

OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 5

April 6, 2022

**SUBJECT: ADMINISTRATIVE PER SE, ARRESTING OFFICER'S
RESPONSIBILITY – REVISED**

PURPOSE: This Order revises the requirement for the arresting officer(s) to add a copy of Page 1 (front and back) and Page 2 of the Department of Motor Vehicles (DMV) Officer's Statement, Form DS 367 or DS 367M (if under 21) [Administrative Per Se (Admin Per Se)], to the arrest report. This will help conform to discovery under Section 1054.1 of the California Penal Code.

PROCEDURE: Department Manual Section 4/343.30, *Arresting Officer's Responsibility*, has been revised. Attached is the revised manual section with the revisions indicated in italic.

AMENDMENTS: This Order amends Section 4/343.30 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.



MICHEL R. MOORE
Chief of Police

Attachments

DISTRIBUTION "D"

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 5, 2022**

343.30 ARRESTING OFFICER'S RESPONSIBILITIES. An officer making an arrest for Driving Under the Influence (DUI) shall complete a Driving Under the Influence Arrest Report Supplemental, Form 05.02.05, in the usual manner and confiscate the California Driver's License from the arrestee when the arrestee:

Note: Out-of-state/foreign licenses are not included under California law and cannot be confiscated.

- Refuses to submit to and complete a chemical test; or,

Note: The Chemical Test Admonition portion must be read to the arrestee in its entirety, even when the arrestee refuses to submit to or complete a chemical test.

- Takes a breath test which shows a blood alcohol concentration (BAC) level of .08 percent or more (if over 21 years of age) or .01 percent or more (if under 21 years of age); or,
- Takes a blood test (voluntary or forced) and the officer believes that subsequent test results will show that the driver is at or above a BAC of .08 percent or more (if under 21, a BAC of .01 percent or more).
- Has been driving a vehicle that requires a commercial driver's license when the subject had a BAC of .04 percent or more; or,
- Has been on probation for California Vehicle Code (CVC) Sections 23152 or 23153 and had a BAC of .01 percent or more as measured by a Preliminary Alcohol Screening (PAS) test or other chemical test; or,
- Has been on DUI-related probation for CVC Sections 23103, 23152, or 23153, Penal Code Section 191.5 and refuses to complete the PAS test; or,
- Is under the age of 21 and refuses to complete the PAS test.

Note: A person under 21 years old who has a BAC level between .01 to .04 percent should be cited for CVC Section 23136(a) and issued a Department of Motor Vehicles (DMV) Officer's Statement, Form 367M (Administrative Per Se). Officers shall wait 15 minutes and then conduct two Preliminary Alcohol Screening (PAS) device BAC readings and document the results on the DS 367M form.

A person under 21 years old who has a BAC level between .05 to .07 percent should be cited for CVC Section 23140(a) and issued a DMV Form DS 367M. Officers shall wait 15 minutes and then conduct two PAS device BAC readings and document the results on the DS 367M form.

Note: A urine test is only administered as an additional chemical test or when a breath test is unavailable, and the arrestee is a hemophiliac or is taking anticoagulants for a heart condition, which precludes them from providing a blood sample. If a urine test is administered, the arresting officer shall follow procedures described in Department Manual Section 4/343.42.

Upon completion of the Driving Under the Influence Arrest Report Supplemental, and confiscation of the arrestee's California Driver's License, the arresting officer shall complete a Department of Motor Vehicles (DMV) Officer's Statement, Form DS 367 [Administrative Per Se

**DEPARTMENT MANUAL
VOLUME IV
Revised by Special Order No. 5, 2022**

(Admin Per Se), and *Form DS 367M (if under 21)*], and write the arrestee's booking number in the upper left corner [or *Division of Records No.* in instances of an unbooked DUI].

Upon approval of the Driving Under the Influence Arrest Report Supplemental and Administrative Per Se documentation, officers shall:

- Attach the yellow copy of the DMV Form DS 367 to the Driving Under the Influence Arrest Report Supplemental (if under 21, attach the yellow copy of the DMV Form DS 367M to the Arrest Report);
- *Copy Page 1 (front and back) and Page 2 of the DMV Form 367 or DMV Form 367M (if under 21) and attach these pages to the arrest report;*
- Issue the pink copy of the DMV Form DS 367 to the arrestee (if under 21, issue the pink copy of the DMV Form DS 367M to the arrestee); and,
- Mail the original DMV Form DS 367 (if under 21, original Form DS 367M) with the arrestee's original California Driver's License; a complete copy of the Arrest Report and a completed Los Angeles Police Department EC/IR Operator Checklist, Form 05.20.07, to the DMV location which corresponds with the geographic bureau of arrest.

In all the above scenarios, the California Driver's License shall be confiscated and attached to the DMV Form 367 or Form 367M (if under 21).

If officer(s) arrest a person for DUI drug(s), officer(s) shall complete a DMV Form 367 or Form 367M (if under 21) but shall not confiscate their California Driver's License.

The law requires that all reports and forms be received by the DMV within five working days from the date of arrest. The pink copy of the DMV Form DS 367 (if under 21, the pink copy of the DMV Form DS 367M) issued to the arrestee, will serve as a temporary driver's license for 30 days from the date of arrest for an arrestee with a valid California Driver's License. The arrestee will have 10 days to request a DMV hearing. Failure by the arrestee to request a hearing will result in an automatic suspension of the arrestee's California Driver's License.

Supervisor's Responsibilities. Supervisors approving a Driving Under the Influence Arrest Report, Supplemental, Form 05.02.05, shall ensure that arresting officers have complied with Administrative Per Se procedures, when applicable, and related reports.