

**237 ALCOHOL CONCENTRATION CHART**

A chart showing estimated alcohol concentrations has been received in evidence and may be considered in arriving at a verdict. This chart is prepared by the Department of Transportation and shows estimated concentrations of alcohol as determined by comparing the number of drinks consumed with the weight of the person who consumed them. The chart has a formula for determining the amount of alcohol "burned up" over time by the drinker.

The estimates in the chart are based on estimates of the results under average circumstances. The actual alcohol concentration in any particular case will depend on many factors, including the metabolic rate of the person, which is the rate at which the body burns up alcohol, the actual alcohol content of the drinks, the amount of food in the person's stomach, and other factors.

This evidence was received for the purpose of helping you make your decision, if it does help you. You are not bound by this evidence. You should carefully consider the evidence along with all the other evidence in the case, giving to it just such weight as you decide it is entitled to receive.

**COMMENT**

Wis JI-Criminal 237 was approved by the Committee in March 1985 and was republished without substantive change in 1992 and 2000.

The 1994 revision of this instruction deleted the reference to "blood" alcohol concentration. The current versions of the Department of Transportation charts are titled "Alcohol Chart."

In State v. Hinz, 121 Wis.2d 282, 360 N.W.2d 56 (Ct. App. 1984), the Wisconsin Court of Appeals held it was error to exclude the DOT-published chart relating Blood Alcohol Concentration (BAC) to the number of drinks consumed, adjusted for body weight. The court compared the BAC chart to the standard stopping distance chart and found no reason for treating the two differently.

The court further noted the standard civil jury instruction for the stopping distance chart and stated, "[w]e perceive no reason why the correlative limitations of the blood alcohol chart should not be explained to the jury in the same manner." 121 Wis.2d 282, 288. The civil instruction referred to in Hinz has been withdrawn. See the note at Wis JI-Civil 255.

The court in Hinz further listed what the "correlative limitations" are for the BAC chart: "Blood alcohol content may vary from the chart's estimate because of metabolic rate, the actual alcohol content of the drinks consumed, the amount of food in the stomach, and other factors." 121 Wis.2d 282, 286.

Hinz seems to assume that the actual chart will go to the jury, as opposed to there being only testimony, based on the chart, about what the defendant's BAC probably was. Wis JI-Criminal 237 is based on the Hinz decision.