

**SAN DIEGO POLICE DEPARTMENT  
PROCEDURE**

**DATE:** JUNE 10, 2019

**NUMBER:** 7.03 – TRAFFIC

**SUBJECT:** CHEMICAL TESTS FOR DRIVING UNDER THE  
INFLUENCE; ZERO TOLERANCE; ADMIN PER SE

**RELATED POLICY:** N/A

**ORIGINATING DIVISION:** TRAFFIC

**NEW PROCEDURE:**

**PROCEDURAL CHANGE:**  **EXTENSIVE CHANGES**

**SUPERSEDES:** DP 7.03 - 06/06/2014

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**I. PURPOSE**

This Department procedure establishes guidelines for chemical testing of individuals suspected of driving under the influence of alcohol and/or drugs.

**II. SCOPE**

This procedure applies to all sworn members of the Department.

**III. BACKGROUND**

The California Vehicle Code (CVC) governs driving “under the influence.” CVC section 23612 (“implied consent”), establishes that when any person who operates a motor vehicle is lawfully arrested for a violation of CVC section 23140, 23152, or 23153, the driver has automatically agreed to submit to a chemical test upon request by a peace officer. CVC section 13353 (“DUI refusal”), states that if the driver refuses to submit to a chemical test, his or her privilege to drive will be suspended by the Department of Motor Vehicles for a period of at least one year, depending upon prior convictions, administrative suspensions, and revocations. CVC section 23612, “implied consent,” is a law that directly implicates a person’s privilege to drive (see Section IV of this DP); however, it does not allow a peace officer to forcibly perform a chemical test on a driver who has refused to comply without a search warrant or a valid exception to the Fourth Amendment.

The United States Supreme Court in *Missouri v. McNeely*, 569 U.S. 141 (2013), held that a search warrant is required before law enforcement can administer nonconsensual, forced blood testing. The Court reasoned that natural metabolization of alcohol in the bloodstream does not present a per se exigency justifying a warrantless, nonconsensual blood draw in every case. Instead, exigency in this context must be determined case by case based on the totality of the circumstances. To perform a blood draw consistent with the *McNeely* decision, officers must either: (1) obtain consent, (2) obtain a search warrant, or (3) articulate exigent circumstances excusing the need for a warrant – simple dissipation of evidence is not sufficient exigency.

In California, a search warrant may be issued “when a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer’s request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code . . . .” Cal. Penal Code § 1524 (a) (13).

The chemical test is incidental to the custodial arrest, and the officer's reasonable suspicion of intoxication must be based upon observations of objective signs and symptoms. The results of the chemical test are only confirmatory. Blood and breath samples are used to test for alcohol, although urine samples may be used if both the blood and breath tests are not available. Blood and urine samples are used to test for drugs in a person’s system.

#### IV. **GENERAL PROCEDURE**

##### A. Driving Under the Influence (DUI) of Alcohol

Persons arrested for driving while under the influence of alcohol will be admonished at the time of arrest as to the requirements for a blood, breath or, under special circumstances, urine test. If the subject is willing to take a test but is indecisive as to which test to take, he or she should be encouraged to take the blood test. If the subject refuses to take either the blood or breath test, **THE IMPLIED CONSENT STATEMENT MUST BE READ TO HIM OR HER** as modified by Training Bulletin 16-07 and *Birchfield v. North Dakota*, 579 U.S. \_\_\_\_, 136 S. Ct. 2160 (2016). If, after reading the modified Implied Consent Statement to the subject, he or she still refuses to take one of these tests, a Refusal Form (DS-367) must be completed and submitted with the Arrest Report, and a search warrant must be obtained prior to administering a blood test, unless exigent circumstances apply and can be articulated.

##### B. Drug or Combination DUIs

Persons arrested for driving under the influence of drugs should be tested for the presence of all substances suspected of being in their blood. Persons arrested for

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driving under the influence of a combination of alcohol and drugs will be tested for the presence of alcohol in their systems. If the alcohol level is below a 0.08 percent, the blood collected from the subject will be tested for the presence of suspected drugs. If the alcohol level is at a 0.08 percent or higher, the subject's blood sample will not be automatically sent out for further testing.

Based on Vehicle Code section 23612(a) (2) (C), a person who chooses to submit to a breath test may also be requested to submit to a blood test if the officer has reasonable cause to believe the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug, and the officer has a clear indication a blood test will reveal evidence of the person being under the influence of drugs. The officer shall state in his or her report the facts supporting this conclusion. The officer 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 the blood test, the person shall submit to and complete a urine test. CVC § 23612(a) (2) (C).

If a person has a blood alcohol level under 0.08 percent, and the officer suspects the person may be under the influence of drugs, it is highly recommended that the officer request assistance from a Drug Recognition Expert (DRE) to pursue the case further. A DRE will meet with the arresting officer at either a substation or the Headquarters Sally Port for a DRE evaluation. The person must already be placed under arrest by the arresting officer before the DRE conducts an evaluation. The DRE will complete his or her evaluation and submit a written report of it with the arresting officer's arrest report.

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If the subject refuses to complete either test, THE IMPLIED CONSENT STATEMENT MUST BE READ TO HIM OR HER as modified by Training Bulletin 16-07 and *Birchfield v. North Dakota*, 579 U.S. \_\_\_, 136 S. Ct. 2160 (2016). If, after reading the modified Implied Consent Statement to the subject, he or she still refuses to take one of these tests, a Refusal Form (DS-367) must be completed and submitted with the Arrest Report, and a search warrant must be obtained prior to administering a blood test, unless exigent circumstances apply and can be articulated.

## V. TEST PROCEDURE (PERFORMED BY EITHER A FORENSIC ALCOHOL ANALYST OR TRAINED OFFICER)

### A. Breath Tests

1. A breath test will only indicate the amount of alcohol in a subject's system at the time of the test by measuring the breath alcohol concentration (AC).

It does not provide information about drug use. If drug use is suspected, a blood or urine sample will need to be provided for testing.

2. On occasion, Crime Laboratory personnel and/or trained operators may not be available, and it will be necessary to have an Intoxilyzer 8000 trained officer conduct the breath test. Only TRAINED officers will give this test. The Intoxilyzer 8000 operator is responsible for inputting all of the required information into the Intoxilyzer equipment and following the Intoxilyzer checklist. Only one copy of the Intoxilyzer results test strip will be printed out automatically. Intoxilyzer 8000 operators are advised to print two more copies by pressing the F1 key. One copy will be attached to the original arrest report, one will be attached to the City/District Attorney report copy, and one will be provided to the subject arrested. The Intoxilyzer 8000 operator and/or arresting officer will sign each printout copy in the appropriate place, including by whom the test was observed, and note the observation times on each copy.
3. Contact the Watch Commander when either Laboratory personnel or an Intoxilyzer 8000 trained officer is unavailable. The Watch Commander will call a trained officer from the field, if necessary, to respond to Headquarters Room 138 to administer the breath test.
4. The arresting officer must record the test information on the DUI Supplemental Arrest Report (PD-346B and the DS-367). In order to avoid unnecessary delays in completing paperwork, the Intoxilyzer 8000 operator should sign the DS-367 at the time of the test. The subject information must be entered into the FileOnQ barcode system in the "Owner" field.
5. Breath Test Retention Admonishment (Trombetta Admonishment)

If a person completes a breath test, he or she must be advised after the test that the breath testing equipment (Intoxilyzer 8000) does not retain a breath sample for later analysis and, if desired, he or she may furnish either a blood or urine sample for future analysis. Cal. Vehicle Code § 23614, *California v. Trombetta*, 467 U.S. 479 (1984).

The person shall also be advised that a blood or urine sample will be retained at no cost to the person and that either party in a criminal prosecution may test the blood or urine sample. Cal. Vehicle Code § 23614. The Intoxilyzer 8000 will prompt the operator to read the Trombetta Admonishment. The admonishment is printed on the back of the Intoxilyzer checklist which is placed beside the Intoxilyzer 8000 equipment. The operator will press the "Y" key to indicate that the Admonishment was read. For Intoxilyzer 8000 testing, no checklist form

is submitted, so the officer shall list the suspect's reply in the narrative of his or her report.

B. Blood Draw Services

1. For blood draw services, the San Diego Police Department, in accordance with Vehicle Code section 23158, uses licensed contract personnel.
2. Contract personnel are on-site at Headquarters in Room 138 from 2000 hours to 0600 hours daily.
3. Requests for blood draws off-site, at hospitals, or at times when there is no coverage in Room 138, are coordinated through the Watch Commander.

C. Blood Tests

1. The arresting officer shall:
  - a. Obtain consent from the suspect/driver (if consent is not given, refer to Section V. D., of this DP regarding Forced Blood Draws);
  - b. Witness the blood being drawn by the phlebotomist;
  - c. After the blood is drawn, the suspect shall be handcuffed and placed in the chair near the computer that prints the evidence labels or back inside the police car;
  - d. Record the time the sample was collected;
  - e. Enter the subject information into the FileOnQ barcode system in the Owner field;
  - f. Print and initial labels for each blood vial and outer plastic tube;
  - g. Ensure that one label is affixed directly to the blood vial;
  - h. Ensure the protective tube is closed and sealed with an evidence seal;
  - i. The collector will initial the label(s) across the seal and onto the protective tube; and,
  - j. The officer will place the sealed vial in the locked sample box in Room 138.

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2. In case of a hospital blood draw, blood will not be taken from a seriously injured suspect, except with the consent of suspect/driver and the attending physician. If the suspect is unconscious or in a condition rendering him or her incapable of consenting, then a search warrant must be obtained prior to administering the blood test, unless exigent circumstances apply and can be articulated; or the suspect/driver is on parole or has a valid fourth waiver. The subject must be under arrest for a DUI violation prior to a blood sample being taken; however, it is not necessary for the officer to read the implied consent statement to such a person. Cal. Vehicle Code § 23612(a) (5).
3. If an injured suspect is taken to a hospital and must remain for medical treatment, and the suspect has consented to a blood test, then the arresting officer may request a blood test. As a general rule, licensed contract personnel should perform the blood draws. Call-outs for licensed contract personnel can be arranged through the Watch Commander. The responding phlebotomist should have the proper equipment to perform the blood draw. If the blood draw is done at the hospital by hospital personnel, the blood should be collected in a grey top vial. If the hospital personnel are familiar with the legal/medical aspects of blood alcohol testing, their own procedures for drawing blood will be acceptable.

The arresting officer shall:

- a. Observe the blood being drawn by the phlebotomist;
- b. Record the time the sample was collected;
- c. Ensure an evidence label (provided by the phlebotomist) is filled out (by the officer) and affixed directly to the blood vial (by the phlebotomist);
- d. Ensure the vial is placed into a protective tube, and that the tube is sealed by the phlebotomist;
- e. Take possession of the blood and transport it to Room138;
- f. Enter the subject information into the FileOnQ barcode system in the "Owner" field and print the required number of labels (one for each vial and one for the officer's records);
- g. Initial each FileOnQ label;
- h. Ensure that one of the labels is affixed directly to the protective tube;

- i. Initial the label across the seal and onto the protective tube;
  - j. The officer will place the sealed vial in the locked sample box in Room 138; and,
  - k. Document in the report the name of the individual who drew the blood.
4. Occasionally, hospital staff will refuse to cooperate with an officer's request for a blood draw. If this occurs, and the refusal is not due to the suspect's medical condition, contact the Watch Commander, who will arrange for licensed contract personnel to respond to the hospital and conduct the blood draw. On-call personnel will have the proper equipment.
  5. If a hospitalized suspect insists on a breath test and refuses a blood or urine test, it is deemed a refusal to comply with a test because a breath test is unavailable due to the hospitalization. See Vehicle Code section 23612(a) (3). If the suspect refuses to complete the blood or urine test, **THE IMPLIED CONSENT STATEMENT MUST BE READ TO HIM OR HER** as modified by Training Bulletin 16-07 and *Birchfield v. North Dakota*, 579 U.S. \_\_\_, 136 S. Ct. 2160 (2016). The officer should include in the Refusal Report (DS-367) that a breath test was available at Room 138, but the suspect was unable to be transported to Police Headquarters. If, after reading the modified Implied Consent Statement to the suspect, he or she still refuses to complete the blood test, a Refusal Form (DS-367) must be completed and submitted with the Arrest Report, and a search warrant must be obtained prior to administering a blood test, unless exigent circumstances apply and can be articulated.
  6. Anticoagulant and Hemophilia  
  
Vehicle Code sections 23612(b), and (c) exempt a suspect who is taking a medically prescribed anticoagulant or is afflicted with hemophilia is exempt from taking a blood test. This does not relieve the suspect from taking a breath or urine test under "implied consent." If the suspect refuses to complete the test, **THE IMPLIED CONSENT STATEMENT MUST BE READ TO HIM OR HER** as modified by Training Bulletin 16-07 and *Birchfield v. North Dakota*, 579 U.S. \_\_\_, 136 S. Ct. 2160 (2016).

#### D. Forced Blood Draws

Under certain circumstances, a peace officer may use force to take a blood sample from a suspect who has refused to consent, or is incapable of consenting, to a chemical test.

1. Recent case law

The United States Supreme Court in *Missouri v. McNeely*, 569 U.S. 141 (2013), held that a search warrant is required before law enforcement can administer nonconsensual, forced blood testing. The Court reasoned that natural metabolization of alcohol in the bloodstream does not present a per se exigency justifying a warrantless, nonconsensual blood draw in every case. Instead, exigency in this context must be determined case by case based on the totality of the circumstances. To perform a blood draw consistent with the *McNeely* decision, officers must either: (1) obtain consent, (2) obtain a search warrant, or (3) articulate exigent circumstances excusing the need for a warrant – simple dissipation of evidence is not sufficient exigency.

2. Search warrant

In California, a search warrant may be issued “when a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer’s request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code . . .” Cal. Penal Code § 1524 (a) (13).

3. Parolees or 4<sup>th</sup> Waivers

Consent is deemed given, and a warrant is not required, if the suspect/driver is on parole, Post Release Community Supervision (PRCS), or has a valid fourth waiver. *People v. Jones*, 231 Cal. App. 4th 1257 (2014).

4. Officers will adhere to the following procedures when completing a forced blood draw after a suspect has refused or is incapable of consenting to a chemical test:

a. Obtain a search warrant pursuant to Penal Code section 1524(a) (13).

1. A non-consensual blood draw will not be obtained without a search warrant or exigent circumstances—simple dissipation of evidence is not sufficient exigency.

2. If an officer has a suspect who is refusing an appropriate chemical test or is incapacitated, the officer must immediately notify the Watch Commanders Office. The Watch Commander will assist the officer with obtaining a search warrant.



3. If a judge refuses to issue a search warrant, officers should proceed without a blood test and with proper probable cause, book the suspect into jail pursuant to California Vehicle Code section 23152(a).
  4. A warrant is not required if the suspect/driver is on parole or has a valid fourth waiver.
- b. Generally, all samples (regular and forced blood draws) will be drawn in Room 138 or the sally port;
  - c. A police supervisor shall be present to observe and oversee all forced blood draws. If a police supervisor cannot be present, then officers shall not proceed with completion of the blood draw. Once present, the supervisor will ensure the sample is drawn under controlled medical conditions and the force used would not shock the conscience of the court. The supervisor shall also enter the appropriate information in the Forced Blood Draw Log;
  - d. Forced blood draws in the sally port can be taken by using the safety control chair method. This requires placing the suspect with his/her hands cuffed behind the back and strapping them to the maximum restraint chair located adjacent to the Watch Commander's office;
  - e. Use of the safety control chair method, or any other method to force a blood sample requiring physical restraint are considered a reportable use of force, and must be well documented in the arrest report. In addition, a BlueTeam entry shall be completed in these instances;
  - f. DUI refusals at Hospitals: With the approval of the Watch Commander or Field Lieutenant, forced samples may be taken at a hospital from injured DUI suspects when circumstances arise that will not allow them to be transported to Room 138 or they refuse to submit to a blood draw in the hospital, and the refusal is not due to the suspect's medical condition. Licensed contract personnel will be used to perform the blood draw. A sergeant or Field Lieutenant shall monitor the blood draw to ensure it is performed in a medically approved manner.

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E. Urine Tests

1. Urine tests are no longer offered as one of the primary tests given to suspects arrested for driving while under the influence. Blood and breath tests are the only options offered. Urine tests may be used as a secondary test if the suspect requests it, but only after the Trombetta admonishment has been given and he or she has completed a breath test. Urine tests will only be used as a primary test when the suspect, for medical reasons, cannot complete the breath or blood test. If the breath test results do not match the symptoms, a blood test may be conducted if drugs are suspected. If the person arrested is incapable of completing the blood test, the person shall submit to and complete a urine test.
2. Urine tests will be supervised and observed by the arresting officer, unless the subject is the opposite sex of the arresting officer. In that case, same-sex officers shall be used to collect the sample. The samples will be obtained in the restroom in Room 138. Urine alcohol tests must be from the second void urine. Officers must watch the suspect to ensure he or she does not dilute the sample with water from the toilet bowl or alter the sample in any manner.
3. The arresting officer shall enter the suspect's information into the FileOnQ barcode system in the "Owner" field and print a container label. The officer will place the sealed vial in the locked sample box in Room 138.
  - a. The type of violation determines the acceptable collection method for a urine sample. For driving under the influence of alcohol violations, the second void of a two-part urine test should be collected. For driving under the influence of drugs, the first void of the bladder should be collected. For driving under the influence of a combination of drugs and alcohol, both a first and second void should be collected from the subject. Samples should be collected as soon as practical after the time of the offense.
  - b. If the officer keeps the first void for drug testing, the subject may not refuse the second sample by saying that he already provided a sample. The officer should explain the requirement of the two-part test prior to the start of the test to avoid any confusion.
  - c. After completely voiding his/her bladder, the subject must urinate a second time, into a specimen cup, no sooner than twenty minutes after the first void. The urine will then be poured into a plastic specimen bottle that must be at least one-eighth full (about one-half ounce). The specimen should be labeled "2<sup>nd</sup> Void". Plastic bottles with preservative are available in Room 138. Preservative

chemicals provided in the plastic bottle should not be spilled, as they are toxic and should not be inhaled or touched.

- d. If a female officer is not available to witness the urine test of a female subject, the arresting officer should take the subject to Las Colinas Women's Detention Facility and request a deputy obtain the sample. To maintain the chain of custody, the arresting officer should wait for the sample and transport it back to the depository in Room 138.

## **VI. ADDITIONAL INFORMATION**

### **A. Minors/Juveniles**

Minors (under the age of 21) and juveniles (under the age of 18) will be treated as adults when chemical testing of blood, breath, or urine is conducted in connection with driving while under the influence.

### **B. Custody of Subject**

All subjects will be handcuffed while in Room 138 unless in the process of taking a voluntary blood or urine test. The subject will remain under the arresting officer's supervision at all times and under no circumstances will Laboratory or contract personnel be placed in hazardous situations with combative subjects.

### **C. Hospital Samples**

Most hospitals will not draw samples from subjects who are combative, under the influence of drugs, or under 18 years of age. In these cases, the arresting officer shall contact the Watch Commander to request that licensed contract personnel respond on a call-out basis.

### **D. Felony and Drug Suspects**

Two vials of blood are needed whenever a blood test is given to a person arrested for felony DUI or being under the influence of drugs (11550 H&S). Follow established procedures when breath test results are not symptomatic of the suspect being under the influence of alcohol only.

### **E. PCP Subjects**

Due to the possible side effects of PCP influence (violence, PCP contaminated clothing, etc.), other prisoners and Department employees shall not be allowed inside of Room 138 during testing. Only officers and the Laboratory technician

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should be present in Room 138 during the test. Officers dealing with individuals who are suspected of being under the influence of PCP, shall use PPE.

F. Subject's Request for Independent Testing

1. Pursuant to 23158(b) CVC, subjects submitting to a chemical test may, at their own expense, have a person of their choosing administer a second test. Officers are not required to advise the subject of this right.
2. If the subject requests an independent test, the officer must make a reasonable effort to comply with the request. The following options and procedures will be offered to the subject:
  - a. Suspect requests a specific personal physician - if the subject's personal physician can be contacted by telephone and can arrive at Room 138 within an hour, the officer should detain the subject there and allow the physician to administer the blood draw. If the physician cannot be reached by phone or does not arrive at Room 138 within an hour, the subject may submit to testing under the second procedure listed below. The time the physician is contacted and the time this test is administered should be recorded on the reports submitted by the officers.
  - b. Suspect requests independent testing (not by a specific personal physician) - transporting the subject to a nearby hospital and allowing he or she to select any of the medical personnel on duty to draw a blood sample may fulfill this request. The hospital laboratory determines the alcohol content and provides the result to the subject, who is required to pay for these services.

G. Refusal Form

If a subject refuses a chemical test, the arresting officer must complete the Chemical Test Refusal admonishment on the back of Form DS-367, which will be the basis for a license suspension by the Department of Motor Vehicles. Cross out and do not read the language in paragraph 4 of the DS-367 that states, "Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction for driving under the influence. **THIS FORM MUST BE COMPLETED IN DETAIL.** If a subject is suspected of being under the combined influence of alcohol and drugs, or only drugs, and refuses to submit to a blood or urine test, the Drug Admonition Supplemental on side two of the DS-367 must also be completed.

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## H. Presumptive Limits Blood Alcohol Content

1. If a chemical test is given within three hours of driving, Sections 23152 and 23610 CVC establish rebuttable presumptions relating to the percentage of alcohol in the blood of a driver at the time of the offense as determined by chemical analysis of his blood, breath, or urine. The results at the time of the test establish the following presumptions:
  - a. If a person had a .08 percent or more alcohol in his or her blood at the time of the chemical test, it is a rebuttable presumption that the person had .08 percent or more of alcohol in his or her blood at the time of driving (23152(b) CVC). It is unlawful to operate a motor vehicle with a BAC of .08% or more alcohol in the blood.
  - b. If the results are .08 percent or higher, it shall be presumed that the person was under the influence of an alcoholic beverage at the time of the alleged offense (23610(a)(3) CVC);
  - c. If the results are .05 percent or more but less than .08 percent, no presumption is established but other evidence may be presented to determine whether the person was under the influence of alcohol at the time of the alleged offense (23610(a)(2) CVC);
  - d. If the results are less than .05 percent, it shall be presumed that the person was not under the influence at the time of the offense (23610(a)(1) CVC) and those adults age 21 or older with less than .05 percent should not be charged with driving under the influence of alcohol; and,
  - e. If the results are .04 percent or more and the person was driving a commercial vehicle, there is a rebuttable presumption that the driver had .04 percent or more of alcohol in his or her blood at the time of driving (23152(d) CVC). It is unlawful to operate a commercial motor vehicle with a BAC of .04% or more alcohol in the blood at the time of the performance of a chemical test within three hours after the driving.
  - f. If the results are .04 percent or more and the person was driving a motor vehicle when a passenger for hire is a passenger in the vehicle at the time of the offense, there is a rebuttable presumption that the driver had .04 percent or more of alcohol in his or her blood at the time of driving (23152(e) CVC). It is unlawful to operate a motor vehicle with a passenger for hire with a BAC of .04% or more alcohol in the blood at the time of the performance of a chemical test within three hours after the driving. For purposes of this subdivision, “passenger for hire” means a

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passenger for whom consideration is contributed or expected as a condition of carriage in the vehicle, whether directly or indirectly flowing to the owner, operator, agent, or any other person having an interest in the vehicle.

2. In instances where the blood alcohol content is low, but significant symptoms of intoxication are apparent, the arresting officer should consider whether some other intoxicating substance is present in addition to alcohol.
3. Persons with a reading between 0.05 and 0.07 percent should not generally be charged with driving while under the influence unless other evidence indicates serious deficiencies in driving were caused by alcohol or drug impairment (i.e., they are determined to be the party most at fault in a collision, and officers can articulate that more than a simple driving error on their behalf was the proximate cause of the collision.) The decision to book the arrestee rests with the Watch Commander.

#### I. Persons Under the Age of 21 Driving with Alcohol in their Systems

1. 23140 CVC – Minors with Blood Alcohol Level Of .05% or More (Infraction).
  - a. 23140(a) CVC states: “It is unlawful for a person under the age of 21 years who has 0.05 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.” A blood alcohol level at or above .08% is a violation of Section 23152(b) CVC.
  - b. If the person under the age of 21 years old appears to be under the influence of alcohol but refuses to take a chemical test, proceed as with any other "refusal" case. The statute specifically permits charging 23140(a) CVC even without a chemical test. Officers must indicate the objective signs and symptoms that led them to believe the person was over 0.05%.
  - c. Officers may arrest any driver under the age of 21 who has a BAC of .05% or higher on the Preliminary Alcohol Screening (PAS) test. Suspects must submit to a blood or breath test in compliance with the Implied Consent law. If the BAC of the person is more than .05% but less than .08%, and the elements of DUI are NOT present, officers shall issue a Notice to Appear form (PD-177) charging 23140(a) CVC, an infraction, prior to release. This procedure would also be followed if the suspect took a blood test at Room 138, if there was no impairment, AND if the officer believed the results would show a .05% to .07%.

- d. Officers must document the reason for the stop in the “Charges” box of the Notice to Appear form when no other violations are listed. Additionally, officers shall record the chemical test number in the “Property Tag Number” box on the face of the citation if an Intoxilyzer or blood test number are obtained. (Refer to Department Procedure 7.01, Traffic Enforcement Procedures, for further details of implied consent enforcement procedures.) If the results of the chemical test are .05% or more, and there is impairment, officers may book the driver in Jail or Juvenile Hall for 23152(a) CVC.
2. 23136 CVC – “Zero Tolerance” Law - Minors with a Blood Alcohol Level Of 0.01% or More (Infraction)
    - a. 23136 CVC states: “it is unlawful for a person under the age of 21 years who has a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test or other chemical test, to drive a vehicle.”
    - b. 23136(c) CVC (juvenile implied consent) provides that all persons under the age of 21 operating a motor vehicle are deemed to have given their consent to a PAS test or other chemical test. When lawfully detained for an alleged violation of 23136 CVC, the minor suspect must submit to the administration of the PAS or have their driving privileges suspended for a period of one year. Those minors not old enough to possess a license will have their driving privileges delayed for one year upon reaching the age of 16.
    - c. The minor suspect cannot be transported from the evaluation scene for testing, so the level of alcohol must be established by a PAS device. Blood or urine samples may not be taken to support a charge of 23136 CVC. The PAS device must be “reasonably” available to the evaluating officer. The driver may not be detained longer than the time it would take to complete a normal traffic contact. The PAS-equipped officer will advise the estimated time of arrival and the evaluating officer will determine if the motorist is to be detained.
    - d. In processing violations of 23136 CVC, officers shall follow the Administrative Per Se procedures as outlined below.
    - e. Normally, subjects should be observed for 15 minutes prior to administering a PAS test. Two PAS tests should be performed. If the results vary by .02% or more, a third test should be performed.

Two of the three test results must be within .02% of each other for a valid test.

- f. Minors with test results from .01% - .04% shall be issued a Notice to Appear form (PD-177) charging 23136(a) VC, an infraction.
- g. Traffic Division officers with Intoxilyzer 8000 equipment installed in the trunks of their cars may use the Intoxilyzer 8000 for 23136 and 23140 CVC cases in the field.
- h. Drivers cited for a violation of 23136(a) CVC or 23140(a) CVC and issued an Order of Suspension/Revocation (DS-367M) may have their vehicle impounded per 22651(h) (2) CVC.

J. Testifying in Court

- 1. Police officers will carefully record and be prepared to testify as to each procedure they followed and what they observed. Officers shall not attempt to explain the theories or the functions of the tests or devices. Expert witnesses will be provided by the Laboratory for scientific explanations of the tests and the effects of alcohol on the human body.
- 2. When possible, breath tests and the collection of urine or blood samples should be conducted in such a manner that the presence of persons other than the arresting officer will not be needed in court. The tests, whenever possible, will be conducted in the presence and under the immediate supervision of the arresting officer. The licensed blood drawer may also be subpoenaed to testify; therefore:
  - a. Do not discuss the case in the presence of Laboratory, contract, or hospital personnel;
  - b. Observe the drawing of the blood. Do not lose sight of the vial until you place it in the depository box or turn it over to Laboratory personnel; and,
  - c. Ask the licensed contract personnel, licensed laboratory personnel, or hospital phlebotomist, in the presence of the subject, if the solution used to swab the arm is non-alcoholic. Under some circumstances, the officer in court may testify to their statement that a non-alcoholic solution was used, even though it is hearsay evidence.

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K. Evidence for Court

Blood and urine samples are seldom allowed in court. On the designated court date, the arresting officer shall pick up a photo copy of the labeled blood vial or labeled urine container, along with the supporting chain of evidence log from the Laboratory vault, located on the 6<sup>th</sup> floor at SDPD Headquarters, and submit these items to the court if requested to do so by the prosecutor.

L. Laboratory Responsibilities

1. The Police Laboratory Forensic Chemistry Section will maintain the Intoxilyzer 8000 instruments. The Laboratory will provide supplies for obtaining blood and urine specimens.
2. The Laboratory will maintain a Room 138 Blood and Urine Collection Log of all blood and urine tests administered, along with the names of the subject, officer, and person administering the test, as well as the date and time of the test. The results of the blood and urine alcohol tests will normally be available within one to two weeks from the time of arrest, and are found by launching the Narcotics and Alcohol Analysis Results application (magnifying glass icon) and entering the Incident Number.
3. Procedures affecting technical and legal aspects of chemical tests for intoxication will be continuously evaluated by qualified Laboratory personnel.
4. Laboratory personnel provide court testimony regarding the operation, theory, and accuracy of the testing equipment, the effects of alcohol on the human body, and an interpretation of the impairment based upon the information provided. Laboratory personnel making court appearances shall bring all pertinent records, except for Alco-Sensor accuracy records, relating to the trial.

**VII. ADMINISTRATIVE PER SE**

- A. Administrative Per Se is the prompt administrative suspension or revocation of the driving privilege for the offense of driving under the influence of alcohol, independent of criminal prosecution. This process authorizes a peace officer to seize any California Driver's License in the possession of the DUI offender when the offender's blood alcohol concentration (BAC) level is .08 percent or more (13353.2 CVC), or when the offender refuses to submit to a chemical test to determine his or her BAC under the Implied Consent Law (13353 CVC). The officer immediately serves the subject with an Order of Suspension/Revocation, and issues a temporary driver's license, located on the Order of Suspension/Revocation. An out of state driver's license may not be seized, but

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the California Department of Motor Vehicles will notify the driver's home state of the California suspension or revocation of the driver's privilege to drive in California.

B. Procedure

1. Drivers arrested for DUI pursuant to Sections 23152 or 23153 CVC, or minors detained for 23136 or 23140 CVC, are subject to Administrative Per Se regulations when one of the following circumstances occurs:
  - a. The subject refuses to submit to, or fails to complete, the chemical test;
  - b. The subject submits to a breath test, which shows a BAC of .08 percent or greater, or any minor with a BAC of .01 percent or greater; or,
  - c. The subject submits to a blood or urine test and the officer believes that the BAC is .08 percent or greater. (If the test results later show a blood alcohol concentration of less than .08 percent, the suspension action will be set aside.)
2. If the subject is arrested for driving under the influence of a combination of alcohol and drugs, the arresting officer must believe that the BAC is .08 percent or greater. Administrative Per Se provisions only apply to BAC levels or refusals, not DUI on drugs. Therefore, if the suspect is arrested solely for DUI on drugs, Administrative Per Se proceedings will not be instituted unless the suspect refuses the chemical test.
3. The arresting officer will complete an Order of Suspension/Revocation and Temporary Driver License (DS-367) or (DS-367M). The officer will note any current license restrictions issued by the DMV on the face of Temporary Driver License and provide a copy to the subject.
4. The arresting officer will confiscate the subject's California driver's license and attach it to the DMV's copy of the Order of Suspension/Revocation. The officer should complete the Order of Suspension/Revocation, including checking the appropriate box to indicate whether the driver's license was seized, or whether the driver had a license in his or her possession.
5. The arresting officer will complete the Officer's Statement (DS-367).
6. Investigative personnel, will ensure that the Officer's Statement (DS-367), pages 1, 2 and 3, and the subject's driver's license are forwarded to the DMV Driver Safety District Office, 1455 Frazee Road Suite 400, San

Diego, CA, 92108, within five business days. If the subject submitted to a blood or urine test, the chemical test results (Blood/Urine Test Results Supplemental, DL-367a) will be forwarded to the DMV Driver Safety District Office (at the above address) by our Laboratory staff.

7. The arresting officer will issue a temporary driver's license even when the offender's driving privilege is currently suspended or revoked. The arresting officer will check the "Suspended/ Revoked" box on the face of the Order of Suspension/Revocation and Temporary Driver License (DS-367).

C. Administrative Per Se Advisement

1. There is no statute that requires the arresting officer to admonish the violator regarding Administrative Per Se. However, the San Diego Police Department requires the arresting officer to advise the subject that his or her driver's license will be confiscated and he or she will be issued a temporary driver's license (located on the Suspension/ Revocation Order and Temporary Driver License). The temporary driver's license is valid for 30 days from the date of arrest.
2. The arresting officer will be required to provide the implied consent chemical test admonishment for individuals who refuse to submit to, or fail to complete, a chemical test to determine their BAC.

D. Documentation

The arresting officer will ensure that the following documents are completed and placed in the Administrative Per Se bin at the area station.

1. The following documents will be forwarded to DMV within five business days:
  - a. Suspension/Revocation Order, DS-367 (DMV's copy);
  - b. Officer's Statement, DS-367, pages 1 and 2 (Original);
  - c. Photocopy of the Intoxilyzer results (if applicable); and,
  - d. Subject's driver's license (if available).
2. The second copy of the Suspension/Revocation Order (DS-367 or DS-367-M) will be attached to the Arrest Report and retained at Records Division.

3. The arresting officer will ensure that the booking slip reflects whether or not the subject has prior convictions for DUI. For example, the charges box may read:

“23152 (a) VC / DUI-Breath .14% with two priors”

Bail amounts will be assigned by the Sheriff's booking clerk.