



LAGUNA BEACH POLICE DEPARTMENT

TRAINING BULLETIN # 20-02

The following information was obtained from the 2020 Southern California Traffic College

OCDA Traffic Safety Resource Prosecutor Training Network

BLOOD DRAWS AND THE FOURTH AMENDMENT

PURPOSE:

The purpose of this training bulletin is to provide employees with guidelines for the best practices for obtaining valid consent in the field for chemical tests to defeat a defense suppression motion attacking a blood draw. In addition, the training bulletin will discuss the statutory language and requirements of CVC 23612 and the changes to the DMV DS 367 form as of 2019.

DEFINITION

PC 23612 states:

(a) (1) (A) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) A person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood for the purpose of determining the drug content of his or her blood, if lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153. If a blood test is unavailable, the person shall be deemed to have given his or her consent to chemical testing of his or her urine and shall submit to a urine test.

(C) The testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.

(D) The person shall be told that his or her failure to submit to, or the failure to complete, the required breath or urine testing will result in a fine and mandatory imprisonment if the person is convicted of a violation of Section 23152 or 23153. The person shall also be told that his or her failure to submit to, or the failure to complete, the required breath, blood, or urine tests will result in (i) the administrative suspension by the department of the person's privilege to operate a motor vehicle for a period of one year, (ii) the administrative revocation by the department of the person's privilege to operate a motor vehicle for a period of two years if the refusal occurs within 10 years of a separate violation of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153 of this code, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code that resulted in a conviction, or if the person's privilege to operate a motor vehicle has been suspended or revoked pursuant to Section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion, or (iii) the administrative revocation by the department of the person's privilege to operate a motor vehicle for a period of three years if the refusal occurs within 10 years of two or more separate violations of Section 23103 as specified in Section 23103.5, or of Section 23140, 23152, or 23153 of this code, or of Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, or any combination thereof, that resulted in



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convictions, or if the person's privilege to operate a motor vehicle has been suspended or revoked two or more times pursuant to Section 13353, 13353.1, or 13353.2 for offenses that occurred on separate occasions, or if there is any combination of those convictions, administrative suspensions, or revocations.

(2) (A) If the person is lawfully arrested for driving under the influence of an alcoholic beverage, the person has the choice of whether the test shall be of his or her blood or breath and the officer shall advise the person that he or she has that choice. If the person arrested either is incapable, or states that he or she is incapable, of completing the chosen test, the person shall submit to the remaining test. If a blood or breath test, or both, are unavailable, then paragraph (2) of subdivision (d) applies.

(B) If the person is lawfully arrested for driving under the influence of any drug or the combined influence of an alcoholic beverage and any drug, the person has the choice of whether the test shall be of his or her blood or breath, and the officer shall advise the person that he or she has that choice.

(C) A person 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 that the person was driving under the influence of a drug or the combined influence of an alcoholic beverage and a drug and if the officer has reasonable cause to believe that a blood test will reveal evidence of the person being under the influence. The officer shall state in his or her report the facts upon which those beliefs are based. The officer shall advise the person that he or she is required to submit to an additional test. The person shall submit to and complete a blood test. If the person arrested is incapable of completing the blood test, the person shall submit to and complete a urine test.

(3) If the person is lawfully arrested for an offense allegedly committed in violation of Section 23140, 23152, or 23153, and, because of the need for medical treatment, the person is first transported to a medical facility where it is not feasible to administer a particular test of, or to obtain a particular sample of, the person's blood or breath, the person has the choice of those tests, including a urine test, that are available at the facility to which that person has been transported. In that case, the officer shall advise the person of those tests that are available at the medical facility and that the person's choice is limited to those tests that are available.

(4) The officer shall also advise the person that he or she does not have the right to have an attorney present before stating whether he or she will submit to a test or tests, before deciding which test or tests to take, or during administration of the test or tests chosen, and that, in the event of refusal to submit to a test or tests, the refusal may be used against him or her in a court of law.

(5) A person who is unconscious or otherwise in a condition rendering him or her incapable of refusal is deemed not to have withdrawn his or her consent and a test or tests may be administered whether or not the person is told that his or her failure to submit to, or the noncompletion of, the test or tests will result in the suspension or revocation of his or her privilege to operate a motor vehicle. A person who is dead is deemed not to have withdrawn his or her consent and a test or tests may be administered at the direction of a peace officer.

LBPDP Policy 514.5.5 STATUTORY NOTIFICATIONS:

Officers requesting that a person submit to chemical testing shall provide the person with the mandatory warning pursuant to Vehicle Code § 23612(a)(1)(D) and Vehicle Code § 23612(a)(4).

LBDP Policy 514.5.6 PRELIMINARY ALCOHOL SCREENING:



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Officers may use a preliminary alcohol screening (PAS) test to assist in establishing reasonable cause to believe a person is DUI. The officer shall advise the person that the PAS test is being requested to assist in determining whether the person is under the influence of alcohol or drugs, or a combination of the two. Unless the person is under the age of 21, he/she shall be advised that the PAS test is voluntary. The officer shall also advise the person that submitting to a PAS test does not satisfy his/her obligation to submit to a chemical test as otherwise required by law (Vehicle Code § 23612).

IN SUMMATION:

California law *requires* officers to do the following incident to lawfully arresting a DUI suspect:

- The person SHALL be told that failure to submit to testing will result in administrative suspension or revocation of their driver's license by the DMV.
- The officer SHALL advise the person that he/she has the choice of a blood or breath test.
- If the person selects a breath test, and the officer suspects drugs, the officer SHALL advise them that they are required to submit to an additional test (blood test).
- The officer SHALL advise the person that he/she does not have the right to an attorney during the test.
- The officer SHALL advise that refusal may be used against him/her in a court of law.
- The officer SHALL advise that the PASS is optional.

Per Orange County DDA Henninger, Traffic Safety Resource Prosecutor,

POLICE OFFICER BEST PRACTICE GUIDE TO AVOID SUPPRESSION MOTION:

- Correctly advise the arrestee of the law regarding consequences for refusal – CVC 23612.
- **STICK TO THE FORMS:** read the DS 367 in its ENTIRETY for every DUI arrest, even if the suspect is cooperative. The revised DS 367 has all of the necessary language to fulfil the requirements of CVC 23612.
- If the subject is unconscious, unresponsive, or equivocating about consent, get a McKneely warrant immediately.
 - Do NOT threaten to get a warrant. This will be viewed as coercive. You may tell the subject you will APPLY for a warrant, and if one is approved, blood will be drawn in a medically approved manner.
- Record your advisement.
- Document in your report his/her response and any irregularities in the blood draw procedure.

EXTRA TIP:

It would be beneficial if the arresting officer reads the Watson Advisement at the conclusion of each DUI arrest and includes this information in the officer's report. By doing so, this helps the prosecution potentially file manslaughter/murder charges if the subject kills someone as a result of an additional DUI before he/she is admonished in court.