

Officer Protocol for Implementing No Refusal

Let's take a look at a typical protocol for how No Refusal should be implemented.

STEP 1: Officer makes a traffic stop.

Think about a DWI stop. What does that typically look like? An officer has reasonable and articulable suspicion that criminal activity is or has occurred so he conducts a traffic stop. During conversation, he determines impairment and makes an arrest.

STEP 2: Officer transports suspect to station.

Once the individual is in custody, the officer transports him to the office and informs him about his rights related to the chemical test under implied consent.

STEP 3: Suspect refuses to take the breath test.

It's at this point that the "No Refusal" initiative comes into play. There's no need to make a big fuss or production. There's not even a need to inform the arrestee of your next actions. Simply step away from him and follow your department protocol for obtaining a search warrant.

STEP 4: Officer prepares an Affidavit and Search Warrant for a blood draw.

Process may vary slightly because some agencies use an E-Warrant system while others still apply for warrants by phone and fax or in-person. We will address each process here.

STEP 4A: Using E-Warrant Applications

The officer completes the necessary fields within the e-warrant form to develop an Affidavit and Search Warrant application. The affidavit is the equivalent to "electronic testimony under Louisiana Code of Criminal Procedure Article 162.2, therefore, the officer does not need to be sworn in by a judge or magistrate. The warrant is electronically delivered to the judge or magistrate by web. Now, depending upon a judge's preference, the officer may text or e-mail the judge to inform him that an e-warrant has been submitted. The judge reviews the e-warrant. If approved, he attaches an e-signature and submits the Return electronically to the officer. The Officer is informed by email notification that the e-warrant has been signed.

STEP 4B: Using Fax or Email Warrant Applications

The officer calls the judge and advises him/her about the Warrant. The Judge administers the oath and swears in the officer over phone. This procedure is in line with Louisiana Code of Criminal Procedure Article 162.1. Once the officer has been sworn, he signs the affidavit and faxes or emails it along with the Warrant application to the Judge. The judge reviews the warrant. If approved, he signs it and faxes or emails the warrant back to the Officer.

STEP 4C: Using In-Person Applications

Please note that this part of the protocol is very similar for agencies that apply for warrants in person.

STEP 5: Officer serves the arrestee and reads the judge's order to submit to a chemical test.

At this point, it's likely that the arrestee will protest, either verbally or physically. Remember that the search warrant provides you cover to proceed with the blood draw. If the arrestee offers to blow in the intoxilyzer at this point, let him do the breath test; but still follow through with the warrant. More evidence is better for the case!

STEP 6: Officer summons medical personnel to draw blood.

This may be either medical personnel at correctional facility or an EMS provider. The officer must personally observe the blood being drawn from the subject by paramedic.