**S T A T E O F T E N N E S S E E**
OFFICE OF THE
**ATTORNEY GENERAL**
**PO BOX 20207**
**NASHVILLE, TENNESSEE 37202**

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Opinion No. 03-047

Mandatory testing to determine blood alcohol level

## QUESTION

Is it a constitutional violation to compel a motorist involved in an accident resulting in injury or death to submit to a blood alcohol test if a police officer has probable cause to believe that the motorist has committed driving under the influence, vehicular assault, or vehicular homicide while intoxicated?

## OPINION

No. There is no federal or state constitutional violation in compelling a motorist to submit to a blood alcohol test, provided there is probable cause that the motorist is intoxicated, exigent circumstances exist to forego the warrant requirement, the test to determine alcohol content is reasonable, and the test is performed in a reasonable manner.

## ANALYSIS

It is well established that the United States Constitution permits the taking of a blood sample from a person accused of driving under the influence of an intoxicant with or without the permission of the accused. *Schmerber v. California*, 384 U.S. 757, 86 S.Ct. 1926, 16 L.Ed.2d 908 (1966). In *Schmerber*, the United States Supreme Court upheld a compelled blood alcohol test in a DUI case finding that: i) there was probable cause for the officer to believe that the defendant was intoxicated; ii) exigent circumstances existed to forego a warrant (because the percentage of alcohol begins to diminish shortly after drinking stops, and the delay caused in getting a warrant could result in the destruction of evidence); iii) a blood alcohol test is an effective means of determining intoxication; and iv) the test was performed in a reasonable manner. *Id.* at 768-771. The results of such testing are also admissible as evidence without violating the accused's privilege against self-incrimination. *Schmerber*, at 765.

Article 1, Section 7 of the Tennessee Constitution, concerning unreasonable searches and seizures, is identical in intent and purpose with the Fourth Amendment to the United States Constitution. *Sneed v. State*, 423 S.W.2d 857 (1958); *State v. Meadows*, 745 S.W.2d 886 (Tenn. Crim. App. 1987). Relying on *Schmerber*, Tennessee courts have specifically acknowledged that there may be a forcible taking of blood in certain situations. *State v. Mason*, 02C-01-9310-CC-

00233, 1996 WL 111200 (Tenn. Crim. App. Mar. 14, 1996) (adopting *Schmerber's* four-part test)*; State v. Jordan*, 7 S.W.3d 92, 99 (Tenn. Crim. App. 1999), *appeal denied* (Nov. 22, 1999) (citing *Mason*).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

HELENA WALTON YARBROUGH
Assistant Attorney General

Requested by: Honorable Frank Buck
State Representative
Vice Chairman, Transportation Committee
124 West Main Street
Smithville, TN 37166