14-13 - DUI McNeely Warrant (Blood Test)

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

DUI McNEELY WARRANT (Blood Test)

On April 17, 2013, the United States Supreme Court held in *Missouri v. McNeely* that the natural dissipation of alcohol in the bloodstream does not establish a per se exigency that justifies warrantless, nonconsensual blood testing in DUI investigations. The totality of the circumstances must be considered in each case.

Pursuant to Penal Code section 1524, the Department has authorized the use of the *Affidavit in Support of Search Warrant* (SH-R-221A). This *Affidavit in Support of Search Warrant* shall be used for blood draws:

". . . that constitute evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused . . . and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis."

These 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.

If a deputy believes that obtaining blood for evidential value is imperative to the investigation and the suspect is refusing a test, the deputy will obtain a warrant via the *Affidavit in Support of Search Warrant* (SH-R-221A).

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