



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

May 12, 2009

MEMORANDUM

To: Senator Carpenter

From: Peggy J. Hurley, Senior Legislative Attorney, (608) 266-8906

Subject: Technical Memorandum to **2009 SB 102** (LRB-1372/1) by **DOT**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

CORRESPONDENCE MEMORANDUM

DT1175 97

Wisconsin Department of Transportation

Date: April 28, 2009

To: Legislative Reference Bureau

From: Richard Kleist
DMV Legislative Liaison, Department of Transportation

Subject: Technical Note for Senate Bill 102 relating to periods of revocation of driving privileges after committing certain offenses related to operating while intoxicated.

It appears that this bill intends to toll a license revocation period while the violator is imprisoned. However, it inadvertently tolls the period during which prior offenses are counted. Currently the time period used for counting a person's prior refusals or OWI-related convictions is relatively straightforward. The time period is counted backwards beginning with the date of the current refusal or OWI-related violation and goes back the period specified under the particular statute section, depending on the number of prior refusals or convictions on the record.

SB 102 changes statute sections that define how the time period is determined for counting a person's prior offenses. The proposal requires the court to notify DOT whether or not the person has been ordered imprisoned so the department may use the appropriate "count-back" period when determining the person's prior OWI-related offenses. As the proposal states, the period specified for "counting-back" in the person's driving record to determine the number of prior offenses is tolled for the duration the person has been imprisoned. The proposal doesn't limit the tolling to imprisonment related to an alcohol-related offense.

Additionally, if the imprisonment were to be related to the underlying alcohol-related offense, the offense would need to be under s. 940.09 (1) or s. 940.25, or at least a fifth-offense on an OWI-related charge before prison time can be ordered. In all three of these scenarios, the "count-back" time for the OWI-related charges indicated in this proposal is already the person's lifetime, so the tolling for the time they are imprisoned would have no affect.

SB 102 in its current language seems ambiguous and does not appear to accomplish the analysis provided with the proposal. It appears by the analysis, the desire is to toll the revocation period while a person is imprisoned, not change the method for counting prior OWI-related offenses.

The language in the bill states the time period is tolled whenever or for as long as the person is imprisoned. Does this language mean whenever they are imprisoned, such as if they were imprisoned for burglary, or just when they are imprisoned for the underlying OWI-related charge?

Also, the proposal states a person must notify the department when they have been released from prison, while the analysis states jail or prison. Clarification of the language in this area may be necessary also.

Finally, the analysis states that under this bill, the period of revocation begins on the date the person commits the OWI-related offense. Generally, the period of revocation begins on the date a person is convicted of an offense, or a later date if so ordered by the court

We appreciate your attention to these technical concerns.

Richard Kleist, WisDOT-DMV
(608) 266-1449