

CHAPTER 5
CHEMICAL TESTS–IMPLIED CONSENT LAW

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CHAPTER 5

CHEMICAL TESTS—IMPLIED CONSENT LAW

1. GENERAL.

a. Chemical testing to determine blood alcohol and/or drug content is the cornerstone of California's implied consent law and is vital to driving under the influence (DUI) prosecution. The implied consent law provides legal reasoning and incentive for DUI suspects to provide a sample of their breath, blood, or in specified cases, urine, for the purposes of determining the alcohol and/or drug content of their blood.

b. A sample of the driver's blood, breath, or in specified cases, urine, taken soon after the act of driving, is the best scientific evidence of intoxication and supplements the investigating officer's observations. The sample must be taken soon after the arrest as the amount of alcohol and/or drugs in the blood begins to decrease soon after drinking or ingestion stops.

c. The chemical test must be incidental to a lawful arrest and administered at the direction of a peace officer who has reasonable cause to believe a person was driving a motor vehicle under the following conditions:

(1) While under the influence of an alcoholic beverage and/or drug, as defined by Sections 109 and 312 of the California Vehicle Code (CVC), and in violation of Section 23152 or 23153 CVC; or

(2) While under age 21, with a blood alcohol concentration (BAC) of 0.01 percent or greater, and in violation of Section 23136 or 23140 CVC.

(3) While on probation for DUI, with a BAC of 0.01 percent or greater, and in violation of Section 23154 CVC.

d. Implied consent does not apply to:

(1) Persons arrested for attempted DUI (Section 664 of the Penal Code [PC]/ Section 23152 CVC).

(2) Persons arrested for Section 21200.5 CVC (DUI bicycle), Section 21221.5 CVC (DUI motorized scooter), or Section 21296 CVC (DUI electrically motorized board).

2. IMPLIED CONSENT ADMONITION.

a. All persons lawfully arrested for a violation of Section 23152 or 23153 CVC shall be given one of the following admonishments relative to the implied consent law.

(1) Formal Chemical Test Admonishment.

(a) Officers should read the Chemical Test Admonition section, verbatim, from the back of the California Department of Motor Vehicles (DMV) form DS 367, Age 21 and Older Officer's Statement; or DS 367M, Under 21 Officer's Statement, and note the arrestee's responses on the form and in their arrest report.

(2) Informal Chemical Test Admonishment.

(a) Officers may paraphrase the requirements of Section 23612 CVC; however, any informal admonition must include all of the requirements contained within Section 23612 CVC.

(b) Given the increasing complexity of implied consent, it is suggested officers read the admonition from the back of the appropriate DS 367 or DS 367M. In the event the DUI arrestee refuses chemical testing, officers shall read the Chemical Test Admonition section, verbatim, from the back of the appropriate DS 367 or DS 367M and note the arrestee's responses on the form and in the arrest report.

(3) Limited Test Advisement.

(a) A limited test advisement section for arrestees who are transported to a medical facility for treatment is located on the back of the first page of the DS 367 and DS 367M. If the arrestee will not select a test available at the medical facility, it will be considered a refusal.

3. CONSENT TO TESTING.

a. Choice of Tests. A DUI arrestee shall be offered their choice of test pursuant to Section 23612 CVC. If the arrestee either is incapable, or states they are incapable of completing the chosen test, the arrestee shall submit to the remaining test(s). An arrestee 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 arrestee was driving under the influence. If the officer has reasonable cause to believe a blood test will reveal evidence of the arrestee being under the influence, the officer shall state in their report the facts upon which those beliefs are based. The officer shall advise the arrestee that they are required to submit to an additional blood test.

If the arrestee is incapable of completing the blood test, they shall submit to, and complete, a urine test.

b. Test Unavailability. The Department has determined unavailability should be narrowly defined by the statutory exemptions or where testing is restricted due to arrestee's hospitalization. Inability or failure to complete a test does not make the test "unavailable."

c. Failure to Select a Specific Chemical Test. An arrestee's refusal to respond to questions regarding which test they will take, when requested by the officer, constitutes a refusal of chemical tests. Officers shall record the arrestee's actions on the back of the first page of the DS 367 or DS 367M, in the Chemical Test Refusal section.

(1) If the arrestee agrees to submit to a chemical test, but declines to specify which one, the officer will designate a test.

(2) If the arrestee refuses to take the first test designated by the officer, the remaining test(s) shall be offered.

(3) The arrestee must not only refuse to make a choice, but also must refuse to take each test designated by the officer, in order to constitute a refusal.

d. Incomplete Tests. When an arrestee either cannot, or states they are incapable of completing their chosen chemical test, they shall be given the opportunity to complete the remaining test(s). The officer shall document the subject's inability to complete the test and advise the arrestee of the remaining test(s) available.

e. Refusal of Chemical Tests. In the event the arrestee refuses chemical testing, the officer shall read the chemical test refusal section admonition from the appropriate DS 367 or DS 367M, verbatim. The chemical test refusal section shall also be completed for all drug-related DUI offenders who, after a breath test, refuse to submit to a subsequent blood or urine test, pursuant to Section 23612(2)(C) CVC.

f. Search Warrant for Chemical Testing.

(1) If the arrestee refuses to consent to chemical testing, or is incapable of providing consent due to injury, the arresting officer should seek a search warrant to obtain a blood sample.

(2) The original CHP 202, Driving Under the Influence Arrest – Investigation Report, a copy of the DS 367 or DS 367M, and a copy of any search warrant and the search warrant return, shall be retained at the Area office as part of the arrest report.

g. Unconscious Drivers.

(1) Whenever a person is arrested for DUI and sustains injuries resulting in loss or altered consciousness, a blood test should be administered in order to comply with Section 23612(a)(5) CVC.

(2) Supreme Court Case No. 18-6210, Mitchell v. Wisconsin, ruled officers may obtain warrantless blood samples from unconscious DUI suspects where the suspect's condition and other factors (e.g., ensuring public safety at a crash scene, providing medical aid, transporting a DUI arrestee to a hospital for medical treatment) exist that would significantly delay the process of securing a search warrant.

NOTE: Although the court provides wide latitude to officers when obtaining warrantless samples from unconscious DUI arrestees, officers must provide justification as to why a search warrant was not obtained and document the justification in their arrest report.

(3) Prior to obtaining a blood sample, the arresting officer should confer with the attending medical personnel, before approaching the driver, to determine the extent of injury, which medical procedures were performed, and whether any impairing medication(s) was administered. Any relevant information should be noted in the arrest report.

h. Juveniles.

(1) Persons under 21 years of age who are not under arrest for a violation of Section 23152 or 23153 CVC, and who are suspected of violating Section 23136 or Section 23140 CVC, should be handled in accordance with Chapter 4, Driving Under the Influence Policy and Procedures, of this manual.

(2) Juveniles fall within the provisions of Section 23612 CVC and may legally consent to the drawing of blood in compliance with the implied consent law, without parental permission.

(3) If the parent of a juvenile in any way interferes and directs or causes the juvenile to not submit to a chemical test, this shall be construed as a refusal under the provisions of the implied consent law and shall be handled in accordance with the chemical test refusal policy of this chapter.

i. Consent and Medical Forms—Hospitals and Other Medical Facilities.

(1) Some medical facilities require arrestees (including parents of juveniles) to sign a consent or medical treatment form prior to drawing blood for impaired driving arrests.

(2) If an arrestee selects a blood test but refuses to sign the consent or medical form, or, in the case of a juvenile, the parent refuses or is not available to sign the consent or medical form, the following shall apply:

(a) If the consent or medical form contains a waiver of liability which absolves the hospital in any way from civil or criminal action stemming from its actions, the arrestee or parent/guardian does not have to sign, and such refusal to sign shall not be construed as a refusal under the provisions of Section 23612 CVC. No further chemical tests can be required at that facility. This does not preclude the administration of a test at another facility or the use of a licensed phlebotomist to obtain a sample.

(b) If the consent or medical form contains no waiver of liability clause, but contains pertinent medical information or other general data, the arrestee's or parent/guardian's refusal to sign shall be construed as a refusal to comply with the provisions of Section 23612 CVC (*Butler v. DMV*, 115 Cal. App. 3d 913 [1981]).

(c) A CHP 233, Request for Blood Sample, or a similar locally approved form, should be prepared and delivered to a person authorized to withdraw a blood sample, in every instance where blood samples are obtained by a request from a member of the Department. This form provides information about legal protections for persons authorized to draw the blood.

(d) The time, place, and name of person withdrawing the blood sample, shall be documented in the arrest report.

j. Post Chemical Test Admonishment Procedures.

(1) If the arrestee provides free and voluntary consent to testing, the officer may obtain a chemical test and should note in their report the subject's response and any other indications the subject is providing free and voluntary consent to testing.

(2) If an arrestee refuses chemical testing after reading the admonition verbatim from the DS 367 or DS 367M, the officer should seek a search warrant and obtain a chemical test sample in accordance with the nonconsensual chemical testing procedures outlined in this manual.

(3) Arrestees selecting a breath test must also submit to a blood test (or in specified cases a urine test), when there is reason to believe impairment is caused by drugs or a combination of alcohol and drugs. In these cases, Implied Consent continues to be applicable, and the Drug Admonition should be read, verbatim, from the DS 367 or DS 367M. The officer should note the arrestee's responses on the form and in their arrest report.

4. COMMAND RESPONSIBILITIES.

a. Area commanders shall coordinate with the following groups:

(1) Local district attorney/city attorney to ensure local requirements are met for the successful filing of DUI criminal cases.

(a) Area commanders shall notify the Impaired Driving Section (IDS) if a local district/city attorney requests any major departures from policy contained within this chapter.

(b) After consultation with IDS and their respective Division, commands may add any locally developed/required procedures to their Standard Operating Procedure (SOP) which are necessary to ensure the successful filing/prosecution of DUI criminal cases.

(2) Local crime laboratory representatives to develop procedures to ensure local chemical testing procedures comply with California Code of Regulations (CCR) Title 17, Public Health.

(3) Local medical care facilities to ensure they understand the implied consent law and associated departmental procedures.

5. COLLECTION AND HANDLING OF SAMPLES.

a. Pursuant to Section 100700 of the Health and Safety Code (HSC), the collection and testing of blood, breath, and urine samples to determine the concentration of ethyl alcohol in the blood, must comply with CCR Title 17. The identity and integrity of the sample shall be maintained from the time of collection, through analysis, reporting, and adjudication. Procedures specified in this chapter comply with these regulations.

b. Breath Collection.

(1) Officers shall be trained on locally provided, evidential breath testing equipment by the appropriate crime laboratory, or in accordance with procedures approved by the appropriate crime laboratory.

(2) For each person tested, breath alcohol analysis shall include analysis of two separate breath samples. These samples must result in determinations of BACs which do not differ from one another by more than 0.02 percent (0.02 grams per 100 milliliters).

(a) The instructions provided by the controlling crime laboratory for the specific test equipment utilized (sometimes referred to a precautionary checklist), should be referenced and followed when administering a breath test. Some devices have the precautionary checklist built into the device which appears as a series of electronic prompts.

(b) Breath samples shall be collected only after the arrestee has been under continuous observation for at least 15 minutes. During this time, the arrestee must not have ingested alcoholic beverages or other fluids, vomited, eaten, or smoked.

NOTE: In the case, *Manriquez v. Gourley* (2003) Court of Appeal, Fourth District, California (D039757), the court ruled that observation by senses other than sight are sufficient during the 15-minute observation period.

(3) Chemical Testing Advisement.

(a) Section 23614 CVC requires the reading of a specific admonishment in those cases where approved and certified means of breath sample preservation are not used. It is the Department's preference this admonishment be given after the breath test has been completed to avoid confusion with implied consent. However, some courts require reading Section 23614 CVC before the breath test is started. Area commanders should coordinate with their local courts to determine which procedure shall be used. In either case, the person shall be read the following statement, from the CHP 202, page 2, verbatim:

"The breath testing equipment does not retain any breath sample for later analysis by you or anyone else. If you want a sample retained, you may provide a blood or urine sample that will be retained at no cost to you. If you do so, the blood or urine sample may be tested for alcoholic or drug content by either party in a criminal prosecution. Do you wish to provide an additional sample?"

(4) Pursuant to Section 23158(b) CVC, an arrestee may arrange for a chemical test in addition, and subsequent to, any such test administered at the direction of a peace officer. This test will be at the subject's own expense. The subject's failure or inability to obtain an additional test will not preclude the admissibility into evidence of the test taken at the direction of a peace officer.

(5) Upon request of the person tested, and as soon as practicable upon completion of obtaining both samples, the officer shall state the results of the breath test to the subject. If local policy dictates, a copy of the breath test results may also be given to the subject.

c. Blood Collection.

(1) Blood samples shall be collected by venipuncture as soon as feasible after an alleged offense and only by persons authorized by Section 23158 CVC.

(2) Persons afflicted with hemophilia are exempt from the blood test requirements.

(3) Persons afflicted with a heart condition and using an anticoagulant under the direction of a licensed physician or surgeon, are also exempt from the blood test requirements.

(a) The Department will not require persons claiming these exemptions to provide medical proof.

(b) Such persons will be informed the exemption applies only to blood tests and not to breath tests, or, when applicable, urine tests.

(4) Alcohol or other volatile organic disinfectants are not to be used to clean the skin when a specimen is collected.

(5) The blood sample shall be deposited in a container as provided by the laboratory that services the Area.

d. Urine Collection.

(1) Section 23612 CVC requires an individual arrested for a drug-related, or combination alcohol drug-related, DUI, to submit to a breath or blood test for the purposes of determining the alcohol and drug content of their blood. An arrestee suspected of drug use who submits to a breath test must subsequently submit to a blood test. However, officers should collect a urine sample in the following instances:

(a) Both the breath and blood tests are unavailable.

(b) The arrestee suffers from hemophilia.

(c) The arrestee uses an anticoagulant for a heart condition.

NOTE: An arrestee's claim of hemophilia or use of an anticoagulant for a heart condition is sufficient reason to select an alternate available test.

(2) When administering a urine test, the following sample collection methods shall be observed:

(a) Alcohol Only. The only approved urine sample for BAC analysis is a sample collected no sooner than 20 minutes after first completely voiding the bladder. The time the bladder was first voided, as well as the time the approved sample is obtained, shall be recorded.

(b) Drug Use Suspected. If the presence of drugs is suspected, an initial urine void is not required. The first urine sample should be retained for drug analysis.

1 A person providing a urine sample shall be given enough privacy to ensure the accuracy of the specimen, while maintaining the dignity of the individual involved, pursuant to Section 23158(i) CVC.

2 Privacy, as used here, means reasonable protection from public view.

3 To ensure the accuracy of the specimen, the appropriate gendered officer or authorized medical personnel should be present at the time the specimen is obtained.

4 For individuals identifying as intersex, transgender, or nonbinary, as defined in SB 179 (2018), The Gender Recognition Act, the appropriate gendered officer or authorized medical personnel should be present at the time the specimen is obtained.

NOTE: In the event it is not possible to have an appropriate gendered officer or medical professional obtain the sample, officers should notify a supervisor. In these instances, it is suggested to have two officers present and afford as much privacy as possible while still maintaining officer safety. Additionally, officers should document the circumstances and actions taken in the arrest report.

(c) The specimen shall be deposited in a clean, dry container which also contains a preservative. These containers are generally provided by the crime laboratory that services the Area. The quantity of the specimen required, as well as the quantity of the preservative used, will depend upon the method of analysis employed by the laboratory.

e. Biological Specimen Retention.

(1) Biological specimens shall be retained for a minimum period of one year from date of collection. The laboratory will normally retain a portion of the analyzed specimens for the required retention period. However, if the laboratory is unable to do so, or if the specimens are not delivered for analysis, the Area shall store them for the required retention period. This

requirement is not waived by an earlier adjudication of the case. Biological specimens will be disposed of in accordance with the requirements of Highway Patrol Manual (HPM) 70.1, Evidence Manual.

(2) If, during the retention period, a sample is requested by the defendant for analysis and a sufficient sample remains, the Area shall retain possession of the original sample, but shall provide a portion of the sample to the defendant. The portion of the sample provided shall be delivered in a clean container. Additionally, a copy or transcript of the identifying information written on, or accompanying, the original sample container, will be provided. The laboratory performing the analysis should be contacted to determine the amount of the sample to be provided to the defendant. If the laboratory rather than the Area is in possession, the defendant shall be directed to the laboratory.

6. EVIDENTIAL BREATH TESTING EQUIPMENT.

a. Evidential breath testing devices collect breath results in compliance with CCR Title 17 and satisfy all requirements of Section 23612 CVC. These devices are provided and maintained by crime laboratories for use by the CHP and local law enforcement. These devices can be stationary or portable; however, they are different from preliminary alcohol screening (PAS) devices maintained by the Department. For additional information regarding PAS devices, refer to Chapter 7, Preliminary Alcohol Screening (PAS) Device, of this manual.

(1) Only breath testing instruments which have been approved by the National Highway Traffic Safety Administration shall be used for breath alcohol analysis.

(2) Area commanders are responsible for ensuring officers reporting from the Academy, or transferring from other Areas, are trained in the operation of breath testing devices utilized in their Area. Training should be provided and/or coordinated through the crime laboratory providing the device.

b. Portable Evidential Breath Testing Equipment.

(1) The California Department of Justice (DOJ) and various county crime laboratories throughout California may provide Portable Evidential Breath Testing (PEBT) devices as part of their evidential breath testing programs. These devices are designed to give a law enforcement agency the ability to conduct roadside evidential breath testing. Refer to Annex A for additional PEBT information.

7. NONCONSENSUAL CHEMICAL TESTING.

a. General.

(1) Nonconsensual testing was substantially revised in the Supreme Court decision of *Missouri v. McNeely* (11-1425), which generally requires law enforcement personnel to obtain a search warrant prior to conducting a nonconsensual chemical test. Specifically, the court stated, “. . . the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant.” The court concluded the reasonableness of a warrantless blood test must be determined on a case-by-case basis considering the totality of the circumstances.

(2) The judicially established criteria for maintaining the admissibility of forcibly seized blood samples, for the investigation of any crime, focuses on the following elements:

(a) The sample is drawn by a medically qualified person in a reasonable and medically approved manner.

(b) The test is incidental to a lawful custodial arrest.

(c) There is a reasonable belief that evidence of alcohol or drugs will be found in the sample.

(d) The force used is limited to that amount, which is reasonable and necessary to obtain the sample, and is not disproportionate to the need.

NOTE: Officers must use sound professional judgment when using any force to obtain a blood sample.

(3) Section 13353 CVC et seq. (implied consent) and related laws (Sections 23612, 23614, 23158, and 23577 CVC) do not preclude the taking of a blood sample without the consent of, or over the objections of, the arrested person.

(4) A person who refuses to consent to a chemical test is still subject to the administrative sanction(s) of Section 13353 CVC (implied consent), despite a blood sample having been obtained against their will. The driver license suspension sanction is predicated upon a refusal to consent to a chemical test.

(5) Refusal. Pursuant to Section 23612 CVC, the determination the offender has refused, is dependent upon whether the person was arrested for alcohol-only DUI (and test availability) or drug-related DUI.

(a) Alcohol-Only Driving Under the Influence. If a breath test is selected but unavailable after an alcohol-only DUI arrest, a nonconsensual blood test may be administered, pursuant to a valid search warrant. The urine test should not be offered if no medical exemption exists precluding the arrestee from providing a blood sample.

(b) Drug-Related/Combination Driving Under the Influence. If arrested for a drug-related/combination DUI, a nonconsensual blood withdrawal may be administered, pursuant to a valid search warrant, when an arrestee refuses to submit to a breath or blood test. If the arrestee elects a breath test, they shall subsequently submit to a blood test. The urine test should not be offered if no medical exemption exists precluding the arrestee from providing a blood sample.

(6) Several landmark cases have addressed nonconsensual blood draws. A listing of associated cases is contained in Annex B.

b. Nonconsensual Chemical Testing Procedures. Arrestees who refuse to voluntarily submit to a chemical test will be physically compelled to submit to a blood draw only after all the following procedural guidelines have been met:

(1) The use of alcoholic beverages and/or drugs, as defined in Sections 109 and 312 CVC, is suspected.

(2) The individual has been placed under arrest for any of the following violations: Sections 23140, 23152, 23152/23550, 23152/23550.5, or 23153 CVC; and/or Section 191.5(a), 191.5(b), or 192.5(a) PC; or any combination thereof.

NOTE: Section 23140 CVC violations are only subject to nonconsensual chemical testing procedures when a traffic crash results in the death of a person and an arrest for felony vehicular manslaughter (Section 191.5 PC).

(3) A valid signed search warrant is obtained authorizing the seizure of the arrestee's blood pursuant to Section 1524 PC. If obtaining a search warrant becomes impossible due to exigent circumstances (beyond the mere dissipation of evidence in the blood), all efforts made to obtain a search warrant shall be thoroughly documented in the arrest report.

NOTE: Officers should attempt to obtain a search warrant in all nonconsensual chemical testing cases. If a search warrant is not obtained, the court will weigh the legality of each nonconsensual test on a case-by-case basis. If a search warrant cannot be obtained, the Area shall ensure a good faith effort was made and all attempts to obtain a search warrant were documented in the arrest report.

(4) The arresting officer shall obtain supervisory approval prior to the arrestee being physically compelled to submit to a blood draw. The approving supervisor, if readily available, should be present during the procedure. Participating officers and supervisors shall use sound professional judgment to ensure no more force or restraint than reasonably necessary is used to accomplish the procedure. If the arrestee is, or becomes, too combative to safely obtain a blood sample, officers and/or sergeants shall discontinue the blood draw attempt and thoroughly document the failed attempt in the CHP 202. If participating officers and/or sergeants suspect the arrestee is experiencing a medical emergency (e.g., difficulty breathing, drug ingestion), they shall discontinue the blood draw attempt and provide appropriate medical aid, including, but not limited to, transporting the arrestee to the nearest medical facility.

(5) The medically qualified person extracting the blood must consent to the procedure, notwithstanding the arrestee's refusal or resistance. The sample shall be obtained in a reasonable and medically approved manner.

(6) The Chemical Test Refusal section located on the back of the first page of the DS 367 or DS 367M shall be completed.

(7) A statement shall be made in the arrest report that it became necessary to obtain a nonconsensual blood sample from the arrestee. The procedure used shall be articulated in the report (e.g., how the subject was secured, resistance [if any], amount of force used [if any], location from which sample was taken).

NOTE: Areas should attempt to video record all nonconsensual blood draws including the reading of the Chemical Test Refusal section located on the back of the first page of the DS 367 or DS 367M.

c. Use of Force.

(1) The amount of force used (if any) to overcome the resistance shall be limited to that amount which is reasonable and necessary to obtain the sample, and not disproportionate to the need. A sufficient number of law enforcement personnel shall be available to adequately restrain the arrestee safely.

(2) The number of officers necessary will depend upon the physical abilities of the arrestee to be tested (e.g., muscular, sick, injured, disabled, elderly). Care should be taken to guard against injuries to the subject or the officers involved.

d. Safety Restraint Chairs for Nonconsensual Blood Draw.

(1) When nonconsensual blood draws are conducted at an Area office or a

CHP facility, only Safety Restraint Chairs (SRC) approved by the Department shall be utilized, subject to the limited exceptions specified herein. Any nonconsensual blood draws that cannot be conducted at an Area office or CHP facility, shall be conducted at a hospital or medical facility by trained medical personnel.

(2) Arrestees placed in an SRC shall be secured in accordance with departmental procedures.

(3) Arrestees secured in an SRC shall be continually monitored by uniformed personnel for signs of positional asphyxia.

(4) Officers shall use sound professional judgment when dealing with cooperative, passive resistive, or noncombative arrestees, during a nonconsensual blood draw at an Area office or CHP facility. If the officer forms the opinion that utilizing the SRC would cause the subject to become combative, the officer shall seek approval from a Sergeant or the Officer in Charge to not utilize the SRC. If at any time the subject becomes uncooperative, resistive, or combative, the SRC shall be utilized.

(5) Arrestees shall not be secured in the SRC until the person conducting the blood draw, as specified in HPM 70.4, Chapter 5, paragraph 5.c., is on scene and ready to perform the blood draw. Arrestees shall be removed from the SRC as soon as practicable after the blood draw.

(6) Except as provided below, when nonconsensual blood draws are conducted at an Area office or a CHP facility and the SRC is unavailable, or the subject cannot be secured in the SRC by objectively reasonable means (control holds), the SRC shall not be utilized, and the nonconsensual blood draw procedure shall be terminated.

(7) If the subject has already been restrained in the nylon leg restraint and removal would cause a greater risk of harm, or if the subject has been arrested for DUI involving serious bodily injury or a fatality, and the SRC is unavailable, or the subject cannot be reasonably secured in the SRC utilizing the control holds, the subject may be restrained using a mat on the ground. The subject shall be placed on their side and secured by officers at the subject's legs, hips, and shoulders. Once the blood sample is obtained, officers should place the subject in an upright seated position to allow for adequate breathing.

NOTE: Specific training on the use of a departmental SRC is available on the departmental Intranet.

e. Nonconsensual Blood Draw Procedures.

(1) Monitoring should be done by a sergeant or an officer-in-charge. When feasible, the sergeant or officer-in-charge shall appoint a safety officer to be present and to observe the nonconsensual blood draw. For the purposes of this section, a safety officer is any uniformed member of the Department with the sole responsibility to monitor the arrestee while they are restrained in the SRC. The safety officer shall not be engaged in any other responsibility. The safety officer, along with any other uniformed member on scene, has the authority to stop the blood draw at any time if they believe the safety of the subject is compromised. The safety officer's name and ID number shall be documented in the report. Officers shall immediately request medical assistance whenever an arrestee appears to be in need of, or requests, medical attention, regardless of outward symptoms of illness or injury.

NOTE: Medical symptoms may include, but are not limited to, decreased level of consciousness, labored breathing, discoloration of the lips or extremities, gurgling/gasping sounds, and foam or mucus coming from the nose or mouth.

(2) The arrestee should be controlled by utilizing the elongated rear wrist lock and/or bent wrist control holds. The subject should be walked to the SRC and guided into a seated position.

NOTE: Any use of a control hold/pain compliance which results in an apparent injury, complaint of injury, or a subsequent claim of injury, shall be documented. Documentation shall be in accordance with HPM 70.6, Officer Safety Manual; Chapter 1, Use of Force.

8. RESPONSIBILITY FOR COSTS OF CHEMICAL TESTS. On certain occasions, Area commands have experienced resistance from counties and/or cities, with respect to financial responsibility, for payment of blood withdrawal and laboratory costs related to drug and DUI arrests.

a. Policy. Commanders shall not accept responsibility for costs incurred for laboratory analysis or services related to such testing as a result of drug or DUI arrests. The county and/or city in which the arrest is made is liable for these costs.

b. Authority. The Department's position with regard to costs for DUI and drug arrests is based on various statutes and Attorney General Opinions (refer to Annex C).

c. Procedures.

(1) When a county refuses to pay laboratory costs or related services associated with DUI or drug arrests, Area commanders shall attempt to resolve the issue at the local level. The Area commander should remind the county the costs associated with DUI and drug arrests are the responsibility of the city or county in which the arrest took place. This responsibility is not excused by the insufficiency of funds authorized by statute. It is inappropriate for these county charges to be assumed by the Department since the Department has no statutory authority to expend state funds for payment of such charges.

(2) If the issue of financial responsibility cannot be resolved at the Area or Division level, the Area or Division commander should request assistance from IDS.

ANNEX A

PORTABLE EVIDENTIAL BREATH TESTING DEVICES

1. GENERAL.

- a. The PEBT devices may only be used in Areas where they are licensed and supported by a licensed forensic alcohol laboratory, such as DOJ or a local crime laboratory.
- b. Area commanders shall ensure the following conditions have been met prior to accepting PEBT devices from DOJ or the local crime laboratory:

- (1) Area commanders shall meet with DOJ or the local crime laboratory to confirm their equipment and methodologies conform to CCR Title 17, and all the equipment and supplies necessary to support a PEBT program (e.g., instruments, mouthpieces, paper, ink, ribbons, gas standards, regulators) will be provided to the Department at no cost.

- (2) If DOJ or the local crime laboratory wish to enter into a Memorandum of Understanding (MOU), the Area commander shall review the MOU to ensure it does not conflict with any of the provisions in this chapter.

- (a) The Area shall coordinate PEBT training with the respective crime laboratory to ensure all Area personnel receive sufficient training. The training, which shall be provided by crime laboratory personnel, shall be properly documented on each officer's training record.

- (b) The Area shall establish an SOP which addresses local procedures and controls for implementing a PEBT program within the guidelines of this chapter.

(3) Portable Evidential Breath Testing Program Responsibilities.

- (a) Area. Area commanders are responsible for complying with the requirements of this chapter, including the following:

- 1 Submitting a program plan and associated SOP to their Division for approval.

- 2 Promptly reporting any operational issues or legal challenges to their Division.

- (b) Division. Field Division commanders are responsible for the following:

ANNEX A

PORTABLE EVIDENTIAL BREATH TESTING DEVICES (*continued*)

1 Reviewing Areas' requests for PEBT deployment, reviewing proposed SOPs, and ensuring the requirements of this chapter have been met. Field Division commanders shall include their comments and forward the approved PEBT documents to Assistant Commissioner, Field (ACF), for review and approval.

2 Monitoring ongoing PEBT programs within their Division and reporting any operational issues or legal challenges to ACF and IDS.

3 Deploying PEBT devices assigned to their Division based upon identified needs and in accordance with policy contained in this chapter.

2. EVIDENTIAL BREATH TESTING INCIDENT REPORTING. The IDS shall be notified, via memorandum through channels, or by phone at (916) 843-4360, of any adverse and/or unfavorable reactions or constitutional challenges to the use of PEBT devices. If a notification is made by phone, a follow-up memorandum, through channels, may be requested.

ANNEX B

CASE LAW–NONCONSENSUAL CHEMICAL TESTING

1. PEOPLE v. KRAFT (1970) 3 C.A. 3d 890.
2. PEOPLE v. RYAN (1981) 116 C.A. 3d 168.
3. HAMMER v. GROSS (9TH CIR. 1989) 884 F.2d 1200.
4. MISSOURI v. MCNEELY (2012) 133 S. Ct. 98 (11-1425).
5. NORTH DAKOTA v. BIRCHFIELD (2016) ND 182 885 N.W. 2d 62.
6. PEOPLE v. MASON (2016) 8 Cal.App.5th Supp. 11.
7. PEOPLE v. PICKARD (2017) 15 Cal.App.5th Supp. 12.
8. PEOPLE v. VANNESSE (2018) 23 Cal.App.5th 440.
9. PEOPLE v. CUEVAS (2013) 218 Cal.App.4th 1278.
10. MITCHELL v. WISCONSIN (2019) 139 S.Ct. 2525 (18-6210).

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ANNEX C

RESPONSIBILITY FOR COSTS OF CHEMICAL TESTS—LEGAL FOUNDATION

1. Sections 29601 and 29602 GC.
2. Section 1463.14 PC.
3. Sections 1463(c) and (e) PC.
4. Section 11372.5 HSC.
5. Attorney General's Opinion NS-5020 (September 1, 1943).
6. Attorney General's Opinion No. 68-160 (March 31, 1970).
7. Attorney General's Opinion No. 91-902 (July 15, 1992).
8. Attorney General's Opinion No. 96-403 (November 21, 1996).

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