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# Informational Memorandum

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## AN HISTORICAL SUMMARY OF WISCONSIN'S DRUNK DRIVING LEGISLATION

Drunk driving has been illegal in Wisconsin since 1911. The statutory provision on age and speed limits for driving included language that "no intoxicated person shall operate, ride or drive any automobile, motor cycle or other similar motor vehicle along or upon any public highway of this state." The prohibition on drunk driving evolved over the succeeding decades, with an increasing number of additional restrictions and penalties.

Chapter 534, Laws of 1949, created statutory language providing for chemical testing for intoxication within two hours of arrest. That law established a three-level standard for determining whether the results indicated intoxication. A result of 0.05% or less by weight of alcohol in the person's blood was *prima facie* evidence that the person was not under the influence of an intoxicant. More than 0.05% and less than 0.15% blood alcohol concentration (BAC) was admissible as evidence relevant to intoxication, but did not have any *prima facie* effect. A blood alcohol level of 0.15% or more was *prima facie* evidence of intoxication, but was not sufficient for finding the person guilty of being under the influence of intoxicants without corroborating physical evidence.

Chapter 383, Laws of 1969, first created a driver's implied consent to chemical tests for intoxication. Refusal of a required chemical test meant an automatic 60 days' license suspension. If the person was ultimately convicted of drunk driving, the fact of refusal carried an additional penalty of two days in jail on nonworking days and a mandatory one-year revocation.

Chapter 102, Laws of 1973, lowered the 1949 standards from 0.15% to 0.10% between the middle and upper tiers described above.

Chapter 193, Laws of 1977, created the presumption that a BAC of 0.10% or more was sufficient evidence that a person was under the influence of an intoxicant, without a requirement for corroborating evidence.

Chapter 20, Laws of 1981, specifically made driving with a 0.10% BAC illegal. Before this *per se* law was enacted, a 0.10% BAC was considered sufficient evidence to prove prohibited intoxication, but was not technically in itself illegal.

1985 Wisconsin Act 337, the law that increased the legal minimum drinking age to 21, also made changes to drunk driving laws. It provided "aggravated drunk driving" penalties for driving with a BAC of 0.20% or more, increased license sanctions and waiting periods for occupational licenses, and required community service for first-time offenders.

1987 Wisconsin Act 3 repealed or revised some of the drunk driving provisions enacted as part of 1985 Act 337. It repealed the aggravated drunk driving penalties, changed the revocation provision for first-time offenders back to a suspension, and made community service optional rather than mandatory.

1989 Wisconsin Act 105 created stricter drunk driving provisions for commercial drivers in response to federal legislation, reducing the prohibited BAC to 0.04% for operating commercial motor vehicles and creating other penalties.

1991 Wisconsin Act 277 made several major changes aimed at repeat offenders, including a 0.08% standard for persons with two or more prior offenses; adding vehicle seizure, immobilization, or ignition interlock provisions; longer incarceration for causing death by OWI; and longer record retention requirements.

**1993 Wisconsin Act 317** increased the period for counting OWI offenses from five years to 10 years for persons with two or more prior offenses.

**1997 Wisconsin Act 237** required that records of OWI violations dating from January 1, 1989, be permanently maintained if a person has two or more suspensions, revocations, or convictions within a 10-year period. Prior to the 1997 law, OWI convictions records generally were "wiped clean" after a maximum of 10 years with no violations.

**1999 Wisconsin Act 109** increased penalties for third or subsequent OWI convictions involving elevated BAC levels. Minimum and maximum fines doubled for a 0.17% to 0.199% BAC, tripled for 0.20% to 0.249%, and quadrupled for 0.25% or higher.

**2003 Wisconsin Act 30** reduced the minimum prohibited BAC while operating a motor vehicle, all-terrain vehicle, snowmobile, or boat from 0.10% to 0.08% in response to the possibility of reductions in federal highway aid to Wisconsin. The reduction applied to persons with no or one prior OWI conviction, effective September 30, 2003. (It was already 0.08% or lower for repeat offenders with two or more prior convictions.) The law also required the Wisconsin Department of Transportation to purge after 10 years the record of a violation counted as a first offense if the violation was for a BAC of more than 0.08% but less than 0.10% and the driver has no subsequent convictions during that 10-year period. (The provision does not apply to someone who has a commercial driver's license or was driving a commercial motor vehicle.) Otherwise, conviction records are maintained permanently.

**2005 Wisconsin Act 8** allows a court to consider, in any drunken driving hearing, the fact that a person had a prohibited blood alcohol concentration to be *prima facie* evidence that the person was under the influence of an intoxicant.

**2005 Wisconsin Act 317** allows DOT to assess four demerit points against the driver's license of a person who is younger than the legal drinking age but who operates a motor

vehicle with alcohol in his or her blood. The act also increased the forfeiture amount from \$10 to \$200 for a violation.

**2005 Wisconsin Act 389** created a pilot program in Winnebago County for sentencing persons convicted of certain offenses involving operating a motor vehicle while intoxicated. It allows the county to reduce the minimum term of imprisonment for a person who completes a period of probation and undergoes alcohol or other drug counseling.

**2005 Wisconsin Act 413** allows a law enforcement officer to request a driver who is involved in an accident that results in death or great bodily harm to take a blood or breath test for the presence or quantity of alcohol, controlled substances, controlled substance analogs, or other drugs, if the officer detects on the driver the presence of any of those substances.

**2007 Wisconsin Act 94** restricts a person with an occupational driver's license to vehicles equipped with an ignition interlock device if the person has two or more violations relating to operating a motor vehicle while intoxicated and a court requires the person to use an ignition interlock device.

**2007 Wisconsin Act 111** increased penalties for repeat drunken driving offenders. 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. Act 111 created more severe penalties beyond the sixth conviction. It made a seventh, eighth, or ninth conviction 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 is now 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). Act 111 also increased the OWI "driver improvement surcharge."