

TITLE 23 – TRAFFIC CODE

CHAPTER 2 - DRIVING UNDER THE INFLUENCE

Legislative History: Ordinance No. 51, "Persons Driving Under the Influence of Intoxicating Liquor or Drugs," was enacted by the Papago Council on January 3, 1975 and approved by the Papago Agency Superintendent on January 9, 1975. Ordinance No. 51 was compiled within the Traffic Code of the Tohono O'odham Nation on July 5, 2005 pursuant to Resolution No. 05-361.

Ordinance No. 51 was partially repealed and replaced by new Criminal Code Section 13.12 pursuant to Resolution No. 05-664, which was passed November 16, 2005. Criminal Code Section 13.12, Driving Under the Influence, became effective November 21, 2005, while Ordinance No. 51 remains in effect and governs the construction of and punishment for any offense as defined in Ordinance No. 51 that was committed prior to November 21, 2005. (See Resolution No. 05-664 for terms of repeal and savings provisions.)

Related History: Resolution No. 842 (adopting Arizona Code Sections 66-151 through 66-401, 66-401, and 66-406 through 66-408, with some exceptions, as Sections 36 through 237 of Chapter 5 of the Papago Law and Order Code) was enacted by the Papago Council on September 23, 1955 and approved by the Sells Agency Superintendent on [no date given]. Section 66-156 of the Arizona Code Annotated, Persons Under the Influence of Intoxicating Liquor or Drugs, was subsequently repealed and replaced by Ordinance No. 51.

ORDINANCE OF THE PAPAGO COUNCIL

ORD. NO. 51

WHEREAS, The Traffic Rules and Regulations adopted from Title 66 of the Arizona Code Annotated in Resolution Number 842 have not been rewritten or modified to specifically apply to the Papago Reservation; and

WHEREAS, it has been the policy of the Papago Council to revise the Law and Order Code from time to time in order to provide greater traffic safety; and

WHEREAS, it has been shown that the Papago Reservation is in need of its own Traffic Regulations particularly suited to the Papago Tribe in order to provide for the safety and welfare of the Papago People; and

NOW THEREFORE BE IT RESOLVED THAT: Resolution Number 842 be amended as follows:

That Section 66-156 of the Arizona Code Annotated, dealing with Driving While Under the Influence of Liquor or Drugs is HEREBY REPEALED and is no longer a part of Chapter V of the Law and Order Code. Any other Resolution or Ordinance of the Papago Council that conflicts with, or modified, or amends this Ordinance is, HEREBY EXPRESSLY REPEALED AND REVOKED.

BE IT FURTHER RESOLVED that the following Sections be added to Chapter V of the Law and Order Code of the Papago Tribe:

Persons Under the Influence of Intoxicating Liquor or Drugs

Section A. It is unlawful and punishable as provided in Paragraph H for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within the boundaries of the Papago, San Xavier or Gila Bend reservations.

Section B. In the trial of any Civil or Criminal action for a violation of Paragraph A. the amount of alcohol in the defendant's blood at the time alleged as shown by Chemical Analysis of the defendant's blood or breath, shall give rise to the following presumptions:

1. If there was at that time .05 per cent or less by weight of alcohol in defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor.
2. If there was at that time an excess of .05 per cent alcohol but less than .10 percent alcohol in defendant's blood, such fact shall not give rise to any presumption that the Defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
3. If there was at that time .10 percent or more by weight of alcohol in the defendant's blood it shall be presumed that the defendant was under the influence of intoxicating liquor.

Section C. The Court may hear any competent evidence bearing upon the questions of whether or not the defendant was under the influence of intoxicating liquor.

Section D. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

Section E. Chemical Analysis of a person's breath shall only be made by persons qualified and trained to make such tests and authorized to do so by the Chief of Police.

Section F. Chemical analysis of a person's blood shall only be made by a physician, registered nurse or other qualified person authorized by the Public Health Service to make such tests.

Section G. It is unlawful and punishable as provided in paragraph H of this ordinance for any person to operate a motor vehicle within the boundaries of the Papago, San Xavier or Gila Bend reservations, while under the influence of narcotic drugs or any drug which renders such person incapable of driving safely. It is no defense that such drug was prescribed by a physician.

Section H. Punishment. A person convicted of a violation of this Ordinance shall be punished upon the first conviction by a fine not to exceed three hundred dollars, or by imprisonment not to exceed six (6) months or both. Upon a second or subsequent conviction under this Ordinance, the court may require under its sole discretion, that the Operator's or Chauffeur's license of such convicted person be surrendered to the court for a period not to exceed one year and to restrict the driver, in addition to a fine or imprisonment set forth above. Furthermore, the court in its sole discretion, upon a conviction under this Ordinance, may require such convicted person to undergo counseling from an appropriate Agency, such as Mental Health or Alcoholics Anonymous.

Section I. The court may, upon pronouncement of a jail sentence as provided in Section H of this Ordinance, provided that if the defendant is employed he may continue in such employment for not more than twelve hours a day, six (6) days a week, and the remaining day, days or parts of days shall be spent in jail until his sentence is served. He shall be allowed out of jail only long enough to complete his actual employment and no longer.

The foregoing Ordinance was duly enacted by the Papago Council on the 3rd day of January, 1975, at a meeting at which a quorum was present with a vote of 16 for, 2 against 2 not voting and 2 absent, pursuant to the authority vested in the Papago Council by Section 2 (h) Article V of the Constitution and By-laws of the Papago Tribe, ratified by the Tribe on December 12, 1936 and approved by the Secretary of the Interior on January 6, 1937 pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984). Said Resolution is effective as of the date of its approval by the Superintendent of the Papago Agency and is not subject to review by the Secretary of the Interior.

THE PAPAGO COUNCIL

/s/ Jacob A. Escalante
Jacob A. Escalante, Chairman

Attest:

/s/ Delma Garcia, Secretary

Approved: January 9, 1975

/s/ Joseph M. Lucero,

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Compiling Traffic Laws Within the Traffic Code of the Tohono O'odham Nation
and Referring to the Domestic Affairs Committee for Review)

RESOLUTION NO. 05-361

- 1 **WHEREAS, the Legislative Council is vested with the power "to enact criminal and civil laws**
2 **governing the conduct of any person within the Tohono O'odham Nation" and to**
3 **provide laws "to promote, protect and provide for public health, peace, morals,**
4 **education and general welfare of the Tohono O'odham Nation and its members"**
5 **(Constitution of the Tohono O'odham Nation, Article VI, Section 1(c)(6) and 1(c)(2));**
6 **and**
- 7 **WHEREAS, in 1945 the Papago Tribal Council enacted thirty-six criminal laws as Chapter 5 of the**
8 **Law and Order Code of the Papago Tribe; and**
- 9 **WHEREAS, in 1955 the Tribal Council adopted numerous Arizona traffic statutes, including the**
10 **then-current Arizona driving under the influence ("DUI") statute, as the traffic laws**
11 **of Papago Tribe (Resolution No. 842); and**
- 12 **WHEREAS, in 1975 the Tribal Council (1) enacted Ordinance No. 51, thereby repealing the Arizona**
13 **DUI law adopted in 1955 and replacing it with a new DUI law, and (2) enacted**
14 **speeding restrictions pursuant to Ordinance No. 52; and**
- 15 **WHEREAS, the Tribe's traffic laws were never compiled within a single traffic code but were**
16 **instead added to Chapter 5 of the Law and Order Code; and**
- 17 **WHEREAS, the criminal laws originally enacted in 1945 as Sections 1-36 of Law and Order Code**
18 **Chapter 5 were repealed and replaced by the Nation's Criminal Code in 1985 pursuant**
19 **to Ordinance No. 02-85; and**
- 20 **WHEREAS, Ordinance No. 02-85 also repealed laws conflicting with the Criminal Code but did not**
21 **repeal the traffic laws added to Law and Order Code Chapter 5 after its enactment in**
22 **1945; and**
- 23 **WHEREAS, there is a need to organize the Nation's traffic laws into a single, separate volume of**
24 **laws known as the Traffic Code of the Tohono O'odham Nation ("Traffic Code") and to**
25 **update and otherwise revise these laws; and**
- 26 **WHEREAS, the importance of updating the Nation's traffic laws has been highlighted by**
27 **members of the Nation and, particularly, by surviving family members of DUI victims**
28 **who have expressed concern regarding the Nation's DUI sentencing provisions and**
29 **who have recommended that Ordinance No. 51 be amended; and**
30

RESOLUTION NO. 05-361

(Compiling Traffic Laws Within the Traffic Code of the Tohono O'odham Nation and Referring to the Domestic Affairs Committee for Review)

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1 **WHEREAS, concern has also been expressed that the Nation does not have a seatbelt or child**
2 **restraint law despite the fact that these laws have proven effective in reducing the**
3 **number of traffic fatalities and serious injuries to children and adults in other**
4 **jurisdictions; and**

5 **WHEREAS, the Domestic Affairs Committee is vested with the power to "draft, review and make**
6 **recommendations on proposed laws, ordinances, or resolutions" and exercises**
7 **jurisdiction over the "enactment of civil and criminal laws" (Plan of Operation for**
8 **Domestic Affairs Committee, Article III.B.5. and C.2(b)); and**

9 **WHEREAS, it is in the Nation's best interest to both enact the Traffic Code and refer the Traffic**
10 **Code to the Domestic Affairs Committee to be updated and otherwise amended in a**
11 **manner that will protect public health, safety, and welfare.**

12 **NOW, THEREFORE, BE IT RESOLVED that the Legislative Council hereby enacts the Traffic**
13 **Code of the Tohono O'odham Nation, which shall be comprised of (1) the provisions**
14 **of Ordinance No. 52 and (2) the Arizona traffic laws incorporated and enacted as laws**
15 **of the Tohono O'odham Nation (then known as the Papago Tribe) pursuant to**
16 **Resolution No. 842, as revised by Ordinance No. 51.**

17 **BE IT FURTHER RESOLVED that each provision of the Traffic Code shall stand separate and**
18 **independent of every other provision. If any provision of the Traffic Code or its**
19 **application to any person or circumstance is held invalid by a court of competent**
20 **jurisdiction, the invalidity shall not affect any other provisions or applications of the**
21 **Traffic Code which can be given effect without the invalid provision or application,**
22 **and to this end the provisions of the Traffic Code are severable.**

23 **BE IT FINALLY RESOLVED that the Tohono O'odham Nation Legislative Council hereby**
24 **directs the Domestic Affairs Committee to review the Traffic Code and to make**
25 **recommendations to the Council within 90 days for enacting new and updated traffic**
26 **laws, including but not limited to seatbelt and child restraint laws and revisions to**
27 **the Nation's DUI law.**

28 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 27th, Day**
29 **of JUNE, 2005 at a meeting at which a quorum was present with a vote of 2,347.45 FOR; 93.35**
30 **AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by**
31 **Section 1 (c)(1), 1(c)(2), 1(c)(6), and 1(l) of Article VI of the Constitution of the Tohono 'Odham**
32 **Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting**
33 **Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16**
34 **of the Act of June 18, 1934 (48 Stat. 984).**

RESOLUTION NO. 05-361

(Compiling Traffic Laws Within the Traffic Code of the Tohono O'odham Nation and Referring to the Domestic Affairs Committee for Review)

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TOHONO O'ODHAM LEGISLATIVE COUNCIL

Evelyn B. Juan Manuel

Evelyn B. Juan Manuel, Legislative Chairwoman

30th day of June, 2005

ATTEST:

Lucille Lopez

Lucille Lopez, Acting Legislative Secretary

30th day of June, 2005.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 30th day of June, 2005 at 11:45 o'clock, A.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

Evelyn B. Juan Manuel

Evelyn B. Juan Manuel, Legislative Chairwoman

APPROVED

on the 5 day of July, 2005

DISAPPROVED

at 11:35 o'clock, A.M.

Vivian Juan-Saunders

VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

RESOLUTION NO. 05-361

(Compiling Traffic Laws Within the Traffic Code of the Tohono O'odham Nation and Referring to the Domestic Affairs Committee for Review)

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Returned to the Legislative Secretary on the 05th day of

July, 2005, at 11:46 o'clock, A.M.

Lucille Lopez
Lucille Lopez, Acting Legislative Secretary

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Enacting Criminal Code Section 1.21, "Savings Clause," Section 2.23, "Refusal to
Provide Chemical Evidence," and Section 13.12, "Driving Under the Influence")**

RESOLUTION NO. 05-664

- 1 **WHEREAS, the Legislative Council is vested with the power "to enact criminal and civil laws**
2 **governing the conduct of any person within the Tohono O'odham Nation" and to**
3 **provide laws "to promote, protect and provide for public health, peace, morals,**
4 **education and general welfare of the Tohono O'odham Nation and its members"**
5 **(Constitution of the Tohono O'odham Nation, Article VI, Section 1(c)(6) and 1(c)(2));**
6 **and**
- 7 **WHEREAS, on June 27, 2005, the Council enacted the Traffic Code of the Tohono O'odham Nation**
8 **and directed the Domestic Affairs Committee to make recommendations to the**
9 **Council for enacting new and updated traffic laws, including but not limited to**
10 **revisions to the Nation's driving under the influence ("DUI") law (Resolution No. 05-**
11 **361); and**
- 12 **WHEREAS, the Domestic Affairs Committee subsequently drafted seatbelt and child restraint**
13 **provisions which were added to the Traffic Code pursuant to Resolution No. 05-438;**
14 **and**
- 15 **WHEREAS, the Domestic Affairs Committee has worked with the Executive Office to draft two**
16 **related Criminal Code sections, Chapter 13, Section 13.12, "Driving Under the**
17 **Influence," and Chapter 2, Section 2.23, "Refusal to Provide Chemical Evidence"; and**
- 18 **WHEREAS, the enactment of these laws will enhance the protection of public safety and health**
19 **by creating higher standards for persons driving or in actual physical control of**
20 **vehicles on the Nation; and**
- 21 **WHEREAS, the Domestic Affairs Committee and the Executive Office have determined that it is**
22 **essential to take immediate action on these laws due to the grave dangers posed by**
23 **driving under the influence on the Nation; and**
- 24 **WHEREAS, in order to implement Section 13.12 and also allow DUI offenses committed before**
25 **Section 13.12 becomes effective to continue to be addressed under the Nation's**
26 **existing DUI Ordinance No. 51, it is also necessary to enact Chapter 1, Section 1.21,**
27 **"Savings Clause"; and**
- 28 **WHEREAS, the Domestic Affairs Committee has recommended that the Legislative Council enact**
29 **these laws in order to better protect the public health, safety, and welfare of all**
30 **persons on the Nation.**

1 NOW, THEREFORE, BE IT RESOLVED that the Legislative Council hereby enacts Criminal Code
2 Section 1.21, "Savings Clause," Section 2.23, "Refusal to Provide Chemical Evidence,"
3 and Section 13.12, "Driving Under the Influence," in the form attached hereto, which
4 are hereby added to the Criminal Code of the Tohono O'odham Nation and shall
5 become effective November 21, 2005.

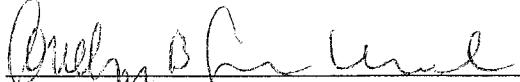
6 BE IT FURTHER RESOLVED that Section 13.12 of the Criminal Code shall govern the construction
7 of and punishment for any offense defined in Section 13.12 and committed upon or
8 after November 21, 2005.

9 BE IT FURTHER RESOLVED that Ordinance No. 51 shall be repealed effective November 21, 2005,
10 except that Ordinance No. 51 shall remain in effect and govern the construction of
11 and punishment for any offense as defined in Ordinance No. 51 that is committed
12 prior to November 21, 2005, and further provided that such an offense shall be
13 prosecuted, construed, and punished according to the provisions of Ordinance No.
14 51, regardless of the actual date of prosecution and sentencing, and in the same
15 manner as if Criminal Code Section 13.12 had not been enacted.

16 BE IT FINALLY RESOLVED that Criminal Code Chapter One, Sections 1.19 and 1.20, Chapter Two,
17 Section 2.22, and Chapter 13, Section 13.11, shall be reserved.

18 The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 15TH Day
19 of NOVEMBER, 2005 at a meeting at which a quorum was present with a vote of 2,440.80 FOR; -0-
20 AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by
21 Section 1 (c)(1)(2) &(6) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by
22 the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant
23 Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June
24 18, 1934 (48 Stat. 984).

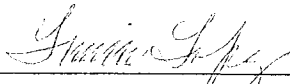
25 TOHONO O'ODHAM LEGISLATIVE COUNCIL

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28 Evelyn B. Juan Manuel, Legislative Chairwoman

29
30 15th day of November, 2005

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32 ATTEST:

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34 _____

35 Lucille Lopez, Acting Legislative Secretary

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37 15th day of November, 2005.
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Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 15th day of November, 2005 at 4:27 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



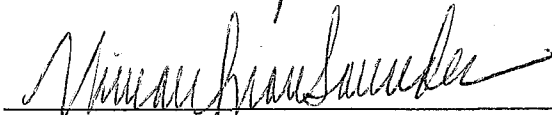
Evelyn B. Juan Manuel, Legislative Chairwoman

APPROVED

on the 16 day of November, 2005

DISAPPROVED

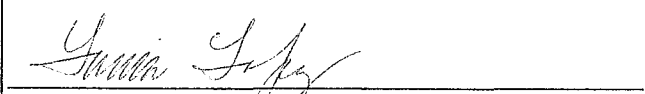
at 3:28 o'clock, P.M.



VIVIAN JUAN-SAUNDERS, CHAIRWOMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 16th day of

November, 2005, at 3:40 o'clock, P.M.


Lucille Lopez, Acting Legislative Secretary

Section 1.21 Savings Clause

- (A) The enactment, re-enactment, revision, amendment, or repeal of any provision of the Criminal Code or any other criminal laws of Nation (hereinafter, "revisions") shall govern the construction of and punishment for any offense defined in the revisions and committed upon or after the effective date of such revisions.
- (B) Except as otherwise provided or unless context otherwise requires, the revisions shall govern the construction of and punishment for any offense defined outside the revisions and committed upon or after the effective date of such revisions.
- (C) Such revisions do not apply to or govern the prosecution or construction of and punishment for any offense committed before the effective date of the revisions, or the construction and application of any defense to a prosecution for such an offense. Such an offense shall be prosecuted, construed, and punished according to the provisions of law existing at the time of the commission thereof, regardless of the actual date of prosecution and sentencing, and in the same manner as if the revisions had not been enacted.

Section 2.23 Refusal to Provide Chemical Evidence

- (A) A person commits the offense of refusal to provide chemical evidence when he or she is requested by a police officer of the Tohono O'odham Nation to take a breath, blood, or urine test to determine that person's alcohol concentration and the person refuses to take and complete the test. A failure to expressly agree to the test or successfully complete the test shall be deemed a refusal. Such a request shall only be made upon probable cause in accordance with Chapter 13, §13.12(H) of this Code.
- (B) A person found guilty of refusal to provide chemical evidence shall be sentenced
- (1) to a fine not to exceed \$500; or
 - (2) if a person is found guilty of refusal to provide chemical evidence and the evidence adduced at trial shows that he or she was charged with a violation of Chapter 13, § 13.12 on facts arising from the same incident then said person shall be sentenced to the following:
 - (a) Imprisonment in jail for a period not to exceed one year; and
 - (b) A \$1000 fine.

Section 13.12 Driving Under the Influence

- (A) A person commits the offense of driving under the influence if he or she drives or is in actual physical control of a vehicle anywhere within the Tohono O'odham Nation, and
- (1) is under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is mentally or physically impaired to the slightest degree; or
 - (2) has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.
- (B) Sentencing Ranges. Except as otherwise provided in this section, person found guilty of driving under the influence shall be sentenced to the following:
- (1) Imprisonment in jail for a period of not less than 90 days and not to exceed one year; and
 - (2) A fine of not less than \$250 and not to exceed \$5,000.
- (C) First Offense. A person who is convicted of driving under the influence shall receive a minimum jail sentence of 90 days and a minimum fine of \$250, provided that at least five days of the jail sentence shall be served without suspension, probation, parole, or release of any kind other than work release.
- (D) Second Offense. Any person who is previously convicted of driving under the influence or the equivalent offense in any jurisdiction within the five years immediately prior to the latest violation of this section shall receive a minimum jail sentence of 180 days and a minimum fine of \$500, provided that at least 180 days of the jail sentence shall be served without suspension, probation, parole, or release of any kind other than work release.
- (E) Third or Subsequent Offense. Any person who is convicted two or more times of driving under the influence or the equivalent offense in any jurisdiction within the five years immediately prior to the latest violation of this Section shall receive a jail sentence of one year and a minimum fine of \$1000, provided that the one year jail sentence shall be served without suspension, probation, parole, or release of any kind other than work release.

- (F) Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated this section and a sample of blood, urine or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes. A person who collects blood, urine or any other bodily substance under this section or any hospital, laboratory or clinic employing or using the services of the person does not incur any civil liability as a result of this activity if requested by a law enforcement officer to collect blood, urine or other bodily substances unless the person, while performing the activity, acts with gross negligence.
- (G) All health agencies of the United States government on the Tohono O'odham Nation shall provide services for a blood draw for any person suspected of violating section (A) above and shall provide said services without the need of a court order.
- (H) Traffic accidents; implied consent; tests
- (1) A person who operates a motor vehicle within the Tohono O'odham Nation gives consent to a test or tests of the person's blood, breath, urine or other bodily substance for the purposes of determining alcohol concentration or drug content if:
- (a) the person is involved in a traffic accident resulting in physical injury or property damage and a law enforcement officer has probable cause to believe that the person caused the accident; or
 - (b) a law enforcement officer has probable cause to believe that the person has committed a violation of this section.
- (2) The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person:
- (a) was involved in a traffic accident resulting in physical injury or property damage and the law enforcement officer has probable cause to believe that the person caused the accident; or
 - (b) committed a violation of this section.

(Effective 11/21/05 pursuant to Resolution No. 05-664)

- (3) After a determination is made that a person was involved in a traffic accident resulting in physical injury or property damage and the officer has probable cause to believe that the person caused the accident or that the person committed a violation of this section, the person may be requested to submit to and successfully complete any test or test prescribed by subsection (H)(1) of this section. Failure to expressly agree to the test or successfully complete the test shall be deemed a refusal and may result in sanctions being imposed pursuant to Chapter 2, Section 2.23, "Refusal to Provide Chemical Evidence."
- (4) A person who is dead, unconscious or otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subsection (H)(1) of this section and the test or tests shall be administered.