

## Impaired Driving and Evidence Collection

### 514.1 PURPOSE AND SCOPE

This policy explains the procedures to be followed while collecting evidence to establish the blood alcohol and/or drug content level of drivers arrested for driving while intoxicated and unconscious drivers who are suspected of driving while intoxicated.

### 514.2 POLICY

When a person is arrested for driving under the influence of an alcoholic beverage, the arresting deputy shall advise the person that he/she has a choice of whether the chemical test shall be of the breath or blood (Vehicle Code § 23612 (a)(2)(A)). When a person is arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the arresting deputy shall advise the person that he/she has a choice of whether the test shall be of the blood or breath (Vehicle Code § 23612 (a)(2)(B)).

If the person chooses to submit to a breath test, the deputy should also require the person to submit to a blood test if the deputy has a clear indication that a blood test will reveal evidence of any drug or the combined influence of an alcoholic beverage and any drug. The deputy shall state in his or her report the facts upon which that clear indication is based. The deputy shall advise the person that he or she is required to submit to an additional test. The person shall submit to and complete a blood test. If the person arrested is incapable of completing a blood test, the person shall submit to and complete a urine test (Vehicle Code § 23612(a)(2)(C)).

If a blood or breath test are unavailable, the person shall submit to a urine test (Vehicle Code § 23612(d)(2)).

The deputy shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test, before deciding which test to take, or during administration of the test, and that, in the event of refusal to submit to a test, the refusal may be used against him or her in a court of law (Vehicle Code § 23612(a) (4)).

Any person who is unable to submit to a chemical test due to any of the following conditions shall not be considered as refusing to comply with the provisions of Vehicle Code § 23612:

1. The Department is unable to furnish a selected test.
2. There are verifiable medical reasons for noncompliance.
3. An attending physician refuses to allow it.

#### 514.2.1 COLLECTING BLOOD EVIDENCE

Only a certified phlebotomy technician, licensed physician, nurse or other individual authorized by Vehicle Code § 23158(a) may withdraw a blood sample. Whether such evidence is collected at the Department or other location, the withdrawal of the blood sample shall be witnessed by the assigned deputy.

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A person who is a hemophiliac or is using an anticoagulant under the direction of a physician for a heart condition, shall not be required to take a blood test, but shall submit to and complete a urine test (Vehicle Code § 23612(b) and (c)).

All blood samples shall be booked into evidence for later transfer to the crime laboratory for analysis.

#### 514.2.2 COLLECTING BREATH AS EVIDENCE

If the arrested person chooses a breath test, the arrested person shall be given a breath test in the field utilizing the Intoximeter AlcoSensor IV-XL Point of Arrest System (Yellow Box). This test shall be administered by a deputy who has been trained in the use of the device and is a qualified operator.

When the arrested person chooses a breath test the handling deputy shall advise the person that the breath-testing equipment does not retain a sample and that no breath sample will be available after the test which could be analyzed later by that person or any other person, and the person may, if desired, provide a blood or urine sample which shall be retained at no cost to the person to facilitate subsequent verification testing (Vehicle Code § 23614(a) and (b)). The person shall also be advised that the blood or urine sample may be tested by either party in any criminal prosecution (Vehicle Code § 23614(c)).

#### 514.2.3 COLLECTING URINE AS EVIDENCE

If the arrested person chooses a urine test, as permitted by law, he/she shall be promptly transported to the jail. Urine evidence collection kits are maintained in the jail. The deputy shall follow the directions listed on the instruction sheet accompanying the urine evidence collection kit. If the arrested person's urine is necessarily collected elsewhere, the procedure will remain the same.

Urine samples shall be collected and/or witnessed by a deputy of the same gender as the person giving the sample. The person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved (Vehicle Code § 23158(i)).

The urine evidence collection kit shall be marked with the arrestee's name, offense, department, case number and the name of the witnessing deputy. The urine evidence collection kit shall then be placed in the evidence refrigerator to await transportation to the crime laboratory.

#### 514.2.4 TESTING OF CONSCIOUS PERSON AT A HOSPITAL

If because of the need for medical treatment, the arrested person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood, breath or urine, the person has the choice of those tests that are available at the facility to which that person has been transported. In that case, the deputy shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available (Vehicle Code § 23612(a) (3)).

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### 514.2.5 TESTING OF UNCONSCIOUS PERSON AT A HOSPITAL

When a person is suspected of driving under the influence of alcohol and/or drugs and the person is unconscious or in a condition rendering him or her incapable of consent, the deputy shall advise the attending physician of the intention to collect a sample of the person's blood as evidence. If the physician does not object based on medical reasons, the deputy shall contact the Department Commander to obtain a search warrant for the blood to be drawn. If the deputy believes there are exigent circumstances to justify not obtaining a warrant, the deputy shall contact the Department Commander, who will review the circumstances and determine whether a search warrant will be requested. **The fact of the dissipation of alcohol in the arrestee's bloodstream alone does not constitute an exigency.**

If the person is dead, the handling deputy should coordinate with the Coroner's Office to ensure that a viable test shall be obtained (Vehicle Code § 23612(a)(5)).

### 514.3 REFUSAL OR FAILURE TO TEST

If a person who has been arrested for a violation of Vehicle Code § 23140; Vehicle Code § 23152; or Vehicle Code § 23153, after having been advised of his/her rights per Vehicle Code § 23612, refuses or fails through statements or actions to complete a chemical test, the handling officer shall serve the notice of order of suspension on behalf of the Department of Motor Vehicles and confiscate all California driver's licenses in the person's possession (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

Blood may only be taken by force in any impaired driver investigation when the person refuses to submit to a chemical test and when **all** the following circumstances have been met:

1. The person must be in custody for DUI and a search warrant has been obtained to draw the person's blood by force or there are exigent circumstances which justify not obtaining a search warrant. The deputy shall contact the Department Commander to request that a search warrant be obtained for the blood to be drawn by force. If the deputy believes there are exigent circumstances to justify not obtaining a search warrant, the deputy shall contact the Department Commander, who shall review the circumstances and determine whether a search warrant will be requested. **The fact of the dissipation of alcohol in the arrestee's bloodstream alone does not constitute an exigency.**
2. The person's alternative choice, if selected, is either unavailable or not a viable test for the nature of the suspected intoxication (e.g., breath is not a viable test for suspected drug influence).
3. The blood is taken in a medically approved manner.
4. All forced blood extractions are to be conducted in a secure location out of the view of the public.
5. If a forced blood extraction must occur at an Orange County Jail Facility, deputies shall comply with CCOM Policy 2116.
6. Only reasonable force may be used to restrain the arrestee.

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After a search warrant has been obtained or after the Department Commander has determined that exigent circumstances exist which justify not obtaining a search warrant, and with a supervisor present, blood may be forcibly extracted from a person arrested for DUI who is physically uncooperative and has refused a chemical test. The amount of force used to accomplish the collection of this evidence shall be controlled by that supervisor, keeping in mind the seriousness of the suspected offense and the factors used to determine the reasonableness of force in accordance with the Use of Force Policy.

The circumstances surrounding any blood draw by force shall be thoroughly documented in all arrest reports including whether or not a search warrant was obtained and, if not, the circumstances (beyond the mere dissipation of evidence) which precluded obtaining a search warrant. The amount of force and methods used to accomplish the blood sample draw shall also be detailed in the report.