

DOWNEY POLICE DEPARTMENT

TRAINING



BULLETIN

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DUI Implied Consent

Recently, there has been some discussion regarding DUI implied consent laws and what constitutes a refusal. Accordingly, the Legislature long ago enacted the "implied consent law" (Veh. Code § 23612) under which drivers are deemed to have given their permission to undergo one of the chemical tests designated in the statute to determine the presence of alcohol and/or drugs. A driver suspected of being under the influence of either alcohol or drugs has a choice of only two tests: breath or blood. A urine test is still permissible under certain limited circumstances.

During the admonishment, Officers must clearly explain the following:

- The chemical test is required by law
- Availability of tests offered to the driver
- Refusal to take a chemical test or failure to complete a test will result in the following consequences
 - A one year license suspension, or
 - A two year license revocation with a prior DUI conviction
 - A three year license revocation with two or more prior DUI or wet reckless convictions

It is strongly recommended that the admonishment be given verbatim from the back of the DMV DS 367 form to maintain compliance with the implied consent law.

The purpose of the implied consent or "chemical test" admonition is to make the arrestee aware of their duty to submit to and complete a chemical test at that time and the consequences of their refusal to do so. As a general rule, you need only advise the driver in the statutory language.

When the driver appears confused or lacks understanding because of the language you used in giving the admonition, then you have a duty to clarify. You need not "clarify" the situation further where it is apparent that the "confusion" results from the driver's own intoxication or lack of intelligence, rather than from the admonition given. Similarly, you need not attempt to clarify more than once if the driver continues to express "confusion" despite a correct admonition and clarifying explanation.

Recognizing a Refusal

If, after a lawful arrest and being given a standard admonition, a driver refuses to submit to and promptly complete a chemical test, his driver's license will be suspended. You have no obligation either to make a second offer or accommodate the driver if he changes his mind. A refusal is: (1) any statement, act, or conduct by the driver that (a) directly refuses, (b) qualifies compliance by imposing conditions not permitted by law, or (c) makes compliance unreasonably difficult or impossible; (2) any failure to satisfactorily complete the chosen test or its alternative; or (3) any delay in offering to provide a sample. The simple refusal ("No") is obviously the easiest. In all other instances, refusal is implied by the driver's acts and conduct or the qualifications he imposes before cooperating.

When the driver remains silent after being asked whether they will submit to a test, their silence constitutes a "refusal." However, if the driver indicates a willingness to take a test, but fails or refuses to specify which test, it is up to you to select the test. The law does not require that the driver must themselves choose the test to comply with the statute.

In regards to blood draws without consent, the United States Supreme Court has addressed whether a search warrant is required to obtain a sample to test a driver's blood alcohol content. Absent consent or another exception to the warrant requirement, a warrant is required for a blood test "McNeely Warrant." A McNeely Warrant is needed only when a conscious driver knowingly refuses a chemical test and the need for the sample is imperative. Before officers obtain a McNeely Warrant, they shall present the factors to the on-duty Supervisor and obtain approval to seek a warrant.