

Impaired Driving

514.1 PURPOSE AND SCOPE

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

514.2 POLICY

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

514.2.1 TESTING OF CONSCIOUS SUSPECT AT A HOSPITAL

Based on probable cause the officer should place the hospitalized but conscious suspect under arrest and if possible, advise attending medical staff of the intention to administer a chemical test to the suspect. Unless the person under arrest refuses to submit to the test designated by the arresting officer, the blood or urine samples will be collected in the prescribed manner (ARS § 28-1321(D)).

The person tested shall be given a reasonable opportunity to arrange for any physician, registered nurse or other qualified person of the person's own choosing to administer a test or tests in addition to any administered at the direction of a law enforcement officer (ARS § 28-1388(A)).

If the arrestee refuses to submit to the test, the officer shall:

- File a certified report of the refusal with the Department of Transportation.
- Serve an order of suspension on the arrestee.
- Require the immediate surrender of the arrestee's driver's license or permit or identify the reason it was not surrendered.
- Issue a 15 day driving permit.
- Forward the certified report of refusal, a copy of the completed notice of suspension, a copy of any completed temporary permit and any driver license or permit taken into possession to the Department of Transportation within five days.

If an arrestee refuses to submit to the test but has had a sample of blood, urine or other bodily substance taken for any reason, the officer shall obtain a portion of that sample sufficient for analysis pursuant to ARS § 28-1388(E).

514.2.2 TESTING OF UNCONSCIOUS DRIVER AT A HOSPITAL

The officer shall advise the attending physician of the intention to collect a sample of the suspect's blood as evidence when there is probable cause to believe the following:

- That an unconscious driver is under the influence.
- There is no method of informing the individual of the arrest.
- Verbal consent for testing is not practicable.

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If the physician does not object based on medical reasons, the blood will be collected in the prescribed manner (ARS § 28-1321(C)).

514.2.3 EMERGENCY DOCTRINE

Under the emergency doctrine, the level of influence of an intoxicant can be important evidence. Since it is not of a permanent nature, it will be lost if not seized immediately. This policy is within the guidelines of the emergency doctrine.

514.2.4 COLLECTING BLOOD EVIDENCE

Only a qualified phlebotomy technician, licensed physician, nurse or other individual authorized by ARS § 28-1321 may withdraw a blood sample. Whether such evidence is collected at the Department or the prisoner processing area, the withdrawal of the blood sample should, when possible, be witnessed by the assigned officer.

514.2.5 WITHDRAWAL OF BLOOD BY WARRANT

A search warrant may be sought when the arresting officer deems it necessary for the successful prosecution of a DUI suspect.

A blood specimen must be obtained within four hours of the arrest.

The Department has coordinated with judges for 24-hour access to obtain a warrant for the withdrawal of blood. The judges will generally accept warrant requests via telephone (oral) or fax.

To obtain a warrant for a blood withdrawal and to complete service of an issued blood draw warrant:

- Complete a blood draw affidavit, warrant, fax cover and return. The form used must contain the element that provides for the judge, notary or witness officer to sign.
- Ensure that a notary public or another peace officer is present to perform the required role as witness.
- Contact a judge by telephone from the call list maintained in Communications Section and determine whether a live signature or a fax procedure is preferred.
- If the judge agrees to the fax procedure, transmit the completed forms and Fax Cover with the requesting officer's name and voice contact number and return fax number. This must be done so the judge can have the officer swear to the affidavit over the phone, or if they have any questions, they can contact the officer.
- If the judge approves the warrant, the judge retains the signed original and a facsimile will be transmitted back to the requesting officer.
- Upon completion of the warrant service and blood draw the officer must complete the warrant return and fax the return to the issuing judge.
- Blood draws may only be performed by a physician, registered professional nurse, qualified technician, chemist, licensed vocational nurse or qualified phlebotomist.
- The person drawing the blood must complete and sign the Affidavit of Person Who Withdrew the Blood and ensure that the form is notarized.
- The Return and Inventory, original Affidavit and attachments must be completed and returned by the officer to the issuing court/magistrate.
- A copy of the Search Warrant face sheet and Return Inventory must be placed with the arrestee's property.

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514.2.6 COLLECTING BREATH AS EVIDENCE

If the arresting officer chooses a breath test, the arrested person should first be transported to the processing area for booking preparatory to the collection of breath samples. At the processing area, an officer trained in the use of the alcohol breath machine will record the blood alcohol level by obtaining samples of the person's breath pursuant to ARS § 28-1323(A).

514.2.7 COLLECTING URINE AS EVIDENCE

If the arresting officer chooses a urine test, he/she shall promptly transport the arrestee to the processing area. The PSO will furnish a urine kit for collecting samples of the arrested person's urine. The officer shall follow the directions listed on the container instruction sheet. If the arrested person's urine is necessarily collected elsewhere, the procedure will remain the same. Whenever practicable, sample collection should be collected by a person of the same gender.

An officer should only direct a person to submit to a urine test if the person is exempted from a blood test due to hemophilia or a heart condition requiring use of anticoagulants as determined by a physician.

The collection kit shall then be marked accordingly with the suspect's name, offense, Department, case number and the name of the witnessing officer. The collection kit shall be placed in the evidence refrigerator to await transportation to the crime laboratory.

Urine samples shall be collected and/or witnessed by an officer or matron of the same gender as the suspect.

514.3 FIELD TESTS

The Special Enforcement Lieutenant should identify the primary field sobriety tests (FSTs) and any approved alternate tests for officers to use when investigating violations of DUI laws.

514.4 CHEMICAL TESTS

A person is deemed to have consented to a chemical test or tests under any of the following (ARS § 28-1321):

- (a) The arresting officer has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or drugs.
- (b) The person is under 21 years of age and has any amount of alcohol in his/her body.
- (c) The person is dead, unconscious or otherwise in a condition that renders him/her incapable of refusal.
- (d) An officer has reasonable grounds to believe that the person was involved in a traffic accident that resulted in death or serious physical injury and has probable cause to believe that the person caused the accident (ARS § 28-673).

514.4.1 BREATH SAMPLES

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

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

514.4.2 BLOOD SAMPLES

Only persons authorized by law to withdraw blood shall collect blood samples (ARS § 28-1388). The withdrawal of the blood sample should be witnessed by the assigned officer. No officer, even if properly certified, should conduct the blood withdrawal.

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

If an arrestee cannot submit to a blood test because he/she is a hemophiliac or is using an anticoagulant, he/she shall not be required to take a blood test. Such inability to take a blood test should not be treated as a refusal. However, the person may be required to complete another available and viable test.

514.4.3 URINE SAMPLES

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

Urine samples shall be collected and witnessed by an officer or jail staff of the same sex as the person giving the sample. The person tested should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the specimen.

The collection kit shall be marked with the person's name, offense, Peoria Police Department case number and the name of the witnessing officer. The collection kit should be refrigerated pending transportation for testing.

514.5 REFUSALS

When a person refuses to provide a chemical sample, officers should:

- (a) Advise the person of the requirement to provide a sample (ARS § 28-1321).
- (b) Audio-record the admonishment and the response when it is legal and practicable.
- (c) Document the refusal in the appropriate report.

514.5.1 STATUTORY NOTIFICATIONS

Upon refusal to submit to a chemical test as required by law, officers shall personally serve the notice of suspension upon the person and take possession of any state-issued license or permit to operate a motor vehicle that is held by that person. If the person's license is surrendered, the officer shall issue the person a 15-day temporary driving permit. If the person's license or permit is not surrendered, the officer should include the reason why in his/her report (ARS § 28-1321).

514.5.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test and:

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- (a) A search warrant has been obtained (ARS § 28-1321); or
- (b) If the officer has probable cause to believe that the person has violated the state's impaired driving laws and a sample of blood, urine or other bodily substance has been taken from that person for any reason, the officer may request a portion of that sample for analysis (ARS § 28-1388).

514.5.3 FORCED BLOOD SAMPLE

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

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer) and attempt to persuade the person to submit to such a sample without physical resistance. This dialogue should be recorded on audio and/or video when practicable.
- (d) Ensure that the withdrawal is taken in a medically approved manner.
- (e) Supervise any use of force and ensure the forced withdrawal is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied is reasonable under the circumstances.
 - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - 2. In misdemeanor cases, if the suspect becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
 - 3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood being withdrawn may be permitted.
- (g) Ensure the use of force and methods used to accomplish the blood sample draw are documented in the related report.

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

514.6 ARREST AND INVESTIGATION

514.6.1 STATUTORY WARNING

An officer arresting a person for DUI shall provide the person with the mandatory statutory warning provided by ARS § 28-1321(B).

514.6.2 ADDITIONAL TESTING

The person tested shall be given a reasonable opportunity to arrange for any physician, registered nurse or other qualified person of the person's own choosing to administer a test or tests, in addition to any administered at the direction of an officer (ARS § 28-1388).

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514.6.3 RESULTS FROM HEALTH CARE INSTITUTION

An officer who has reasonable grounds to believe that a person is DUI may request a copy of any written or electronic report of the person's blood alcohol concentration that is in the possession of a health care institution (ARS § 28-1390).

514.6.4 IGNITION INTERLOCK DEVICE

A person arrested for DUI, who is also under a previous court order to have a certified ignition interlock device (IID) on his/her motor vehicle, shall submit to any test chosen by an officer (ARS § 28-1464).

514.6.5 OFFICER RESPONSIBILITIES

The arresting officer shall file a certified report of a person's refusal, the surrendered license and copies of the notice of suspension and temporary permit with the Arizona Department of Transportation (ADOT) within five days. The certified report shall contain (ARS § 28-1321):

- (a) The officer's reasonable grounds to believe that the arrested person was driving or in actual physical control of a motor vehicle:
 1. While under the influence of intoxicating liquor or drugs.
 2. Or was under 21 years of age and had alcohol in his/her body.
- (b) The manner in which the person refused to submit to the test or tests.
- (c) That the person was advised of the consequences of refusal.

514.6.6 ORDER OF SUSPENSION

If a person refuses to submit to a test, the officer shall, on behalf of ADOT, serve an order of suspension on the person. The order of suspension is effective 15 days after the date it is served and shall be accompanied by printed forms that the person can use to request a hearing regarding the suspension. The order shall notify the person that (ARS § 28-1321; ARS § 28-1385):

- (a) He/she may submit a written or online request for a hearing.
- (b) The request for a hearing must be received by ADOT within 15 days after the date of the notice, or the order of suspension will become final.
- (c) The person's license or permit to drive or right to apply for a license or permit will be suspended.
- (d) The person's driving privilege may be reinstated following the period of suspension only if the person completes alcohol or other drug screening.
- (e) Unless the person has surrendered his/her license or permit, the person's request for a hearing will not be accepted without a certifying statement that the license or permit is lost or destroyed.

514.6.7 PRELIMINARY TESTS

An officer who has reasonable suspicion to believe that a person is in violation of ARS § 28-1381 (DUI) or ARS § 28-1382 (extreme DUI) may request that the person submit to a preliminary breath test before arrest (ARS § 28-1322).

514.6.8 QUALITY ASSURANCE

This department shall utilize a quality assurance program, conducted by quality assurance specialists or operators, regarding devices used to determine alcohol concentration and

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shall generate records of periodic maintenance of those devices, pursuant to AAC § R13-10-104.

514.7 RECORDS SECTION RESPONSIBILITIES

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

514.8 ADMINISTRATIVE HEARINGS

The supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to ADOT.

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

Officers called to testify at an administrative hearing should document the hearing date and the ADOT file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified. The Records Section should forward this to the prosecuting attorney as part of the case file.

514.9 TRAINING

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