

AM I DETAINED?

While every effort is made to ensure the accuracy of the information contained in this outline it provides *general guidance and information only*, It is neither intended nor represented as a substitute for obtaining case-specific advice from a licensed and experienced prosecutor or other attorney in your state

REVIEW THE FOLLOWING REGULARLY:

SMILE AND BE COURTEOUS – ALWAYS! THE INTERACTION YOU HAVE WITH THE DRIVER/SUSPECT SHOULD BE CONVERSATIONAL, BUT AT THE SAME TIME BE PREPARED FOR ANYTHING.

Window Shopping (DUI Investigations behind the B Pillar)

When safety and opportunity allows the LE officer should take every opportunity to question the suspect at the window of the vehicle while that suspect's cooperation level is relatively high. The investigation must take place in a very friendly, non-threatening way to be most effective. Remember Officer Friendly. With respect. Also remember the questions should be asked in a conversational context. For example: "Johnny's Bar. I know that place. Was that big guy Billy working?" Thereby allowing the suspect to correct you and provide the name of the actual bartender. Another example: "You have a shoulder problem huh. I know all about them. My brother had surgery on his. He was taking Hydrocodone or something like that. Is that what you are on? How does that work for you?" Thereby allowing the suspect to fill in the blanks and tell the truth about what did or did not create any impairment that is present. The areas of questioning should include:

Do you know why I stopped you?

Don't be alarmed....

Was there a reason for...(whatever driving behavior you observed)?

Where are you coming from?

Where are you going?

Who were you with while there?

How much have you had to drink tonight?

What? (beer, whiskey, mixed drinks, etc.)

What kind (light, high gravity etc.)?

How big?

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How many? (Asked again for consistency and to draw out deceit).

What else?

What else...until s/he says no more.
Where did you drink?
Where else?
Who was the Bartender?
How did you pay for it?
 Looking for credit card receipts
 Looking for bar receipts?
Anything to eat?
What?
Where?
When?
What else?
Any injuries, illnesses or medical conditions?
Occupation?
Physical requirements of that occupation?
Treating with any doctor for these conditions?
Name of Doctor?
Have you been prescribed any treatment? (Physical Therapy for example)
Are you taking any medicine for that problem?
What?
How many times a day?
Did you take any today?
When and how much?
Ask to see the pill bottle?
How are you feeling right now?
On a scale of 0 to 10 with 10 being falling down, toilet hugging drunk and
0 being totally sober, where would you say you are?

Feel free to brainstorm and add to this list as you see fit. Make it routine and you will be surprised at the information you will discover. Remember. You are searching for the truth. It is a conversation NOT an interrogation. Until you find probable cause this driver may be innocent of impaired driving. But even when you make a positive PC determination the conversational tone should continue as long as officer safety allows.

BE PREPARED! POSSIBLE COMMENTS BY DRIVERS:

“Am I detained?” **Ans.:** Yes you are. Say this politely with a smile. But remember they are not IN CUSTODY.

“Why are you violating my 4th amendment right?” **Ans:** Either no response at all or “I have reasonable suspicion (or probable cause depending on the facts) to stop you

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under the 4th Amendment.” Again say this politely with a smile.
“Am I free to go?” **Ans.:** No, you are detained.

“Why am I not free to leave?” **Ans.:** Because you are detained.

In response to Law Enforcement request to open a window: Why do I need to open my window?” **Ans.:** So I can determine whether you are safe to drive.

DEVELOPING REASONABLE SUSPICION

An otherwise uncooperative driver may exhibit clues providing you with additional reasonable suspicion allowing you to direct the driver to exit the vehicle so you may conduct field sobriety tests and continue your investigation.

Based on your training and experience additional evidence of impairment may include the likelihood of the driver masking or hiding their impairment. This may include:

The driver fails to open their window and you cannot smell odors in the vehicle or on their breath or adequately see their eyes or hear the quality or pattern of their speech.

The driver fails to respond

The driver simply looks straight ahead and fails to engage in any other activity

The driver is hiding their eyes or otherwise masking any other clues of impairment by not cooperating.

WHEN RELEASING A CONFRONTATIONAL DRIVER

Never release just because you don't want to deal with them. When you do release the confrontational driver be sure to remind them you are releasing them because you were able to get them to talk enough and were able to observe their eyes and behavior etc. so you were able to make a determination regarding impairment.

NEVER release them without that admonition. Otherwise their confrontational behavior is enabled. They think their confrontational behavior works! They then share that information with others and such behavior grows exponentially.

WHEN RELEASING NON-CONFRONTATIONAL DRIVERS

Thank them for driving sober and hand out any MADD literature available. Smile! Citizens deserve your courtesy and remember they and their friends and family are potential jurors.

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