



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2019 Assembly Bill 15

**Assembly Substitute
Amendment 1 and
Assembly Amendment 1 to
Substitute Amendment 1**

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BACKGROUND

Very generally, under current law, the penalty for a first-offense of operating while intoxicated (OWI) is a civil forfeiture and second and subsequent OWI offenses are subject to criminal penalties. Because a first-offense OWI is a civil offense, it may be prosecuted either as a violation of state law or as a city, village, or town (municipal) or county ordinance violation adopted in strict conformity thereof.¹

Also, in general, if a person is arrested for a first-offense OWI and receives a traffic citation for the violation, the person generally may choose to either: (1) appear in person before the court at the initial appearance to enter a plea to the citation or request a continuance; or (2) pay a deposit for the violation, which serves as the person's plea of no contest. However, a municipality may, by ordinance, require that the person appear in person before a municipal court at an initial appearance for a first-offense OWI. Also, state Supreme Court rules authorize a person to appear by an attorney, rather than in person, in every court action or proceeding in civil or criminal misdemeanor cases.

If a person chooses to **pay the deposit** and **does not appear** at the initial appearance, the court may either accept the plea of no contest and enter a default judgment accordingly, or issue a summons for the person to appear. If the person does not appear in response to the summons, the court may issue a warrant for the person's arrest.

¹ While circuit courts have jurisdiction over all actions brought for violations of traffic regulations and municipal courts have jurisdiction over actions brought for violations of traffic ordinance violations, if the violation is prosecuted as a municipal ordinance violation and a municipality has a municipal court, then the first-offense OWIs will be heard in municipal court. In all other instances, the violation will be heard in circuit court.

If the person does **not pay a deposit** and **does not appear** at the initial appearance, the court may deem the nonappearance to be a plea of no contest and enter a default judgment against the person. A circuit court may decide, however, to issue an arrest warrant instead for the person's failure to appear. Similarly, a municipal court may decide instead to issue a summons for the person's failure to appear, and if the person fails to appear in response to the summons, then issue an arrest warrant.

Also, all prior OWI convictions are generally counted for purposes of determining the penalty except for determining the penalty for second-offense OWIs. For second-offense OWI, if the first OWI offense occurred within 10 years immediately preceding the second offense, the penalty for the second offense is a misdemeanor. However, if the first OWI offense occurred 10 or more years prior to the date of the second offense, the penalty for the second offense is a civil forfeiture, which is the same as the penalty for a first offense.

2019 ASSEMBLY BILL 15

2019 Assembly Bill 15 requires a person who receives a citation for a first-offense OWI to appear in person for the initial appearance and may not pay a deposit as a way of entering a plea of no contest. If the person fails to appear in person, the circuit court or municipal court, whichever is applicable, must: (1) enter a default judgment against the person; (2) impose the applicable penalties; and (3) impose a \$300 surcharge on the person's failure to appear in court.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 (ASA 1) retains the provisions of the bill described above and also eliminates the provision that allows a second-offense OWI to be penalized as a civil forfeiture if the first offense occurred 10 years or more prior to the second offense. Under ASA 1, all second-offense OWIs are subject to misdemeanor penalties, regardless of when the first offense occurred.

ASSEMBLY AMENDMENT 1 TO ASA 1

Assembly Amendment 1 (AA 1) to ASA 1 requires that the amount of the \$300 surcharge that is collected from a person who fails to appear in person at the initial appearance must be transmitted by the circuit or municipal court, whichever is applicable, to the county treasurer and may only be used for substance use prevention and treatment.

BILL HISTORY

ASA 1 was introduced by Representative Ott on April 30, 2019, and AA 1 to ASA 1 was introduced on May 1, 2019, by Representatives Crowley, Spreitzer, and Emerson. On May 31, 2019, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of AA 1 to ASA 1; adoption of ASA 1, as amended; and passage of the bill as amended, all by subsequent votes of Ayes, 9; Noes, 0.

MS:jal