

2005 DRAFTING REQUEST

Bill

Received: 12/15/2004

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing:

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: Drunk Driving - procedures

Extra Copies:

Submit via email: YES

Requester's email: Rep.Gundrum@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibited alcohol concentration

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	phurley 12/20/2004	jdye 12/21/2004	pgreensl 12/21/2004	_____	mbarman 12/21/2004	lemery 02/04/2005	

FE Sent For:

<END>

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/?	phurley	12/21 JLD	12/21 P8	12/21 P8 / P8			

FE Sent For:

<END>

Hurley, Peggy

From: Gundrum, Mark
Sent: Thursday, October 28, 2004 8:01 PM
To: Hurley, Peggy; Dsida, Michael
Cc: Churchill, Jolene
Subject: FW: OWI presumption of 885.235

Peggy and Mike,

Please take a look at this e-mail from a friend of mine who is also a long-time prosecutor. Did we miss something here when this statute was revised???

-----Original Message-----

From: Krueger, Dennis
Sent: Friday, October 22, 2004 12:49 PM
To: Gundrum, Mark
Subject: FW: OWI presumption of 885.235

Also look at 940.09 which cross references 340.01(46m) what is my prohibited pac for homicide or gbh with a pac. The statute does not say.

-----Original Message-----

From: Krueger, Dennis
Sent: Friday, October 22, 2004 12:44 PM
To: Gundrum, Mark
Cc: Madson, Steve
Subject: OWI presumption of 885.235

When the statute was amended a huge whole was created in 885.235 which makes the prosecutor's job more difficult than it used to be:

Before the revision if a person was charged with homicide while under the influence and pac. The prosecution has a presumption that if the test was above the prohibited limit (.1 then) the test is given a prima facie presumption of being under the influence without requiring an expert to prove the connection between pac and impairment. With the revision that presumption is taken away. Also if a person is a 4th or more and has a pac of .08 the presumption of impairment has also vanished. Same problem with CDL

You guys need to make this fix asap

> -----Original Message-----
> From: Ginkowski, Richard
> Sent: Tuesday, November 09, 2004 11:49 AM
> To: Buker, Kate; *DA DISTRICT ATTORNEYS
> Subject: RE: 3RD & higher OWI test admissibility HELP!
>
> See 885.235(1g)(c) and (cd)
>

> -----Original Message-----
> From: Buker, Kate
> Sent: Tuesday, November 09, 2004 11:41 AM
> To: *DA DISTRICT ATTORNEYS
> Subject: 3RD & higher OWI test admissibility HELP!
>

> I'm in the middle of a jury trial on an OWI 4th. Michelle
Tjader has moved to exclude my .14 test result because 885 Wis Stat only
permits admission of tests without an expert on first and second offenses.
The judge also says the jury instructions only instruct the jury about the
BAC level being prima facie evidence of impairment on first and second
offenses. H E L P, please.

>
> Pitiful Kate Buker, Rock County

Jld

2005 BILL

in
12-20-04
Joan

Gen

1 AN ACT ...; relating to: evidence of being under the influence of an intoxicant.

Analysis by the Legislative Reference Bureau

Under current law, a person may not operate a motor vehicle while under the influence of an intoxicant (OWI) or operate a motor vehicle with a prohibited alcohol concentration. 2003 Wisconsin Act 30 changed the prohibited alcohol concentration, for most drivers, from 0.10 to 0.08. Before 2003 Wisconsin Act 30, that fact that a person had an alcohol concentration that was over the legal limit could be admitted as prima facie evidence that the person was under the influence of an intoxicant. Under 2003 Act 30, the fact that a person had an alcohol concentration that was over the legal limit may only be admitted as prima facie evidence that the person was under the influence of an intoxicant if the person has 2 or fewer prior OWI-related convictions.

Wisconsin *

the

two

Under this bill, the fact that a person had an alcohol concentration that is over the legal limit may be admitted as prima facie evidence that the person was under the influence of an intoxicant, regardless of the number of prior OWI-related convictions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 885.235 (1g) (c) of the statutes is amended to read:

BILL

SECTION 1

3 885.235 (1g) (c) ~~In cases involving persons who have 2 or fewer prior~~
4 ~~convictions, suspensions, or revocations, as counted under s. 343.307 (1), the~~ [✓]The fact
1 that the analysis shows that the person had an alcohol concentration of 0.08 or more
2 is prima facie evidence that he or she was under the influence of an intoxicant and
3 is prima facie evidence that he or she had an alcohol concentration of 0.08 or more.

History: 1971 c. 40; 1973 c. 102; 1981 c. 20, 184; 1983 a. 74, 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 399; 1989 a. 105; 1991 a. 277; 1995 a. 436, 448; 1997 a. 35, 198; 2003 a. 30, 97.

4

(END)

Emery, Lynn

From: Usealman, Kevin
Sent: Thursday, February 03, 2005 4:16 PM
To: LRB.Legal
Subject: Draft review: LRB 05-1256/1 Topic: Prohibited alcohol concentration

It has been requested by <Usealman, Kevin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-1256/1 Topic: Prohibited alcohol concentration