

# **Use of Warrants for Breath Test Refusal: Case Studies**

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1. Report No. DOT HS 810 852		2. Government Accession No.		3. Recipient's Catalog No.	
4. Title and Subtitle Use of Warrants for Breath Test Refusal: Case Studies				5. Report Date October 2007	
				6. Performing Organization Code	
7. Authors J.H. Hedlund and D.J. Beirness				8. Performing Organization Report No.	
9. Performing Organization Name and Address Preusser Research Group, Inc. 7100 Main St. Trumbull, CT 06611				10. Work Unit No. (TRAIS)	
				11. Contract or Grant No. DTNH22-02-35121, Task Order 06	
12. Sponsoring Agency Name and Address U.S. Department of Transportation National Highway Traffic Safety Administration Office of Behavioral Safety Research 1200 New Jersey Ave. SE. Washington, DC 20590				13. Type of Report and Period Covered Draft Final Report, Case Studies 2005-2006	
				14. Sponsoring Agency Code	
15. Supplementary Notes The Contracting Officer's Technical Representative for this project was Amy Berning.					
16. Abstract <p>This study investigated the use of warrants to obtain blood samples from drivers arrested for alcohol-impaired driving and who refuse to provide breath samples when requested to do so by law enforcement officers. Case studies were conducted in four States: Arizona, Michigan, Oregon, and Utah. Meetings and discussions with law enforcement officers, prosecutors, defense attorneys, judges, and officials in the Department of Public Safety or the Governor's Highway Safety Office provided a thorough picture of each State's experience with warrants, documented in a separate chapter for each State. Telephone interviews were conducted with key contacts in California and Nevada, two States in which warrants are not required to obtain blood samples from drivers who have refused requests for breath samples. The final chapter summarizes and synthesizes the information and conclusions from all case study States.</p>					
17. Key Words Alcohol-impaired driving BAC DUI DWI			18. Distribution Statement Document is available through the National Technical Information Service Springfield, VA 22161 and free of charge at <a href="http://www.nhtsa.dot.gov">www.nhtsa.dot.gov</a> .		
19. Security Classif.(of this report) Unclassified		20. Security Classif.(of this page) Unclassified		21. No. of Pages 150	
				22. Price	

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# **Executive Summary**

## **Background**

The amount of alcohol in a driver's blood is an important piece of evidence in demonstrating the influence of alcohol on a driver's ability to operate a vehicle safely. In all States, a blood alcohol concentration (BAC) level of .08 grams per deciliter (g/dL) is per se evidence of driving while impaired (DWI). Many prosecutors and judges believe that a DWI conviction is more difficult to obtain without a BAC.

Implied consent laws in all States require drivers to provide some form of BAC evidence, typically through a breath test when requested by a law enforcement officer. Drivers may refuse this request. In some States, the sanctions for refusal are less severe than the sanctions for a DWI conviction. Hence, it may be to a driver's advantage to refuse the test. A recent report documented that about one-quarter of all drivers arrested for DWI in 40 States and the District of Columbia from 1996 to 2001 refused the BAC test.

To reduce breath test refusals, increase the proportion of drivers with BAC evidence, and increase the number of drivers successfully prosecuted for DWI, some States use search warrants. If a driver refuses to provide a breath test, the arresting officer contacts a magistrate or judge, obtains a warrant that requires the driver to provide a blood sample, and then arranges for the blood sample to be drawn, by force if necessary. The procedures for warrants and the situations in which warrants are used differ from State to State. The National Highway Traffic Safety Administration is aware of six States that used warrants extensively for BAC test refusals in at least one jurisdiction in 2006.

## **Study Goals and Methodology**

The study's goal was to describe how warrants are used in four States – Arizona, Michigan, Oregon, and Utah – selected because some jurisdictions in each State use warrants extensively. Researchers met with selected law enforcement officers, prosecutors, defense attorneys, judges, and officials in the Department of Public Safety or the Governor's Highway Safety Office in each State. All people interviewed had extensive experience with the use of warrants. They do not constitute a random sample of all people holding these positions throughout any study State. Researchers also obtained copies of relevant legislation, law enforcement policies and procedures, warrant forms and affidavits, and reports. In addition, researchers conducted telephone interviews with key contacts in California and Nevada, two States in which warrants are not needed to require drivers arrested for DWI to provide blood samples.

## **Legal Basis of Warrants**

Arizona and Michigan laws specifically authorize warrants in cases of BAC test refusal. Oregon's law has been interpreted to provide the same authorization. Utah derives the authority from case law. Nevada and North Carolina laws, and California case law, allow blood samples to be obtained without warrants from drivers who refuse breath tests.

## **Use of Warrants in 2006**

The four case study States use warrants in different situations.

- Arizona: some jurisdictions use warrants for all BAC test refusals and most jurisdictions use them for some refusals.
- Michigan: most county prosecutors have policies that require law enforcement officers to obtain warrants for all BAC test refusals, including first offenders.
- Oregon: law enforcement officers in a few counties use warrants for some BAC test refusals.
- Utah: warrants are used statewide, more commonly in some areas than in others.

## **The Warrant Process**

The process for obtaining a blood sample from a DWI suspect is similar in all four case study States. The driver is arrested for DWI and is asked for a breath sample. The driver is informed of the State's implied consent provisions and penalties. If the driver refuses to provide a breath sample, the officer proceeds to request a warrant for a blood sample. The officer first completes standard affidavit and warrant forms. In some jurisdictions, the officer contacts an on-call prosecutor; in others, the officer immediately contacts a judge or magistrate. The forms can be faxed to the judge or magistrate for signature, or the warrant can be sworn by telephone.

Once the warrant is granted, the driver is required to provide a blood sample. In Michigan and Oregon, the driver is taken to a facility where a qualified medical practitioner (physician, nurse, emergency medical technician [EMT], or phlebotomist) draws a blood sample, or a qualified person is called to the police station to draw the sample. In Arizona and Utah, a number of law enforcement officers have been trained and certified as phlebotomists and are authorized to draw blood samples. They typically draw the blood sample at the police station, eliminating the need to transport the driver to a medical facility. If a law enforcement phlebotomist is not available, blood can be drawn by medical personnel as in Michigan and Oregon. In all States, the driver will be charged with and will face the penalties for a BAC test refusal, in addition to potential charges and penalties for DWI.

## **Advantages of Warrants**

Judges and prosecutors interviewed in all four case study States strongly agreed that the driver's BAC is a valuable piece of evidence in court and can make the difference between a guilty plea and a trial. BAC evidence is critical in States with "extreme DWI"<sup>1</sup> laws that provide additional penalties for drivers with a BAC exceeding a level such as .15 or .16 g/dL. Judges and prosecutors interviewed strongly supported warrants, to the extent of volunteering to answer the telephone in the middle of the night to issue a warrant. They agreed that warrants have reduced breath test refusals and increased the proportion of DWI cases with BAC evidence in their jurisdictions. This in turn has produced more guilty pleas, fewer trials, and more convictions.

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<sup>1</sup> Also known as "High BAC" laws or "Aggravated BAC" laws in some States.

Law enforcement officers interviewed in case study States generally supported the use of warrants. They are willing to take the additional time that the warrant process requires in order to obtain BAC evidence.

## **Disadvantages of Warrants**

The major disadvantage of warrants reported by the people interviewed is the additional time required to obtain the warrant and the blood sample. It can take an officer an extra 90 to 120 minutes or more to complete the warrant forms, transmit the information to a judge for signature, transport the suspect to a medical facility or call a phlebotomist to the station, and obtain the blood sample. Law enforcement phlebotomists can eliminate both the need to transport the driver to and from a medical facility and the time spent waiting for the blood sample to be drawn.

People interviewed noted that the use of law enforcement phlebotomists may raise a risk of unexpected medical complications from a blood draw in a police station, with no physician or other medical staff present. No such instances have been reported in Arizona or Utah, the two States in which law enforcement phlebotomists are used. Law enforcement officer phlebotomists should receive complete and thorough training and regular recertification to ensure they maintain their qualifications and are able to draw blood in a safe and professional manner.

People interviewed suggested that some members of the public may believe that law enforcement phlebotomists provide an opportunity for police harassment. Again, procedures for law enforcement phlebotomists should be clearly defined and followed. No questions of harassment have been reported in Arizona or Utah.

## **Conclusions**

Each case study State uses warrants for some drivers arrested for DWI who refuse breath tests. The main differences in warrant procedures across the four States are:

- How warrants are authorized: by statute (Arizona, Michigan), by interpretation of statute (Oregon), or through case law (Utah).
- How the system is structured: with common procedures statewide (Arizona and Utah) or with county-level procedures (Michigan and Oregon).
- Where and how frequently warrants are used:
  - statewide, quite extensively, for all refusals in major jurisdictions (Arizona);
  - in most counties, quite extensively, for all refusals in many counties (Michigan);
  - statewide, primarily through the Highway Patrol (Utah);
  - in a few counties (Oregon).
- Who draws blood: medical personnel (Michigan and Oregon) or law enforcement phlebotomists (Arizona and Utah).

Each State's system is now well accepted in the jurisdictions in which it operates. In each State, the people interviewed agreed that warrants have reduced breath test refusals and produced BAC evidence in more DWI cases. This in turn has produced more pleas, fewer trials, and more convictions.

The major reported disadvantages of a warrant system are the additional time required for a law enforcement officer to obtain a warrant and collect a blood sample and the cost of analyzing the blood sample. One way the additional time can be reduced is if trained law enforcement phlebotomists are used to draw blood samples.

People interviewed reported that some judges are not satisfied that cases of “simple DWI” justify the use of warrants to obtain BAC evidence. The full support of judges and prosecutors is critical to the successful use of warrants in any jurisdiction.

# 1. Introduction

## Background

The amount of alcohol in a driver's blood is an important piece of evidence in demonstrating the influence of alcohol on a driver's ability to operate a vehicle safely. In all States, a blood alcohol concentration (BAC) level of .08 g/dL is per se evidence of alcohol-impaired driving, usually called driving while impaired (DWI)<sup>2</sup>. More than half the States have enacted extreme or aggravated DWI laws with more severe sanctions for drivers with a BAC exceeding a higher level, typically .15 or .16 g/dL.

Law enforcement, prosecutors, and judges rely on BAC evidence to help charge and prosecute drivers for DWI. Without a BAC, the evidence supporting a DWI charge is limited to an officer's observations of the driver's behavior on the road, visible signs of intoxication, and the driver's scores on the Standardized Field Sobriety Tests (SFST). Without a BAC, drivers may not be charged properly under extreme DWI laws and repeat DWI offences. Many prosecutors and judges believe that a DWI conviction is more difficult to obtain without a BAC.

Implied consent laws in all States require drivers to provide BAC evidence when requested by a law enforcement officer. This evidence usually is obtained from a breath test, though some States allow an officer to request a blood or urine sample.

Drivers may refuse an officer's request for a breath test (or a blood or urine sample). In some States, the sanctions for refusal are less severe than the sanctions for a DWI conviction. In most States, the sanctions for refusal are less severe than the sanctions for conviction under an extreme DWI law or for a repeat DWI offender. Hence, it may be to a driver's advantage to refuse to take the breath test.

A recent report documented breath test refusal sanctions and refusal rates in the States. Across the 41 jurisdictions – 40 States and the District of Columbia – for which test refusal data were available, about one-quarter of all drivers arrested for DWI from 1996 to 2001 refused to provide a breath test. The refusal rates varied markedly from State to State. In 2001, California reported the lowest refusal rate of 5.3%, while refusal rates in New Hampshire and Rhode Island exceeded 80%.<sup>3</sup>

The report also documented reasons for breath test refusals through case studies of five States, four of which had 2001 refusal rates above the national average, and the report suggested potential strategies for reducing refusals. It reported that in one jurisdiction in Louisiana, one of the case study States, judges would issue warrants to obtain a blood sample from some drivers arrested for DWI who refused to provide a breath test. The report noted that laws in 10 other States

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<sup>2</sup> The various offenses of driving under the influence of alcohol or other substances, used generically in this report without reference to a specific State; also the term used for these offenses in Arizona and Utah. Some States use the term "driving while intoxicated" (DWI); the terms may be used generically and interchangeably here.

<sup>3</sup> Zwicker, T.J., Hedlund, J., & Northrup, V.S. (2005), "Breath Test Refusals in DWI Enforcement: An Interim Report," HS 809 876, p. 6. Washington, DC: National Highway Traffic Safety Administration.

allow warrants in all DWI cases while laws in many other States authorize a BAC test to be obtained by force if necessary in some circumstances, for example in serious-injury or fatal crashes where there is probable cause to believe that a driver was impaired by alcohol. The report concluded that the use of warrants when authorized may be an effective strategy to provide BAC evidence for more DWI offenders.

## **Study Goals and Methodology**

This study provides detailed information on the use of warrants in four States: Arizona, Michigan, Oregon, and Utah. These four States were selected because some jurisdictions in each State were known to use warrants extensively.

The basic process for using warrants is straightforward. If a driver is arrested for DWI and refuses to provide a breath test (or a blood or urine sample), the arresting officer contacts a magistrate or judge, obtains a warrant that requires the driver to provide a blood sample, and then arranges for the blood sample to be drawn. However, the procedures for warrants and the situations in which warrants are used differ from State to State.

The study's goal was to describe how the four case study States use warrants. To obtain this information, researchers met with 12 to 15 people in each State, including law enforcement officers, prosecutors, defense attorneys, judges, and officials in the Department of Public Safety or the Governor's Highway Safety Office. They obtained copies of relevant legislation, law enforcement policies and procedures, warrant forms and affidavits, and reports. In addition, the researchers conducted telephone interviews with key contacts in California and Nevada, two States in which warrants are not needed to require drivers arrested for DWI to provide a blood sample.

By design, the researchers interviewed law enforcement officers, prosecutors, defense attorneys, judges, and State officials selected for their extensive experience with the use of warrants. The people interviewed do not constitute a random sample of all people holding these positions throughout any study State. The observations and conclusions based on these interviews and on the other information obtained in each State attempt to provide an accurate description of the use of warrants in the State, and these observations and conclusions have been reviewed by the State's highway safety office, but they may not apply to all jurisdictions within the State. They do not claim to represent the views of all law enforcement officers, prosecutors, defense attorneys, or judges throughout the State.

This study design did not allow for obtaining data on breath test refusal rates or the number of trials, pleas, or convictions in the study States. Any changes in breath test refusals, trials, pleas, or convictions noted in this report are based on the beliefs of the people interviewed in each State.

## **Contents of this Report**

Following a brief discussion of the study's methodology, each study State is described in a separate chapter. Each State's description includes the legal basis for warrants, how and when warrants began to be used, and the extent of warrant use in 2006. The warrant process is described in detail, including how the possibility of a warrant is presented to the driver, how an officer contacts a judge or magistrate to seek a warrant, how and by whom the blood sample is drawn, and where the blood sample is sent for BAC analysis. The effects of the warrant system on various measures are described: breath test refusals, the proportion of DWI offenders with BAC evidence, and DWI pleas, trials, and convictions. Warrant system costs, in both dollars and time, are summarized. Each chapter summarizes the views of those interviewed regarding the warrant system and their suggestions for improving the system in their State. The chapters for Arizona and Michigan, the two States with substantial experience with the use of warrants in many jurisdictions, conclude with recommendations of those interviewed for other States interested in considering the use of warrants.

The experiences of California and Nevada, the two States in which warrants are not needed, are summarized briefly in the following chapter. The law through which North Carolina joined California and Nevada as of December 1, 2006, is provided.

The final chapter synthesizes and summarizes the experiences with and the costs and benefits of warrants across all study States. It provides suggestions for States that may wish to consider using warrants.

## **Acknowledgments**

The information in this report comes from personal interviews and telephone conversations with over 60 law enforcement officers, prosecutors, defense attorneys, judges, and others in six States as well as with officials and staff in six State highway safety offices and four NHTSA Regional offices. The authors thank everyone who generously gave of their time and expertise to provide information, answer questions, and review drafts.

## 2. Methodology

### State Selection

The study sought to document the use of warrants in several States. NHTSA is aware of six States that used warrants extensively for BAC test refusals in at least in one jurisdiction in 2006. The study design allowed four of these to be studied. Some jurisdictions in each study State had substantial experience with the use of warrants. The procedures used for warrants varied across the four States, so that collectively they provide a thorough overview of how States use warrants.

Researchers contacted each NHTSA Regional Administrator, explained the study's goals, and obtained information on States within the Region that use warrants for blood draws. With the information gained from these conversations and other information from individual State Offices of Highway Safety, NHTSA selected four States for full case studies – Arizona, Michigan, Oregon, and Utah – and two additional States for telephone contact – California and Nevada.

### Case Study Procedures

Researchers contacted the NHTSA Regional Administrators in the Regions of all six study States to obtain their advice on the study. The researchers then contacted the Governor's Representative or Coordinator for each of the four full case study States and described the study (see Appendix A for the one-page study outline used). The Governor's Representative or Coordinator designated a primary study contact in the State. The researchers then conducted a telephone interview with this contact to discuss the study in detail and to obtain an overview of the State's warrant use and process (see Appendix B for the outline used in this and subsequent interviews). They explained that they wished to visit the State and conduct personal interviews with judges, prosecutors, defense attorneys, law enforcement officials, and others who have experience with the use of warrants in the State. The primary contact then proposed interview candidates.

After the primary contact and a researcher agreed on a date for the visit, the primary contact scheduled interviews. Between 12 to 20 people were interviewed in each State, many in individual interviews, some in small groups such as two law enforcement officers or three judges. Judges, prosecutors, law enforcement officers, defense attorneys, and State officials were interviewed in each State. In Oregon, a researcher attended a meeting of the Governor's Advisory Committee and discussed warrants with the Committee chair, an official from the Department of Motor Vehicles, a toxicologist, a retired defense attorney, and several citizen activists. In Arizona, a researcher attended a roll-call briefing of seven patrol officers and conducted a group discussion of warrants.

Appendix B gives the overall outline of discussion topics. The researchers adapted the topics for each interview to the person being interviewed and the time available, with detailed questions in areas of the interviewee's knowledge and experience. Interviews ended with open-ended questions on the interviewee's overall opinions regarding warrants and any advice for other jurisdictions or States interested in considering warrants. Group interviews tended to be less structured due to time constraints. All interviews were conducted "on background" so that information and

opinions from interviews are not attributed to specific individuals but only to categories of individuals, such as law enforcement officers in a State.

The research team then drafted a report on each State. The draft report was reviewed for accuracy and completeness by staff in the Governor's Representative's office and other people suggested by the Governor's Representative's office and was revised as appropriate. These revised reports constitute Chapters 3 through 6 of this report.

For California and Nevada, a researcher conducted a telephone interview with the primary study contact. From the information gained he drafted a brief report on the State's law authorizing blood tests and the effects of this law. The contacts in each State reviewed their State's draft report and revised as appropriate. These revised reports are contained in Chapter 7.

## 3. Arizona

### Overview

Arizona uses warrants extensively statewide. Some jurisdictions, including Phoenix, Peoria, and Scottsdale, obtain a warrant and a blood sample for virtually every driver arrested for DUI (driving under the influence of alcohol or drugs) who refuses a breath test. Key characteristics of Arizona's system include:

- Laws that allow a warrant and blood draw for any alcohol test refusal in any DWI situation and that allow an arresting officer to choose either a breath or blood test;
- A substantial number of law enforcement officers who are trained phlebotomists and who perform most of the blood draws authorized by warrant;
- Judges who encourage warrants and who cooperate in issuing warrants at all hours of the day and night;
- Prosecutors and district attorneys who have established policies encouraging warrants;
- Laboratories that analyze blood samples quickly; and
- The Governor's Office of Highway Safety (GOHS), which works with all parties to establish a comprehensive and cooperative system and which provides both startup and continuing funding for key activities.

This report is based on discussions with law enforcement officers, prosecutors, defense attorneys, judges, and highway safety officials in the Phoenix area. Some observations and conclusions may not apply to all jurisdictions in Arizona. The statements in this report do not necessarily represent the views of all law enforcement officers, prosecutors, defense attorneys, or judges throughout Arizona.

### Laws

Arizona's implied consent law (§28-1321) requires a driver arrested for DUI to submit to a test to determine the BAC. A law enforcement officer may choose to test the driver's breath, blood, urine, or any other bodily substance, and may require more than one test. If the driver refuses, the officer may seek a warrant for a test. A warrant is not required for a driver involved in a fatal or serious injury crash, but most law enforcement officers and prosecutors prefer to have a warrant in these situations. A blood sample for a BAC test must be obtained by "a physician, a registered nurse, or another qualified person."

Administrative penalties for test refusal are strict: a mandatory one-year license suspension for a first refusal and a two-year suspension for a second or subsequent refusal. The basic administrative license suspension for failing a test with a BAC over .08 is 30 days for a first offense and 90 days for a second or subsequent offense.

Arizona has an "extreme DUI" law (§28-1382) for drivers with a BAC exceeding .15. Sanctions include 30 days in jail, fines, and an alcohol interlock requirement for any vehicle that the driver operates after the required license suspension period has been served.

Appendix C contains key sections from Arizona's laws.

## How Arizona's Warrant System Began and Spread

Arizona's laws authorizing warrants have been in effect for some time but warrants were sought only rarely before the mid-1990s. At that time, jurisdictions including Phoenix, Peoria, and Scottsdale began to use warrants for some more serious DUI arrests. At about the same time, the Arizona Department of Public Safety (DPS) began training law enforcement officers as phlebotomists. The results were so positive that the use of warrants spread. The Maricopa County Attorney established a policy that felony DUI cases (those involving a serious injury or fatality, a repeat DUI offender, a driver with a suspended license, or a driver with a child in the vehicle) would not be prosecuted if the driver had refused a BAC test and a warrant had not been sought. As a result, Phoenix soon began obtaining warrants for all BAC test refusals. As more DPS officers were trained as phlebotomists, the use of warrants spread throughout the State.

As of 2006, some Arizona jurisdictions, including Phoenix, Peoria, and Scottsdale, use warrants for almost all BAC test refusals. Phoenix defense attorneys and prosecutors who were interviewed "cannot remember the last refusal case where there was no warrant." Judges who were interviewed report that cases with a refusal and no warrant are "very rare." Some police agencies have established policies that require officers to obtain warrants for all test refusals. The Arizona DPS uses warrants in many of their test refusal cases. DPS also will provide a DPS phlebotomist when possible to assist smaller police agencies throughout the State that do not have their own phlebotomists. While there are no statewide data on BAC test refusals and warrants, most Arizona agencies use warrants for some refusals and some agencies, including the major cities noted above, seek and obtain warrants for virtually all refusals.

## How Arizona's Warrant System Operates

**The DUI arrest and the warrant.** After a driver has been arrested for DUI, the driver is taken to the police station (or, in Phoenix and some other jurisdictions, to a mobile DUI van). The driver is asked for a breath test. If the driver refuses, an officer reads the implied consent provisions and tells the driver that continuing to refuse means the officer will contact a judge and request a warrant for a blood test. The driver has the right to contact an attorney before deciding whether to take the breath test, but very few do. The driver can decide to take the breath test until a judge is contacted; after a judge has been contacted and the warrant process has begun, the driver must provide a blood sample. See Appendix D for Phoenix police DUI policies and procedures.

If the driver continues to refuse, an officer then contacts a judge and requests a warrant. Officers have a list of judges in their jurisdictions who are available and willing to provide warrants, so officers rarely have difficulty locating a judge. In Phoenix, an Initial Appearance Judge is present at the Maricopa County jail at all times (24 hours a day, 7 days a week) and is called for most warrants. The Maricopa County Initial Appearance Judge can issue warrants statewide and can be used if a local judge is not available for refusals in other jurisdictions. The Maricopa County Initial Appearance Judge issues about 2,000 DUI refusal warrants annually.

Most warrants and affidavits are faxed. Police agencies have their own standard “fill-in-the-blank” warrant affidavit form (see Appendix F for the Phoenix form and Appendix H for the DPS form). The officer fills out the fax warrant affidavit and warrant forms, phones the judge, is sworn in, provides details to the judge, and faxes the warrant affidavit and the warrant to the judge (see Appendix J for the standard Arizona search warrant). The judge reviews the affidavit and warrant and, if appropriate, signs the warrant and faxes it back to the officer, who then can proceed to obtain a blood sample. If fax facilities are not available, warrants can be obtained by phone (see Appendix G for the Phoenix telephonic warrant form and Appendix I for the DPS form). Blood is usually drawn by a law enforcement phlebotomist. The blood sample is refrigerated as soon as possible and sent to a laboratory for analysis. The warrant form is returned to the issuing judge or court within three to five days. Appendix E provides the Phoenix police checklist, which includes detailed procedures for obtaining warrants by fax or phone.

The DUI vans used in Phoenix and Mesa consolidate many parts of this procedure. The vans are equipped with a computer and fax machine. All DUI arrest forms, including the warrant form, are linked in the computer, so that information is entered only once and automatically transferred to all forms. A phlebotomist is assigned to each van so the arresting officer does not need to transport the driver anywhere else to draw a blood sample.

**Who draws blood: law enforcement phlebotomists.** When Arizona began using warrants for BAC test refusals, blood was drawn by a medical phlebotomist, either a nurse or technician at a hospital or other medical facility, or a contract phlebotomist on call or at a police agency. Two difficulties with this system quickly became apparent.

- In some instances it was difficult to access a medical phlebotomist in a timely manner because they were busy, hard to contact, or located far away from the arresting officer and driver;
- If a case went to trial, medical phlebotomists often would fail to appear in court; when they did appear, they often did not provide adequate testimony.

Consequently, in the mid 1990s the Arizona DPS began a phlebotomist training program for law enforcement officers and civilian aides. Training is now provided by four community colleges around the State, using a standard curriculum. The course consists of 20 hours of classroom instruction plus 100 blood draws. It takes approximately one week, at a cost of \$200 per student. Approximately 200 phlebotomists are trained each year (178 in 2005). While there is no state-wide database listing all trained phlebotomists, most Arizona agencies either have phlebotomists on their staff or have easy access to them through nearby agencies or the DPS.

People who have completed this training are recognized as “qualified” to draw blood under Arizona law. The requirements for phlebotomists to retain their qualification vary by agency. These often include a minimum number of blood draws annually (Phoenix requires 24, which can be done at a hospital or medical facility if an officer has not performed enough blood draws on drivers arrested for DUI) and refresher training every one or two years.

The law enforcement officers, prosecutors, judges, and highway safety officials interviewed concluded that law enforcement phlebotomists offer several advantages over medical phlebotomists.

- Law enforcement phlebotomists provide quicker response time, especially when one is assigned to a police agency or DUI van during a high-DUI period.
- Less law enforcement time is required to process a BAC test refusal because drivers do not need to be transported to and from a medical facility, which in rural areas may be many miles away, and wait at the facility while the blood sample is drawn.
- Officers regularly appear in court as part of their normal duties and are trained on how to testify. By contrast, most medical phlebotomists have no experience or training in how to testify in court. Many do not wish to spend the time required to testify.
- Law enforcement phlebotomists can be used to draw blood when required in non-DUI situations, for example where DNA evidence is needed or where a communicable disease may be involved.
- A law enforcement phlebotomist at a crash or arrest scene can draw a blood sample in circumstances where transporting a driver quickly to a police station or medical facility is not possible.
- Overall costs are low: each blood draw requires only a few minutes of the phlebotomist's time and a blood kit costing about \$7.

The people interviewed in Arizona suggested some potential disadvantages or risks to the use of law enforcement phlebotomists.

- Safety risk: because law enforcement phlebotomists do not draw blood at a medical facility, there usually are no physicians or other trained medical personnel available in case of unexpected medical consequences such as uncontrolled bleeding. This risk may be exacerbated in rural areas, when the nearest medical facility is many miles away. No examples of these situations were reported by any of the people interviewed.
- Training and experience: some law enforcement phlebotomists may not be as well trained or experienced in drawing blood as medical personnel. One defense attorney reported a driver with 24 visible puncture marks received as a law enforcement phlebotomist attempted to draw a sample. On the other hand, some people interviewed reported that some medical personnel who draw blood for medical purposes are less qualified than law enforcement phlebotomists who have received the standard training.
- Potential for law enforcement harassment: a warrant authorizes law enforcement to obtain a blood sample by force if necessary. It is possible that officers could fail to explain carefully to a driver (who may not be thinking clearly due to intoxication) that refusal will lead to a warrant, but instead take the driver's initial refusal as justification for a warrant and a forcible blood draw.

**Blood sample analysis and reporting.** All DUI test refusal blood samples in Arizona are analyzed at laboratories operated by the DPS or by law enforcement agencies in Mesa, Phoenix, and Scottsdale. BAC results typically are available in five business days or less. This quick analysis and reporting provides prosecutors with the BAC results they need to charge offenders properly.

## Outcomes of Arizona’s Warrant System

The people interviewed in Arizona concluded that the widespread use of warrants has produced several consequences.

- BAC test refusals decreased substantially. While there are no statewide data, the law enforcement officers, prosecutors, defense attorneys, and judges interviewed all agreed that test refusals dropped dramatically after warrant use became widespread. In Phoenix, an officer with substantial experience with DUI arrests citywide during this period estimated that refusals dropped from about 30 to 40% before warrants were used to 5% or less afterwards.
- BAC evidence is now available for more DUI cases. As noted above, almost every Phoenix DUI case has BAC evidence.
- BAC evidence produces more pleas, fewer trials, and more convictions.
- The impact on pleas, trials, and convictions is especially apparent for drivers with BAC evidence from a blood test resulting from a refusal and a warrant. Defense attorneys noted that “blood never goes to trial.” Prosecutors reported that they “haven’t lost a blood-test case yet.” Juries are quicker to accept BAC evidence from a blood test than from a breath test. Breath test evidence provides more opportunities for defense challenge than blood test evidence.
- Prosecutors have the BAC evidence necessary to charge “extreme DUI.” Phoenix prosecutors and defense attorneys reported that extreme DUI may not be charged for drivers with a BAC only slightly above .15 but almost always is charged for drivers with a BAC of .17 or higher and is not pled down to the lesser offense of standard DUI.

**Legal challenges.** The warrant system has been challenged several times in Arizona courts. None of the challenges have been successful. The Arizona Court of Appeals has ruled that law enforcement phlebotomists are qualified to draw blood under Arizona law, which allows blood to be drawn by “any qualified person.”

The broader issue of whether blood may be taken involuntarily for a BAC test rests on *Schmerber v. California* [384 U.S. 757 (1966)], in which the U.S. Supreme Court unanimously ruled that forced blood tests do not violate the Fifth Amendment guarantee against self-incrimination. However, *Schmerber* involved blood drawn by medical personnel in a hospital, and the court’s opinion noted that its ruling may not extend to blood drawn in other circumstances. (“We are thus not presented with the serious questions which would arise if a search involving use of a medical technique, even of the most rudimentary sort, were made by other than medical personnel or in other than a medical environment - for example, if it were administered by police in the privacy of the stationhouse” [384 U.S. 757 (1966)].) While this language may provide an opportunity to challenge involuntary BAC tests under certain circumstances, the prosecutors and judges interviewed reported that no challenge was underway as of May 2006.

**Costs.** The primary direct costs of the warrant system are for training law enforcement phlebotomists, purchasing blood test kits, and analyzing blood samples. GOHS pays all training costs: about \$40,000 annually for training about 200 students at \$200 per student. GOHS buys an initial supply of blood test kits for the first phlebotomists in a law enforcement agency to receive

training. After that, agencies pay for their own kits at about \$7 apiece. Agencies also pay for other shared supplies needed by their phlebotomists: perhaps \$1,000 to outfit a squad.

Each laboratory that analyzes blood samples is operated by a law enforcement agency. These laboratories analyze the blood samples as part of their normal operations, at no additional charge to the agency submitting the sample.

The primary indirect costs are for the time required by law enforcement officers and judges. Initial phlebotomist training takes about one week; refresher training takes a few hours. Agencies also give short in-service training to patrol officers in the procedures for submitting warrants (see Appendix K for the lesson plan for Phoenix's two-hour warrant training course). For each BAC test refusal, obtaining a warrant and a blood test adds to the DUI processing time. Judges can issue a warrant in a matter of minutes.

GOHS has encouraged the use of warrants by providing some funding to help establish some of the law enforcement agency laboratories. GOHS also has purchased fax machines for some judges.

## Reactions to and Observations Regarding the Warrant System

**Law enforcement officers** who were interviewed liked warrants because they reduce test refusals, provide BAC test evidence, and allow drivers to be charged with extreme DUI. Phoenix officers reported they would rather have the driver consent to the breath test because it is less invasive and is quicker: Obtaining a warrant and a blood test typically adds between 15 – 90 minutes to DUI processing time. But they are quite willing to obtain a warrant and blood test if the driver continues to refuse.

Phoenix officers reported that drivers usually cooperate with the blood test after a warrant is obtained and explained. If a driver is still uncooperative, officers may gather three or four other officers and then explain to the driver, "Either you cooperate or these guys will hold you down." Officers also may tell the driver, "If you cooperate, you'll go home afterwards; if not, you'll spend the night in jail." These explanations convince almost all drivers to cooperate, so that officers rarely need to use force to obtain a blood sample. Still, defense attorneys and prosecutors have stories of cases in which excessive force may have been used to obtain a blood sample.

**Prosecutors** who were interviewed strongly supported the system. It provides more BAC evidence which in turn leads to more guilty pleas, more convictions, and more extreme BAC charges. Prosecutors particularly like evidence from blood tests, as blood test cases almost always produce a plea and are easier to prosecute if they go to trial. One prosecutor noted that some juries are not comfortable with law enforcement phlebotomists drawing blood, especially at the roadside when a DUI van is not available, but this discomfort has not led to acquittals.

**Defense attorneys** who were interviewed have adapted to the system. Phoenix attorneys usually advise drivers to take the breath test. They explain that refusal will lead to a warrant which in turn will produce a blood test, and attorneys would rather have a breath than a blood test because breath tests are easier to attack in court. Attorneys almost never take a blood test case to

trial. Refusal also is almost certain to result in an administrative license suspension. Only in special circumstances would an attorney advise a driver to refuse the test: for example, a high-BAC driver in a situation where a refusal may add a substantial delay before blood could be drawn.

**Judges** who were interviewed agreed with prosecutors and defense attorneys that warrants produce more BAC tests and that BAC evidence produces more pleas, fewer trials, more convictions, and more extreme BAC law convictions. The judges had no objection to the implied consent provisions that lead to a warrant and a blood draw if a driver refuses a breath test. Many judges cooperate by issuing warrants at all hours of the day and night. One judge has never seen a successful motion to suppress a warrant in two and a half years of DUI cases. Juries seem comfortable with blood draws for refusals as long as an officer has explained clearly to the driver that breath test refusal will lead to a warrant and a blood test.

**The media and the public** have paid little attention to the warrant system, perhaps because the laws were enacted some time ago and the use of warrants increased gradually over time. The system is now well established and accepted. Nobody who was interviewed remembered any negative news stories regarding warrants.

Some **drinking drivers** know about the system but others do not. Prosecutors who were interviewed reported that most repeat offenders understand that test refusal will lead to a warrant. Defense attorneys reported that some clients were not aware that they would be required to provide a blood sample if they refused a breath test.

**GOHS** strongly supports the system for the reasons noted above. In addition to funding phlebotomist training and other startup expenses, GOHS promotes the use of warrants at statewide conferences and training for law enforcement, prosecutors, and judges.

## Potential Improvements

While the warrant system operates well, some people interviewed recommended that it could be improved by greater standardization and more training.

- Standardize the fax warrant form. Different agencies have different forms, some of which do not have complete information. A standard form statewide would be useful.
- Train law enforcement officers statewide in procedures for obtaining the necessary information for a warrant and processing a warrant.
- Standardize retention requirements for law enforcement phlebotomists. Different agencies have different requirements involving a minimum number of blood draws annually and some form of refresher training. Uniform retention requirements may be useful to further ensure that all law enforcement phlebotomists are fully qualified.
- Maintain a statewide roster of qualified phlebotomists.
- Establish standard procedures for law enforcement phlebotomists, including procedures regarding the use of force to obtain a blood sample. Some agencies have a policy that limits a phlebotomist to two attempts to draw blood; if neither is successful, another phlebotomist must be called. While most drivers cooperate with a blood draw, a few do not, and the possibility of excessive force exists. Clear procedures may help guide officers and assure that force is used only as a last resort. Some blood draws are videotaped.

A videotape provides good, though far from perfect, evidence of how the blood draw was conducted and may be useful in certain circumstances. Videotapes probably should not be expected as standard practice for all blood draws because videotape facilities may not be available, videotapes would add yet another requirement to a complicated and lengthy DUI arrest process, and videotapes may fail to work satisfactorily and could be challenged (for example, if the camera fails to work, the videotape's chain of custody is not documented properly, or the videotape is poor quality or fails to capture critical moments).

## Other Issues

**Native Americans.** Some judges and prosecutors who were interviewed observed that Native Americans are more likely to refuse a BAC test than other drivers. This may suggest cultural or communications issues to be investigated.

**DUI arrest processing time.** If a warrant is required, in some cases the blood sample may not be drawn until two or three hours after the arrest due to the time needed to offer the breath test, explain the consequences of test refusal, allow the driver to contact an attorney and receive advice back from the attorney, fill out the warrant forms, contact the judge, and receive the signed warrant from the judge. This is not a serious issue but should be kept in mind.

## Conclusions

Arizona's warrant system is widely used and fairly standardized. With proper procedures in place, it takes approximately 15 – 90 minutes to fill out the additional information needed for the warrant, call the judge, fax the warrant, and have the warrant signed and faxed back. Law enforcement officers, prosecutors, judges, and defense attorneys interviewed agreed that the warrant system reduces BAC test refusals, provides more BAC test evidence, increases guilty pleas, reduces trials, and provides the evidence needed for an extreme BAC charge. It is very cost-effective. It works very well in metropolitan areas where an Initial Appearance Judge is available to issue warrants all or almost all the time. As one judge noted, "This system certainly could be used in any city of 100,000 or more."

The two key elements of Arizona's warrant system are (1) that it is used extensively statewide, authorized by appropriate laws and using generally similar methods, and (2) that law enforcement phlebotomists make most blood draws.

The people interviewed reported that there is little opposition throughout Arizona to the basic principles underlying warrants: that a driver's license is a privilege, not a right; that drivers agree through implied consent to provide a BAC sample if arrested for DUI; and that a blood sample may be taken, by force if necessary, if drivers refuse the test. The system of law enforcement phlebotomists offers many advantages. The only suggestions for improving the system were to make it consistent, straightforward, and simple throughout Arizona.

## **Suggestions for States Considering the Use of Warrants for BAC Test Refusals**

The law enforcement officers, prosecutors, judges, defense attorneys, and GOHS representatives interviewed in Arizona offered the following suggestions for other States interested in considering the use of warrants.

- Enact laws that authorize warrants, allow law enforcement to choose either a breath test or blood test, and allow more than one test.
- Obtain the support of law enforcement, judges, and prosecutors.
- Assure that laboratory facilities are available to analyze blood samples quickly; provide funding for the laboratory analyses.
- Use law enforcement phlebotomists for blood draws authorized by warrant; provide enough well trained law enforcement phlebotomists where they will be needed throughout the State.
- Convene all key parties – law enforcement, judges, prosecutors, laboratories, and the highway safety office – to plan and implement a cooperative and consistent system; consider a task force to coordinate the system’s implementation and operations.
- Use fax warrants with a standard form.
- Design a simple, consistent, and standard system of training, forms, and procedures statewide. Train officers on warrant procedures. Establish clear and consistent policies on when to use warrants, how to locate a judge, how to locate a phlebotomist, how to communicate with drivers, and when and how force can be used.

## **Use of Blood for All BAC Tests in Some Arizona Jurisdictions**

Some Arizona jurisdictions, including Scottsdale, have stopped using breath tests for DUI and now use blood for all BAC tests. Other jurisdictions are considering this practice. A blood test can require no more police time than a breath test if blood test facilities are readily available. Prosecutors also prefer blood test to breath test evidence because blood tests are less open to challenge in court. Defense attorneys typically would rather defend a breath test case than a blood test case because they can attack the breath test machine and procedures. One defense attorney with a large caseload noted that “Juries love blood evidence.”

An additional advantage of blood testing is that two blood samples can be drawn. In Arizona, one sample is analyzed by the police laboratory to provide the BAC. The second sample is retained and can be retested by the defense to verify the police laboratory’s BAC result. A breath test sample cannot be retained.

Scottsdale’s system uses both medical and law enforcement phlebotomists. If the driver consents to the test, the driver is taken to a medical facility where blood is drawn. If the driver refuses, a warrant is obtained and a law enforcement phlebotomist draws the blood sample.

## 4. Michigan

### Overview

Michigan uses warrants extensively throughout the State. Most counties obtain a warrant and a blood sample for almost every driver arrested for OWI (Operating While Intoxicated, Michigan's basic impaired driving offense) who refuses a breath test or blood test to determine BAC (blood alcohol concentration). Some cities use warrants less frequently, especially for first-time offenders.

Michigan's system has two important features:

- 1) It operates at the county and city level, with each county and city setting its own policies and procedures for warrants.
- 2) It uses medical personnel, usually in hospital settings, to draw blood authorized by warrants.

Other key characteristics of Michigan's system include:

- Laws which allow a warrant and blood draw for any alcohol test refusal in any OWI situation and which allow an arresting officer to choose either a breath or blood test;
- Judges and magistrates who encourage warrants and who are on call to issue warrants at all hours of the day and night;
- Prosecutors and district attorneys who have established policies encouraging warrants;
- Law enforcement officers who strongly support the warrant system and use warrants as standard procedure for BAC test refusals; and
- The State Police Crime Laboratory, which analyzes blood samples promptly.

This report is based on discussions with law enforcement officers, prosecutors, defense attorneys, and judges in Eaton and Calhoun counties and the city of Lansing, and with representatives of the Prosecuting Attorneys Association of Michigan (PAAM) and the Office of Highway Safety Planning (OHSP) who have extensive experience with impaired driving enforcement, prosecution, and adjudication statewide. Some observations and conclusions may not apply to all jurisdictions in Michigan. The statements in this report do not necessarily represent the views of all law enforcement officers, prosecutors, defense attorneys, or judges throughout Michigan.

This report is based on discussions with law enforcement officers, prosecutors, defense attorneys, judges, and highway safety officials in Michigan. Some observations and conclusions may not apply to all jurisdictions in Michigan. The statements in this report do not necessarily represent the views of all law enforcement officers, prosecutors, defense attorneys, or judges throughout Michigan.

### Laws

Michigan has two impaired driving offenses. The basic offense is OWI (Operating While Intoxicated). A BAC of .08 g/dL is per se evidence of OWI. The lesser offense of OWVI (Operating While Visibly Impaired, or "Impaired"), has no minimum BAC limit. An OWVI conviction is

listed as an impaired driving offense on the driver's record and serves as a prior in the event of a subsequent arrest. First-offense OWI frequently is pled down to OWVI. Michigan has no high-BAC aggravated offense.

Michigan's implied consent law (§257.625c) requires a driver arrested for OWI to submit to a test to determine the BAC. A law enforcement officer may choose to test the driver's breath, blood, or urine, but is limited to a single test. The driver may request that a separate breath, blood, or urine sample be taken, to be available for an independent second test for the driver's own use, but few arrested drivers make this request. If the driver refuses, the officer may seek a warrant for a test.

Drivers who are served a warrant after refusing a test receive the penalty for refusal (one year license suspension for first refusal, compared to 6 months for first offense OWI and 90 days for first offense OWVI, and 6 points on their drivers licenses) and also are subject to any criminal penalties from an OWI or OWVI conviction.

Michigan cities may enact their own ordinances governing first-offense OWI. Most city ordinances provide for warrants. County sheriffs and State highway patrol charge OWIs under State law, even if the arrest is made within a city with a separate first-offense OWI ordinance, so they may use warrants for any arrest. Law enforcement officers in cities with separate ordinances may charge first-offense OWIs under either State or city laws. All second and subsequent offense OWIs must be charged under State law. Third-offense OWI is a felony.

Appendix L contains key sections from Michigan's laws.

## **How Michigan's Warrant System Began and Spread**

Michigan's State law authorizing warrants has been in effect for some time. Kalamazoo and Muskegon counties have used warrants for first offenders for over 10 years. Many other counties have used warrants for repeat offenders for several years. In 2006, warrants were used for almost all repeat offenders statewide.

Many counties recently began using warrants for first-time OWI offenders. As of 2006, most county prosecutors have policies that require law enforcement officers to obtain warrants for all OWI refusals, including first offenders. Some cities also use warrants for all OWI refusals. In a very few rural counties and some cities, judges will not support warrants for first-offense OWIs.

PAAM has encouraged the use of warrants through its interaction with, and training courses for, prosecutors in all counties.

## **How Michigan's Warrant System Operates**

**The OWI arrest and the warrant.** After a driver has been arrested for OWI, the driver is taken to the police station. The officer reads the implied consent provisions (see Appendix O) and asks the driver for a BAC test, usually a breath test. The officer can choose breath or blood,

and some officers will choose a blood test in cases where this will be faster, for example when a medical facility is nearby but a breath test instrument is some distance away.

If the driver refuses the test, the officer tells the driver that if he or she continues to refuse then the officer will contact a judge and request a warrant for a blood test. There is no standard policy on whether drivers may change their minds and decide to take a breath test after an initial refusal. Generally, once a judge or magistrate has been contacted to obtain a warrant, the driver must provide a blood sample.

Drivers do not have a right to call an attorney before deciding to take or refuse a test, but many officers will allow a driver to make a call as long as this takes no more than a few minutes. Few drivers ask to call an attorney.

If the driver continues to refuse, an officer then fills out a one-page fill-in-the-blank warrant affidavit form (see Appendix M; affidavit forms vary slightly from county to county), phones a magistrate or judge, and faxes the affidavit. All counties have magistrates on call at all times, and a judge is available as backup if a magistrate is not available for any reason. Magistrates can issue warrants only within their own counties. Judges can issue warrants statewide, though judges rarely issue warrants outside their counties. The officer is sworn in by the magistrate and testifies to the facts of the faxed warrant affidavit. The magistrate then signs the warrant (Appendix N) and faxes it back to the officer, who then proceeds to obtain a blood sample.

Some Michigan courts have a policy or standard practice that a prosecutor must review any warrant before it is sent to a magistrate or judge. The fill-in-the-blank standard warrant form has been accepted by prosecutors, magistrates, and judges in some counties so that no further prosecutor review is required for individual warrants. In other counties, the officer phones a prosecutor and faxes the warrant affidavit. The prosecutor reviews and approves the affidavit; the officer then faxes the affidavit to a magistrate or judge. In counties where prosecutors are involved in each warrant, there is a prosecutor on call at all times.

**Who draws blood: medical personnel.** Blood is drawn by trained medical personnel. Different law enforcement agencies arrange this in different ways.

- In most agencies, an officer will transport the driver to a hospital or other medical facility where blood is drawn by a nurse, physician, or emergency room technician.
- Some larger agencies will have a nurse, physician, medical technician, or contract phlebotomist at the jail during certain times.
- A few agencies will call an ambulance with a trained technician to the jail.

Hospitals and medical facilities do not object to drawing blood, but they also frequently will not give it any priority. The driver takes a turn in the hospital's admissions queue. As a result, officers and drivers may wait two or three hours for a blood draw if the hospital is busy. Some hospitals require drivers to follow the usual hospital admissions procedures, which takes additional time. Some law enforcement agencies have met with hospitals in their jurisdictions to explain the process, agree on procedures, and attempt to expedite blood draws. Individual officers may develop special relationships with medical staff to expedite blood draws.

If a case goes to trial, some hospital and medical staff have been unwilling to testify or have had little or no training or experience in providing effective testimony.

Blood draws use standard kits, supplied by law enforcement. Hospitals that regularly draw blood typically keep a supply of these kits on hand. The officer then takes the blood sample back to the station house, refrigerates and stores it securely, and sends it to a laboratory for testing.

Drivers occasionally resist the blood draws. If so, they are restrained while the blood samples are drawn, using standard hospital equipment for the restraint of unruly patients. Hospital and law enforcement personnel may assist in restraining the driver.

**Blood sample analysis and reporting.** Most counties and some cities send blood samples to the State Police Crime Laboratory's Toxicology Department for analysis. The laboratory may provide BAC test results within seven days. If a drug analysis is also requested, as is frequently the case, or if the laboratory has a large backlog, then the laboratory may require more time to provide test results.

## Outcomes of Michigan's Warrant System

The people interviewed in Michigan concluded that the widespread use of warrants has produced several consequences.

- BAC test refusals are low. Michigan refusal rates have ranged between 10 to 15% for several years and have been gradually decreasing.<sup>4</sup> The recent expansion of warrants to first-time offenders probably has not changed overall refusal rates much. Some judges and prosecutors noted that “those who used to refuse still refuse, but now we get a warrant, a blood draw, and a BAC.”
- BAC evidence is available for most OWI cases. One judge estimated that there was BAC evidence in over 90% of his cases and 80 to 90% of cases in other jurisdictions; one prosecutor estimated about 90%.
- BAC evidence produces more pleas, fewer trials, and more convictions. One prosecutor estimated his county had one OWI trial per year out of 500 to 600 OWI cases (though some may have been pled to avoid a trial); one judge estimated he had three OWI trials in the last six months. One judge noted that trials had increased recently because the OWI penalties were increased when Michigan adopted the .08 per se BAC limit. The BAC evidence itself is not attacked by the defense in a trial, and juries accept it.
- Prosecutors view BAC as strong evidence in an OWI case. Some defense attorneys see BAC evidence as considerably less important than the officer's observations of driving and roadside behavior. BAC evidence is especially useful in OWI courts to help judges assign alcohol treatment if appropriate. Michigan has 17 OWI courts (called “DWI Courts” in other States).
- Prosecutors also prefer blood test to breath test evidence because blood tests are less open to challenge in court. Blood tests also give higher BAC readings because blood tests

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<sup>4</sup> Zwicker, T.J., Hedlund, J., & Northrup, V.S. (2005), “Breath Test Refusals in DWI Enforcement: An Interim Report,” HS 809 876, p. 6. Washington, DC: National Highway Traffic Safety Administration.

measure BAC directly while breath tests use a relatively conservative “partition ratio” to convert a breath test measurement into a BAC.

- Some law enforcement officers and prosecutors believe that some repeat offenders may understand that warrants and blood draws will be used for breath test refusals; others believe that most offenders do not know about warrants, do not care, or are sufficiently intoxicated that they cannot analyze rationally the consequences of a refusal.
- The warrant system has received no attention from the media or the public.

**Legal challenges.** The warrant system is fully accepted. There have been no challenges to the warrant process itself. The faxed warrant system was challenged and upheld. One judge reported perhaps one defense motion a year to suppress BAC evidence obtained by means of a warrant, and these motions have not been successful.

**Costs.** The main direct costs of the warrant system are for blood draws, blood test kits, and blood sample analyses.

- There appears to be no consistent manner of paying blood draw costs. Some hospitals bill the driver through medical insurance (many of these hospitals require the driver to follow the usual hospital admissions procedures). Some hospitals bill the law enforcement agency for each draw (one agency quoted a cost of \$27 per draw). Law enforcement agencies that have a phlebotomist or other medical personnel at the agency cover the costs of these personnel.
- Law enforcement agencies pay for the blood test kits at about \$7 per kit.
- The State Police Crime Laboratory bills individual agencies for the costs of analyzing blood samples.

Michigan offenders can be ordered to pay certain costs associated with their offenses through a process known as “cost recovery.” Perhaps one-third of Michigan’s law enforcement agencies bill defendants for the costs of blood draws and analyses, along with other OWI case costs, usually through a fixed fee of \$50 or \$100.

The main indirect costs of the warrant system are for the time required by law enforcement officers and magistrates. Obtaining a warrant and a blood draw adds anywhere from 30 minutes to 3 hours to the time required for an officer to process an OWI case. The greatest uncertainties are the time to transport the driver to and from a hospital or medical facility for the blood draw and the waiting time at the hospital.

## Reactions to and Observations Regarding the Warrant System

The judges, prosecutors, and law enforcement officers interviewed all strongly supported the warrant system for BAC test refusals. Their universal reaction upon learning that most States do not use warrants was “Why not?” They believe that it is the right thing to do: BAC evidence is an important part of an OWI case, so if a driver refuses to provide a test, then get a warrant.

**Law enforcement officers** who were interviewed accepted warrants as part of their job because they provide the BAC test evidence that plays an important part of the OWI case. The only drawback is that a warrant can add substantially to the time required to process an OWI.

**Prosecutors** who were interviewed strongly supported the system. It provides more BAC evidence which in turn leads to more pleas and more convictions. Prosecutors noted that it is sometimes difficult to get the physician or nurse who drew the blood sample to appear in court. This leads to some cases being pled down, either from OWI to OWVI or to a reduced sentence, rather than risk losing the case at trial if the physician or nurse does not appear.

**Defense attorneys** have adapted to the system. Attorneys usually advise drivers to take the breath test. They explain that refusal will lead to a warrant which in turn will produce a blood test and a BAC. Refusal also is almost certain to result in an administrative license suspension. One defense attorney believed that the warrant system is not a good use of societal resources because it is an expensive way to obtain information of marginal value to an OWI case. He also saw warrants as a potential way for law enforcement to punish a driver by not explaining carefully that refusal will lead to a warrant and a blood draw, and instead proceeding directly to the warrant without allowing the driver to withdraw the refusal and take the breath test.

**Judges** who were interviewed agreed with prosecutors and defense attorneys that warrants produce more BAC tests and that BAC tests produce more pleas, fewer trials, and more convictions. Judges noted that the system of warrants and blood draws is now fully established and accepted by the courts, prosecutors, attorneys, and the public. Judges also noted that trials are very expensive, so a reduction in trials produces substantial savings to the court system.

**The media and the public** have paid little attention to the warrant system, perhaps because the laws were enacted some time ago, the use of warrants increased gradually over time, and the system has not been publicized. The system is now well-established and accepted. Nobody who was interviewed remembered any negative news stories.

Some **drinking drivers** know about the system but others do not. Many repeat offenders probably understand that test refusal will lead to a warrant, but many first-time offenders probably do not.

## Potential Improvements

While the warrant system operates well, some people interviewed suggested potential improvements.

- Use warrants for all BAC test refusals, including first-time offenders, in all cities and counties, so the system is uniform statewide. PAAM could continue to advocate for this policy through the Michigan judicial and magistrates associations.
- Consider an automatic blood draw and BAC analysis for all drivers admitted to hospitals after crashes. Currently, hospitals draw blood for medical purposes only for head injury patients, and hospitals may not analyze these blood samples for BAC unless requested. Courts usually can obtain BAC results from hospitals when they are available. Defense attorneys may challenge hospital BAC evidence if there is no apparent medical reason for the blood draw and BAC analysis.
- Consider centralizing blood and breath tests in some geographical areas so that tests are done only at one location where someone always is available to draw a blood sample. Al-

ternatively, find a way to draw blood at the jail or agency headquarters using medical or paramedic phlebotomists. Either method would eliminate long waits for blood draws in hospitals. Blood draws at law enforcement facilities would eliminate the need to transport drivers.

- Consider the use of law enforcement phlebotomists. In addition to the reasons discussed in the Arizona report, this would eliminate one link in the evidence chain – the medical person drawing blood – which in turn eliminates one person who must be prepared to testify in a trial. Medical personnel are “nonstakeholders” in the OWI process (in the words of one judge), so testifying in an OWI case is not high priority for them. Law enforcement officers are major stakeholders and are trained to testify.

## Conclusions

Michigan’s warrant system is widely used and fairly standardized, using a simple one-page, fill-in-the-blank warrant form. Its major cost is that it adds to the time that a law enforcement officer spends to process an OWI case when the driver refuses the BAC test. Its major advantage is that it provides BAC evidence in most OWI cases, which leads to more guilty pleas, fewer trials, and more convictions.

## Suggestions for States Considering the Use of Warrants for BAC Test Refusals

The law enforcement officers, prosecutors, judges, and OHSP representatives interviewed in Michigan offered the following suggestions for other States interested in considering the use of warrants.

- Michigan’s warrant system is effective, it is the right thing to do (to acquire an important piece of evidence for an OWI case), and its benefits exceed its costs.
- Be sure that State laws authorize warrants and allow law enforcement to choose either a breath or blood test.
- Develop a unified system with cooperation and support from all participants: prosecutors, judges, law enforcement, hospitals and other medical facilities that may be called on for blood draws, laboratories, and alcohol treatment agencies.
- Establish a method to cover the costs of blood draws and blood test analyses.
- Make the system simple: use standard one-page, fill-in-the-blank, faxed affidavits and warrants; have magistrates on call to process warrant requests; obtain prosecutor approval for the affidavit and warrant forms so that prosecutors do not need to approve each individual warrant.
- Provide proper training on warrant procedures to law enforcement officers.
- Use the same system and procedures statewide.

## 5. Oregon

### Overview

Oregon recently began to use warrants for nonconsensual chemical testing of drivers arrested for DUII (driving under the influence of intoxicants) who refuse breath tests. The use of warrants has not been widely adopted and there appears to be resistance in the larger urban areas. Key characteristics of Oregon's system include:

- There is no specific law that allows for forced blood draws;
- Existing DUII law has been interpreted to allow police to obtain a warrant to require a suspect who refuse a breath test to submit to a blood test;
- The suspect must be transported to a hospital to have blood drawn by qualified medical personnel; and
- Warrants are used in only a few counties.

This report is based on discussions with law enforcement officers, prosecutors, defense attorneys, judges, and highway safety officials in Oregon. Some observations and conclusions may not apply to all jurisdictions in Oregon. The statements in this report do not necessarily represent the views of all law enforcement officers, prosecutors, defense attorneys, or judges throughout Oregon.

### Laws

Oregon's implied consent law (ORS 813.100) requires a driver arrested for DUII to submit to a chemical test of breath or blood if being treated in a health care facility, for the purpose of determining the alcohol content if the person was arrested for DUII. Before the test is given, the driver must be informed of the consequences and rights.

In addition, Oregon law requires a driver suspected of DUII to submit to field sobriety tests (ORS 813.135). Before the tests are administered, the suspect must be informed of the consequences of refusing or failing the tests.

In cases of refusal, the procedure to draw blood on a warrant is not statutory but is based on an interpretation of the existing DUII law. ORS 813.320 states that the implied consent law does not limit the introduction of competent, relevant evidence of the amount of alcohol in the blood of a defendant if the evidence results from a test of blood taken while the defendant was hospitalized or receiving medical care or if the evidence is obtained pursuant to a search warrant.

The penalty for test refusal is a \$500 fine and a 12-month license suspension. Upon refusal, the officer issues a temporary license certificate that is valid for 30 days, during which time the driver may request a hearing.

The basic license suspension for DUII conviction is 90 days for a first offense. Longer suspensions are imposed for repeat offenses. First offenders are eligible for diversion.

Appendix P contains key sections from Oregon's laws.

## How Oregon's Warrant System Began and Spread

The opportunity to seek a warrant to obtain evidence from a blood alcohol test is provided in ORS 813.320 (2)(b). Although this statute does not specifically state that a warrant can be obtained to force DUII suspects to provide a blood sample, it clearly indicates that evidence obtained from a blood sample is not precluded by the implied consent law if the evidence was obtained pursuant to a search warrant. Only in the past few years have police begun to seek warrants to obtain blood samples in DUII cases in which the drivers have refused to provide breath samples.

Other instances in which blood may be drawn without the consent of the suspect are when:

- There is probable cause to believe the person was driving while under the influence of intoxicants and the person is unconscious or otherwise incapable of expressly consenting to the test or tests required (ORS 813.140); and
- Evidence of the amount of alcohol in the blood is obtained from the results of a test of blood taken from the suspect while the suspect was hospitalized or otherwise receiving medical care (ORS 813.320).

Only a few counties actively participate in a program to obtain warrants for forced blood draws from DUII offenders. Efforts by individual prosecutors and some police departments to involve more counties continue, particularly counties that include large urban areas.

The system of warrants requires the active support of prosecutors and judges. In counties where the prosecutors and judges support the program, warrants are obtained regularly for refusal cases. In other counties, prosecutors or judges may disagree with the need for blood warrants, do not wish to be bothered late at night for DUII cases, or refuse to participate in a process of telephonic warrants. This severely restricts the opportunity to expand the program.

## How Oregon's Warrant System Operates

**The DUII arrest and the warrant.** Upon arrest for suspicion of DUII, the offender is taken to the station and the law enforcement officer requests the driver to provide a sample of breath for analysis of alcohol content. The suspect is advised of the consequences and rights associated with refusal. If the driver refuses the breath test, the officer uses a template to complete the warrant and either reads it over the phone or sends it by fax to the on-call prosecutor who must approve the warrant. The on-call judge is called and the call must be recorded. The warrant is printed and signed and either taken to the judge or sent by fax.

Once the warrant is obtained, the suspect must be taken to the hospital to have blood drawn. If necessary, the suspect is restrained. A qualified medical practitioner must draw the blood. Some medical staff may be reluctant to draw blood without the person's consent or for any reason that is not strictly for medical purposes; therefore, it is necessary to have a copy of the search warrant in hand. At times, it is helpful to have the warrant state "This is a court order" to help medical personnel understand the implications of a search warrant. The sample is then taken to the State lab for analysis.

**Who draws blood: medical personnel.** Blood samples must be drawn by qualified medical practitioners: a doctor, nurse, or phlebotomist in a hospital or an EMT. No law enforcement officers in Oregon are trained as phlebotomists.

**Blood sample analysis and reporting.** Oregon reports that approximately 200 blood tests are performed each year, as compared to 50,000 to 60,000 breath tests. Blood samples are typically stored until there are a sufficient number to test. All DUII blood samples in Oregon are analyzed at State police laboratories. BAC results are returned within 30 days. A law enforcement officer who works closely with the State toxicology laboratories and the breath test program indicated that the average BAC from blood tests was approximately .20, whereas the average from breath tests was about .15.

## Outcomes of Oregon's Warrant System

The people interviewed in Oregon generally agreed that the use of warrants to obtain blood samples from DUII offenders who refuse to provide a breath sample can be the difference in whether or not a case goes to trial. Blood alcohol evidence is viewed as strong and most defendants will not try to defeat it. The process is not used widely enough to know whether it has had any impact on the number of refusals. In general, though, first-time offenders who are eligible for diversion are unlikely to refuse. Repeat offenders who have been through the process on at least one previous occasion are most likely to refuse the breath test. Blood alcohol evidence from these offenders helps to increase the likelihood of conviction.

**Legal challenges.** Oregon law provides the opportunity to obtain a warrant for forced blood draws in the case of an implied consent refusal and this right has been upheld in two cases. In *State v. Jaehnig* the court determined that a mere statutory violation of rights will not cause evidence to be suppressed. Therefore, statutory violation of implied consent will not cause blood draw results to be suppressed. *State v. Shantie* went one step further and determined that ORS 813.320 authorizes a blood draw even when the only offense being investigated is DUII.

**Costs.** Alcohol tests are performed by State laboratories, which analyze the blood samples as part of their normal operations, at an estimated cost of \$50 per test.

The main indirect costs are for the time required by law enforcement officers and judges to complete the warrant process. Time expenditures, primarily the time involved in obtaining the warrant and transporting the suspect to the hospital to have blood drawn, are seen as the major drawbacks to the warrant procedure. The people interviewed in Oregon stated that this procedure can increase the time required to process a DUII offender from an average of two or three hours to as much as five or six hours. This is not an insignificant investment of time and some supervisors may object to taking an officer off the road for such an extended period of time.

## Reactions to and Observations Regarding the Warrant System

**Law enforcement officers** interviewed in Oregon liked the search warrant process because they believe it reduces test refusals and provides BAC test evidence, often critical in the successful prosecution of DUII cases. Although the process of obtaining a warrant and obtaining a blood

sample can add significantly to the time required to process a DUII offender, officers recognized the importance of BAC evidence in a DUII case and most are willing to go to the effort of obtaining a warrant to help ensure a conviction.

The **judges** interviewed believe that the warrant system appears to have more support in some areas of the State than others. The people interviewed in Oregon reported that some judges do not feel DUII is a sufficiently serious crime to invoke forced blood draws.

**Prosecutors** who were interviewed report that blood test evidence is always welcome by prosecutors in a DUII case. It is viewed as strong, compelling evidence that can produce a plea and avoid a lengthy trial.

## Potential Improvements

While the warrant system operates well where it is used, some people interviewed recommended that it could be improved by greater standardization and more widespread acceptance.

- Expand the program to include more counties, particularly those that include large urban areas.
- Train law enforcement officers in obtaining the necessary information required for an affidavit and a warrant in a DUII case.
- Implement a law enforcement phlebotomist program to allow trained and certified police officers to draw blood.

## Other Issues

The time required to contact a judge, complete the forms, swear the information, obtain a warrant, transfer the suspect to the hospital, and obtain a blood sample is not trivial and can add significantly to what is already a lengthy procedure for processing a DUII offender.

The support of prosecutors and judges is critical to the successful use of warrants.

## Conclusions

The system for obtaining warrants for blood samples from DUII offenders who refuse to provide breath samples in Oregon appears to work efficiently and effectively where it is used.

The people interviewed agreed that the warrant system reduces BAC test refusals, provides more BAC test evidence, increases guilty pleas, reduces trials, and provides the evidence needed for a DUII conviction. Its major drawback is the amount of time required to obtain a warrant and have blood drawn.

## 6. Utah

### Overview

Utah uses warrants for nonconsensual chemical testing extensively statewide for drivers arrested for DUI (driving under the influence of alcohol or drugs) who refuse a breath test. The program appears to be more widely employed by the Utah Highway Patrol but it is beginning to spread throughout municipal police departments as well. Key characteristics of Utah's system include:

- The authority to draw blood in cases of breath test refusal is not statutory but is based on case law;
- A number of law enforcement officers have been trained and certified as phlebotomists and perform authorized blood draws;
- Civilian phlebotomists can be used or the suspect can be transported to a hospital;
- Prosecutors and district attorneys have established standard forms for affidavits and warrants to facilitate blood draws; and
- The Department of Public Safety has established policies and procedures concerning nonconsensual chemical testing.

This report is based on discussions with law enforcement officers, prosecutors, defense attorneys, judges, and highway safety officials in the greater Salt Lake City area. Some observations and conclusions may not apply to all jurisdictions in Utah. The statements in this report do not necessarily represent the views of all law enforcement officers, prosecutors, defense attorneys, or judges throughout Utah.

### Laws

Utah's implied consent law (UCA 41-6a-520) requires a driver arrested for DUI to submit to a chemical test of breath, blood, urine, or oral fluids for the purpose of determining whether the person was operating, or in actual physical control of, a motor vehicle while having a BAC in excess of .08, while under the influence of alcohol, a drug, or combination of alcohol and any drug, or while having any measurable controlled substance or metabolite of a controlled substance in the body. A law enforcement officer determines which and how many tests may be administered. Refusal to submit to the first or any subsequent requested tests constitutes a refusal. The officer requesting a test is required to warn the suspect that refusal to submit to a test may result in revocation of the person's license and a five- or ten-year prohibition from driving with any measurable amount of alcohol in the person's system.

In cases of refusal, the procedure to draw blood on a warrant is not statutory but is based on case law whereby a police officer swears an affidavit before a justice and can be granted a warrant to obtain a blood sample. The procedure is similar to that in any other situation where a warrant is requested to collect evidence of a crime. A lower appeals court acknowledged the process in an opinion overturning a warrantless blood draw (*State v. Rodriguez* 93 P.3d 854, 2004 UT app 198; [www.utcourts.gov/opinions/appopin/rodrig061004.htm](http://www.utcourts.gov/opinions/appopin/rodrig061004.htm)).

The administrative penalty for test refusal is a mandatory 18-month license suspension. Upon refusal, the officer gives notice of the Driver License Division's intention to revoke the person's license, takes possession of the license, and issues a temporary license certificate that is valid for 29 days during which time the driver may request a hearing before the Driver License Division.

The basic license suspension for a DUI conviction is 90 days for a first offense and one year for a second or subsequent offense. Other sanctions may include 48 hours incarceration or community service or home confinement; alcohol screening, assessment and rehabilitation; and a fine of \$700. Offenders with a BAC in excess of .16 are subject to more severe sanctions and restrictions including treatment, home confinement, supervised probation, and participation in an ignition interlock program.

Appendix Q contains key sections from Utah's laws.

## **How Utah's Warrant System Began and Spread**

The opportunity to seek a warrant to obtain evidence of a crime has always been available. Until about three years ago, warrants to obtain blood samples were rarely sought for DUI cases except where serious injury or death was involved. It was considered an expensive and time-consuming procedure.

Several years ago, following a serious collision, law enforcement officers ordered a blood sample without a warrant from the driver responsible for a serious crash to obtain evidence of alcohol involvement, believing the exigent nature of the circumstances did not allow sufficient time to obtain a warrant. Although the subsequent appeals court decision overturned the driver's conviction because the blood sample was obtained without a warrant, the ruling acknowledged that an officer could obtain a warrant to force a suspect to provide a blood sample for analysis of alcohol or drug content. This landmark case (*State v. Rodriguez*) is still under appeal but the major issue as of 2006 involved defining the situations or circumstances which qualify as exigent and thereby allow the officer to obtain a blood sample without a warrant. The decision is not expected to impact the ability of an officer to seek a warrant for a nonconsensual blood draw in DUI cases.

Taking a DUI suspect to a hospital for a blood test was found to be a time-consuming process. State law (Utah Health Code 26-1-30) allows qualified people to draw blood from DUI suspects. Therefore, the Highway Patrol contracted with civilian phlebotomists to draw blood from suspects on an as-needed basis. This was deemed to be an expensive process. Based on the reported success in Arizona, Utah began training Highway Patrol troopers as phlebotomists to conduct their own blood draws.

As of June 2006 there were 53 active trooper phlebotomists in Utah and there were plans to train more. Civilian phlebotomists were still used when necessary. Warrants were used statewide but may not be as common in some areas as in others. The law enforcement phlebotomist program was limited to the Utah Highway Patrol and it is not known whether many municipal police departments will adopt it.

The ability to obtain a blood sample from drivers who refuse to provide a breath sample is embraced with considerable enthusiasm among the officers interviewed. They view it simply as a means to obtain evidence of a crime that will help ensure the offender is convicted and punished for the offense.

## How Utah's Warrant System Operates

**The DUI arrest and the warrant.** Upon arrest for suspicion of DUI, the officer requests the driver to provide a sample of breath (or blood, urine, or oral fluids) for analysis. The suspect is read word-for-word the formal arrest and refusal admonishment on the DUI citation that states that failing to provide the requested samples may result in revocation of the person's driver's license (18 months), a five- or ten-year prohibition from driving with any measurable amount of alcohol in the driver's system, and the forcible withdrawal of a blood sample. If the driver continues to refuse, the officer contacts the on-call prosecutor who takes the information to a judge to obtain a warrant for a blood test. Alternatively, depending on the jurisdiction, the officer will contact the on-call judge directly to obtain a warrant. The call is recorded (in-vehicle video may be used) and the paperwork is completed later. Some counties have established standard affidavit and warrant forms (fill-in-the-blanks) that simplify the procedure for the officer and the judge (see Appendices R and S for samples from Salt Lake County).

Many affidavits and warrants can be faxed. The officer fills out the required forms, phones the judge, is sworn in, provides details to the judge, and faxes the warrant form to the judge. The judge then reviews and signs the warrant and faxes it back to the officer, who then can proceed to obtain a blood sample. If fax facilities are not available, warrants can be obtained by phone. There is a proposal to provide judges with personal digital assistants (PDAs) to allow warrants to be completed via wireless communication.

Once a warrant is obtained, the arresting officer must obtain approval for the procedure from a supervisor. The supervisor contacts a qualified phlebotomist to draw the sample. If readily available, the supervisor is present during the procedure to ensure that it is done according to policy guidelines and that no more force or restraint than is reasonably necessary is used. Wherever possible, blood is drawn by a trooper phlebotomist. Otherwise civilian phlebotomists on contract can be called or the suspect can be taken to a hospital.

The blood sample is stored appropriately and sent to the State laboratory (Department of Public Safety) for analysis. The warrant form is returned to the issuing judge or court within three to five days.

**Who draws blood: law enforcement phlebotomists.** When Utah began using warrants for BAC test refusals, blood was drawn by a medical phlebotomist, either a nurse or technician at a hospital or other medical facility, or a contract phlebotomist at a police agency. In some instances it was difficult to access a medical phlebotomist in a timely manner because they were busy, hard to contact, or located far away from the arresting officer and driver.

Following the lead of Arizona, the Utah Highway Patrol began a phlebotomist training program for law enforcement officers. Training is provided by the Utah School of Phlebotomy using certi-

fied instructors and a standard curriculum. The course is taught two days per week for two weeks at a cost of \$250 per student. In conjunction with the course, officers are instructed in evidence collection and handling procedures. Initially, approval was obtained to train 60 officers and 53 were still active in the program as of June 2006. Central records are kept of the officers certified and each officer maintains a log in which blood draws are recorded.

Troopers who have completed this training are known as “trooper phlebotomists” and are recognized as “qualified” to draw blood under Utah law (Utah Health Code 26-1-30(2)(s)). Current phlebotomists require four hours of in-service training every two years to retain their qualification. Interviewees pointed out that there is always the risk of medical complications, such as uncontrolled bleeding, that can create problems when blood is drawn away from a medical facility. The authorities who were interviewed also noted that if law enforcement officers forcibly draw blood from DUI suspects, the public may perceive the officers as overstepping their authority.

Contract civilian phlebotomists are still used when a trooper phlebotomist is not available. Blood samples can also be obtained by taking the suspect to a hospital.

The law enforcement officers, prosecutors, judges, and highway safety officials interviewed in Utah concluded that law enforcement phlebotomists offer several advantages over medical phlebotomists.

- It is less expensive to train a law enforcement officer as a phlebotomist than to pay a civilian phlebotomist for blood draws: a one-time training cost of \$250 compared to a cost of about \$40 for each blood draw;
- If a trooper phlebotomist is on duty, it takes considerably less time to obtain a blood draw than to call a civilian phlebotomist or transport the suspect to a hospital, especially in rural areas;
- Blood draws performed at the station can be witnessed by other officers who may also be required to provide assistance;
- Trooper phlebotomists can also be used to draw blood when required as part of the Drug Evaluation and Classification (DEC) procedure; and
- Defense attorneys often advise clients to provide a breath sample because the period of license suspension for refusal is considerably longer than that for a DUI conviction.

**Blood sample analysis and reporting.** In 2005, trooper phlebotomists in Utah performed 423 blood draws (no data were available for four officers). Four officers reported performing at least 25 blood draws each. All DUI blood samples in Utah are analyzed at the State Toxicology Laboratory. BAC results typically are available in 5 to 10 business days.

## Outcomes of Utah’s Warrant System

The law enforcement officers, prosecutors, judges, and highway safety officials interviewed in Utah concluded that the use of warrants has produced several consequences.

- BAC test refusals decreased substantially, from 51.8% in 1996 to 17.3% in 2001.<sup>5</sup>
- BAC evidence is now available for more DUI cases that might otherwise not be prosecuted successfully.
- BAC evidence produces more pleas, fewer trials, and more convictions.

**Legal challenges.** The warrant system appears to operate without serious problems in Utah. Qualified law enforcement phlebotomists are authorized to draw blood under Utah law, which allows blood to be drawn by “any qualified person.”

As in other States, the *Schmerber* decision (*Schmerber v. California* 384 U.S. 757 [1966]) is cited in support of using involuntary blood draws. In this case, the U.S. Supreme Court unanimously ruled that forced blood draws do not violate the Fifth Amendment guarantee against self-incrimination. As indicated previously, in Utah the *Rodriguez* case is cited as providing support for the use of warrants to obtain forced blood draws from DUI offenders.

Law enforcement officers indicated that because blood alcohol evidence dissipates with time, exigent circumstances (primarily time constraints in cases of serious collisions) allow forced blood draws in the absence of a warrant. The appeals court decision in the *Rodriguez* case indicated that an effort should be made to obtain a warrant before the suspect is required to submit to a nonconsensual blood test. A final decision on the *Rodriguez* case may help to define what constitutes exigent circumstances in DUI cases. In the meantime, prosecutors urge law enforcement officers to seek a warrant prior to every forced blood draw.

**Costs.** In fiscal 2004, DPS spent approximately \$17,000 on blood draws in hospitals or by contract phlebotomists in Salt Lake, Utah, Davis, Weber and Toole Counties. Salt Lake County alone spent approximately \$12,000. It costs \$250 to train each officer as a trooper phlebotomist; 50 officers could be trained for less than is currently spent on blood draws. Blood draw kits are supplied by the toxicology lab. Other supplies – gloves, bandages, tourniquet, cotton sponges – can be supplied at about \$1 per kit. “Sharps” containers (for used syringes) are \$3 each.

Alcohol tests are performed by State laboratories. These laboratories analyze the blood samples as part of their normal operations, at no additional charge to the agency submitting the sample. The actual cost per test is not known.

The main indirect costs are for the time required by law enforcement officers and judges. Initial phlebotomist training takes four days; refresher training takes four hours. Agencies also give short in-service training to patrol officers in the procedures for completing warrants.

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<sup>5</sup> Zwicker, T.J., Hedlund, J., & Northrup, V.S. (2005), “Breath Test Refusals in DWI Enforcement: An Interim Report,” HS 809 876, p. 6. Washington, DC: National Highway Traffic Safety Administration.

## Reactions to and Observations Regarding the Warrant System

**Law enforcement officers** who were interviewed liked warrants because they believe that they reduce test refusals and provide more BAC test evidence, which in turn allows drivers with BACs over .16 to be issued more-severe sanctions. Although the process of obtaining a warrant and obtaining a blood sample can add significantly to the time required to process a DUI offender, the trooper phlebotomist program can reduce that time considerably. Officers recognized the importance of BAC evidence in a DUI case. The officers interviewed believe that they, along with their fellow officers who deal with drinking drivers on a regular basis, are willing to go to the effort of obtaining a warrant to help ensure a conviction in those situations where the driver refuses to provide a sample voluntarily.

There is some concern that warning the suspect of the consequences of refusing to provide a breath sample might be perceived as a way to coerce the suspect into submitting to the breath test. While some see it as fair to provide suspects the opportunity to change their mind, others believe that once suspects have refused to provide a sample they are in violation of implied consent and the officer should proceed accordingly without an explicit warning.

Blood test evidence is always welcome by prosecutors in a DUI case. It is viewed as strong, compelling evidence that can produce a plea and avoid a lengthy trial.

The warrant system appears to have more support in some areas of the State than others. For whatever reasons, there remains some opposition to forced blood draws.

## Potential Improvements

While the warrant system operates well, some people interviewed recommended that it could be improved by greater standardization and more widespread acceptance.

- Standardize the affidavit and warrant forms across jurisdictions. Different counties use different forms; some do not have standard forms. The greater the consistency in the information required, the easier it is for officers to complete the forms. Standard forms statewide would be useful.
- Train law enforcement officers in obtaining the necessary information required for an affidavit and for a warrant in a DUI case.
- Expand the law enforcement phlebotomist program to other police departments. Currently, only the Highway Patrol has an officer phlebotomist program. Municipal and local police agencies could benefit from this type of program as well.

## Other Issues

The time required to contact a judge, complete the forms, swear the information, obtain a warrant, contact a phlebotomist, and obtain a blood sample is substantial and can add significantly to what is already a lengthy process of processing a DUI offender.

Some people interviewed suggested that there might be some general deterrent value in informing the general public about forced blood draws. On the other hand, the wrong message – or an inappropriate slant on the message – might be used to tarnish the image of law enforcement officers.

The support of prosecutors and judges is critical to the successful use of warrants.

## Conclusions

Utah's system for obtaining warrants for blood samples from DUI offenders who refuse to provide a breath sample works efficiently and effectively. Written policies and procedures have been produced to ensure a consistent and standardized process in some counties.

The people interviewed agreed that Utah's warrant system reduces BAC test refusals, provides more BAC test evidence, increases guilty pleas, reduces trials, and provides the evidence needed for a DUI conviction. The trooper phlebotomist program is used widely by the Highway Patrol but has not spread to other police agencies in the State. It reduces the need to transport suspects to a hospital or to call in a civilian phlebotomist to draw blood. It is cost-effective.

There is little opposition to the basic principle underlying warrants – the police view it as a process necessary to obtain evidence of a crime. It also gives teeth to the implied consent law.

## 7. California, Nevada, and North Carolina

California, Nevada, and North Carolina all allow blood draws for breath test refusals without a warrant. The researchers conducted phone interviews with knowledgeable officials in California and Nevada. North Carolina's law came into effect on December 1, 2006, as this report was being completed.

California and Nevada both allow a blood sample to be obtained without a warrant from a driver who has refused an officer's request for a breath, blood, or urine sample. As a result, BAC evidence from a breath or blood test is available for almost every driver arrested for DUI in California and Nevada. A North Carolina law similar to Nevada's became effective on December 1, 2006. This section summarizes the California and Nevada systems and the recently enacted North Carolina law.

### California

California's implied consent law requires drivers arrested for DUI to provide a blood or breath sample (California Vehicle Code 23612). If the driver refuses, law enforcement officers may obtain a blood sample, by force if necessary. Their authority rests on California case law beginning with the U.S. Supreme Court decision in *Schmerber v. California* [384 U.S. 757 (1966)]. The blood sample must be drawn in a medically approved manner at a hospital or other suitable facility. A warrant is used only in rare circumstances: for example, for some seriously injured drivers in hospitals who cannot respond to a law enforcement officer's request for a breath or blood sample.

California law enforcement officers routinely use this process to obtain blood samples from drivers who refuse to provide a breath or blood sample voluntarily. As a result, California has few breath test refusals (the reported refusal rate in 2001 was 5.3%<sup>6</sup>) and has BAC evidence for almost all drivers arrested for DUI.

### Nevada

Nevada's implied consent law contains the usual requirement that a driver must provide an evidentiary breath, blood, or urine sample when an officer has reasonable grounds to suspect that the driver was under the influence of alcohol or drugs. Nevada law also provides that breath test BAC evidence can be used only if two consecutive breath tests produce consistent BAC values. If they do not, the driver must provide a third breath test; if this test's BAC is inconsistent with both the previous BAC values, the driver must provide a blood sample. If the driver refuses any breath or blood sample request, Nevada law authorizes law enforcement officers to use force if necessary to obtain a blood sample:

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<sup>6</sup> Zwicker, T.J., Hedlund, J., & Northrup, V.S. (2005), "Breath Test Refusals in DWI Enforcement: An Interim Report," HS 809 876, p. 6. Washington, DC: National Highway Traffic Safety Administration.

NRS 484.383(7). If a person to be tested fails to submit to a required test as directed by a police officer pursuant to this section and the officer has reasonable grounds to believe that the person to be tested was: (a) Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance; or (b) Engaging in any other conduct prohibited by NRS 484.379, 484.3795 or 484.37955, the officer may direct that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested.

This law clearly allows a blood sample to be drawn without a warrant. The blood sample may be drawn by any qualified person. In practice, most blood samples are drawn by registered nurses, who are under contract to law enforcement agencies and who are called to the police station as needed.

This law has been in effect since 1985. As a result, BAC evidence from a breath or blood test is available for almost every driver arrested for DUI in Nevada. The exceptions are drivers arrested in very rural areas, more than two hours away from the nearest law enforcement agency and evidential breath test machine.

## **North Carolina**

In the 2006 legislative session, North Carolina enacted a law similar to Nevada's.

Bill 1048, Part IX, Section 16, revising G.S. 20-139.1, (c). Notwithstanding any other provision of law, when a blood or urine test is specified as the type of chemical analysis by a law enforcement officer, a physician, registered nurse, emergency medical technician, or other qualified person shall withdraw the blood sample and obtain the urine sample, and no further authorization or approval is required ([www.ncleg.net/Sessions/2005/Bills/House/HTML/H1048v6.html](http://www.ncleg.net/Sessions/2005/Bills/House/HTML/H1048v6.html)).

The law became effective on December 1, 2006.

## 8. Summary and Conclusions

### Legal Basis of Warrants

All States have implied consent laws with administrative sanctions for drivers who refuse a breath test. Arizona and Michigan have laws that specifically authorize law enforcement officers to seek warrants to obtain blood samples from drivers arrested for DUI who refuses to provide breath samples, and Oregon's law has been interpreted to provide the same authorization. Utah derives the authority from case law, whereby obtaining a warrant is merely viewed as a means of obtaining evidence of a crime. Nevada and North Carolina laws allow a blood sample to be obtained without a warrant from a driver who refuses a breath test. California also allows a blood sample to be obtained without a warrant, based on *Schmerber v. California* (384 U.S. 757[1966]).

Case study State officials often cited the U.S. Supreme Court decision in *Schmerber v. California* as providing support for warrants. In this landmark case, the court ruled that forced blood draws did not violate the Fifth Amendment guarantee against self-incrimination.

Different aspects of the warrant system have been challenged in the courts of each case study State. None of the challenges has been upheld.

### History and Current Use of Warrants

NHTSA is aware of six States that used warrants extensively for BAC test refusals in at least in one jurisdiction in 2006. Four of these States, Arizona, Michigan, Oregon, and Utah, were chosen for in-depth examination in this study.

In the four case study States, the opportunity to obtain a warrant for a blood sample had been available for many years, but the procedure was rarely used until relatively recently.

- In Arizona, jurisdictions including Phoenix, Peoria, and Scottsdale began to use warrants for some more serious DUI cases in the mid-1990s. At about the same time, the Arizona State police began training law enforcement officers as phlebotomists. As of 2006, some Arizona jurisdictions use warrants for all BAC test refusals and most jurisdictions use them for some refusals.
- In Michigan, some counties have used warrants for first offenders for over 10 years and many other counties have used them for repeat offenders for several years. As of 2006, most county prosecutors have policies that require law enforcement officers to obtain warrants for all BAC test refusals, including first offenders.
- In Oregon, law enforcement officers in a few counties recently began to seek warrants for some BAC test refusals.
- In Utah, until about three years ago warrants were rarely sought except in cases involving serious injury or death. Based on the experience of neighboring Arizona, Utah began to train Highway Patrol officers as phlebotomists. As of 2006, warrants are used statewide, more commonly in some areas than in others, with Highway Patrol phlebotomists providing many of the blood draws.

## **The Warrant Process**

The process for obtaining a blood sample from a DUI suspect is similar in all four case study States. The driver is arrested for DUI and is asked for a breath sample. The driver is informed of the State's implied consent provisions and penalties. If the driver refuses to provide a breath sample, the officer proceeds to request a warrant for a blood sample. Jurisdictions differ as to when, and if, drivers may change their minds and agree to provide breath samples. Generally, once the officer has contacted a magistrate, judge, or prosecutor regarding a warrant, the driver's refusal is final, the administrative sanctions for an implied consent refusal are invoked, and the driver must submit to a blood test if a warrant is granted.

To obtain a warrant, the arresting officer usually completes standard affidavit and warrant forms. In some jurisdictions, the officer first contacts an on-call prosecutor; in others, the officer immediately contacts a judge or magistrate on duty. The forms can be faxed to the judge or magistrate for signature or the warrant can be sworn by telephone (with the conversation usually recorded) and the paperwork can be completed the following day.

Once the warrant is granted, the driver is required to provide a blood sample. In Michigan and Oregon, the driver is taken to a facility where a qualified medical practitioner (physician, nurse, EMT, or phlebotomist) draws a blood sample or a qualified person is called to the police station to draw the sample. In Arizona and Utah, a number of law enforcement officers have been trained and certified as phlebotomists and are authorized to draw blood samples. They typically draw the blood sample at the police station, eliminating the need to transport the driver to a medical facility. If a law enforcement phlebotomist is not available, blood can be drawn by medical personnel as in Michigan and Oregon. In all States the driver will be charged with and face the penalties for a BAC test refusal in addition to potential charges and penalties for DUI.

## **Advantages of Warrants**

Judges and prosecutors interviewed in all four case study States strongly agreed that the driver's BAC is a valuable piece of evidence in court and can make the difference between a guilty plea and a trial. BAC evidence is critical in the prosecution of extreme DUI cases and also is important in cases involving repeat offenders.

Judges and prosecutors interviewed in case study States agreed that the use of warrants has reduced breath test refusals and increased the proportion of DUI cases with BAC evidence in their jurisdictions. This in turn has produced more guilty pleas, fewer trials, and more convictions. In addition, blood alcohol test evidence is often considered the "gold standard" in DUI cases. While breath test BAC evidence is often challenged by defense counsel, blood test evidence is rarely questioned.

Law enforcement officers interviewed in case study States generally supported the use of warrants. They are willing to take the additional time that the warrant process requires in order to obtain BAC evidence. Prosecutors strongly supported the use of warrants. Many judges also strongly supported warrants, to the extent of volunteering to answer their telephone in the middle of the night to issue warrants.

## Disadvantages of Warrants

The major disadvantage of the warrant system reported by the people interviewed is the additional time required to obtain the warrant and the blood sample. It can take an officer an extra 90 to 120 minutes or more to complete the warrant forms, transmit the information to a judge for signature, transport the suspect to a medical facility or call a phlebotomist to the station, and obtain the blood sample. Additional time may be required to obtain or complete original documents the following day. The use of law enforcement phlebotomists can eliminate both the need to transport the driver to and from a medical facility and the time spent waiting for the blood sample to be drawn.

People interviewed reported that some judges remain uncomfortable with warrants obtained by telephone and fax. Others are not satisfied that cases of “simple DUI” justify the use of such forcible and invasive procedures to obtain BAC evidence. These obstacles must be addressed before a system for obtaining warrants can be universally and equally applied in a jurisdiction.

People interviewed noted that the use of law enforcement phlebotomists may raise a risk of unexpected medical complications from a blood draw in a police station, with no physician or other medical staff present. No such instances have been reported in Arizona or Utah, the two States in which law enforcement phlebotomists are used. It is imperative that officer phlebotomists receive complete and thorough training and engage in ongoing certification courses to ensure they maintain their qualifications and are able to draw blood in a safe and professional manner.

People interviewed suggested that the public may believe that law enforcement phlebotomists provide an opportunity for police harassment. Again, procedures for law enforcement phlebotomists should be clearly defined and followed. No questions of harassment have been reported in Arizona or Utah.

## Conclusions

Each case study State uses warrants for some drivers arrested for DUI who refuse breath tests. The main differences in warrant procedures across the four States are:

- How warrants are authorized: by statute (Arizona, Michigan), by interpretation of statute (Oregon), or through case law (Utah).
- How the system is structured: with common procedures statewide (Arizona and Utah) or with county-level procedures (Michigan and Oregon).
- Where and how frequently warrants are used:
  - statewide, quite extensively, for all refusals in major jurisdictions (Arizona);
  - in most counties, quite extensively, for all refusals in many counties (Michigan);
  - statewide, primarily through the Highway Patrol (Utah);
  - in a few counties (Oregon).
- Who draws blood: medical personnel (Michigan and Oregon) or law enforcement phlebotomists (Arizona and Utah).

Each State's system is now well accepted in the jurisdictions in which it operates. In each State, the people interviewed agreed that warrants have reduced breath test refusals and produced BAC evidence in more DUI cases. This in turn has produced more pleas, fewer trials, and more convictions.

The major reported disadvantage of a warrant system is its costs: the additional time required for a law enforcement officer to obtain a warrant and collect a blood sample; the cost of drawing the blood sample, measured either by the charge for a sample drawn at a medical facility or by the cost of training law enforcement phlebotomists; and the cost of analyzing the blood sample. If trained law enforcement phlebotomists are used to draw blood samples, then additional law enforcement time and out-of-pocket costs are lower, but still are greater than the costs of taking no further action when a driver refuses to provide a BAC sample. Many of the people interviewed regarded these costs as necessary and appropriate for acquiring critical evidence for the criminal DUI charge. Others pointed out that DUI trials are very expensive. If a warrant system increases guilty pleas and reduces trials, then they believe that these savings are greater than the warrant system's costs.

## **9. Appendices**

Appendix A

**Study Description**

## Study Description

### Document effective programs to reduce alcohol test refusals through the use of warrants The Preusser Research Group, under contract to NHTSA

**Background:** Drivers arrested for drinking and driving (DWI) in the United States are required by implied consent laws to provide a breath or blood sample to determine the amount of alcohol in his/her blood (i.e., BAC). But some drivers refuse the test. Refusals result in administrative and, in some States, criminal penalties. However, drivers who refuse may be more likely to avoid a DWI conviction. Some States provide more severe sanctions for drivers convicted of DWI who have a high BAC, such as over .15. These sanctions are very difficult to apply to drivers who refuse to provide a sample to determine BAC.

A recent NHTSA study documented alcohol test refusal rates across the States (Breath Test Refusals in DWI Enforcement, DOT HS 809 876 (2005), available at [www.nhtsa.dot.gov](http://www.nhtsa.dot.gov)). In 2001 about one-quarter of all drivers arrested for DWI refused the test. Refusal rates varied substantially by State, from a low of 5% to a high of 85%.

Several States or jurisdictions within States use warrants to reduce or virtually eliminate alcohol test refusals. In these States, if a driver refuses the test, law enforcement officers can obtain a warrant from a judge or magistrate permitting them to acquire a blood sample for the purpose of determining the driver's alcohol level either with the driver's cooperation or involuntarily.

**The study:** The procedures for obtaining blood samples by warrant differ substantially from State to State. This study will document how warrant systems operate in several States.

**Method:** Interviews with judges, prosecutors, law enforcement officers, defense attorneys, toxicologists, and highway safety officials in each State.

#### Information sought:

- underlying laws
- when warrants are used
- how warrants and blood samples are obtained
- how effective the system is in obtaining alcohol tests from arrested drivers
- strengths and weaknesses of the system
- advice to other States interested in exploring a warrant system

#### Reports:

- a brief report on each State's system
- an overall study report documenting the similarities and differences across all the States studied and overall conclusions, including the brief reports on each State's system

**Audience:** Other States interested in exploring a warrant system.

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Appendix B

**Study Questions**

## **Study Questions**

### **Overall Questions for Person Most Familiar with Warrant System**

Intro: We're documenting how several States use warrants or other methods to get a blood sample from drivers arrested for DWI who refuse a BAC test.

Where? Whole State or some jurisdictions? If not whole State: why in some but not others?

When? All DWI arrests or only some? If some, then generally which? What State laws allow this?

How does the system work, in these jurisdictions for these drivers? Describe what usually happens when a driver is arrested for DWI and asked for a BAC test:

- Does the arresting officer tell the driver about the warrant and forced blood draw?
- If the driver still refuses, what usually happens?
  - Is a warrant needed? How does the officer get it?
  - Who draws blood? Where? How does the driver get there?

What are the effects? How does the warrant system affect DWI arrests, prosecutions, convictions?

- Arrests: Refusal rates? Time required for the officer to process a DWI arrest? How does law enforcement feel about warrants?
- Prosecutions and convictions? How do prosecutors, judges, defense attorneys feel?
- Any unexpected consequences?

Costs? Who pays for the blood tests?

Any legal, political, or public relations issues about warrants or forced blood draws? If so, how solved?

Any problems with the system, things you'd like to change if you could?

When did the system get started? How? Any changes over time? If so, what and why?

Your overall opinion of the system: good, bad, neither.

Your advice for other States interested in exploring a warrant system.

Your recommendations for people we should talk to for more information: law enforcement, prosecutors, judges, defense attorneys, phlebotomists, others?

Appendix C  
ARIZONA  
**Extracts from Arizona Laws**

## Extracts from Arizona Laws

28-1321. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension; special ignition interlock restricted driver license (L05, Ch. 312, sec. 3. Eff. 2/1/06).

A. A person who operates a motor vehicle in this state gives consent, subject to section 4-244, paragraph 33 or section 28-1381, 28-1382 or 28-1383, to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content if the person is arrested for any offense arising out of acts alleged to have been committed in violation of this chapter or section 4-244, paragraph 33 while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs. The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer having reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle in this state either:

1. While under the influence of intoxicating liquor or drugs.
2. If the person is under twenty-one years of age, with spirituous liquor in the person's body.

B. After an arrest a violator shall be requested to submit to and successfully complete any test or tests prescribed by subsection A of this section, and if the violator refuses the violator shall be informed that the violator's license or permit to drive will be suspended or denied for twelve months, or for two years for a second or subsequent refusal within a period of sixty months, unless the violator expressly agrees to submit to and successfully completes the test or tests. A failure to expressly agree to the test or successfully complete the test is deemed a refusal. The violator shall also be informed that if the test results show a blood or breath alcohol concentration of 0.08% or more, or if the results show a blood or breath alcohol concentration of 0.04% or more and the violator was driving or in actual physical control of a commercial motor vehicle, the violator's license or permit to drive will be suspended or denied for not less than ninety consecutive days.

D. If a person under arrest refuses to submit to the test designated by the law enforcement agency as provided in subsection A of this section:

1. The test shall not be given, except as provided in section 28-1388, subsection E or pursuant to a search warrant.

28-1388. Blood and breath tests; violation; classification; admissible evidence

A. If blood is drawn under section 28-1321, only a physician, a registered nurse or another qualified person may withdraw blood for the purpose of determining the alcohol concentration or drug content in the blood. The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood alcohol content determination made pursuant to this subsection.

Source: [www.azleg.state.az.us/ArizonaRevisedStatutes.asp](http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp); accessed May 17, 2006. See also the short summary of laws and sanctions at [www.youcantaaffordit.com/Home2.html](http://www.youcantaaffordit.com/Home2.html).

Appendix D  
ARIZONA  
**Phoenix Police DUI Policies and Procedures**

<b>DRIVING UNDER THE INFLUENCE INVESTIGATIONS</b>		<b>Operations Order 6.4</b>
<b>PHOENIX POLICE DEPARTMENT</b>	Rev. 02/03	<b>PAGE 1</b>

1. **DRIVING UNDER THE INFLUENCE (DUI) VIOLATIONS**

<b>DUI/Alcohol, Drugs, or Any Combination <u>ARS 28-1381A1</u></b>	<ul style="list-style-type: none"> <li>• Suspects must have been driving or in actual physical control of a motor vehicle.</li> <li>• The ability to drive must have been impaired to the slightest degree by the use of intoxicating liquor, drugs, toxic vapors, or any combination thereof.</li> </ul>
<b>Blood Alcohol Concentration (BAC) of .08 or More Within Two Hours of Driving <u>ARS 28-1381A2</u></b>	<ul style="list-style-type: none"> <li>• Suspects must have been driving or in actual physical control of a motor vehicle.</li> <li>• Suspects must have an alcohol concentration of .08 or more within two hours of driving or being in actual physical control of the vehicle.</li> </ul>
<b>DUI While Having any Drug or its Metabolite in the Body <u>ARS 28-1381A3</u></b>	<ul style="list-style-type: none"> <li>• Suspects must have been driving or in actual physical control of a motor vehicle.</li> <li>• Suspects must have had a drug, as defined in <u>ARS 13-3401</u>, or its metabolite in their body.</li> <li>• This section may only be charged if a certified drug recognition expert (DRE) officer has evaluated the suspect and determined that drug impairment is actually present, or in the absence of a DRE evaluation, after the blood/urine has been analyzed. In the latter situation, the City Prosecutor's Office will file this charge.</li> <li>• Without exception, this charge will only be written along with an <u>ARS 28-1381A1</u> violation.</li> </ul>
<b>Driving a Commercial Vehicle While Having an Alcohol Concentration of .04 Percent or More <u>ARS 28-1381A4</u></b>	<p><u>Definition of Commercial Vehicle:</u></p> <ul style="list-style-type: none"> <li>• For the purposes of this charge, a commercial motor vehicle is one that requires a person to obtain a commercial driver's license as defined in <u>ARS 28-3001</u>.</li> <li>• Officers may consult a member of the Phoenix Police Department Commercial Vehicle Squad if they have any questions.</li> </ul> <p><u>Charging Criteria:</u></p> <ul style="list-style-type: none"> <li>• Suspects must have been driving or in actual physical control of a commercial motor vehicle.</li> <li>• Suspect must have a blood alcohol concentration of .04 or more at the time of driving or being in actual physical control of a commercial vehicle.</li> </ul>
<b>Extreme DUI <u>ARS 28-1382</u></b>	<ul style="list-style-type: none"> <li>• Suspects must have been driving or in actual physical control of a motor vehicle.</li> <li>• Suspects must have an alcohol concentration of .15 or more within two hours of driving or being in actual physical control of the vehicle.</li> </ul>
<b>Aggravated DUI <u>ARS 28-1383</u></b>	<p>A person is guilty of aggravated driving or actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs if the person does any of the following:</p> <ul style="list-style-type: none"> <li>• Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> while the person's driver's license or privilege to drive is suspended, canceled, revoked, or refused, or in violation of a restriction placed on a driver's license as a result of violating <u>ARS 28-1381</u> or <u>ARS 28-1385</u>.</li> <li>• Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> and has two prior convictions for violations of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> within a period of 60 months prior to this incident – Acts committed in another state, a court of the United States or tribal court also apply.</li> <li>• Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> while a person under 15-years of age is in the vehicle.</li> <li>• Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> and has a previous conviction for a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> and has never applied for a driver's license.</li> <li>• Aggravated DUI committed under paragraphs A (1) or A (2) is a class 4 felony.</li> <li>• Aggravated DUI committed under paragraph A (3) is a class 6 felony.</li> </ul>

2. **INVESTIGATION OF DUI VIOLATIONS**

A. **Making the Traffic Stop**

- (1) Officers will make every effort to prevent intoxicated individuals from driving a vehicle.
- (2) Any driver who appears to be DUI will be stopped immediately if it can be done safely.

B. **Standardized Field Sobriety Tests (SFSTs)** - Prior to making an arrest for a DUI related offenses, the driver will be offered the opportunity to perform SFSTs as listed in the Alcohol Influence Report, except in those cases where the test/s cannot be administered for the suspect and or officers safety.

C. **Horizontal Gaze Nystagmus (HGN)**

- (1) Only officers trained in the use of the horizontal gaze nystagmus (HGN) will administer HGN to suspected DUI drivers.
- (2) Only officers who have successfully completed HGN training will make notations on the HGN field sobriety test worksheet of the Alcohol Influence Report.

(3) **HGN Log Information:**

<b>Maintenance of HGN Logs</b>	<p>All HGN-trained officers will document each administration of HGN in their HGN Log.</p> <ul style="list-style-type: none"> <li>• These logs will be inspected periodically by supervisors and the inspections staff of the Professional Standards Bureau.</li> <li>• HGN certification may be forfeited if the officer fails to maintain the log.</li> </ul>
<b>Requests for Copies of Logs</b>	<ul style="list-style-type: none"> <li>• Upon request of a prosecuting agency, or in response to a subpoena, officers will provide any or all of the following documents: <ul style="list-style-type: none"> <li><input type="checkbox"/> An up-to-date copy of their HGN Log</li> <li><input type="checkbox"/> A copy of their AZPOST Certificate of Achievement , if issued one</li> <li><input type="checkbox"/> A copy of their Standardized Field Sobriety Horizontal Gaze Nystagmus Control Sheet</li> </ul> </li> <li>• Officers will forward a copy of the requested documents within one week of receiving the request.</li> <li>• If officers are unable to meet this time line, they will immediately notify both the requesting agency and their immediate supervisor and provide an anticipated date when the documents will be forwarded.</li> </ul>
<b>Submitting Copies to the City Prosecutor and Maricopa County Attorney's Office</b>	<ul style="list-style-type: none"> <li>• All HGN-certified officers will immediately submit complete copies of their logs and either a copy of their AZPOST Certificate of Achievement or the Standardized Field Sobriety Horizontal Gaze Nystagmus Control Sheet to the Legal Assistance Unit in the City Prosecutor's Office and the Maricopa County Attorney's Office Vehicular Crimes Bureau.</li> <li>• Thereafter, all HGN-certified officers will submit copies of their HGN Logs on a monthly basis showing the prior month's activity, this practice will continue when officers have made a DUI arrest during the prior month.</li> <li>• Copies of logs submitted to the City Prosecutor's Office and the Maricopa County Attorney's Office will not have any information blacked out.</li> </ul>

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2. D. Preliminary Breath Test (PBT)

- (1) Preliminary breath testing devices (PBTs) may be used as an investigative tool when an indication exists that a person may be under the influence of intoxicants and is willing to provide a breath sample.
- (2) In impaired driver cases, if possible, the PBT should be used after the driver has been given the opportunity to perform standardized field sobriety tests.
- (3) All PBT devices will be submitted to the Laboratory Services Bureau at least every six months to confirm that the device is functioning properly.
- (4) Authorization for Use of PBT - Ownership of a PBT device is strictly voluntary; they are not required equipment.
  - (a) Only PBT devices authorized by the department's crime lab will be used.
  - (b) PBT device operators must be certified as Department of Health Services breath test operators and be familiar with the operation of the PBT.

3. PROCESSING DUI SUSPECTS

A. The following chart provides information regarding the steps to follow when processing DUI suspects:

<b>PAPERWORK AND PROCEDURES</b>	<b>MISDEMEANOR DUI</b>	<b>AGGRAVATED DUI</b>	<b>AGGRAVATED ASSAULT/HOMICIDE</b>
<b>Alcohol Influence Report</b>	YES	YES	YES
<b>Admin Per Se/ Implied Consent</b>	YES	YES	NO
<b>Citations</b>	YES (1)	NO	NO
<b>PACE DR</b>	NO (6)	YES (2)	YES
<b>Breath Test</b>	YES	YES (3)	YES
<b>Blood Test</b>	YES (4)	YES (4)	YES
<b>DRE Call Out</b>	YES (5)	YES (5)	YES
<p>1 Supervisor approval is required if BAC is .06 to .07 and impairment is visible. If both breath tests are .08 or more, cite for <u>ARS 28-1381A1</u> and <u>ARS 28-1381A2</u>. If both breath tests are .15 or more, cite for <u>ARS 28-1381A1</u>, <u>ARS 28-1381A2</u>, and <u>ARS 28-1382</u>.</p> <p>2 Obtain PACE DR number for DUI visual</p> <p>3 If not hospitalized</p> <p>4 If hospitalized</p> <p>5 If impairment is inconsistent with breath test results</p> <p>6 No PACE DR or DR number unless there is property to be impounded associated with the arrest</p>			

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3. B. Arrest of DUI Suspects

- (1) Officers will arrest, search, and secure DUI suspects in police units as with any other prisoners.
- (2) DUI suspects will be handcuffed behind their backs to expedite breath testing procedures.
- (3) Officers will transport the suspect to the nearest precinct, DUI van, or the northern or southern command stations for processing.
- (4) The period of time that a suspect spends in police custody should be kept to the minimum necessary to properly process the suspect.

C. Telephone Calls

- (1) Suspects will be specifically asked if they wish to make any telephone calls.
- (2) Telephone numbers, times of calls, and unusual responses will be documented.
- (3) The suspect will be given a reasonable amount of privacy during the call.
  - If the suspect requests complete privacy, officers will ensure that it is provided.

D. Records Check - A records check will be conducted on all DUI suspects.

- (1) The records check will include the following:

<b>Driver's License Check</b>	<ul style="list-style-type: none"> <li>• Driver's license checks will be made through radio, the Records and Identification Bureau, or other bureaus with a Police Automated Computer Entry (PACE) terminal.</li> </ul>
<b>Prior DUI History</b>	<ul style="list-style-type: none"> <li>• A check of the prior DUI history (past 60 months) will be made on an MDT, a PACE terminal, or through the Records and Identification Bureau.</li> </ul>

- (2) The results of the records check will be included on the Alcohol Influence Report.
- (3) The name or employee number of the person providing the information will also be included.
- (4) When officers are unable to verify driver's license history information and no other bookable charges are reasonable, the subject will be cited and released.

E. Interviews

- (1) Suspects will be advised of their rights per Standard Miranda Rights Card prior to interviewing.
- (2) Officers will ask the suspect the questions from the interview section of the Alcohol Influence Report.
- (3) If the suspect requests an attorney during the course of the interview, the interview will end, and the suspect will be permitted access to the telephone.

3. F. Administrative Per Se and Implied Consent

- (1) In all cases where DUI is being charged, suspects will be advised that Arizona State Law requires him/her to submit to a chemical test to determine the alcohol concentration or drug content and that their driver's license will be suspended in the following circumstances:
  - If they have an alcohol concentration of .08 or more
  - If they refuse to submit to the test/s requested by the officer
- (2) The Implied Consent/Administrative Per Se Affidavit also applies to drivers in violation of the underage drinking and driving law, ARS 4-244.33.
- (3) The Implied Consent/Administrative Per Se Affidavit will be read in all cases where the suspect refuses to submit to tests to determine alcohol concentration and or drug content.
- (4) The implied consent provision applies whether the DUI occurs on private or public property.
- (5) The Admin Per Se/Implied Consent Affidavit (MVD) Form 40-5807 or Spanish version Form 40-5801, will be completed on all suspected DUI drivers with the exception of serious injury and/or fatal collisions, and will include:

<b>Probable Cause</b>	<ul style="list-style-type: none"> <li>• Officers will specify what actions led them to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.               <ul style="list-style-type: none"> <li><input type="checkbox"/> Improper driving</li> <li><input type="checkbox"/> Physical impairment/actions</li> <li><input type="checkbox"/> Odor of intoxicating liquor</li> </ul> </li> <li>• If probable cause is not established, MVD will not schedule a hearing and the suspension will be voided.</li> </ul>
<b>Failure to Complete Test</b>	<ul style="list-style-type: none"> <li>• If the arrestee refused or failed to successfully complete any test/s, specify the manner in which the refusal or failure occurred by using a factual statement; i.e., "completed one test, refused another" or "refused-stated they would not take any tests."</li> </ul>
<b>Serious Physical Injury</b>	<ul style="list-style-type: none"> <li>• Indicate by checking "yes" or "no" if the arrestee caused serious physical injury.</li> <li>• <u>ARS 13-105</u> defines serious physical injury as "physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb."</li> </ul>

- (6) DUI/Drugs or Blood Alcohol Concentration of Less Than .08 – In cases where the suspect has a blood alcohol concentration of less than .08 on any breath test, or the suspect is cited for DUI/drugs, the suspect's responses to the advisement on Implied Consent and Administrative Per Se warnings will still be recorded on the affidavit for evidentiary purposes.
  - In these cases, the top portion of the affidavit must be completed.
  - The original face sheet of the affidavit will be sent to MVD and the blue copy will be attached to the Alcohol Influence Report.
  - The pink and yellow copies may be discarded.

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3. F. (7) When A Violator's Driver's License is Already Suspended - If the violator's license is already suspended or if the violator's license is not seized (e.g., not in possession, lost, destroyed, etc.), the listed steps will be followed:

- Complete the descriptive sections of the Temporary Driver Permit only.
- Check the box marked "Permit Not issued Because."
- Indicate why the permit is not issued (license already suspended, etc.).
- The violator will still be given the pink and yellow copies.

G. Breath Testing

- (1) A person to be tested for alcohol concentration will be taken to the nearest station or DUI van, where a breath test will be conducted.
  - (a) The breath test should be done within two hours of the time the defendant was first seen driving.
  - (b) All DUI suspects will be informed that they are under arrest before they are asked to give a breath sample for analysis.
  - (c) The precinct/command station or DUI van where the test was conducted and the serial number of the employee who transported the suspect to the station will be noted on the Alcohol Influence Report.
- (2) Persons Authorized to Conduct Breath Tests - Breath tests will be conducted only by officers or laboratory personnel who have been trained by the Laboratory Services Bureau and certified by the Arizona Department of Health Services for the instrument being used.
- (3) Documentation of Breath Test - Data entered into the Intoxilizer 5000 is recorded and saved by the COBRA software system and can be retrieved by contacting the Laboratory Services Bureau.
- (4) Administering the Breath Test
  - (a) When a person suspected of DUI asks to contact an attorney prior to taking a breath test, access to a telephone will be permitted.
    - Suspects will be given a reasonable amount of privacy during the call.
    - The officer should note in the report the time/s of the suspect's request/s to contact an attorney and whether or not the suspect requested privacy.
    - If a suspect requests privacy, it will be provided.
    - If the suspect is unable to reach an attorney after being given a reasonable opportunity to do so, the suspect must decide whether or not to take the test.
  - (b) The breath test operator will utilize the approved Department of Health Services (DHS) operational checklist and will initial the appropriate places on this checklist for each test administered.
  - (c) Force or restraint will not be used to obtain breath samples.
  - (d) The suspect's name, date of birth, violation date, time the breath tests were conducted, officers' initials and serial number will be placed on the suspect's photograph.
  - (e) Officers will advise suspects of test results upon completion of the examination.

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3. G. (5) Operation of Breath Test Instruments - Breath tests for alcohol concentration will be conducted on an IR 5000 using the following procedures:
- (a) Conduct a 15-minute deprivation period; the Deprivation Period is defined as a 15-minute period immediately prior to a quantitative duplicate breath test during which time the suspect has not ingested any fluids, vomited, eaten, smoked, or placed any foreign objects in the mouth.
  - (b) Complete and follow, in writing, the Department of Health Services (DHS) standard operational procedure checklist for the specific breath test instrument used.
  - (c) Administer two breath tests **NOT LESS** than five minutes and **NOT MORE** than ten minutes apart.
    - Results of both tests **must be** within .020 alcohol concentration.
    - If the second test is not within .020 alcohol concentration of the first test and not within the specified time limits, perform additional tests until the results of **two consecutive tests** are within .020 alcohol concentration of each other.
  - (d) Advise the suspect of the right to obtain an independent chemical test.
  - (e) **No** additional sample is required to be provided to the suspect when duplicate tests are conducted successfully.
  - (f) Faulty instruments will be immediately reported to the crime laboratory 24 hours a day.
- (6) 15-minute Deprivation Period - The exclusive use of a 15-minute deprivation period followed by duplicate tests is preferred for breath tests performed on the IR 5000.
- (a) In rare cases, officers may use their discretion and conduct a single test after a 20-minute observation period.
  - (b) However, if this option is used, the suspect must be offered a second sample, which must be a blood sample.
- (7) When Refusing Suspects Change Their Mind - If suspects change their mind after an initial test refusal and request a breath test, the breath test will be given under the following conditions:
- (a) There would not be a substantial inconvenience or expense to the department.
  - (b) The suspect is still in custody and the arresting officer is still present.
  - (c) The breath test equipment is readily available and functioning properly (precinct, hospital, etc.)
- H. Request for Blood Sample
- (1) The suspect will be offered the opportunity for a blood sample to be taken in the following situations:
    - (a) When the suspect has only furnished one acceptable breath sample.
    - (b) When the officer has elected to do a single breath test.

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3. H. (2) The Request for Blood Sample Form (80-512D) will be prepared in duplicate and will be signed by the arresting officer and the suspect.
    - If the suspect refuses to sign either section of the form, the arresting officer will write "Refused" above the suspect's signature block in the Request for Blood Sample portion of the form.
    - Officers should document the way the suspect refused the signature.
    - Suspects will be provided the opportunity for a blood sample if they request one, even if no signature was obtained.
  - (3) When suspects waive the right to have a blood sample taken, they will be requested to sign the Waiver of Blood Sample portion of the form.
  - (4) A phlebotomist can be contacted to collect the blood sample via the Communications Bureau's call out list.
  - (5) The original copy of the Request for Blood Sample Form will be stapled to the Alcohol Influence Report, and a copy will be given to the suspect.
- I. Seizure of Driver's License
- (1) BAC of .08 or More/Refusal to Submit or Complete Specified Test/s - If a suspected DUI driver registers a .08 blood alcohol concentration or more on a breath test instrument or refuses to submit to or successfully complete the test offered, the suspect's driver's license will be seized and attached to the original (white) copy of the Implied Consent/Administrative Per Se Affidavit and forwarded to MVD.
    - (a) Valid breath tests must be .08 or more to seize a driver's license except in the case of a .04 or more reading on a commercial motor vehicle charge.
    - (b) Out-of-state licenses or permits will not be seized.
    - (c) The Implied Consent/Administrative Per Se Affidavit will be completed and the suspect will be given the appropriate copies.
  - (2) When the Results Are not Known - In cases where a blood sample is taken and the resulting alcohol concentration is not immediately known, the following procedure will be followed:
    - (a) The suspect's driver's license or permit will not be seized.
    - (b) The DUI affidavit will be completed except for the Order of Suspension and Surrender of License sections.
    - (c) All copies of the affidavit will be attached to the Request for Scientific Analysis Form and impounded with the sample.
      - Affidavits should not be listed on the property invoice as an impounded item.
    - (d) If blood is obtained by virtue of ARS 28-1381O and the suspect then refuses to give blood for purposes of implied consent, the affidavit will be processed as a refusal, and the blood will be impounded as evidence for the criminal charges.

3. J. Distribution of the Affidavit

<b>Driver</b>	<ul style="list-style-type: none"> <li>• The pink and yellow copies of the affidavit will be given to the driver.</li> <li>• These copies will serve as the Notice/Order of Suspension and temporary driving permit.</li> <li>• If the driver refuses to sign the affidavit, the word "SERVED" will be written on the arrestee's signature line.</li> <li>• The driver is responsible for reading, understanding, completing, and delivering or mailing if a summary review or hearing is requested.</li> </ul>
<b>MVD</b>	<ul style="list-style-type: none"> <li>• The original affidavit and driver's license will be placed in a pre-addressed envelope and sent with the downtown paperwork for mailing to the Motor Vehicle Division (MVD).</li> </ul>
<b>Department</b>	<ul style="list-style-type: none"> <li>• The blue copy of the affidavit will be attached to the Alcohol Influence Report.</li> </ul>

K. Advisement of Right to Independent Chemical Tests - Officers will advise suspects under arrest for DUI that they have the right to arrange and pay for an independent chemical test.

- (1) The advisement will be documented in the appropriate section of the AIR.
- (2) This right applies whether or not the suspect has refused to take the breath test.
- (3) Telephone Calls Reference Independent Chemical Tests - The suspect will be given the opportunity to make a reasonable number of telephone calls to arrange for such tests as soon as practical.
  - (a) Officers should record the telephone number dialed and who, if anyone, was contacted.
  - (b) This information should be included in the report.
  - (c) If suspects are booked, the call will be made prior to transporting them to jail.
- (4) Assistance in Obtaining an Independent Chemical Test
  - (a) Every attempt should be made to cite and release misdemeanor DUI suspects who have requested an independent chemical test.
  - (b) At the discretion of the Madison Street Jail staff, medical personnel may be permitted access to the jail for the purpose of an independent chemical test.

L. Disposition of DUI Vehicle Keys

- (1) When a person is arrested for DUI, the vehicle may be towed if requested by the driver.
  - In this situation, the keys will be left with the vehicle/towing company.
- (2) If the vehicle is not towed, it will be legally parked and secured at or near the scene.

3. L. (3) Required Paperwork - Will be completed by the arresting officer:

<b>Release of Vehicle Information Form (80-150D)</b>	<ul style="list-style-type: none"> <li>• Will be given to the suspect prior to release.</li> </ul>
<b>Property Invoice</b>	<ul style="list-style-type: none"> <li>• The property invoice will include: <ul style="list-style-type: none"> <li><input type="checkbox"/> Name of vehicle's registered owner</li> <li><input type="checkbox"/> Name of DUI suspect</li> <li><input type="checkbox"/> Vehicle description</li> <li><input type="checkbox"/> Date and time of arrest</li> <li><input type="checkbox"/> Location of vehicle</li> <li><input type="checkbox"/> Arresting officer's name</li> <li><input type="checkbox"/> Arresting officer's signature</li> </ul> </li> <li>• The property invoice and vehicle keys will be placed in an impound envelope and filed at the precinct station.</li> </ul>

(4) Advising the Suspect of Disposition of the Keys

- (a) If DUI suspects are to be cited and released, they will be informed that their vehicle keys will remain in storage at the precinct station from which they were released.
- (b) Officers will advise DUI suspects that the keys will not be available for release for a minimum of 10 hours from the time of arrest.

(5) Release of Keys

- (a) Vehicle keys will not be released within 10 hours of the DUI arrest.
- (b) Vehicle keys may be released to the following individuals:
  - DUI suspect
  - Registered owner of the vehicle
  - Person presenting the signed authorization form (80-150D)
- (c) Keys may be released by personnel designated by the precinct commander (police aides, etc.).
- (d) Keys will not be released to any intoxicated person.
  - If a question exists, an officer will be summoned to evaluate the situation.
  - If there is a doubt as to the person's condition, the keys will not be released.
- (e) Those persons taking possession of the vehicle keys will be required to sign the reverse side of the property invoice.
  - If an authorization form (80-150D) has been presented, it will be retained and attached to the property invoice.
  - The invoice and the form will be forwarded to the Property Management Bureau (PMB).

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3. L. (6) Keys Held Longer Than 72 Hours - The precinct DUI key file will be checked on a regular basis.
- (a) Keys that have not been released within 72 hours of the DUI arrest will be impounded.
  - (b) The arresting officer's original property invoice will be used for this purpose.
- (7) DUI Suspects Booked into Jail - If the DUI suspect is booked into jail, vehicle keys will be included with the personal property, and no further action is required.
- (8) Exceptions - Exceptions to this policy may be authorized by a supervisor, providing the following conditions are met:
- (a) The person demanding the keys has a legal right to the vehicle, e.g., a registered owner or spouse of the suspect driver.
  - (b) The person has not been drinking, i.e.; there is no evidence of recent alcohol consumption or other impairment.
  - (c) The person accepts responsibility for ensuring that the suspect driver does not drive the vehicle within the 10-hour period.
  - (d) Officers will indicate in the Details of Arrest section of the Alcohol Influence Report the name and address of the person taking possession of the keys.

M. Disposition of DUI Arrests

- (1) General Enforcement Guidelines - DUI suspects will be cited for violations and released on their written promise to appear unless one or more of the following exists:
- (a) The suspect is uncooperative, e.g., refuses to be photographed or fingerprinted.
    - Suspects will not be presumed uncooperative if they refuse to take the breath test.
  - (b) The suspect is not a local resident and has no local business interests.
  - (c) The suspect has an extensive record of "failure to appear".
  - (d) The suspect is driving on a suspended or revoked license, which is an element of ARS 28-1383, and does not include civil traffic complaint suspensions.
  - (e) Suspects are unable to get a responsible person to take them home.
  - (f) The arresting officer believes that the suspect will drive again if released.
    - The officer will document all relevant information supporting that belief in all appropriate reports; e.g., statements made by the suspect, lack of a responsible party to release the suspect to, etc.
- (2) Completion of ATTCs When the Suspect is Booked - When a DUI suspect is booked, both civil and criminal violations will be listed on the same ATTC.
- The suspect will not be allowed to sign the ATTC.
  - Officers will write Served/Booked in the signature block of the ATTC, and the booking number will be written in the booking number block.

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3. M. (3) Aggravated DUI - Suspects charged with aggravated DUI will not be issued ATTCs.

(4) Enforcement Criteria

<b>BAC of .05 or Less</b>	<ul style="list-style-type: none"> <li>A driver whose blood alcohol concentration is .05 OR LESS will not be charged with the offense of DUI unless drugs are suspected or a commercial vehicle is involved.</li> <li>When the driver is charged with a DUI offense, an ATTC will be issued for violation of <u>ARS 28-1381A1</u>.</li> <li>The ATTC will be worded <u>DUI</u>.</li> </ul>
<b>BAC of More than .05 but Less than .08</b>	<ul style="list-style-type: none"> <li>A driver may be charged with DUI if the blood alcohol concentration is MORE than .05 but LESS than .08 and the visual examination indicates strongly that a person is intoxicated.</li> <li>Charging a person with a BAC of .06 to .07 requires the permission of a supervisor.</li> <li>If the officer chooses to charge the driver with DUI, the charge will be <u>ARS 28-1381A1</u>.</li> </ul>
<b>BAC of .08 or More</b>	<p>When a driver's blood alcohol concentration is .08 or more on all tests, the driver will be charged with all of the following:</p> <ul style="list-style-type: none"> <li><u>ARS 28-1381A1</u>, DUI</li> <li><u>ARS 28-1381A2</u>, Driving (or in Actual Physical Control of) a Motor Vehicle with a Blood Alcohol Concentration of .08 or more</li> </ul>
<b>BAC of .15 or More</b>	<p>When a driver's blood alcohol concentration is .15 or more on all tests, the driver will be charged with all of the following:</p> <ul style="list-style-type: none"> <li><u>ARS 28-1382</u>, Driving (or in Actual Physical Control of) a Motor Vehicle While Under Extreme Influence of Intoxicating Liquor</li> <li><u>ARS 28-1381A1</u>, DUI</li> <li><u>ARS 28-1381A2</u>, Driving (or in Actual Physical Control of) a Motor Vehicle with a Blood Alcohol Concentration of .08 or more</li> </ul>
<b>BAC of .35 or More</b>	<ul style="list-style-type: none"> <li>When the blood alcohol concentration is .35 or more, a Medical Examination Report (Form 80-22D) will be completed and a doctor's examination conducted before the suspect is booked.</li> <li>When suspects are released, medical attention becomes their responsibility or the responsibility of the person accepting custody.</li> <li>When the blood alcohol concentration is .35 or more, the accepting party will be advised to seek medical attention for the suspect.</li> <li>Applicable reports will indicate that the person accepting custody of the suspect was advised of the suspect's physical condition</li> </ul>
<b>Refusal to Submit to Breath Test</b>	<ul style="list-style-type: none"> <li>Cite the suspect for violation of <u>ARS 28-1381A1</u>, DUI.</li> </ul>
<b>When a Blood Sample is Obtained for Later Analysis</b>	<ul style="list-style-type: none"> <li>Officers are directed to submit blood evidence for analysis per Operations Order 6.4.3.1.(2).</li> <li>An original PACE DR will be completed for the investigation using a radio code of 390D.</li> <li>All original paperwork, including the Alcohol Influence Report and Accident Report will be sent to Traffic Records.</li> <li>Upon blood analysis the Vehicular Crimes Unit will submit for the appropriate charges.</li> <li>Officers should only cite civil violations.</li> </ul>

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3. N. Alcohol Influence Report

- (1) Alcohol Influence Reports (Form 80-146D) will be completed in ALL cases where a suspect is arrested or suspected of DUI alcohol or drugs.
  - The report will be printed in medium black ballpoint pen and will be completely filled out, with N/A written in spaces that do not apply.
- (2) Departmental Report (DR) Numbers - If the suspect is being charged for an aggravated DUI, a DR number will be obtained for the Alcohol Influence Report and the Alcohol Influence Report then becomes a DR.
- (3) No DR number is needed on misdemeanor DUI reports.
- (4) Completion of the Alcohol Influence Report (AIR)

<b>Page 1</b>	<p><u>General Description</u> - This page includes the suspect's personal history and interview questions.</p> <p><u>Use of Force Codes</u> - If force was used to take the suspect into custody, the officer will indicate which level of force was used in the Use of Force section on page 1.</p>
<b>Page 2</b>	<p><u>General Description</u> - This page includes documentation to be attached to the AIR:</p> <ul style="list-style-type: none"> <li>• A photograph of the suspect</li> <li>• Breath test results</li> <li>• Records check results</li> <li>• Officer's observations of subject's physical condition</li> <li>• Information concerning phone calls</li> <li>• Witness section</li> </ul> <p><u>Breath Test Results</u></p> <ul style="list-style-type: none"> <li>• The officer conducting the breath test will follow the checklist for operating the intoxilyzer on page 2.</li> <li>• The breath test record card will be attached to the upper right hand section of page two.</li> </ul> <p><u>Officer's Observations of Suspect</u></p> <ul style="list-style-type: none"> <li>• Although descriptions are supplied on the report pertaining to breath, color of face, attitude, etc., it is recommended that officers add words to more fully describe the suspect's condition.</li> </ul> <p><u>Witnesses</u></p> <ul style="list-style-type: none"> <li>• Names of witnesses will be listed on the Alcohol Influence Report in the spaces indicated.</li> <li>• Officers will obtain statements from witnesses in their own handwriting whenever practical.</li> <li>• Witness statements will be attached to the Alcohol Influence Report unless an accident is involved. In the case of an accident, a copy of the witness statements will be attached to the AIR and the original statements will be attached to the accident report.</li> </ul>

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3. N. (4) Completion of the Alcohol Influence Report (AIR): (Continued)

Page 2 (Continued)	<p><u>Photographs</u></p> <ul style="list-style-type: none"> <li>A photograph will be taken of the suspect and will be attached to the upper left-hand section of page two of the AIR.</li> <li>Physical restraints will not be used to obtain photographs, but suspects who refuse or fail to cooperate in having their pictures taken <u>will be</u> booked.</li> </ul>
Pages 3 & 4	<p><u>General Description</u> - Cover "Details of Arrest" and include:</p> <ul style="list-style-type: none"> <li>Standardized Field Sobriety Tests Worksheet</li> <li>Charge section</li> <li>Narrative</li> </ul> <p><u>Additional Charges</u></p> <ul style="list-style-type: none"> <li>If there are more charges than the space provided on the report, the narrative space will be used for additional charges.</li> </ul> <p><u>Narrative</u></p> <ul style="list-style-type: none"> <li>A complete narrative of the circumstances surrounding the arrest will be written in the Details Section.</li> <li>The time the defendant actually stopped driving (unless an actual physical control case) should be plainly noted in the Narrative Section in all cases.</li> </ul> <p><u>Fingerprints</u></p> <ul style="list-style-type: none"> <li>If the suspect is cooperative, the right index fingerprint will be placed on the Alcohol Influence Report, whether the suspect is booked or released.</li> <li>All felony and misdemeanor DUI suspects must be fingerprinted on the FBI Criminal Fingerprint Card (FD-249) whether they are booked or released.</li> <li>Fingerprints may be obtained by either of two methods: <ul style="list-style-type: none"> <li><input type="checkbox"/> Inked prints</li> <li><input type="checkbox"/> Live Scan terminals</li> </ul> </li> <li>Fingerprints are essential for identification and should be checked for clarity.</li> <li>Fingerprint cards will be forwarded to the AFIS Detail of the Records and Identification Bureau via interoffice mail.</li> <li>If a suspect refuses to submit to being fingerprinted, the suspect will be booked.</li> </ul>

4. **COLLISIONS INVOLVING DUI**

A. In cases involving collisions, based on probable cause, officers will handle drivers suspected of DUI under ARS 13-3883A3 as if the officers had actually witnessed the violation.

B. Collisions involving impaired drivers may result in criminal prosecutions, i.e., aggravated assault or endangerment.

- Elements to support these charges must be backed by a thorough on-scene investigation.

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4. C. Collisions Involving Serious Physical Injury or Death

- (1) In serious injury and/or fatal collision situations when a driver show signs of impairment, the investigating officer must realize the situation is no longer “just a collision” and is now a criminal investigation.
  - Officers will not inform suspects that they are under arrest for DUI.
  - Officers will collect evidence of impairment.
  - Officers will collect any evidence of drugs; to include prescription medication and any illegal drugs and/or drug paraphernalia in the vehicle or in the suspect’s possession.
  - Implied consent warnings will not be given if the collision involves serious physical injury or death.
- (2) DRE certified officers will process all impaired drivers involved in a serious injury and/or fatal collisions.
  - A call-out list will be maintained in the Communications Bureau.
- (3) In those instances where there is doubt as to the elements of the offense, or the investigation requires a greater level of expertise than is readily available, the Vehicular Crimes Unit (VCU) should be contacted for assistance.

D. Gathering Evidence at Collision Scenes Involving DUI

- (1) The following evidence must be obtained at collision scenes involving impaired drivers and will be documented in the Alcohol Influence Reports:
  - A complete description of the scene
  - A listing of the victim’s injuries (if serious or life threatening)
  - 35 mm photographs (if serious or life threatening injuries exist)
  - Witness statements
  - Suspect’s injuries
  - Names of medical personnel tending to impaired drivers, if necessary
  - Any evidence that supports the fact that the suspect was driving or in actual physical control of the vehicle at the time of the collision
- (2) Officers will document any evidence that supports the fact that the suspect was driving or in actual physical control of the vehicle at the time of the collision, to include:
  - Identification of witnesses who can place the suspect as the driver
  - Whether the suspect suffered injuries consistent with being in the driver’s seat
  - If all possible drivers on the scene were intoxicated
  - Who had the keys to the suspect vehicle when the officer arrived
  - Who exercised control of the vehicle in deciding disposition; i.e., vehicle parked and locked, towed
  - Any additional information that points to the suspect as the driver
  - Evidence of beer or any other liquor, open or unopened, in the vehicle

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5. **SPECIAL DUI PROCESSING PROCEDURES**

A. **Aggravated DUI** - All suspects arrested for aggravated DUI will be booked into jail.

- (1) If after being advised of their rights, suspects waive those rights, officers must interview the suspects as to the status of their driver's license.
- (2) The officer must establish certain facts that will be included in the Alcohol Influence Report/DR.
  - The suspect had knowledge of the revocation/suspension.
  - How the suspect became aware of the revocation/suspension.
- (3) A DR number will be obtained for the Alcohol Influence Report and the Felony DUI block will be marked. The report will contain the following information:
  - Suspect's driver's license number listed in the appropriate block, even if it is suspended, revoked, expired, etc.
  - Details that led to the apprehension as well as substantiation for all alleged traffic violations committed by the suspect.
- (4) When processing a suspect for Aggravated DUI with a passenger under the age of fifteen, the arresting officer will ensure a photograph is taken of each child involved and document the following information in the report:
  - Statements indicating the status of the photographs (digital image impounded as evidence, etc.).
  - Complete name, date of birth, current address and telephone number of a parent, guardian, or responsible person who assumed care of the child, (usually the person other than the suspect who can identify the child by name and age).
  - Any statements indicating the suspect's knowledge as to the age of the children involved.
  - Any information regarding the relationship of the child to the suspect.
- (5) ATTCs **will not** be issued for any aggravated DUI.
  - When a DUI-related ATTC is written prior to learning of the aggravated driving violation, the ATTC will be voided in accordance with established procedures.

B. **Telephonic/Facsimile Search Warrants for Impaired Drivers**

- (1) **Responsibility for Completion of Search Warrant** - Only officers trained to complete the telephonic/facsimile search warrants will do so.
- (2) **Procedures**
  - (a) When it is determined that a DUI suspect is refusing to provide blood, breath, or urine evidence, the arresting officer will:
    - Notify his/her supervisor prior to obtaining the warrant
    - Contact an on-duty warrant qualified officer.
    - If a qualified officer is not immediately available, contact the Communications Supervisor and request a DRE.

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5. B. (2) (b) The arresting officer must be able to articulate the following:
- Who witnessed the suspect driving or in actual physical control of the vehicle.
  - All probable cause such as improper driving actions, odor of intoxicating liquor on the suspect's breath, standardized field sobriety test impairment; horizontal gaze nystagmus, etc.
  - Admin Per Se was read and how the suspect refused.
- (c) The arresting officer will ensure that the suspect has been read the Admin Per Se/Implied Consent Form and understands the consequences of refusing the test/s.
- The arresting officer will complete and submit the Implied Consent/Administrative Per Se Affidavit as a refusal.
  - The arresting officer will inform the suspect that a request for a telephonic/facsimile search warrant for blood will be made based on the refusal.
  - If the suspect changes their decision, prior to the search warrant being issued, a breath test will be offered in accordance with routine procedures, the Implied Consent/Administrative Per Se Affidavit will be modified to reflect the change.
- (d) If a suspect requests to speak to an attorney prior to the service of the search warrant, reasonable attempts to accommodate the request will be made.
- A suspect is not guaranteed the right to have counsel present during the actual service of the search warrant, however, it may be allowed if it does not hinder the investigation.
- (e) The arresting officer will be available to assist the responding search warrant-qualified officer during the continuation of the investigation.
- (3) Search Warrant-Qualified Officer Responsibilities
- (a) The search warrant-qualified officer will contact the suspect and confirm that the suspect understands that he/she is under arrest for DUI and that the suspect is refusing to submit to or successfully complete the specified test/s.
- Once facts are established, the qualified officer will advise the suspect that the officer is going to request a telephonic/facsimile search warrant for a biological sample.
  - If the suspect continues to refuse or is there is still no discussion between the qualified officer and the suspect, the process to obtain a search warrant will begin.
  - If a judge grants the search warrant, the qualified officer will be responsible for overseeing the taking of a blood sample from the suspect, even if the suspect continues to refuse.
  - If the suspect opens dialogue, the officer will explain the department's policy and answer questions asked by the suspect, the **entire** conversation will be documented.
  - If the suspect decides to submit to the specified test/s, a Consent Search Form will be completed and signed by the Suspect and two witnesses.
    - A breath, blood, or urine sample will be obtained.
    - The Implied Consent/Administrative Per Se Affidavit will be modified to reflect consent.

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5. B. (3) (b) The search warrant-qualified officer will complete the Affidavit in Support of Telephonic/Facsimile Search Warrant and the Arizona Duplicate Original Search Warrant with the information obtained from the arresting officer.
- (c) Telephone Search Warrant - Once the forms are completed for a Telephonic Search Warrant the search warrant-qualified officer will contact a judge:
- The **entire** conversation will be tape-recorded.
  - A witness/other officer must be present during the conversation with the judge.
  - The search warrant-qualified officer will be responsible for ensuring that a transcript of a tape of the conversation with the issuing judge is made.
  - The tape recording and the transcript will be impounded as evidence.
  - The search warrant-qualified officer will read the information on the two forms to the judge.
  - With permission from the judge, the search warrant-qualified officer will sign the Arizona Duplicate Original Search Warrant as the affiant and also sign the judge's name.
  - The officer will also indicate the date and time of the signing.
  - The witness/other officer must also sign the warrant.
- (d) Facsimile Search Warrant - Once the forms are completed for a Facsimile Search Warrant the search warrant-qualified officer will contact a judge:
- A witness/other officer must be present during the conversation with the judge.
  - The affiant and witness must sign the Arizona Duplicate Original Search Warrant and the Affidavit in Support of a Telephonic/Facsimile Search Warrant.
  - The search warrant-qualified officer must include a return facsimile telephone number and should include a contact telephone number in case the judge has any additional questions.
- (e) The warrant-qualified officer will contact the list phlebotomist to respond to the location where the suspect is being detained to obtain a blood sample.
- (f) The qualified officer will serve the suspect with a copy of the Arizona Duplicate Original Search Warrant, noting the date and time of service on the warrant.
- (4) Obtaining a Blood Sample From an Uncooperative Suspect - In compelling a suspect to give a blood sample, officers will take all steps necessary to ensure that only reasonable force is used to obtain it.
- (a) The shift commander of the precinct in which the warrant was served will be notified prior to the use of any force to obtain a blood sample.
- The circumstances surrounding the arrest and processing of the suspect will be explained to the shift commander who will make the final determination on whether or not the search warrant will be executed.
- (5) Procedures for Obtaining a Blood Sample
- (a) When a blood sample is obtained, the warrant-qualified officer will be responsible for observing the draw and impounding the blood.
- (b) Upon completion of the blood draw, the qualified officer will write "two tubes of blood taken from (suspect's name)" on both copies of the warrant as property taken.

<b>DRIVING UNDER THE INFLUENCE INVESTIGATIONS</b>	<b>Operations Order 6.4</b>
<b>PHOENIX POLICE DEPARTMENT</b>	<b>Rev. 02/03</b> <b>PAGE 19</b>

5. B. (6) Return of the Search Warrant

(a) The search warrant-qualified officer will return the following completed documents to the issuing judge within five days after serving the search warrant:

- Affidavit in Support of a Telephonic/Facsimile Search Warrant
- Standard Arizona Duplicate Original Search Warrant, if applicable
- Standard Arizona Search Warrant
- Standard Arizona Inventory, Affidavit, and Return of Search Warrant

(b) The qualified officer will ensure that one complete copy of all the search warrant documents is distributed as follows:

- A complete copy will be impounded under the appropriate DR listing the search warrant number and issuing court in the narrative.
- A complete copy to Traffic Records.
- A complete copy to the Records and Identification Bureau.

(c) If officers were unable to execute the search warrant, the reason/s must be documented on the search warrant prior to its return to the issuing judge.

C. Drugs, Toxic Vapors, or Substance Combination Suspected - Procedures for handling DUI/drugs, toxic vapors, or DUI/combination drugs/alcohol/toxic vapors will be the same as for DUI involving alcohol.

(1) Breath Tests

(a) In those instances where drugs, toxic vapors, or substance combinations are suspected, a breath test will be administered to establish the absence or presence of alcohol concentration.

(b) Breath test readings above .15 will not be processed for DUI/drugs unless it is an aggravated case.

(2) Drug Recognition Expert (DRE) - A DRE will be requested to assist the arresting officer with processing the suspect whenever drugs, toxic vapors, or any combination is suspected and/or the breath test reading is not consistent with the impairment observed.

(a) Only certified DRE officers will perform drug evaluations on suspected drug-impaired drivers.

(b) If a DRE is not available by radio, officers will contact a communications supervisor to request a DRE.

(c) DRE officers must maintain certification from the International Association of Chiefs of Police (IACP).

(d) All DRE officers will document each evaluation performed (including rule-outs) in the officer's DRE Log.

- These logs will be inspected periodically by supervisors and the inspection staff of the Professional Standards Bureau.
- DRE certification may be forfeited if the officer is found to have failed to maintain the log.

<b>DRIVING WHILE UNDER THE INFLUENCE</b>	<b>Operations Order 6.4</b>
<b>PHOENIX POLICE DEPARTMENT</b>	Rev. 02/03 <b>PAGE 20</b>

5. C. (2) (e) If toxic vapor substances (as defined in ARS 13-3401) are involved, a blood sample must be obtained to confirm the substance.

D. Injured DUI Suspects

- (1) If injured DUI suspects are treated and released from a hospital within a reasonable length of time, they will be processed the same as other DUI suspects.

(2) Hospital Follow-Up

- (a) If officers suspect a driver is DUI and the driver is being transported to a hospital, officers should make their hospital follow-up as soon as possible.
- (b) If follow-up will be delayed, a second unit should be requested to proceed to the hospital to stand by the suspect.

(3) Blood Samples

- (a) Per ARS 28-1381O, if a law enforcement officer has probable cause to believe that a person has violated ARS 28-1381 and a sample of blood, urine, or other bodily substance is taken from the person for any reason, even if the suspect does not consent, a portion of the sample will be provided to the officer if requested.

- (b) Unconscious Suspects - If the suspect is unconscious or otherwise in a condition rendering the suspect incapable of refusal, it is deemed by ARS 28-1321 that the suspect has not withdrawn consent.

- In this case, if the hospital has taken a sample of the suspect's blood for medical purposes, a portion of that sample may be used by the officer for analysis.
- Officers must document "blood drawn for medical purposes."

- (c) Conscious Suspects - If the suspect is conscious and capable of refusing, officers will place the suspect under arrest and ask for consent to obtain blood.

- If consent is given, officers may use a portion of the hospital-drawn blood as implied consent blood.
- If consent is not given, officers may still use a portion of the hospital-drawn blood and the suspect will be processed as a refusal.
- If the officer obtains hospital-drawn blood, the officer will impound the blood as evidence for the criminal charges.

(d) Procedures for Blood Draw

- If blood is drawn, officers will request that the staff use a Phoenix Police Department Blood Alcohol Kit or a preservative vial (gray colored top). If this request is refused, officers will accept the blood sample offered.
- Officers will observe the sample being taken and take custody of the blood sample drawn by hospital personnel.

<b>DRIVING WHILE UNDER THE INFLUENCE</b>		<b>Operations Order 6.4</b>
<b>PHOENIX POLICE DEPARTMENT</b>	Rev. 02/03	<b>PAGE 21</b>

5. D. (3) (e) Procedures for Processing Blood Evidence - Officers will mark the sample as evidence and take it directly to the main station.

<b>Blood Samples</b>	<ul style="list-style-type: none"> <li>• Collected blood samples will be refrigerated as soon as possible.</li> <li>• During business hours, blood samples will be sealed in a property envelope and handed directly to the property custodian in the property annex.</li> <li>• During non-business hours, the blood samples will be sealed in a property envelope and impounded in the DRE refrigerator.</li> <li>• One copy of a Request for Scientific analysis and a Property Impound Notice will be left with the blood sample, along with the completed Implied Consent/Administrative Per Se Affidavit (except in refusal cases.)</li> </ul>
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- (f) Required Documentation - Officers will document the following information on the Alcohol Influence Report and/or any related reports:

- Name and address of the person drawing the blood
- Name of the hospital staff member who requested the blood
- Type of non-alcohol preparation used (i.e., betadine)
- Date and time the blood was drawn

- (g) Hindering Prosecution - Hospital Staff

- Officers will not arrest or issue an ATTC to hospital staff who refuse to comply.
- A hindering prosecution DR will be made requesting prosecution.
- A copy of the DR, together with a copy of the Alcohol Influence Report (AIR), will be forwarded to the Vehicular Crimes Unit (VCU).

- (h) When an injured DUI suspect at a hospital requests an additional sample, officers will request an additional sample to be provided to the suspect if blood is drawn by hospital personnel.

- (4) Issuing ATTCs to Injured Drivers

- (a) If officers believe that a suspect is DUI based upon probable cause, the suspect will be cited.

- (b) An ATTC may be issued to an injured suspect if a responsible person (spouse, parent, etc.) acknowledges receipt, even though no signature is obtained.

- A signature is not required as long as the ATTC is acknowledged; in such cases an ATTC has the same effect as a summons.
- If an ATTC cannot be acknowledged by the suspect or a responsible person, an ATTC will not be issued.
- Instead a memorandum will be forwarded to VCU providing pertinent information on how, where, and when an ATTC may be issued.

5. E. Juvenile DUI Suspects

- (1) Appropriate ATTCs will be issued, and the juveniles will be released to a parent or guardian, whenever possible.
- (2) Officers will complete an Alcohol Influence Report and include the name and telephone number of the juvenile's parents or guardian in the narrative.
  - Officers will write "Copy to Juvenile Court" across the top of the AIR.
- (3) Officers will advise parents that the juvenile should be examined by a doctor.
- (4) If juveniles must be detained, a medical release will be obtained.

F. Underage Drinking and Driving, ARS 4-244.33

- (1) This offense **will be** cited any time a driver less than 21 years of age is determined by breath test to have **any** measurable alcohol concentration.
- (2) A defendant must be under arrest for DUI or underage drinking and driving before a breath test can be required; however, an ARS 4-244.33 charge can be made even if a DUI charge is not filed.
- (3) Enforcement Guidelines:

<b>Violators Under 18</b>	<ul style="list-style-type: none"> <li>• Juveniles under the age of 18, who are charged with Underage Drinking and Driving ARS 4-244.33 will be cited into Juvenile Court Center for both criminal and civil citations.</li> </ul>
<b>Violators 18 to 21</b>	<ul style="list-style-type: none"> <li>• All misdemeanor DUI violators and underage drinking and driving violators between the ages of 18 and 21 will be cited into the Phoenix Municipal Court.</li> </ul>

- (4) Charging for Underage Drinking and Driving Only - If an ARS 4-244.33 charge is made **without** an associated DUI being filed, a DR will be necessary.
  - (a) The DR number will be included on the ATTC and DUI Visual.
  - (b) The DR must include the facts establishing probable cause for a DUI or underage drinking and driving arrest.
  - (c) The DR must also include the checklist and other paperwork associated with the breath test.
  - (d) An AIR may be used as the DR in these situations as long as it is clearly marked to show it is an ARS 4-244.33 and not a DUI.
  - (e) These cases should be treated as a major traffic complaint, such as reckless driving.
  - (f) The arresting officer will issue the ATTC, and forward a copy of the DR (in AIR format) to the City Prosecutor's Office if the suspect is between 18 and 20 years of age.
    - If the suspect is under the age of 18 a copy of the DR (in AIR format) will be forwarded the Juvenile Court Center.

<b>DRIVING UNDER THE INFLUENCE INVESTIGATIONS</b>	<b>Operations Order 6.4</b>
<b>PHOENIX POLICE DEPARTMENT</b>	Rev. 02/03 <b>PAGE 23</b>

5. F. (5) Charging for DUI and Underage Drinking and Driving - A separate DR **will not** be made for underage drinking and driving when charging both ARS 28-1381, DUI and ARS 4-244.33, Underage Drinking and Driving.

(a) The fact that the ARS 4-244.33 charge is being made, and the basis for it, will be included in the narrative portion of the AIR.

(b) The ARS 4-244.33 charge will be cited along with the applicable DUI charge/s and submitted to the appropriate court depending on the suspect's age.

(6) Aggravated DUI - If a person less than 21 years of age is booked on an aggravated (felony) DUI, an ATTC for ARS 4-244.33 **will not** be issued.

G. Aid and Abet

(1) A DR will be prepared on all aid and abet DUI arrests.

(2) When an ATTC for aid and abet is issued, the DR number will be written on the ATTC.

(3) The wording on an Aid and Abet ATTC will be DUI (Aid and Abet)

(4) A copy of the aided person's Alcohol Influence Report along with the Aid and Abet DR will be forwarded to the Vehicular Crimes Unit.

(5) The DR number for the Aid and Abet DUI DR will be written on the Alcohol Influence Report as a cross-reference.

(6) Examples of DUI aid and abet arrests are:

- Citing the vehicle owner when the owner is a passenger and the driver is obviously intoxicated and it is apparent that the owner knew that the driver was intoxicated.
- Citing the responsible party who takes custody of a cited DUI suspect and allows the suspect to drive.

Appendix E  
ARIZONA  
**Phoenix Police Telephonic/Fax Warrant Checklist**

## Telephonic/Fax Warrant Checklist

- 1) Contact arresting officer to determine probable cause exists for arrest, ensuring that the charge is valid and all elements of the crime exists.
  - a) Ensure that Miranda warnings and Admin Per Se were read to the suspect, and the refusal has occurred.
  - b) If you are going to proceed, interview the arresting officer and document the probable cause in the warrant.
- 2) Contact the suspect and inform him/her of your intention to obtain a telephonic/fax warrant for blood or other bodily fluids.
  - a) If the suspect has questions reference the warrant, explain the department's policy and procedure.
    - 1) If the suspect changes his/her mind, allow a breath test to be administered. (keep in mind the 2-hour limit)
    - 2) If no dialog occurs, complete the required paperwork to obtain a warrant.
- 3) Complete the Affidavit in Support of Telephonic or Fax Warrant and the Arizona Duplicate Original Search Warrant by filling in all of the appropriate spaces.
  - a) For telephonic warrants, obtain a tape recorder and a new cassette.
  - b) For fax warrants, make sure you have access to a working fax machine.
- 4) After completing all of the required paperwork, contact the Initial Appearance Judge.
  - a) If the Initial Appearance Judge is not available, contact one of the judges on the Justice Court list.
- 5) When the judge answers, inform him/her of your intentions.
  - a) Ask the judge if they are available to assist you with the warrant, which should take approximately 15 minutes.
  - b) In the case of a telephonic warrant, tell them that you will be tape recording the conversation.
- 6) Telephonic Warrant
  - a) Begin reading the script verbatim, read in a normal voice so you are clear to the judge and the tape recording.
  - b) Notify your boss, so the lieutenant can be notified.
  - c) Call communications for a Phlebotomist on duty or from the list.
- 7) Fax Warrant
  - a) After you are sworn in, send the fax.
  - b) When the fax comes back signed, notify your boss, so the lieutenant can be notified.
  - c) Call communications for a Phlebotomist on duty or from the list.
- 8) When the Phlebotomist arrives, inform the suspect that you will be obtaining a blood sample, and give them a copy of the Arizona Duplicate Original Search Warrant.
  - a) If combative, notify the on duty lieutenant, who will make the decision on serving the warrant.
- 9) If the warrant is served, observe the draw; noting the time of the draw, the type of preparation used, and the location of the draw (i.e.. left arm). Impound the evidence per policy with a Scientific Analysis Request form.
  - a) Serve the suspect with a property receipt, once the blood sample is obtained (it can be part of the Arizona Duplicate Original Search Warrant).

10) Return of Search Warrant

- a) Must be done within 5 days (calendar not working).
- b) Submit cassette tape and handwritten notes to the secretary so it can be transcribed ASAP!
- c) Upon return from the secretary, review the paperwork for accuracy, then return the warrant to the judge.
  - 1) Judge receives the following paperwork:
    - a) **Original typed** Affidavit in Support of Telephonic Search Warrant (transcribed).
    - b) **Original typed** Arizona Duplicate Original Search Warrant *\*judge must sign this document.*
    - c) **Original typed** Standard Arizona Inventory, Affidavit and Return of Search Warrant *\*judge must sign this document.*
    - d) Do not forget to put warrant number on all documents.
    - e) Faxed warrant-your handwritten or typed fax warrant serves as the original for the court and he/she should already have it with the judges original signature, but be sure to give the judge the original ones that you faxed. All other paperwork is the same.

11) Paperwork Flow

- a) Copy of above listed forms; signed by the judge. **Traffic Records with the DUI visual.**
- b) Copy of above listed forms; signed by the judge. **R and I Bureau with the DR.**
- c) Original handwritten notes (script) used to obtain the warrant, and cassette tape of telephonic warrant process impounded as evidence.

12) **YOU ARE FINALLY DONE!!!!!!!!!!**

Appendix F  
ARIZONA

**Phoenix Police Affidavit in Support of Tele-Fax Search Warrant**

**YOUR DEPARTMENT NAME**  
**AFFIDAVIT IN SUPPORT OF**  
**TELE-FAX SEARCH WARRANT**

**SEARCH WARRANT #** \_\_\_\_\_  
**REPORT #** \_\_\_\_\_

**FAX TO:** Judge \_\_\_\_\_ **Fax #** \_\_\_\_\_ **Phone #** \_\_\_\_\_  
**FROM:** Sender: \_\_\_\_\_ **Fax #** \_\_\_\_\_ **Phone #** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Officer's name** \_\_\_\_\_ **I.D. #** \_\_\_\_\_

**Judge:** This is \_\_\_\_\_ I.D.# \_\_\_\_\_ of the \_\_\_\_\_

I am faxing you this sworn affidavit to obtain a Tele-Fax search warrant in support of a:

- DUI  Aggravated assault  \_\_\_\_\_  
 Aggravated DUI  Homicide investigation

Please sign below as documentation that you swore me in via telephone with \_\_\_\_\_  
I.D.# \_\_\_\_\_ standing by as a witness.

**Judge:** \_\_\_\_\_  
of the \_\_\_\_\_ Court  
(Justice of the Peace/Judge or Magistrate)

**Affiant:** \_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Judge:** I have probable cause to believe that there is now in the blood or bodily fluids of: \_\_\_\_\_ date of birth \_\_\_\_\_

Located at \_\_\_\_\_

The following substances to wit:  alcohol  drugs  
 Identifying characteristics (DNA)

Together with other evidence of the crime of:

- driving a vehicle while under the influence of intoxicating liquor and/or drugs  
 actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs  
 \_\_\_\_\_

As set forth in this affidavit, I Officer \_\_\_\_\_ your Affiant, am a peace officer in the State of Arizona, employed by \_\_\_\_\_ I have been a sworn peace officer for \_\_\_\_\_ years and have the following training and experience:

I have graduated from:  A.L.E.T.A.  The Arizona Law Enforcement Academy  
 The Phoenix Police Academy  \_\_\_\_\_

My training included identifying driver impairment due to alcohol or drugs. My duty assignments have included traffic, criminal and DUI investigations. I have specialized training in:

- H.G.N. (Horizontal Gaze Nystagmus)  D.R.E. (Drug Recognition Expert)  
 DUI investigation and apprehension  Phlebotomy  
 \_\_\_\_\_

I am investigating the crime of:  DUI  Aggravated DUI  Aggravated assault  Manslaughter  Homicide  
 \_\_\_\_\_

**YOUR DEPARTMENT NAME**  
**AFFIDAVIT IN SUPPORT OF**  
**TELE-FAX SEARCH WARRANT**  
**(Continued)**

**SEARCH WARRANT #** \_\_\_\_\_  
**REPORT #** \_\_\_\_\_

which I believe to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_ at the time of \_\_\_\_\_ hours at the location of \_\_\_\_\_ in \_\_\_\_\_ County, State of Arizona, based on the following reasons and circumstances:

- Collision (describe location and circumstances): \_\_\_\_\_  
 Driving behavior (list violations or physical control) \_\_\_\_\_

The driver license status of \_\_\_\_\_ is \_\_\_\_\_

In addition, the following observations of symptoms of consumption and/or impairment were made of \_\_\_\_\_ date of birth \_\_\_\_\_ by \_\_\_\_\_ of the \_\_\_\_\_

UNUSUAL ACTIONS

- belching  
 vomiting  
 urinated  
other \_\_\_\_\_

ODOR OF ALCOHOL

- faint  
 moderate  
 strong  
other \_\_\_\_\_

ATTITUDE

- antagonistic  
 combative  
 mood swings  
other \_\_\_\_\_

PUPILS

- equal  
 slow reaction  
 dilated/constricted  
other \_\_\_\_\_

SPEECH

- slurred  
 incoherent  
 profanity  
other \_\_\_\_\_

BALANCE

- swaying  
 lost balance/fell down  
 staggering  
other \_\_\_\_\_

FACE

- dazed expression  
 flushed  
 pale  
other \_\_\_\_\_

CLOTHING

- orderly  
 soiled  
 disarranged  
other \_\_\_\_\_

EYES

- watery  
 bloodshot  
other \_\_\_\_\_

In addition: \_\_\_\_\_

I believe that the property, substances, and behavior that I have described in this affidavit are evidence of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs.

**NIGHTTIME SEARCH WARRANT:**

I believe that it is necessary to obtain this evidence after 10:00 PM and before 6:00 AM, for the reason that it is now \_\_\_\_\_ hours, Therefore, I cannot effectively serve and execute the warrant during the daytime. The evidence requested is of a perishable nature and a Time delay would render it useless.

Based on the preceding facts, I, \_\_\_\_\_ I.D.# \_\_\_\_\_ request that a Tele-Fax  
 daytime  nighttime search warrant to be issued. This concludes my affidavit Your Honor.

**Affiant:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

**Appendix G**  
**ARIZONA**  
**Phoenix Police Affidavit in Support of Telephonic**  
**Search Warrant**

**YOUR DEPARTMENT NAME**  
**AFFIDAVIT IN SUPPORT OF**  
**TELEPHONIC SEARCH WARRANT**

**SEARCH WARRANT #** \_\_\_\_\_  
**REPORT #** \_\_\_\_\_

**DATE:** \_\_\_\_\_ **Officer's name** \_\_\_\_\_ **I.D. #** \_\_\_\_\_

**Judge:** Hello?

**Officer:** Judge \_\_\_\_\_, this is \_\_\_\_\_ I.D. # \_\_\_\_\_ of the Phoenix Police Department, will you swear me in please?

**Judge:** (The Judge swears you in.)

**Officer:** This is \_\_\_\_\_ of the Phoenix Police Department. I am calling you on (date & time) \_\_\_\_\_ with (name) \_\_\_\_\_ standing by as a witness.

I am calling for a telephonic search warrant and have just, probable, and reasonable cause to believe that there is now in the blood/body fluids of \_\_\_\_\_ date of birth \_\_\_\_\_

Located at \_\_\_\_\_

The following substances to wit:  alcohol  drugs  
 Identifying characteristics (DNA)

Together with other evidence of the crime of:

- driving a vehicle while under the influence of intoxicating liquor and/or drugs  
 actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs  
 \_\_\_\_\_

As set forth in this affidavit, that I, \_\_\_\_\_ your Affiant, am a peace officer in the State of Arizona, employed by the \_\_\_\_\_ I have been a sworn peace officer for \_\_\_\_\_ years and have the following training and experience:

I have graduated from:  A.L.E.T.A.  The Arizona Law Enforcement Academy  
 The Phoenix Police Academy  \_\_\_\_\_

My training included identifying driver impairment due to alcohol or drugs. My duty assignments have included traffic, criminal and DUI investigations. I have specialized training in:

- H.G.N. (Horizontal Gaze Nystagmus)  D.R.E. (Drug Recognition Expert)  
 DUI investigation and apprehension  Phlebotomy  
 \_\_\_\_\_

I am investigating the crime of:  DUI  Aggravated DUI  Aggravated assault  Manslaughter  Homicide  
 \_\_\_\_\_

Which I believe to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_ at the time of \_\_\_\_\_ hours, at the location of \_\_\_\_\_ in the City of \_\_\_\_\_, State of Arizona, based on the following reasons and circumstances:

- Collision (describe location and circumstances): \_\_\_\_\_  
 Driving behavior (list violations or physical control) \_\_\_\_\_

**YOUR DEPARTMENT NAME**  
**AFFIDAVIT IN SUPPORT OF**  
**TELEPHONIC SEARCH WARRANT**  
**(Continued)**

**SEARCH WARRANT #** \_\_\_\_\_  
**REPORT #** \_\_\_\_\_

The driver license status of \_\_\_\_\_ is \_\_\_\_\_

In addition, the following observations of symptoms of consumption and/or impairment were made of \_\_\_\_\_  
date of birth \_\_\_\_\_ by \_\_\_\_\_ of the \_\_\_\_\_

**UNUSUAL ACTIONS**

- belching
- vomiting
- urinated
- other \_\_\_\_\_

**ODOR OF ALCOHOL**

- faint
- moderate
- strong
- other \_\_\_\_\_

**ATTITUDE**

- antagonistic
- combative
- mood swings
- other \_\_\_\_\_

**PUPILS**

- equal
- slow reaction
- dilated/constricted
- other \_\_\_\_\_

**SPEECH**

- slurred
- incoherent
- profanity
- other \_\_\_\_\_

**BALANCE**

- swaying
- lost balance/fell down
- staggering
- other \_\_\_\_\_

**FACE**

- dazed expression
- flushed
- pale
- other \_\_\_\_\_

**CLOTHING**

- orderly
- soiled
- disarranged
- other \_\_\_\_\_

**EYES**

- watery
- bloodshot
- other \_\_\_\_\_

In addition: \_\_\_\_\_

I believe that the property, substances, and behavior that I have described in this affidavit is/are evidence of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs.

**NIGHTTIME SEARCH WARRANT:**

I believe that it is necessary to obtain this evidence after 10:00 PM and before 6:00 AM, for the reason that it is now \_\_\_\_\_ hours, therefore, I cannot effectively serve and execute the warrant during the daytime. The evidence requested is of a perishable nature and a time delay would render it useless.

Based on the preceding facts, I, \_\_\_\_\_ I.D.# \_\_\_\_\_ request that a telephonic  
 daytime  nighttime search warrant to be issued. This concludes my affidavit Your Honor.

**JUDGE:** ( await his/her reply)

**Officer:** I will now read verbatim to you the Standard Arizona Duplicate Original Search Warrant, State of Arizona, indicating which spaces I have completed.

**Affiant** \_\_\_\_\_

**Witness** \_\_\_\_\_

Appendix H  
ARIZONA

**Department of Public Safety Affidavit in Support of Tele-Fax Search Warrant**





**ARIZONA DEPARTMENT OF PUBLIC SAFETY**  
**AFFIDAVIT IN SUPPORT OF**  
**TELE-FAX SEARCH WARRANT**  
**(Continued)**

DOCKET NUMBER	DR NUMBER
---------------	-----------

I am investigating the crime of:  DUI  Aggravated DUI  Aggravated assault  Homicide  
 \_\_\_\_\_

Which I believe to have been committed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the time of \_\_\_\_\_ hours at the location of \_\_\_\_\_, in \_\_\_\_\_ County, Arizona, based on the following reasons and circumstance:

- Accident (describe location and circumstances): \_\_\_\_\_
- Driving behavior (list violations or physical control): \_\_\_\_\_

The status of \_\_\_\_\_ driver license is \_\_\_\_\_.  
 In addition, the following observations of symptoms of consumption and / or impairment were made of \_\_\_\_\_, date of birth \_\_\_\_\_, by \_\_\_\_\_ of the  Arizona Department of Public Safety  Other agency \_\_\_\_\_:

- |                                    |   |                                   |                                     |   |
|------------------------------------|---|-----------------------------------|-------------------------------------|---|
| <b><u>EYES</u></b>                 | <b><u>FACE</u></b>                        | <b><u>ODOR OF ALCOHOL</u></b>     | <b><u>SPEECH</u></b>                | <b><u>CLOTHING</u></b>                        |
| <input type="checkbox"/> watery    | <input type="checkbox"/> flushed          | <input type="checkbox"/> faint    | <input type="checkbox"/> slurred    | <input type="checkbox"/> soiled               |
| <input type="checkbox"/> bloodshot | <input type="checkbox"/> pale             | <input type="checkbox"/> moderate | <input type="checkbox"/> incoherent | <input type="checkbox"/> disarranged / mussed |
| <input type="checkbox"/> _____     | <input type="checkbox"/> dazed expression | <input type="checkbox"/> strong   | <input type="checkbox"/> profanity  | <input type="checkbox"/> torn                 |
- 
- |   |                                       |                                    |  |
|---|---------------------------------------|------------------------------------|--|
| <b><u>BALANCE</u></b>                             | <b><u>ATTITUDE</u></b>                | <b><u>UNUSUAL ACTIONS</u></b>      | <b><u>PUPILS</u></b>                   |
| <input type="checkbox"/> swaying _____            | <input type="checkbox"/> antagonistic | <input type="checkbox"/> hiccough  | <input type="checkbox"/> poor reaction |
| <input type="checkbox"/> staggering               | <input type="checkbox"/> combative    | <input type="checkbox"/> vomiting  | <input type="checkbox"/> dilated       |
| <input type="checkbox"/> lost balance / fell down | <input type="checkbox"/> mood swings  | <input type="checkbox"/> urinating | <input type="checkbox"/> _____         |

In addition: \_\_\_\_\_

I believe that the property, substances, and behavior that I have described in this affidavit are evidence of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.

**NIGHT TIME SEARCH WARRANT:**

I believe that it is necessary to obtain this evidence after 10:00 PM and before 6:30 AM, for the reason that it is now \_\_\_\_\_ hours, therefore, I cannot effectively serve and execute the warrant during the daytime. The evidence requested is of a perishable nature and a time delay would render it useless.

Based on the preceding facts, I, Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_, request that a Tele-Fax  **daytime**  **night time** search warrant to be issued. This concludes my affidavit Your Honor.

Affiant: **X** \_\_\_\_\_

Witness: **X** \_\_\_\_\_



STANDARD ARIZONA INVENTORY, AFFIDAVIT AND RETURN OF SEARCH WARRANT

Table with 2 columns: DOCKET NUMBER, DR NUMBER

I, Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_, a Peace Officer in the State of Arizona, being first duly sworn upon oath, deposes and says:

That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I executed this search warrant and the following described property was seized:

- checkbox \_\_\_\_\_ tube(s) of blood
checkbox urine sample
checkbox other item(s) as described below

Horizontal lines for describing seized property

I further certify that the foregoing inventory is a true and detailed account of all property taken by me pursuant to ARS §13-3921 and that a detailed receipt for the property taken was [checkbox] given to: [checkbox] left at:

Horizontal lines for receipt information

Affiant: X \_\_\_\_\_ I. D. No. \_\_\_\_\_

Rank: \_\_\_\_\_ Department: \_\_\_\_\_

This warrant was returned, subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to ARS §13-3918.A.

JUDGE: X \_\_\_\_\_
Justice of the Peace; Judge or Magistrate
of the \_\_\_\_\_ Court .

DOCKET NUMBER	CASE NUMBER
---------------	-------------

# STANDARD DUPLICATE ORIGINAL SEARCH WARRANT

COUNTY OF \_\_\_\_\_, STATE OF ARIZONA  
 IN THE \_\_\_\_\_ COURT

Proof by affidavit having been made this day before me by Officer \_\_\_\_\_ I. D. No. \_\_\_\_\_ of the Arizona Department of Public Safety, I am satisfied that there is probable cause to believe that:

In the blood or bodily fluids of \_\_\_\_\_, date of birth \_\_\_\_\_,  
 Located at: \_\_\_\_\_ in the County of \_\_\_\_\_,  
 in the State of Arizona, there is now being possessed or concealed certain property or substance(s) described as:

alcohol and / or  drugs

together with other fruits, instrumentalities and evidence of a crime which property or things consists of any item or constitutes any evidence which tends to show that a public offense has been committed such being more fully described in the affidavit, to wit:

- Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor and drugs
- Aggravated driving or in actual physical control of a vehicle while under the influence of intoxicating liquor and / or drugs
- Aggravated assault
- Homicide

Which offense occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at or near the location of \_\_\_\_\_, \_\_\_\_\_ County, State of Arizona.

You are therefore commanded:

- in the DAYTIME (excluding the time period between 10:00 PM and 6:30 AM)
- in the NIGHT TIME (good cause therefore having been shown)

to make a search of the above named or described person(s), for the herein above described substances, and if you find the same or any part thereof, to retain such in your custody or in the custody of the agency that you represent, as provided by ARS §13-3920. Return this warrant to me within five (5) business days of the date thereof, as directed by ARS §13-3918.

Given under my hand and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**JUDGE:** \_\_\_\_\_  
*Justice of the Peace; Judge or Magistrate*  
 of the \_\_\_\_\_ Court.

Affiant: **X** \_\_\_\_\_  
 Witness: **X** \_\_\_\_\_

Appendix I  
ARIZONA

**Department of Public Safety Affidavit in Support of Telephonic Warrant**



ARIZONA DEPARTMENT OF PUBLIC SAFETY

AFFIDAVIT IN SUPPORT OF TELEPHONIC SEARCH WARRANT

Form with fields: DOCKET NUMBER, TODAY'S DATE, TIME, DR NUMBER, OFFICER NAME, I.D. NO., WITNESS NAME, SUSPECT NAME

Read only verbatim the following document, including the necessary filled in areas.

Judge \_\_\_\_\_, this is Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_ of the Arizona Department of Public Safety. I am requesting your assistance with a Telephonic Search Warrant in support of a:

- Checkboxes for: DUI investigation, Aggravated assault investigation, Aggravated DUI investigation, Homicide investigation

My testimony is being recorded and Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_ standing by as a witness. Will you swear me in, please?

Witness: X \_\_\_\_\_ I.D. No.: \_\_\_\_\_

Thank you, your Honor. I will now continue with the affidavit.

Judge, I have probable cause to believe that there is now in the blood or bodily fluids of (suspects name): \_\_\_\_\_, date of birth \_\_\_\_\_.

Located at: \_\_\_\_\_

The following substances and or property, to wit: \_\_\_\_\_

- checkboxes for alcohol and / or drugs

Together with other evidence of the crime of:

- checkboxes for: driving a motor vehicle while under the influence of intoxicating liquor or drugs, actual physical control of a vehicle while under the influence of intoxicating liquor or drugs

As set forth in this affidavit, I, Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_ your affiant, am a peace officer in the State of Arizona, employed by the Arizona Department of Public Safety. I have been a sworn peace officer for \_\_\_\_\_ years, and have the following training and experience:

- checkboxes for: A.L.E.T.A., The Phoenix Police Academy, The Arizona Law Enforcement Academy

Training included identifying driver impairment due to alcohol or drugs. My duty assignments have included traffic, criminal and DUI investigations. I have specialized training in:

- checkboxes for: H.G.N. Horizontal Gaze Nystagmus, D.R.E. Drug Recognition, DUI investigation and apprehension, Phlebotomy

I am investigating the crime of: checkboxes for DUI, Aggravated DUI, Aggravated assault, Homicide



AFFIDAVIT IN SUPPORT OF TELEPHONIC SEARCH WARRANT - (Continued)

DOCKET NUMBER, TODAY'S DATE, TIME, DR NUMBER

Which I believe to have been committed on the \_\_\_ day of \_\_\_, 20\_\_\_, at the time of \_\_\_ hours at the location of \_\_\_, in \_\_\_ County, Arizona, based on the following reasons and circumstance:

- Accident (describe location and circumstances):
Driving behavior (list violations or physical control):

The status of \_\_\_ driver license is \_\_\_. In addition, the following observations of symptoms and / or impairment were made of \_\_\_, date of birth \_\_\_, by \_\_\_ of the [ ] Arizona Department of Public Safety [ ] Other agency

- EYES: watery, bloodshot
FACE: flushed, pale, dazed expression
ODOR OF ALCOHOL: faint, moderate, strong
SPEECH: slurred, incoherent, profanity
CLOTHING: soiled, disarranged / mussed, torn
BALANCE: swaying, staggering, lost balance / fell down
ATTITUDE: antagonistic, combative, mood swings
UNUSUAL ACTIONS: hiccough, vomiting, urinating
PUPILS: poor reaction, dilated

In addition: \_\_\_\_\_

I believe that the property, substances, and behavior that I have described in this affidavit are evidence of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.

NIGHT TIME SEARCH WARRANT: (read this portion if applicable)

I believe that it is necessary to obtain this evidence after 10:00 PM and before 6:30 AM, for the reason that it is now \_\_\_ hours, therefore, I cannot effectively serve and execute the warrant during the daytime. The evidence requested is of a perishable nature and a time delay would render it useless.

Based on the preceding facts, I, Officer \_\_\_\_\_ I.D. No. \_\_\_\_\_, request that a Telephonic [ ] daytime [ ] night time search warrant to be issued. This concludes my affidavit Your Honor.

With your permission Your Honor, I will now read to you a Standard Duplicate Search Warrant.

Upon reading the warrant, read the following:

This concludes the reading of the Standard Duplicate Original Search Warrant, Your Honor. Do I have your permission to sign your name and execute the search warrant, Your Honor?

Affiant: X \_\_\_\_\_

Witness: X \_\_\_\_\_

Appendix J  
ARIZONA  
**Standard Arizona Search Warrant**

**STANDARD ARIZONA ORIGINAL SEARCH WARRANT  
STATE OF ARIZONA**

**SEARCH WAR-  
RANT # \_\_\_\_\_  
REPORT # \_\_\_\_\_**

COUNTY OF \_\_\_\_\_, STATE OF ARIZONA  
IN THE \_\_\_\_\_ COURT

Proof by affidavit having been made this day before me by \_\_\_\_\_ I.D. # \_\_\_\_\_  
of the \_\_\_\_\_ I am satisfied that there is probable cause to believe that:

- In the blood/body fluids of \_\_\_\_\_ date of birth \_\_\_\_\_  
 Located at \_\_\_\_\_

in the State of Arizona, there is now being possessed or concealed certain property or substance(s) described as:

- Alcohol and/or  drugs  \_\_\_\_\_

together with other fruits, instrumentalities and evidence of a crime which property or things consists of any item or constitutes any evidence which tends to show that a public offense has been committed such being more fully described in the affidavit, to wit:

- Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs.  
 Aggravated driving or in actual physical control of a vehicle while under the influence of intoxicating liquor and/or drugs  
 Aggravated assault  
 Manslaughter  
 Homicide

Which offense occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_, at or near the location of \_\_\_\_\_, \_\_\_\_\_ County, State of Arizona

you are therefore commanded:

- in the daytime (excluding the time period between 10:00 p.m. and 6:30 a.m.)  
 in the nighttime (good cause therefore having been shown)

to make a search of the above named or described person(s) for the herein above-described substances, and if you find the same or any part thereof, to retain such in your custody or in the custody of the agency you represent, as provided by ARS §13-3920. Return this warrant to me within five (5) business days of the date thereof, as directed by ARS §13-3918.

Given under my hand and dated this \_\_\_\_\_ day of \_\_\_\_\_,

**JUDGE:** \_\_\_\_\_

**Affiant:** \_\_\_\_\_

of the \_\_\_\_\_ Court

**Witness:** \_\_\_\_\_

(Justice of the Peace; Judge or Magistrate)

Warrant Served: **Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_

Receipt for property taken: \_\_\_\_\_

Reason for non-service: \_\_\_\_\_

Appendix K  
ARIZONA

**Phoenix Police Lesson Plan on Telephonic/Facsimile Search  
Warrants**

**CITY OF PHOENIX  
PHOENIX POLICE DEPARTMENT  
Lesson Plan**

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**TELEPHONIC/FACSIMILE SEARCH WARRANTS**

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LESSON PLAN: TELEPHONIC/FAX  
SEARCH WARRANTS

LESSON PLAN NUMBER:

TOTAL COURSE HOURS: 2 HOURS

COURSE CONTENT: A DETAILED COURT APPROVED  
PROCEDURE ON HOW TO OBTAIN A  
TELEPHONIC/FACSIMILE SEARCH  
WARRANT.

PERFORMANCE OBJECTIVES: UPON COMPLETION OF THE CLASS,  
STUDENTS WILL BE ABLE TO COM-  
PLETE A TELEPHONIC/FACSIMILE  
SEARCH WARRANT. STUDENTS  
WILL LEARN HOW TO COMPLETE  
THE NECESSARY PAPERWORK TO  
OBTAIN A WARRANT, HOW TO TAPE-  
RECORD THE WARRANT PROCESS,  
AND WHAT IS REQUIRED FROM THE  
COURTS, SUCH AS TIME RESTRIC-  
TIONS FOR SERVICE/RETURN OF  
WARRANT.

LESSON PREPARED BY: SERGEANT WILLIAM E. NILES JR.  
#4228

DATE PREPARED: JUNE 6, 1998

DATE REVISED: JULY 24, 1998

LESSON REVISED BY: OFFICER DAN MULLENEAUX #4893

DATE REVISED:

AUGUST 9, 2002

INSTRUCTOR REFERENCES:

TITLE 28, TITLE 13, PHOENIX POLICE DEPARTMENT POLICY ON TELEPHONIC/FACSIMILE SEARCH WARRANTS.

TRAINING AIDS:

HANDOUTS:

CONSENT FORM, AFFIDAVIT IN SUPPORT OF TELEPHONIC AND FACSIMILE SEARCH WARRANT FORM, STANDARD ARIZONA DUPLICATE ORIGINAL SEARCH WARRANT FORM, STANDARD ARIZONA INVENTORY RECEIPT, AFFIDAVIT AND RETURN OF SEARCH WARRANT FORM.

METHOD OF PRESENTATION:

LECTURE, CLASS PARTICIPATION

CLASS LEVEL:

ADVANCED OFFICER TRAINING

REVIEWED BY:

DATE REVIEWED:

APPROVED BY: (Author's Commander)

DATE:

APPROVED BY: (Records Approval Committee)

DATE:

APPROVED BY: (Training Bureau Commander)

DATE:

## I. INTRODUCTION

- A. Brief background into the problem of DUI refusal cases.

Added difficulty of processing refusal cases in light of recent jury instructions given, which say that the Phoenix Police Department is not doing all we should to secure blood alcohol evidence.

### Statistics for DUI refusals in the past two years

2000	Total DUI arrests:	8967
	Aggravated DUI cases:	885
	Misdemeanor DUI arrests:	8082
	DUI refusals:	532
	Refusal rate:	5.9%
2001	Total DUI arrests:	8417
	Aggravated DUI cases:	868
	Misdemeanor DUI arrests:	7549
	DUI refusals:	290
	Refusal rate:	3.4%

To combat the problem of DUI refusals, we are going to step up efforts with an aggressive program of telephonic/fax search warrants.

Executive Staff approved the current search warrant policy in January 1998.

Once you have completed the search warrant training, you will be qualified to draft search warrants for both felony and misdemeanor cases.

## II. COURT REQUIREMENTS

- A. The officer must be sworn in by the judge, swearing to tell the truth while providing information to obtain the warrant.

**NOTE:** To use a facsimile warrant, you must be sworn in by the judge prior to sending the warrant.

During this same time period, agencies such as DPS, Mesa, Tempe, Scottsdale and Tucson PD, using a telephonic/facsimile search warrant policy, report a much lower refusal rate.

These agencies also report that approximately 50-60% of suspects who initially refuse, chose to take a breath test when told about the impending blood draw after a warrant is issued.

The first half of 2002 is at a refusal rate of 1.5%

The same sources also note that defense attorneys don't advise their clients to refuse breath tests as frequently, when they know a policy is in place to obtain blood via search warrant.

The percentage of refusals has gone down significantly since starting to use search warrants in 1998.

In 1996 there were 8391 DUI arrests with 1080 refusals (12.8%).

In 1997 there were 8916 DUI arrests with 1146 refusals (12.8%).

It is the judge's responsibility to swear you in before you begin to testify. If the judge forgets, you should request to be sworn in before starting the process. If you are not sworn in, the warrant could be ruled invalid!!!

- B. Ensure all paperwork is completed legibly, as it will either be sent to the judge via facsimile or read verbatim.
- C. The transcribed warrant must be returned to the issuing court within 5 days of its issuance.
  - 1. This does not apply to a facsimile warrant, since the judge already has a copy of the warrant.
  - 2. Upon returning the warrant, the officer must complete the Affidavit and Return of Search Warrant form, which will be signed by the judge.
- D. The defendant must be provided with a copy of the warrant (handwritten will suffice). The defendant will also be given a receipt for the property removed.

Warrant must be returned within 5 calendar days of the date issued by the judge, not the date served. (Requirement is actually 5 court days, but we use calendar days to be safe)

### III. TELEPHONIC/FACSIMILE SEARCH WARRANT PROCEDURE

- A. Upon arrival, you must first determine that a valid arrest has been made, and probable cause exists.
  - 1. Ensure that the necessary elements exist for a DUI/Aggravated DUI charge.
  - 2. Confirm that the suspect has been Mirandized and has been advised of the Administrative Per Se law.
  - 3. Confirm that the suspect has refused to submit to the specified test as requested and understands the consequences of refusing.
  - 4. Interview the officer for specific details of the incident to be included in the Affidavit.
- B. Contact the suspect, and inform him/her of your intention to obtain a Telephonic/Facsimile Search Warrant for a sample/s of their blood.
  - 1. If the suspect opens a dialog concerning the warrant, answer the questions.
  - 2. If no conversation occurs, begin the process to obtain the warrant.

Allow the suspect to make a phone call if requested to consult with an attorney.

Remember that this is your probable cause.

3. If the suspect changes his or her mind and agrees to submit to the requested test/s, complete the Consent Search Form and ensure the Administrative Per Se affidavit reflects consent.
4. If the suspect continues to refuse to provide the requested sample, complete the Administrative Per Se paperwork as a refusal.
5. Determine whether you will utilize a Telephonic or a Facsimile Search Warrant form.

Ensure all paperwork is completed prior to contacting the judge.

C. Complete the Affidavit in Support of Facsimile Search Warrant and the Arizona Original Search Warrant.

1. Ensure an officer is standing-by to witness your conversation with the judge.
2. Contact a judge with an available facsimile machine from the current list.
  - a. Ask the judge if he or she is available to assist you.
  - b. If the judge agrees to assist you, ensure the judge swears you in prior to terminating your telephone contact.
  - c. Confirm the judge's facsimile telephone number.
  - d. Ensure yourself and your witness sign the search warrant and the affidavit.
  - e. Send all of the paperwork, including a contact telephone number and a return facsimile telephone number to the judge for review.
  - f. Serve the suspect with a copy of the signed search warrant.

D. Complete the Affidavit in Support of a Telephonic Search Warrant, the Standard Duplicate Original Search Warrant, and the Standard Arizona Original Search Warrant.

1. Proceed to a telephone line, obtain a tape recorder and a blank tape and ensure the equipment is recording properly.
2. Ensure an officer is standing-by to witness your conversation with the judge.
3. Begin recording, state your name, the date, and the current time prior to dialing the phone.
4. Contact a judge from the current list.

Supervisor's phones are equipped to record calls.

Be professional.

- a. Ask the judge if he or she is available to assist you.
- b. Once the judge acknowledges he or she will assist you with the warrant, begin reading from the script.
- c. Read in a clear voice and avoid “police jargon.”
- d. After reading the affidavit, wait for the judge’s response.
- e. Read the Standard Arizona Duplicate Original Search Warrant.
- f. After you are finished reading the Standard Arizona Duplicate Original Search Warrant, ask the judge if you have permission to sign their name.
- g. Indicate that you signing their name, your name, and having your witness sign the warrant.
- h. Thank the judge for his or her assistance; hang up the telephone and state the time prior to stopping the tape.
- i. Serve the suspect with a copy of the signed search warrant.

Just relay the facts and not opinions. **REMEMBER** this will be scrutinized.

## E. Contact a Phlebotomist

1. Utilize the current list or the Police Communications Supervisor for an available Phlebotomist.
  - a. Obtain a blood kit and have it ready when the Phlebotomist arrives.
  - b. Use only the force necessary to obtain the sample/s pursuant to the search warrant.
  - c. Witness the blood draw, recording the time, type of preparation (betadine), and location from which the blood was drawn.
  - d. Complete the receipt for property taken on all copies of the search warrant indicating the property seized (i.e. “two vials of blood”)
  - e. Impound the blood into the Drug Recognition Expert (DRE) refrigerator in the property room in the basement of 620 West Washington Street.

Request for scientific analysis and PACE impound slip is required.

## F. Transcribing the Telephonic Search Warrant

1. Transcribe the search warrant as soon as possible.
2. Request the assistance of Bureau and/or Precinct secretaries if needed.

Keep in mind that the warrant must be returned within 5 days.

### G. Return of the Search Warrant

1. The search warrant **must** be returned within five (5) days of the date of issuance.
  - a. If you cannot return the warrant yourself within this time period, contact the judge and request that another officer be permitted to return the search warrant.

The warrant number can be obtained from the court staff the following day.

### H. Distribution of the Paperwork

1. The issuing court retains all original copies.
2. Complete copy of related paperwork and audiotape (if applicable) impounded as evidence.
3. Complete copy of related paperwork sent to Traffic Records and Records and Identification Bureau.

### I. Mock Search Warrant Scenario

1. Give each officer an actual DUI report and have him or her complete the search warrant paperwork based on the report.
2. Upon completion of the warrant paperwork, select two officers to role-play the warrant process.

TESTING: EXPERIENTIAL SCENARIOS  
NOTED PASS OR FAIL

(Learning activities will have an objective practical/scenario pass/fail evaluation to assess student competency in this functional area.)

COMPUTER FILE NAME:

OUTLINE \SEARCH WARRANT

\*ANY CHANGES TO THIS OUTLINE CONSTITUTES A REVISION AND MUST BE DOCUMENTED AS A NEW LESSON PLAN AND RE-APPROVED.

Appendix L  
MICHIGAN  
**Extracts from Michigan Laws**

## Extracts from Michigan laws

257.625c Consent to chemical tests; persons not considered to have given consent to withdrawal of blood; administration of tests.

(1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:

(a) If the person is arrested for a violation of section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8), section 625a(5), or section 625m.

(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle in violation of section 625.

257.625d Refusal to submit to chemical test; court order; report to secretary of state; form.

(1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 625a(6), a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) A written report shall immediately be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 625c(1), and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Appendix M  
MICHIGAN  
**Affidavit for Search Warrant**

COPY

STATE OF MICHIGAN ____ DISTRICT COURT	AFFIDAVIT FOR SEARCH WARRANT	COMP. NO.
--	---------------------------------	-----------

Affiant states:

- I am a police officer with the \_\_\_\_\_ Police Department. I am investigating an incident involving driving while under the influence of alcohol and/or a controlled substance that occurred at (location) \_\_\_\_\_ in the City/Twp of \_\_\_\_\_, County of Ingham on \_\_\_\_\_, at approximately \_\_\_\_\_ (a.m./p.m.)
- I have personally observed (name) \_\_\_\_\_ to be the operator of a motor vehicle involved in this incident (and/or) I have learned that information through personal contact with witness(es), namely, \_\_\_\_\_, who advised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- I have personally observed the above named operator and believe same to be under the influence of intoxicating liquor or a controlled substance or both or that the operator has an unlawful blood alcohol level, based on the following observations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- PBT result (if given): \_\_\_\_\_
- This investigation will likely result in a criminal prosecution against the operator. The property to be searched for and seized is blood samples from the operator. The blood samples will be analyzed by the crime laboratory and the alcohol content determined. The blood sample and analysis will constitute evidence of criminal conduct.
- The operator has been arrested and informed of his/her rights to a chemical test and the penalties associated with a refusal. The operator has refused the chemical test offered.
- I have informed the operator that a person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not required to submit to a blood test or considered to have consented to a blood test. The operator did not indicate that he/she had such an affliction, nor has he/she indicated any other medical damage which would be experienced should a blood sample be taken as required.

\_\_\_\_\_  
Printed name of Affiant

\_\_\_\_\_  
Signature of Affiant

Subscribed and sworn to before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
District Judge/Magistrate

Appendix N  
MICHIGAN  
**Search Warrant**

COPY

STATE OF MICHIGAN ____ DISTRICT COURT	SEARCH WARRANT	COMP. NO.
--	----------------	-----------

TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: I have found that probable cause exists and you are commanded to make the search and seize the described property. Leave a copy of this warrant with affidavit attached and a tabulation (a written inventory) of all property taken with the person from whom the property was taken or at the premises. You are further commanded to promptly return this warrant and tabulation to the court.

Issued: \_\_\_\_\_  
Date

\_\_\_\_\_  
Judge/Magistrate

\_\_\_\_\_  
Bar No.

**RETURN AND TABULATION**

Search was made \_\_\_\_\_ and the following property was seized:  
Date

Copy of affidavit, warrant and tabulation served on: \_\_\_\_\_

Tabulation filed: \_\_\_\_\_  
Date

PA-19a

Appendix O  
MICHIGAN

**Officer's Report of Refusal to Submit to Chemical Test**

DI-93 (9/99) By the Authority of P.A. 300 of 1949 as amended

# OFFICER'S REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST

PERSON'S FULL NAME (AS APPEARS ON MICHIGAN DRIVER LICENSE)		BIRTH DATE (MMDDYY)	SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	
ADDRESS (NUMBER & STREET)		MICHIGAN DRIVER LICENSE NUMBER		
CITY	STATE	ZIP	OTHER STATE DRIVER LICENSE NUMBER	STATE
HEIGHT	WEIGHT	EYE COLOR	HAIR COLOR	<input type="checkbox"/> OPERATOR <input type="checkbox"/> CHAUFFEUR <input type="checkbox"/> MOPED
ARREST DATE (MMDDYY)		MILITARY TIME	REFUSAL DATE (MMDDYY)	
COUNTY (OF ARREST)		CITY OR TOWNSHIP (OF ARREST)		CO/CTY/TWP CODE <b>MICHIGAN</b>
VEHICLE TYPE	Was person involved in an accident? <input type="checkbox"/> YES <input type="checkbox"/> NO	INSTRUMENT #	BAC #1	BAC #2
		<b>REFUSED</b>	<b>N/A</b>	<b>N/A</b>
ARRESTING OFFICER'S NAME		BADGE NUMBER	ORI NUMBER	
BREATH TEST OPERATOR'S NAME, only if not listed above and necessary for hearing		BADGE NUMBER	ORI NUMBER	
OTHER OFFICER, if necessary for hearing		BADGE NUMBER	ORI NUMBER	

The above named person was arrested for a violation of section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or for the offense of felonious driving, manslaughter, murder, or negligent homicide resulting from the operation of a motor vehicle.

The officer had reasonable grounds to believe that the above named person violated section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or committed the offense of felonious driving, negligent homicide, manslaughter or murder resulting from the operation of a motor vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or while having an unlawful bodily alcohol content, or if the person is less than 21 years of age while having any bodily alcohol content. [MCL 257.625c(1)(b)]

The above named person was requested to take a chemical test. The person was advised of the chemical test rights as required under section 625a and refused to take a chemical test.

Michigan driver license confiscated? <input type="checkbox"/> YES <input type="checkbox"/> NO	Michigan driver license destroyed? <input type="checkbox"/> YES <input type="checkbox"/> NO	Under 21? <input type="checkbox"/> YES <input type="checkbox"/> NO	LICENSED OUT OF STATE <input type="checkbox"/>
Driving status on date of arrest	VALID <input type="checkbox"/>	EXPIRED <input type="checkbox"/>	RESTRICTED <input type="checkbox"/>
	SUSPENDED <input type="checkbox"/>	REVOKED <input type="checkbox"/>	DENIED <input type="checkbox"/>
	UNLICENSED <input type="checkbox"/>	UNKNOWN <input type="checkbox"/>	INDORSEMENT <input type="checkbox"/>
License	Permit	A	B
CDL <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C	H	N
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	X	P	T
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	CDL restrictions	CY	F
		<input type="checkbox"/>	<input type="checkbox"/>
		R	Other
		<input type="checkbox"/>	<input type="checkbox"/>

VEHICLE TYPES	MD Med Tr w/wo Trl ovr 10,000# (non CDL)	AP Group A Passenger	BH Group B Hazardous
CY Cycle	OR Offroad Vehicle (ATV type)	AT Group A Double/Triple	BN Group B Tank
MO Moped	SM Snowmobile	AX Group A Tank & Hazardous	BP Group B Passenger
PA Pass Car & Sta Wgn	OO Other	AY Group A Tank & Double/Triple	BX Group B Tank & Hazardous
VA Van & Motor Home	AA Group A	AZ Group A Hazardous Double/Triple	CH Group C Hazardous
PU Pickup	AH Group A Hazardous	AL Grp A Hazard Tank Double/Triple	CP Group C Passenger
ST Sm Tr (un 10,000#)	AN Group A Tank	BB Group B	CX Group C Tank & Hazardous

## SERVICE OF NOTICE OF SUSPENSION

I certify that I hand delivered a copy of the document containing the Notice of Suspension and Appeal Rights to the person named above.

Officer's Signature \_\_\_\_\_

Date (MMDDYY) \_\_\_\_\_

## OFFICER'S INSTRUCTIONS

Give two white copies to person  
Keep two pink copies

# REQUEST FOR HEARING

# Request For Hearing:

I request a hearing before the Driver License Appeal Division to contest issue number (s) \_\_\_\_\_ (issues are listed on the Notice of Suspension.)

### Affirmative Address Statement:

- The address on my master driving record is correct. Send all correspondence to this address.
- The address on my master driving record should be changed to the address shown on the reverse side. Send all correspondence to this address.
- The address on the reverse side is only a temporary address. Send all correspondence to this address. Please DO NOT CHANGE the address on my master driving record file.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Driver License Number \_\_\_\_\_ Telephone \_\_\_\_\_

**This request for hearing must be mailed within 14 days of the receipt of the Officer's Report Of Refusal to Submit to Chemical Test containing the Notice of Suspension, or your operator's or chauffeur's license and vehicle group designation or operating privilege will be suspended. Send this form. Do not send a photocopy.**

**Mail to:** MICHIGAN DEPARTMENT OF STATE  
DRIVER LICENSE APPEAL DIVISION  
PO BOX 30196  
LANSING MI 48909-7696

<input type="checkbox"/> STATE <input type="checkbox"/> COUNTY <input type="checkbox"/> CITY <input type="checkbox"/> ZIP	<input type="checkbox"/> LICENSE <input type="checkbox"/> CLASSIFICATION <input type="checkbox"/> EXPIRES	<input type="checkbox"/> DRIVER <input type="checkbox"/> OPERATOR <input type="checkbox"/> CHAUFFEUR	<input type="checkbox"/> GROUP <input type="checkbox"/> DESIGNATION	<input type="checkbox"/> OPERATING <input type="checkbox"/> PRIVILEGE	<input type="checkbox"/> VEHICLE <input type="checkbox"/> TYPE	<input type="checkbox"/> LICENSE <input type="checkbox"/> CLASSIFICATION <input type="checkbox"/> EXPIRES	<input type="checkbox"/> DRIVER <input type="checkbox"/> OPERATOR <input type="checkbox"/> CHAUFFEUR	<input type="checkbox"/> GROUP <input type="checkbox"/> DESIGNATION	<input type="checkbox"/> OPERATING <input type="checkbox"/> PRIVILEGE	<input type="checkbox"/> VEHICLE <input type="checkbox"/> TYPE
--	---	--	--	--	---	---	--	--	--	---

### SERVICE OF NOTICE OF SUSPENSION

I hereby certify that I have delivered a copy of the document containing the notice of suspension and request for hearing to the person named below.

Officer's Signature \_\_\_\_\_ Date (MM/DD/YY) \_\_\_\_\_

### OFFICER'S INSTRUCTIONS:

Give two copies to person. Keep one copy.

REQUEST FOR HEARING

BTH TEST OPR NO

LEIN ENTRY

RECORD SEQUENCE NO

DI-93 (9/99)B By the Authority of P.A. 300 of 1949 as amended

**OFFICER'S REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST**

PERSON'S FULL NAME (AS APPEARS ON MICHIGAN DRIVER LICENSE)				BIRTH DATE (MMDDYY)		SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		
ADDRESS (NUMBER & STREET)				MICHIGAN DRIVER LICENSE NUMBER				
CITY		STATE		ZIP		OTHER STATE DRIVER LICENSE NUMBER		STATE
HEIGHT	WEIGHT	EYE COLOR	HAIR COLOR		<input type="checkbox"/> OPERATOR <input type="checkbox"/> CHAUFFEUR <input type="checkbox"/> MOPED			
ARREST DATE (MMDDYY)			MILITARY TIME		REFUSAL DATE (MMDDYY)		MILITARY TIME	
COUNTY (OF ARREST)			CITY OR TOWNSHIP (OF ARREST)			CO/CTY/TWP CODE		MICHIGAN
VEHICLE TYPE	Was person involved in an accident? YES <input type="checkbox"/> NO <input type="checkbox"/>	INSTRUMENT # <b>REFUSED</b>		BAC #1 N/A	BAC #2 N/A	BAC #3 N/A	UCR CODE	COMPLAINT NUMBER
ARRESTING OFFICER'S NAME				BADGE NUMBER		ORI NUMBER		
BREATH TEST OPERATOR'S NAME, only if not listed above and necessary for hearing				BADGE NUMBER		ORI NUMBER		
OTHER OFFICER, if necessary for hearing				BADGE NUMBER		ORI NUMBER		

The above named person was arrested for a violation of section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or for the offense of felonious driving, manslaughter, murder, or negligent homicide resulting from the operation of a motor vehicle.

The officer had reasonable grounds to believe that the above named person violated section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or committed the offense of felonious driving, negligent homicide, manslaughter or murder resulting from the operation of a motor vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or while having an unlawful bodily alcohol content, or if the person is less than 21 years of age while having any bodily alcohol content. [MCL 257.625c(1)(b)]

The above named person was requested to take a chemical test. The person was advised of the chemical test rights as required under section 625a and refused to take a chemical test.

Michigan driver license confiscated?	YES <input type="checkbox"/> NO <input type="checkbox"/>	Michigan driver license destroyed?	YES <input type="checkbox"/> NO <input type="checkbox"/>	Under 21?	YES <input type="checkbox"/> NO <input type="checkbox"/>	LICENSED OUT OF STATE									
Driving status on date of arrest	VALID <input type="checkbox"/>	EXPIRED <input type="checkbox"/>	RESTRICTED <input type="checkbox"/>	SUSPENDED <input type="checkbox"/>	REVOKED <input type="checkbox"/>	DENIED <input type="checkbox"/>	UNLICENSED <input type="checkbox"/>	UNKNOWN <input type="checkbox"/>							
License	Permit	A	B	C	H	N	X	P	T	CDL restrictions	INDORSEMENT	CY	F	R	Other
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**MICHIGAN TEMPORARY DRIVING PERMIT**

This temporary driving permit is valid only if you have a valid Michigan operator's or chauffeur's license. If your license has a CDL and/or indorsements or restrictions, this permit grants you the same CDL and/or indorsements or restrictions. You may not apply for a replacement photo license or personal identification card. This permit is valid until the criminal charges are dismissed or you are acquitted, or your license or permit is suspended, restricted, or revoked for a conviction. [MCL257.625g(3)]

**SERVICE OF NOTICE OF SUSPENSION**

I certify that I hand delivered a copy of the document containing the Notice of Suspension and Appeal Rights to the person named above.

Officer's Signature \_\_\_\_\_

Date (MMDDYY) \_\_\_\_\_

**OFFICER'S INSTRUCTIONS**

Give two white copies to person  
Keep two pink copies

**MICHIGAN TEMPORARY DRIVING PERMIT**

**This permit is only valid if you have a valid Michigan driver license.  
This permit is not valid if you are unlicensed or your license is expired,  
suspended, revoked or denied.**

**Carry this permit when driving.**

Driver's Copy

# Notice of Suspension

You have allegedly refused to take a chemical test. Your Michigan operator's or chauffeur's license, vehicle group designation or operating privilege will be suspended and six points will be added to your driving record.

## Appeal Rights:

If you do not appeal within 14 days your operator's or chauffeur's license, vehicle group designation or operating privilege will be automatically suspended. If you wish to request a hearing you must do so within 14 days of the date of service of this Notice of Suspension.

## Hearing Issues:

MCL 257.625f limits the issues appealable at a hearing ONLY to the following:

1. Whether the peace officer had reasonable grounds to believe that you committed a crime described in MCL 257.625c(1).
2. Whether you were placed under arrest for a crime described in MCL 257.625c(1).
3. If you refused to submit to a chemical test upon the request of the officer, whether the refusal was reasonable.
4. Whether you were advised of your rights under MCL 257.625a.

To request a hearing, complete the attached Request for Hearing and mail to the Department of State within 14 days of the date of the service of this notice.

You are not required to have an attorney at this hearing, but an attorney may represent you if you wish.

## CHEMICAL TEST RIGHTS

*(As read by peace officer)*

I will be requesting that you take a chemical test to determine the alcohol content and/or presence of a controlled substance in your body. **IF YOU WERE ASKED TO TAKE A PRELIMINARY BREATH TEST PRIOR TO YOUR ARREST, YOU MUST STILL TAKE THE TEST I AM ABOUT TO OFFER YOU.**

If you refuse to take this chemical test, it will not be given without a court order, but I may seek to obtain such a court order. Your refusal to take this test shall result in the suspension of your operator's or chauffeur's license and vehicle group designation or operating privilege, and the addition of six points to your driving record.

After taking my chemical test, you have a right to demand that a person of your own choosing administer a breath, blood, or urine test. You will be given a reasonable opportunity for such a test. You are responsible for obtaining a chemical analysis of a test sample taken by a person of your own choosing.

The results of both chemical tests shall be admissible in a judicial proceeding, and will be considered with other competent evidence in determining your innocence or guilt.

# OFFICER'S REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST

PERSON'S FULL NAME (AS APPEARS ON MICHIGAN DRIVER LICENSE)				BIRTH DATE (MMDDYY)		SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE			
ADDRESS (NUMBER & STREET)				MICHIGAN DRIVER LICENSE NUMBER					
CITY		STATE		ZIP		OTHER STATE DRIVER LICENSE NUMBER		STATE	
HEIGHT	WEIGHT	EYE COLOR	HAIR COLOR		<input type="checkbox"/> OPERATOR			<input type="checkbox"/> CHAUFFEUR	<input type="checkbox"/> MOPED
ARREST DATE (MMDDYY)			MILITARY TIME			REFUSAL DATE (MMDDYY)		MILITARY TIME	
COUNTY (OF ARREST)			CITY OR TOWNSHIP (OF ARREST)			CO/CTY/TWP CODE		MICHIGAN	
*VEHICLE TYPE	Was person involved in an accident?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	INSTRUMENT #	BAC #1	BAC #2	BAC #3	UCR CODE	COMPLAINT NUMBER
				REFUSED	N/A	N/A	N/A		
ARRESTING OFFICER'S NAME				BADGE NUMBER		ORI NUMBER			
BREATH TEST OPERATOR'S NAME, only if not listed above and necessary for hearing				BADGE NUMBER		ORI NUMBER			
OTHER OFFICER, if necessary for hearing				BADGE NUMBER		ORI NUMBER			

The above named person was arrested for a violation of section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or for the offense of felonious driving, manslaughter, murder, or negligent homicide resulting from the operation of a motor vehicle.

The officer had reasonable grounds to believe that the above named person violated section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or committed the offense of felonious driving, negligent homicide, manslaughter or murder resulting from the operation of a motor vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or while having an unlawful bodily alcohol content, or if the person is less than 21 years of age while having any bodily alcohol content. [MCL 257.625c(1)(b)]

The above named person was requested to take a chemical test. The person was advised of the chemical test rights as required under section 625a and refused to take a chemical test.

Michigan driver license confiscated?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	Michigan driver license destroyed?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	Under 21?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	LICENSED OUT OF STATE						
Driving status on date of arrest	VALID <input type="checkbox"/>	EXPIRED <input type="checkbox"/>	RESTRICTED <input type="checkbox"/>	SUSPENDED <input type="checkbox"/>	REVOKED <input type="checkbox"/>	DENIED <input type="checkbox"/>	UNLICENSED <input type="checkbox"/>	UNKNOWN <input type="checkbox"/>	<input type="checkbox"/>						
License	Permit	A	B	C	H	N	X	P	T	CDL restrictions	INDORSEMENT	CY	F	R	Other
CDL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

### MICHIGAN TEMPORARY DRIVING PERMIT

This temporary driving permit is valid only if you have a valid Michigan operator's or chauffeur's license. If your license has a CDL and/or indorsements or restrictions, this permit grants you the same CDL and/or indorsements or restrictions. You may not apply for a replacement photo license or personal identification card. This permit is valid until the criminal charges are dismissed or you are acquitted, or your license or permit is suspended, restricted, or revoked for a conviction. [MCL257.625g(3)]

### SERVICE OF NOTICE OF SUSPENSION

I certify that I hand delivered a copy of the document containing the Notice of Suspension and Appeal Rights to the person named above.

Officer's Signature \_\_\_\_\_

Date (MMDDYY) \_\_\_\_\_

### Notice to officer:

**Complete this form to record implied consent refusals, including most search warrants. (See DI-177)**

**Confiscate and destroy arrested person's Michigan driver license or permit.**

**Input arrest data into LEIN Alcohol File (F Breath Screen).**

**Note:** This LEIN data is a continuation of the written report prescribed and furnished by the Secretary of State. The encoded information will print at the Secretary of State office and will include the following statement, "The officer had reasonable grounds to believe that the person had committed a crime described in section 625c(1), and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal" as required by section 625d.

### OFFICER'S INSTRUCTIONS

- Give two white copies to person
- Keep two pink copies

Officer's Copy

**Read the complete page to the arrested person.**

I am a peace officer. You are under arrest for the offense of: *(Read only the charge that applies)*

- Operating a vehicle while under the influence of an intoxicating liquor or a controlled substance or a combination of both, or with a bodily alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Operating a vehicle while visibly impaired due to the consumption of an intoxicating liquor or a controlled substance or a combination of both.
- Causing the death of another while operating a vehicle while under the influence of, or while visibly impaired by an intoxicating liquor or a controlled substance or a combination of both, or with an unlawful bodily alcohol content.
- Causing serious injury to another while operating a vehicle while under the influence of, or while visibly impaired by an intoxicating liquor or a controlled substance or a combination of both, or with an unlawful bodily alcohol content.
- Operating a commercial motor vehicle with a bodily alcohol content of 0.04 grams or more but not more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Operating a vehicle while less than 21 years of age and having any bodily alcohol content.
- Murder resulting from the operation of a motor vehicle.
- Manslaughter resulting from the operation of a motor vehicle.
- Felonious Driving.
- Negligent Homicide.
- Refusing a Preliminary Breath Test if arrested while driving a commercial motor vehicle.
- Endangerment (Operating while intoxicated with person under age of 16.)

**CHEMICAL TEST RIGHTS**

I will be requesting that you take a chemical test to determine the alcohol content and/or presence of a controlled substance in your body. IF YOU WERE ASKED TO TAKE A PRELIMINARY BREATH TEST PRIOR TO YOUR ARREST, YOU MUST STILL TAKE THE TEST I AM ABOUT TO OFFER YOU.

If you refuse to take this chemical test, it will not be given without a court order, but I may seek to obtain such a court order. Your refusal to take this test shall result in the suspension of your operator's or chauffeur's license and vehicle group designation or operating privilege, and the addition of six points to your driving record.

After taking my chemical test, you have a right to demand that a person of your own choosing administer a breath, blood, or urine test. You will be given a reasonable opportunity for such a test. You are responsible for obtaining a chemical analysis of a test sample taken by a person of your own choosing.

The results of both chemical tests shall be admissible in a judicial proceeding, and will be considered with other competent evidence in determining your innocence or guilt.

Will you take a: *(Select the appropriate test from the following list)*

Breath Test?      or      \* Blood Test?      or      Urine Test?

Notice to Peace Officer: 1) Take the arrested person's Michigan driver license and destroy it. Issue the two white pages of this document to the arrested person. 2) Notify the Department of State by LEIN.

\* MCL 257.625c(2) provides that a person afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant shall not be considered to have given consent to the withdrawal of blood.

DI-93 (9/99)F By the Authority of P.A. 300 of 1949 as amended

## OFFICER'S REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST

PERSON'S FULL NAME (AS APPEARS ON MICHIGAN DRIVER LICENSE)					BIRTH DATE (MMDDYY)		SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE			
ADDRESS (NUMBER & STREET)					MICHIGAN DRIVER LICENSE NUMBER					
CITY			STATE		ZIP		OTHER STATE DRIVER LICENSE NUMBER		STATE	
HEIGHT		WEIGHT		EYE COLOR		HAIR COLOR		<input type="checkbox"/> OPERATOR <input type="checkbox"/> CHAUFFEUR <input type="checkbox"/> MOPED		
ARREST DATE (MMDDYY)			MILITARY TIME			REFUSAL DATE (MMDDYY)		MILITARY TIME		
COUNTY (OF ARREST)				CITY OR TOWNSHIP (OF ARREST)				CO/CITY/TWP CODE		MICHIGAN
VEHICLE TYPE	Was person involved in an accident?	YES <input type="checkbox"/>	NO <input type="checkbox"/>	INSTRUMENT #	BAC #1	BAC #2	BAC #3	UCR CODE	COMPLAINT NUMBER	
				REFUSED	N/A	N/A	N/A			
ARRESTING OFFICER'S NAME					BADGE NUMBER		ORI NUMBER			
BREATH TEST OPERATOR'S NAME, only if not listed above and necessary for hearing					BADGE NUMBER		ORI NUMBER			
OTHER OFFICER, if necessary for hearing					BADGE NUMBER		ORI NUMBER			

The above named person was arrested for a violation of section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or for the offense of felonious driving, manslaughter, murder, or negligent homicide resulting from the operation of a motor vehicle.

The officer had reasonable grounds to believe that the above named person violated section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1),(3),(4),(5),(6),(7), 625a(5) or 625m or committed the offense of felonious driving, negligent homicide, manslaughter or murder resulting from the operation of a motor vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or while having an unlawful bodily alcohol content, or if the person is less than 21 years of age while having any bodily alcohol content. [MCL 257.625c(1)(b)]

The above named person was requested to take a chemical test. The person was advised of the chemical test rights as required under section 625a and refused to take a chemical test.

Michigan driver license confiscated?		YES <input type="checkbox"/>		NO <input type="checkbox"/>		Michigan driver license destroyed?		YES <input type="checkbox"/>		NO <input type="checkbox"/>		Under 21?		YES <input type="checkbox"/>		NO <input type="checkbox"/>		LICENSED OUT OF STATE			
Driving status on date of arrest		VALID <input type="checkbox"/>		EXPIRED <input type="checkbox"/>		RESTRICTED <input type="checkbox"/>		SUSPENDED <input type="checkbox"/>		REVOKED <input type="checkbox"/>		DENIED <input type="checkbox"/>		UNLICENSED <input type="checkbox"/>		UNKNOWN <input type="checkbox"/>		LICENSED OUT OF STATE <input type="checkbox"/>			
License		Permit		A		B		C		H		N		X		P		T		CDL restrictions	
CDL <input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	
												INDORSEMENT		CY <input type="checkbox"/>		F <input type="checkbox"/>		R <input type="checkbox"/>		Other	

### MICHIGAN TEMPORARY DRIVING PERMIT

This temporary driving permit is valid only if you have a valid Michigan operator's or chauffeur's license. If your license has a CDL and/or indorsements or restrictions, this permit grants you the same CDL and/or indorsements or restrictions. You may not apply for a replacement photo license or personal identification card. This permit is valid until the criminal charges are dismissed or you are acquitted, or your license or permit is suspended, restricted, or revoked for a conviction. [MCL257.625g(3)]

### SERVICE OF NOTICE OF SUSPENSION

I certify that I hand delivered a copy of the document containing the Notice of Suspension and Appeal Rights to the person named above.

Officer's Signature \_\_\_\_\_ Date (MMDDYY) \_\_\_\_\_

### OFFICER'S INSTRUCTIONS

- Give two white copies to person
- Keep two pink copies

**Read the complete page to the arrested person.**

I am a peace officer. You are under arrest for the offense of: *(Read only the charge that applies)*

- Operating a vehicle while under the influence of an intoxicating liquor or a controlled substance or a combination of both, or with a bodily alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Operating a vehicle while visibly impaired due to the consumption of an intoxicating liquor or a controlled substance or a combination of both.
- Causing the death of another while operating a vehicle while under the influence of, or while visibly impaired by an intoxicating liquor or a controlled substance or a combination of both, or with an unlawful bodily alcohol content.
- Causing serious injury to another while operating a vehicle while under the influence of, or while visibly impaired by an intoxicating liquor or a controlled substance or a combination of both, or with an unlawful bodily alcohol content.
- Operating a commercial motor vehicle with a bodily alcohol content of 0.04 grams or more but not more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Operating a vehicle while less than 21 years of age and having any bodily alcohol content.
- Murder resulting from the operation of a motor vehicle.
- Manslaughter resulting from the operation of a motor vehicle.
- Felonious Driving.
- Negligent Homicide.
- Refusing a Preliminary Breath Test if arrested while driving a commercial motor vehicle.
- Endangerment (Operating while intoxicated with person under age of 16.)

**CHEMICAL TEST RIGHTS**

I will be requesting that you take a chemical test to determine the alcohol content and/or presence of a controlled substance in your body. IF YOU WERE ASKED TO TAKE A PRELIMINARY BREATH TEST PRIOR TO YOUR ARREST, YOU MUST STILL TAKE THE TEST I AM ABOUT TO OFFER YOU.

If you refuse to take this chemical test, it will not be given without a court order, but I may seek to obtain such a court order. Your refusal to take this test shall result in the suspension of your operator's or chauffeur's license and vehicle group designation or operating privilege, and the addition of six points to your driving record.

After taking my chemical test, you have a right to demand that a person of your own choosing administer a breath, blood, or urine test. You will be given a reasonable opportunity for such a test. You are responsible for obtaining a chemical analysis of a test sample taken by a person of your own choosing.

The results of both chemical tests shall be admissible in a judicial proceeding, and will be considered with other competent evidence in determining your innocence or guilt.

Will you take a: *(Select the appropriate test from the following list)*

Breath Test? or <sup>\*</sup>Blood Test? or Urine Test?

Notice to Peace Officer: 1) Take the arrested person's Michigan driver license and destroy it. Issue the two white pages of this document to the arrested person. 2) Notify the Department of State by LEIN.

\*MCL 257.625c(2) provides that a person afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant shall not be considered to have given consent to the withdrawal of blood.

Appendix P  
OREGON  
**Extracts from Oregon Laws**

## Extracts from Oregon Laws

### Chapter 813 — Driving Under the Influence of Intoxicants

2005 EDITION

#### DRIVING UNDER THE INFLUENCE OF INTOXICANTS

##### IMPLIED CONSENT

(Breath or Blood Test)

**813.095 Offense of refusal to take a breath test; penalty.** (1) A person commits the offense of refusal to take a breath test if the person refuses to take a breath test when requested to do so in accordance with the provisions of ORS 813.100.

(2) The offense described in this section, refusal to take a breath test, is a traffic offense punishable by a fine of at least \$500 and not more than \$1,000. The fine described in this section is in addition to any other consequence prescribed by law for refusal to take a breath test. [2003 c.814 §2]

**813.100 Implied consent to breath or blood test; confiscation of license upon refusal or failure of test.** (1) Any person who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent, subject to the implied consent law, to a chemical test of the person's breath, or of the person's blood if the person is receiving medical care in a health care facility immediately after a motor vehicle accident, for the purpose of determining the alcoholic content of the person's blood if the person is arrested for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance. A test shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance. Before the test is administered the person requested to take the test shall be informed of consequences and rights as described under ORS 813.130.

(2) No chemical test of the person's breath or blood shall be given, under subsection (1) of this section, to a person under arrest for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, if the person refuses the request of a police officer to submit to the chemical test after the person has been informed of consequences and rights as described under ORS 813.130.

(3) If a person refuses to take a test under this section or if a breath test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300, the person's driving privileges are subject to suspension under ORS 813.410 and the police officer shall do all of the following:

(a) Immediately take custody of any driver license or permit issued by this state to the person to grant driving privileges.

(b) Provide the person with a written notice of intent to suspend, on forms prepared and provided by the Department of Transportation. The written notice shall inform the person of consequences and rights as described under ORS 813.130.

(c) If the person qualifies under ORS 813.110, issue to the person, on behalf of the department, a temporary driving permit described under ORS 813.110.

(d) Within a period of time required by the department by rule, report action taken under this section to the department and prepare and cause to be delivered to the department a report as described in ORS 813.120, along with the confiscated license or permit and a copy of the notice of intent to suspend.

(4) If a blood test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300, the person's driving privileges are subject to suspension under ORS 813.410 and the police officer shall report to the department within 45 days of the date of arrest that the person failed the blood test. [1983 c.338 §591; 1985 c.16 §298; 1985 c.672 §19; 1993 c.305 §1; 1995 c.568 §1]

**813.135 Implied consent to field sobriety tests.** Any person who operates a vehicle upon premises open to the public or the highways of the state shall be deemed to have given consent to submit to field sobriety tests upon the request of a police officer for the purpose of determining if the person is under the influence of intoxicants if the police officer reasonably suspects that the person has committed the offense of driving while under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance. Before the tests are administered, the person requested to take the tests shall be informed of the consequences of refusing to take or failing to submit to the tests under ORS 813.136. [1989 c.576 §15]

**813.136 Consequence of refusal to submit to or failure of field sobriety tests.** If a person refuses or fails to submit to field sobriety tests as required by ORS 813.135, evidence of the person's refusal or failure to submit is admissible in any criminal or civil action or proceeding arising out of allegations that the person was driving while under the influence of intoxicants. [1989 c.576 §14]

## CHEMICAL TESTS; METHODS AND REQUIREMENTS

**813.140 Chemical test with consent; unconscious person.** Nothing in ORS 813.100 is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the blood to determine the amount of alcohol in any person's blood or a test of the person's blood or urine, or both, to determine the presence of a controlled substance or an inhalant in the person as provided in the following:

(1) If, when requested by a police officer, the person expressly consents to such a test.

(2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:

(a) The police officer has probable cause to believe that the person was driving while under the influence of intoxicants and that evidence of the offense will be found in the person's blood or urine; and

(b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested. [1983 c.338 §593; 1985 c.16 §299; 1999 c.619 §11]

**813.160 Methods of conducting chemical analyses; duties of Department of State Police; reports; costs.** (1) A chemical analysis is valid under ORS 813.300 if:

(a) It is an analysis of a person's blood for alcohol content and is performed in:

(A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology testing;

(B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

(C) A forensic laboratory established by the Department of State Police under ORS 181.080 that is accredited by a national forensic accrediting organization.

(b) It is an analysis of a person's breath and is performed by an individual possessing a valid permit to perform chemical analyses issued by the Department of State Police and is performed according to methods approved by the Department of State Police. For purposes of this paragraph, the Department of State Police shall do all of the following:

(A) Approve methods of performing chemical analyses of a person's breath.

(B) Prepare manuals and conduct courses throughout the state for the training of police officers in chemical analyses of a person's breath, which courses shall include, but are not limited to, approved methods of chemical analyses, use of approved equipment and interpretation of test results together with a written examination on these subjects.

(C) Test and certify the accuracy of equipment to be used by police officers for chemical analyses of a person's breath before regular use of the equipment and periodically thereafter at intervals of not more than 90 days. Tests and certification required by this subparagraph must be conducted by trained technicians. Certification under this subparagraph does not require a signed document.

(D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in accordance with one or more methods approved by the department.

(E) Issue permits to individuals according to their qualifications. Permits may be issued to police officers only upon satisfactory completion of the prescribed training course and written examination. A permit must state the methods and equipment that the police officer is qualified to use. Permits are subject to termination or revocation at the discretion of the Department of State Police.

(2) In conducting a chemical test of the blood, only a duly licensed physician or a person acting under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under the direction or control of a duly licensed physician, is not civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

(3) An individual who performs a chemical analysis of breath or blood under ORS 813.100 or 813.140 shall prepare and sign a written report of the findings of the test that must include the identification of the police officer upon whose request the test was administered.

(4) Any individual having custody of the report mentioned in subsection (3) of this section shall, upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

(5) The expense of conducting a chemical test as provided by ORS 813.100 or 813.140 must be paid by the governmental unit on whose equipment the test is conducted or by the governmental unit upon whose request the test was administered if no governmental unit's equipment is used to conduct the test. [1983 c.338 §173; 1985 c.16 §57; 1985 c.337 §2; 1995 c.351 §1; 2003 c.19 §1]

**813.320 Effect of implied consent law on evidence.** (1) The provisions of the implied consent law, except ORS 813.300, shall not be construed by any court to limit the introduction of otherwise competent, relevant evidence in any civil action, suit or proceedings or in any criminal action other than a violation of ORS 813.010 or a similar municipal ordinance in proceedings under ORS 813.410.

(2) The provisions of the implied consent law shall not be construed by any court to limit the introduction of otherwise competent, relevant evidence of the amount of alcohol in the blood of a defendant in a prosecution for driving while under the influence of intoxicants if:

(a) The evidence results from a test of blood taken from the defendant while the defendant was hospitalized or otherwise receiving medical care, whether or not the defendant consented to the drawing of blood or to the test; or

(b) The evidence is obtained pursuant to a search warrant. [1983 c.338 §596; 1985 c.16 §302; 1999 c.437 §1]

**813.420 Duration of suspension for refusal or failure of test.** When the Department of Transportation imposes a suspension under ORS 813.410, the suspension shall be for a period of time determined according to the following:

(1) If the suspension is for refusal of a test under ORS 813.100 and the person is not subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of one year.

(2) If the suspension is for refusal of a test under ORS 813.100 and the person is subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of three years.

(3) If the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is not subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of 90 days.

(4) If the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of one year. [1985 c.16 §171; 1993 c.305 §7; 1995 c.568 §7]

Appendix Q  
UTAH  
**Extracts from Utah Laws**

## Extracts from Utah Laws

### **41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report.**

(1) (a) A person operating a motor vehicle in this state is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for the purpose of determining whether the person was operating or in actual physical control of a motor vehicle while:

(i) having a blood or breath alcohol content statutorily prohibited under Section **41-6a-502**, **41-6a-530**, **53-3-231**, or **53-3-232**;

(ii) under the influence of alcohol, any drug, or combination of alcohol and any drug under Section **41-6a-502**; or

(iii) having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section **41-6a-517**.

(b) A test or tests authorized under this Subsection (1) must be administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while in violation of any provision under Subsections (1)(a)(i) through (iii).

(c) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) If a peace officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.

(d) (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) A peace officer requesting a test or tests shall warn a person that refusal to submit to the test or tests may result in revocation of the person's license to operate a motor vehicle, a five or ten-year prohibition of driving with any measurable or detectable amount of alcohol in the person's body depending on the person's prior driving history, and a three-year prohibition of driving without an ignition interlock device if the person:

(i) has been placed under arrest;

(ii) has then been requested by a peace officer to submit to any one or more of the chemical tests under Subsection (1); and

(iii) refuses to submit to any chemical test requested.

(b) (i) Following the warning under Subsection (2)(a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered, a peace officer shall, on behalf of the Driver License Division and within 24 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle.

(ii) When a peace officer gives the notice on behalf of the Driver License Division, the peace officer shall:

(A) take the Utah license certificate or permit, if any, of the operator;

(B) issue a temporary license certificate effective for only 29 days from the date of arrest; and

(C) supply to the operator, in a manner specified by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if provided in a manner specified by the Driver License Division, also serve as the temporary license certificate.

(d) As a matter of procedure, the peace officer shall submit a signed report, within ten calendar days after the day on which notice is provided under Subsection (2)(b), that:

(i) the peace officer had grounds to believe the arrested person was in violation of any provision under Subsections (1)(a)(i) through (iii); and

(ii) the person had refused to submit to a chemical test or tests under Subsection (1).

(3) Upon the request of the person who was tested, the results of the test or tests shall be made available to the person.

(4) (a) The person to be tested may, at the person's own expense, have a physician of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

(5) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

Amended by Chapter 341, 2006 General Session

**41-6a-523. Persons authorized to withdraw blood -- Immunity from liability.**

(1) (a) Only a physician, registered nurse, practical nurse, or person authorized under Section **26-1-30**, acting at the request of a peace officer, may withdraw blood to determine the alcoholic or drug content.

(b) The limitation in Subsection (1)(a) does not apply to taking a urine, breath, or oral fluid specimen.

(2) Any physician, registered nurse, practical nurse, or person authorized under Section **26-1-30** who, at the direction of a peace officer, draws a sample of blood from any person whom a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical facility at which the sample is drawn, is immune from any civil or criminal liability arising from drawing the sample, if the test is administered according to standard medical practice.

Enacted by Chapter 2, 2005 General Session

## Utah Health Code

### **26-1-30. Powers and duties of department.**

(2) In addition to all other powers and duties of the department, it shall have and exercise the following powers and duties:

(s) establish qualifications for individuals permitted to draw blood pursuant to Section **41-6a-523**, and to issue permits to individuals it finds qualified, which permits may be terminated or revoked by the department.

Amended by Chapter 2, 2005 General Session.

Appendix R  
UTAH

**Salt Lake County Affidavit in Support of Blood Draw Search  
Warrant**

IN THE WEST VALLEY CITY JUSTICE COURT  
IN AND FOR SALT LAKE COUNTY  
STATE OF UTAH

AFFIDAVIT IN SUPPORT OF BLOOD DRAW  
SEARCH WARRANT

Officer \_\_\_\_\_ of the West Valley City Police Department, being duly sworn, deposes and says that s/he has reason to believe that:

On \_\_\_\_\_ the \_\_\_\_\_ person \_\_\_\_\_ of \_\_\_\_\_  
(D.O.B.) \_\_\_\_\_

In the City of West Valley, Salt Lake County, State of Utah, there is now certain property or evidence described as:

**BLOOD EVIDENCE CONTAINING BLOOD ALCOHOL CONCENTRATION OR A MEASURABLE AMOUNT OF A CONTROLLED SUBSTANCE OR METABOLITE OF A CONTROLLED SUBSTANCE IN THE ABOVE-NAMED SUSPECT'S BODY.**

And that said evidence constitutes evidence of illegal conduct, possessed by a party to the illegal conduct.

Your affiant believes the blood evidence described is evidence of the crime(s) of:

Driving Under the Influence in violation of U.C.A. § 41-6a-502 or a local ordinance similar thereto.

Driving With Any Measurable Controlled Substance in the Body in violation of U.C.A. § 41-6a-517(2)

Automobile Homicide in violation of U.C.A. § 76-5-207.

An alcohol offense while under 21 years of age in violation of U.C.A, § 32A-12-209.

\_\_\_\_\_ in violation of U.C.A. § \_\_\_\_\_

The facts to establish the grounds for issuance of a search warrant are as follows:

Your affiant hereby swears that s/he is an officer duly employed by the West Valley City Police Department who has been employed in law enforcement since \_\_\_\_\_. Your affiant further swears that s/he has been certified by Utah Police Officer Standards and Training. Your affiant has successfully completed the following Police Officer Standard's and Training courses:

Standardized Field Sobriety Tests

- Recognition of odor and characteristics of alcohol and drugs
- Recognition of physiological symptoms of alcohol and drug consumption
- Drug Recognition Expert
- Accident Reconstruction
- Other: \_\_\_\_\_

Your affiant's current assignment is \_\_\_\_\_

Furthermore, your affiant states that s/he has observed and performed field sobriety tests on numerous suspected violators who have consumed alcohol/and or drugs during his/her tenure in law enforcement.

Your affiant further states that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_s/he has observed the following:

Your affiant further states that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_s/he was informed by citizen witnesses of the following: (If information is based upon witness observation, state the name of the witness.)

1. Actual physical control of a motor vehicle: (Time of initial observation \_\_\_\_\_ am/pm)

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2. Driving Pattern and/or reason for law enforcement contact: \_\_\_\_\_

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3. Physical Characteristics of the subject which lead your affiant to believe the subject is intoxi-

cated or under the influence of drugs: \_\_\_\_\_

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4. Field Sobriety Tests: \_\_\_\_\_

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5. Other observations and notes: \_\_\_\_\_

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6.  Your affiant hereby further states that the subject was read verbatim the admonition contained in Section X of the Uniform DUI Report Form stating that the suspect was under arrest for the above-listed charge and requesting a chemical test to determine the alcohol and/or drug content of his/her body. Furthermore, the subject of this warrant was warned that his/her "driving privilege may be revoked for 18 months for a first refusal or 24 months for s subsequent refusal with no provision for limited driving." After this warning was read the defendant refused to take the requested test.

The above mentioned admonition **was not** read for the following reason(s):

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7. Your affiant has received further information from the following sources: (Give the name of the source and a description of the information)

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8. Your affiant asks that reasonable force may be used in the seizure of such evidence for the following reasons:

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WHEREFORE, your affiant prays that a Search warrant be issued for the seizure of said items at any time day or night, because there is reason to believe it is necessary to seize said blood prior to it being destroyed, damaged, or altered to wit: Based upon my training and experience, evidence contained in the blood dissipates rapidly and will be lost. Time is of the essence to establish the level of the alcohol and/or drugs in the blood. Therefore, immediately upon issuance of this warrant, your affiant asks to seize such evidence.

\_\_\_\_\_  
Affiant  
West Valley Police Department

(Signature)

SUBSCRIBED AND SWORN TO BEFORE ME

By telephone (the conversation must be recorded and transcribed. After transcription, the statement shall be certified by the magistrate and filed with the court pursuant to rule 40(e).

In person

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Magistrate

(Only sign if in person)

In the \_\_\_\_\_ Court  
Salt Lake County  
State of Utah

Appendix S  
UTAH  
**Salt Lake County Search Warrant**

IN THE WEST VALLEY CITY JUSTICE COURT  
IN AND FOR SALT LAKE COUNTY  
STATE OF UTAH

SEARCH WARRANT

To any peace officer in the State of Utah:

Proof by Affidavit under oath having been made this day before me either in person or by telephone by \_\_\_\_\_, I am satisfied that there is probable cause to believe that on the person of \_\_\_\_\_ (D.O.B.) \_\_\_\_\_ there is now certain evidence described as:

**BLOOD EVIDENCE CONTAINING BLOOD ALCOHOL CONCENTRATION OR A MEASURABLE AMOUNT OF A CONTROLLED SUBSTANCE OR METABOLITE OF A CONTROLLED SUBSTANCE IN THE ABOVE-NAMED SUSPECT'S BODY.**

And that said evidence constitutes evidence of illegal conduct possessed by a party to the illegal conduct.

You are therefore commanded at any time day or night to make a search of the above-named person for the herein-above described evidence and if you find the same or any part thereof, to take them to a medical laboratory for testing and then bring any remainder forthwith before me OR to retain such property in your custody, subject to the order of this court.

You are further ordered that, if necessary, reasonable force may be used to secure the above-described evidence.

\_\_\_\_\_  
Magistrate

(If telephonic, officer must sign for the  
Magistrate)

In the \_\_\_\_\_ Court  
Salt Lake County  
State of Utah

RETURN TO SEARCH WARRANT

As the affiant sworn in this affidavit, I do swear that I obtained blood evidence from \_\_\_\_\_ (D.O.B. \_\_\_\_\_) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Said blood evidence has been submitted to the Utah State Toxicology Lab for analysis, where I am informed that it will be maintained until further order of the court.

\_\_\_\_\_  
Affiant  
West Valley Police Department

SUBSCRIBED AND SWORN TO BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
Magistrate  
In the \_\_\_\_\_ Court  
Salt Lake County  
State of Utah

**Appendix T**  
**UTAH Department of Public Safety Policies and Procedures**  
**for Nonconsensual Chemical Testing**

# STATE OF UTAH

REF. Seized Property PAGE  
2-4-7 1 of 5

## Department of Public Safety POLICIES AND PROCEDURES

EFFECTIVE DATE REVISION DATE  
07-07-04 11-07-05

SUBJECT: **NONCONSENSUAL CHEMICAL TESTING**

### I. PURPOSE

To establish the Department of Public Safety guidelines and procedures for the implementation of a Nonconsensual Chemical Testing (NCT) Program.

### II. POLICY

- A. The objective of this policy is to provide a means for obtaining critical evidence from an intoxicated or impaired driver at the time of arrest. It is also the objective of this policy to reduce the incidence of driving under the influence (DUI).
- B. The chemical test is the cornerstone of Implied Consent action and for DUI prosecution. Implied Consent laws provide a necessary incentive for obtaining a chemical test which, in turn, provides a scientifically objective measurement of alcohol and/or drug impairment. Thus, chemical testing is essential to both Implied Consent and to effective prosecution for DUI.
- C. A sample of the driver's blood, breath, or urine, taken soon after the act of driving, is the best scientific evidence of intoxication and supplements the officer's observation. The sample must be taken soon after the arrest because the amount of alcohol or drugs in the blood begins to diminish soon after drinking or ingestion stops, as the body eliminates it from the system.
- D. Implied Consent law provides for the suspension of an impaired driver's license for refusing to submit to a chemical test. The enactment of this provision of law does not eliminate the option of forcibly removing fluid samples without the driver's consent. The judicially established criteria for maintaining the admissibility of forcibly seized blood samples focuses on the following elements:
  1. The sample is drawn by a medically qualified person in a reasonable and medically approved manner.
  2. It must be incidental to a lawful arrest.
  3. There is a probable cause 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.
  5. The officer believes the delay in obtaining a warrant would result in the destruction of short-lived evidence contained within the suspect's blood.
- E. The Implied Consent Statute does not preclude the taking of a blood sample without the consent of, or over the objections of, the arrested person. A person who refuses to take a chemical test is still subject to the administrative sanctions of the Implied Consent law, even though a blood sample was obtained against his/her will.

### III. PROCEDURE

- A. Persons who have been arrested for felony and misdemeanor DUI violations 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. Determination that a chemical test is essential to the prosecution of a criminal case.
  2. There are indications the person has used alcoholic beverages and/or drugs, as defined in U.C.A. 41-6a-502 through 509 and 512
  3. The person has been placed under arrest for a violation of U.C.A. 41-6a-502 through 509 and 512
  4. The person arrested has been given the opportunity to submit to a chemical test.
  5. The arresting officer shall read exactly, word for word, the formal arrest and refusal admonishment found on the DUI citation, and the arrestee shall have refused to submit to a chemical test. *(If the DUI form has "the test will not be given" printed on it, the officer will cross that out and not read it)*
  6. The arrestee shall be admonished that refusal to voluntarily submit to, or complete, a chemical test will result in the forcible withdrawal of a blood sample, and that the mandatory license suspension per the implied consent law will be invoked.
- Policy Number 2-4-7 Nonconsensual Chemical Testing Page 3 of 5
7. The arresting officer shall obtain supervisory approval from a sergeant or lieutenant prior to the arrestee being physically compelled to submit to a blood test.

8. The approving supervisor, (sergeant or lieutenant) if readily available, should be present during the procedure. The supervisor shall ensure that the conditions outlined in this policy are complied with. The supervisor shall also ensure that no more force or restraint than is reasonably necessary is used to accomplish the procedure.
9. A medically qualified person will be called to extract the blood. The sample shall be obtained in a reasonable and medically approved manner.
10. A statement shall be made in the DUI arrest report that it became necessary to forcibly remove a blood sample from the subject. The procedure used shall be articulated in the report (e.g., how the subject was secured, resistance [if any], amount of force used [if any], location from which sample was taken).
11. The amount of force used (if any) to overcome the resistance shall be limited to that which is reasonable and necessary, and is not disproportionate to the need. A sufficient number of law enforcement personnel shall be available to adequately restrain the arrestee. The number of officers necessary will depend upon the physical abilities of the subject to be tested (e.g., muscular, sick, injured, disabled, elderly). Sound professional judgment shall be used when forcibly removing a blood sample from the subject, and care should be taken to guard against injuries to the subject or the officers involved.
12. Blood samples shall not knowingly be withdrawn from persons who are hemophiliacs, or who have a heart condition and are using a prescribed anticoagulant. A statement by the arrestee that he/she is subject to one of these qualifies for exception. It is recommended that officers make this determination early in the arrest procedure; to assist with determining which chemical tests are applicable to the subject.
13. Chemical tests will be taken from those who refuse in a controlled environment such as a jail, police station, section office or hospital. No chemical tests will be taken at the roadside.

Policy Number 2-4-7 Nonconsensual Chemical Testing Page 4 of 5

14. An incident report will be written on each forcible blood draw. The report will include every officer who was involved and the amount of force (if any), which was used. The incident report will accompany the DUI report. If practical, the blood draw should be video taped.
15. If the subject is combative to the point that a blood sample cannot be safely obtained, the procedure shall be discontinued.

#### **IV. PROCEDURAL REQUIREMENTS**

- A. When the officer has determined that the person arrested has made the decision to refuse chemical testing the officer will attempt to obtain a warrant prior to the withdraw of blood evidence from the person arrested. If the officer deems that the time it will take to obtain the warrant will result in dissipation of short-lived evidence, he/she will proceed with the blood draw without a warrant but will articulate the reason why. Such reason could be:
1. Proximity to nearest magistrate
  2. The impact the delay in seeking a warrant could have on evidence
  3. Alternatives explored by the officers
  4. The point of time during the arrest the officer made the determination to seek a warrant
- B. After the officer has obtained a warrant or has deemed that the removal of blood evidence without a warrant is exigent in nature and must be removed to preserve short-lived evidence, he/she will follow the procedure for obtaining the blood evidence of the crime.
- C. Before a system of non-consensual chemical testing is used, the Section Commander will personally meet with each Prosecutors office in their area and explain the program. The Section commander and Prosecutors will discuss using the forcible blood draw techniques. The Section commanders will set up a telephonic warrant system for officers in their area if there is the ability to do so. The Telephonic warrant system will include:

Policy Number 2-4-7 Nonconsensual Chemical Testing Page 5 of 5

1. Jurisdictional call list for Judges
2. On call list for Prosecutors (if deemed necessary in jurisdiction)
3. Recording device to tape telephonic phone calls
4. Standardized pre-made warrant form

**Appendix U**  
**UTAH**  
**Department of Public Safety Policies and Procedures for**  
**Department Phlebotomists**

<b>STATE OF UTAH</b> Department of Public Safety <b>POLICIES AND PROCEDURES</b>	REF. Seized Property 2-4-8	PAGE 1 of 3
	EFFECTIVE DATE 02-24-05	REVISION DATE 00-00-00
<b>SUBJECT: Department Phlebotomists</b>		

### **I. Purpose**

To establish guidelines and procedures for Department of Public Safety (DPS) officers/troopers who are trained to perform blood draws.

### **II. Policy**

- A. Before a trooper of the department can draw another person's blood, he/she needs to meet the required training by the Department of Health. (See Administrative Rule 438-12-3). They will be known as Trooper Phlebotomists.
- B. The trooper must complete and submit the application for the permit to the Health Department that authorizes the officer to draw blood for alcohol or drug content. They must possess this permit before they may act as a phlebotomist for the Department.
- C. All Trooper Phlebotomists will follow guidelines from the Health Department in regards to: collection, labeling, preservation, and chain of custody of a blood sample.
- D. All Trooper Phlebotomists will draw only in the arms in the manner that they were trained. Emergency room personnel will do any other draws i.e. heart sticks.
- E. The Trooper Phlebotomist must maintain certification through the department. The Department's Phlebotomy coordinator will maintain records and assure the Department's Phlebotomists meet the requirements.
- F. The Trooper Phlebotomist must perform a minimum of (10) ten blood draws a year to maintain certification with the department. The Trooper Phlebotomist must receive (4) four hours of in-service training every year to maintain department certification.
- G. The Trooper Phlebotomist will only draw blood for DPS officers. Any exception shall require exigent circumstances, supervisory approval, and documentation in the Trooper Phlebotomist's incident report.

H. The Department's Phlebotomy Coordinator will be responsible for the following:

1. Coordination of training.
2. Maintain records of Trooper Phlebotomist.
3. Maintain a roster of Trooper Phlebotomist.
4. Provide annual in-service training.
5. Provide information to sections for phlebotomy supplies and equipment.
6. Seek funding for the program.

### **III. Procedure**

- A. The Trooper Phlebotomist will have their permit available for inspection during any blood draw.
- B. The Trooper Phlebotomist will conduct him/herself in a professional manner and be courteous to all subjects. If feasible the Trooper phlebotomist will wear scrubs or a lab coat when conducting a blood draw.
- C. The Trooper Phlebotomist will be required to have the following items: Tourniquet, gloves, gauze sponges, soap and water solution to cleanse the withdrawal site (all cleansing material must be alcohol free), envelope or kit to seal blood tubes, gray cap blood tubes, needles, sharps container, container for bio-hazardous waste. The Utah Bureau of Forensic Toxicology will supply collection tubes and needles.
- D. Sample collection procedure will be as follows:
  1. Approach the subject in a friendly manner.
  2. Wear rubber gloves at all times during the collection procedure.
  3. Locate a portion on the arm and cleanse with an alcohol-free cleanser.
  4. The arresting officer must observe the blood draw.
  5. Use only gray-capped tubes and mix the anticoagulants by slowly inverting the tubes (do not shake).
  6. Apply a bandage to the injection site and properly dispose of all needles and other material in bio-hazardous containers.

E. The Trooper Phlebotomist will provide the following documentation:

1. Label the specimen tubes with the name of the subject, blood collectors initials, date and time collected, and the arresting officers initials.
2. Seal the tubes with the provided evidence seal.
3. Seal the tubes in an envelope or the provided kit.
4. Fill out the "DUI Toxicology Analysis Request Form" provided by the department of Forensic Toxicology and send a copy of this form to the Department's Phlebotomy coordinator.
5. Maintain a log of all blood draws.

F. The Trooper Phlebotomist will maintain the proper chain of custody of the blood evidence. The samples must be kept cool in a refrigerator or a cooler. The specimen should be delivered to the toxicology lab as soon as possible. If mailing the specimen it must be in a method that can track the shipment. Strict chain of custody must be maintained.

G. Each Trooper Phlebotomist will be responsible to locate a facility in the area they work where the bio-hazardous waste can be destroyed. Local hospitals would be the best option for this service. All biological hazardous waste will be properly destroyed.

Appendix V  
North Carolina  
**Extracts from North Carolina Laws**

Section 20-38.3 of the North Carolina Motor Vehicle Driver Protection Act of 2006 clarifies DWI processing duties, including the optional use of warrants. It reads as follows:

**§ 20-38.3. Police processing duties.**

Upon the arrest of a person, with or without a warrant, but not necessarily in the order listed, a law enforcement officer:

- (1) Shall inform the person arrested of the charges or a cause for the arrest.
- (2) May take the person arrested to any place within the State for one or more chemical analyses at the request of any law enforcement officer and for any evaluation by a law enforcement officer, medical professional, or other person to determine the extent or cause of the person's impairment.
- (3) May take the person arrested to some other place within the State for the purpose of having the person identified, to complete a crash report, or for any other lawful purpose.
- (4) May take photographs and fingerprints in accordance with G.S. 15A-502.
- (5) Shall take the person arrested before a judicial official for an initial appearance after completion of all investigatory procedures, crash reports, chemical analyses, and other procedures provided for in this section.

The law became effective on December 1, 2006.

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