

LEGAL SANCTIONS

HISTORICAL OVERVIEW OF WISCONSIN DRINKING DRIVING LAW

1849 Chapter 33, section 3, Laws of 1849, prohibited the employment of any person to drive a coach or vehicle who is addicted to drunkenness, or to the excessive use of intoxicating liquors. A similar statute, sec. 364.64, Stats., still exists in Wisconsin law.

1911 Chapter 600, Laws of 1911, published July 15, 1911, prohibits operating, riding or driving a motor vehicle while intoxicated. This appears to be the first reference in Wisconsin Statutes to the actual offense of drunk driving. Also note that riding was included as a part of the offense in 1911. The penalty for first offense was a fine of not less than \$10 nor more than \$50. The penalty for second and subsequent offenses was a fine of not less than \$25 nor more than \$100, or imprisonment for 60 days, or both. See Chapter 73a, s.1636-49 and 54, 1911 Wisconsin Statutes pp. 1092-93.

1921 Chapter 761 section 1636-49, 1921 Wisconsin Statutes, p.1254, used the same language, “no intoxicated person shall operate, ride, or drive any automobile...”. The penalty section in 1921, section 1636-54, p. 1259, had been changed to read: “Any person who shall operate, ride, or drive any automobile...upon or along any public highway of this state, while intoxicated, shall be punished by a fine of not more than \$100 or by imprisonment in the county jail for not more than six months, or by such fine and imprisonment.” There was no statutory reference to second and subsequent offenses.

1923 By 1923, the drunk driving provisions were included in the “Law of the Road,” which had been recodified in Chapter 85, Wisconsin Statutes. The provision making riding while intoxicated illegal had been eliminated. Section 85.08, 1923 Wisconsin Statutes read as follows: “[A]nd no intoxicated person shall operate any automobile...”. Section 85.22, 1923 Wisconsin Statutes provided for the following pen-

alty: “Any person who violates...85.08 shall be fined not less than \$10 nor more than \$100, and for a second or subsequent violation thereof in any year shall be fined not less than \$50 nor more than \$500 or imprisoned not exceeding sixty days, or both.”

1933 Wisconsin Statutes, Sec. 85.13, read as follows: “It shall be unlawful for any person who is a habitual user of narcotic drugs, or who is subject to epilepsy, or any person under the influence of an intoxicating liquor or narcotic drug, to operate any vehicle upon any highway.” Note that the prohibition was once again any vehicle. Section 85.91(3), 1933 Wisconsin Statutes, provided for the following penalty. Any person violating s. 85.13 “...shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished in addition to any other penalty provided by law, by a fine not to exceed \$100 or by imprisonment...for not more than six months, or by both such fine and imprisonment. The operator’s license of such person may also be revoked or suspended for a period not to exceed one year; and for the second or each subsequent conviction within one year thereafter the person shall be punished by a fine not to exceed \$200, or by such imprisonment not to exceed one year, or both...and in addition thereto by suspension or revocation of the operator’s license for not to exceed one year.” This is the first reference in the law to suspension/revocation of the drivers license as a penalty for drunk driving.

1949 On July 28, 1949, Chapter 534, Laws of 1948-49 amended sec. 85.13 and introduced into Wisconsin law the concept of chemical analysis of breath, blood, urine and saliva as evidence of drunk driving. This new law indicated that blood taken within two hours of arrest which contained (.15) fifteen-hundredths of one percent or more by weight of alcohol in blood could be admitted as prima facie evidence of intoxication, but there also needed to be corroborating evidence.

1957 Chapter 260, Laws of 1957, recodified the Motor Vehicle statutes. This law changed the statutory cite for drunk driving from s. 85.13 to s. 346.63(1), Stats. This statutory cite is where the drunk driving offense is still located. By 1957, the chemical test sections had moved to s. 325.235. Penalties in 1957 remained the same as they were in 1953. See s. 346.65(2), 1957 Wisconsin Statutes.

1969 Chapter 383, Laws of 1969, created Wisconsin's Implied Consent Law. Under the law, persons who operate motor vehicles on highways are deemed to have given their consent to submit to a chemical test upon request by a police officer.

1973 Chapter 102, Laws of 1973, changed the prima facie blood alcohol concentration from .15 to .10, but continued the requirement for the need of corroborating evidence. By 1973, the penalty for first offense no longer included the option of jail.

1981 Chapter 20, Laws of 1981, restructured Wisconsin's OWI law. This law created the offense of intoxication as a matter of law if the person has an alcohol concentration in excess of .1 or more; corroborating evidence is no longer required. It eliminated the ability of prosecutors to plea bargain OWI offenses to lesser offenses. It required alcohol assessment as a condition of sentence for every person convicted of OWI, and it established a surcharge fund for the purpose of helping to underwrite assessment and treatment.

1983 Chapter 74, Laws of 1983, raised the legal drinking age to 19 and created an Absolute Sobriety provision for persons under the legal drinking age .

1985 Wisconsin Act 337 raised the drinking age to 21 effective September 1, 1986 but left the absolute sobriety provision from Chapter 74, Laws of 1983, t age 19. Other changes in statutory rules associated with underage drinking were also made.

1987 Chapter 3, Laws of 1987, created immediate (30 days after the violation) license suspension for six months (Administrative Suspension) for any person with an alcohol concentration of .1 or greater. This law became effective on January 1, 1988.

1989 Chapter 105, Laws of 1989, created new OWI statutory provisions for commercial vehicle operators. This law created an absolute sobriety provision for commercial motor vehicle operators,

and reduced the alcohol concentration level to .04 for persons operating commercial motor vehicles. These provisions became effective on January 1, 1991.

1992 Chapter 277, Laws of 1991, created new penalties and treatment opportunities for OWI repeat offenders. This law included possible seizure of vehicles, increased penalty for Homicide by Intoxicated Use, an alcohol concentration of .08 for persons with two or more offenses, and easier access to treatment. The provisions of this law became effective on January 1, 1993.

1996 Act 127 amended and expanded the OWI laws to include offenses taking place on rental property and in employee parking lots. The law does not pertain to private parking areas on farms or single-family residences.

1999 Wisconsin Act 109 increased penalties for repeat offenders, lowered prohibited alcohol concentrations in some instances and expanded the ability for courts to use ignition interlock devices along with other substantive changes.

2001 Wisconsin Act 16 created a new set of repeat OWI penalties for 2 or more convictions in any five year period: a minimum one year revocation with no occupational licensing during that period; immobilization or IID required on all vehicles; seizure may be ordered on third or subsequent conviction. For the 2nd conviction, the court shall order five days in jail or at least 30 days of community service (this doubled community service time for 2nd offense). Increased the OWI surcharge by \$10 (from \$345 to \$355).

2003 Wisconsin Act 30 lowered prohibited alcohol content to .08 for all drivers not already held to a lower AC but removed the OWI surcharge and the assessment of drug and alcohol use for first offenses when AC > .08 and <.10. Wisconsin Act 97 made it illegal to operate a motor vehicle with any detectable amount of a controlled substance in one's bloodstream, regardless of whether one is impaired. This proscription extends to the operation of all-terrain vehicles, snowmobiles, firearms and motor boats.

2004 Act 251 further conformed laws governing the operation of ATVs to those for operating MVs, enhancing penalties for OWI when there is a minor passenger under 16 and when the AC is "high".

Note: Wisconsin has the distinction of being the only state that does not provide for criminal sanctions or any jail time for first offense OWI convictions. In comparison, first offense shoplifting is a Class A Misdemeanor punishable by a fine of up to \$10,000 and/or up to nine months in jail.

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

OWI AND RELATED ALCOHOL PENALTIES (AS OF FEBRUARY 2005)

Conviction	Fine or Forfeiture ⁹	Jail	Suspension or Revocation	Occupational License ¹³	Assessment ⁵ Points ¹²
OWI, First ¹⁰ [346.63(1)(a),(am),(b)] (Per se AC ≥ .08) [340.01(46m)(a)] Restricted controlled substance [340.01(50m)] ¹⁶	\$150-\$300 ⁶ [346.65(2)(a)] (plus \$355 OWI surcharge) ¹⁴ [346.655]	No	6-9 month revocation ⁶ [343.30(1q)(b)2]	Immediately [343.30(1q)(b)2]	Yes ¹⁴ 6
OWI, Second ^{1,10,16} (Per se AC ≥ .08) [340.01(46m)(a)]	\$350-\$1,100 ⁶ [346.65(2)(b)] (plus \$355 OWI surcharge)	5 days to 6 months ⁶ [346.65(2)(b)]	12-18 month revocation ⁶ [343.30(1q)(b)3] Vehicle immobilized or equipped with IID ⁸	After 60 days ^{2,3} After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)3],[343.307(1)]	Yes 6
OWI, Third ^{1,10,16} (Per se AC ≥ .08) [340.01(46m)(a)]	\$600-\$2,000 ^{6,11} [346.65(2)(c)] (plus \$355 OWI surcharge)	30 days to 1 year ⁶ [346.65(2)(c)]	2-3 year revocation ⁶ [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized [346.65(6)(a)1] ⁸	After 90 days ^{2,3,9} After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	Yes 6
OWI, Fourth ^{1,10,16} (Per se AC > .02) [340.01(46m)(c)]	\$600-\$2,000 ^{6,11} [346.65(2)(d)] (plus \$355 OWI surcharge)	60 days to 1 year ⁶ [346.65(2)(d)]	2-3 year revocation ⁶ [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized ⁸	After 90 days ^{2,3} After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	Yes 6
OWI, Fifth or more ^{1,10,16} (Per se AC > .02) [340.01(46m)(c)]	\$600-\$10,000 ¹¹ [346.65(2)(e)] [939.50(3)(h)] (plus \$355 OWI surcharge)	6 months to 6 years ⁶ imprisonment [346.65(2)(e)] [939.50(3)(h)]	2-3 year revocation ⁶ [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized ⁸	After 90 days ^{2,3} After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	Yes 6
Causing Injury ^{10,16} While OWI [346.63(2)(a)]	\$300-\$2,000 ^{6,11} [346.65(3m)] (plus \$355 OWI surcharge)	30 days to 1 year ⁶ [346.65(3m)]	1-2 year revocation ^{6,8} [343.31(3)(e)]	After 60 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(b)]	Yes 6
Causing Great ^{10,16} Bodily Harm by OWI [940.25(1)]	Up to \$25,000 ^{6,7,10,11} [939.50(3)(f)] (plus \$355 OWI surcharge)	Up to 12.5 years ^{6,7,10} imprisonment [939.50(3)(f)]	2 year revocation ^{4,6,7,8} [343.31(3)(f)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	Yes 6
Homicide While OWI ^{10,16} [940.09(1)]	Up to \$100,000 ^{6,7,10,11} [939.50(3)(c),(d)] (plus \$355 OWI surcharge)	Up to 25 years or, ^{6,7,10} if one or more prior OWI-related offense, up to 40 years [939.50(3)(c),(d)]	5 year revocation ^{4,6,7} [343.31(3)(c)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	Yes 6
Chemical Test Refusal ¹⁰ (First) [343.305(9)]			1 year revocation ⁶ [(343.305(10)(b)2)]	After 30 days [(343.305(10)(b)2)]	Yes 0
Chemical Test Refusal ^{1,10} (Second) [343.305(9)]			2 year revocation ⁶ [343.305(10)(b)3] Vehicle immobilized or equipped with IID ⁸ [343.305(10m)]	After 90 days ³ After 12 months if 2 or more offenses within 5 years [343.305(10)(b)3]	Yes 0
Chemical Test Refusal ^{1,10} (Third or greater) [343.305(9)]			3 year revocation ⁶ [343.305(10)(b)4] Vehicle immobilized or equipped with IID or may be seized ⁸ [343.305(10m)]	After 120 days ³ After 12 months if 2 or more offenses within 5 years [343.305(10)(b)4]	Yes 0
Administrative Suspension for Prohibited Alcohol Concentration [343.305(7)]			6 month suspension [343.305(7)(a)]	Immediately [343.305(8)(d)]	0
Open Container (Driver or passenger) ¹⁵ [346.935]	\$100 [346.95(2m)]				0

¹ Generally, second offenses are counted within a 10-year period. Third and subsequent are counted within an individual's lifetime dating back to 1/1/89. [346.65(2)(b)-(c), 343.305(10)(b)3-4, 1997 Wis. Act 237 - s. 9348(2)]. The 10-year and lifetime periods are measured from the date of refusal or violation that resulted in conviction. [346.65(2e)].

² Absolute sobriety is mandatory for an occupational license for persons with two or more suspensions, revocations or convictions. [343.10(5)(a)(2)].

³ 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 to be eligible for an occupational license.

[343.10(2)(c), 343.30(1q)(c)]

⁴ If repeat offender, court may immobilize, equip with an ignition interlock device (IID) or seize vehicle. [940.09(1d), 940.25(1d)]

⁵ Assessment of the offender's use of alcohol or controlled substances is required except for first offenses where alcohol concentration (AC) ≥ .08 and < .10. [343.30(1q)(c)]

⁶ Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI if a person under 16 years of age was in the vehicle at the time of the offense. [343.30(1q)(b)4m., 343.305(10)(b)4m.(em), 343.31(3)(b)4m.(c),(e),(f) and 346.65(2)(f),(3m)]. For third and subsequent OWI offenses, fines are increased according to AC. [346.65(2)]

⁷ Fines, forfeitures, jail, and revocations or suspensions are doubled if a pregnant woman is in the vehicle at the time the driver committed the offense. [343.31(3)(c),(f)]

⁸ The vehicle owned by the offender and used in the offense may be immobilized or equipped with IID or the offender's operating privileges may be restricted to vehicles equipped with IID. [343.301(1)(a) and (2)(a)] For second or subsequent offenses, if there are 2 or more enumerated offenses committed within any 5 years such operating privilege restrictions are mandatory and all vehicles titled or registered in the offenders' name must be immobilized or equipped with IID. [343.301(1)(a) and (2)(a), 343.305(10m)] For third or subsequent offense the vehicle may be seized and forfeited. [346.65(6)(a)1]

⁹ Additional fees, assessments and surcharges will also apply except for first OWI offense where AC ≥ .08 and < .10 [165.755(1), 302.46, 346.655(1), 757.05(1), 814.63(1), 814.65(1), 814.85(1), 814.86(1)]

¹⁰ If offense is committed while operating a commercial motor vehicle, then penalties will include a 1 year CDL disqualification (3 year disqualification if transporting hazardous materials, or lifetime disqualification for 2nd offense since July 1, 1987.). [343.315(2)(a)(b)(c)]

¹¹ For third or subsequent OWI offenses, fines are increased according to AC. [346.65(2)(g)]

¹² For the scale of demerit points for all traffic violations, see Trans 101.02, Wisconsin Administrative Code, and 343.32(2); newly licensed and unlicensed drivers may be subject to increased demerit points.

[343.32(2)(b)(c)]

¹³ 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]

¹⁴ No OWI surcharge and no assessment of offender's alcohol or controlled substance use for first offense prohibited alcohol content [346.63(1)(b)] if AC ≥ .08 and < .10. An OWI surcharge and an assessment are required for all first prohibited alcohol convictions where AC ≥ .10 and for all first OWI convictions. [346.655(1), 343.30(1q)(c)1]

¹⁵ 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]

¹⁶ 2003 Wisconsin Act 97 prohibits a person from operating a motor vehicle with any detectable presence of a restricted controlled substance in his or her bloodstream. Violations are treated as OWI, and are subject to the same penalties as OWI.

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

UNDERAGE ALCOHOL OFFENSES AND RELATED PENALTIES (AS OF FEBRUARY 2005)

Conviction	Fine or forfeiture ⁵	Driver License Suspension or Revocation	Supervised Work Program	Court Ordered Stay ¹	Assessment ¹
Absolute Sobriety "Not a Drop" Law (If under age 21) [346.63 (2m)]	\$10 ³ [346.65(2q)]	90 day license suspension ³ [343.30(1p)] Occupational- immediately			
Underage Alcohol (Procure or Misrepresent Age) (age 17-20) [125.07(4)(a)] or local ordinance	1st: \$250-\$500 2nd in a year: \$300-\$500 3rd in a year: \$500-\$750 4th & subsequent in a year: \$750-\$1,000 [125.07(4)(bs)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [125.07(4)(bs)]	Yes-Court option as an alternative [125.07(4)(c)2]	Optional [125.07(4)(e)2a]
Juvenile Alcohol (Procure or Misrepresent Age) (under 17) [125.07(4)(a)] or local ordinance	1st: \$250-\$500 2nd in a year: \$300-\$500 3rd & subsequent in a year: \$500 [938.344(2b)(a)-(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2b)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Underage Alcohol (Possess or Consume) (age 17-20) [125.07(4)(b)] or local ordinance	1st: \$100-\$200 2nd in a year: \$200-\$300 3rd in a year: \$300-\$500 4th & subsequent in a year: \$500-\$1,000 [125.07(4)(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [125.07(4)(c)]	Yes-Court option as an alternative [125.07(4)(e)2]	Optional [125.07(4)(e)2a]
Juvenile Alcohol (Possess or Consume) (under 17) [125.07(4)(b)] or local ordinance	1st: Up to \$50 2nd in a year: Up to \$100 3rd & subsequent in a year: up to \$500 [938.344(2)(a)-(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Underage False ID (Use or Possess) (age 17-20) [125.085(3)(b)]	\$300-\$1250 [125.085 (3)(bd)]	30-90 days ⁴ [343.30(6)(bm)]	Yes-Court option as an alternative [125.085(3)(bd)]		
Juvenile False ID (Use or Possess) (under 17) [125.085(3)(b)]	1st: \$100-\$500 2nd in a year: \$300-\$500 3rd & subsequent in a year: \$500 [938.344(2d)(a)-(c)]	1st: 30-90 day ⁴ suspension 2nd: up to 1 yr. suspension 3rd & subsequent: up to 2 yr. suspension [343.30(6)(b)]	Yes-Court option as an alternative [938.344(2d)]	Yes-Court option as an alternative [938.344(2g)(a)]	Optional [938.344(2g)(a)1]
Intoxicants In Vehicle (Underage Persons) [346.93]	\$20-\$400 [346.93(2g)]	1st: 30 day - 1 yr. suspension 2nd: up to 1 yr. suspension ² 3rd & subsequent: up to 2 yr. suspension ² [343.30(2m),(6)(b)]			

¹Court may stay enforcement of the sentence if the defendant agrees, and in turn, the court must condition the stay on voluntary assessment and participation in a court-approved alcohol abuse education program or enrollment in a treatment program; however, the court may not stay, suspend or modify a mandatory drivers license suspension.

²Suspension is permissive for 1st offense, but mandatory for 2nd and subsequent offenses that involve a motor vehicle.

³ Forfeiture, costs and period of suspension are doubled if a passenger under 16 years of age was in the vehicle at the time of the offense. [343.30(1p), 346.65(2q)]

⁴ If a person does not hold a valid license at the time of disposition, the suspension period begins when they first apply for a license or two years from the disposition. [343.30(6)(d)]

⁵ Additional fees, assessment and surcharges will apply.

COMMENTS ON PENALTIES FOR UNDERAGE ALCOHOL OFFENSES

Persons whose licenses are suspended or revoked for underage alcohol violations other than *Absolute Sobriety* are eligible for occupational licenses 15 days after the suspension or revocation begins. [343.10(2)(a)4] Those whose licenses are suspended for violating the *Absolute Sobriety* or "Not a Drop" law are eligible for occupational licenses immediately. [346.63(2m)]

Like persons aged 21 or older, underage persons are subject to the provisions of Wisconsin laws prohibiting operating/driving motor vehicles while intoxicated. These laws include impairment/intoxication resulting from the use of illegal, over the counter or prescription drugs or combinations of drugs or alcohol. It is illegal in Wisconsin to operate snowmobiles, all-terrain vehicles, motor boats, aircraft and other motor vehicles with a detectable presence of restricted controlled substances in the bloodstream or while under the influence of alcohol or drugs or a combination of alcohol and drugs.

Underage Alcohol conviction records are largely confidential. The Department of Transportation may not disclose information concerning a suspension, revocation or restriction as a result of an underage alcohol conviction to any person other than a court, district attorney, municipal prosecuting attorney, law enforcement agency, the underage individual or his/her parents or legal guardian. [343.30(5), 343.24(3)]

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

COMMERCIAL DRIVER LICENSE ALCOHOL AND OTHER DRUG OFFENSES AND RELATED PENALTIES (AS OF FEBRUARY 2005)

Violation in CMV	Fine/Forfeiture/Jail ³	Effect on CDL	Effect on Class D/M License	Occupational License (class D/M) ⁶
Any measurable alcohol concentration (AC > 0.0 and < .04), possession of alcohol, operation within 4 hours after consuming [346.63(1)(am)(7)]	\$10 [346.65(2u)(a)]	24 Hr Out-of-Service [346.65(2u)(b)] [343.315(2)(g)]		
AC ≥ .04 and < .08 ^{2,4} 1st Offense [346.63(5)]	\$150-\$300 forfeiture ^{1,8} [346.65(2i)(a)]	1 Yr Disq 3 Yr Disq if "H" [343.315(2)(a),(b)]	Subject to 24-hour license seizure ⁵ [343.305(7)(b)]	After 15 days [343.10(2)(a)]
AC ≥ .04 and < .08 ^{2,4} 2nd Offense	\$300-\$1,000 fine ^{1,8} 5 days-6 mo jail [346.65(2j)(b)]	Lifetime Disq [343.315(2)(c)]	Subject to 24-hour license seizure ⁵ [343.305(7)(b)]	After 15 days [343.10(2)(a)]
AC ≥ .04 and < .08 ^{2,4} 3rd or Subsequent Offense	\$600-\$2000 fine ^{1,8} 30 days-1 yr jail [346.65(2j)(c)]	Lifetime Disq [343.315(2)(c)]	Subject to 24-hour license seizure ⁵ [343.305(7)(b)]	After 15 days [343.10(2)(a)]
AC ≥ .04 and < .08 ² Causing Injury [346.63(6)]	\$300-\$2,000 ^{1,8} 30 days-1 yr jail [346.65(3m)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	1 year revocation ¹ [343.31(1)(ar),(3)(a)]	After 15 days [343.10(2)(a)]
AC ≥ .04 and < .08 Causing Great Bodily Harm [940.25(1)(bm)]	Up to \$25,000 ^{6,7,8} up to 12.5 yrs jail [939.50(3)(f)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	2 year revocation ^{1,7} [343.31(3)(f)]	After 120 days or, if 2 or more offenses within 5 years, after 1 year [343.31(3m)(a)]
AC ≥ .04 and < .08 Causing Death [940.09(1)(bm)]	Up to \$100,000 ^{6,7,8} up to 40 yrs jail [939.50(3)(c),(d)]	1 Yr Disq/3 yr if "H" (life for 2nd offense) [343.315(2)(a),(b),(c)]	5 year revocation ¹ [343.31(3)(c)]	After 120 days or, if 2 or more offenses within 5 years, after 1 year [343.31(3m)(a)]
Chemical Test Refusal ⁴ 1st Offense [343.305(9)(am)]		1 Yr Disq 3 Yr Disq if "H" [343.315(2)(a),(b)]	1 year revocation ^{1,5} [343.305(10)(b)2]	After 30 days [343.305(10)(b)2]
Chemical Test Refusal ⁴ 2nd Offense (Within 10 years) [343.305(9)(am)]		Lifetime Disq [343.315(2)(c)]	2 year revocation ^{1,5,9} [343.305(10)(b)3]	After 90 days or, if 2 or more offenses within 5 years, 1 year [343.305(10)(b)3]
Chemical Test Refusal ⁴ 3rd Offense (Within lifetime) [343.305(9)(am)]		Lifetime Disq [343.315(2)(c)]	3 year revocation ^{1,5,9} [343.305(10)(b)4]	After 120 days or, if 2 or more offenses within 5 years, after 1 year [343.305(10)(b)4]
Using a CMV to make, dispense, or distribute drugs feloniously	Varies depending upon drug crime	Lifetime Disq [343.315(2)(c)]	1 year revocation [343.31(1)(c),(3)(a)]	After 15 days [343.10(2)(a)4]

¹ Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI when a person under 16 years of age was in the vehicle at the time of the offense. [343.30(1q)(b)4m and (3)(e), 343.305(10)(b)4m, 343.31(3)(c), 346.65(2j)(d),(2q)and(3m)] For third and subsequent regular OWI offenses, fines are also increased according to blood alcohol level. [346.65(2)(g)]

² If AC meets or exceeds .08 or the prohibited alcohol concentration as defined in 340.01(46m), or involves the detectable presence of restricted controlled substances, the offense is punishable under 346.63(1) or 346.63(2)(b), with CDL disqualification under 343.315.

³ Additional fees, assessments and surcharges will apply.

⁴ Prior offenses counted include injury or homicide by intoxicated motor vehicle use, and other OWI-related offenses committed after January 1, 1989, or the date specified in the relevant statute.

⁵ License subject to 24-hour seizure if AC > 0.0 or if driver refuses to take an AC test. [343.305(9)(a),(am)].

⁶ No occupational license can authorize the operation of a commercial motor vehicle during the time of CDL disqualification. [343.10(2)(c)]

⁷ Fines, jail penalties and revocation periods are doubled if a pregnant woman is present in the vehicle at the time of the offense. [343.31(3)(f), 940.09(1b), 940.25(1)(b)]

⁸ Plus OWI \$355 surcharge [346.655].

⁹ The vehicle owned by the offender and used in the offense may be immobilized or equipped with an ignition interlock device (IID), or the offender's operating privilege for class D vehicles may be restricted to operating only Class D vehicles equipped with an IID. [343.301(1)(a), 343.301(2)(a), 343.305(10m)].

¹⁰ Only offenses committed on or after July 1, 1987, are counted [343.315(2)(c)].

Note: Similar convictions in other jurisdictions may cause a driver to lose her or his Commercial Driver License.

CMV = Commercial motor vehicle

OWI = Operating while intoxicated

Disq = Disqualified (cannot drive CMV or get CDL-OCC)

OCC = Occupational license

CDL = Commercial driver license

AC = Alcohol concentration

"H" = Hauling hazardous materials requiring placarding [343.125] at time of offense

CASE LAW UPDATE

IMPLIED CONSENT LAW

State v. Verkler, 2003 WI App 37, 260 Wis. 2d 391, 659 N.W.2d 137. This decision reaffirms the well-established rule that an individual does not have a right to counsel in the implied consent setting. The court of appeals concluded that at no time did the officer in this case expressly assure or implicitly suggest that the defendant had a right to consult with his attorney before deciding whether to submit to a chemical test. The fact that the officer allowed the defendant to talk with his law partner (who was a passenger in defendant's car) at the scene of his OWI arrest did not translate into a suggestion that he could then talk to his law partner at the station about whether to take the chemical test.

SEARCH AND SEIZURE

State v. Larson, 2003 WI App 150, 266 Wis.2d 236, 668 N.W.2d 338. The court of appeals concluded that an officer's act of placing his foot across the threshold of an individual's doorway, thus preventing the individual from closing the door, constituted an illegal entry under the Fourth Amendment. Here, an officer received a dispatch to look for a possible intoxicated driver. After learning the license plate number and obtaining the address of the vehicle's registered owner, the officer responded to the defendant's home. While the State argued that the entry was justified based on the exigent circumstances exception to the warrant requirement, the court reaffirmed established case law that held a warrantless home entry cannot be justified simply because evidence of the defendant's blood alcohol level might dissipate while the officer obtains a warrant.

State v. Colstad, 2003 WI App 25, 260 Wis. 2d 406, 659 N.W.2d 394. The court of appeals reaffirms the rule set forth in *State v. Griffin*, 183 Wis.2d 327, 515 N.W.2d 535 (Ct. App. 1994); namely, that an officer may perform an investigatory stop of a vehicle based on a reasonable suspicion of a non-criminal traffic violation. In so holding, the court rejected the defendant's argument that police must possess probable cause before conducting a stop based on suspicion of a civil infraction.

SENTENCING ISSUES

State v. Jorgensen, 2003 WI 105, 264 Wis. 2d 157, 667 N.W.2d 318. The Wisconsin Supreme Court held that district-by-district judicial sentencing guidelines are constitutional. At the defendant's sentencing hearing, both the prosecutor and defense counsel based their arguments on the guidelines established pursuant to statute for their judicial district. After hearing the arguments, the circuit court sentenced the defendant, explicitly referencing the guidelines. On appeal, the defendant argued that the guidelines violated her rights to due process and equal protection because they increase sentencing disparity on the basis of the geographic location of the offense. The supreme court rejected this

argument, concluding that the guidelines serve to reduce disparity among judicial districts. As such, the circuit court's reliance on the guidelines reflected a proper exercise of its sentencing discretion.

State v. Kuechler, 2003 WI App 245, 268 Wis. 2d 192, 673 N.W.2d 335. Upon conviction for his seventh OWI offense, the defendant was sentenced to a period of confinement and ordered to pay a fine of \$8,852. The defendant claimed that the sentencing court erroneously exercised its discretion and violated his constitutional rights by arbitrarily imposing a fine according to district sentencing guidelines and by failing to consider his ability to pay the fine imposed. Relying on *Jorgenson*, the court of appeals reiterated that it was not error for the sentencing court to make reference to the guidelines when it sentenced the defendant. It was, however, error for the sentencing court to impose the fine without first ascertaining the defendant's ability to pay. Thus, the case was remanded to the trial court to determine whether the defendant was able to pay the fine imposed.

State v. VanRiper, 2003 WI App 237, 267 Wis.2d 759, 672 N.W.2d 156. The court of appeals held that a Department of Transportation (DOT) certified driving transcript is admissible evidence and sufficient to establish a defendant's repeater status as an element of the offense beyond a reasonable doubt in an OWI/PAC prosecution. The court of appeals concluded that if a teletype is admissible and sufficient evidence of prior offenses in a sentencing proceeding, it logically follows that the proof requirements in both settings should be the same. A defendant's driving record is a public record and is admissible as an exception to the hearsay rule as a record which DOT is required to maintain for each motor vehicle licensee pursuant to statute.

BLOOD TEST ISSUES

State v. Erickson, 2003 WI App 43, 260 Wis. 2d 279, 659 N.W. 2d 407. The court of appeals concluded that the warrantless blood draw in this case satisfied the factors enumerated in *State v. Bobling*, 173 Wis. 2d 529, 494 N.W.2d 399 (1993). Specifically, the court held that in the absence of an arrest, probable cause to believe a suspect's blood contains evidence of a drunk-driving violation or crime satisfies the first prong of *Bobling*. Here, the officer knew there had been a serious crash that killed one individual. The defendant admitted to the officer that she had been on her way home from a party where she had been drinking when she crashed her vehicle into the other vehicle. Further, the officer and emergency personnel detected an odor of intoxicants on the defendant. The court concluded that based upon the totality of the circumstances, there was probable cause to believe that the defendant's blood contained evidence of a drunk-driving crime, which justified a warrantless blood draw prior to arrest.

SOURCE: University of Wisconsin Law School Resource Center on Impaired Driving