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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>2013 Assembly Bill 71</b>	<b>Assembly Amendments 3 and 4</b>
<i>Memo published: November 20, 2013</i> <i>Contact: Michael Queensland, Staff Attorney (266-3810)</i>	

### Current Law

Current law prohibits operating a motor vehicle while intoxicated (OWI). OWI offenses include operating a vehicle while under the influence of an intoxicant and operating with a prohibited blood-alcohol concentration (BAC).<sup>1</sup> In most circumstances, the prohibited BAC is 0.08.

A third-offense OWI is a misdemeanor, punishable by a fine of \$600 to \$2,000, imprisonment of 45 days to one year, two to three years' revocation, and required installation of an ignition interlock device (IID). A fourth-offense OWI is also a misdemeanor if the offender has not been convicted of an OWI in the five years prior to his or her conviction for fourth-offense OWI; otherwise it is a Class H felony. Fifth-offense and sixth-offense OWI are also Class H felonies. Current law also allows, if the sentencing court is in a county that provides a treatment-based sentencing option, a person who commits a second, third, or misdemeanor fourth OWI offense to receive a reduced minimum period of imprisonment if the person completes a probation period that includes alcohol and other drug treatment.

Generally, all prior convictions for an OWI offense, or for any OWI-related violation, are counted as prior offenses for the purposes of sentencing following an OWI conviction. However, a second-offense OWI is penalized in the same way a first-offense OWI is penalized if the offender has not been convicted of an OWI within 10 years, or of causing great bodily injury or homicide by intoxicated use in his or her lifetime.

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<sup>1</sup> Generally, the prohibition against OWI is against operating under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog. It also includes operating under the influence of any other drug to a degree that renders the person incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree that renders the person incapable of safely driving. Finally, it includes operating with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood. For the sake of brevity, this memorandum simply refers to these offenses as "operating while intoxicated" or OWI.

**The Bill**

The bill makes third and subsequent OWI offenses felonies. It also increases the felony classification of fifth and subsequent offense OWIs. Under the bill, third-offense and fourth-offense OWIs where the offender has not been convicted of an OWI in the five years prior to his or her conviction for fourth-offense OWI are Class H felonies. Other fourth-offense OWIs and fifth-offense and sixth-offense OWIs are Class G felonies. Seventh-offense, eighth-offense, and ninth-offense, OWIs which are all currently punished as Class G felonies, are Class F felonies. Tenth and subsequent offenses, currently punished as Class F Felonies, are Class E felonies.

**Assembly Amendment 3**

Assembly Amendment 3 eliminates the 10-year look-back period for second-offense OWI and provides that a person who commits a second OWI offense, regardless of the time elapsed since his or her last prior offense, is guilty of a misdemeanor.

**Assembly Amendment 4**

Assembly Amendment 4 provides that a person convicted of fourth-offense OWI is eligible to receive a treatment-based sentencing option for a fourth-offense OWI regardless of whether the offender has been convicted of an OWI in the five years prior to his or her conviction for fourth-offense OWI.

**Bill History**

Assembly Amendment 3 was offered by Representative J. Ott. Assembly Amendment 4 was offered by the Assembly Committee on Judiciary. On September 12, 2013, the Assembly Committee on Judiciary recommended adoption of Assembly Amendment 3, adoption of Assembly Amendment 4, and passage of the bill, as amended, on a vote of Ayes, 9; Noes, 0.

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