

1985 Senate Bill 226

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1985 Wisconsin Act 64

AN ACT to amend 343.305 (1), 343.305 (2) (c), 343.305 (5) and 343.305 (6) (a) of the statutes, relating to tests for driving while under the influence of an intoxicant or controlled substance or both.

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

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

343.305 (1) Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, shall be deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol or controlled substances or a combination of alcohol and controlled substances when requested to do so by a law enforcement officer under sub. (2) (b) or when required to do so under sub. (2) (c). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (2)

(b), and may designate which of the tests shall be administered first.

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

343.305 (2) (c) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, ~~the person may be arrested therefor and~~ one or more tests may be administered to the person.

SECTION 3. 343.305 (5) of the statutes is amended to read:

343.305 (5) In addition to a test administered upon the request of a law enforcement officer under sub. (2) (b) or required under sub. (2) (c), a person who was the operator of a motor vehicle involved in an accident

resulting in great bodily harm or death to any person or a person arrested for a violation of s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (2) or 940.25, or s. 940.09 if the offense involved the use of a vehicle, shall be permitted, upon his or her request, the alternative test provided by the agency under sub. (1) or, at his or her own expense, reasonable opportunity to have any qualified person of his or her own choosing administer a chemical test for the purpose specified under sub. (1). If a person has been arrested for such a violation and he or she has not been requested to provide a sample for a test under sub. (2) (b), the person may request a breath test to be administered by the agency or, at his or her own expense, reasonable opportunity to have any qualified person administer any test specified under sub. (2) (b). The failure or inability of a person to obtain a test at his or her own expense shall not preclude the admission of evidence of the results of any test administered under sub. (2) (b). If a person requests the agency to

administer a breath test and if the agency is unable to perform that test, the person may request the agency to perform a test under sub. (2) (b) that it is able to perform. The agency shall comply with a request made in accordance with this subsection.

SECTION 4. 343.305 (6) (a) of the statutes is amended to read:

343.305 (6) (a) Blood may be withdrawn from the person arrested for violation of s. 30.68 (1), 346.63 (1), (2) or (2m), 350.10 (3) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1) or 350.10 (3), or as provided in sub. (2) (c) to determine the presence or quantity of alcohol or controlled substance or a combination of alcohol and a controlled substance in the blood only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician.

SECTION 5. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
343.305 (3)(a)(intro.), (b)(intro.) and (8)(a)	sub. (2)	sub. (2)(b)
