

# TRAFFIC ADMINISTRATION, ENFORCEMENT & CONTROL

STANDARD NO(S)

NYSLEAP 39.1 ,47.1,2,4,5

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REFER TO:

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## I. OBJECTIVE:

To establish the procedures for supporting and discharging the SCSO's responsibilities relating to the enforcement of state and municipal traffic laws and the control of traffic within Seneca County.

## II. POLICY:

It is the policy of the SCSO to assure safe travel within Seneca County by adhering to a vigorous enforcement program and by intelligently deploying patrol personnel in accordance with regularly obtained and analyzed data. Traffic law enforcement and the delivery of traffic related services will be applied in a consistent and courteous manner designed to foster a positive public attitude and acceptance of such enforcement and control as necessary in the public interest.

## III. DETAILS:

**A. Primary responsibility** - Responsibility for the enforcement of traffic laws within Seneca County and for any administrative and support processes which enable such enforcement shall rest with the SCSO's Road Patrol Division. See ("**Road Patrol**"), this manual. All members of the road patrol, who share this responsibility, are uniformed and maintain a high degree of visibility upon the roadways, thus contributing to vehicular and pedestrian safety.

**B. Performance** - In order to insure compliance with the policy stated above, traffic enforcement activities will be carried out with consideration for the requirements of the judicial, engineering, educational and administrative agencies involved in promoting highway safety.

1. The SCSO will cooperate with other agencies having responsibilities for highway safety in order to resolve any problems in this area as quickly and efficiently as possible.

2. The SCSO will be represented on the Seneca County Traffic Safety Board.
3. Supervisory personnel, beginning with the Sergeant in charge of the shift, shall review, on a monthly basis, members' performance in carrying out traffic related duties.
4. While there are no specific requirements for the level of activity, performance objectives will be set annually at the member's performance evaluation and each member will be expected to share the work load equitably, with consideration being given to the following factors:
  - a. Member's training and experience;
  - b. Number of days worked during the month;
  - c. Traffic density and history of compliance in the assigned patrol post;
  - d. Time spent on duties not related to traffic; and,
  - e. Other factors, such as complying with requests for selective enforcement.
  - f. Level of traffic enforcement activity of fellow uniformed officers.

In the event it becomes apparent that a member has consistently failed to share in meeting the responsibilities of the SCSO in this or any other activity, the shift Sergeant will recommend remedial action through the chain of command.

**C. Traffic functions** - The following activities are conducted by members assigned to the road patrol, and are necessary for the implementation of the SCSO's policy of promoting the safe and expeditious flow of traffic within Seneca County:

1. Enforcement of traffic laws, including the operation of speed measuring devices and the administration of, or arranging for, chemical tests to determine blood alcohol content following an arrest for driving while intoxicated. Methods to effect enforcement include:
  - a. The visible traffic patrol - This is the preferred method of enforcement by SCSO, making use of readily identifiable patrol cars deployed in member's assigned patrol area, either stationary (overt or covert) or roving; on a specified roadway in compliance with the request of a complainant or as a result of a traffic analysis; or at the direction of the shift Sergeant.
  - b. The unmarked or unconventional vehicle - Shall not be used to effect a traffic stop, unless there is a significant traffic safety issue that needs immediate attention and waiting for a marked unit will put other motorists and the public at risk, or a criminal investigation may be compromised by waiting for a marked unit or other reasonable purpose which can be articulated by the officer. Those in unmarked vehicles who observe a traffic violation shall radio for a marked unit and shall follow the suspect vehicle until the marked unit arrives on scene. The marked unit shall initiate the traffic stop with the unmarked unit as a back up

unit and the complainant. This does not preclude the use of an unmarked or unconventional vehicle to be used as a decoy on traffic details at the direction of the Road Patrol Lieutenant.

2. Investigation of accidents, with the assistance, if necessary, of certain road patrol and CID personnel who are trained in and certified to perform accident reconstruction, and, in the case of serious or fatal accidents, with the assistance of an investigator assigned to the Criminal Investigation Division. See (“**Traffic Accident Investigation**”), this manual
3. Rendering aid to the travelling public in accordance with the procedures set out in "**Assistance to Motorists**", this manual.
4. Responding to and assuming direction of traffic to relieve congestion or an impediment to safe travel. See “**Road Patrol**”, this manual.
5. Chances for success with each of the above activities can be greatly enhanced provided the member will see oneself as an agent for effecting a change for the betterment of the motorist's driving habits. This will be accomplished by minimizing conflict with the traffic law violator and maintaining a professional relationship at all times. Specific conduct for professionalism includes:
  - a. The member's image as shown by dress, grooming, language, bearing and emotional stability;
  - b. Being certain of one's observations concerning the alleged violation and prepared to express them coherently;
  - c. A courteous greeting using an appropriate title when requesting license, registration and insurance identification;
  - d. Having all necessary forms at hand and being thoroughly knowledgeable in their execution;
  - e. A willingness to listen to violator's excuse, if made, but the firmness to explain that there is no alternative to the action being taken (this procedure can accomplish two things - it provides an opportunity for an assessment of any physical, emotional, alcohol or drug impairment, and it may convince the motorist that his own safety requires an alteration in his driving habits); and always dealing with the motorist in a fair, just and calm manner, and;
  - f. Assisting the violator to re-enter the traffic flow safely, leaving him contrite and appreciative rather than resentful and vindictive.
6. Activities conducted by the Lieutenant assigned to the road patrol:
  - a. Coordination and planning for the deployment of available personnel based upon the review of data collected by the SCSO.

- b. Liaison with the appropriate highway superintendent(s) or with New York State Department of Transportation personnel to effect changes in roadway markings, traffic patterns, etc. when deemed proper.
- c. With input from the road patrol shift Sergeants, make assignments for personnel to attend civic or school functions for the presentation of information relating to highway safety.

**D. Deployment** - Selective enforcement activities are performed in conjunction with routine patrol responsibilities in areas having the greatest numbers of accidents and calls for traffic services. When staffing levels permit, patrol personnel shall be directed by the shift Sergeant or Road Lieutenant, to problem areas within their patrol posts which have been identified as having increased traffic volume, impediments to safe traffic flow, or an increased incidence of traffic violators or motor vehicle accidents. Deployments may also include specific assignments to specialized units, such as the STOP-DWI patrol, or to one or more patrol units to participate in a speed monitoring activity. Information which will lead to the decision for specific deployment is obtained from:

- 1. A review of complaints received from the public that traffic laws are being regularly ignored in a particular area, or,
- 2. A specific request for control at a particular time and place due to an anticipated concentration of vehicular traffic.

**E. Records** - Processing, maintenance, and distribution of traffic records is handled by the Records Division. See ("**Records & Reports**"), this manual. The report review procedure is as follows:

- 1. Traffic reports (consisting of accident reports, citations, etc.) shall be submitted for supervisory review prior to the writer's cessation of duty.
- 2. Reports shall be checked for accuracy and completeness, and, if found deficient, shall be returned to the writer for any necessary additions or corrections. If such action will result in a delay in filing, the Sergeant will note the reason for the delay in email to the Records Division.
- 3. The assigned Road Sergeant shall review the traffic reports, obtain the information required for statistical purposes, he or she shall disseminate the appropriate reports to the Road Lieutenant, Chief Deputy, Undersheriff and Sheriff where they shall be used in making decisions for the proper deployment of personnel. The statistical data to be summarized on a monthly basis include:
  - a. Number of summons issued by each member of the SCSO
  - b. Number of MVA's investigated by each member of the SCSO
  - c. Number of DWI related arrests made by each member.
  - d. Monthly reports are consolidated into a department monthly report and at year-end into a summary report issued by the Chief Deputy.

**F. Enforcement generally** - Traffic law enforcement must allow for the use of officer discretion, within reasonable limits. Good judgment, common sense, an appreciation of community expectations, and the ability to consider the effect a particular event will have on the behavior of those involved, are all factors which may influence an officer's decision to make an arrest, write a citation, or merely to issue a warning. Also, it is expected that the member engaged in road patrol activities will take into account the seriousness of the observed violation, the time of day, weather conditions, traffic density, and the presence or absence of traffic control devices, in determining whether a vehicle should be stopped.

1. Once it has been determined that there is probable cause to believe that an offense has been committed, and that it is of sufficient severity to warrant stopping the vehicle, one of the above actions should be taken without regard for such factors as personal favoritism, community or political influence, attitude or frivolous excuse. The procedures for stopping and approaching a traffic law violator are as follows: See (“**Vehicle Operation**”), this manual

- a. **CAUTION! - EVERY TRAFFIC STOP, NO MATTER HOW HARMLESS THE VIOLATOR APPEARS, HAS THE POTENTIAL FOR VIOLENCE.**
- b. Before any attempt is made to stop the violator, the member will contact the Seneca County E-911 Center and announce the intention to stop a vehicle, giving the vehicle plate number, the exact location, and any other information which might indicate the need for assistance. If no license plate is visible, the make, model, color of the vehicle and direction of travel shall be given. This should be done in plain language not “10” codes.
- c. The violator will be signaled to stop by using the emergency lights. Member may have to resort to horn, headlights, or even siren in order to attract violator's attention.
- d. It is the member's responsibility to insure that the stop does not create a traffic hazard, and traffic lanes should be kept clear as reasonably possible keeping in mind subsection (e) more fully explained below.
- e. Member shall position the patrol car about 15 to 20 feet behind the violator, and slightly to the left affording the officer a “safety alley” to approach the stopped vehicle and talk to the operator. Emergency lights shall be left on during the stop.
- f. If after dark, member shall use the patrol car spotlight and take down lights to illuminate the interior of violator's vehicle.
- g. Member shall approach the violator's vehicle keeping the driver and passengers in sight at all times while using their personal preference on a driver side or

passenger side approach. The rear compartment, including trunk, should be quickly scanned while approaching the vehicle.

- h. Make a professional contact as set forth under paragraph C (5) above.
- i. The following procedures are to be used whenever it can be determined that there is an increased chance for violence such as might be the case where the operator or a passenger has been identified as a fleeing felon, or the operator has first refused to stop, or the violation for which the stop is made is serious:
  - 1. The member may defer the stop, keeping the violator in view until back-up units arrive.
  - 2. Once the violator has complied with the signal to stop, the member should step out of the patrol car but SHOULD NOT APPROACH THE VIOLATOR. Instead, member take a position behind the open patrol car door and, in a loud, clear voice, or by using the public address system, order the operator to switch off the ignition and drop the key at arm's length out of the window.
  - 3. With the vehicle immobilized, all occupants shall be ordered to place hands where they can be seen, such as on head, on dashboard, or out a window.
  - 4. If the stop has to be made without the presence of a back-up unit, keep all occupants inside the car until assistance arrives. Request that the back-up cover the curb side of the vehicle, making sure that the occupants are well aware that there is now more than one officer on the scene.
  - 5. Remove the occupants from the vehicle one at a time, with handgun at the ready, ordering each to get out, turn completely around, then walk backwards to a position behind his car where he can be handcuffed and searched safely.
  - 6. A member must never relax one's guard and must be alert for any rapid or suspicious movement. Keep control by forbidding any unordered actions.
- 2. Since every traffic charge requires the officer's affirmation under penalty of perjury, it is essential that the member be scrupulous in basing the charge on the facts as they occurred, which means, for example, do not write for a bald tire or for failure to obey a traffic device when the violation is speeding.

It is not the function of the traffic enforcer to amend the charge in order to be lenient to the violator. If the circumstances indicate that leniency is justified, a warning, accompanied by an explanation of the action taken, should be given. Members are not to issue a ticket for some violation which did not occur, merely for the sake of issuing a ticket. [See paragraph 5, below]

- 3. A physical or custody arrest may be appropriate in the following instances:

- a. When the operator is apparently under the influence of alcohol or drugs, or,
  - b. When a felony has been committed involving a vehicle, or,
  - c. When the operator fails to comply with a lawful direction given by the member, or,
  - d. When the operator cannot produce sufficient identification to enable a citation to be written, or,
  - d. When there is good reason to believe the operator will not comply with a summons if issued, or,
  - e. When the operator is to be charged with a moving violation and is not a resident of a state, territory, or possession of the United States, or of a Canadian province having a reciprocal compact or agreement with New York State, as described in Section 517 of the Vehicle & Traffic Law (VTL).
4. A citation or summons should be issued to a violator whose conduct is proscribed by the VTL, which conduct jeopardizes, or has the potential for jeopardizing the safe and efficient flow of vehicular or pedestrian travel, including the operation of unregistered, uninspected, unsafe, or otherwise improperly equipped vehicles. Once a citation is issued, members will not amend or make any recommendation to "reduce" the charge except upon the authority of the District Attorney or one of his staff who is prosecuting that case. It must be anticipated that every citation issued will eventually be tried in court.
  5. A verbal warning may be given to an operator who has committed a minor violation, but which warning, considering the totality of the circumstances, can be effective in impressing the operator with the necessity for safe driving, without the need for a formal charge.
  6. Juveniles - The above actions may be taken in the handling of traffic violations committed by residents or nonresidents (subject to the provisions mentioned), legislators, and military personnel. Certain violators, however, must be handled differently.
    - a. Juveniles (under the age of 16) are not licensed to operate a motor vehicle in the State of New York; however, in the event a juvenile commits a traffic violation he will not be issued a citation, since he cannot be prosecuted in either County or local criminal court. In the event the juvenile violator cannot be released into the custody of his parents or other responsible person, he shall be detained by the member and CPS shall be notified so they can make a determination on suitable placement of the juvenile. In the event that a juvenile has committed a misdemeanor or felony offense contained in the NYS Vehicle and Traffic Law, SCSO procedures will be the same as outlined in "**Juvenile Operations**", this manual. The juvenile and parent/guardian will be issued a standard juvenile appearance ticket (not a UTT). The appearance ticket requires the law violation

along with the NYS V&T section violated be noted on the appearance ticket, for example: If a juvenile were charged with Driving While Intoxicated, the juvenile appearance ticket would be completed as follows – Operating a motor vehicle while under the influence of alcohol under section 1192 of the Vehicle and Traffic Law. The arresting officer is required to complete juvenile information, which closely resembles a standard accusatory instrument. All SCSO generated documents relating to such juvenile V&T misdemeanor or felony arrest is to be forwarded to the Seneca County Probation Department for further processing.

7. Charging a motorist with a violation under the Vehicle & Traffic Law of the State of New York or under a local traffic ordinance is commonly done by issuing a Uniform Traffic Ticket (UTT), through the TRaCS system. The ticket shows the location of the court having jurisdiction, as well as the date and time the violator is to appear. The ticket provides forms for the violator to enter a plea of guilty or not guilty by mail, unless the offense charged is a misdemeanor or felony, in which case the violator is required to appear in person. If the TRaCS system is not operating in the patrol vehicle then a serialized UTT may be issued.
8. While the TraCS system is designed to deliver summonses electronically to each court it is not always the case. Some courts are not tied into the electronic system, other times the system fails to get the summons to the correct court. Since we are the only place the Courts can get a copy of the summons from, in either of the above stated cases it will be the policy of the SCSO that each individual officer is responsible for any summonses he or she issues to deliver to the court, whether or not the court gets them electronically. The issuing officer, upon doing an end shift and completing the transfer of the issued summons to the TraCS server, will print a “Universal Court Copy” of all summonses, on regular plain paper and make sure that it is delivered to the court of jurisdiction before the scheduled court date. A different Officer than the issuing Officer may deliver this court paperwork to the proper Court. However, the ultimate responsibility falls to the issuing Officer to make sure the Court gets all summons and accompanying paperwork (supporting deposition, Bill of Particular, etc.) in a timely manner.
9. If the Officer has issued one of the old style UTT type summons, the Officer is still responsible to see that the Court gets the proper copies. The “Arrest” copy will be forwarded to the Road Sergeant that is responsible for stats so it can be logged. It will then be forwarded to the Records Division for filing.
10. The TraCS UTT, mentioned above, serves as a Simplified Traffic Information as it is described in Section 100.10 (2) (a) of the New York State Criminal Procedure Law. Since this document can provide the basis for prosecution, it must be legibly, accurately and completely executed by the complainant officer.
  - a. Section 100.25 describes the defendant's right to have the complainant officer prepare a supporting deposition. The extent to which additional detail must be included in the supporting deposition is not stated; however, some guidance may be taken from the Practice Commentary that appears in McKinney's Consolidated Laws of New York and reads, "...the simplified information) permits a minimum amount of factual information, and, therefore, a defendant



arraigned upon a simplified information is entitled as of right to the supporting deposition..."

It would appear from this that at least some additional information should be in the supporting deposition. This section also requires the officer to serve a copy of the supporting deposition upon the defendant or his attorney, within 30 days of the date requested or at least 5 days before trial, whichever is earlier, and to file the deposition with the court together with proof of service thereof.

b. An arrest report must be completed when:

- 1) Under the circumstances and offenses listed in section 160.10 of the NYS Criminal Procedure Law (fingerprintable offenses);
- 2) An arrest is made for any offense listed in the NYS Penal Law,
- 3) An arrest is made for any offense under any law and the person is placed in physical custody and either arraigned or released on an appearance ticket.

11. Traffic and Criminal Software (TraCS) - Many SCSO patrol cars are equipped to support the on-site issuance and printing of traffic tickets and accident reports as an alternative to the handwritten UTT. Data from a driver's license and vehicle registration are scanned directly into the system and transmitted electronically to DMV, DOT, and the appropriate court and to DCJS.

A diagram tool can provide a clear depiction of an accident scene. TraCS allows for fast and accurate processing of tickets as well as the subsequent analysis of accident and crime statistics.

The Sheriff, or designee, has assigned members to various security levels of the process to ensure effectiveness and accountability, including the correction of data or that which may need to be voided, e.g. a traffic ticket. The day-to-day oversight of the process is assigned to a patrol sergeant.

**G. Specific enforcement** - The following section will provide guidelines for enforcement of some of the most common traffic law violations. In most cases the general procedures which are given under paragraph F. above, will apply.

1. Driving under the influence of alcohol or drugs - Although enforcement of the DWI laws are not uncommon, SCSO's procedures differ significantly from those used for other traffic violations and are set out under paragraph H below. Members assigned to road patrol duties must be thoroughly familiar with the following sections of the Vehicle & Traffic Law:

- a. 1192 - Operating a motor vehicle while under the influence of alcohol or drugs (describes proscribed conduct),
- b. 1193 - Sanctions (defines levels of offenses, penalties, and provisions for revocation or suspension of driving license)

- c. 1194 - Arrest and testing (authorizes warrantless arrest, field testing, and outlines the procedures for chemical testing in its various forms, and the action to be taken upon refusal),
  - d. 1195 - Chemical test evidence (addresses the admissibility and probative value of the determined blood-alcohol content)
- 2. Speed violations - While speed limits, both posted and statutory are considered to be absolute, practicality suggests that speeding is a matter of degree, therefore, any charge made should be one which is likely to result in a conviction. Factors which justify a member's decision to take enforcement action include location, (e.g., congested area, school zone, known hazard), time of day, weather, safety of others, prior complaints, etc.
  - a. As with any other charge, police intervention is justified by the knowledge that an offense has been committed. In the case of speeding, this information can come from the officer's observation, confirmed by the radar equipment and/or by the duly calibrated patrol car speedometer, or, less commonly, from the report of a non-police witness.
  - b. Every SCSO patrol vehicle is equipped with a radar unit which meets the specifications and performance standards of the New York State Division of Criminal Justice (DCJS), Office of Public Safety (OPS). These standards are in accord with those promulgated by the National Highway Traffic Safety Administration.
  - c. Operational procedures, including internal and external calibration checks to be performed at the beginning and end of each shift, shall be in accordance with those recommended by OPS.
  - d. SCSO members receive a programmed course in radar operation and visual speed estimation consisting of 32 hours of classroom and field instruction and a qualifying examination, and are certified as Doppler Radar Operators by OPS.
  - e. A road patrol Sergeant shall be responsible for insuring that all radar units are properly maintained and are periodically calibrated. This officer shall keep accurate records pertaining to each item of equipment by serial number.
  - f. The SCSO also has two LIDAR Laser radar units that can be taken out on patrol by members certified in the use of the LIDAR. The LIDAR should also be considered for use on STEP (Selective Traffic Enforcement Program) details.
- 3. Other hazardous violations - Any moving violation can be regarded as hazardous or at least potentially hazardous. Since the aim of law enforcement is to achieve voluntary compliance with traffic laws, the member shall be diligent in enforcing those violations which can render our roadways unsafe, thus encouraging a change in behavior on the part of those who would ignore traffic regulations.
- 4. Equipment violations - Many equipment violations are subject to dismissal upon the submission of proof to the court by the violator that the cited defect was corrected

no later than one-half hour after sunset on the first full business day after issuance of the citation. For qualifying defects, the member should provide the violator with the form entitled "Notice of Correction."

5. Public carrier/commercial vehicle violations -Violations of the traffic laws involving trucks and busses shall be handled in the same manner as are passenger vehicles, except for those laws which are written expressly for trucks and busses.

U.T.T's issued for "Passing a Stopped School Bus" will include supporting depositions from the bus driver and the officer, and any 710.30 notices. These documents will be furnished to the court of jurisdiction and to the District Attorney.

6. Multiple violations - In cases where a violator is stopped and it later develops that he exhibits signs of intoxication, both the misdemeanor DWI and the lesser violation should be charged, since the latter provides the probable cause necessary to the former. This circumstance differs from one in which the member should consider issuing a citation for a charge whose elements encompass multiple lesser violations e.g., running a stop sign, speeding, and drifting into an oncoming lane of traffic could be cited as reckless driving if the operators actions unreasonably interferes with free use of the roadway or endangers other users of the roadway.
7. Newly enacted laws and/or regulations -Information pertaining to legislative or regulatory actions affecting traffic laws is disseminated electronically to the Road Patrol Lieutenant via the "P" bulletins provided by the Department of Motor Vehicles. These are distributed to the road patrol Sergeants for discussion at roll calls and posted for future reference. New laws always have an effective date so that members will be aware of the appropriate action, be it warning, citation or arrest.

**H. DWI/DWAI** - In recent years there has been unprecedented attention toward police efforts to rid the roadways of the alcohol or drug impaired driver. Law enforcement agencies, including the SCSO, have become more zealous in the detection and apprehension of intoxicated drivers; prosecutors have become less inclined to compromise on convictions; and, numerous penalties and administrative sanctions against driving privileges have become more stringent. The community's expectation is that the laws against drunk driving will be strictly enforced.

The following procedures are set out to guide members in recognizing, arresting, testing, and preparing a case for prosecution of the operator who is under the influence of alcohol or drugs.

1. Detecting the impaired driver - As a result of field studies involving over 4,600 patrol stops in which blood alcohol concentrations were correlated with drivers' operation, the following visual cues were identified as predictors of drunk driving, especially at night. The cues are listed in descending order of probability that the person observed is driving while intoxicated, and may serve as a determinant in deciding whether a stop should be made. Observation of multiple cues should reinforce member's decision to take some enforcement action.
  - a. Turning with wide radius,

- b. Straddling center or lane marker,
  - c. Appearing to be drunk,
  - d. Almost striking object or vehicle,
  - e. Weaving,
  - f. Driving on other than designated roadway,
  - g. Swerving,
  - h. Slow speed (more than 10 mph below limit),
  - i. Stopping (without cause) in traffic lane,
  - j. Following too closely,
  - k. Drifting,
  - l. Tires on center or lane marker,
  - m. Braking erratically,
  - n. Driving into opposing or crossing traffic,
  - o. Signaling inconsistent with driving actions,
  - p. Slow response to traffic signals,
  - q. Stopping inappropriately (other than in lane),
  - r. Turning abruptly or illegally,
  - s. Accelerating or decelerating rapidly,
  - t. Headlights off, and
  - u. Failure to dim headlights for oncoming traffic.
2. Notwithstanding the above, members shall be alert for any indication of impaired driving, day or night, whether encountered as a result of an enforcement stop, in connection with response to an accident involving one or more vehicles, or merely on the occasion of rendering assistance to the motorist.
  3. Members should be aware that behavior alone may not indicate intoxication, therefore it is permissible, in order to resolve the ambiguous situation, for the member to ask a driver whether he has consumed an alcoholic beverage. His answer, if pertinent, should be recorded for subsequent notice to the defendant under the provisions of section 710.30 of the Criminal Procedure Law.

4. Field testing - If intoxication is suspected, but not yet sufficiently convincing to support an arrest, it is next appropriate for the member to administer the field sobriety test. If the officer is trained in the Standardized Field Sobriety Tests (SFSTs) they shall be done in accordance with his training. The SFSTs are the Horizontal Gaze Nystagmus test (HGN), the 9 step walk and turn and the one leg stand. If the Officer is not trained and certified in SFST then the Officer will conduct the field tests in a manner consistent with his or her training, received during "Basic Police" school. Other field tests may include the alphabet, finger to nose, finger count, and Romberg balance test. A PBT such as an Alco-sensor may also be used. The officer shall record the results of such tests in his narrative or on a DWI field note form
5. Arresting the impaired driver - In the event probable cause for the arrest of an intoxicated driver has been established, he should be informed that he is under arrest for driving while intoxicated, handcuffed, searched for dangerous weapons or contraband, then placed in the patrol car. Arrangements should be initiated for the disposition of his vehicle in accordance with procedures set out under III, B and C of "Assistance to Motorists", this manual, or, in the alternative, by having a sober and licensed passenger assume control of the vehicle.

Passengers who are unlicensed, infirm, or children must not be abandoned along the roadway, but rather, all reasonable efforts must be made to insure their safe transportation from the scene. In some cases, where children under the age of 18 are traveling with none other than the arrestee, and no other parent or relative can be located, the member shall, through the E-911 center, contact the Seneca County Department of Social Services (DSS) for immediate assistance. **\*Note that on 12/18/09 it became a felony to operate a vehicle in an intoxicated condition with a passenger under the age of 16 riding in vehicle ("Leandra's Law").**

It will also be necessary for the member to execute form DSS 2221-A and call the Albany child abuse hotline at 1(800)342-3720. All three copies of the form are forwarded to DSS within 48 hours and DSS will perform the follow-up investigation. If appropriate, consideration should be given to charging the driver with endangering the welfare of a child under section 260.10 of the Penal Law.

6. The chemical test - Under the provisions of Section 1194(1) of the V & T Law, any chemical test of the driver's breath, blood, urine or saliva for the purpose of determining the alcoholic and/or drug content of his blood must be administered within two hours after arrest. This test provides the only acceptable evidence to support prosecution for violation of Section 1192(2) which reads, "No person shall operate a motor vehicle while such person has .08 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis..."

Since the validity of the chemical test hinges on compliance with the two hour statutory limit, it is important that it be determined early whether a chemical test will be given. If a subject refuses the officer is to then to recite the DWI warning as recommended by the Department of Motor Vehicles:

1. Will you submit to a chemical test for intoxication (drugs) to determine the alcohol (drug) content of your blood?

2. Before you tell me if you will or will not submit to a chemical test for intoxication (drugs), I must warn you and advise you as follows:

YOUR REFUSAL TO SUBMIT TO A CHEMICAL TEST OR ANY PORTION THEREOF, WILL RESULT IN THE IMMEDIATE SUSPENSION AND SUBSEQUENT REVOCATION OF YOUR LICENSE OR DRIVING PRIVELEDGE WHETHER OR NOT YOU ARE FOUND GUILTY OF THE CHARGES FOR WHICH YOU WERE ARRESTED, ALSO YOUR REFUSAL TO SUBMIT TO A CHEMICAL TEST OR ANY PORTION THEREOF, CAN BE INTRODUCED AGAINST YOU AT ANY TRIAL OR HEARING RESULTING FROM YOUR ARREST.

3. After warning ask driver:

WILL YOU SUBMIT TO A CHEMICAL TEST FOR INTOXICATION (DRUGS)?

It should be understood that, although the courts have held that a motorist has no constitutional right to refuse a chemical test, the law does not require that the police officer resort to force in order to administer one, therefore the sanctions of suspension and revocation are imposed upon those who do refuse.

Along with the DWI warning as furnished by the Department of Motor Vehicles, the cautions against self-incrimination and the rights to counsel commonly referred to as the "Miranda Warning" should also be read to the arrestee. Although it has been clearly established that Miranda need only be given an arrestee when the subject is in custody AND there will be interrogation (questioning), it is recommended that members recite Miranda to DWI violators. Although "Miranda" doesn't apply to the DWI chemical test or basic pedigree information, it does apply to any other questions after the subject has been placed in custody and for the DWI oral examination.

This is especially true if dealing with an underage DWI, who is in a position to furnish information about the person who provided him with the alcoholic beverage.

- a. If the violator agrees to submit to a chemical test the member shall notify the shift Sergeant that a breath test operator is needed, unless the arresting member is so qualified.
- b. If the violator refuses the chemical test, the warnings should be repeated twice more so that the member can testify that the violator was "given sufficient warning, in clear or unequivocal language" since this is a requirement in support of any subsequent revocation. See paragraph (d)(2) below.
- c. In either of the above circumstances, the arresting officer shall arrange for the violator to be fingerprinted and photographed and for his driving record to be obtained via computer from DMV records. The latter inquiry is for the

purpose of determining whether there are prior alcohol or drug related violations which would elevate the misdemeanor charge to a felony.

- d. Misdemeanors may be charged on the UTT; however, if it is determined that the violator has been convicted of a predicate offense as described in Section 1193 (1)(c), a felony complaint must be executed.

(1) Following administration of the breath test, the violator who has no prior conviction which would require a felony charge, shall be cited for the appropriate violations. They may be released on UTT's if the Officer and Sergeant agree he is not a threat to fail to appear and there is a sober responsible third party the person can be released to. If it is below a .08% level a charge of DWAI would be written and unless the driver is from out of state or there is a question as to them returning to the court they may be released, however, it remains the member's responsibility to insure that the violator has a safe means of transportation away from the SCSO.

(2) The circumstances under which an immediate arraignment shall be done are:

- (a) The violator is charged with a felony, or
- (b) The violator resides and/or is licensed outside of New York State, or
- (c) The violator has a history of failure to appear to court, failure to pay fine, or bail jumping.
- (d) The violator has refused to submit to a chemical test. A report of his refusal will be prepared for the court having jurisdiction by the arresting officer.
- (e) Violation of "Leandra's Law", which covers operating a vehicle while intoxicated and having a minor child in the vehicle at the time and violations of the sections pertaining to the mandatory "ignition interlock device", its use and/or misuse.

(3) Effective November 1, 1994, the Vehicle and Traffic Law was amended to mandate the suspension of a driver's license pending prosecution for the charge of §1192(2), driving with .08% BAC, or more.

"The suspension shall occur no later than at the conclusion of all proceedings required for arraignment; provided, however, that if the results of any test administered are not available within such time period, the complainant police officer...shall transmit such results to the court at the time they become available..."

The above change emphasizes the need for promptly furnishing the court with any additional charge under §1192(2), made on the basis of a subsequent laboratory test as well as the test results supporting the charge.

Note that the sanction of suspension here is not the same as that which might be imposed for a test refusal. The latter, after a hearing, can lead to revocation; whereas a violator appearing for arraignment and charged with §1192(2) can have his license suspended for at least 30 days and then may be issued a conditional license, unless he has convinced the court that he has an "extreme hardship," in which case his driving privilege may be continued conditionally.

7. Datamaster DMT - Breath tests are administered by the SCSO by an operator holding a New York State Department of Health certification, renewable every two years. Training for such certification is under the auspices of the Office of Public Safety (OPS) must undergo periodic calibration and certification by BMP.
  - a. There are two Datamasters DMTs, One is located in the LEC in Romulus in the Pre-Booking area just off the sally port for the Correctional Facility and the second is located in the Waterloo Substation in the Deputies Office.
  - b. The instrument is tested for radio frequency interference (RFI) semiannually and whenever it is moved from its location for repair or calibration. All RFI tests shall be documented in records kept for this purpose. The Uniform Road Patrol Sergeant assigned to maintain DWI records and equipment is responsible for the testing and documentation of same.
  - c. No portable transmitters are permitted in the room while the Datamaster is being operated, and under no circumstances will a transmitter be brought within six feet of the instrument.
8. Datamaster DMT procedures - Having arranged for the administration of a Datamaster DMT test by a certified operator, the violator must be kept under close observation for a period of at least 20 minutes prior to the test. The arresting officer must be able to testify that the violator was observed closely, carefully and without interruption for the entire 20 minutes. During this time the violator shall not be permitted to place anything in his mouth. If, during the waiting period, the violator asks to call his attorney, he shall be permitted to do so, provided that any delay incurred thereby does not delay the test beyond the statutory two hour period. The violator must be told that his delay for this or any other reason will be interpreted as a refusal to submit to a chemical test.
  - a. The Datamaster DMT Operational Checklist will be followed as written.
  - b. The operator will check the spaces indicating completion of each step as it is performed.
  - c. The percentage of blood alcohol, as determined by the test, will be entered on the checklist.



9. Blood test - Section 1194(2) of the V & T Law provides that while the breath, urine, or saliva tests are made either by or at the direction of a police officer, the blood test is made only at the officer's direction.

- a. If a DWI arrest is contemplated following a motor vehicle accident and the driver has been taken to a hospital, the member, upon completion of the investigation at the scene, and, with the approval of the shift Sergeant, shall proceed to the hospital. Here, the member shall formally place the violator under arrest, read him the DWI Warning, and determine whether he will submit to a blood test.

Note that regardless of violator's incapacity from injuries sustained, it is essential that he be placed under arrest AND that any drawing of blood is accomplished within two hours of the TIME OF ARREST. These pertinent events must be carefully documented. It should be noted that current law does allow a test result obtained from an unconscious defendant in Vehicle & Traffic Law cases. (People v. Moselle, 1982)

- b. If the violator agrees to submit to the blood test, the member must arrange for blood to be drawn. The following persons are authorized by statute to withdraw blood: for the purpose of determining the alcoholic or drug content therein: physician, a registered professional nurse, a registered physician assistant, a certified nurse practitioner, or an advanced emergency medical technician as certified by the Department of Health; or under the supervision and at the direction of a physician, registered physician assistant or certified nurse practitioner acting within his or her lawful scope of practice.

The blood sample shall be taken in the presence of a witness and shall be obtained in an SCSO supplied vacutainer used expressly for this purpose. After use, the vacutainer is to be sealed, marked as evidence by the member, and identified by the person drawing the sample. In this regard, it is preferable that the physician who is actively treating the violator not be the person securing the sample.

The reason for this is that the violator, at trial, may claim that a doctor-patient relationship existed, thus precluding the doctor from testifying to any information he obtained therefrom.

- c. The blood sample shall be placed in an approved container, upon which will be entered the required information. The container, along with the property sheets, shall be taken to the LEC and storage under refrigeration. The refrigerator is located in the patrol office at the LEC in Romulus. In this circumstance, the property sheets shall be left in the evidence custodian's mailbox. See ("**Collection & Preservation of Evidence**"), this manual.
- d. If the violator refuses to submit to a blood test, and the aforementioned accident resulted in the death or serious physical injury of another person, the provisions allowing for application to a court for an order to compel a blood test, as set out in § 1194(3) shall be carefully followed.

- e. Transmittal of blood samples for analysis is the responsibility of the Evidence Coordinator or designee, as set out in ¶ H, "**Collection and Preservation of Evidence**," this manual. A written report of the findings will be sent to SCSO's Evidence Coordinator, who will retain the original written report of findings in the appropriate evidence case file, and will forward copies to the District Attorney's Office, arresting officer and the SCSO records division for filing in the appropriate case file.

The Evidence Coordinator will send a copy of the report to the arresting officer who must generate the appropriate accusatory instrument (long form Information or Felony Complaint) charging violation of 1192(2), provided the sample showed a level of .08% BAC, or more.

The time for preparation of the new accusatory is no later than the end of the officer's next scheduled work day, after receipt of the lab report. The original of the accusatory (ITT, Information or Felony Complaint) along with the lab report must be delivered to the appropriate court.

In the case of the latter, a copy should also go to the District Attorney's Office. In either event copies of the new accusatory shall be provided to Records for inclusion in the DWI packet. The reason for this change is to enable the arraigning magistrate to perform his duty to suspend a violator's license pending prosecution as noted in ¶ 6(3) above.

- 10. "Common law" DWI - § 1192(3) of the V&T reads, "No person shall operate a motor vehicle while in an intoxicated condition", and is a misdemeanor. § 1192(1) reads, "No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol" and is a traffic infraction.

- a. It is important that a member making an arrest in a suspected DWI case be particularly observant and meticulous in gathering evidence. It is the practice in the SCSO to arrest for violation of 1192(3), without regard for the outcome of any subsequent chemical test. A member must be thoroughly prepared to give testimony in support of any action, even though the chemical test fails to enable a charge under 1192(2).

A 1988 court case noted that a defendant could be convicted of 1192(1) if his ability to operate his vehicle was impaired "to any extent", but could not be convicted of 1192(3) unless his ability to operate was impaired to the extent that he was "incapable" of employing those physical and mental abilities which he is expected to possess in order to operate a vehicle as a reasonable and prudent driver.

- b. The practical effect of the above is that absent a chemical test showing a blood alcohol content of at least .08%, the case is likely to be reduced to a driving while impaired, making the member's observation even more critical; however, it remains the responsibility of the District Attorney's Office to make such a determination.

11. Drug test -

- a. In the case of an arrest for DWI, supported by all the necessary probable cause, and a subsequent Datamaster test shows low blood alcohol content which is inconsistent with the arrestee's behavior, it should be suspected that the intoxication may be due to the arrestee's use of drugs. (See ¶ 12 below)
- b. Encountering the above, member should ask the violator to submit to a blood test. If he agrees, immediate arrangements should be made to transport him to a facility where the necessary two vials of blood can be drawn. Even though the two hour period may be exceeded, this procedure should be carried out, since apparently there has been no court review of the time limit under these circumstances.
- c. A refusal to take a second chemical test should be treated as any other refusal and the required report generated for presentation to the appropriate court at arraignment.
- d. Blood rather than urine tests for drugs are preferred since the latter test will show positive for up to thirty days after drug use.

12. Drug Recognition – The Office of Public Safety, DCJS, has provided training that enables the evaluation of a person who, after having been arrested for DWI and having undergone the Datamaster test, exhibits behavior that is inconsistent with the BAC found. An officer so trained is designated and certified a Drug Recognition Expert (DRE).

- a. When the conduct of an arrestee suggests impairment not consistent with the BAC score, that is, the BAC is unusually low; the DRE shall be notified and will conduct an evaluation to determine whether the cause may be drugs or some other reason such as a medical condition.
- b. For safety and for documenting the evaluation a second officer shall be present during the DRE's evaluation.
- c. The DRE will assist the Arresting officer with submitting any urine or blood sample and will be notified with a copy of the lab analysis upon the Evidence coordinator getting the results. A copy of the results shall be forwarded to the Records Division (with CR number on it) and the District Attorney's Office
- d. If a urine sample is to be taken from a female offender, a female officer will be present. Female Corrections staff may be used to assist for this purpose.
- e. The DRE may also be of assistance in cases of fatal or serious personal injury accidents.
- f. The DRE may serve as an expert witness at trial upon qualification by the court.

13. DWI packet - The packet is prepared in duplicate. One copy is maintained in the Records Division, the other, containing some originals, is furnished to the District Attorney's Office within 48 hours. The packet consists of the following documents:

- a. The original DWI check off list;
- b. Copy, Refusal Report, if appropriate;
- c. Copy, Arrest Report;
- d. Copy, Incident Report;
- e. Copy, Accident Report, if appropriate;
- f. Original teletype records showing inquiries for criminal history and prior convictions,
- g. Copy, request for DMV abstract of operating record;
- h. Copy, Datamaster DMT and/or blood test report,
- i. Photocopies of any UTTs issued,
- j. Copy, all accusatory instruments, along with any supporting depositions;
- k. Original signed statements, if any, (including 710.30 Notices) and,
- l. DWI packet receipt form for DA to acknowledge receipt

The packet, containing as much information as is then available, is assembled by the arresting member and left in the mail receptacle outside of the Sergeants' office, prior to cessation of duty. The duty Sergeant, after review for completeness, shall ensure it's delivery of the District Attorney's packet to the DA's Office where it is initialed by a DA's representative, the pertinent documents extracted for the prosecutor's use, and the original packet is submitted to the Records Division for filing.

As replies to requests for various records are received, it is the responsibility of the arresting officer to file them with the proper case in the Records Division and send copies to the District Attorney, when appropriate.

14. Vehicular assault and vehicular manslaughter -

Special attention must be given to these offenses which are mentioned in Section 1193 (1)(c) of the V & T Law but are to be handled differently from an ordinary felony DWI (see paragraph 6 (d) above). Vehicular assault and vehicular manslaughter are described in Sections 120.03-4 and 125.12-13, of the New York State Penal Law respectively.

It is required that the defendant act with criminal negligence and cause serious physical injury (for assault) or death (for manslaughter) by operation of a vehicle

while intoxicated by alcohol or drugs. With an ordinary felony DWI, it is permissible to accompany the required felony complaint charging DWI (noting the predicate charge) with the appropriate UTT's citing any other misdemeanors or infractions.

In the case of a motor vehicle accident involving a fatality or serious physical injury, and when there appears to be any possibility that the above charges will be filed, either because the defendant was intoxicated or impaired at the time, or because his driving was grossly reckless or negligent, **only the felony complaint shall be filed.**

This document must charge the appropriate felony and may include any other lesser charges as well. All of these charges will then be presented to the Grand Jury.

The reason for not providing the defendant with a UTT charging a misdemeanor DWI, or any other infraction, is that in a recent case a defendant pled guilty in local criminal court to the misdemeanor before felony charges had been filed. The Court of Appeals ruled that prosecution for the felony would constitute double jeopardy, since the underlying conduct for both charges was the same.

It is important that members thoroughly understand this distinction. Since the local criminal court has only preliminary jurisdiction in felony cases and since any subsequent charges can be filed after Grand Jury action, there is no need to risk having felony prosecution barred by hasty action. The felony complaint will provide the basis for the arrest without a warrant, thus enabling an admissible chemical test.

15. Countermeasures - New York State's program to reduce alcohol and drug related traffic offenses is known by the acronym STOP-DWI (Special Traffic Options Program-Driving While Intoxicated). When in effect, one or more full-time members, with vehicles and other equipment, are assigned to this function. Their efforts are supplemented by other members who volunteer to work extra shifts and are paid from STOP-DWI funds. SCSO's program is supervised by the Road Lieutenant or designee and the Sheriff or his designee shall also serve on the Seneca County Traffic Safety Board and the STOP-DWI Advisory Board.
  - a. The STOP-DWI patrol shall be responsible for completing a STOP-DWI Activity Report at the conclusion of the tour of duty. This report shows the citation number, the defendant, the offense, (including blood alcohol content), and the location by town and highway, as well as the total time spent and number of citations written in that jurisdiction. This information enables an evaluation of the various roadways according to their incidences of alcohol-related violations.
  - b. STOP-DWI patrols are expected to take an aggressive approach in the enforcement of DWI laws. It shall be the goal of each member to detect and apprehend the impaired driver before he can become involved in an accident.
  - c. Members engaged in STOP-DWI patrols receive special training in detection, sobriety testing, arrest procedures, report preparation and courtroom testimony, all designed to enhance their efficiency in alcohol enforcement. All members, beginning with basic training, and continuing through supervised field training

and in-service sessions, are regularly urged to improve their skills toward an effective deterrence of impaired driving.

**I. Suspended or revoked –**

1. The offenses of vehicle operation after one's driving privilege has been revoked or suspended are described in Section 511 of the Vehicle & Traffic Law, and range from an infraction to a Class E felony. As noted above, infractions and misdemeanors may be cited using the UTT, while the felonies require a felony complaint. Regardless of the type of accusatory instrument filed, a physical arrest may be appropriate under the circumstances noted under Paragraph F (3) above.
2. VTL § 340 provides for the return of DMV property, namely license plates when suspended or revoked. If member determines that this property should be seized for return to DMV, the member shall issue a "Confiscated Plate Receipt form" and issue it to the owner/operator of the vehicle. This form should be signed by the owner/operator and a second form identical form should also be signed. The second form along with a copy of the DMV data showing the suspension should be attached to the plate(s) and all placed in the proper receptacle in the Sergeant's Office. The confiscated plate receipt form is forwarded to the Records Division for filing after the plates are destroyed.

**J. Seizure of unlawfully operated vehicles -** Section 511-b of the V & T Law provides for the seizure of certain vehicles being operated in violation of the misdemeanor and felony offenses under Section 511. Members shall be particularly attentive to these provisions since any deprivation of a violator's property actually occurs prior to judgment.

Care must be taken to authenticate the violator's suspended or revoked status and to verify his or another's ownership of the vehicle being operated. If the conditions described under 511-b (1) are met, arrangements shall be made to have the unlawfully operated vehicle removed to a SCSO designated impound facility for impoundment pending compliance with the provisions described under 511-b (2). See ("**Vehicles Towed/Impounded & Seized**"), this manual.

**K. Recommendation for reexamination -** Occasionally, through investigation of an accident, issuance of a citation, rendering assistance to a motorist, or by the report of a family member or other individual, a licensed driver is suspected of having lost the skills or judgment necessary to the safe operation of a motor vehicle. In this circumstance, it is appropriate for the member to report any suspicion to the Department of Motor Vehicles, Driver Improvement Bureau, Empire State Plaza, Albany, New York 12226. The medium for such reporting is the Driver Improvement Request for Review.

- L. Pedestrians and cyclists** - Members of the SCSO shall be governed by Articles 27 and 34 of the Vehicle & Traffic Law which deal with the application of the traffic laws and regulations affecting pedestrians and the operators of bicycles or play vehicles. Effective compliance with such regulations can frequently be achieved by the members' contact with and education of the public.
- M. Off-road vehicles** - Members of the SCSO shall be governed by Articles 47, 48-A and 48-B New York State Parks and Recreation law for the enforcement activities which are to be applied to snowmobiles, limited use vehicles and all terrain vehicles. These articles deal specifically with the requirements affecting their registration, insurance and operation, and violations described shall be handled in the same manner as any traffic offense, using the Uniform Traffic Ticket or the Parks and Recreation citation, depending upon the law violated.
- N. Parking enforcement** - Except in the Villages of Waterloo and Seneca Falls, the SCSO is responsible for enforcing regulations pertaining to stopping, standing and parking as they are defined in Article 32 of the Vehicle & Traffic Law. In addition, SCSO members will issue citations for vehicles found to be in violation of town and village ordinances, when such laws are made a matter of record with the SCSO. Particular attention will be given to vehicles left to obstruct public highways, fire zones, and those occupying space reserved for handicapped persons without proper identification. Enforcement actions will usually consist of issuing a Uniform Traffic Ticket; however in the case of a vehicle causing an impediment to the safe movement of traffic, a member may resort to towing and impoundment.
- O. Traffic direction and control** - The SCSO's traffic direction and control functions are performed in cooperation with the state, county and town highway superintendents [see Traffic Engineering, this Manual]. Each member of the SCSO shall consider it a duty to report areas or specific locations where an apparatus, marking or control is needed to promote and insure the safe and efficient movement of vehicles and pedestrians.
1. The reference work for the establishment of unmanned traffic control devices is the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the Federal Highway Administration.
  2. In connection with member's normal patrol activities and as a result of familiarity with the assigned patrol post, member shall make appropriate recommendations for the temporary performance of manual traffic direction. For this purpose, the SCSO will not utilize non-sworn personnel, since the public expects all uniformed SCSO members to provide full police services at all times. As noted above, the need for the installation of unmanned devices will be made known immediately to the highway superintendent having jurisdiction. With the approval of the shift Sergeant, manual traffic control may be conducted in instances of:
    - a. Inoperative or missing traffic control devices,
    - b. An accident or other emergency scene,
    - c. A special event having serious traffic congestion,

- d. Roadway construction until a flag person can be made available,
  - e. Adverse weather conditions resulting in electric lines down or debris in roadway,
  - f. A special assignment requiring priority traffic or vehicle movement.
3. In compliance with the 2008 Federal Worker Visibility Act (23 CFR Part 634), except for traffic stops, where the patrol car provides increased visibility and protection, officers are required to wear high visibility safety apparel while performing any functions on any highway right of way such as directing traffic, investigating accidents, conducting traffic checks, etc..
  4. When a special event or heavy traffic flow is anticipated, traffic cones and/or special signs may be used for the purpose of insuring a more efficient flow. It shall be the responsibility of road patrol personnel assigned to the scene to place and remove any such traffic regulators.
  5. In the event it is determined that an unsafe condition has developed due to vehicles being regularly parked in a particular location, this information should be reported to the shift Sergeant for referral to the appropriate state, county or town highway authority for possible remedial action. These incidents are handled on an as needed basis.
  6. As noted in the Road Patrol section of this Manual, members are dispatched to fire scenes throughout the county. Members' primary responsibility shall be to assist duly appointed fire police, who serve with an authorized fire service, in the control or diversion of traffic, maintaining access to and egress from the scene by fire and emergency vehicles, and keeping unauthorized persons from entering the affected area.

SCSO members should not request the use of fire police unless the situation is clearly fire-related or when fire department equipment is at the scene.

The SCSO has a close working relationship with the various fire services and a representative of the SCSO shall be assigned to conduct liaison with fire police on a regular basis. Training in the handling of traffic at a fire scene is provided and includes the placement of automobiles belonging to volunteer firefighters so that emergency operations will not be obstructed.

7. SCSO members shall be alert for those conditions which affect the safe and efficient movement of traffic adversely, such as, accident hazard, debris from highway cargo, downed trees, utility poles or power lines, fog, rain, snow, ice, or flooded areas. Members encountering these or similar conditions shall advise the shift Sergeant who will determine if the appropriate highway superintendent should be notified, and, if so, shall instruct the E-911 Center to make such notification. See (“**Road Patrol**” III (A)(6)(a) ),this manual.
8. Escorts - Under certain circumstances it may be appropriate for a member of the SCSO, in a marked patrol car, to provide an non emergency escort for another vehicle. See (“**Vehicle Operation**”), this manual. In all cases of a request for a non-



emergency SCSO escort, prior approval must be obtained from the Road Patrol Lieutenant.

**P. Foreign Diplomats/Consular Officials –**

The United States extends diplomatic immunity to diplomatic agents of foreign missions, Consulates and the United Nations, as well as to their family and staff. Immunity does not mean total release from responsibility to comply with the law. Rather, it is a legal barrier which precludes courts in the United States from exercising jurisdiction over persons who have diplomatic immunity.

There are different levels of immunity. The extent of a particular individual's immunity depends upon their status and duties in the foreign mission.

1. In 1987, the U.S. Department of State began issuing new identification cards to all persons entitled to diplomatic privileges and immunities. While this form of identification is generally to be relied upon, a member should immediately contact a SCSO Supervisor and request that the Supervisor contact the U.S. Department of State for verification of any person claiming to have immunity during the course of your investigation of any incident including driving while intoxicated or if there is any doubt as to the validity of an identification card. Possession of a foreign diplomatic passport, even if it contains a U.S. diplomatic visa, is also not conclusive indication the bearer possesses immunity.
  - a. There are three types of identification cards:

Diplomatic (blue border for Diplomats).

Official (green border for employees).

Consular (red border for Consular personnel).
  - b. This 3 <sup>3</sup>/<sub>4</sub> x 2 <sup>1</sup>/<sub>2</sub> inch card will bear a brief statement of the bearer's immunity, their name, signature, title, mission, city and state, date of birth, identification number, expiration date, and a U.S. Department of State seal on the front of the card.
  - c. While this form of identification is generally to be relied upon, law enforcement authorities are nonetheless urged immediately to seek verification as indicated below in connection with any serious incident or in any case where they have reason to doubt the validity of the card.
2. The U.S. Department of State also issues automobile registrations, license plates and drivers licenses to persons entitled to immunities. Neither the registration card nor the driver's license should be relied upon as conclusive indications of the status or immunity of the bearer.

**REMEMBER** – a person with immunity may not always be driving a vehicle with federal license plates. On occasion, the person may be using a rented or borrowed

vehicle. Similarly, a person operating a vehicle bearing a federal diplomatic license plate is not necessarily entitled to immunity.

3. Verification of identity and the current status of diplomatic license plates, registrations, driver permits, or reporting traffic incidents, citations, etc., may be accomplished on a 24 hour basis as follows:
  - a. For diplomatic and consular personnel and international organizations other than the UN call the Command Center of the Bureau of Diplomatic Security, Department of State at (202)647-7277;
  - b. For United Nations personnel call the U.S. Mission to the United Nations at (212) 415-4444.
4. Diplomatic immunity is a concept frequently misunderstood by law enforcement officers who are reluctant to grant special privileges or concessions to individuals who break the law. Conversely, the officer may feel that because of a diplomat's status, any attempt at enforcement is futile and so the violation is not charged. Privileges accorded foreign diplomats vary with rank and circumstances, but even at the highest level, diplomatic immunity does not exempt diplomatic officers from the obligation to conform to national and local laws and regulations. It is not intended to serve as a license for such persons to flout the law and purposely avoid liability for their actions. When proper identification is available, an individual's immunity should be fully respected to the degree to which the individual is entitled. Nevertheless, when dealing with a person who is entitled to full immunity, the police still have authority to:
  - a. Protect public safety
  - b. Prevent a serious crime from being committed; and
  - c. Defend themselves from possible personal harm pursuant to law.
5. Diplomatic agent is the term for ambassadors and other diplomatic officers who generally have the function of dealing with the host country officials and enjoy the highest degree of privileges and immunities. They may not be arrested or detained; they are owed a special measure of respect and protection; and, neither their property nor residences may be entered or searched. They cannot be prosecuted no matter how serious the offense, and cannot be required to testify even if they have themselves been the victim of a crime.

Family members, as well as members of the diplomatic agent's administrative and technical staff are also immune from criminal jurisdiction; however, their private servants have no such protection.

6. Consular officers perform a variety of functions of interest to their sending countries (e.g. issuance of travel documents, assisting their countrymen who are present in the U.S., promoting their country's commerce). They, along with their administrative and technical employees, have only *official acts* or *functional* immunity from prosecution. Consular officials may be arrested pending trial provided the underlying offense is a

felony and that the arrest is made pursuant to a decision by a competent judicial authority (e.g. a warrant issued by an appropriate court).

The question of whether the proscribed conduct does or does not fall within the performance of an official act is one that may be presented to the court for resolution. Without a bilateral agreement to the contrary, the family members of consular officials enjoy no personal inviolability and no jurisdictional immunity of any kind.

7. Personnel of international organizations such as the United Nations, generally have only official acts immunity, except for the most senior executives (e.g. U.N. Secretary-General and all Assistant Secretaries-General) who are afforded the status of diplomatic agents.

8. Traffic Enforcement Procedures –

- a. Stopping a vehicle operated by a person with diplomatic immunity, full or otherwise, and issuing that person a Uniform Traffic Ticket does not constitute arrest or detention and is permissible.

- b. If an individual possesses immunity from arrest:

Do not handcuff unless the individual is or may become violent;

Do not take the individual into custody

Do not require bail to be posted

- c. If you suspect that an individual possesses immunity from arrest is driving while intoxicated, you may request submission to field sobriety tests. The individual, like anyone else, may refuse and may not be forced to comply.
    - d. A member should never hesitate to follow normal procedures to intervene in a traffic violation. Even if immunity ultimately bars any further action at the scene a violator should be stopped, if appropriate a citation issued, and the incident reported. If on the basis of observation alone, the violator is believed to be intoxicated, the individual should not be permitted to continue to drive, even in the case of a diplomatic agent.
    - e. In this circumstance, the options available to the member are to take the violator to a place where the time necessary for recovery may be spent, allow another driver to be summoned, or to arrange for other transportation to be provided.
    - f. The property of a person with full immunity, including the vehicle, may not be searched or seized.
    - g. Vehicles will not be impounded; however the vehicle may be towed the distance necessary to remove it from obstructing traffic or endangering public safety.

9. Other Criminal Investigations

- a. It can never be ascertained with certainty at the investigation stage whether a person will continue to enjoy immunity when their government is confronted with the alleged criminal actions of such person. Additionally, there are diplomatic remedies available to deal with such persons even if immunity bars prosecution and conviction.
- b. Fully investigate all serious offenses even if the suspect may possess immunity. A high standard of police investigation, record keeping and reporting of diplomatic incident cases is essential to permit the U.S. Department of State to exercise available diplomatic tools. The District Attorney will be consulted on any and all cases in which an accusatory instrument will be filed.

10. Administrative Notification –

- a. In all cases in which a member of the SCSO comes into contact with a foreign diplomat or consular official for any violation of law, the member will follow the procedures and protocol identified in “**Administrative Notification**” this manual.