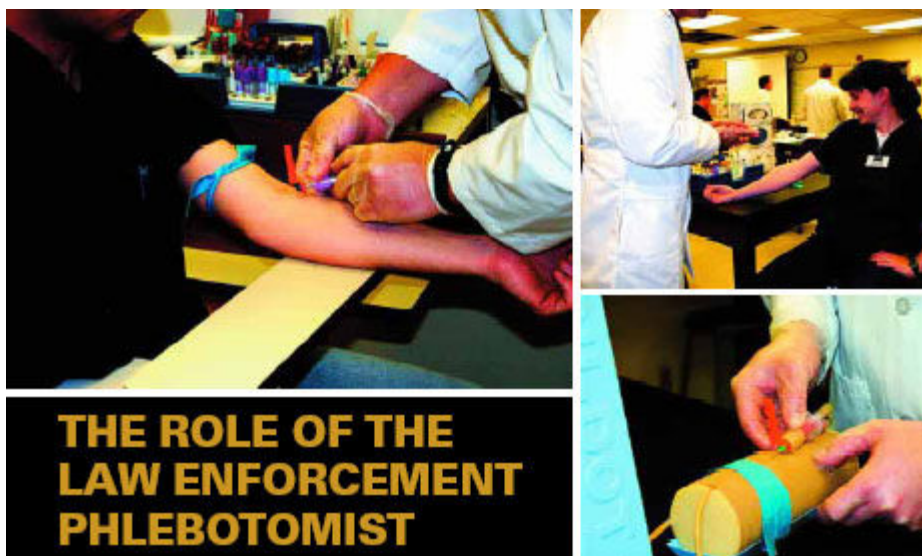


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The Role of the Law Enforcement Phlebotomist

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Drivers impaired by drugs or alcohol continue to plague highways and roadways in spite of the vigorous efforts of law enforcement agencies that are dedicated to traffic enforcement and of legislators who have produced stricter impaired driving laws. In 2003, according to the National Highway Traffic Safety Administration, 40 percent of vehicle-related crash fatalities in the United States were caused by the impaired driver, resulting in the deaths of 17,013 people.¹

Law enforcement officers trained in standardized field sobriety testing (SFST) and the International Association of Chiefs of Police Drug Recognition Expert program developed by NHTSA are at the forefront of impaired driving enforcement. State legislatures, such as Arizona's, have reduced the presumptive blood alcohol level to 0.08 and enacted tougher laws for extreme driving under the influence (DWI) when one's blood alcohol level is 0.15 or greater. Furthermore, Arizona's DWI law makes it a felony to drive while impaired if a child is in the vehicle, if the driver is suspended, revoked, or refused, or if the violation is a third DWI offense within 60 months.²

A solid impaired driving case is built upon probable cause for arrest by the officer's observations of impaired driving cues and the driver's signs and symptoms of impairment during the SFST. Blood alcohol evidence is extremely important to successful prosecution. If blood alcohol evidence is not obtained in a timely fashion, it is lost forever. Officer skills and effective state laws are important to reducing the rate of impaired driving, but the question still has arisen concerning how to obtain blood evidence from a DWI suspect when he or she

refuses to consent to a blood, breath, or urine test. For example, in Arizona, if a DWI suspect refuses to consent to a chemical test upon arrest, the suspect's driver's license is suspended by the state motor vehicle division for 12 months, or for 24 months if there is a prior implied consent refusal within the last 60 months on the record.³

Arizona Department of Public Safety Phlebotomy Program

In 1995 the Arizona Department of Public Safety Highway Patrol (DPS) had two sergeants trained as phlebotomists to draw blood from DWI suspects. Both sergeants were certified paramedics prior to becoming certified phlebotomists. From the success of this initial effort a statewide program developed and interest from other states and police departments indicates that the concept is at the cutting-edge and could soon be used by many agencies.

Prior to implementing the DPS phlebotomy program, the department used hospital phlebotomists to draw blood if consent was given, when a breath screening device such as an Intoxilyzer was not immediately available, or after the officer obtained a search warrant to secure blood evidence from a DWI suspect. But some civilian phlebotomists were hesitant to draw blood on uncooperative DWI suspects or after a search warrant had been secured, due to unfounded legal concerns.

The Arizona DWI law allows physicians, nurses, or "other qualified persons" to draw blood during DWI investigations.⁴ It is important that the blood is drawn in a professional and expedient manner in every DWI investigation.

At the request of the Arizona DPS, the director of phlebotomy at Phoenix College pioneered the development of the law enforcement phlebotomy program. Officers obtain their certification after attending a comprehensive 40-hour course. Pima College in Tucson and Coconino College in Flagstaff have modeled their curriculum on that of Phoenix College and have also begun training officers. During the training, officers conduct a minimum of 100 venipunctures in laboratory settings under the supervision of a certified phlebotomist. These programs have been so successful that many other Arizona law enforcement agencies have trained officers as phlebotomists for investigative purposes. Today, the Arizona DPS has 103 certified officer-phlebotomists strategically located throughout the state, and other Arizona law enforcement departments have more than 400 law enforcement phlebotomists operating in the state.

Phlebotomy Use in DWI Investigations

Arizona DPS Highway Patrol Officers now have the opportunity to obtain blood evidence in almost every DWI investigation. After an officer makes an arrest for DWI, the officer then reads the suspect the implied consent affidavit (also known as the admin per se affidavit) and requests a blood or breath test. If the suspect consents, the test is given. This test may include duplicate breath testing on the Intoxilyzer 5000 or 8000, or a consensual blood draw by a phlebotomist. When a suspect refuses to provide the requested test, the DPS officer applies for a search warrant from a judicial officer for obtaining samples of the suspect's blood. The warrant may be requested in person, via phone, or via facsimile; this process takes about 30 minutes.

The officer serving the warrant explains to the suspect that an Arizona DPS phlebotomist will be obtaining the blood evidence; at this point most suspects give their consent and do not resist. Those who physically resist are restrained while their blood is drawn. If the situation is too dangerous for the suspect or the officers, the blood is not obtained and the suspect is charged with failure to comply with a court order. When it is necessary to obtain a warrant to seize the blood evidence, the suspect is still considered to have refused the test and a one-year driver's license suspension is sought from the motor vehicle division.

In addition to the 40-hour law enforcement phlebotomy program and 100 venipunctures, Arizona DPS phlebotomists must adhere to the department's phlebotomy manual, which requires, for example, that phlebotomists wear the protective clothing and gloves as required by the U.S. Occupational Safety and Health Administration.

Case Law

Schmerber v. California, 384 U.S. 757 (1966), is the leading case on compulsory blood tests. In this case, the U.S. Supreme Court ruled that police acted reasonably by ordering a warrantless blood test based upon probable cause from a DWI suspect who submitted to the test but did not consent to it. In *State v. Woomer*, 196 N. J. Super. 583 (N.J. App. Division 1984), the appellate court affirmed that police may use force to obtain a blood sample and approved an officer's mild threat of force to obtain a drunk driving suspect's submission to a warrantless blood test.

The courts do recognize that use of force to obtain a blood sample becomes unreasonable at some level. Therefore, officers must use the minimum amount of force necessary when conducting blood draws.⁵ DPS phlebotomists will not draw blood on individuals if the use of force is so great that the officers or suspects may be injured during the procedure. The use of a violent prisoner restraint chair has been very successful for completing blood draws on aggressive and resistant individuals. In those cases where the risk of injury is too great, the officer charges the suspect with failure to comply with a court order.

Benefits of Drawing Blood

The use of a search warrant to obtain blood evidence from DWI suspects by phlebotomists eliminates the refusal from almost all DWI investigations. Consequently, a blood alcohol level is obtained, is available for presentation in court, and results in more drunk drivers being convicted of extreme DWI.

Arizona DPS has found that more defendants plead guilty to DWI when a blood alcohol level is obtained. This reduces court and overtime costs for officers and allows the department to keep officers on proactive patrol. Since the implementation of this program, DPS has found that DWI suspects are more likely to consent to the required chemical test if they know that blood will still be obtained via search warrant and they still receive a one-year license suspension for refusing to consent. Implied consent refusals for Arizona DPS drunk-driving arrests have decreased from 434 refusals in 2003 to 382 in 2004, a 12 percent drop.

Arizona DPS phlebotomists tend to be the best impaired driving enforcement officers; therefore, they make excellent witnesses in impaired driving cases. Additionally, the chain of custody is simplified when an officer draws blood and then secures it rather than obtaining it from a civilian technician prior to booking.

The DWI Squad's mobile Intoxilyzer vehicle is equipped with a phlebotomy chair, telephone, and facsimile machine. The driver and officers assigned to the squad all are certified phlebotomists, so they can quickly obtain at the arrest scene search warrants. This process has significantly reduced booking times, allowing enforcement officers to return to patrol more quickly. Additionally, the DPS assigns officer-phlebotomists to sobriety checkpoints. With the exception of Maricopa and Pima Counties, Arizona is still a rural state. Rural highway patrol officers often must travel an hour or longer to an Intoxilyzer unit, so officer-phlebotomists can now secure blood evidence more quickly and occasionally even at the scene of serious crashes.

Arizona DPS phlebotomists are used for cases other than DWI. They are called to assist local and county law enforcement with sexual assault, assault, and homicide cases when DNA evidence is needed. These blood draws simplify the chain of custody and build relationships between law enforcement agencies. In addition, blood draws can help investigators rule out impairment during serious crash investigations when alcohol or drugs are not suspected.

The Arizona Experience

The law enforcement phlebotomy program has been highly successful for Arizona DPS and Arizona law enforcement. Phlebotomists are highly trained and their skills have been widely accepted in the courts. This program has resulted in higher conviction rates, reduced administrative time, and fewer refusals by impaired drivers. Arizona is committed to reducing impaired driving collision rates, and the phlebotomy program has been an excellent avenue to succeed.

¹ National Highway Traffic Safety Administration (NHTSA), Fatality Analysis Reporting System (FARS) 2003 Report: Trends: Alcohol.

² Arizona Revised Statute 28-1383: Aggravated driving or actual physical control while under the influence; violation; classification; definition.

³ Arizona Motor Vehicle Division, form 40-5807 R/ 10/01: Admin per se/implied consent affidavit.

⁴ Arizona Revised Statute 28-1388: Blood and breath tests; violation; classification; admissible evidence.

⁵ The Law Officer's Bulletin (September 13, 2001): 21-22.

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