

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 6, 2008

GENERAL ORDER H-5

SUBJECT: BLOOD TEST PROCEDURES FOR DEFENDANTS AND ARRESTEES
IN HEALTH RISK SITUATIONS

PURPOSE

- 1 - The purpose of this General Order is to outline the protocol for blood testing of a criminal defendant, arrestee, or certain sex crime suspects when that person's bodily fluid comes in contact with an employee or a crime victim. In these situations, blood samples may be: (a) voluntarily acquired from a criminal defendant or arrestee; (b) compelled from a criminal defendant by Court Order; or, (c) compelled from a criminal defendant or certain sex crime suspects by search warrant, under the protocol outlined here. The protocol outlined here should not be used as part of a criminal investigation, but rather, is limited to situations where the blood test is sought solely for the protection of the employee or victim's health.

POLICY

- 2 - It is the Department's policy to obtain blood tests from criminal defendants, arrestees, and certain sex crime suspects, in accordance with the law, when the person's bodily fluid comes in contact with an employee or a crime victim in order to protect the health and safety of the employee and victim.

VOLUNTARY TESTING PROCEDURES

- 3 - In those cases where an employee or crime victim has come into contact with a criminal defendant or arrestee's bodily fluid, and the person will voluntarily submit to having his/her blood drawn, and/or voluntarily submits to a "Rapid HIV Test" (i.e., oral saliva swab), he/she may be transported to Alta Bates Hospital, Alameda County (Highland) Hospital, Alameda County's Public Health Department Laboratory (499 5th Street, 4th Floor, Oakland, CA, ph#510-268-2700), or other authorized facility for these procedures.
 - (a) If available, an on-call phlebotomist (e.g., nurse, certified medical technician, etc.) may be utilized to obtain blood samples.
 - (b) If the person is held at another agency's detention facility, the blood sampling procedure may be accomplished at that location's medical facility upon approval of the facility's on-duty commanding officer or senior supervisor.
 - (c) The "Rapid HIV Test" is a preliminary test for HIV only. Officers will request the person provide blood samples for confirmation analysis of a positive result.
- 4 - Written consent to provide blood and saliva samples, and authorization for release of test results, shall be obtained from the person prior to initiating any medical procedure referenced in this voluntary testing procedure.

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- 5 - Bodily fluid samples shall be obtained from a person in a medically approved manner by trained and authorized medical personnel.
 - (a) Officers will advise the involved doctor, nurse or medical technician of the purpose for the blood draw so the proper sample vial (without preservative) will be used.
- 6 - If the person consents to provide a blood and/or saliva sample, but refuses to release test results to the involved employee, medical personnel will be asked to obtain the samples and accomplish their analysis, but withhold the release of the test results until a Court Order is obtained.
- 7 - Officers requesting additional blood samples from the person in furtherance of a criminal investigation (e.g., evidence of Blood-Alcohol Content relative to a driving-under-the-influence investigation) shall adhere to criminal investigation procedures established in other General Orders and law.

COMPELLED SAMPLE AND TESTING PROCEDURES

- 8 - Legal Authority: The following statutes authorize compelled sampling and testing of persons for specified blood-borne pathogens:
 - (a) Health and Safety Code §§121060 and 121065 provide for a court-ordered blood test for acquired immune deficiency syndrome (AIDS), AIDS-related conditions, or other communicable diseases in a defendant, charged in a criminal complaint and alleged to have interfered with public safety personnel, when there is probable cause to believe bodily fluids have been transmitted to a peace officer, fire fighter or other emergency medical personnel.
 - (1) The charges against the offender shall include applicable resisting/obstruction offenses (e.g., Penal Code §148).
 - (b) PC §1524.1 authorizes the issuance of a search warrant to obtain and test for HIV in blood and saliva samples of a criminally charged person, who after preliminary hearing is held to answer (pursuant to PC §872), and certain sex crime suspects who have been previously charged with certain sex crimes, upon the request of the crime victim who suffered bodily fluid exposure.
- 9 - Availability as Evidence: Information gained through the testing of blood and/or saliva samples obtained pursuant to the referenced statutes cannot be used as evidence in a criminal proceeding.
- 10 - Medical Information Confidentiality: The blood test results obtained under the Court Order procedure (HS §121060) are confidential, except as to the defendant, the employee, the employee's employing agency, officer, or entity, and the officer in charge of and chief medical officer at the facility holding the

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defendant. Violation of the medical confidentiality provisions of the referenced statutes may expose the responsible person(s) to civil and criminal penalty.

- (a) Blood test results obtained under the search warrant procedure (PC §1524.1) are subject to all applicable medical confidentiality provisions, but the victim may disclose the results as he or she deems necessary to protect his or her health or safety, and that of his or her family and sexual partner.
- 11 - The involved employee and supervisor shall complete injury and blood-borne pathogen exposure reports required in General Order P-24.
- 12 - Prior to applying for a Court Order, a reasonable effort shall be made to request the voluntary participation of the responsible person.

HS §§121060, 121065 Court Order Procedure
(Officer Exposure, Application via City Attorney)

- 13 - Declaration By Involved Employee: To facilitate the City Attorney's application for a Court Order issued pursuant to HS §§121060 or 121065, the involved employee shall complete and sign a Declaration In Support Of Motion To Compel Defendant's Blood Test form.
- (a) The employee should include any special knowledge of the person's medical/physical condition relevant to the risk of exposure and in support of the application for a compelled blood test.
- 14 - Department Command Notification: The supervisor of the involved employee shall route a copy of the Declaration and all relevant reports to the Patrol Division Captain, who will assign a Patrol Division Lieutenant to facilitate the court order petition process in concert with the City Attorney's Office.
- 15 - City Attorney Notification: A Patrol Division Lieutenant shall promptly notify the City Attorney's Office whenever a court order will be required.
- (a) During regular weekday business hours, a Patrol Division Lieutenant shall contact the City Attorney's Office via telephone, and personally deliver or fax (510-981-6960) the Declaration and all relevant reports to the City Attorney.
 - (b) During weekend or evening hours, a Patrol Division Lieutenant, or in his/her absence the senior Patrol Division Sergeant, shall fax a copy of the Declaration to the City Attorney's office to ensure rapid notice and assist the assigned Patrol Division Lieutenant in his/her responsibilities set forth in paragraphs 14 and 15(a) of this Order.
 - (c) When available, the following information should be forwarded to the City Attorney's office:

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- (1) Relevant Alameda County Superior Court (docket) case number(s).
- (2) Name, address and telephone number of the person's defense attorney or public defender.
- (3) Place of custody of person.
- (4) Expected next place of custody of person.
- (5) Expected release date of person.
- (6) Time and place of next court date for person.

Service of Court Order Obtained by City Attorney's Office

- 16 - After obtaining the Court Order from the City Attorney's office, the assigned Patrol Division Lieutenant shall ensure it is delivered to the location where the blood and/or saliva sampling will be administered (i.e., jail, public health laboratory, local hospital, etc.)
 - (a) If requested by the medical personnel conducting the procedure, the officer(s) assigned to oversee the blood test may sign a waiver form as witness to the subject's signature. If the compliant subject elects not to sign a waiver, the test should proceed as ordered by the Court.
- 17 - Officers may accomplish the service of a Court Order and acquisition of compelled blood and/or saliva samples from a compliant person at a medical or laboratory facility available to the place he/she is in-custody.
- 18 - When the in-custody person does not comply with a Court Order to submit to having his/her blood drawn, he/she will be transported to a facility where the subject's restraint may be accomplished and samples safely obtained.
- 19 - If the person is not in custody, the assigned Patrol Division Lieutenant shall make reasonable efforts to coordinate an appointment with the person at a location where the compelled blood and/or saliva samples may be obtained.
 - (a) If the person does not cooperate, the Patrol Division Lieutenant shall notify the City Attorney to request enforcement of the Court Order through a bench warrant or contempt proceeding.

PC §1524.1 Search Warrant Procedure (Crime Victim Exposure, Application via District Attorney)

- 20 - An employee or citizen who is victim of a crime and, during the commission of which, is exposed to the bodily fluids of the offender may request the prosecuting attorney of the District Attorney's Office petition the Court for a search warrant authorizing the sampling and testing of the defendant's blood and saliva for HIV.

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- (a) Should a police officer be a crime victim and a request for court-ordered blood sampling and testing is submitted to the District Attorney's Office, notification to and involvement by the City Attorney's Office as described in paragraphs 13 - 15 of this Order is not required.
- 21 - An investigating officer who receives a request from a victim of a crime, including, but not limited to, specified sexual offenses (e.g., PC §§261,261.5, 262, 266b, 266c, 286, 288, or 288a), for HIV testing of a charged person shall document the request in the investigation report (e.g., incorporated in Disposition section.)
 - (a) In the event the request for testing is not documented in the investigation report, the investigating officer or detective handling the follow-up investigation shall ensure the request is communicated to the District Attorney's Office.
- 22 - Officers facilitating a voluntary blood sample process subsequent to request by a crime victim shall follow the procedures set forth in paragraphs 3 - 6 of this Order.
- 23 - In the event the person refuses to participate, entirely or in part, in a voluntary blood sample procedure, the officer responsible for criminal investigative follow-up shall forward to the prosecuting District Attorney the victim's request for a Court Order to compel testing and/or release of analysis results pursuant to PC §1524.1.
 - (a) The request for voluntary participation in the testing process and the subject's response shall be documented in the criminal investigation report.

Service of Court Order or Search Warrant Obtained by District Attorney

- 24 - Detective Bureau personnel responsible for the investigative follow-up of a criminal offense wherein a bodily fluid and possible blood-borne pathogen exposure occurred shall, as requested or necessary, assist the District Attorney's Office in their effort to serve a search warrant issued to obtain blood samples from a person located in our jail or jurisdiction.

DISPOSITION OF BLOOD SAMPLES AND TEST RESULTS

- 25 - Internal protocols of the medical facility or technician performing an extraction procedure may require they retain possession of blood samples for testing and to ensure confidentiality of medical information. If this occurs, employees shall report the retention of the samples to the assigned Patrol Division Lieutenant.
- 26 - In the event an employee receives blood sample vials, he/she shall deliver them to the Alameda County Public Health Department Laboratory (499 5th Street, 4th Floor, Oakland, CA, ph#510-268-2700) during normal business hours.

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- 27 - If blood samples are received during non-business hours, the receiving employee shall store them at the Public Safety Building in accordance with General Order P-65 and, via the chain of command, notify the assigned Patrol Division Lieutenant of their disposition.
- 28 - The assigned Patrol Division Lieutenant shall ensure blood sample vials stored at the Public Safety Building pursuant to this Order are delivered to the Alameda County Public Health Department Laboratory as soon as practical on the next business day.
- 29 - The employee exposed to the bodily fluids of another person shall contact the attorney (Deputy City Attorney or Deputy District Attorney) who obtained the court order to coordinate notification of the results of a subject's blood sample analysis.
- (a) The assigned Patrol Division Lieutenant shall make reasonable efforts to facilitate the communication and ensure notification to the involved employee of analysis results is accomplished at the soonest practical opportunity.
 - (b) Employees shall not contact the hospital, laboratory facility or medical technician involved in obtaining and/or testing blood samples for the results of analysis.
 - (c) This Order does not prohibit the assigned Patrol Division Lieutenant, or his/her designee, or the officer responsible for criminal investigative follow-up in instances of crime victim requests for blood testing pursuant to PC §1524.1, from making a contact intended to determine the status of the analysis process and/or notification to an effected employee.

EMPLOYEE EXPOSURE, RECORDS FOR INJURY REPORT PACKAGE

- 30 - In the instance of employee exposure, the Patrol Division Captain shall ensure copies of the Court Order, Search Warrant, voluntary consent form(s), and relevant incident documentation are routed to the Administrative Division Captain for inclusion with the injury report package.

References: Health and Safety Code §§121055, 121060 and 121065
Penal Code §§69, 148 and 1524.1
General Orders P-24, P-65 and S-6
City of Berkeley Protocol: "Bloodborne Pathogen Program, Exposure Control Plan (November 2007)"