

# Impaired Driving

## 514.1 PURPOSE AND SCOPE

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

## 514.2 POLICY

The Kitsap County Sheriff's Office is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Washington's impaired driving laws.

## 514.3 INVESTIGATIONS

Deputies should not enforce DUI laws to the exclusion of their other duties unless specifically assigned to DUI enforcement. All deputies are expected to enforce these laws with due diligence.

## 514.4 FIELD TESTS

Standardized Field Sobriety Tests recognized and instructed by the Washington State Criminal Justice Training Commission and the Washington State Patrol should be used when investigating violations of DUI laws.

## 514.5 CHEMICAL TESTS

A person implies consent under Washington law to a chemical test or tests of the person's breath and to providing the associated chemical sample under any of the following (RCW 46.20.308):

- (a) The arresting deputy has reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drug.
- (b) The arresting deputy has reasonable grounds to believe a person under the age of 21 was driving or in actual physical control of a motor vehicle while having a blood alcohol concentration of at least 0.02 (RCW 46.61.503).
- (c) The deputy has stopped a person operating a commercial motor vehicle license (CDL) and has reasonable grounds to believe that the person was driving while having alcohol in the person's system (RCW 46.25.120).

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the deputy should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

### 514.5.1 BREATH TESTS

The Washington State Patrol Breath Test Program 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.

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Deputies 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 the Washington State Patrol Bremerton Communications Center.

Generally, chemical tests to determine alcohol concentration shall be of the breath only (RCW 46.20.308).

### **514.5.2 BLOOD SAMPLES**

Only persons authorized by law to draw blood shall collect blood samples (RCW 46.61.506). The blood draw should be witnessed by the assigned deputy. No deputy, even if properly certified, should perform this task.

Deputies should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be drawn and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

A blood sample may be obtained only with the consent of the individual or as otherwise provided in this policy (RCW 46.20.308; RCW 46.25.120).

### **514.5.3 STATUTORY NOTIFICATIONS**

A deputy requesting that a person submit to a chemical test shall provide the person, prior to administering the test, with the mandatory warnings pursuant to RCW 46.20.308(2) or if driving a commercial vehicle the warnings pursuant to RCW 46.25.120(3).

### **514.6 REFUSALS**

When an arrestee refuses to provide a chemical sample, deputies shall:

- (a) Advise the arrestee of the requirement to provide a sample.
- (b) Document the refusal in the appropriate report.

#### **514.6.1 BLOOD SAMPLE WITHOUT CONSENT**

A blood sample may be obtained from a person who has been arrested and does not consent to a blood test when any of the following conditions exist (RCW 46.20.308; RCW 46.25.120):

- (a) A search warrant has been obtained.
- (b) The deputy can articulate that exigent circumstances exist.

Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency

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can be established by the existence of special facts, such as a lengthy time delay in obtaining a blood sample due to an accident investigation or medical treatment of the person.

### **514.6.2 FORCED BLOOD SAMPLE**

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the deputy should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (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 deputy) and attempt to persuade the individual to submit to such a sample without physical resistance.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances
  - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
  - 2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
  - 3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (f) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

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

## **514.7 ARREST AND INVESTIGATION**

### **514.7.1 WARRANTLESS ARREST**

A deputy having probable cause to believe that a person is DUI may make a warrantless arrest of the person whether or not the deputy observed the violation first hand (RCW 10.31.100).

Arrests supported by probable cause for DUI are mandatory if the person has been convicted of DUI in the past 10 years or if the deputy has knowledge based on the information available to him/her that the person is charged with, or is waiting arraignment for, an offense that would qualify as a prior offense as defined by RCW 46.61.5055 if it were a conviction (RCW 10.31.100).

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### **514.7.2 DEPUTY RESPONSIBILITIES**

If a person refuses to submit to a chemical test, or the results from the test render a prohibited alcohol or THC concentration in the person's breath or blood, the deputy shall (RCW 46.20.308(5)):

- (a) Serve the notice of intention to suspend, revoke, or deny the person's license or permit to drive.
- (b) Provide the person with a written notice of his/her right to a hearing before the Department of Licensing (DOL).
- (c) Advise the person that his/her license or permit is a temporary license.
- (d) Through the Records Division, immediately notify the DOL of the arrest and within 72 hours transmit to the DOL a sworn report that states:
  - 1. The deputy had reasonable grounds to believe the person was DUI.
  - 2. After having received the required statutory warnings, the person either refused to submit to a test of his/her blood or breath or submitted to a test that rendered a prohibited alcohol or THC concentration of the person's breath or blood.
- (e) Submit a sworn report to the DOL when the person has a CDL and either refused or had a test administered that disclosed a prohibited amount of alcohol or any amount of THC concentration (RCW 46.25.120(5)).

When a person is arrested for a violation of RCW 46.61.502 (DUI) or RCW 46.61.504 (Physical control of vehicle while DUI), the deputy shall make a clear notation on the report if there is a child under the age of 16 present in the vehicle and promptly notify child protective services as required in the Child Abuse Policy (RCW 46.61.507).

### **514.7.3 ADDITIONAL TESTING**

A person submitting to a chemical test pursuant to this policy may have a qualified person of his/her own choosing administer one or more tests in addition to any administered at the direction of a deputy (RCW 46.61.506). Such testing will be done at the person's expense and they will take custody of the sample. If the person is booked into the jail the sample will be placed into evidence for safe keeping and released to them after their release pursuant to Property and Evidence procedures.

### **514.8 RECORDS DIVISION RESPONSIBILITIES**

The Support Services Supervisor 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 TRAINING**

Deputies shall maintain their certification under the Washington State Breath Alcohol Test Program (BAC certification). The Training Officer should ensure that deputies participating in the enforcement of DUI laws receive regular training. Training should include, at minimum, the BAC

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refresher course as required to maintain certification. The Training Officer should confer with the prosecuting attorney's office and update training topics as needed.