

Missouri Association of Prosecuting Attorneys

DWI/Traffic Safety Best Practices Subcommittee (No Refusal Policy, Implied Consent, Search Warrants and Bonds) (Approved April 2014)

Note: A best practices recommendation of the Missouri Association of Prosecuting Attorneys is the product of careful consideration by experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible in every case or in every county. There may be other methods in local jurisdictions to reach the same or similar objectives.

RECOMMENDATION #1: Prosecutors should develop a no refusal policy for impaired driving cases.

RECOMMENDATION #2: Prosecutors should work with law enforcement to develop standard procedures to obtain search warrants to procure blood in impaired driving cases.

Commentary: Law enforcement will be more willing to adopt a no refusal policy if the process is simple and streamlined. Using a standard template for search warrants and affidavits will help ensure all necessary information is included and will reduce the time it takes to prepare the documents.

RECOMMENDATION #3: Prosecutors and law enforcement should use electronic means to obtain search warrants.

Commentary: Time is of the essence in impaired driving cases. When feasible, using email or other electronic means to communicate with law enforcement and judges will cut down on the time it takes to get a blood sample from the suspect.

RECOMMENDATION #4: Prosecutors and law enforcement should draft language in addition to the implied consent warnings to inform defendants that if they refuse a test, the officer will seek a warrant.

Commentary: Many defendants who initially refuse to submit to a breath test may change their minds when they are told that the officer is going to seek a warrant. Adding this language will cut down on the overall number of refusals and overall number of requests from law enforcement to obtain a search warrant for blood. Below is a sample of the warning that could be given:

I am going to give you the implied consent warning in a moment. Before I do that, however, I want to advise you that _____ County is a “no refusal county” which means if you refuse to give your breath sample upon my request after being read implied consent, I will apply for a search warrant to obtain your blood sample. If a judge issues the search warrant, [insert a description of how blood will be taken, e.g., you will be taken to a hospital and blood will be drawn or a nurse will be called to take your blood, etc.]

RECOMMENDATION #5: Prosecutors should file a motion for bond conditions in all impaired driving cases.

Commentary: Public safety is a concern when DWI offenders are out on bond. Some conditions that prosecutors should request are: electronic monitoring or the 24/7 program, no alcohol, and no bars. Another concern is releasing defendants while they are still impaired. Prosecutors should also request that defendants will not be released until their BAC is .02 or lower and they are showing no visible signs of impairment.