



# Legislative Briefs

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## REPEAT DRUNKEN DRIVING PENALTIES INCREASED

2007 Wisconsin Act 111, passed by the legislature and signed by Governor Jim Doyle on March 18, 2008, increases penalties for repeat drunken driving offenders.

### BACKGROUND

A 2006 Wisconsin Department of Transportation report indicated that in a January 2003 "snapshot" of the Division of Motor Vehicles' Driver Record file, about 20% of drivers with Operating While Intoxicated (OWI) convictions were repeat offenders, including nearly 4,000 drivers (about 1.2% of the total) with five or more convictions. News reports of prominent drunken driving cases sometimes highlight the records of offenders with as many as 13 OWI convictions.

For repeat offenders, each additional OWI conviction up to a certain point incurs increased penalties (monetary fines, incarceration and extended supervision, and license suspension and revocation). Furthermore, after the third conviction, the blood alcohol threshold for a conviction is reduced from .08 to .02. Penalties are doubled if there is a minor under age 16 in the vehicle. Additional penalties apply to OWI injury, great bodily harm, and homicide cases.

### 2007 WISCONSIN ACT 111

2007 Wisconsin Act 111 was introduced on March 27, 2007, as 2007 Senate Bill 116 by Senators Sullivan and Roessler, and Representative Staskunas.

**Prior law.** Prior to the enactment of Act 111, the penalties for a fifth or subsequent OWI conviction were that of a Class H felony, a maximum sentence of a \$10,000 fine and six years' imprisonment (three years in confinement and three years in extended supervision). Multiple convictions beyond that point carried the same maximum penalty.

**Increased sentences.** Under Act 111, a fifth or sixth OWI conviction will remain a Class H

felony, but the act applies more severe penalties beyond the sixth conviction.

Under the new law, a seventh, eighth, or ninth conviction will become a Class G felony with a maximum sentence of a \$25,000 fine and 10 years' imprisonment (five years in confinement and five years of extended supervision). A tenth or subsequent conviction will become a Class F felony, with a maximum sentence of a \$25,000 fine and 12.5 years' imprisonment (7.5 years of confinement and five years of extended supervision).

**Increased surcharge.** Act 111 also increases the OWI "driver improvement surcharge" from \$355 to \$365, and alters the distribution of that surcharge.

The act reduces the percentage of the surcharge the county retains from 61.5% to 60%, increasing the state share from 38.5% to 40%. From the state share, the state's Safe Ride Program will receive 9.75%, up from 3.76% before Act 111.

The net effect of the change is that almost all of the \$10 increase goes to the Safe Ride Program appropriation account. In dollar terms, the county share increases very slightly from about \$218.33 to \$219.00. The state share rises from about \$136.68 (including \$5.14 for Safe Ride) to \$146.00 (including \$14.24 for Safe Ride).

### INITIAL APPLICABILITY

Act 111 first applies to violations occurring on the act's effective date of April 2, 2008, but does not preclude the counting of prior violations for administrative or sentencing purposes.

### MORE INFORMATION

**More information.** View a copy of 2007 Wisconsin Act 111 at [www.legis.state.wi.us/2007/data/acts](http://www.legis.state.wi.us/2007/data/acts)

**OWI AND RELATED ALCOHOL AND DRUG PENALTIES<sup>1</sup> (through 2007 Act 111, April 2, 2008)**

| Conviction <sup>2</sup>   | Fine or Forfeiture <sup>3,4</sup>  | Jail or Prison <sup>3</sup>   | Suspension or Revocation <sup>2,3</sup>   | Occupational License <sup>5</sup>  | Alcohol Assessment <sup>6</sup> | Demerit Points <sup>7</sup> |
|---|--|---|---|--|---------------------------------|-----------------------------|
| OWI, First<br>[346.63 (1) (a),(am),(b)]<br>(Per se AC > .08)<br>[340.01 (46m) (a)]<br>[340.01(50m)] | \$150-\$300 [346.65 (2) (am) 1.] (plus \$365 surcharge) <sup>11</sup><br>[346.655]   | No  | 6-9 month revocation<br>[343.30 (1q) (b) 2.]  | Immediately [343.30 (1q) (b) 2.]   | Yes <sup>11</sup>               | 6                           |
| OWI, Second <sup>8</sup> (Per se AC > .08)  | \$350-\$1,100<br>[346.65 (2) (am) 2.]<br>(plus \$365 surcharge)  | 5 days to 6 months<br>[346.65 (2) (am) 2.]  | 12-18 month revocation<br>[343.30 (1q) (b) 3.] Vehicle immobilized or equipped with IID <sup>14</sup>                                   | After 60 days <sup>15</sup> . After 12 months if 2 or more offenses within 5 years [343.30 (1q) (b) 3.], [343.307 (1)] | Yes                             | 6                           |
| OWI, Third <sup>8</sup> (Per se AC > .08)   | \$600-\$2,000 <sup>12</sup><br>[346.65 (2) (am) 3.]<br>(plus \$365 surcharge)  | 30 days to 1 year<br>[346.65 (2) (am) 3.]   | 2-3 year revocation<br>[343.30 (1q) (b) 4.] Vehicle immobilized or equipped with IID or may be seized [346.65 (6) (a) 1.] <sup>14</sup> | After 90 days <sup>15</sup> . After 12 months if 2 or more offenses within 5 years [343.30 (1q) (b) 4.]                | Yes                             | 6                           |
| OWI, Fourth <sup>8</sup> (Per se AC > .02) [340.01 (46m) (c)]                                       | \$600-\$2,000 <sup>12</sup><br>[346.65 (2) (am) 4.]<br>(plus \$365 surcharge)  | 60 days to 1 year<br>[346.65 (2) (am) 4.]   | 2-3 year revocation<br>Vehicle immobilized or equipped with IID or may be seized <sup>14</sup>  | After 90 days <sup>15</sup> . After 12 months if 2 or more offenses within 5 years                                     | Yes                             | 6                           |
| OWI, Fifth or Sixth <sup>8</sup> Per se AC > .02)   | \$600-\$10,000 <sup>12</sup><br>[346.65 (2) (am) 5.]<br>[939.50 (3) (h)]<br>(plus \$365 surcharge)                             | 6 months to 6 years<br>[346.65 (2) (am) 5.]<br>[939.50 (3) (h)]   | 2-3 year revocation<br>Vehicle immobilized or equipped with IID or may be seized <sup>14</sup>  | After 90 days <sup>15</sup> . After 12 months if 2 or more offenses within 5 years                                     | Yes                             | 6                           |
| OWI, Seventh, Eighth, or Ninth <sup>8</sup> (Per se AC > .02)                                       | Up to \$25,000 <sup>12</sup><br>[346.65 (2) (am) 6.]<br>[939.50 (3) (g)]<br>(plus \$365 surcharge)                             | Up to 10 years<br>[346.65 (2) (am) 6.]<br>[939.50 (3) (g)]  | 2-3 year revocation<br>Vehicle immobilized or equipped with IID or may be seized <sup>14</sup>  | After 90 days <sup>15</sup> . After 12 months if 2 or more offenses within 5 years                                     | Yes                             | 6                           |
| OWI, Tenth or more <sup>8</sup> (Per se AC > .02)   | Up to \$25,000 <sup>12</sup><br>[346.65 (2) (am) 7.]<br>[939.50 (3) (f)]<br>(plus \$365 surcharge)                             | Up to 12.5 years<br>[346.65 (2) (am) 7.]<br>[939.50 (3) (f)]  | 2-3 year revocation<br>Vehicle immobilized or equipped with IID or may be seized <sup>14</sup>  | After 90 days <sup>15</sup> . After 12 months if 2 or more offenses within 5 years                                     | Yes                             | 6                           |
| Causing Injury While OWI [346.63 (2) (a)]   | \$300-\$2,000 <sup>12</sup> [346.65 (3m)]<br>(plus \$365 surcharge)  | 30 days to 1 year<br>[346.65 (3m)]  | 1-2 year revocation <sup>14</sup><br>[343.31 (3) (e)]   | After 60 days After 12 months if 2 or more offenses within 5 years [343.31 (3m) (b)]                                   | Yes                             | 6                           |
| Causing Great <sup>9</sup> Bodily Harm by OWI [940.25 (1)]  | Up to \$25,000 <sup>2,12,13</sup><br>[939.50 (3) (f)]<br>(plus \$365 surcharge)  | Up to 12.5 years <sup>2,13</sup><br>[939.50 (3) (f)]  | 2 year revocation <sup>9,13,14</sup><br>[343.31 (3) (f)]  | After 120 days After 12 months if 2 or more offenses within 5 years [343.31 (3m) (a)]                                  | Yes                             | 6                           |
| Homicide While OWI <sup>9</sup> [940.09 (1)]  | Up to \$100,000 <sup>2,12,13</sup><br>[939.50 (3) (c),(d)]<br>(plus \$365 surcharge)   | Up to 25 years or, <sup>2,13</sup> if one or more prior OWI-related offense, up to 40 years<br>[930.50 (3) (c),(d)] | 5 year revocation <sup>9,13</sup><br>[343.31 (3) (c)]   | After 120 days After 12 months if 2 or more offenses within 5 years  | Yes                             | 6                           |
| <b>Chemical Test Refusal<sup>2</sup></b>  | <b>Suspension or Revocation<sup>3</sup></b>  |   | <b>Occupational License<sup>5</sup></b>   |  |                                 |                             |
| First [343.305 (9)]   | 1 year revocation [343.305 (10) (b) 2.]  |   | After 30 days [343.305 (10) (b) 2.]   | Yes  | 0                               |                             |
| Second <sup>8</sup>   | 2 year revocation [343.305 (10) (b) 3.] Vehicle immobilized or equipped with IID [343.305(10m)]                                |   | After 90 days <sup>15</sup> After 12 months if 2 or more offenses within 5 years [343.305 (10) (b) 3.]                                  | Yes  | 0                               |                             |
| Third or greater <sup>8</sup>   | 3 year revocation [343.305 (10) (b) 4.] Vehicle immobilized or equipped with IID or may be seized <sup>7</sup> [343.305 (10m)] |   | After 120 days <sup>15</sup> After 12 months if 2 or more offenses within 5 years [343.305 (10) (b) 4.]                                 | Yes  | 0                               |                             |
| Administrative Suspension for Prohibited Alcohol Concentration [343.305(7)]                         | 6 month suspension [343.305 (7) (a)]   |   | Occupational license, immediately [343.305 (8) (d)]   | ---  | 0                               |                             |
| Open Container (Driver or passenger) <sup>10</sup> [346.935]  |  | \$100 forfeiture [346.95 (2m)]  |   |  |                                 | 0                           |

<sup>1</sup>2003 Wisconsin Act 97 prohibits a person from operating a motor vehicle with any detectable presence of a restricted controlled substance in his or her bloodstream. Violations are treated as OWI, and are subject to the same penalties as OWI.

<sup>2</sup>If offense is committed while operating a commercial motor vehicle, then penalties will include a 1 year commercial drivers license disqualification (3 year disqualification if transporting hazardous materials, or lifetime disqualification for 2nd offense since July 1, 1987).

<sup>3</sup>Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI if a person under 16 years of age was in the vehicle at the time of the offense. For third and subsequent OWI offenses, fines are increased according to alcohol concentration (AC). [346.65(2)]

<sup>4</sup>Additional fees, assessments and surcharges will also apply except for first OWI offense where AC > .08 and < .10. [165.755(1), 302.46, 346.655(1), 757.05(1), 814.63(1), 814.65(1), 814.85(1), 814.86(1)]

<sup>5</sup>Persons whose operating privileges have been suspended or revoked may apply for an occupational license to drive between home and work or school. [343.10]

<sup>6</sup>Assessment of the offender's use of alcohol or controlled substances is required except for first offenses where AC > .08 and < .10. [343.30 (1q) (c)]

<sup>7</sup>Newly licensed and unlicensed drivers may be subject to increased demerit points.

<sup>8</sup>Generally, second offenses are counted within a 10-year period. Third and subsequent are counted within an individual's lifetime dating back to 1/1/89. The 10-year and lifetime periods are measured from the date of refusal or violation that resulted in conviction. [346.65 (2) (am) 1-5, 343.305 (10) (b) 3-4, Act 237-s.9348 (2f)]

<sup>9</sup>If repeat offender, court may immobilize, equip with an ignition interlock device (IID), or seize vehicle. [940.09(1d), 940.25(1d)]

<sup>10</sup>2005 Wisconsin Act 413 allows police to request test sample from any driver

involved in an accident causing injury or death, without probable cause to believe the driver was OMVWI or underage.

<sup>11</sup>No OWI surcharge and no assessment of offender's alcohol or controlled substance use for first offense prohibited alcohol content [346.63(1) (b)] if AC > .08 and < .10. An OWI surcharge and an assessment are required for all first prohibited alcohol convictions where AC > .10 and for all first OWI convictions. [346.655(1), 343.30(1q) (c)1]

<sup>12</sup>For third or subsequent OWI offenses, fines are increased according to AC.

<sup>13</sup>Fines, forfeitures, jail, and revocations or suspensions are doubled if a pregnant woman is in the vehicle at the time the driver committed the offense.

<sup>14</sup>The vehicle owned by the offender and used in the offense may be immobilized or equipped with IID or the offender's operating privileges may be restricted to vehicles equipped with IID. [343.301 (1) (a) and (2) (a)] For second or subsequent offenses, if there are 2 or more enumerated offenses committed within any 5 years such operating privilege restrictions are mandatory and all vehicles titled or registered in the offenders' name must be immobilized or equipped with IID. [343.301(1) (a) and (2) (a), 343.305(10m)] For third or subsequent the vehicle may be seized and forfeited. [346.65 (6)(a) 1.]

<sup>15</sup>Absolute sobriety is mandatory for an occupational license for persons with two or more suspensions, revocations, or convictions. Persons with two or more suspensions, revocations, or convictions counted under 343.307(1), must complete assessment and be in compliance with a driver safety plan to be eligible for an occupational license.

Source: Wisconsin Department of Transportation, Bureau of Transportation Safety; DOT, Office of General Counsel, February 1, 2006. Updated by Wisconsin Legislative Reference Bureau, through 2007 Wisconsin Act 111 (May 2008).