


Fort Collins Police Services

Policy Manual

 FORT COLLINS POLICE	POLICY	514
	TITLE	Impaired Driving

514.1 PURPOSE AND SCOPE

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

514.2 POLICY

Fort Collins Police Services is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Colorado's impaired driving laws.

514.3 INVESTIGATIONS

Officers should not enforce DUI laws to the exclusion of their other duties unless specifically assigned to DUI enforcement. All officers are expected to enforce these laws, similar to all other laws, with due diligence.

514.4 FIELD TESTS

The Traffic Sergeant, in conjunction with certified SFST Instructors, should identify the primary field sobriety tests (FSTs) and any approved alternate tests for officers to use when investigating violations of DUI laws.

514.5 CHEMICAL TESTS

A person is deemed to have consented to a chemical test or tests under any of the following (CRS § 42-4-1301.1):

- (a) The officer has probable cause to believe that the person was driving a motor vehicle in violation of CRS § 42-4-1301 (DUI, DUI per se, DWAI, habitual user or UDD).
- (b) The person is dead or unconscious (CRS § 42-4-1301.1(8)).

514.5.1 CHOICE OF TESTS

Officers shall respect a viable choice of chemical test made by an arrestee as provided for by law. Generally, a person may request either a test of his/her blood or breath for determining alcohol content (CRS § 42-4-1301.1(2)(a)(I)). However, officers may choose to only offer a blood test if they suspect the driver is under the influence of drugs or a combination of alcohol and drugs.

Officers should use a blood test to determine drug content within a person's system. The arrestee is required to take and complete the selected test or tests (CRS § 42-4-1301.1(2)(b)(I)). See information regarding refusals in 514.6 below.

514.5.2 BREATH SAMPLES

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The Traffic Sergeant 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.

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 an Intoxilyzer Instructor and email the Traffic Sergeant with this information. The arresting officer should transport the arrestee to a facility that possesses a currently certified Intoxilyzer instrument. In order to perform a breath test on the instrument, the officer is required to be a certified operator per Colorado Department of Public Health and Environmental guidelines.

514.5.3 BLOOD SAMPLES

Only persons authorized by law to withdraw blood shall collect blood samples (CRS § 42-4-1301.1(6)(a)). The arresting officer should transport the arrestee to the nearest medical facility to perform the blood draw. 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, two samples will be drawn, with one sample being for alternate testing. Unless medical personnel object, two samples should be drawn and retained as evidence, so long as only one puncture is required. After the blood draw is completed, the officer should take custody of the blood vials and seal them with the seal devices provided with the blood draw kit. The vials should then be placed in the blood draw kit's packaging and sealed with the provided seal devices. The officer shall complete the blood draw form which includes the arrestee information, date and time of blood draw, officer information, phlebotomist information, as well as type of blood test. The blood draw form should be placed with the kit into the provided cardboard packaging. This process should be documented in the officer's report.

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 shall not be treated as a refusal. However, the person may be required to complete another available and viable test. After the blood draw is completed, and the arrestee has been transported to jail, the arresting officer should place the sealed blood draw kit package into the secured refrigerated storage area (Locker #69) at Fort Collins Police Services and complete a log entry with date and time kit was secured in the refrigerated evidence locker, case number and Officer name. After the blood draw has been received by the blood testing facility and a written result has been returned to the arresting officer, he/she shall complete a supplemental report documenting the results of the test.

514.5.4 NEGATIVE OR NON-DETECTED RESULT RETURN

If a negative or non-detected result is returned from a blood sample, the officer and an administrative assistant must notify the officer's immediate supervisor via email. If a negative or non-detected result is returned from a breath test, a supervisor should be consulted and a DRE, if available, to determine whether additional testing (DRE evaluation, blood draw) should be conducted. In the case of a blood test, the supervisor will review the investigation and speak

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with the investigating officer to determine the reason for negative or non-detected results. A determination should be made regarding the need for additional testing of the blood sample. A supplemental police report will be completed in all instances.

514.6 REFUSALS

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

- (a) Advise the person of the requirement to provide a sample (CRS § 42-4-1301.1).
- (b) Audio/BWC videorecord the admonishment and the response.
- (c) Document the refusal in the appropriate report.
- (d) Author a search warrant for a blood sample, for misdemeanor and felony cases involving a refusal, when practical and when exigent circumstances do not exist.

514.6.1 STATUTORY NOTIFICATIONS

Upon refusal to submit to a chemical test as required by law, the officer shall personally serve the notice of revocation upon the person and take possession of any state-issued license to operate a motor vehicle that is held by that person. The officer may issue the person a seven-day temporary permit unless the person already possesses one (CRS § 42-2-126(5)). Additionally, the driver shall not be issued a permit if their license is already under restraint or if they possess an Interlock license.

514.6.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained.
 - 1. When a search warrant is obtained, the options and suspect rights under the Expressed Consent statute does not apply. The suspect should be considered a "Refusal" for administrative processes and procedures under CRS § 42-4-1301.1.
- (b) The officer can articulate the exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol in the person's blood stream. Exigency can be established by the existence of special facts such as a lengthy delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.
- (c) Exigent circumstances exist and the officer has probable cause to believe the person committed any of the following offenses (CRS § 42-4-1301.1(3))
 - 1. Criminal Negligent Homicide
 - 2. Vehicular Assault
 - 3. Vehicular Homicide
 - 4. Aggravated Vehicular Unlawful Termination of a Pregnancy (CRS § 18-3.5-108 (5)(a))
 - 5. Assault in the Third Degree

514.6.3 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. If available, a supervisor should respond to assist. The

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following subsections provide guidance to officers and supervisors regarding forced blood samples and use of force in related situations.

Officers and supervisors should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate. In making this determination, the supervisor or officer should:
 1. Evaluate the type and severity of crime.
 2. Review any signed search warrant and determine if force is authorized to be used in the collection of any blood sample.
 3. Unless extenuating circumstances are present, or a violent crime was committed, force should not be used for blood draws in alleged offenses involving misdemeanors only.
 4. Handcuffing and use of department issued restraints is not considered a use of force. Assisting or moving a suspect's arm into a position to affect the blood draw, without the use of pain compliance, is not considered a use of force.
- (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 shall be recorded on audio and video.
- (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..
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- (f) Monitor and ensure that the type and level of force applied is reasonable under the circumstances.
 1. Force used should be authorized by a search warrant, or compliant with subsection 3 below.
 2. Force used shall be reasonable, appropriate and only necessary to overcome resistance offered and complete the blood draw or ensure the safety of persons assisting with the blood draw.
 3. When exigent circumstances exist preventing officers from obtaining a search warrant, officers may use force that is reasonable, appropriate, and necessary to obtain a sample only in cases of criminally negligent homicide, vehicular homicide, vehicular assault, or assault in the third degree (CRS § 42-4-1301.1(3))..
- (g) Ensure the use of force and methods used to accomplish the blood sample draw are documented in the related report.
- (h) Handcuffing and use of department issued restraints is not considered a use of force. Assisting or moving a suspect's arm into a position to affect the blood draw, without the use of pain compliance, is not considered a use of force.
- (i)

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

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514.7 ARREST AND INVESTIGATION

514.7.1 PRELIMINARY TESTING

- (a) An officer may request that a person provide a breath sample for a preliminary screening test when the officer (CRS § 42-4-1301(6)(i)(I)).
 - 1. Has reason to believe the person was driving a motor vehicle while under the influence or impaired by alcohol and;
 - 2. Has advised the person that he/she may refuse or agree to provide the preliminary breath sample.
- (b) If the person is under the age of 21, the officer may conduct a preliminary screening test, without the person's consent, if there is a reasonable belief the person has consumed alcohol (CRS § 42-4-1301(6)(i)(I)).
- (c) An officer may use the results of the preliminary test in determining whether probable cause exists to believe the person was DUI and whether to administer additional testing (CRS § 42-4-1301(6)(i)(II)).

514.7.2 COLLECTING SAMPLES

Arrestee samples shall be collected and processed in accordance with standards set by the Department of Public Health and Environment (5 CCR 1005-2).

514.7.3 TIME TO COLLECT SAMPLE

If an officer requests that a person submit to a blood or breath test to determine the alcohol content of the person's blood or breath, the person must cooperate with the request such that the sample can be obtained within two hours of the person's driving (CRS § 42-4-1301.1(2)(a)(III)).

If an officer requests that a person submit to a blood or to determine the drug content within the person's system, the person must cooperate with the request such that the sample can be obtained within two hours of the person's driving (CRS § 42-4-1301.1(2)(b)(II)).

514.7.4 NOTICE TO COMMERCIAL MOTOR VEHICLE DRIVER

Officers investigating a driver of a commercial motor vehicle license for DUI shall advise the person that a refusal to submit to a chemical test shall result in an out-of-service order for a period of 24 hours and a revocation of the privilege to operate a commercial motor vehicle for one year (CRS § 42-4-1301.1(4)).

514.7.5 OFFICER RESPONSIBILITIES

An officer believing that a person should be subject to license revocation as a result of driving under the influence shall forward the following to the Division of Motor Vehicles (DMV), through submission to the FCPS Records Unit, on the forms prescribed by the DMV (CRS § 42-2-126(5)):

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- (a) A copy of the completed notice of revocation form.
- (b) A copy of any completed temporary permit.
- (c) The person's driver's license.
- (d) An affidavit, signed, dated, and sworn to by the officer containing information relevant to the legal issues and facts to be considered by the DMV for revoking the person's license.

514.7.6 EXTRAORDINARY CIRCUMSTANCES

If an officer requests a person to submit to a chemical test and subsequently determines, after discussion with a supervisor, that there are extraordinary circumstances that prevent the completion of the test elected by the person within the two-hour time period, the officer shall inform the person of such circumstances and request and direct the person to take and complete the other test. The person shall then be required to take and complete, and to cooperate in the completing of, the other test (CRS § 42-4-1301.1(2)(a.5)(I)). The officer shall reflect in his/her report the reasoning for the specific testing and the extraordinary circumstances which required the change. Extraordinary circumstances include, but are not limited to, weather related delays, high call volume affecting medical personnel, power outages, malfunctioning breath test equipment, and other circumstances that preclude the timely collection of sample (CRS § 42-4-1301.1(a.5)(IV)(B)). Extraordinary circumstances do not include inconvenience, a busy workload on the part of the law enforcement officer, minor delay that does not compromise the two-hour test period, or routine circumstances that are subject to the control of the law enforcement officer.

514.7.7 UNCONSCIOUS OR DECEASED PERSONS

If an officer believes a person to be DUI and the person cannot submit to a chemical test because the person is unconscious, hospitalized, or undergoing medical treatment, the officer may:

- (a) Order the person's blood to be drawn to determine the alcohol or drug content of the person's blood through testing.
- (b) Order the test of any blood or urine that was obtained and not utilized by the health care provider if a test as outlined in (a) of this section cannot be administered because it would endanger the person's life or health.
- (c) Have access to medical tests administered by the health care provider that show test results of the alcohol or drug content in the person's system. The provisions of section 13-90-107 relating to physician privileged communications do not apply to such test results (CRS § 42-4-1301.1(8)).

In addition, the blood or urine sample of any deceased driver or pedestrian at least 15 years of age shall be tested for alcohol, drug, and carbon monoxide concentration following the procedures established by the Department of Public Health and Environment (CRS § 42-4-1301.1(8); CRS § 42-4-1304(1); CRS § 42-4-1304(6)).

514.7.8 MEDICAL MARIJUANA REGISTRY IDENTIFICATION CARD

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The driver's possession of a valid medical marijuana registry identification card **shall not**, in the absence of other contributing factors, constitute probable cause for a peace officer to require the driver to submit to an analysis of his or her blood (CRS § 42-4-1301(k)).

514.8 RECORDS RESPONSIBILITIES

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

514.9 ADMINISTRATIVE HEARINGS

The supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the Division of Motor Vehicles (DMV).

Officers called to testify at an administrative hearing should document errors in their original report, new or additional evidence, and any new witnesses that were identified during the administrative hearing. Records should forward this to the prosecuting attorney as part of the case file.

514.10 TRAINING

The Personnel and Training Sergeant should ensure that officers participating in the enforcement of DUI laws receive regular training. Training should be provided by certified SFST instructors with guidance from the Traffic and Training Sergeants. At a minimum, training should include current laws on impaired driving, investigative techniques, and rules of evidence pertaining to DUI investigations. The Personnel and Training Sergeant and Traffic Sergeant should confer with the prosecuting attorney's office and update training topics as needed.