

## SAN DIEGO POLICE DEPARTMENT PROCEDURE

**DATE:** 08/29/2014

**NUMBER:** 3.14 - INVESTIGATIONS

**SUBJECT:** DRUG INFLUENCE TESTING PROCEDURES

**RELATED POLICY:** [3.13](#)

**ORIGINATING DIVISION:** INVESTIGATIONS I

**NEW PROCEDURE:**

**PROCEDURAL CHANGE:**

**SUPERSEDES:** DP 3.14 – 11/23/2011

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### **I. PURPOSE**

This Department procedure establishes guidelines for the drug influence testing of subjects suspected of being under the influence of a controlled substance.

### **II. SCOPE**

This procedure applies to all sworn members of the Department.

### **III. BACKGROUND**

There is an evident correlation between drug use and overall involvement in crime. It is the policy of this Department that officers aggressively enforce violations of Section 11550 of the Health and Safety Code (H&S), Being Under the Influence of a Controlled Substance. Since a successful prosecution is likely to result in the imposition of a 4<sup>th</sup> Amendment waiver, it is especially important for officers to utilize the proper procedure for arrests of 11550 H&S.

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The United States Supreme Court in *Missouri v. McNeely*, 133 S. Ct. 1552 (2013), held that a search warrant is required before law enforcement can administer nonconsensual, forced blood testing. Although the underlying facts of the *McNeely* case deal with driving under the influence of alcohol, the holding applies to forced blood draws in general, including those administered in suspected 11550 H&S violations. Currently, California Penal Code section 1524 does not allow a search warrant to be issued in cases where a

sample of the blood would constitute evidence that tends to show a violation of 11550 H&S.

#### **IV. DEFINITIONS**

- A. A controlled substance is a drug substance or immediate precursor that is listed in any schedule in Sections 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code (H&S).
- B. The elements of 11550 H&S include being under the influence of certain controlled substances. Generally, 11550 H&S drugs include compounds containing opiates, methamphetamine, cocaine, and PCP. Refer to the Health and Safety Code for a complete list of controlled substances that qualify under Section 11550.
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C. Marijuana, Hashish, LSD, Ketamine, Ecstasy (MDMA), Gamma-hydroxybutyrate (GHB), and Gamma-butyrolactone (GBL) are also classified as controlled substances. However, only GHB is covered by 11550 H&S. If a subject is suspected of being under the influence of one of these drugs, they should also be evaluated and, if appropriate, charged with 647(f) PC.

#### **V. PROCEDURES**

- A. 11550 H&S arrests are normally based on the observations of the arresting officer. In cases of suspects under the influence of a controlled substance, and a test is administered, an arresting officers should not specify in the arrest report which drug is suspected. Substance identification by arresting officers that is not supported by test results of laboratory services can hamper prosecution efforts.
  - 1. The initial contact with the suspect must be justified and fully explained. Justification can be based upon detailed observations of physical symptoms prior to contact or some independent basis.
  - 2. A detention for investigation must be justified. Inspections for fresh injection sites may be an intrusion into a subject's privacy and (absent from an arrest) should follow the observation of other symptoms. If an officer asks to see a person's arms, and the person agrees, the search for injection sites would be proper.
  - 3. Once an arrest is made, officers shall take the suspect to a location where the lighting conditions can be controlled. A controlled examination should be performed and the results noted on a Narcotics Supplemental form (PD-988).

4. The suspect should be admonished and the officer should attempt to solicit information related to the drug use. Questions such as the type of drug used, its source, date and time of last usage, and where the suspect was when he or she used the drug (i.e., City of San Diego) are appropriate and can be beneficial to support an arrest.
5. Keep in mind the suspect may also be responsible for burglaries, robberies, thefts, or other crimes. If he/she admits to any other crimes, it is important to document in the report if the person was under the influence, but sufficiently coherent to understand and respond to questions. Examples of questions evaluating coherency include, "What day is this?", "Where are you right now?", and "What time is it?" It is important to document the person's responses.

**B. Consensual Chemical, Blood, or First Void Urine Samples**

**NEW**

1. Consent must be obtained before any testing is administered. Consent is deemed given if the suspect is on parole or has a valid fourth waiver.
2. Urine bottles are available in Room 138 at Headquarters. The first void is all that is required for drug analysis and approximately half of the standard bottle is sufficient to test. Smaller amounts of urine can be tested; however, the larger the sample the better. First void urine samples are not appropriate for alcohol analysis. If alcohol analysis is also required, a second void sample of urine is also necessary.
3. An officer must be present and observe whenever a subject provides a urine sample. If the suspect and officer are not of the same sex, the appropriate male or female officer shall be summoned. Bluing agents should be added to the water in the toilet bowl to ensure the collected sample was not dipped into toilet water.
4. Blood samples should be taken at Room 138 by an available qualified criminalist. A criminalist can be reached at the Crime Lab during business hours through the Watch Commander's Office. Officers should complete all paperwork and vial labels prior to the criminalist's arrival, ensuring information is accurate and consistent.
5. In the absence of a qualified criminalist, the Watch Commander's Office will call out a phlebotomist. Contracted phlebotomists are on site daily from 2000-0600 hours.
6. Blood samples should be obtained from suspects believed to have injected or ingested the controlled substance within the past two hours. Generally, two full gray topped vials should be obtained for accurate testing. Smaller amounts of blood can be tested; however, two full vials should be

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obtained, if possible. Blood testing for LSD is not available. Therefore, urine samples should be obtained for LSD testing.

7. Completing a Blood/Urine Label
  - a. Special notes concerning the blood/urine label
    - (1) "Assignment" refers to the officer's assigned unit or substation (i.e., Gangs, Narcotics Section, Central, Eastern, etc.).
    - (2) "Drawn by" (for urine samples) refers to the officer witnessing the giving of the sample by the subject.
  - b. The officer in charge of monitoring the subject must witness the drawing of the blood sample.
8. The officer will submit a Toxicology Request Form (forms are available at Room 138), ensuring all entries are complete. The information provided on this form, as well as on both the master log and specimen label, will determine whether or not the requested drugs are allowable under the law. Officers should refer to the Health and Safety Code schedules of controlled substances as indicated under the Definitions section of this procedure.
9. Driving Under the Influence Arrests
  - a. If a check for both drugs and alcohol is requested, and the blood alcohol result is greater than .08%, the specimen will not be submitted for drug testing. The toxicology request form will be returned to the requestor.
  - b. If only a drug content check is requested, no tests for alcohol will be conducted.
  - c. If the violations are listed as both 23152 CVC and 11550 H&S, the sample will be submitted for both drug and alcohol testing.
  - d. For combination 23152 CVC –11550 H&S arrests, the officer should conduct both the drug evaluation and Standardized Field Sobriety Test (SFST). The SFST is needed to confirm impairment while driving.
10. Toxicology requests involving sex crimes require the completion of a sex crimes toxicology request form. The form can be found on the LAN at F:\LAB\Crime Lab Requests\SDPD Lab Toxicology.doc. All suspected

drugs to be checked must be included on the form. Toxicology requests for specialized drugs related to sex crimes require a sergeant's signature. When alcohol testing is also required, the appropriate box must be clearly marked.

11. Officers desiring a second or expert opinion can contact the Narcotics Office at (619) 531-2468 or via Communications Division between the hours of 0700 and 1700 on weekdays. A Narcotics Section detective is available during after-hours on a callback basis and can be contacted through the Watch Commander's Office.

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## **VI. NON-CONSENSUAL, FORCED BLOOD DRAW**

- A. For violations of 11550 H&S, officers must either:
  1. Obtain consent.
    - a. Consent is required before blood can be drawn. *Missouri v. McNeely*, 133 S.Ct. 1552 (2013).
    - b. California statutes do not authorize the issuance of search warrants for non-consensual blood draws for violation of 11550 H&S.
  2. If consent is not obtained.
    - a. Officers should proceed without a blood test and, with probable cause, book the suspect into jail for H&S 11550(a) violations.
    - b. Officers must clearly articulate the behavior and conditions that, based upon their training and experience, indicate the drug the suspect is believed to have used.
  3. Parole or a 4<sup>th</sup> Waiver.

Consent is deemed given if the suspect is on parole or has a valid fourth waiver. Only under these circumstances can a peace officer use force to take a blood sample from a suspect who has refused to consent, or is incapable of consenting, to a chemical test.

- B. Officers shall document any force used in their reports as outlined in DP 1.04, Use of Force.

## **VII. REPORTING PROCEDURES**

- A. The arresting officer should not specify in the arrest report which drug is suspected.
- B. After determining a suspect is under the influence, it is necessary for the reporting officer to include the following information in the arrest report:
  1. Describe thoroughly, in chronological order, the reason for the initial stop/detention and further investigation. Prior knowledge of the suspect can include:
    - a. If the suspect is known to the officer as a narcotics user;
    - b. Whether the officer had prior information that the suspect is a narcotics user; or,
    - c. Whether the suspect was previously observed in the company of a known user(s) or in the process of making a possible drug transaction.

It is not necessary that these prior contacts or observations occurred in a public place.

2. Describe all objective symptoms (symptomatology) observed of the suspect's actions leading to arrest. This may include:
  - a. Articulating observable physical symptoms that reflect the suspect's gait and movements; however, avoid the use of the word "staggering";
  - b. Carefully describing the suspect's speech characteristics;
  - c. Comparing the suspect's pupils to a known standard, the pupillometer (PD 376-LA), noting the lighting conditions (specifically darkness, indirect light, direct light, and room light are the four lighting conditions under which the suspect's pupils must be compared.);
  - d. Having the suspect close their eyes for 60 seconds and then noting any reaction or lack of reaction to light. This should be done in a darkened area;
  - e. Checking for both horizontal and vertical nystagmus. Involuntary movements of the suspect's eyes may occur with subjects under the influence of PCP;

- f. Describing injection sites in detail (old, recent, or fresh). Example: "I observed a puncture wound in the suspect's left forearm over a vein. The puncture wound was red and swollen, with dried blood around the wound, which led me to believe it was fresh." Do not use the words "track marks" as this is a slang term and inappropriate for an official police report; and
- g. Checking the suspect's pulse three times, two of which shall be done in a controlled environment. To give the most reliable indication of drug influence, the length of time between the first and second pulse, or the second and third pulse, should be more than 30 minutes. Different types of drugs have significant effects on the body, especially the heart. This is also an important symptom in determining whether a person is under the influence. A person under the influence of methamphetamine would probably have a resting pulse rate greater than 90 beats per minute which is at the upper end of the normal pulse range.

- 3. Include within the conclusion of the report narrative, "Suspect (suspect's name) was placed under arrest for being under the influence of a controlled substance."
- 4. Describe the evidence seized and how/where the evidence was impounded. Include the name(s) of the police/lab personnel who obtained/drew the body fluid evidence for analysis.
- 5. Include all related reports when submitting the case for prosecution. For example, if the suspect is arrested during a search warrant of another's house, all reports related to that search should be included as well.