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## Impaired Driving

### 504.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of driving under the influence (DUI).

### 504.2 POLICY

The Irvine Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of California's impaired driving laws.

### 504.3 INVESTIGATIONS

The Traffic Lieutenant will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DUI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum:

- (a) The field sobriety tests (FSTs) administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in California or another jurisdiction.

### 504.4 FIELD TESTS

The Traffic Lieutenant should identify standardized FSTs and any approved alternate tests for officers to use when investigating violations of DUI laws.

### 504.5 CHEMICAL TESTS

A person implies consent to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Vehicle Code § 23612):

- (a) The person is arrested for driving a vehicle while under the influence, pursuant to Vehicle Code § 23152.

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- (b) The person is under 21 years of age and is arrested by an officer having reasonable cause to believe that the person's blood alcohol content is 0.05 or more (Vehicle Code § 23140).
- (c) The person is under 21 years of age and detained by an officer having reasonable cause to believe that the person was driving a vehicle while having a blood alcohol content of 0.01 or more (Vehicle Code § 23136).
- (d) The person was operating a vehicle while under the influence and proximately caused bodily injury to another person (Vehicle Code § 23153).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

#### 504.5.1 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).

#### 504.5.2 PRELIMINARY ALCOHOL SCREENING

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).

#### 504.5.3 PRELIMINARY ALCOHOL SCREENING FOR A PERSON UNDER AGE 21

If an officer lawfully detains a person under 21 years of age who is driving a motor vehicle and the officer has reasonable cause to believe that the person has a blood alcohol content of 0.01 or more, the officer shall request that the person take a PAS test to determine the presence of alcohol in the person, if a PAS test device is immediately available. If a PAS test device is not immediately available, the officer may request the person to submit to chemical testing of his/her blood, breath or urine, conducted pursuant to Vehicle Code § 23612 (Vehicle Code § 13388).

If the person refuses to take or fails to complete the PAS test or other chemical test, or if the result of either test reveals a blood alcohol content of 0.01 or more, the officer shall proceed to serve the person with a notice of order of suspension pursuant to this policy (Vehicle Code § 13388).

#### 504.5.4 CHOICE OF TESTS

Officers shall respect a viable choice of chemical test made by an arrestee, as provided for by law (e.g., breath will not be acceptable for suspected narcotics influence).

A person arrested for DUI has the choice of whether the test is of his/her blood or breath, and the officer shall advise the person that he/she has that choice. If the person arrested either is

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incapable, or states that he/she is incapable, of completing the chosen test, the person shall submit to the remaining test.

If the person chooses to submit to a breath test and there is reasonable cause to believe that the person is under the influence of a drug or the combined influence of alcohol and any drug, the officer may also request that the person submit to a blood test. If the person is incapable of completing a blood test, the person shall submit to and complete a urine test (Vehicle Code § 23612(a)(2)(C)).

To reduce the waiting time for a certified phlebotomy technician to respond, the arresting/transporting officer shall notify Communications as soon as practicable that he/she is responding to the station or hospital with an intoxicated arrestee. The officer shall advise the type of chemical test chosen by the arrestee and, if a blood test has been selected, request the on-call phlebotomy technician respond to the temporary holding facility or to the hospital. Communications will notify the phlebotomist designated by the Department.

#### 504.5.5 BREATH SAMPLES

The Traffic Lieutenant should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Traffic Lieutenant.

When the arrested person chooses a breath test, the handling officer shall advise the person that the breath-testing equipment does not retain a sample, and the person may, if desired, provide a blood or urine specimen, which will be retained to facilitate subsequent verification testing (Vehicle Code § 23614).

The officer should also require the person to submit to a blood test if the officer has a clear indication that a blood test will reveal evidence of any drug or the combined influence of an alcoholic beverage and any drug. Evidence of the officer's belief shall be included in the officer's report (Vehicle Code § 23612(a)(2)(C)).

#### 504.5.6 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (Vehicle Code § 23158). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility. The technician withdrawing the blood sample will be responsible for booking

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the blood sample at the Orange County Crime Lab. In major traffic accidents involving felonies, or when directed by a supervisor, a second sample will be booked into the refrigeration unit located in the evidence packaging area of the police facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

### **504.5.7 URINE SAMPLES**

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample. The arrestee should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample (Vehicle Code § 23158(i)).

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

### **504.6 TESTING AT A HOSPITAL**

Most blood, breath and urine tests will be administered at the jail. However, if a timely breath or urine test cannot be administered because the person is transported to a medical facility where such tests cannot be facilitated, the person shall be advised that a blood test will be the only choice available and a blood sample may be taken at the medical facility (Vehicle Code § 23612(a)(3)).

Based on probable cause, the officer should place the conscious person under arrest and advise the attending physician of the intention to collect a sample of the person's blood. Unless the attending physician objects for medical reasons, a blood sample will be collected in the prescribed manner.

When a person is suspected of driving under the influence of alcohol and/or drugs and the person is unconscious or in a condition rendering him or her incapable of refusal, the officer shall advise the attending physician of the intention to collect a sample of the person's blood as evidence. If the physician does not object based on medical reasons, the blood will be collected in the prescribed manner, as outlined below.

If a person is deceased, the officer should coordinate with the Coroner's Office to ensure that a viable test will be obtained (Vehicle Code § 23612(a)(5)).

### **504.7 REFUSALS**

When an arrestee refuses to provide a viable chemical sample, officers should:

- (a) Advise the arrestee of the requirement to provide a sample (Vehicle Code § 23612).

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- (b) Audio- and/or video-record the admonishment when it is practicable.
- (c) Document the refusal in the appropriate report.

#### 504.7.1 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, officers shall personally serve the notice of order of suspension upon the arrestee and take possession of any state-issued license to operate a motor vehicle that is held by that individual (Vehicle Code § 23612(e); Vehicle Code § 23612(f)).

#### 504.7.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

- (a) A McNeely Search Warrant is approved by the on-call magistrate.
- (b) The officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts such as a lengthy time delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

#### 504.7.3 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer) and attempt to persuade the individual to submit to such a sample without physical resistance.
  - 1. This dialogue should be recorded on audio and/or video if practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Ensure the forced blood draw is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
  - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.

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2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
  3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform as a responding supervisor, as set forth above.

#### **504.8 ARREST AND INVESTIGATION**

##### 504.8.1 WARRANTLESS ARREST

In addition to the arrest authority granted to officers pursuant to Penal Code § 836, an officer may make a warrantless arrest of a person that the officer has reasonable cause to believe has been driving under the influence of an alcoholic beverage or any drug, or under the combined influence of the same when (Vehicle Code § 40300.5):

- (a) The person is involved in a traffic accident.
- (b) The person is observed in or about a vehicle that is obstructing the roadway.
- (c) The person will not be apprehended unless immediately arrested.
- (d) The person may cause injury to him/herself or damage property unless immediately arrested.
- (e) The person may destroy or conceal evidence of a crime unless immediately arrested.

##### 504.8.2 OFFICER RESPONSIBILITIES

The officer serving the arrested person with a notice of an order of suspension shall immediately (Vehicle Code § 23612):

- (a) Forward a copy of the completed notice of suspension or revocation form and any confiscated driver's license to the Department of Motor Vehicles (DMV).
- (b) Forward a sworn report to DMV that contains the required information in Vehicle Code § 13380.
- (c) Forward the results to the appropriate forensic laboratory if the person submitted to a blood or urine test.

#### **504.9 HOSPITAL PROTOCOL - MISDEMEANOR AND FELONY**

Misdemeanor Driving Under the Influence – Driver Injured - If the driver of a vehicle is injured and subsequently placed under arrest for misdemeanor DUI, the following procedure should be followed by the officers in addition to the 13353 CVC requirements:

- (a) Request a California Forensic Phlebotomy technician to respond to the hospital.

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- (b) Witness the sample being drawn and complete appropriate documentation (CFP will retain possession of sample for Orange County Crime Lab).
- (c) Request Communications to conduct a want/warrant check.
- (d) Complete the Certification of Release From Custody Form.
- (e) Issue a court date of at least 30 days following the date of offense.
- (f) Have arrestee sign the form.
  - 1. If the subject's medical condition prevents a signature on the form, the officer shall note that in the arrest report.
  - 2. If hospitalization or other major medical treatment causes a conflict with a court date, indicate that no date was set by the officer.
- (g) Release subject from custody and issue the pink copy of the form to the subject.
- (h) Retain the remaining two copies of the form and turn in with the arrest report.

Felony Driving Under the Influence/Vehicular Manslaughter – Driver Injured - If the driver of a vehicle is injured and subsequently placed under arrest for DUI causing injury or death to another, the following procedure should be followed by the officer, in addition to the §13353 CVC requirements:

- (a) Request a California Forensic Phlebotomy technician to respond to the hospital.
- (b) Instruct CFP to draw two samples. One is retained by CFP for the Orange County Crime Lab analysis, and the other is retained by the officer and booked into evidence cold storage at the station.
- (c) Witness the samples being drawn and complete appropriate documentation.
- (d) Request Communications to conduct want/warrant, driving and criminal history.
- (e) Contact the watch commander and traffic detectives to coordinate investigative follow-up prior to release.
- (f) Contact will be made with the detention-release officer at the Orange County Jail by either the officer or the watch commander.
- (g) The detention-release officer will, based upon information provided to him by the agency, make a determination if the circumstances surrounding the case warrant further detention or release, and contact the on-call judge.
- (h) If the judge concurs with the release recommendation, the detention-release officer will notify IPD and generate a teletype to IPD authorizing the release and naming the judge granting same.
- (i) Upon receipt of this notification, the officer may then release the arrestee and issue him/her a Certificate of Release From Custody - Written Promise to Appear (do not issue a "detention only" 849(b)(1) PC).
- (j) The OR release teletype shall be attached to the arrest report. Whenever possible a copy of the teletype should also be attached to the arrestee's copy of the Certificate of Release.

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- (k) In the event the arrestee does not qualify for an OR release, (unidentified, warrants) the officer will maintain custody.
- (l) Custody will be maintained at the treating facility until arrangements can be made to transfer the subject to Western Medical Center, Anaheim, and be lodged into the "jail ward."
- (m) If the arrestee is immovable and not releasable, custody will be maintained at the treating facility until the watch commander can contact the on-call district attorney or judge for direction.
- (n) Do not indicate to the arrestee that he/she is not responsible for medical bills while in police custody. They will be billed for medical care.

#### Precautions in Felony Driving Under the Influence/Vehicular Manslaughter Arrests

- (a) All subjects must be arrested prior to administering of any chemical test.
- (b) Because intoxication may be caused by a combination of alcoholic beverages and drugs, the blood will be screened for both forms of intoxicants.
- (c) Be sure to document all drugs administered to the arrestee by either the paramedics or by the treating facility, the time administered, and into what location of the body. Have the blood sample drawn from a location not previously used by medical personnel.
- (d) The assigned traffic detective will handle any follow-up work.

#### **504.10 IMMEDIATE BOOKING AND RELEASE PROGRAM**

- (a) To qualify for the Immediate Booking and Release Program (IBAR), the arrestee should meet the following specific criteria:
  - 1. Be non-combative.
  - 2. The arrestee shall have no injuries or known medical problems, which could result in the necessity for medical treatment while in custody.
  - 3. The arrestee may choose either the breath test or blood draw as the method of chemical testing. The blood test can only be used whenever a lab technician is able to respond to IPD.
  - 4. The arrestee shall demonstrate the capability of having a relative or friend respond to Irvine PD and pick them up within 60 minutes of the arrest.
  - 5. The arrestee shall agree to sign the written promise to appear form, including an agreement not to operate a motor vehicle for six hours after being released from custody.
- (b) The IBAR program may be used upon approval of the watch commander when there are no personnel staffing the custody facility. Officers who are processing DUI arrestees through the IBAR program shall utilize the following process:
  - 1. Immediately after taking a subject into custody for DUI, determine if the IBAR program criteria are met. Coordinate phone calls to a friend or relative to confirm

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- that they will respond and pick up the arrestee. No more than three calls should be made on behalf of an arrestee.
2. If the criteria are met (e.g. community caretaker doctrine), the arrestee's vehicle shall be towed unless it is released to a non-intoxicated passenger or parked per the Vehicle Towing and Release Policy. If the vehicle is stored the officer shall complete a vehicle storage form pursuant to §22651(h) CVC (Driver Arrested). On the last line of the narrative section of the form shall be written, "Vehicle Not To Be Released Before" (specify a time at least six hours after time of arrest).
  3. Upon arrival at Irvine PD, the arrestee shall be processed as they normally would be.
- (c) The arrestee shall be placed in the sobering cell and be monitored by the custody officer, if available, or the arresting officer until their ride arrives. Female arrestees awaiting a ride shall not be housed in the sobering cell with male arrestees.
- (d) Upon arrival of the party picking up the arrestee, the custody officer or the arresting officer shall:
1. Complete the written promise to appear form listing the name, address, and the phone number of the person that the arrestee is being released to.
  2. Have the arrestee initial the box, "I agree not to operate a motor vehicle for six hours."
  3. Explain the conditions of release to the arrestee:
    - (a) Written promise to appear.
    - (b) Date and location of appearance.
    - (c) Agreement not to operate a motor vehicle for six hours after release.
    - (d) If the arrestee's vehicle was stored, the name and phone number of the tow agency, and that the vehicle will not be released for at least six hours from the time of arrest.
  4. Have the arrestee sign the written promise to appear and return their property.
  5. Obtain arrestee's fingerprint impressions on the bottom of the written promise to appear and then release the arrestee from custody.

#### **504.11 RECORDS BUREAU RESPONSIBILITIES**

The Records Supervisor will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

#### **504.12 ADMINISTRATIVE HEARINGS**

The Records Supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to DMV.

Any officer who receives notice of required attendance to an administrative license suspension hearing should promptly notify the prosecuting attorney.

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An officer called to testify at an administrative hearing should document the hearing date and DMV file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.

#### **504.13 TRAINING**

The Training Manager should ensure that officers participating in the enforcement of DUI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to DUI investigations. The Training Manager should confer with the prosecuting attorney's office and update training topics as needed.