

Additional Relevant California Law

(Additional background laws that may affect DHS' regulations pertaining to forensic and breath alcohol analysis)

California Evidence Code

§352. Discretion of court to exclude evidence

The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

(Stats.1965, c. 299, §2, operative Jan. 1, 1967.)

California Vehicle Code

§ 23158. Chemical Test Procedure

(a) Notwithstanding any other provision of law, only a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, a person who has been issued a "certified phlebotomy technician" certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath specimens. An emergency call for paramedic services takes precedence over a peace officer's request for a paramedic to withdraw blood for determining its alcoholic content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his or her own expense, have a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a "certified phlebotomy technician" certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or any other person of his or her own choosing administer a test in addition to any test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of his or her blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to the person or the person's attorney.

(d) Notwithstanding any other provision of law, no licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a "certified phlebotomy technician" certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a "certified phlebotomy technician" certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, owning or leasing the premises on which tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, clinical laboratory, medical clinic environment, jail, or law enforcement facility, according to accepted venipuncture practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer the test.

(e) Notwithstanding any other provision of law, a person who has been issued a "certified phlebotomy technician" certificate pursuant to Section 1246 of the Business and Professions Code and who is authorized by this section to draw blood at the request and in the presence of a peace officer for purposes of determining its alcoholic content, may do so in a jail, law enforcement facility, or medical facility, with general supervision. The "certified phlebotomy technician" shall draw blood following the policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, appropriate to the location where the blood is being drawn and in accordance with state regulations.

(f) The Certified Phlebotomy Technician I or II shall carry a current, valid identification card issued by the State Department of Health Services, attesting to the technician's name, certificate type, and effective dates of certification, when performing blood withdrawals.

(g) As used in this section, "general supervision" means that the supervisor of the technician is licensed under the Business and Professions Code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(h) Nothing in this section shall be construed as requiring the certified phlebotomy technician who is authorized to withdraw blood by this section at the request and in the presence of a peace officer for purposes of determining alcoholic content to be associated with a clinical laboratory or to be directly supervised after competency has been established.

(i) If the test given under Section 23612 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(j) The department, in cooperation with the State Department of Health Services or any other appropriate agency, shall adopt uniform standards for the withdrawal, handling, and preservation of blood samples prior to analysis.

(k) As used in this section, "certified paramedic" does not include any employee of a fire department.

(l) Consent, waiver of liability, or the offering to, acceptance by, or refusal of consent or waiver of liability by the person on whom a test is administered, is not an issue or relevant to the immunity from liability for medical or law enforcement personnel or other facilities designated under subdivision (d).

(Amended Sec 30, Ch 118, Stats.1998. Effective January 1, 1999. Operative July 1, 1999.)

§ 13353.2. Immediate Suspension

(a) The department shall immediately suspend the privilege of any person to operate a motor vehicle for any one of the following reasons:

(1) The person was driving a motor vehicle when the person had 0.08 percent or more, by weight, of alcohol in his or her blood.

(2) The person was under 21 years of age and had a blood-alcohol concentration of 0.01 percent or greater, as measured by a preliminary alcohol screening test, or other chemical test.

(b) The notice of the order of suspension under this section shall be served on the person by a peace officer pursuant to Section 13388 or 13382. The notice of the order of suspension shall be on a form provided by the department. If the notice of the order of suspension has not been served upon the person by the peace officer pursuant to Section 13388 or 13382, upon the receipt of the report of a peace officer submitted pursuant to Section 13380, the department shall mail written notice of the order of the suspension to the person at the last known address shown on the department's records and, if the address of the person provided by the peace officer's report differs from the address of record, to that address.

(c) The notice of the order of suspension shall clearly specify the reason and statutory grounds for the suspension, the effective date of the suspension, the right of the person to request an administrative hearing, the procedure for requesting an administrative hearing, and the date by which a request for an administrative hearing shall be made in order to receive a determination prior to the effective date of the suspension.

(d) The department shall make a determination of the facts in subdivision (a) on the basis of the report of a peace officer submitted pursuant to Section 13380. The determination of the facts, after administrative review pursuant to Section 13557, by the department is final, unless an administrative hearing is held pursuant to Section 13558 and any judicial review of the administrative determination after the hearing pursuant to Section 13559 is final.

(Amended Ch 1244, Stats.1993. Effective January 1, 1994. Amended Ch 938, Stats.1994. Effective September 28, 1994. Amended Sec 3.12, Ch 118, Stats.1998. Effective January 1, 1999. Operative July 1, 1999. Amended Sec 14, Ch 22, Stats.1999. Effective May 26, 1999. Operative July 1, 1999.)

§ 13380. Police Officer's Report: Service Order of Suspension: Arrests

(a) If a peace officer serves a notice of an order of suspension pursuant to Section 13388, or arrests any person for a violation of Section 23140, 23152, or 23153, the peace officer shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information that adequately identifies the person, a statement of the officer's grounds for belief that the person violated Section 23136, 23140, 23152, or 23153, a report of the results of any chemical tests that were conducted on the person or the circumstances constituting a refusal to submit to or complete the chemical testing pursuant to Section 13388 or 23612, a copy of any notice to appear under which the person was released from custody, and, if immediately available, a copy of the complaint filed with the court. For the purposes of this section and subdivision (g) of Section 23612, "immediately" means on or before the end of the fifth ordinary business day following the arrest, except that with respect to Section 13388 only, "immediately" has the same meaning as that term is defined in paragraph (3) of subdivision (b) of Section 13388.

(b) The peace officer's sworn report shall be made on forms furnished or approved by the department.

(c) For the purposes of this section, a report prepared pursuant to subdivision (a) and received pursuant to subdivision (a) of Section 1801, is a sworn report when it bears an entry identifying the maker of the document or a signature that has been affixed by means of an electronic device approved by the department.

(Added Sec 3.24, Ch 118, Stats.1998. Effective January 1, 1999. Operative July 1, 1999.)

California Penal Code

§ 1463.14. Reckless driving, driving under the influence of alcohol or drugs, or combined influence; fines; use and transfer of funds; additional penalties

(a) Notwithstanding the provisions of Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, fifty dollars (\$50) of each fine collected for each conviction of a violation of Section 23103, 23104, 23152, or 23153 of the Vehicle Code shall be deposited in a special account which shall be used exclusively to pay for the cost of performing for the county, or a city or special district within the county, analysis of blood, breath or urine for alcohol content or for the presence of drugs, or for services related to that testing. The sum shall not exceed the reasonable cost of providing the services for which the sum is intended.

On November 1 of each year, the treasurer of each county shall determine those moneys in the special account which were not expended during the preceding fiscal year, and shall transfer those moneys into the general fund of the county. The county may retain an amount of that money equal to its administrative cost incurred pursuant to this section, and shall distribute the remainder pursuant to Section 1463. If the account becomes exhausted, the public entity ordering a test performed pursuant to this subdivision shall bear the costs of the test.

(b) The board of supervisors of a county may, by resolution, authorize an additional penalty upon each defendant convicted of a violation of Section 23152 or 23153 of the Vehicle Code, of an amount equal to the cost of testing for alcohol content, less the fifty dollars (\$50) deposited as provided in subdivision (a). The additional penalty authorized by this subdivision shall be imposed only in those instances where the defendant has the ability to pay, but in no case shall the defendant be ordered to pay a penalty in excess of fifty dollars (\$50). The penalty authorized shall be deposited directly with the county, or city or special district within the county, which performed the test, in the special account described in subdivision (a), and shall not be the basis for any additional assessment pursuant to Section 1464 or 1465, or Chapter 12 (commencing with Section 76010) of Title 8 of the Government Code.

For purposes of this subdivision, "ability to pay" means the overall capability of the defendant to pay the additional penalty authorized by this subdivision, taking into consideration all of the following:

(A) Present financial obligations, including family support obligations, and fines, penalties, and other obligations to the court.

(B) Reasonably discernible future financial position over the next 12 months.

(C) Any other factor or factors which may bear upon the defendant's financial ability to pay the additional penalty.

(c) The Department of Justice shall promulgate rules and regulations to implement the provisions of this section.

(Added by Stats.1991, c. 189 (A.B.544), § 28, eff. July 29, 1991. Amended by Stats.1995, c. 9 (A.B.129), § 1; Stats.1995, c. 318 (A.B.1075), § 1.)