OFFICE OF LEGISLATIVE RESEARCH
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ResearchReport

Drugged Driving and Compelled Testing

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Issue

Describe the circumstances under which law enforcement can compel a driver suspected of driving under the influence of drugs to submit to testing.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

Connecticut law prohibits anyone from driving a motor vehicle under the influence of alcohol or drugs (sometimes referred to as driving under the influence (DUI) and driving under the influence of drugs (DUID) laws). Like the majority of states, Connecticut has impairment-based DUID laws, which require that, in a criminal prosecution, the state proves that the driver was impaired (e.g., by driving recklessly or erratically). Evidence of drug-impaired driving is obtained through blood and urine tests as well as law enforcement officers' observations and advanced training.

Before asking a driver to take a chemical test, the officer must advise the driver of his or her constitutional rights (CGS § 14-227b(b) as amended by PA 21-1, June Special Session (JSS)). While there is no criminal penalty for refusing to take the test, the officer must advise the driver that he or she may refuse to take the test and that a prosecutor may use evidence of the refusal in the criminal case against the driver. In addition, CGS § 14-227a(b)(1) states that evidence of a drug in the defendant's urine is only admissible if the arresting officer gave the defendant "a reasonable opportunity to telephone an attorney prior to the performance of the test and [the defendant] consented to the taking of the test" on which the analysis is based. Testing is mandatory following fatal accidents and accidents resulting in serious injury.

The Fourth Amendment of the United States Constitution, applied to the states through the Fourteenth Amendment, is one of the most common challenges in impaired driving cases. Specifically, it protects citizens from unreasonable searches and seizures by requiring that, in most instances, officials secure a search warrant before they search a person's house, papers, effects, or person. The Supreme Court has recognized exceptions to the warrant requirement, however. One occurs under exigent circumstances when evidence must be seized immediately, or it will be lost. A second consists of a search incident to a lawful arrest. A third occurs when the suspect consents to the search or seizure.

For impaired driving suspects, the Court has held that the Fourth Amendment allows a state to compel warrantless sobriety and breath tests as a search incident to a lawful arrest, but generally does not permit warrantless blood tests unless certain exigent circumstances exist. Most recently, the Court held that a suspect's loss of consciousness following his probable cause arrest for drunk driving will almost always qualify for the exigent circumstances exception to the Fourth Amendment's warrant requirement.

The cases discussed below concerned drunk driving, rather than drugged driving. However, it appears that these cases would apply to drugged driving as well.

Constitutional Case Law

Schmerber v. California, 384 U.S. 757 (1966)

Schmerber (the driver) was arrested following a car crash. Investigating officers noted evidence that he was intoxicated. He was injured in the crash and taken to a hospital. Acting without a search warrant, an officer directed a physician to take a sample of Schmerber's blood for testing, over his objection.

The Court held that this warrantless search did not violate the Fourth Amendment (among other constitutional arguments raised in the case). First, the method of collection was reasonable. Additionally, the delay needed to obtain a search warrant would threaten "the destruction of evidence" due to the dissipation of alcohol in the blood. As noted by the National Traffic Law Center, the case was interpreted to stand for the proposition that a *per se* exigent circumstances exception exists in all impaired driving cases due principally to the natural and rapid dissipation of alcohol in the body. The Court eventually curtailed this exception in 2013 (see below).

Missouri v. McNeely, 569 U.S. 141 (2013)

After being stopped by police for speeding and driving erratically, Tyler McNeely admitted he had been drinking. He smelled of alcohol, slurred his speech, and performed poorly on the roadside

sobriety tests. After McNeely's refusal to take a breathalyzer test, the officer transported him to the hospital for a blood test. The officer knew that the necessary prosecutor and magistrate were both available but did not attempt to obtain a search warrant. The test showed that McNeely's blood alcohol level was well above the legal limit, and he was charged with driving while intoxicated.

The state appealed the trial court's granting of McNeely's motion to suppress the blood test results. The Missouri Supreme Court held that the officer had violated McNeely's Fourth Amendment rights when ordering the blood test without first obtaining a warrant. The United States Supreme Court affirmed, holding that:

> *"while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, as it did in Schmerber, it does not do so categorically."*

Therefore, rather than a *per se* exigency in all impaired driving cases, courts are now required to evaluate the facts of each case individually to determine whether an exigency existed, based on a totality of the circumstances.

Birchfield v. North Dakota, 579 U.S. 438 (2016)

In 2016, the Supreme Court consolidated three DUI cases relating to the Fourth Amendment (*Birchfield v. North Dakota*, *Bernard v. Minnesota*, and *Beylund v. Levi*). The cases addressed the circumstances under which the police, having made an arrest for drunk driving, may conduct a warrantless sobriety test. Birchfield was convicted for refusing to submit to a warrantless blood test. Bernard was convicted for refusing a warrantless breath test. Beylund suffered civil and administrative consequences after submitting to a blood test in the face of threatened criminal prosecution.

In the majority opinion, Justice Alito referred to the recently decided *Riley v. California (2014)*, where the Court had explained that incident to arrest claims are weighed by measuring "the degree to which [they] intrude upon an individual's privacy and . . . the degree to which [they] are needed for the promotion of legitimate government interests." The majority opinion concluded that under such a measure, breath tests qualified for the exception, but blood tests did not.

> *"A breath test does not 'implicate significant privacy concerns.' Blood tests are a different matter…. Blood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative for a breath test."*

Mitchell v. Wisconsin, 139 S. Ct. 2525 (2019)

Acting on a complaint, officers discovered Mitchell stumbling around a lake near his parked van. They arrested him after he failed a preliminary breath test and took him to the police station. When the officers were unable to administer a second breath test at the station because Mitchell had passed out, they took him to a hospital for a blood test. Based on the blood test, officials charged him with drunk driving. Mitchell sought unsuccessfully to suppress the results of the blood test. Wisconsin appellate courts affirmed his conviction, as did a divided U.S. Supreme Court.

In a plurality opinion, Justice Alito, writing for four justices, outlined the states' compelling interest, based on various factors, in access to a reliable test to determine the extent of a suspect's intoxication. "[T]he only question left, under our exigency doctrine, is whether this compelling need justifies a warrantless search because there is, furthermore, 'no time to secure a warrant.'" He concluded,

> *"[w]hen 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 blood alcohol content (BAC) without offending the Fourth Amendment."*

Connecticut Law

While a blood alcohol content (BAC) level of .08% or higher is *per se* evidence of driving under the influence, there is no such threshold for drugs, including marijuana (CGS § 14-227a(a), as amended by PA 21-1, June Special Session (JSS), PA 22-26, and PA 22-40). The odor of cannabis or burnt cannabis may not be used to justify a stop or search of a person or vehicle, but law enforcement may test for impairment based on this odor if the officer reasonably suspects that a driver was driving under the influence (CGS § 54-33p as amended by PA 22-26, and PA 22-40).

Requests for Drug Influence Evaluations and Chemical Testing

State law allows a police officer who arrests a driver for DUI to request that he or she submit to a blood, breath, or urine test, or a drug influence evaluation (DIE), only after the driver is:

1. informed of his or her constitutional rights;
2. given reasonable opportunity to contact an attorney before the test or evaluation occurs;
3. informed that evidence of refusal to submit to a test or evaluation is admissible as evidence in DUI prosecutions, except that refusing to submit to the testimonial portions of a DIE is not admissible as evidence; and

4. informed that his or her license or operating privilege may be suspended under administrative *per se* procedures if (a) he or she refuses a test or the nontestimonial portion of a DIE or submits to a test and the results indicate an elevated BAC or (b) the officer, through his or her investigation, concludes that the person was driving under the influence of intoxicating liquor, a drug, or both.

If a driver submits to a breath test and the results indicate that he or she does not have an elevated BAC, the officer may ask the driver to take a different type of test. But if he or she refuses to submit to a blood test, the officer must designate that a urine test be taken (CGS § 14-227b(b) as amended by PA 21-1, JSS).

Refusing Test or Elevated BAC

The law prohibits testing if the subject refuses, except if the person refuses or is unable to submit to a blood test, the police officer must designate another test to be taken (CGS § 14-227b(b)(2) as amended by PA 21-1, JSS). If a test is refused, the officer must officially note that he or she informed the person of the conditions under which the license or driving privilege could be suspended.

Additionally, if a person refuses to submit to a blood, breath, or urine test, refuses the nontestimonial portion of a DIE, or submits to a test within two hours after driving and the results indicate the person has an elevated BAC, then the police officer, acting on behalf of the Department of Motor Vehicles (DMV), must immediately and for a 24-hour period (1) revoke and take possession of the person's driver's license or (2) suspend his or her operating privilege if he or she is a nonresident (CGS § 14-227b(c) as amended by PA 21-1, JSS).

Accidents Resulting in Death or Serious Injury

In accidents resulting in another person's death or serious physical injury, a blood or breath sample must be obtained from a surviving driver whose vehicle was involved if:

1. an officer has probable cause to believe that the driver operated the vehicle while under the influence of alcohol, drugs, or both, or
2. the driver has been charged in connection with the accident and the officer has a reasonable suspicion that he or she was under the influence.

The law allows a urine sample to be taken instead of a blood or breath sample. In addition, a drug influence evaluation must be conducted of a surviving operator if he or she is not seriously injured or otherwise unable to take the evaluation because of the accident. The results of these tests must be reported to the DMV commissioner, who may then use this information when deciding whether to suspend the driver's license (CGS § 14-227c, as amended by PA 21-1, JSS).

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