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REVISED PENALTY FOR HOMICIDE BY INTOXICATED USE OF A VEHICLE

The 2001-2002 Wisconsin Legislature enacted legislation which reduced the maximum sentence for offenders convicted of causing a fatality while operating a motor vehicle while intoxicated (OWI). The change reduced the maximum prison sentence from 40 to 15 years and applies to crimes committed on or after February 1, 2003.

This provision was included in 2001 Wisconsin Act 109, the budget adjustment act, which was passed by the legislature and signed by Governor Scott McCallum on July 26, 2002.

MOVING TOWARD UNIFORM SENTENCING

The "Criminal Code Revision" provisions of 2001 Wisconsin Act 109 generally apply to crimes committed on February 1, 2003, or later. Act 109 continued the process begun by 1997 Wisconsin Act 283, the "Truth-in-Sentencing" law, which created a determinate sentencing structure for felonies. Under this format, which generally became effective for crimes committed on or after December 31, 1999, parole was eliminated and felons were required to serve the entire length of both portions of a bifurcated (two-part) sentence, which mandates a period of incarceration, followed by a period of extended supervision. Act 109 revised the sentencing structure by reclassifying nearly all felonies and certain misdemeanors and increasing the number of classes of felonies from six to nine, labeled "Class A" through "Class I".

The criminal code revisions were intended to group crimes of similar severity in the same penalty classes. For example, the penalty range for homicide by intoxicated use of a vehicle is now the same as that for second-degree reckless homicide, first offense (Section 940.06, Wisconsin Statutes). Prior to February 1, 2003, causing a death while OWI carried a significantly greater penalty.

Although offenders are generally required to serve the entire length of both portions of their sentences, Act 109 contained procedures to modify sentences in certain cases. Eligible elderly and seriously ill inmates serving prison sentences for other than Class A or B felonies may petition to be released from confinement. Other prisoners who are serving sentences for other than Class A or B felonies may petition the sentencing court to adjust the structure of their sentences to allow them to be released from incarceration. A sentence adjustment petition may be filed if the inmate has served at least 85% of the confinement portion of the original sentence in a Class C, D, or E felony or at least 75% of the incarceration portion for a Class F or lesser felony. In the cases of both sentence adjustment petitions and early release petitions from elderly and ill inmates, if the petition is granted, the remainder of the confinement portion of the sentence is added to the offender's period of extended supervision, with the total sentence length remaining the same.

REVISED PENALTIES FOR HOMICIDE CAUSED BY OWI

Up to 15 Years in Prison for Drunk Drivers Who Kill. Among the crimes affected by the revised penalties is "Homicide by intoxicated use of vehicle or firearm." Under the new provisions, contained in Section 940.09 (1c) (a), any person who "causes the death of another, including an unborn child, by the operation or handling of a vehicle while under the influence of an intoxicant" is guilty of a Class D felony. The penalty for a Class D felony, as provided by Section 939.50 (3) (d), is a maximum term of confinement in prison of 15 years, plus a maximum period of extended supervision of 10 years, for a total maximum sentence of 25 years. A maximum fine of \$100,000 may be imposed, either in addition to, or instead of, a prison sentence.

The above penalties also apply to the following situations:

- Causing the death of another, including an unborn child, by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m). For persons with one or no prior OWI convictions, suspensions or revocations, this means a blood alcohol concentration of 0.1% or more. For 2 priors, the threshold is an alcohol concentration of 0.08 or more. For 3 or more priors, the threshold is an alcohol concentration of 0.02 or more.
- Causing the death of another, including an unborn child, by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1.

Increased Penalty for Repeat Offenders. Section 940.09 (1c) (b) provides that a person who commits the crime of "causing the death of another by the operation or handling of a vehicle while under the influence of an intoxicant" and has one or more prior OWI convictions, suspensions, or revocations, as counted under s. 343.307 (2), is guilty of a Class C felony. The penalty for a Class C felony is a maximum term of confinement

of 25 years, plus a maximum period of extended supervision of 15 years, for a total maximum sentence of 40 years. A maximum fine of \$100,000 may be imposed, either in addition to, or instead of, a prison sentence.

The vehicles of offenders with multiple previous convictions, suspensions, or revocations may be subject to court-ordered installation of ignition interlock devices, immobilization, or seizure and forfeiture.

Prior Law. The crime of causing the death of another while driving a vehicle while under the influence of an intoxicant (alcohol beverage or narcotic drug) was first created by Chapter 294, Laws of 1941. The prison penalty, which remained the same for 50 years, was set at 5 years. 1991 Wisconsin Act 277 increased the offense to a Class C felony, carrying a maximum prison sentence of 10 years, and 1997 Wisconsin Act 338 increased the offense to a Class B felony, with a prison sentence of up to 40 years. However, an offender was eligible for consideration for release on parole after serving one-fourth of the sentence, and a prisoner was generally eligible for mandatory release on parole after serving two-thirds of the sentence. This penalty applied to offenses committed before December 31, 1999.

Offenses committed between December 31, 1999, and February 1, 2003, are subject to the penalties stipulated by 1997 Wisconsin Act 283 and 2001 Wisconsin Act 109, which imposed a maximum sentence of 60 years with a maximum term of incarceration of 40 years.

FOR MORE INFORMATION

Relevant sections of the Wisconsin Statutes may be downloaded from: www.legis.state.wi.us/rsb/stats.htm. Also see Wisconsin Brief 02-7, "Truth-in-Sentencing and Criminal Code Revision", August 2002, available at: <http://www.legis.state.wi.us/lrb/pubs/wb/02wb7.pdf>.

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