

CITY OF BARSTOW

CALIFORNIA

POLICIES and PROCEDURES MANUAL: POLICE

Subject: CHEMICAL TEST AND IMPLIED CONSENT

INTRODUCTION

This procedure defines the proper method for giving Chemical Tests to an individual suspected of Driving Under the Influence of Alcohol and/or Drugs. It further explains recent changes in the law as they pertain to IMPLIED CONSENT (California Vehicle Code Section 13353).

1. Arrest Procedure

Officer(s) who arrest a person for Driving a Motor Vehicle While Under the Influence of an Intoxicating Alcohol and/or Drugs shall:

- a. Advise the arrestee of the test requirements as per section 13353 CVC (revised 1986)
- b. Read to the suspect the chemical test requirements from State form DL-367 (revised 1986)

2. Test Procedure

If the arrestee agrees to submit to one of the three tests required by 13353 CVC, the following procedure is to be adhered to:

a. Urine Test Procedure

When an arrestee requests a urine test, the taking of the sample shall be monitored by an Officer or other official of the same sex as the arrestee. These samples will be collected at the Barstow Police Department. The Officer obtains a San Bernardino County Crime Laboratory Urine Sample Kit from the storage cabinet. The Officer should check the seal on the cylinder to verify that it is not broken. The Officer then breaks the seal and checks to be sure that the serial numbers on all items match.

The arrestee is given the bottle labeled "Sample Number One" and directed to urinate into the bottle, filling it if possible. The arrestee must be advised to void his/her bladder during the taking of the first sample. The Officer should provide the arrestee with approximately thirty (30) minutes between samples. The Officer then provides the arrestee with the bottle labeled "Sample Number Two" and directs the arrestee to urinate in the second bottle.

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Both samples are then marked with the Barstow Police Department case number, suspect's name, date, time, and the name of the person monitoring collection of the sample, and the name of the Officer (if different from that of the person monitoring sample collection).

The sample bottle should then be put back in the cylinder and deposited in the drop box at the jail. If the suspect is unable to complete the test, he/she must choose one of the remaining tests. If the arrestee refuses to take another test, send the completed portion to the laboratory for analysis.

b. Breath Test Procedure

The Gas Chromatograph Mark IV may only be operated by persons trained and certified in its use. If the arrestee requests the breath test and the officer is not certified, the Watch Commander should be advised, and provisions will be made for a certified operator to conduct the test at the San Bernardino Jail, Barstow Substation.

c. Blood Test Procedure

When a person is arrested for driving under the influence and requests a blood test, he should normally be transported to the Barstow Police Department. However, the blood technicians will respond to the jail, hospital, or even the scene in unusual situations. While enroute, the arresting officer should contact the dispatcher and request that the on-call technician be contacted.

The technician will respond to the station or other designated location within twenty minutes. The technician will extract the sample and complete all documentation. The officer will witness the blood withdrawal, and will date and initial the blood kit. The blood kit will then be placed in storage locker number seven.

Note: The blood technicians maintain their own supplies, including blood kits, at the police station. However, an additional supply of kits will be maintained by the property officer for emergencies.

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3. Refusal to Submit to Chemical Test

When a person has been properly arrested for Driving Under the Influence, and has been made aware of the implied consent laws per CVC 13353, he had a legal obligation to comply. If he fails to do so, the arresting officer must be able to testify that the suspect understood the various ramifications of his refusal.

This is best accomplished by reading CVC 13353 and the LC-367 form to the suspect a second time, and making note of the suspects exact statements. If the officer feels that the refusal may later become a court issue, consideration should be given to having another officer present or tape record the suspect's response.

a. Recent changes in the Vehicle Code sections 13353, 23157.5, 23158, 23159, and 23206 simplify the language of the law, and increase penalties for persons refusing to submit to a chemical test after an arrest for driving under the influence.

(1) Two Year Revocation

Per new section 23157 CVC, a refusal with a prior conviction (23103.5, 23152, or 23153 CVC) will result in a two-year revocation, instead of a one-year suspension.

(2) Increased Criminal Penalties

Per amended section 23159 CVC, a refusal, if pled and proven in court, will result in an increased prison term if the driver is convicted of Driving Under the Influence (23152 CVC or 23153 CVC) from the same arrest.

NOTE: Arrestee must be advised that a refusal or a failure to complete the required chemical test will result in additional fines and imprisonment. If convicted of 23152 CVC or 25153 CVC.

NOTE: Officers shall at all times give complete admonition per DL-367, including six (6) month, two (2) year and three (3) year terms.

b. Reporting Procedure

(1) DL-367 Form

If after complete admonition the suspect still refuses to submit to any chemical tests, fill out the CL-367 form and attach it to the arrest report (202 CHP form).

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(2) 202 CHP Form

Arresting Officer shall complete the 202 Form for all persons arrested for violations of 23152 or 23153 CVC. Include all facts leading to the traffic stop, suspect's demeanor, statements, and field sobriety test. The arresting officer shall also describe chemical test given or statements regarding refusal.

(3) Citation

The arresting officer shall complete a citation listing the charge (23152 or 23153 CVC). If the suspect refuses to submit to a chemical test or fails to properly complete a test, the words "Refused Chemical Test" shall be written under the charge in the section violated box.

The District Attorney uses the citation as a complaint form; so if the refusal is not alleged on the citation, the suspect cannot be subjected to the additional charge.

4. Involuntary Drawing of Blood

The involuntary drawing of blood in DUI and under the influence, H&S 11550, arrests/investigations shall be subject to current state law and shall be accomplished within the following guidelines:

1. A supervisor must grant approval and be present at the time blood is drawn. The supervisor shall ensure policy and procedure is followed.
2. The involuntary drawing of blood should be accomplished in the following manner:
 - a. The suspect will be asked to submit;
 - b. The suspect will be advised restraint will be used if necessary;
 - c. The suspect's arm may be held down on a smooth, flat surface;
 - d. The suspect's upper body may be steadied against a supporting surface, such as a desk or counter top, to control movement.

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3. An arrestee's refusal and resistance to the drawing of blood does not in and of itself constitute a resisting or delaying.
4. Department policy prohibits:
 - a. Excessive bending, twisting, and hyperextension of arms.
 - b. Use of any weapons.
 - c. Striking blows.
 - d. Neck restraint, i.e., carotid, etc.
5. Supervisors shall immediately stop attempts to draw blood if it appears that the degree of restraint necessary could cause injury to the suspect or officers.

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