

2001 DRAFTING REQUEST

Senate Amendment (SA-SB55)

Received: 05/31/2001

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Dyck

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - law enforcement
Drunk Driving - procedures
Nat. Res. - miscellaneous

Extra Copies: TNF, ARG,
RLR, RNK, MGG

Submit via email: NO

Requester's email:

Pre Topic:

LFB:.....Dyck -

Topic:

Passive alcohol sensors (Motion #1030, #27)

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 05/31/2001 mdsida 06/01/2001	jdyer 06/01/2001	jfrantze 06/01/2001	_____	lrb_docadmin 06/01/2001		

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FE Sent For:

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/1	phurley 05/31/2001 mdsida	1 6/1 jld	7/6/01	3/6/01 6/1			

§ 20. **General Obligation Debt Service Reestimate** -- Decrease debt service on general obligation bonds for transportation facilities funded from the transportation fund by \$506,000 SEG in 2001-02 and \$730,600 in 2002-03 to reflect a reestimate of debt service. General obligation debt service for transportation facilities would total \$5,024,600 in 2001-02 and \$4,929,800 in 2002-03.

§ 21. **Expressway Policing Aids** -- Provide \$31,200 SEG in 2001-02 and \$63,400 SEG in 2002-03 to provide a 3% annual increase in expressway policing aid to Milwaukee County. Base level funding for expressway policing aid to Milwaukee County is \$1,040,800 SEG from the transportation fund.

AM ~~DF~~ 22. **Interchange on USH 141 and CTH B in Marinette County** -- Require DOT to construct a grade-separated interchange at the intersection of USH 141 and CTH B near the Village of Coleman in Marinette County when the Department reconstructs USH 141 to four lanes.

AM ~~DF~~ 23. **Interchange on STH 57 and CTH P in Brown County** -- Require DOT to construct a grade-separated interchange at the intersection of STH 57 and CTH P in Brown County when the Department reconstructs STH 57 to four lanes.

AM ~~DF~~ 24. **Wausau City Square Park Pedestrian Pathway** -- Require DOT to approve a grant under the transportation enhancements program during the 2001-03 biennium to the City of Wausau for a project known as the City Square Park Pedestrian Pathway if the City provides funds toward the cost of the project equal to at least 20% of the cost of the project.

AM 25. **Pedestrian Crossing of USH 45 in Winnebago County** -- Require DOT to construct a pedestrian facility crossing USH 45 in the Town of Clayton in Winnebago County if the town provides 50% of the cost of the project.

private bond * 26. **Leo Frigo Memorial Bridge in the City of Green Bay** -- Require DOT to designate and mark the bridge on I-43 over the Fox River in the City of Green Bay as the "Leo Frigo Memorial Bridge."

* 27. **Electronic Alcohol Sensing Devices** -- Prohibit law enforcement agencies from using any device designed to chemically or electronically detect the presence of alcohol in the breath of a person without the knowledge of consent of the person.
 look at 249 d68. but also civil stuff.
 and SWS John Dyck x 5-31-01

RK 28. **Funding for Port Arthur Road Extension in the City of Ladysmith** -- Require DOT to allocate funds to the City of Ladysmith during the 2001-03 biennium from the SEG appropriation for local transportation facility improvement assistance to close a section of College Avenue and extend Port Arthur Road east to STH 27, if the City provides funds toward the cost of the project equal to 20% or more of the total cost of the project. Specify that the amount allocated by DOT shall be equal to 80% of the cost of the project or \$200,000, whichever is less.

MS 29. **Harbor Assistance Program Eligibility** -- Require DOT to amend its administrative rules for the harbor assistance program during the 2001-03 biennium to recognize ferries and cruise

5-31

T/c to Jon Dyck

PAS - don't just and owl staff -
reguster wants a blanket ban on
all uses of these devices.

Talk w RR - ch 968, maybe?

NATIONAL HARDCORE DRUNK DRIVER PROJECT

[Homepage](#)

Enforcement

Passive Alcohol Sensors

Passive alcohol sensors are devices that sense alcohol in the exhaled breath near the driver's mouth. Most use alcohol-specific fuel cells and air pumps that draw in a measured air sample. They register estimated BACs by means of a digital display or an array of light bars. Some are integrated into police flashlights. Because they are not intrusive, they are unlikely to be challenged based upon constitutional prohibitions against unreasonable search and seizure.

Passive sensors may not be as accurate as evidentiary breath testers because passive sensors test the air surrounding the driver. If alcohol is detected, it can be from the exhaled breath of the driver, or a passenger, or an open container, or alcohol-based hair spray. By themselves, they do not provide probable cause for an alcohol-related arrest but provide reasonable suspicion to proceed with an alcohol investigation.¹²

Passive sensors may be particularly helpful in the identification of the hardcore drunk driver, who generally has a higher alcohol tolerance and doesn't necessarily appear intoxicated, despite high BAC levels.

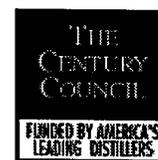
Where Are Passive Sensors Used?

Research shows a recent trend in checkpoint operations toward using passive sensors as part of driver screening.¹³ There are at least 2,000 units in use at a cost of approximately 725 per unit, according to an industry source.

How Effective Are Passive Sensors?

Studies have found these devices to be very effective in distinguishing between drivers who had and had not been drinking and those who were at or above specific BAC levels. Their use as preliminary breath tests has led to fewer high-BAC drivers avoiding arrest and fewer low- or zero-BAC drivers being detained. A series of studies has shown that passive sensors increase by about 50% the detection rate of drivers with BACs at .10 or greater in checkpoint operations.¹¹

Research notes some drawbacks to the use of passive sensors. To get an accurate reading, the device must be held at just the right distance from the driver to capture a specific amount of air from exhaled breath, typically while the driver speaks. In one


[Enforcement](#)
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[Standardized Field Sobriety Test \(SFST\)](#)
[Preliminary or Pre-Arrest Breath Test \(PBT\)](#)
[License Plate Actions](#)
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study, police officers said the passive sensors represented one more item to be held, and when used for testing, the devices required the officers to be close to the subjects and to divert at least part of their attention to the sensors.¹²

Where to Go for More Information on Passive Sensors

Insurance Institute for Highway Safety. August 1996.
Alcohol Q&A: Deterrence & Enforcement.
Insurance Institute for Highway Safety.

Leaf, W.A., and Preusser, D.F. March 1996.
Effectiveness of Passive Alcohol Sensors.
National Highway Traffic Safety Administration.
DOT HS 808 381.

Martin, S.E., and Preusser, D.F. 1995.
Enforcement strategies for the persistent drinking driver,
Strategies for Dealing with the Persistent Drinking Driver,
Transportation Research Board, Transportation Research
Circular No. 437.
Washington, D.C. National Research Council: 38-42.

Voas, R.B. 1991.
Enforcement of DUI laws,
Alcohol, Drugs and Driving. Vol. 7, Nos. 3-4: 173-196.

Voas, R.B., Holder, H.D., and Gruenewald, P.J. 1997.
The effect of drinking and driving interventions on alcohol-
involved traffic crashes within a comprehensive community trial,
Addiction. Supplement 2, S221-S236.

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PAS SYSTEMS INTERNATIONAL

ALCOHOL SENSOR SYSTEMS

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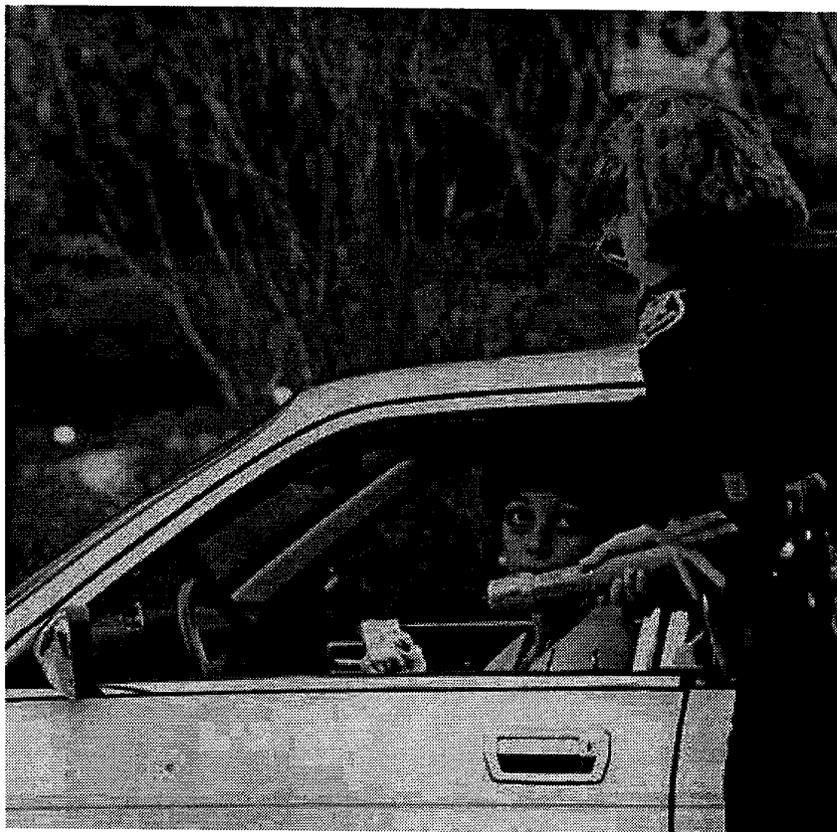
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Law Enforcement

Law Enforcement

Schools

LAW ENFORCEMENT



✱ P.A.S.™ III Passive Alcohol Sensor

A non-invasive, alcohol screening instrument with a built-in high intensity flashlight. The P.A.S.™ III enables an operator to check breath alcohol levels without a subject's active participation, or check for alcohol presence in open containers (drinks) or enclosed spaces (automobile, small rooms, jail cells, etc.).

✱ *How Used*

The P.A.S.™ III Passive Alcohol Sensor samples exhaled air from in front of the face of an individual. A simple press of the switch button activates the proprietary sample pump and draws the sample into the electrochemical fuel cell sensor alerting the operator to the presence and approximate concentration of alcohol (BAC%). Holding the sensor up to ten (10) inches from the suspected alcohol source is all that is needed to determine if alcohol is present. This design also allows the sensor to check for alcohol in open containers (drinks) or closed spaces (automobiles, jail cells, rooms, etc.). The alcohol level is shown by color-coded display and in a few seconds after sampling.

✱ *Where Used*

In law enforcement the P.A.S. Sensor is frequently used at sobriety checkpoints or during routine traffic stops to alert the officer to the presence of alcohol. The "sniffer" sampling system is ideal to monitor and measure the presence of alcohol over open containers (drinks), enclosed spaces, or for zero tolerance enforcement of underage drivers. The "stealth" design of the P.A.S.™ III often alerts the officer to the presence of alcohol before the subject is even aware a sample has been taken and analyzed. This type of sampling is not a violation of the individual's rights as such "sniffing" is protected by the "plain sight doctrine," a legal doctrine that allows the officer, when legally in a position to use his or her senses to observe a violation of the law, aiding the officer to establish "probable cause" for making the arrest. Passive alcohol testing has been upheld to be consistent with this legal doctrine.

✱ *What is saved by using passive alcohol testing?*

According to studies conducted by the National Highway Traffic Association and the Insurance Institute for Highway Safety officers using P.A.S.™ Sensors at sobriety checkpoints increase their effectiveness by 15 to 25 percent in detecting legally impaired (0.08 gm% or 0.10 gms%) drivers. In zero tolerance enforcement, the sensors can be even more effective by enhancing the officers' subjective senses of smell, visual and hearing to evaluate more accurately for the presence of alcohol.

Savings of billions of dollars every year and countless numbers of lives is possible with stronger and more rigorous enforcement of drinking and driving laws. NHTSA estimates that direct costs of alcohol-related crashes exceeded \$46 billion in 1994. An additional \$90 plus billion is lost in quality of life due to these crashes. These high-tech tools which quickly "sniff" out alcohol to one-hundredth of one percent are proving how technology can help combat DUI/DWI, enforce zero tolerance, and save lives and money.



✱ P.A.S.™ III Sentry

A portable or "wall mount" breath analyzer that screens subjects automatically upon blowing toward a sensor, the Sentry uses visual prompts and an audible alarm to direct the subject's sampling. When alcohol is present a color-coded display and numeric readout indicates the presence and approximate concentration of alcohol followed by an audible alarm.

✱ *How Used*

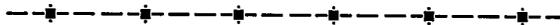
The innovative "wall mount" requires a test subject to stand 6 to 8 inches distance from the intake port, take a deep breath and exhale in a sustained manner for a few seconds to activate the sensor and proprietary sample pump. The pump automatically draws in a breath sample and processes for the presence and concentration of alcohol. The visual prompts (four lamps) indicate SAMPLE (Green), PUMP (Yellow), ANALYZING (Blue), and WAIT (Red). The color-coded numeric display indicates the concentration of alcohol (BAC%).

✱ *Where Used*

The P.A.S.™ Sentry is used in screening large populations of subjects rapidly. For example, in large jails that have work release programs, jail commanders have found the Sentry to be a cost-effective and reliable indicator when alcohol was being used. In court-based counseling centers, the Sentry is used to influence behavior by testing every subject that is in counseling or on probation. Without this cost-effective device, the centers usually are limited to random testing. That is often insufficient to influence behavior because the odds of being the random subject is so infrequent, many habitual drinkers are more than willing to take the risk.

✱ *How Does the Sentry Save Money?*

First, to use the device does not require the use of mouthpieces or attachments. That can save 20¢ to 50¢ per test, so any volume of testing saves money. The Sentry operates on regular electrical current, saving the cost of batteries. The ability to test all subjects in "real time" and not after-the-fact, such as urine alcohol testing, saves counselors time, allows more effective counseling and avoids disruptive behavior to other subjects attending sessions. Of course, in institutional environments, prompt confinement and disciplinary action can save putting other inmates or staff at risk of injury, rape or even suicides from alcoholic depression.



✱ Funding Sources to Purchase Passive Alcohol Sensors (P.A.S.™ III, Sentry and Vr.)

✱ Insurance Companies

Over the past few years, many major insurance companies have purchased, donated, or paid half of the purchase price of a passive alcohol-screening device.

*** M.A.D.D.**

In several states, Mothers Against Drunk Driving have purchased P.A.S.™ Units (Passi Sensor) and donated them to local law enforcement agencies.

*** Government**

NHTSA provides millions of dollars each year to support alcohol DUI/DWI enforcement states. The NHTSA 402 State and Community Highway Safety Grant Program and the Alcohol Incentive Grant Programs are administered by the Governors' Highway Safety Representatives (Office of Traffic Safety) in each state. These performance-based grants streamlined to facilitate documentation and grant processing. Call your HHTSA Region State Governor's Highway Safety Representative for information.

*** Civic Organizations**

Many civic organizations in your area usually take on annual projects. The purchase of P.A.S.™ Units for law enforcement or schools can have a very positive effect in the cor

*** Industry**

The P.A.S.™ Unit has had a great success in industry. Local industry may donate a sys enforcement officials for good public relations. Law enforcement in return could assist working with the passive alcohol sensor.

*** Industry**

The P.A.S.™ Unit has been sold to high schools and colleges with exceptional results. cases, schools who do not own their own P.A.S.™ Unit call in law enforcement to verif students were drinking on campus. New, easy-to-use P.A.S.™ Systems allow school of quickly and accurately perform their own "real time" testing.

*** Working Together -- A Key**

Alcohol abuse has far-reaching effects throughout the community. It is not just a "polic However, if police, industry and schools work together in any given community, P.A.S International will assist in creating a central "calibration station" for all to use. This pro effort within the community and reinforces the passive alcohol sensor concept.



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DRUNK DRIVING ISSUE

Issue Forum

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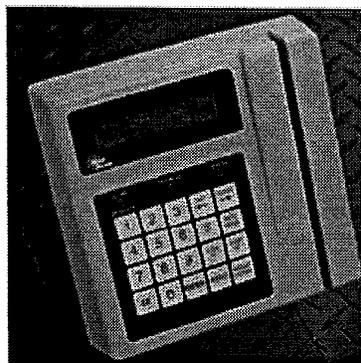
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KNOXVILLE, TN - Consider this scenario: a police officer stops a car at a roadblock. There has been no evidence of impaired driving. As the officer approaches the vehicle, he holds in his hand what appears to be a flashlight. After asking the driver to roll down the window, the officer extends the device into the passenger compartment without the consent of the driver. The device, unbeknownst to the driver, then begins to analyze the air inside the car for alcohol. The officer has essentially searched the vehicle for evidence that the driver is under the influence of alcohol without legal grounds to justify the intrusion and without the permission of the driver for the search.



Devices Used in the Battle Against Driving:
Above is an Evidential Portable Alcohol System (EPAS) from Draeger, Duran

Based on the reading obtained by the device, the officer orders the suspect out of the car. The suspect is unable to complete the field sobriety tests to the officer's satisfaction and is arrested for DUI. The suspect is then taken to jail to extract a blood sample before being thrown six weeks later, after spending thousands of dollars posting bond and hiring a lawyer, the suspect learns that his blood alcohol level was .04 percent. The problems caused here by the surreptitious use of this device are more of what might have expected in old Communist Europe instead of our land that holds the freedom from unwarranted searches and seizures.



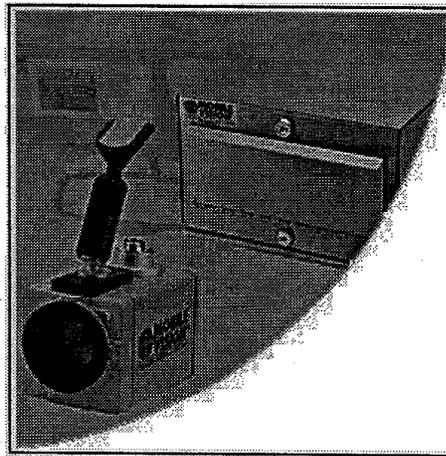
Devices Used in the Battle Against Drunk Driving:
Above is a countertop identification checker from IdentiScan, Ellington, CT.

The device described in this scenario is a passive alcohol sensor (PAS), or flash alcohol sensor. The PAS is a flashlight that contains a fuel cell sensor designed to detect the alcohol content of a breath sample. In practice, the officer simply sticks the flashlight inside the window of a suspect's car while asking for the driver's license, and the sensor will detect the odor of alcohol in the breath purportedly exhaled by the suspect. At 15 seconds, the sensor will display a reading that the officer can use to determine whether to proceed with further tests to determine

alcohol content of the suspect.

The flaw in this practice is that the PAS apparently has several serious problems with accuracy. The sensor measures only the air in the car that, at best, contains exhaled breath, not the deep lung air that is necessary to correlate a breath to an accurate blood alcohol reading. At worst, the device is measuring perfume, cologne, mouthwash, breath spray, or any number of other substances that contain alcohol and may be present on the person or breath of the driver or passenger. Even if an alcoholic beverage or other substance has been spilled in the car, the device cannot determine the source of the substance. These problems exist even with the assumption that the device is accurately detecting ethanol and not confusing it with a similar chemical.

Even when the PAS accurately reports the presence of alcohol on a person, it does not always accurately report the amount of alcohol in that person's blood. For instance, in a 1986 study, 20 percent of the suspects detained based on a PAS reading were later proved to have levels of alcohol below .10 percent. A 1997 study showed even more startling results. Only 25 percent of those who tested positive after use of the PAS had blood alcohol levels of .10 percent or above. Of the remaining subjects, 25 percent had blood alcohol levels below .05 percent and the remaining 50 percent had blood alcohol levels between .05 percent and .10 percent.



While the PAS may appear to be a high-tech weapon in the war against drunk driving, it also appears to have significant flaws in both its design and its use. Moreover, it is frequently used without the consent of the driver and without any suspicion that the driver is under the influence of alcohol. There are many ways to detect and prevent drunk drivers from taking an unnecessary toll on our highways. Americans should carefully consider whether we want to embrace this device as a tool for detecting intoxicated drivers, or whether we should permit the continuing erosion of individual liberties.

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Devices Used in the Battle Against Drunk Driving: Above is a VCR camera with a zoom lens from Mobile Vision, Boonton, NJ.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb0492/1

MGD:.....

JLD

LFB:.....Dyck – Passive alcohol sensors (Motion #1030, #27)

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 2001 SENATE BILL 55 AND 2001 ASSEMBLY BILL 144

soon

1 At the locations indicated, amend the bill as follows:

2 1. Page 1339, line 23: after that line insert:

3 "SECTION 2882m. 175.50 of the statutes is created to read:

4 175.50 Use of passive alcohol sensors. (1) In this section:

5 (a) "Law enforcement officer" means a Wisconsin law enforcement officer, as
6 defined in s. 175.46 (1) (g).

7 (b) "Passive alcohol sensor" means a device that is used to determine the
8 presence of alcohol in the air but that does not require a person to breathe directly
9 into it through a mouthpiece, tube, or similar device.

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