



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 97 [2003 Assembly Bill 458]	Operating Vehicle or Going Armed With a Detectable Amount of a Restricted Controlled Substance
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

Current Law

Under current law, a person may not operate a motor vehicle, an all-terrain vehicle (ATV), a snowmobile, or a motorboat if the person: (1) has an alcohol concentration of .08 or more in his or her blood, breath, or urine; or (2) is under the influence of an intoxicant (alcohol, drugs, or a combination of alcohol or drugs) that impairs his or her ability to operate the vehicle safely. Penalties for violating these prohibitions depend on the number of prior offenses, whether the violation injured or killed another person, and, if another person was injured, the extent of the injury.

Current law also prohibits a person from operating or going armed with a firearm while under the influence of an intoxicant and, in some circumstances, with a prohibited alcohol concentration.

Act 97

Act 97 prohibits operating a motor vehicle, ATV, snowmobile, or motorboat, or operating or going armed with a firearm, with a detectable amount of a restricted controlled substance in the bloodstream. "Restricted controlled substance" is defined as: the primary active ingredient in marijuana; a Schedule I controlled substance (for example, heroin, LSD, PCP); and cocaine. Penalties for violating the Act's prohibitions are the same as those that apply currently if a person has a prohibited alcohol concentration or is under the influence of an intoxicant.

Thus, under the Act, if one has a detectable amount of a restricted controlled substance in his or her bloodstream while operating a vehicle or going armed with a firearm there is no requirement that the person was "under the influence" of that restricted controlled substance. Evidence of a detectable amount is sufficient. It is often difficult to prove that a person who has used a restricted controlled substance was "under the influence" of that substance.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

Penalties for violating the Act's prohibitions track those that apply if the violator had a prohibited alcohol prohibition or had been under the influence of an intoxicant.

Two defenses are available if a detectable amount of a restricted controlled substance is found in the bloodstream: (1) a defense to causing death or injury if the defendant can prove the injury or death would have occurred even if the defendant had been exercising due care and did not have a restricted controlled substance in his or her blood (this is an extension of defenses available under current law); and (2) a defense to having methamphetamine, GHB, or the active ingredient of marijuana in the bloodstream if the defendant can show he or she had a valid prescription for that substance.

Effective Date: Act 97 takes effect December 19, 2003.

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December 16, 2003

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