

Municipal Litigation Center

Heidi's Law

Background

In 2005, Daniel Buffman was arrested in northern Michigan and charged with first-offense drunk driving, even though his record included four drunk driving convictions on either prior arrests. Buffman's previous violations included a manslaughter conviction for causing the death of 16-year-old Heidi Steiner in June 1991, when he crossed the center line and collided with Heidi's car head-on. Buffman was sentenced to 10-15 years in prison, the maximum possible sentence for that conviction. Since felony penalties for repeat drunk driving convictions under the Michigan Vehicle Code applied only if the offender had two prior convictions in the past 10 years, and all of Buffman's previous violations occurred before 1991, his 2005 arrest subjected him only to a 93-day misdemeanor penalty.

Heidi's Law was introduced to eliminate the 10 year limitation period for felony enhancement of a 3rd alcohol-related driving offense. 2006 PA 564 (MCL 257.625). Under the Act, two prior convictions of any of the following offenses, **regardless of when the convictions occurred**, would subject the offender to enhanced penalties, including a felony conviction:

Operating While Impaired (OWI) MCL 257.625(9)(c)

Operating While Visibly Impaired (OWVI) MCL 257.625(11)(c)

OWI with a passenger under the age of 16 MCL 257.625(7)(a)(ii)

Zero Tolerance with a passenger under the age of 16 MCL 257.625(7)(b)(ii)

Operating with the Presence of a Schedule 1 Controlled Substance or Cocaine
MCL 257.625(9)(c)

Prior Convictions

Prior to passage of Heidi's Law, a prior conviction was established by an:

- abstract of conviction,
- copy of defendant's driving record, or
- an admission by defendant

Under Heidi's Law, a prior conviction may **also** be established by any of the following:

- copy of judgment of conviction
- transcript of a prior trial or a plea-taking or sentencing proceeding
- copy of court register of actions
- information contained in a presentence report.

Retention of Records by Secretary of State

A companion act to Heidi's Law requires the Secretary of State's Office to retain certain drunk driving records for the life of the driver. 2006 PA 565 (MCL 257.208), effective October 31, 2010.

Practice Tip

The municipal prosecutor will need to search all possible sources of prior convictions in order to determine whether referral to the county prosecutor is necessary for prosecution as felony and enhanced sentencing.

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