



**Illinois State Police**  
**Law Bulletin – May 2018**  
***Non-consensual Blood Draw***

Illinois State Police Directive, ENF-018, Driving Under the Influence Enforcement and Processing, provides in relevant part that if a subject refuses to consent to a blood draw and is physically resisting taking of a sample, the officer shall not proceed with the blood draw. See also 625 ILCS 5/11-501.2.

**Warrantless Search** – Warrantless searches "are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576.

**Recent Case Example** – *People v. Eubanks*, No. 1-14-2837, Appellate Court of Illinois, 1st District, 2nd Division (December 26, 2017)

Facts:

On December 12, 2009, at approximately 9:00 p.m., Eubanks was driving in the Rogers Park neighborhood of Chicago when he struck two pedestrians. One of the pedestrians died at the scene and the other was severely injured. Eubanks fled the scene of the accident but was apprehended a few minutes later at 9:05 p.m. At 10 p.m., a passenger in the vehicle driven by Eubanks positively identified Eubanks as the driver in the fatal collision. At 10:30 p.m., Eubanks was placed in an interview room.

At 12 a.m., a Chicago police officer advised Eubanks he was under arrest for DUI. Eubanks refused to take a breathalyzer or provide blood and urine. After waiting almost three (3) hours, Eubanks was transported to the hospital at 2:57 a.m. At 4:00 a.m., Eubanks was restrained by hospital staff so a nurse could draw his blood. Later, at 5:20 a.m. after being threatened with a catheter, Eubanks provided a urine sample.

Issue & Holding:

Whether a forcible, non-consensual blood draw and urine sample of a driver involved in a fatal crash under section 11-501.2(c)(2) of the Illinois Vehicle Code is constitutional. No, this provision is "unconstitutional on its face, insofar as it sets forth a categorical exception to the fourth amendment's warrant requirement of the kind rejected by the Supreme Court in *McNeely*, 569 U.S. 141."

Reasoning:

*Reasonableness of a warrantless, non-consensual blood draw* - the court examined whether exigent circumstances were present to justify a warrantless blood draw and urine sample. The court noted that the "exigency in [the context of a DUI investigation] must be determined by the totality of the circumstances" and noted that a "case-by-case assessment of exigency" should be used instead of relying on an over-broad *per se* rule.

Based on the United States Supreme Court precedent, the court found section 11-501.2(c)(2) to be overly broad since it permits compelled chemical testing without a warrant **in all cases** where an officer has probable cause to believe that a driver under the influence has caused death or personal injury to another. The court noted that some cases will involve exigencies that would allow for a non-consensual blood draw under the exigent circumstances exception to the search warrant requirement; however, the state will bear the burden of proving the existence of the exigency by a totality of the circumstances.

Turning to the facts here, the court noted that Eubanks was in custody for over 4 1/2 hours prior to the non-consensual blood draw and urine sample. The court held “(t)here was no concern that he (Eubanks) might become unavailable before a warrant could be obtained, nor did the officers attempt to obtain one in that span of time.” Under these circumstances, there were no exigent circumstances which would allow for the warrantless blood draw.

*Use of force during a warrantless, non-consensual blood draw* - Next, the court considered the use of force utilized to take Eubanks’ blood and urine specimens. According to the court, the precedent set in *People v. Jones* does not grant officers unlimited authority to order and conduct chemical testing. In *Jones*, the Illinois Supreme Court held “(w)e do not suggest that a DUI arrestee’s lack of a right to refuse chemical testing under section 11-501.2(c)(2) permits law enforcement officers to use physical force in obtaining blood, urine, and breath samples.” *Jones*, 214 Ill.2d at 187, 201 (2005).

The court held that even a “reasonably trained” Illinois police officer would have been aware that the use of force to obtain the blood and urine samples in this case was not authorized under *Jones*. As such, the forcible, non-consensual blood and urine samples were suppressed under the exclusionary rule.

**Rule of Law:** “A warrantless search is per se unreasonable unless it is a search conducted pursuant to consent, a search incident to arrest, or a search predicated upon probable cause where there is exigent circumstances which make it impracticable to obtain a warrant.” To justify a non-consensual blood draw and urine sample, the officer must have a search warrant or operate under a valid exception to the search warrant requirement.

**Future Guidance:**

- ENF-018, Driving Under the Influence Enforcement and Processing, will be updated to recognize the Fourth Amendment requirement for a search warrant applies to non-consensual blood and urine samples.
- Effective immediately, if a driver refuses chemical testing, contact your local prosecuting attorney to obtain a search warrant prior to obtaining a non-consensual blood, breath, or urine test, even in a case involving death or personal injury.
  - If you are unable to establish contact with a local prosecuting attorney, and the jurisdiction permits law enforcement officers to seek search warrants directly from a judge without the involvement of a prosecuting attorney, please attempt to contact a judge for a search warrant.
  - If you are unable to reach a prosecuting attorney or judge to obtain a search warrant, do not immediately proceed to a warrantless blood draw. Wait until a prosecuting attorney or judge responds.
  - If a search warrant is signed by a judge, you may then transport the driver for a blood draw, except that you should present the search warrant to the medical personnel instead of the Non-consensual Blood Draw Request, form ISP 5-514.
- In a death or personal injury DUI case, blood, breath, or urine samples can still be obtained from samples collected by the hospital, without request from law enforcement in the regular course of providing emergency medical treatment (625 ILCS 5/11-501.4-1).
- The use of force to obtain a blood and urine sample under the Illinois Vehicle Code is prohibited by ENF-018, Driving Under the Influence Enforcement and Processing,

**If you have any questions regarding the Legal Guidance given herein, please contact the Illinois State Police Legal Office at (217) 782-7658.**