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**NEW LAW RELATING TO OPERATING A VEHICLE
WHILE UNDER THE INFLUENCE OF AN INTOXICANT, DRUGS, OR BOTH,
AND OPERATING A MOTOR VEHICLE AFTER REVOCATION OR
SUSPENSION OF LICENSE
(1991 WISCONSIN ACT 277)**

Information Memorandum 92-2

NCJRS

JUN 25 1992

ACQUISITIONS

**Wisconsin Legislative Council
One East Main Street, Suite 401
Madison, Wisconsin
Telephone: (608) 266-1304**

May 8, 1992

*Information Memorandum 92-2**

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INTRODUCTION

This Information Memorandum summarizes changes made by a new state law on operating a motor vehicle while under the influence of an intoxicant, drugs, or both, and operating a motor vehicle after revocation or suspension of a person's motor vehicle operating privileges (hereafter, referred to as "driver's license"). The new law, 1991 Wisconsin Act 277, will take effect January 1, 1993.

Copies of Act 277 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

In this Information Memorandum:

1. "OWI" refers to the basic drunk driving offense of operating a motor vehicle while under the influence of an intoxicant, drugs, or both, or:
 - a. Prior to January 1, 1993, with a blood alcohol content (BAC) of 0.1% or more or 0.1 gram or more of alcohol in 210 liters of breath.
 - b. On and after January 1, 1993, a BAC of 0.1% or more for a first or second offense and .08% or more if the violator has two or more OWI or OWI-related (described below) convictions, suspensions or revocations.
2. "OWI-related offense" refers to:
 - a. Causing injury by OWI [s. 346.63 (2), Stats.].

* This Information Memorandum was prepared by Don Salm, Senior Staff Attorney, Legislative Council Staff.

causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.”

c. Causing death by OWI [s. 940.09, Stats.].

3. “Refusal” means an improper refusal to submit to a chemical test to measure intoxication, as required by the Implied Consent Law, s. 343.305, Stats. Prior improper refusals are counted in determining the penalty for OWI or refusal violations within a five-year period (e.g., if a person has an improper refusal and then is subsequently convicted for OWI in a separate incident, the person is subject to the criminal penalties for a second offense OWI).

4. A person whose license is referred to as “revoked” must, in order to drive in this state, reapply for a license (with the required fee), submit to the Department of Transportation (DOT) proof of financial responsibility (e.g., insurance) and pass all written and road motor vehicle operator’s tests, as well as a vision screening. The reapplication and testing may occur only after the driver’s revocation period has expired. A person whose license is referred to as “suspended” must, in order to drive in this state, have his or her license reinstated by the DOT, upon payment of a fee, once the suspension period has expired.

The remainder of this Information Memorandum describes how Act 277, effective January 1, 1993, affects the current law on OWI and operating a motor vehicle after revocation or suspension (OAR or OAS, respectively).

This Memorandum is divided into the following parts:

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I. PROHIBITED ALCOHOL CONCENTRATION

A. Current Law

Under current law, a person may not operate a motor vehicle while he or she has a BAC of 0.1% or more [s. 346.63 (1) (b), Stats.]. The same BAC standard applies to OWI-related offenses involving causing injury, great bodily harm or death by operation of vehicles [ss. 94.09 (1) (b), 343.63 (2) (a) 2 and 940.25 (1) (b), Stats.]. In addition, this 0.1% BAC standard is used in:

a. The administrative suspension provisions in the implied consent law relating to drunk driving. Under s. 343.305 (7), Stats., if a driver submits to a chemical test for intoxication under the implied consent law and the test results indicate a BAC of 0.1% or more, the person's operating privilege is administratively suspended for six months.

b. The "absolute sobriety" provision applicable to drivers who have not attained the age of 19. Under s. 346.63 (2m), Stats., if a person has not attained the age of 19, the person may not drive or operate a motor vehicle while he or she has a BAC of more than 0.0% but not more than 0.1% or more than 0.0 grams, but not more than 0.1 grams of alcohol in 210 liters of that person's breath [ss. 23.33 (4c) (a) 3 and 350.101 (1) (c), Stats.].

c. The statutory legal presumptions applicable in any action or proceeding in which it is material to prove that a person was under the influence of an intoxicant or had a BAC of 0.1% or more while operating or driving a motor vehicle [s. 885.235, Stats.].

B. 1991 Wisconsin Act 277

1991 Wisconsin Act 277 imposes a .08% or more (in contrast to the 0.1% or more) prohibited BAC on persons who have two or more OWI or OWI-related convictions, suspensions or revocations within a five-year period. That is, once a driver has two or more of these violations in a five-year period, he or she is guilty of an OWI violation if he or she drives or operates a vehicle with a .08% or more BAC. The Act also revises the legal presumptions for chemical tests for intoxication to reflect this change in the BAC standard for persons with two or more OWI or OWI-related convictions, suspensions or revocations.

II. PENALTY FOR CAUSING DEATH BY OWI

A. Current Law

Under current law, any person who does either of the following is guilty of a Class D felony (punishable by a fine of not more than \$10,000, imprisonment for not more than five years, or both):

1. Causes the death of another by the operation or handling of a vehicle, firearm or airgun and while under the influence of an intoxicant. "Vehicle" is defined to mean any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water or in the air [s. 939.22 (44), Stats.]; this is broader than the "motor vehicle" definition applicable to OWI and injury by OWI under s. 346.63, Stats. (i.e., includes boats, snowmobiles, all-terrain vehicles, trains and other vehicles in addition to motor vehicles).

2. Causes the death of another by the operation or handling of a vehicle, firearm or airgun while the person has a BAC of 0.1% or more.

3. Causes the death of another by the operation of a commercial motor vehicle [as defined in s. 340.01 (8), Stats.] while the person has a BAC of 0.04% or more but less than 0.1%.

B. 1991 Wisconsin Act 277

Act 277 increases the current penalty for causing death by OWI, as described in Section A, above, from a Class D felony to a Class C felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both). Thus, this change results in an increase in the maximum possible imprisonment from five years to 10 years. This provision is not applicable to causing the death of another by operation or handling of a firearm or airgun while under the influence of an intoxicant or with a BAC of 0.1% or more. Those offenses remain Class D felonies.

III. SEIZING AND FORFEITING VEHICLE (FOURTH OFFENSE OWI)

A. Current Law

Current law contains a number of provisions relating to the impoundment or seizure and sale of motor vehicles involved in certain statutory violations. Among these are the following:

1. Fish and game violations. Current law permits the Department of Natural Resources and its wardens to seize and hold, subject to the order of the court for the county in which the alleged offense was committed, any vehicle which they have probable cause to believe is being used in violation of the fish and game laws in ch. 29, Stats. [ss. 29.05 (8) (a) and 29.06 (1), Stats.].

2. Driving after revocation or suspension of motor vehicle license. Current law provides that, in addition to other penalties for driving after revocation or suspension of a person's motor vehicle license, if the person has committed the violation with respect to a motor vehicle which he or she is the owner, the court may order the vehicle impounded and determine the manner and period of impoundment [s. 343.44 (4) and (5), Stats.].

3. Vehicles used in controlled substances violations. Current law permits the seizure of all vehicles which are used or intended for use to transport, or in any manner to facilitate the transportation of controlled substances which have been manufactured, distributed, dispensed or acquired in violation of ch. 161, Stats. (the Controlled Substances Act), and raw materials, products and equipment of any kind which are used, or intended for use in manufacturing, processing, delivering, importing or exporting any controlled substance in violation of ch. 161. "Vehicle" is defined to mean any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water or in the air [ss. 161.55 and 161.555, Stats.].

4. Illegal transfer of gambling devices. Current law provides that any motor vehicle or aircraft used or employed to aid in or to facilitate the unlawful manufacture or commercial transfer of illegal gambling devices may be seized by any peace officer and must be forfeited to the state [s. 945.05, Stats.].

B. 1991 Wisconsin Act 277

Under Act 277:

1. For a fourth OWI or OWI-related conviction within a five-year period, the court is required to order seizure and forfeiture of a vehicle owned by the offender. Act 277 sets forth procedures for: (a) notification of the owner and all lienholders of record of the seizure; (b) a hearing on forfeiture of the vehicle; (c) sale of the vehicle, if forfeited, by the law enforcement agency or, if there is a perfected security interest, the lienholder; and (d) distribution of the proceeds of the sale. The Act exempts certain vehicles from seizure and forfeiture (a common

carrier; a commercial motor vehicle; and a rented or leased motor vehicle used by a person other than the owner of the vehicle).

2. As discussed in Part IV, below, for a third OWI or OWI-related offense within a five-year period, the court is permitted to order a motor vehicle owned by the violator to be seized and forfeited.

To ensure that the seizure and forfeiture provisions can be appropriately enforced (i.e., prevent the owner from transferring ownership of a vehicle to avoid this sanction), Act 277:

1. Requires the district attorney to notify the DOT when he or she files a criminal complaint against a person who has been arrested for an OWI or OWI-related violation and who has two or more prior OWI or OWI-related convictions, suspensions or revocations within a five-year period. The DOT may not issue a certificate of title transferring ownership of any motor vehicle owned by the person upon receipt of a notice until the court assigned to hear the criminal complaint issues an order permitting the DOT to issue a certificate of title.

2. Prohibits the DOT from issuing a certificate of title transferring ownership of any motor vehicle owned by a person upon receipt of a notice of intent to revoke the person's driver's license for refusing to submit to a chemical test if the person has two or more prior OWI or OWI-related convictions, suspensions or revocations within a five-year period until the court assigned to the hearing on the refusal issues an order permitting the DOT to issue a certificate of title.

IV. SEIZING OR IMMOBILIZING VEHICLE OR EQUIPPING VEHICLE WITH IGNITION INTERLOCK (THIRD OFFENSE OWI)

For a third OWI or OWI-related offense within a five-year period, if the vehicle of the offender is not ordered seized and forfeited using the procedures in Part III, B, above, Act 277 requires the court to either order: (a) immobilization of the vehicle; or (b) that the vehicle be equipped with an ignition interlock. However, the court may not order immobilization or ignition interlock if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person. The Act defines:

a. "Ignition interlock device" to mean a device which measures the person's alcohol concentration and which is installed on a vehicle in such a manner that the vehicle will not start if the sample shows that the person has a prohibited alcohol concentration.

b. "Immobilization device" to mean a device or mechanism which immobilizes a motor vehicle, making the motor vehicle inoperable.

Act 277 provides that no person may remove, disconnect, tamper with or otherwise circumvent the operation of such an ignition interlock device. A person violating this provision may be required to forfeit not less than \$150 nor more than \$600 for the first offense. For a second or subsequent conviction within five years, the person may be fined not less than \$300 nor

more than \$1,000 or imprisoned for not more than six months, or both. The Act requires the DOT to:

a. Promulgate a rule establishing specifications and requirements for approved types of ignition interlock devices and the calibration, installation and maintenance.

b. Design a warning label which must be affixed to each ignition interlock device upon installation and must provide notice of the penalties for tampering with or circumventing the operation of the ignition interlock device.

Act 277 also specifies that no person may remove, disconnect, tamper with or otherwise circumvent the operation of any such immobilization device. A person violating this prohibition may be required to forfeit not less than \$150 nor more than \$600 for the first offense. For a second or subsequent conviction within five years, the person may be fined not less than \$300 nor more than \$1,000 or imprisoned for not more than six months, or both. The Act requires the DOT to design a warning label which must be affixed by the owner of each immobilization device before the device is used to immobilize any motor vehicle. The label must provide notice of the penalties for removing, disconnecting, tampering with or otherwise circumventing the operation of the immobilization device.

V. OCCUPATIONAL LICENSE REQUIREMENTS AND RESTRICTIONS

A. Current Law

Under current law, if a person's motor vehicle license is revoked or suspended and if the person is engaged in an occupation, including homemaking or full-time or part-time study, or a trade making it essential that he or she operate a motor vehicle, the person may seek and obtain an occupational license so that the person can use the motor vehicle in going to and from work or in performing his or her occupation. The order for issuance of an occupational license must contain definite restrictions as to the hours of day, not to exceed 12, hours per week, not to exceed 60, type of occupation and areas or routes of travel which are permitted under the license [s. 343.10 (5) (a), Stats.].

B. 1991 Wisconsin Act 277

Act 277 makes the following changes in the current law relating to occupational license requirements and restrictions:

1. **Completion of assessment and compliance with plan required.** Requires, as a condition of eligibility for an occupational license after a second or subsequent OWI or OWI-related offense within a five-year period, that the applicant have completed the current requirement for an alcohol use assessment and be complying with the driver safety plan (a driver safety plan is required under current law).

2. **Absolute sobriety.** Imposes an absolute sobriety requirement (0.0% BAC when driving or operating a motor vehicle) on holders of occupational licenses who have two or more OWI or OWI-related offenses.

3. **Ignition interlock if third or subsequent offense.** Permits a court to order, as a condition of an occupational license for a person who has three or more OWI or OWI-related offenses, that the person operate only a vehicle equipped with a functioning ignition interlock device. Act 277 also specifies that:

a. If the court order includes this restriction, the DOT may not issue the occupational license until the person provides evidence satisfactory to the DOT that any motor vehicle that the person will be permitted to operate has been equipped with a functioning ignition interlock device.

b. A person to whom this restriction applies violates the restriction if he or she requests or permits another to blow into an ignition interlock device or to start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person an operable motor vehicle without the necessity of first submitting a sample of his or her breath to analysis by the ignition interlock device.

VI. ALCOHOL AND CONTROLLED SUBSTANCES USE ASSESSMENT AND DRIVER SAFETY PLAN

A. Current Law

Under current law, the court is required to order a person convicted of OWI or an OWI-related offense to submit to and comply with an assessment by an "approved public treatment facility" [defined in s. 51.45 (2) (c), Stats.] for examination of the person's use of alcohol or controlled substances and the development of a driver safety plan for the person. The person is required to pay a reasonable fee for the assessment and driver safety plan. The fee for the driver safety plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for assessment or attendance at traffic safety school may be reduced or waived [ss. 46.03 (18) (f) and 343.30 (1q) (c), (d) and (e), Stats.].

B. 1991 Wisconsin Act 277

Act 277 makes the following changes in current law relating to alcohol and controlled substances use assessment and driver safety plans:

1. **Instalment payments.** Permits payment for a required alcohol use assessment or driver safety plan in one, two, three or four equal instalments. Act 277 specifies that nonpayment of the fee is noncompliance with the court order that required completion of an assessment and driver safety plan.

2. **Voluntary submission to assessment.** Expressly permits a person to voluntarily submit to an alcohol use assessment and a driver safety plan before conviction and allows a court to take such voluntary submission into account when determining sentence. A prosecutor may not use that voluntary submission to justify a reduction in the charge made against the person.

3. **Reduction of fine or forfeiture to pay for assessment.** Allows a court, if the court determines that a person does not have the ability to pay the costs, fine or forfeiture imposed for an OWI or OWI-related offense, to reduce the costs, fine or forfeiture and order that the person pay the difference toward the cost of the alcohol use assessment and driver safety plan.

VII. SENTENCING OPTIONS FOR OWI AND OWI-RELATED OFFENSES

Act 277 makes the following changes in the current law relating to sentencing options for OWI and OWI-related offenses:

a. **Effect on victim and victim's family.** Authorizes a court to include in a driver safety plan a component that makes the person aware of the effect of his or her offense on a victim and the victim's family.

b. **Community service work related to OWI effects.** Authorizes a court to include, as a component of community service work, work that demonstrates the adverse effects of substance abuse or of OWI, including work at an alcoholism treatment facility, an emergency room of a general hospital or a driver awareness program. [Under both current law and Act 277, community service work is an optional sanction for an OWI violation.] Other pertinent provisions specify that:

(1) The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining and monitoring the community service work.

(2) If the opportunities available to perform community service work are fewer in number than the number of defendants eligible, the court must, when making an order under this new provision, give preference to defendants who were under 21 years of age at the time of the offense.

(3) All the current OWI community service work provisions apply to this new provision.

c. **Visits to sites demonstrating effects of OWI.** Authorizes a court to order a visit to a site that demonstrates the adverse effects of substance abuse or of OWI, including an alcoholism treatment facility or an emergency room of a general hospital. Other pertinent provisions specify that:

(1) The court may order the defendant to pay a reasonable fee, based on the person's ability to pay, to offset the costs of establishing, maintaining and monitoring the visits.

(2) The court may order a visit to the site only if agreed to by the person responsible for the site.

(3) If the opportunities available to visit sites are fewer than the number of defendants eligible for a visit, the court must, when making an order under this subsection, give preference to defendants who were under 21 years of age at the time of the offense.

(4) The court must ensure that the visit is monitored. A visit to a site may be ordered for a specific time and a specific day to allow the defendant to observe victims of vehicle accidents involving intoxicated drivers.

(5) Any organization or agency acting in good faith to which a defendant is assigned has immunity from any civil liability in excess of \$25,000 for acts or omissions by the defendant.

VIII. PENALTIES FOR OPERATING A MOTOR VEHICLE AFTER LICENSE REVOCATION OR SUSPENSION

A. Current Law

The current penalties and license sanctions for OAR or OAS are set forth in Appendix A attached to this Information Memorandum.

B. 1991 Wisconsin Act 277

Act 277 repeals the current mandatory jail terms, forfeitures, fines and license revocations for operating a motor vehicle after revocation or suspension (OAR or OAS, respectively) unless the underlying offense is OWI-related. Attached, as Appendix B, is a chart that sets forth the new penalties, effective January 1, 1993, for OAR and OAS violations under the Act. The Act expresses legislative intent that courts use the home detention option under s. 973.03 (4), Stats. (attached as Appendix C) in OAR or OAS cases, unless the underlying offense is OWI-related.

With reference to license sanctions for OAR or OAS, Act 277 provides that:

1. A court may revoke a person's driver's license for any period not exceeding six months if the underlying offense is not OWI-related.

2. It appears that a court must revoke a person's driver's license for six months if the underlying offense is OWI-related. One provision in Act 277 [s. 343.30 (1g), created by the Act]

seems to indicate that the revocation period for this offense is "any period not exceeding six months" (i.e., the same language applicable to the offense in Item 1, above). However, another provision [s. 343.31 (3) (g), amended by the Act] states that the revocation period for this offense must be six months, not up to six months. It appears that the latter provision was the intended provision, but this apparent inconsistency is likely to be rectified by the Legislature in trailer legislation early in the 1993-94 Legislative Session.

IX. 48 CONSECUTIVE HOUR JAIL TERM

Act 277 specifies that the penalty for persons who have two or more OWI or OWI-related convictions, suspensions or revocations in a five-year period must include a requirement that the person convicted remain in the county jail for not less than a 48 consecutive hour period. There is no such specific requirement under current law, but the court does have the authority to impose such a requirement in an individual case.

X. MOTOR VEHICLE OPERATOR RECORD RETENTION BY THE DOT

A. Current Law

Under current law, the DOT is required to maintain a file for each motor vehicle licensee containing, among other things, a record of reports or an abstract of the licensee's convictions for motor vehicle violations. The DOT is required to retain these records so that the complete operator's record is available for use of by the Secretary of DOT in determining whether a person's operator's license must be suspended, revoked, canceled or withheld in the interest of public safety.

Current law contains no specific record retention periods relative to files of motor vehicle licensees in general. However, current law does contain the following specific record retention periods for commercial motor vehicle operators:

1. The record of convictions for disqualifying offenses for commercial motor vehicle operators under s. 343.315 (2) (f), Stats., must be maintained for at least three years.
2. The record of convictions for disqualifying offenses for a commercial motor vehicle operator under s. 343.315 (2) (a) to (e), Stats., must be maintained permanently, except that 10 years after a licensee transfers residency to another state, the record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions for disqualifying offenses.

Current law provides that reports and records retained by the DOT may be cumulative beyond the period for which a license is granted, but the Secretary of DOT, in exercising his or her power or revocation under s. 343.32 (2), Stats. (revocation where the Secretary determines a driver to be habitually reckless or negligent in the operation of a motor vehicle or to have repeatedly violated state traffic laws, local traffic ordinances or, under certain circumstances, any

traffic laws enacted by a federally recognized American Indian tribe or band), may consider only those reports and records entered during the four-year period immediately preceding the exercise of such power of revocation [s. 343.23 (2), Stats].

B. 1991 Wisconsin Act 277

Act 277 requires the DOT to maintain OWI and OWI-related records, including records of refusals, for a period of 10 years. However, as under current law, the Act does not allow DOT to utilize these records beyond four years for purposes of license revocation.

XI. OTHER CHANGES

Act 277 also contains provisions:

a. **Clarifying counting of offenses.** Revising, clarifying and making uniform the counting of prior OWI and OWI-related convictions, revocations and suspensions.

b. **DOT study.** Requiring the DOT to conduct a feasibility study on establishing a uniform system for reporting OWI violations in connection with the operation of all-terrain vehicles, boats, snowmobiles and motor vehicles.

XII. INITIAL APPLICABILITY; EFFECTIVE DATE

Act 277 specifies that:

a. It first applies to offenses committed on the effective date of the Act, but does not preclude the counting of other convictions, refusals, revocations or suspensions as prior convictions, refusals, revocations or suspensions for sentencing a person, for immobilization or seizure and forfeiture of a motor vehicle, for equipping a motor vehicle with an ignition interlock device or for suspending or revoking a person's operating privilege.

b. The provision permitting a person to pay the fee for an assessment or driver safety plan in equal instalments and providing that nonpayment of the fee is noncompliance with the court order requiring completion of the assessment or plan first applies to assessments ordered on the effective date of the Act.

c. The effective date of Act 277 is January 1, 1993.

DLS:las;kja

**CURRENT PENALTIES FOR OPERATING A MOTOR VEHICLE
AFTER LICENSE SUSPENSION OR REVOCATION**

CONVICTION	FINE OR FORFEITURE	JAIL	SUSPENSION OR REVOCATION*	OCCUPATIONAL LICENSE*	POINTS
Driving After Revocation or Suspension, First	\$150 - \$600 [s. 343.44 (2) (a), Stats.]	--	Six-month revocation [s. 343.31 (3) (g), Stats.]	After 15 days [s. 343.10 (1) (b), Stats.]	6
Driving After Revocation or Suspension, Second	\$300 - \$1,000 [s. 343.44 (2) (b), Stats.]	10 days to six months [s. 343.44 (2) (b), Stats.]	Six-month revocation [s. 343.31 (3) (g), Stats.]	After 15 days [s. 343.10 (1) (b), Stats.]	6
Driving after Revocation or Suspension, Third	\$1,000 - \$2,000 [s. 343.44 (2) (c), Stats.]	30 days to nine months [s. 343.44 (2) (c), Stats.]	Six-month revocation [s. 343.31 (3) (g), Stats.]	After 15 days [s. 343.10 (1) (b), Stats.]	6
Driving after Revocation or Suspension, Fourth	\$1,500 - \$2,000 [s. 343.44 (2) (d), Stats.]	60-day mandatory jail to one year [s. 343.44 (2) (d), Stats.]	Six-month revocation [s. 343.31 (3) (g), Stats.]	After 15 days [s. 343.10 (1) (b), Stats.]	6
Driving after Revocation or Suspension, Fifth	\$2,000 - \$2,500 [s. 343.44 (2) (e), Stats.]	Six months mandatory jail to one year [s. 343.44 (2) (e), Stats.]	Six-month revocation [s. 343.31 (3) (g), Stats.]	After 15 days [s. 343.10 (1) (b), Stats.]	6

* If the offense results in the driver meeting the criteria for an habitual traffic offender (HTO) under ch. 351, Stats., and the driver is so prosecuted, the revocation period is five years and the waiting period for an occupational license is two years. In general, an HTO is a driver who has: (1) four or more serious traffic violations within a five-year period; or (2) 12 or more convictions of moving traffic violations or of crimes in the operation of a motor vehicle. OAR and OAS are specified in the list of serious traffic violations.

**PENALTIES FOR OPERATING A MOTOR VEHICLE AFTER SUSPENSION
(OAS) OR REVOCATION (OAR) UNDER ENROLLED 1991 SENATE BILL 308
(AS PASSED BY THE LEGISLATURE)**

CONVICTION WITHIN A FIVE-YEAR PERIOD	PENALTY		
	(1)	(2)	(3)
	WHERE COLUMN (2) OR (3) DOES NOT APPLY	WHERE REVOCATION OR SUSPENSION IS BASED SOLELY ON FAILURE TO PAY A FINE OR FORFEITURE AND/OR ONE OR MORE SUBSEQUENT CONVICTIONS	WHERE PERSON'S LICENSE WAS SUSPENDED OR REVOKED FOR OWI OR OWI-RELATED OFFENSE
First Conviction	May be required to forfeit not more than \$600, except if license revoked under ch. 351, Stats., at time of offense, may be required to pay fine of not more than \$600.	May be required to forfeit not more than \$1,000.	Must forfeit not less than \$150 nor more than \$600, except if revoked under ch. 351, Stats., at time of offense, must be fined not less than \$150 nor more than \$600.
Second Conviction	May be fined not more than \$1,000 and must be imprisoned not more than six months.	May be required to forfeit not more than \$1,000.	Must be fined not less than \$300 nor more than \$1,000 and must be imprisoned for not less than five days nor more than six months.
Third Conviction	May be fined not more than \$2,000 and may be imprisoned not more than nine months.	May be required to forfeit not more than \$2,000.	Must be fined not less than \$1,000 nor more than \$2,000 and must be imprisoned not less than 30 days nor more than nine months.
Fourth Conviction	May be fined not more than \$2,000 and may be imprisoned not more than one year in county jail.	May be required to forfeit not more than \$2,000.	Must be fined not less than \$1,500 nor more than \$2,000 and must be imprisoned not less than 60 days nor more than one year in the county jail.
Fifth Conviction	May be fined not more than \$2,500 and may be imprisoned not more than one year in the county jail.	May be required to forfeit not more than \$2,500.	Must be fined not less than \$2,000 nor more than \$2,500 and must be imprisoned not less than six months nor more than one year in the county jail.

Section 973.03 (4), Stats.

973.03 (4) (a) In lieu of a sentence of imprisonment to the county jail, a court may impose a sentence of detention at the defendant's place of residence or other place designated by the court. The length of detention may not exceed the maximum possible period of imprisonment. The detention shall be monitored by the use of an electronic device worn continuously on the defendant's person and capable of providing positive identification of the wearer at the detention location at any time. A sentence of detention in lieu of jail confinement may be imposed only if agreed to by the defendant. The court shall ensure that the defendant is provided a written statement of the terms of the sentence of detention, including a description of the detention monitoring procedures and requirements and of any applicable liability issues. The terms of the sentence of detention may include a requirement that the defendant pay a daily fee to cover the costs associated with monitoring him or her. In that case, the terms must specify to whom the payments are made.

(b) A person sentenced to detention under par. (a) is eligible to earn good time in the amount of one-fourth of his or her term for good behavior if sentenced to at least 4 days, but fractions of a day shall be ignored. The person shall be given credit for time served prior to sentencing under s. 973.155, including good time under s. 973.155 (4). If the defendant fails to comply with the terms of the sentence of detention, the court may order the defendant brought before the court and the court may order the defendant deprived of good time.

(c) If the defendant fails to comply with the terms of the sentence of detention, the court may order the defendant brought before the court and the court may order that the remainder of the sentence of detention be served in the county jail.

(d) A sentence under this subsection is not a sentence of imprisonment, except for purposes of ss. 973.04, 973.15 (8) (a) and 973.19.