

Legislative & Case Law Update

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2017 Legislative Update



DWI Law Changes

- Minn. Stat. § 169A.51, subd. 2
~~Implied Consent Advisory~~ → Breath Test Advisory
- Minn. Stat. § 169A.20, subd. 2
DWI refusal crime now applies to: (1) breath tests pursuant to the advisory; and (2) blood and urine tests pursuant to a search warrant
- Minn. Stat. § 171.177
Newly created statute provides for license revocations pursuant to a search warrant
- Minn. Stat. §§ 169A.53, subd. 3(b)(12) & 171.177, subd. 12(h)
Allow for prescription drug defense in license revocation hearings
- Minn. Stat. §§ 169A.53, subd. 2(a) & 171.177, subd. 11(a)
Increased amount of time to challenge license revocation from 30 to 60 days



DWI Law Changes

Why?!?

- Comply with *Birchfield* decision (U.S. Supreme Court)
- Safety to officers and suspects – no forcible blood draws
 - (Still exception for CVH/O cases)
- License revocations for all DWIs



DWI Law Changes

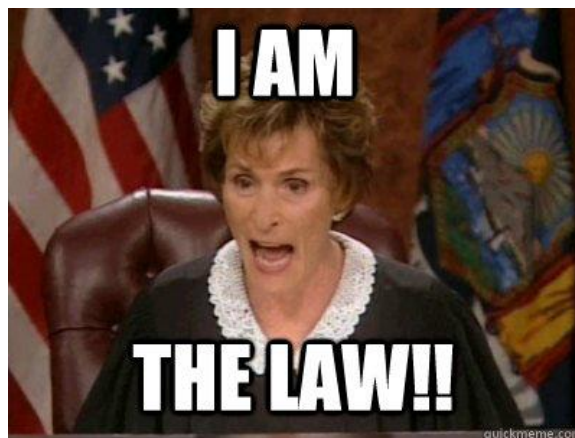
Important...

- Suspects do not have a right to refuse
 - Search warrants are judicial orders
 - Law enforcement should direct the suspect to take the test
 - Refusal crime is present to prevent forcible blood draws and still allow for successful investigation and prosecution

For more information, see our webinar!



2017 Case Law Update



State v. Henderson

State v. Henderson, 2017 WL 393885

- Passenger grabbed steering wheel and was later charged with CVO
- Held: As a matter of apparent first impression, manipulation of the steering wheel of a moving motor vehicle by a passenger constitutes “operation” of a motor vehicle under criminal vehicular operation statute
- MN Supreme Court granted review on April 26, 2017



Brooks v. State

Brooks v. State, 897 N.W.2d 811

- Yes, *that* Brooks!
- Held: Rule in *Birchfield* is not retroactive
- Upheld conviction (again)



State v. Hunn

State v. Hunn, 899 N.W.2d 541

- Officer suspected DWI and asked for consent to urine test, but did not reach implied consent advisory or obtain a warrant
- Defense argued that he was still entitled to a right to counsel
- Held: when the implied-consent statute is not invoked, advisement of the limited right to counsel under state constitution is not a prerequisite to admitting chemical-test results
- MN Supreme Court accepted review on September 18, 2017



State v. Carson

State v. Carson, -- N.W.2d --, 2017 WL 4531706

- The substance 1,1-difluoroethane (DFE) (dust-off), found in refrigerant-based propellant used for cleaning electronic equipment, was not a “hazardous substance” within meaning of driving-while-impaired statute



Upcoming Legislative

Here are some possible legislative initiatives to look out for next session:

- **DWI Task Force:** in light of *Carson*, expand DWI laws to include substances currently excluded, such as DFE
- **MADD:** All-offender ignition interlock bill
- **City Attorney Offices:** Gross Misdemeanor Careless Driving
- **Legislators:** Limit Forfeiture
- **Legislators:** driver's license revocations



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Questions?

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