

SANTA CLARA POLICE DEPARTMENT GENERAL ORDER 95.2

CHEMICAL TESTING – ARRESTEES

ISSUED SEPTEMBER 2010

95.2.1 Policy

The policy of the Santa Clara Police Department is that a chemical sample will be obtained from an arrestee charged with a violent felony crime, or when the presence of alcohol or drugs in the arrestee's system is relevant to the crime being investigated.

95.2.2 Taking of Specimen Against Arrestee's Will

Officers will adhere to the following appropriate procedures whenever an arrestee refuses to consent to a chemical test of his/her blood, urine, or breath. Willful refusal shall be documented in the body of a crime report.

MISDEMEANOR CRIMES (including Driving Under the Influence):

Officers shall not use physical force to obtain a chemical sample from an individual arrested for a misdemeanor crime. Officers may take blood when the nature of the arrestee's resistance is verbal, accompanied by a lack of physical cooperation short of being combative.

For the purposes of this section, the following actions do not constitute "physical force":

- Positioning an arrestee's arm and holding it steady to safely administer the test.
- When the sample is taken while the arrestee is in handcuffs.
- When a sample is taken from an arrestee who has *already been* restrained in the WRAP.*

* A subject arrested for a misdemeanor offense shall not be placed in the WRAP solely for the purpose of a blood draw.

For the safety of the officers, lab technicians, and the arrestee, if during the blood draw the arrestee begins to physically resist, the process will be stopped and blood shall not be taken.

FELONY CRIMES: A chemical test will be administered when the incident involves a violent felony violation or when the presence of alcohol or drugs in the arrestee's system is relevant to the case. The officer must either obtain consent from the arrestee, or have probable cause to believe that the blood sample will show evidence of being under the influence of alcohol and / or drugs, and their presence has evidentiary bearing on the case at hand. In Felony Driving Under the Influence cases, and absent circumstances that make an immediate warrantless blood draw reasonably necessary, a search warrant will generally be required before taking a chemical sample from the arrested driver. Officers may not force a chemical sample merely to prove a person is sober. They may, however, obtain this type of sample with consent of the arrestee. When administering such a test, officers will remain aware that the courts will examine the method used to obtain the specimen and decide if such method "shocks the conscience" of the court. The following elements will be examined:

- Physical Injury -- When the method used produces an injury that requires medical treatment, the courts are likely to view such a method as unwarranted.
- Nature of Resistance -- When the nature of the arrestee's resistance is verbal, accompanied by a lack of physical cooperation short of being combative, an officer's actions obtaining a sample in compliance with this policy will likely be viewed as warranted.
- Reasonableness -- The courts will assess the circumstances of the incident as compared to the method used to administer a test. Circumstances which will be considered include, but are not limited to, the following: the nature of the crime; the necessity for obtaining the specimen; and whether the circumstances and facts present at the time the test was administered would be sufficient to lead an ordinary and prudent person to believe the method used was reasonable.

95.2.3 Chemical Tests at Hospital or Other Medical Facilities

Officers will abide by hospital or medical facility procedures when requesting blood, breath or urine specimens. When a disagreement over procedure occurs, officers will contact their supervisor and explain the situation. Supervisors will, when necessary, contact hospital or medical facility personnel and resolve the disagreement.

95.2.4 Chemical Test of Deceased Persons

Chemical tests in death cases referred to the coroner will be the responsibility of the coroner's office personnel assigned to the incident.

95.2.5 Specific Chemical Test Procedures

Officers will adhere to the following additional procedures when intending to obtain any of the following biological specimens for a chemical test:

- **BLOOD TESTS:** Officers intending to subject an arrestee to a blood test shall ask if the arrestee is a hemophiliac or using anticoagulants under the direction of a physician. When it is determined that an arrestee is a hemophiliac or using anticoagulants, such an arrestee is exempt from the blood test. Officers will then record, on an appropriate report form, the name of the arrestee's attending physician and the date of the last visit to the physician.
- **URINE TESTS:** Preparatory to taking a urine sample (except in narcotic cases), the arrestee must empty his/her bladder. The sample will be taken 20 to 30 minutes later. The officer will note on the envelope the time of voiding and the time the sample was taken. The following additional procedures will also be adhered to when administering a urine test:
 - The law requires that when a urine specimen is taken the arrestee must be given reasonable privacy consistent with the accuracy of the sample and the dignity of the individual.
 - If it is necessary to obtain the urine sample at a location that does not have sample bottles available, a laboratory technician will be requested.
 - The laboratory technician will have a special kit for urine samples that contains a sample bottle and a "chain of possession" envelope, complete with data sheet on the front and

directions on the back. Officers will ensure that the initials of the technician, the date, the case number, and their own initials are indicated on the urine specimen container, and the data sheet completed.

- Additionally, the urine sample kits can be used for collecting urine for hard narcotics (morphine, heroin, and their derivatives) analysis. Any narcotics taken by addicts show up in the urine for several days after dosage. A larger bottle is desired for these tests than those furnished in the urine alcohol kit. However, if a larger bottle is not on hand, several of the alcohol urine bottles may be used. In narcotic cases, collect all urine. Preliminary voiding is not necessary.
- **BREATH TESTS:** Only officers certified in the use and operation of an intoxilyzer shall administer breath tests.

Upon completion of the test, officers will place the laboratory copy of the Intoxilyzer Test Record into the Santa Clara Police Department evidence refrigerator. The card will be processed in the same manner as the blood test. The remaining two copies of the Intoxilyzer Test Record will be submitted to the Records Division with the other related police reports.

95.2.6 Required Additional Reports

In addition to those forms used to report the incident (Crime report, AIB Form, JCR, etc.), officers initiating the taking of biological samples for analysis will complete the “Request for Taking Specimen - Chemical Analysis” form (Santa Clara County Form 6857) and submit the officer’s copy with the other reports pertaining to the case.

95.2.7 Additional Information

An officer need not make a formal arrest to obtain a biological sample, as long as probable cause exists to make an arrest.