

FIFTH JUDICIAL DISTRICT

OWI SENTENCING GUIDELINES

Citations Issued On or After

December 1, 2015

District Court Administrator
215 S. Hamilton Street, Room 6111
Madison, WI 53703-3295
(608) 267-8820

James P. Daley, Chief Judge

Dated: December 1, 2015

This copy of the Sentencing Guidelines posted as a public service by Attorney Charles Kyle Kenyon, Madison Wisconsin.

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FIFTH JUDICIAL DISTRICT
 FIRST OFFENSE

Citations Issued On or After
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PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
<.10 or prescription meds used as prescribed	\$150-\$175 6 month revocation	\$175-\$225 6-7 month revocation	\$200-\$275 7-8 month revocation
.10-.149 or prescription meds not used as prescribed or THC	\$175-\$200 6-7 month revocation	\$175-\$225 7-8 month revocation	\$200-\$275 8-9 month revocation
.150-.199	\$175-\$225 7-8 month revocation	\$200-\$275 8-9 month revocation	\$225-\$300 9 month revocation
.20 and above or refusal or illegal drugs, illegally obtained prescription meds, hazardous substances	\$200-\$275 8-9 month revocation	\$225-\$300 9 month revocation	\$250-\$300 9 month revocation

PENALTY RANGE

FINE/COSTS

\$150-\$300 Forfeiture

Costs total \$572.50 (Driver Improvement Surcharge, Court Costs, Jail Surcharge, Justice Information Surcharge, Court Support Surcharge, Crime Lab/Drug Surcharge) plus a penalty surcharge equal to 26% of the fine

REVOCAION

6-9 months

No waiting period for occupational license (343.30)

PASSENGER UNDER AGE 16

See guidelines for OWI 2

REFUSAL

1 year revocation and 30 day waiting period for occupational license (343.305(10)(b)2)

If no refusal hearing is requested, revocation period begins 30 days after the date of refusal. If a hearing is requested, revocation begins 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later. (343.305(10)(a))

ALCOHOL ASSESSMENT AND DRIVER SAFETY PLAN

Court Shall Order:

- Community service for defendant unable to pay the fine (346.65(2g)(ag))

Court May Order:

- Safety plan to include the effect on victim or victim's family
- Community service work that demonstrates adverse effects of substance abuse or OWI to reduce the amount of forfeiture or fine (346.65(2g)(a))
Site visit that demonstrates the effects of substance abuse (346.65(2i))
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e))
- Restitution (346.65(2r)(a))

Note:

Ignition interlock (IID) restriction does not apply to first offense until July 2010, and then only if the PAC is equal to or greater than .15.

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FIFTH JUDICIAL DISTRICT
SECOND OFFENSE & FIRST w/ MINOR CHILD

Citations Issued On or After
December 1, 2015

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
<.10 or prescription meds used as prescribed	\$300-\$500 5-10 days jail 12 month revocation	\$400-\$800 10 days-3 months jail 13-17 month revocation	\$500-\$1000 20 days-2 months jail 14-18 month revocation
.10-.149 or prescription meds not used as prescribed or THC	\$400-\$800 10 days-1 month jail 13-17 month revocation	\$500-\$1000 20 days-2 months jail 15-17 month revocation	\$600-\$1000 1-3 months jail 16-18 month revocation
.150-.199	\$400-\$800 1-3 months jail 13-17 month revocation	\$500-\$1000 45 days-4 months jail 14-18 month revocation	\$600-\$1000 3-5 months jail 16-18 month revocation
.20 and above or refusal or illegal drugs, illegally obtained prescription meds, hazardous substances	\$500-1000 3-5 months jail 14-18 month revocation	\$600-\$1100 4 months-160 days jail 16-18 month revocation	\$800-\$1100 5-6 months jail 18 month revocation

PENALTY RANGE

JAIL

5 days to 6 months jail (346.65(2)(am)2). If probation, maximum term is 2 years, with minimum 5 days conditional jail. (973.09(2)(a)1.d) Maximum changes to 7 days when defendant enrolls in approved treatment court program. (346.65(2)(bm)) Conditional jail must include good time. (973.09(1)(d))

FINE/COSTS

\$300-\$1100 Fine

Costs total \$545 (Driver Improvement Surcharge, Court Costs, Jail Surcharge, Justice Information Surcharge, Court Support Surcharge, Crime Lab/Drug Surcharge) plus a penalty surcharge equal to 26% of the fine

REVOCAION

12-18 Months (343.30)
60 day waiting period for occupational license; 1 year wait if 2 OWIs in 5 years

PASSENGER UNDER AGE 16

Minimum and maximum fines, jail (346.65(2)(f)) and length of revocation (343.305(10)(b)4m) all double

REFUSAL

2 year revocation and 90 day waiting period for occupational license, unless 2nd offense in 5 years, then waiting period is 1 year (343.305(10)(b)3)

If no refusal hearing is requested, revocation period begins 30 days after the date of refusal. If a hearing is requested, revocation begins 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later. (343.305(10)(a))

ALCOHOL ASSESSMENT AND DRIVER SAFETY PLAN

Court Shall Order:

- If 2 offenses within 5 years, interlock for not less than 1 year nor more than 18 months, beginning 1 year after revocation begins (343.301(1)(a)2 and 343.301(1)(b))
- Community service for defendant unable to pay the fine (346.65(2g)(ag))
- Ignition interlock device for not less than 1 year nor more than 18 months (343.301(1g)(b))

Court May Order:

- Safety plan to include effect on victim or victim's family
- Community service work that demonstrates adverse effects of substance abuse or OWI to reduce the amount of forfeiture or fine (346.65(2g)(a))
- Site visit that demonstrates the effects of substance abuse (346.65(2i))
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and drive safety plan (346.65(2e))
- Restitution (346.65(2r)(a))

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FIFTH JUDICIAL DISTRICT
 THIRD OFFENSE

Citations Issued On or After
 December 1, 2015

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
<.10 or prescription meds used as prescribed	\$600-\$1200 45 days-3 months jail 24 month revocation	\$700-\$1500 2-5 months jail 26-30 month revocation	\$800-\$2000 3-6 months jail 28-32 month revocation
.10-.149 or prescription meds not used as prescribed or THC	\$700-\$1500 2-5 months jail 26-30 month revocation	\$1200-\$2500 3-6 months jail 28-32 month revocation	\$1600- \$4000 5-8 months jail 30-36 month revocation
.150-.199	\$1800-\$4000 4-7 months jail 28-32 month revocation	\$2000-\$5000 5-8 months jail 30-36 month revocation	\$2200-\$6000 6-9 months jail 32-36 month revocation
.20 and above or refusal or illegal drugs, illegally obtained prescription meds, hazardous substances	\$2400-\$6000 6-10 months jail 30-36 month revocation	\$2600-\$7000 7-11 months jail 32-36 month revocation	\$2800:\$800 8-12 months jail 36 month revocation

PENALTY RANGE

JAIL

45 days to 12months jail. (346.65(2)(am)3) If probation, maximum term is 2 years, with minimum 45 days conditional jail. (973.09(2)(a)1.d) Minimum changes to 14 days when defendant enrolls in approved treatment court program. (346.65(2)(cm)) Conditional jail must include good time. (973.09(1)(d))

FINE/COSTS

\$600-\$2000 fine: if PAC>= .17, fine doubles; >= .20, fine triples; >= .25, fine quadruples (346.65(2)(g))

Costs total \$545 (Driver Improvement Surcharge, Court Costs, Jail Surcharge, Justice Information Surcharge, Court Support Surcharge, Crime Lab/Drug Surcharge) plus a penalty surcharge equal to 26% of the fine

REVOCAION

24-36 months (343.30)
 90 day waiting period for occupational license, 1 year if 2 OWIs in 5 years

PASSENGER UNDER AGE 16

Felony conviction, plus minimum and maximum fines, jail (346.65(2)(f)) and length of revocation (343.305(10)(b)4m) all double

REFUSAL

3 year revocation and 120 day waiting period for occupational license, unless 2d offense in 5 years, when waiting period is 1 year (343.305(10)(b)4)

If no refusal hearing is requested, revocation period begins 30 days after the date of refusal If a hearing is requested, revocation begins 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later. (343.305(10)(a))

ALCOHOL ASSESSMENT AND DRIVER SAFETY PLAN

Court Shall Order:

- If prior offense within 5 years, interlock for not less than 1 year nor more than 36 months, beginning 1 year after revocation begins (343.301(1)(a)2 and (343.301(1)(b))
- Community service for defendant unable to pay the fine (346.65(2g)(ag))
- Ignition interlock device for not less than 1 year nor more than 36 months (343.301(1g)(b))

Court May Order:

- Safety plan to include the effect on victim or victim's family
- Community service work that demonstrates adverse effects of substance abuse or OWI to reduce the amount of forfeiture or fine (346.65(2g)(a))
- Site visit that demonstrates the effects of substance abuse (346.65(2i))
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e))
- Restitution (346.65(2r)(a))
- Seizure and forfeiture of motor vehicle owned and used by the defendant, unless the court orders interlock or immobilization, or unless seizure results in undue hardship or endangers health and safety (346.65(6)(a)l)

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FIFTH JUDICIAL DISTRICT
FOURTH OFFENSE (MISDEMEANOR)

Citations Issued On or After
December 1, 2015

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
<.10 or prescription meds used as prescribed	\$600-\$1200 2-3 months jail >= 2 months conditional jail 24 month revocation	\$700-\$1500 3-6 months jail >= 2 months conditional jail 26-30 month revocation	\$800-\$2000 4-7 months jail >= 2 months conditional jail 30-36 months revocation
.10-.149 or prescription meds not used as prescribed or THC	\$860-\$1500 3-6 months jail >= 3 months conditional jail 26-30 month revocation	\$1000-\$2000 4-7 months jail >= 3 months conditional jail 25-34 month revocation	\$1200-\$3000 6-8 months jail >= 3 months conditional jail 30-36 month revocation
.150-.199	\$2000-\$4000 5-8 months jail >= 4 months conditional jail 30-26 month revocation	\$2400-\$5000 6-9 months jail >= 4 months conditional jail 32-36 month revocation	\$2800-\$6000 7-10 months jail >= 4 months conditional jail 36 month revocation
.20 and above or refusal or illegal drugs, illegally obtained prescription meds, hazardous substances	\$2400-\$6000 8-11 months jail >= 5 months conditional jail 36 month revocation	\$2800-\$7000 9-12 months jail >= 5 months conditional jail 36 month revocation	\$3000-\$8000 11-12 months jail >= 5 months conditional jail 36 month revocation

PENALTY RANGE

JAIL

60 days to 12 months jail (346.65(2)(am)4). If probation, maximum term is 2 years, with minimum 60 days conditional jail. (973.09(2)(a)1.d) Minimum changes to 29 days when defendant enrolls in approved treatment court program. (346.65(2)(dm)) Conditional jail must include good time. (973.09(1)(d))

FINE/COSTS

\$600-\$2000 fine: if PAC>=.17, fine doubles; >=.20, fine triples; >=.25, fine quadruples (346.65(2)(g))

Costs total \$545 (Driver Improvement Surcharge, Court Costs, Jail Surcharge, Victim/Witness Surcharge Parts A and B, and Crime Lab/Drug Surcharge) plus a penalty surcharge equal to 26% of the fine

REVOCAION

24-36 months (343.30)

90 day waiting period for occupational license, 1 year if 2 OWIs in 5 years

PASSENGER UNDER AGE 16

Felony conviction, plus minimum and maximum fines, jail (346.65(2)(f)) and length of revocation (343.305(10)(b)4m) all double

REFUSAL

Same as OWI 3

ALCOHOL ASSESSMENT AND DRIVER SAFETY PLAN

Court Shall Order:

- If prior offense within 5 years, interlock for not less than 1 year nor more than 36 months, beginning 1 year after revocation begins (343.301(1)(a)2 and (343.301(1)(b))
- Community service for defendant viable to pay the fine (346.65(2g)(ag))
- Ignition interlock device for not less than 1 year nor more than 36 months (343.301(1g)(b))

Court May Order:

- Safety plan to include the effect on victim or victim's family
- Community service work that demonstrates adverse effects of substance abuse or OWI to reduce the amount of forfeiture or fine (346.65(2g) (a))
- Site visit that demonstrates the effects of substance abuse (346.65(2i))
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e))
- Restitution (346.65(2r) (a))
- Seizure and forfeiture of motor vehicle owned and used by the defendant, unless the court orders interlock or immobilization, or unless seizure results in undue hardship or endangers health and safety (346.65(6)(a)1)

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FIFTH JUDICIAL DISTRICT
FIRST OFFENSE COMMERCIAL

Citations Issued On or After
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PAC	MINIMUM	AGGRAVATED
.04 to .079 or prescription meds used as prescribed	\$150- \$175 6 month suspension	\$150- \$225 6-8 month suspension
.08to .099 or prescribed meds not used as prescribed or THC	\$150-\$175 6 month revocation	\$150-\$225 6-8 month revocation
.10 to .15	\$175-\$225 7 month revocation	\$200-\$275 7-9 month revocation
.151 and above or refusal or illegal drugs, illegally obtained prescription meds, hazardous substances	\$225-\$300 8-9 month revocation	\$300 9 month revocation

PENALTY RANGE

FORFEITURE/COSTS

\$150 - \$300 forfeiture

Costs total \$580.50 (Driver Improvement Surcharge, Court Costs, Jail Surcharge, Justice Information Surcharge, Court Support Surcharge, Crime Lab/Drug Surcharge, Truck Drive Education Surcharge) plus a penalty surcharge equal to 26% of the fine

REVOCAATION

6-9 months (not mandatory per 343.30)

PASSENGER UNDER AGE 16

Minimum and maximum forfeiture and revocation double (346.65(2j)(d))

ALCOHOL ASSESSMENT AND DRIVER SAFETY PLAN

Court May Order:

- Community service work to reduce the amount of forfeiture or fine (346.65(2g)(a))
- Site visit that demonstrates the effects of substance abuse (346.65(2i))
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and drive safety plan (346.65(2e))
- Restitution (346.65(2r)(a))

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FIFTH JUDICIAL DISTRICT
 SECOND OFFENSE COMMERCIAL

Citations Issued On or After
 November 1, 2015

PAC	MINIMUM	AGGRAVATED
.04 to .10 or prescription meds used as prescribed	\$300-\$400 5 days-2 months jail 12 month revocation	\$400-\$500 1 month-130 days jail 12-17 month revocation
.10 to .15 or prescription meds not used as prescribed or THC	\$350-\$500 10 days-3 months jail 13-17 month revocation	\$400-\$800 40 days-5 months jail 15-18 month revocation
.151 and above or refusal or illegal drugs, illegally obtained prescription medication, hazardous substances	\$400-\$900 20 days-4 months jail 16-17 month revocation	\$500-\$1000 2-6 months jail 17-18 month revocation

PENALTY RANGE

JAIL

5 days to 6 months jail or monitored home detention in excess of mandatory minimum. (973.03(4)) Minimum 48 consecutive hours jail. Minimum 5 days jail or 30 days community service work_(346.65(2g)(d))

FINE/COSTS

\$350-\$1100 Fine

Costs total \$553 (Driver Improvement Surcharge, Court Costs, Jail Surcharge, Victim/Witness Surcharge Part A and Part B, Crime Lab/Drug Surcharge and Truck Driver Education Surcharge)

REVOCAION

12-18 months (not mandatory per 343.30)

PASSENGER UNDER AGE 16

Minimum and maximum forfeiture and revocation double (346.65(2j)(d))

ALCOHOL ASSESSMENT AND DRIVER SAFETY PLAN

Court May Order:

- Community service work to reduce the amount of forfeiture or fine (346.65(2g)(a))
- Site visit that demonstrates the effects of substance abuse (346.65(2i))
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e))
- Restitution (346.65(2r)(a))

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FIFTH JUDICIAL DISTRICT
 THIRD OFFENSE COMMERCIAL

Citations Issued On or After
 November 1, 2015

PAC	MINIMUM	AGGRAVATED
.04 to .10 or prescription meds used as prescribed	\$600-\$800 1 month-100 days jail 24-26 month revocation	\$700-\$900 2-6 months jail 24-30 month revocation
.10 to .15 or prescription meds not used as prescribed or THC	\$700-\$1000 45 days-4 months jail 26-30 month revocation	\$800- \$1500 2 months-300 days jail 30-32 month revocation
.151 and above or refusal or illegal drugs, illegally obtained prescription medication, hazardous substances	\$1800-\$2000 2-5 months jail 32-34 month revocation	\$1800-\$2000 3-12 months jail 36 month revocation

PENALTY RANGE

JAIL

30 days to 12 months jail or monitored home detention in excess of mandatory minimum. (973.03(4)) Minimum 48 consecutive hours jail.

FINE/COSTS

\$600-\$2000 Fine

Costs total \$553 (Driver Improvement Surcharge, Court Costs, Jail Surcharge, Victim/Witness Surcharge Part A and Part B, Crime Lab/Drug Surcharge and Truck Driver Education Surcharge)

REVOCAION

24-36 months. 90 day waiting period for occupational license with absolute sobriety. 1 year if 2 OWIs within 5 years. (343.30)

PASSENGER UNDER AGE 16

Minimum and maximum forfeiture and revocation double (346.65(2j)(d))

ALCOHOL ASSESSMENT AND DRIVER SAFETY PLAN

Court May Order:

- Community service work to reduce the amount of forfeiture or fine (346.65(2g)(a))
- Site visit that demonstrates the effects of substance abuse (346.65(2i))
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e))
- Restitution (346.65(2r)(a))

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FIFTH JUDICIAL DISTRICT

POSSIBLE SENTENCING CRITERIA

FACTOR	MITIGATED	INTERMEDIATE	AGGRAVATED
Ability to pay	Indigent or low income	Average ability to pay	Substantial ability to pay
Conduct of defendant since offense	Initiated responsible efforts to evaluate self and alcohol problem, and to obtain treatment, if appropriate; no new crimes; and/or plea entered within 60 days of initial appearance	Defendant did nothing to evaluate self and alcohol problem, but has otherwise followed court orders	Defendant violated court orders and/or missed court appearances and/or resisted evaluation or treatment and/or committed a new crime
Consequences of offense to defendant	Defendant suffered substantial personal consequences, such as injury, death or injury to a relative, or impairment of earning ability	Defendant suffered moderate personal consequences	Defendant suffered no consequences outside the court system
Consequences to victims	No crash, injury, or damage to property	Property damage only, and covered by insurance, or restitution paid up front	Injury or uninsured property loss
Cooperation of defendant (with police)	Cooperated with police and submitted to tests	Did not cooperate or refused to submit to tests	Defendant fled or resisted and refused to submit to tests
Defendant's driving (current offense)	Considering time of day, manner and location of driving, little danger to others	Some present danger to other people or property	Extreme present danger to other people or property
Defendant's criminal history and driving record	Good driving record, or dated driving record and no criminal history	Poor driving record, or minor or dated criminal history	Very poor driving record, previous OWIs near in time (to each other and/or current offense), previous OWI-related OARs, or moderate to serious criminal history
Drug use	Prescription medications used as prescribed	Prescription medication not used as prescribed, or THC used	Illegal street drugs, illegally obtained prescription medication, or hazardous substances used