

Chapter Trans 103

HABITUAL TRAFFIC OFFENDERS

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Trans 103.01 Purpose and scope. The purpose of this chapter is to administratively interpret ch. 351, Stats., and to establish department policy and procedure relating to habitual traffic offenders and repeat habitual traffic offenders.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95.

Trans 103.02 Definitions. The words and phrases defined in ss. 340.01, 343.01 and 351.02, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Driver record" means the abstract of convictions and other information related to a driver maintained by the department in its computer database.

(2) "HTO" means habitual traffic offender.

(3) "License" means operator's license.

(4) "Major offense" means a conviction for any offense specified in s. 351.02 (1) (a), Stats.

(5) "Minor offense" means a conviction under ss. 346.63 (2m), 346.63 (5) (a), Stats., or for any offense specified in s. 351.02 (1) (b), Stats., that is not a major or petty offense.

(6) "Petty offense" means a conviction for which demerit points are not assessed under s. Trans 101.02 (5), except convictions for violation of ss. 346.63 (2m) or 346.63 (5) (a), Stats.

(7) "Release" means the action taken by the department to temporarily or permanently withdraw a suspension or revocation of an operating privilege.

(8) "Repeat HTO" means repeat habitual traffic offender.

Note: The Department's rationale for distinguishing petty offenses from other offenses is discussed in *Lewandowski v. State*, 140 Wis. 2d 405, 411 N.W.2d 146 (Ct. App. 1987).

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95.

Trans 103.03 HTO determination. (1) In determining the number of offenses accumulated during a 5-year period, the department shall use the date each violation was committed as the basis for the determination.

Note: The use of violation date rather than conviction date was upheld in *DeBruin v. State*, 140 Wis. 2d 631, 412 N.W.2d 130 (Ct. App. 1987).

(2) The department may count any combination of major and minor convictions to establish an HTO revocation under s. 351.02 (1) (b), Stats.

(3) The department may not count petty offenses for any purpose in determining whether a person is a habitual traffic offender.

(4) In determining whether to revoke a person's operating privilege, the department may not count a refusal to submit to chemical testing as a separate incident in determining HTO or repeat HTO status if the refusal arises out of the same incident as a conviction under s. 346.63 (1), Stats., or a local ordinance in conformity therewith, ss. 346.63 (2), 940.09 and 940.25, Stats., or a conviction under the law of another jurisdiction with substantially similar terms or any law enacted by a federally-recognized American Indian tribe or band in this state.

(5) Multiple offenses arising out of one occurrence may be counted as one offense under s. 351.02 (1) (d), Stats., only if the person's driver record does not show any convictions for minor or

major offenses that occurred in the 5-year period preceding the date of the multiple offenses.

(6) Convictions for violations occurring on the same date in different counties shall be presumed to have resulted from separate occurrences for purposes of s. 351.02 (1) (d), Stats.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95.

Trans 103.04 Repeat HTO determination. (1) The department shall revoke the operating privilege of a person as a repeat habitual traffic offender if the person is convicted of either:

(a) Two minor offenses committed during an HTO or repeat HTO revocation period and within one year following issuance of an occupational license to the person pursuant to s. 351.07, Stats., or

(b) One major offense or 4 minor offenses committed during an HTO or repeat HTO revocation period and within 3 years following issuance of an occupational license to the person pursuant to s. 351.07, Stats.

(2) The revocation under sub. (1) shall be imposed regardless of the type of license under which the person was operating a motor vehicle, the classification of the vehicle being operated, or whether the person's license or operating privilege was valid at the time of the offense.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95.

Trans 103.05 Effective dates. The effective date of HTO and repeat HTO revocations under this chapter shall be the earliest date determined under subs. (1) to (3) as follows:

(1) Except as provided in subs. (2) and (3), the effective date shall be the date the HTO or repeat HTO order is mailed.

(2) If all convictions that formed the basis for an HTO or repeat HTO revocation order occurred in another jurisdiction, the effective date of the HTO or repeat HTO revocation order shall be the date of the latest conviction in another jurisdiction that forms the basis of the HTO or repeat HTO revocation.

(3) If an HTO or repeat HTO revocation order is not mailed within 6 months of the date of the latest conviction that forms the basis for the HTO or repeat HTO revocation order, the effective date of the revocation is the date 6 months after the latest conviction that forms the basis for the HTO or repeat HTO revocation.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95; am. (1), r. (2) and (3), renum. (4) and (5) to be (2) and (3), Register, August, 2000, No. 536, eff. 9-1-00; reprinted to correct printing error Register, January, 2001, No. 541.

Trans 103.06 Amendments. (1) For purposes of this section, "repeat HTO window period" shall mean that period of time following the issuance of an occupational license pursuant to s. 351.07, Stats., during which a person may be subject to revocation as a repeat habitual traffic offender under s. Trans 103.04.

(2) An amended HTO order shall supersede the HTO revocation that it amends and shall state the basis for the HTO revocation as amended and the effective date of the revocation.

(3) An HTO revocation order may be amended when a person is convicted of an offense that occurred during the 5-year period following the date of the earliest offense that formed the basis for the HTO revocation order, except where the offense would make the person a repeat HTO.

Note: If the conviction qualifies the person as a repeat habitual traffic offender, the driver's operating privilege is revoked as a repeat habitual traffic offender.

(4) A repeat HTO revocation order may be amended when a person is convicted of an offense that occurred during the repeat HTO window period.

(5) An amended HTO or repeat HTO revocation order shall include the offense which prompted an amendment under sub. (2) or (3) and all offenses that were used in the original revocation order, including offenses that may have been purged from the driver's record at the time of the amendment, but excluding convictions for offenses that have been overturned or vacated or for which a revocation or suspension is stayed pending appeal.

Note: Section 343.325, Stats., requires certain license actions be stayed pending appeal.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95.

Trans 103.07 Credit for time previously served.

(1) If an HTO or repeat HTO revocation is released because of an appeal, or a court order to reopen, stay or vacate a conviction that was used as the basis for the revocation, and another HTO or repeat HTO revocation is subsequently imposed using one-half or more of the identical convictions used in the original case, the pe-

riod of revocation imposed shall be reduced by the period of revocation served under the original revocation.

(2) If an HTO or repeat HTO revocation is released because of an appeal, or a court order to reopen, stay or vacate a conviction that was used as the basis for the revocation, the person is subsequently convicted of the charge or an amended charge, and the person will continue to be classified as a habitual traffic offender under s. Trans 103.03 and s. 351.02 (1), Stats., the released HTO or repeat HTO revocation order shall be reimposed and the revocation period imposed shall be reduced by the period of revocation previously served under that revocation order.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95.

Trans 103.08 Release of repeat HTO revocations.

A repeat HTO revocation may be released if the underlying HTO or repeat HTO revocation is released and the person would no longer qualify as a habitual traffic offender or repeat habitual traffic offender.

Note: If the person would qualify as an HTO or Repeat HTO, the original revocation order may be amended under s. Trans 103.06.

History: Cr. Register, October, 1995, No. 478, eff. 11-1-95.