



## Legislative Fiscal Bureau

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TO: Members  
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Comparison of Engrossed Senate Bill 66 and Engrossed Assembly Bill 283: Operating While Intoxicated

The attached table presents a comparison of the major provisions of the following:

- **Engrossed SB 66**, which was passed by the Senate on November 5, 2009.
- **Engrossed AB 283**, which was passed by the Assembly on September 17, 2009.

The attachment identifies modifications to current OWI statutes under each of the bills.

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Attachment

## ATTACHMENT

### Comparison of Major Provisions of Engrossed SB 66 and Engrossed Assembly Bill 283

#### Fines and Jail Term for Specific Offenses

	<b>Current Law</b>	<b>Engrossed SB 66</b>	<b>Engrossed AB 283</b>
First Offense OWI (with minor passenger).	\$300 to \$600 forfeiture (civil offense).	\$350 to \$1,100 fine; 5 days to 6 months term of imprisonment (criminal misdemeanor offense).	Same as Engrossed SB 66.
Third Offense OWI.	\$600 to \$2,000 fine; 30 days to 1 year term of imprisonment.	Increase minimum term of imprisonment to 45 days.	No change to current law.
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 five 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.	Same as Engrossed SB 66, except lacking a technical correction.
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.	Same as Engrossed SB 66.
Absolute sobriety violation.	Forfeiture of \$400 (civil offense).	For offenders where there was a minor in the vehicle: Fine of \$400 (criminal misdemeanor).  For other offenders: Same as current law.	Same as Engrossed SB 66.

## Probation and General Sentencing Provisions

	<b>Current Law</b>	<b>Engrossed SB 66</b>	<b>Engrossed AB 283</b>
Minimum confinement period for multiple OWI offenders; applicability of house arrest.	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.	Same as Engrossed SB 66.
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, in addition to 4 <sup>th</sup> offense OWI; maximum period of probation for fourth offense probation extended from 2 years to 3 years.	Same as Engrossed SB 66, except no change to term of probation for 4 <sup>th</sup> offense.
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.	Same as Engrossed SB 66, except lacking a technical correction.
Alternative sentencing options.	In Winnebago County, 2 <sup>nd</sup> and 3 <sup>rd</sup> offense 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 option 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; also would make sentencing option available for 4 <sup>th</sup> offense OWI offenders, with a minimum sentence of 29 days for participants.	Extends Winnebago program to all counties as Engrossed SB 66, but does not include other changes.

## Ignition Interlock Device (IID) Provisions

	<b>Current Law</b>	<b>Engrossed SB 66</b>	<b>Engrossed AB 283</b>
Applicability of IID order.	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 five years.	IID order mandatory for all repeat OWI offenses and for a 1 <sup>st</sup> OWI offense with a blood alcohol level of 0.15 and above; seizure and immobilization options eliminated.	Same as Engrossed SB 66.
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 ordered.	Operating privilege restriction time period begins when first license is issued instead of when order is issued; time period would be one year if the maximum revocation period for the offense is less than one year.	Same as Engrossed SB 66, with regard to start of restriction; no change to current law time periods.
IID surcharge.	No provision.	\$50 IID surcharge levied whenever IID restriction ordered; counties retain the \$50 surcharge.	Same as Engrossed SB 66, except that surcharge revenues placed in DOT appropriation and \$40 returned to sheriff of the county of the offense.
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; DOT may not approve IID provider for business in Wisconsin if the provider does not agree to allow qualifying individuals to make reduced payment.	Same as Engrossed SB 66, except no provision related to DOT approval of IID providers.
Occupational license provisions.	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 all vehicles subject to an IID installation order have been equipped with an IID.	Same as Engrossed SB 66, except that person must show proof that IID has been installed on every vehicle owned or registered in whole or in part by the offender (even vehicles not subject to IID order).
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, six months imprisonment, or both for violation; IID order period extended by six months for violation.	Same as Engrossed SB 66.

	<b>Current Law</b>	<b>Engrossed SB 66</b>	<b>Engrossed AB 283</b>
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.	0.02 prohibited alcohol concentration for persons subject to an IID order.	Same as Engrossed SB 66.
Eligibility for Huber Release.	No provision.	Prohibits a person from leaving jail under Huber release unless, within two weeks after a court issues an IID order, the person submits proof to the sheriff that an IID has been installed in each motor vehicle to which the order applies.	No provision.

## Licensing and Other Provisions

	<b>Current Law</b>	<b>Engrossed SB 66</b>	<b>Engrossed AB 283</b>
Revocation time periods.	License revocation period begins when ordered.	Period of license revocation is extended by the amount of the term of imprisonment.	License revocation period is tolled while a person is imprisoned.
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 1st OWI conviction if the offender had a blood alcohol concentration of between 0.08 and 0.10; no alcohol assessment required for such offenders.	Eliminate special surcharge and alcohol assessment exemptions for these offenders.	Same as Engrossed SB 66.
Waiting period after revocation for eligibility for an occupational license.	Eligibility for an occupational license begins after 60 days following the revocation for a 2 <sup>nd</sup> offense and after 90 days for a 3 <sup>rd</sup> or subsequent offense, except that if an offender commits two or more offenses within a five-year period, eligibility for an occupational license begins after one year.	Eliminates the one-year waiting period for offenders with two or more offenses within a five-year period. Reduces the current 60-day or 90-day waiting periods to 45 days	No change to current law.

## Fiscal Provisions

	<b>Current Law</b>	<b>Engrossed SB 66</b>	<b>Engrossed AB 283</b>
Beer and liquor tax revenue.	Beer and liquor tax is deposited in the general fund.	No provision.	First \$10,000,000 collected from each tax in each fiscal year credited to a new PR appropriation in the Department of Corrections for probation and various treatment services related to OWI offenders, beginning in 2011-12.
Criminal actions fee.	\$20 surcharge paid by person convicted of any crime; 50% (\$10) retained by county and 50% deposited in the general fund.	Increase surcharge by \$143 and deposit increase in the general fund; specify that 93.87% of the collected fee be sent to the Department of Administration (DOA); increase estimated general fund revenue by \$2.5 million in 2009-10 and \$10.0 million in 2010-11.	No provision.
District attorney surcharge.	No provision.	No provision.	\$100 district attorney surcharge levied for any OWI conviction, including operating a commercial motor vehicle with a blood alcohol level of between 0.04 and 0.08; revenues transmitted to Department of Administration for OWI prosecutions.
License reinstatement fee.	\$50 reinstatement fee following any license suspension or revocation plus a \$10 issuance fee; revenue deposited in the transportation fund.	Creates an additional \$40 reinstatement fee following revocations for OWI or OWI-related offenses; deposit revenues in the general fund; increase estimated general fund revenues by \$0.3 million in 2009-10 and \$0.8 million in 2010-11.	No provision.

	<b>Current Law</b>	<b>Engrossed SB 66</b>	<b>Engrossed AB 283</b>
Appropriation for state costs.		<p>Department of Corrections, District Attorneys, Department of Justice, and Office of State Public Defender: Joint Committee on Finance GPR supplemental appropriation increased by \$15.4 million in 2010-11; DOA required to submit request under s. 13.10 on behalf of these agencies to allocate funding.</p> <p>Department of Transportation: No provision.</p>	<p>Department of Corrections: PR appropriation created with an allocation of \$20.0 million of beer and liquor tax revenues, beginning in 2011-12.</p> <p>District Attorneys: PR appropriation created with proceeds of the district attorney surcharge, estimated at \$2.7 million annually.</p> <p>Department of Justice: No provision.</p> <p>Office of State Public Defender: No provision.</p> <p>Department of Transportation: PR appropriation created with the state share of proceeds from the IID surcharge, estimated at \$0.2 million annually.</p>