

## Legal Update

- Legislative Update
- Case Law Update

# Legislative Update 2019



## Minnesota Statute 169.475 Hands Free Law

2019 Minnesota Session Laws, Chapter 11, Section 2



## Minnesota Statute 169A.24

- Provides “catch-all” language for felony CVO/ CVH convictions
- Smith Decision
- Includes out-of-state convictions
- Does not include out-of-state felony DWI

2019 Minnesota Session Laws, Chapter 5, Article 6, Section 3

## Minnesota Statute 169A.63

Allows someone to avoid DWI forfeiture by enrolling in the ignition interlock program.

2019 Minnesota Session Laws, Chapter 5, Article 6, Section 4

## Minnesota Statute 169.18, subd. 7(5)



## Minnesota Statute 169.18, subd. 10



## Minnesota Statutes 169.06, subd. 4a



## Platoon Systems:



2018 Session Law: Chapter 159, section 1

## Case Law Update

- [Wisconsin v. Mitchell](#)
- [State v. Rosenbush](#)
- [Jensen v. Commissioner of Public Safety](#)

### Wisconsin v. Mitchell,

\_\_\_ U.S. \_\_\_ (June 27, 2019).

- Warrantless blood draw from an unconscious driver
- Court held that this was an exigent circumstance where the driver was unconscious and treated medically
- Court did not rule for the state based upon implied consent

## Factors to Consider:

- Was the driver conscious at some point during the arrest?
- Was unconsciousness determined by medical personnel?
- Was the driver taken to the hospital?
- Did medical personnel already draw blood
- What medical treatment is about to happen?
- Was the driver given IV or medication?

## F.A.Q. #1

Q: Driver is taken by ambulance to emergency room medical treatment. The hospital draws his blood. Can I have them give me a blood sample without doing a search warrant?

## F.A.Q. #2

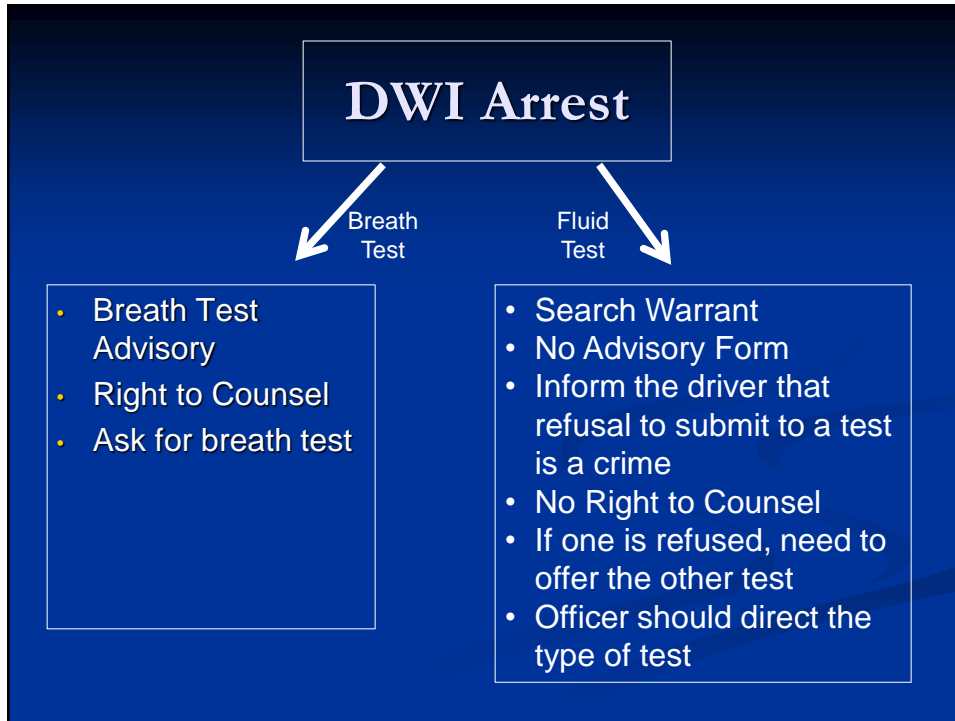
Q: Driver is taken by ambulance to emergency room. The hospital draws his blood. They inform me that he is unconscious and they are taking him in for surgery now and ask if I want a blood sample, which they've already drawn. Should I take it? Do I need to get a search warrant?

### State v. Rosenbush,

931 N.W.2d 91 (Minn. 2019).

- Minnesota Supreme Court held that the limited right to counsel in Friedman does not apply when there is a search warrant for the blood draw under Minn. Stat. 171.177.
- The decision was 4 – 3
- There is a right to counsel before a breath test





## Jensen v. Comm. Of Public Safety

(Minn. Ct. App. September 3, 2019)

- CVO investigation
- Officer did not inform driver that “refusal to take a test is a crime”
- Administrative DL revocation under 171.177
- The Court of Appeals held that the DL can not be administratively revoked because the deputy did not inform the driver that refusal is a crime

## F.A.Q #4

Q: In a CVO case what should I do?

A: If possible, obtain a search warrant for blood only. In DWI eCharging, it will default to blood or urine. Change it to blood. Collect a blood sample. Do not tell the driver that refusal is a crime. When blood test results are received from BCA, you can suspend the DL administratively by completing the form in DWI eCharging for CVO.

[Minnesota Statute 171.187.](#)

## 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

# Questions:

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