

**OWI AND RELATED ALCOHOL AND DRUG PENALTIES (AS OF SEPTEMBER 1, 2012)**

Conviction	Fine or Forfeiture	Confinement Sentence	Driving Consequences if Committed in Wisconsin	Consequences if Minor under 16 in Vehicle	Consequences if Committed in Another Jurisdiction	Occupational License
OWI, First Offense [346.63(1)] (Per se AC ≥ 0.08) [340.01(46m)(a)]	\$150-\$300 [346.65(2)(am)1.] (plus \$365 OWI surcharge) [346.655]	No.	Revocation: 6 - 9 month [343.30(1q)(b)2.] If AC is 0.15 or more: Vehicle equipped with IID for 1 year [343.301(1g)(b)1., (2m)]	Fine: \$350 - \$1100 [346.65(2)(f)1.] Jail: 5 days to 6 months [346.65(2)(f)1.] Rev./IID Max. Length: 12 - 18 months + confinement length [343.30(1q)(b)4m., 343.30(1r)]	Revocation: 6 months [343.31(2), (3)(b)]	Can apply immediately [343.30(1q)(b)2.] If IID is ordered: 0.02 PAC limit [340.01(46m)]
OWI, Second Offense No prior OWI within 10 years nor Great Bodily Harm or Homicide by Intoxicated Use offenses during offender's life. [346.63(1)] (Per se AC ≥ 0.08) [340.01(46m)(a)]	\$150-300 [346.65(2)(am)1.] (plus \$365 OWI surcharge) [346.655]	No.	Revocation: 6 - 9 month [343.30(1q)(b)2.] If AC is 0.15 or more: Vehicle equipped with IID for 1 year [343.301(1g)(b)1., (2m)]	Fine: \$350 - \$1100 [346.65(2)(f)1.] Jail: 5 days to 6 months [346.65(2)(f)1.] Rev./IID Max. Length: 12 - 18 months + confinement length [343.30(1q)(b)4m., 343.30(1r)]	Revocation: 6 months [343.31(2), (3)(b)]	Can apply immediately [343.30(1q)(b)2.] Absolute Sobriety Required [343.10(5)(a)(2)]
OWI, Second Offense Prior OWI within 10 years or Great Bodily Harm or Homicide by Intoxicated Use offense during offender's life. [346.63(1)] (Per se AC ≥ 0.08) [340.01(46m)(a)]	\$350-1,100 [346.65(2)(am)2.] (plus \$365 OWI surcharge) [346.655]	5 days - 6 months [346.65(2)(am)2.] Safe Streets option: 5 days - 7 days <sup>10</sup> [346.65(2)(bm)]	Revocation: 12 - 18 month + confinement length [343.30(1q)(b)3., 343.30(1r)] Vehicle equipped with IID for 1 year to 18 months + confinement length [343.301(1g)(b)2., (2m)]	Fine: \$700 - 2,200 [343.30(1q)(b)4m.] Jail: 10 days - 12 months [343.30(1q)(b)4m.] Rev./IID Max. Length: 2 - 3 years + confinement length [346.65(2)(f)2., 343.30(1r)]	Revocation: 1 year [343.31(2), (3)(a)]	Can apply after 45 days [343.30(1q)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
OWI, Third Offense [346.63(1)] (Per se AC ≥ 0.08) [340.01(46m)(a)]	\$600-2,000 (Excessive BAC Escalator) <sup>1</sup> [346.65(2)(am)3.] (plus \$365 OWI surcharge) [346.655]	45 days - 1 year [346.65(2)(am)3.] Safe Streets option: 14 days - 1 year <sup>10</sup> [346.65(2)(cm)]	Revocation: 2 - 3 year + confinement length [343.30(1q)(b)4., 343.30(1r)] Vehicle equipped with IID for 1 year to 3 years + confinement length [343.301(1g)(b)2., (2m)]	Fine: \$1,200 - 4,000 [343.30(1q)(b)4m.] Jail: 90 days - 2 years [343.30(1q)(b)4m.] Rev./IID Max. Length: 4 - 6 years + confinement length [346.65(2)(f)2., 343.30(1r)]	Revocation: 1 year [343.31(2), (3)(a)]	Can apply after 45 days [343.30(1q)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
OWI, Fourth Offense none within previous 5 years [346.63(1)] (Per se AC > 0.02) [340.01(46m)(c)]	\$600-2,000 (Excessive BAC Escalator) <sup>1</sup> [346.65(2)(am)4.] (plus \$365 OWI surcharge) [346.655]	60 days - 1 year [346.65(2)(am)4.] Safe Streets option: 29 days - 1 year <sup>10</sup> [346.65(2)(dm)]	Revocation: 2 - 3 year + confinement length [343.30(1q)(b)4., 343.30(1r)] Vehicle equipped with IID for 1 year to 3 years + confinement length [343.301(1g)(b)2., (2m)]	Fine: \$1,200 - 4,000 [343.30(1q)(b)4m.] Jail: 120 days - 2 years [343.30(1q)(b)4m.] Rev./IID Max. Length: 4 - 6 years + confinement length [346.65(2)(f)2., 343.30(1r)]	Revocation: 1 year [343.31(2), (3)(a)]	Can apply after 45 days [343.30(1q)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
OWI, Fourth Offense including 1 or more within previous 5 years [346.63(1)] (Per se AC > 0.02) [340.01(46m)(c)]	\$600-10,000 (Excessive BAC Escalator) <sup>1</sup> [346.65(2)(am)4m., 939.50(3)(h)] (plus \$365 OWI surcharge) [346.655]	Class H Felony 6 months - 6 years [346.65(2)(am)4m., 939.50(3)(h)]	Revocation: 2 - 3 year + confinement length [343.30(1q)(b)4., 343.30(1r)] Vehicle equipped with IID for 1 year to 3 years + confinement length [343.301(1g)(b)2., (2m)]	Fine: \$1,200 - 20,000 [343.30(1q)(b)4m.] Jail: 1 year - 12 years [343.30(1q)(b)4m.] Rev./IID Max. Length: 4 - 6 years + confinement length [346.65(2)(f)2., 343.30(1r)]	Revocation: 1 year [343.31(2), (3)(a)]	Can apply after 45 days [343.30(1q)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
OWI, Fifth or Sixth Offense [346.63(1)] (Per se AC > .02) [340.01(46m)(c)]	\$600-10,000 (Excessive BAC Escalator) <sup>1</sup> [346.65(2)(am)5., 939.50(3)(h)] (plus \$365 OWI surcharge) [346.655]	Class H Felony 6 months - 6 years [346.65(2)(am)5., 939.50(3)(h)]	Revocation: 2 - 3 year + confinement length [343.30(1q)(b)4., 343.30(1r)] Vehicle equipped with IID for 1 year to 3 years + confinement length [343.301(1g)(b)2., (2m)]	Fine: \$1,200 - 20,000 [343.30(1q)(b)4m.] Jail: 1 year - 12 years [343.30(1q)(b)4m.] Rev./IID Max. Length: 4 - 6 years + confinement length [346.65(2)(f)2., 343.30(1r)]	Revocation: 1 year [343.31(2), (3)(a)]	Can apply after 45 days [343.30(1q)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
OWI, Seventh, Eighth, or Ninth Offense [346.63(1)] (Per se AC > .02) [340.01(46m)(c)]	Up to \$25,000 [346.65(2)(am)6., 939.50(3)(g)] (plus \$365 OWI surcharge) [346.655]	Class G Felony 3 - 10 years [346.65(2)(am)6., 939.50(3)(g)]	Revocation: 2 - 3 years + confinement length [343.30(1q)(b)4., 343.30(1r)] Vehicle equipped with IID for 1 year to 3 years + confinement length [343.301(1g)(b)2., (2m)]	Fine: Up to \$50,000 [343.30(1q)(b)4m.] Jail: 6 - 20 years [343.30(1q)(b)4m.] Rev./IID Max. Length: 4 - 6 years + confinement length [346.65(2)(f)2., 343.30(1r)]	Revocation: 1 year [343.31(2), (3)(a)]	Can apply after 45 days [343.30(1q)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
OWI, Tenth or Greater Offense [346.63(1)] (Per se AC > .02) [340.01(46m)(c)]	Up to \$25,000 [346.65(2)(am)7., 939.50(3)(f)] (plus \$365 OWI surcharge) [346.655]	Class F Felony 4 - 12.5 years [346.65(2)(am)7., 939.50(3)(f)]	Revocation: 2 - 3 years + confinement length [343.30(1q)(b)4., 343.30(1r)] Vehicle equipped with IID for 1 year to 3 years + confinement length [343.301(1g)(b)2., (2m)]	Fine: Up to \$50,000 [343.30(1q)(b)4m.] Jail: 8 - 25 years [343.30(1q)(b)4m.] Rev./IID Max. Length: 4 - 6 years + confinement length [346.65(2)(f)2., 343.30(1r)]	Revocation: 1 year [343.31(2), (3)(a)]	Can apply after 45 days [343.30(1q)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
Causing Injury While OWI with no prior OWI offense or chem test refusal [346.63(2)(a)]	\$300-2,000 [346.65(3m)] (plus \$365 OWI surcharge) [346.655]	30 days - 1 year [346.65(3m)] Safe Streets option: 15 days - 1 year <sup>10</sup> [346.65(3r)]	Revocation: 1 - 2 years + confinement length [343.31(1)(am), (3)(e), (4)] If AC of 0.15 or higher: Vehicle equipped with IID for 1 year to 2 years + confinement length [343.301(1g)(b)1., (2m)]	Fine: \$600 - 4,000 [346.65(3m)] Jail: 60 days - 2 years [346.65(3m)] Rev./IID Max. Length: 2 - 4 years + confinement length [343.31(1)(am), (3)(e) (4)]	Revocation: 1 - 2 years [343.31(1)(am), (3)(e)]	Can apply after 60 days [343.31(3m)(b)] If IID is ordered: 0.02 PAC limit [9340.01(46m)]
Causing Injury while OWI with 1 or more OWI offense or chem test refusal [346.63(2)(a)]	Up to \$10,000 [346.65(3p), 939.50(3)(h)] (plus \$365 OWI surcharge) [346.655]	Class H Felony Up to 6 years [346.65(3p), 939.50(3)(h)]	Revocation: 1 - 2 years + confinement length [343.31(1)(am), (3)(e), (4)] If AC of 0.15 or higher: Vehicle equipped with IID for 1 year to 2 years + confinement length [343.301(1g)(b)1., (2m)]	Fine: \$20,000 [346.65(3p)] Jail: Up to 12 years [346.65(3p)] Rev./IID Max. Length: 2 - 4 years + confinement length [343.31(1)(am), (3)(e) (4)]	Revocation: 1 - 2 years [343.31(1)(am), (3)(e)]	Can apply after 60 days except if 2 or more offenses within 5 years: Can apply after 1 year [343.31(3m)(b)] Absolute Sobriety Required [343.10(5)(a)(2)]
Causing Great Bodily Harm by OWI [940.25(1)]	Up to \$25,000 [939.50(3)(f)] (plus \$365 OWI surcharge) [346.655]	Class F Felony Up to 12.5 years [939.50(3)(f)]	Revocation: 2 years + confinement length [343.31(1)(a), (3)(f), (4)] If AC is 0.15 or more, or not first offense: Vehicle equipped with IID for 1 year to 2 year + confinement length [343.301(1g)(b)1.,2., (2m)]	Rev./IID Max. Length: 4 years + confinement length [343.31(1)(a), (3)(f), (4)] *If unborn child is in vehicle: Rev./IID Max. Length: 4 years + confinement length [343.31(1)(a), (3)(f), (4)]	Revocation: 2 year [343.31(1)(a), (3)(f)]	Can apply after 120 days except if 2 or more offenses within 5 years: Can apply after 1 year AND Absolute Sobriety Required [343.31(3m)(a), 343.10(5)(a)(2)]
Homicide While OWI [940.09(1)]	Up to \$100,000 [939.50(3)(c), (d)] (plus \$365 OWI surcharge) [346.655]	Class D Felony Up to 25 years If one or more prior OWI-related offense: Class C Felony, up to 40 years [939.50(3)(c), (d)]	Revocation: 5 years + confinement length [343.31(1)(a), (3)(c), (4)] If AC is 0.15 or more, or not first offense: Vehicle equipped with IID for 1 year to 2 years + confinement length [343.301(1g)(b)1.,2., (2m)]	Rev./IID Max. Length: 10 years + confinement length [343.31(1)(a), (3)(c), (4)] *If unborn child is in vehicle: Rev./IID Max. Length: 10 years + confinement length [343.31(1)(a), (3)(c), (4)]	Revocation: 5 year [343.31(1)(a), (3)(c)]	Can apply after 120 days except if 2 or more offenses within 5 years: Can apply after 1 year AND Absolute Sobriety Required [343.31(3m)(a), 343.10(5)(a)(2)]

continued

Conviction	Fine or Forfeiture	Confinement Sentence	Driving Consequences if Committed in Wisconsin	Consequences if Minor under 16 in Vehicle	Consequences if Committed in Another Jurisdiction	Occupational License
Chemical Test Refusal (First Offense) [343.305(9)]	None	None	Revocation: 1 year [343.305(10)(b)2.] Vehicle equipped with IID for 1 year [343.301(1g)(a), (2m), 343.305(10m)]	Rev./IID Max. Length: 2 years [343.305(10)(b)4m.]	None	Can apply after 30 days [343.305(10)(b)2.] 0.02 PAC limit [340.01(46m)]
Chemical Test Refusal (Second Offense) No prior OWI within 10 years nor Great Bodily Harm or Homicide by Intoxicated Use offenses during offender's life. [343.305(9)]	None	None	Revocation: 1 year [343.305(10)(b)3.] Vehicle equipped with IID for 1 year [343.301(1g)(a), (2m), 343.305(10m)]	Rev./IID Max. Length: 2 years [343.305(10)(b)4m.]	None	Can apply after 30 days [343.305(10)(b)2.] Absolute Sobriety Required [343.10(5)(a)(2)]
Chemical Test Refusal (Second Offense) Prior OWI within 10 years or Great Bodily Harm or Homicide by Intoxicated Use offenses during offender's life. [343.305(9)]	None	None	Revocation: 2 year [343.305(10)(b)3.] Vehicle equipped with IID for 1 year to 2 years + confinement length [343.301(1g)(a), (2m), 343.305(10m)]	Rev./IID Max. Length: 4 years [343.305(10)(b)4m.]	None	Can apply after 90 days, except if 2 or more offenses within 5 years: Can apply after 1 year [343.305(10)(b)3.] Absolute Sobriety Required [343.10(5)(a)(2)]
Chemical Test Refusal (Third or Greater Offense) [343.305(9)]	None	None	Revocation: 3 years [343.305(10)(b)4.] Vehicle equipped with IID for 1 year to 3 years + confinement length [343.301(1g)(a), (2m), 343.305(10m)]	Rev./IID Max. Length: 6 years [343.305(10)(b)4m.]	None	Can apply after 120 days except if 2 or more offenses within 5 years: Can apply after 1 year [343.305(10)(b)4.] Absolute Sobriety Required [343.10(5)(a)(2)]
Administrative Suspension for Prohibited Alcohol Concentration [343.305(7)]	None	None	6 month suspension [343.305(7)(a)]	N/A	N/A	Can apply immediately [343.305(8)(d)]
Open Container (Driver or passenger) <sup>2</sup> [346.935(1)] (Commercial Motor Vehicle) [346.63(7)(a)3]	\$100 [346.95(2m)] If commercial motor vehicle is involved: Add \$10 [346.65(2u)(a)]	None	If commercial motor vehicle is involved: 24-hour disqualification [343.315(2)(g), 346.65(2u)(b)]	N/A	N/A	

**Notes:**

**Definition of Operating while Intoxicated**

Under Wisconsin law, a driver is considered to be operating while intoxicated if:

- (1) the driver is under the influence of an intoxicant so that his ability to operate a vehicle was impaired [346.63(1)(a)];
- (2) the driver has an alcohol concentration in excess of what the law allows. This limit generally decreases for problem drivers. The PAC (prohibited alcohol concentration) for first, second and third offenders is 0.08. For fourth and subsequent offenders as well as for all drivers who are subject to an ignition interlock order, the PAC is 0.02 [340.01(46m), 346.63(1)(b)]; or
- (3) the driver has any amount of a restricted controlled substance in this blood [346.01(50m), 346.63(1)(b)].

**Period between Offenses**

The period between offenses are measured violation date to violation date. [346.65(2c)].

**Occupation Licenses**

Persons whose operating privileges have been suspended or revoked may apply for an occupational license to drive between home and work or school. [343.10] Obtaining an occupational license will require payment of \$240 (\$50 reinstatement fee + \$140 OWI-related fee + \$40 occupational fee license + \$10 license issuance fee). [343.21(1)(j), (jr), 343.21(1)(k), (n)] No occupational license may be issued to an offender who fails to pay \$50 IID Surcharge. [343.10(2)(f)] Persons with two or more suspensions, revocations or convictions counted under 343.307(1), must complete assessment and be in compliance with a driver safety plan as well as submit proof of IID install to be eligible for an occupational license. [343.10(2)(e), (f), 343.30(1)(c)]

**Ignition Interlock Devices (IIDs)**

Courts enter IID orders on any repeat offender, any first offender with a BAC of 0.15 or more and any person who refuses a chem test. [343.301(1g)] A driver subject to an IID order will have his Class D operating privileges restricted for a minimum of 1 year to a maximum period equal to the length of the driver's revocation (which includes extensions for confinement and for having a minor under 16 or an unborn child in the vehicle at the time of the offense). [343.301(2m)] The IID restriction will begin on the date the driver obtains any license (including occupational license) in Wisconsin. [343.301(2m)] The IID order also requires the installation of IIDs on every vehicle titled or registered in the driver's name, unless undue financial hardship would result. [343.301(1g), (1m)] Courts can require the vehicle order to be immediately. Courts will charge a \$50 IID Surcharge when issuing IID orders. [343.301(5)]

**Minor under 16 in Vehicle at Time of Offense**

Penalties are often doubled if a minor under the age of 16 was in the vehicle at the time of the offense. For a first OWI offense and a second OWI offense with no prior offenses in the preceding 10 years, fines are more than doubled, jail time is added and revocation penalties are doubled. (See chart.) For a second OWI offense with prior convictions within 10 years of offense as well as third or greater OWI offenses and causing injury while intoxicated offenses, fines/forfeitures, jail time and suspensions/revocations penalties are doubled. For causing great bodily harm or homicide while intoxicated offenses and chemical test refusals, the revocation penalties are doubled. [343.30(1q)(b)4m, 343.305(10)(b)4m, 343.31(3)(c), (e), (f) and 346.65(2)(f), (3m), (3p)]

**Huber Release**

Regardless of when the court orders IIDs to be installed, an offender cannot be released from jail under the Huber Law UNLESS, IIDs are installed in each vehicle to which the order applies within 2 weeks of being convicted. Failure to install IIDs within this 2 week period will result in being ineligible for Huber release for the duration of the sentence. This failure CANNOT be corrected by installing the IIDs at a later time. Sheriffs lack any discretionary power in imposing this Huber release restriction. [303.08(10r)] An offender will also be required to submit to assessment and treatment as a condition of Huber release. [303.08(10m)]

**Consequences to Holders of Commercial Drivers Licenses**

If any of the listed offenses (except Open Container offenses) are committed while operating a commercial motor vehicle or were committed by a holder of a commercial drivers license (CDL) after September 30, 2005, the following sanctions are applicable:

- (1) for first offenders, a 1-year CDL disqualification (a 3-year CDL disqualification if transporting hazardous materials); or
- (2) for 2nd and subsequent offenders (with first offense after July 1, 1987), a lifetime CDL disqualification. [346.315(2)]

Administrative suspensions result in CDL disqualifications.

**"Safe Street" Option**

A modified probation option known as "Safe Street" is available for certain second, third, fourth OWI offenses and first offense causing injury by intoxicated use of a motor vehicle. Mandatory jail sentences are reduced only if the person completes probation including alcohol and other drug treatment. This option may only be used once in a person's lifetime.

**Demerit Points**

All offenses listed on this chart result in the assessment of demerit points except chem test refusal, administrative suspensions and open container violations. 6 demerit points are assessed for these violations committed by drivers holding regular licenses. Drivers who have never been licensed or who hold instruction permits or probationary licenses, are assessed 12 demerit points. [343.32(2)(bc)] For the scale of demerit points for all traffic violations, see Trans 101.02, Wisconsin Administrative Code, and 343.32(2).

**Prior Offenses**

For a complete list of offenses that may be counted as prior offenses, see 343.307.

**Additional Fees**

In addition to fines and forfeitures, fees, assessments and surcharges will be applied pursuant to 165.755(1), 302.46, 343.301(5), 346.655(1), 757.05(1), 814.63(1), 814.65(1), 814.85(1) and/or 814.86(1).

**Mandatory Time of Confinement**

For 3rd or subsequent offense, pre-sentence release and stay of execution of jail or prison term is prohibited until after mandatory minimum time of confinement has been served, with exceptions for probation or legal cause. Probation is a sentencing option, but offender must serve at least the mandatory minimum jail or prison term. [969.01(2)(a)]

**Start of Revocation**

Period of license revocation begins on date of conviction and is extended by the number of days the offender is sentenced to jail or prison. [343.30(1r)]

**Motor Vehicles**

Operation of a motor vehicle is an element of all offenses except the felony offenses of causing great bodily harm or homicide by intoxicated use of any type of vehicle.

**Footnotes:**

<sup>1</sup> Excessive BAC Escalator: Forfeitures and fines are doubled if offense was committed with an AC between 0.17 and 0.199; tripled if AC is between 0.20 and 0.249; and quadrupled if AC exceeds 0.25. [346.65(2)(g)]

<sup>2</sup> Both drivers and passengers can be ticketed for the presence of an unsealed container of an intoxicating beverage in the passenger compartment of a vehicle. [346.935]

SOURCE: DOT-Bureau of Transportation Safety; DOT-Office of General Counsel

This guide provided by Atty. Charles Kenyon, Madison, 608-276-9645.