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## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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**2009 Wisconsin Act 100**  
[2009 Senate Bill 66]

**Operating a Motor Vehicle While  
Intoxicated**

2009 Wisconsin Act 100 makes a number of significant changes in the laws relating to operating a motor vehicle while under the influence of an intoxicant (hereafter, “OWI-related offense”). Major changes in Act 100 (with a general effective date of July 1, 2010) include:

- Making a first OWI-related offense a criminal offense if a child younger than 16 years of age is present in the vehicle at the time of the offense.
- Requiring the installation of ignition interlock devices (IIDs) for all repeat drunk drivers and for first offense drunk drivers with an alcohol concentration of 0.15 or more.
- Making a 4th OWI-related offense a felony, instead of a misdemeanor (current law), if that 4th offense occurs within five years of a prior OWI-related offense.
- Establishing minimum terms of imprisonment for 4th offense felony and 5th and subsequent OWI-related offenses.
- Permitting any county, at its option, to develop and use a program (currently permitted in Winnebago County) providing a sentencing option that allows the period of imprisonment of an OWI-related violator to be reduced if the violator successfully completes a period of probation that includes alcohol and drug treatment.
- Funding the various changes in Act 100 through general purpose revenues (GPR), increased criminal court processing fees and reinstatement of license fees, and a new IID surcharge.

The following table, prepared by Don Salm, Senior Staff Attorney, Legislative Council, based on a chart originally prepared by Jon Dyck, Fiscal Analyst, and Jere Bauer, Program

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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.state.wi.us/>.

Supervisor, Legislative Fiscal Bureau, dated October 6, 2009, compares the provisions in current law with provisions in 2009 Act 100.

**COMPARISON OF PROVISIONS IN CURRENT LAW WITH PROVISIONS IN 2009 WISCONSIN ACT 100**

**Fines, Jail Terms, and License Sanctions**

	<i>Current Law</i>	<i>2009 Wisconsin Act 100</i>
First Offense OWI (with minor passenger)	\$300 to \$600 forfeiture (civil offense—forfeiture is doubled if minor passenger).	\$350 to \$1,100 fine; 5 days to 6 months term of imprisonment (criminal offense).
Third Offense OWI	\$600 to \$2,000 fine; 30 days to 1 year term of imprisonment.	Increases minimum term of imprisonment to 45 days.
Fourth Offense OWI	\$600 to \$2,000 fine; 60 days to 1 year term of imprisonment (misdemeanor offense).	For offenders with a prior offense within previous 5 years: \$600 to \$10,000 fine; 6 months to 6 years term of imprisonment (Class H felony--3 years prison and 3 years of extended supervision).  For all other 4 <sup>th</sup> offense offenders: no change to current law.
OWI causing injury (basic OWI and commercial motor vehicle with BAC of 0.04 to 0.08)	\$300 to \$2,000 fine; 30 days to 1 year term of imprisonment (misdemeanor offense); fines and jail term doubled if there was a minor in the vehicle.	For persons with a prior OWI conviction(s): Up to \$2,000 fine; up to 6 years term of imprisonment (Class H felony); fines and prison term doubled if there was a minor in the vehicle.  For other offenders (no prior offense): same as current law.
Absolute sobriety violation	Forfeiture of \$400.	For offenders where there was a minor in the vehicle: fine of \$400 (criminal offense).  For other offenders: same as current law.
Revocation time periods		Extends the period of license revocation for an OWI offender by the number of days court sentences offender to jail or prison.
Occupational License Waiting Period	<u>2 OWI-related offenses</u> , a waiting period of 60 days;  <u>3 or more OWI-related offenses</u> , 90 days;  <u>2 or more OWI-related offenses within 5 years</u> , one year waiting period.	If 2 or more OWI-related offenses, waiting period of 45 days applicable to all.

**Probation and General Sentencing Provisions**

	<i>Current Law</i>	<i>2009 Wisconsin Act 100</i>
Minimum confinement period for multiple OWI offenders	48-consecutive-hour period (for all criminal OWI offenses).	For 7 <sup>th</sup> , 8 <sup>th</sup> , and 9 <sup>th</sup> offense: 3 years.  For 10 <sup>th</sup> offense: 4 years.  All other offenders: no change to current law.

	<i>Current Law</i>	<i>2009 Wisconsin Act 100</i>
Probation for OWI offenders	Probation allowed for 4 <sup>th</sup> offense OWI, not less than 6 months nor more than 2 years; probation not allowed for 2 <sup>nd</sup> or 3 <sup>rd</sup> offense.	Probation allowed for 2 <sup>nd</sup> and 3 <sup>rd</sup> offense OWI, in addition to 4 <sup>th</sup> offense OWI.  Maximum probation period for 4 <sup>th</sup> offense OWI increased to three years.
Pre-sentence release and stay of sentence execution for OWI offenders	Pre-sentence release and stay of execution (up to 60 days) allowed for OWI offenders.	Pre-sentence release and stay of execution prohibited for 3 <sup>rd</sup> and subsequent offense until after the minimum period of confinement is served.  There are exceptions if court finds legal cause to delay the execution of sentence or if court places person on probation.
Alternative sentencing options	In Winnebago County, 2 <sup>nd</sup> and 3 <sup>rd</sup> OWI offenders who complete probationary period that includes alcohol and other drug treatment are eligible for alternative sentencing with reduced minimum and maximum terms.	Extends Winnebago sentencing <u>option</u> to any county with a program similar to the Winnebago program.  Increases the minimum sentence for a 3 <sup>rd</sup> offense participant from 10 days to 14 days.  Sentencing option available for 4 <sup>th</sup> OWI offenders, with a minimum sentence of 29 days for participants.
Department of Corrections (DOC): Probation, Supervision, Assessment and Treatment for 2 <sup>nd</sup> and 3 <sup>rd</sup> OWI Offenders		Requires the DOC to provide probation supervision, assessment, treatment, and other community treatment options for 2 <sup>nd</sup> and 3 <sup>rd</sup> OWI offenders with no waiting list.

### Ignition Interlock Device (IID) Provisions

	<i>Current Law</i>	<i>2009 Wisconsin Act 100</i>
General provisions	IID order allowed for 2 <sup>nd</sup> or subsequent OWI offense and required (unless seizure or immobilization ordered instead) for a 2 <sup>nd</sup> or subsequent offense committed within 5 years.	IID order mandatory for all repeat OWI offenses and for a first OWI offense with a blood alcohol level of 0.15 and above; seizure and immobilization options eliminated.
Time periods	IID restriction ordered for not less than one year nor more than maximum license revocation period for the offense; time period begins when IID restriction ordered by court.	IID restriction ordered for not less than one year nor more than maximum license revocation period for the offense, <b>except</b> if the maximum revocation period is less than one year, IID restriction is one year.  Time period begins when first license is issued instead of when order is issued.  Time period for vehicle installation order is eliminated.  Court may order vehicle installation of IID immediately upon issuance of the order.
IID surcharge	No provision.	All OWI offenders for which IID ordered must pay a \$50 IID surcharge.  Counties retain the \$50 surcharge; surcharge is placed after current law surcharges in priority of collection.

	<i>Current Law</i>	<i>2009 Wisconsin Act 100</i>
Provisions for low income offenders	All offenders liable for the full cost of installation and maintenance of the device.	Offenders with a household income at or below 150% of the poverty line pay 50% of the cost of installation and maintenance. Other offenders, full cost.  DOT may not approve IID provider for business in the state if the provider does not agree to allow qualifying individuals to a payment structure equal to 50% of the full installation and maintenance cost for other offenders.
Occupational license provisions related to IIDs	No provision.	No occupational license may be issued to a person subject to an IID order unless the person submits proof that IID surcharge has been paid and that IID has been installed on every vehicle owned or registered in whole or in part by the offender.  An exception is provided for a vehicle or vehicles excluded from the IID order by a judge for reasons of financial hardship.
Enforcement and penalty provisions	Forfeiture of \$150 to \$600 for removing, disconnecting, tampering with, or otherwise circumventing the operation of an IID.	Adds failure to install an IID, as ordered, as a violation; imposes criminal fine of \$150 to \$600, 6 months imprisonment, or both for violation; IID order period extended by 6 months for violation.
Prohibited alcohol concentration	0.08 prohibited alcohol concentration, 0.02 for person with three OWI offenses; no special provision for offenders subject to an IID order.	Adds 0.02 prohibited alcohol concentration for persons subject to an IID order.
Huber Law—Proof of Compliance with IID	Huber Law allows person sentenced to county jail or confined in county jail as a sanction while the person is on extended supervision to leave jail for certain purposes (e.g., work, school, community service, treatment or counseling).	Requires OWI offender for whom judge approves Huber Law participation to submit, within 2 weeks of sentencing date, proof of compliance with order to install IID on his or her vehicles. If fail to submit proof, person may not be released under Huber Law.

### Other Provisions

	<i>Current Law</i>	<i>2009 Wisconsin Act 100</i>
Surcharges and other sanctions for OWI offenders with a blood alcohol level of between 0.08 and 0.10	Penalty surcharges, including OWI driver improvement surcharge are not levied for first-time OWI convictions if the offender had a blood alcohol concentration of between 0.08 and 0.10; no alcohol assessment required for such offenders.	Eliminates special surcharge and alcohol assessment exemptions for these offenders (the so-called “Loophole”).
Criminal Processing Fee	Upon conviction, criminal offender pays <b>\$20</b> processing fee to clerk of court. 50% retained by county, 50% to the general fund	Increases processing fee to <b>\$163</b> . County forwards 93.87% of fees it collects for deposit into general fund and retains 6.13% for use by county.

	<i>Current Law</i>	<i>2009 Wisconsin Act 100</i>
Additional Fee for Reinstatement of License	Person whose license is suspended or revoked must pay <b>\$60</b> fee to reinstate license once period of suspension or revocation is over.	Requires, in addition to current \$60 reinstatement fee, person revoked for OWI to pay <b>\$140</b> additional reinstatement fee (total of <b>\$200</b> ). Funds from additional fee deposited in the general fund.
Appropriation for state costs		DOT: no provision.  <u>Increased Appropriation:</u> District Attorneys, Director of State Courts, DOC, Department of Justice, and Office of State Public Defender: Joint Committee on Finance supplemental appropriation increased by <b>\$8.8 million</b> in 2010-11; DOA required to submit request under s. 13.10 on behalf of the agencies, above, to allocate funding.
DOC Appropriation for Community Probation Supervision and Funding Monitoring Center and Enhanced Treatment		Creates an appropriation for DOC to provide community probation supervision, to staff and fund a monitoring center, and to fund enhanced community treatment for 2 <sup>nd</sup> and 3 <sup>rd</sup> OWI offenders.  <b>\$6,600,000</b> are appropriated for this purpose in FY 2010-11.  Protects these funds from the lapse requirements under 2007 Wisconsin Act 20 and 2009 Wisconsin Act 2 (as affected by 2009 Wisconsin Act 28).
Initial Applicability		Applies to OWI-related violations or refusals that occur on or after the effective date, but does not preclude counting of other OWI-related convictions, suspensions or revocations as prior convictions, suspensions, or revocations for purposes of administrative action by DOT, sentencing by a court, or revocation or suspension of operating privilege.
General Effective Date		<b>July 1, 2010.</b>

**Effective date:** The general effective date of 2009 Wisconsin Act 100 is July 1, 2010.

**Prepared by:** Don Salm, Senior Staff Attorney

January 5, 2010 (Revised  
January 8, 2010)

DLS:jal