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# Legislative Briefs

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## INCREASED PENALTIES AND IGNITION INTERLOCK REQUIREMENTS FOR DRUNK DRIVING OFFENSES

2009 Wisconsin Act 100 established a new requirement for ignition interlock devices and increased several penalties relating to operating a motor vehicle while intoxicated.

The bill, which originated as 2009 Senate Bill 66, introduced by Senators Jim Sullivan and Jeffrey Plale and cosponsored by Representative Josh Zepnick, was signed by Governor Jim Doyle on December 22, 2009. It generally takes effect on July 1, 2010. (Technical changes made by 2009 Wisconsin Act 121, enacted February 11, 2010, also go into effect on July 1, 2010.)

### BACKGROUND

Drunk driving has been illegal in Wisconsin for just short of 100 years and, since 1911, the state has enacted numerous additional restrictions and stricter penalties as lawmakers and the general public have become increasingly concerned about the dangers of drunk driving. But many observers point out that Wisconsin's laws have in some respects not kept pace with drunk driving laws elsewhere in the United States.

Recent debate has focused on the criminal status of a first violation. Advocates of having an offender receive a criminal record for a first violation point to the fact that most states make a first violation a misdemeanor criminal offense, with Wisconsin being one of six or seven states plus the District of Columbia in which a first violation is a civil offense. (The number of states depends on how one counts New York State, where "Driving while Ability Impaired" is an infraction, but "Driving while Intoxicated" is a misdemeanor.) Those who oppose changing

that aspect of current law, in which only repeat offenders are subject to criminal prosecution, point to the added costs and caseloads for courts, prosecutors, and public defenders because more motorists accused of drunk driving will choose to go to trial if the stakes are higher. Opponents of criminalization also note that arrest rates increased and it became easier to obtain convictions after Wisconsin changed the law in 1972 to change a first violation from a criminal to a civil offense.

Other topics in the debate over drunk driving include increases in penalties for repeat offenders, use of ignition interlock devices, use of alternative sentencing and treatment options, and funding sources to pay for increased enforcement and punishment costs.

### CHANGES RESULTING FROM ACT 100

**Criminal penalties.** Act 100 did not change the general penalty for first offense operating while intoxicated (OWI) from a civil forfeiture and other sanctions to a criminal misdemeanor unless a minor younger than age 16 is in the motor vehicle at the time of the violation. The new penalty for OWI with a child in the motor vehicle will increase to a criminal fine (rather than a civil forfeiture, as in current law) of \$350-\$1,100 plus imprisonment ranging from five days to six months.

Act 100 also significantly increases penalties for third and fourth offense OWI. The fine remains at \$600-\$2,000 for third offense, but increases the minimum imprisonment from 30 days to 45 days, with the maximum remaining at one year. A fourth offense with a prior offense within five years, however, will become a Class

H felony instead of a misdemeanor. The maximum fine will increase from \$2,000 to \$10,000, and the term of imprisonment will increase from 60 days to one year, to six months to six years, with the six years divided between three years' prison and three years' extended supervision.

OWI causing injury by a person with a prior conviction also changes from a misdemeanor to a Class H felony, with a maximum \$2,000 fine and up to six years' imprisonment, with both doubled if a minor was in the motor vehicle.

The law also increases the minimum period of confinement for serial offenders from the current 48 consecutive hours for all criminal OWI offenders, to a minimum of three years for seventh, eighth, and ninth offenses and a minimum of four years for a 10th or subsequent offense.

**Ignition interlock device (IID).** Under current law, a judge has the option to order that a second-time OWI offender be limited to operating motor vehicles with an IID installed and to pay the costs of installation and monitoring. For a third or subsequent offense within five years an IID is mandatory (unless the person's motor vehicles were immobilized or seized). Act 100 eliminates the immobilization and seizure options, and requires an IID for all repeat offenders, including second offense. It also requires an IID for first offenders who had a blood alcohol content (BAC) of 0.15 or higher, and creates a \$50 IID surcharge in addition to the imposition of costs of installation and monitoring.

Under current law, a hardship provision allows a judge to order an IID for only some rather than all of a person's motor vehicles. (The operating privilege is still limited to a motor vehicle with an IID installed.) The hardship exemption in the new law will reduce the installation and monitoring charges to one-half of the full cost for offenders whose income is at or below 150% of the federal poverty level. The \$50 surcharge is not waived. Offenders with incomes above 150% of the poverty level must

pay the \$50 surcharge and the full installation and monitoring costs. Penalties for first offense disconnecting, tampering with, or removing an IID increase from a forfeiture under current law to a fine and a maximum of six months' imprisonment under the new law. Failure to install an IID as ordered will also become a violation.

All persons subject to an IID order will be subject to a 0.02 BAC standard. Under current law that 0.02 standard applies only to persons with three or more OWI offenses.

**Alternative sentencing.** 2005 Wisconsin Act 389 created a pilot sentencing program in Winnebago County that reduced the period of imprisonment for second and third offenders who successfully complete a drug and alcohol treatment program. Act 100 extends this option to any county that wishes to offer it, and also makes it available for fourth-time offenders.

**Other provisions.** Act 100 eliminates certain exemptions for a first OWI offense with a BAC under 0.10. When Wisconsin reduced its general prohibited alcohol concentration from 0.10 to 0.08, it exempted first-time offenders with a BAC in the lower range between the old and the new levels from certain penalty surcharges and alcohol assessment requirements. Act 100 eliminates these exemptions previously granted for less severe violations.

Act 100 also includes several provisions relating to occupational licenses, revocation periods, probation, increased penalty surcharges and other fees, increased appropriations, and various "technical" changes.

#### **FOR MORE INFORMATION**

For a copy of Act 100, see the hyperlink in the bill history located at:  
<http://www.legis.state.wi.us/2009/data/SB66hst.html>. That page also has a hyperlink to a detailed comparison of current law with Act 100, prepared by the Legislative Council.