

San Diego Police Department

TRAINING BULLETIN

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BLOOD DRAW ADMONITION PROCEDURES FOR PERSONS ARRESTED FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

I. PURPOSE

The purpose of this Training Bulletin is to provide direction on the U.S. Supreme Court ruling regarding the implied consent law (CVC 23612), and to establish blood draw admonition procedures for persons arrested for driving under the influence of alcohol or drugs.

II. BACKGROUND

The role of the implied consent law (CVC 23612) in California is rapidly changing. *Missouri v. McNeely* 569 U.S. 141 (2013) required a warrant if the consent was withdrawn (i.e., “a refusal”) unless a well-recognized exception, such as exigent circumstances, could be articulated at the time of the blood draw. It shall be noted Missouri has a very similar implied consent law as California.

The issue of the role of the implied consent law was clarified in the U.S. Supreme Court’s opinion of June 23, 2016, in *Birchfield v. North Dakota* [579 U.S. ____]. Key points of the ruling are:

1. The use of a Preliminary Alcohol Screening device is still permitted, and no warrant is required; however, it remains a voluntary test.
2. No search warrant is necessary for a breath test. It is permitted as a search incident to the arrest.
3. Actual consent is required for a blood test at the time of the arrest.
4. If no actual consent is given for a blood test, a search warrant must be obtained, or a traditional exception to the warrant requirement must be articulated.
5. Enhanced penalties may be imposed if an arrestee refuses to submit to or complete a breath or urine test, if the arrestee is later convicted of CVC 23152

or 23153. The urine test is only available if the arrestee is afflicted with Hemophilia or is using anticoagulant medications.

6. The administrative suspension of the license and the use of the refusal in court to show consciousness of guilt is still permitted.

III. FIELD PROCEDURES

1. Establish probable cause to believe the suspect drove while impaired by alcohol or drugs.
2. Upon completion of the Standardized Field Sobriety Test (SFST), or in cases where a subject refuse to complete a SFST, read the admonition pursuant to CVC 23612.
3. Administer the breath test as currently done.
4. When the officer offers for the suspect to take a blood test:
 - a) The suspect must actually consent, if so – draw the blood in the Department approved manner
5. If alcohol is suspected and there is a refusal for both breath and blood, or drugs are suspected and there is a refusal for blood and urine:
 - a) Get a warrant, or
 - b) Identify a lawful exception to the warrant requirement:
 1. Typically exigent circumstances (more than just dissipation of alcohol in the blood pursuant to *McNeely*)
 2. If the suspect has a valid 4th waiver, a warrant is not required. (Check the 4th Amendment waiver status of the suspect regarding probation/parole.)
 3. If one of these exceptions exists, then a search warrant would not be required
 - a. If a forced blood draw is conducted, follow Department Procedure 7.03 (Chemical Tests for DUI, Zero Tolerance, Admin Per Se), and document all force used.