



## What Passed?



- Chapter 195
- Chapter 183
- Chapter 159
- Chapter 171
- Chapter 122

## Chapter 195:

- Changes “hazardous substance” to “intoxicating substance”
- No longer requires “substantially impair” ability to drive
- Changes “knowingly under the influence” to “knows or has reason to know that the substance has the capacity to cause impairment”
- Effective August 1, 2018

2018 Session Law: Chapter 195

## **Minn. Stat. 169A.20, subd. 1(3):**

“The person is under the influence of an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment.”

2018 Session Law: Chapter 195

## **Minn. Stat. 169A.03: Intoxicating Substance**

“a drug or chemical, as those terms are defined in section 151.01, that when introduced into the human body impairs the central nervous system or impairs the human audio, visual, or mental processes. The term does not include alcohol or controlled substances.”

## Chapter 183:

- Repeals Minn. Stat. 169A.07 and 169A.33, subd. 1
- First time DWI while using a motor boat, ATV, snowmobile, or off road vehicle will result in revocation of driver's license
- Effective August 1, 2018

2018 Session Law: Chapter 183

## Chapter 159:

- Effective August 1, 2018
- Amends 169.18, subd. 11:  
(c) If a lane change under paragraph (a) or (b) is impossible, or when approaching and before passing an authorized emergency vehicle with its emergency lights activated that is parked or otherwise stopped on or next to a street or highway having only one lane in the same direction, the driver of a vehicle must reduce the speed of the motor vehicle to a speed that is reasonable and prudent under the conditions until the motor vehicle has completely passed the parked or stopped emergency vehicle, if it is possible to do so.

2018 Session Law: Chapter 159, section 1

## Chapter 159:

- Effective August 1, 2018

- Amends 169.18, subd. 12:

(c) If a lane change under paragraph (a) or (b) is impossible, or when approaching and before passing a freeway service patrol vehicle, road maintenance vehicle, utility company vehicle, or construction vehicle with its warning lights activated that is parked or otherwise stopped on or next to a street or highway having only one lane in the same direction, the driver of a vehicle must reduce the speed of the motor vehicle to a speed that is reasonable and prudent under the conditions until the motor vehicle has completely passed the parked or stopped freeway service patrol vehicle, road maintenance vehicle, utility company vehicle, or construction vehicle, if it is possible to do so.

2018 Session Law: Chapter 159 , section 1

## Chapter 171

- Amends 169.81, subd. 5 by providing exception for leakage of liquid from thawing sugar beets if transporting unprocessed sugar beets.

- Effective May 20, 2018

- Amends 221.031, subd. 2d by expanding hours of service exception for farm supplies for agricultural purposes – any time of the year.

- Effective August 1, 2018

2018 Session Law: Chapter 171, sections 1 and 2

## Chapter 122

- Minn. Stat. 169.974, subd. 2 is amended to allow a person with a two-wheeled vehicle instruction permit to drive a motorcycle on an interstate highway
- Effective August 1, 2018

2018 Session Law: Chapter 122, section 1

## Where can I find it in the new manuals?

- Page 200: “Intoxicating Substance”
- Page 138: Boats, Snowmobiles, and ATV’s
- Page 144: Johnson and Morehouse
- Page 147: Hunn decision
- Page 266: CVO and CVH license suspension

## What Can You Do?

EAST METRO

### Trucker who killed driver in Lake Elmo can still drive

Prosecutors wanted Samuel Hicks' driving privileges curtailed, but a judge said no.

By Tim Harlow Star Tribune | MARCH 6, 2018 — 11:39PM



Hicks

A trucker who allegedly was using his smartphone when he hit and killed another driver last week on Hwy. 36 in Lake Elmo still has driving privileges even though prosecutors asked a judge to take them away.

Samuel Hicks, 28, of Independence, Wis., was arraigned on charges of criminal vehicular homicide on Friday in Washington County District Court.

He was released on bail with conditions that he not contact the family of Robert J. Bursik, the motorist who was killed Feb. 27 when Hicks' semitrailer truck slammed into the back of Bursik's car as it was stopped at a red light at the intersection of Hwy. 36 and Lake Elmo Avenue.

- CDL driver
- Criminal Vehicular Homicide
- Gross Negligence
- No alcohol or drugs
- No DWI
- Distracted driving
- Prosecutor asks for prohibition on driving as a condition of release
- Judge denied the request

Star Tribune, March 6, 2018



## *State v. Vondrachek*

906 N.W.2d 262 (Minn. Ct. App. 2017), rev. denied (Minn. 2018)



- Stopped for 61 mph in 40 mph zone
- Odor of alcohol, Admitted to two drinks
- Performed SFSTs (HGN, W&T, OLG, PBT)
- Breath test = 0.12 AC
- Defense challenged admissibility of SFSTs, arguing that a warrant is needed
- Court of Appeals: No warrant needed – only need reasonable, articulable suspicion
- MN Supreme Court denied review

## *State v. Brazil*

906 N.W.2d 274 (Minn. Ct. App. 2017), rev. denied (Minn. 2018)

- Breath test = 0.16 AC
- Charged as 3<sup>rd</sup> degree DWI with enhancement of 0.16 AC
- Defense challenged enhancement, arguing uncertainty of measurement ... range went below 0.16.
- Court of Appeals: Evidence was sufficient to sustain conviction of 3<sup>rd</sup> degree DWI with enhancement of 0.16 AC
- “While appellant argues that the state is required to prove his alcohol concentration within the uncertainty-of-measurement range, our case law has consistently rejected this argument when framed in terms of margin of error.”
- MN Supreme Court denied review
- See MCAA Webinar from March 2018



## *Kruse v. Comm's of Pub. Safety*

906 N.W.2d 554 (Minn. Ct. App. 2018)

- Officer observed vehicle drive onto, but not over the fog line, then onto, but not over the center line
- Initiated a traffic stop and conducted a DWI investigation
- Petitioner challenged constitutionality of the stop, arguing that a violation only occurs if the vehicle crosses **over** the lines
- Minn. Stat. 169.18, subd. 7(a): “A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.”
- Court of Appeals defined “lanes” ... yes, lawyers and judges are that exciting
- Court of Appeals upheld the stop, holding that touching the lane markings constitutes a violation under Minn. Stat. 169.18, subd. 7(a)



## *State v. Henderson*

907 N.W.2d 623 (Minn. 2018)

- Defendant was passenger in car
- Defendant grabbed the steering wheel, causing a crash
- Defendant arrested for DWI
- Defendant argued he was not driving or operating the vehicle
- MN Supreme Court: “ ‘Operating’ a motor vehicle refers to any act that causes a motor vehicle to function or controls the functioning of a motor vehicle.”
- Upheld Defendant’s DWI conviction, finding that he operated the motor vehicle by grabbing and controlling the steering wheel



## *Olson v. One 1999 Lexus*

910 N.W.2d 72 (Minn. Ct. App. 2018), *rev. granted* (Minn. 2018)

- August 16, 2015: Driver was arrested for 1<sup>st</sup> degree DWI and car was seized for forfeiture
- October 7, 2015: Filed demand for forfeiture court trial
- Court trial was continued six times pending the outcome of the license revocation and criminal DWI proceedings
- October 14, 2016: Filed motion for summary judgment on forfeiture
- May 24, 2017: Court granted motion for summary judgment, finding due process violation because of long delay in forfeiture proceedings
- Court of Appeals upheld
- MN Supreme Court granted review; case is pending

## *Morehouse v. Comm'r of Pub. Safety*

911 N.W.2d 503 (Minn. 2018)

## *Johnson v. Comm'r of Pub. Safety*

911 N.W.2d 503 (Minn. 2018)

- 2015 offense dates (*pre-Birchfield*)
- Both petitioners arrested for DWI and read the (former) implied consent advisory
- Morehouse: submitted to blood test
- Johnson: refused blood and urine tests
- Petitioners argued due process violations because of the misleading advisory

## *Morehouse v. Comm'r of Pub. Safety*

911 N.W.2d 503 (Minn. 2018)

## *Johnson v. Comm'r of Pub. Safety*

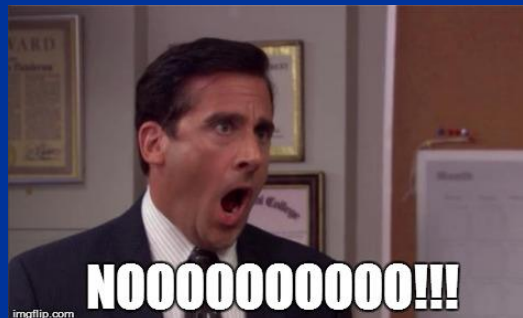
911 N.W.2d 503 (Minn. 2018)

- MN Supreme Court: 3-part test for license revocations:
  - 1) the person whose license was revoked submitted to a blood, breath, or urine test;
  - 2) the person prejudicially relied on the implied consent advisory in deciding to undergo testing; and
  - 3) the implied consent advisory did not accurately inform the person of the legal consequences of refusing testing
- Johnson: did not meet 1<sup>st</sup> or 2<sup>nd</sup> elements because he refused testing
- Morehouse: did not meet 2<sup>nd</sup> element because he did not claim, or prove, prejudicial reliance
- Upheld rescissions

## *Johnson v. State*

916 N.W.2d 674 (Minn. Ct. App. 2018)

- The rule announced in *Birchfield* applies retroactively to final convictions on collateral review
- Meaning ... we might have many old test refusal cases re-opened and re-litigated



## *State v. Dyrdaahl*

2018 WL 4201227 (Minn. Ct. App. 2018)

- Defendant arrested for DWI
- Officer read the breath test advisory, which read, “refusal to take a test is a crime.”
- Defense moved to suppress the results of the breath test, arguing that refusal to take a blood or urine test is not a crime without a search warrant or valid exception (*Birchfield*), so telling the defendant that refusal to take A test was a crime was misleading since it did not specify a *breath* test
- Court of Appeals: This is the *breath* test advisory, and defendant was offered a *breath* test, so the advisory was not misleading

## *State v. Hunn*

911 N.W.2d 816 (Minn. 2018)

- Defendant arrested for DWI
- Officer did not read the (former) implied consent advisory, but instead asked, “Will you take a urine test?”
- Defendant responded, “Why not” and submitted to the test
- Defendant tested positive for amphetamines and methamphetamine



## *State v. Hunn*

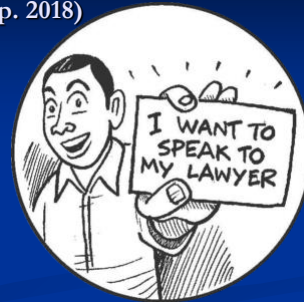
911 N.W.2d 816 (Minn. 2018)

- MN Supreme Court: the right to counsel attaches at a critical stage of the proceedings (*McDonnell*)
- Critical stage: when the defendant/petitioner is given a choice and faces immediate consequences
- In this case, the defendant was given the choice, but was not faced with immediate consequences ... since there was no implied consent read, he did not face a license revocation
- Therefore, no right to counsel

## *State v. Rosenbush*

2018 WL 3340530 (Minn. Ct. App. 2018)

- Defendant arrested for DWI
- Officer obtained a search warrant for a blood sample
- Officer told Defendant that refusal to take a test was a crime, but did not provide a right to counsel
- Defense challenged right to counsel
- MN Court of Appeals: Under *McDonnell*, was this a critical stage of the proceedings?



## *State v. Rosenbush*

2018 WL 3340530 (Minn. Ct. App. 2018)

- State: Warrant provides no choice
- Defense: Under *McDonell*, license revocation consequences means there is a choice
- Court of Appeals: both arguments have merit
  - Really???
- Held: This officer did not give this defendant a choice, so there was no right to counsel for this defendant
- Takeaway: Wording is important
- Takeaway #2: MN Supreme Court has accepted review



## *State v. Mike*

--- N.W.2d ---, 2018 WL 4056594 (Minn. Ct. App. 2018)

- Defendant arrested for DWI
- Officer obtained warrant for blood/urine testing
- Defendant was NOT told that refusal to take a test was a crime
- Defendant agreed to a blood test
- Defense moved to suppress the blood test because the officer did not comply with Minn. Stat. 171.177 since the officer did not tell the defendant that refusal to submit to a test is a crime
- MN Court of Appeals: No right to counsel because of the wording the officer used; defendant was not given a choice
- Purpose of advisory is to encourage testing, not provide a choice
- Therefore, declined to suppress blood test result

## *Search Warrant Procedures*

- Obtain search warrant for blood and/or urine
- **Direct** which type of test is to be given (blood or urine)
- Advise that refusal to take a test is a crime
- **Direct** the test to begin ... Don't ask!
- If refusal, **direct** alternative (blood/urine)
- If also refuses alternative, charge refusal
- No forcible test unless CVO/CVH
  
- Sample language: "I have a warrant for a blood draw. Refusal to take a test is a crime. Now, we'll begin the blood draw."

## Questions?

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