

**2001 DRAFTING REQUEST**

**Assembly Amendment (AA-AB216)**

Received: 12/05/2001

Received By: fasttn

Wanted: Soon

Identical to LRB:

For: Gary Sherman (608) 266-7690

By/Representing: self

This file may be shown to any legislator: NO

Drafter: fasttn

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - refusals**

Extra Copies: **ARG, PJH - 1**

Submit via email: NO

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Discovery exception

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**Instructions:**

See Attached

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**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>
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/1			jfrantze 12/10/2001	_____	lrb_docadmin 12/10/2001	lrb_docadmin 12/10/2001	

FE Sent For:

<END>

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1/	fasttn 12/09/2001	lrb editor 1/12/10 jld	12/10	76/Pg 12/10			

FE Sent For:

<END>

## Fast, Timothy

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**From:** Sherman, Gary  
**Sent:** Wednesday, December 05, 2001 6:10 PM  
**To:** Fast, Timothy  
**Subject:** RE: AB 216

Thanks. You are working late.

G

-----Original Message-----

**From:** Fast, Timothy  
**Sent:** Wednesday, December 05, 2001 6:09 PM  
**To:** Sherman, Gary  
**Subject:** RE: AB 216

Greetings. I'll take care of the amendment and you should have it on Friday or Monday morning. Please take care.

Regards, Tim

Timothy N. Fast  
Senior Legislative Attorney  
Legislative Reference Bureau  
Phone: (608) 266-9739

-----Original Message-----

**From:** Sherman, Gary  
**Sent:** Wednesday, December 05, 2001 5:21 PM  
**To:** Fast, Timothy  
**Subject:** FW: AB 216

I sent this to Peggy Hurley and got back her message that she is on maternity leave. She recommended you. If you cannot take care of this, please let me know.

Thanks,  
Gary

-----Original Message-----

**From:** Sherman, Gary  
**Sent:** Wednesday, December 05, 2001 5:19 PM  
**To:** Hurley, Peggy  
**Subject:** AB 216

You appear to be the drafting attorney on AB 216. Please draft an amendment for me that includes as an exception to the rule against discovery all of the language of sec 345.421 after the word "except" in the second line. Since it is not material to the issue at hand, you can leave out "or to measure speed."

2001

Date (time)

needed

MON. AM 12/10

LRBa 098711

AMENDMENT

TNF: jld:

See form AMENDMENTS — COMPONENTS & ITEMS.

S (A) AMENDMENT

TO S A AMENDMENT (LRBa 1)

TO S A SUBSTITUTE AMENDMENT (LRBs 1)

TO 2001 SB SJR SR (AB) AJR AR 216 (LRB- 1)

At the locations indicated, amend the bill as follows:

(fill ONLY if "engrossed ...." or "as shown by .....")

#. Page 2, line 12: delete the material beginning with "Neither" and ending with "hearing." on line 16 and substitute "Except as provided in par. (c), neither party is entitled to prehearing

discovery." ↑

#. Page 3, line 10: delete the material beginning with "Neither" and ending with "hearing." on line 14 and substitute "Except as provided in par. (c), neither party is entitled to

prehearing discovery." ↑

#. Page 3, line 17: after that line insert:

29.  
" Section # 343.305 (9) (c) of the statutes is renumbered 343.305 (9) (c) (intro.) and amended to read:

343.305 (9) (c) (intro.) If a law enforcement officer informs the circuit court that a person has refused to submit to a test under sub. (3) (a) or (am), the court shall be prepared to hold any requested hearing to determine if the refusal was proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5. Section 967.055 applies to any hearing under this subsection.

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.

NO  
#

Prehearing discovery may be made only under the following circumstances:

SECTION 2j. ✓ CR; 343.305 (9) (c) 1. and 2.

# 343.305 (9) (c) 1. # NO

Section # ~~345.42~~ of the statutes

person who refused to take the test under ~~ppm~~ (a) or (am) sub. (3)

refusal

~~345.42~~ Discovery Neither party is entitled to pretrial discovery, except that if the ~~defendant~~ <sup>§26</sup> moves within 10 days after the alleged ~~violation~~ and shows cause therefor, the court may order that the defendant be allowed to inspect and test under s. 804.09 and under such conditions as the court prescribes, any devices used by the ~~plaintiff~~ to determine whether a violation has been committed, including without limitation, devices used to determine presence of alcohol in breath ~~or body fluid~~ <sup>or to measure speed</sup>, and may inspect under s. 804.09 the reports of experts relating to those devices.

officer

History: 1971 c. 278; Sup. Ct. Order, 67 Wis. 2d 585, 776 (1975); 1975 c. 218.

, blood, or urine ✓

or refusal



ASSEMBLY BILL 216

bill allows the court, for cause, to order the production of those statements before the hearing.

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

SECTION 1. 343.305 (9) (a) (intro.) of the statutes is amended to read:

343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the law enforcement officer shall immediately take possession of the person's license and prepare a notice of intent to revoke, by court order under sub. (10), the person's operating privilege. If the person was driving or operating a commercial motor vehicle, the officer shall issue an out-of-service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy with the person's license to the circuit court for the county in which the arrest under sub. (3) (a) was made. The officer shall also mail a copy of the notice of intent to revoke to the district attorney for that county and the department. Neither party is entitled to prehearing

~~discovery except that~~ the refusal hearing, before a witness testifies, written or voice recorded statements of the witness, if any, shall be given to the person who refused to take the test under sub. (3) (a). For cause, the court may order the production of those statements before the hearing. ~~This limit on discovery does not affect either party's right to discovery under s. 971.23 related to any criminal prosecution.~~ The notice of intent to revoke the person's operating privilege shall contain substantially all of the following information:

SECTION 2. 343.305 (9) (am) (intro.) of the statutes is amended to read:

or (am) ✓

11.

✓ (END)

plain text

#

Q. A+