

# LawClips

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Topic for the Month

## OWI Law Changes

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## Operating While Intoxicated LAW CHANGES

On July 1, 2010, the 2009 Wisconsin Act 100 went into effect changing the scope and complexity of the Operating While Intoxicated (OWI) laws in the State of Wisconsin. Among the changes in the law, the most notable are:

- The creation of New Misdemeanor Classifications for first time offenders
- Expansion of Probation for all criminal OWI offenses
- Permits counties to use Options for Reduced Jail Sentences if the violator successfully completes a period of probation that includes alcohol and drug treatment
- Expands the authority of judges to provide penalties regarding Ignition Interlock Device Orders

### *New Misdemeanor Classifications*

Wisconsin is the only state left in the United States that treats a first offense OWI as a civil traffic violation. This has come under severe scrutiny in the past several years with lobby groups pushing hard to change the first offense OWI to a criminal offense. As of July 1, 2010, lawmakers came to a middle ground compromise. The Wisconsin Legislature increased penalties for violators of the State's drunk driving laws by forming a new criminal class charge for first time offenders. To fall into this new classification, the individual at the time of the OWI offense has to have a person under the age of 16 present in the vehicle. This exposes first-time offenders to the same penalties one would face if convicted of a second-offense OWI with a minimum of five days jail, a maximum penalty of six months jail and a maximum fine of \$1,100.

This is another step toward criminalization of OWI first offense violators. It will be interesting to watch the Wisconsin Legislature, will they take the next step and criminalizes all first time offenders? It is important to note each county in Wisconsin has different sentencing guidelines when it comes to OWI offenses based upon ones Blood Alcohol Concentration or (BAC). Check your county's guidelines to know the minimum and maximum penalties when dealing with an OWI prior to accepting any plea offers.

### *Expansion of Probation*

Under the previous OWI guidelines, probation was not offered until a fourth OWI offense. Now, under the new laws, a person convicted of second and third OWI offense may receive a lesser sentence with the eligibility of probation. A person undergoing this option needs to understand that short-term this could provide less jail time but long-term this could extend the time in which that person is in the legal system due to the period of probation. Further, probation would not replace their time in jail but merely reduce the amount of up-front jail time an individual would receive from the OWI conviction. Another important aspect to remember is that if the offender's probation is revoked, the offender could face up to the maximum penalty again. It is always important to consult an attorney prior to taking the probation option on a plea to an OWI.

### *Options for Reduced Jail Sentences*

One of the major changes in the new law is the expansion of court ordered treatment program options.

All misdemeanor offenders are given the opportunity to participate in a period of intense supervision with required alcohol or drug treatment programs. Successful completion of this option will result in reduced up-front jail time. Again, it is important to note that if an offender fails during any part of the treatment period, the offender is subject to their original jail time sentence imposed due to their BAC level. Not all counties will offer this treatment option. It is important to check to see if these types of programs are offered when bargaining for a plea offer.

### *Ignition Interlock Device Orders*

One of the most controversial changes is the new law requires convicted individuals to equip their vehicles with an ignition interlock device (IID) in a variety of situations. An IID requires the driver to submit to a breath test prior to and during the operation of their vehicle. The purpose of the device is to prevent the engine from starting or continuing if the person's breath-alcohol concentration is more than the devices programmed level. The new law makes it a mandatory requirement that an IID be installed upon second and subsequent offenses. Under the new law however, the IID restriction period does not commence until a convicted individual obtains an occupational license from the Wisconsin DOT. The effects of the ignition interlock device could prolong occupational license eligibility and could surpass the revocation period on their driving privileges. The IID restriction period must at least be one year and may not extend beyond the maximum license-revocation period for a particular OWI related offense. The consequence of this new enactment will cause some individuals to have an IID restriction period that extends beyond their driving privilege revocations. Another consequence of the IID, unlike in the past, is that a person who is eligible to obtain an occupational license will have to show proof of payment and installation of the IID prior to being able to obtain an occupational license. Offenders must pay a fifty dollar surcharge along with ongoing maintenance and monitoring costs. The financial burden of the IID could force an offender to sell their vehicle or abandon driving all together until their license is restored.

### *Conclusion*

With all of the changes to the OWI laws in Wisconsin it is important to remember not to face these changes alone. Always consult your local attorney to understand the impact the laws have on your case. This article is not intended to be a comprehensive understanding of all the changes to Wisconsin's OWI laws but a brief snapshot of the most significant changes. Please remember that each OWI case is different. Defenses that work in one case may not work in others. In this day and age when the Wisconsin lawmakers are ramping up the severity in penalties for OWI, the most important defense you have is "do not drink and drive".



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