

---

# Wisconsin Legislative Council

## AMENDMENT MEMO

---



**Memo published:** September 26, 2019

**Contact:** Amber Otis, Staff Attorney

**2019 Senate Bill 7**

**Senate Substitute  
Amendment 1**

### 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.<sup>1</sup>

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.

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.

---

<sup>1</sup> 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.

## **2019 SENATE BILL 7**

2019 Senate Bill 7 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.

## **SENATE SUBSTITUTE AMENDMENT 1**

Senate Substitute Amendment 1 retains the provisions of the bill described above and makes two additional changes to the bill.

First, the substitute amendment requires that the \$300 surcharge 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.

Second, the substitute amendment eliminates the provision under current law 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 the substitute amendment, all second-offense OWIs are subject to misdemeanor penalties, regardless of when the first offense occurred.

## **BILL HISTORY**

Senator Darling offered Senate Substitute Amendment 1 on June 13, 2019. On September 25, 2019, the Senate Committee on Judiciary and Public Safety recommended adoption of Senate Substitute Amendment 1, and passage of the bill, as amended, on votes of Ayes, 5; Noes, 0.

AO:ty