

## FROM THE PROSECUTOR'S DESK

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# Prosecutor Walsh answers your questions about the new "No Refusal" law

On September 30, 2008, the "No Refusal" law for repeat drunk drivers went into effect. Drunk drivers who have a previous felony DUI conviction, two DUI convictions in the last six years, or five DUI convictions in the last 20 years, are now required to submit to a mandatory breathalyzer test. If they refuse, the law authorizes law enforcement officers to obtain a blood sample.

**Q:** What happens if the three-hour time limit has expired before we request a blood draw?

**A:** This will still be a good arrest, however, it will void the Administrative License Suspension (ALS) portion of the arrest.

**Q:** If an officer has to obtain the suspect's blood because they refused the breath test, does that count as a refusal?

**A:** YES. In that instance, mark the 2255 as a refusal and send it to the BMV.

**Q:** If an officer tells a suspect that they intend to take them to the hospital to obtain a blood sample and the suspect decides to blow, is that still considered a refusal?

**A:** NO. Take the breath sample and record it as such. Do not use the authority to forcibly obtain a blood sample as a threat or as coercion. Officers should advise the suspect that, if they refuse the test, they will take them to the hospital to obtain a blood sample. If the suspect then changes their mind and offers to blow, allow them to do so and do not write a search warrant.

**Q:** What happens if a suspect refuses to give blood at the hospital?

**A:** The new DUI law authorizes law enforcement officers to use reasonable force to obtain a suspect's blood, so an officer technically can hold a suspect down while their blood is drawn. If the suspect refuses the breath test, the officer needs to advise the suspect that they have the authority to take them to a hospital to have their blood drawn against their will. If the suspect refuses the blood draw at the hospital, the officer should advise them that the refusal will not only get them a license suspension but they will also be charged with Tampering with Evidence (O.R.C. 2921.12(A)(1)), a felony of the 3rd degree, because they are withholding evidence. Tampering with Evidence carries a potential sentence of 1 to 5 years in prison and a \$10,000 fine. Please note that it is the policy of Summa Health System that they will not perform forcible blood draws. However, if the suspect is unconscious or is incapable of rendering consent, Ohio Law holds that consent is implied and a blood sample may be drawn for analysis.

My office has pocket-sized laminated copies of the new law that include arresting language to be read to offenders. If you would like one, please call Melanie Hart at 330-643-8674.