

# Court rules Irvine was wrong to mandate DUI blood tests

**LAW:** A lawsuit contends drunken-driving suspects are discouraged from opting for urine or breath tests.

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A federal appeals court ruled Wednesday that the city of Irvine cannot require suspected drunken drivers to submit to blood tests.

The decision likely means a procedural change for Irvine officers, who are trained to encourage suspects to take blood tests, Irvine Police Chief Charles Brobeck said.

"I haven't read the case yet ... but if it's a federal court that decided that, we'll have to comply with that," Brobeck said.

"Clearly we would cease immediately and have our city attorney review it."

The 3-0 ruling by the 9th U.S. Circuit Court of Appeals reinstates a class-action lawsuit dismissed by U.S. District Court Judge Gary L. Taylor.

The suit contended that Irvine police violated the rights of suspects in drunken-driving cases by forcing them to give blood when breath or urine tests could have been administered.

"For the police to impose the most intrusive form of search is a violation of the Fourth Amendment," said lawyer Barry T. Simons, who is pursuing the class-action lawsuit to bar Irvine's alleged practice of forcing blood tests. He said the ruling will permit him to proceed with the lawsuit unless the city appeals to the U.S. Supreme Court.

Anyone who receives a driver's license agrees under state

law to provide a blood, urine or breath sample if requested by police. At the time the suit was filed, three-fourths of Irvine's drunken-driving suspects took blood tests. The statewide average was about one-third.

However, Irvine police maintain that while encouraging blood tests, they give suspects their choice.

"Blood is a lot more substantial. You can test for other drugs," Brobeck said. "It's a lot easier to administer and a lot more reliable."

Jeffrey Wertheimer, Irvine's lawyer, said the decision could change the way drunken-driving cases are prosecuted in California. He added that the decision will be reviewed to determine whether a further appeal is warranted.

"The basic issue (of the lawsuit) is far from resolved," Wertheimer said.