

# Intoxicated Driver Laws



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There were about 26,000 convictions in 2013 for impaired driving offenses in the state of Wisconsin, ranking among the most common traffic offenses. Impaired driving also presents a significant traffic safety issue. Though alcohol-related traffic fatalities have declined in the past decade, alcohol use was a factor in about 35% of traffic fatalities in 2013.

Given the impact on both the judicial system and traffic safety, the state's impaired driving law typically attracts interest and attention from both the Legislature and the public during each legislative session. This paper provides a description of the state's impaired driving law, as well as of the principal state programs involved in impaired driving enforcement and prevention.

There are several separate offenses sometimes referred to collectively as "drunk driving" or "impaired driving." In this paper, a distinction is made between an offense of operating a motor vehicle while intoxicated, here termed a "basic" operating while intoxicated (OWI) offense, and other offenses, such as causing injury or death as the result of operating a motor vehicle while intoxicated or certain impaired driving offenses involving a commercial motor vehicle. Collectively, these are referred to as "operating while intoxicated or other counted" offenses, reflecting that these other offenses are counted as prior offenses for the purpose of determining fines, jail periods, and other sanctions for a basic OWI offense.

This paper provides a description of the state's OWI law, including the penalties and other sanctions for violating that law. It also provides information on state programs related to OWI enforcement and prevention and federal impaired driving provisions. The paper concludes with a

section on OWI statistics for the most recent 10 years.

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## Wisconsin's Operating While Intoxicated Law and Related Violations

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### Description of Basic OWI Offense

Wisconsin's basic operating while intoxicated law encompasses three distinct offenses, each requiring the proof of a different fact for conviction. The first offense prohibits a person from operating or driving a motor vehicle while: (a) under the influence of an intoxicant (under 2013 Act 83, intoxicant includes a hazardous inhalant) or a controlled substance (or controlled substance analog) or any combination of an intoxicant and a controlled substance (or analog); or (b) under the influence of any other drug to a degree which renders him or her incapable of safely driving or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving. This offense, which has been part of Wisconsin's law in some form since the advent of motor vehicles, requires the proof of impairment for conviction. [In cases involving "any other drug" in the definition above, the prosecution must also demonstrate that the defendant met the "incapable of safely driving" standard.] The evidence presented at trial consists of observations made by law enforcement officers or other witnesses, including driving behavior and the results of a field sobriety test.

The second offense prohibits any person from operating or driving a motor vehicle with a prohibited blood alcohol concentration. Unlike the

first offense, no proof of impairment is required for conviction. Instead, the proof for conviction is found in the numerical measurement of blood alcohol level, taken through a test of the person's blood, breath, or urine. This so-called "per se" law (because a certain blood alcohol level is per se, or, "by itself," a violation of law) was enacted in 1981, with the prohibited alcohol concentration established at 0.10 (measured as grams of alcohol per 100 milliliters of blood, or roughly equivalent to 0.10% alcohol by volume).

The blood alcohol concentration considered the threshold for a violation has been changed several times since that time, most notably in 2003, when the standard prohibited blood alcohol concentration was lowered to 0.08. Since 1992, the prohibited blood alcohol concentration has been established at a lower level for certain repeat offenders. Currently, the threshold is 0.02 for persons subject to an ignition interlock device order (described in more detail in a later section) and for persons with three or more previous convictions.

The third element of the state's OWI law, added in 2003, prohibits any person from operating or driving a motor vehicle with any detectable amount of a restricted controlled substance in his or her blood. Like the "per se" blood alcohol law, simply the presence of a restricted controlled substance is considered a violation, meaning no evidence of impairment is required. For the purposes of this provision, a restricted controlled substance is any of the substances listed in Schedule I of the state's uniform controlled substances act (or any analogs of those substances), which are drugs with a high potential for abuse and with no currently accepted medical use. In addition, the definition of restricted controlled substance includes a few substances that, although not included in Schedule I, are commonly-abused hallucinogenic or stimulant drugs, including cocaine, methamphetamine, and the active substance contained in marijuana.

Although a person may be charged with any combination of these violations arising from a single incident, a person can only be convicted for one basic OWI offense arising from that incident.

### **Related Offenses and Counting of Prior Offenses for Sentencing**

As with many other civil and criminal violations, the penalties for a basic OWI conviction depend upon the number of prior convictions. However, in addition to counting prior basic OWI convictions for the purposes of sentencing, the state's OWI law requires prior convictions of several related offenses to also be counted. The following section describes the related offenses that are counted for sentencing purposes, while the next section describes the provisions related to the time periods that are considered for counting prior offenses.

*Causing Injury, Great Bodily Harm, or Death by Intoxicated Use of a Vehicle.* If a person causes an injury, great bodily harm, or death by the intoxicated use of a motor vehicle, he or she may be charged with a criminal offense distinct from the basic operating while intoxicated violation described above. For the offense involving an injury, the elements of the offense are identical to the basic operating while intoxicated violation, except for the occurrence of an injury. That is, a criminal offense occurs if the operator of a vehicle causing injury is either under the influence of an intoxicant, has a prohibited alcohol concentration, or has a detectable amount of a restricted controlled substance in his or her blood. For the purposes of this provision and the related commercial vehicle provision, an injury is defined as a bodily injury that causes a laceration requiring stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia (round spot on the skin due to bleeding under the skin); a temporary loss of consciousness, sight, or hearing; a concussion; or a loss or fracture of a tooth.

The elements of the offenses involving great bodily harm or death are slightly different than for the basic operating while intoxicated violation. In these cases, the criminal offense occurs when a person causes death or great bodily harm to another human being or unborn child by the operation of a vehicle while the person: (a) was under the influence of an intoxicant; (b) has a prohibited blood alcohol concentration; (c) has a detectable amount of a restricted controlled substance in his or her blood; or (d) was operating a commercial motor vehicle with an alcohol concentration between 0.04 and 0.08. For the purposes of these provisions, "under the influence of an intoxicant" is defined to mean that the person's ability to operate a vehicle is "materially impaired." The term "great bodily harm" means an injury that either: (a) creates a substantial risk of death; (b) causes serious permanent disfigurement; (c) causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or (d) is another serious bodily injury.

With respect to the offenses involving great bodily harm or death, the statutes specify that the vehicle operator has a defense if he or she proves by a preponderance of the evidence that the great bodily harm or death would have occurred even if he or she had not been under the influence of an intoxicant or had not met one of the other "per se" criteria for the violation. Consequently, although the great bodily harm and homicide by intoxicated use of a motor vehicle provisions have an element of the "per se" offense used for the standard operating while intoxicated offense, the blood alcohol concentration or restricted controlled substance measurement may not be sufficient for a conviction.

*Implied Consent Refusal.* Under Wisconsin law, any person who drives or operates a motor vehicle on a public road or other place open to public use is deemed to have given consent to one or more tests for the presence of alcohol or controlled substances. The principle behind this "implied consent" law is that driving a motor ve-

hicle is a privilege for which the driver consents to be tested for evidence of intoxication if stopped by a police officer. The results of that test are used in an administrative proceeding to determine whether the driver's operating privilege should be suspended. If a person refuses to submit to a chemical test upon the request of a law enforcement officer, under the statute, a driver's operating privilege will be revoked. Courts have generally upheld the validity of implied consent laws in the United States against challenges on Fourth Amendment (prohibition against illegal search or seizure) and Fifth Amendment (prohibition against compelling self-incrimination) grounds.

An implied consent refusal is generally not considered a violation of law, per se, but, instead is considered a failure to meet the prerequisites for maintaining the privilege to operate a motor vehicle. Yet, for the purposes of sentencing for an operating while intoxicated offense, any previous license revocation imposed for an implied consent refusal is counted as if it was a prior "offense," even if the person is not charged with an OWI offense arising out of the same incident or is later acquitted of an OWI charge. However, only one prior offense is counted for each incident. That is, if a person's license is revoked for refusing to submit to a test of intoxication and the person is later convicted of an operating while intoxicated offense arising from the same incident, that refusal revocation and the subsequent conviction are counted as a single "prior offense" for the purposes of sentencing on any future OWI convictions. More information on tests for intoxication is provided in a later section of this paper.

*Aircraft Operation.* The operation of an aircraft while intoxicated is considered a "prior offense" for the purpose of sentencing following an OWI conviction. Under the intoxicated aircraft operation statute, no person may operate an aircraft: (a) under the influence of alcohol or a controlled substance (or analog); (b) under the influence of any other drug that renders him or her

incapable of safely operating the aircraft; or (c) with a prohibited alcohol concentration. For the purpose of this provision, the prohibited alcohol concentration threshold is 0.04 if there are no passengers in the aircraft and 0.0 if the aircraft contains passengers.

*Violations Occurring in Other Jurisdictions.* Any OWI convictions or license revocations (or suspensions) for an implied consent refusal under the laws of other jurisdictions, including the laws of a federally recognized American Indian tribe or band, are counted as prior offenses for the purposes of sentencing in Wisconsin. Although absolute sobriety violations occurring in Wisconsin are not counted as prior offenses for the purposes of sentencing for a subsequent OWI offense, a 2010 ruling of the Wisconsin Supreme Court found that an absolute sobriety violation occurring in another state must be counted as a prior offense in sentencing for a Wisconsin OWI offense.

### **Time Periods for Counting Prior Offenses**

Generally, all prior convictions for an OWI offense, or for any of the related violations described above, are counted as prior offenses for the purposes of sentencing following an OWI conviction. However, if a person has only one prior conviction for an OWI offense, causing injury while intoxicated, intoxicated aircraft operation, or an implied consent refusal, and that conviction occurred more than 10 years prior to a subsequent OWI offense, the current offense is treated the same as a first OWI offense for the purposes of prosecution and penalties. That is, in these circumstances, although the person has committed a second offense, it is treated as a civil (rather than criminal) violation, subject to the same penalties as a first OWI offense. However, if the prior offense was for causing great bodily harm or death by the intoxicated use of a vehicle, the subsequent offense is prosecuted as a second offense, regardless of the amount of time elapsed from the prior offense.

The state's policy on counting prior offenses took its current form in 1999, with the implementation of 1997 Act 237. Prior to that time, the counting period for a second offense was five years and the counting period for a third or subsequent offense was ten years. That is, an OWI offense would be prosecuted as a criminal offense, subject to second OWI penalties, if the person had one conviction in the previous five years and no other prior convictions within the previous 10 years. In all cases, an offense that occurred more than ten years previous to a subsequent offense would not be counted as a prior offense for the purposes of prosecution and sentencing. Because the Department of Transportation, in keeping with a statutory directive in effect at that time, expunged driver records of all OWI convictions after 10 years, the Department does not have a record of OWI convictions occurring prior to January 1, 1989, and, therefore, Act 237 stipulated that any such convictions are not counted as prior offenses.

The policy regarding the counting of prior offenses was modified further with the passage of 1999 Act 109, which stipulated that convictions of causing death or great bodily harm by the intoxicated use of a vehicle were to be counted as prior offenses for the lifetime of the offender. Since these convictions are recorded on a person's permanent criminal record, the information is available to the courts regardless of the amount of time elapsed since the offense.

### **Related Motor Vehicle Alcohol Offenses Not Counted As Prior Offenses for OWI Sentencing**

The state has several other motor vehicle laws that are related to alcohol and the operation of motor vehicles, but which are not counted as prior offenses for the purpose of sentencing for the basic OWI offense. This section describes these provisions.



*Commercial Motor Vehicle Alcohol Operation.* As noted above, the prohibited alcohol concentration establishes the threshold for the "per se" OWI offense for the operation of a motor vehicle. In most cases, that threshold is a blood alcohol level of 0.08, although the threshold is lower for certain repeat offenders. However, the statutes create a distinct per se offense as it relates to the operation of a commercial motor vehicle. Accordingly, a person may be found guilty of a violation if he or she drives or operates a commercial motor vehicle with a blood alcohol concentration of 0.04 or more but less than 0.08 or causes an injury to another person while operating a commercial motor vehicle with a blood alcohol level within that range. [The basic OWI statute applies to the operator of a commercial motor vehicle with a blood alcohol level of 0.08 or above.] While these violations are not counted for the purpose of sentencing on a basic OWI conviction, they are counted in determining the length of a subsequent license revocation for an implied consent refusal and are used to determine the prohibited blood alcohol threshold for repeat OWI offenders. In addition, these violations are counted for the purpose of determining the sentence of a person who has committed a subsequent offense of operating a commercial motor vehicle with a blood alcohol concentration between 0.04 and 0.08.

Generally, the penalties for these commercial motor vehicle alcohol violations are similar to the corresponding basic OWI violations. In this paper, these offenses are referred to as "commercial motor vehicle OWI" and "commercial motor vehicle OWI causing injury."

*Commercial Motor Vehicle Absolute Sobriety and Alcohol Consumption While on Duty Time.* In addition to creating a separate blood alcohol threshold for the operation of a commercial motor vehicle, Wisconsin law has a separate offense for lower levels of alcohol use by commercial motor vehicle drivers. Under this provision, a person may not drive or operate a commercial

motor vehicle or be on duty time with respect to a commercial motor vehicle in the following circumstances: (a) with a blood alcohol level above 0.0; (b) within four hours of having consumed or having been under the influence of an intoxicated beverage; or (c) while possessing an intoxicated beverage, except for the purposes of shipment and delivery. A law enforcement officer who arrests a commercial motor vehicle driver for a violation of these provisions is required to issue the driver a 24-hour out-of-service order, prohibiting the operation of a commercial motor vehicle during that time.

*Absolute Sobriety for Underage Drivers.* State law prohibits a person who has not reached the legal drinking age of 21 years of age from driving if he or she has a blood alcohol concentration above 0.0. This law is typically referred to as the "absolute sobriety law." Although these violations, when occurring in Wisconsin, do not count as a prior offense for the purpose of sentencing for a subsequent basic OWI conviction, those occurring in other states are counted for that purpose.

*Intoxicants in Motor Vehicles; Open Container.* Wisconsin law places restrictions on both the transport and consumption of alcohol in a motor vehicle. Accordingly, no person (driver or passenger) may drink alcohol while in a motor vehicle on a public highway and no person in a privately-owned motor vehicle may possess on his or her person an opened container of alcohol. Furthermore, the owner or driver of a vehicle (if the owner is not present) may not keep or allow to be kept an opened alcoholic beverage container in the passenger compartment. An exception to these provisions is provided for passengers in a limousine driven by a chauffeur.

A person under the age of 21 may not transport alcoholic beverages by motor vehicle in any area of the vehicle, with exceptions related to the transport of alcohol by employees of alcohol-related businesses, such as alcohol distributors.

**Table 1: Fines or Forfeitures and Jail or Prison Sentences for OWI and Related Offenses**

	Fine or Forfeiture	Jail or Prison Sentence
<b>Basic OWI</b>		
First	\$150 to \$300 forfeiture	None
Second	\$350 to \$1,100 fine	Five days to six months
Third	\$600 to \$2,000 fine	45 days to one year
Fourth*	\$600 to \$2,000 fine	60 days to one year
Fifth or Sixth	\$600 to \$10,000 fine	Six months to six years
Seventh, Eighth, or Ninth	Up to \$25,000 fine	At least three years, up to 10 years
Tenth or Subsequent	Up to \$25,000 fine	At least four years, up to 12 years and six months
<b>Related Offenses Counted as "Prior Offenses"</b>		
<b>OWI Causing Injury**</b>		
First	\$300 to \$2,000 fine	30 days to one year***
Second	Up to \$10,000 fine	Up to six years
<b>OWI Causing Great Bodily Harm**</b>		
	Up to \$25,000 fine	Up to 12 years and six months
<b>OWI Causing Death**</b>		
First	Up to \$100,000 fine	Up to 25 years
Second	Up to \$100,000 fine	Up to 40 years
<b>Intoxicated Aircraft Operation</b>		
First	\$150 to \$300	None
Second	\$350 to \$1,100	Five days to six months
Third	\$600 to \$2,000	30 days to one year
Fourth	\$600 to \$2,000	60 days to one year
Fifth or Subsequent	At least \$600	At least six months
<b>Other Motor Vehicle Alcohol-Related Offenses</b>		
<b>Commercial Motor Vehicle OWI</b>		
First	\$150 to \$300 forfeiture	None
Second	\$300 to \$1,000 fine	Five days to six months
Third or Subsequent	\$600 to \$2,000 fine	45 days to one year
<b>Commercial Motor Vehicle Absolute Sobriety/ Alcohol Use on Duty Time</b>		
	\$10 forfeiture	None
<b>Absolute Sobriety, Underage Operator</b>		
	\$200 forfeiture	None
<b>Intoxicants in Motor Vehicle/Open Container</b>		
	Up to \$100 forfeiture	None

\*If the fourth offense occurred within five years of the third offense, the person is guilty of a felony and the fine and jail sentence are the same as for a fifth or sixth offense. All fifth and subsequent offenses are considered felonies.

\*\*Includes causing injury, great bodily harm, or death with a commercial motor vehicle with a blood alcohol level between 0.04 and 0.08.

\*\*\*A court may impose less than the 30-day minimum if the person injured was an adult in the vehicle operated by the offender and the court finds that such treatment best serves the interest of the community and will not harm the public.

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## Penalties, Sanctions, and Treatment Measures

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The penalties imposed upon conviction for an OWI offense depend upon the number of prior offenses a person has accumulated and are subject to some judicial discretion. The following section describes the penalties for a basic OWI offense, as well as for the related offenses described in the previous section.

### Forfeitures or Fines and Other Criminal Sanctions

Upon conviction for an OWI or related offense, the court is required to impose a forfeiture or a fine, and, in some cases, additional criminal penalties (jail or prison terms or some jail sentence alternatives). The terms "forfeiture" and "fine" distinguish, respectively, between a civil case (non-criminal) and a criminal case. A first basic OWI offense and some of the other related offenses are civil violations, subject to a forfeiture, but no jail (or jail alternative) sentence. Repeat OWI violations (except for a second offense that occurs more than 10 years following the first) and more serious related offenses are criminal offenses, subject to a fine and other criminal penalties. Table 1 shows the forfeiture and fine ranges for OWI and related offenses and the criminal sentences imposed for each. Although the table expresses the criminal sentences as "jail or prison" time, various alternative sentencing methods are available, including home detention with electronic monitoring. Typically, sentences of less than one year are served in the county jail while sentences exceeding one year are served in a state prison. In addition to the basic penalties shown in the table, there are certain circumstances that result in enhanced penalties, which are described below.

## Penalty Enhancers for Certain Circumstances

If there was a minor passenger under the age of 16 years in the vehicle at the time of a violation, the applicable maximum and minimum fines or forfeitures and jail or prison terms are doubled, for convictions involving a second or subsequent basic OWI, OWI causing injury, commercial motor vehicle OWI, and commercial motor vehicle OWI causing injury. In cases of a first basic OWI violation with the presence of a minor passenger, the violation becomes a criminal offense, and is penalized as if it were a second OWI offense. Similarly, if there is a minor passenger in the vehicle, an absolute sobriety violation for an underage driver is treated as a criminal offense, punishable with a fine of \$400.

The applicable minimum and maximum fines are doubled, tripled, or quadrupled for certain repeat offenders who had a blood alcohol level within certain ranges at the time of arrest for a basic OWI or intoxicated aircraft operation offense. Specifically, fines are doubled for a blood alcohol level of 0.17 to 0.199, tripled for a blood alcohol level of 0.20 to 0.249, and quadrupled for a blood alcohol level of 0.25 or above. These enhanced fines apply for a third through sixth basic OWI offense and to a third or subsequent intoxicated aircraft operation offense.

### Probation Provisions Applicable to OWI Offenders

A person may be placed on state probation for any criminal OWI offense, provided that the person serves at least the minimum jail sentence prior to beginning probation supervision. The term of probation, if ordered, must be between six months and two years for a second or third OWI offense, between six months and three years for a fourth OWI offense, and between one year and three years or the maximum prison term for the offense, whichever is greater, for an OWI offense classified as a felony (certain fourth offenses, all fifth and subsequent offenses, and causing great

bodily harm or death by the intoxicated use of a vehicle). Prior to July 1, 2010, a court could not order probation for a person who was convicted of a second- or third-offense OWI. This prohibition was eliminated with the passage of 2009 Act 100. Following a conviction for a seventh or subsequent offense, the judge must impose a bifurcated sentence, with a minimum period of confinement of at least three years (four years for the tenth OWI conviction), followed by a period of extended supervision.

### **Jail Sentence Reductions for the Successful Completion of Treatment**

In certain counties, OWI offenders who are convicted of a basic OWI or OWI commercial motor vehicle offense that is counted as a second, third, or fourth OWI offense and who successfully complete a period of probation that includes alcohol and other drug abuse treatment may be eligible for a reduced sentence. Under this sentencing option, the minimum jail sentence for a second offense remains five days, but the maximum is reduced from six months to seven days. For a third offense, the minimum sentence is reduced from 45 days to 14 days, and for a fourth OWI offense, the minimum sentence is reduced from 60 days to 29 days. The reduced sentencing option has been available in Winnebago County since 2006, but was expanded to any county that wishes to participate with the passage of 2009 Act 100. An offender is eligible for the sentence reduction only once in his or her lifetime.

The statutes do not establish particular treatment program criteria. The Winnebago County program establishes various requirements for the offender, including completing prescribed driver safety plan treatment (described in more detail in a later section on the alcohol assessment and driver safety plan), attending a victim impact panel, and submitting to random chemical testing. Failure to meet all requirements results in a lengthened jail sentence.

### **Other Imprisonment Provisions Applicable to OWI Offenders**

A person who is given a jail or prison sentence for an OWI offense is not eligible for presentence release (release from custody following conviction but prior to sentencing) if the conviction is for a third or subsequent OWI offense. Likewise, a court generally may not stay the execution of a jail sentence for a person convicted of a third or subsequent OWI offense.

A person who is given a jail or prison sentence for an OWI offense is generally eligible for work release privileges (applicable to most inmates, except those convicted of certain serious crimes). However, a person sentenced to serve a sentence in a county jail for an OWI offense who is also subject to an ignition interlock device order (described in more detail below) may not be given work release privileges unless the person submits proof, within two weeks after the court issues the order, that an ignition interlock device has been installed on each vehicle to which the order applies.

### **Driver Improvement Surcharge**

In addition to the payment of a fine or forfeiture (and penalty surcharges, applicable to all criminal and civil cases), a person convicted of an OWI or other counted offense, or of a commercial motor vehicle OWI, is required to pay a \$435 driver improvement surcharge. With respect to the driver improvement surcharge, 50.3% of the revenue is retained by the county in which the conviction occurred and used for the cost of alcohol assessments for convicted drivers (discussed in more detail in a later section). The other 49.7% is retained by the state and used primarily for the costs associated with blood and breath testing. Smaller amounts of the state share are used for OWI prevention programs and to supplement county funding for alcohol assessment. Additional information on the driver improvement surcharge and the programs funded by the

surcharge is provided in a later section of this paper.

Other surcharges and court fees are charged in OWI cases, but are not unique to these offenses. More information on these surcharges and fees can be found in the Legislative Fiscal Bureau Informational Paper entitled "Wisconsin Court System." A later section of this paper illustrates the cost to the offender for a typical OWI conviction, including the amount of the driver improvement surcharge and other surcharges and fees.

### **Driver's License Revocation and Occupational License Provisions**

*License Revocation and Occupational Licenses.* The Department of Transportation is required to revoke the driver's license of a person who is convicted of an OWI offense or one of the other counted offenses. The time period of the revocation depends upon the number of prior OWI or other counted offenses, if any, that the person has on his or her record. A person whose license has been revoked may be eligible to receive an occupational license, which allows restricted driving privileges, typically to and from work. An occupational license may be issued immediately upon revocation or after a waiting period, depending upon the type of offense and the number of prior counted OWI or related offenses. Table 2 shows the length of revocation for each offense and the waiting period for occupational license eligibility.

If the person is given a jail sentence as the result of the OWI conviction, the license revocation period is extended by the amount of the sentence. The revocation periods (both minimum and maximum, where applicable) are doubled if there was a minor passenger under the age of 16 in the vehicle at the time of the offense.

### *Operating a Motor Vehicle with a Revoked License Following OWI Conviction*

Operating a motor vehicle with a revoked li-

cence (or in violation of occupational license restrictions) is a criminal offense if the license was revoked for an OWI offense or for an implied consent refusal. Penalties for an operating after revocation conviction include a fine of up to \$2,500 and a jail sentence of up to one year. These penalties are increased and the violation is considered a felony if the person causes death or great bodily harm while operating with a revoked license.

### *Impacts on Commercial Motor Vehicle Licenses*

Persons who hold a commercial motor vehicle driver's license face additional restrictions on that license as the result of OWI or OWI-related convictions, even if those offenses did not involve the use of a commercial motor vehicle. A person is disqualified from operating a commercial motor vehicle for one year upon any conviction of a basic OWI offense, any of the other offenses included in Table 2, or any OWI commercial motor vehicle offense. Upon conviction of any second or subsequent offense, the person is disqualified for life from operating a commercial motor vehicle.

### *License Reinstatement Following Revocation for OWI*

A person whose license has been revoked for an operating while intoxicated offense or an implied consent refusal must pay a reinstatement fee of \$200. This fee consists of a \$50 regular reinstatement fee and a \$10 issuance fee, applying to all license reinstatements, plus a \$140 fee applying only to OWI and related offenses. The regular reinstatement fee and the issuance fee (\$60 total) are deposited to the transportation fund, while the \$140 fee is transferred to the general fund.

In addition to the required reinstatement fee, certain persons who have one or more prior OWI offenses are required to file proof of automobile insurance with the Department prior to receiving

**Table 2: Driver's License Revocation Periods and Occupational License Eligibility Waiting Periods for OWI and Related Offenses**

	Revocation Period	Occupational License Waiting Period
<b>Basic OWI</b>		
First	6 months to 9 months	None (immediate eligibility)
Second	1 year to 18 months	45 days
Third or Subsequent	2 years to 3 years	45 days
<b>Related OWI Offenses</b>		
OWI Causing Injury		
First	1 year to 2 years	60 days
Second or Subsequent	1 year to 2 years	1 year*
OWI Causing Great Bodily Harm		
First	2 years	120 days
Second or Subsequent	2 years	1 year*
OWI Causing Death		
First	5 years	120 days
Second	5 years	1 year*
Implied Consent Refusal		
First	1 year	30 days
Second	2 years	1 year*
Third or Subsequent	3 years	1 year*

\* Two or more offenses within any five-year period. Prior offense or offenses may be a basic OWI offense or another related OWI offense.

a license (or an occupational license). The proof of insurance requirement applies to anyone who has at least one prior offense within the previous five years or two or more prior offenses in the previous 10 years. Proof of insurance must be maintained for three years following reinstatement, and failure to do so results in license revocation.

**Ignition Interlock Device Restriction and Vehicle Sanctions**

An ignition interlock device is an instrument installed in a vehicle that prevents the vehicle from operating if the presence of alcohol at or above the prohibited concentration is detected in the driver's breath. The driver is required to exhale into the machine prior to initial operation and at periodic intervals during operation thereafter.

Under Wisconsin law, certain OWI offenders are subject to ignition interlock device requirements, which take the form of both a license restriction and a vehicle installation order. The former applies to the driver, regardless of which vehicle he or she is operating, while the latter applies to any vehicle or vehicles on which the person's name appears on the certificate of title or registration (with certain exceptions, described below), regardless of who drives the vehicle.

Courts are required to order an ignition interlock device driver's license restriction for any person who: (a) is convicted of a second or subsequent basic or other counted OWI offense; (b) is convicted of a first OWI violation and who had a blood alcohol level of 0.15 or above at the time of the offense; or (c) refuses a blood alcohol test. The restriction must be for at least one year, but not more than the maximum license revocation

period for the offense, although if the maximum revocation period for the offense is less than one year (for a first OWI offense or an implied consent refusal, for example), then the restriction period must be one year. The restriction period begins on the date that the person first receives operating privileges, under either an occupational license or a fully reinstated license.

Since the driver's license restriction does not begin until a person's full or partial operating privileges are restored, it may not apply during the period immediately following an OWI conviction while the license revocation or suspension is in effect. However, the court must also impose a vehicle installation order and may order that the installation occur immediately. Consequently, a person's vehicle or vehicles may be equipped with an ignition interlock device even though he or she may not legally be able to drive.

A person who is subject to an ignition interlock device order is responsible for arranging for the installation of the device or devices, which is done by a number of companies doing business in the state. Once installed, these firms do periodic service on the devices, which includes collecting performance information, such as a record of test failures and attempts at tampering.

The person subject to an ignition interlock device order is responsible for paying the installation and maintenance costs of the device or devices. If convicted of a qualifying offense, the court will assess the offender a \$50 surcharge. In addition, service providers typically charge about \$75 to \$150 to install each device, plus a monthly maintenance fee of about \$60 to \$90. Other fees are charged for periodic recalibration, for violations, and for removal at the end of the restriction period. The total, annual cost typically ranges from \$950 to \$1050. The sentencing court is required to limit the installation and maintenance costs to one-half the normal fee for persons who have a household income at or below 150% of the federal poverty line. The Department of

Transportation, which is the state agency with authority to approve ignition interlock device service providers in the state, is required to ensure that such service providers accept reduced payments. In addition, a court may exclude one or more vehicles from a vehicle installation order if it finds that installing devices on all applicable vehicles would pose an undue financial hardship.

A person who is subject to an ignition interlock device order may not remove or tamper with an installed device, or fail to have a device installed. A violation of this provision is a criminal offense, punishable by a fine of \$150 to \$600, a jail term of up to six months, or both. With a second offense within a five-year period, the fine increases to \$300 to \$1,000.

### **Alcohol Assessment and Driver Safety Plan**

#### *Assessment and Driver Safety Plan Requirements and Procedures*

Any person who has an implied consent refusal or who is convicted of an OWI offense must undergo an assessment of his or her alcohol or controlled substance use at an approved treatment facility, designated by his or her county of residence (or in his or her state of residence, if the person is not a Wisconsin resident). [Persons convicted of certain other offenses, such as intoxicated operation of an aircraft, intoxicated operation of a recreational vehicle (snowmobiles, motorboats, or all-terrain vehicles), or possession of a controlled substance are also required to undergo such an assessment. In addition, the Department of Transportation's Division of Motor Vehicles may order a person to undergo an assessment as the result of an administrative medical review process.]

Each county establishes a single driver assessment facility (although certain counties share a single facility), according to standards developed by the Wisconsin Department of Health Services. Under 2013 Act 246, tribal treatment

facilities that meet certain statutory requirements are eligible to provide assessments. Assessments are conducted according to a standardized interview procedure, but may also involve an analysis of other relevant information, including a review of available records and reports, and information provided by other persons. Following the completion of the assessment review, the assessor issues a finding, which ranges from "irresponsible use" of alcohol or drugs, to alcohol or drug dependency.

The assessor's finding is used in the development of a driver safety plan, which outlines the driver's obligations in response to the finding. Response measures vary depending on the type of finding. For instance, a person who is found to have irresponsible alcohol use is required to attend a traffic safety program (or a similar educational program), in which participants discuss, in a group setting, their intoxicant use habits and lifestyle modifications that may help avoid intoxicated driving. Persons who are found to have an alcohol or drug dependency are required to undergo a more comprehensive substance abuse treatment program, which may include up to 30 days of inpatient services. Driver safety plans may also include other elements, at the option of the assessment agency, including mandatory attendance at an intoxicated driving victim impact panel, or a psychiatric evaluation. The treatment or other measures required under a driver safety plan are provided by service providers approved by the county. The person may choose the provider from a list of approved facilities within the geographic area.

The driver safety plan is in effect for a period determined by the assessor. Plans generally may not exceed one year, but can be extended beyond the one-year period with the approval of the Department of Transportation. Other elements of a plan may be amended if recommended by the plan provider or assessment agency.

### *Financing the Cost of Assessments and Safety Plan Services*

Each county establishes an assessment fee, which is paid by the person subject to the assessment order. The fees are intended to cover the cost of the assessment, and generally range from about \$200 to \$300 (although a few have fees higher than this range). Some counties also charge additional fees for rescheduled appointments or failure to appear for an assessment. Fees can be paid in installments, but must be paid in full prior to the assessment.

The person who is subject to a driver safety plan is charged a fee for plan services. The fee for certain services may be waived or reduced if it is determined that the person is unable to pay the full fee, but the fee for a traffic safety or alternative educational program may not be waived. The cost of some services may be offset from other sources, depending upon the type of service. For instance, private health insurance plans or the state medical assistance program may cover certain substance abuse treatment services. In addition, a portion of the revenues generated by the driver improvement surcharge are retained by counties and are used to cover a portion of the cost of services, and a portion of the state's share of these proceeds is used to supplement the county share in smaller counties.

If a court finds that a person does not have the ability to pay the fine or forfeiture and other costs associated with an OWI conviction, the court may reduce the fine or forfeiture and other costs and order that the difference be paid toward the cost of the assessment and driver safety plan.

### *Noncompliance with an Assessment or Driver Safety Plan*

Assessment facilities and driver safety plan providers are required to notify the Department of Transportation if a person fails to comply with an assessment order or driver safety plan. Upon



such notice, the Department revokes the person's driver's license, or suspends the license if the reason for the noncompliance is the failure to pay the required fees. The revocation or suspension is ended when the driver complies with the assessment order or driver safety plan (or pays the required fees) and pays a license reinstatement fee.

### **Community Service Requirements for OWI Offenders**

Courts have general authority in criminal cases to order a person to perform community service with a public agency or nonprofit charitable organizations in lieu of part or all of a fine imposed upon a criminal conviction. In provisions specific to basic OWI cases, the court is required to order community service in lieu of a fine if it determines that the offender does not have the ability to pay the fine for a criminal offense. In addition, the court has the option to order community service in lieu of the fine or forfeiture in all basic OWI cases, including upon conviction of a first basic OWI offense. Courts are specifically prohibited, however, from reducing the amount of the driver improvement surcharge in exchange for the performance of community service.

Courts may require any community service ordered for an OWI offense to include work demonstrating the adverse effects of substance abuse or operating a vehicle while intoxicated, including working at an alcoholism treatment facility or a hospital emergency room. If there was a minor passenger under the age of 16 years at the time of the offense, the court may require that the community service work benefits children or demonstrates the adverse effects on children of substance abuse. In addition to, or instead of, community service assignments that involve working at a site that demonstrates the adverse effects of operating while intoxicated, a judge may order a site visit or visits that demonstrate such adverse effects. Such visits must be monitored, as directed by the courts, and offenders

may be required to pay a fee to support the monitoring costs.

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### **Summary of Fines, Fees, and Other Costs Associated With an OWI Conviction**

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As noted in the previous sections, persons convicted of an OWI offense must pay a variety of fees and surcharges, in addition to the forfeiture or fine for the offense. This section provides a summary of these costs. Table 3 shows the forfeiture or fine, surcharges, and other costs typically paid by a person convicted of a first OWI offense and a person convicted of a second offense. For the purposes of this table, it is assumed that the offender had a blood alcohol level in the 0.08 to 0.14 range and that no other penalty enhancers (for a minor passenger, for instance) apply, and that the second OWI offense is prosecuted as a criminal offense (that is, the prior offense occurred within 10 years). Also, some of the amounts shown in the table will vary depending upon the location and upon decisions of individual courts. In these cases, the amounts shown represent what might be the typical or average case. In addition to the costs resulting directly from an OWI conviction, as shown in the table, a driver with an OWI conviction can expect to pay more for automobile insurance, although the amount will vary based on a number of factors affecting underwriting decisions.

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### **Enforcement and Court Procedures Applicable to OWI Offenses**

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#### **Traffic Stop, Arrest, and Testing**

With respect to the enforcement of OWI laws, as well as all other traffic regulations, a law enforcement officer may stop a vehicle if he or she

**Table 3: Typical Costs Associated with a First and Second OWI Conviction**

Item	First Offense	Second Offense
<b>Court Costs</b>		
Forfeiture/Fine <sup>1</sup>	\$150.00	\$350.00
Driver Improvement Surcharge	435.00	435.00
Penalty Surcharge <sup>2</sup>	39.00	91.00
Jail Surcharge	10.00	10.00
Crime Lab Drug Surcharge	13.00	13.00
Justice Information System Surcharge <sup>3</sup>	21.50	N.A.
Victim/Witness Surcharge <sup>3</sup>	N.A.	67.00
Court Support Services Surcharge <sup>3</sup>	68.00	N.A.
Circuit Court Fee <sup>3</sup>	25.00	N.A.
Criminal Court Costs <sup>3</sup>	N.A.	163.00
Ignition Interlock Surcharge <sup>4</sup>	<u>N.A.</u>	<u>50.00</u>
Total Amount Paid to the Court	\$761.50	\$1,179.00
<b>Other Costs</b>		
Driver Assessment Fee <sup>5</sup>	\$250.00	\$250.00
Occupational License Fee	50.00	50.00
License Reinstatement Fee	200.00	200.00
Ignition Interlock Device Costs <sup>6</sup>	<u>N.A.</u>	<u>1,000.00</u>
Total Amount of Other Costs	\$500.00	\$1,500.00
<b>Grand Total</b>	<b>\$1,261.50</b>	<b>\$2,679.00</b>

<sup>1</sup> The forfeitures/fines for an OWI offense may vary depending upon the circumstances of the offense, subject to judicial discretion. The amounts shown represent what are typical amounts for a case with no aggravating circumstances, according to sentencing guidelines.

<sup>2</sup> The penalty surcharge is equal to 26% of the forfeiture/fine.

<sup>3</sup> Certain surcharges are applicable in civil (noncriminal) cases, like first offense OWI, but not in criminal cases, while others are applicable in criminal cases, but not civil cases.

<sup>4</sup> The ignition interlock device surcharge is applicable for all second and subsequent offenses and first-offense OWI cases where the person had a blood alcohol concentration of 0.15 or more.

<sup>5</sup> The driver assessment fee varies by county. The amount shown is the median value.

<sup>6</sup> Ignition interlock device fees vary by service provider. The amount shown is typical for the cost of installation, maintenance, and other fees.

has reasonable cause to believe that a violation has occurred. Once a stop has been made, the officer may investigate the violation. The officer may also encounter other situations in which such investigation is warranted, such as in cases where an officer is assisting a motorist who has stopped alongside the highway. In cases where impaired driving is suspected, the officer may require the driver to perform various tasks designed to show the degree of impairment, if any. These tests are referred to collectively as a "field

sobriety test." If the officer has reasonable cause to believe, based on the results of a field sobriety test or other observations, that the driver was operating a motor vehicle while impaired, he or she may also ask the driver to take a preliminary breath screening test. The results of the preliminary breath screening test, the field sobriety test, and other observations may be used in establishing probable cause for making an arrest for an OWI offense.

While the preliminary breath screening test is used to establish probable cause to make an arrest, a separate, "evidentiary" test is used in court as evidence of impairment or of a per se violation. Once an arrest has been made, the officer may request that the person take an evidentiary breath, blood, or urine test. The Department of Transportation, through its chemical test section in the Division of State Patrol, establishes the procedures to be used for evidentiary breath tests, and provides training and certification of breath testing equipment. The State Laboratory of Hygiene establishes the methods for evidentiary blood and urine analysis, while the Department of Health Services approves permits for the laboratories and individuals performing blood and urine analysis.

Blood samples may be taken only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, other medical professional who is authorized to draw blood, or a person acting under the direction of a physician. If a person is convicted of an OWI offense, and the person had a blood sample taken at the time of arrest, the court is required to impose and collect, from the defendant, any costs paid or charged to the law enforcement agency for the blood draw.

Every law enforcement agency is required to be prepared to administer at least two of the three types of tests, either at its own facilities or at other approved facilities. The law enforcement agency conducts a test and, if requested by the

driver, must conduct another test by an alternative method. The driver may also request a test conducted by a qualified third party, but is responsible for the cost of such a test.

### **Procedures Following a Crash**

Following a crash that results in the great bodily harm to any person, a law enforcement officer may request a driver involved in the crash to submit to a breath, blood, or urine test if the officer detects any presence of alcohol or controlled substance. This test, which may be requested without the arrest of the driver, follows the same procedures involved with a test following an arrest and may be used as evidence in any subsequent criminal trial. Similarly, if a crash results in death or great bodily harm to any person, and a law enforcement officer has reason to believe that a driver involved in the crash violated any state or local traffic law, even if the violation did not involve alcohol or controlled substances, the officer may request that the driver submit to testing. Again, this test does not require the arrest of the driver and the results may be used as evidence in any subsequent court proceeding.

### **Administrative License Suspension Following a Positive Test Result**

If an evidentiary test indicates the presence of a restricted controlled substance or a prohibited blood alcohol concentration, then the person's license is suspended for six months, even if the person is not charged with intoxicated driving or is eventually acquitted of such a charge. At the time of the test, the law enforcement officer that ordered the test must provide a notice to the driver of his or her right to an administrative or judicial review of the administrative suspension. The notice serves as a 30-day temporary driver's license, after which time the suspension period begins. The driver may request a review within 10 days and the Department of Transportation is required to conduct the review within 30 days. The

review is generally limited to whether the traffic stop, arrest, and testing were conducted according to correct procedures and whether the results of the test met the requirements for administrative suspension. If the Department's hearing examiner rules against the driver in such a hearing, the driver may request a judicial review of the decision in circuit court.

### **License Revocation for Implied Consent Refusal**

If a person who has been arrested on suspicion of an OWI offense refuses to take a blood, breath, or urine test upon request, the law enforcement officer must prepare a notice to revoke the person's license. The revocation begins 30 days after the notice is prepared, although the driver may request a judicial review, similar to the administrative suspension review, within 10 days of the refusal. The revocation period depends upon the number of prior OWI offenses or prior implied consent refusals, as shown in Table 2 above. A person whose license is revoked for a test refusal must submit to an alcohol assessment and comply with a driver safety plan, and is subject to an ignition interlock device order. These measures are required even if the person is not subsequently charged or convicted of an OWI offense.

### **Limits on Dismissals and Deferred Prosecution**

Wisconsin statutes prohibit a prosecutor, on his or her own initiative, from dismissing or amending a charge involving an OWI offense. In order to dismiss or amend such a charge prior to arraignment, a prosecutor must apply to the court. The court, in turn, may not agree to the dismissal or amendment unless it finds that it would be consistent with the public's interest in deterring OWI violations.

Wisconsin law prohibits the use of deferred prosecution agreements for alleged OWI offenses.

**Table 4: Allocation of State Driver Improvement Surcharge Funds, 2013-14**

Program	Agency	2013-14 Budget
Chemical test section, State Patrol	Department of Transportation	\$ 1,110,000
Breath screening instruments	Department of Transportation	150,000
State Laboratory of Hygiene	University of Wisconsin	1,494,600
Services for drivers, local assistance	Department of Health Services	812,700
Safe-ride grant program	Department of Transportation	409,800
Services for drivers	Department of Public Instruction	165,000
Crime victim compensation services	Department of Justice	<u>60,900</u>
Total		\$4,203,000

es. Deferred prosecution agreements establish conditions for a person charged with a law violation that, if complied with for a specified period of time, would result in the dismissal of the charge.

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### **Driver Improvement Surcharge Revenue**

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#### **Distribution of Surcharge Revenue**

Any person convicted of an OWI offense is required to pay a driver improvement surcharge, in addition to the fine or forfeiture and other general surcharges. The state and counties each receive a percentage of this surcharge to fund OWI-related services. In the 2013-15 biennial budget, the driver improvement surcharge increased by \$70, from \$365 to \$435. The state's percentage-based share of total revenue increased as well, to allow the full \$70 increase to go to the state, while the amount received by counties remained constant. The increase was intended to address declining surcharge revenues. Failure to pay the surcharge may result in a license suspension of up to two years, or until the surcharge is paid. This section describes the collection and use of surcharge revenues for OWI enforcement and prevention programs.

Of the amount of driver improvement sur-

charge revenues collected by the courts, 50.3% is retained by the county in which the conviction occurred and 49.7% is forwarded to the state. [If the full amount is collected, the county receives \$218.80 from each surcharge paid and the state receives \$216.20.] The county share is allocated to county human service departments to offset a portion of the costs of alcohol assessments and driver safety plan services. The state share supports a variety of OWI enforcement and prevention programs, and is allocated to these programs by the Department of Administration. Table 4 shows the allocation of state surcharge revenue in 2013-14. A description of each program is provided below.

#### *Chemical Test Section and Breath Screening Instruments*

All evidentiary breath testing equipment used by state and local law enforcement agencies is owned and maintained by the state through the State Patrol's chemical test section. In addition to maintaining the machines, chemical test section personnel train and certify all law enforcement personnel in the use of the machines. The state owns 339 evidentiary breath testing machines, of which about 245 were in use by law enforcement agencies at the time of publication, at no charge to those agencies. The chemical test section provides breath testing machines, as needed, to testing sites that meet the section's testing requirements. The remaining machines are used for

training or are out of service for maintenance.

In a typical year, about 20,000 to 22,000 breath tests are conducted related to OWI driving offenses, although the machines are also used in the enforcement of intoxicated use of recreational vehicle laws (snowmobiles, all-terrain vehicles, and motorboats), and other alcohol laws, such as absolute sobriety. The section has 13.0 positions for training and maintenance functions.

In addition to administering the breath testing machine functions, the chemical test section also tests and certifies ignition interlock devices used in the state and maintains a list of approved device service providers.

The evidentiary breath testing machines currently in service were purchased in 2006, using a financing agreement. The final payment on the agreement was made in March, 2014. The breath screening instruments appropriation makes payments under purchase agreements for this purpose.

#### *State Laboratory of Hygiene*

The State Laboratory of Hygiene (SLH), which is attached to the University of Wisconsin-Madison, conducts 90% of blood alcohol and drug testing for OWI enforcement in Wisconsin. In recent years, SLH has conducted approximately 20,000 alcohol tests and 4,000 tests for drugs other than alcohol annually. In addition, SLH staff make about 300 court appearances in response to subpoenas in OWI cases per year. Due to increases in the number of samples tested and decreases in the amounts received through the driver improvement surcharge, turnaround time for blood tests for drugs other than alcohol increased to 12 months in 2012. In that year, \$400,000 in federal funds provided under the American Recovery and Reinvestment Act (ARRA) was allocated to SLH to reduce the backlog of samples needing to be tested. Under 2013 Act 20, the Legislature transferred \$136,400 from the UW System's program revenue balances in each

year of the 2013-15 biennium to SLH and authorized two two-year project positions for the lab. Due to this additional funding and certain process improvements, turnaround time for blood tests for drugs other than alcohol has been reduced to three months in 2014.

#### *Services for Drivers, Local Assistance*

The Department of Health Services provides supplemental assistance to county health departments for alcohol assessment and driver safety plan services costs. Counties may apply for assistance if the amount of surcharge revenue retained by the county, plus insurance reimbursements and program fees, is insufficient to cover program costs.

#### *Safe-Ride Grant Program*

The safe-ride grant program provides grants to local governments or nonprofit organizations for 80% of the cost of taxi rides for potentially intoxicated persons from alcohol establishments to their homes. The grant recipient is responsible for the remaining cost. By statute, the safe-ride grant program receives 9.75% of the state share of driver improvement surcharge revenues.

#### *Department of Public Instruction, Services for Drivers*

The Department of Public Instruction's services for drivers appropriation funds the cost of the production and distribution of curriculum materials for school districts related to traffic safety and substance abuse.

#### *Department of Justice Victim Compensation Services*

The Department of Justice's victim compensation services appropriation funds a position to administer the crime victim compensation program. The program provides compensation payments to victims of crimes, including victims of crashes caused by an intoxicated driver. Pay-

ments are made for up to \$40,000 in medical expenses, lost wages, or loss of dependent support. Although the appropriation of driver improvement surcharge revenues funds administrative costs, victim payments are made from other fund sources, including the state general fund, penalty surcharges, and federal grants.

### History of Driver Improvement Surcharge Collections

Table 5 shows the amount of the state's share of driver improvement surcharge collections over the past 10 years. During the time period shown, the surcharge was increased from \$355 to \$365 on April 1, 2008. Due to the 2008 change (including a modification to the state percentage), the state share went from \$136.68 to \$146.00. The 2014 change to the surcharge (to \$435) and percentage allocated to the state and counties, increased the state share from \$146.00 to \$216.20, effective July 1, 2014, which will first affect collections in 2014-15.

**Table 5: State Share of Driver Improvement Surcharge Collections**

Fiscal Year	State Share Collected
2004-05	\$4,523,900
2005-06	4,381,100
2006-07	4,470,300
2007-08	4,421,800
2008-09	4,635,500
2009-10	4,552,000
2010-11	4,341,600
2011-12	4,065,300
2012-13	3,917,900
2013-14	4,203,000

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### Other State Programs Related to OWI Enforcement and Prevention

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In addition to the state programs funded with driver improvement surcharge revenues, the state has several other programs funded from other

sources related to OWI enforcement and prevention. This section describes those programs.

### Department of Transportation Programs

The Department of Transportation's Bureau of Transportation Safety administers several programs related to impaired driving prevention. The Bureau uses funds received from federal traffic safety programs to both make grants to local governments and support statewide initiatives. Local grants are generally for enhanced law enforcement campaigns and educational and prevention programs. The funding is also used to support the Impaired Driving Resource Center, in the University of Wisconsin-Madison law school, which serves as a clearinghouse of information for judges and other justice system personnel. Federal funding is also used for media campaigns related to the legal and safety consequences of impaired driving.

The Bureau also administers the pretrial intoxicated driving intervention program, which provides grants using state funds for county intensive supervision programs. A key aspect of such programs is that offenders are given an alcohol assessment and driver safety plan prior to trial, based on the principle that early intervention may reduce recidivism. To be eligible to participate, a defendant must be charged with a second or subsequent OWI offense. The successful completion of the treatment program may be considered by the judge in sentencing.

By statute, grant funds may cover up to 80% of the cost of program activities, although the Department limits aid to 50% of the cost to allow grants to be made for more programs. The remaining costs are covered by local governments, client fees, and private sources. In 2014, the program provided funding for 11 county intensive supervision programs.

In the 2013-15 biennium, the pretrial intoxicated driver intervention program was funded at

\$731,600 in each year. Funding is provided from the state transportation fund.

### **Department of Corrections Programs**

The Department of Corrections provides substance abuse treatment services, including OWI programming, to inmates in its institutions and to offenders supervised in the community. The facilities that provide OWI programming include the Drug Abuse Correctional Center in Winnebago County, the Chippewa Valley Correctional Treatment Facility in Chippewa Falls, and the Milwaukee Secure Detention Facility. In total, these facilities serve approximately 500 inmates annually. Inmates participate in a six-month, residential program, which utilizes a cognitive/behavioral treatment model to address substance abuse issues and self-management skills. In the community, the Department's Division of Community Corrections contracts with private community vendors to provide substance abuse services, including residential programs in half-way houses, or outpatient programs provided at day reporting centers or in the community. Provision of these services is based on needs assessments and availability of programming and resources.

Under 2009 Act 100, a separate general fund appropriation was created in the Department of Corrections to provide community probation supervision, to fund a monitoring center, and to fund enhanced community treatment for persons convicted of a second or third offense related to driving while intoxicated. Statutes specify that services provided from the appropriation are to be provided with no waiting list. If the moneys appropriated to the Department of Corrections are not sufficient to fully fund the services with no waiting list, the Department is required to notify the Joint Committee on Finance. In the 2013-15 biennium, the budget act appropriated \$10,065,400 for this program.

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### **Federal Impaired Driving Provisions**

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Although impaired driving policy is generally driven by state laws, the federal government has periodically enacted provisions to encourage states to adopt certain impaired driving laws. Typically, those provisions establish standards that, if not adopted by a state by a certain deadline, will result in the loss of a portion of the state's federal transportation aid. This section describes a few significant recent examples.

*0.08 Prohibited Alcohol Concentration.* The 2001 federal appropriations act for transportation included a provision that required the U.S. Department of Transportation to withhold certain percentages of federal highway aid from states that did not enact and enforce a 0.08 prohibited blood alcohol concentration law by September 30, 2003. Initially, the percentage withheld was set at 2%, but gradually increased with each year that a state was out of compliance. Wisconsin adopted the 0.08 law during the 2003 legislative session, and was not sanctioned under this provision. All states have now adopted a 0.08 per se law.

*Repeat Offender Law.* A provision included in the federal Transportation Equity Act for the 21<sup>st</sup> Century, passed in 1998, sanctions states that do not have all of four specified sanctions for repeat OWI offenders. The four sanctions include mandatory driver's license suspension for at least one year (with allowances for limited occupational license eligibility provided that the driver is subject to ignition interlock device restrictions for at least one year), mandatory vehicle sanctions (immobilization, seizure, or ignition interlock device installation), mandatory assessment of alcohol use, and minimum jail or community service terms. Beginning in federal fiscal year 2001, states that were not in compliance with all four laws had a portion of their federal highway aid transferred to traffic safety programs (currently

2.5% of selected major federal program categories). After being subject to the transfer in federal fiscal year 2001, Wisconsin adopted changes, effective in September, 2001, that brought the state into compliance with all four repeat offender laws for the next several years. Changes to both federal and state law resulted in noncompliance in federal fiscal years 2011 and 2012, subjecting the state to the transfer provision. With more recent changes to the federal law, the state was in compliance with this provision in 2013 and 2014.

*Open Container Law.* Along with the repeat offender transfer provision, the Transportation Equity Act for the 21<sup>st</sup> Century also included a funding transfer provision for states that do not prohibit, with limited exceptions, the possession of an opened alcoholic beverage container or the consumption of an alcoholic beverage in a motor vehicle operating on a public highway. The transfer provisions for states not in compliance with this requirement are the same as for the repeat offender law. Wisconsin was in compliance with this requirement at the time of the enactment of the federal law and has remained in compliance.

*Commercial Motor Vehicle Laws.* The federal Commercial Motor Vehicle Act of 1986, and subsequent amendments, establish minimum national standards for the licensing of commercial motor vehicle drivers. Certain provisions of the act require states to impose certain impaired driving laws. Most notably, states are required to have a commercial motor vehicle 0.04 per se blood alcohol concentration law. In addition, federal law requires states to disqualify commercial driver's licenses for one year following a conviction for a "major" violation, which includes, among others, an implied consent refusal or an OWI violation, regardless if the refusal or violation occurred while operating a commercial motor vehicle or some other vehicle. For a second major violation, states are required to impose a lifetime disqualification, although the driver may be eligible for reinstatement after 10 years under

certain circumstances (Wisconsin law does not allow for such reinstatement).

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## OWI Statistics

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This section provides data on the trends in OWI convictions and alcohol-related traffic crashes. Table 6 shows the number of Wisconsin convictions for basic OWI and other counted offenses by calendar year over the past decade. These figures represent the number of convictions for offenses occurring in the state, including convictions of residents of other states. Convictions of Wisconsin residents for offenses committed in other states are not reflected in this data. Total convictions have declined in recent years, with the number in 2013 equaling 65% of that in 2007.

**Table 6: Number of OWI and Related Convictions by Year**

Year	Convictions
2004	40,161
2005	40,014
2006	40,283
2007	40,260
2008	36,846
2009	33,653
2010	32,273
2011	28,213
2012	26,632
2013	26,081

Table 7 shows the number of persons killed in traffic crashes involving alcohol. The figures include any incident where a responding law enforcement officer or coroner noted in a post-accident report that a driver, bicyclist, or pedestrian had used alcohol prior to the crash. Since bicyclists and pedestrians are included, and alcohol use, not impairment, is the standard, not all fatalities shown in the table involved impaired driving. In addition to the number of alcohol-related traffic fatalities, the table also shows the



percentage of total traffic fatalities that this number represents. As with OWI convictions, the number of alcohol-related fatalities has declined in recent years.

**Table 7: Number of Alcohol-Related Traffic Fatalities and Percentage of Total Fatalities**

Year	Alcohol-Related Traffic Fatalities	Total Traffic Fatalities	Percentage of Total Fatalities
2004	326	784	41.6%
2005	330	801	41.2
2006	305	712	42.8
2007	337	737	45.7
2008	234	587	39.9
2009	238	542	43.9
2010	220	562	39.1
2011	225	565	39.8
2012	223	601	37.1
2013	185	527	35.1

Table 8 shows the total number of alcohol-related traffic crashes over the same period, as well as the total number of reportable crashes,

and the percentage that were alcohol-related. As in the number of alcohol-related fatalities, the number of alcohol-related crashes has generally declined over this period. Though the number of alcohol-related crashes increased from 2012 to 2013, the total number of crashes also increased, by a larger percentage. As a result, the data show a continued decline in alcohol-related crashes as a percentage of total crashes.

**Table 8: Number of Alcohol-Related Traffic Crashes and Percentage of Total Crashes**

Year	Alcohol-Related Traffic Crashes	Total Traffic Crashes	Percentage of Total Crashes
2004	8,931	128,308	7.0%
2005	8,768	125,174	7.0
2006	8,393	117,877	7.1
2007	8,327	125,123	6.7
2008	7,235	125,103	5.8
2009	6,429	109,991	5.8
2010	5,751	108,808	5.3
2011	5,297	112,516	4.7
2012	4,933	109,385	4.5
2013	4,954	118,254	4.2