UIC Law Review

Volume 5 | Issue 2 Article 4

Spring 1972

Illinois Implied Consent Legislation: Suspension of License upon Refusal to Submit to Chemical Tests for Intoxication, 5 J. Marshall J. of Prac. & Proc. 298 (1972)

William Peter Maksym Jr.

ILLINOIS' "IMPLIED CONSENT" LEGISLATION: SUSPENSION OF LICENSE UPON REFUSAL TO SUBMIT TO CHEMICAL TESTS FOR INTOXICATION

INTRODUCTION

Since the early days of the horseless carriage, the menace presented by the inebriated motorist has been recognized by our courts.[1] Studies have revealed that fifty to seventy-five per cent of all fatal accidents on our highways involve motorists who have been drinking.[2] All fifty states and the District of Columbia have responded to this problem through the enactment of laws relating to the operation of a motor vehicle while under the influence of intoxicating liquor.[3] Illinois also possesses a modern example of this legislation.[4] In order to complement[5] this legislation, aid its enforcement and obtain evidence[6] of a driver's intoxication by means of chemical tests, a quasi-criminal Implied Consent Statute[7] has been adopted in Illinois effective as of July 1, 1972.[8] Thus, to date, forty-nine states,[9] including

---

[1] *See, e.g.*, State v. Rodgers, 91 N.J.L. 212, 102 A. 433 (1917).

[2] NATIONAL SAFETY COUNCIL TRAFFIC SAFETY (8th ed. Feb. 1967).

[3] R. ERWIN, DEFENSE OF DRUNK DRIVING CASES, 123-24 (Supp. 1968); *See also An Analysis of the Drunken Driving Statutes in the United States*, 8 VAND. L. REV. 888 (1955).

[4] ILL. REV. STAT. ch. 95½, §11-501 (1971).

[5] Note, however, that violations of Implied Consent laws and drunk driving statutes have been held to be separate offenses with separate penalties. The concept of Implied Consent statutes is simple: an arrested driver may be asked to consent to the taking of a chemical test; if he makes an unreasonable refusal, the penalty of a suspended license would be imposed. United States v. Gholson, 319 F. Supp. 499 (E.D. Va. 1970).

[6] For a discussion concerning the admissibility of chemical tests in Illinois prior to the enactment of Implied Consent, *see* 1 DEPAUL L. REV. 298 (1952); 3 DEPAUL L. REV. 117 (1953).

[7] Pub. L. No. 77-1881 (July 1, 1972), *amending* ILL. REV. STAT. ch. 95½, §11-501.1 (Supp. 1972). (Full text of new law follows this article.)

[8] *Id.* §11-501.1(e).

[9] *See* ALA. CODE tit. 36, §154-158 (Supp. 1969); ALASKA STAT. §28.35 (1962), *as amended*, S.L.A. ch. 83, §§28.35.031-28.35.034 (1969) ARIZ. REV. STAT. ANN. §28-691 (Supp. 1972); ARK. STAT. ANN. §75-1045 (Supp. 1969); CAL. VEHICLE CODE §13353 (West 1971); COLO. REV. STAT. ANN. §13-5-30 (Supp. 1967), *as amended*, ch. 69, §13-5-30 (1971) Colo. Laws 1st Reg. Sess. 214; CONN. GEN. STAT. REV. §14-227b (Supp. 1969); FLA. STAT. ANN. §322.261 (Supp. 1972); GA. CODE ANN. §68-1625.1 (Supp. 1971); HAWAII REV. STAT. §§286-151 - 286-162 (1968); IDAHO CODE ANN. §49-352 (1967); IND. ANN. STAT. §§47-2003c-2003h (Supp. 1971); IOWA CODE ANN. §§321B.1 - 321B.14 (Supp. 1972); KAN. STAT. ANN. §8-1001 (1964); KY. REV. STAT. ANN. §186.565 (Supp. 1971); LA. REV. STAT. ANN. §§32:661-32:669 (Supp. 1972); ME. REV. STAT. ANN. tit. 29, §1312 (Supp. 1972); MD. ANN. CODE art. 66½, §92A (Supp. 1969); MASS. GEN. LAWS ANN. ch. 90, §24 (1968); MICH. COMP. LAWS ANN. §§257.625a-257.625g (Supp. 1972); MINN. STAT. ANN. §169.123 (Supp. 1972); MISS. CODE ANN. §§8106-8107 (1942), *as amended*, ch. 515 (1971) Miss. Laws Reg. Sess. 721; MO. ANN. STAT. §§564.441-564-444 (Supp. 1971); MONT. REV. CODES ANN. §§32-2142.1 - 32-2143.3 (Supp. 1971); NEB. REV. STAT. §§39-727.03 - 39-727.14 (1968); NEV. REV. STAT. §§484.383-483.393 (1971); N.H. REV. STAT. ANN. §§262-A:69-a - 262-A:69-j

Illinois,[10] have enacted some form of Implied Consent Legislation.

DEVELOPMENT AND THEORY

It is not difficult to understand how this tidal wave of legislation came to pass.[11] Traffic-safety propagandists have been extremely successful in informing society of the inherent dangers of the drunk driver. It was this information, coupled with the United States Supreme Court's apparent approval of chemical testing in *Briethaupt v. Abram*,[12] and the statements of legal commentators[13] that no constitutional prohibitions existed to the administration of a chemical test to a motorist arrested on a charge of drunk driving which paved the way for Implied Consent.

There are two basic theories underlying implied consent laws. First, a state, under its police power, has the right to impose reasonable regulations[14] regarding the act of driving a

(1969); N.J. STAT. ANN. §§39:4-50.2 - 39:4-50.7 (Supp. 1971); N.M. STAT. ANN. §§64-22-2.6 - 64-22-2.12 (Supp. 1971); N.Y. VEH. & TRAF. LAW §1194 (McKinney Supp. 1971); N.C. GEN. STAT. §20-16.2 (Supp. 1969); N.D. CENT. CODE ANN. §§39-20-01 - 39-20-14 (Supp. 1971); OHIO REV. CODE ANN. §4511.19.1 (Page Supp. 1967); OKLA. STAT. ANN. tit. 47, §§751-760 (Supp. 1971); ORE. REV. STAT. §§483.634-483.646 (1971); PA. STAT. tit. 75, §624.1 (Supp. 1971); R.I. GEN. LAWS ANN. §31-27-2.1 (1969); S.C. CODE ANN. §46-344 (Supp. 1970); S.D. COMP. LAWS §33-23-10 (1967); TENN. CODE ANN. §§59-1045 - 59-1052 (Supp. 1970); TEX. PEN. CODE art. 802f (Supp. 1972); UTAH CODE ANN. §41-6-44.10 (1970); VT. STAT. ANN. tit. 23 §§1188-1195 (1967); VA. CODE ANN. §18.1-55.1 (Supp. 1971); WASH. REV. CODE ANN. §46.20.308 (1970); W. VA. CODE ANN. §§17C-5A-1 - 17C-5A-8 (Supp. 1970); WIS. STAT. ANN. §343.305 (1971); WYO. STAT. ANN. §39-129 (1959), *as amended*, ch. 158 (1971) Wyo. Laws Reg. Sess. 200.

The model for much of this legislation is the UNIFORM VEHICLE CODE §6-205.1.

Only one state has yet to enact Implied Consent. *See* DEL. CODE ANN. tit. 21 §4176 (Supp. 1970). One jurisdiction provides for tests to determine intoxication but expressly reserves the motorist's right to refuse its administration. *See* D.C. CODE ANN. §40-609a (1967).

The reader is advised that, in any one jurisdiction, several statutory provisions may relate to drunk driving. It is therefore essential that, when viewing the illustrative cases and statutes hereinafter mentioned, he make reference to the applicable legislation in force within a particular state at the time the litigation transpired.

[10] See note 7 *supra*.

[11] *See* State v. Muzzy, 124 Vt. 222, 202 A.2d 267 (1964), for a discussion relating to the purposes behind and the reasons prompting the enaction of Implied Consent statutes.

[12] 352 U.S. 432, 435-440 (1957). Here the defendant was unconscious when a blood test was given. This properly administered blood test was held not to violate the due process clause, as it was not considered offensive or shocking per se.

However, in a strong dissent Mr. Justice Douglas argued that the compulsory extraction of blood was a repulsive invasion of a person's privacy and was therefore violative of the individual's right to due process of law. *Id.* at 443.

[13] *See* 31 U. CHI. L. REV. 603-04 (1964). Note, that this author examined some of the doubts surrounding Implied Consent legislation, particularly shifting of the burden of proof.

[14] The reasonableness of requiring a motorist to submit to chemical tests and suspending the driver's license of a person who refuses to submit to such tests after being arrested for driving while intoxicated was noted

motor vehicle within its boundaries.[15] This authority is justified when the interests of society are balanced against the rights of the individual.[16] The second and most often cited reason is that the activity of driving an automobile upon the public highways is not a right but a privilege; ipso facto that privilege may be subject to reasonable regulation by the state.[17] Thus, a motorist is deemed to have consented to submit to a chemical test for intoxication provided that its administration conforms to certain prescribed standards. Further, upon his failure or refusal to submit to such tests,[18] his license, which evidences his privilege to drive may be suspended.[19]

CONSTITUTIONAL IMPLICATIONS

The development of scientific tests[20] which could accurately measure the amount of alcohol in the blood brought about a means whereby an arresting officer's testimony could be corroborated. The motorist, prior to the use of such tests, would invariably testify to his sobriety, convince the jury and gain an acquittal. But even after the tests became available, many drivers refused to submit to them when arrested for drunken driving. In turn, the police were advised not to give a test unless they obtained the consent of the motorist since it was feared that without such procurement, a violation of the self-incrimination, search and seizure or due process provisions of the state and federal constitutions would inure.[21]

The adoption of Implied Consent Statutes was given impetus by the United States Supreme Court's decision in *Schmerber v.*

in Campbell v. Superior Court in and for Maricopa County, 106 Ariz. 542, 479 P.2d 685 (1971).

[15] Blydenburg v. David, 413 S.W.2d 284 (1967).

[16] *See* 22 U. MIAMI L. REV. 698, 706 (1968).

[17] *See, e.g.*, State v. Duguid, 50 Ariz. 276, 72 P.2d 435 (1937); Serenko v. Bright, 70 Cal. Rptr. 1, 263 Cal. App. 2d 682 (1968); Wells v. State, 239 Ind. 415, 158 N.E.2d 256 (1959); Lee v. State, 187 Kan. 566, 358 P.2d 765 (1961); Mauldin v. State, 239 Md. 592, 212 A.2d 502 (1965); Beare v. Smith, 82 S.D. 20, 140 N.W.2d 603 (1966); Walton v. City of Roanoke, 204 Va. 678, 133 S.E.2d 315 (1963); *Chemical Tests for Intoxication: A Legal, Medical and Constitutional Survey*, 37 N.D. L. REV. 212, 252 (1961); 51 MICH. L. REV. 1195, 1200 (1953); 17 WASH. & LEE L. REV. 299, 300 (1960).

[18] A refusal or failure to submit is a reasonable ground, in and of itself, to believe that the motorist was driving a motor vehicle while in an intoxicated condition. Sidler v. Strelecki, 98 N.J. Super. 530, 237 A.2d 903 (1968).

[19] Pub. L. No. 77-1881 (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1 (Supp. 1972).

[20] This paper is not intended to explore the broad and technical area of chemical testing. For discussion concerning this area the reader is referred to the following articles: Slough & Wilson, *Alcohol and the Motorist: Practice and Legal Problems of Chemical Testing*, 44 MIN. L. REV. 673, 675 (1960); R. DONIGAN, CHEMICAL TESTS AND THE LAW (2d ed. 1966); Symposium, *Breath Alcohol Tests*, 5 TR. L. GUIDE 1 (1961); Coldwell & Grant, *A Study of Some Factors Affecting the Accuracy of the Breathalyzer*, 8 J. FOR SCIENCE 149 (1963); Watts, *Some Observations on Police Administered Tests for Intoxication*, 45 N.C. L. REV. 34 (1966).

[21] 51 MICH. L. REV. 1195, 1197 (1953).

California.[22] In *Schmerber*,[23] the court held that merely requiring the accused to become a source of *real* or *physical* evidence[24] does not violate his fifth amendment guarantee[25] against self-incrimination.[26] The Court also reasoned that consent to a blood test is not necessary[27] and does not violate an accused's right to due process when the test is properly administered under medically accepted circumstances.[28] Further, *Schmerber* held that the prohibition[29] against unlawful searches and seizures[30] would not apply to the administration of a compulsory chemical test when made incident to a lawful arrest, justifiably executed by the police upon probable cause,[31] provided, a procedure satisfying the fourth amendment standards of reasonableness[32] was applied.

Actions under Implied Consent for refusal to take a breath test have been held to be a civil and not a criminal proceeding for sixth amendment[33] purposes of an accused's right to counsel.[34] Therefore, some courts have held that a motorist does not have a constitutional right to consult with an attorney before he decides to accede to an officer's request to take a chemical test.[35]

---

[22] 384 U.S. 757 (1966).

[23] *Id.*

[24] *Id.* at 764.

[25] U. S. CONST. amend. V.

[26] Schmerber v. California, 384 U.S. 757, 761 (1966).

[27] *Id.* at 760 n. 4.

[28] *Id.* at 771.

[29] U. S. CONST. amend. IV.

[30] Two cases particularly control the Illinois position on the permissibility of a search and seizure made incident to a lawful arrest for an alleged traffic violation. *See* People v. Reed, 37 Ill. 2d. 91, 227 N.E.2d 69 (1967) and People v. McKnight, 39 Ill. 2d 577, 237 N.E.2d 488 (1968). For "minor" traffic violations note the distinction made in People v. Tadlock, 59 Ill. App. 2d 481, 208 N.E.2d 100 (1965).

[31] Where probable cause is found to exist, a search warrant will not be required because the evidence sought, alcohol traces in the blood, would dissipate if the search were delayed. Schmerber v. California, 384 U.S. 757 (1966).

[32] Schmerber v. California, 384 U.S. 757, 768 (1966). *See also Blood Alcohol Tests and the Fourth and Fifth Amendments*, 17 DRAKE L. REV. 231 (1968); *Constitutionality of Compulsory Chemical Tests To Determine Alcoholic Content*, 40 ILL. L. REV. 245, 259-62 (1945); *Admissibility and Constitutionality of Chemical Intoxication Tests*, 35 TEXAS L. REV. 813, 830 (1957).

[33] U.S. CONST. amend. VI.

[34] Commonwealth v. Morris, 218 Pa. Super. 347, 280 A.2d 658 (1971); *accord*, Plumb v. Department of Motor Vehicles, 81 Cal. Rptr. 639, 1 Cal. App. 3d 256 (1969).

[35] State v. Palmer, 191 N.W.2d 188 (1971); Funke v. Department of Motor Vehicles, 81 Cal. Rptr. 662, 1 Cal. App. 3d 449 (1969); State v. Macuk, 57 N.J. 1, 268 A.2d 1 (1970); Rusho v. Johns, 186 Neb. 131, 181 N.W.2d 448 (1970); Blow v. Commissioner of Motor Vehicles, 83 S.D. 628, 164 N.W.2d 351 (1969); Deaner v. Commonwealth, 210 Va. 285, 170 S.E.2d 199 (1969); Finochairio v. Kelly, 11 N.Y.2d 58, 226 N.Y.S.2d 403, 181 N.E.2d 427 (1962). *See also* 25 A.L.R.3d 1076 (1969) for a general treatment of the right of a motorist, stopped by the police for various traffic offenses, to be advised of his constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966). For a short discussion of the constitutional

The intent of the Illinois Legislature on this issue appears to be quite clear from a reading of the statute.[36] A motorist is to be informed that he will have a reasonable opportunity to consult with his attorney,[37] and that a failure to consult with counsel will not excuse or mitigate the effect of a refusal to take or complete the test.[38]

Most importantly, even when these statutes have been subject to very strict construction, no state court has ever held the essential provisions of the implied consent laws unconstitutional.[39]

RIGHTS AND DUTIES OF THE ILLINOIS MOTORIST

Pursuant to the adoption of Illinois' new Implied Consent Statute, one who drives[40] a motor vehicle within the State of Illinois impliedly consents[41] to take and complete a breath test subject to certain considerations. The Illinois Legislature was highly specific in its declaration of the rights and duties which the driver of a motor vehicle will possess under Implied Consent. An understanding of these responsibilities and obligations is essential, not only from the viewpoint of the motorist, but of the police officer, legal practitioner and the judiciary.

The breathalyzer test can *only* be given incident to a lawful arrest,[42] evidenced by a Uniform Traffic

applicability of *Miranda* to "Implied Consent Situations" *see The Pennsylvania Implied Consent Law: Problems Arising in a Criminal Proceeding*, 74 DICK. L. REV. 219, 237-39 (1970).

[36] Pub. L. No. 77-1881 (July 1, 1972) *amending* ILL. REV. STAT. ch 95½, §11-501.1 (Supp. 1972).

[37] *Id.* §11-501.1(a)(1).

[38] *Id.* §11-501.1(a)(9).

[39] *See* Watts, *Some Observations on Police Administered Tests for Intoxication*, 45 N.C.L. REV. 34, 101 n.223 (1966).

[40] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972). A distinction has been established between "driving" and "operating" a motor vehicle. The term "driving" is given stricted construction. Usually courts hold that the vehicle must have been in motion. Although "operating" has been given a similar construction in some cases, it has been more liberally construed in others to include starting the engine, or manipulating the mechanical or electrical agencies of the vehicle. *See, e.g.*, Gallagher v. Commonwealth, 205 Va. 666, 139 S.E.2d 37 (1964). For an extended treatment of this area *see* 47 A.L.R.2d 570 (1956).

[41] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972). *See also* text accompanying notes 14 through 18 *supra.*

[42] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972). A formal declaration of arrest by a police officer is not always necessary. State v. Sullivan, 65 Wash. 2d 47, 395 P.2d 745 (1964). The requirement of a lawful arrest has been found to be satisfied where a law enforcement officer merely "stopped" a motorist for the alleged offense of drunk driving. Freeman v. Department of Motor Vehicles, 74 Cal. Rptr. 259, 449 P.2d 195 (1969). Nebraska courts require that a person must be arrested or taken into custody before a test to determine intoxication can be demanded. Prigge v. Johns, 184 Neb. 103, 165 N.W.2d 559 (1969). For a discussion of whether a "technical arrest" occurs when a motorist is

Ticket.[43] The ticket must be issued for an offense defined in Section 11-501 of the Illinois Motor Vehicle Code[44] of a similar provision of a municipal ordinance.[45] Once arrested, the motorist has a right to have the arresting officer make an oral statement to the effect that his privilege to operate a motor vehicle may be suspended if he refuses to submit to and complete a breath test.[46] Concurrent with the officer's oral statement, the motorist has the right to receive a printed notice.[47] After being so advised, the arrested motorist has a right to study the written notice delivered to him, and to consult with

questioned by a policeman for the purpose of being advised of his rights under *Miranda*, *see* 25 A.L.R.3d 1076, 1084 (1969); *The Pennsylvania Implied Consent Law; Problems Arising in a Criminal Proceeding*, 74 DICK. L. REV. 219, 237-39 (1970).

[43] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972).

[44] ILL. REV. STAT. ch. 95½, §11-501 (1971).

[45] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972). This statute does not preempt the area of drunken driving and will not supersede or deprive a municipality's power to enact an ordinance which may vary from that of the State, provided that the ordinance does not conflict with or become repugnant to the State statute. Village of Mt. Prospect v. Malouf, 103 Ill. App. 2d 88, 243 N.E.2d 434 (1968). Could it also be possible that the regulations of the local municipality might provide a different standard of proof and/or a difference in the percentage of blood alcohol that need be present? *See* City of Rockford v. Floyd, 104 Ill. App. 2d 161, 243 N.E.2d 837 (1968), *cert. denied*, 396 U.S. 985, *rehearing denied*, 397 U.S. 929 (1968).

[46] Pub. L. No. 77-1881, §§(a), (d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a), (d) (Supp. 1972). Other jurisdictions have confronted problems in interpreting exactly what type of oral warning is required by similar provisions in their implied consent legislation. *See, e.g.*, Decker v. Department of Motor Vehicles, 20 Cal. App. 3d 23, 97 Cal. Rptr. 361 (1971) where it was said that to require letter-perfect and technically complete warnings by a policeman to suspected drunk drivers would defeat the general purpose of the legislation. The purpose is to obtain the best evidence of blood alcohol content and therefore a warning that the motorist's driving privileges "could" be suspended for a certain period of time is sufficient. *Accord*, Howe v. Commissioner of Motor Vehicles, 82 S.D. 496, 149 N.W.2d 324 (1967).

A Kentucky court said that the officer *must* request that the motorist take the tests in addition to warning the driver of the possible consequences of his or her refusal. Simply asking the motorist to sign a consent form was held not to be sufficient. Commissioner of Public Safety v. Carpenter, 467 S.W.2d 338 (1971).

It is submitted that the arresting officer's oral statement should be as follows, per Sidler v. Strelecki, 98 N.J. Super. 530, 237 A.2d (1968):

1. I have a reasonable grounds to believe that you were operating a motor vehicle while under the influence of intoxicating liquor.
2. I would like you to submit to a harmless series of two chemical tests by means of a breathalyzer.
3. Under no circumstances will there be a forceable administration of the tests.
4. If you refuse to submit to the tests, your refusal *may* result in the loss of your driving privileges.
5. Now, I ask you, will you submit to a breath test?

Note that in *Sidler* the word "may," not "will," was found not to render the officer's request defective.

[47] *See* Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972). See also Appendix, Form 1.

an attorney[48] or other person by telephone.[49]

The motorist has a duty to submit to the two tests within ninety minutes following receipt of the written notice, or suffer the risk that his failure to so submit will constitute a refusal[50] under the statute.[51] The failure to consult with counsel[52] or supply written permission[53] will not mitigate or defeat a refusal which will inevitably arise by operation of law.[54] Similarly, a motorist's subsequent claims that he or she did not have the capacity to make a rational decision concerning whether or not to take the test due to a lack of intelligence,[55] absence of subjective awareness due to drunken-

[48] Utah has taken the position that an arrested motorist has a right to consult with a lawyer and a reasonable time thereafter within which to make up his or her mind before making a decision to take or decline a sobriety test. This state's approach appears to parallel the spirit of the Illinois statute. Hunter v. Dorius, 23 Utah 2d 122, 458 P.2d 877 (1969). *Compare*, in Mills v. Bridges, 93 Idaho 679, 471 P.2d 66 (1970), where an Idaho court held that a motorist cannot condition his or her refusal to submit to a chemical test upon the presence of counsel. Also, the suspension of a motorist's license has even been allowed and was not wrongful where, after being advised of his right to counsel, a motorist refused to take the test because he was under the erroneous impression that he could refuse to submit until after his attorney had arrived. Johnson v. Department of Motor Vehicles, 92 Ore. App. 1530, 485 P.2d 1258 (1971).

[49] Pub. L. No. 77-1881, §(a) (3) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a)(3) (Supp. 1972).

[50] The question of whether or not a motorist "refused" a chemical test has been held to be a question of fact. *See, e.g.*, Cahall v. Department of Motor Vehicles, 94 Cal. Rptr. 182, 16 Cal. App. 3d 491 (1971). A refusal to submit to the chemical test under Implied Consent Laws has been held to occur where the conduct of an arrested motorist is such that a reasonable person in the arresting officer's position would be justified in believing that such motorist was capable of refusal and manifested an unwillingness to submit to the test. Campbell v. Superior Court, 106 Ariz. 542, 479 P.2d 685 (1971).

[51] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972).

[52] *Id.*

The United States Supreme Court has taken the position that even before trial, in a lineup identification situation, a suspect must have the right to counsel, despite the fact that only physical evidence was being sought, in order to insure against any improper presentation of the suspect by the police. United States v. Wade, 388 U.S. 218 (1967); Gilbert v. California, 388 U.S. 263 (1967). Similarly, could it be provided that an accused motorist must have an attorney present when a request to submit to a breathalyzer test is made under Implied Consent so as to check any possible impropriety on the part of the police? Remember the predominantly civil nature of this statute. Even if this argument were not present, a concrete obstacle would still exist: practicality! Also, the nature of an "Implied Consent situation" is such that the "emergency" doctrine stated in *Schmerber* would no doubt control. *Cf.* Stovall v. Denno, 388 U.S. 293 (1967). See also note 48 *supra.*

[53] Note 52 *supra.*

[54] *See also* State v. Pandoli, 109 N.J. Super. 1, 262 A.2d 41 (1970) where the court held that anything substantially short of an unqualified, unequivocal assent to an officer's request for a motorist to take a test constitutes a refusal. *Accord*, Reirdon v. Director, Department of Motor Vehicles, 72 Cal. Rptr. 614, 266 Cal. App. 2d 808 (1968).

[55] August v. Department of Motor Vehicles, 264 Cal. App. 2d 52, 70 Cal. Rptr. 172 (1968); Goodman v. Ore, 97 Cal. Rptr. 226, 19 Cal. App. 3d 845. (1971).

ness,[56] belief of innocence[57] or confusion[58] will not affect the finality or the effectiveness of a refusal if the proper Implied Consent admonitions[59]are given. If the arrested motorist is detained in custody after the state's tests have been conducted, he has a right to, upon a request made to the police, an additional chemical test.[60] This test would appear to be subject to the same time limitation as that of the state: one hundred fifty minutes following his or her arrest.[61] If the additional test is requested, it is to be made at his or her expense[62] by a qualified person[63] of his or her own choosing.[64] Transportation to the location at which the additional test is to be conducted must be supplied by the police, if necessary.[65]

After the tests are taken or refused and the arresting police officer has filed a sworn statement in the Circuit Court of the County in which the arrest was made,[66] the motorist must request

[56] State v. Hurbeon, 23 Ohio App. 2d 119, 261 N.E.2d 290 (1970).

[57] McGarry v. Costello, 128 Vt. 234, 260 A.2d 402 (1969).

[58] Smith v. Department of Motor Vehicles, 81 Cal. Rptr. 800, 1 Cal. App. 3d 499 (1969).

[59] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972); see also text accompanying notes 46 through 54 *supra.*

[60] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972).

[61] *Id.* §11-501.1(c).

[62] *Id.* §11-501.1(a).

[63] *Id.* §11-501.1(a), (b).

For the tentative rules and regulations governing the examination and licensing of breathalyzer operators, the examination and certification of the accuracy of breath analysis instruments, the certification of methods and laboratories, and the procedures for revoking the license of a breathalyzer operator which have been promulgated by the Department of Public Health of the State of Illinois under the authority prescribed in ILL. REV. STAT. ch. 95½, §§11-501 - 11-501.1 (Supp. 1972), *see* Pub. L. No. 77-1881 (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1 (Supp. 1972), RULES AND REGULATIONS OF THE ILLINOIS DEPARTMENT OF PUBLIC HEALTH, Rules 1-9 (1972).

[64] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(a) (Supp. 1972).

In regard to this right, whether or not such a person is reasonably available to make such a test is to be determined by the driver and his attorney — it is not an obligation of the police. Holland v. Parker, 84 S.D. 691, 176 N.W.2d 54 (1970).

[65] Note 64 *supra.* The" transportation clause," at the onset is likely to cause great distress among law enforcement officers. Only the Illinois courts can resolve the question of the legislature's intent in regard to this matter. It is not likely that the Illinois Legislature intended nor that the Illinois courts will require that the policemen of this state be transformed into chauffeurs. In all probability the denial of this right may not result in the exclusion of the state's evidence obtained from its test. As a general presumptive rule, a state's court will follow specific statutory provisions which attempt to insure proper interpretation. People v. Johannsen, 126 Ill. App. 2d 31, 261 N.E.2d 551 (1970). *But see* State v. Batterman, 79 S.D. 191, 110 N.W.2d 139 (1961), where the South Dakota Supreme Court came to the conclusion that its state's legislature did not understand the language of its own enactment!

[66] Pub. L. No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½ §11-501.1(d) (Supp. 1972).

a hearing by written petition[67] within twenty-eight days from the mailing of a notice from the Clerk of that County. If he fails to request such a hearing within the prescribed time limit, the Clerk will notify the Secretary of State who will, in turn, automatically revoke the motorist's driver's license.[68] The requested hearing is civil in nature[69] and limited to the exclusive determination of the following issues:

1. Whether the motorist was placed under *arrest* for an offense defined in Chapter 95½ §11-501 of the Illinois Motor Vehicle Code or a similar provision of a municipal ordinance,
2. whether the arresting officer had *reasonable grounds* to believe that the motorist arrested was driving while under the influence of intoxicating liquor,
3. whether the motorist was informed *orally and in writing*, as provided under the statute, that his privilege to operate a motor vehicle would be suspended if he refused to take and complete the tests, and
4. whether upon the request of the police officer and after being properly advised he *refused to submit* to the complete and required tests.[70]

If a suspension of the motorist's driver's license results from a refusal to take the tests, or an adverse determination upon the hearing, the motorist may submit a written application to the Secretary of State asking that he or she be issued a restricted driver's permit.[71]

Police Procedures and Duties

The policeman is subjected to highly technical requirements under Implied Consent. He may, within a reasonable time[72] following a lawful arrest[73] made upon his reasonable belief[74] that the motorist was driving while under the influence of alco-

---

[67] *Id.*

[68] *Id.*

[69] *Id.* Proceedings under this type of legislation are administrative and are not criminal prosecutions. *See* Severson v. Sueppel, 260 Iowa 1169, 152 N.W.2d 281 (1967).

[70] Pub. L. No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d) (Supp. 1972).

[71] *Id.* §11-501.1(e).

[72] *Id.* §11.501.1(a).

[73] See note 42 *supra.* The issue of whether the motorist was placed under arrest is to be determined by the test of whether the arresting officer had *reasonable grounds* to believe that the motorist was driving under the influence of intoxicating liquor. *Id.* Courts have construed "reasonable grounds" to be the equivalent of "probable cause." *See, e.g.*, Wong Sun v. United States, 371 U.S. 471, 491 (1963); *Accord*, Thorpe v. Department of Motor Vehicles, 480 P.2d 716 (1971). In Van Wormer v. Tofany, 281 N.Y.S.2d 491 (1967), it was held that a state trooper, who discovered a motorist behind the steering wheel of an auto which had gone off the shoulder of the road, had made a valid arrest upon noticing the thick speech of, and alcoholic odor about, the driver.

[74] Where a motorist staggered and wobbled while smelling strongly of alcohol when arrested by a state trooper who found the driver's pick-up truck in a ditch, there were "reasonable grounds" to request the test under "Implied Consent." *See* Cushman v. Tofany, 321 N.Y.S.2d 831 (1971).

hol, request[75] the motorist to submit[76] to an analysis of his breath on a breath testing instrument approved by the Department of Public Health of the State of Illinois.[77]

After the officer has made an oral statement[78] and concurrently delivered to the motorist the written notice[79] supplied by the Secretary of State, the arrested person should be allowed a reasonable opportunity[80] to study the notice[81] and consult with his attorney.[82] The officer must then obtain the permission of the motorist in writing.[83] It is likely that the test will not be given at the scene of the arrest by the arresting officer. In all likelihood, the arrested motorist will be taken to a convenient location where the tests will be administered by a qualified person.[84] The "transportation clause" of the Illinois Implied Consent Statute will no doubt become its most controversial provision.[85] It can only be hoped that the police will seek to make a good faith compliance with its spirit and that the motorists of Illinois will not abuse this added protection.

If subsequent to a proper request a refusal results[86] either in fact or by operation of law, the statute requires the arresting officer to follow a certain procedure in order to initiate the legal

---

[75] See note 46 *supra.*

[76] It is important to note that the officer and not the accused motorist usually has the right to choose whether the test shall be administered. *See* Hallet v. Johnson, 276 A.2d 926 (1971); Gottschalk v. Sueppel, 258 Iowa 1173, 140 N.W.2d 866 (1966); Lee v. State, 187 Kan. 566, 358 P.2d 765 (1961); Stensland v. Smith, 79 S.D. 651, 116 N.W.2d 653 (1962). *Contra,* Bean v. State Dept. of Public Safety, 12 Utah 2d. 76, 362 P.2d 750 (1961), State Department of Highways v. McWhite, 286 Minn. 468, 176 N.W.2d 285 (1970).

[77] See note 63 *supra.*

[78] See note 46 *supra.*

[79] See note 47 *supra.* It would be advisable for the arresting officer to begin a ninety minute countdown upon the delivery of the written notice to the arrested motorist for purposes of compliance with the stringent time restrictions set forth in the statute.

[80] *See* Hanlon v. Commissioner of Motor Vehicles, 80 S.D. 316, 123 N.W.2d 136 (1963).

[81] Pub. L. No. 77-1881, §(a) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501(a) (Supp. 1972). The requirement of the detailed written warning is directed at satisfying minimum fifth and sixth amendment requirements. *See* State v. Hagen, 180 Neb. 564, 143 N.W.2d 904 (1966).

[82] See text accompanying notes 37 and 38 and see also note 81 *supra.*

[83] But see text accompanying note 52 *supra.*

[84] It is generally the case that the breathalyzer is operated by a policeman who has received training in the method of operation of the device. For a good treatment of the training and background required so that a policeman can qualify as an expert witness regarding the use of such apparatus — R. ERWIN, DEFENSE OF DRUNK DRIVING CASES, §29.03 (3d ed. 1971). *See also* the requirements set forth by the Illinois Department of Public Health referred to in note 63 *supra.*

[85] See note 65 *supra.*

[86] Once a motorist refuses to submit to the tests, after a fair warning of the possible consequences is given, a police officer is not required to turn away from his other duties and arrange for the administration of a belated chemical test. Zidell v. Bright, 71 Cal. Rptr. 111, 264 Cal. App. 2d 861 (1968).

action which could result in suspension of the motorist's privilege to operate a motor vehicle.[87] This consists of filing with the circuit court of the county in which the arrest was made, a sworn statement[88] of reasonable cause,[89] naming the person refusing to take the tests and identifying his driver's license number and current residence.[90] The statement of reasonable cause should point out:

1. *Facts which will show* that the officer had *reasonable grounds* for believing the motorist was driving a motor vehicle while under the influence of intoxicating liquor, *and*
2. that the *officer made a request* for the motorist to submit to the tests at a specific time and place or places, *and*
3. specifically *how* the *motorist refused* to submit to the tests.[91]

EVIDENTIARY ASPECTS

There is little uniformity regarding the issue of whether evidence of a motorist's refusal to submit to a chemical test should be admissible in a subsequent civil or criminal proceeding. Some states favor the admissibility of such evidence.[92] Others do not deal with this question in their respective statutes and have therefore left the issue open for determination by their courts.[93] Illinois has chosen to specifically address itself to this question.[94] In short, such evidence will be *inadmissible* in all proceedings, both civil and criminal *except:*

1. a civil hearing under Implied Consent relating to the suspension of a person's privilege to drive; and
2. in an action under Chapter 95½ §11-501 of the Illinois Motor Vehicle Code where such evidence is corroborated by an automatically printed record of the test, the test is administered within one hundred fifty minutes following a lawful arrest and probable cause is first shown that the motorist was operating a motor vehicle within the State of Illinois while under the influence of alcohol.[95]

---

[87] Pub. Law No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d) (Supp. 1972).

[88] See Appendix, Form 2.

[89] Pub. L. No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d) (Supp. 1972).

[90] *Id.*

[91] *Id.*

[92] *See, e.g.*, ALA. CODE tit. 36, §155(h) (Supp. 1969); ARIZ. REV. STAT. ANN. §28-692(H) (Supp. 1972); LA. REV. STAT. ANN. §32.666 (Supp. 1972). *But see* COLO. REV. STAT. ANN. §13-5-30(g) (1967); *as amended* ch. 69, §13-5-30(h) (1971) Colo. Laws 1st Reg. Sess. 216; VA. CODE ANN. §18.1-55.1(i) (Supp. 1971).

[93] *See* State v. Holt, 261 Iowa 1089, 156 N.W.2d 884 (1968), *compare* State v. Hedding, 221 Vt. 379, 172 A.2d 599 (1961).

[94] Pub. L. No. 77-1881, §(c) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(c) (Supp. 1972). The admission of such evidence in subsequent and related proceedings would no doubt serve to accomplish the claimed objectives of this type of legislation: the removal of the drunken driver from our roads.

[95] *Id.*

Regardless of the nature of the proceeding, a sufficient foundation must be laid prior to the introduction of the results of a breathalyzer test. In *State v. Baker*,[96] the Washington court held that the introduction of prima facie evidence on the following points is essential to the admissibility of the results of a breathalyzer test:

1. that the machine was properly checked and in proper working order at the time the test was conducted;
2. that the chemicals employed were of the correct kind and compounded in the proper proportions;
3. that the subject had nothing in his mouth at the time of the test and that he had taken no food or drink within fifteen minutes prior to taking the test;
4. that the test was given by a qualified operator and in the proper manner.[97]

ADMINISTRATIVE AND JUDICIAL PROCEDURE

The new statute pronounces the procedure[98] which is to be followed pursuant to a refusal by a motorist to take and complete the prescribed chemical tests. Upon the filing of the police officer's written statement,[99] the clerk of the circuit court for the county in which the arrest was made shall notify[100] the accused motorist in writing that his driver's license will be suspended unless, within twenty-eight days from the date of the mailing of the notice, the motorist requests, in writing, a hearing.[101] If this request is not made within that period, the clerk will notify the Secretary of State and will, in turn, automatically suspend the motorist's driver's license.[102] If a hearing is requested within the prescribed time period and is subsequently conducted, immediately, upon the termination of the court's proceedings, the clerk will notify the Secretary of State of the court's decision.[103] Upon this notification, the Secretary of State

---

[96] 56 Wash. 2d 846, 355 P.2d 806 (1960).

[97] For a further discussion relating to the foundation required for the introduction of results from a breathalyzer device and the testimony of breathalyzer operators. *See* R. ERWIN, DEFENSE OF DRUNK DRIVING CASES, §§22.04, 22.05, 29.03 (3d ed. 1971).

[98] *See* Pub. L. No. 77-1881, §§(d), (e) (July 1, 1972), *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d)(e) (Supp. 1972).

[99] See text accompanying note 88 *supra*.

[100] See Appendix, Form 4.

[101] Pub. L. No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d) (Supp. 1972). See also Appendix, Form 5.

[102] Pub. L. No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d) (Supp. 1972).

[103] Pub. L. No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d) (Supp. 1972). See also Appendix, Form 9. Note that post facto developments concerning a lawful arrest under Implied Consent have no bearing on the action which the Secretary of State must take. *See* Bowers v. Hults, 249 N.Y.S.2d 361, 41 Misc. 2d 845 (1964); Severson v. Sueppel, 260 Iowa 1169, 152 N.W.2d 281 (1967); Prucha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75 (1961); Strelecki v. Coan, 97 N.J.S. 279, 235 A.2d 37 (1967); Marbut v. Motor Ve-

shall, if the court so decrees, suspend the license of the motorist or, upon the court's recommendation, issue a restricted driver's permit.[104]

WITHDRAWAL OF CONSENT

The Illinois Legislature has provided that any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal to submit to the chemical tests shall be deemed to have withdrawn the consent provided under the Implied Consent Act.[105]

A blood test could be obtained for purposes of a chemical analysis in a situation where the motorist is unconscious under the rational of *Briethaupt*.[106] But what about a person who is "otherwise in a condition rendering him incapable of refusal?"[107] Other courts have recognized that a problem exists where the motorist is incapable of *performing* the tests due to various physical or medical incapacities.[108] However, this provision would appear to allow a defense based upon the negation of the mental element necessary to make a knowing and willful refusal. Little, if any, litigation has transpired in regard to this problem. Thus, the Illinois courts will have another opportunity to interpret yet another provision of this complex legislation.[109]

CONCLUSION

In the past, the essential ingredients of implied consent laws have been upheld. Further, it appears that these ingredients as adopted in the Illinois Implied Consent Act are constitutional. However, the statute will present both practical problems in its administration and legal problems regarding its interpretation. Irrespective of these problems, the breath test should find favorable acceptance as a major innovation in the fight against a proven menace.

---

hicle Department of Highways Commission, 194 Kan. 620, 400 P.2d 982 (1965); Combes v. Kelly, 152 N.Y.S.2d 934, 2 Misc. 2d 491, -- N.E.2d ----; (1956); State v. Muzzy, 124 Vt. 222, 202 A.2d 267 (1964). But also note that where an arrest without a warrant is held unlawful, a subsequent acquittal of the accused may form the basis for challenging the suspension of the accused's license where an arrest without a warrant is permitted only for an offense committed in the presence of an officer. McDonald v. Ferguson, 129 N.W.2d 348 (1964).

[104] Pub. L. No. 77-1881, §(d) (July 1, 1972) *amending* ILL. REV. STAT. ch. 95½, §11-501.1(d) (Supp. 1972).

[105] *Id.* §11-501.1(e).

[106] Briethaupt v. Abram, 352 U.S. 432 (1957), see also note 12 *supra*.

[107] Pub. L. No. 77-1881, §(e) (July 1, 1972) *amending* ILL. REV. STAT. ch 95½, §11-501.1(e) (Supp. 1972).

[108] *See, e.g.*, Prucha v. Department of Motor Vehicles, 172 Neb. 415, 110 N.W.2d 75 (1961) (heart condition); Burson v. Collier, 226 Ga. 427, 175 S.E.2d 660 (1970) (emphysema); Application of Scott, 171 N.Y.S.2d 210. 5 A.2d 859 (1959) (false teeth).

[109] One might take the position that the legal principles enunciated in

The motorist and practitioner should remember that Implied Consent is not an automatic and irreversible process which inevitably leads to suspension, liability or possible conviction. Often, the circumstances of the case will govern its outcome.[110] For the law enforcement agencies, Implied Consent should prove a powerful weapon, but not a panacea in the war against the massacre on the highways of this state.

It must be remembered that this statute will operate in a delicate area. The Illinois Legislature has made every attempt not to lose sight of the fundamental rights of the individual, while yielding to the realization of the necessity to act to protect what has been seen as an overriding public interest. The Illinois courts will look to the experience of other jurisdictions in an effort to solve the problems which Implied Consent will necessarily create. Only time will tell whether the legislature's compromise and the wisdom of our courts will ultimately encourage the cooperation of the citizenry of this state. Hopefully, Implied Consent will be a success in Illinois, but there can only be one real measure of it — a significant reduction in the number of accidents on our roads, especially the fatal ones caused by the drunk driver.

Walter Peter Maksym, Jr.

---

the text accompanying notes 55 through 59 will govern Illinois interpretation of this issue by equating the irrelevance of subjective mental incapacity to submit to that of physical incapacity to submit to the required tests.

[110] *See, e.g.*, Howe v. Commissioner of Motor Vehicles, 82 S.D. 496, 149 N.W.2d 324 (1967).

Suspension of license — Implied Consent.

(a) Any person who drives a motor vehicle anywhere within this State thereby consents, under the terms of this Section, to take and complete a test or chemical analysis of his breath to determine the alcoholic content of his blood when made as an incident to and following his lawful arrest, evidenced by the issuance of a Uniform Traffic Ticket, for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance. Within a reasonable time following any such arrest, a police officer shall request the person arrested to submit to such analysis of his breath upon a breath testing instrument approved by the Department of Public Health in consultation with the Department of Law Enforcement which will automatically display the test results visually to the arrested person and provide for an automatic printed test record. A test shall consist of 2 breath analyses taken not less than 15 minutes apart. Each printed recording shall also contain an automatically printed record of the reading of the testing device made immediately prior to the recording for the tested person. Each recording shall contain the date and time on which the test was given, which may be manually printed on the recording.

The officer shall make an oral statement and concurrently deliver to the arrested person a printed notice supplied by the Secretary of State in the English and Spanish languages and any other languages deemed appropriate by the Secretary of State which shall advise the arrested person:

(1) that by his driving a motor vehicle in this State he has consented to take a test of 2 breath analyses which shall be administered not less than 15 minutes apart to determine the alcoholic content of his blood when such test is made as an incident to and following his lawful arrest for an offense of driving a motor vehicle while under the influence of intoxicating liquor,

(2) that he may refuse to submit to either such analysis and that his refusal to submit to either analysis within 90 minutes after receiving the notice may result in the suspension of his privilege to operate a motor vehicle for 3 months on his first such arrest and refusal and for 6 months on his second and each subsequent such arrest and refusal within 5 years,

(3) that he may consult with an attorney or other person by phone or in person within that 90 minutes,

(4) that his failure to submit to and complete the test may be admitted in evidence against him in any hearing concerning the suspension, revocation or denial of his license or permit,

(5) that he will receive a duplicate original or a photocopy of the results of any such test to which he submits at the request of the police,

(6) that the results of such test may be introduced in evidence against him to support the charge of driving while under the influence of intoxicating liquor, and

(7) that a reading of .10% or more by weight of alcohol in the blood establishes a presumption of being under the influence of intoxicating liquor, and

(8) that he may secure additional chemical tests at his own expense and that such tests should be taken as soon as possible and are customarily available from hospitals, medical laboratories and physicians, and

(9) that upon his request full information concerning the results of such test he took at the request of the police officer will be made available to him or his attorney.

After being so advised the arrested person may study the written notice and may consult with an attorney or other person by phone or in person but refusal to submit to the test within 90 minutes after being given the written notice shall constitute a refusal to take the test. Failure to consult counsel shall not excuse or mitigate the effect of the refusal to take or complete the test. No test shall be given to any person without the written permission of that person; willful refusal to give such written permission, however, shall constitute refusal to submit to the test within the meaning of this Section.

If the arrested person is detained in the custody of the police after such test has been administered, the police shall, at the request of the

arrested person, facilitate the prompt securing of an additional chemical test by a qualified person of the arrested person's choice and at his own expense as authorized by paragraph (f) of Section 11-501 and to transport the subject to a location within the county of arrest where services are available as defined by paragraph (f) of Section 11-501. If these services are not available in the county of arrest, then transportation shall be to the next adjacent county where the services are available.

(b) Any such test made as an incident to and following the lawful arrest shall be performed according to uniform standards and procedures adopted by the State Department of Public Health in co-operation with the Superintendent of State Police. Such standards and procedures shall include:

(1) Rules and regulations for examining and licensing any individual who shall administer any such test.

(2) Procedures for revoking the license of any such individual.

(3) Rules and regulations for examining and certifying the accuracy of any breath-testing instrument.

Any license issued to any individual to conduct such tests shall expire one year from date of issuance and any individual who desires to be licensed again must be re-examined. Any such breath-testing instrument must have been tested for accuracy and certified accurate pursuant to such rules and regulations no more than 30 days prior to the day the arrested person is requested to submit to the test upon the instrument.

(c) Evidence of a refusal to submit to the test or chemical analysis under this Section is inadmissible in any civil action or proceeding other than a hearing on the suspension of a person's privilege to operate a motor vehicle as provided under the provisions of this Section. Evidence of a refusal to submit to the test under this Section is inadmissible in an action under Section 11-501 of this Act, or in an action for violation of a local ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor. No evidence based upon a test or chemical analysis of breath shall be admitted into evidence in a proceeding under Section 11-501 unless corroborated by an automatically printed recording of the reading of the testing device and unless administered within 150 minutes following such lawful arrest of the person tested.

No evidence of any test taken pursuant to this Section is admissible in any criminal proceeding except in a proceeding under Section 11-501. No evidence of any test may be submitted in a proceeding under Section 11-501 until probable cause is shown that the person was operating a motor vehicle in the State of Illinois while under the influence of intoxicating liquors.

(d) The arresting officer shall file with the Clerk of the Circuit Court for the county in which the arrest was made, a sworn statement naming the person refusing to take and complete the test requested under the provisions of this Section. Such sworn statement shall identify the arrested person, his driver's license number and current residence address and shall specify the refusal of that person to take the test requested and the time, place or places where such request was made. Such sworn statement shall include a statement that the arresting officer had reasonable cause to believe the person was driving the motor vehicle within this State while under the influence of intoxicating liquor and that such test was made as an incident to and following the lawful arrest for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal code, and that the person, after being arrested for an offense arising out of acts alleged to have been committed while so driving refused to submit to and complete a test as requested orally and in writing as provided in paragraph (a) of this Section.

The Clerk shall thereupon notify such person in writing that his privilege to operate a motor vehicle will be suspended unless, within 28 days from the date of mailing of the notice, he shall request in writing a hearing thereon. If such person fails to request a hearing within such 28 day period, the Clerk shall so notify the Secretary of State who shall automatically suspend such person's driver's license, the privilege of driving a motor vehicle on highways of this State given to a non-

resident, or the privilege which an unlicensed person might have to obtain a license under the Driver's License Act, as provided in Paragraph (a) of this Section.

If such person desires a hearing, he shall petition the Circuit Court for and in the county in which he was arrested for such hearing. Such hearing shall proceed in the Court in the same manner as other civil proceedings, except that the scope of such proceedings shall cover only the issues of whether the person was placed under arrest for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance, whether the arresting officer had reasonable grounds to believe that such person was driving while under the influence of intoxicating liquor, whether the person was informed orally and in writing as provided in paragraph (a) that his privilege to operate a motor vehicle would be suspended if he refused to submit to and complete the test and whether, after being so advised, he refused to submit to and complete the test upon request of the officer.

Immediately upon the termination of the Court proceedings, the Clerk shall notify the Secretary of State of the Court's decision. The Secretary of State shall thereupon suspend the driver's license, the privilege of driving a motor vehicle on highways of this State given to a nonresident, or the privilege which an unlicensed person might have to obtain a license under the Driver's License Act, of the arrested person if that be the decision of the Court. If the Court recommends that such person be given a restricted driving permit to prevent undue hardship, the Clerk shall so report to the Secretary of State.

(e) Regardless of whether such person petitions the Court for a Court proceeding as provided in Paragraph (d) of this Section, whenever a driver's license is suspended under this Section, the Secretary of State may, if application is made therefor by the person whose license is so suspended, issue such person a restricted driver's permit, to prevent undue hardship, in the same manner, under the same conditions and with the same limitations specified in Section 6-205 of this Act.

If the person has had a Court hearing as provided for in Paragraph (d) and if the Court recommended that such person be given a restricted driver's permit to prevent undue hardship, this recommendation shall be made a part of the hearing before the Secretary of State.

Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed to have withdrawn the consent provided by this Section.

Notwithstanding any other provision of Subsection (i) of Section 11-501 of this Act, the Court may, in lieu of a sentence of imprisonment for a conviction under Section 11-501, order any person to serve a term of not less than 2 days in a hospital, alcoholic or rehabilitation center, or other such agency or institution, under such terms and conditions as may to the Court be appropriate.

Section 2. This amendatory Act takes effect July 1, 1972, or upon its becoming a law, whichever is later.

APPENDIX OF FORMS

FORM #1

NOTICE OF REQUEST TO SUBMIT TO CHEMICAL TEST OF BREATH TO DETERMINE INTOXICATION

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Arrest Ticket No.
Date & Time of Arrest	Date, Time & Place of Request

You have been arrested and charged with the offense of driving while intoxicated in violation of Section 11-501 of the Illinois Vehicle Code or a similar municipal ordinance, to wit: _____

You are hereby requested to submit to a chemical test of your breath to determine the extent of that alleged intoxication. Such chemical tests shall consist of 2 breath analyses.

1. By your driving a motor vehicle in this state you have consented to take 2 breath analyses which shall be administered not less than 15 minutes apart to determine the alcoholic content of your blood when such analyses are made as an incident to and following your lawful arrest for an offense of driving a vehicle while under the influence of intoxicating liquor.

2. You may refuse to submit to either such analyses and your refusal to submit to either analyses within 90 minutes after receiving this notice may result in the suspension of your privilege to operate a vehicle for 3 months on your first such arrest and refusal, and suspension for 6 months on your second and each subsequent such arrest and refusal within the preceding 5 year period.

3. You may consult with an attorney or other person by phone or in person within 90 minutes.

4. Your failure to submit to and complete these analyses may be admitted in evidence against you in any hearing concerning the suspension, revocation or denial of your driver's license or permit or privilege to operate a motor vehicle.

5. You will receive a duplicate original or a photocopy of the results of any such analyses to which you submit.

6. The results of such analyses may be introduced in evidence against you to support the charge of driving while under the influence of intoxicating liquor.

7. A reading of 0.10% or more of alcohol in the blood establishes a presumption of driving a motor vehicle while under the influence of intoxicating liquor.

8. You may secure additional chemical tests at your own expense. Such tests should be taken as soon as possible and are customarily available at hospitals, medical laboratories and physicians' offices.

9. Upon your request, full information concerning the results of such analyses will be made available to you or your attorney.

After being so advised you may study this written notice and may consult with an attorney or other person by phone or in person, but refusal to submit to the analyses within 90 minutes after being given this written notice shall constitute a refusal to take the analyses within the purview of Section 11-501.1. Failure to consult counsel shall not excuse or mitigate the effect of your refusal to take or complete the analyses. No analyses shall be given to you without your written permission hereon; willful refusal to give such written permission, however, shall constitute refusal to submit to the analyses within the purview of Section 11-501.1 of the Illinois Vehicle Code.

I, _____, having had the above statement read to me and having received a copy of same, do hereby give permission for the above described chemical tests and analyses to be administered to me.

Officer	Identifying Number	Driver

Date, Time & Place of Signing

Date, Time & Place of Refusal

FORM #2

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Arrest Ticket No.
Date & Time of Arrest	Date, Time & Place of Request
Date, Time & Place of Refusal	Method of Refusal

REPORT AND AFFIDAVIT OF ARRESTING OFFICER

STATE OF ILLINOIS

COUNTY OF _____

I hereby certify that I have placed the above named person under arrest, and that I had reasonable grounds to believe that said person was driving a motor vehicle in this state while under the influence of intoxicating liquor in that: _____

I further certify that said person did willfully refuse to submit to the breath analyses when requested to do so in accordance with Section 11-501.1 of the Illinois Vehicle Code, after being informed of the possible consequences of his or her refusal.

Arresting Officer	Identifying Number

Subscribed and sworn to before me this _____ day of _____ A.D., 19____.

Notary Public _____

OR

Clerk of Court _____

County of _____

Police Officer — File with Circuit Clerk of _____ County

FORM #3

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Arrest Ticket No.
Date & Time of Arrest	Date, Time & Place of Request
Date, Time & Place of Refusal	Method of Refusal

REPORT AND AFFIDAVIT OF ARRESTING OFFICER

STATE OF ILLINOIS

COUNTY OF _____

I hereby certify that I have placed the above named person under arrest, and that I had reasonable grounds to believe that said person was driving a motor vehicle in this state while under the influence of intoxicating liquor in that: _____

I further certify that said person did willfully refuse to submit to the breath analyses when requested to do so in accordance with Section 11-501.1 of the Illinois Vehicle Code, after being informed of the possible consequences of his or her refusal.

Arresting Officer	Identifying Number

Subscribed and sworn to before me this _____ day of _____ A.D., 19____

Notary Public _____

OR

Clerk of Court _____

County of _____

Circuit Clerk — Retain

FORM #4

TO:

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Arrest Ticket No.
Date & Time of Arrest	Date, Time & Place of Request
Date, Time & Place of Refusal	Method of Refusal

NOTICE TO MOTORIST

A sworn statement has been filed with the Circuit Court of _____ County, by _____ (Arresting Officer), _____ (Staff Member), that you were arrested for driving a motor vehicle while under the influence of intoxicating liquor. That after having been read and given a written statement as required in Section 11-501.1, Illinois Vehicle Code, you did refuse to submit to such analyses as set forth in said section.

NOW THEREFORE

Notice is hereby given to you that a report will be made to the Secretary of State which will result in the suspension of your driving privileges for at least 3 months for the first such refusal and 6 months for any second or subsequent refusal unless a written request for a hearing is made by you to this Office within 28 days from the date of this notice; said hearing will determine the following issues:

1. Whether or not you were placed under arrest for the offense of driving while intoxicated as defined in Section 11-501.1 or a similar provision of a municipal ordinance.
2. Whether the arresting officer had reasonable grounds to believe that you were driving while under the influence of intoxicating liquor.
3. Whether you were informed orally and in writing as required by statute, that your driver's license or privilege to operate a motor vehicle would be suspended if you refused to submit to and complete such analyses and whether, after being so advised, you did refuse to submit to and complete such analyses upon request of arresting officer.

Dated this _____ day of _____, 19 ____

_____
Circuit Clerk

Circuit Clerk — Send to Motorist

FORM #5

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Arrest Ticket No.
Date & Time of Arrest	Date, Time & Place of Request

PETITION FOR HEARING

I have received a Notice from the Circuit Clerk of

_____ County, that _____

_____ has filed a sworn statement stating that I was arrested for driving a motor vehicle while under the influence of intoxicating liquor, and that after having been read and given a written statement as required in Section 11-501.1, Illinois Vehicle Code, I refused to submit to such analyses as set forth in said section.

The said Notice further stated that, unless I made a written request for a hearing within 28 days from the date of mailing of the Notice, my driving privileges would be suspended.

I hereby request a hearing on the officer's sworn statement and ask that the Circuit Clerk advise me of the date, time and place set for the hearing.

_____
Petitioner's Signature

_____
Petitioner's Address

_____
Date

FORM #6

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Arrest Ticket No.
Date & Time of Arrest	Date & Time of Request

NOTICE

A sworn statement has been filed with the Circuit Court of _____ County, by _____ Arresting Officer _____, that you were arrested for driving a motor vehicle while under the influence of intoxicating liquor. That after having been read and given a written statement as required in Section 11-501.1, Illinois Vehicle Code, you did refuse to submit to such analyses as set forth in said section.

NOW THEREFORE

Notice is hereby given to you that a report will be made to the Secretary of State which will result in the suspension of your driving privileges for at least 3 months for the first such refusal and 6 months for any second or subsequent refusal unless a written request for a hearing is made by you to this Office within 28 days from the date of this notice; said hearing will determine the following issues:

1. Whether or not you were placed under arrest for the offense of driving while intoxicated as defined in Section 11-501 or a similar provision of a municipal ordinance.
2. Whether the arresting officer had reasonable grounds to believe that you were driving while under the influence of intoxicating liquor.
3. Whether you were informed orally and in writing as required by statute, that your driver's license or privilege to operate a motor vehicle would be suspended if you refused to submit to and complete such analyses.
4. Whether upon the request of the arresting officer, and after being properly advised as prescribed under the statute, you refused to submit to and complete the required tests.

Dated this _____ day of _____, 19____

_____
Circuit Clerk

Circuit Clerk — Retain

FORM #7

CERTIFICATE OF MAILING

STATE OF ILLINOIS

COUNTY OF _____

I, the undersigned, do hereby certify that on the _____ day of _____, A.D., 19 ____, I deposited in the United States Mail, a true and correct copy of the Notice on the reverse side of this document, in a sealed envelope, First Class Mail, Postage fully prepaid, addressed in accordance with the address furnished this office by the arresting officer to the named person, pursuant to Section 11-501.1, Illinois Vehicle Code.

_____
Clerk of the Circuit Court

_____
Deputy Clerk

FORM #8

NOTICE TO THE SECRETARY OF STATE

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Ticket No.
Date & Time of Arrest	Date & Time of Request

TO THE SECRETARY OF STATE, I _____,
THE CIRCUIT CLERK OF _____ COUNTY, do hereby certify that on _____ (date) _____ (month) _____ (year) a notice was given in accordance with the Illinois Vehicle Code governing such notices to the above named _____ (Driver) by depositing in the United States Mail, postage prepaid, notice as required by Section 11-501.1 of the Illinois Vehicle Code, that 28 days have elapsed since the above date, that no written request for a hearing has been received or filed herein. This matter is reported to you in accordance with Section 11-501.1, Illinois Vehicle Code.

_____
Circuit Clerk

TO THE SECRETARY OF STATE, I, _____,
THE CIRCUIT CLERK OF _____ COUNTY, do hereby certify that pursuant to statute on _____ (date) _____ (month) _____ (year) a hearing was held before the Honorable _____ in the Circuit Court of _____ County, Case No. _____. It is the decision of the Court that the Secretary of State shall take the following action: (Check that which is applicable)

- ☐ Do not suspend the driver's license or driving privileges of the person named above
- ☐ Suspend the driver's license or driving privileges of the person named above
- ☐ Recommendation is made for the issuance of restricted driving permit
- ☐ No recommendation is made for the issuance of a restricted driving permit

This is reported to you in accordance with the provisions of Section 11-501.1, Illinois Vehicle Code.

_____
Circuit Clerk

Circuit Clerk — Mail to Secretary of State

FORM #9

NOTICE TO THE SECRETARY OF STATE

Name	Driver's License No.
Street Address	Date of Birth
City & State	Soc. Sec. No.
Place of Arrest	Ticket No.
Date and Time of Arrest	Date & Time of Request

TO THE SECRETARY OF STATE, I, _____,
THE CIRCUIT CLERK OF _____ COUNTY, do hereby certify that on _____ (date) _____ (month) _____ (year) a notice was given in accordance with the Illinois Vehicle Code governing such notices to the above named _____ (Driver) by depositing in the United States Mail, postage prepaid, notice as required by Section 11-501.1 of the Illinois Vehicle Code, that 28 days have elapsed since the above date, that no written request for a hearing has been received or filed herein. This matter is reported to you in accordance with Section 11-501.1, Illinois Vehicle Code.

_____
Circuit Clerk

TO THE SECRETARY OF STATE, I, _____,
THE CIRCUIT CLERK OF _____ COUNTY, do hereby certify that pursuant to statute on _____ (date) _____ (month) _____ (year) a hearing was held before the Honorable _____ in the Circuit Court of _____ County, Case No. _____. It is the decision of the Court that the Secretary of State shall take the following action: (Check that which is applicable)

- ☐ Do not suspend the driver's license or driving privileges of the person named above
- ☐ Suspend the driver's license or driving privileges of the person named above
- ☐ Recommendation is made for the issuance of restricted driving permit
- ☐ No recommendation is made for the issuance of a restricted driving permit

This is reported to you in accordance with the provisions of Section 11-501.1, Illinois Vehicle Code.

_____
Circuit Clerk

Circuit Clerk — Retain

FORM #10

Name	Arresting Officer
Street Address	Arrest Ticket No.
City & State	Date, Time & Place of Request
Driver's License No.	Case No. _____
Date, Time & Place of Arrest	

Date	COURT ACTION AND OTHER ORDERS
	Report and Affidavit of Arresting Officer filed.
	Clerk's Notice to driver given as shown by copy of Notice with Certificate of Mailing attached.
	Written request for hearing filed.
	Set for hearing before the Honorable _____ at _____ O'clock ____.M. on the _____ day of _____, 19_____.
	Notice of hearing given by mail to the driver, arresting officer, State's Attorney and _____.
	Hearing Continued to _____.
	The matter having been heard by the Court, the Court finds as follows: 1. Said driver ☐ was ☐ was not placed under arrest for the offense of driving while intoxicated as defined in Section 11-501 of the Illinois Vehicle Code or a similar provision of a municipal ordinance; 2. The arresting officer ☐ did ☐ did not have reasonable grounds to believe that said driver was driving while under the influence of intoxicating liquor; 3. Said driver ☐ was ☐ was not informed orally and in writing as required by statute that his driver's license or privilege to operate a motor vehicle would be suspended if said driver refused to submit to and complete the breath analyses as requested; and 4. After being so informed, said driver ☐ did ☐ did not refuse to submit to and complete such analyses upon request of the arresting officer. 5. _____ It is therefore the decision of the Court that: ☐ The driver's license or driving privileges of said driver ☐ be ☐ not be suspended. ☐ It is recommended that said driver be issued a restricted driving permit. _____ Judge
	Notice given the Secretary of State