

FIRST JUDICIAL DISTRICT

OWI SENTENCING GUIDELINES

Effective for offenses occurring on or after September 30, 2003

Wisconsin law recognizes the serious consequences of operating a motor vehicle while under the influence of an intoxicant (“OWI”), and specifies a range of penalties for violation of those laws. The judges of this judicial district understand the extraordinary dangers of drunk driving in a heavily populated community with congested streets and highways.

The Legislature has directed that each judicial district in the state adopt guidelines for the sentencing of certain OWI violations. § 346.65(2m), Stats. *See also State v. Jorgensen*, 2003 WI 105, ¶¶26-27, 264 Wis. 2d 157, 174-175 (2003)(although local guidelines are applicable only to prohibited alcohol concentration (“BAC”) offenses, courts may refer to local guidelines when sentencing for other OWI offenses). Indeed, in Milwaukee County, where the criminal courts preside over thousands of OWI cases, guidelines for the sentencing of OWI violations will contribute to consistency among branches and among the cases in each branch. Relative consistency will help ensure justice for offenders, victims, and the community.

We also appreciate the importance of discretion in evaluating the facts and circumstances of each offender and each case. Therefore, these guidelines identify many of the significant criteria considered by courts in imposing a sentence and the penalty range within which each factor may fall. However, the guidelines do not require any particular sentence. Further, the various aggravating and mitigating criteria may be of varying significance in different cases and must be considered as a whole before a sentence is determined.

We first adopted OWI guidelines in 1995. These guidelines have been reviewed, revised and reaffirmed by our predecessors, have been modified to reflect changes in State law, and are now approved as of the date above.

Hon. Michael P. Sullivan
Chief Judge

Hon. Victor Manian
Presiding Judge, Felony Division

Hon. Daniel Konkol
Presiding Judge, Misdemeanor Division

Hon. William Brash
Hon. Michael Brennan
Hon. Louis Butler
Hon. Karen Christenson
Hon. Jeffrey Conen
Hon. Jean DiMotto
Hon. Timothy Dugan

Hon. John Franke
Hon. David Hansher
Hon. Charles Kahn
Hon. Mary Kuhnmuench
Hon. Elsa Lamelas
Hon. John McCormick
Hon. Patricia McMahon

Hon. Marshall Murray
Hon. Richard Sankovitz
Hon. John Siefert
Hon. Jeffrey Wagner
Hon. Glenn Yamahiro

SENTENCING CRITERIA

Factor (listed alphabetically)	Mitigated	Intermediate	Aggravated
Ability to Pay	Defendant is indigent or of low income	Defendant has average ability to pay	Defendant has substantial ability to pay
Blood Alcohol Level	Less than .05 above the legal limit (e.g., BAC of .07 or less in an OWI 4 th case, where limit is .02)	.05-.10 over the legal limit	More than .10 over the legal limit
Conduct of Defendant since Offense	Defendant initiated responsible efforts to evaluate self and alcohol problem, and to obtain treatment, if appropriate; and has not committed a subsequent offense	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 subsequent offense
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 did not suffer consequences outside court system
Consequences to Victims	No accident or injury	Property damage only, and covered by insurance	Personal injury, or uninsured property loss
Cooperation of Defendant	Defendant cooperated with police and submitted to tests	Defendant 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, manner or location of driving, little danger to others	Some present danger to another person or property	Extreme present danger to another person
Defendant's Record	Good driving record, or dated record and no criminal record	Poor driving record, or minor or dated criminal record	Very poor driving record, previous OWIs at short intervals, previous OWI-related OAR/OAS, or moderate to severe criminal record

SENTENCING RANGES

Offense	Incarceration	Forfeiture/Fine */**	Suspension/Revocation	Immobilization/Interlock /Seizure ***
First Offense				None applicable
Mitigated Range	NA	\$150-300	6-9 months	
Intermediate Range	NA	\$200-300	7-9 months	
Aggravated Range	NA	\$250-300	8-9 months	
Second Offense				Court may order interlock or immobilization for 12-18 months****
Mitigated Range	5-120 days	\$350-500	12-18 months	
Intermediate Range	40-150 days	\$350-750	14-18 months	
Aggravated Range	90-180 days	\$350-1100	16-18 months	
Third Offense				Court may order seizure or shall order interlock or immobilization for 12-36 months ****
Mitigated Range	30-210 days	\$600-1000	24-28 months	
Intermediate Range	90-300 days	\$600-1500	28-32 months	
Aggravated Range	180-365 days	\$600-2000	32-36 months	
Fourth Offense				Court may order seizure or shall order interlock or immobilization for 1-5 years
Mitigated Range	60-365 days	\$600-1200	5 years °	
Intermediate Range	150-365 days	\$600-1600	5 years °	
Aggravated Range	210-365 days	\$600-2000	5 years °	
Fifth Offense				Court may order seizure or shall order interlock or immobilization for 1-5 years
Mitigated Range	180-365 days °°	\$600-1200	5 years °	
Intermediate Range	12-36 months I.C. °°°	\$600-1600	5 years °	
Aggravated Range	24-36 months I.C.	\$600-10,000	5 years °	
Sixth Offense				Court may order seizure or shall order interlock or immobilization for 1-5 years
Mitigated Range	270-365 days °°	\$600-1200	5 years °	
Intermediate Range	18-40 months I.C.	\$600-1600	5 years °	
Aggravated Range	30-36 months I.C.	\$600-10,000	5 years °	
Seventh Offense				Court may order seizure or shall order interlock or immobilization for 1-5 years
Mitigated Range	300-365 days °°	\$600-1200	5 years °	
Intermediate Range	24-40 months I.C.	\$600-1600	5 years °	
Aggravated Range	30-36 months I.C.	\$600-10,000	5 years °	

* In addition to the Forfeiture/Fine, the court must impose costs and surcharges (except in 1st offenses cases where BAC is less than .10% and the defendant is convicted under § 346.65(1)(b), not 3646.65(1)(a), see § 343.30(1q)). The clerk will determine the amounts, which will depend on (1) whether the offense is the first or not and (2) the amount of the Forfeiture/Fine, including: Clerk Fee (\$20.00), Jail Assessment (1% of the fine, or at least \$10.00), Crime Laboratories and Drug Law Enforcement Assessment

(\$7.00), Circuit Court Automation Project Fee (\$5.00), Court Support Service Fee (\$68.00), Justice Information System Fee (\$9.00), Milwaukee Prosecution Fee (\$3.50), Victim/Witness Surcharge (\$50.00), Penalty Assessment (24% of the Fine/Forfeiture), Driver Improvement Surcharge (\$355.00), and DNA Analysis Surcharge (\$250.00).

** For third and subsequent offenses, the fines increase depending on the defendant's BAC; the fines double if the BAC is .17 or greater; they triple if the BAC is .20 or greater; they quadruple if the BAC is .25 or greater. See § 346.65(2)(g).

*** For offenses committed on or after January 1, 2002; for offense committed between September 30, 2001 and December 31, 2001, and offenses committed before September 1, 2001, these provisions vary

**** Interlock/immobilization is optional if no two OWIs fell within five years of one another. See § 343.301.

° This revocation is accomplished administratively by the Department of Transportation, as a result of a habitual traffic offender designation, pursuant to § 351.025. Stats.

°° Incarceration that may be imposed as a jail term or as a condition of probation. See § 973.09(1)(d)1.

°°° "I.C." refers to the initial term of confinement in prison; in addition the court must impose a period of extended supervision. The total length of the sentence, including extended supervision, may not exceed six years, and the initial term of confinement may not exceed three years, subject to note 7 below.

Additional Sentencing Provisions:

1. For each OWI violation the court shall order that defendant undergo an alcohol assessment and comply with a driver safety plan
2. Court may order a reduction in court costs, fine or forfeiture so an offender is able to pay the difference for an alcohol assessment and driver safety plan
3. Court may order community service to reduce the amount of a fine or forfeiture. See § 346.65(2g)(ag).
4. Court may order community service that demonstrates the adverse effects of OWI or substance abuse
5. Court may order a site visit that demonstrates the effects of OWI or substance abuse
6. Court may order restitution
7. The applicable minimum and maximum Fines/Forfeitures or Incarceration may be doubled if there is a minor passenger under the age of 16 in the motor vehicle at the time of the violation or if the violation occurred where persons were engaged in work in a utility, highway maintenance or construction area