Wisconsin Operating While Intoxicated Law

A Client's Guide to the Language and Procedure
Welcome

Thank you for considering Bakke Norman, S.C. to represent your interests. This booklet will give you a basic overview of operating while intoxicated laws in Wisconsin, and it has been written to give you general information about how we handle cases such as yours. We hope it will help you.

Your satisfaction is very important to us and forms the basis for our formal quality pledge:

❖ To provide the highest quality legal service to the clients we serve

❖ To develop and maintain the highest personal and professional standards and reputation

❖ To provide a quality professional work opportunity for attorneys and staff.

We welcome your feedback at all times.

BAKKE•NORMAN
LAW OFFICES
OWI and Traffic Case Attorneys: Who Are They? What Do They Do? How Much Will They Charge?

At Bakke Norman, S.C., we have attorneys experienced in handling Operating While Intoxicated (OWI) cases and other traffic matters. We employ skilled legal assistants and paralegals to help you and your attorney with your file and to assure you of the best professional representation. You are encouraged to contact the legal assistant or paralegal regarding any questions about your case if the attorney is unavailable. A legal assistant or paralegal is not an attorney and is not permitted to give legal advice. However, the legal assistant or paralegal can answer many questions about your case. The legal assistant or paralegal will refer questions calling for legal advice to your attorney.

❖ What Will My Attorney Do?
Your attorney will advise you about the law and help you prepare and present your case. He or she will keep you advised about the legal proceedings, advise you about options you have or decisions you must make, and answer your questions.

❖ What Does It Cost?
It is difficult to predict the cost of an OWI defense prior to hearing the case’s facts. OWI clients of Bakke Norman, S.C. are charged for legal services based on the projected time that will be spent on the file, the factual and legal problems involved in the case, the experience and expertise of the attorney working on your file, the number of previous operating-while-intoxicated convictions, and whether a chemical test refusal or commercial driver’s license problem is involved. We normally charge a flat-rate fee, payable when we begin work on your file.

During our representation, we might advance some fees and costs for you, including such items as payment for police or medical reports, transcripts of hearings, process server or expert witness’ fees, and investigator's expenses. We will discuss projected costs with you at the beginning of your case.

We must have an agreement with you about fees and costs before any work starts. If, for any reason, you do not completely understand and agree about the fees to be paid, please discuss this with your attorney immediately.

❖ Telephone Calls and E-Mail
We welcome your telephone calls and e-mail with questions about your case or with new information we need. When your attorney is in court or meeting with another client, your call might be referred to the legal assistant or paralegal assisting on your file. We will make every effort to respond to your inquiries promptly.

❖ Facts about the OWI Law
Wisconsin law provides that no person may drive or operate a motor vehicle while under the influence of an intoxicant to a degree that causes the person to be incapable of safely driving. In addition, no person may drive or operate a motor vehicle with a prohibited alcohol concentration (PAC), 0.08% or greater alcohol in the body for first-, second- or third-time offenders. The prohibited level drops to 0.02% if there are three or more prior convictions. Finally, no person may drive or operate a motor vehicle while having a detectable amount of a
controlled substance in the body. The law refers to both “drive” and “operate” because a person can be charged with operating while intoxicated even if the vehicle is not moving at the time of the police contact.

A person arrested by a police officer can be, and usually is, charged with both operating while intoxicated (OWI) and operating with a prohibited alcohol concentration (PAC). A PAC violation is charged if the results of a breath, blood or urine chemical test indicate a prohibited alcohol concentration is present in the person’s body. If the person is later found guilty of both violations, only one conviction is entered on the driving record, and penalties are imposed on that conviction only.

❖ The Penalties

A first-offense OWI or PAC violation is non-criminal, meaning there is no jail sentence if a person is convicted, and no criminal record is established. However, the conviction will appear on the driver’s license record kept by the Wisconsin Department of Transportation. Insurance companies, and employers under some circumstances, can access these driving records.

The penalties for a first-offense OWI or PAC conviction include a fine, court costs and other fees, a 6- to 9-month license suspension, alcohol assessment (for which the driver is also charged a fee), and compliance with any recommended driver safety plan. An occupational license is generally immediately available if you follow certain requirements. Such a license restricts the driver to set periods of driving, not to exceed 12 hours in any day or 60 hours in any week. If a person has an alcohol concentration of 0.15% or greater or refused to take a chemical test for intoxication, the court will also order that any vehicles owned by or registered to that person must be equipped with an ignition interlock device. This device prohibits the vehicle from starting without the driver providing a breath test to indicate the body is alcohol-free.

A second or any subsequent OWI or PAC violation is a criminal matter. The penalties for a second-offense conviction can range from five days to six months in jail, depending on the person’s driving record and the facts of the case; increased fines; and increased court and driver safety costs and fees. A second-offense conviction also carries a 12- to 18-month license revocation. An occupational license is available following a 45-day waiting period provided the driver has completed alcohol assessment, has complied with a driver safety plan, and has an ignition interlock device installed in all vehicles owned by or registered to the driver.

The penalties for a third-offense OWI or PAC conviction can range from 45 days to one year in the county jail. Third or greater convictions also require the court to order that all vehicles owned by or registered to the driver be equipped with an ignition interlock device. There is a 45-day wait prior to eligibility for an occupational license, with the same assessment and driver safety plan requirements that pertain to a second-offense violator. For a fourth offense, the minimum jail sentence increases to 60 days, but if the offense leading to a previous OWI-related conviction was committed less than five years prior to the date of the fourth offense, then the fourth offense becomes a felony. A fifth or subsequent offense is always a felony, and prison is the presumed punishment.

❖ The Arrest Procedure

An OWI/PAC case begins when a driver is stopped and arrested. The police officer must have a reasonable suspicion of either impaired driving or a violation of the traffic rules prior to stopping a driver. If, after stopping the driver, the officer suspects alcohol or drug consumption, he or she may request the person to perform “field sobriety tests.” These tests are given to measure a person’s physical and mental responses and to assist the officer in determining whether the person is intoxicated. While a person can refuse to submit to such tests, the refusal to do the tests can be considered by a judge in determining whether the police officer had “probable cause” to arrest. The officer may also request the person to submit to a preliminary breath test (PBT) at the site of the traffic stop. This test result is only used to determine whether
there is probable cause to arrest; it is inadmissible as evidence against the driver at the trial. If the officer concludes that the driver’s ability to drive is impaired, the driver will be placed under arrest for operating while intoxicated.

The driver will then be transported to the local police or sheriff’s department or a hospital, where the driver will be read a document informing him or her of certain rights and duties under Wisconsin law. The driver will be asked to provide one or more samples of breath, blood or urine for chemical testing, the results of which are admissible in court. Many law enforcement officers use a breath-testing machine to measure the presence of alcohol. Prior to performing the breath test, the officer must observe the driver for a 20-minute period to assure that the driver does not burp, regurgitate or introduce any foreign object into the mouth, as these things can affect the breath test’s accuracy.

After submitting to a chemical test, a person has the absolute right to require the arresting officer to provide a second test to determine the presence of alcohol. This second test must be given, and its cost is the arresting agency’s responsibility. However, like the first test, this test’s results are available for use by the prosecutor at trial. An arrestee also has the right to get a second chemical test at his or her own expense, but the arresting officer does not have to arrange transportation for this test. Generally, this test’s results will be unavailable to the prosecutor unless your attorney feels it would be useful to your defense.

Wisconsin law provides that any properly conducted alcohol test taken within three hours of driving is admissible in court as evidence of the person’s alcohol concentration at the time of driving. For this reason, it is advisable for any arrested person to seek a blood test immediately upon being released from jail to the custody of a friend or family member. This should be done even if more than three hours have elapsed since the arrest. The results of this test do not have to be made known to the police, and they can be extremely useful in the defense of an OWI case.

❖ Refusing a Chemical Test
If a person refuses to take any chemical test requested by the arresting officer (except the PBT, which a person has a right to refuse to take), the arresting officer immediately provides the driver with a notice that his or her license will be revoked. A person is entitled to a court review on this issue, provided a request for hearing is made within 10 days. A refusal is only legally justified if it results from the person’s physical inability to submit to the test, or the arresting officer’s actions have violated procedural law. If the court finds the refusal unreasonable, a minimum one-year license revocation will be given, and an ignition interlock device will need to be installed on each vehicle owned by or registered to the driver. In addition, the person can still be prosecuted for the OWI, and the refusal can be used as evidence to show that the person was aware that he or she was intoxicated.

❖ Following the Arrest
After a person has provided a breath, blood or urine sample with a result indicating that a prohibited alcohol concentration might be present, the officer will issue a form entitled “Notice of Intent to Suspend Operating Privilege, Temporary Driving Permit.” This document is a 30-day driver’s license. At the end of 30 days, a six-month license suspension goes into effect.

A driver is entitled to an administrative review of the suspension by a Department of Transportation hearing examiner. The request for review must be made within 10 days of the receipt of the Notice of Intent to Suspend. If a review is requested, a hearing must be held within the 30-day period following the original notice. The concerns at the administrative hearing are limited, and the hearing is not a trial on the merits of the case.

After the hearing, the examiner will decide whether the suspension should take effect. If the examiner decides that the suspension should take effect, then the driver is entitled to a review by a judge. The judge also has the authority to stay the administrative suspension (meaning it
would not go into effect), pending the court hearing.

Because of the 10-day time limit to request an administrative review, and because of the complexity of the problems, it is a good idea to speak to an attorney as soon as possible following any arrest. Bakke Norman, S.C. can help you assess your options, while also preserving your rights and driving privileges pending a full resolution of your case. Although we cannot guarantee that you will not lose your driving privileges because of the administrative suspension process, most clients continue to drive while their case is pending.

❖ The Court Procedure

At the time of arrest, the driver is handed a citation that provides the initial court appearance date. These appearances are generally mandatory, though many courts excuse a person from attending if an attorney represents him or her. At the initial appearance, the driver is given the option of pleading guilty, not guilty or no contest. A plea of guilty or no contest results in the court entering a finding of guilt and proceeding to sentencing. A not guilty plea results in the case being scheduled for further proceedings.

Important time limits begin with the entry of a not guilty plea. In a first-offense OWI, a jury trial must be requested immediately. Written motions to the court must be made shortly after the initial appearance. Failure to meet these time limits can waive (give up) your right to file motions and to have a jury trial. Bakke Norman, S.C. attorneys can assure that all your rights are preserved and that you receive fair treatment in the court system.

After the initial appearance, the case is set for a pre-trial conference. This is the time when the defense attorney and the prosecutor can discuss the case and try to resolve the matter prior to trial. This is a good time for each side to discuss the strengths and weaknesses of their respective cases. Many cases are settled because of these conferences.

It is often necessary to file motions with the court. A motion is a request to the court to take specific action or provide specific relief based on the facts and law of the case. These motions may challenge the basis for the officer’s decision to stop and arrest the driver, the procedures used by the officer during the arrest and processing of the driver, or other legal concerns. We stay current with the law in this changing and challenging area, and we often file motions to protect and preserve our clients’ rights. A successful motion can lead to a case being resolved without an OWI or PAC conviction.

While a case is pending, Bakke Norman, S.C. attorneys take part in what is known as discovery. Formal discovery is the process by which we receive information from the police and the prosecuting attorney about your case. We also take part in informal discovery, during which we interview witnesses, investigate the factual claims made by the arresting officer, seek information about the officer and the assigned judge, pursue alternate theories to explain certain facts, and determine whether an expert witness would help in the defense. The client is a very important part of this process, and we try to involve him or her in preparing the defense.

If a case is not settled through negotiation or resolved by legal motions, a trial will be held. The trial can be to a judge or to a jury. In a first-offense case, it is necessary to pay a fee for a jury trial, while a second or any subsequent offense entitles the driver to a jury trial without payment of the fee. Although two charges are usually brought against the driver, guilt on one charge will result in a conviction being entered. The burden of proving all elements of the case is on the prosecutor.

❖ Commercial Motor Vehicle Operators

If you hold a commercial motor vehicle license, many laws apply specifically to you. In the areas of OWI and PAC, these laws can profoundly affect your ability to drive a commercial motor vehicle and even your employment. It is illegal to drive a commercial vehicle within four hours of consuming any intoxicating beverage, to have any measurable alcohol in the body while driving
or on duty time, or to have alcoholic beverages in the vehicle while it is operated. The prohibited alcohol concentration level is 0.04%, not the 0.08% that applies for other vehicles. Many other provisions apply only to commercial drivers. The attorneys at Bakke Norman, S.C. are available to answer any questions you might have in this specialized area of law.

❖ If I’m Arrested, Doesn’t that Mean I’m Guilty?
No. Because every case is different, it makes sense to speak to an attorney to determine (1) whether there are valid defenses to the charges, (2) the consequences of a finding of guilt, and (3) your rights under the law. Bakke Norman, S.C. has attorneys who are knowledgeable in this complicated area of the law. They can help you determine the best method of proceeding in your specific case, and they can provide a capable, aggressive defense to the charges brought against you. Although we sincerely hope you never have need for our services in this area of the law, we are here to help you if such a need arises.

Copyright ~ 2011 Bakke Norman, S.C.

R2011
BAKKE•NORMAN

Local Lawyers—Statewide Reputation

Business Planning and Development

Business Succession

Estate Planning/Probate/Trust Administration

Tax Planning

Debtor/Creditor Relations

Employment Law

Real Estate (Commercial & Residential)

Municipal Law

Business Litigation

Divorce & Family Relations

Criminal Defense/Operating While Intoxicated (OWI)

Personal Injury

Mediation/Arbitration (Alternative Dispute Resolution)

990 Main Street • P.O. Box 54 • Baldwin, WI 54002 • Phone: (715) 684-4545 • Fax: (815) 927-041
2919 Schneider Avenue • P.O. Box 280 • Menomonie, WI 54751 • Phone: (715) 235-9016 • Fax: (815) 927-041
1200 Heritage Drive • P.O. Box 308 • New Richmond, WI 54017 • Phone: (715) 246-3800 • Fax: (815) 927-041
www.bakkenorman.com