



### **C. CHEMICAL TESTS**

A person implies consent to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Vehicle Code § 23612):

1. The person is arrested for driving a vehicle while under the influence, pursuant to Vehicle Code § 23152.
2. The person is under 21 years of age and is arrested by a deputy having reasonable cause to believe that the person's blood alcohol content is 0.05 or more (Vehicle Code § 23140).
3. The person is under 21 years of age and detained by a deputy having reasonable cause to believe that the person was driving a vehicle while having a blood alcohol content of 0.01 or more (Vehicle Code § 23136).
4. The person was operating a vehicle while under the influence and proximately caused bodily injury to another person (Vehicle Code § 23153).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the deputy should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

### **D. CHOICE OF TESTS**

Deputies shall respect a viable choice of chemical test made by an arrestee, as provided for by law (e.g., breath will not be acceptable for suspected narcotics influence).

A person arrested for DUI has the choice of whether the test is of his/her blood or breath, and the deputy shall advise the person that he/she has that choice. If the person arrested either is incapable, or states that he/she is incapable, of completing the chosen test, the person shall submit to the remaining test.

If the person chooses to submit to a breath test and there is reasonable cause to believe that the person is under the influence of a drug or the combined influence of alcohol and any drug, the deputy may also request that the person submit to a blood test. If the person is incapable of completing a blood test, the person shall submit to and complete a urine test (Vehicle Code § 23612(a)(2)(C)).

### **E. BREATH SAMPLES**

The Sergeant should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Deputies obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Sergeant.

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 the person may, if desired, provide a blood or urine specimen, which will be retained to facilitate subsequent verification testing (Vehicle Code § 23614).

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. Evidence of the deputy's belief shall be included in the deputy's report (Vehicle Code § 23612(a)(2)(C)).

#### **F. BLOOD SAMPLES**

Only persons authorized by law to draw blood shall collect blood samples (Vehicle Code § 23158). The blood draw should be witnessed by the assigned deputy. No deputy, even if properly certified, should perform this task.

Deputies should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

#### **G. STATUTORY NOTIFICATIONS**

Deputies requesting that a person submit to chemical testing shall provide the person with the mandatory warning pursuant to Vehicle Code § 23612(a)(1)(D) and Vehicle Code § 23612(a)(4).

#### **H. PRELIMINARY ALCOHOL SCREENING**

Deputies may use a preliminary alcohol screening (PAS) test to assist in establishing reasonable cause to believe a person is DUI. The deputy shall advise the person that the PAS test is being requested to assist in determining whether the person is under the influence of alcohol or drugs, or a combination of the two. Unless the person is under the age of 21, he/she shall be advised that the PAS test is voluntary. The deputy shall also advise the person that submitting to a PAS test does not satisfy his/her obligation to submit to a chemical test as otherwise required by law (Vehicle Code § 23612).

**I. PRELIMINARY ALCOHOL SCREENING – UNDER 21**

If a deputy lawfully detains a person under 21 years of age who is driving a motor vehicle and the deputy has reasonable cause to believe that the person has a blood alcohol content of 0.01 or more, the deputy shall request that the person take a PAS test to determine the presence of alcohol in the person, if a PAS test device is immediately available. If a PAS test device is not immediately available, the deputy may request the person to submit to chemical testing of his/her blood, breath or urine, conducted pursuant to Vehicle Code § 23612 (Vehicle Code § 13388).

If the person refuses to take or fails to complete the PAS test or other chemical test, or if the result of either test reveals a blood alcohol content of 0.01 or more, the deputy shall proceed to serve the person with a notice of order of suspension pursuant to this policy (Vehicle Code § 13388).

**J. REFUSALS**

When an arrestee refuses to provide a viable chemical sample, deputies should:

1. Advise the person of the requirement to provide a sample (Vehicle Code § 23612).
2. Audio- and/or video-record the admonishment when it is practicable.
3. Document the refusal in the appropriate report.

Upon refusal to submit to a chemical test as required by law, deputies shall personally serve the notice of order of suspension upon the person and take possession of any state-issued license to operate a motor vehicle that is held by that person (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

**K. BLOOD SAMPLES WITHOUT CONSENT**

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

1. A search warrant has been obtained (Penal Code § 1524).
2. The deputy can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts such as a lengthy time delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

**L. FORCED BLOOD SAMPLE**

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the deputy should request a supervisor to respond.

The responding supervisor should:

1. Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
2. Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes a viable form of testing in a timely manner.
3. Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another deputy) and attempt to persuade the individual to submit to such a sample without physical resistance. This dialogue should be recorded on audio and/or video if practicable.
4. Ensure that the blood sample is taken in a medically approved manner.
5. Ensure the forced blood draw is recorded on audio and/or video when practicable.
6. Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
  - (a) Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
  - (b) In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
  - (c) In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
  - (d) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, deputies are expected to use sound judgment and perform as a responding supervisor, as set forth above.

**M. STATUTORY NOTIFICATIONS UPON REFUSAL**

Upon refusal to submit to a chemical test as required by law, deputies shall personally serve the notice of order of suspension upon the arrestee and take possession of any state-issued license to operate a motor vehicle that is held by that individual (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

**N. ADMINISTRATIVE HEARINGS**

The Administration Division will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to DMV.

Any deputy who receives notice of required attendance to an administrative license suspension hearing should promptly notify the prosecuting attorney.

A deputy called to testify at an administrative hearing should document the hearing date and DMV file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.

**O. TRAINING**

The Training Sergeant should ensure that deputies participating in the enforcement of DUI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to DUI investigations. The Training Sergeant should confer with the prosecuting attorney's office and update training topics as needed.

**P. ARREST AND INVESTIGATION**

In addition to the arrest authority granted to deputies pursuant to Penal Code § 836, a deputy may make a warrantless arrest of a person that the deputy has reasonable cause to believe has been driving under the influence of an alcoholic beverage or any drug, or under the combined influence of the same when (Vehicle Code § 40300.5):

1. The person is involved in a traffic accident.
2. The person is observed in or about a vehicle that is obstructing the roadway.
3. The person will not be apprehended unless immediately arrested.
4. The person may cause injury to him/herself or damage property unless immediately arrested.
5. The person may destroy or conceal evidence of a crime unless immediately arrested.

**Q. DEPUTY RESPONSIBILITIES**

The deputy serving the arrested person with a notice of an order of suspension shall immediately (Vehicle Code § 23612):

1. Forward a copy of the completed notice of suspension or revocation form and any confiscated driver's license to the Department of Motor Vehicles (DMV).
2. Forward a sworn report to DMV that contains the required information in Vehicle Code § 13380.
3. Book any blood or urine samples that were collected into evidence to be forwarded to the proper forensics laboratory.