5-08/010.05 - Defendant's Rights - Driving Under the Influence (DUI)

A person arrested for driving under the influence of alcohol shall be advised of the provisions of California Vehicle Code section 23612 (Implied Consent for Chemical Testing).

When the person arrested is suspected of being under the influence of alcohol only, the person shall be afforded the opportunity to submit to their choice of a blood test or breath test.

NOTE: A urine test is no longer available to such persons unless they are incapable of completing either the blood test or breath test.

In cases where the arresting deputy reasonably suspects that the person arrested is under the influence of a drug, or the combined influence of a drug and alcohol, the suspect may be required to submit to a blood and/or breath test. A suspect who is afflicted with hemophilia or is afflicted with a heart condition and is using an anticoagulant under the direction of a licensed physician and surgeon is exempt from the blood test requirement, but shall submit to, and complete, a urine test (23612 CVC).

If the suspect:

- Is incapable or states that they are incapable of completing the chosen blood or breath test, they shall then have the choice of submitting to and completing the remaining tests and shall be so informed. If they are incapable of completing both the blood and breath test, they shall be offered the opportunity to submit to a urine test;
    - If the urine test is administered, the sample shall be taken at the station or DUI checkpoint command post, and the dignity of the suspect maintained as much as possible;
- Chooses to allow a sample of their blood to be drawn, they shall be transported to the nearest hospital or clinic affiliated with the county emergency aid plan; and
- Chooses the breath test, they shall be advised that a sample will not be saved, and that they and their attorney will not have a breath sample for independent testing of alcohol content. If the suspect wants a sample saved for their own use, they must submit to an additional test of either their blood or urine.

If the breath test is selected and the officer can document a reasonable suspicion of drugs or drugs/alcohol intoxication, the suspect shall then be advised of California Vehicle Code section 13353, Refusal of Chemical Test, and section 13353.2, Immediate Suspension, and the arresting deputy shall complete all required California Department of Motor Vehicles forms. The suspect shall also be advised that failure to submit to the additional test will result in the suspension of driving privileges for at least one year.

The suspect may request that a blood test also be conducted by their own physician and at their own expense. If they so request, they shall be allowed to telephone the physician of their choice immediately after booking, and after the blood test by the Department.

The following shall apply:

- The telephone call for purposes of obtaining a private physician to take a blood sample shall be in addition to the regular calls permitted a suspect at the time of booking; and

- There shall be no unnecessary delay in permitting this call so as to allow the suspect to obtain a timely sample.

After the private physician has obtained the blood sample, they shall be solely responsible for its disposition, if the suspect is without funds, a local call shall be placed for them by the arresting deputy or the jailer. Once the call has been placed, the suspect shall be allowed to speak for themself.