

## 2009 DRAFTING REQUEST

### Bill

Received: **06/04/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Glenn Grothman (608) 266-7513**

By/Representing: **Jim Emerson**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - refusals/testing**  
**Drunk Driving - other**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Grothman@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Tests for intoxication

---

### Instructions:

After any accident involving injury to a person, a law enforcement officer can request a blood draw or other test for intoxication without individualized suspicion.

New draft: If any injury + detect alcohol, then blood draw is ok. AND if serious bodily harm/death, blood draw is ok automatically, w/o detecting alcohol.

Also add in: if great bodily harm or death + any traffic violation, blood is ok.

---

### 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 07/07/2009	bkraft 07/09/2009	rschlue 07/10/2009	_____	mbarman 07/10/2009		S&L

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/2	phurley 07/30/2009	bkraft 08/10/2009	phenry 08/11/2009	_____	sbasford 08/11/2009		S&L
/3	phurley 09/01/2009	bkraft 09/01/2009	jfrantze 09/02/2009	_____	sbasford 09/02/2009	mbarman 09/21/2009	

FE Sent For: "3" @ intro. 9/23/09

<END>

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/2	phurley 07/30/2009	bkraft 08/10/2009	phenry 08/11/2009	_____	sbasford 08/11/2009		

FE Sent For:

13 bjk 9/1

*Jb*  
9/2

*Jb/ph*  
9/2  
<END>

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FE Sent For: *12 bjk 8/10*

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/?	phurley	1 bjk 7/9		_____	_____	_____	_____

FE Sent For:

<END>



Lbjk

## 2009 BILL

SA  
K-ref

7-7-09

1 AN ACT <sup>gen.</sup> ...; relating to: requesting a person who operates a vehicle that is  
 2 involved in an accident that causes death or injury to submit to a test for  
 3 intoxication.

### *Analysis by the Legislative Reference Bureau*

Under current law, any person who operates a motor vehicle on a public highway is deemed to have given consent to having his or her breath, blood, or urine tested to determine the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs (test for intoxication). Generally, a law enforcement officer may request a person to submit to a test for intoxication when the person is arrested for operating a vehicle while intoxicated, although an officer may request a test prior to arrest if the person is operating a commercial motor vehicle or is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to a person and, in either circumstance, the officer detects the presence of alcohol or another drug.

Under this bill, an officer may request the person to submit to a test to determine the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs prior

**BILL**

> to arrest if the person is the operator of a vehicle that is involved in an accident that causes the death of or injury to a person. *DA*

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 343.305 (3) (ar) of the statutes is amended to read:  
2           343.305 (3) (ar) If Prior to arrest, if a person is the operator of a vehicle that  
3 is involved in an accident that causes the death of or ~~great bodily harm~~ injury to any  
4 person, and a law enforcement officer detects any presence of alcohol, a controlled  
5 substance, a controlled substance analog or other drug, or a combination thereof, the  
6 law enforcement officer may request the operator to provide one or more samples of  
7 his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance  
8 with a request for one type of sample does not bar a subsequent request for a different  
9 type of sample. A person who is unconscious or otherwise not capable of withdrawing  
10 consent is presumed not to have withdrawn consent under this paragraph and one  
11 or more samples specified in par. (a) or (am) may be administered to the person. If  
12 a person refuses to take a test under this paragraph, he or she may be arrested under  
13 par. (a).

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413; 2007 a. 20 ss. 3303 to 3315, 9121 (6) (a); 2007 a. 136.

14           **SECTION 2.** 343.305 (4) of the statutes is amended to read:  
15           343.305 (4) **INFORMATION.** At the time that a chemical test specimen is  
16 requested under sub. (3) (a), (am), or (ar), the law enforcement officer shall read the  
17 following to the person from whom the test specimen is requested:  
18           “You have either been arrested for an offense that involves driving or operating  
19 a motor vehicle while under the influence of alcohol or drugs, or both, or you are the  
20 operator of a vehicle that was involved in an accident that caused the death of or

**BILL**

1 injury to a person, or you are suspected of driving or being on duty time with respect  
2 to a commercial motor vehicle after consuming an intoxicating beverage.

3 This law enforcement agency now wants to test one or more samples of your  
4 breath, blood or urine to determine the concentration of alcohol or drugs in your  
5 system. If any test shows more alcohol in your system than the law permits while  
6 driving, your operating privilege will be suspended. If you refuse to take any test that  
7 this agency requests, your operating privilege will be revoked and you will be subject  
8 to other penalties. The test results or the fact that you refused testing can be used  
9 against you in court.

10 If you take all the requested tests, you may choose to take further tests. You  
11 may take the alternative test that this law enforcement agency provides free of  
12 charge. You also may have a test conducted by a qualified person of your choice at  
13 your expense. You, however, will have to make your own arrangements for that test.

14 If you have a commercial driver license or were operating a commercial motor  
15 vehicle, other consequences may result from positive test results or from refusing  
16 testing, such as being placed out of service or disqualified.”

**History:** 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413; 2007 a. 20 ss. 3303 to 3315, 9121 (6) (a); 2007 a. 136.

17

**(END)**



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2979/1

PJH:bjk:rs

2  
L stays

2009 BILL

SA  
x-ref

- regen.

1 AN ACT *to amend* 343.305 (3) (ar) and 343.305 (4) of the statutes; **relating to:**  
2 requesting a person who operates a vehicle that is involved in an accident that  
3 causes death or injury to submit to a test for intoxication.

***Analysis by the Legislative Reference Bureau***

Under current law, any person who operates a motor vehicle on a public highway is deemed to have given consent to having his or her breath, blood, or urine tested to determine the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs (test for intoxication). Generally, a law enforcement officer may request a person to submit to a test for intoxication when the person is arrested for operating a vehicle while intoxicated, although an officer may request a test prior to arrest if the person is operating a commercial motor vehicle or is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to a person and, in either circumstance, the officer detects the presence of alcohol or another drug.

> Under this bill, an officer may request the person to submit to a test to determine the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs prior

**BILL**

to arrest if the person is the operator of a vehicle that is involved in an accident that causes the death of or injury to a person.

Insert  
analysis

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1  
2  
3  
4  
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6  
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8  
9  
10  
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12  
13

**SECTION 1.** 343.305 (3) (ar) of the statutes is amended to read:

343.305 (3) (ar) If Prior to arrest, if a person is the operator of a vehicle that is involved in an accident that causes the death of or ~~great bodily harm~~ injury to any person, and a law enforcement officer detects any presence of alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this paragraph and one or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this paragraph, he or she may be arrested under par. (a).

Insert  
A

**SECTION 2.** 343.305 (4) of the statutes is amended to read:

343.305 (4) INFORMATION. At the time that a chemical test specimen is requested under sub. (3) (a), (am), or (ar), the law enforcement officer shall read the following to the person from whom the test specimen is requested:

“You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are the operator of a vehicle that was involved in an accident that caused the death of or

**BILL**

1 injury to a person, or you are suspected of driving or being on duty time with respect  
2 to a commercial motor vehicle after consuming an intoxicating beverage.

3 This law enforcement agency now wants to test one or more samples of your  
4 breath, blood or urine to determine the concentration of alcohol or drugs in your  
5 system. If any test shows more alcohol in your system than the law permits while  
6 driving, your operating privilege will be suspended. If you refuse to take any test that  
7 this agency requests, your operating privilege will be revoked and you will be subject  
8 to other penalties. The test results or the fact that you refused testing can be used  
9 against you in court.

10 If you take all the requested tests, you may choose to take further tests. You  
11 may take the alternative test that this law enforcement agency provides free of  
12 charge. You also may have a test conducted by a qualified person of your choice at  
13 your expense. You, however, will have to make your own arrangements for that test.

14 If you have a commercial driver license or were operating a commercial motor  
15 vehicle, other consequences may result from positive test results or from refusing  
16 testing, such as being placed out of service or disqualified.”

17 (END)

2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2979/ins  
PJH:bjk:rs

2

Please change component to anal: text and the officer believes that person violated the local state or traffic laws

reasonably  
INSERT ANALYSIS:  
Under this bill, if the person is the operator of a vehicle that is involved in an accident that causes any injury to any person and an officer detects the presence of alcohol or another drug, the officer may request the person to submit to a test for intoxication before he or she arrests the person. If the person is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to any person, the officer may request the person to submit to a test for intoxication before he or she arrests the person, regardless of whether the officer detects the presence of alcohol or another drug.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INSERT A:

SECTION 1. 343.305 (3) (ar) of the statutes is renumbered 343.305 (3) (ar) 1. and amended to read:

343.305 (3) (ar) 1. If a person is the operator of a vehicle that is involved in an accident that causes ~~the death of or great bodily harm~~ injury to any person, and a law enforcement officer detects any presence of alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this paragraph and one

subdivision

>

↑ ↑

or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this ~~paragraph~~ <sup>subdivision</sup>, he or she may be arrested under par. (a).

**History:** 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104; 2003 a. 97, 199; 2005 a. 332, 413; 2007 a. 20 ss. 3303 to 3315, 9121 (6) (a); 2007 a. 136.

**SECTION 2.** 343.305 (3) (ar) 2. of the statutes is created to read:

343.305 (3) (ar) 2. If a person is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to any person, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine for the purpose specified under sub. (2). Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample. A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this ~~paragraph~~ <sup>subdivision</sup> and one or more samples specified in par. (a) or (am) may be administered to the person. If a person refuses to take a test under this ~~paragraph~~ <sup>subdivision</sup>, he or she may be arrested under par. (a).

and the law enforcement officer has reason to believe that the person violated any state or local traffic law



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-2979

PJH:bjk:ph

3/1/09  
stays

2009 BILL

SA

9/1/09

regen.

1 AN ACT *to renumber and amend* 343.305 (3) (ar); *to amend* 343.305 (4); and  
2 *to create* 343.305 (3) (ar) 2. of the statutes; **relating to:** requesting a person  
3 who operates a vehicle that is involved in an accident that causes death or  
4 injury to submit to a test for intoxication.

*Analysis by the Legislative Reference Bureau*

Under current law, any person who operates a motor vehicle on a public highway is deemed to have given consent to having his or her breath, blood, or urine tested to determine the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs (test for intoxication). Generally, a law enforcement officer may request a person to submit to a test for intoxication when the person is arrested for operating a vehicle while intoxicated, although an officer may request a test prior to arrest if the person is operating a commercial motor vehicle or is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to a person and, in either circumstance, the officer detects the presence of alcohol or another drug.

However

generally

for intoxication

Under this bill, if the person is the operator of a vehicle that is involved in an accident that causes any injury to any person and an officer detects the presence of alcohol or another drug, the officer may request the person to submit to a test for intoxication before he or she arrests the person. If the person is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm

**BILL**

to any person and the officer reasonably believes that the person violated any state or local traffic law, the officer may request the person to submit to a test for intoxication before he or she arrests the person, regardless of whether the officer detects the presence of alcohol or another drug.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 343.305 (3) (ar) of the statutes is renumbered 343.305 (3) (ar) 1. and  
2 amended to read:

3           343.305 (3) (ar) 1. If a person is the operator of a vehicle that is involved in an  
4 accident that causes ~~the death of or great bodily harm~~ injury to any person, and a law  
5 enforcement officer detects any presence of alcohol, a controlled substance, a  
6 controlled substance analog or other drug, or a combination thereof, the law  
7 enforcement officer may request the operator to provide one or more samples of his  
8 or her breath, blood, or urine for the purpose specified under sub. (2). Compliance  
9 with a request for one type of sample does not bar a subsequent request for a different  
10 type of sample. A person who is unconscious or otherwise not capable of withdrawing  
11 consent is presumed not to have withdrawn consent under this ~~paragraph~~  
12 subdivision and one or more samples specified in par. (a) or (am) may be administered  
13 to the person. If a person refuses to take a test under this ~~paragraph~~ subdivision,  
14 he or she may be arrested under par. (a).

15           **SECTION 2.** 343.305 (3) (ar) 2. of the statutes is created to read:

16           343.305 (3) (ar) 2. If a person is the operator of a vehicle that is involved in an  
17 accident that causes the death of or great bodily harm to any person and the law  
18 enforcement officer has reason to believe that the person violated any state or local  
19 traffic law, the officer may request the operator to provide one or more samples of his

**BILL**

1 or her breath, blood, or urine for the purpose specified under sub. (2). Compliance  
2 with a request for one type of sample does not bar a subsequent request for a different  
3 type of sample. A person who is unconscious or otherwise not capable of withdrawing  
4 consent is presumed not to have withdrawn consent under this subdivision and one  
5 or more samples specified in par. (a) or (am) may be administered to the person. If  
6 a person refuses to take a test under this subdivision, he or she may be arrested  
7 under par. (a).

8 **SECTION 3.** 343.305 (4) of the statutes is amended to read:

9 343.305 (4) INFORMATION. At the time that a chemical test specimen is  
10 requested under sub. (3) (a), (am), or (ar), the law enforcement officer shall read the  
11 following to the person from whom the test specimen is requested:

12 “You have either been arrested for an offense that involves driving or operating  
13 a motor vehicle while under the influence of alcohol or drugs, or both, or you are the  
14 operator of a vehicle that was involved in an accident that caused the death of or  
15 injury to a person, or you are suspected of driving or being on duty time with respect  
16 to a commercial motor vehicle after consuming an intoxicating beverage.

17 This law enforcement agency now wants to test one or more samples of your  
18 breath, blood or urine to determine the concentration of alcohol or drugs in your  
19 system. If any test shows more alcohol in your system than the law permits while  
20 driving, your operating privilege will be suspended. If you refuse to take any test that  
21 this agency requests, your operating privilege will be revoked and you will be subject  
22 to other penalties. The test results or the fact that you refused testing can be used  
23 against you in court.

24 If you take all the requested tests, you may choose to take further tests. You  
may take the alternative test that this law enforcement agency provides free of

**BILL**

1 charge. You also may have a test conducted by a qualified person of your choice at  
2 your expense. You, however, will have to make your own arrangements for that test.

3 If you have a commercial driver license or were operating a commercial motor  
4 vehicle, other consequences may result from positive test results or from refusing  
5 testing, such as being placed out of service or disqualified.”

6 (END)

**Basford, Sarah**

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**From:** Emerson, James  
**Sent:** Friday, September 18, 2009 4:59 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-2979/3 Topic: Tests for intoxication

Please Jacket LRB 09-2979/3 for the SENATE.