

# **THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES**

**FOR CITATIONS ISSUED ON OR AFTER**

**April 2, 2008**

THIRD JUDICIAL DISTRICT  
515 W. Moreland Blvd.  
Waukesha, WI 53188-2428  
(262) 548-7210

HON. J. MAC DAVIS  
Chief Judge

MICHAEL G. NEIMON  
District Court Administrator

DISTRICT OAWI SENTENCING GUIDELINES COMMITTEE:

HON. JACQUELINE ERWIN, Jefferson Co.  
HON. DAVID C. RESHESKE, Washington Co.  
HON. RALPH RAMIREZ, Waukesha Co.  
HON. TOM R. WOLFGRAM, Ozaukee Co., Chairperson

**Modifications: Per the 2007 Wisconsin ACT 111 the driver improvement surcharge increases from \$355 to \$365 for all offenses. 40% of the surcharge is payable to the state Secretary of Administration; 60% is payable to the treasurer of the county, city, town or village.**

## **SENTENCE OPTIONS/ALTERNATIVES**

### Alcohol Assessment and Driver Safety Plan. (All offenses)

- Court may order the safety plan to include effect on any victim or victim's family. **(All offenses)**
- Court may order community service work that demonstrates adverse effects of abuse (and a reasonable fee). **(All offenses)**
- Court may order a visit to a site that demonstrates adverse effects of abuse (and a reasonable fee). **(All offenses)**
- Court must order community service to pay off fine, if a finding is made that there is an inability to pay.
- Court may also order restitution. **(All offenses)**
- Court may, after a finding of inability to pay, reduce the costs or forfeiture and order the person to pay the difference toward the cost of the alcohol assessment and driver safety plan. **(All offenses)**

### IMMOBILIZATION OR IGNITION INTERLOCK OF OWNED VEHICLE 2nd offense or greater

(Unless undue hardship, extreme inconvenience or endangerment of person's health and safety)

Court may order a motor vehicle owned and operated by a violator to be seized and forfeited. **(3rd offense and above only)**

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## **MITIGATING AND AGGRAVATING FACTORS IN SENTENCING**

### **MITIGATING FACTORS:**

- \*Age of prior OAWI/BAC Offense/Conviction
- \*Pre-Conviction Assessment and Treatment
- \*Good Driving Record; \*Minimal Poor Driving
- \*Cooperation With Authorities; \*Positive Attitude/Steps Toward Problem Recognition
- \*Blood Test Taken with Refusal

### **AGGRAVATING FACTORS:**

- \*Poor Driving; \*Accident or Injury Involved; \*Poor Prior Driving Record; \*Lack of Remorse
- \*Recent Prior OAWI/BAC Offense/Conviction
- \*Operating Without Valid Driving Privileges (i.e. OAR, OAS, OWL, HTO)
- \*Circumstances of Consumption (Binge Drinking, Amount Consumed, Medication Use, etc.)
- \*Poor/Limited Problem Recognition as Evidenced by Prior Treatment History or Lack Thereof
- \*Uncooperative/Belligerent/Violent Toward Arresting Officer
- \*Prior Uncounted Offenses for OAWI/BAC
- \*For 3rd Plus Offenses: Previously Uncounted Offenses from January 1, 1988, per (1993 Wisconsin Act 317, Effective April 30, 1994)
- \*Combination of alcohol and controlled substance use

**THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES**

**PENALTY RANGES PER STATUTE**

	<b>1<sup>st</sup> Offense (Alcohol Only) .08&lt;.10</b>	<b>1st Offense</b>	<b>2nd Offense</b>	<b>3rd Offense</b>	<b>4th Offense</b>	<b>5th Offense Or Higher</b>
Fine or Forfeiture	\$150 - 300	\$150 - 300	\$350 - 1100	\$600 - 8000	\$600 – 8000	\$600 - 8000
Penalty Assessment		26%	26%	26%	26%	26%
Jail Assessment		\$10	\$10	1% (\$10 min)	1% (\$10 min)	1% (\$10 min)
Justice Information Service Fee		\$12	none	none	None	none
Court Support Services Fee		\$68	none	none	None	none
Victim-Witness Surcharge A		None	\$40	\$40	\$40	\$65
Victim-Witness Surcharge B		None	\$20	\$20	\$20	\$20
Court Costs		\$25	\$20	\$20	\$20	\$20
Driver Improvement Surcharge		\$365	\$365	\$365	\$365	\$365
Crime Lab.& Drug Assessment		\$8	\$8	\$8	\$8	\$8
Jail Sentence	None	none	5 days to 6 mos.*	30 days to 1 yr*	60 days to 1 yr*	6 mos. to 5 yrs*
Revocation	6-9 months	6-9 months	12-18 months	24-36 months	24-36 months	24-36 months
(No Refusal) Waiting period for occupational license	None	None	60 days**	90 days**	90 days**	90 days**
(Refusal) Waiting period for occupational license	30 days	30 days	90 days**	120 days**	120 days**	120 days**

**\*\*Must complete Alcohol Assessment and be in compliance with drivers safety plan and absolute sobriety during use**

### Third Judicial District OAWI Sentencing Guidelines

#### First Offense

#### Mitigating Factors

Bac Level	.08 < .10 (Alcohol only)	.08 < .10 (Alcohol & Drug)	.10 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Forfeiture	250.00	150.00	150.00	200.00	250.00	250.00
Penalty Surcharge (26%)		39.00	39.00	52.00	65.00	65.00
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Justice Information Service Fee		12.00	12.00	12.00	12.00	12.00
Court Support Services Fee		68.00	68.00	68.00	68.00	68.00
Court Costs		25.00	25.00	25.00	25.00	25.00
Driver Improvement Surcharge		365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$250.00</b>	<b>\$677.00</b>	<b>\$677.00</b>	<b>\$740.00</b>	<b>\$803.00</b>	<b>\$803.00</b>
Revocation	6 months	6 months	6 months	7 months	8 months	9 months

#### Aggravating Factors

Bac Level	.08 < .10 (Alcohol only)	.08 < .10 (Alcohol & Drug)	.10 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Forfeiture	300.00	200.00	200.00	250.00	300.00	300.00
Penalty Surcharge (26%)		52.00	52.00	65.00	78.00	78.00
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Justice Information Service Fee		12.00	12.00	12.00	12.00	12.00
Court Support Services Fee		68.00	68.00	68.00	68.00	68.00
Court Costs		25.00	25.00	25.00	25.00	25.00
Driver Improvement Surcharge		365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$300</b>	<b>\$740.00</b>	<b>\$740.00</b>	<b>\$803.00</b>	<b>\$866.00</b>	<b>\$866.00</b>
Revocation	7 months	7 months	7 months	8 months	9 months	9 months

### Third Judicial District OAWI Sentencing Guidelines

#### Second Offense

#### Mitigating Factors

Bac Level	.08 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Fine	350.00	400.00	450.00	500.00
Penalty Surcharge (26%)	91.00	104.00	117.00	130.00
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$904.00</b>	<b>\$967.00</b>	<b>\$1,030.00</b>	<b>\$1,093.00</b>
Jail	5-30 days	10-60 days	20-90 days	90-180 days
Revocation	12 months	14 months	16 months	18 months

#### Aggravating Factors

Bac Level	.08 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Fine	400.00	450.00	500.00	550.00
Penalty Surcharge (26%)	104.00	117.00	130.00	143.00
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$967.00</b>	<b>\$1,030.00</b>	<b>\$1,093.00</b>	<b>\$1,156.00</b>
Jail	30-60 days	60-90 days	90-180 days	120-180 days
Revocation	14 months	16 months	18 months	18 months

### Third Judicial District OAWI Sentencing Guidelines

#### Third Offense

#### Mitigating Factors

Bac Level	.08 to .169	.17 to .199	.20 to .249	.25 and above or refusal
Fine	600.00	1200.00	1800.00	2400.00
Penalty Surcharge (26%)	156.00	312.00	468.00	624.00
Jail Surcharge	10.00	12.00	18.00	24.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,219.00</b>	<b>\$1,977.00</b>	<b>\$2,739.00</b>	<b>\$3,501.00</b>
Jail	30 days -5 months	45 days - 6 months	3-7 months	4-9 months
Revocation	24 months	27 months	30 months	33 months

#### Aggravating Factors

Bac Level	.08 to .169	.17 to .199	.20 to .249	.25 and above or refusal
Fine	650.00	1300.00	1950.00	2600.00
Penalty Surcharge (26%)	169.00	338.00	507.00	676.00
Jail Surcharge	10.00	13.00	19.50	26.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,282.00</b>	<b>\$2,104.00</b>	<b>\$2,929.50</b>	<b>\$3,755.00</b>
Jail	45 days -6 months	4-8 months	7 mo.-1 yr.	9 mo.-1 yr.
Revocation	27 months	30 months	33 months	36 months

### Third Judicial District OAWI Sentencing Guidelines

#### Fourth Offense

#### Mitigating Factors

Bac Level	.02 to .079	.08 - .169	.17 - .199	.20 to .249	.25 and above or refusal
Fine	650.00	750.00	1500.00	2250.00	3000.00
Penalty Surcharge (26%)	169.00	195.00	390.00	585.00	780.00
Jail Surcharge	10.00	10.00	15.00	22.50	30.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,282.00</b>	<b>\$1,408.00</b>	<b>\$2,358.00</b>	<b>\$3,310.50</b>	<b>\$4,263.00</b>
Jail	2 mo.-1yr.	3 mo.-1yr.	4 mo.-1yr.	6 mo.-1yr.	7 mo.-1yr.
Revocation	24 months	24 months	27 months	33 months	36 months

#### Aggravating Factors

Bac Level	.02 to .079	.08 - .169	.17 - .199	.20 to .249	.25 and above or refusal
Fine	900.00	1000.00	2000.00	3000.00	4000.00
Penalty Surcharge (26%)	234.00	260.00	520.00	780.00	1040.00
Jail Surcharge	10.00	10.00	20.00	30.00	40.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$1,597.00</b>	<b>\$1,723.00</b>	<b>\$2,993.00</b>	<b>\$4,263.00</b>	<b>\$5,533.00</b>
Jail	5 mo.-1yr.	7 mo.-1yr.	9 mo.-1yr.	10 mo.-1yr.	10 mo.-1yr.
Revocation	27 months	33 months	36 months	36 months	36 months

### Third Judicial District OAWI Sentencing Guidelines

#### Fifth Offense

#### Mitigating Factors

Bac Level	.02 to .079	.08 - .169	.17 - .199	.20 to .249	.25 and above or refusal
Fine	1200.00	1500.00	3000.00	4500.00	6000.00
Penalty Surcharge (26%)	312.00	390.00	780.00	1170.00	1560.00
Jail Surcharge	12.00	15.00	30.00	45.00	60.00
Victim-Witness Surcharge A	65.00	65.00	65.00	65.00	65.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$2,002.00</b>	<b>\$2,383.00</b>	<b>\$4,288.00</b>	<b>\$6,193.00</b>	<b>\$8,098.00</b>
Jail	6 months -6 yrs	1-6 yrs	1-6 yrs	1-6 yrs	1-6 yrs
Revocation	36 months	36 months	36 months	36 months	36 months

\* If the defendant is placed on probation you must impose at least the minimum mandatory period of confinement as a condition of probation. The defendant is eligible to receive good time under Sec. 302.43. See Sec. 973.09(1)(d)

#### Aggravating Factors

Bac Level	.02 to .079	.08 - .169	.17 - .199	.20 to .249	.25 and above or refusal
Fine	1500.00	1700.00	3400.00	5100.00	6800.00
Penalty Surcharge (26%)	390.00	442.00	884.00	1326.00	1768.00
Jail Surcharge	15.00	17.00	34.00	51.00	68.00
Victim-Witness Surcharge A	65.00	65.00	65.00	65.00	65.00
Victim-Witness Surcharge B	20.00	20.00	20.00	20.00	20.00
Court Costs	20.00	20.00	20.00	20.00	20.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	8.00	8.00	8.00	8.00	8.00
<b>Total Financial</b>	<b>\$2,383.00</b>	<b>\$2,637.00</b>	<b>\$4,796.00</b>	<b>\$6,955.00</b>	<b>\$9,114.00</b>
Jail	1-6 yrs	1-6 yrs	1-6 yrs	2-6 yrs	2-6 yrs
Revocation	36 months	36 months	36 months	36 months	36 months

\* If the defendant is placed on probation you must impose at least the minimum mandatory period of confinement as a condition of probation. The defendant is eligible to receive good time under Sec. 302.43. See Sec. 973.09(1)(d)



### Third Judicial District OAWI Sentencing Guidelines

#### Municipal Court First Offense

#### Mitigating Factors

Bac Level	.08 < .10 (Alcohol Only)	.08 < .10 (Alcohol & Drug)	.10 to .149	.15 to .199	.20 + above	Refusal
Forfeiture	250.00	150.00	150.00	200.00	250.00	250.00
Penalty Surcharge (26%)		39.00	39.00	52.00	65.00	65.00
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Court Costs*		\$15 - \$28	\$15 - \$28	\$15 - \$28	\$15 - \$28	\$15 - \$28
Driver Improvement Surcharge		365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial From</b>		<b>\$587.00</b>	<b>\$587.00</b>	<b>\$650.00</b>	<b>\$713.00</b>	<b>\$713.00</b>
<b>Factoring Court Costs To</b>	<b>\$250.00</b>	<b>\$600.00</b>	<b>\$600.00</b>	<b>\$663.00</b>	<b>\$726.00</b>	<b>\$726.00</b>
Revocation	6 months	6 months	6 months	7 months	8 months	9 months

#### Aggravating Factors

Bac Level	.08 < .10 (Alcohol Only)	.08 < .10 (Alcohol & Drug)	.10 to .149	.15 to .199	.20 + above	Refusal
Forfeiture	300.00	200.00	200.00	250.00	300.00	300.00
Penalty Surcharge (26%)		52.00	52.00	65.00	78.00	78.00
Jail Surcharge		10.00	10.00	10.00	10.00	10.00
Court Costs*		\$15 - \$28	\$15 - \$28	\$15 - \$28	\$15 - \$28	\$15 - \$28
Driver Improvement Surcharge		365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge		8.00	8.00	8.00	8.00	8.00
<b>Total Financial From</b>		<b>\$650.00</b>	<b>\$650.00</b>	<b>\$713.00</b>	<b>\$776.00</b>	<b>\$776.00</b>
<b>Factoring Court Costs To</b>	<b>\$300.00</b>	<b>\$663.00</b>	<b>\$663.00</b>	<b>\$726.00</b>	<b>\$789.00</b>	<b>\$789.00</b>
Revocation	7 months	6 months	6 months	7 months	8 months	9 months