

New York State

STATUTORY REGULATIONS ON BLOOD-ALCOHOL TESTS

THE following paragraph has been added as an amendment to the New York State Vehicle and Traffic Law (Chap. 726, Laws of 1941, Sub-Div. 5 of Sec. 70):

"Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person arrested for operating a motor vehicle or motor cycle, while in an intoxicated condition, the court may admit evidence of the amount of alcohol in the defendant's blood taken within two hours of the time of the arrest, as shown by a medical or chemical analysis of his breath, blood, urine or saliva. For the purpose of this section (a) evidence that there was, at the time, five-hundredths of one per centum, or less, by weight of alcohol in the blood, is *prima facie* evidence that the defendant was not in an intoxicated condition; (b) evidence that there was, at the time, more than five-hundredths of one per centum and less than fifteen-hundredths of one per centum by weight of alcohol in his blood is relevant evidence, but it is not to be given *prima facie* effect in indicating whether or not the defendant was in an intoxicated condition; (c) evidence that there was, at the time, fifteen-hundredths of one per centum, or more by weight of alcohol in his blood, may be admitted as *prima facie* evidence that the defendant was in an intoxicated condition."

For the guidance of the police the Attorney-General of New York State has given an interpretation of this amendment, and his views are published in a memorandum dated July 30th, 1941.*

When a defendant voluntarily submits to the test, or consents to its application, there can be no question that such evidence is admissible, but if the evidence has been obtained in circumstances which amount to compulsion, the defendant might urge that his constitutional rights had been violated by compelling him to be a witness against himself. Moreover, a question of assault might arise if the specimen of blood or urine were taken by force. The United States Constitution does not prohibit, however, such acts as confronting a murderer with his victim or the forcible examination of a prisoner's person for marks and bruises, which might establish his guilt. In a leading case, which is cited, it was held, on appeal, that a doctor was entitled to give evidence of the results of physical tests for drunkenness, applied at the police station to a motorist who had been arrested on a charge of intoxication while driving a motor car. "It should," stated the Appellate Division, "be the aim of the courts to so interpret the provision that it cannot be used as a shield for the guilty."

In a case in Ohio in 1938 the Court of Appeal held that it was permissible for evidence to be given that a defendant, charged with driving a motor vehicle while intoxicated, had refused to submit to a test to determine the amount of alcohol in his blood or urine. The Court held that there had been no violation of the constitutional principle that "no person shall be compelled in any criminal case to be a witness against himself"; but that his failure to testify might be the subject of comment by counsel. The evidence, said the Court, was not to be given by the defendant himself, but by the doctor and the deputy sheriff. The Court held that the constitutional inhibition against self-incrimination related only to disclosure by utterance.

The Attorney-General's final conclusion is that the so-called "drunken driving law" has for its object the protection of the public and the occupants of the vehicles themselves. The reasonable exercise of the police power of the State cannot be denied. But the statute does not expressly authorise the use of force to obtain such evidence, and it is highly questionable if any such implied authority may be read into it. Hence, until the legislature grants more specific authority, the police should not use compulsion or bodily force to obtain the evidence.

* *Bulletin, Bureau of Criminal Investigation*, New York Police, August, 1941, 6, No. 8.

The Superintendent of the Bureau has kindly given permission to summarise the main points of the Memorandum.—EDITOR.