

STOCKTON POLICE DEPARTMENT

GENERAL ORDERS

SOBRIETIES
SUBJECT

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NO: T-6

FROM: CHIEF ERIC JONES

TO: ALL PERSONNEL

INDEX: Sobrieties
Intoxicated Driver Processing
Narcotic Processing of Influenced Driver
Omicron Intoxilizer Use
Handling of Blood and Urine Samples
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I. POLICY

Persons arrested for Driving Under the Influence will be subjected to a sobriety test.

II. LAW

Officers must become familiar with Sections 13353, 13353.1, 13353.2, 23152(a), (b), (c), (d), 23153, 23136, 23137, 23138, and 23140 of the California Vehicle Code.

III. PROCEDURE

A. These rules will be followed in cases involving a person suspected of driving under the influence: (exception: injured drunk drivers -- refer to T-5, Drunk Driving Arrests Involving Accidents).

1. Each suspected intoxicated driver will perform a Field Sobriety Test, if possible.
 - a. At the conclusion of the Field Sobriety Test, all drivers the officer feels failed the test(s) will be told that they are under arrest for Drunk Driving.
2. Following the subject's arrest, the person will be advised of Section 23157 of the California Vehicle Code, "Chemical Test Admonition." NOTE: A Spanish version of this form is available.
 - a. Persons arrested on private property generally open for public use, as well as on a public roadway, are to be advised under Section 23157 VC.
3. A blood, breath, or urine sample will be obtained, if possible.
 - a. Section 23157 VC states in part, "The person arrested shall have the choice of a blood, breath, or urine test and must choose and complete one of these tests. If the subject tells the officer to choose, the officer may do so. If the subject is unable to complete or says that he/she is unable to complete a certain test, they must choose and complete one of the remaining tests."
 - b. If the person is unable to complete the test of his/her choice; i.e., unable to give a urine sample twenty (20) minutes after voiding his/her bladder or unable to complete the breath test, the subject must be re-advised of 23157 VC indicating they must take one of the remaining test(s) or that person's license will be suspended.
 - c. California Vehicle Code Section 23157.5 states, "In addition to the requirements of Section 23157 VC, a person who chooses to submit to a breath test shall be advised before or after the test that the breath-testing equipment does not retain a sample of the breath and that no breath sample will be available after the test that could be analyzed later by the person or any other person."

- (1) If the driver so desires, a blood or urine test may be taken in conjunction with the breath test at no cost. This will be retained by the State for later analysis, if so desired.
 - (2) The sample will be placed in the proper container with the wording "DUPLICATE SAMPLE TO BREATH TEST" on the envelope.
- d. In the event the arrested person refuses all tests, the person must be advised that the refusal will be used against him/her in court. DMV Form DS 367 (Officers Statement, 13353 VC), must also be completed.
4. Advise the violator of the Administrative Per Se Law.
- a. Any driver arrested for driving under the influence who: Refuses to submit to and complete a chemical test, or takes a breath test which shows a BAC of 0.08% or more (.04% or more for the driver of a commercial motor vehicle, as defined in Section 15210), or takes a urine or blood test and the officer believes that subsequent test results will show the driver is at or above the 0.08% BAC (.04 % or more for the driver of a commercial motor vehicle, as defined in Section 15210), or a person under 21 who takes a breath test with the results of 0.05% or more, or a person under 21 who takes a blood or urine test and the officer believes the results will show the blood alcohol concentration to be 0.05% BAC or more.

B. SOBRIETY ROOM

1. The sobriety testing of the person who is driving under the influence should take place in the Sobriety Room. Officers using this room shall ensure that it is kept clean at all times.
2. At NO TIME should an officer transmit with their portable radio in or near the Sobriety Room. Radio transmissions in and around the EPAS can cause it to malfunction and possibly give a false reading. It is highly recommended that when entering the room, officers turn off their radios.

C. PHYSICAL EXAMINATION

1. The arresting officer must observe the arrested subject's clothing, attitude, coordination, etc.
2. This information will be listed on Stockton Police Department Intoxication Form (PD-1040)

D. SECURING A CHEMICAL SAMPLE

1. Breath Test.
 - a. Use the Evidential Portable Alcohol System (EPAS).
 - (1) EPAS units are currently stored at both police facilities and with each DUI officer. All EPAS units must be at their respective police facilities on Wednesday of each week before 1700 Hours for calibration. DUI officers are responsible for their calibration and will inform patrol officers once units are calibrated and ready to check out.
 - b. Only personnel trained in the operation of the EPAS are authorized to operate this machine.
 - c. If the results of the breath test are less than .08% BAC and there is evidence (observations, etc.) indicating the subject is under the influence, additional investigation is required. If indicated, after the additional investigation, the subject may still be charged and incarcerated.
 - (1) When the results are less than .08% BAC, the officer shall:
 - (a) Question the subject about the use of narcotics or medication.
 - (b) Attempt to get a urine or blood sample.
 - (c) The subject may be booked for 23152(a) VC only.
 - (2) When the results are .08% BAC or higher, the proper charging section is 23152(b) CVC.
 - (a) Officers should printout two copies of the EPAS results. One copy retained for the report which should also have the suspect's right thumb placed on the opposite side

and a second copy given to the suspect.

2. Urine Test

- a. Have the subject void his/her bladder in a toilet, noting the time (this sample is not saved).
- b. After a period of twenty (20) minutes, not to exceed thirty (30) minutes, have the subject provide a urine sample for analysis, again noting the time obtained.
- c. Use the bottle provided in the Urine Sample Kit supplied by DOJ for this purpose. These Kits are located in the Sobriety Room.
 - (1) The obtaining of the sample must be observed personally by same sex police personnel to assure the urine sample is neither contaminated nor substituted.
 - (a) Note: The Urine Sample Kit is contained in a small white box addressed to the DOJ Lab. Check to see that the kit is complete. The box contains: a urine sample bottle (with preservatives), a bottle label, a plastic safety bag, an absorbent towelette, the DOJ urine sample envelope, and a piece of blue security tape (used to seal the box closed).
- d. The sample bottle cap then must be sealed tightly.
- e. After obtaining the sample, complete the DOJ envelope, making certain the crime report number is placed on the form. Place the bottle into the plastic bag, along with the absorbent towelette, and seal it. The sealed plastic bag is then placed into the completed DOJ envelope and sealed. Carefully fold the envelope to fit it into the box, close the box, and seal it with the blue security tape.
- f. The sealed box is then secured in the locked refrigerator located in the Sobriety Room. The officer will complete the log (ledger) located at Headquarters and relock after deposit (no property record is required).

3. Blood Test

- a. When a person elects to give a blood sample, the arresting officer should inquire and determine whether there is any medical reason why blood should not be taken (cases of hemophilia, heart condition, etc.).

Note: It is the arresting officer'(s) responsibility to take a DOJ Blood Sample Kit with him/her to the hospital where the sample is to be drawn. The kit includes a grey-topped sample tube, a tube label, a plastic safety tube, a plastic bag, an absorbent towelette, a DOJ envelope, and a piece of red security tape to seal the box when closed.

- b. Unless circumstances prohibit, blood samples will be obtained by a doctor or nurse at the San Joaquin County Hospital (i.e., subjects are already at another hospital).
 - (1) Officers will witness the actual drawing of the blood and mark the sample tube, along with the person drawing the sample, with the tube label. The sample tube will be placed into the plastic safety tube, this tube will be put into the plastic bag along with the absorbent towelette. The plastic bag containing the sample will be put into the completed DOJ envelope and sealed. The DOJ envelope will be folded to fit back into the box, sealing the box with the red security tape. The kit will then be transported to the storage refrigerator located in the Sobriety Room at the Police Department (no property record is required).

E. ARRESTEE'S RIGHT TO CALL A DOCTOR

1. A person arrested for driving under the influence does have a right, or a reasonable opportunity, to call that person's own doctor at the person's own expense.
2. This right does not prevent the police from obtaining a sample prior to the subject's doctor obtaining a sample.
3. "Reasonable opportunity" is when the subject arrives at the San Joaquin County Jail.

- a. If the period of time from arrest to booking is expected to be lengthy, the arrestee will be allowed to call a doctor from the Police Facility.

F. DRIVING UNDER THE INFLUENCE OF A NARCOTIC

- 1. Processing persons driving under the influence of a drug or narcotic is handled in a different manner than persons processed for driving under the influence of alcohol.
 - a. The subject will be given a Field Sobriety Test.
 - b. The subject will be advised of Section 23157 VC as it applies to blood or urine testing.
 - c. The subject will be taken to the Sobriety Room where the officer will advise the subject of the following:
 - (1) The officer's observations and conclusions as to why the subject is under the influence of a drug or narcotic.
 - (2) Advise the subject of the Drug Admonition on the back of the Officer's Statement Form (DS 367), completing same.
 - (3) This conversation for obtaining a sample will be done prior to the Miranda warning.
 - d. The investigating officer will attempt to have an on-duty Drug Recognition Expert "DRE" assist in the processing.
 - (1) The Telecommunications Center has a list of all certified DREs within the department.
 - e. The following are recommended specimens to be obtained, when possible, for chemical analysis:

<u>Test</u>	<u>Quantity and Specimen</u>	
Amphetamines	40-50 cc	Urine
Antihistamines	40-50 cc	Urine
Barbiturates	10 cc	Blood
Darvon	40-50 cc	Urine
Dilantin	10 cc	Blood
Heroin (Morphine)	40-50 cc	Urine
Librium	10cc	Blood
Morphine (Alkaloid)	40-50 cc	Urine
Placidyl	10cc	Blood
Glues/Toluence	10 cc	Blood

NOTE: The bottle supplied in the Sobriety Room, one-half full, is an adequate amount of urine for testing.

A test tube, 5 inches in length, filled is the adequate amount of blood for testing.

- (1) The sample label should indicate what type of drug or narcotics is suspected for faster, more economical service, otherwise, a complete screening must be done.

G. ARRESTS WITHIN THE CITY LIMITS BY ANOTHER LAW ENFORCEMENT AGENCY

- 1. When summoned to the scene, an officer from the Stockton Police Department may handle the arrest. If so, the officer should:
 - a. Conduct an independent sobriety test.
 - b. Book the subject at the San Joaquin County Jail with S.P.D. and assisting agency name listed on the booking slip.
 - c. Include in the Crime/Arrest Report the statements of the assisting officers.

H. REPORTS

1. The reports listed below are all required in a DUI arrest:
 - a. Crime/Arrest Report via ARS
 - b. Intoxication Report (PD-1040)
 - c. Administrative Order of Suspension (DS 360)
 - d. Officer's Statement (DS 367)
 - e. City of Stockton Billing Memorandum (F505 PD-DUI)
 - (1) This form will only be completed when an emergency response is required by either City of Stockton fire or police personnel.
 - f. Supplement of Officer's Statement Blood/Breath/Urine Results (DS 367A)
 - g. If the violator refuses to submit to a chemical test (Section 13353 VC), the back side of the Administrative Order of Suspension (DS 360) must be completed.
 - h. San Joaquin County Jail Booking Slip.
 - (1) If the arrest occurs as the result of a collision, refer to General Order T-7.
 2. A citation will be completed and all copies attached to the Crime/Arrest Report.
 3. One EPAS photocopy will have the suspect's right thumbprint placed on the back.
 4. The EPAS printout and copy will be attached to the citation and then attached to the ARS Crime/Arrest Report as an attachment.
 5. One copy of the EPAS results will be given to the arrestee.
 6. Officers will take any valid California Driver's License in the driver's possession.
 7. Complete the Administrative Order of Suspension (DS 360) and serve the third copy to the driver.
 - a. This along with the driver's release from custody slip, will serve as a thirty (30) day temporary license.
 8. Complete the Officer's Statement (DS 367), attach it to the California Driver's License taken from the driver, the remaining copies of the Order of Suspension (DS 360), a citation showing any vehicle code sections violated, including the appropriate 23152 VC Section, and the breath results (if taken). These documents will be made an attachment to the ARS Crime/Arrest Report and placed in the Sergeant's Review Box.
 - a. If the driver submitted to a blood/urine test, a Supplement to Officer's Statement (DS 367A) will be completed. The supplement will be attached to the documents listed above for later processing by Records personnel.
- NOTE: The temporary license is only valid if the driver has a valid California Driver's License. The officer will advise the violator that his/her driver's license will be confiscated and he/she will be issued a temporary driver's license. A temporary license will not be issued when the driver has no license, is licensed in another state or country, or if the driving privilege has been suspended or revoked. There is no statutory law requiring the arresting officer to admonish the violator regarding the Administrative Per Se. The violator can be informed, at the time of arrest or any subsequent inquiry by the violator, that there is a telephone number on the Order of Suspension to assist them with any questions regarding the Administrative Per Se action; (916) 657-0214.
9. If an emergency response is required due to a DUI incident, the officer shall complete a City of Stockton Billing Memorandum (F505 PD-DUI). State law and SMC 10-350 authorize the recovery of Police & Fire Units' cost incurred as a result of the emergency response. This report will be attached to the Crime/Arrest Report for Sergeant approval.

IV. USE OF PRELIMINARY ALCOHOL SCREENING (EPAS/SCREEN MODE)

- A. The preliminary alcohol screening test via EPAS Screen Mode indicates the presence or

concentration of alcohol based on a breath sample in order to establish reasonable cause to believe the person was driving a vehicle in violation of Section 23140 VC, 23152 VC, or 23153 VC. It may be used after the officer evaluates the totality of the circumstances, including the person's performance on the field sobriety tests and under both of the following conditions:

1. If a person refuses to take field sobriety tests or is incapable of taking the tests, the preliminary alcohol screening test may be used as a further investigative tool, unless the person refuses to take the preliminary alcohol screening test.
2. If the officer decides to use a preliminary alcohol screening test, the officer shall advise the person that he or she is requesting consent from that person to take a preliminary alcohol screening test to assist the officer in determining if that person is under the influence of alcohol.

The person's obligation to submit to a blood, breath, or urine test for the purpose of determining the alcohol or drug content of that person's blood is not satisfied by the person submitting to a preliminary alcohol screening test. The officer shall advise the person of that fact and of the person's right to refuse to take the preliminary alcohol screening test.

V. PROCESSING PERSONS UNDER 21 DRIVING WITH BLOOD ALCOHOL OF .01 OR MORE (23136, 23137, 23138 VC) (The "Zero Tolerance" law.)

- A. 23136 VC: "It is unlawful for any person under the age of 21 who has a blood alcohol content of .01 or more, as shown by a EPAS/Screen Mode (preliminary alcohol screening) test, to drive a vehicle."
1. This law, effective in 1994, amounts to a total prohibition against drinking and driving for persons under 21. However, it does not bar prosecution under Section 23152 VC or 23153 VC, or any other statute.
 2. If you have lawfully detained a driver under the age of 21 and have "reasonable cause," i.e., probable cause to suspect that the driver has been drinking, you "shall" request the driver to take a PAS test, if one is immediately available (23137 VC). You must also advise the driver that his or her failure to take or complete a PAS test as requested will result in a one-to-three-year suspension or revocation of his or her driver's license (23136VC, 23137 VC).
 3. If the test shows .01 or more, or if the driver refuses to take or to complete the PAS test, the usual "Admin Per Se" provisions apply. Accordingly, you should physically confiscate the driver's license and immediately issue a notice of the order of suspension endorsed as a temporary license (DS-360A). The Records Section will forward the appropriate documents to DMV within five business days, as set out in Section 23137 VC.

B. REPORTS

1. The following reports are required:
 - a. A Crime/Arrest Report will be filed to document probable cause for the stop, administration of the PAS test, and disposition of the violator's vehicle.
 - b. Forms DS 360A (0.01 BAC - Under 21) Administrative Per Se Order of Suspension/Revocation) will be filed, as will Form DS 367 (Officer's Statement). The third copy of the Form DS 360A will be served to the violator.
 - c. If the violator refuses to submit to a PAS test, the reverse side Form DS 367 must be completed.
2. A citation will not be issued for Section 23136 VC. A citation may be issued for any other section that was violated. In those cases, the pink copy of the citation will be given to the driver. The remaining copies will be attached to the Crime/Arrest Report.
3. The officer will confiscate the violator's drivers license. It is to be attached to the DS 367 Form.
 - a. NOTE: DMV has a telephone number available should citizens have questions about the Administrative Per Se action. The number is (916) 657-0214.

VI. PERSONS UNDER 21 DRIVING WITH BLOOD ALCOHOL OF .05 OR MORE

- A. 23140 VC: "It is unlawful (an infraction) for any person under the age of 21 who has .05 percent or more, by weight, of alcohol in his or her blood to drive a vehicle."
1. A violation of this section can be found, even though no chemical test was taken, as long as the trier of fact finds that the driver: (1) was under the influence or was affected by an alcoholic beverage, and (2) had a BAC of .05% or more.
- NOTE: This offense pertains only to alcohol, not to a "drugs only" DUI case. The section does apply, however, to a "combination" case as long as the minor's blood alcohol level was .05% or more.
- B. This offense is separate from, and in addition to, the usual "drunk driving" statutes - Vehicle Code Sections 23152 and 23153.
1. The "implied consent" law and the "Admin Per Se" sanctions, also apply to a violation of Section 23140 VC.

VII. FORCE TO OBTAIN A BLOOD SAMPLE

- A. The Judicially established criteria for maintaining the admissibility of forcibly seized blood samples, for the investigation of any crime, focuses on the following elements:
1. The sample is drawn by a medically qualified person in a reasonable and medically approved manner.
 2. The test is incidental to a lawful custodial arrest.
 3. There is reasonable belief that evidence of alcohol or drugs will be found in the sample.
 4. The force used is limited to that amount which is reasonable and necessary to obtain the sample, and is not disproportionate to the need.
- B. Section 13353 (Implied Consent) and related laws (23612, 23614, 23158, and 23577 VC) do not preclude the taking of a blood sample without the consent of, or over the objections of, the arrested person. Additionally, a person who refuses to consent to a chemical test is still subject to the administrative sanction(s) of 13353, even though a blood sample was obtained against his/her will. Specifically, the driver's license suspension sanction is predicated upon a refusal to consent to take a chemical test and this sanction is stayed upon a lawful seizure of a blood sample over the objection of the defendant.
1. Due to the section 23612 VC revision, the determination that the offender has refused is dependent upon whether the person was arrested for alcohol only DUI (and test availability) or a drug related DUI.
 - a. Alcohol Only DUI: If arrested for alcohol only DUI and either test (blood or breath) was available, a non-consensual (forced) blood withdrawal may be administered where the arrestee refused to submit to a blood or breath test. The urine test need not be offered.
 - b. Drug Related DUI: If arrested for a drug related DUI, a non-consensual (forced) blood draw may be administered where the arrestee refused to submit to a blood, breath, or urine test.
- C. Arrestees who refuse to voluntarily submit to a chemical test will be physically compelled to submit to a blood test only after all the following procedural guidelines have been met:
1. A chemical test is essential to the prosecution of a criminal case.
 2. The use of alcoholic beverages and/or drugs, as defined in sections 109 and 312 VC, is suspected.
 3. The individual must have been placed under arrest for a violation of sections 23140, 23152, 23153 VC, or 191.5 or 192.(3) PC. (For the purposes of this section, Section

23140 violations will only result in a forcible blood withdrawal when a traffic collision results in the death of a person and an arrest for felony vehicular manslaughter.)

4. The person arrested has been given the opportunity to submit to a chemical test of his/her choice, as directed by law.
 - a. The arresting officer shall read verbatim the formal admonishment found on the DMV DS367 or 367M, and the arrestee shall have refused to submit to a chemical test.
 - b. The arrestee shall be admonished that refusal to voluntarily submit to, or complete, a chemical test of his/her choice will result in the forcible withdrawal of a blood sample, and the mandatory license suspension pursuant to section 13353 VC (Implied Consent) and 13353.2 VC (Admin. Per Se) will be invoked.
 5. The arresting officer shall obtain supervisor approval prior to the arrestee being physically compelled to submit to a blood test. The approving supervisor, if readily available, should be present during the procedure. The supervisor will ensure that the conditions outlined in this general order are complied with. Participating officers and supervisors shall also ensure that no more force or restraint than reasonably necessary is used to accomplish this procedure.
 6. The medically qualified person who will be extracting the blood must consent to the procedure, notwithstanding the arrestee's refusal or resistance. The sample shall be obtained in a reasonable and medically approved manner.
 7. The chemical test refusal statement located on the DMV DS367 or SD367M (under 21) shall be completed.
 8. A statement shall be made in the arrest report that it became necessary to forcibly remove a blood sample from the subject. The procedure used shall be articulated in the report (i.e. how the suspect was secured, resistance (if any), amount of force used (if any) and location from which the sample was taken).
- D. The amount of force used (if any) to overcome the resistance shall be limited to that which is reasonable and necessary and shall not be disproportionate to the need. A sufficient number of law enforcement personnel shall be available to adequately restrain the arrestee. Sound professional judgment shall be used when forcibly removing a blood sample from the suspect., and care should be taken to guard against injuries to the subject or officers involved.
- E. Blood samples SHALL NOT be taken from persons who are hemophiliacs, or who have a heart condition and are using a prescribed anticoagulant. (Refer to Section 23612 VC)

VII. BICYCLE/MOTORIZED SCOOTER DUI

- A. Section 21200 VC provides the basis for enforcement concerning bicyclists. Bicycles are not included within the definition of a motor vehicle (Section 415 VC); therefore, Section 13353 VC, Refusal of Chemical Tests is not applicable. However, the provisions of Section 40300.5 VC, DUI involved in an accident do apply.
1. Section 21200.5 VC makes it a misdemeanor for anyone to ride a bicycle upon a highway while under the influence of alcohol and/or drugs.
- B. Section 21221 VC provides the basis for enforcement concerning motorized scooters. A motorized scooter is defined as a "device" in section 407.5 VC. Motorized scooters are specifically excluded in Section 1803 VC, Report of Court Refusal of Chemical Tests, does not apply. However, the provisions of Section 40300.5 VC, DUI involved in an accident do apply.
1. Section 21221.5 VC makes it a misdemeanor for anyone to operate a motorized scooter upon a highway while under the influence of alcohol and/or drugs.
- C. Persons arrested for Section 21200.5 or 21221.5 VC shall be handled in the following manner.
1. Officers shall advise the arrestees that they are entitled, but not required to take a chemical test of their blood or breath, if they so desire. The arrestee may also choose a urine test pursuant to Section 23612 VC. (The urine test is based upon the availability of both blood and breath tests.) This advisement shall be noted in the arrest report.

2. If the arrestee requests a chemical test, the officer shall afford him/her the opportunity to take a test. If the arrestee fails to complete a test, or changes his/her mind about taking the test, these facts shall be noted in the arrest report.
3. The test shall be administered under the same conditions as any chemical test pursuant to Section 13353 and 23612 VC.
4. Although the recognized presumptive blood alcohol limit of 0.08 percent does not apply to sections 21200.5 or 21221.5 VC, it can be used as a guide, along with observed riding patterns, to determine the arrestee's ability to safely operate a bicycle or motorized scooter.
 - a. Some persons arrested for Sections 21200.5 or 21221.5 VC will not request or submit to a chemical test. In those instances, it is essential that officers accurately document the specific objective symptoms of intoxication which led to the arrest of the subject, including any FST's given. Emphasis should be placed on evidence of the violator's inability to operate a bicycle or motorized scooter safely.
5. Officers should ensure the security of the arrestee's bicycle or motorized scooter when he/she is taken into custody. If possible, the bicycle or motorized scooter can be released to a responsible person. The bicycle or motorized scooter can also be placed in a secure location at the direction of the arrestee. The disposition of the bicycle or motorized scooter shall be noted in the narrative of the arrest report.
6. A arrest report will be completed, along with the intoxication report (PD-1040) and a DMV MS367A, Blood/Urine supplement, if the subject submitted to a blood or urine test.