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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2013 Assembly Bill 68</b>	<b>Assembly Substitute Amendment 1 and Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1</b>
<i>Memo published:</i> November 20, 2013 <i>Contact:</i> Michael Queensland, Staff Attorney (266-3810)	

### Current Law

Current law prohibits operating a motor vehicle while intoxicated (OWI). OWI offenses include operating a vehicle while under the influence of an intoxicant and operating with a prohibited blood-alcohol concentration (BAC).<sup>1</sup> In most circumstances, the prohibited BAC is 0.08.

A first-offense OWI is generally a civil offense, punishable by a fine of \$150 to \$300 and license revocation for six to nine months. A first-offense OWI is a criminal offense if, at the time of the violation, the offender was transporting a passenger who was younger than 16 years old. An additional sanction applies to persons convicted of first-offense OWI who had a BAC of 0.15 or higher at the time of the offense. These offenders are required to install an ignition interlock device (IID) on their vehicles for a specified period of time.

Generally, all prior convictions for an OWI offense, or for any OWI-related violation, are counted as prior offenses for the purposes of sentencing following an OWI conviction. However, a second-offense OWI is penalized in the same way a first-offense OWI is penalized if the offender has not been convicted of an OWI within 10 years, or of causing great bodily injury or homicide by intoxicated use in his or her lifetime.

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<sup>1</sup> Generally, the prohibition against OWI is against operating under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog. It also includes operating under the influence of any other drug to a degree that renders the person incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree that renders the person incapable of safely driving. Finally, it includes operating with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood. For the sake of brevity, this memorandum simply refers to these offenses as “operating while intoxicated” or OWI.

In addition, a fourth-offense OWI is punished as a misdemeanor unless the offender committed an earlier OWI offense within five years prior to his or her fourth OWI offense. In that case, the person is guilty of a Class H felony and is subject to the same penalties as a person who commits a fifth or sixth OWI offense: a minimum fine of \$600, a six-month minimum term of imprisonment, and a six-year maximum term of imprisonment. Current law also allows, if the sentencing court is in a county that provides a treatment-based sentencing option, a person who commits a second, third, or a misdemeanor fourth OWI offense to receive a reduced minimum period of imprisonment if the person completes a probation period that includes alcohol and other drug treatment.

### **The Bill**

The bill makes a first-offense OWI a criminal offense if the offender had a BAC of 0.15 or greater at the time of the violation. The bill also increases the penalty for a second-offense OWI from a fine of \$350 to \$1,100, imprisonment for five days to six months, or both, to a fine of \$500 to \$1,500, imprisonment for 10 days to six months, or both.

### **The Substitute Amendment**

The substitute amendment does not make first-offense OWI a criminal offense if the offender had a BAC of 0.15 or greater, nor does it increase the penalty for a second-offense OWI. Instead, the substitute amendment eliminates the 10-year look-back period for second-offense OWI so that a person who commits a second-offense OWI is guilty of a misdemeanor, regardless of when his or her prior offense occurred. In addition, the substitute amendment eliminates the five-year look-back for fourth-offense OWI so that a person who commits a fourth-offense OWI is guilty of a Class H felony, regardless of when his or her third offense occurred.

The substitute amendment also eliminates, for a person convicted of fourth-offense OWI, the option for a reduced period of imprisonment based on completing a period of probation that includes alcohol and other drug treatment, currently available for certain people convicted of fourth-offense OWI as a misdemeanor.

### **Assembly Amendment 1 to the Substitute Amendment**

Assembly Amendment 1 to the substitute amendment provides a person convicted of fourth-offense OWI the option for a reduced period of imprisonment based on completing a period of probation that includes alcohol and other drug treatment.

### **Assembly Amendment 2 to the Substitute Amendment**

Assembly Amendment 2 to the substitute amendment eliminates the 10-year look-back period for second-offense OWI for purposes of determining the length of time that an offender's operating privileges are revoked.

### **Bill History**

Assembly Substitute Amendment 1 was offered by Representative J. Ott and Assembly Amendment 1 to Assembly Substitute Amendment 1 was offered by the Assembly Committee on Judiciary. On September 12, 2013, the Assembly Committee on Judiciary recommended adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1, adoption of Assembly Substitute Amendment 1, as amended, and passage of the bill, as amended, on a vote of Ayes, 9; Noes, 0.

Assembly Amendment 2 to Assembly Substitute Amendment 1 was offered by Representative J. Ott on November 1, 2013. On November 5, 2013, the Assembly voted to adopt Assembly Amendments 1 and 2 to Assembly Substitute Amendment 1, and Assembly Substitute Amendment 1, as amended, on voice votes. The Assembly passed the bill, as amended, on a vote of Ayes, 88; Noes, 7.

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