



Training Bulletin

SANTA BARBARA POLICE DEPARTMENT



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Admonishing DUI Arrestees

DISCUSSION POINTS –

- Supreme Court decision in *Birchfield V. North Dakota*
- Changes to DMV DS367 form and SBPD DIU Report form

Supreme Court decision in Birchfield V. North Dakota Santa Barbara DA's Office has suggested the following

The Supreme Court decision in *Birchfield V. North Dakota* has changed how DUI arrestees can be admonished regarding their obligation to provide a chemical sample. The District Attorney's Office has suggested to following procedures.

- I. Upon arresting a subject for driving under the influence, advise them that they are under arrest for DUI. Read the arrestee the Chemical Test Admonishment from the DMV DS367 (Admin Per Se) form. **Omit the paragraph labeled "4"** (Attachment 1). Note in your report that you omitted that paragraph.

"4. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence."

-DMV DS367 Chemical Test Admonition

This paragraph references criminal penalties for a chemical test refusal. Arrestees should not be compelled or "coerced" by any mention of criminal penalties, court, fine or imprisonment. The District Attorney's office has advised that breath, blood or urine samples should be admissible if the arrestee was not threatened with criminal penalties.

- II. For cases involving a subject who is unable to complete a breath test (i.e. unable to follow instructions, frequent coughing, belching, etc.) you may instruct the arrestee that they are then required to submit to the remaining (blood) test. You will need to get a warrant if the subject refuses.

For a DUI involving the suspicion of drugs, please read the Drug Admonition: Blood and Urine also on the DMV DS367. **Omit the paragraph labeled "4"** (Attachment 1) Note in your report that you omitted that paragraph.

"4. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence."

-DMV DS367 Drug Admonition Supplement

The arrestee will be required to submit to a blood test. Note: Even though drugs are suspected, the arrestee should be given the choice of breath or blood first.

III. In addition, the Chemical Test Admonition on the Santa Barbara Police Department Driving Under the Influence Report form **shall no longer be used** (Attachment 2).

On Felony DUI cases involving blood draws, the District Attorney's office strongly advises obtaining a warrant.

** Updated forms are not yet available, individual officers will be responsible for making the changes in the interim. Please contact Drinking Driver Team Officer Rapp with any questions Work Cell (805)-451-8049

ATTACHMENT 1

PRELIMINARY ALCOHOL SCREENING TEST REFUSAL (DUI PROBATION), 13353.1 CVC
 CHEMICAL TEST REFUSAL, 13353 CVC

CHEMICAL TEST ADMONITION (23154, 23612 CVC)

I admonished the driver on _____ at _____ AM/PM in _____ CA.

1. You are required by state law to submit to a PAS (DUI Probation) or other chemical test to determine the alcohol and/or drug content of your blood.

2. a. Because I believe you are under the influence of **alcohol**, you have a choice of taking a breath or blood test.
 b. Because I believe you are under the influence of **alcohol and drugs**, you have a choice of taking a breath or blood test.
 c. **WHEN APPLICABLE:** Since the breath and blood tests are unavailable; you are incapable of completing a breath or blood test, or you are afflicted with hemophilia or are using an anticoagulant medication, you are deemed to have given your consent to chemical testing of your urine.
 d. **WHEN APPLICABLE:** Since you need medical treatment, your choice is limited to _____ test(s), the only test(s) available at _____.

3. If you refuse to submit to, or fail to complete a test, your driving privilege will be suspended for one year or revoked for two or three years. A second offense within ten years of a separate violation of driving under the influence, including such a charge reduced to reckless driving, or vehicular manslaughter, or a violation of Section 23140 CVC, which resulted in a conviction, or separate administrative determination that you were driving with a BAC of 0.01% or more while under age 21, or a separate administrative determination that you were driving with a BAC of 0.01% or more while on DUI probation, or a BAC of 0.04% or more while operating a commercial motor vehicle, or a BAC of 0.08% or more at any age, or you refused a test, will result in a two-year revocation. Three or more offenses within ten years of any combination of the above violations, convictions or separate administrative determinations will result in a three-year revocation.

~~4. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence.~~

5. You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test.

6. If you cannot, or state you cannot, complete the test you choose, you must submit to and complete a remaining test.

RESPONSE TO: Will you take a Preliminary Alcohol Screening (DUI Probation) test? _____
Breath test? _____ **Blood Test?** _____

Both Breath and Blood tests are unavailable. EXPLAIN: _____
 PAS test unavailable. EXPLAIN: _____
 Drug use suspected. **RESPONSE TO: Will you take a urine test?** _____

The driver refused to submit to or failed to complete any test. The refusal or failure was indicated by the following statements or actions: _____

If not given in English, admonition was given in Spanish Other language (specify) _____

If the above Chemical Test Admonition was read to arrestee by another officer, indicate that officer's:
Name _____ Badge/ID No. _____ Agency _____ Phone No. () _____

DRUG ADMONITION SUPPLEMENT

I believe the driver was driving under the influence of drugs or a combination of drugs and alcohol. In addition to the breath test results and information listed on the front, my belief is based on the following facts: _____

DRUG ADMONITION: Blood and Urine

1. The breath test you have just taken is designed to detect only the alcohol content of your blood.

2. Because I believe you are under the influence of drugs or a combination of drugs and alcohol, you are required by state law to submit to a blood or urine test. A urine test is available only if you are afflicted with hemophilia or are using an anticoagulant medication.

3. If you refuse to submit to, or fail to complete a test, your driving privilege will be suspended for one year or revoked for two or three years. A second offense within ten years of a separate violation of driving under the influence, including such a charge reduced to reckless driving, or vehicular manslaughter, or a violation of Section 23140 CVC, which resulted in a conviction, or separate administrative determination that you were driving with a BAC of 0.01% or more while under age 21, or a separate administrative determination that you were driving with a BAC of 0.01% or more while on DUI probation, or a BAC of 0.04% or more while operating a commercial motor vehicle, or a BAC of 0.08% or more at any age, or you refused a test, will result in a two-year revocation. Three or more offenses within ten years of any combination of the above violations, convictions or separate administrative determinations will result in a three-year revocation.

~~4. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence.~~

5. You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test.

If the above Drug Admonition was read to the arrestee by another officer, indicate that officer's:
Name _____ Badge/ID No. _____ Agency _____ Phone No. () _____

If not given in English, admonition was given in Spanish Other language (specify) _____

Response to: Will you take a Blood test? _____ **Urine test?** _____

The driver refused to submit to or failed to complete any such test. The refusal or failure was indicated by the following statements or actions: _____

DS 367 (REV. 10/2012)

ATTACHMENT 2
SANTA BARBARA POLICE DEPARTMENT
DRIVING UNDER THE INFLUENCE REPORT

DRUG RELATED COLLISION FORCED BLOOD DRAW

GO # _____

SUSPECT: LAST NAME			FIRST NAME			MIDDLE			DATE			DAY OF WEEK			
STOP TIME			INITIAL CONTACT <input type="checkbox"/> AT DRIVERS WINDOW <input type="checkbox"/> AS SUBJECT EXITED VEHICLE <input type="checkbox"/> OTHER _____												
ODOR OF ALCOHOL				ATTITUDE				SPEECH				BALANCE			
O. <input type="checkbox"/> OBVIOUS M. <input type="checkbox"/> MODERATE S. <input type="checkbox"/> STRONG W. <input type="checkbox"/> WEAK N. <input type="checkbox"/> NONE				C. <input type="checkbox"/> COMBATIVE O. <input type="checkbox"/> COMPLIANT N. <input type="checkbox"/> NEGATIVE Z. <input type="checkbox"/> OTHER _____				N. <input type="checkbox"/> NORMAL R. <input type="checkbox"/> RAPID G. <input type="checkbox"/> SLOW / GARBLED S. <input type="checkbox"/> SLURRED <input type="checkbox"/> OTHER _____				N. <input type="checkbox"/> NORMAL S. <input type="checkbox"/> UNABLE TO STAND U. <input type="checkbox"/> UNSTABLE <input type="checkbox"/> OTHER _____			
OTHER SYMPTOMS OF INTOXICATION / INFLUENCE AND UNUSUAL ACTIONS OF SUSPECT															
CLOTHING WORN / CONDITION AND DESCRIPTION															

DO YOU KNOW OF ANYTHING WRONG WITH YOUR VEHICLE? (DESCRIBE) <input type="checkbox"/> YES <input type="checkbox"/> NO						DO YOU REMEMBER DRIVING THE VEHICLE? <input type="checkbox"/> YES <input type="checkbox"/> NO					
ARE YOU SICK OR INJURED? (DESCRIBE) <input type="checkbox"/> YES <input type="checkbox"/> NO						HAVE YOU BUMPED YOUR HEAD TODAY? <input type="checkbox"/> YES <input type="checkbox"/> NO					
ARE YOU DIABETIC? <input type="checkbox"/> YES <input type="checkbox"/> NO		DO YOU TAKE INSULIN PILLS? <input type="checkbox"/> YES <input type="checkbox"/> NO		DO YOU TAKE INSULIN INJECTIONS? <input type="checkbox"/> YES <input type="checkbox"/> NO		ARE YOU EPILEPTIC? <input type="checkbox"/> YES <input type="checkbox"/> NO		RECENT SURGERY <input type="checkbox"/> YES <input type="checkbox"/> NO			
ARE YOU UNDER THE CARE OF A DOCTOR OR DENTIST? IF YES NAME, ADDRESS, PHONE NUMBER OF MEDICAL PROVIDER <input type="checkbox"/> YES <input type="checkbox"/> NO											
DO YOU HAVE ANY PHYSICAL IMPAIRMENTS? (DESCRIBE) <input type="checkbox"/> YES <input type="checkbox"/> NO											
WHEN DID YOU LAST SLEEP?			HOW LONG?		WHEN DID YOU LAST EAT?		DESCRIBE FOOD				
WERE YOU DRIVING THE VEHICLE? <input type="checkbox"/> YES <input type="checkbox"/> NO			WHERE DID YOU START DRIVING?				WHERE WERE YOU GOING?				
DO YOU KNOW WHY YOU WERE STOPPED? IF YES EXPLAIN <input type="checkbox"/> YES <input type="checkbox"/> NO											
WHAT HAVE YOU BEEN DRINKING?						HOW MUCH?		TIME STARTED		TIME STOPPED	
WHERE WERE YOU DRINKING?						HOW DID YOU PAY FOR THE DRINKS?					
WHAT EFFECTS DO YOU FEEL FROM THE DRINKS?											
HAVE YOU BEEN DRINKING SINCE THE ACCIDENT? IF YES, WHAT, WHEN AND HOW MUCH <input type="checkbox"/> YES <input type="checkbox"/> NO											
HAVE YOU TAKEN ANY MEDICINE OR DRUGS? IF YES DESCRIBE								HOW MUCH?		TIME	
WHAT EFFECTS OF YOU FEEL FROM THE MEDICINE/DRUGS?											
NOTES											

CHEMICAL TEST ADMONITION (23612 CALIFORNIA VEHICLE CODE)

<p align="center">BECAUSE I BELIEVE YOU ARE UNDER THE INFLUENCE OF <input type="checkbox"/> ALCOHOL, <input type="checkbox"/> DRUGS and/or ALCOHOL YOU HAVE A CHOICE OF TAKING A <input type="checkbox"/> BREATH OR <input type="checkbox"/> BLOOD TEST.</p> <p align="center">IF YOU REFUSE TO SUBMIT TO, OR FAIL TO COMPLETE A TEST, YOUR DRIVING PRIVILEGE WILL BE SUSPENDED. REFUSAL OR FAILURE TO COMPLETE A TEST MAY BE USED AGAINST YOU IN COURT. REFUSAL OR FAILURE TO COMPLETE A TEST WILL ALSO RESULT IN A FINE AND IMPRISONMENT IF THE ARREST RESULTS IN CONVICTION OF DRIVING UNDER THE INFLUENCE.</p> <p align="center">AFTER BREATH TEST, DRUGS ARE SUSPECTED, SUBJECT HAS CHOICE OF <input type="checkbox"/> BLOOD OR <input type="checkbox"/> URINE.</p> <p align="center">READ DIRECTLY FROM DS 367 "DRUG ADMONITION"</p> <p align="center">A URINE TEST IS AVAILABLE ONLY IF YOU ARE AFFLICTED WITH HEMPHILIA OR ARE USING AN ANTICOAGULANT MEDICATION.</p> <p align="center">REFUSED: IF TESTS ARE REFUSED READ AND COMPLETE THE CHEMICAL TEST REFUSAL FROM DMV 907.</p>											
BREATH TEST ADMINISTERED BY			ID NUMBER		OBSERVED FOR MINIMUM 15 MIN FROM		TIME / RESULTS 1 ST SAMPLE		TIME / RESULTS 2 ND SAMPLE		LOCATION TAKEN

WAIVER OF RIGHT TO RETESTABLE SAMPLE

I UNDERSTAND THAT NO PORTION OF MY BREATH SAMPLES WILL BE PRESERVED FOR LATER RETESTING. I UNDERSTAND THAT A BLOOD OR URINE* SAMPLE CAN BE RETESTED. I UNDERSTAND THAT I MAY PROVIDE A BLOOD OR URINE* SAMPLE FREE OF CHARGE IN ADDITION TO MY BREATH SAMPLES SO THAT THERE WILL BE SOMETHING RETAINED AT NO COST TO ME WHICH MAY BE ANALYZED LATER ON. I UNDERSTAND THAT THE ADDITIONAL BLOOD OR URINE* SAMPLE I MAY PROVIDE MAY BE TESTED BY EITHER PARTY IN ANY CRIMINAL PROCEEDING. I WISH TO TAKE THE BREATH TEST.

I DO NOT WISH TO GIVE A SAMPLE OF MY BLOOD OR URINE* FOR POSSIBLE ANALYSIS, AND I GIVE UP MY RIGHT TO DO SO.

I DO WISH TO GIVE A RETESTABLE SAMPLE, AND CHOOSE A BLOOD TEST OR URINE* TEST.

REFUSAL OR INABILITY TO SIGN WAIVER DOES NOT CONSTITUTE A REFUSAL TO TAKE TEST (PROVIDING TEST IS COMPLETED). IF SUBJECT REFUSES TO SIGN WAIVER, STATE "REFUSED" IN SIGNATURE BLOCK.

SIGNED (ARRESTEE)			DATE			WITNESSED (ARRESTING OFFICER)			ID NUMBER		
X											
URINE* TEST ADMINISTERED BY				LOCATION				TIME BLADDER FIRST VOIDED		TIME SPECIMEN OBTAINED	
BLOOD TEST DRAWN BY / TITLE				LOCATION				TIME SAMPLE OBTAINED		<input type="checkbox"/> DEPOSITORY COUNTY JAIL <input type="checkbox"/> SENT TO STATE LAB (URINE - DRUG)	