

Cherokee Nation Code Annotated
Title 21: Crimes and Punishments
Part IX. Boating Safety
Chapter 80: Boating Safety Act of 2021
§ 4210.9. Implied consent to administer drug or alcohol test

Cite as: 21 CNCA § 4210.9

A. 1. Any person who operates a vessel upon the waters of this Nation shall be deemed to have given consent to a test or tests of the blood or breath of the person, for the purpose of determining the alcohol concentration as defined in Section 7 of this act, and the blood, saliva or urine of the person, for the purpose of determining the presence or concentration of any other intoxicating substance as defined in this section, if arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a vessel upon the waters of this Nation while under the influence of alcohol or other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, or, if the person is involved in a boating collision that resulted in the immediate death or serious injury of any person and is removed from the scene of the collision to a hospital or other health care facility outside this Nation before a law enforcement officer can effect an arrest.

2. A law enforcement officer, having reasonable grounds to believe that such person was operating or in actual physical control of a vessel while under the influence may direct the administration of or administer the test or tests.

3. As used in this section, “other intoxicating substance” means any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

B. 1. The law enforcement agency by which the arresting officer is employed may designate, in accordance with the rules of the Board of Tests for Alcohol and Drug Influence, whether blood or breath is to be tested for the alcohol concentration thereof, and whether blood, saliva or urine is to be tested for the presence or concentration of any other intoxicating substance therein.

2. In the event the law enforcement agency does not designate the test to be administered, breath shall be the substance tested for alcohol concentration. Blood may also be tested to determine the alcohol concentration thereof in the event that breath cannot be tested to determine the alcohol concentration thereof because of the lack of an approved device or

qualified person to administer a breath test or because such breath test for any other reason cannot be administered in accordance with the rules of the Board.

3. In the event the law enforcement agency does not designate the test to be administered, blood, saliva or urine shall be the substance tested for the presence or concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance.

C. In the event the person is incapable of submitting to and successfully completing, by reason of illness or injury or other physical disability, the test to be administered, an alternate test may be administered in accordance with the rules of the Board.

D. 1. Any person who is unconscious or otherwise incapable of refusing to submit to a test of the blood or breath of the person to determine the alcohol concentration thereof, or to a test of the blood, saliva or urine of the person to determine the presence or concentration of any other intoxicating substance therein, shall be deemed not to have withdrawn the consent provided by subsection A of this section, and such test may be administered as provided herein.

2. An unconscious person who has been issued a citation by a law enforcement officer for one of the offenses listed in subsection A of this section is arrested for purposes of this section. The arresting officer must leave a copy of the citation with the arrested person which may be accomplished by handing it to the arrested person, or by leaving it with the personal effects of the arrested party, so as to inform the unconscious person of the arrest.

3. Any person who has been arrested for one of the offenses listed in subsection A of this section who is unconscious or injured and who requires immediate medical treatment as determined by a treating physician may be released by the arresting officer on the recognizance of the person for medical reasons. The arresting officer who releases an arrested person on the recognizance of the person must indicate the release on the face of the citation. Any person released on his or her own recognizance for medical reasons shall remain at liberty pending the filing of charges.

E. In addition to any test designated by the arresting officer, the arrested person may also designate any additional test to be administered to determine the concentration of alcohol, or the presence or concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance. The cost of such additional test shall be at the expense of the arrested person.

A sufficient quantity of any specimen obtained at the designation of the arrested person shall be available to the law enforcement agency employing the arresting officer. Such

specimens shall be treated in accordance with the rules applicable to the specimens obtained by an arresting officer.

F. When a law enforcement officer has determined that the blood alcohol content of an individual is to be tested for the presence or concentration of alcohol, other intoxicating substance, or the combination of alcohol and any other intoxicating substance, the law enforcement officer shall inform the individual to be tested that the withdrawal of blood shall only be performed by certain medical personnel as provided for in this act.

Historical Data

LA 18-21, eff. May 17, 2021.