

(b) If the defendant selects a type of test which could be administered within the 2 hour time limitation, but later changes the selection to a type that, due to the unavailability of facilities or equipment, cannot be administered within the 2 hour time limitation, the police officer may select the type of test to be administered, provided the facilities or equipment are available and the test can be administered within the 2 hour time limitation. Failure to take the test selected under the provisions of this subsection shall be deemed a refusal to take the test under the vehicle laws.]

~~(A) -- THE -- POLICE -- OFFICER -- MAY -- SELECT -- THE -- TYPE -- OF -- TEST -- TO -- BE -- ADMINISTERED -- TO -- THE -- DEFENDANT -- UNLESS -- FACILITIES -- OR -- EQUIPMENT -- ARE -- NOT -- AVAILABLE -- FOR -- ADMINISTRATION -- OF -- A -- TEST, -- THE -- DEFENDANT'S -- FAILURE -- TO -- TAKE -- THE -- TEST -- SELECTED -- IS -- A -- REFUSAL -- TO -- TAKE -- THE -- TEST -- UNDER -- THE -- VEHICLE -- LAWS -- THE -- DEFENDANT'S -- FAILURE -- TO -- TAKE -- THE -- TEST -- SELECTED -- BY -- THE -- POLICE -- OFFICER -- IS -- A -- REFUSAL -- TO -- TAKE -- THE -- TEST -- UNDER -- THE -- VEHICLE -- LAWS, -- UNLESS -- FAILURE -- TO -- TAKE -- THE -- TEST -- IS -- DUE -- TO -- FACILITIES -- OR -- EQUIPMENT -- NOT -- BEING -- AVAILABLE -- FOR -- ADMINISTRATION -- OF -- THE -- TEST.~~

(A) THE TYPE OF TEST ADMINISTERED TO THE DEFENDANT SHALL BE THE CHEMICAL TEST OF BREATH EXCEPT THAT THE CHEMICAL TEST OF BLOOD SHALL BE THE TYPE OF TEST ADMINISTERED IF:

(1) THE DEFENDANT IS UNCONSCIOUS OR OTHERWISE INCAPABLE OF REFUSING TO TAKE A CHEMICAL TEST FOR ALCOHOL; OR

(2) INJURIES TO THE DEFENDANT REQUIRE REMOVAL OF THE DEFENDANT TO A MEDICAL FACILITY; OR (3) THE EQUIPMENT FOR ADMINISTERING THE CHEMICAL TEST OF BREATH IS NOT AVAILABLE.

[(c)] (B) Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of test refusal shall be deemed not to have withdrawn consent.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1983.

Approved May 24, 1983.

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CHAPTER 290

(Senate Bill 514)

AN ACT concerning

Chemical Test for Alcohol - Refusal to Take the Test