State of Wisconsin

OWI

Enforcement Manual
This manual has been researched and published through the Wisconsin Department of Transportation, Division of State Patrol, and Bureau of Transportation Safety. Readers may identify needed improvements, suggestions, and/or corrections. Please forward any recommendations to:

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Acknowledgements

The OWI Manual is intended to be a training manual as well as a reference for law enforcement officers in the state of Wisconsin. The intention of the manual is to provide an easy to read and easy to follow set of procedures related to those alcohol-related violations, which a law enforcement officer might detect during traffic patrol.

The original manual was completed in 1996. A committee of representatives from the Wisconsin State Patrol, Wisconsin Department of Natural Resources and the Resource Center On Impaired Driving took the time to initiate and complete an update of the original manual. The challenges of the dynamics of change related to the law, as well as practice, were met by the committee but not without the expense of time, effort, and energy. That committee consisted of:

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A sincere debt of gratitude is owed to Nina Emerson of the Resource Center on Impaired Driving, who contributed the law chapter.

The committee also wishes to acknowledge and thank the following for their contribution and review of the updated manual:

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Chapter 1: OWI Basic

Statutes ......................................................................................................................................1
Elements of OWI........................................................................................................................1
Initial Observation of Vehicle in Operation ................................................................................1
Observation of the Stopping Sequence.....................................................................................2
Face to Face Observation and Interview of the Driver..............................................................2
Observation of the Exit and Walk ..............................................................................................3
Field Sobriety Testing ................................................................................................................3
Arrest..........................................................................................................................................4
Disposition of Vehicle and Passengers.....................................................................................4
Citation .......................................................................................................................................4
Transport to the Test Site ..........................................................................................................4
Informing the Accused ...............................................................................................................4
Test ............................................................................................................................................5
Person Consents to Test ...........................................................................................................5
Refusal of Test...........................................................................................................................7
Tracking Form ................................................................................................................................7
Pre-interrogation Warnings .......................................................................................................7
Review all Forms .......................................................................................................................8
Incarceration or Release ............................................................................................................8
Forms Discussed in this Chapter ...............................................................................................9
OWI Flow Chart .......................................................................................................................11
OWI Basic

This chapter presents the general provisions for enforcement of the basic OWI offense from detection to incarceration/release. It identifies indications of impaired driving and procedures for establishing probable cause, obtaining chemical tests, handling refusals to chemical tests, completing forms and reports, and deciding whether to incarcerate or release.

Statutes

- 346.63(1)(a) Drive or operate a motor vehicle while under the influence of alcohol and/or drugs
- 346.63(1)(b) Drive or operate a motor vehicle with a prohibited alcohol concentration.
- 346.63(1)(am) Drive or operate a motor vehicle with a detectable amount of restricted controlled substance in his or her blood.

In addition to being applicable upon highways, Sec. 346.63 is applicable upon all premises held out to the public for the use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. Sec. 346.63 does not apply to private parking areas at farms or single-family residences. This section does not include frozen bodies of water. Sec. 346.63 is not applicable to snowmobiles or ATV’s. Sec. 346.61

Elements of OWI

- The person was operating or driving a motor vehicle.
- The person was under the influence of alcohol or drugs at the time of operation.

Initial Observation of Vehicle in Operation

A. There does not have to be a traffic violation observed to stop a vehicle suspected of OWI. All that is needed is reasonable suspicion that the operator of the motor vehicle is under the influence of alcohol or controlled substances or other drugs. Reasonable suspicion is anything that would lead a reasonable officer to believe that a person may be under the influence according to his or her training and experience.
B. Observe the vehicle for moving traffic violations, equipment violations, expired registration, unusual driving actions, such as deviating within a lane or moving at slower than normal speed, or drinking or drugs in the vehicle.

C. There are numerous clues that indicate possible impaired driving. Refer to the SFST Student Manual for these clues and their interpretation.

D. You now have to make a decision:
   1. Stop the vehicle,
   2. Continue to observe the vehicle and look for further evidence of impairment, or
   3. Take no action.

E. There are times that you may never actually see the vehicle in operation, such as:
   1. Crash scenes.
   2. A vehicle stopped on the shoulder of the highway.

**Observation of the Stopping Sequence**

What was the driver's reaction when the lights and siren were activated? Did the vehicle stop slowly, abruptly, on the pavement, or anything out of the ordinary? Make careful note of how the vehicle stops.

**Face-to-Face Observation and Interview of the Driver**

A. Persons who are under the influence of alcohol, drugs or both, frequently exhibit certain effects or symptoms of impairment such as slowed reactions, impaired judgment, impaired vision, poor coordination, odor of intoxicants, red/glossy eyes, slurred/slow speech and other indicators of impairment.

B. If anything exists during face-to-face contact that leads you to believe the driver is impaired or has been drinking, the driver should be asked to step out of the vehicle for further testing.

C. Be aware that certain medical conditions can make a person appear to be under the influence of drugs or alcohol.
Observation of the Exit and Walk

Note the person's balance, coordination and reactions and ability to follow instructions.

Field Sobriety Testing

A. You may have a driver of a vehicle who refuses to do any structured field sobriety tests. If this happens, it is all the more important that you observe everything the person says and does and document it to be able to establish probable cause for the arrest. Refusal to do field sobriety tests can be used as probable cause for the arrest. (State v. Babbitt)

B. If at all possible, the three standardized field sobriety tests should be used. These include:

1. Horizontal Gaze Nystagmus (HGN).
2. Walks and Turn (WAT).
3. One Leg Stand (OLS).

Refer to the SFST Student Manual for specific instructions and interpretation of the tests.

C. Other tests may be used in addition to the three mentioned, such as, but not limited to:

1. The finger to nose test.
2. The alphabet test.

D. Is there probable cause to arrest for OWI?

Probable cause is reasonable grounds to believe that an offense has been committed and, further, that the one to be arrested is probably the one who committed the offense.

E. Preliminary Breath Test (Sec. 343.303)

1. The PBT is to be offered only after probable cause to believe an arrest has been established and prior to arrest. The person has the right to refuse to take the PBT. If the person refuses to take the PBT, probable cause has already been established and an arrest should be made.

2. Results of PBT
   a. If PBT results are consistent with observations, place under arrest and transport to testing site.
   b. If PBT results are inconsistent with observations, you should consider the possibility of a drug or medical impairment. (See Chapter 3)
Arrest

Tell the person that he/she is under arrest and restrain according to policy. Search the subject and the vehicle as part of the lawful arrest AFTER the subject has been properly handcuffed.

Disposition of Vehicle and Passengers

A. Once the driver of the vehicle has been arrested and deprived of his/her freedom, you then secure the vehicle or tow it being sure to follow your agency’s policy/procedure. If the vehicle is not in a safe and legal place, consider towing the vehicle.

B. If there are passengers in the vehicle, allow a passenger to drive if he/she is capable and the owner gives consent. Passengers may need to be transported to the Sheriff's office or to some other place of safety if there is no one to operate the vehicle.

C. There is a penalty enhancer for individuals convicted of OWI and there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation. Sec. 346.65(2)(f).

Citation

A. Although not mandatory, if at all possible issue a citation for 346.63(1)(a) "Operating a motor vehicle while under the influence of alcohol or drugs" prior to the evidentiary breath or blood test.

B. Count convictions of OWI or refusals from all states (343.307 (1)(d) and 346.65 (2c)] to determine prior offenses. See Chapter 10: Repeat Offenders.

Transport to the Test Site

Determine which test is to be administered and transport the person to the appropriate facility for a breath, blood, or urine test.

Informing the Accused

A. Read the form verbatim

B. If the person is conscious, the Informing the Accused form must be read prior to administering the test if you are doing the test pursuant to Implied Consent. [343.305(4)]

C. If the person is unconscious, the Informing the Accused form should still be read to the subject. Upon reading the form, draw blood incident to arrest [(343.305(3)(b)].

D. Do not attempt to explain this information in your own words.
E. If the subject asks a question, reread that portion of the form.

F. Though not specifically required, read and issue a new Informing the Accused for each type of test offered.

G. Refer to Chapter 9: Implied Consent.

NOTE: This form is provided by DOT in English only. Translated forms are not authorized.

Test

A. The state supports a breath test as the primary test.

B. The alternate test is blood.

C. Circumstances may dictate changing the primary and alternate test. Remember that the choice of primary and alternate tests is that of the arresting agency and not the person (343.305(5)(a)).

D. The subject has no right to counsel prior to taking the test. (State v. Bunders)

E. The agency shall be prepared to administer 2 of the 3 tests (breath, blood, or urine) and may designate which of the tests shall be administered first [(343.305(2)].

Person Consents to Test

A. To be admitted without expert testimony, the test must be obtained within three hours of vehicle operation. If three hours have elapsed, the test should still be completed, but expert testimony may be needed in the event of trial. [Sec. 885.235(1g)].

B. Blood or urine test

1. Fill out the test kit form according to instructions in the test kit.

2. If a blood test is requested, have qualified personnel as specified in Sec. 343.305(5)b obtain the sample. Fill out the enclosed form in the sample kit and mail to the State Lab of Hygiene.

   If you request both alcohol and drug screen and do not need the drug screen because the AC is .08 or higher, be sure to check the box advising to cancel the drug screen if AC is over .08 or whatever AC you wish to write in the blank space.

3. If a urine test is requested, follow the instructions in the test kit and then mail the sample to the State Lab of Hygiene.
4. When the test results are returned:

   a. If .01 to .079 on a first, second or third offense within 10 years, refer to the District Attorney for disposition.

   b. If .08 or more on a first, second, or third offense within 10 years, since January 1, 1989:

   c. If .02 on 4th or subsequent offenses:

      (1) Issue a citation for prohibited alcohol concentration,

      (2) Complete the Administrative Suspension form and either mail or deliver in person to the subject. It would be better to deliver in person if practical so that the driver's license can be picked up and forwarded to DMV along with the paperwork.

      (3) See Chapter 8: Administrative Suspension for more information on procedures.

C. Evidentiary Breath Test (EBT)

1. Monitor person for 20 minutes prior to taking the breath sample and conduct the EBT test in accordance with the procedures in the EBT manual.

2. If the person is unable to provide an adequate sample and you believe that there is a medical reason for this, read the Informing the Accused form again and request a blood or urine test. Refer to blood and urine test for procedure upon return of the results of the test.

3. If the person does not give an adequate sample and if you determine that there is no medical reason, this should be considered a refusal.

4. If the EBT reported value is less then .08, consider drug impairment: (See Chapter 3)

   a. If drugs are suspected, read the Informing the Accused form again and request a blood test.

   b. If there is no evidence of drugs or you do not suspect that drugs were used, leave the charge as is.

5. If the person's AC is .08 or more on a first, second, or third offense within 10 years, or .02 or more on a fourth or subsequent offense within 10 years, issue a citation for 346.63(1)b "Operating a Motor Vehicle with Prohibited Alcohol Concentration," take driver's license, regardless of state of origin, and fill out the Administrative Suspension form. (Refer to Chapter 8 for further information on administrative suspension.)
6. After the person submits to your primary test, the person may request the alternate test that your agency is prepared to administer at the agency's expense, or be given reasonable opportunity for a test of the person's own choosing at his or her own expense. The alternate test the agency administers must be different than the first test administered by the agency. The person can have any of the three performed at his or her expense.

Refusal of Test

A. If the person refused, the officer may obtain evidence of intoxication by conducting a search incident to arrest. Blood can be forcibly drawn for this purpose, unless medically unsafe to do so [343.305(5)(b)].

B. Fill out the Notice of Intent to Revoke form and give the person a copy. The current form includes a 30-day driving receipt.

C. Seize the subject's driver's license, regardless of state of issue [s. 343.305(9)(a)]

D. Deliver or mail a copy of the "Notice of Intent to Revoke Operating Privilege" form, and license to the circuit court for the county in which the refusal was made.

E. Mail a copy of the "Notice of Intent to Revoke Operating Privilege" to:
   Revocation and Suspension Section
   Wisconsin Department of Transportation
   P. O. Box 7917
   Madison, WI 53707

F. Mail or deliver copy of "Notice of Intent to Revoke Operating Privilege" to the District Attorney for the county in which the refusal was made.

G. Refer to Chapter 9: Implied Consent and Refusals for further information.

Tracking Form

Complete the DWI Tracking Form or Alcohol Influence Report when appropriate for gathering information.

Pre-interrogation Warning

A. During the investigatory stage of a crime:

1. Prior to a full custody arrest, questions may be asked to determine if a violation has occurred.

2. Once the probable cause for an arrest has been established, no more questions involving the offense should be asked unless the person has been given his/her pre-interrogation warnings and agrees to answer questions.
B. Custodial interrogation:

1. Miranda should not be given until after the person has taken or refused the test to avoid confusion over the right to legal counsel prior to the test.

2. After the EBT or blood test is completed, you should then read the pre-interrogation warnings. The pre-printed questions on either the DWI tracking form or the Alcohol Influence Report form should be read and the answers written down as close to verbatim as possible. Additional questions may be asked and answers recorded.

C. Required for crimes

1. First offense OWI in Wisconsin is a forfeiture. Second and subsequent OWI’s are crimes.

Review all Forms

After the arrest procedure and testing has been completed, and prior to releasing the subject to a responsible party, review all forms to be sure that all paperwork has been completed as required.

Incarceration or Release

A. Incarceration or release will depend on the rules of the court in which the arrest was made.

B. The person may be released to a responsible adult if the rules of the court allow it. The individual to whom the person is released should be required to sign a release form stating the name and address and that he/she will be responsible for the person.

C. If unable to release to a responsible adult, the person may not be released until 12 hours have elapsed or until a chemical test administered under s.343.305 shows that there is an alcohol concentration of less than 0.04 (Sec. 345.24)

D. In the absence of any guidance from the court on bond requirements for release, be guided by the information in the Uniform Bond Book.
Forms Discussed in this Chapter

Alcohol Influence Report
DWI Tracking Form
Informing the Accused
Notice of Intent to Revoke Operating Privilege (Refusal)
Notice of intent to Suspend Operating Privilege
Uniform Traffic Citation
Release Form
Chemical Test Refusal Driver's License Receipt
Blood Analysis Form
OWI Responsibility Release Form
Chapter 2: Crash Involving Alcohol or Drugs

Definitions ........................................................................................................................................1
Statutes ..........................................................................................................................................2
Crash Investigation .......................................................................................................................4
Probable Cause .............................................................................................................................5
No Injuries ....................................................................................................................................5
Injuries .........................................................................................................................................5
Evidentiary Testing .........................................................................................................................6
Extraordinary Circumstances - Chemical-Testing .........................................................................8
Incarceration of Subject ................................................................................................................9
Forms Discussed in this Chapter ...............................................................................................9
Crashes Involving Alcohol or Drugs

Alcohol and other drugs play a significant part in traffic crashes. Law enforcement officers have the responsibility to thoroughly investigate the crash and determine if there are violations of traffic or criminal laws, including those that may be alcohol or drug related.

Several unique problems are posed by traffic crashes as they relate to alcohol or drug-related operation. One is that the officer normally arrives after the actual operation. The gathering of information, which could lead to probable cause, is altered from the normal effort, and the officer must backtrack beyond the point of operation in order to determine impairment and the time of the crash, so the test can be shown to be within 3 hours. Another problem is that the actual effort to determine impairment of the operator(s) must wait until care for any injuries is assured, and if the operator(s) is injured this further compounds the problems. Another problem is that evidence related to impairment may be differently detected and gathered as the officer focuses on the items left at the scene, what the vehicle shows, and what the road shows.

The net effort remains the same, however, and that is to determine whether drugs, alcohol, or both, have impaired the operator(s), and to provide the best law enforcement effort to that end. In alcohol or drug related crashes it is easy to see that crashes are caused; they are not mere accidents.

Definitions

- **ACCIDENT/CRASH** - means an occurrence that originates or terminates on a traffic way, which involves at least one motor vehicle in transport and results in injury or death to any person, or damage to any property. "Accident" includes acts by the operators of motor vehicles which contribute to the cause of an accident regardless of physical contact and, for the purpose of chapter 344, Wis. Stats., includes intentional acts. (Chapter Trans. 100.02(1), chapter 344, Stats., relates to Vehicles-Financial Responsibility.)

- **INJURY** - means physical harm or damage to a person.

- **BODILY HARM** - means physical pain or injury, illness, or any impairment of physical condition, Sec. 939.22(4)

- **GREAT BODILY HARM** - means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury, Sec. 939.22(14)

- **PROHIBITED ALCOHOL CONCENTRATION** - means .08 grams of alcohol per 210 liters of breath or .08% of alcohol in blood, if first, second, or third offense; means .02 grams per 210 liters of breath or .02% alcohol in blood if fourth or greater offense.
• UNDER THE INFLUENCE OF AN INTOXICANT - means that the actor's ability to operate a vehicle is materially impaired because of his or her consumption of an alcoholic beverage; a controlled substance under chapter 961; a controlled substance analog or any combination of an intoxicant or a controlled substance and a controlled substance analog. This includes under the influence of any other drug and the combination of an alcoholic beverage and any other drug.

• HUMAN BEING - when used in the homicide sections means one who has been born alive.

• UNBORN CHILD - means any individual of the human species, from fertilization until birth that is gestating inside a woman. Sec. 939.75(1)

Statutes

• 346.63(2)(a) CAUSING INJURY BY OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE

It is unlawful for any person to cause injury to another person by the operation of a vehicle while:

1. Under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

2. The person has a prohibited alcohol concentration.

• 346.63(6) CAUSING INJURY BY OPERATING A COMMERCIAL MOTOR VEHICLE WHILE UNDER THE INFLUENCE

(6)(a) No person may cause injury to another person by the operation of a commercial motor vehicle while the person has an alcohol concentration of .04 or more but less than 0.08.

• 940.25 INJURY BY INTOXICATED USE OF A VEHICLE

(1)(a) Causes great bodily harm to another human being by the operation of a vehicle while under the influence of an intoxicant.

(1)(b) Causes great bodily harm to another human being while the person has a prohibited alcohol concentration as defined in Sec. 340.01(46m) and Sec. 939.25(1)(b).
(1)(bm) Causes great bodily harm to another human being by the operation of a commercial motor vehicle while the person has an alcohol concentration of .04 or more but less than 0.08 as defined in Sec. 940.25(1)(bm).

(1)(c) Causes great bodily harm to an unborn child by the operation of a vehicle while under the influence of an intoxicant.

(1)(d) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a prohibited alcohol concentration, as defined in Sec. 340.01(46m).

(1)(e) Causes great bodily harm to an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

(1b) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under sub. (1), any applicable maximum fine or imprisonment specified for the conviction is doubled.

- 940.09 HOMICIDE BY INTOXICATED USE OF VEHICLE

(1)(a) Causes the death of another by the operation or handling of a vehicle while under the influence of an intoxicant.

(1)(b) Causes the death of another by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in Sec. 340.01(46m).

(1)(bm) Causes the death of another by the operation of a commercial motor vehicle while the person has an alcohol concentration of .04 or more but less than 0.08.

(1)(c) Causes the death of an unborn child by the operation or handling of a vehicle while under the influence of an intoxicant.

(1)(d) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a prohibited alcohol concentration as defined in Sec. 340.01(46m).

(1)(e) Causes the death of an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08.

The following statutes may be appropriate when an operator is not materially impaired by the use of alcohol or drugs:

- 940.06 SECOND-DEGREE RECKLESS HOMICIDE
- 940.10 HOMICIDE BY NEGLIGENT OPERATION OF A VEHICLE
Crash Investigation

All motor vehicle traffic crashes should be investigated. The degree of investigation will be commensurate with the seriousness of the crash or the seriousness of any related offense.

A. When investigating crashes:

1. Consider contacting a crash Reconstructionist and/or a Drug Recognition Expert on all crashes involving great bodily harm or death. Follow your agency’s policy on this request.

2. Consider Motor Carrier Safety Assistance Program (MCSAP) investigation, which should be performed as soon as possible on all commercial motor vehicles involved in crashes involving injury, death, or extensive property damage. Follow your agency’s policy on this request.

3. Treat the crash scene as if it were a crime scene until you are convinced that it is not. Evidence gathering should be specifically meticulous:

   a. Take statements from witnesses, passengers, and operators with consideration to pre-interrogation warnings at the appropriate time for arrested persons.

   b. Vehicles involved in crashes may be impounded as evidence or secured for further investigation. Follow your agency’s policy.

   c. Make field sketches, measurements, and photographs of the scene, of the vehicles, and of the items ultimately collected and preserved to support the case. If available, video tape the scene and evidence.

   d. Items that indicate alcohol or drug use or involvement should be properly collected and preserved.

B. When considering whether alcohol or drugs might be involved:

1. Identify clues to determine if alcohol or indicators of drugs are involved (See Chapter 3).

   a. Open, partially consumed beverage containers, or drug paraphernalia in vehicles or near collision site.

   b. Statements by witnesses or operators indicating alcohol or drug use. This would include first responders, EMT’s, wrecker operator(s) and firefighters.

   c. Odor of alcohol beverages or drugs in the vehicles or about the operator(s) and any passengers.
d. Watch for the normal indicators in walk, talk, and other interactions with operators but remember that other factors might be involved such as injury, medical problems, age, etc.

2. Determine if alcohol or drugs have been consumed after the crash and if so, how much, by whom, and where.

**Probable Cause**

You must establish probable cause to arrest. You cannot request an evidentiary chemical test just because there is injury or death. The odor of intoxicants by itself will satisfy the probable cause requirement for a CMV alcohol violation. However, all indicators of impairment should be noted. Refer to Chapter 11: Case Law Reference

**No Injuries**

- Non-Commercial Motor Vehicle - Refer to Chapter 1: OWI Basic
- Commercial Motor Vehicle - Refer to Chapter 6: Commercial Motor Vehicles

**Injuries**

To charge with a criminal violation for alcohol- or drug-related violations, the injuries must be to a second party, **not to the arrested operator**. In all injury cases, it is very important to alert the District Attorney. The District Attorney needs to be aware of all injuries and/or deaths prior to accepting any plea on an OWI related to the incident.

A. Minor Injuries - Traffic Crime

1. Arrest and issue a citation for causing injury while under the influence of intoxicants or controlled substances or a combination of both as appropriate, [Sec. 346.63(2)], or

2. Causing injury while operating a commercial motor vehicle with an alcohol concentration of 0.04 or more but less than 0.08, Sec. 346.63(6)(a).


B. Great Bodily Harm - Criminal Offense

1. Place subject under arrest for Sec. 940.25(1)(a) - Injury by intoxicated use of a vehicle, or if a commercial vehicle
2. Causing injury by operation of a commercial motor vehicle with an alcohol concentration of at least 0.04 but less than 0.08, Sec. 940.25(bm).

3. Notify District Attorney in cases of critical injuries. Alert District Attorney if death from injuries remains a possibility.

C. Death

1. Arrest for Homicide by intoxicated use of a vehicle, Sec. 940.09.

2. Notify Coroners. Sec. 346.71

3. Immediately notify District Attorney.

Evidentiary Testing

A. Implied Consent

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 343.305(3)(b) or (3)(am), and may designate which of the tests shall be administered first. Sec. 343.305(2).

1. Primary Test

Request the test appropriate to the circumstances. The circumstances to consider include the offense to be charged and whether the operator is capable of submitting to the requested test. Wisconsin's Implied Consent Law does not limit the right of a law enforcement officer to obtain evidence by any other lawful means. The officer will need to ensure coordination with the prosecuting attorney to determine whether to proceed with Implied Consent admonitions. Compliance with a request for one type of sample does not bar a subsequent request for a different type of sample.

a. Consent - Conscious Subject: Administer appropriate chemical test.

b. Consent - Unconscious Subject: An unconscious subject is presumed not to have withdrawn consent, so a specimen can be drawn under the implied consent law. Sec. [343.305(3)(b)]

c. Refusal Sec. 343.305(9)

(1) Take possession of the person's driver's license.

(2) Complete Notice of Intent to Revoke.

(3) If a crime, consider having blood drawn as a search incident to a lawful arrest.
2. Alternate Test

Be prepared to administer the Agency's alternate test at the Agency's own expense after the person submits to the Agency's primary test. The Agency has the responsibility of having the sample processed. [Sec. 343.305(5)]

3. Additional Test

Be prepared to give the person reasonable opportunity to have an additional test of their own choosing at their own expense after the person submits to the Agency's primary test. The person has the responsibility of having the sample processed.

B. Search incident to a lawful arrest

In certain arrest situations it may be advisable to forego the requirements of the Implied Consent law. Such advice should be sought from the local prosecuting attorney. Circumstances may still allow a breath, blood or urine test to be administered if the person is agreeable and not resisting.

1. The Implied Consent Law is not applicable.

2. The specimen, if blood, shall be drawn by a doctor, nurse, or qualified technician.

3. Reasonable force may be used, if necessary, to obtain blood sample.

C. Send samples to the State Lab of Hygiene following the directions in the collection kits.

D. Test Results - Non-Commercial Motor Vehicles

<table>
<thead>
<tr>
<th>Prohibited Alcohol Concentration</th>
<th>0.00-0.04</th>
<th>No violation if drug use not suspected.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0.05-0.079</td>
<td>No additional violation exists unless it is a fourth or subsequent violation and the prohibited alcohol concentration is 0.02 or greater. If prohibited alcohol concentration, issue citation for prohibited alcohol concentration. Forward all reports to the District Attorney.</td>
</tr>
</tbody>
</table>

Prohibited Alcohol Concentration
Statute 340.01(46m)
NOTE: Prohibited alcohol concentration is dependent upon the number of prior convictions and/or refusals. See Chapter 10: Repeat Offenders for assistance in determining prior offenses.

Minor Injuries: Issue citation for 346.63(2)(a), "Causing injury while operating with a prohibited alcohol concentration."
Great Bodily Harm: Arrest and process for "Causing great bodily harm while operating with a prohibited alcohol concentration," 940.25(1)(b).
Death: Arrest and process for "Causing the death of another by the operation or handling of a vehicle while the person has a prohibited alcohol concentration," 940.09(1)(b).
Extraordinary Circumstances - Chemical Testing

Emergency Medical Service personnel are often first on the scene of an injury crash. Often times the persons involved, including the operator(s), may have been transported to a medical facility prior to your arrival, or they are being checked for injuries during your investigation.

The investigating officer should consider several aspects of medical service, which might take place, and be aware of efforts needed to develop the investigation in cooperation with the necessary medical attendance.

A. Subject transported or otherwise not available for testing: i.e., in surgery, in transport, or med flighted.

Blood drawn by the hospital staff for their purposes can be utilized for prosecution. Sec. 905.04(4)(f).

1. Request the sample to be sealed in your presence.
2. Request the sample be refrigerated.
3. Notify District Attorney as soon as possible so a warrant or a subpoena for records can be drafted for the hospital's blood sample.
4. Serve warrant when obtained and transport or mail sample to State Lab of Hygiene.

B. Subject receiving intravenous solution or transfusion

1. Make note of what solution is.
2. Determine how much has been administered.
3. Have any specimen samples drawn from opposite arm if possible. If not, have sample drawn from area where IV solution will not contaminate the sample.

C. Subject transported to a distant medical facility, in-state

1. Contact appropriate agency / Wisconsin State Patrol district to make the arrest if probable cause exists and if one has not yet been made. Have blood drawn either through implied consent or search incident to lawful arrest.
2. If traffic citation is to be issued it need not be issued at this time, investigating officer may mail citation.
D. Subject transported to out-of-state medical facility

1. Contact supervisor

2. Arrange to meet with law enforcement officer who has jurisdiction where subject has been transported.

3. If misdemeanor crime, traffic crime or traffic regulation:
   a. Be guided by implied consent law.
   b. If officer from foreign state agrees to exercise his authority to have a blood sample drawn, a blood sample may be drawn under that authority. Provide and use a Wisconsin collection kit.

4. If felony injury or death,
   a. Uniform Act on Close Pursuit, Sec. 976.04 applies.
   b. Blood may be drawn incident to a lawful arrest.

5. Mail or transport sample to State Lab of Hygiene.

Incarceration of Subject

The officer must be aware of the location and time when the arrest is made. The subject is in custody and, regardless of disposition of medical aspects; care must be given to the subject’s arrest status.

A. If subject is not injured or hospitalized, follow appropriate incarceration procedures.

B. If subject is hospitalized, notify a supervisor to make arrangements to guard the subject, if appropriate.

Forms Discussed in this Chapter

Uniform Traffic Citation
Notice of Intent to Revoke Operating Privilege (Refusal)
OWI and Drugs

This chapter identifies the process to be followed when a person is believed to be operating under the influence of drugs or a combination of drugs and alcohol.

The Law Enforcement officer must be alert for signs of drug influence from the onset of the detection process. This process will begin after the stop of the vehicle and the administration of field sobriety tests and probable cause for impairment has been established. The overall process is described for quick reference in the field and the procedural steps for dealing with the drug-impaired driver are outlined.

Definition

A drug is any substance, which when taken into the human body, can impair the ability of a person to operate a motor vehicle safely.

Type of Test

If drug use is suspected, blood should be considered as the primary test as it is the only means to quantify the level of drugs present.

Drug Recognition Expert (DRE)

The Drug Recognition Expert (DRE), also known as the Drug Evaluation and Classification Program (DEC) is a course of instruction developed by the National Highway Safety Administration (NHTSA) with Los Angeles Police Department. The Advisory Committee on Highway Safety of the International Association of Chiefs of Police (IACP) is charged with overseeing the operation and development of this training.

In May 1995, Wisconsin became the thirty-first state to accept this technology to help arrest and convict drug impaired persons.

The DRE use a standardized and systematic twelve-step process to evaluate drug impairment, and medical problems. The Standardized Field Sobriety testing along with other psychophysical tests is just part of the evaluation process. Clinical indicators, such as blood pressure, pulse, temperature and pupil size are among some other information used to categorize the impairment by one or more of the seven drug categories.

They designed the program to train a limited amount of Drug Recognition Experts among different law enforcement agencies. Then by training the street officer in the Standardized Field Sobriety Testing, (Horizontal Gaze Nystagmus, Walk and Turn and one leg Stand) along with the NHTSA approved Drugs That Impair Driving (8-hour class) the trained street officer will then be aware of some general indicators of drug impairment. The DRE should then be used at serious or fatal crashes, or when OWI arrest impairment is not consistent with the breath test results. Follow your agency’s policy on the use of a DRE.
Drugs That Impair Driving

A segment of the NHTSA-sponsored training on Standardized Field Sobriety Tests includes a block on this topic. A reference sheet that provides common indicators consistent with specific drug categories is included in this manual for reference. See Figure 3.1 at the end of this chapter.

Low PBT Result or No Alcohol Present

A. If a PBT is used, it is to be administered after probable cause has been established. If the PBT result is low, or alcohol is not present, be particularly observant for signs of drug use. If impairment is not consistent with the PBT result and the PBT result is below 0.08, consider contacting a Drug Recognition Expert (DRE). Be sure to follow your department’s policy on this request.

1. Drug Impairment suspected

   a. Note drug indicators

   b. Arrest and secure the subject.

   c. Search and secure the vehicle.

   d. Although not mandatory, if at all possible, issue a citation for 346.63(1)(a), "Operating a motor vehicle while under the influence of alcohol or drugs" prior to the blood test.

   e. Complete the Informing the Accused form and specify blood as the primary test.

      Note: If drug use is suspected, it is imperative that you obtain a blood sample as soon as possible as peak concentration of many drugs occurs within one-half to one hour after use.

   f. If the subject refuses the blood test, follow the Refusal procedures as outlined in Chapter 9. Blood may be drawn incident to arrest using reasonable force.

   g. If the subject submits to the test, have a qualified person as specified in Sec. 343.305(3)(b) draw 2 tubes of blood following the guidelines enclosed in the State Lab of Hygiene blood collection kit.

      (1) If specific drugs are known or suspected, enclose a list of known or suspected drugs (on a separate sheet of paper) with the sample.

      (2) Complete the Blood/Urine Analysis form sections related to arresting agency, subject data, and be sure to annotate the block "Analysis Requested For" paying special attention to the cancel drug screen if over a certain AC. You determine AC.
(3) Submit sample to the State Lab of Hygiene. Note - special handling is required if LSD or cocaine is suspected. LSD breaks down quickly when exposed to heat or light. Refrigerate and keep sample as cool as possible while forwarding to Lab of Hygiene by quickest available method.

2. If drug impairment is not suspected:
   a. Consider the need for medical attention.
   b. If there is no need for medical attention, release the subject.

**High PBT Test Results**

A. Arrest for OWI and refer to Chapter 1: OWI Basic for further information.

B. If you suspect drug impairment in combination with alcohol, you should consider requesting a blood test and follow the advice for such above. (See Chapter 3 Figure 3-1)

**Evidentiary Breath Test (EBT)**

A. Prohibited Alcohol Concentration - Follow procedures outlined in Chapter 1: OWI Basic.

B. Less than Prohibited Alcohol Concentration

1. If you believe that drug use is present,
   a. Read the Informing the Accused form specifying blood as the test (if the subject refuses, even though he has already submitted to the EBT, this would be a refusal and you should continue as outlined in Chapter 9 on refusals).
   b. Have a qualified person draw blood and submit the sample to the State Lab or Hygiene.

2. If you do not find indications of drug use,
   a. Continue as an OWI charge.
   b. An alcohol concentration of .04 but less than .08 is relevant evidence of OWI for alcohol and requires corroborating evidence s. 885.235(1g)(b)
   c. Refer to the District Attorney to make the decision on prosecution.
Interpreting Drug Test Results

A. Unlike alcohol, there is no per se level of drug intoxication or a concentration where all persons are impaired. It is imperative that an officer’s observations for drug impairment start as soon as there is contact with the driver. (See Figure 3-1) Some drug indicators are short lived. They maybe observable only at the first contact, and dissipate as time elapse.

B. Detailed and accurate reporting of driving behavior and performance on field tests is helpful for the toxicologist, to corroborate that a drug and/or drugs are in the blood.

C. If there is need for interpretation of the test results, contact the Toxicology Section at the State Lab of Hygiene at (608) 262-9710.

Forms Discussed in this Chapter

Uniform Traffic Citation
Informing the Accused
Notice of Intent to Revoke Operating Privilege (Refusal)
Blood Analysis Form
Common Symptoms of Drug Abuse

A. Depressants: Valium, Prozac, Xanax, Benadryl, Haldol - Symptoms similar to alcohol intoxication but no odor of alcohol, may fall into a deep sleep or general lack of interest in any type of activity.

B. Stimulants: Amphetamines, Methamphetamine, Cocaine, Ritalin - Excessive activity, irritable, argumentative, may appear very nervous, mouth may be very dry, lips chapped, incessant talking often about how the subject cannot sleep.

C. Hallucinogens: LSD, MDA, Peyote, Psilocybin - Often difficult to detect due to the fact that this type of drug use is often confined to a setting which the user can control, such as within the confines of their home or a fellow user’s residence. Persons under the influence of a hallucinogen are often found in a sitting or reclined position. Dilation of the pupils may be present.

D. PCP: Angeldust, Ketamine - Subject may have a “chemical” odor on their breath. They may have an increase in body temperature, causing them to sweat, even in cold weather. Blank stare, incomplete verbal responses and a very high pain threshold.

E. Narcotics: Heroin, Morphine, Codeine, Peredoan, Darvon - Usually lethargic, drowsy, pupils are often constricted and fail to respond to light, may be a medicinal odor about the subject due to their use of liquids containing a narcotic preparation, “tracks”, use of long sleeve cloths even in very hot weather and presence of the equipment needed for injecting types of narcotics.

F. Inhalants: Airplane glue, paint, gasoline, nitrous oxide, chloroform - Odor about the person who is sniffing some type of glue or solvent, excessive nasal secretions, redness or watering of the eyes, complaint of double vision, ringing in the ears and possibly hallucinations.

G. Cannabis (marijuana): Early stages include very animated appearance, loud and rapid talking, laughter, and in more advanced stages or heavier use, the effects is usually one of sleepiness or stupor.

NOTE: It is important to note that the above descriptions are meant to help those officers not having the everyday contact with drug users and abusers. These indicators should not be used as positive identifiers but rather should lead the officer to investigate further.
<table>
<thead>
<tr>
<th>Indicators Consistent with Drug Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DEPRESSANT</strong></td>
</tr>
<tr>
<td>HGN</td>
</tr>
<tr>
<td>VERTICAL NYSTAGMUS</td>
</tr>
<tr>
<td>PUPIL SIZE</td>
</tr>
</tbody>
</table>

Note: These indicators are those most consistent with the category. Keep in mind that there may be variations due to individual reaction, dose taken, and drug interactions.

1. High dose for that particular individual
2. Soma, Quaaludes usually dilate pupils
3. Normal but may be dilated
4. Pupil size possibly normal

### MAJOR INDICATORS

<table>
<thead>
<tr>
<th>CNS DEPRESSANTS</th>
<th>CNS STIMULANTS</th>
<th>HALLUCINOGENS</th>
<th>PCP</th>
<th>NARCOTIC ANALGESICS</th>
<th>INHALANTS</th>
<th>CANNABIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uncordinated Disorientation</td>
<td>Restlessness</td>
<td>Dazed appearance</td>
<td>Perspiring</td>
<td>Droopy eyelids (ptosis)</td>
<td>Residue of substance around nose and mouth</td>
<td>Marked reddening of conjunctiva</td>
</tr>
<tr>
<td>Sluggishness</td>
<td>Body tremors</td>
<td>Body tremors</td>
<td>Warm to the touch</td>
<td>Warm to the touch</td>
<td>Odor of marijuana</td>
<td>Odor of marijuana</td>
</tr>
<tr>
<td>Thick, slurred speech</td>
<td>Excited</td>
<td>Synesthesia</td>
<td>Blank stare</td>
<td>Drowsiness</td>
<td>Marijuana debris in mouth</td>
<td>Marijuana debris in mouth</td>
</tr>
<tr>
<td>Gait ataxia</td>
<td>Euphoric</td>
<td>Hallucinations</td>
<td>Very early angle of HGN onset</td>
<td>Depressed reflexes</td>
<td>Body tremors</td>
<td>Body tremors</td>
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<tr>
<td>Drowsiness</td>
<td>Talkative</td>
<td>Paranoia</td>
<td>Difficulty in speech</td>
<td>Low, raspy, slow speech</td>
<td>Eyelid tremors</td>
<td>Eyelid tremors</td>
</tr>
<tr>
<td>Droopy eyes</td>
<td>Exaggerated reflexes</td>
<td>Uncordinated Nausea</td>
<td>Incomplete verbal responses</td>
<td>Dry mouth</td>
<td>Increased appetite</td>
<td>Increased appetite</td>
</tr>
<tr>
<td>Fumbling</td>
<td>Anxiety</td>
<td>Nausea</td>
<td>Repetitive speech</td>
<td>Facial itching</td>
<td>Impaired perception of time and distance</td>
<td>Impaired perception of time and distance</td>
</tr>
<tr>
<td>NOTE: With Methaqualone, pulse will be elevated and body tremors will be evident. Alcohol and Quaaludes elevate pulse. Soma and Quaaludes dilate pupils.</td>
<td>Grinding teeth (bruxism)</td>
<td>Difficulty in speech</td>
<td>Increased pain threshold</td>
<td>Euphoria</td>
<td>Flushed face</td>
<td>Flushed face</td>
</tr>
<tr>
<td>Restlessness</td>
<td>Redness to nasal area</td>
<td>Poor perception of time and distance</td>
<td>Cyclic behavior</td>
<td>Fresh puncture marks</td>
<td>Non-communicative Intense headaches</td>
<td>Non-communicative Intense headaches</td>
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<tr>
<td>Body tremors</td>
<td>Runny nose</td>
<td>Memory loss</td>
<td>Confusion, agitation</td>
<td>Nausea</td>
<td>NOTE: Tolerant users exhibit relatively little psychomotor impairment.</td>
<td>NOTE: Tolerant users exhibit relatively little psychomotor impairment.</td>
</tr>
<tr>
<td>Excited</td>
<td>Loss of appetite</td>
<td>Flashesbacks</td>
<td>Hallucinations</td>
<td>Track marks</td>
<td>Heroin, opium, Demerol, codeine</td>
<td>Heroin, opium, Demerol, codeine</td>
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<tr>
<td>Euphoric</td>
<td>Insomnia</td>
<td>Possibly violent and combative</td>
<td>Possibly violent and combative</td>
<td>Ketamine (analog of PCP)</td>
<td>Ketamine (analog of PCP)</td>
<td>Ketamine (analog of PCP)</td>
</tr>
<tr>
<td>NOTE: With LSD, piloerection may be observed (goose bumps, hair standing on end)</td>
<td>Increased alertness</td>
<td>PCP</td>
<td>Ketamine (analog of PCP)</td>
<td>Ketamine (analog of PCP)</td>
<td>Ketamine (analog of PCP)</td>
<td>Ketamine (analog of PCP)</td>
</tr>
<tr>
<td>Dry mouth</td>
<td>Drowsiness</td>
<td>LSD, peyote</td>
<td>Perspiring</td>
<td>Drowsiness</td>
<td>Raised pain threshold</td>
<td>Raised pain threshold</td>
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</table>

### GENERAL INDICATORS

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<tr>
<th>CNS DEPRESSANTS</th>
<th>CNS STIMULANTS</th>
<th>HALLUCINOGENS</th>
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<th>NARCOTIC ANALGESICS</th>
<th>INHALANTS</th>
<th>CANNABIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Xanax, Prozac, Valium, GHB</td>
<td>Restlessness</td>
<td>Dazed appearance</td>
<td>Perspiring</td>
<td>Droopy eyelids (ptosis)</td>
<td>Residue of substance around nose and mouth</td>
<td>Marked reddening of conjunctiva</td>
</tr>
<tr>
<td>Restlessness</td>
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<td>Body tremors</td>
<td>Warm to the touch</td>
<td>Warm to the touch</td>
<td>Odor of marijuana</td>
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<tr>
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<td>Synesthesia</td>
<td>Blank stare</td>
<td>Drowsiness</td>
<td>Depressed reflexes</td>
<td>Marijuana debris in mouth</td>
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<td>Hallucinations</td>
<td>Very early angle of HGN onset</td>
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</tr>
<tr>
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<td>Nausea</td>
<td>Incomplete verbal responses</td>
<td>Hallucinations</td>
<td>Fresh puncture marks</td>
<td>Increased appetite</td>
<td>Increased appetite</td>
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<tr>
<td>Exaggerated reflexes</td>
<td>Difficulty in speech</td>
<td>Possibly violent and combative</td>
<td>Possibly violent and combative</td>
<td>Nausea</td>
<td>Impaired perception of time and distance</td>
<td>Impaired perception of time and distance</td>
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<td>Anxiety</td>
<td>Poor perception of time and distance</td>
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<td>Ketamine (analog of PCP)</td>
<td>Heroin, opium, Demerol, codeine</td>
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<td>Grinding teeth (bruxism)</td>
<td>Memory loss</td>
<td>Flashesbacks</td>
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<td>Irritability</td>
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<td>Ketamine (analog of PCP)</td>
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<td>Ketamine (analog of PCP)</td>
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<td>cocaine, amphetamine methamphetamine</td>
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<td>Ketamine (analog of PCP)</td>
<td>Ketamine (analog of PCP)</td>
<td>Ketamine (analog of PCP)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>CANNABIS</th>
<th>GENERAL INDICATORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marked reddening of conjunctiva</td>
<td>Uncoordinated</td>
</tr>
<tr>
<td>Odor of marijuana</td>
<td>Restlessness</td>
</tr>
<tr>
<td>Marijuana debris in mouth</td>
<td>Body tremors</td>
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<tr>
<td>Body tremors</td>
<td>Eyelid tremors</td>
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<tr>
<td>Relaxed inhibitions</td>
<td>Increased appetite</td>
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<td>Increased appetite</td>
<td>Impaired perception of time and distance</td>
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<td>Impaired perception of time and distance</td>
<td>Memory loss</td>
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<td>Memory loss</td>
<td>Flashbacks</td>
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<td>NOTE: Tolerant users exhibit relatively little psychomotor impairment.</td>
</tr>
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<td>Heroin, opium, Demerol, codeine</td>
</tr>
<tr>
<td>Heroin, opium, Demerol, codeine</td>
<td>Marked reddening of conjunctiva</td>
</tr>
</tbody>
</table>

**Figure 3-1**
For further information contact DRE Coordinator Bill Kraus at (715) 457-2241 or Mary Adler at (608) 267-3249

DEA-Chicago (1)

August 2004
<table>
<thead>
<tr>
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<th>Scott Urbaniak</th>
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<td>Miller, Pamela</td>
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<td>Jensen, Don</td>
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<td>Jackl, Chris</td>
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<td>Oak Creek PD</td>
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<td>Groves, David</td>
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<td>Miller, Jedd</td>
<td>Polk Co SD</td>
<td>Anthony Puetz</td>
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<td>Gscheidmeier, John</td>
<td>Sheboygan Co SD</td>
<td>Multer, Brent</td>
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<td>Berghammer, Dane</td>
<td>Shorewood PD</td>
<td>Sullivan, Paul</td>
</tr>
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<td>Zienkiewicz, Scott</td>
<td>St. Croix Co SD</td>
<td>Koenig, Richard</td>
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<td>Amundsen, Richard</td>
<td>Two Rivers PD</td>
<td>Luecke, Rob</td>
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<td>(Retired) Milwaukee PD- State DRE/SFST Coordinator</td>
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2003 Wisconsin Act 97
The Basics

Effective: December 19, 2003

Prohibits:
Driving or operating a motor vehicle with a “detectable amount of a restricted controlled substance” (RCS) in a person’s blood

Creates:
Subsection 346.63(1)(am) – motor vehicles
Subsection 346.63(2)(a)3 -- causing injury by the operation of a vehicle w/a detectable amount of a RCS
Sub. 23.33(4c)(a)2m – ATVs
Sub. 23.33(4c)(b)2, -- causing injury by the operation of an ATV w/a detectable amount of a RCS
Sub. 30.681(1)(b)1m – motorboats
Sub. 30.681(2)(b)1m—causing injury by the operation of a motorboat w/a detectable amount of a RCS
Sub. 350.101(1)(bm) – snowmobiles
Sub. 350.101(2)(bm) – causing injury by the operation of a snowmobile w/a detectable amount of a RCS
Sub. 940.09(1)(am) - homicide by the operation or handling a vehicle or firearm w/a RCS
Sub. 940.25(1)(am)- causing great bodily harm by the operation of a vehicle w/a RCS
Sub. 941.20(1)(bm) – operating or going armed w/a firearm w/a RCS

Restricted Controlled Substance:
(a) A schedule I controlled substance other than tetrahydrocannabinol (THC)
(b) A controlled substance analog
(c) Cocaine or any of its metabolites
(d) Methamphetamine
(e) Delta-9-tetrahydrocannabinol

Schedule I Controlled Substances include:
- Synthetic opiates
- Substances derived from opium, e.g., Heroin, morphine
- Hallucinogenic substances, e.g., LSD, Mescaline, Psilocybin
- Depressants, e.g., GHB, Methaqualone
- Stimulants, e.g., Methcathinone

Cocaine or any of its metabolites:
- Cocaethylene
- Benzylecgonine
**Delta-9-Tetrahydrocannabinol**
- Active ingredient in marijuana
- Distributed through the body, metabolized into 11-hydroxy-delta-9-THC (11-hydroxy-THC) and 11-nor-delta-9-THC-9-carboxylic acid (9-carboxy-THC)

*For a complete list of restricted controlled substances see Figure 3-3 at the end of this chapter.*

**Provides an Affirmative Defense:**
If the person can prove he or she has a valid prescription for methamphetamine or one of its metabolic precursors, Gamma-hydroxybutyric acid or delta-9-THC

**Does not include other scheduled drugs:**
- Schedule II, Hydrocodone, Oxycodone
- Schedule III, Pentobarbital, Ketamine
- Schedule IV, Clonazepam, Lorazepam

**Provides an Affirmative Defense to Homicide & GBH:**
- If defendant can prove by a preponderance of the evidence the death/GBH would have occurred even if
- Defendant had been exercising due care and did not have a detectable amount of a restricted controlled substance

**Penalties:**
- The penalties for s. 346.63(1)(am) and s. 346.63(2)(a) (3) offenses are the same as those proscribed for offenses under s. 346.63(1)(a) and (b) and s. 346.63(2).
- Similarly, penalties for s. 940.09(1)(am) and s. 940.25(1)(am) offenses are the same as those proscribed for offenses under the same section involving alcohol.

**Law Enforcement Procedures**
- As with any OWI, traffic stops should be based on reasonable suspicion or probable cause. If driving or other observations lead to a reasonable suspicion the driver may be under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance.
  - Officers should:
    - Observe driver and note signs of impairment;
    - Conduct standardized field sobriety tests (SFSTs);
    - If you have reason to believe impairment may be due to a substance other than alcohol, ask driver if he or she has recently taken any drugs;
    - Administer a Preliminary Breath Test (PBT):
      - If the PBT result is consistent with the level of impairment observed and/or above the prohibited alcohol concentration, officers should proceed as they normally would for an OWI(alcohol) stop.
If the PBT result is not consistent with the level of impairment observed during the
officer’s contact with the driver and the administration of the SFSTs, and the
officer has reason to believe that the driver is under the influence of a restricted
controlled substance, further investigation should be conducted to determine if the
person is operating with a detectable amount of a controlled substance in his or
her blood.

Chemical Tests:

- If the officer has probable cause to believe (based on observations and SFSTs) that the
driver is operating while under the influence of alcohol or operating with a prohibited
alcohol concentration, the driver should be arrested under s. 346.63(1)(a) or (b), and a
breath or blood alcohol test (depending on agency policy) should be administered
pursuant to the implied consent law.

- If a breath test is administered and the test results indicate a prohibited alcohol
concentration, a citation for the s. 346.63(1)(b) (“PAC”) violation should be issued.

- If the test results do not indicate a PAC, and the officer believes, based on the SFSTs,
interview and/or observations that the driver is under the influence of a drug or a
restricted controlled substance, a blood draw should be conducted pursuant to the
implied consent law.

- A refusal to submit to a blood test for a controlled substance is treated the same as a
refusal to take a chemical test for alcohol under s. 343.305.

- Similar to OWI-alcohol cases in which blood is the primary test and the PAC citation is
not issued until the blood test results are reported by the State Lab of Hygiene, a citation
under s. 346.63(1)(am) should not be issued until the results of the blood test are known.
  - Results from drug tests performed by the State Hygiene Lab can take 2 weeks to
  4 months.

- A driver should be cited for operating under the influence under s. 346.63(1)(a) until a
subsequent blood test identifies a detectable amount of a restricted controlled substance
in his or her blood.
  - Agencies should be using the revised Notice of Intent to Suspend form (MV3519),
dated 4/2004. This version of the form has been revised to reflect the s.
346.63(1)(am) violation.
Restricted Controlled Substances
By Drug Category

Schedule I from s.961.14.
(2) Synthetic opiates.
(a) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylacetamide);
(ag) Acetylmethadol;
(am) Allyprodine;
(b) Alphacetylmethadol (except levo-alphacetylmethadol (LAAM));
(bm) Alphameprodine;
(c) Alphamethadol;
(cd) Alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);
(cg) Alpha-methylthiofentanyl (N-{1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);
(cm) Benzethidine;
(d) Betacetylmethadol;
(dg) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);
(dm) Betameprodine;
(e) Betamethadol;
(em) Betaprodine;
(er) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
(f) Clonitazene;
(fm) Dextromoramide;
(gm) Diampromide;
(h) Diethylthiambutene;
(hg) Difenoxin;
(hm) Dimenoxadol;
(j) Dimepheptanol;
(jm) Dimethylthiambutene;
(k) Dioxaphetyl butyrate;
(km) Dipipanone;
(m) Ethylmethylthiambutene;
(mm) Etonitazene;
(n) Etoxeridine;
(nm) Furethidine;
(p) Hydroxypethidine;
(pm) Ketobemidone;
(q) Levomethadone;
(qm) Levophenacylmorphan;
(qs) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);
(r) Morpheridine;
(rg) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(rj) 3-methylthiofentanyl (N-[3-methyl-1-[2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide);
(rm) Noracymethadol;
(s) Norlevorphanol;
(sm) Normethadone;
(t) Norpipanone;
(tg) Para-fluorofentanyl (N-[1-(2-phenylethyl)-4-piperidinyl]-N-(4-fluorophenyl)propanamide);
(tm) Phenadoxone;
(u) Phenampromide;
(um) Phenomorphan;
(v) Phenoperidine;
(vg) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxy-4-piperidine);
(vm) Piritramide;
(w) Proheptazine;
(wm) Properidine;
(wn) Propiram;
(x) Racemoramide;
(xm) Thiofentanyl (N-{1-[2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);
(xr) Tilidine;
(y) Trimeperidine.

(3) **Substances derived from opium.**
(a) Acetorphine;
(b) Acetyldihydrocodeine;
(c) Benzylmorphine;
(d) Codeine methylbromide;
(e) Codeine-N-oxide;
(f) Cyprenorphine;
(g) Desomorphine;
(h) Dihydromorphine;
(hm) Drotebanol;
(j) Etorphine, except its hydrochloride salts;
(k) Heroin;
(m) Hydromorphinol;
(n) Methyldesorphine;
(p) Methyldihydromorphine;
(q) Morphine methylbromide;
(r) Morphine methylsulfonate;
(s) Morphine-N-oxide;
(t) Myrophine;
(u) Nicocodeine;
(v) Nicomorphine;
(w) Normorphine;
(x) Pholcodine;
(y) Thebacon.

(4) **Hallucinogenic substances.**
(a) 3,4-methylenedioxyamphetamine, commonly known as "MDA";
(ag) 3,4-methylenedioxyethylamphetamine, commonly known as "MDE";
(am) 3,4-methylenedioxyethamphetamine, commonly known as "MDMA";
(ar) N-hydroxy-3,4-methylenedioxyamphetamine;
(b) 5-methoxy-3,4-methylenedioxyamphetamine;
(bm) 4-ethyl-2,5-dimethoxyamphetamine, commonly known as "DOET";
(c) 3,4,5-trimethoxyamphetamine;
(cm) Alpha-ethyltryptamine;
(d) Bufotenine;
(e) Diethyltryptamine;
(f) Dimethyltryptamine;
(g) 4-methyl-2,5-dimethoxyamphetamine, commonly known as "STP";
(h) Ibogaine;
   (j) Lysergic acid diethylamide, commonly known as "LSD";
(m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;

(mn) Parahexyl (3-hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo(b, d)pyran);

(n) Phencyclidine, commonly known as "PCP";

(p) N-ethyl-3-piperidyl benzilate;

(q) N-methyl-3-piperidyl benzilate;

(r) Psilocybin;

(s) Psilocin;

(t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;

(t) (Delta-9-tetrahydrocannabinol only – see “Additional Restricted Controlled Substances")

(u) 1-[1-(2-thienyl)cyclohexyl]piperidine, which is the thiophene analog of phencyclidine;

(ud) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine, which is the thiophene pyrrolidine analog of phencyclidine;

(ug) N-ethyl-1-phenylcyclohexylamine, which is the ethylamine analog of phencyclidine;

(ur) 1-(1-phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phencyclidine;

(v) 2,5-dimethoxyamphetamine;

(w) 4-bromo-2,5-dimethoxyamphetamine, commonly known as "DOB";

(wg) 4-bromo-2,5-dimethoxy-beta-phenylethylamine, commonly known as "2C-B" or "Nexus";

(x) 4-methoxyamphetamine.

(5) Depressants.

(ag) Gamma-hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and gamma-butyrolactone.

(am) Mecloqualone.

(b) Methaqualone.

(6) Immediate precursors.

(a) Immediate precursors to phencyclidine:

1. 1-phenylcyclohexylamine.

2. 1-piperidinocyclohexanecarbonitrile.

(7) Stimulants.

(ag) Cathinone.

(am) Aminorex.

(b) Fenethylline.

(c) N-ethylamphetamine.

(d) 4-methylaminorex.

(e) N,N-dimethylamphetamine.

(L) Methcathinone.

(p) 4-methylthioamphetamine, commonly known as "4-MTA."

961.15

961.16 Schedule II.

(Cocaine or any of its metabolites and Methamphetamine – see “Additional Restricted Controlled Substances”)

Additional Restricted Controlled Substances (Ref: s.340.01(50m))

Cocaine or any of its metabolites.

Methamphetamine.

Delta-9-tetrahydrocannabinol
## RESTRICTED CONTROLLED SUBSTANCES

*APPROXIMATE* Detection Windows

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<th>DRUG/Metabolite</th>
<th>BLOOD</th>
<th>URINE</th>
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<tr>
<td>BENZOYLECGONINE Cocaine Metabolite)</td>
<td>20-36 hrs $^{1,6}$</td>
<td>1-3 day $^2$</td>
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<td>COCAINE</td>
<td>2-8 hrs $^1$</td>
<td>$\geq$ 10 hrs $^2$</td>
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<td><em>GAMMA-BUTYROLACTONE (GBL) – See GHB</em></td>
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<td><em>GAMMA-HYDROXYBUTYRATE (GHB)</em></td>
<td>$\leq$ 6 hrs $^7$</td>
<td>$\leq$ 12 hrs $^7$</td>
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<td>HEROIN Metabolite - (Morphine*)</td>
<td>4-12 hrs $^4$</td>
<td>2-4 days $^2$</td>
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<td><em>LYSERGIC ACID DIETHYLAMIDE (LSD)</em></td>
<td>2-12 hrs $^4$</td>
<td>1-5 days $^4$</td>
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<td>MESCALINE</td>
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<td>METHAMPHETAMINE</td>
<td>4-24 hrs $^4$</td>
<td>2-4 days $^2$</td>
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<td>METHAQUALONE (Quaaludes) - Removed from market in 1984</td>
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<tr>
<td>METHCATHINONE</td>
<td>2-24 hrs $^4$</td>
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<tr>
<td>METHYLENEDIOXYAMPHETAMINE (MDA)</td>
<td>2-24 hrs $^4$</td>
<td>1-3 days $^4$</td>
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<tr>
<td>METHYLENEDIOXYETHYLAMPHETAMINE (MDE)</td>
<td>2-24 hrs $^4$</td>
<td>1-3 days $^4$</td>
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<tr>
<td>METHYLENEDIOXYMETHAMPHETAMINE (MDMA)</td>
<td>2-24 hrs $^4$</td>
<td>1-3 days $^4$</td>
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<tr>
<td>PHENCYCLIDINE (PCP)</td>
<td>1-4 days $^4$</td>
<td>3-5 days $^4$</td>
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<tr>
<td>*PSILOCIN (“Mushrooms”)</td>
<td>6–24 hrs $^4$</td>
<td>1-2 days $^4$</td>
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**Tetrahydrocannabinols:**

| DELTA-9-THC                                          | 2-6 hrs $^3$ | $\leq$ 1 day $^4$ (if at all) |
| CARBOXY-THC (THC Metabolite)                         | Single use 12-72 hrs $^3$ | 12-72 hrs $^4$ |
|                                                      | Casual use 2-8 days $^4$ | 2-7 days $^2$ |
|                                                      | Heavy use: 10 days $^4$ | 28 days $^2$ |

*TIMES LISTED ARE ONLY ESTIMATES*

Time of detection will vary depending on use and user.
REFERENCES:
1 "The Pathology of Drug Abuse", Dr. Steven B. Karch, CRC Press
2 "Pharmchem Newsletter", 1989, Vol. 17, No.2, Joyce Y. Chang, Ph.D.
4 "Disposition of Toxic Drugs and Chemicals in Man", Dr. R.C.Baselt and Robert Cravey, Year Book Medical Publishers, Inc. Chicago.
6 "Cocaine Disposition in Humans after Intravenous Injection, Nasal Insufflation (Snorting), or Smoking", Jeffcoat, et.al., Drug Metabolism and Disposition, Vol. 17, No.2, 1988.
7 "Gamma-hydroxybutyric acid as hypnotic", 1980, VI, pp.93-99, Hoes et.al.

Modified with permission from C.D.Collins, Wisconsin State Crime Lab – Madison, January 2004
Chapter 4: Snowmobiles and ATV’s

Statutes ......................................................................................................................................1
Probable Cause to Arrest ..........................................................................................................1
Arrest and Disposition of Snowmobile or ATV ..........................................................................2
Citation .......................................................................................................................................2
Informing the Accused ...............................................................................................................3
Evidentiary Chemical Test .........................................................................................................3
Refusals .....................................................................................................................................3
Alcoholic Influence Interview and Release of Person Arrested ......................................................4
Snowmobiling and ATV “Not A Drop” Violation........................................................................4
Causing Injury or Death While OWI with a Snowmobile or ATV...............................................4
Penalties ....................................................................................................................................5
Reporting the Arrest to DNR ......................................................................................................5
Forms Discussed in this Chapter ...............................................................................................6
Snowmobiles and ATV’s

This chapter will present information relative to the enforcement of operation of snowmobiles and ATV’s while intoxicated. Although there are many similarities between enforcement of intoxicated vehicle statutes and those for snowmobiles and ATV’s, there are also several peculiarities of which an officer should be aware. Certain forms used, reporting arrests to DNR, and other requirements are different between OWI with vehicles and OWI involving snowmobiles and ATV’s.

The Wisconsin Department of Natural Resources is the primary agency responsible for the regulation of snowmobile and ATV operation. However, any officer can enforce snowmobile and ATV regulations. Officers should be aware of the various violations related to operation, equipment, registration, and required permits as applicable, since these will aid in forming the basis for a stop.

Statutes

- 350.1025 (Snowmobiles) - indicates that the laws prohibiting intoxicated operation are applicable on all property, public or private. However, it does not apply to operation on private land unless the land is designated as a snowmobile trail, or a personal injury accident occurs and operation was without the landowner’s consent.

- 23.33(4j) (ATV’s) - indicates that intoxicated operation of the ATV law is applicable on any highway and on public and private land when the land is held out to use by the public for ATV’s.

Probable Cause to Arrest

A. In order to stop snowmobiles and ATV’s, officers need reasonable cause and should use similar operation violations and indicators as for automobiles.

B. After the stop has been made, the officer should be observant for indicators of alcohol use, i.e., odor of alcohol beverage, slurred speech, bloodshot and glassy eyes, etc.

C. If indicators of alcohol use are present, the officer should administer the Standardized Field Sobriety tests, if the weather or environment permits.

D. Once probable cause to believe an arrest has been established, the officer should request a preliminary breath test.

1. Section 350.102 provides that a person shall provide a sample of breath for preliminary breath screening to a requesting officer who has probable cause to believe the person is intoxicated while operating a snowmobile prior to arrest.
2. Section 23.33(4g) provides that a person shall provide a sample of breath for preliminary breath screening to a requesting officer who has probable cause to believe the person is intoxicated while operating an ATV prior to the arrest.

**Arrest and Disposition of Snowmobile or ATV**

A. Once probable cause to arrest has been established, arrest, secure, and search the subject and the snowmobile or ATV, and transport the individual to the test site.

B. Snowmobiles and ATV’s can be removed by tow truck operators. Make sure the tow truck operator is aware that they will be picking up a snowmobile or ATV when making the call for service.

**Citation**

A. The Uniform Traffic Citation shall be used for arrests of intoxicated operators or refusals of evidentiary chemical tests by intoxicated operators, when the operation of the snowmobile or ATV is on a highway s.345.11(1m) and s.345.11(1r).

1. No demerit points are assessed against the person's driving record.

2. No entry of arrest or conviction is on the person's driving record.

B. The Department of Natural Resources citation shall be used for arrests of intoxicated operators, or refusals of evidentiary chemical tests by intoxicated operators, when the operation of the snowmobile or ATV is not on a highway.

C. There is no requirement to issue the citation prior to administration of the evidentiary chemical test. Although the citation may be issued at any point in the process that the officer feels appropriate, the same procedure used during motor vehicle arrests is suggested.

D. The wording on the citation is suggested as: "Operating While Under the Influence of an Intoxicant, in violation of Statute -

1. 350.101(1)(a) for snowmobile operation"

2. 23.33(4c)(a)1 for ATV operation"
Informing The Accused

A. Officers shall complete and read the DNR Informing the Accused form (4100-123) to the operator of a snowmobile or ATV, prior to the administration of any evidentiary chemical test.

B. The operator of a snowmobile or ATV is deemed to have given consent to an evidentiary chemical test and the Informing the Accused form need not be completed and read if the person is unconscious or otherwise unable to withdraw consent.

C. Do not use the Informing the Accused form (SP4197) normally used for OMVWI in lieu of the DNR Informing the Accused form.

Evidentiary Chemical Test

A. A person shall provide one or more samples of breath, blood, or urine, or submit to one or more chemical tests, for analysis if arrested for the intoxicated operation of a snowmobile or ATV. The evidentiary collection is the same as it is for arrests made under Chapter 346.

1. If the results of the test are over .08 gram per 210 liters of breath, or .08% of alcohol by weight in the subject's blood, a second citation is issued for Operating with Alcohol Concentrations at or above specified levels, in violation of Sec. 350.101(1)(b) if operating a snowmobile or Sec. 23.33(4c)(a)2 if operating an ATV.

B. A person may request an alternate test after submitting to the officer's primary test.

C. A person may request an optional test even though he/she had not submitted to any other test. This differs from the Implied Consent provisions in Chapter 343.

Refusals

A. Refusal of an evidentiary chemical test is a statutory violation. The refusal is brought before the court by issuance of a Uniform Traffic Citation when related to highway use or a Department of Natural Resources Citation when not related to Highway use. The suggested wording on the citation for a refusal is as follows, "Evidentiary Chemical Test Refused by Operator of Snowmobile/ ATV," in violation of Sec. 350.104(5) for snowmobile operation or Sec. 23.33(4p)(e) for ATV operation.

B. There is no refusal form to complete, as with the Implied Consent provisions of Chapter 343.

1. The court will determine whether the refusal was lawful through a preponderance of evidence.
2. At issue with the court will be the same elements as traffic refusals under Chapter 343.

C. Deliver the refusal citation with your original OWI citation and report.

**Alcohol Influence Interview and Release of Person Arrested**

A. Procedures for arrests for intoxicated operation of snowmobiles and ATV's have the same consideration as for automobiles. The same procedures for recording the information on Alcohol Influence Reports, DWI Tracking Forms, custodial interrogation, and release or incarceration of arrested person are required.

B. A person arrested for OWI with a snowmobile or ATV may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test shows a BAC of .05 or less. The person may be released to his or her attorney, spouse, relative, or other responsible adult at any time after the arrest process is completed. Sec. 350.107

**Snowmobiling and ATV "Not A Drop" Violation**

Persons under the age of nineteen years with alcohol concentrations the same as those prohibited by Chapter 346, are in violation and cited under Sec. 350.101(1)(c) for snowmobile operation and Sec. 23.33(4c)(a)3 for ATV operation, using the Uniform Traffic Citation (if on the highway) or Department of Natural Resources Citation (if off the highway).

**Causing Injury or Death While OWI with a Snowmobile or ATV**

A. Causing injury through the intoxicated use of a snowmobile or ATV is a crime.

B. The officer should not hesitate to request the assistance of an area DNR warden when involved with these types of situations.

C. If death occurs, notify the DNR and consult with your District Attorney immediately.

D. In most instances, the officer will become involved in this type of situation through the investigation of the crash. It is important for the officer to apply the same technique of investigation as he or she would when investigating a motor vehicle crash.

E. Utilize the Uniform Traffic Citation or Department of Natural Resources Citation, whichever is applicable, when making an arrest for Causing Injury While OWI with a snowmobile or ATV.

1. Sec. 350.101(2)(a) Causing injury on a snowmobile while OWI.

3. Sec. 23.33(4c)(b)1 Causing injury on an ATV while OWI.

4. Sec. 23.33(4c)(b)2 Causing injury on an ATV with a prohibited alcohol concentration.

Penalties

A. Sec. 350.11 describes the penalties for snowmobile operation. (See Bond schedule.)

B. Sec. 23.33(12)(b) describes the penalties for ATV operation. (See Bond schedule.)

C. First offense OWI and refusals are forfeitures.

D. Two or more convictions or refusals within a 5 year period is a crime.

1. To determine prior convictions or refusals, the officer must do a DNR records check through dispatch.

2. Section II of the Revised Uniform State Traffic Deposit Schedule and Uniform Misdemeanor Bail Schedule show the bond amount.

E. Intoxicated operators of Snowmobiles or ATV's who cause injury of any degree or great bodily harm to another person are to be charged with a crime.

F. A first or subsequent violation of the "not a drop law" or refusal is a forfeiture.

Reporting the Arrest to DNR

A. The arrest for intoxicated operation of a snowmobile or ATV or for a refusal must be reported to DNR.

1. Mail a copy of the citation(s) and your arrest report as soon as possible to:

   Department of Natural Resources
   Boating Safety or Snowmobile-ATV
   P.O. Box 79707
   Madison, WI 53707
Forms Discussed in this Chapter

Uniform Traffic Citation
Department of Natural Resources Citation
DWI Tracking Form
Alcohol Influence Report
DNR Informing the Accused Form
Chapter 5: Juvenile/Underage Alcohol Offenses

Definitions ..................................................................................................................................1
Statutes ......................................................................................................................................1
Juvenile/Underage Non-Driving Alcohol Offenses....................................................................1
Procedure...................................................................................................................................2
Enforcing Crimes under Chapter 125........................................................................................3
Custody and Release.................................................................................................................3
Juveniles Incapacitated by Alcohol............................................................................................3
Absolute Sobriety or "Not a Drop" .............................................................................................4
Procedure for Arrest of "Absolute Sobriety" ..............................................................................4
Release ......................................................................................................................................5
Chapter 346.93 - Intoxicants in Vehicle.....................................................................................5
Enforcing Related ID Card Violations........................................................................................6
Forms Discussed in this Chapter...............................................................................................6
Juvenile/Underage Alcohol Offenses

Definitions

- Alcoholic beverages - fermented malt beverages and intoxicating liquor containing 0.5% or more of alcohol by volume. Sec. 125.02
- Legal drinking age - 21 years of age. Sec. 125.02
- Adult - a person age 18 and older
- Juvenile - a person age 12-17
- Underage person - a person who has not yet attained the legal drinking age

Statutes

- 125.07(4)(a) - Underage drinking violations - Procures or attempts to procure alcohol.
- 125.07(4)(b) - Underage drinking violations - possesses or consumes.
- 125.085(3)(b) - Identification card violations
  Note: Violators under this section who have reached the legal drinking age are charged under 125.085(3)(a)1 on the misdemeanor bail schedule.
- 125.09(2) - School-related possession of alcohol beverages.
- 346.63(1)(a) - OWI
- 346.63(2m) - Absolute Sobriety
- 346.93 - Underage person transporting intoxicants in motor vehicle.
  Note: If violation occurs in a commercial motor vehicle see 346.93(2) for an additional penalty.

Juvenile/Underage Non-Driving Alcohol Offenses (Chapter 125 Offenses)

A. Persons age 12-20 may be issued citations for these violations and taken into custody.

B. There is no provision in the statutes for issuing a citation to a person age 11 and younger. For persons age 11 and younger violating an underage alcohol offense, an offense report should be completed and forwarded to the intake worker in the county in which the offense occurred.
C. Persons age 12-16 who violate underage alcohol provisions are to be cited into the appropriate juvenile court branch and informed of the court appearance date and deposit procedures.

1. No bond is to be required of the person before release.

2. Assessments and court costs are not to be included in the citation deposit section.

3. Persons age 17-20 who violate underage alcohol provisions are adults and are to be cited into the appropriate adult court branch. The person may be arrested and bond, including assessments and court costs, may be required of the person before release.

Procedure

A. Complete and issue the citation for underage alcohol violations when charging a person between the ages of 12 and 20 for a violation of Sec. 125.07(4)(b) or 125.085(3)(b).

1. Children under the age of 12 who are charged with an offense under these sections are referred to the county juvenile intake office using the court Referral-Juvenile (J1-01) form. Forms should be available at the PD or SO.

2. Cite persons age 12 to 16 into the correct branch of juvenile court. (Circuit/Municipal)

3. Cite persons age 17 to 20 into the correct branch of adult court. (Circuit/Municipal)

4. Include the current name, address and phone number of parent or guardian for persons cited between age 12 and 17.

5. Include the mailing address of the court if the person is not required to appear on his/her court date.

6. List only the base deposit amount from the deposit schedule if the person is age 12 to 17; this amount also goes into the box marked "Total." For persons age 18 to 20, include all additional assessments from the deposit schedule in the box marked "Assess." Include the amount of court costs from the deposit schedule in the box marked "Costs" and the total of all amounts in the box marked "Total."

B. Note: Juvenile record information is confidential. Prior conviction information should not be released over the non-secure radio.

C. Indicators of consumption, including odor of intoxicants and any degree of intoxication, should be noted.
D. A PBT and/or an evidentiary breath test (EBT) may be given if feasible and the person consents. The Implied Consent provisions of Chapter 343 do not apply to Chapter 125 offenses. If the person refuses the EBT, it is all the more important that you record the indicators that you already have (odor of intoxicant, etc.) and any comments the person may make regarding drinking.

Enforcing Crimes under Chapter 125

Certain violations of this chapter are crimes. For a complete list of crimes under Chapter 125, refer to the Misdemeanor Bail Schedule.

Custody and Release

A. Juveniles who have been drinking should be taken into custody. Juveniles who have not been drinking, but have violated an underage alcohol provision may be taken into custody. Juveniles taken into custody must be released as soon as possible to a parent or guardian. If a parent or guardian is not available, consider the following:

1. Juveniles under the age of 15 may be released only to a parent or guardian, or responsible adult.

2. Juveniles age 15 or older may be released to another responsible person if an adult or parent is not available. If no such person is available, the juvenile may be released on his/her own if the officer can document in the incident report why the release was reasonable and in the best interest of the juvenile.

3. Juvenile violators should not be released to another violator from the same incident.

4. Juveniles who for any reason cannot be released are to be turned over to a juvenile intake worker.


B. Adults violating underage alcohol provisions are treated as they would be for any other violation.

Juveniles Incapacitated by Alcohol

Juveniles who are incapacitated by alcohol and constitute a substantial probability of harm to themselves or others, who are in prompt need of medical treatment, shall be taken into protective custody and brought to a hospital or approved public treatment facility for emergency treatment. See Secs. 48.20 and 51.45, Wis. Stats.
Absolute Sobriety or "Not a Drop"

When a person under age 21 is stopped while operating a motor vehicle and the officer detects the odor of an intoxicant, the officer should proceed in the same manner as with any other person who is suspected of operating a motor vehicle while under the influence of an intoxicant.

A. Administer field sobriety tests, including the preliminary breath test if available.

1. If there is probable cause to believe that the person is OWI, charge with Sec. 346.63(1)(a).

2. If probable cause does not indicate that the person is OWI, charge the person with a violation of Sec. 346.63(2m), Absolute Sobriety.

Procedure for Arrest of "Absolute Sobriety"

A. Issue the uniform traffic citation.

1. A person age 16 or older who violates any traffic law is handled in the same manner as an adult.

2. Persons under age 16 must be handled in accordance with provisions of the Children's Code-Chapter 48.

3. Citations issued to children age 12 to 15 must indicate that the person is to appear in court when and where notified. Refer the case to juvenile authorities.

4. If the child is under age 12, no citation can be issued. Refer the case to juvenile authorities.

B. Read and complete the Informing the Accused form.

C. Offer the evidentiary (breath, blood or urine) chemical test.

1. If the person submits to the breath test and the result is:

   a. Greater than .00 but less than .08, provide the person with his/her copy of the citation, the Informing the Accused form, and Test Record.

   b. If .00, decide whether to proceed with an alternate test for drugs or controlled substances. If no alternate test is conducted, refer the citation to the district attorney for disposition.

   c. If .08 or greater, issue a citation for a violation of Sec. 346.63(1)(b), "Operating a Motor Vehicle with Prohibited Alcohol Concentration" and continue with the procedures appropriate to this charge, including administrative suspension. Refer both citations to the District Attorney for disposition.
2. Blood or Urine
   
   a. Upon receipt of test results, follow same procedure as for breath.

D. Alternate test or person’s own test:

   1. Section 343.305(5) provides that a person who has submitted to the test or tests requested by the arresting officer is entitled to the agency’s alternate test at the agency’s expense or his/her own test at the person’s expense.

      a. If the person requests the agency’s alternate test, the officer must provide the test and is responsible for having the sample processed.

      b. If the person requests his or her own test, the officer must provide the person a reasonable opportunity to obtain it and the person is responsible for having the sample processed.

E. Refusal: Process the same as an OWI refusal as outlined in Chapter 1.

Release

A. Refer to the release provisions contained in the section on Chapter 125, Underage Alcohol Offenses, at the beginning of this chapter.

B. If the person is being released, advise him/her that he/she cannot operate a motor vehicle until all alcohol has been eliminated from his/her system.

Chapter 346.93 - Intoxicants in Vehicle

A. No underage person, as defined under Sec. 125.02(2m), may knowingly possess, transport or have under his or her control any alcohol beverage in any motor vehicle unless the person is employed by a brewer, an alcohol beverage licensee, wholesaler, retailer, distributor, manufacturer, or rectifier and is possessing, transporting or having such beverage in a motor vehicle under his or her control during his or her working hours and in the course of employment, as provided under Sec. 125.07(4)(bm). Alcohol beverage should be confiscated and packaged as evidence according to agency evidence policy.

B. In addition to any other penalty prescribed by law, any violation of this section by an underage person driving or operating or on duty time with respect to a commercial motor vehicle shall be punished under Sec. 346.65(2u). Note that the penalty for transporting intoxicants not in the course of employment when committed by an underage person operating a commercial motor vehicle is that specified in Sec. 346.65(2u). Refer to the bond schedule for the forfeiture amount, and issue the Out-of-Service Order required.
C. Possession, distribution or delivery of nitrous oxide is covered in sec. 941.315.

Enforcing Related ID Card Violations

A. 343.50(12)(a)-(f) may be used to cite for unlawful use of ID card.

B. 343.14(5) may be used to cite for fraud in obtaining operator's license or identification card. This offense is a traffic crime.

C. For unlawful use of an operator's license as an identification card when used to violate the legal drinking age, the person should be cited under Sec. 125.085(3)(b).

D. Remember that juveniles age 16 or older are treated as adults in the enforcement of traffic violations.

E. 125.085(3)(a)1 (misdemeanor) should be used for an adult providing falsification of proof of age to an underage person.

Forms Discussed in this Chapter

Underage Alcohol Citation
Referral-Juvenile Form (J1-01)
Uniform Traffic Citation
Informing the Accused
Notice of Intent to Revoke Operating Privilege (Refusal)
Commercial Motor Vehicles
Alcohol and Drug Enforcement

This chapter presents provisions for enforcement of drug and alcohol offenses as they affect commercial motor vehicle (CMV) operators. All drivers of CMVs are required to comply with alcohol restrictions including those CMV drivers who are not required to have CDLs, such as fire fighters and military personnel.

In today's society, alcohol and drug abuse have become more prevalent in the workplace. For the CMV operator that workplace includes the city, township, county, state and federal highway systems within Wisconsin. The use or abuse of drugs and alcohol while operating a CMVs puts themselves and motorists on the highway at risk. The sheer size of the vehicle being operated by the CMV operator magnifies the potential for injury or death when they become involved in a motor vehicle crash.

The ability to detect, apprehend and process the impaired CMV operator plays an important role in highway safety. This chapter is intended to help law enforcement officers in enforcing CMV alcohol violation regulations and removing impaired CMV operators from service.

Commercial Motor Vehicle Definition-- Wis. Stat. 340.01(8)(a)-(d)

A "Commercial Motor Vehicle" is defined as a motor vehicle designed or used to transport passengers or property and having one or more of the following characteristics:

340.01(8)(a)

A single vehicle with:
- a gross vehicle weight rating, OR
- a registered weight, OR
- an actual gross weight of more than 26,000 pounds
Is a combination vehicle with:
A gross combination weight rating, OR
registered weight, OR
an actual gross weight
of more than 26,000 pounds
inclusive of a towed unit with a gross vehicle weight rating, registered
weight or actual gross weight of more than 10,000 pounds.

Is a vehicle which is:
Designed to transport the driver and 15 or more passengers
OR
Actually transporting a driver and 15 or more passengers.
Statutes and Applicability

In addition to 346.63(1)(a), (1)(b) and some criminal statutes, operators of commercial motor vehicles, are subject to additional alcohol offense statutes:

<table>
<thead>
<tr>
<th>Statute</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>346.63(5)(a)</td>
<td>No person shall drive or operate a commercial motor vehicle while that person has an alcohol concentration of .04 or more, but less than 0.08</td>
</tr>
<tr>
<td>346.63(6)(a)</td>
<td>No person may cause injury to another person by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.08</td>
</tr>
</tbody>
</table>
| 346.63(7)(a)     | No person may drive, operate, or be on duty with respect to a commercial motor vehicle under any of the following circumstances:  
                      1. While having any measure of alcohol concentration above 0.0;  
                      2. Within 4 hours of having consumed or having been under the influence of an intoxicating beverage regardless of alcohol content;  
                      3. While possessing an intoxicating beverage regardless of alcohol content. This does not apply if the beverage is unopened, and is manifested and transported as part of a shipment. |

Probable Cause and Arrest

A. Probable cause to believe that the person is a commercial motor vehicle operator and has committed an alcohol offense.

1. Determine if the vehicle stopped meets any of the definitions of a commercial motor vehicle as defined earlier in this chapter.
a. CMV Alcohol provisions apply to all operators of Commercial Motor Vehicles even though they may be waived from Commercial Driver's License (CDL) requirements; i.e., fire fighters, farmers, etc.

b. If not a Commercial Motor Vehicle operator, refer to Chapter 1: OWI Basic.

2. Note all indicators of consumption (including odor), influence or possession of an intoxicating beverage: appearance, behavior, balance and driving performance, if observed.

B. Perform field sobriety tests. (Reference: DSP4356 Field Sobriety Test Record Notebook)

C. Perform preliminary breath test, if probable cause to believe the basis for an arrest exists.

1. The odor of an intoxicating beverage by itself will satisfy the requirement of probable cause for an arrest of a Commercial Motor Vehicle operator for a CMV absolute sobriety alcohol violation.

2. If impairment is not consistent with the PBT results, the officer should strongly consider the possibility of drug impairment and select a testing site where blood can be drawn by personnel qualified under 343.305(5)(b). The officer should also not rule out the possibility of an existing medical condition.

3. If drug impairment is suspected refer to Chapter 3: OWI and Drugs.

D. If probable cause to arrest for OWI exists, arrest for OWI and refer to Chapter 1: OWI Basic. **In addition to the OWI charge the following steps must also be taken:**

1. A citation for violation of 346.63(7)(a)1, shall be issued upon either obtaining a measured alcohol concentration level greater than .00 or a refusal (see 343.305(7)(b) and 343.305(9)(am)).

2. Upon completion of the 346.63(7)(a)1 citation, a 24 Hour Out-Of-Service Order (MV3648) shall also be issued (343.305(7)(b)).

   a. Agency policy may dictate issuing a classified license receipt (MV 3558) for the operator's CDL and confiscating the CDL for the 24 hour Out-Of-Service period.

E. If an officer has established probable cause to believe that the person has any alcohol in his/her system (346.63(7)(a)1), or has consumed an intoxicating beverage within the previous 4 hours (346.63(7)(a)2), the person should be arrested for a CMV alcohol violation and transported to a test site.

1. The charge of "CMV Alcohol Violation" is adequate. No specific section needs to be cited until the results of the test are known.
Chemical Test

A. Breath is the **recommended** test because of the ability to obtain immediate test results and determine the violation.

1. Begin 20-minute observation period at test site.

2. Complete Informing the Accused (SP4197).

   a. Enter statute number 346.63(7).
   
   b. The citation number to be entered is the next usable citation in your citation book. If the person tests .00, contact the Chemical Test Unit at (608)266-0084 to purge the test from the system so that it does not go on the persons driving record. You can then use that same numbered citation for the next traffic citation which you issue. A **reported value** showing an alcohol concentration, or a **refusal is needed** in order to **issue the 346.63(7)(a)1 citation** and 24 Hour Out-Of-Service order.

4. Test results.

<table>
<thead>
<tr>
<th>Value</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
<td>• No violation: Release if no impairment of drugs is suspected</td>
</tr>
<tr>
<td>0.01- 0.03</td>
<td>• Issue citation for violation of 346.63(7)(a)1.</td>
</tr>
<tr>
<td>0.04- 0.08</td>
<td>• Issue citations for violations of 346.63(7)(a)1 and 346.63(5).</td>
</tr>
<tr>
<td></td>
<td>(if reported value is 0.08 or 0.09 and 3rd offense, see below)</td>
</tr>
<tr>
<td>0.08 and above</td>
<td>• Issue citations for violations of 346.63(7)(a)1 and 346.63(1)(b).</td>
</tr>
<tr>
<td></td>
<td>• Distribute Administrative Review (MV3530)- this form is</td>
</tr>
<tr>
<td></td>
<td>the cover form for the Notice of Intent to Suspend.</td>
</tr>
<tr>
<td></td>
<td>• Complete Notice of Intent to Suspend (MV 3519).</td>
</tr>
</tbody>
</table>

5. Complete 24 Hour Out-Of-Service Order (MV3546)
   
   a. Order should be sent to:

   Wisconsin Department Of Transportation
   Revocation and Suspension Section
   P.O. Box 7917
   Madison, WI 53707
   ATTN: Mary Jackson

6. If driver's license is confiscated for 24 hours, issue a classified license receipt (MV3558).
7. Complete DWI Tracking Report or Alcohol Influence Report (SP4358/ SP4005).

B. Blood or urine tests.

1. If the chemical test taken is blood or urine, citations for violations of 346.63(1)(b), 346.63(7)(a) and 346.63(5)(a) may not be issued until the results of those tests are known.

2. No 24 Hour Out-Of-Service Order is completed.
   a. Order requires issuance of 346.63(7)(a) citation, which cannot be issued without a chemical test result or refusal.
   b. The driver should be advised that future operation is not recommended. If the person drives, enforcement action may be continued until probable cause for arrest no longer exists.
   c. When reported values are obtained at a later date, citations for violations of 346.63(7)(a), (5)(a), or (1)(b) should be issued depending on alcohol concentration levels. A 24 Hour Out-Of-Service order will not be issued in conjunction with a 346.63(7)(a) citation in these cases.

Refusal

If subject refuses chemical test:

A. Issue citation for violation of 346.63(7)(a). (enables tracking through court system)

B. Issue Notice of Intent to Revoke (MV3396).

C. Take possession of operator's license for refusal (under 343.305(9)(am)) regardless of classification or the state of issue.

D. Issue 24 Hour Out-of-Service Order.

E. Complete DWI Tracking Report or Alcohol Influence Report (SP4005).

F. Mail a copy of the "Notice of Intent to Revoke Operating Privilege" to:

   Revocation and Suspension Section
   WI Department of Transportation
   P. O. Box 7917
   Madison, WI 53707

G. Mail or deliver copy of "Notice of Intent to Revoke Operating Privilege" to the District Attorney for the county in which the refusal was made.
Notification of Carrier

In the case of an arrest and removal of a driver of a CMV, the carrier for which they are employed should be notified of such action (this is not mandatory but advised) so steps can be taken to protect the carrier's equipment and cargo. It is the carrier's responsibility to ensure protection of the equipment and cargo.

Prior Convictions

Both CDL and non-CDL convictions under 346.63(1) and (5) count as prior convictions of operating while intoxicated for the purpose of commercial motor vehicle operation. See Chapter 10: Repeat Offenders.

Violations of Possession and Consumption

A. No person may drive, operate or be on duty with respect to a commercial motor vehicle, if within 4 hours of doing so has consumed or been under the influence of an intoxicating beverage. Driver admission can result in the issuance of a citation under 346.63(7)(a)2. A 24 Out-Of-Service Order shall be issued even if a reported value of alcohol is absent.

B. No person may drive, operate or be on duty with respect to a commercial motor vehicle if possessing an intoxicating beverage regardless of its alcohol content. (Unless such beverage is unopened, manifested and transported as part of a shipment.) If an unmanifested intoxicating beverage, not part of the cargo, whether opened or unopened is discovered:

1. The driver should be cited for a violation of 346.63(7)(a)3.
2. A 24 Hour Out-Of-Service Order should be issued.

C. Refer to Sec. 343.315(2)(g).

Causing Injury/Great Bodily Harm/Death by Intoxicated Use of a CMV

Refer to Chapter 2: Crash Involving Alcohol or Drugs

Forms Discussed in this Chapter

Uniform Traffic Citation (MV4016)
24 Hour Out-Of-Service Order (MV3546)
DWI Tracking Report (SP4348)
Alcohol Influence Report (SP4005)
Notice Of Intent to Revoke Operating Privilege (MV3396)
Driver's License Receipt For 24 Hour Out-Of-Service Order (MV3558)
Intent to Suspend Operating Privilege (MV3519)
Chapter 7: Open Intoxicants

Definitions ..................................................................................................................................1
Applicability ..............................................................................................................................1
The Offenses .............................................................................................................................1
Enforcement...............................................................................................................................2
Forms Discussed in this Chapter ..............................................................................................3
Open Intoxicants

This chapter identifies the process to be followed when dealing with violations of Sec. 346.935 Wis. Stats., which prohibits possession of open intoxicants or nitrous oxide in a motor vehicle on a highway, drinking alcoholic beverages or inhaling nitrous oxide in motor vehicles on a highway and also prohibits the owner or driver, if the owner is not present, of a privately owned motor vehicle from keeping or allowing to be kept in a motor vehicle on a highway any open container of alcoholic beverages or nitrous oxide.

The Law Enforcement Officer must be on the alert at all times to detect this violation as it may be an indicator leading to a person operating under the influence of an intoxicant or controlled substance.

Definitions

- Alcoholic beverage - containing 0.5% or more alcohol by volume. If less than 0.5% by volume, it is legal to possess even though it is open. This information can be determined by the label on the container. Sec. 125.02

- Nitrous Oxide Container - Any compressed gas container that contains food grade or pharmaceutical grade nitrous oxide as its principal ingredient. Sec. 134.63

Applicability

This section does not apply to passengers in a limousine operated by a chauffeur or in a motor bus (alcohol only). No person may possess nitrous oxide with the intent to inhale it. Sec. 941.315.

The Offenses

- Drinking Alcoholic Beverages or Inhaling Nitrous Oxide in a Motor Vehicle - 346.935(1), person drinks alcohol beverage or inhales nitrous oxide in a motor vehicle upon a highway

- Possessing an Open Container - 346.935(2), person possesses on his or her person, in a privately owned motor vehicle any bottle or receptacle containing alcohol beverage or nitrous oxide if the bottle or receptacle has been opened, the seal has been broken, or the contents of the bottle or receptacle have been partially removed, while on a highway.
• Allowing Open Containers to be Kept in a Motor Vehicle - 346.935(3), the owner of a privately owned motor vehicle or the driver of the vehicle, if the owner is not present in the vehicle, shall not keep or allow to be kept in the motor vehicle when upon a highway, any bottle or receptacle containing alcohol beverage or nitrous oxide if the seal has been broken or the contents of the bottle or receptacle have been partially removed

Note: This subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers.

• A utility compartment or glove box is considered to be within the area normally occupied by the driver or occupants.

• The bottle or container may be kept in the area to the rear of the driver in a motor home. It may not be consumed there while on a highway.

• Sec. 941.315 prohibits the possession of nitrous oxide or a substance containing nitrous oxide with the intent to inhale it and the intentional inhaling of nitrous oxide.

Enforcement

A. If there is more than one occupant in the vehicle and an open container is found and it cannot be determined who it belongs to,

1. The owner, if present, may be charged under 346.935(2).

2. If the owner is not present, the driver may be charged.

3. If ownership of the bottle or receptacle can be determined, that person may be charged.

4. Both the owner/driver and passenger could be charged for the offense-the passenger for having an open container on person under sub(2) and the owner/driver for allowing under sub(3). Agency policy should be reviewed to determine if both should be charged.

B. If multiple open containers are in the vehicle and multiple occupants, citations may be issued for each of the open containers under s. 346.935(1), (2), or (3).

C. Evidence

1. Preserve evidence according to your department's evidence policy.

2. Issue official property receipt if your evidence policy requires containers be kept as evidence.
3. Follow evidence policy for storing evidence.

D. Post bond if required by the court and release.

**Forms Discussed in this Chapter**

Uniform Traffic Citation
Official Property Receipt or Evidence Receipt
Chapter 8: Administrative Suspension

Definitions ..................................................................................................................................1
Law Enforcement Officer Actions and Information Provided to Driver.................................1
Reviews......................................................................................................................................3
Suspensions ..............................................................................................................................5
Department to Vacate Administrative Suspension....................................................................5
Forms Discussed in this Chapter ..............................................................................................5


Administrative Suspension

The purpose of this chapter is to establish an administrative interpretation of Sec. 343.305(8) and (11), Wis. Stats., relating to arrest for operating with a prohibited alcohol concentration and administrative suspension of operating privilege and review thereof.

Definitions

- Alcohol - any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol and isopropanol.

- Alcohol concentration - any of the following:
  - the number of grams of alcohol per 100 milliliters of a person's blood.
  - the number of grams of alcohol per 210 liters of a person's breath.

- Prohibited Alcohol Concentration –
  a. If the person has 2 or fewer prior convictions, suspensions, or revocations, as counted under s. 343.307 (1), an alcohol concentration of 0.08 or more.
  b. If the person has 3 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), an alcohol concentration of more than 0.02.

- Hearing examiner - an examiner or officer of the Department of Transportation authorized to conduct administrative reviews.

- Law enforcement officer - any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he or she is employed to enforce.

- The department - offices of the Department of Transportation staffed by personnel of the Bureau of Field Services five days a week or the home office location in the assigned district for Bureau of Field Services personnel who regularly travel to other locations.

Law Enforcement Officer Actions and Information Provided to Driver

If a person is tested for alcohol concentration in accordance with Sec. 343.305, and test results indicate a prohibited alcohol concentration, the law enforcement officer shall:

A. Take possession of the license issued to the person regardless of state of issue. Any valid Wisconsin operator's license may be accepted as a deposit pursuant to Sec. 345.23(2)(c), prior to being forwarded to the department.
B. Provide the person with two separate forms as follows:

1. A Notice of Intent to Suspend Operating Privilege, which does all of the following:
   a. Serves as a 30 day temporary operator's license, provided the person has a valid license.
   b. Notifies the person that his or her operating privilege will be administratively suspended in 30 days.
   c. Notifies the person of the right to obtain administrative and judicial review of the suspension.

2. An Administrative Review Request, which contains a section for the person to request an administrative review.

C. Within five days after the issue date of the Notice of Intent to Suspend Operating Privilege, the law enforcement officer must submit a copy of his or her report and the results of the chemical tests, which includes the following, to the nearest Division of Motor Vehicles headquarters:

1. Driver's license, if available,

2. A copy of the Informing the Accused form that informs the person of Wisconsin's implied consent law,

3. A copy of the arrest report,

4. A copy of the chemical test result that is the basis of the suspension,

5. If available, the results of any other chemical tests related to the incident,

6. A copy of the Notice of Intent to Suspend Operating Privilege.

D. If the above information (section C) is provided, the officer need not appear at the administrative review unless subpoenaed under Sec. 805.07.

E. If a review is requested and the information required above (section C) is not received or postmarked within five days after the issue date of the Notice of Intent to Suspend, the suspension will be vacated.

F. Upon request, copies of the above information (section C) shall be provided to the person or his or her representative.

G. In addition to the information submitted by the officer, a copy of all evidentiary breath test (EBT) maintenance reports shall be submitted on a regular basis by the Division of State Patrol to the location indicated above.
Reviews (Trans. 113.04)

A. Written request for a review must be received or postmarked within ten days after the date of the Notice of Intent to Suspend Operating Privilege under Trans 311.03 or if notification is by mail, within 13 days, excluding Saturdays, Sundays and holidays, after the date of mailing.

B. Reviews shall be conducted:

1. By the department at the office in the county where the offense allegedly occurred or if the offense allegedly occurred in a county where the department does not maintain an office, at the office of the department nearest to the location where the offense allegedly occurred.

2. Within the 30 day period after the date of the Notice of Intent to Suspend Operating Privilege.

C. The issues the person wishes to contest at the review may be specified with the request for review. At the review, the person may present evidence and may be represented by counsel. The examiner shall consider and determine the reliability of all the evidence presented at the time of the review. Statements and reports of law enforcement officers are subject to the same standards of credibility applied to all other evidence presented. The issues shall be limited to any of the following:

1. The correct identity of the person.

2. Whether the person was informed of the options regarding tests as required under Sec. 343.305(4).

3. Whether the person had a prohibited alcohol concentration at the time the offense allegedly occurred.

4. Whether one or more tests were administered in accordance with Sec. 343.305.

5. If one or more tests were administered in accordance with Sec. 343.305, whether each of the test results for those tests indicate the person had a prohibited alcohol concentration.

6. Whether probable cause existed for the arrest.

7. Whether the person was driving or operating a commercial motor vehicle when the offense allegedly occurred.

D. Upon receipt of a request for review, the examiner shall schedule the time and place and send notice to the person by first class mail at least five days prior to the review. The five-day notice may be replaced by actual notice, such as a telephone call, if a shorter period is necessary in order to hold the review within the 30-day period after the date of the notice to suspend operating privilege.
E. If the person requests a review but does not appear at the time and place scheduled, the administrative suspension shall take effect as provided by Trans. 113.05.

F. The person may submit written arguments limited to the issues in section C above if the written arguments are submitted with the request for review and the person indicates the written arguments are in lieu of a personal appearance.

G. The examiner may permit testimony by telephone if the site of the administrative review is equipped with telephone facilities to allow multiple party conversations.

H. If at any time the person submits written evidence from a facility certified by the State Laboratory of Hygiene and meeting the requirements of Sec. 885.235(1), indicating an alcohol level of less than prohibited alcohol concentration, the suspension will be vacated.

I. If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory, and convincing that the criteria in Sec. 343.305(8)(b), for administrative suspension have not been satisfied, or that the person did not have a prohibited alcohol level at the time the offense allegedly occurred:

1. The examiner shall notify the person in writing and shall order that the administrative suspension of the person's operating privilege be rescinded; and

2. The person's license shall be returned without payment of a reinstatement fee under Sec. 343.21(1)(j).

J. If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory, and convincing that the criteria for administrative suspension have been satisfied and that the person had a prohibited alcohol level at the time of the offense allegedly occurred:

1. The examiner shall provide the person with a Judicial Review Request form and notify the person in writing of the review decision and right to judicial review and stay of the suspension as provided in Sec. 343.305(8)(c).

2. The administrative suspension shall take effect as provided in Trans. 113.05 and Sec. 343.305(7)(a).

3. The administrative suspension is vacated if the examiner fails to mail the notice to the person within 30 days after the date of the Notice of Intent to Suspend Operating Privilege under Trans. 113.03.

K. Examiners shall conduct reviews in an impartial and detached manner. The result of an individual review may not be considered in any personnel action involving the examiner or performance review of the examiner by the department.

L. No testimony given by any witness may be used in any subsequent action or proceeding.
Suspensions (Trans. 113.05)

The suspension shall be effective beginning at 12:01 A.M. on the 31st day after the date of the Notice of Intent to Suspend Operating Privilege under Trans. 113.03, unless the department is notified by the examiner that the criteria in Sec. 343.305(8)(b) for administrative suspension have not been satisfied.

Department to Vacate Administrative Suspension (Trans. 113.06)

The department shall vacate the administrative suspension unless within 60 days of the date of the request for judicial review of the administrative hearing decision, the department has been notified of the results of the judicial review or of an order of the court entering a stay of the examiner's order continuing the suspension.

Forms Discussed in this Chapter

Notice of Intent to Suspend Operating Privilege
Chapter 9: Implied Consent and Refusals

Procedural Requirements for Triggering the Implied Consent Law ........................................ 1
Testing Procedures Under the Implied Consent Law ............................................................... 2
Person’s Rights Under the Implied Consent Law ................................................................. 2
Refusal Notice ..................................................................................................................... 3
Refusal Hearing .................................................................................................................. 4
Penalties for Person’s Refusal ............................................................................................. 4
The theory behind the Implied Consent Law is that any person who drives or operates a motor vehicle upon the public highways of this state, or those areas enumerated in Section 346.61 Wis. Stats., is deemed to have given consent to one or more tests of his/her blood, breath or urine for the purpose of determining the presence or quantity of alcohol, controlled substances, a combination of alcohol and controlled substances, other drugs or a combination of alcohol and other drugs when requested to do so by a law enforcement officer under Sec. 343.305(3)(a) or 343.305(3)(b).

The purposes of the Implied Consent Law are to facilitate the identification of impaired drivers and their removal from the highway, for evidence to aid in prosecuting impaired drivers and to provide statistical information for highway safety purposes.

**Procedural Requirements for Triggering the Implied Consent Law**

A. Before an officer can request a person to submit to a chemical test under the Implied Consent Law, the officer must first place the person under arrest, for violation of one of the following Wisconsin Statutes:

1. All OWI statutes under Sec. 346.63.
2. A local ordinance in conformity with the State OWI statute.
3. The homicide by intoxicated use of a vehicle statute, Sec. 940.09 - see Chapter 2: Crash Involving Alcohol or Drugs
4. The felony injury by intoxicated use of a vehicle statute, Sec. 940.25 - see Chapter 2: Crash Involving Alcohol or Drugs

B. **Exceptions**:

1. An officer may request a Commercial Motor Vehicle operator to submit to a chemical test prior to arrest. Nonetheless, where an odor of intoxicants is present, arrest for violation of Sec. 346.63(7) should occur before the request for test.

2. A person who is unconscious or otherwise incapable of withdrawing consent is presumed to consent to a chemical test.

3. The Implied Consent Law does not limit an officer from obtaining a chemical test by any other lawful means, therefore, blood may be drawn using reasonable force following an implied consent refusal.
Testing Procedures Under the Implied Consent Law

A. The State of Wisconsin recognizes three types of tests which may be administered:

1. Blood
2. Breath
3. Urine

B. Tests are defined as:

1. **Primary test** - the test or tests that the officer requests of a person and the test that the person must submit to.
   a. The person must submit to this test before having the right to the alternate test or an additional test.
   b. Should circumstances require the officer to switch primary tests after reading the Informing the Accused form and writing the type of test in the blank, indicate the type of test in the blank next to the first test requested. A second form is suggested.

2. **Alternate test** - a second test other than the primary test which the Law Enforcement Agency must be prepared to administer upon the driver's request, at the agency's expense, if the driver takes the primary test. It is the agency's responsibility to take the sample and have it processed.

3. **Additional test** - the test that the person requests at his/her own expense.
   a. The person must submit to the agency's primary test first. It is the responsibility of the person requesting the test to take the sample and have it processed.
   b. The officer must provide the person with reasonable opportunity to have the additional test done.
      
      (1) Reasonable opportunity does not mean physically taking the person somewhere for the additional test. It simply means trying to make arrangements for the person to be released to a responsible adult so that person can take him/her to a place for the test.
      
      (2) An EBT on an instrument maintained by the Division of State Patrol Chemical Test Section should not be used as the person's

Person's Rights Under the Implied Consent Law

A. Person has the right to be orally informed of his/her rights as outlined in Sec. 343.305(4)and (4m).
B. The person has the right to be informed of his/her right to have a refusal hearing, Sec. 343.305(9).

C. If the person submits to the primary test, he/she has the right to take the arresting agency's alternate test or be given the opportunity to have an additional test taken at the person's own expense.

D. If the officer does not request a chemical test of the person, he/she has the right to request a test.

E. The person does not have the right to:

1. Designate the primary test. This is the agency's prerogative.

2. Consult with an attorney prior to submitting to the test nor be advised under Miranda.

3. Be informed that if he/she refuses to submit to the test, that the fact that he/she refused the test may be used against him/her at the underlying OWI trial.

4. Refuse a search made incident to a lawful arrest. Therefore, blood may be drawn from an arrested driver who refuses to comply with the Implied Consent Law.

   a. Blood may be drawn only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician. Section 343.305 (5)(b).

   b. The person drawing blood, the employer of such person and any hospital where blood is withdrawn by any such person have immunity from civil or criminal liability under s. 895.53 section 343.305(5)(c).

   c. Hospital personnel must administer a blood alcohol test and reports at the request of an officer. Section 9436.40. 68 Atty Gen. 209.

Refusal Notice

A. After the person refuses to submit to a chemical test, the officer shall issue him/her a Notice of Intent to Revoke form.

1. This form explains to the person what rights he/she has and what issues are to be addressed at the refusal hearing and that the person has 10 days to request a hearing.

2. The form also serves as adequate process to provide the court with jurisdiction.

3. The form serves as a Temporary Driver Receipt valid for 30 days from the notice date unless the person does not have a valid driver's license.
Refusal Hearing

A. The refusal hearing is separate from the underlying OWI trial.

B. The hearing is civil in nature and is akin to a probable cause hearing. The scope of the hearing is limited by statute to the following:

1. Whether the officer had probable cause to believe the person was operating or driving a motor vehicle under the influence and whether the person was properly arrested.

2. Whether the officer informed the person of the following:
   a. That the person is deemed to have consented to a chemical test; and
   b. That the refusal to submit shall result in revocation; and
   c. That the person may also have the alternate test; and
   d. That the person may have additional tests at his/her own expense.

3. Whether the person refused the test.
   a. Failure to provide two separate, adequate breath samples in proper sequence constitutes a refusal, Sec. 343.305(6)(c)3.

4. Whether the person refused due to physical inability to submit to a test.
   a. Applicable only when inability is due to disability or illness unrelated to use of alcohol or controlled substance.
   b. Person deemed not to have refused, if preponderance of evidence shows physical inability to submit.

5. Court must determine issues within five days of the close of the hearing, Sec. 343.305(9)(d).

   If all issues are determined adversely to person, court shall revoke his/her driving privileges and order assessment under Sec. 343.305(10)(a) and (9).

6. If one or more issues are determined favorably to the person, the court shall take no action on the driver's license based on the person's refusal to take the test, Sec. 343.305(9)(d).

Penalties for Person's Refusal

A. Revocation of the person's driving privileges for one year if it is a first refusal and no prior OWI conviction, Sec. 343.305(10)(b)2.
B. Revocation of the person's driving privileges for two years if the number of refusals and convictions equal two, and both occurred within a ten year period, Sec. 343.305(10)(b)3.

C. Revocation of the person's driving privileges for three years if the number of refusals and convictions equal three or more. Sec. 343.305(10)(b)4.

D. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident, the applicable minimum and maximum revocation periods for the improper refusal are doubled. Sec. 343.305(10)(b)4m.

E. The time period under this paragraph shall be measured from the dates of the refusals or violations which resulted in revocations or convictions. Sec. 343.304(10)(b)5.
Chapter 10: Repeat Offenders

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Determining Prior Offenses</td>
<td>1</td>
</tr>
<tr>
<td>Second Offense</td>
<td>2</td>
</tr>
<tr>
<td>Third Offense</td>
<td>2</td>
</tr>
<tr>
<td>Fourth and Subsequent Offenses</td>
<td>3</td>
</tr>
<tr>
<td>Immobilization of a Motor Vehicle</td>
<td>3</td>
</tr>
<tr>
<td>Ignition Interlock Device (IID)</td>
<td>4</td>
</tr>
<tr>
<td>Seizure of a Motor Vehicle</td>
<td>4</td>
</tr>
<tr>
<td>Seizure Procedure</td>
<td>5</td>
</tr>
<tr>
<td>Forms Discussed in this Chapter</td>
<td>6</td>
</tr>
</tbody>
</table>
Repeat Offenders

Wisconsin statutes allow additional penalties to be assessed by the courts for persons who are repeat offenders.

When enforcing the operating while alcohol or drug impaired laws, law enforcement officers are faced with several challenges considering repeat offender laws. Specifically, the officer may arrest an individual with prior convictions or refusals to submit to evidentiary chemical tests on his/her record, and elements of the offense may change based upon these. For first, second or third offense, the alcohol concentration limit is .08 grams of alcohol. Fourth and subsequent offenses are .02. The definition of "Prohibited Alcohol Concentration" is found in Sec. 340.01(46m). The .08 per se standard of intoxication for chemical test is found in Sec. 885.235(1)(cd).

The officer may be confronted with a response to a request for vehicle registration or driver license information with data that advises the vehicle is to be seized, or the vehicle should be equipped with an ignition interlock device. Upon third or subsequent convictions the court will order immobilization or installation of an ignition interlock device.

Determining Prior Offenses

A. Convictions that count as prior OWI offenses.
   1. OWI convictions from all states.
   2. Chemical test refusals from all states.
   3. Causing injury to another person while OWI.
   4. Causing great bodily harm to another while OWI.
   5. Homicide by intoxicated use.
   7. Commercial vehicle alcohol violation causing great bodily harm.
   9. Violations of a law of a federally recognized American Indian tribe or band in Wisconsin in conformity with sec. 346.63(1).

B. These are the charge code abbreviations for the above offenses that will appear on the record that are to be counted as prior OWI offenses: CAD, CAH, CBH, CCS, CHI, CII, CWI, GBH, HAD, HAH, HBH, HCS, HHI, HIC, HII, HWI, IC, NHI, OCS, OII, OWA, and OWI.
C. How to Count Prior Convictions

1. View the record and mark all OWI type convictions with a violation date on or after 01/01/89.

2. If no priors exist, this arrest is a first offense.

3. For an individual with one OWI after 01-01-89, a new OWI within 10 years is treated as a 2nd OWI.

4. If the 2nd OWI is more than 10 years after the first, it is treated as another 1st OWI.

5. For an individual with two OWIs after 01-01-89, any new OWIs are treated as third and subsequent OWIs.

Second Offense

A. The Uniform Traffic Citation is used providing traffic crime initial appearance information.

B. The bond for a traffic crime violation is found in Section II of the Uniform Bond Schedule.

C. The District Attorney's office must be furnished with complete OWI reports to generate a criminal complaint.

Third Offense

A. The Alcohol Concentration limit is .08 grams of alcohol for a third violation. After determining that the violation is a third offense, the officer should follow the same procedures as outlined for second offense above.

B. Upon a third conviction, the court may order seizure of a motor vehicle owned by the offender, Sec. 346.65(6)(a)1.

C. If the vehicle is not seized, the court shall order the vehicle to be equipped with an ignition interlock device (IID) or immobilized. The court may not order an IID or immobilization of a vehicle if it would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person.

D. The District Attorney's office must put a "title hold" on the vehicle, Sec. 342.12(4), at the time of filing complaint.
Fourth and Subsequent Offenses

A. An alcohol concentration of .02 is used.

B. After determining that the violation is a fourth or subsequent offense, the officer should follow the same procedures as outlined for a second offense.

C. Upon conviction the court shall order the seizure of a motor vehicle owned by the offender.

D. The District Attorney's office puts a "title hold" on the vehicle, Sec. 342.12(4).

E. Fifth and Subsequent Offenses - These violations are considered a Class H felony (364.65(2)(e).

Immobilization of a Motor Vehicle

A. Court ordered immobilization does not extend beyond the person's revocation period.

B. The owner of the vehicle is liable for the costs of the immobilization or the equipping of the IID. If the vehicle is subject to a security agreement, the court shall release it to the secured party upon the filing of an affidavit that the agreement is in default and upon payment of costs of immobilization.

C. Procedure for immobilizing a vehicle

The method for immobilization of motor vehicles should be dictated by department policies and procedures. Appropriate forms as specified by these policies need to be used for record keeping purposes.

1. A copy of the court order and a Court Ordered Vehicle Immobilization record should be in the officer's possession when the immobilization is performed.

2. The owner should be contacted to arrange for immobilization. Arrange for a mutually agreeable location for the immobilization.

3. A DOT supplied warning label shall be affixed to the immobilization device prior to the immobilization, Sec. 347.417(2).

4. Send a copy of the vehicle immobilization record to the vehicle owner and to all lien holders by certified mail within ten days after immobilization.

5. Send a completed DMV Action Notice (MV2833) to the Department of Transportation as soon as possible following the immobilization.

6. Send a copy of the Court Ordered Vehicle Immobilization record to the originating court.
7. Tampering with an immobilization device is prohibited, Sec. 347.417.

8. When a vehicle is encountered with an unexecuted immobilization order against it, arrange for immobilization as soon as practical. This may include towing to a secure facility. If the immobilization order originated from another agency:

   a. Another agency order will appear on the Time system reply of a vehicle registration check under lines 25 and 28. Line 25 will show the originating agency, line 28 will show "Vehicle Immobilization".

   b. Take possession of the vehicle.

   c. Complete a Vehicle Immobilization record.

   d. Notify the responsible agency of the action.

   e. Coordinate any necessary transfer of the vehicle with the responsible agency.

**Ignition Interlock Device (IID)**

A. Chemical Test Section of the Wisconsin State Patrol is responsible for the testing of IIDs and for approving equipment manufacturers, Trans. 313.

B. If an IID has been ordered by the court, this status will appear on the person's driving record. If this notation is on the record, the officer should research which vehicle(s) is (are) required to have the IID.

C. If an operator is encountered in violation of this order, take appropriate enforcement action.

D. Installation and maintenance of IIDs will be the responsibility of the subject and the contracting vendor.

E. No person may remove, disconnect, tamper with or otherwise circumvent the operation of an IID, Sec. 347.413.

F. A vehicle may not be equipped with an IID for more than two years beyond the period of the subject's revocation.

**Seizure of a Motor Vehicle**

A. Upon 3rd conviction, the court may order seizure of a motor vehicle, Sec. 346.65(6)(a)1.
1. If the vehicle is not seized, the court shall order the vehicle to be equipped with an ignition interlock device (IID) or immobilization of any motor vehicle owned by the person. The court may not order an IID or immobilization of a vehicle if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person.

2. The court shall notify the Department that such an order has been entered.

B. Upon a fourth or subsequent conviction, the court must order seizure of a vehicle owned by the offender.

1. The court notifies the Department that an order has been entered.

2. The proceeds from the sale of any seized vehicle shall be disbursed per Sec. 346.65(6)(e).

3. The District Attorney of the county where the vehicle seizure order originated shall initiate the forfeiture action within 30 days of the seizure.

C. Any vehicle subject to the above actions may not be sold or have its title transferred, unless the court approves the transfer. The District Attorney notifies the Department when a criminal complaint is filed. The Department may not then issue any new titles transferring ownership of the vehicle unless approved by the court, Sec. 342.12(4).

D. Commercial vehicles, common carriers, rental and leased vehicles are not subject to seizure and forfeiture unless the owner had knowledge or gave consent for the commission of the violation, Sec. 346.65(6)(a)4. They may, however, be immobilized.

E. A person who owns a motor vehicle subject to seizure, equipping with an IID or immobilization shall surrender to the clerk of circuit court the certificate of title issued under chapter 342 for every motor vehicle owned by the person. Sec. 346.65(6)(a)(2m).

**Seizure Procedure**

The method for seizure of motor vehicles should be dictated by department policies and procedures. Appropriate forms as specified by these policies need to be used for record keeping purposes.

A. Procedure for seizing when directed to pick up vehicle where the location of the vehicle is known.

1. Must have copy of court order to present to owner.

2. Have vehicle towed to approved department facility.

3. Notify the owner of the vehicle and all lienholders of record by certified mail within 10 days of the seizure.
4. Send a completed DMV Vehicle Action Notice MV2833 to the Department as soon as possible following the seizure.

5. Send a copy of the Court Ordered Vehicle Seizure form to the court.

6. Once seizure is accomplished, the District Attorney shall commence an action to forfeit the motor vehicle within 30 days of the seizure.

B. Procedure for seizure when encountering vehicle with an unexecuted seizure order against it.

1. A seizure order will appear on the Time system return when a vehicle registration check is done. Lines 25 and 28 will show seizure information. Line 25 will give the agency initiating the seizure order; line 28 will show “Vehicle Seizure”.

2. Execute the seizure order on the vehicle and have it towed to a department approved facility.

3. Notify the originating agency of the action.

4. Complete a vehicle seizure report.

5. Coordinate any necessary transfer of the vehicle with the responsible law enforcement agency responsible for seizing the vehicle.

6. Forward a copy of the court ordered vehicle seizure report to the responsible law enforcement agency along with copies of any bills or receipts concerning the seizure, towing or storage for recovery of these costs. The originating agency will be responsible for notification of owner and lien-holders.

C. Return of a Seized Vehicle.

1. When the court declines forfeiture of the vehicle, it must be returned to the owner. The only costs that can be recovered are the costs of storage and towing.

2. After payment of towing and storage costs by the vehicle owner, arrange for return to the owner.

Forms Discussed in this Chapter

- Uniform Traffic Citation
- Court Ordered Immobilization Record
- DOT Warning Label
- DMV Action Notice (MV2833)
- Court Ordered Vehicle Seizure Form
Chapter 11: Case Law Reference

The Constitution as a Guide ........................................................................................................1

The Initial Stop .............................................................................................................................1

The Initial Stop in OWI Cases .....................................................................................................2

Arrest Issues .............................................................................................................................9

Statutory Authority under Section 968.07 ....................................................................................9

The Constitutional Standard: Probable Cause ............................................................................9

Field Sobriety Tests .....................................................................................................................10

HGN Legal Authority ..................................................................................................................12

Miranda Rights ...........................................................................................................................13

Search Incident to Arrest under Section 968.11 .........................................................................15

Warrantless Search Exceptions ..................................................................................................16

Elements of an OWI Offense .......................................................................................................22

Implied Consent Law ....................................................................................................................25
The Constitution as a Guide

Both the United States Constitution (Constitution) and the Wisconsin Constitution act as guides in guaranteeing and protecting individual rights. However, the Constitution is typically looked to as a source of limits of what police can do and the state constitution's interpretation imposes the same requirements.

The Constitution affects the criminal justice system in three important ways:

1. By guaranteeing that no single branch of government can determine the fate of those accused of a crime--separate functions are accorded to the police, the legislature and the courts;

2. By establishing general principles which govern both the substantive criminal law and criminal procedure; and

3. By assuring basic rights to all citizens, including those suspected and accused of a crime.

The most relevant Constitutional provisions to the criminal justice system are found in the Bill of Rights (the first ten amendments) and in the Fourteenth Amendment (guaranteeing due process and equal protection to "any person within its jurisdiction"). The Fourteenth Amendment extends the protection of the Bill of Rights and makes them binding on state governments as well as on the federal government.

The minimum standards within which police, as well as others in the criminal justice system must operate, are contained in the Constitutional provisions and the interpretations made by the courts of those provisions. However, the standards are not detailed or particularized. They are meant to provide a general framework of guidance for proper conduct.

The Initial Stop

A. **Terry v. Ohio**: The Constitutional Standard

1. The *Terry* case is the benchmark for what constitutes a legal stop where the U.S. Supreme Court interprets the fourth amendment's proscription against unreasonable searches and seizures.

2. A "Terry stop" requires "specific and articulable facts which, taken together with rational inferences from those facts," support a reasonable suspicion that a person has committed, is committing, or is about to commit a crime.

---


2 392 U.S. 1 (1968).
3. Terry also establishes that a "frisk" is permissible during the course of a lawful stop, provided the officer has a reasonable suspicion that the suspect is armed and the frisk is necessary for the protection of the officer or others.

B. Statutory Authority under Sections 968.24 and 968.25

The Wisconsin statutes attempt to codify the same "stop and frisk" elements in the following two sections, cited here for reference:

1. Section 968.24 - Temporary questioning without arrest.
2. Section 968.25 - Search during temporary questioning.

The Initial Stop in OWI Cases

Numerous published and unpublished cases have addressed the issue of what elements will establish the "reasonable suspicion" required for a legal "Terry stop." The underlying question the court is faced with is whether the law enforcement officer's actions were reasonable under the circumstances. The following cases illustrate how the courts have decided this issue:

A. Violation of a Traffic Law

1. State v. Longcore, 226 Wis. 2d 1 (Ct. App. 1999). When an officer makes a traffic stop based on a misinterpretation of the law, no violation has occurred and there can be no basis for the stop. Therefore, the court concluded that when an officer relates certain facts (here, the observation of a plastic sheet covering a rear passenger window) to a specific offense (violation of the safety glass statute), it must indeed be an offense. A lawful stop cannot be predicated on a mistake of law.

2. State v. Krier, 165 Wis. 2d 673 (Ct. App. 1991). An investigatory stop is permissible even when the person's conduct may constitute only a civil forfeiture, i.e., a traffic violation or a first offense OWI.

3. State v. Baudhuin, 141 Wis. 2d 642 (1987). The court held that an officer must have articulable facts to believe the defendant was violating a traffic law under a reasonable grounds standard. In this case, the officer did not stop the defendant with the intention of issuing a citation. However, the court concluded the officer's subjective motivation did not invalidate the stop because there were objective facts that supported a legal basis for articulable facts of a traffic violation. Here, Baudhuin was traveling unusually slow and could have been issued a citation for impeding traffic.

3 Unless otherwise noted, all references in this chapter to the Wisconsin statutes are to the 1997-98 statutes.
4 NOTE: An unpublished opinion is of no precedential value and for this reason may not be cited in any court of this state as precedent or authority, except to support a claim of res judicata, collateral estoppel, or law of the case. Subsec. 809.23(3).
5 The supreme court intentionally declined to sustain the stop in this case based on either a “Good Samaritan” stop or a public safety stop because “the facts of this case are not appropriate to determine the minimal
Note: *Bentzler v. Braun*, 34 Wis. 2d 362, 374-377 (1966). The supreme court reasoned that the minimum speed law (see Sec. 346.59) was passed because the slow driver may be the cause of fatal highway accidents as well as the fast driver.

**B. Pretextual Stops**

1. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001). The U.S. Supreme Court held that a warrantless arrest is permissible for any criminal violation, regardless of the severity of the penalty that can be imposed. Under Texas law, it is a misdemeanor for a front-seat passenger in a car with safety belts not to wear one or for the driver to fail to secure a child riding in the front seat. The misdemeanor is punishable by a fine only and a police officer may issue a citation in lieu of arrest. Here, the officer arrested defendant after observing the seat belt violations and took her into custody where she was later released on bond. The Supreme Court concluded that an officer may arrest an individual without violating the Fourth Amendment if there is probable cause to believe that the offender has committed even a very minor criminal offense in the officer’s presence.

2. *Patrick Knowles v. Iowa*, 525 U.S. 113 (1998). The U.S. Supreme Court held that the “bright line rule” established in United States v. Robinson, 414 U.S. 218 (1973), which allows officers to conduct a full search of the person incident to a lawful custodial arrest, should not be extended to a search incident to a citation. This decision clarifies the ruling that a search incident to arrest applies only to custodial arrests.

3. *Whren v. United States*, 517 U.S. 806 (1996). The Supreme Court held that a vehicle stop that is supported by probable cause to believe the driver has committed a traffic violation is reasonable under the Fourth Amendment even if a reasonable officer, under the same circumstances, would not have made the stop absent some purpose not related to traffic enforcement. In essence, the Court held that pretextual stops do not violate the Fourth Amendment so long as the basis for the stop is objectively reasonable. The court concluded that the reasonableness of an officer’s actions should not be based on his or her subjective intent.

4. *United States v. Robinson*, 414 U.S. 218 (1973). The Supreme Court held that an arrest for a traffic violation would not be rendered invalid due to the fact that it was a “mere pretext for a narcotics search…”

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standards for such stops to be upheld under these doctrines” given that the present case involves a traffic law violation under subsection 346.59(1). *Baudhuin*, 141 Wis. 2d at 649-650.
C. Suspicious Behavior

State v. Waldner, 206 Wis. 2d 51 (1996). If a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, an officer has the right to temporarily detain an individual for the purpose of inquiry. Therefore, the supreme court concluded that under the “totality of the circumstances, including Waldner’s unusual driving at a late hour and his dumping of liquid and ice from a plastic cup, coalesced to form the basis for a reasonable suspicion grounded in specific, articulable facts and reasonable inferences from those facts” to justify the officer temporarily freezing the situation by stopping Waldner to further investigate.

State v. Anderson, 155 Wis. 2d 77 (1990). The court held that defendant's flight from the police was sufficiently suspicious to justify a temporary investigative stop. Although the act of flight is not by itself illegal, it did give rise to a reasonable suspicion of wrongful conduct. Further, an officer is not required to rule out the possibility of innocent behavior before initiating a brief stop.

D. Investigating Possible Criminal Behavior

1. State v. Olson, 2001 WI App 284, 249 Wis. 2d 391. The court of appeals held that reasonable suspicion to believe that defendant was involved in a burglary, taken together with the strong governmental interest in solving crimes and the purposeful avoidance of the police by defendant, made the officer’s traffic stop a reasonable solution to investigate further. However, the court cautioned that reasonable suspicion of a past crime would not always justify a traffic stop. Here, the facts and circumstances of the case justified the officer’s stop and subsequent investigation.

2. State v. Allen, 226 Wis. 2d 66 (Ct. App. 1999). The court held that given the “facts known to the police officers, along with their training and experience, the high-crime reputation of the area and the time of the day” combined, were sufficient to establish a reasonable suspicion that justified the stop and frisk of Allen. The court reasoned that a “frisk or pat-down of a person being questioned during an investigatory stop is reasonable if the stop itself is reasonable and if the officer has reason to believe that the person might be armed and dangerous.”

3. State v. Taylor, 226 Wis. 2d 490 (Ct. App. 1999). Relying on Terry and its progeny, the court held that the “totality of the facts” known to the officer supported a reasonable basis for suspicion “that something unlawful was afoot with Taylor.” Here, the defendant was leaving a residence already secured by the police for the lawful purpose of serving a bench warrant. Further, the officer saw defendant put a paper bag in his coat pocket in a dangerous neighborhood, described as a “high gang area” and as a “high drug area with multiple gunshots throughout the nights.” Finally, the defendant took an unusual route when leaving the house that put him into an enclosed backyard. The totality of the circumstances also provided the officer with the requisite “reasonable suspicion” to believe Taylor might be armed to justify a pat-down search in conjunction with the investigative stop.
4. State v. Amos, 220 Wis. 2d 793 (Ct. App. 1998). The court evaluated the totality of the circumstances with which the officers were confronted to determine there was reasonable suspicion to make an investigatory stop. Here, the officers knew that drugs were being sold from cars in neighborhood parking lots. Further, the apartment managers had requested police enforcement of the trespassing ordinances to reduce the volume of drug activity. Therefore, the officers were justified in stopping Amos to investigate possible trespassing and drug activity.

E. Absence of Registration Plates

State v. Griffin, 183 Wis. 2d 327 (Ct. App. 1994). The absence of vehicle registration plates provides a sufficient basis to justify an investigatory stop. Here, the officer stopped defendant's vehicle because the "license applied for" sign created an inference that the same could have easily been placed on a stolen vehicle. The court held that the temporary stop was justified for the purpose of inquiring about the vehicle registration.

F. Anonymous Tip

1. State v. Williams, 2001 WI 21, 241 Wis. 2d 631 (On remand from the United States Supreme Court; reversing 225 Wis. 2d 159, 591 N.W.2d 823 (Wis. 1999), 214 Wis. 2d 412; 570 N.W.2d 892 (Ct. App. 1997).) The Wisconsin Supreme Court held that based on the totality of the circumstances known to the officers—a 911 call from a citizen complaining of overt drug dealing in broad daylight, observations of a crime in progress, description and location of the vehicle, observations confirmed by the officers, the absence of license plates on the suspect vehicle, and the suspect's hand extended behind the passenger seat upon the officer's arrival—provided the requisite reasonable suspicion to detain Williams. Further, the court held that the officers were reasonable in fearing for their safety, making the subsequent protective search of the vehicle valid.

2. State v. Rutzinski, 2001 WI 22, 241 Wis. 2d 729. The Wisconsin Supreme Court held that a cellular phone tip from an unidentified caller who believed that he or she was following a possible drunk driver provided sufficient justification for an investigative stop of that driver. The factors the Supreme Court relied upon in reaching its decision were: (1) The tip contained sufficient indicia of the informant's reliability in that the tip exposed the informant to possible identification and, therefore, to possible arrest if the tip proved false. (2) The tip reported contemporaneous and verifiable observations regarding Rutzinski's alleged erratic driving, location, and vehicle description, many of which the officer was able to verify. (3) The allegations in the tip could suggest to a reasonable officer that Rutzinski was operating his vehicle while intoxicated. (4) The exigent circumstances strongly weighed in favor of immediate police investigation.
3. **Florida v. J.L.**, 529 U.S. 266, 120 S. Ct. 1375 (2000). The U.S. Supreme Court held that an anonymous tip that a person carrying a gun is, without more, insufficient to justify a police officer’s stop and frisk of that person. The Court concluded that the tip, which was made by an unknown and unaccountable informant, had no qualifying indicia of reliability. See also **Alabama v. White**, 496 U.S. 325 (1990).

4. **State v. Krier**, 165 Wis. 2d 673 (Ct. App. 1994). A corroborated anonymous tip about an activity that could be a forfeiture or a crime is sufficient to provide a reasonable suspicion that a crime is being committed. The court held that under the totality of the circumstances known to the officer at the time, which included the verifiable predictions of the anonymous caller that defendant did not have a valid driver license and was seen driving, the officer had a reasonable and articulable suspicion that the defendant was engaged in illegal activity.

5. **State v. King**, 175 Wis. 2d 146 (Ct. App. 1993). The court concluded that when an informant’s tip describes dangerous ongoing criminal activity, a police officer need not undertake an independent investigation of the tip as long as the tip provides sufficient indicia of reliability. Here, an officer made a traffic stop based on an informant’s tip regarding a shooting. The actual criminal charge was for possession of cocaine with intent to deliver. In upholding the conviction, the court held that the fact there was no relationship between the tip and the actual [criminal] event will not by itself make an investigatory stop unreasonable.

6. **State v. Guzy**, 139 Wis. 2d 663 (1987). The officers stopped defendant based upon a brief description provided over the police radio of a person suspected of committing a robbery. In balancing the interests of society in solving crimes and bringing offenders to justice and the rights of people in society to be free from unreasonable intrusion, the court concluded the officers' conduct was reasonable under all of the facts and circumstances. Here, the totality of the circumstances included: 1) the description of a suspect that would require only a minimal intrusion, 2) the lack of alternative means to investigate further without making a stop, and 3) the lost opportunity for further investigation if the officers did not react immediately.

G. **Community Caretaker Function**

1. **State v. Anderson**, 149 Wis. 2d 663 (Ct. App. 1989) (reversed by the Wisconsin Supreme Court on grounds not related to the community caretaker issue, see **State v. Anderson**, 155 Wis. 2d 77 (1999).). The court held that two questions are to be asked in evaluating the validity of “community caretaker” stops: (1) were the police pursuing a bona fide community caretaker activity; and, (2) if so, does the public need and interest outweigh the intrusion on the privacy of the individual.
2. **State v. Ellenbecker**, 159 Wis. 2d 91 (Ct. App. 1990). This case involved a “motorist assist” of an officer with a driver tending to a disabled vehicle. The court held that it was lawful for the officer to request the driver’s license and to conduct a status check as a “community caretaker function.” The court concluded that the reasonableness of that function requires balancing the public need and interest of the police against the degree of and nature of the intrusion on the citizen’s privacy.

3. **State v. Dunn**, 158 Wis. 2d 138 (Ct. App. 1990). The court held that the officer’s initial stop and entry of defendant’s vehicle was valid because she could observe that he was in some sort of trouble. Here, the officer saw the defendant pull into an isolated shop area at 2 a.m., turn off the engine, remain stationary, and then slump over in the seat as the officer approached. The court found these observations could cause a reasonable person to believe that the defendant needed assistance.

4. **State v. Blum**, No. 93-1166-CR (Ct. App. 1993). In this unpublished decision, the court applied the two-prong test in **Dunn** to conclude that the officer’s stop was justified by a belief that the defendant might need assistance. Here, the defendant’s vehicle was parked on the shoulder of a highway at night with no lights on. The officer observed that the person behind the wheel was not awake. The court concluded the officer would have been remiss in his duties if he had not investigated the circumstances further.

**H. Passengers of Traffic Stops**

1. **Maryland v. Pringle**, S.Ct., No. 02-809 (12/15/03). The U.S. Supreme Court held an officer who during a search of a vehicle stopped for a traffic violation, found cash in the glove compartment and a sizable quantity of drugs hidden behind the back-seat armrest had probable cause to arrest all of the occupants of the vehicle. Here, officers stopped a car for speeding and a seat belt violation. The officer noticed a large amount of rolled-up money in the glove compartment when the driver opened it to get his license registration. The officer issued a verbal warning and then asked for consent to search after the driver indicated he did not have any weapons or narcotics in the car. The search revealed $763 in cash and five plastic baggies containing cocaine. All three men in the car denied ownership of the money and cocaine, so the officer arrested each of them. Pringle, one of the passengers, subsequently confessed that the cocaine belonged to him. The court concluded that the passenger Pringle’s arrest was valid because the totality of the circumstances supported a reasonable belief that all three passengers were involved in a common enterprise to traffic drugs.
2. **State v. Matejka**, 2001 WI 5, 241 Wis. 2d 52. The Wisconsin Supreme Court held that a driver’s consent to search a vehicle extends to a passenger’s jacket left in the vehicle at the time of the search. In this case, a state trooper stopped a van for a traffic violation. When the officer approached the van, he saw several passengers covered with blankets on the back floor. He also noticed the driver leaning over as if he was trying to hide or retrieve something. The officer asked everyone in the van to get out and then obtained consent to search the van. The passengers asked for their jackets while they waited outside. The officer searched all of the jackets before giving them to the passengers. The officer found drugs and contraband in the defendant’s jacket.

3. **Wyoming v. Houghton**, 526 U.S. 295 (1999). The U.S. Supreme Court held that a police officer can lawfully search a passenger’s personal belongings left inside a vehicle when the officer has probable cause to believe the vehicle contains contraband. In this case, Houghton was a passenger in a vehicle the police stopped for an equipment violation. The officer noted a hypodermic syringe in the pocket of the driver, which the driver admitted to using for illegal drugs. Based on this admission, the officer had probable cause to believe there were drugs in the car. A subsequent search of the car, which included a purse belonging to the defendant, revealed evidence to convict defendant of a drug crime.

4. **Maryland v. Wilson**, 419 U.S. 408 (1997). An officer who has made a routine traffic stop may, without more, order the driver to get out of the vehicle. The Supreme Court reasoned that, as a practical matter, passengers are already stopped by virtue of the vehicle stop, so that the additional intrusion of having them get out of the car is minimal. Further, the danger to an officer during a traffic stop is likely to be greater when it involves passengers in addition to the driver.

5. **State v. Harris**, 206 Wis. 2d (1996). The Wisconsin Supreme Court held “that when police stop a vehicle, all of the occupants of that vehicle are seized and have standing to challenge the stop.” The court concluded that “[w]hen a passenger rides in a vehicle he or she does not surrender the Fourth Amendment … right against unreasonable seizure.”

6. **State v. Guzy**, 139 Wis. 2d 663 (1987). A passenger, who is the “target” of a vehicle stop, has been seized within the meaning of the Fourth Amendment. Therefore, the court concluded that the passenger has standing to challenge the stop. However, the court stated, “We do not deal with the issue of a passenger’s standing to challenge the stop when the passenger is not the target of the stop.” (See Harris, supra.)
Arrest Issues

A. Statutory Authority under Section 968.07

A law enforcement officer may arrest a person when:

1. He has a warrant commanding that such person be arrested; or

2. He believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or

3. He believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or

4. There are reasonable grounds to believe that the person is committing or has committed a crime.

B. The Constitutional Standard: Probable Cause

1. Draper v. United States, 358 U.S. 307 (1959). The Supreme Court defines probable cause as existing where the facts and circumstances are within the arresting officers' knowledge and of which they had reasonably trustworthy information sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. (citing Carroll v. United States, 267 U.S. 132, 162.)

2. State v. Sharpee, 154 Wis. 2d 515 (Ct. App. 1990). Here, the court expands the criteria for probable cause to arrest as follows:
   
   a. When an officer, at the time of arrest, has knowledge of facts and circumstances sufficient to warrant a person of reasonable prudence to believe that the arrestee is committing, or has committed, an offense.
   
   b. It is a test based on probabilities; such that the facts need only be sufficient to lead a "reasonable officer" to believe that guilt is more than a possibility.
   
   c. It is a common sense test involving the "factual and practical considerations of everyday life on which reasonable and prudent men [and women], not legal technicians, act."

3. State v. Truax, 151 Wis. 2d 354 (Ct. App. 1989). In a non-OWI case, the court found that probable cause:
   
   a. Refers to that quantum of evidence, which would lead a reasonable officer to believe that the defendant probably committed a crime.
b. Need not be sufficient to show guilt beyond a reasonable doubt, nor even to prove that guilt is more probable than not.

The following cases illustrate how the courts have resolved various OWI-related arrest issues:

1. **State v. Secrist**, 224 Wis. 2d 201 (1999). The supreme court held “that the odor of a controlled substance provides probable cause to arrest when the odor is unmistakable and may be linked to a specific person or person because of the circumstances in which the odor is discovered or because other evidence links the odor to the person or persons.” Here, the defendant drove up to a uniformed police officer who was directing traffic during a holiday parade and asked for directions. The officer immediately detected a strong, unmistakable odor of marijuana coming from the vehicle where defendant was the only occupant.

2. **State v. Babbitt**, 188 Wis. 2d 349 (Ct. App. 1994). The court concluded that “we must look to the totality of the circumstances to determine whether the arresting officer’s knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant.

3. **State v. Swanson**, 164 Wis. 2d 437 (1991). The supreme court adopted an objective test to determine the moment of arrest for Fourth Amendment purposes; namely, whether a "reasonable person in the defendant's position would have considered himself or herself to be 'in custody,' given the degree of restraint under the circumstances." Under this test, what officers have communicated, either by words or actions, shall be controlling, rather than what was their unarticulated plan. Although unexplained erratic driving, the odor of alcohol, and the time of the incident may form the basis for reasonable suspicion; they do not, in the absence of field sobriety tests, constitute probable cause to arrest for OWI.

4. **Note: State v. Wille, 185 Wis. 2d 673 (Ct. App. 1994).** The court held that a defendant is not precluded from challenging the probable cause determination at a suppression hearing in a subsequent criminal proceeding. In its probable cause analysis, the court specifically commented that **Swanson does not mean that under all circumstances, the officer must first perform field sobriety tests to determine whether to arrest for OWI.** (See also discussion of State v. Babbitt below.)

C. Field Sobriety Tests

1. The middle tier between reasonable suspicion and probable cause to arrest. An officer should have knowledge of facts sufficient to reasonably suggest that further inquiry is warranted, although the facts need not rise to the level of probable cause.
2. Are not testimonial or communicative in nature to fall within the scope of the Fifth Amendment proscription against self-incrimination. State v. Babbitt, 188 Wis. 2d 349 (Ct. App. 1994), holding that “field sobriety tests are not testimonial in nature because the suspect does not intend to convey a statement as to his or her state of sobriety by performing the test.”

3. Do not require giving defendant Miranda warnings prior to conducting. Id., at 385. See also Schmerber v. California, 384 U.S. 757 (1966).

4. Pennsylvania v. Muniz, 496 U.S. 582 (1990) describes the three standard field sobriety tests as follows:
   a. Horizontal gaze nystagmus test (HGN) measures the extent to which a person's eyes jerk as they follow an object moving from one side of the person's field of vision to the other. The test is premised on the understanding that, whereas everyone's eyes exhibit some jerking while turning to the side, when the subject is intoxicated “the onset of the jerking occurs after fewer degrees of turning, and the jerking at more extreme angles becomes more distinct.”
   b. Walk and turn test requires the subject to walk heel-to-toe along a straight line for nine paces, pivot, and then walk back heel-to-toe along the line for another nine paces. The subject is required to count each pace aloud from one to nine.
   c. One leg stand test requires the subject to stand on one leg with the other leg extended in the air for 30 seconds, while counting aloud from one to thirty.

5. State v. Babbitt, 188 Wis. 2d 349 (Ct. App. 1994). The court held that defendant's refusal to perform a field sobriety test may be used as evidence of probable cause to arrest for OWI. In this case, the officer received a citizen's report of a vehicle driving erratically; the officer observed the vehicle as described; when the defendant was stopped, there was an odor of alcohol, defendant's eyes were glassy and bloodshot, defendant's walk was slow and deliberate, and defendant was consistently uncooperative. The court concluded that these facts provided sufficient evidence of probable cause to arrest for OWI. Finally, the court cautioned that its holding is limited to evidence of probable cause to arrest.

NOTE: The Florida Supreme Court ruled that requiring a drunk driving suspect to recite the alphabet out of ordinary sequence is testimonial in nature and protected by the fifth amendment. The court concluded that it is the content of an incorrect recitation, rather than the manner of the recitation, that would lead a reasonable person to conclude such a request was designed to elicit an incriminating response. Allred v. Florida, 622 So.2d 984 (1993).

1. State v. Kasian, 207 Wis. 2d 611 (Ct. App. 1996). The court concluded that although the field sobriety tests may be necessary to establish probable cause in some cases, it may not be necessary in others. Therefore, an officer does not have to administer field sobriety tests in all circumstances to confirm a suspicion of intoxication.
2. **State v. Mallick**, 210 Wis. 2d 427 (Ct. App. 1994). The court held that the privilege against self-incrimination protects a suspect from being compelled to produce evidence “of a testimonial or communicative nature,” but not physical evidence such as voice and handwriting samples. Here, the court held that admission of Mallick’s refusal to submit to the field sobriety tests could be used as evidence at trial.

D. **HGN Legal Authority**

There is finally a published Wisconsin court opinion on the issue of admissibility of HGN evidence.

**State v. Zivcic**, 598 N.W.2d 565 (Ct. App. 1999). The court held that HGN test results are admissible at trial as long as they are accompanied by the testimony of an officer who is properly trained to administer and evaluate the test. In reaching its decision on an issue of first impression, the court rejected the defendant’s argument that the test results should be “accompanied by ‘testimony from an expert with specialized knowledge and training in HGN testing and its underlying principles.’”

The following cases from other jurisdictions support the admissibility of HGN evidence:

**State v. Superior Court ex rel. County of Cochise (Blake)**, 718 P.2d 171 (Ariz. 1986). This Arizona Supreme Court case is considered the most thoroughly researched and well-reasoned decision on the issue of admissibility of HGN test evidence. This precedent-setting case has been relied upon in almost every subsequent case on the issue. The court held the following:

- HGN, when properly administered by a trained police officer, is sufficiently reliable to be a factor in establishing probable cause to arrest for OWI;
- HGN test evidence may be admissible to corroborate or attack, but not to quantify, the chemical analysis of the defendant’s alcohol concentration; and
- HGN test evidence may not be used to establish the defendant’s level of alcohol concentration in the absence of a chemical analysis.

1. **State v. Murphy**, 451 N.W.2d 154 (Iowa 1990). The Iowa Supreme Court held that HGN test evidence is admissible without requiring further scientific evidence because: 1) the officer was professionally trained to properly administer the test; 2) the results were objectively recorded; 3) it is one of three reliable indicators of intoxication; 4) U.S. DOT recommends its use as a field sobriety test; and 5) the officer was qualified to testify to his/her specialized knowledge.

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2. **People v. Buening**, 592 N.E.2d 1222 (Ill.App.5 Dist. 1992). The Illinois Appellate Court held that HGN test evidence is admissible to prove the defendant was operating under the influence of alcohol provided there is a proper foundation: 1) describing the officer's education and experience in administering the test; and 2) showing the procedure was properly administered. However, HGN test results are not admissible to prove the specific alcohol concentration.

3. **City of Fargo v. McLaughlin**, 512 N.W.2d 700 (N.D. 1994). The court held that when the HGN test is given in conjunction with other field sobriety tests to form the basis for the officer's opinion on defendant's intoxication, the officer's testimony concerning the HGN test results is admissible without laying a scientific foundation by expert testimony.

4. **State v. Klawitter**, 518 N.W.2d 577 (Minn. 1994). The Minnesota Supreme Court considered the admissibility of HGN testing as part of the Drug Recognition Protocol. The court concluded: 1) nystagmus tests are standard neurological tests; 2) police officers are trained to be observers not scientists; 3) the training refines an officer's observations skills to detect whether a person is under the influence; and 4) as a trained observer, an officer should not be referred to as an "expert." The court held that an officer's opinion of HGN test evidence is admissible if a sufficient foundation has been laid.

### E. Miranda Rights

1. An officer cannot subject a person to custodial interrogation, regardless of the nature or severity of the alleged offense, until advised of the following rights:

   - Right to remain silent;
   - Any statement made may be used as evidence against the person;
   - Right to an attorney; and
   - If the person can't afford an attorney, one will be appointed.

2. The underlying purposes of these warnings are:

   - To ensure police do not coerce or trick captive suspects into confessing;
   - Relieve the "inherently compelling pressures" of a custodial setting; and
   - To free courts from the task of scrutinizing individual cases to determine after the fact whether the confessions were voluntary.

3. The following cases illustrate how the courts have resolved issues related to the **Miranda** warnings:

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a. **State v. Gruen**, 218 Wis. 2d 582 (Ct. App. 1998). The actions of a Wauwatosa officer, who was called to the scene of a one-car crash to resume the investigation by a Milwaukee officer, were those of an officer still acting in an investigatory stage. Here, the defendant had been briefly questioned following a crash, was invited to sit in a police van to wait for another officer, was not handcuffed, was not placed under arrest, and was not locked inside the van. Therefore, the court concluded that defendant was not “in custody” for purposes of *Miranda*.

b. **State v. Buck**, 210 Wis. 2d 115 (Ct. App. 1997). The court held that a defendant who is formally arrested while conscious in an ambulance, and is subsequently transported to a hospital via helicopter, does not release the person from the initial law enforcement custody and did not discontinue the earlier arrest.

c. **State v. Schambow**, 176 Wis. 2d 286 (Ct. App. 1993). The court held that statements taken by police while defendant was in the hospital and prior to formal arrest did not require *Miranda* warnings. The court concluded that questioning in a hospital is not custodial in nature to invoke *Miranda* when the suspect is not under formal arrest. Further, the court stated that to find the statements to be involuntarily made, would require some affirmative evidence of improper police procedures deliberately used to procure a confession.

d. **State v. Leprich**, 160 Wis. 2d 472 (Ct. App. 1991). The ultimate inquiry is whether there is a formal arrest or restraint on freedom of movement of a degree associated with a formal arrest. In making this determination, we consider the “totality of the circumstances.” We look to the defendant’s freedom to leave the scene and the purpose, place and length of the interrogation.

e. **State v. Pounds**, 176 Wis. 2d 315 (Ct. App. 1993). In this case, decided the same day as *Schambow*, the court held that defendant was “in custody” for *Miranda* purposes. Here, defendant had been a subject of a routine traffic stop. The officers told him he was free to leave the scene, then apprehended him a short time later at gunpoint. Defendant was frisked, handcuffed, and transported back to the scene of the traffic stop when the officer inquired about a gun. The court found that defendant's admission of ownership of the gun should be suppressed because a reasonable person in defendant's position would have considered himself or herself to be in custody, given the degree of restraint under the circumstances.

f. **Village of Menominee Falls v. Kunz**, 126 Wis. 2d 143 (Ct. App. 1985). The *Miranda* warnings do not apply to a routine traffic stop where the eventual prosecution is a civil forfeiture proceeding; e.g., first offense OWI. Conduct punishable only by a forfeiture is not a crime.
4. Outside the OWI arena, the courts have most recently interpreted *Miranda* as follows:

a.  **State v. Armstrong**, 223 Wis. 2d 331 (1999). The supreme court affirmed its decision in *Schimmel v. State*, 84 Wis. 2d 287 (1978) and held that “a person who is incarcerated is *per se* in custody for purposes of *Miranda*.” Further, the court reasoned that a prison inmate is “in custody” for purposes of *Miranda* even though questioned about a situation distinct from the one for which he or she may be imprisoned.

b.  **State v. Santiago**, 206 Wis. 2d 3 (1996). A police officer’s conclusory statement the he gave the defendant Spanish language *Miranda* warnings is not sufficient when the defendant claims that he was not properly advised or did not knowingly and intelligently waive his *Miranda* rights. The supreme court suggested that the “better practice” in some cases may be to have two interpreters; one for the accuse, and one for the court.

c.  **State v. Long**, N.W.2d 826 (Ct. App. 1995). In affirming the defendant's no-contest plea, the court held that a defendant's *Miranda* rights must be asserted unequivocally for a reasonable officer to understand that defendant is invoking the right to counsel and all further questioning should cease. In reaching this decision, the court concluded this does not mean an officer is required to ask clarifying questions when faced with an ambiguous request for counsel.

d.  **State v. Lagar**, 526 N.W.2d 836 (Ct. App. 1995). In affirming defendant's conviction, the court held that only interrogation-type questions (those designed to elicit incriminating answers) must cease once a suspect has clearly invoked the right to counsel. The court reasoned that the rule enunciated by the Supreme Court in *Edwards v. Arizona*, 451 U.S. 477 (1981) does not prohibit questions "normally attendant to arrest and custody." Therefore, an officer can ask simple questions designed to insure that defendant is provided with counsel once a clear invocation of the right to counsel is made.

F. **Search Incident to Arrest under Section 968.11**

When a lawful arrest is made, a law enforcement officer may reasonably search the person arrested and an area within such person's immediate presence for the purpose of:

- Protecting the officer from attack;
- Preventing the person from escaping;
- Discovering and seizing the fruits of the crime; or
- Discovering and seizing any instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.
1. **Knowles v. Iowa**, 119 S.Ct. 484 (1998). The Supreme Court held that police officers who stop a motorist to issue a traffic citation, e.g., for speeding, cannot automatically search the motorist’s vehicle as a lawful “search incident to arrest.” The court reasoned that the Fourth Amendment’s warrant requirement does not allow a law enforcement officer to search a vehicle when the officer has probable cause to arrest the driver but opts to issue a citation for a traffic offense instead.

2. **United States v. McLaughlin**, 170 F.3d 889 (9th Cir. 1999). The court applied the “search incident to arrest” doctrine to uphold the warrantless search of a backpack found in a vehicle five minutes after the defendant was taken from the arrest scene. The court reasoned that the bright-line rule enunciated in **New York v. Belton**, 453 U.S. 454 (1981), allowed a warrantless search of closed containers in a vehicle’s passenger compartment as a “contemporaneous incident” of a lawful arrest of a vehicle occupant. Here, the court concluded that “the defendant’s arrest, the filling out of the impound paperwork, and the search of his car were all part of a continuous, uninterrupted course of events, all occurring within a relatively brief period of time” to satisfy the Belton rule.

3. **State v. Swanson**, 164 Wis. 2d 437 (1991). The supreme court held defendant’s search illegal based on the established rule that “for a search incident to an arrest to be lawful, the arrest itself must be lawful, and for the arrest to be lawful, probable cause for arrest must exist.” Here, the defendant was merely asked to perform field sobriety tests, was never told he was under arrest nor given the Miranda warnings nor handcuffed. The court concluded that a reasonable person in defendant’s position would not have believed that he or she was under arrest or in legal custody prior to the search during a routine traffic stop.

### G. Warrantless Search Exceptions

Searches without a warrant are **per se unreasonable**, unless they fit within specific, well-delineated exceptions, for example:

1. **Plain View Doctrine**

   a. **Bies v. State**, 76 Wis. 2d 457 (1977). In denying the suppression of evidence seized without a warrant, the supreme court held that the following requirements of the plain view doctrine were met: 1) The officer had prior justification for being where the “plain view” discovery was made (an anonymous call requiring general surveillance and proceeding to an area with the only light); 2) The evidence must be in plain view (an empty door frame to the garage put the evidence in plain view); 3) The discovery must be inadvertent (the officer was not looking for or expecting to find evidence); and 4) The item, in itself or with facts known to the

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8 In contrast, a pat down frisk for weapons would be allowed under Terry for the purpose of discovering weapons that might be used to harm the officers or others nearby. However, the frisk must be confined in scope so that it is minimally intrusive to the suspect. **Swanson**, 164 Wis. 2d 437, 444.
officer, provides probable cause to believe it is connected with some criminal activity (the officer knew the item was not typically in private possession and that it had previously been in a location vulnerable to theft).

2. The Automobile Exception

a. Wyoming v. Houghton, U.S. Sup. Ct. No. 98-184, 4/5/99. When a police officer has probable cause to believe that a vehicle contains drugs, the “automobile exception” to the Fourth Amendment warrant requirement encompasses any containers in the vehicle that might contain the object of the search, regardless of whether the container may belong to the driver or to a passenger.

b. State v. Pallone, 2000 WI 77, 236 Wis. 2d 162. The Wisconsin Supreme Court held that police may conduct a warrantless search of belongings in a vehicle when the driver of the vehicle is under arrest, but police do not have probable cause to arrest or detain the passenger. Here, an officer arrested the driver of a vehicle for having open intoxicants. Subsequent to the arrest, he requested permission to search the vehicle. The passenger Pallone told the officer he wanted to get his duffle bag out of the car. Pallone appeared nervous and the officer was concerned that the duffel bag contained something he didn’t want the officer to find. The officer searched the duffel bag and found cocaine. The Supreme Court concluded the search was constitutional for two reasons. First, the search was valid under the “search incident to arrest” exception; and second, the search was proper because the police had probable cause to search the vehicle and any containers capable of concealing the object of the search.

c. U.S. v. Ross, 456 U.S. 798 (1982). Here, the Wisconsin Supreme Court held that a search under the automobile exception may extend to containers and packages found in the vehicle. The scope is the same as the scope of a search authorized by a warrant. It is defined by the nature of the evidence being searched for and the places in which there is probable cause to believe that the evidence may be found. Thus, no distinction is made based on the type of container or package found in the vehicle.

d. Carroll v. U.S., 267 U.S. 132 (1925). In this case, the Supreme Court recognized the need for making special exception for automobile searches. The Court concluded that the risk of losing evidence from a readily mobile source while seeking a warrant justifies a search where there is probable cause to believe the vehicle contains evidence of a crime. However, in Coolidge v. New Hampshire, 403 U.S. 443 (1971), the Court cautioned that there is nothing magic about the word "automobile" to justify abandoning all fourth amendment tenets.
3. Consent

a. **State v. Williams**, 2002 WI 94, 255 Wis. 2d 1. The Wisconsin Supreme Court concluded that when the officer requested consent to search, the defendant was not “seized” for purposes of the Fourth Amendment when he consented to the search. In this case, the officer stopped defendant for speeding. The officer gave the defendant a warning citation, returned his license and other paperwork and told him “we’ll let you get on your way then.” However, before the defendant left, the officer asked the defendant if he had any guns, knives, drugs, or large amounts of money in the car and asked for consent to search. The defendant denied having any of the things in his car and gave consent to search. The officer found heroin and a gun. The court upheld the search of the vehicle.

b. **State v. Stankus**, 220 Wis. 2d 232 (Ct. App. 1998), *petition for review denied*. The court concluded that the presence of two officers incident to a lawful stop; one on the driver’s side, and the other on the passenger’s side, did not create an unduly coercive atmosphere to render the defendant’s consent to search involuntary.

c. **Ohio v. Robinette**, 117 S.Ct. 417 (1996). The Fourth Amendment does not require that an officer advise a lawfully seized defendant that he or she is “free to go” before the defendant’s consent to search will be recognized as voluntary. The Supreme Court concluded that while knowledge of the right to refuse consent is one factor to be considered in determining whether the consent was voluntary, it would be “unrealistic to require police officers to always inform detainees that they are free to go before a consent to search may be deemed voluntary.”

d. **State v. Gaulrapp**, 207 Wis. 2d 600 (Ct. App. 1996). The court relied on the Robinette decision in stating that “[t]he Fourth Amendment test for a valid consent to search is that the consent be voluntary, and voluntariness is a question of fact to be determined from all the circumstances.” Further, the court concluded that defendant’s detention based on a stop for a loud muffler was not unreasonably prolonged when the officer asked if he had any drugs or weapons in his car and if she could search his vehicle.

4. Blood Tests/Hospital Evidence

a. **State v. Faust**, 2004 WI 99
The Wisconsin Supreme Court held that the presence of one presumptively valid chemical test of a person’s breath does not extinguish the exigent circumstances justifying a warrantless blood draw. The defendant in this case was arrested for OWI and taken to the police station, read the Informing the Accused form, and agreed to take the breath test. The result of the breath test was .09, which was over the .08 legal limit for third offenders at that time. The officer requested defendant submit to the alternate blood test, which is allowable under the implied consent law. However, the defendant refused and the
officer took a nonconsensual blood draw. The supreme court reiterated that the rapid dissipation in the bloodstream of a person arrested for a drunk driving related offense constitutes an exigency that justifies the warrantless nonconsensual blood draw. The fact that police obtain a single presumptively valid breath sample from a defendant does not remove the need to gather evidence of intoxication.

b. State v. Erickson, 2003 WI App 43, 260 Wis.2d 279. The court of appeals held that a pre-arrest, warrantless and nonconsensual blood draw is lawful when an officer has probable cause to believe the blood will contain evidence of a drunk-driving related crime or violation. The defendant was involved in a crash that killed one occupant of another vehicle and seriously injured another occupant. The responding officer questioned Erickson at the scene. Erickson admitted drinking at an all-night party, but the officer did not detect an odor of intoxicants. At the hospital, medical personnel reported they detected an odor of intoxicants about Erickson. The officer subsequently directed hospital personnel to take a blood sample even though Erickson was not placed under arrest. The court of appeals concluded that based upon these facts, it was reasonable for the officer to conclude that Erickson had dozed off and crashed into the vehicle because she was under the influence of alcohol. This was sufficient to supply the requisite probable cause to believe Erickson’s blood contained evidence of drunk driving at the time the officer directed medical personnel to take a blood sample.

c. State v. Krajewski, 2002 WI 97, 255 Wis. 2d 98. The Wisconsin Supreme Court held that a warrantless, nonconsensual blood draw of a person arrested for OWI is constitutional as an exception to the Fourth Amendment warrant requirement based upon exigent circumstances, even when the person offers to take a different chemical test. Krajewski was arrested for OWI. Agency policy dictated that a person arrested for a second or subsequent OWI be taken for a blood test. After the officer read Krajewski the Informing the Accused form, Krajewski said he “had a fear of needles” and offered to take either the breath or urine test. A blood draw was taken without Krajewski’s consent. Here, the supreme court concluded that the nonconsensual blood test complied with the standards established in State v. Bohling, 173 Wis. 2d 529 (1993). Specifically, the test was taken to obtain evidence of intoxication after Krajewski was arrested for OWI, there was probable cause to believe the blood draw would produce evidence of intoxication, the blood was taken in a reasonable manner, and Krajewski presented no reasonable objection. Therefore, the blood draw was reasonable and constitutional.

d. State v. Wodenjak, 2001 WI App 216, 247 Wis. 2d 554. The Court of Appeals held that defendant’s willingness to take a less invasive breath test and the availability of the test did not deprive law enforcement of the right to obtain a warrantless blood draw. The defendant in this case, a repeat offender, was asked to submit to a blood test under the implied consent law. The defendant asked if he could take a breath test. The officer informed him that blood was the agency’s primary test for repeat offenders. The defendant refused the blood test and the officer
informed him that a blood sample would be taken without his consent, pursuant to agency policy that required a blood sample on all repeat offenses. The defendant then changed his mind and submitted to the blood test. The court concluded that the holdings in State v. Bohling and State v. Thorstad apply, which allow forcible warrantless blood draws as an exception to the Fourth Amendment provided the conditions of Bohling are satisfied. The court reasoned that it makes no difference whether the suspect refuses the primary breath test and then submits to the blood test (Bohling) or the suspect submits to the primary blood test (Thorstad).

e. State v. Thorstad, 2000 WI App 199, 238 Wis. 2d 666. The Court of Appeals held that the blood test procedure under the implied consent law was reasonable under the Fourth Amendment and was not involuntary or nonconsensual. The defendant was arrested for OWI and the officer requested he provide a blood sample pursuant to the implied consent law. The form explained that the defendant could refuse, but that his driving privileges would be revoked if he did refuse. The defendant agreed to take the blood test and at no time requested an alternative test. The court concluded that all of the requirements of State v. Bohling, 173 Wis. 2d 529 (1993) were met; namely, (1) the defendant was lawfully arrested for OWI; (2) he had been in a one-car crash, admitted drinking, and failed the field sobriety tests, which provided a reasonable suspicion that his blood would contain evidence of intoxication; (3) the blood test was performed in a medical environment, and (4) he did not refuse or present any reasonable objections to the blood draw.

f. State v. Thurk, 224 Wis. 2d 662 (Ct. App. 1999). The court held that a blood test that was taken incident to a fatal crash where the defendant voluntarily consented, was not read the Informing the Accused form, and was not placed under arrest, was taken outside the implied consent law. As such, the defendant did not have a statutory right to an alternate test.

g. State v. Thompson, 222 Wis. 2d 179 (Ct. App. 1998). The court concluded that defendant had no reasonable expectation of privacy in the hospital emergency room or operating room. Further, the officer’s gathering of evidence (here, three bags of cocaine which were surgically removed from defendant’s small intestine) did not constitute a search. Therefore, the court did not consider whether the officer’s presence in the operating room could be justified under any of the limited circumstances that permit searches without a warrant.

h. Schmerber v. California, 384 U.S. 757 (1966). The Supreme Court held that police may draw blood incident to arrest, without a warrant, and over the defendant’s objection under the following circumstances: 1) The arresting officers have a clear indication that the evidence they are seeking will be found in the person's blood; 2) Exigent...
circumstances exist; and 3) The method used to take the blood sample is a reasonable one and performed in a reasonable manner.

i. **State v. Bohling**, 173 Wis. 2d 529 (1993). Here, the court interprets *Schmerber* to conclude that the rapid dissipation of alcohol in the bloodstream creates exigent circumstances to justify a warrantless blood draw. The court restated the *Schmerber* test to allow a warrantless blood sample to be taken at the direction of an officer under the following circumstances: 1) The blood test is taken to obtain evidence of intoxication from a person lawfully arrested for a drunk driving related offense; 2) There is a clear indication that the blood draw will produce evidence of intoxication; 3) The method used to take the blood sample is a reasonable one and performed in a reasonable manner; and 4) The suspect presents no reasonable objection to the blood draw. Here, defendant was in a car accident, smelled of alcohol, had bloodshot eyes, and poor balance; he was arrested for third offense OWI and taken to the police department; he refused to take the intoxilyzer test; department policy required blood tests on third and subsequent offenses; defendant submitted to a blood test.

j. **State v. Krause**, 168 Wis. 2d 578 (Ct. App. 1992). The court relies on *Schmerber* in this case to conclude that a forcible extraction of blood for testing was a reasonable search. Unlike Bohling where the defendant ultimately consented to the blood draw, the officers in this case had to physically restrain the defendant by placing a pillowcase over his head and tying down his feet in order to obtain a blood sample. In reaching its conclusion, the court considered the following factors: 1) The severity of the crime of drunk driving, 2) the reasonableness of the procedure for drawing blood, 3) the threat the defendant posed to the safety of the officers or others, 4) the force the defendant used in resisting, 5) whether the officers refused defendant's request for an alternative test, and 5) the state's need for obtaining a sample.

k. **State v. Penzkoffer**, 194 Wis. 2d 262 (Ct. App. 1994). The court held that blood test results obtained by a "certified laboratory assistant" were admissible and did not violate statutory requirements. The court concluded that a doctor's express authorization was not required for each blood draw by the statute's mandate that it be drawn "under the direction of a physician." Here, it was sufficient that the blood was drawn under the pathologist's "general supervision and direction."

l. **State v. Jenkins**, 80 Wis. 2d 426 (1977). The court held “that where a blood test is taken at the request of a physician, solely for diagnostic purposes and not at the request or suggestion of any governmental authority, there is no search and seizure within the meaning of the fourth amendment...Nor is there a search and seizure because the doctor later testifies concerning the results at a homicide trial." Here, the prosecutor received an anonymous phone call concerning the defendant who had been involved in a fatal crash nearly eight months...
Based on the call and the blood test results obtained from the hospital, the district attorney charged defendant with homicide by the negligent and intoxicated use of a motor vehicle.

5. Breath Tests

a. County of Jefferson v. Renz, 231 Wis. 2d 293 (1999). The Wisconsin Supreme Court concluded that the legislature intended “probable cause to believe” to refer to a quantum of proof that is greater than the reasonable suspicion necessary to justify an investigative stop, and greater than the “reason to believe” necessary to request a PBT from a commercial driver, but less than the level of proof required to establish probable cause for arrest. In this case, the defendant showed several signs of intoxication. His car smelled of intoxicants. He admitted drinking. However, his speech was not slurred and he was able to substantially complete the field sobriety tests. The officer requested the defendant submit to a PBT. The result indicated a .18 alcohol concentration. The supreme court concluded the officer had the requisite degree of probable cause to request the defendant submit to a PBT.

b. State v. Busch, 217 Wis. 2d 429 (1998). The supreme court held that the modified version of the Intoxilyzer 5000, Series 6400 and the Intoxilyzer 5000, Series 6600 were, for all practical purposes, the same machine as the Intoxilyzer 5000 which had been evaluated and approved by the chief of the Chemical Test Section of the Department of Transportation. Therefore, Busch’s breath test results obtained from the Intoxilyzer 5000, Series 6600 were entitled to the statutory presumption of accuracy and reliability without requiring expert testimony.

Elements of an OWI Offense

A. Statutory Requirements under Section 346.63

1. No person may drive or operate a motor vehicle while:

a. Under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or

b. The person has a prohibited alcohol concentration.

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9 Proof of actual impairment is unnecessary. The purpose of the statute is to encourage prosecution of OWI. State v. McManus, 152 Wis. 2d 113 (1989).
2. The Court of Appeals has addressed what constitutes “drive” and "operate" for OWI purposes in the following cases:

a. State v. Modory, 204 Wis. 2d 538 (Ct. App. 1996). The court affirmed an OWI conviction where defendant’s vehicle was running, its wheels were spinning, but the frame was resting on a mound of dirt rendering the vehicle “stuck.” The court concluded that Wisconsin does not recognize the “immobility defense” in OWI cases because the statute does not require movement, only that the defendant physically manipulate or activate any of the controls “necessary to put the motor vehicle in motion.”

b. Village of Elkhart Lake v. Borzyskowski, 123 Wis. 2d 185 (Ct. App. 1985). The court found sufficient probable cause to arrest defendant for "operating" a motor vehicle while intoxicated when the officer observed defendant sitting behind the steering wheel of a car with the engine running and parked along a roadway in a place not designated for parking. The court concluded that based upon these facts it was reasonable for the officer to believe that defendant was physically manipulating the controls either by leaving the engine running or by restraining its movement.

c. Milwaukee County v. Proegler, 95 Wis. 2d 614 (Ct. App. 1980). The court affirmed defendant's OWI conviction based on the following facts: The officer found defendant sleeping behind the steering wheel of a vehicle parked partially on the emergency ramp of an interstate. The keys were in the ignition; the motor was running; the lights and heater were on; the transmission was in "park." The court concluded that "operation" of a vehicle occurs either when a defendant starts the motor and/or leaves it running. Further, the court stated that the legislative intent behind stricter OWI laws is to encourage people to "have the brains" to avoid any attempt to operate a vehicle while intoxicated.

B. Applicability of Section 346.63 under Section 346.61

In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

Sections 346.62 to 346.64 do not apply to private parking areas at farms or single-family residences.

Brown County v. Burch, No. 99-1065-FT (Ct. App. 1999)(unpublished). The court held that a “lane” connecting Highway 56 and Deuster Road near Wrightstown constitutes property “held out to the public for use of their motor vehicles.” The
defendant was arrested for OWI after an officer encountered him on the “lane” “hunched over” the steering wheel of this truck with the engine still running. The trial court had noted that “[Burch] had to have gotten there from somewhere. He didn’t drop out of the sky with a pick-up truck.” The court reasoned that it was fair to conclude that defendant had been driving north on Highway 57 prior to pulling onto the “lane.” Therefore, it was also fair to conclude that defendant had been operating his motor vehicle on Highway 57 while under the influence.

C. **Premises Held Out for Public Use**

OWI statutes are applicable to privately owned parking lots including those provided by employers to employees and premises provided to tenants of rental housing in buildings of four or more units. OWI statutes do not apply to private parking areas at farms or single family residences.

a. **State v. Carter**, 229 Wis. 2d 200 (Ct. App. 1999). The court of appeals held that there was sufficient evidence that the property on which the hit-and-run occurred was held out for public use. Here, the premises were bordered by two city streets that abutted an alley in the back. The area was easily accessed by the public. Although there were “No Parking” signs, there were no signs prohibiting trespassing or passing through the lot. Further, the owner had not taken any steps, such as fencing or towing vehicles, to keep the public off the property. In addition, a “For Sale” sign was posted on the property, which made it reasonable to infer that the public was welcomed or invited to enter and inspect the property. The court of appeals concluded that these factors provided sufficient evidence to indicate that any resident of the community with a driver’s license and access to a motor vehicle could use the parking lot.

b. **City of LaCrosse v. Richling**, 178 Wis. 2d 856 (Ct. App. 1993). The court concluded that the appropriate test for determining whether an area is held out to the public for use of their motor vehicles “is whether, on any given day, potentially any resident of the community with a driver’s license and access to a motor vehicle could use the [premises] in an authorized manner.”

c. **City of Kenosha v. Phillips**, 142 Wis. 2d 549 (1988). The Supreme Court held that the test for determining whether a parking lot was “held out to the public,” was whether the person in control of the lot intended it to be available to the public for use of their motor vehicles. In this case, the parking lot sign said “AMC parking only. Violators will be towed at own expense.” The court concluded that the AMC parking lot was specifically maintained for the benefit of its employees and was not intended to be held out for public use.
Implied Consent Law

A. Informing the Accused

The Informing the Accused form was revised pursuant to 1997 Wis. Act 107 which rewrote the provisions of the implied consent law in sec. 343.305. Officers are required to read the exact statutory language contained in the form. If they do not comply with the requirement, the test results will not be automatically admissible. See Eau Claire v. Resler, 151 Wis. 2d 645 (1989).

1. States v. Begicevic, 2004 WI App 56, 270 Wis. 2d 676. The Court of Appeals held that the officer in this case did not use reasonable means to reasonably convey the implied consent warnings to the defendant. The court concluded that compliance with the implied consent law turns on the objective conduct of the officer, not on the subjective understanding of the officer as to whether the driver understood the information conveyed. Here, the officer knew that English was not the defendant’s primary language because he spoke with a heavy accent and asked if the officer spoke German. The officer made no effort to find an interpreter who spoke German and was not aware if her department had arrangements with any interpreter service. The court reversed the defendant’s conviction for second offense OWI and remanded the case so the defendant could pursue an order prohibiting the automatic admissibility of the blood test result under sec. 885.235 Wis. Stats.

2. State v. Piddington, 2001 WI 24, 241 Wis. 2d 754. The Wisconsin Supreme Court held that an officer should utilize reasonable methods under the circumstances facing him or her at the time of the arrest to reasonably convey the implied consent warnings. To determine whether an officer has used reasonable methods, the focus will be on the officer’s conduct, not on the comprehension of the accused driver. The defendant in this case was deaf, which his passenger told the trooper at the time of his stop. The trooper initially communicated with the defendant through the passenger as an interpreter. The trooper also communicated by writing notes and using hand gestures. The trooper eventually contacted dispatch to locate an officer who knew sign language. The officer was not a certified American Sign Language interpreter, but knew some sign language. She communicated with the defendant by sign and orally. The officer also told the defendant to read the Informing the Accused form and to initial each paragraph if he understood it, which he did. The supreme court concluded that the officers here used reasonable methods, perhaps even exemplary, to convey the required implied consent warnings to the defendant.

3. State v. Nord, 2001 WI App 48, 241 Wis. 2d 387. The Court of Appeals held that the implied consent law adequately informs an accused of the consequences under ch. 343 for consenting or refusing to take the test. Therefore, the statute does not actively mislead a person arrested for OWI. Here, the defendant argued that the implied consent law overstates the consequences for refusing a test and understates the consequences for consenting to a test. The court concluded that the implied consent law identifies several consequences beyond license revocation that may result if an accused refuses the test. Thus, the language “you will be subject to other
penalties” is not an overstatement. Further, the court concluded that the implied consent law alerts an accused to the penalties that could result from violating subsec. 343.305(4), as well as the fact that the test results could be used against the person in court.

4. State v. Gibson, 2001 WI App 71, 242 Wis. 2d 267. The court of appeals held that the implied consent statute does not restrict the police from using other constitutional means to collect evidence of the driver’s intoxication. Here, the defendant argued that after he refused the chemical test under the implied consent law, he should only be subject to the license revocation penalty. The court reasoned that because a driver has no right to refuse to take a chemical test, that the implied consent law does not provide the exclusive remedy for a refusal to submit to evidentiary testing.

5. State v. Ludwigson, 212 Wis. 2d 871 (Ct. App. 1997). The officer attempted to explain the Informing the Accused form to the defendant in layperson’s terms; but in doing so he provided erroneous information about the potential revocation the defendant faced for refusing and about the defendant’s right to an alternate test. Although the misinformation satisfied the first two prongs of the Quelle test; namely, that the officer exceeded his duty, and that the oversupply of information was misleading; the defendant did not satisfy the third prong. Specifically, the defendant did not prove the misinformation affected her ability to decide whether to take the test. In fact, the defendant never presented any evidence to show that the erroneous information caused her to refuse to take the chemical test.

6. Village of Oregon v. Bryant, 188 Wis. 2d 680 (1994). In a review of three consolidated court of appeals cases, the supreme court held that the Informing the Accused form accurately informed each of the defendants of their rights under the implied consent law. Specifically, the court held that advising a person that “any” chemical test result greater than .10—rather than “each” test result—will result in an administrative suspension does not falsely inform defendants. Further, the court concluded the entire administrative suspension process under the implied consent law, when viewed as a continuum, is not contradictory or confusing. In reaching its decision, the court relied on State v. Piskula, 168 Wis. 2d 135 (Ct. App. 1992), holding the information provided defendants in the Informing the Accused form did not mislead them on the merits of taking an alternative test and did not violate their due process rights.

7. State v. Drexler, 199 Wis. 2d 128 (Ct. App. 1995). The court relied on Bryant in concluding that defendant was properly informed under the implied consent law and his due process rights were “scrupulously honored.” The court reasoned that although the blood test results were not immediately known to defendant, he retained the absolute right to have a second test administered at no cost to him. The court rejected defendant’s argument that he received the Notice of Intent to Suspend too late to have another test. The court concluded that the officer faithfully adhered to the statutory procedure and the defendant was not misinformed.
8. **County of Ozaukee v. Quelle**, 198 Wis. 2d 269 (Ct. App. 1995). The court held that the supreme court's reference to "subjective confusion" in its Bryant decision was mere dicta and not intended to be a judicially recognized defense. Here, the officer spent about forty-five minutes in question-answer dialogue with defendant before she agreed to take a breath test. The defendant moved to suppress the test results on the basis that the officer's conduct confused her. Although the court agreed that the officer provided information beyond that required under the implied consent law, it concluded that the information was not inaccurate or misleading.

B. **Alternate Tests**

1. **State v. Keith**, 2003 WI App 47, 260 Wis. 2d 592. The court of appeals held that the officer in this case did not deny the defendant access to an alternative breath test. The officer arrested the defendant for OWI and took him to a hospital for a blood test. While en route to the hospital, the defendant asked the officer "if there were any tests that I could be taking." The officer told the defendant that he was going to the hospital for a blood test. The court of appeals concluded that the exchange on the way to the hospital did not amount to a request by the defendant for an alternate test.

2. **State v. Thurk**, 224 Wis. 2d 662 (Ct. App. 1999). The defendant was involved in a fatal crash where he admitted to driving, striking the motorcyclist, and to drinking. The responding officer did not place him under arrest or read the Informing the Accused form; but took him to a medical center where the defendant consented to a blood test. The court held that the defendant was not entitled to an alternate test (here, breath) because the blood test was not taken under the implied consent statute (see subsec. 343.305(3)(c), Stats.).

3. **County of Dane v. Granum**, 203 Wis. 2d 252 (Ct. App. 1996). The defendant was arrested for OWI and read the Informing the Accused form. He agreed to submit to a breath test. However, when the machine did not produce a valid result, the defendant was taken to a hospital where an officer read him the Informing the Accused form and he submitted to a blood test. The court concluded that although the defendant did not receive the Notice of Intent to Suspend until days after the occurrence when it was too late to take an alternative test, the blood test results did not lose a favorable statutory presumption or evidentiary effect.

4. **City of Waupaca v. Javorski**, 195 Wis. 2d 563 (1995) where the court held that although Javorkski was misled and was not accurately informed of his rights and options under the implied consent law, he was not entitled to suppression of the otherwise validly consented to blood test results at trial. Further, in **State v. Drexler**, 199 Wis. 2d 128 (Ct. App. 1995), the court held that providing the information concerning Notice of Intent to Suspend or the Administrative Review Request form after the blood test results were known, several days later, did not violate the statutory procedure under the implied consent law.
5. **State v. Stary**, 187 Wis. 2d 266 (Ct. App. 1994). In reversing the trial court's suppression order, the court of appeals held that once a suspect has unequivocally refused the agency's second test, the officer is not under a continuing obligation to accommodate future requests. Here, defendant consented to take the agency's primary breath test, but declined to take an alternate blood test at the agency's expense. The officer repeatedly offered and defendant declined each time. After defendant was informed of his right to a test of his own choosing at his own expense, he posted bond, was released and went to a medical center where he requested a blood test at the agency's expense. The court concluded that once defendant unequivocally refused the officer's repeated offers for an alternative test, the agency had no further obligation to provide or pay for defendant's blood test.

6. **State v. Vincent**, 171 Wis. 2d 124 (Ct. App. 1992). The court of appeals reversed the trial court's suppression order and held that a suspect's "reasonable opportunity" for an alternate test means the law enforcement agency must not frustrate that request. In reaching its decision, the court recognized that agencies are required under the implied consent law to designate a primary and secondary chemical test at their expense. They must also provide a suspect with a "reasonable opportunity to have any qualified person of his or her own choosing administer a chemical test" at his or her own expense. The court concluded the agency must take reasonable steps to make the suspect available to take an alternative test within the three-hour testing period. Beyond that, it is the suspect's responsibility to make the arrangements and pay for the test.

C. Refusals

1. **States v. Verkler**, 2003 WI App 37, 260 Wis.2d 391. The Court of Appeals held that the officer in this case did not implicitly suggest that the defendant had a right to counsel during the implied consent phase when he allowed the defendant to briefly talk to his attorney who was present at the time of the arrest. While the court reiterated that an officer does not have an affirmative duty to advise a defendant that the right to counsel does not attach to the implied consent law, it did point out that if an officer explicitly assures or implicitly suggests that a defendant has a right to consult counsel, the officer may not thereafter pull the rug out from the defendant. According to the court in this case, a reasonable person would interpret the brief consultation as a mere courtesy, not an implication of the right to counsel.

2. **State v. Baratka**, 2002 WI App 288, 258 Wis. 2d 342. The Court of Appeals held that an officer’s misstatement that he had a right under the implied consent law to conduct field sobriety tests did not affect the defendant’s ability to make an informed choice about chemical testing. The officer’s right to request the chemical test was properly stated when the officer read the Informing the Accused form. Further, the court held that repeated requests for an attorney, in the absence of a verbal refusal, can amount to a refusal as long as the officer informs the defendant that there is no right to an attorney in the implied consent setting.
3. **States v. Reitter**, 595 N.W.2d 646 (1999). The Wisconsin Supreme Court held: (1) that an officer does not have an affirmative duty to advise a defendant that the right to counsel does not attach to the implied consent law; and (2) that the defendant’s repeated requests for an attorney constituted conduct that resulted in a refusal. The court reasoned that because the implied consent law is a “statutory creation,” it is up to the legislature, not the court, to impose any duties on police officers in the implied consent setting. Until then, officers are under no affirmative duty to advise custodial defendants about rights for which the statute makes no provision.

4. **State v. Rydeski**, 214 Wis. 2d 101 (Ct. App. 1997). The court held that the defendant’s conduct in this case constituted a refusal although he never verbally refused to take the Intoxilyzer. Further, the court decided that once a person refuses to submit to a test, any subsequent willingness to submit does not cure the refusal. Therefore, an officer has no obligation to offer the test again. In reaching its decision, the court relied upon **State v. Neitzel**, 95 Wis. 2d 191 (1980) which held that “once a person has been properly informed of the implied consent statute, that person must promptly submit or refuse to submit to the requested test.”

5. **State v. Schirmang**, 210 Wis. 2d 325 (Ct. App. 1997). The court reversed the defendant’s suspension for refusing to submit to a chemical test because he had not been adequately informed of his rights under the law. There cannot be “substantial compliance” with the implied consent law when, as here, the penalties which would actually affect the driver, given his driving record, were misstated. The court also concluded that the trial court erred in admitting evidence of the refusal; but that the error was harmless. Therefore, Schirmang’s OWI conviction was affirmed.

6. **State v. Spring**, 204 Wis. 2d 343 (Ct. App. 1996). The defendant in this case verbally agreed to submit to a blood test. However, he refused to sign a written consent form required by the medical facility. The court concluded that although the implied consent law did not specifically recognize or authorize such a form, the form’s use and content also did not violate the implied consent law. Therefore, the defendant was not entitled to refuse the test on the basis of the medical consent form.

7. **State v. Donner**, 192 Wis. 2d 305 (Ct. App. 1995). The court held that evidence of defendant's refusal to submit to a blood test after he submitted to a breath test was admissible at trial. The court reasoned that under the implied consent law, compliance with a request for one chemical test does not preclude a subsequent request for another type of test. Further, the court concluded that the state's failure to pursue revocation based on the refusal did not bar the state from using the refusal evidence at trial.

8. **State v. Sutton**, 177 Wis. 2d 709 (Ct. App. 1993). The court affirmed defendant's revocation of operating privileges because the officer substantially complied with the implied consent law. Here, the officer overstated the penalties for refusing to take a chemical test. However, the court concluded that this erroneous information did not prejudice the defendant because he still chose not to take the test. Further, the court
held that an officer is not required to issue a citation before requesting a suspect submit to a chemical test.

9. **State v. Algaier**, 165 Wis. 2d 515 (Ct. App. 1991). The court held that evidence of defendant's refusal was not admissible when he was not fully informed under the implied consent law. Here, the officers read defendant the Informing the Accused form that advised of the consequences for refusing to submit to a chemical test. However, the officers did not advise the defendant of the consequences for submitting to the test. Although refusal evidence is relevant to draw a reasonable inference of consciousness of guilt, the supreme court has ruled that when the implied consent law is not followed, evidence of the refusal cannot be used.

10. **State v. Grade**, 165 Wis. 2d 143 (Ct. App. 1991). The court held that defendant's failure to provide two breath test samples in the specified sequence was an incomplete test and should be considered as a refusal. Here, defendant was in a car accident and admitted driving. The officer observed defendant's slurred speech, odor of alcohol, difficulty maintaining balance, and glassy eyes. The officer read the defendant a deficient Informing the Accused form and he submitted to an intoxilyzer test. However, the defendant did not provide the two partial breath test samples in the proper sequence. The court concluded that the two partial tests were incomplete and inadmissible. Further, the court concluded that because the Informing the Accused form was deficient, defendant's refusal could not be used as evidence.
Appendices
Appendix A: Resources for Educational or Special Detail Speeches

Occasionally, law enforcement officers are asked to perform a special detail to support a community organization or a local school. This involves the officer gathering material in order to provide a meaningful educational experience to the audience, preparing the speech or discussion, and finally delivering.

This golden opportunity should be viewed as a favorable time to generate interest in the problem and solicit support for the laws and the enforcement of alcohol-related violations. Support for the officer exists from several perspectives, and the officer should not hesitate to contact the following organizations for their input:

Wisconsin Information Network for Safety
52 Sunset Avenue
Stevens Point, WI 54481
(866) 511-WINS (9467)

Wisconsin Department of Transportation
For brochures, posters, and check
Maps & Publication Sales
P. O. Box 7713
Madison, WI 53707-7713
(608) 246-3265
(608) 246-5632 FAX

Wisconsin Department of Transportation
For brochures, posters, and check
Maps & Publication Sales
P. O. Box 7713
Madison, WI 53707-7713
(608) 246-3265
(608) 246-5632 FAX

Wisconsin State Patrol, Chem Test Section
Ms. Susan Hackworthy, Chief
Hill Farms State Office Building, Room 551
Test Section
4802 Sheboygan Avenue
Mr. Gene Tremelling, Supervisor
P.O. Box 7912
Madison, Wi 53707-7912
(608) 267-2881

Wisconsin State Patrol Academy
Major Darren Price, Director of Education
800 South Tenth Avenue
94656-5168
Fort McCoy, WI 54656-5168
(608) 269-2500

The Resource Center on Impaired Driving
Nina Emerson, Director
University of Wisconsin Law School
975 Bascom Mall, Room 2348
Madison, WI 53706
(800) 862-1048

Wisconsin State Patrol Academy
Major Darren Price, Director of Education
800 South Tenth Avenue
Fort McCoy, WI 54656-5168
(608) 269-2500

For complete legal information specific to impaired driving and alcohol related data.

www.dot.wisconsin.gov/forms/docs/dt1265
Wisconsin State Patrol
Hill Farms State Office Building, Room 551
4802 Sheboygan Avenue
P.O. Box 7912
Madison, WI 53707-7912
(608) 267-7102

David L. Collins, Superintendent
Lieutenant Colonel Benjamin H. Mendez
Bureau of Field Services and Training

The Bureau of Transportation Safety
Hill Farms State Office Building, Room 809
4802 Sheboygan Avenue
P.O. Box 7936
Madison, WI 53707-7936
(608) 266-0402

Major Daniel Lonsdorf, Director
Carol Karsten, Alcohol Programs
Frank Huit, Public Information
Mary Kunkel, Statistics

Wisconsin Clearing House Prevention Resource Center
PO Box 1468
Madison, WI 53701-1468
248-9244
Reliable, accurate and affordable publications to help prevent alcohol 1-800-
and other drug problems.

CANDID (Citizens AgaiNst Drug Impaired Driving)
PO Box 17705
Milwaukee, WI 53217
(414) 352-2043

MADD of Wisconsin
2144 W. Spencer Street
Appleton, WI 54914
(920) 831-6540
Appendix B: Forms Related to Alcohol Arrests
Referenced in this Manual

On the following pages are copies of the forms related to arrests made for the various
charges involving alcohol and drug impaired driving which have been referenced in this
manual.

These copies are for your awareness and recognition. They are not to be used in lieu of the
actual form.
INFORMING THE ACCUSED

Under Wisconsin's Implied Consent Law, I am required to read this notice to you:

You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.

This law enforcement agency now wants to test one or more samples of your breath, blood or urine to determine the concentration of alcohol or drugs in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court.

If you take all the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test.

If you have a commercial driver license or were operating a commercial motor vehicle, other consequences may result from positive test results or from refusing testing, such as being placed out of service or disqualified.

Will you submit to an evidentiary chemical test of your _____________________________? □ Yes □ No
(breath, blood, urine)

I certify that I have read the above information to _______________________________________
who has been arrested for a violation of ____________________________________________, and have
provided him/her a copy of this form. He/She was identified by _____________________________.

_________________________________________  _____________  _____________
(Citation Number)  (Date and Time Signed)  A.M./P.M.

_________________________________________
(Agency)  (Law Enforcement Officer)

Distribution: 1 - Agency Requesting Test; 2 - Review Examiner; 3 - Person Requested to Submit to Test
### ALCOHOL/DRUG INFLUENCE REPORT

**DISTRIBUTION:** White - Court Officer; Yellow - Review Examiner; Green - Arresting Officer

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>ZIP Code</th>
<th>Incident Date</th>
<th>Time</th>
<th>Arrest Date</th>
<th>Time</th>
<th>Arrest By</th>
<th>Department</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Citation Number</th>
<th>Names of Other Occupants in Vehicle</th>
</tr>
</thead>
</table>

**Condition Of Other Occupants**

- Describe Clothing: Type, Color, Condition
- Breath, Odor of Alcoholic Beverage: [ ] None [ ] Light [ ] Moderate [ ] Strong
- Alcogol: [ ] Cooperative [ ] Uncooperative [ ] Combative
- Sleep: [ ] Cooperative [ ] Uncooperative [ ] Combative

**What did you suspect alcohol or drug influence?**

**Opinions:** Is the subject under the influence of intoxicants?

- [ ] No [ ] Yes

**Is the subject: Ability to operate a motor vehicle impaired?**

- [ ] No [ ] Yes [ ] Yes

**Witness(es):**

- [ ] Date [ ] Time [ ] Signature [ ] Notes [ ] Witness

---

**Pre-Interrogation Warning:** Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can and will be used against you in court. You have the right to talk to a lawyer before questioning and to have the lawyer with you during questioning. If you cannot afford a lawyer and want one, a lawyer will be appointed for you without charge prior to any questioning. If you decide to start answering questions at this time, you can stop anytime during the questioning.

**Waiver of Rights:** I have read, or have had read to me this statement of my rights. I understand what my rights are. I am willing to answer questions at this time. I do not want a lawyer at this time. I understand and know what I am doing.

**Were you operating a motor vehicle?**

- [ ] No [ ] Yes

**What street or highway were you on?**

**Where were you going?**

**Where were you coming from?**

**What is today's date?**

**Time?**

**When did you last sleep?**

**How much sleep did you have?**

**What is your normal amount?**

- [ ] No [ ] Yes

**Are you under a doctor's care?**

- [ ] No [ ] Yes, For what?

**Have you had any prescription medication or drugs in the last 24 hours?**

- [ ] No [ ] Yes, What type?

**Have you been to a dentist in the past 24 hours?**

- [ ] No [ ] Yes, What time?

**What kind of dental care did you receive?**

**Dry mouth?**

- [ ] No [ ] Yes

**Diabetes?**

- [ ] No [ ] Yes

**Are you taking insulin?**

- [ ] No [ ] Yes, Last dose?

**Do you have any physical defects?**

- [ ] No [ ] Yes

**If yes, please describe:**

**Have you been drinking?**

- [ ] No [ ] Yes, How much?

**Time Started?**

**Time Stopped?**

**What have you been drinking?**

- [ ] Beer [ ] Wine [ ] Whiskey [ ] Brandy [ ] Other, Specify:

**Where were you drinking?**

**Have you been using drugs?**

- [ ] No [ ] Yes, What type?

**From the time you last operated a motor vehicle, have you been drinking or using drugs?**

- [ ] No [ ] Yes, What type?

**Are you under the influence of alcohol or drugs at this time?**

- [ ] No [ ] Yes

**Have you been in a crash today?**

- [ ] No [ ] Yes

**Have you been drinking or using drugs since then?**

- [ ] No [ ] Yes, What and how much?

**Report Compiled By**

- [ ] Date
# DWI TRACKING AND ALCOHOL INFLUENCE REPORT

**SP#438 11/2000**

**Wisconsin Department of Transportation**

## 1. GENERAL INFORMATION

<table>
<thead>
<tr>
<th>Name of Accused/Arrested</th>
<th>Birth Date</th>
<th>Citation Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Street Address</td>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

## 2. MOTOR VEHICLE STOP

- Describe Reason(s) for Stopping Motor Vehicle:
  - [ ] Accident Investigation

- What led you to suspect alcoholic influence?

## 3. OBSERVATIONS OF DRIVER CONDITION

- Describe Clothing (Type, Color, Condition):
- Breath
- Attitude
- Speech

- Signs or Complaints of Injury or Illness:
  - [ ] None

- Describe Condition of Eyes:
  - Pupils [ ] Dilated [ ] Contracted [ ] Near Normal

## 4. FIELD SOBRIETY OBSERVATIONS

<table>
<thead>
<tr>
<th>SOBRIETY TESTS</th>
<th>CLUES OBSERVED</th>
<th>APPROVED ALTERNATIVE TESTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ] HGN</td>
<td></td>
<td>1. Finger-to-Nose</td>
</tr>
<tr>
<td>[ ] Walk &amp; Turn</td>
<td></td>
<td>2. Alphabet</td>
</tr>
<tr>
<td>[ ] One Leg Stand</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 5. OTHER OCCUPANTS IN MOTOR VEHICLE (Complete as necessary)

- Passenger(s) in Front Seat: [ ]
- Address of Each:

- Passenger(s) in Rear Seat: [ ]
- Address of Each:

## 6. WITNESSES

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Statement Obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>[ ] Yes [ ] No</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[ ] Yes [ ] No</td>
</tr>
</tbody>
</table>

## 7. INFORMING THE ACCUSED

Before administering tests to determine the presence of alcohol or a controlled substance, the officer is to complete, “Informing the Accused,” form SP#4197. Exception: the person who is unconscious or otherwise not capable of withdrawing consent.

- [ ] “Informing the Accused,” form was completed and the arrested person was provided a copy.

- [ ] The person arrested was unconscious or otherwise not capable of withdrawing consent.
  - “Informing the Accused,” form was not completed.

Instructions to Officer:
1. If the person arrested refuses to submit to a test or tests, proceed to section eight.
2. If the person arrested submits to your requested test(s) or if the person is unconscious or otherwise not capable of withdrawing consent, proceed to section nine.
8. NOTICE OF INTENT TO REVOKE OPERATING PRIVILEGE


☐ 2. Officer took possession of arrested person's operator license and issued, "Operator's License Receipt," form MV3395. Copy of receipt given to person arrested.

☐ 3. Person arrested had no operator's license on person.

☐ 4. Officer delivered or mailed a copy of the "Operator's License Receipt," form MV3395, a copy of the "Notice of Intent to Revoke Operating Privilege," form MV3396 and the operator license, if available, to the Circuit Court for the county in which the refusal was made.

☐ 5. Officer mailed a copy of the "Notice of Intent to Revoke Operating Privilege," to the: Chemical Test Section, Wisconsin Department of Transportation, P O Box 7912, Madison WI 53707-7912

☐ 6. Officer delivered or mailed a copy of form MV3396, "Notice of Intent to Revoke Operating Privilege" to the District Attorney for the county in which the refusal was made.

9. TESTS TO DETERMINE BAC

NOTICE: If a breath specimen is to be obtained, the person arrested is to be observed for a minimum of 20 minutes prior to the collection of a breath specimen, during which time the test subject shall not have ingested alcohol, regurgitated, or smoked. Check that the subject has nothing in his/her mouth, such as chewing tobacco, cotton, gum, etc.

NOTICE: If the person arrested does not accept the agency test(s) offered, it is a refusal. The officer is to complete section 8. No further tests to determine BAC are to be administered. If the person arrested accepts the agency test(s) offered, the person can also EITHER request the alternate test the agency is prepared to administer OR at the person's own expense his or her own test.

<table>
<thead>
<tr>
<th>Observation Began</th>
<th>Observation Completed</th>
<th>Person(s) Making Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>M At</td>
<td>M At</td>
<td>M At</td>
</tr>
</tbody>
</table>

☐ Agency Test(s) ☐ Breath ☐ Blood ☐ Urine BAC

☐ Agency Alternate Test (Officer provided person with copy) ☐ Breath ☐ Blood ☐ Urine BAC

☐ Person's Own Test ☐ Breath ☐ Blood ☐ Urine BAC

☐ Person was unconscious or otherwise not capable of withdrawing consent.

☐ Officer obtained blood.

Give Location Name and Address Where Sample Obtained

Person was arrested for a violation of: and blood was obtained as a search incidental to a lawful arrest.

Name of Person Taking Blood Sample

10. INTERROGATION

PRE-INTERROGATION WARNING - Before we ask you any questions you must understand your rights.

☐ 1. You have the right to remain silent.

☐ 2. Anything you say can and will be used against you in court.

☐ 3. You have the right to talk to a lawyer before questioning and to have the lawyer with you during questioning.

☐ 4. If you cannot afford a lawyer and you want one, a lawyer will be appointed for you without charge prior to any questioning.

☐ 5. If you decide to start answering questions at this time, you can stop anytime during the questioning.

WAIVER OF RIGHTS - I have read, or have had read to me the above statement of my rights. I understand what my rights are. I am willing to answer questions at this time.

☐ Person chose not to waive his or her Miranda rights.

☐ (Signature) (Date)

☐ (Witness)

☐ (Witness)
## 11. Alcoholic Influence Report Interview

<table>
<thead>
<tr>
<th>Question</th>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>During the 20 minute period prior to the breath test,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Did you have anything to eat, drink, or smoke?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Did you have anything in your mouth?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Did you vomit or regurgitate?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were you driving or operating a motor vehicle?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What street or highway were you on?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where were you going?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where were you coming from?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is today’s date?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When did you last sleep?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of hours?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were you seriously injured recently?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, describe:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have you or are you taking any medication or drugs either orally or by injection?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, what?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you under a doctor’s care?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, for what?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do you have epilepsy?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do you have diabetes?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you taking insulin?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, when was last dose?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have you been drinking?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, what?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How much did you drink?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time started drinking?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Where were you drinking?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time stopped drinking?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With whom were you drinking?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you under the influence of alcohol at the present time?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you using narcotics?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, what kind?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you using barbiturates, amphetamines, pep pills, LSD or any hallucinogenic drugs?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, what kind?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are you using marijuana?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, when did you last use it?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Were you involved in an accident today?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, where?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have you been drinking since the accident?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If yes, what?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How much?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have you taken or used any drugs or marijuana since the accident?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time Completed</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## 12. Release and Vehicle Information

The person MAY be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest. If arresting officer releases arrested person, complete forms: DSP4335 and DSP4337.

<table>
<thead>
<tr>
<th>Location of Arrested Person’s Motor Vehicle</th>
<th>Location of Keys to the Motor Vehicle</th>
</tr>
</thead>
</table>
ADMINISTRATIVE REVIEW REQUEST
Wisconsin Department of Transportation
MV3530 4/2004

IMPORTANT NOTICE - RESPOND WITHIN TEN (10) DAYS

REQUESTING AN ADMINISTRATIVE REVIEW IS OPTIONAL

- This form, (MV3530) Should Not be completed if you Do Not want a review.
- If you Do Not request a review within ten (10) days you have waived your right to a review.
- This is Not a review to get an occupational license.

If you choose to request an administrative review of the loss of your operating privileges:

1. Fill in the information below and mail this form (MV3530) to the DMV address shown below.
2. Your request for a review must be postmarked within ten (10) days of the notice date on the "Notice of Intent To Suspend...", or within 13 days if the notice was mailed to you.

THE ADMINISTRATIVE REVIEW IS LIMITED TO THE FOLLOWING ISSUES

1. The correct identity of the person.
2. Whether the person was informed of the options regarding tests under s.343.305 Wis. Stats.
3. Whether the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood at the time of offense.
4. Whether one or more of the tests were administered in accordance with s.343.305 Wis. Stats.
5. Whether each of the test results indicates the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood.
6. Whether probable cause existed for the arrest.
7. Whether the person was driving or operating a commercial motor vehicle when the offense allegedly occurred.
8. Whether the person had a valid prescription for methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol.

GENERAL REVIEW INFORMATION

1. If you request a review, you will be notified of the time and location of the review.
2. The review will be held within 30 days of the notice date on the "Notice of Intent To Suspend..." form MV3519.
3. You may present evidence and you may be represented by an attorney.
4. You may submit written arguments with this request if you do not wish to appear at the review. Written arguments must address one or more of the above issues and state that they are in lieu of a personal appearance.

REVIEW REQUEST

I request an administrative review of the suspension of my operating privileges resulting from an arrest for operation of a motor vehicle with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance. Send this request to the address below:

DMV Driver Services
Wisconsin Dept. of Transportation
PO Box 7930
Madison, WI 53707-7930

Name - Last, First, Middle Initial
Birth Date
Sex
Daytime Area Code - Telephone Number

Driver License Number
State of Issuance

Clination Number
Arranging Agency Name

Date of Violation
County of Violation
Notice Date

See back of form for all attorney and address information.
NOTICE OF INTENT TO SUSPEND OPERATING PRIVILEGE
TEMPORARY DRIVING PERMIT
Wisconsin Department of Transportation
MV3519  4/2004

IN THE MATTER OF THE SUSPENSION OF:

Driver Name: Last, First, Middle Initial  Driver License No.  State of Issuance
Address  Birth Date  Sex
City  State  ZIP Code

<table>
<thead>
<tr>
<th>CITATION NUMBER</th>
<th>STATUTE NUMBER</th>
<th>Date of Violation</th>
<th>Time of Violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>s. 346.63(1)(a)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s. 346.63(1)(b)</td>
<td></td>
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<td></td>
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<tr>
<td>s. 346.63(1)(am)</td>
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<tr>
<td>s. 346.63(2)(a)</td>
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<tr>
<td>s. 346.63(2)(a)</td>
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<tr>
<td>s. 940.09(1)(a)</td>
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<td></td>
<td></td>
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<tr>
<td>s. 940.09(1)(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s. 940.25(1)(a)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s. 940.25(1)(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

County/Where Violation Occurred:
Operating Commercial Motor Vehicle on Violation Date
Transferring Hazardous Materials
This Notice (MV3519) issued
In person  Mailed
MV9500 issued

Check if Criminal Complaint Issued:
Yes  No

(Arresting Agency)  (Agency Code)

This document must be carried with you and shall serve as your temporary driver license. It is valid for the class(es) and subject to any restrictions on your original license and is valid for thirty (30) days from the date of this notice. At the end of 30 days your operating privilege is suspended and a formal Order of Suspension will be mailed to you. **This document does not provide any driving privilege if you do not have a driver license or if your driving privilege is suspended, revoked, cancelled or disqualified.**

On the above date you submitted to chemical testing administered in accordance with s.343.305 Wis. Stats. The test result indicated a prohibited alcohol concentration or a detectable amount of a restricted controlled substance. Your operating privilege will be administratively suspended for six months. You have a right to obtain administrative and judicial review of the suspension under the provisions of s.343.305(8) Wis. Stats. You must surrender the driver license now in your possession.

Within 10 days after this notification, or within 13 days if this notice was mailed to you, you may request, in writing, that the suspension be reviewed. If such a request is made a review shall be held within 30 days of this notice. You may present evidence and you may be represented by counsel at the review.

I acknowledge receipt of this notice.

X

Arresting Agency:  DMV Driver Services
Wisconsin Dept. of Transportation
PO Box 7930
Madison, WI 53707-7930


Date DOT Received: X
NOTICE OF INTENT TO REVOKE OPERATING PRIVILEGE (and Temporary Driving Receipt)

Name: Last, First, Middle Initial
Address: City, State, ZIP Code
Driver License Number: State of License: Expires: Clarion Number:
At time of offense, defendant operated as:
- [ ] Regular Driver
- [ ] School Bus Driver
- [ ] Commercial Motor Vehicle Operator
- [ ] Operator of Vehicle Transporting Hazardous Materials
Year and Make of Vehicle Involved in Violation: Plate Number: Vehicle Identification Number:

I, a law enforcement officer, requested you, the above-named person, to submit to one or more chemical tests under s.343.305(9) Wisconsin Statutes. Unless the box for s.346.63(7) Wis. Stats. is checked below, prior to the request, an officer placed you under arrest for a violation of the following state statute or a local ordinance conforming to that statute:

- [ ] s.346.63(1)(a) Wis. Stats.
- [ ] s.346.63(1)(b) Wis. Stats.
- [ ] s.346.63(2) Wis. Stats.
- [ ] s.346.63(3) Wis. Stats.
- [ ] s.346.63(4) Wis. Stats.
- [ ] s.346.63(5) Wis. Stats.
- [ ] s.346.63(6) Wis. Stats.
- [ ] s.940.09 Wis. Stats.
- [ ] s.940.25 Wis. Stats.
- [ ] s.940.26 Wis. Stats. (no arrest required)

**Commercial Motor Vehicle Violations**

If this box is checked, I issued an out-of-service order to you, which specified the date and time it was issued, for the 24 hours after you refused the test.

I complied with s.343.305(4) Wis. Stats., by reading to you form SP4197, the informing the Accused form, and provided a copy of that form to you. You refused a request to submit to a test or tests under s.343.305(3) Wis. Stats.

Because you refused one or more tests, your operating privilege will be revoked in 30 days. If you would like a hearing regarding this revocation (see reverse for details), file a written request within 10 days of the date of this notice with the following circuit court:

County of Circuit Court Where Arrest Occurred:
Court Street Address:
City, State, ZIP Code:

If your operating privilege is not revoked or suspended and your driver license has not been cancelled, this form serves as a Temporary Driving Receipt that may be used in lieu of a driver license for 30 days from the date of this notice. If you are disqualified from operating a commercial motor vehicle, this receipt does not authorize operation of commercial motor vehicles.

**Distribution**
- White Original: Court: WDOT DSP Chemical Test: P.O. Box 7912: Madison, WI 53707-7912
- Yellow Copy: Person Refusing Test
- Pink Copy: District Attorney
- Green Copy: License (Do Not Confiscate Occupational License) Surrendered: [ ] YES [ ] NO

See reverse for additional information.

To Be Completed by Court

Extension Expiration Date: Wisconsin Circuit Court for County Of [ ]

Judge or Clerk of Court Signature:
<table>
<thead>
<tr>
<th>BLOOD / URINE ANALYSIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALCOHOL / OTHER DRUGS</td>
</tr>
<tr>
<td>WISCONSIN STATUTE 343.305(3)</td>
</tr>
</tbody>
</table>

Send Agency Report to: (or leave blank if subject's own test)  
Subject Name / Address

| Officer: |
| Agency: |
| Address: |

| Agency Telephone ( ) |
| Date of Birth: |
| Sex: |

| Violation Date Time |
| Drivers License No.: DL State: |

Analysis requested for:  
- Alcohol only
- Alcohol and Drug Testing
  - THC (Cannabinoids)
  - Cocaine
  - Complete Drug Panel
  - Cancel Drug Testing if BAC is over g/100mL

Citation Number:  
Statute: 346.63 (specify) Other (specify)

<table>
<thead>
<tr>
<th>LABORATORY INFORMATION</th>
</tr>
</thead>
</table>

Specimen Received By:  
Date / Time:

<table>
<thead>
<tr>
<th>SPECIMEN COLLECTION</th>
</tr>
</thead>
</table>

Date:  
Time:

Specimen type:  
- Blood  
- Urine

Specimen collected by (Officer, Physician, Technologist)

Name (print)  
Signature

<table>
<thead>
<tr>
<th>OFFICIAL REPORT OF ANALYSIS</th>
</tr>
</thead>
</table>

Results of Analysis  
Date of Analysis  
Date Reported  
Analyst Cert. No.  
Analyst Signature

Laboratory Name / Address  
Reviewed by:  
Title
DISTRICT #1
DMV FIELD SERVICES DISTRICT 1
WISCONSIN DEPT. OF TRANSPORTATION
2001 BARTILLON DRIVE
MADISON WI 53704-2614

DISTRICT 2
DMV FIELD SERVICES DISTRICT 2
WISCONSIN DEPT. OF TRANSPORTATION
833 SOUTH ROLLING MEADOWS DRIVE
PO BOX 2067
FOND DU LAC WI 54936-2067

DISTRICT 3
DMV FIELD SERVICES DISTRICT 3
WISCONSIN DEPT. OF TRANSPORTATION
9477 US HIGHWAY 16 E
ONALASKA WI 54650-8527

DISTRICT 4
DMV FIELD SERVICES DISTRICT 4
WISCONSIN DEPT. OF TRANSPORTATION
5301 RIB MOUNTAIN DRIVE
WAUSAU WI 54401-7599

DISTRICT 5
DMV FIELD SERVICES DISTRICT 5
WISCONSIN DEPT. OF TRANSPORTATION
113 NORTH MAIN STREET
RICE LAKE WI 54868-1740

DISTRICT 6
DMV FIELD SERVICES DISTRICT 6
WISCONSIN DEPT. OF TRANSPORTATION
942 VANDERPERREN WAY
GREEN BAY WI 54304-5344

DISTRICT 7
DMV FIELD SERVICES DISTRICT 7 HQ
WISCONSIN DEPT. OF TRANSPORTATION
2000 PEWAUKEE ROAD SUITE D
WAUKESHA WI 53188-2446

DISTRICT 8
DMV FIELD SERVICES DISTRICT 8
WISCONSIN DEPT. OF TRANSPORTATION
819 NORTH 6TH STREET ROOM 90
MILWAUKEE WI 53203-1690
MANDATORY APPEARANCE? (See other side.)
If your citation is marked as a mandatory court appearance, you
MUST appear in court. The "appearance not mandatory" instructions
do not apply to you.

APPEARANCE NOT MANDATORY? (See other side.)
IF YOU WISH TO DISPUTE THE CITATION, you must either appear
in court or enter a "not guilty" plea by mail prior to your court date.
You may do so even if you have already paid the deposit or posted a
bond. Please include either:
  • a photocopy of your citation and your correct mailing address, OR
  • your correct name and mailing address, citation number,
    court appearance date listed on the citation, offense, and
    arresting police agency.

These should be mailed to the court address written under
"YOU ARE NOTIFIED TO APPEAR" on the other side. The court
will schedule another court date and/or a trial. Your trial will be to a
judge, unless you demand a jury trial in writing within 10 days of the
court date on your citation and enclose the proper fee. Make check
payable to the clerk of court and forward it to the address shown
on the other side.

IF YOU DO NOT WISH TO DISPUTE THE CITATION, simply mail in
the "deposit permitted" amount on the other side of the citation by
your court date, with a statement saying you do not wish to contest
the citation. Please include either:
  • a photocopy of your citation, OR
  • your correct name and address, citation number, court
    appearance date listed on the citation, offense and arresting
    police agency.

Make check payable to the clerk of court and mail it to the court
address written under "YOU ARE NOTIFIED TO APPEAR" on the
other side. You do not need to appear. The court will either:
  • accept your nonappearance as a plea of no contest, find you
    guilty and keep the "deposit permitted" amount as payment for
    your citation; OR
  • decline to accept the deposit and order you to appear in court
    by summons or warrant.

IF YOU DO NOTHING, the court may either:
  • issue a warrant for your arrest, OR
  • issue a summons for you to appear in court, OR
  • find you guilty for failing to appear in court and order you
    to pay the forfeiture and costs imposed by the court.
NOTICE TO COURT
Convictions under ss.125.07(4)(a) or (b), 125.085(3)(b), 125.09(2), 161.573(2), 161.574(2), 161.575(2) or a local ordinance strictly conforming to any of those statutes must be reported to the Dept. of Transportation, even if the court does not order suspension or revocation of the violator's operating privilege. S. 343.28(3), Wis. Stats. This copy may be used for that purpose. Mail to:
Wisconsin Department of Transportation
Driver Record File
P.O. Box 7918
Madison, WI 53707

NOTICE OF CONVICTION
The person identified within this citation was convicted of the violation specified.

COURT ORDER OF SUSPENSION/REVOCATION
It is ordered by this court that the operating privilege of this person be
☐ suspended
☐ revoked
for a period of

_______________________
Signature

_______________________
Title

_______________________
Date of Disposition

BELOW FOR D.O.T. USE ONLY
Pros:
Chg:
Rmk:
Cty:
Date 1:
Did #:
State:
Date 2:
Court:
### WISCONSIN CITATION FOR

**You Are Notified To Appear**

<table>
<thead>
<tr>
<th>Defendant Name - Last</th>
<th>First</th>
<th>MI</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Street Address</th>
<th>Post Office</th>
<th>State</th>
<th>Zip Code</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Driver License Number or Other I.D. (specify)</th>
<th>State</th>
<th>Exp. Yr.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Date of Birth</th>
<th>Sex</th>
<th>Race</th>
<th>Height</th>
<th>Weight</th>
<th>Hair</th>
<th>Eyes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Defendant Violated:</th>
<th>(Check only 1 violation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance No.</td>
<td>Adopting State Statute</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description of Violation:</th>
</tr>
</thead>
</table>

**Plaintiff:**

- City
- Village
- Town
- County

<table>
<thead>
<tr>
<th>OF:</th>
</tr>
</thead>
<tbody>
<tr>
<td>State of Wisconsin</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Week Day</th>
<th>Month - Day - Year</th>
<th>Time</th>
<th>AM</th>
<th>PM</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>At:</th>
<th>County:</th>
<th>City/Village/Town:</th>
</tr>
</thead>
</table>

| Name & Address of Parent/Guardian (if minor defendant) |

<table>
<thead>
<tr>
<th>Print Officer Name</th>
<th>Department</th>
<th>I.D. No.</th>
<th>Date Citation Issued</th>
</tr>
</thead>
</table>

*Do not include costs or assessment if the person is under age 14.*

*Deposit Permitted*  
- [ ] cash  
- [ ] card

*(For Court Use Only)*

GF-116, 4/94
INSTRUCTIONS TO ISSUER

Section 778.25(7), Wis. Stats., requires the issuing agency to mail or deliver a copy of this citation to the parent or guardian of any child issued a citation within 7 days. In addition, if a citation is issued to a child aged 12 to 15 for violation of ss. 125.07(4)(a) or (b), 125.085(3)(b), 125.09(2), 161.573(2), 161.574(2) or 161.575(2), Wis. Stats., or a local ordinance conforming to one of those statutes, the issuing agency must send a copy of the citation to the juvenile court intake worker for informational purposes only. s. 48.17(2)(c), Wis. Stats. This copy may be used for either purpose. If the defendant is not a minor, it may be discarded.
**COURT REFERRAL-JUVENILE**  
(LAW ENFORCEMENT REFERRALS)

<table>
<thead>
<tr>
<th>Field Description</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>Wisconsin</td>
</tr>
<tr>
<td>Circuit Court</td>
<td>Juvenile</td>
</tr>
<tr>
<td>Intake Office</td>
<td></td>
</tr>
</tbody>
</table>

1. Intake Case No.  
2. County Code  
3. Race  
4. Birthdate  
5. Sex  
6. County  
7. Child's Street Address  
8. City State  
9. Home Telephone  
10. School Attended/Place of Employment  
11. Work Employment  
12. Grade/Occupation  
13. Father's Name (Natural, Step, Foster)  
14. Mother's Name (Natural, Step, Foster)  
15. Guardian/Legal Custodian/Supervising Agency  
16. Name of Referring Agency  
17. Referring Officer  
18. File/Case No.  
19. Prior Record with Referring Agency:  
20. Name of Referring Officer  
21. Alleged Offenses—If more space needed, attach addition sheet  
22. Name(s) of Accomplice  
23. Taken Into Physical Custody  
24. Released:  
25. Complainant Name/Address  
26. Property Loss: (Attach Itemized Listing if applicable)  
27. Date of Referral to Intake Office

**INTAKE INQUIRY RECOMMENDATION**  
Intake Worker complete Items 1 & 2 and 28-39 and distribute copies.

28. Date Inquiry Notice Sent  
29. Interview Date  
30. Attorney Present at Interview  
31. Attorney Present at Interview  
32. Physical Custody Status at Referral:  
33. Prior Referrals to Intake  
34. Intake Recommendation—Check all appropriate boxes. Major Reason For Referral Must Be Completed Regardless Of Recommendation.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Description</th>
</tr>
</thead>
</table>
| A. Case Closed | Dismissed-falls jurisdiction  
| B. Informal Disposition Agreement | Case held open 30 days 60 days  
| C. Formal Petition Requested | Ordinance Violation-Civil  
| D. Court Ordered | Ordinance Violation Traffic Offense  
| E. Referred to Other County | Delinquency Waiver  
| F. Other-Specific | Need of Protection/Services  

35. Comments

36. Intake Worker's Name/Agency  
37. Signature  
38. Telephone  
39. Date Recommended

**Note:** The form includes fields for personal and contact information, as well as sections for referring agency details, offenses, and intake recommendations. It is designed to be completed by intake workers and distributed to relevant parties.
24 HOUR OUT-OF-SERVICE ORDER

<table>
<thead>
<tr>
<th>Distribution:</th>
<th>White - Wisconsin Department of Transportation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pink - Driver</td>
</tr>
<tr>
<td></td>
<td>Green - Arresting Agency</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Issue Date</th>
<th>Issue Time</th>
<th>AM</th>
<th>PM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Driver Name</td>
<td>Driver License Number</td>
<td>State</td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>Birth Date</td>
<td>Sex</td>
<td></td>
</tr>
<tr>
<td>City, State, Zip</td>
<td>License Surrendered</td>
<td>YES</td>
<td>NO</td>
</tr>
<tr>
<td>Citation Number(s)</td>
<td>Charge(s)/Statute Number(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arresting Agency</td>
<td>Agency Code</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agency Address</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

X ____________________________ (Officer)  (Badge Number)

On the above date you were issued a citation for a violation of s.346.63(7):

No person may drive or operate or be on duty time with respect to a commercial motor vehicle under any of the following circumstances:

1. While having any measured alcohol concentration above 0.0,
2. Within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content.
3. While possessing an intoxicating beverage, regardless of its alcohol content. (This section does not apply to possession of an intoxicating beverage if the beverage is unopened and is manifested and transported as part of a shipment.)
4. Having refused to submit to chemical testing under s.343.305(9) Wisconsin Statutes.

You are prohibited from operating a commercial motor vehicle for a 24 hour period beginning on the date and time shown above.

I acknowledge receipt of this order.

X ____________________________ (Driver)

If your license was surrendered, you may reclaim it after the 24-hour period has lapsed by contacting the Arresting Agency listed above, unless you were also issued a notice of intent to suspend or a notice of intent to revoke.
**CLASSIFIED LICENSE RECEIPT**  
*(24 Hour Out-of-Service)*

<table>
<thead>
<tr>
<th>Receipt Date</th>
<th>Time of Receipt Issuance</th>
<th>Citation Number</th>
<th>Citation Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operator Name</td>
<td>AM</td>
<td>FM</td>
<td>Birth Date</td>
</tr>
<tr>
<td>License Number</td>
<td>State of License</td>
<td>License Expiration Date</td>
<td></td>
</tr>
</tbody>
</table>

This document must be carried with you and shall serve as your temporary driver's license. It is valid for noncommercial vehicle operation only and is subject to all restrictions on your original Class D or Class M license (or home state's equivalent). It is valid for 24 hours from the date and time this receipt was issued. This document does not provide any driving privileges if you do not have a driver's license or if your Class D or Class M license (or home state's equivalent) is expired, suspended, revoked, cancelled or disqualified.

(Enforcement Agency Name)  
(Office Signature)  
(Office Number)
# COURT ORDERED VEHICLE IMMOBILIZATION

**SP4436  12/2001**

## Vehicle Description

<table>
<thead>
<tr>
<th>Year</th>
<th>Make</th>
<th>Model</th>
<th>Type</th>
<th>District File Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vehicle Identification Number</th>
<th>License Number</th>
<th>Color</th>
<th>Odometer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defendent Name - Last</td>
<td>First</td>
<td>M.I.</td>
<td></td>
</tr>
<tr>
<td>Vehicle Owner Name - Last</td>
<td>First</td>
<td>M.I.</td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>City</td>
<td>State</td>
<td>Zip Code</td>
</tr>
<tr>
<td>Lien Holder</td>
<td>Date Notified</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>City</td>
<td>State</td>
<td>Zip Code</td>
</tr>
</tbody>
</table>

## Immoobilization

<table>
<thead>
<tr>
<th>Agency Performing Immobilization</th>
<th>Area Code – Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency Address</td>
<td>City</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court Ordering Immobilization</th>
<th>Order Date</th>
<th>Area Code – Telephone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason for Immobilization</td>
<td>Date Immobilized</td>
<td>Time Immobilized</td>
</tr>
<tr>
<td>When May Immobilization be Removed?</td>
<td>Date Removed</td>
<td>Time Removed</td>
</tr>
<tr>
<td>Location of Immobilized Vehicle</td>
<td>Device Serial Number</td>
<td></td>
</tr>
<tr>
<td>State Patrol Officer</td>
<td>WSP Number</td>
<td>Mileage Accrued</td>
</tr>
<tr>
<td></td>
<td>Hours Accrued</td>
<td></td>
</tr>
</tbody>
</table>

## Comments

- Blank lines for additional comments.

## Warning

Under Wisconsin statute 347.417(1), anyone who disconnects, tampers with or otherwise circumvents the operation of any immobilization device installed in response to a court order, may be fined not less than $50 nor more than $600 for the first offense and not less than $300 nor more than $1,000 and imprisoned not more than 6 months for the second or subsequent offense.

Within ten days of the scheduled termination of the immobilization order, contact the Agency Performing Immobilization office listed above to make an appointment to have the immobilization device removed. The immobilization device may be removed only by the above agency, and not until after the court ordered immobilization period has expired. If this vehicle must be moved, call the State Patrol District office listed above for assistance in temporarily removing the immobilization device. Do not remove or tamper with the immobilization device yourself.
VEHICLE ACTION NOTICE
MV2833  1/2001  s.346.65(6)(a)3 Wis. Stats.

Driver Name - Last, First, Middle

Address

City State Zip Code

Driver Identification Number

Vehicle owned by the above driver and involved in the violation

Vehicle Year Make License Plate Number

Vehicle Identification Number

Law Enforcement Officer

Name

Agency

Telephone: 608-266-0898
Fax: 608-267-6966

Mail completed form to:
Vehicle Records - OWI, Room 205
Wisconsin Department of Transportation
P O Box 7911
Madison WI 53707-7911

Vehicle Action Taken - Check One

[ ] Seized  [ ] Immobilized

X ____________________________
(Officer Signature - MUST BE ORIGINAL)   (Date)
Department of Natural Resources
NATURAL RESOURCES CITATION

STATE OF WISCONSIN
The undersigned, being duly sworn and under oath, complains for
and on behalf of the ________________ of ________________
upon information and belief:

Deposit Permitted: $ __________ Deposit Envelope No.: __________
Social Security No.: __________ School No.: __________

Name: ___________________________ Last: ___________________________
First: ___________________________ MI: ___________________________
Date of Birth (MM-DD-YY): __________ Sex: __________

Street or Route: ___________________________ City, State, Zip Code: 

Day of Week: __________ Date of Violation (MM-DD-YY): __________
Time: __________ AM __________ PM

County: ___________________________ Code: __________

TWP-Village-City: ___________________________ Code: __________

Violation: __________

The above-stated Time and Date, The Defendant ______________________________________

In violation of section(s) ___________________________ of the __________ Wis. Stats. __________ Wis. Adm. Code __________ Local Ordinance

and requests that he/she may be held to answer therefor.

SUBSCRIBED AND SWORN TO before me this date ___________________________

Name: ___________________________ Title: ___________________________

Department or Agency: ___________________________

Signature of Officer: ___________________________ Badge No.: __________

You are hereby notified to appear in the above named Court on __________

Located at: ___________________________

City: ___________________________

The maximum penalty for this violation is $ __________

The court may also revoke approval, confiscate evidence, and require restitution or restoration of any environmental damage.

Forms 4100-70 Rev: 1-99
Section 23.54, Wis. Stats.
INFORMING THE ACCUSED

ss. 30.684(1)(b) or 350.104(1)(b) or 23.33(4p)(2), Wis. Stats.
Form 4100-123
Rev. 7-98

DISTRIBUTION: White - Agency requesting test, Yellow - Person requested to submit to test.

A law enforcement officer requesting a person to take one or more chemical tests under ss. 30.684(1)(b), 350.104(1)(b) or 23.33(4p)(2), Wis. Stats., shall, at the time of the request and prior to administering any such test, inform the person:

1. You have been arrested for an offense that involves operating a snowmobile, ATV or boat while under the influence of alcohol or drugs, or both. You are deemed under Wisconsin’s Implied Consent Law, ss. 30.683, 350.103 or 23.33(4L), Wis. Stats., to have consented to tests of your breath, blood or urine at this Law Enforcement Agency’s expense, for the purpose of determining the presence or quantity of alcohol or controlled substances in your blood or breath.

2. If you refuse to submit to any such tests, you have violated ss. 30.68(5), 350.104(5) or 23.33(4p)(e), Wis. Stats., and are subject to the same penalties and procedures as a violation of ss. 30.681(1)(a), 350.101(1)(a) or 23.33(4c)(a)1, Wis. Stats., which include a fine or forfeiture, a possible jail sentence in the event you are a repeat offender and completion of a boating safety course if a boat is involved. The test results or the fact that you refused testing can be used against you in court.

If you take all the requested tests, you may choose to take further tests. You may take the alternate test that this Law Enforcement Agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense for the purpose specified under ss. 30.684(3), 350.104(3), or 23.33(4p)(c), Wis. Stats. You, however, will have to make your own arrangements for that test.

4. Will you submit to an evidentiary chemical test of your __________? Yes □ No □

I certify that I have read the information printed on this form to ____________ and have provided him/her with a copy of this form.

Defendant:

Status Number:

Type of Identification:

Signed: ___________________________ Dept.: ________________________ Date: ___________ Time: ______ a.m. p.m.

Law Enforcement Officer (Agency)
AGREEMENT TO UNDERTAKE RESPONSIBILITY FOR CARE OF A PERSON ARRESTED FOR OPERATING A MOTOR BOAT, A.T.V. OR SNOWMOBILE WHILE INTOXICATED

State of Wisconsin
Department of Natural Resources

Completion of this form is mandatory for release of arrested person to your custody. Personally identifiable information on this form is not intended to be used for any other purpose.

I, THE UNDERSIGNED, do hereby agree to undertake responsibility for the care of (hereinafter referred to as "detrainee"), a person arrested for operating a Motor Boat ☐, A.T.V. ☐, or Snowmobile ☐ while intoxicated. In consideration of the release of the detainee to my care, I certify and agree that

1. My physical and mental ability is not now impaired by the use of alcohol, drugs, or other intoxicants, or medications, prescriptions or otherwise.

2. I am physically and otherwise able to exercise responsibility for the care of the detainee.

3. I will exercise such responsibility for the care of the detainee in a diligent manner and with due regard for the safety of the detainee, myself and members of the general public.

4. I will not allow the detainee to operate a motor boat, A.T.V., snowmobile, or motor vehicle so long as he/she displays any evidence of impaired ability, and in any event I will not allow such operation at any time during the next twelve (12) hours.

5. I will indemnify, defend, and hold harmless, the State of Wisconsin, its officers, and employees, against any and all liability, loss, damage, costs, or expense which they or any of them may sustain, incur, or pay by reason of the acts of the detainee while under my care pursuant to his/her release to my care.

Detainee's Telephone Number (include area code) | Date
--- | ---

Signature of Person Taking Custody
Printed Name of Person Taking Custody

Time of Arrest ☐ A.M. ☐ P.M. | Telephone Number (include area code)

Pursuant to s. 23.57, Wis. Stats., and in consideration of the above agreement, I do hereby release the above named detainee to the person executing said agreement.

Date
Officer's Signature

Time of Release ☐ A.M. ☐ P.M. | Printed Name of Officer

Distribution: White - Agency Copy
Pink - Person Taking Custody