14-14 - The Use of Force In Taking DUI Blood Samples

Los Angeles County Sheriff's Department
NEWSLETTER
Field Operations Support Services, (323) 890-5411

THE USE OF FORCE IN TAKING DUI BLOOD SAMPLES

On May 13, 1991, the United States Court of Appeals for the Ninth Circuit decided that no more force than is reasonably necessary may be used to compel the taking of a blood sample pursuant to an arrest for driving under the influence (DUI).

Vehicle Code 23157 and 23158 state that the rules for taking a blood sample pursuant to a DUI arrest are as follows:

- Incident to a lawful arrest;
- The officer has reasonable cause to believe the arrestee is under the influence;
- The blood sample may only be taken in a medically approved manner by a licensed physician and surgeon, registered nurse, licensed vocational nurse, licensed clinical laboratory technologist, clinical laboratory bioanalyst, or unlicensed personnel regulated by Sections 124.2, 124.5, and 124.6 of the Business and Professions Code; and
- A blood test may be requested subsequently to the administration of a breath test if the arresting officer has reasonable cause to believe that the arrestee is under the influence of a drug other than alcohol.

Blood draws shall be in compliance with the Department's Manual of Policy and Procedures when both requesting and obtaining blood for evidential value. For suspects who refuse a test, deputy personnel shall advise the suspect of section 13353 CVC, Chemical Test Admonition, and complete the Department of Motor Vehicle form DL 367 as stated in the Manual of Policy and Procedures section 5-08/010.10, Defendant Refuses All Tests. In addition, Field Operations Directive 92-005, Video Recording of Driving Under the Influence (DUI) Chemical Test Refusals, sets out the procedures for video recording someone who is refusing a DUI chemical test.

Pursuant to *Missouri v. McNeely*, if an arrestee refuses a blood test, a search warrant must be obtained if a

blood draw is needed for evidential value. See Newsletter 14-13, *DUI McNeely Warrant (Blood Test)* and the form *Affidavit in Support of Search Warrant*.

The Fourth Amendment must be considered if any force is used to extract a blood sample. It may be lawful to use force to extract blood from the suspect; however, one has to carefully measure whether to use force and the degree of force that may be used.

If the suspect refuses to take a breath test, is offered a blood test and then agrees to take a breath test, in most cases the breath test should be given. No force should be employed to extract blood under these circumstances unless the evidence would perish in the time required to take a breath test or urine test. The prior refusal to take a breath test would not make the use of force to extract the blood sample reasonable under most circumstances.

Information regarding the content of this newsletter may be directed to Traffic Services Detail or Field Operations Support Services.

REFERENCES:

California State Legislature SB 717 - http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0701-0750/sb_717_bill_20130920_chaptered.pdf

Penal Code Section 1524

Vehicle Code Section 23140

Vehicle Code Section 23152

Vehicle Code Section 23153

California District Attorneys Association - (www.CDAA.org).

MPP Section 4-07/035.00, Driving Under the Influence

MPP Section 4-19/062.00, Property Damage, Accidental Traffic Collision Connected

MPP Section 5-04/020.25, Completing the Property Label

MPP Section 5-08/010.00, Chemical Test Laws

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

MPP Section 5-08/010.10, Defendant Refuses All Tests

MPP Section 5-08,010.15, Breath Alcohol Test Administration

MPP Section 5-08/010.20, Blood Tests

MPP Section 5-08/010.25, Urinalysis

MPP Section 5-08/010.27, Release of Blood Alcohol Samples – Urinalysis and Blood

MPP Section 5-08/010.30, Station Commander's Responsibility

MPP Section 5-08/010.35, Responsibility for Evidence

MPP Section 5-09/130.00, Drug/Driving Under the Influence – Driver's History Check

FOD 89-02, Use of Checkpoints for Driving Under the Influence/Driver License Enforcement

FOD 92-05, Video Recording of Driving Under the Influence (DUI) Chemical Test Refusals

Newsletter #50, Recent Appellate DUI Ruling

Newsletter #64, The Use of Force in Taking DUI Blood Samples

Newsletter 01-16, Probably Cause and DUI Reporting

Newsletter 08-08, Zero Tolerance Law – 23136 CVC, Use of Alcohol by Drivers Under 21

Behind the Wheel with the Traffic Safety Resource Prosecutor Program, Vol. 18, No. 9 (September 2013), SB 717 – The McNeely Solution