

**2005 DRAFTING REQUEST**

**Bill**

Received: **02/10/2006**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing:

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

Drafter: **phurley**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Discovery

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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>
/?	phurley 02/10/2006	wjackson 02/10/2006		_____			S&L
/1			rschluet 02/10/2006	_____	lnorthro 02/10/2006	lnorthro 02/10/2006	

FE Sent For:

<END>

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/?	phurley	1/11/2/10		_____			
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FE Sent For:

<END>

PK jacket for  
assembly

**Basford, Sarah**

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**From:** Usealman, Kevin  
**Sent:** Friday, February 10, 2006 11:25 AM  
**To:** Basford, Sarah  
**Subject:** RE: Two more Jackets

- 41630 (Asm. Version)  
Companion Oked by Roesler's Office

Sarah,

Mike should be contacting you about this.

What I would like to know is, what can we do to avoid the headache of having to get these permissions two and three times? There's no way I should be told at this point "it's not your draft" when we've been working on it with them for months. I'm the one who called to get the Assembly version **drafted** and we obviously got permissions at that time.

Not coming down on you at all here, and I definitely appreciate that LRB is so careful with these things, but I just want to know what the right answer is. Who is the RIGHT person to get these permissions to record them so EVERYONE knows and there is no misunderstanding on subsequent calls?

Thanks,  
Kevin

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**From:** LRB.Legal  
**Sent:** Friday, February 10, 2006 11:11 AM  
**To:** Usealman, Kevin  
**Subject:** RE: Two more Jackets

Kevin: 4454 has been jacketed and introduced already as AB 990. Also, we need to hear (in writing) directly from the requestor for -4160 since it is not your draft. Thanks.

**Sarah Basford**  
Program Assistant  
State of Wisconsin  
Legislative Reference Bureau  
PH: (608) 266-3561/FAX: (608) 264-6948  
[sarah.basford@legis.state.wi.us](mailto:sarah.basford@legis.state.wi.us)

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**From:** Usealman, Kevin  
**Sent:** Friday, February 10, 2006 10:55 AM  
**To:** LRB.Legal  
**Subject:** Two more Jackets

Please Jacket this and send it over. I believe the Assembly version is 4149...thanks!

Also lrb 4544 on the same trip. Thanks again!

Kevin Rep. Gundrum's staff 119W

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**From:** Roessler, Carol  
**Sent:** Tuesday, February 07, 2006 3:58 PM  
**To:** \*Legislative Assembly Democrats; \*Legislative Assembly Republicans; \*Legislative Senate Democrats; \*Legislative Senate Republicans  
**Subject:** Roessler/Gundrum LRB 4160/1 & LRB 4149/1 re: discovery in implied consent cases involving drunken driving and in certain prosecutions for alcohol beverage violations.

TO: All Legislators

FROM: Senator Carol Roessler and Representative Mark Gundrum

DATE: February 7, 2006

RE: LRB 4160/1 and LRB 4149/1: discovery in implied consent cases involving drunken driving and in certain prosecutions for alcohol beverage violations.

Handwritten notes: "Senate" circled with an arrow pointing to "RE:"; "Assm" circled with an arrow pointing to "DATE:"; "-4630" written between the two circles.

Under current law, when a motorist is suspected of being intoxicated, those that agree to a breathalyzer test and those that refuse to take a breathalyzer test are afforded differing rules of discovery. Those that refuse breathalyzers currently are granted rights under statute that exceed those of other related criminal penalties. The resulting scenario is that certain defendants are able to “beat the system.” An Assistant District Attorney from Fond du Lac County summed the problem up this way:

“1) officers are being forced to travel long distances, 2) prosecutors are unable to attend because the location of the depositions are often well outside their county--meaning there is no attorney there to ensure fairplay, 3) there are typically other motion hearings already set by the Court in the county where the incident occurred--so the defense attorney can ask the same questions and gather the same evidence--so this is terribly inefficient.”

He further summarized, the main reason for setting a deposition is to try to have officers testify under oath to offer disparate testimony at a proceeding where that officer has no attorney representing the state's interests. It is also a huge inconvenience to the officer and the department to have to drive long distances (within 100 miles of the witness's residence).

This bill prohibits either party’s use of discovery in these cases, except that the court may allow the person who allegedly refused to take the test to inspect documents, including lists of names and addresses of witnesses, and to test any devices used by the plaintiff to determine whether a violation has been committed. In that way, those that refuse breathalyzer will abide by the same rules and limits to discovery as other similar offenses.

Additionally, a similar scenario exists in underage drinking prosecution. Currently, prosecutions seeking punishment resulting in fines or imprisonments do not have the entire range of discovery; however, prosecutions seeking penalties resulting in forfeitures do have the full range of discovery. This bill will bring forfeiture prosecution in line with fine and imprisonment penalties regarding use of discovery.

If you would like to co-sponsor, call Senator Roessler’s Office at 266-5300 or Representative Gundrum’s Office at 267-5158 by **FRIDAY, FEBRUARY 10 at NOON**. Co-sponsors will be signed on to both LRBs.

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

Under current law, if a person is arrested for driving or operating a motor vehicle while under the influence of an intoxicant (OWI), a law enforcement officer may request the person to take a test to determine the amount of alcohol in his or her blood or breath. The law enforcement officer may request the test prior to arrest if a person is suspected of operating or driving a commercial motor vehicle while under the influence of an intoxicant. If the person refuses to take the test, the law enforcement officer takes possession of the person’s driver’s license and prepares a notice of intent to revoke the person’s operating privilege. A copy of the notice goes to the person, to the circuit court, and to the district attorney. The notice informs the person of a number of items, including the right to request a court hearing to contest the revocation. The Wisconsin court of appeals, in *State v. Schoepp*, 204 Wis. 2d 266 (1996), held that a person who receives a notice of intent to revoke the person’s operating privilege may utilize the full range of discovery procedures under state law before the hearing,

including the use of depositions and interrogatories.

This bill prohibits either party's use of discovery in these cases, except that the court may allow the person who allegedly refused to take the test to inspect documents, including lists of names and addresses of witnesses, and to test any devices used by the plaintiff to determine whether a violation has been committed.

Also under current law, a person who violates the state's alcohol beverage laws, including underage drinking prohibitions, may be prosecuted and, if convicted, may be subject to penalties including forfeiture, fine, or imprisonment. A violation that results in a fine or imprisonment is a criminal offense, while a violation that results in a forfeiture generally is not. If a violation is punishable as a criminal offense, the proceeding is governed by the rules of criminal procedure, including criminal rules of pretrial discovery.

In *State v. Phillips*, case no. 00-3541-LV (Ct.App., Dist. II, January 17, 2001) (unpublished), the court of appeals concluded that, in a prosecution for violations relating to underage drinking that would result in forfeitures, the proceeding was civil in nature and the rules of civil procedure pertaining to pretrial discovery must be applied.

This bill prohibits pretrial discovery under the rules of civil procedure in any prosecution for a violation of the alcohol beverage laws that may result in the imposition of a forfeiture, except that the court may allow the defendant to inspect documents, including lists of names and addresses of witnesses, and to test any devices used by the plaintiff to determine whether a violation has been committed.

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

<< File: 05-41601.pdf >>

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stays

4630/1

## 2005 BILL

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1 AN ACT *to renumber* 125.14 (6); *to amend* 343.305 (9) (a) (intro.) and 343.305  
 2 (9) (am) (intro.); and *to create* 125.14 (6) (title) and 125.14 (6) (b) of the statutes;  
 3 **relating to:** discovery in implied consent cases involving drunken driving and  
 4 in certain prosecutions for alcohol beverage violations.

### *Analysis by the Legislative Reference Bureau*

Under current law, if a person is arrested for driving or operating a motor vehicle while under the influence of an intoxicant (OWI), a law enforcement officer may request the person to take a test to determine the amount of alcohol in his or her blood or breath. The law enforcement officer may request the test prior to arrest if a person is suspected of operating or driving a commercial motor vehicle while under the influence of an intoxicant.

If the person refuses to take the test, the law enforcement officer takes possession of the person's driver's license and prepares a notice of intent to revoke the person's operating privilege. A copy of the notice goes to the person, to the circuit court, and to the district attorney. The notice informs the person of a number of items, including the right to request a court hearing to contest the revocation. The Wisconsin court of appeals, in *State v. Schoepp*, 204 Wis. 2d 266 (1996), held that a person who receives a notice of intent to revoke the person's operating privilege may utilize the full range of discovery procedures under state law before the hearing, including the use of depositions and interrogatories.

This bill prohibits either party's use of discovery in these cases, except that the court may allow the person who allegedly refused to take the test to inspect

**BILL**

documents, including lists of names and addresses of witnesses, and to test any devices used by the plaintiff to determine whether a violation has been committed.

Also under current law, a person who violates the state's alcohol beverage laws, including underage drinking prohibitions, may be prosecuted and, if convicted, may be subject to penalties including forfeiture, fine, or imprisonment. A violation that results in a fine or imprisonment is a criminal offense, while a violation that results in a forfeiture generally is not. If a violation is punishable as a criminal offense, the proceeding is governed by the rules of criminal procedure, including criminal rules of pretrial discovery.

In *State v. Phillips*, case no. 00-3541-LV (Ct.App., Dist. II, January 17, 2001) (unpublished), the court of appeals concluded that, in a prosecution for violations relating to underage drinking that would result in forfeitures, the proceeding was civil in nature and the rules of civil procedure pertaining to pretrial discovery must be applied.

This bill prohibits pretrial discovery under the rules of civil procedure in any prosecution for a violation of the alcohol beverage laws that may result in the imposition of a forfeiture, except that the court may allow the defendant to inspect documents, including lists of names and addresses of witnesses, and to test any devices used by the plaintiff to determine whether a violation has been committed.

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.** 125.14 (6) (title) of the statutes is created to read:

2           125.14 (6) (title) PROCEDURE.

3           **SECTION 2.** 125.14 (6) of the statutes is renumbered 125.14 (6) (a).

4           **SECTION 3.** 125.14 (6) (b) of the statutes is created to read:

5           125.14 (6) (b) *Discovery*. In a prosecution for a violation of this chapter that may  
6 result in the imposition of a forfeiture, neither party is entitled to pretrial discovery  
7 in any refusal hearing, except that, if the defendant moves within 30 days after the  
8 initial appearance in person or by an attorney and shows cause therefor, the court  
9 may order that the defendant be allowed to inspect documents, including lists of  
10 names and addresses of witnesses, if available, and to test under s. 804.09, under

**BILL**

1 such conditions as the court prescribes, any devices used by the plaintiff to determine  
2 whether a violation has been committed.

3 **SECTION 4.** 343.305 (9) (a) (intro.) of the statutes is amended to read:

4 343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the  
5 law enforcement officer shall immediately take possession of the person's license and  
6 prepare a notice of intent to revoke, by court order under sub. (10), the person's  
7 operating privilege. If the person was driving or operating a commercial motor  
8 vehicle, the officer shall issue an out-of-service order to the person for the 24 hours  
9 after the refusal and notify the department in the manner prescribed by the  
10 department. The officer shall issue a copy of the notice of intent to revoke the  
11 privilege to the person and submit or mail a copy with the person's license to the  
12 circuit court for the county in which the arrest under sub. (3) (a) was made or to the  
13 municipal court in the municipality in which the arrest was made if the arrest was  
14 for a violation of a municipal ordinance under sub. (3) (a) and the municipality has  
15 a municipal court. The officer shall also mail a copy of the notice of intent to revoke  
16 to the attorney for that municipality or to the district attorney for that county, as  
17 appropriate, and to the department. Neither party is entitled to pretrial discovery  
18 in any refusal hearing, except that, if the defendant moves within 30 days after the  
19 initial appearance in person or by an attorney and shows cause therefor, the court  
20 may order that the defendant be allowed to inspect documents, including lists of  
21 names and addresses of witnesses, if available, and to test under s. 804.09, under  
22 such conditions as the court prescribes, any devices used by the plaintiff to determine  
23 whether a violation has been committed. The notice of intent to revoke the person's  
24 operating privilege shall contain substantially all of the following information:

25 **SECTION 5.** 343.305 (9) (am) (intro.) of the statutes is amended to read:



