



# An Overview of Wisconsin OWI Law

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# Introduction

Wisconsin law prohibits the operation of a motor vehicle while under the influence of an intoxicant. Though the general prohibition on operating while intoxicated (OWI) is well known, the specific offenses and associated penalties are quite complex. This report provides a general overview of Wisconsin's OWI law and other laws pertaining to alcohol and drugs and the operation of vehicles.

## OWI and related offenses

### OWI

An OWI offense consists of operating or driving a motor vehicle under any of the following circumstances:

- While under the influence of an intoxicant, a controlled substance, a controlled substance analog, or any combination thereof, or while under the influence of any other drug or combination of intoxicant and drug to a degree that renders one incapable of safely driving.<sup>1</sup>
- While having a detectable amount of a restricted controlled substance in one's blood.<sup>2</sup> Restricted controlled substances include Schedule I substances and their analogs, cocaine and its metabolites, a heroin metabolite, methamphetamine, and delta-9-tetrahydrocannabinol.<sup>3</sup>
- While having a prohibited alcohol concentration.<sup>4</sup> Alcohol concentration is expressed as the number of grams of alcohol per 100 milliliters of a person's blood or the number of grams of alcohol per 210 liters of a person's breath. The prohibited alcohol concentration is generally 0.08,<sup>5</sup> though a lower threshold is set for repeat offenders,<sup>6</sup> operators of commercial motor vehicles,<sup>7</sup> and people under the legal drinking age.<sup>8</sup>

### OWI causing injury, great bodily harm, or death

The offenses of OWI causing injury, OWI causing great bodily harm, and OWI causing death consist of committing an OWI offense that causes injury, great bodily harm, or death of another person.<sup>9</sup>

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1. Section 346.63 (1) (a), Wisconsin Statutes.

2. Section 346.63 (1) (am), Wisconsin Statutes.

3. Section 340.01 (50m), Wisconsin Statutes.

4. Section 346.63 (1) (b), Wisconsin Statutes.

5. Section 340.01 (46m) (a), Wisconsin Statutes.

6. Section 340.01 (46m) (c), Wisconsin Statutes.

7. Section 346.63 (5) (a) and (7) (a), Wisconsin Statutes.

8. Section 346.63 (2m), Wisconsin Statutes.

9. Sections 346.63 (2) (a), 940.09 (1), and 940.25 (1), Wisconsin Statutes.

## Chemical test refusal

The offense of chemical test refusal consists of refusing a law enforcement officer's request to submit to chemical testing to determine the presence of alcohol, controlled substances and their analogs, or other drugs in one's blood or breath.<sup>10</sup>

## Penalties

The penalty for an OWI or related offense depends on the total number of offenses the person has committed, as determined by counting the current offense together with certain prior offenses. Prior offenses that are counted include OWI, OWI causing injury, OWI causing great bodily harm, OWI causing death, chemical test refusal, operating an aircraft while intoxicated, and equivalent offenses committed in other jurisdictions.<sup>11</sup>

### OWI

A first-offense OWI is a civil infraction punishable by a forfeiture. A second- or third-offense OWI is a misdemeanor, punishable by a fine and a period of confinement. An OWI that is a fourth or subsequent offense is a felony, punishable by a fine and a period of confinement. The basic penalty structure:<sup>12</sup>

Offense	Monetary penalty	Period of confinement
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 \$10,000 fine	60 days to six years
Fifth or sixth	\$600 to \$25,000 fine	Six months to 10 years
Seventh, eighth, or ninth	Up to \$25,000 fine	Three years to 12 years, six months
Tenth or subsequent	Up to \$50,000 fine	Four years to 15 years

Under certain circumstances, different penalties apply.

If a person has committed only one prior offense, occurring more than 10 years prior, and the offense is not an OWI causing great bodily harm or an OWI causing death, the prior offense is not counted.<sup>13</sup>

If a passenger under 16 years of age is in the vehicle at the time the offense is committed, a first-offense OWI is treated as a criminal offense instead of a civil infraction, and a

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10. Section 343.305 (2), (3), and (9), Wisconsin Statutes.

11. Section 343.307, Wisconsin Statutes.

12. Section 346.65 (2) (am), Wisconsin Statutes.

13. Section 346.65 (2) (am) 2., Wisconsin Statutes.

third-offense OWI is treated as a felony instead of a misdemeanor. In addition, for OWIs that are second and subsequent offenses, the applicable fines and periods of confinement are doubled.<sup>14</sup>

If a person has a high alcohol concentration while committing a third-, fourth-, fifth-, or sixth-offense OWI, fines are multiplied—doubled for an alcohol concentration of 0.17 to 0.199, tripled for an alcohol concentration of 0.20 to 0.249, and quadrupled for an alcohol concentration of 0.25 or above.<sup>15</sup>

Some counties offer reduced periods of confinement to OWI offenders who successfully complete a period of probation that includes alcohol and other drug abuse treatment. In counties with this option, for a second-offense OWI, the maximum period of confinement is reduced from six months to seven days; for a third-offense OWI, the minimum period of confinement is reduced from 45 days to 14 days; and for a fourth-offense OWI, the minimum period of confinement is reduced from 60 days to 29 days.<sup>16</sup>

**OWI causing injury, great bodily harm, or death**

A first-offense OWI causing injury is a misdemeanor.<sup>17</sup> An OWI causing injury that is a second or subsequent offense, any OWI causing great bodily harm, and any OWI causing death is a felony.<sup>18</sup> All are punishable by a fine and period of confinement. The basic penalty structure:

Offense	Monetary penalty	Period of confinement
OWI causing injury, first	\$300 to \$2,000 fine	30 days to one year
OWI causing injury, second or subsequent	Up to \$10,000 fine	Up to six years
OWI causing great bodily harm	Up to \$25,000 fine	Up to 12 years, six months
OWI causing death, first	Up to \$100,000 fine	Up to 25 years
OWI causing death, second or subsequent	Up to \$100,000 fine	Up to 40 years

Under certain circumstances, different penalties apply to the offense of OWI causing injury.

If a passenger under 16 years of age is in the vehicle at the time the offense is committed, the applicable fines and periods of confinement are doubled. If the offense is a first offense, it is treated as a felony instead of a misdemeanor.<sup>19</sup>

14. Section 346.65 (2) (f), Wisconsin Statutes.

15. Section 346.65 (2) (g), Wisconsin Statutes.

16. Section 346.65 (2) (bm) to (dm), Wisconsin Statutes.

17. Section 346.65 (3m), Wisconsin Statutes.

18. Sections 346.65 (3p), 940.09 (1c) (a) and (b), and 940.25 (1), Wisconsin Statutes.

19. Section 346.65 (3m) and (3p), Wisconsin Statutes.

Some counties offer a reduced period of confinement to offenders who successfully complete a period of probation that includes alcohol and other drug abuse treatment. In counties with this option, the fine remains the same, but the minimum period of confinement is reduced from 30 days to 15 days.<sup>20</sup>

If the injured person is an adult in the same vehicle as the person committing the offense and if the offense is a first offense, the court may impose penalties that are less than the minimum required penalties.<sup>21</sup>

### **Chemical test refusal**

There is no monetary penalty or period of confinement for a chemical test refusal; the penalty is the revocation of the person’s operator’s license.

## **Impact on the operating privilege**

### **License revocation**

The Department of Transportation must revoke the operator’s license of a person convicted of an OWI or related offense. The length of the revocation depends upon the total number of offenses the person has committed.

<b>Offense</b>	<b>Revocation period<sup>22</sup></b>
OWI, first	Six to nine months
OWI, second	One year to 18 months
OWI, third or subsequent	Two to three years
OWI causing injury	One to two years
OWI causing great bodily harm	Two years
OWI causing death	Five years
Chemical test refusal, first	One year
Chemical test refusal, second	Two years
Chemical test refusal, third or subsequent	Three years

Note: Permanent revocation is required 1) for a fourth or subsequent OWI or related offense under certain conditions and 2) for a second or subsequent OWI or related offense if the person also has two or more convictions for certain crimes involving the use of a motor vehicle.

If a passenger under 16 years of age is in the vehicle at the time the offense is committed, the minimum and maximum revocation periods are doubled.<sup>23</sup>

20. Section 346.65 (3r), Wisconsin Statutes.

21. Section 346.65 (3t), Wisconsin Statutes.

22. Sections 343.30 (1q) (b), 343.305 (10) (b), and 343.31 (1m) and (3) (c), (e), and (f), Wisconsin Statutes.

23. Sections 343.30 (1q) (b) 4m., 343.305 (10) (b) 4m., and 343.31 (3) (c), (e), and (f), Wisconsin Statutes.

In addition, a person is disqualified from operating a commercial motor vehicle (CMV) for one year upon a conviction of any of these offenses if committed while engaged in CMV-related activity. Upon conviction of a subsequent offense, the person is disqualified from operating a CMV for life.<sup>24</sup>

### Occupational license

If a person's operator's license is revoked, the person may be eligible for an occupational license. An occupational license allows for limited driving privileges, such as driving to work or conducting homemaking activities, but may not be used for general recreational purposes.<sup>25</sup> The waiting period before a person is eligible for an occupational license depends on the total number of offenses the person has committed.

Offense	Waiting period <sup>26</sup>
OWI, first	None
OWI, second or subsequent	45 days
OWI causing injury, first	60 days
OWI causing injury, second or subsequent	One year
OWI causing great bodily harm, first	120 days
OWI causing great bodily harm, second or subsequent	One year
OWI causing death, first	120 days
OWI causing death, second or subsequent	One year
Chemical test refusal, first	30 days
Chemical test refusal, second	90 days*
Chemical test refusal, third or subsequent	120 days*

\*For a chemical test refusal that is a second or subsequent offense, the waiting period is increased to one year if two or more of the person's counted offenses were committed within a five-year period.

### Ignition interlock device restrictions

For certain OWI or related offenses, courts must impose ignition interlock device (IID) restrictions.<sup>27</sup> An IID is a device, installed in a vehicle, into which the operator must exhale prior to operation and at intervals while operating the vehicle. The device prevents the vehicle from operating if an alcohol concentration above 0.02 is detected in the exhaled breath.<sup>28</sup> A person subject to IID restrictions must install an IID on each motor

24. Section 343.315 (2) (a) and (c), Wisconsin Statutes.

25. Section 343.10 (5), Wisconsin Statutes.

26. Sections 343.30 (1q) (b) 2. to 4., 343.305 (10) (b) 2. to 4., and 343.31 (3m) (a) and (b), Wisconsin Statutes.

27. Section 343.301 (1g) (a), Wisconsin Statutes.

28. Section 340.01 (46m) (c), Wisconsin Statutes.

vehicle titled or registered to the person. The person is also prohibited from operating any vehicle that is not equipped with an IID.<sup>29</sup>

Courts must impose these IID restrictions for a person convicted of an OWI or related offense that is a second or subsequent offense, a person convicted of a first-offense OWI or related offense with an alcohol concentration of 0.15 or higher, and a person who refuses to submit to chemical testing.<sup>30</sup> The restrictions must apply for at least one year but otherwise may not apply for more than the maximum license revocation period for the offense.<sup>31</sup>

No person may tamper with or circumvent the operation of an IID, fail to have an IID installed as ordered by the court, or violate a court order imposing IID restrictions.<sup>32</sup> Violation of this provision is punishable by a fine of \$150 to \$600, a period of confinement of up to six months, or both. The fine increases to \$300 to \$1,000 for a second violation within a five-year period.<sup>33</sup>

### **Alcohol assessment and driver safety plan**

Courts must order a person convicted of an OWI or related offense to submit to an assessment by an approved public treatment facility for examination of the person's use of alcohol or controlled substances or their analogs and development of a driver safety plan for the person.<sup>34</sup> The driver safety plan contains requirements with which the person must comply.<sup>35</sup> Standards for assessment procedures and driver safety plans are established by the Department of Health Services.<sup>36</sup>

A person convicted of an OWI or related offense that is a second or subsequent offense is ineligible for an occupational license and ineligible to reinstate a revoked license until he or she has completed an alcohol assessment.<sup>37</sup>

## **Fees and surcharges**

In addition to the specified penalty, a person convicted of an OWI or related offense must pay several fees and surcharges. The following are the fees and surcharges that may be required, if applicable to the offense committed:

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29. Section 343.301 (1g) (am) 1., Wisconsin Statutes.

30. Section 343.301 (1g) (a), Wisconsin Statutes.

31. Section 343.301 (2m) (a), Wisconsin Statutes.

32. Section 347.413 (1), Wisconsin Statutes.

33. Section 347.50 (1s), Wisconsin Statutes.

34. Sections 343.30 (1q) (c) 1. and 343.305 (10) (c) 1., Wisconsin Statutes.

35. Sections 343.30 (1q) (d) 1. and 343.305 (10) (d), Wisconsin Statutes.

36. Sections 343.30 (1q) (c) 2. and 343.305 (10) (c) 2., Wisconsin Statutes; DHS 62.07 (5), Wisconsin Administrative Code.

37. Sections 343.10 (2) (e), 343.30 (1q) (b) 3. and 4., 343.305 (10) (b) 3. and 4., and 343.38 (1) (d) 2., Wisconsin Statutes.

Fee or surcharge type	Amount
Crime laboratories and drug law enforcement surcharge <sup>38</sup>	\$13.00
Jail surcharge <sup>39</sup>	\$10.00 (minimum)
License reinstatement fee <sup>40</sup>	\$140.00
Ignition interlock surcharge <sup>41</sup>	\$50.00
Driver improvement surcharge <sup>42</sup>	\$435.00
Safe ride program surcharge <sup>43</sup>	\$50.00
Penalty surcharge <sup>44</sup>	\$39.00 (minimum)
Criminal court fee <sup>45</sup>	\$163.00
Circuit court fee <sup>46</sup>	\$25.00
Court support services surcharge <sup>47</sup>	\$68.00
Justice information system surcharge <sup>48</sup>	\$21.50
Crime victim and witness assistance surcharge <sup>49</sup>	\$67.00/\$92.00
DNA surcharge <sup>50</sup>	\$200.00/\$250.00

## Other alcohol and drug offenses

There are other statutory provisions related to alcohol and drugs and the operation of vehicles that are not counted as prior offenses when determining the penalty for an OWI or related offense.

### Recreational vehicles

There is a prohibition on the intoxicated operation of an all-terrain or utility terrain vehicle,<sup>51</sup> off-highway motorcycle,<sup>52</sup> motorboat,<sup>53</sup> or snowmobile<sup>54</sup> that mirrors the motor ve-

38. Section 165.755 (1) (a), Wisconsin Statutes.

39. Section 302.46 (1) (a), Wisconsin Statutes. The surcharge is the greater of \$10 or 1 percent of the penalty imposed.

40. Section 343.21 (1) (jr), Wisconsin Statutes. This fee is in addition to the standard reinstatement fees.

41. Section 343.301 (5), Wisconsin Statutes. The surcharge is imposed if a court orders IID restrictions.

42. Section 346.655 (1), Wisconsin Statutes.

43. Section 346.657 (1), Wisconsin Statutes.

44. Section 757.05 (1) (a), Wisconsin Statutes. The surcharge is 26 percent of the penalty imposed.

45. Section 814.60 (1), Wisconsin Statutes. This fee applies only to criminal cases.

46. Section 814.63 (1) (b), Wisconsin Statutes. This fee applies only to forfeiture actions in circuit court.

47. Section 814.85 (1) (a), Wisconsin Statutes. This surcharge applies only to forfeiture actions in circuit court.

48. Section 814.86 (1), Wisconsin Statutes. This surcharge applies only to forfeiture actions in circuit court.

49. Section 973.045 (1), Wisconsin Statutes. The surcharge is \$67 for a misdemeanor and \$92 for a felony conviction.

50. Section 973.046 (1r), Wisconsin Statutes. The surcharge is \$200 for a misdemeanor and \$250 for a felony conviction.

51. Section 23.33 (4c), Wisconsin Statutes.

52. Section 23.335 (12), Wisconsin Statutes.

53. Section 30.681 (1), Wisconsin Statutes.

54. Section 350.101 (1), Wisconsin Statutes.

hicle OWI prohibitions. Penalties escalate with repeat offenses but offenses are counted separately for each vehicle type.<sup>55</sup> Offenses involving recreational vehicles have no effect on the motor vehicle operating privilege.

### **CMV operation**

No person may operate a CMV or be on duty time with respect to a CMV with an alcohol concentration above 0.0 or within four hours of consuming alcohol.<sup>56</sup> Violations of these prohibitions vary, depending on the alcohol concentration and the number of prior offenses the person has committed, and include forfeitures or fines, periods of confinement, being placed out of service, and being disqualified from CMV operation.<sup>57</sup>

### **Absolute sobriety**

A person who has not reached the legal drinking age is prohibited from operating a motor vehicle with an alcohol concentration above 0.0. The penalty for violation of this prohibition is a forfeiture and suspension of the operating privilege.<sup>58</sup>

### **Intoxicants in vehicles**

Subject to exceptions, no person under the legal drinking age may possess or transport alcohol in a motor vehicle.<sup>59</sup> The penalty for violation of this prohibition is a forfeiture and suspension of the operating privilege.<sup>60</sup>

No person may drink alcohol while in a motor vehicle on a public highway, and no person may possess an open container of alcohol in a privately owned motor vehicle on a public highway. Subject to exceptions, the owner or driver of a privately owned motor vehicle on a public highway may not keep or allow to be kept an open alcoholic beverage container in the passenger compartment of the vehicle.<sup>61</sup> The penalty for violation of these prohibitions is a forfeiture.<sup>62</sup> ■

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55. Sections 23.33 (13), 23.335 (23), 30.80 (6), and 350.11 (3), Wisconsin Statutes.

56. Section 346.63 (5) to (7), Wisconsin Statutes.

57. Sections 343.315 (2) (a) and (c) and 346.65 (2j) and (2u), Wisconsin Statutes.

58. Sections 346.63 (2m) and 346.65 (2q), Wisconsin Statutes.

59. Section 346.93 (1), Wisconsin Statutes.

60. Section 346.93 (2f) and (2g), Wisconsin Statutes.

61. Section 346.935, Wisconsin Statutes.

62. Section 346.95 (2m), Wisconsin Statutes.



