



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 127
[2017 Assembly Bill 390]

Operating After Revocation

2017 Wisconsin Act 127 removes the “knowingly” element from the offense of operating after revocation (OAR). In addition, the Act allows, rather than requires, a court to consider certain factors in imposing a sentence for OAR.

KNOWLEDGE ELEMENT

Background

Under prior law, an element of the OAR offense was that the person **knowingly operates** a motor vehicle upon any highway in this state during the period of revocation or in violation of any restriction on an occupational license issued to the person.

If a person violates the OAR offense, and in the course of the violation, causes great bodily harm or death, the offense is a misdemeanor, except that **if the person knows at the time of the violation that his or her operating privilege has been revoked**, the offense is a felony. In *State v. Villamil*, the Wisconsin Supreme Court held that knowledge of revocation status is an element for both the misdemeanor and felony offenses because the underlying OAR offense contains a knowledge element. [2017 WI 74, ¶38.]

The Act

The Act deletes “knowingly” from the OAR offense and provides that a person’s knowledge that his or her operating privilege is revoked is not an element of the offense. In addition, as a result, knowledge of revocation status is not an element of the misdemeanor offense of causing great bodily harm or death while violating the OAR offense.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

SENTENCING CONSIDERATIONS

Background

State law contains the following factors for a court to consider in imposing a sentence for an OAR offense: (1) the aggravating and mitigating circumstances in the matter; (2) the class of vehicle operated by the person; (3) the number of prior convictions of the person for OAR and related violations within the five years preceding the person's arrest; (4) the reason that the person's operating privilege was revoked, or the person was disqualified or ordered out of service, including whether the person's operating privilege was revoked for an operating while intoxicated (OWI) offense; and (5) any convictions for moving violations arising out of the incident or occurrence giving rise to sentencing for the OAR.

Under prior law, the statutes provided that the court **shall** review the record and consider the five factors, described above. In *Villamil*, the Supreme Court determined that a court is required to consider the factors and "that the record at sentencing must demonstrate that the circuit court considered the factors enumerated in the statute." [2017 WI 74, ¶60.]

The Act

The Act replaces "shall" with "may." Thus, under the Act, the court **may** review the record and consider the five factors, described above.

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