



# Sheriff's Office Training Bulletin

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## IMPORTANT NEW LEGISLATION EFFECTIVE IN THE YEAR 2020.

Here are some of the highlights of the new legislation in California taking effect on January 1, 2020. These highlights are a few of the new laws taking effect:

- **Penal Code section 150** repealed the posse comitatus provision, which had required every able-bodied person age 18 or older to aid a peace officer or judge upon request, in making an arrest, re-taking an escaped person into custody, or preventing a breach of the peace.
- **Penal Code section 196** was amended to provide that a homicide committed by a peace officer is justifiable if it is either (1) in obedience to a judgment of a competent court; or (2) "when the homicide results from a peace officer's use of force that is in compliance with" P.C. 835a.
- **Penal Code section 266** amended the felony crime of procurement for sexual purposes by making it applicable to male victims and by deleting the requirement that the victim be unmarried and of previous chaste character.

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- p. 3** A warrantless blood draw from an unconscious driver in a driving under the influence case did not violate the Fourth Amendment.

## California State Capitol



### **FROM THE TRAINING MANAGER:**

I know that travel expense reports are not everyone's favorite topic. However, they are necessary to make sure that people are properly reimbursed for training expenses.

In the past, we could process travel expense reports without a physical signature. Recently, the County Controller's Office has informed us that they will no longer process requests without a signature.

Your signature does not have to be an original. You can sign, scan, and then email the form to the Training Unit for processing. This is the preferred method because it will leave an electronic copy in your 'sent' folder.

You can still PONY mail forms to the Training Unit if you prefer. If you opt to use PONY mail, we recommend keeping a copy of the packet for your records.

- **Penal Code section 286.5** amended the misdemeanor crime of sexually assaulting an animal for the purpose of arousing or gratifying the sexual desire of the person, by defining "sexual assault," by making the crime applicable to animals that are alive or dead, and by expanding the purpose of the crime beyond sexual arousal or gratification to include abuse or financial gain.
- **Penal Code section 487k** was added to create a separate grand theft crime for agricultural equipment: stealing, taking, or carrying away a tractor, all-terrain vehicle, or other agricultural equipment, or any portion thereof, used in the acquisition or production of food for public consumption, which is of a value exceeding \$950.
- **Penal Code section 835a** was amended, including: (1) to add the word "objectively" to this existing sentence about the use of force to effect an arrest: "Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance;" (2) to state that a peace officer is justified in using deadly force upon another person "only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (A) To defend against an imminent threat of death or serious

bodily injury to the officer or to another person. (B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts; (3) to provide that a "peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person"; (4) to add that "retreat" does not mean tactical repositioning or other de-escalation tactics; (5) to add definitions of "deadly force," "imminent," and "totality of the circumstances."

- **Penal Code section 859.7** was added to create a statewide standard for eyewitness identification practices by requiring all law enforcement agencies and prosecutorial entities to adopt regulations for conducting photo lineups and live lineups with eyewitnesses and by specifying the minimum standards for those regulations.
- **Penal Code section 18108 et seq.**, the provisions regarding Gun Violence Restraining Orders, were amended: (1) to extend the period of the permanent order from one year to a range of one to five years; (2) to expand the list of persons who may seek an order beyond an immediate family member or a law enforcement officer to add an employer of the subject of the petition, a co-worker of the subject of the petition, if he or she had substantial and regular interaction with the subject for at least one year and has obtained approval of the employer, or an employee or teacher of a secondary or post-secondary school that the subject has attended in the last six months, if the

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employee or teacher has obtained the approval of a school administrator or a school administration staff member with a supervisory role.

- **Penal Code section 25100** was amended to provide that the crime of unlawful storage of a firearm does not require the firearm to be loaded.
- **Penal Code section 25200** was amended to provide that the crime of unlawful storage of a firearm applies to firearms of any size.
- **Penal Code section 29805(c)** was added to create a felony/misdemeanor crime of being convicted of a specified firearm storage crime (P.C. 25100, 25135, or 25200), and then owning, purchasing, receiving, or possessing a firearm within 10 years of that conviction.

*Please consult the full text of these new code sections for their complete content. The code sections are on the internet at <https://leginfo.legislature.ca.gov/faces/codes.xhtml>.*

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## A WARRANTLESS BLOOD DRAW FROM AN UNCONSCIOUS DRIVER IN A DRIVING UNDER THE INFLUENCE CASE DID NOT VIOLATE THE FOURTH AMENDMENT.

A police officer in Wisconsin heard a report that a man who appeared to be very drunk got into a van and drove off. The officer found the man wandering and stumbling around near a lake. When the officer spoke to him, the man slurred his speech. The officer, with the help of another officer, attempted to help the man to stand, but he could hardly stand without the support of the officers.

The officer did not believe that the man was safe to perform field sobriety tests. He provided the man with a preliminary breath test, which registered a blood alcohol level of .24%. The officer arrested the man for driving under the influence and drove him to the department's police station to obtain a more reliable breath test.

On the drive, the man's condition worsened. By the time the officer reached the station, the man was too lethargic to submit to a breath test. The officer drove the man to a local hospital to obtain a blood sample. The man lost consciousness on the ride to the hospital and had to be taken inside in a wheelchair.

Once inside the hospital, the officer read an admonishment giving the unconscious suspect a chance to refuse blood alcohol testing. Under Wisconsin's implied consent law, similar to the law in all states, officers seeking to conduct a blood draw must read a statement advising drivers of their options and the implication of their choices. The Wisconsin admonishment states that a person who is unconscious or not capable of withdrawing consent is presumed not to have withdrawn it.

The officer then asked hospital staff to draw a blood sample. Hospital staff obtained a blood sample. During the blood draw, the man remained unconscious. A later analysis of the blood showed that the blood alcohol level (BAC) was .22%.

In the case of Mitchell v. Wisconsin, the United States Supreme Court ruled that the blood draw on the unconscious suspect did not violate his Fourth Amendment rights against unreasonable searches and seizures.

In the Court's plurality decision, which was not signed by a majority of the justices because one justice wrote a separate concurring decision, the Court stated, "The Fourth Amendment guards the right of the people to be secure in their persons against unreasonable searches and provides that no Warrants shall issue but upon probable cause. A blood draw is a search of the person, so we must determine if its administration here without a warrant was reasonable. Though we have held that a warrant is normally required, we made it clear that there are exceptions to the warrant requirement. And under the exception for exigent circumstances, a warrantless search is allowed when there is compelling need for official action and no time to secure a warrant."

The Court then stated, "The importance

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of the needs served by BAC testing are hard to overstate. The bottom line is that BAC tests are needed for enforcing laws that save lives. The specifics, in short are these: Highway safety is critical; it is served by laws that criminalize driving with a certain BAC level; and enforcing these legal BAC limits requires efficient testing to obtain BAC evidence, which naturally dissipates. So BAC tests are crucial links in a chain on which vital interests hang. And when a breath test is unavailable to advance those aims, a blood test becomes essential.”

The Court noted that highway safety is a vital public interest. The Court cited language from Supreme Court decisions calling highway safety a “compelling interest” and describing the effects of irresponsible driving as “slaughter” comparable to the ravages of war. The Court then noted that federal and state lawmakers are convinced that specified BAC limits make a difference when fighting the harms to highway safety. Every state has adopted the .08 percent BAC limit and many states have enacted laws imposing higher penalties for drivers with a BAC that exceeds a higher threshold. The Court further noted that enforcing BAC limits requires a test that is accurate enough to stand up in court. The Court stated, “Enforcement of BAC limits. . . requires prompt testing because it is a biological certainty that alcohol dissipates from the bloodstream at a rate of .01 percent to .025 percent per hour. Evidence is literally disappearing by the minute.” The Court added that a blood draw becomes necessary when a breath test is unavailable. The Court stated, “Thus, in the case of unconscious drivers, who cannot blow into a breathalyzer, blood tests are essential for achieving the compelling interests” described by the Court.

The Court stated, “Indeed, not only is the link to pressing interests here tighter; the interests themselves are greater. Drivers who are drunk enough to pass out at the wheel or soon afterward pose a much greater risk. It would be perverse if the more wanton behavior were rewarded—if the more harrowing threat were harder to punish.” The Court continued, “For these reasons, there clearly is a ‘compelling need’ for a blood test of

drunk-driving suspects whose condition deprives officers of a reasonable opportunity to conduct a breath test. The only question left is whether this compelling need justifies a warrantless search because there is, furthermore, no time to secure a warrant.”

The Court noted that the constant dissipation of BAC evidence alone does not create an emergency, but that an officer may be justified in obtaining a warrantless blood test when the officer reasonably believes that he or she was confronted with an emergency in which the delay necessary to obtain a warrant threatened the destruction of evidence. In other words, exigent circumstances exist when: (1) BAC evidence is dissipating and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application.

The Court stated that unconsciousness may be that other factor. According to the Court, “Indeed, unconsciousness does not just create needs; it is itself a medical emergency. It means that the suspect will have to be rushed to the hospital or similar facility not just for the blood test itself but for urgent medical care. Police can reasonably anticipate that such a driver might require monitoring, positioning, and support on the way to the hospital; that his blood may be drawn anyway, for diagnostic purposes, immediately on arrival; and that immediate medical treatment could delay (or otherwise distort the results of) a blood draw conducted later, upon receipt of a warrant, thus reducing its evidentiary value.”

The Court concluded, “When police have probable cause to believe a person has committed a drunk-driving offense and the driver’s unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a warrantless blood test to measure the driver’s BAC without offending the Fourth Amendment. We do not rule out the possibility that in an unusual case a defendant would be able to show that his blood would not have been drawn if police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.” ☆