

CHAPTER 5
INTERSTATE JURISDICTIONAL ENFORCEMENT AND INVESTIGATION
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CHAPTER 5

INTERSTATE JURISDICTIONAL ENFORCEMENT AND INVESTIGATION

1. GENERAL. Several California Highway Patrol (CHP) Areas are located adjacent to the physical borders of California with Oregon, Arizona, or Nevada. Due to their proximity to the state border, these Areas frequently encounter interstate incidents or investigations. Interstate incidents are violations and/or incidents which begin in California, but subsequently terminate or require resolution in an adjoining state (e.g., driving under the influence [DUI] traffic collision in which the suspect driver is transported to an adjoining state for medical attention, a pursuit which terminates out-of-state).

2. PURPOSE. The purpose of this chapter is to establish policies for resolution of interstate jurisdictional incidents.

3. AUTHORITY. Barring a grant of power from another state, the CHP's peace officer authority is limited to California. The Fresh Pursuit Acts of other states and the Interstate Mutual Assistance Agreements (as discussed in Chapter 4) confer limited power to CHP officers acting outside the borders of California under certain circumstances.
 - a. Fresh Pursuit Acts. The bordering state's Fresh Pursuit Acts statutorily extend peace officer authority to officers from other states when in "fresh pursuit" of a fleeing **felon** (Arizona Revised Statutes [A.R.S.] 13-3831 to 13-3834, Nevada Revised Statutes [N.R.S.] 171.154 to 171.164, Oregon Revised Statutes [O.R.S.] 133.410 to 133.440). Although case law may vary among the states, in general, "fresh pursuit" is timely and continuous pursuit of a violator.

 - b. Interstate Mutual Assistance Agreements. Pursuant to Section 2403.5 of the Vehicle Code (VC), the Interstate Mutual Assistance Agreements convey limited peace officer authority specifically to officers of the CHP, Oregon State Police (OSP), Nevada Department of Motor Vehicles and Public Safety (NHP), and Arizona Department of Public Safety (DPS) acting outside their state, but within 50 statute miles of the state border under the following circumstances:
 - (1) In response to a request for services initiated by one of the agencies participating in the Interstate Mutual Assistance Agreement.

(2) Upon circumstances requiring “immediate law enforcement action or other emergency action.”

4. DEFINITIONS.

- a. Interstate Incident. An incident which begins in one state and terminates or requires action in an adjoining state.
- b. Local Law Enforcement. The agency having primary law enforcement responsibilities for the geographical location where the incident concludes or follow-up is conducted.
- c. Asylum State. The state in which a suspect is physically located at the time of arrest.

5. POLICY.

- a. Area Operational Plan. Local factors significantly impact issues pertaining to interstate incidents. Therefore, each Area bordering another state shall develop a local operational plan which addresses local needs and procedures. Where possible, Area commanders should attempt to enter into a Memorandum of Understanding (MOU) with the appropriate law enforcement agencies. To facilitate plan development, Area commands should consult with their local California district attorney’s office and/or any other entity which may be affected by the MOU (e.g., local hospitals, labs).
- b. Pursuits. Whether a felony or misdemeanor violation is involved, it is the policy of the Department to turn over pursuits entering adjoining states to the appropriate law enforcement agency having jurisdiction as soon as possible.
- c. Notification. Whether in pursuit or for collision/investigative follow-up, supervisory approval should be obtained prior to entering the adjoining state. When prior notification is impractical, officers shall make notification as soon as possible. Officers shall also immediately notify the appropriate local law enforcement agency of the nature and circumstances surrounding the incident. As a courtesy, officers should also notify other law enforcement agencies when in their jurisdiction.
- d. Extradition. All efforts to return custodial suspects to California shall conform to the “Extradition Act” of the asylum state. Additionally, Areas shall receive prior approval from their respective Division.

6. PROCEDURES. The Area operational plan shall not exceed legal parameters and shall, at a minimum, address mutual responsibilities and procedures for the following:

a. Suspect's Return to California - Extradition. Generally, there are two means by which a suspect who is physically located in one state may be returned to another state (to face criminal charges) - a suspect not in-custody may voluntarily return and an in-custody suspect may be returned consistent with the asylum state's "Extradition Acts" (A.R.S. 13-3841 to 13-3868, N.R.S. 179.177 to 179.235, O.R.S. 133.743 to 133.857).

NOTE: Extradition is the process of one state acquiring custody of a person physically located in another state. Failure to adhere to the Extradition Act could result in civil litigation against the officer and the Department, and/or the inadmissibility of subsequently obtained evidence. Area commands shall contact the local California district attorney's office for assistance in developing extradition procedures.

b. Vehicle Pursuits.

(1) Felony Pursuits. All bordering states have Fresh Pursuit Acts. These acts convey peace officer status to officers who enter the state in fresh pursuit of a known or suspected felon. Thus, an officer who initiates a felony pursuit in California may continue the pursuit, should the circumstances warrant.

(2) Misdemeanor Pursuits.

(a) Authority. The Fresh Pursuit Acts are **not applicable** to misdemeanor violations, however, the Interstate Mutual Assistance Agreements, permit officers to act within 50 statute miles of the state border where "immediate law enforcement action" is required or requested. Officers should not pursue beyond the 50 statute mile limit unless the subject's driving presents an **extreme** hazard to the public (i.e., DUI, reckless).

(b) Driving Under the Influence. Although the states have varied DUI presumptive limits, DUI is a violation in the adjoining states. Thus, a DUI suspect pursued out-of-state may also violate adjoining state's DUI statutes (because he/she is driving in that state while under the influence). Therefore, the officer should detain the suspect and request the appropriate law enforcement authorities investigate for a violation of their statutes.

(c) Dual Prosecution. Section 41400 VC prohibits a subsequent prosecution where the suspect has been "convicted or acquitted" in another state for the same act (refer to Sections 793 and 794 of the Penal

Code [PC]). Thus, if the individual is “convicted or acquitted” out- of-state, no charges should be filed for the California violation.

c. Enforcement of Infractions.

(1) Routine Stops Prohibited. Neither the Fresh Pursuit Acts nor the Interstate Mutual Assistance Agreements authorize routine enforcement of traffic violations (infractions) outside the State of California.

(2) Safety Hazard. When the violation presents an on-going safety hazard and "immediate law enforcement action" is necessary, officers may make an enforcement stop. Motorists stopped should **not** be cited at the scene. Officers should obtain sufficient identifying information upon which to file a complaint. If warranted, a complaint may be filed later through the appropriate California district attorney’s office.

d. Investigative Follow-up.

(1) Felony Follow-up.

(a) Authority. The fresh pursuit authority (Fresh Pursuit Acts) extends to felony investigations. While there is no California case law on point, a Washington court held, fresh pursuit included the delay necessitated by a felony collision investigation (*Washington v. Steinbrunn* [1988]

774 P.2d 55). In this case, a Washington officer conducted felony DUI follow-up in an Oregon hospital two hours after the collision.

(b) Documentation of Fresh Pursuit. However, for “fresh pursuit” applicability the officer should clearly articulate the investigation was timely and continuous. The circumstances causing the delay (scene investigation, medical transport of the suspect, etc.) should be well documented.

(c) Normally, when conducting felony investigative follow-up, officers should not exceed 50 statute miles from the state border without supervisory approval.

(2) Misdemeanor Follow-up.

(a) Authority. The Department's General Counsel has indicated that under the Interstate Mutual Assistance Agreements the CHP has the authority to conduct timely out-of-state misdemeanor investigative follow-up. However, the Interstate Mutual Assistance Agreement is only applicable within 50 statute miles of the border.

(b) Preference for On-Scene Arrest and Blood Withdrawal. When a suspected DUI driver is involved in a collision and is to be transported to an adjoining state, whenever possible, officers are encouraged to arrest and obtain blood/alcohol evidence while in California (e.g., sample drawn by on-scene non-fire department paramedics). Subsequently, the suspect should be formally released.

(c) Area commanders shall contact the appropriate foreign (out-of-state) law enforcement agency and the local California district attorney's office to develop acceptable procedures for facilitating misdemeanor DUI follow-up for incidents in which the on-scene arrest and blood withdrawal is not possible.

e. Hospitalized Suspects - Release/Flight Risk. The Area operational plan shall address procedures for the release of hospitalized suspects and custodial arrest of "flight risk" suspects.

(1) Release of Suspect. Generally, hospitalized arrested suspects who are not considered a flight risk should be formally released from custody consistent with Section 849(b) PC and departmental policies as set forth in HPM 100.68, Enforcement Policy Manual, Chapter 2, Arrest Policies, and HPM 70.4, Driving Under the Influence Enforcement Manual, Chapter 4, DUI Enforcement Policies and Procedures.

(2) Flight Risk Suspects. Where the nature of the charges or circumstances suggest a high probability of flight, the suspect should not be released. Formal booking procedures should be initiated (either at a custodial hospital, detention center, or by the posting of CHP or allied agency personnel (refer to HPM 70.4, Chapter 4).

f. Blood Withdrawal.

(1) Consensual Blood Withdrawal. Area operational plans shall address procedures for obtaining evidence - e.g., what vials are used, which state lab processes, responsibility for lab expenses (refer to HPM 70.4, Chapter 5, Chemical Test - Implied Consent Law), and what forms and procedures are required for evidence transfer between agencies. To ensure compliance with legal requirements of a border state, officers should request the local law enforcement agency assist in obtaining blood samples.

(2) Forced Blood Withdrawal. Statutes of one state have no force in another state (*Hall v. University of Nevada* 74 C.A.3d 280 [141 Cal.Rptr 439]). Actions contrary to the individual state's law or undertaken without police

authority could result in criminal and/or civil charges filed against an officer and/or the Department.

(a) Oregon. Oregon statutes specifically prohibit forced blood withdrawal (ORS 813.100[2]). The Area operational plan should address this issue.

(b) Nevada. Nevada statutes permit forced blood withdrawal (N.R.S. 484.383).

(c) Arizona. Arizona statutes, while not authorizing forced blood withdrawal, permit evidential use of samples drawn for medical purposes (A.R.S. 28-2881). The Area operational plan shall address procedures for lawfully obtaining these samples.

(d) Areas should consult their local district attorney's office for assistance in developing applicable procedures. Additionally, Areas should coordinate all forced blood withdrawals through the local law enforcement agency.

(3) Custody and Incarceration. Area operational plans should address the following issues.

(a) Felony Arrests. The Fresh Pursuit Acts specify officers have both the authority to arrest and hold such "person in custody." Further, the Fresh Pursuit Acts mandate officers take the accused before a local magistrate to determine the lawfulness of the arrest. A local magistrate would be a court in the jurisdiction in which the arrest occurred. Areas should consult their local district attorney's office for assistance in developing applicable procedures. Additionally, Areas should coordinate arrests with the local law enforcement agency.

(b) Misdemeanor Arrests. Pursuant to the Interstate Mutual Assistance Agreement, officers "taking a person or property into custody" shall "relinquish custody" to the appropriate agency (OSP, NHP, and Arizona DPS) at the earliest convenience.

g. Driver License Suspensions – Implied Consent. Pursuant to Section 23612 VC, implied consent provisions are applicable only when the suspect is placed under lawful arrest. When a formal arrest is not affected, the Department of Motor Vehicles cannot execute administrative action for blood/alcohol testing refusal. Similarly, an Administrative Per Se (Section 13382 VC) license confiscation requires a valid arrest. Unless the suspect was lawfully arrested, an officer shall not confiscate a DUI suspect's California driver license.

7. SUMMARY. Given the complexities of interstate incidents and scarcity of judicial interpretation of the Interstate Mutual Assistance Agreements, such incidents should be carefully evaluated on a case-by-case basis. Law enforcement activity outside of California shall be undertaken only upon articulated necessity (rather than expediency or convenience) and consistent with an Area operational plan developed in conjunction with the local California district attorney's office.

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