



Legislative Briefs

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OWI LAWS REVISED

1999 Wisconsin Act 109, passed by the legislature and signed by Governor Tommy Thompson with a partial veto on May 3, 2000, increases penalties for certain OWI (“operating while intoxicated”) offenses, changes the ignition interlock program, creates a safe-ride grant program, and makes other changes in alcohol-related motor vehicle laws. The law generally takes effect January 1, 2001.

REPEAT OFFENDERS

Previous Convictions. The severity of the penalty for an OWI conviction depends on the driver’s number of previous convictions, but offenses committed before January 1, 1989, are not counted for penalty purposes. Current law requires that a person convicted of an OWI violation, including chemical test refusal, who has one prior offense within the last 10 years must be charged as a second offender. Special circumstances apply to the driver whose previous offense occurred more than 10 years ago but after 1988. In this case, the second offense is counted as only a first offense, but all offenses remain on the record and if the driver incurs a third offense it will be charged as a third.

Effective January 1, 2001, Act 109 adds a more stringent standard by requiring that all convictions for homicide or great bodily harm by intoxicated use of a motor vehicle, including those before 1989, must be counted for penalty purposes.

Absolute Sobriety. Under current Wisconsin law, for drivers with one or no prior OWI convictions, a blood alcohol concentration (BAC) of .10 or more is the legal standard for an OWI charge. The BAC threshold drops to .08 for persons with two or more prior convictions. Beginning on January 1, 2001, Act 109 requires that drivers with three or more prior convictions may not exceed an absolute sobriety standard of .02 BAC. (A BAC of .02 is considered “absolute sobriety” because of the limitations in breath testing devices and the fact that the slight alcohol content of mouthwash or some medications can influence a test.)

INCREASED FINES AND ELEVATED BLOOD ALCOHOL CONTENT

Act 109 increases the range of fines for a second offense from \$300-\$1,000 to \$350-\$1100; other fines remain unchanged. The act also provides higher penalties for third or subsequent convictions involving higher BAC levels: minimum and maximum fines double for a .17 to .199 BAC; triple for .20 to .249; and quadruple for .25 or higher.

VEHICLE RESTRICTIONS

Ignition Interlocks. When a driver is convicted for a second or subsequent drunk driving offense or test refusal, a court may order an ignition interlock device (IID) installed on a particular vehicle for a period ranging from one year to the maximum revocation period for the particular offense. The offender is responsible for the cost of installation and maintenance of the device.

Beginning on January 1, 2002, an IID order will apply to the operating privileges of a violator and would include any "Class D" vehicle driven by that person. (Someone subject to an IID restriction may, however, legally drive a motorcycle for which IIDs are not available).

Act 109 directs the Department of Transportation (DOT) to promulgate rules for implementation of a statewide IID program. Under this program, the state would regulate IID providers, require them to establish pilot programs for voluntary IID use, review fees charged to affected vehicle owners, and require providers to notify DOT of tampering, circumvention, or other violations.

Immobilization. A court may order immobilization of a vehicle used during a drunk driving or test refusal violation in the same circumstances and duration as for an IID order.

Vehicle Seizure. Prior to July 1, 2000, a court could order the seizure of every motor vehicle owned by a person who committed a third OWI offense, and seizure was mandatory for a fourth offense. Effective July 1, the court may order a seizure for a third or subsequent offense, but the order applies only to the vehicle used in the offense and owned by the offender. Act 109 eliminates the mandatory seizure requirement.

SAFE-RIDE GRANT PROGRAM

Act 109 increases the "driver improvement surcharge" on court fines and forfeitures from \$340 to \$345 and provides that 3.76% of the surcharge will be transferred to a new safe-ride grant program. DOT may award grants to finance up to 50% of the costs of providing safe rides for patrons of licensed establishments who may be legally intoxicated and should not be driving.

OTHER PROVISIONS

Work Release. Effective January 1, 2001, Act 109 denies Huber law work release privileges to persons imprisoned for OWI offenses if they do not comply with an alcohol assessment and driver safety plan.

Community Service. Under current law, a court may order an offender to perform community service as part of a sentence. Effective January 1, 2001, Act 109 requires that offenders who cannot pay OWI fines must perform community service in lieu of that portion of the fine not covered by payment.

Municipal Court Appearance. Previously, all first-time OWI offenders were required to appear in municipal court. Since July 1, 2000, municipalities are given discretion as to whether to require an appearance.

ADDITIONAL INFORMATION

A copy of 1999 Wisconsin Act 109 is available at <http://folio.legis.state.wi.us> or by calling the Legislative Reference Bureau at (608) 266-0342.