

**MARIN COUNTY SHERIFF'S OFFICE
GENERAL ORDER**

**CHAPTER 5 - OPERATIONS
GO 05-31
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DATE: 4-26-18

INVOLUNTARY BLOOD DRAWS

POLICY

It shall be the policy of this Department to comply with all laws regulating the involuntary withdrawal of blood from a subject who is in the custody of the Sheriff's Office and/or located within a Sheriff's facility at the time the blood sample is drawn.

PROCEDURE

Several Federal Appellate Court cases control how blood may be involuntarily withdrawn if no court order has first been obtained. These cases largely inform the manner in which an involuntary blood draw performed without a court order must be conducted. Those elements include:

1. The involuntary drawing of blood must be incident to an arrest.
2. There must be probable cause to believe that the subject is under the influence of whatever drug or alcoholic beverage the test is supposed to reveal.
3. That being under the influence of the drug or alcoholic beverage is relevant to the offense to be charged.
4. The withdrawal of blood must be done in a "medically approved manner." This means it must be done by a licensed health care professional.
5. The force used to overcome the resistance to the blood being drawn must not be so "offensive to human dignity that it shocks the conscience of the Court."
6. Blood may not be involuntarily drawn if a urine sample would provide the necessary information and the subject agrees to provide the urine sample.

Sheriff's Office employees will conduct an involuntary blood draw that is performed without benefit of a court order only when the following applies:

1. The subject from whom the blood will be taken has been arrested for a felony violation
2. The involuntary blood draw has been approved by the arresting deputy's supervisor or higher authority
3. The involuntary blood draw has been approved by a deputy district attorney
4. The involuntary blood draw is done in conformance to the federally established rules previously described in this policy

In all other cases, a court order that authorizes an involuntary blood draw shall be obtained before the blood is drawn.

Blood draws done subsequent to the issuance of a court order shall be performed only in the presence of a Sheriff's Sergeant or higher authority to confirm the manner in which the sample is taken conforms to all the federally established rules previously described in this policy.

Whenever practical, involuntary blood draws involving Sheriff's Office arrestees performed prior to jail booking, whether with or without a court order, should be conducted at the Marin County Jail. In that case, a Jail Sergeant shall directly supervise the procedure to:

1. Insure all involved deputies are aware of and adhere to the federally established rules previously described in this policy.
2. Advise the subject of the blood draw of their duty to provide a sample and to make an attempt to persuade that individual to submit that sample without resistance.
3. To ensure, whenever practical, that a video and audio recording is made of all the interactions between the subject of the blood draw and the involved Sheriff's Office personnel.
4. Evaluate whether using force to obtain a blood sample is appropriate based on the totality of circumstances encountered at the time the blood draw takes place.
 - a. In the event a court order has been secured authorizing the taking of blood from a misdemeanor suspect, if that arrestee becomes violently resistive, no additional force will be used and the subject's refusal to cooperate should be noted in a report.
 - b. In the case of a felony charge, force that is objectively reasonable given the totality of circumstances encountered at the time of the blood draw may be used to overcome the resistance being offered, but still shall not be so offensive to human dignity as to shock the conscience of the Court.
5. Ensure any force used to obtain a blood sample ceases immediately if the subject of the blood draw agrees to, and does submit to, his/her blood being drawn in a timely manner.
6. Make every effort to ensure that unless otherwise permitted or directed by a court order, any application of force used to obtain a blood sample is limited to handcuffing or similar restraint methods.

A Jail Sergeant or higher authority may give an allied law enforcement agency conditional permission to conduct an involuntary blood draw at the Marin County Jail on an arrestee who has not yet been booked. That blood draw may be conducted with or without a court order, but a Jail Sergeant or higher authority shall directly supervise that procedure to:

1. Ensure all the allied agency's officers are aware of, and adhere to, each of the federally established rules previously described in this policy, immediately terminating permission to continue the blood draw in the Marin County Jail if any of those rules are violated.
2. Ensure no Sheriff's Office personnel assist in the involuntary blood draw.

Should an allied law enforcement agency present a court order directing the Sheriff's Office to allow that agency to remove an inmate from the Jail so they may be taken to an outside facility for an involuntary blood draw, the Sheriff's Office will comply with that order, but will not supervise, assist, or be responsible for any action taken by that agency during the taking of that blood sample.

In any case where Sheriff's Office personnel are involved with any action resulting in the involuntarily drawing of blood, those actions will be documented and a copy of that report will be submitted to the Detention Services Bureau Commander as soon as practical.

RELATED STANDARDS

General Order 03-03 / HIV Testing

AFFECTED DIVISIONS

ALL

DATE OF REVISIONS:

7-23-92

By order of:

ROBERT T. DOYLE
SHERIFF-CORONER