



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2009 Assembly Bill 130**

**Assembly Substitute  
Amendment 1**

*Memo published:* May 26, 2009

*Contact:* Don Salm, Senior Staff Attorney (266-8540)

### **CURRENT LAW**

Under current law, a law enforcement officer may request a person to provide a sample of breath, blood, or urine for analysis if the person is arrested for operating while intoxicated a vehicle, an all-terrain vehicle, a boat, or a snowmobile or for injury or homicide by intoxicated use of a vehicle (OWI-related offense). Upon the request of a law enforcement officer, a test facility must perform an analysis of a person's sample of blood.

### **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 ("the Substitute") provides that if a person is convicted of an OWI-related offense, the person, with one exception, must be assessed any costs associated with acquiring a blood sample that were charged to or paid by a law enforcement agency. The *exception* is that the court may not impose on the defendant any cost for an *alternative test* the law enforcement agency provides free of charge as described in s. 343.305 (4), Stats. (a test a person may request after taking all of the tests requested by the law enforcement agency).

Under the Substitute:

1. But for the exception described above, if a defendant is required to appear in court, in addition to any forfeiture, costs, fees, or surcharges it imposes, the court must impose and collect from the defendant any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood if the court finds that the defendant violated an OWI-related offense, or a local ordinance in conformity therewith.

2. But for the exception described above, if at the time the court finds that the defendant committed the violation, the law enforcement agency has not paid or been charged with the costs of withdrawing the defendant's blood, the court shall impose and collect the costs the law enforcement

agency reasonably expects to be charged for the withdrawal, based on the current charges for this procedure.

3. The court must disburse the amounts it collects to the law enforcement agency that requested the blood withdrawal.

4. Similar provisions as set forth in items 1 to 3, above, are applicable to a defendant required to appear in **municipal court** for violating an OWI-related local ordinance. The municipal court must disburse the amounts it collects to the law enforcement agency that requested the blood withdrawal.

5. Similar provisions are added to s. 973.08, Stats. (costs and fees chargeable in criminal cases). This new provision includes OWI-related offenses, as noted above (repeat offenses are criminal offenses) and violations of causing great bodily harm or death by OWI (ss. 940.09 (1), or 940.25, Stats.). Notwithstanding s. 973.06 (2), Stats. (which permits the court to remit--i.e., excuse--taxable costs in whole or in part), the court may not remit the costs under this new provision.

### **Legislative History**

At an executive session on May 19, 2009, the Assembly Committee on Public Safety adopted Assembly Substitute Amendment 1 (offered by Representative Gundrum) to 2009 Assembly Bill 130 and then recommended the bill, as amended, for passage, both on votes of Ayes, 8; and Noes, 0.

DLS:jal