

# Implied consent is still a mess

*Minnesota*  
MINNESOTA'S IMPLIED consent law for persons accused of drunken driving probably won't be workable for nearly two months. This is the law passed by the recent state legislature which was supposed to be a major step in traffic safety but the law was so poorly drafted and so controversial that it has not been possible to put it into effect. There were some who regarded it as one of the major goofs of the 1961 legislature.

The law subjects a motorist to automatic driver's license suspension for refusing to take a chemical test when arrested as a drunken driving suspect.

*Technically, the implied consent law has been in effect since April 21, the day it was passed—not July 1, as previously mentioned here. But the new law will have no real teeth until the state highway commissioner, James C. Marshall, adopts regulations for administration and interpretation of the chemical tests.*

Adoption of proposed regulations will require a public hearing. Public hearing requires 30 days' notice. Once the regulations have been proposed the attorney general will have 20 days to approve their form and legality.

The highway commissioner has said he will call a hearing as soon as practicable when he has had sufficient chance to study an opinion issued by Attorney General Walter Mondale. The commissioner said there is no need to hurry and that the department was doing all right under present rules.

Here is what the attorney general ruled on implied consent:

● The law gives any peace officer in the state the right to make an arrest for drunken driving;

● Training standards must be established for persons who perform the tests and analyze specimens from the tests;

● Sheriffs or patrolmen don't have to administer or evaluate the tests;

● An arrested person may refuse to take a blood test and take a breath, saliva or urine test instead to determine the alcohol content in his system;

● If no other tests are available, he still doesn't have to take a blood test, but if he refuses to take one of the other three tests his license may be revoked;

● Acquittal for drunken driving doesn't clear a motorist for refusing to take a chemical test.

All these points seem to be what was intended in the new legislation and the safeguards outlined are very vital to the protection of individual rights, whatever rights may be left to the individual after passage of the bad law. If the highway commissioner seems to be dragging his feet on formally and finally proclaiming the necessary regulations it seems to be because he doesn't want to be told what to do by the attorney general.

The whole thing is a mess from start to finish and the minor squabble between the two state officials hasn't helped to clarify the situation.

*Anti-Mondale File*  
NIGHT  
ST. PAUL, AUG. 10 (UPI)--MINNESOTA'S IMPLIED CONSENT LAW MAY NOT BE OPERATIVE FOR ANOTHER 50 DAYS. THAT WAS DETERMINED TODAY AFTER ATTY. GEN. WALTER F. MONDALE ISSUED AN OPINION ON THE LAW AT THE REQUEST OF HIGHWAY COMMISSIONER JAMES C. MARSHALL. *Bob Dodge - IV4-4693*

MARSHALL SAID HE WILL START MACHINERY FOR A PUBLIC HEARING ON PROPOSED RULES FOR IMPLIED CONSENT "ASSS PROPOSED RULES FOR IMPLIED CONSENT "AS SOON AS I CAN DIGEST ALL THIS STUFF."

MARSHALL MUST GIVE 30 DAYS NOTICE OF HEARING. AFTER THAT, MONDALE HAS 20 DAYS TO STUDY AND APPROVE THE RULES.

MARSHALL ASKED 10 QUESTIONS ABOUT THE LAW ENACTED BY THE 1961 LEGISLATURE THAT REQUIRES A PERSON ARRESTED FOR DRUNKEN DRIVING TO SUBMIT TO CHEMICAL TESTS FOR INTOXICATION OR LOSE HIS LICENSE.

MONDALE ANSWERED WITH AN 11-PAGE OPINION. MARSHALL SAID THE OPINION SHOWED THE LAW IS "COMPLETELY ENFORCEABLE."

SOME PERSONS, INCLUDING HIGH POLICE OFFICIALS, HAD COMPLAINED THAT THE LAW COULD NOT BE ENFORCED.

IN HIS OPINION, MONDALE NOTED THAT ALTHOUGH THE LAW HAS BEEN IN EFFECT MORE THAN THREE MONTHS, MARSHALL HAS NOT YET PROMULGATED THE RULES REQUIRED FOR ITS OPERATION. HE REFERRED TO THIS TWICE.

"TO DATE, NO SUCH RULES HAVE BEEN SUBMITTED TO THIS OFFICE FOR APPROVAL AND FILING AS REQUIRED BY LAW," MONDALE WROTE.

"THAT WAS JUST A CHILDISH STATEMENT," MARSHALL, A RETIRED ARMY GENERAL, SAID LATER BY TELEPHONE FROM FOLEY, MINN.

"I COULDN'T SUBMIT THE RULES UNTIL I HAD THE OPINION."

MARSHALL ALSO COMPLAINED THAT HE HAD TO WAIT NEARLY A MONTH FOR MONDALE TO ANSWER THE QUESTIONS.

HE ALSO CLAIMED THAT THE ATTORNEY GENERAL HANDED OUT COPIES OF THE OPINION TO NEWS MEDIA BEFORE DELIVERING THE ORIGINAL TO THE COMMISSIONER.

"I'M NOT RUNNING FOR ANY OFFICE AND HE IS," MARSHALL SAID. "IF HE WANTS TO GET PUBLICITY THIS WAY IT'S ALLRIGHT WITH ME."

HIGHLIGHTS OF MONDALE'S OPINION INCLUDED:

--THAT A PERSON REQUIRED TO TAKE A TEST FOR DRUNKENNESS MAY ELECT TO TAKE A BREATH, SALIVA OR URINE TEST INSTEAD OF A DIRECT BLOOD TEST.

--ALL FULL-TIME POLICEMEN MAY INVOKE THE LAW PROVIDED THEY ARE ADEQUATELY TRAINED.

-POLICEMEN ARE NOT REQUIRED TO ADMINISTER OR EVALUATE THE DRUNK TESTS.

--A PERSON WHO REFUSES TO TAKE THE TEST AND LATER IS FOUND INNOCENT OF DRUNKEN DRIVING STILL IS SUBJECT TO REVOCATION OF HIS LICENSE FOR NOT TAKING A TEST.

BD415PCD..

*2-0960*

*Anti-Mondale  
File*

FROM: MINNESOTA YOUNG REPUBLICAN LEAGUE  
585 ENDICOTT BUILDING  
ST. PAUL, MINNESOTA

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11  
PM Newspaper

SLOW-ACTING, UNSURE MONDALE DELAYS OPERATION OF IMPLIED CONSENT  
LAW, STATE YOUNG G.O.P. HEAD CHARGES

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"Minnesota's implied consent law will not be put into operation for another two months because of Attorney General Walter Mondale's indecisive delay," the state Young Republican Chairman charged today.

Lyall Schwarskopf, Minneapolis, declared in a prepared statement: "The law was passed as result of the leadership exerted by Governor Andersen--and Minnesota needs to have this legislation put into effect at once.

"Yet because Mondale dilly-dallied and took almost one month to produce an opinion on the routine operation of the law, it will be at least 2 additional months before the law can be put to work for public safety.

"The story is this. Commissioner of Highways James Marshall asked Mondale on July 12 to come forth with some sorely needed clarifications of the law so that Marshall could base important Department rulings and get the law to work for the people quickly.

"But Mondale took not only his time--but the public's time--in acting on the Marshall questions. The formal opinion was not issued until August 11. During that time, Mondale was out of his office to attend many public meetings. He was busy issuing press releases and hunting headlines. He has 52 young legal helpers in his Department. Despite all of this, 27 days rolled around before his answer was made known.

"And his answer was a keen disappointment. He sidestepped some of the tough answers and said that he didn't have the Highway Commissioner's rules at hand--despite the fact that his opinion was expected to come first before the regulations could be drafted.

"As a result, Minnesota's valuable traffic safety law won't be getting off to a fast start--all because the state attorney general was ~~more busy issuing press releases~~ too busy issuing more press releases than opinions."



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