



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #616

Decriminalize Certain Convictions for Operating a Motor Vehicle After License Revocation (Public Defender)

[LFB 2009-11 Budget Summary: Page 513, #4]

CURRENT LAW

Office of the State Public Defender. The cost of providing constitutionally and statutorily required counsel to the indigent in Wisconsin is generally the responsibility of the state through the Office of the State Public Defender (SPD). The SPD provides legal representation for indigent persons: (a) facing a possible sentence that includes incarceration; (b) involved in certain proceedings under the Children's and Juvenile Justice Codes (Chapters 48 and 938); (c) subject to petitions for protective placement (Chapter 55); (d) facing involuntary commitment; and (e) involved in certain post-conviction or post-judgment appeals. The SPD provides this counsel either through SPD staff attorneys or SPD-appointed private bar attorneys. The total adjusted base funding for all GPR state operations appropriations under the agency is \$80,053,200 GPR annually.

Operating a Motor Vehicle after License Revocation. Operating a motor vehicle after license revocation (OAR) is a civil offense subject to a forfeiture of not more than \$2,500 unless: (a) the individual had been convicted of another OAR violation within the preceding five-year period; or (b) the underlying license revocation resulted from an offense of: (1) operating under the influence of an intoxicant or other drug; (2) causing injury or death to another person while operating under the influence of an intoxicant or other drug; (3) operating a commercial motor vehicle with an alcohol concentration between 0.04 and 0.08; (4) causing injury or death to another person while operating a commercial motor vehicle with an alcohol concentration between 0.04 and 0.08; or (5) refusing to submit to legally required chemical testing. If an individual commits an OAR offense and was either previously convicted of an OAR offense within the preceding five years or the underlying license revocation was alcohol or drug related, the individual must be fined not more than \$2,500 or imprisoned for not more than one year in

the county jail or both.

GOVERNOR

Convert operating a motor vehicle after license revocation within five years of a prior OAR conviction from a criminal offense to a civil offense. Provide that this change first apply to violations occurring on the effective date of the budget act. Reduce the private bar and investigator reimbursement appropriation by \$913,000 GPR in 2009-10, and \$1,826,100 GPR in 2010-11, to reflect an anticipated reduction in workload associated with OAR cases. This appropriation is used to pay private bar attorneys who accept assignment of criminal defense cases for indigent persons qualifying for SPD representation.

DISCUSSION POINTS

1. Under current law, a license revocation is ordered for traffic offenses that are generally considered likely to result in death, injury, or serious property damage. Such offenses include operating while intoxicated and related impaired driving laws, causing death or great bodily harm through the negligent or reckless operation of a motor vehicle (not involving alcohol), the commission of a felony where the operation of a motor vehicle is involved, failure to stop and render aid as required in the event of an accident resulting in death, injury, or serious property damage, and knowingly fleeing or attempting to elude a traffic officer.

2. Operating a motor vehicle after license revocation is a civil offense unless either the individual had been convicted of a prior OAR violation within the last five years, or the underlying license revocation was alcohol or drug-related. The provisions of AB 75 would now decriminalize OAR offenses in those situations in which the individual had a previous OAR conviction within the preceding five years. Under current law, an individual convicted of multiple OAR offenses within a five-year period must be fined not more than \$2,500 or imprisoned for not more than one year in the county jail or both. Under AB 75, this would now be converted to a civil offense subject to a civil forfeiture not to exceed \$2,500.

3. Assuming an effective date of July 1, 2009, it is estimated that this law change would reduce the SPD's OAR criminal caseload by approximately 8,400 cases annually, reducing private bar representation costs by \$913,000 GPR in 2009-10, and by \$1,826,100 GPR in 2010-11.

4. Adopting this law change would reduce SPD costs to represent the indigent and could also reduce: (a) state and county court costs; (b) state and county prosecution costs; and (c) county jail costs. In addition, provided that the only legal violation was operating a motor vehicle after revocation, it could be argued that it is appropriate to remain focused on the necessary steps for a defendant to restore his or her driving privileges, as opposed to considering and imposing incarceration. As a result, the Committee could consider adopting this recommended law change. [Alternative 1]

5. On the other hand, individuals who have had their licenses revoked have been convicted of traffic offenses that are generally considered likely to result in death, injury, or serious property damage. Some could express concern that such individuals should be subject to criminal penalties for the repeated illegal operation of a motor vehicle without a license. If this is a concern for the Committee, the Committee could delete this recommended law change. To maintain current law, the Committee would restore \$913,000 GPR in 2009-10, and \$1,826,100 GPR in 2010-11, to the private bar appropriation to reflect the costs associated with restoring the OAR workload to the SPD. [Alternative 2]

ALTERNATIVES

1. Approve the Governor's recommendation to convert operating a motor vehicle after license revocation within five years of a prior OAR conviction from a criminal offense to a civil offense. Provide that this change first apply to violations occurring on the effective date of the budget act. Reduce the private bar and investigator reimbursement appropriation of the Office of the State Public Defender by \$913,000 GPR in 2009-10, and \$1,826,100 GPR in 2010-11, to reflect an anticipated reduction in workload associated with operating a motor vehicle after license revocation cases.

2. Delete provision. Provide \$913,000 GPR in 2009-10, and \$1,826,100 GPR in 2010-11, to the private bar appropriation to reflect the costs associated with restoring the OAR workload to the Office of the State Public Defender.

ALT 2	Change to Bill Funding
GPR	\$2,739,100

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