



## BODILY INTRUSION SEARCH PROCEDURE GENERAL ORDER # 17.11

Adopted: 08/04/2006

Replaces: NEW ORDER

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### **POLICY**

Recovering evidence from the person or body of a suspect or other person constitutes a search and seizure. This includes bodily intrusion searches for items which may in and of themselves constitute evidence of a crime, or blood, which may be relevant to the prosecution of the crime for which the suspect has been arrested. While we recognize the need to obtain evidence through bodily intrusion searches, it shall be the policy of this agency to obtain evidence in the least intrusive means whenever possible. Deputies shall make every effort to obtain consent or acquiescence to the search prior to initiating any type of non-consensual search for evidence.

While investigating DUI events, employees of the *Stanford University Department of Public Safety* shall comply with California State Vehicle Code Sections 23612, 13353, (implied consent law). Employees are cautioned about resorting to the use of force in misdemeanor DUI cases, and advised that the use of force to obtain a blood sample where the law already prescribes a penalty for refusing to consent or acquiesce is inappropriate absent exigent circumstances.

- A. **Warrantless Blood Seizure** - Absent consent by the suspect, any search and seizure of blood from a suspect's body must be authorized by a search warrant or court order unless all of the following circumstances exist:
1. The person is in custody pursuant to a valid arrest for a crime in which the existence of alcohol or drugs in the bloodstream would be relevant.
  2. There is probable cause to believe that the suspect is under the influence of drugs or alcohol.
  3. It reasonably appears that any delay in completing the seizure would result in the loss of the evidence.

4. The search is effected at or near the time the offense was committed.
5. The blood is drawn by trained professional medical personnel in accordance with accepted medical practices.

**B. Warrantless Bodily Intrusion Searches** - Absent consent by the suspect, any search for items of evidence which may be secreted inside a suspect's body must be authorized by a valid search warrant or court order unless the following circumstances exist:

1. The person is in custody pursuant to a valid arrest.
2. There is probable cause to believe the search would result in the discovery of evidence of a crime.
3. It reasonably appears that any delay in completing the search would result in the loss of the evidence.
4. The search is effected close in time to the offense.
5. The evidence is removed from the suspect's body by trained professional medical personnel in accordance with acceptable medical practices.

**C. Blood Typing/DNA Testing** - Due to the fact that a delay in completing the search will not result in a loss of evidence, the seizure of a blood sample for "typing" or "DNA" testing requires either the consent of the person tested or a search warrant.

1. If a suspect consents to the search, their consent shall be documented in the occurrence report or on "Consent to Search Waiver" form.
2. If the suspect refuses to give consent, a search warrant may be obtained through the District Attorney's Office during business hours or from the on-call District Attorney after business hours.
3. Nighttime service of search warrants (between 10 p.m. and 7 a.m.) for blood typing or DNA testing shall not be authorized.

## **PROCEDURE**

- A. A felony or misdemeanor, without any additional factors, is not sufficient reason to seize blood or complete any other type of bodily intrusion search.
- B. Deputies must be able to articulate the probable cause for the search, and shall document those reasons in the occurrence report.

- C.** Deputies will make every effort to obtain the suspect's consent or acquiescence prior to completing any type of bodily intrusion search. However, consent is not required where submission to the seizure of a specimen is implied by law.
- D.** If the arresting deputy determines that the policy standards for a warrantless seizure are met, the deputy may obtain the evidence without consent in accordance with subsections E, F and G of this General Order.
- E.** Searches for the retrieval of evidence pursuant to this order shall be completed at either the Alcohol Investigation Bureau (A.I.B.), *Stanford University Department of Public Safety or Sheriff's Office Interview Rooms*, or at a licensed Medical Facility. Other locations may be approved by the on-duty supervisor or medical personnel if they are sanitary and the conditions will not expose the suspect, the deputies, or the medical personnel to a risk of contamination, infection or injury.
- F.** If the suspect refuses to voluntarily submit to a valid bodily intrusion search, and there is a basis under this policy for completing the search and seizure without consent, deputies shall employ the following procedure:
- 1.** The deputy will explain to the suspect that his or her refusal to voluntarily submit to the search will be documented in the occurrence report, along with the fact that it was necessary to physically restrain the suspect in order to complete the seizure.
  - 2.** The Deputy will contact his or her immediate supervisor and advise him or her of the refusal, and request permission to complete the seizure.
  - 3.** If the suspect continues to refuse to consent or acquiesce to the seizure after the deputy has obtained authorization from his or her immediate supervisor, the deputy will request assistance from a second officer and will not attempt to complete the seizure until the second officer/deputy arrives and is able to assist.
  - 4.** The deputy will use the minimum amount of force necessary to complete the seizure, keeping in mind that by law we may only use that degree of force, which is necessary to overcome resistance to the process.
  - 5.** If the suspect becomes combative during any portion of the process, and the deputy, the medical technician, or the supervisor believes that the seizure cannot be completed without exposing the suspect or the others present to undue risk of injury, the deputy shall stop the process and note the circumstances in the occurrence report.
  - 6.** If force is necessary to complete the blood draw process, the deputy shall ensure that all force used, by both the deputy and the suspect, is documented in the occurrence report. The report shall include the facts

necessitating the forced blood extraction, along with the resistive conduct of the suspect and the type of force used to overcome the resistance.

- G.** If a suspect is unable to consent due to being unconscious, or is unable for any other reason to give consent, the deputy may obtain the evidence if probable cause exists for completing a seizure without a warrant or court order subject to approval of the attending medical personnel.
- H.** Exemptions: Hemophiliacs and people using anticoagulants under the direction of a physician are exempt from bodily intrusion searches.

A handwritten signature in black ink that reads "Laura Wilson". The signature is written in a cursive, flowing style.

**LAURA WILSON  
DIRECTOR**