTRUCTOR NOTE: *(Handout) And Videos if available.*
4. Stop of suspect vehicle by an officer – things to look for: **INSTRUCTOR NOTE:** *Re-emphasize divided attention.*
 - a. Tries to flee.
 - b. No response.
 - c. Slow/immediate response.
 - d. Abrupt weave.
 - e. Sudden stop.
 - f. Strikes curb.
 - g. New violations.
 - h. Anything else.
5. Common symptoms of alcohol impairment (in general):

- a. 0.03 BAC = judgment/slowed response.
 - b. 0.05 BAC = risk taking.
 - c. 0.08 BAC = impaired vision.
 - d. 0.10 BAC = poor condition.
- C. Phase two: Personal contact.
- 1. Suspect sitting in vehicle – things to look for and note:
 - a. What do you see?
 - b. What do you hear?
 - c. What do you smell?
 - d. Odor of an alcoholic beverage coming from the interior of the vehicle.
 - e. “Cover up” odors (i.e., cigarettes or gum). Other odors (i.e., burnt marijuana, paint, air fresheners, etc.). **INSTRUCTOR NOTE:** *Solicit additional things to look for from students.*
 - f. Alcoholic beverage containers in vehicles, empty or not. **INSTRUCTOR NOTE:** *Examples – fumbling or dropping items.*
 - g. Dexterity problems.
 - h. Statements. **INSTRUCTOR NOTE:** *Admission or inconsistent or inappropriate responses.*
 - i. Unconsciousness.
 - j. Indicators of alcohol intoxication: **P.O. 4.1.6**
 - i. Odor of alcohol/drugs.
 - ii. Slurred/altered speech. **P.O. 4.1.6A**
 - iii. Poor coordination. **P.O. 4.1.6B**
 - iv. Lack of concentration. **P.O. 4.1.6C**
 - v. General orientation. **P.O. 4.1.6D**

- vi. Altered breathing. **P.O. 4.1.6E**
- vii. Bloodshot/"glassy" eyes. **P.O. 4.1.6F**
INSTRUCTOR NOTE: Alcohol is a vasodilator – it dilates blood vessels (alcohol is only one (1) cause of bloodshot eyes).
- viii. Tremors. **P.O. 4.1.6G**
- ix. Nausea/vomiting. **P.O. 4.1.6H**
- x. Facial complexion/color. **P.O. 4.1.6I**
- xi. Unconsciousness. **P.O. 4.1.6J**
- xii. Slow reaction time. **P.O. 4.1.6K**
- xiii. Impaired vision. **P.O. 4.1.6L**

2. Exiting vehicle – things to look for and note:

- a. Vehicle is still in gear. **INSTRUCTOR NOTE:** Solicit additional things to look for from recruits. Alcohol is a vasodilator.
- b. Balance problems when standing up from a vehicle.
- c. Dropping items. **INSTRUCTOR NOTE:** An odor of alcohol is coming from the person's breath.
- d. Cannot open the door.
- e. Climbs out of the vehicle.
- f. Leans on the vehicle.
- g. Angry or unusual reactions.
- h. Anything else?

D. Phase three: Pre-arrest screening.

1. Preliminary questions.

- a. Drinking (what, when, where). **INSTRUCTOR NOTE:** Lacking an agency policy, you can wait until the actual arrest is made.

- b. Meds/drugs.
 - c. Physical problems/disabilities. **INSTRUCTOR NOTE:** *Physical problems can include problems with the neck, back, hips, knees or ankles.*
2. Divided attention concept relating to standardized field sobriety testing.
- a. Test needs to be simple in nature.
 - b. Multiple tasks to be done at the same time.
3. There are five (5) field sobriety tests that officers can administer to suspected DUI offenders. **INSTRUCTOR NOTE:** *Hand out Alcohol Influence Report.*
- P.O.4.1.8**
- a. Walk and turn.
 - b. One (1)-leg stand.
 - c. Romberg modified.
 - d. Finger to nose.
 - e. Finger count.
4. Explain each FST and demonstrate instructions by administering tests to volunteer students. Go over the clues that students should look for in each test for documenting suspect performance.

V. STANDARDIZED FIELD SOBRIETY TEST**P.O. 4.1.9**

- A. Caution: Safety of the violator, officers and the public should always be evaluated when conducting SFST's.
- B. Practice sessions for each SFST.
 - 1. Walk and turn test (N.H.T.S.A. Standardized/validated). **P.O. 4.1.9E**
 - a. Describe to the class how to administer and clues to look for:
 - i. Cannot keep balance during instruction. (breaks heel to toe position) **INSTRUCTOR NOTE:** *Point out to the class: The sequence of SFST's is the sequence to use in the field.*
 - ii. Starts too soon. **INSTRUCTOR NOTE:** *Eight (8) total clues.*
 - iii. Stops while walking.

- iv. Does not touch heel to toe more than one-half inch ($\frac{1}{2}$ ").
 - v. Steps off line. **INSTRUCTOR NOTE:** Stress officer safety.
 - vi. Uses arms for balance more than six inches (6").
 - vii. Improper turn (fails to take small steps around lead foot).
 - viii. Incorrect number of steps. **INSTRUCTOR NOTE:** Emphasize that students can help each other by pointing out errors of omission or commission. Improper turn includes spin, pivot or losing balance while turning.
- b. If two (2) or more clues are observed, 79%, that subject's BAC/BRAC is .08 or greater. **INSTRUCTOR NOTE:** Percentages come from 1998 San Diego study.
- c. Students will get into groups of two (2) to three (3) and administer tests to each other.
2. One (1)-leg stand (N.H.T.S.A. Standardized/validated). **P.O. 4.1.9C**
- a. Describe to the class how to administer and clues to look for:
 - i. Sways while balancing. **INSTRUCTOR NOTE:** This test must be a timed, 30-second test. Not when the suspect counts to 30.
 - ii. Uses arms for balance more than six inches (6").
 - iii. Hops.
 - iv. Puts foot down. **INSTRUCTOR NOTE:** Four (4) total clues.
 - b. If two (2) or more clues are observed, 83%, that subject's BAC/BRAC is .08 or greater. **INSTRUCTOR NOTE:** Percentages come from 1998 San Diego study.
 - c. Students will get into groups of two (2) to three (3) and administer the test to each other.
3. Romberg-modified test. **P.O.4.1.9D**
- a. Describe to the class how to administer and clues to look for:
 - i. Required additional instruction.

- ii. Opened eyes during testing. **INSTRUCTOR NOTE:** *A variation of the test can be an internal estimation of 30 seconds.*
 - iii. Failed to keep heels together throughout. **INSTRUCTOR NOTE:** *Not validated, but is a good test to detect impairment.*
 - iv. Failed to keep head tilted back.
 - v. Swaying.
 - vi. Error in alphabet or numbers. **INSTRUCTOR NOTE:** *Another option is to have the suspect estimate 30 seconds in their mind. The officer should time the suspect's response. This may be a good indicator for drug impairment.*
- b. Students will get into groups of two (2) to three (3) and administer the test to each other.
4. Finger-to-nose test. **P.O. 4.1.9A**
- a. Describe to the class how to administer and clues to look for:
INSTRUCTOR NOTE: *Not validated, but is a good test to detect impairment.*
 - i. Required additional instruction.
 - ii. Opened eyes during testing.
 - iii. Failed to keep heels together during testing.
 - iv. Used hand other than the one designated.
 - v. Missed nose with fingertip.
 - vi. Touched nose with other than fingertip.
 - vii. Swaying.
 - b. Students will get into groups of two (2) to three (3) and administer the test to each other.
5. Finger count test. **P.O. 4.1.9B**
- a. Describe to the class how to administer and clues to look for.
 - b. Students will get into groups of two (2) to three (3) and administer the

test to each other. **INSTRUCTOR NOTE:** Use two (2) different recruits for each of the five (5) SFST's. Not validated, but is a good test to detect impairment.

- C. Demonstration in front of the class.
1. Have one (1) student come up in front of the class to administer an FST to another student.
 - a. Walk and turn test.
 - b. One (1)-leg stand test.
 - c. Romberg-modified test.
 - d. Finger-to-nose test.
 - e. Finger count test.
 2. Horizontal Gaze Nystagmus (N.H.T.S.A validated). **INSTRUCTOR NOTE:** Six (6) total clues.
 - a. Explain the definition of Nystagmus.
 - b. A certified HGN technician must administer.
 - c. Attempt to get an HGN test done by a certified officer whenever possible.
 - i. It is most advantageous to case prosecution if done at the scene before arrest. **INSTRUCTOR NOTE:** This test is 88% reliable. Based on the 1998 San Diego study.
 - ii. Point out that it is best to administer all FST's at the scene unless extreme unusual circumstances exist (i.e., bad weather, dangerous road area, etc.). **INSTRUCTOR NOTE:** If four (4) or more cues are observed by a HGN-certified officer, there is an 88% chance that the subject's BAC/BRAC is .08 or greater.
 - d. HGN is easy to see, but must not be tested for by an untrained officer.
 - e. Numerous factors can affect the HGN test other than alcohol (i.e., physical injuries or other drugs). **INSTRUCTOR NOTE:** Indicate results of more recent studies in regards to HGN accuracy.
- D. Preliminary breath test per A.R.S. §28-1322.
1. Provides the ability to check BAC in the field close to the time of driving.

2. Used to validate the investigation/arrest decision already made and/or to differentiate an alcohol vs. drug-impaired driver.
3. Now accepted and endorsed by the Arizona Department of Public Safety, who certifies other methods of breath testing.
4. PBT does not relieve the suspect of implied consent.
5. Could also be used for charging extreme DUI.
6. Test is not an evidentiary test that takes the place of pbt or blood tests.

VI. ARREST OF DUI SUSPECTS

- A. Officers will complete a warrant check and a driver's license check on the suspect at the roadside before or after the arrest.
 1. To determine if the suspect is wanted.
 2. To determine if the suspect is a felony or misdemeanor DUI.
- B. Reminder: Officers will make every attempt to administer the field sobriety tests at the scene. The field sobriety tests are designed to assist the officer in developing probable cause at roadside. **INSTRUCTOR NOTE:** Review the elements of arrest (*Reasonable Suspicion – Traffic Violation – Probable Cause – DUI*).
- C. If the officer has probable cause to arrest and elements of the offense are present, an arrest will be made (i.e., traffic violation, odor, alcohol beverage, bloodshot eyes, slurred speech, poor balance, poor results on field sobriety test, etc.).
- D. Advise the suspect that he/she is under arrest for DUI.
- E. Follow proper procedures and guidelines for officers' safety as with any arrest of any person for a criminal offense.
- F. At this time, the officer may advise the suspect of his/her Miranda warnings, but it is not mandatory if no questions are asked, other than biological and biographical questions.
- G. Some departments allow the arresting officer to lock and park the suspect's vehicle and take the vehicle keys. NOTE: Do not let a suspected DUI driver park his/her vehicle. Follow your department's policy.
- H. **28-3511 30-Day Impoundment:** This is required by state law on Aggravated and Extreme DUI cases. Other situations also require 30-Day Impoundments. **INSTRUCTOR NOTE:** *Officer safety and proper searching techniques. Can be done at the scene or later at the station as long as the warnings are given, preferably per standard rights card. Point out*

problems in allowing the DUI driver to drive. Remind – DUI drivers tend to be talkative when being transported. Let them talk and note any admissions or inconsistent statements.

- I. Transport the DUI suspect to the station or call a van.
- J. Upon arriving at your booking location, maintain officer safety and make an attempt to allow the suspect to use the restroom facility soon after arriving. Observe him/her in the restroom. Many suspects have swallowed items to void the breath analysis.

VII. PROCESSING THE DUI SUSPECT AND RELATED PAPERWORK

- A. If Miranda warnings have not been given, do so at this time, prior to questioning.
INSTRUCTOR NOTE: Jury appeal.
- B. The admin per se affidavit will be read verbatim by the arresting officer prior to the interview.
 - 1. Record responses.
 - 2. Record time.
- C. The interview.
 - 1. Identification section.
 - 2. Use a standard rights card so as not to forget an important part of the warning and the advantage of reading from a card for court.
 - 3. Do not recite hastily or in a bored tone, speak clearly so as not to be misunderstood.
 - 4. Record responses as to how he/she understands his/her rights. ***INSTRUCTOR NOTE: DUI suspects like to talk – many times they incriminate themselves by making spontaneous utterances.***
 - 5. Record the time that Miranda warnings are given.
 - 6. Asks questions verbatim off of the DUI form.
 - 7. Record the suspect's responses verbatim, even if lengthy.
 - 8. If Miranda rights are invoked, the suspect cannot be questioned in reference to this investigation.
- D. Allow suspects to make any legal telephone calls, if requested. ***INSTRUCTOR NOTE: Very Important! Case can be dismissed if not allowed to make calls.***

1. Do not limit the number of calls.
 2. Allow a reasonable amount of time to make the calls. **INSTRUCTOR NOTE:** *E.g., 15-20 minutes is reasonable.*
 3. Make every effort possible to allow privacy.
 4. Post the call-back number.
 5. Provide telephone books.
 6. Record the telephone number called and the time and length of the call. **INSTRUCTOR NOTE:** *Explain why we want to get the restroom, phone calls, etc., out of the way so as not to interfere with the breath-test requirement. Consider medical treatment for a very high BAC. Follow your agency policy.*
- E. Arrange for a certified breath-testing officer or phlebotomist depending on your agency's policies.
- F. Chemical Test.
1. If the DUI suspect submits to a chemical test and the results are not available, or the BAC is .08 or above or there is any drug or metabolite as defined in ARS 13-3401. **INSTRUCTOR NOTE:** *Officers can still administer this test if two hour statutory time has expired.*
 - a. Advise the suspect of the order of suspension for 90 days.
 - b. Issue and explain a temporary permit to drive and seize the license.
 - i. DO NOT seize an out-of-state driver's license. **INSTRUCTOR NOTE:** *If extreme intoxication is observed; follow your department's policy on medical treatment.*
 - ii. If a license is not in the person's possession, indicate that on the admin per se. **INSTRUCTOR NOTE:** *Admin Per Se suspension is the first 30 day period of the 90 day suspension.*
 - iii. A temporary permit to drive will not be issued to any person whose driver's license is suspended. NOTE: Copies of the admin per se will be given to him/her upon release.
 2. The Breath Test. **INSTRUCTOR NOTE:** *The breath sample does not need to be preserved.*
 - a. Two (2) breath tests given.

3. The Blood and/or the Urine Test.
 - a. Follow your agency guidelines for obtaining blood and/or urine samples, if applicable. **INSTRUCTOR NOTE:** *Officers can still administer this test if two hour statutory time has expired.*
 - b. Ensure chain of custody.
 - c. Discuss procedures for completing admin per se documentation when obtaining a blood or urine test. **INSTRUCTOR NOTE:** *Elements of aggravated DUI.*
 - d. Advise of the right to arrange for any additional test(s). The same as section VII.G
 - e. A person must “expressly agree” to consent to any chemical test. **INSTRUCTOR NOTE:** *A subject just sticking out the arm does not meet that requirement. Carrillo v. Houser, Arizona Supreme Court.*

- G. Refusal to submit to test(s).
 1. Record verbatim how the suspect refused to submit to a test and the time he/she refused. **INSTRUCTOR NOTE:** *The operator should make notes concerning refusals. Implied consent suspension is a result of refusing or failing to complete the chemical test. 1 or 2 year duration.*
 2. Seize the license if a resident and in possession.
 3. Issue a temporary driver’s permit unless the license is suspended or not in possession.
 4. Advise the suspect of implied consent suspension for 12 months or for two (2) years if implied consent refusal is within the past 84 months. **INSTRUCTOR NOTE:** *Explain that photos and prints can be obtained at jail prior to a release. Also, we need a fingerprint for future identification.*
 5. A telephonic, fax, or electronic search warrant for blood may be obtained, depending on your agency policy and procedure.

- H. Independent Tests.
 1. The right to an independent test will be explained to the suspect regardless of the type of sample collected or if the suspect refuses to provide a sample. **INSTRUCTOR NOTE:** *Explain – this is done so a suspect cannot use as a defense in court that his/her impairment was due to alcohol alone and the breath-testing device was reading low or not operating properly.*

2. Advise of the right to arrange for any additional test(s) A.R.S. §28-1388(C).
INSTRUCTOR NOTE: Read §28-1388(C) – also applies to in-custody/ booking cases. **P.O. 4.1.15**
 3. Options: Breath, blood, urine or other substance.
- I. Obtain the suspect’s fingerprints and photograph. **INSTRUCTOR NOTE:** Misdemeanor print card, fingerprint card and alcohol influence report.
 - J. Record check of DUI suspect.
 1. All DUI suspects will have a records check done for prior DUI arrests, criminal record and status of driver’s license.
 2. The records check must be made prior to issuance of any citations.
 3. If the suspect is found to have a suspended driver’s license and has waived his/her Miranda warnings, ask if he/she knew his/her license was suspended.
INSTRUCTOR NOTE: Record response. Example: “Yeah, I knew, I got busted for DUI about two (2) months ago and they sent me a letter and took my license.”
 - K. Citing requirements/release on Written Promise to Appear. **P.O. 4.1.10**
 1. Each agency has specific guidelines for issuing traffic citations and they should be covered with your field training officer. **INSTRUCTOR NOTE:** Explain how a DUI suspect will not be considered uncooperative merely because he/she refused a chemical test or refused to answer questions.
 2. Released on written promise to appear may vary from one (1) agency to the next.
 - a. In general, if a DUI suspect is cooperative and has good identification and meets your department guidelines for release, he/she should be released on his/her written promise to appear in court on a given date.
INSTRUCTOR NOTE: Prior to release, make every effort to get both current home and work addresses.
 - b. DO NOT TELL a DUI suspect, “If you do not take the breath/blood test, I will consider you to be uncooperative and will have to book you.”
INSTRUCTOR NOTE: Coercion is against the law.
 3. No citations will be issued for aggravated DUI; the driver can be booked into jail.
INSTRUCTOR NOTE: Follow your agency guidelines on felony crime procedures.
 - L. DUI suspect’s vehicle keys.

1. Keys should not be released to any intoxicated person. Follow department policy regarding releasing keys.
 2. Follow your department's policy regarding towing or securing vehicles. (28-3511 30-Day Impound)
- M. Juvenile DUI suspects.
1. Process the same as an adult except keep them separated from other adults.
 2. Each agency has different policies. Below are a few generally-accepted policies of police agencies:
 - a. Use juvenile Miranda warnings.
 - b. Blood test (with parent/guardian consent if your agency requires it.) or a search warrant as per A.R.S. § 1-602. **INSTRUCTOR NOTE:** Review *Parental Bill of Rights A.R.S. § 1-602.*
 - c. Release to the custody of a parent or legal guardian.
 - d. Obtain a medical release if the juvenile has to be booked.
 - e. Advise the parent(s) that the juvenile should be examined by a doctor.
 - f. Cite under the guidelines for court. **INSTRUCTOR NOTE:** Should include *all appropriate offenses committed.*
- N. Injured DUI suspects.
1. In collision cases, based on probable cause, officers will handle drivers suspected of DUI as if the officers had actually witnessed the violation A.R.S. §13-3883(A)(3). **INSTRUCTOR NOTE:** Read A.R.S. §13-3883(A)(3) with students.
 2. Obtain breath or blood samples at the hospital. **P.O.4.1.13**
 - a. Explain, briefly, the Blood Collection Kit and gray-top blood kit – if possible, have a blood kit to show the class. **INSTRUCTOR NOTE:** Read A.R.S. §§28-1388(A) and 28-1388(E) with the class.
 - b. If the hospital conducted a medical draw prior to arrival, you are entitled to that sample under A.R.S. §28-1388(E). **INSTRUCTOR NOTE:** Good practice to also obtain your own sample as well.
 - i. Advise the class that it is a Class 1 misdemeanor for hospital personnel to fail to comply with this section. **INSTRUCTOR NOTE:** (Case law indicates PC plus exigent circumstances are required to

seize medical drawn blood without a search warrant) State Vs. Nissley 2017.

- ii. NOTE: Do not arrest hospital personnel, but if necessary, submit a “hindering prosecution” report.
 - c. If conscious, advise of implied consent and process as though you were at a police station. **INSTRUCTOR NOTE:** *If the suspect refused blood or breath, submit an implied consent for refusal and/or attempt to obtain a search warrant. Arrest or advisement of arrest is still required for Admin Per Se to apply.*
 - d. If the person is dead, unconscious or has a condition rendering the person incapable of refusal, then he/she is deemed not to have withdrawn the consent. (A search warrant is required to seize blood from an unconscious individual) State Vs. Nissley 2017. **INSTRUCTOR NOTE:** *Read §28-1321(C).*
 - e. Observe the blood being drawn, obtain the name of the person drawing the blood, what type of cleanser was used on the person’s arm and record the time it was taken.
 - f. If blood was drawn prior to your arrival, obtain the same information for chain of custody. **INSTRUCTOR NOTE:** *For DUI cases, if alcohol swabs are used; it may create a criminal defense. Use “betadine” if possible.*
- O. Record information on the SFST worksheet.
- 1. Describe suspect performance on the field tests when completing the DUI Report.
 - 2. Instructor – go into detail on how to transcribe, notes and record onto the FST worksheet.
 - 3. Do not merely check boxes; make notes on the worksheet for your future reference. (E.g., on one (1)-leg stand, “put foot down on 1003, 1006, fell on 1011 and quit.”)
- P. Details of arrest.
- 1. Give details of the incident similar to that of a departmental report for any other criminal offense.
 - 2. Justify charges of the offense.
 - a. Driving a motor vehicle.

- b. A traffic violation that gave the officer reasonable suspicion to stop.
 - c. The officer's observations of the suspect.
- 3. Document other traffic offenses such as:
 - a. No driver's license.
 - b. No proof of insurance, etc.
- Q. Court testimony preparation.
 - 1. Wear your uniform, if possible. **INSTRUCTOR NOTE:** *Explain importance of proper appearance and professionalism in court.*
 - 2. Review your report before testifying.
 - 3. Meet with the prosecutor prior to trial.

VIII. DRUG-IMPAIRED DRIVER

- A. The drugged-driver problem. **INSTRUCTOR NOTE:** *Briefly explain what a Drug Recognition Expert is and recommend that the DRE should be called to administer a drug evaluation on these cases, if available.*
 - 1. A drug is any substance which, when taken into the human body, can impair the ability of the person to operate a vehicle safely.
 - 2. Tennessee study: 40% of drivers in hospitals had drugs in their systems. (1988)
 - 3. California study:
 - a. Fifty-one percent (51%) of fatalities had drugs other than alcohol.
 - b. Forty-nine percent (49%) had no drugs other than alcohol.
- B. Problems with identifying drug-impaired drivers:
 - 1. They may look similar to alcohol-only impaired drivers.
 - 2. The person may actually be suffering a medical emergency.
 - 3. Persons with mental illness or developmental disabilities may act like people on drugs.
- C. Officer's abilities that lead to successful DUI prosecution:

1. Recognize evidence of alcohol/drug influence, applying all three (3) detection phases.
 - a. Vehicle in motion.
 - b. Personal contact.
 - c. Pre-arrest screening.
2. Describe the evidence clearly and convincingly.
 - a. Both report writing and testing.
 - b. Anytime where the person's blood alcohol concentration is not consistent with the impairment observed.
3. The arresting officer should advise the drug recognition expert officer of observations relating to the subject's behavior, statements and physical evidence.
 - a. Driving.
 - b. Balance and coordination.
 - c. Unusual behavior.
 - d. Statements of drug use, etc.
 - e. Attitude and demeanor.
 - f. Drugs and paraphernalia.
 - g. Medical problems.
 - h. BAC level.

IX. NON-ALCOHOL OR DRUG-IMPAIRED SITUATIONS**P.O. 4.1.7**

- A. There may be situations where a person may be impaired, but is not under the influence of alcohol or drugs. **INSTRUCTOR NOTE:** Ask the class what non-alcohol or drug situations may impair a person's ability to drive a vehicle.
- B. These situations may include:
 1. Age impairment: People who are at an advanced age may have difficulty driving.

P.O. 4.1.7A

2. Emotional status: People who are emotionally upset may display poor driving or physical impairment. **P.O. 4.1.7B**
 3. Mental status: People with mental handicaps may also display impaired driving or physical demeanor. **P.O. 4.1.7C**
 4. Physical impairments may also affect a person's ability to drive. **P.O. 4.1.7D**
 - a. Epilepsy.
 - b. Diabetic shock.
 - c. Diabetic coma.
 - d. Mental illness or developmental disability.
 - e. Stroke.
 5. Symptoms of impairment that may be present for epilepsy, diabetic shock, mental illness, stroke or diabetic coma can include: ***INSTRUCTOR NOTE: Seek immediate "Medical Assistance" if these symptoms are present.***
 - a. *Slurred or altered speech.*
 - b. Poor coordination.
 - c. General disorientation and the inability to think or respond to questions properly.
 - d. Altered breathing and slow reaction time.
 - e. Those in a diabetic coma or stroke can be conscious, but may be unresponsive or can be in an unconscious state appearing to have had a heart attack.
 6. Fatigue.
 - a. People who are fatigued or tired will often appear as though they are "drunk" or impaired. ***INSTRUCTOR NOTE: This will show during their driving performance.***
 - b. This is common on interstate highways or for people who work shift work. ***INSTRUCTOR NOTE: A recent study shows that fatigue alone has little to no effect on SFST's.***
- C. Investigate these situations where persons may be impaired, but without alcohol or

drugs present.

1. If there is impairment present, but there are no signs of it being caused by alcohol or drugs, officers should:
 - a. Interview the driver in reference to the previously-listed possible causes of impairment.
 - b. Interview any passengers regarding the driver's past medical, emotional and/or physical conditions.
 - c. Seek assistance from a drug recognition expert. **INSTRUCTOR NOTE:** *Explain to the class that each department should have these forms.*
2. If it appears the impairment is caused from a non-alcohol or drug situation, officers should complete the driver's license re-examination form and forward it to the Arizona Motor Vehicle Division. **INSTRUCTOR NOTE:** *If the person is so impaired it would not be safe for him/her to drive, ensure he/she does not drive.*

X. FIELD PROBLEMS

- A. Have the recruit demonstrate the proper techniques of approaching a possible DUI driver, starting the DUI investigation, gathering evidence through FST's and observations and arresting the driver while staying aware of officer safety as well as the safety of the suspect through a simulated DUI encounter. **P.O. 4.1.16**
- B. Complete all applicable paperwork associated with the previous scenario.

P.O. 4.1.17

XI. CLOSING

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).