

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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May 27, 2003

Rep. Gundrum:

1. Should this bill have provisions comparable to ss. 23.33 (4x), 30.687, 345.24 (1), and 350.107? Those sections prohibit releasing someone who has been arrested for an OWI offense for 12 hours, unless the person's blood alcohol content is below a certain level or unless the person is released to a responsible adult. When considering this issue, please note that those sections do not currently prevent the police from releasing someone under the influence of a controlled substance earlier, so long as the person's blood alcohol content does not exceed the specified level.

2. Current law permits a person who is 21 or over to get an occupational license if the person is convicted of operating a motor vehicle either while under the influence of an intoxicant or with a prohibited alcohol content. The bill treats a person who is 21 or over and who drives with a restricted controlled substance in his or her blood in the same way. But under current law, if a person is under 21, he or she cannot get an occupational license after driving with a prohibited alcohol content (*i.e.*, greater than 0.0) but can after driving while under the influence of an intoxicant. Since the illegality of the use of a controlled substance does not depend on a person's age, this draft of the bill treats a person who is under 21 and who drives with a restricted controlled substance in his or her blood in the same way that it treats adults; namely, it permits the person to get an occupational license. Is that okay?

3. A law enforcement officer will probably rarely request a blood test from a person who has a valid prescription for methamphetamine or one of its precursors unless there is some evidence that the person's ability to drive was impaired. Therefore, s. 343.305 (8) and (9), which relate to administrative suspension of a driver's license and a driver's refusal to submit to a blood, breath, or urine test, still apply under the bill to individuals with prescriptions for methamphetamine or one of its precursors. If you want to exempt those individuals, in cases in which there is no evidence of impaired driving, from either the administrative suspension procedures or from the implied consent provisions (for example, if the person shows a valid prescription to the law enforcement officer), or if you want to permit those individuals to refuse to submit to

a chemical test and provide a prescription defense at the refusal hearing, please let us know.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867