

OPERATING WHILE INTOXICATED, §321J.10§321J.10, OPERATING WHILE INTOXICATED321J.10Tests pursuant to warrants.1Refusal to consent to a test under section 321J.6 does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 707.5 or 707.6A if all of the following grounds exist:aA traffic accident has resulted in a death or personal injury reasonably likely to cause death.bThere are reasonable grounds to believe that one or more of the persons whose driving may have been the proximate cause of the accident was violating section 321J.2 at the time of the accident.2Search warrants may be issued under this section in full compliance with chapter 808 or they may be issued under subsection 3.3Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:aWhen a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.bThe person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.cThe oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose driving is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.dIf a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.eIf the magistrate is satisfied from the oral testimony that the grounds for the warrant exist or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact time when the issuance was ordered.fThe person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.gThe magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.hThe clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.4aSearch warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 321J.11. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants.bIf a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, the warrant may be executed as follows:1If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or

a combination of alcohol and another drug.²If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.⁵The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment. Also, if the withdrawal of a specimen is so resisted or obstructed, sections 321J.9 and 321J.16 apply.⁶Nonsubstantive variances between the contents of the original and duplicate warrants shall not cause a warrant issued under subsection 3 of this section to be considered invalid.⁷Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809 or 809A.⁸Subsections 1 to 7 of this section do not apply where a test may be administered under section 321J.7.⁹Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 321J.11.⁸⁶ Acts, ch 1220, §10; 90 Acts, ch 1233, §21; 96 Acts, ch 1133, §44; 98 Acts, ch 1138, §18OPERATING WHILE INTOXICATED, §321J.10§321J.10, OPERATING WHILE INTOXICATED