

THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES

FOR OFFENSES COMMITTED ON OR AFTER

July 1, 2010

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

HON. J. MAC DAVIS
Chief Judge

MICHAEL G. NEIMON
District Court Administrator

DISTRICT OAWI SENTENCING GUIDELINES COMMITTEE:

Hon. Randy Koschnick, Jefferson Co.
Hon. Andrew Gonring, Washington Co.
Hon. J. Mac Davis, Waukesha Co., Chairperson
Hon. Paul Malloy, Ozaukee Co.

SENTENCE OPTIONS/ALTERNATIVES

Alcohol Assessment and Driver Safety Plan. (All offenses)

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

IGNITION INTERLOCK OF OWNED VEHICLE (IID). Required for all offenses except for 1st offense with BAC under .15. Note: IID may start/end on a different date than revocation as revocation period is extended by any imprisonment imposed. 343.30(1r). (The law provides for reduced cost of installation if defendant is found to be indigent.)

PROBATION: Probation may be ordered in some OWI/PAC cases. However, because it is not a "sentence" the law does not require guidelines relating to probation (346.65(2m)). In probation cases, it is suggested that a longer stayed sentence be paired with a shorter condition time in jail. Conditional jail time in OWI/PAC cases does earn good time (973.09(1)). In-any-event, condition time must be equal to at least the mandatory minimum jail sentence.

RESTRICTED\CONTROLLED SUBSTANCE CASES: Guidelines are not required for Restricted\Controlled Substance offenses.

MITIGATING AND AGGRAVATING FACTORS IN SENTENCING

MITIGATING FACTORS:

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

AGGRAVATING FACTORS:

- *Poor Driving; *Accident or Injury Involved; *Poor Prior Driving Record; *Lack of Remorse
- *Recent Prior OAWI/PAC Offense/Conviction
- *Operating Without Valid Driving Privileges (i.e. OAR, OAS, OWL, HTO)
- *Circumstances of Consumption (Binge Drinking, Amount Consumed, Medication Use, etc.)
- *Poor/Limited Problem Recognition as Evidenced by Prior Treatment History or Lack Thereof
- *Uncooperative/Belligerent/Violent Toward Arresting Officer
- *Prior Uncounted Offenses for OAWI/PAC
- *Combination of alcohol and controlled substance use

Modifications to OWI Guidelines

The following is a brief description of the provisions contained in 2009 Act 100¹:

- Increases the penalties to a Class H felony and a minimum imprisonment of 6 months for 4th offense OWI within a five-year period; to a misdemeanor for first time offenders if a child under the age of 16 was present in the vehicle; and to a Class H felony for the second or higher OWI offense if there is also injury to another person. Minimum jail term for 4th offense increase from 30 day to 45 days. Minimum initial confinement times in prison are established at 3 years for 7th-9th offense (now a Class G Felony) and at 4 years for 10th or higher (now a Class F Felony).
- Allows a trial court to place a person on probation for 2nd or 3rd offense.
- Applies all surcharges and assessments to a person convicted of a first offense OWI who has a blood alcohol concentration between 0.08 and 0.099. Removes the provision thqt .08 to .099 offenses are purged after 10 years.
- Imposes stricter ignition interlock device requirements, including a mandatory one year order if a first offender has an alcohol concentration of 0.15 or more or if a person commits a subsequent OWI offenses; also creates a \$50 ignition interlock surcharge.
- Authorizes any county to institute a program similar to Winnebago County's that allows lower penalties for those agreeing to a treatment regimen.
- Eliminates the court's discretion to delay the execution of a sentence for persons convicted of 3rd or higher offenses; also prevents Huber Law participation unless the person has an IID installed.
- Extends the period of license revocation by the number of days that the person is required to spend in jail or in prison.
- Revises the eligibility of a person with two or more offenses to an occupational license by decreasing the waiting period to 45 days and increasing the current \$50 reinstatement fee by an additional \$40.
- Funds the additional costs that will result for the criminal justice and corrections systems, including costs for the court system, by increasing the clerks' fee in all criminal actions from \$20 to \$163.

¹ Director of State Court's Legislative Bulletin 09-13 dated December 28, 2009

THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES

PENALTY RANGES PER STATUTE

	1st Offense	1st Offense A crime with minor passenger under 16	2nd Offense	3rd Offense	4th Offense (Misdemeanor)	4th Offense (Felony) Prior within 5 years
Fine or Forfeiture	\$150 - 300	\$350 - \$1,100	\$350 - \$1,100	\$600 - \$8,000	\$600 - \$8,000	\$600 - \$40,000
Penalty Assessment	26%	26%	26%	26%	26%	26%
Jail Assessment	\$10	\$10	\$10	1% (\$10 min)	1% (\$10 min)	1% (\$10 min)
Justice Information Service Fee	\$21.50	\$21.50	none	none	None	none
Court Support Services Fee	\$68	\$68	none	none	None	none
Victim-Witness Surcharge A	None	None	\$40	\$40	\$40	\$65
Victim-Witness Surcharge B	None	None	\$27	\$27	\$27	\$27
Court Costs	\$25	\$25	\$163	\$163	\$163	\$163
Driver Improvement Surcharge	\$365	\$365	\$365	\$365	\$365	\$365
Crime Lab. & Drug Assessment	\$13	\$13	\$13	\$13	\$13	\$13
Ignition Interlock Device	.15 > \$50	.15 > \$50	\$50	\$50	\$50	\$50
Jail/Initial Confinement	none	5 days to 6 mos.	5 days to 6 mos.	45 days to 1 yr	60 days to 1 yr	6 mos. to 3 yrs
Extended Supervision						Up to 3 years
Revocation*	6-9 months	12-18 months	12-18 months	24-36 months	24-36 months	24-36 months
(No Refusal) Waiting period for occupational license	None	60 days**	60 days**	90 days**	90 days**	90 days**
(Refusal) Waiting period for occupational license	30 days	90 days**	90 days**	120 days**	120 days**	120 days**

* Revocation period order shall be extended by length of any imprisonment ordered. 343.30(1r) Also, if second offense or higher, revocation minimums and maximums are doubled if minor passenger under 16 years of age. 343.30(1q)b 4m

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

PENALTY RANGES PER STATUTE

	5th - 6th Offense (Felony)	7th - 9th Offense (Felony)	10th Offense Or Higher (Felony)
Fine or Forfeiture	\$600 - \$40,000	Up to \$100,000	Up to \$100,000
Penalty Assessment	26%	26%	26%
Jail Assessment	1% (\$10 min)	1% (\$10 min)	1% (\$10 min)
Justice Information Service Fee	none	none	none
Court Support Services Fee	none	none	none
Victim-Witness Surcharge A	\$65	\$65	\$65
Victim-Witness Surcharge B	\$27	\$27	\$27
Court Costs	\$163	\$163	\$163
Driver Improvement Surcharge	\$365	\$365	\$365
Crime Lab. & Drug Assessment	\$13	\$13	\$13
Ignition Interlock Device	\$50	\$50	\$50
Jail/Initial Confinement	6 mos. to 3 yrs	3 yrs to 5 yrs	4 yrs to 7 yrs & 6 months
Extended Supervision	Up to 3 years	Up to 5 years	Up to 5 years
Revocation*	24-36 months	24-36 months	24-36 months
(No Refusal) Waiting period for occupational license	90 days**	90 days**	90 days**
(Refusal) Waiting period for occupational license	120 days**	120 days**	120 days**

* Revocation period order shall be extended by length of any imprisonment ordered. 343.30(1r) Also, if second offense or higher, revocation minimums and maximums are doubled if minor passenger under 16 years of age. 343.30(1q)b 4m

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

First Offense

Mitigating Factors

Bac Level	.08 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Forfeiture	150.00	200.00	250.00	300.00
Penalty Surcharge (26%)	39.00	52.00	65.00	78.00
Ignition Interlock Device		50.00	50.00	50.00
Jail Surcharge	10.00	10.00	10.00	10.00
Justice Information Service Fee	21.50	21.50	21.50	21.50
Court Support Services Fee	68.00	68.00	68.00	68.00
Court Costs	25.00	25.00	25.00	25.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$691.50	\$804.50	\$867.50	\$930.50
Revocation	6 months	7 months	8 months	9 months
IID		12 months*	12 months*	12 months*

* If IID is ordered on a 1st offense the IID order must be for a period of 1 year. 343.301(2m)

Aggravating Factors

Bac Level	.08 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Forfeiture	200.00	250.00	300.00	300.00
Penalty Surcharge (26%)	52.00	65.00	78.00	78.00
Ignition Interlock Device		50.00	50.00	50.00
Jail Surcharge	10.00	10.00	10.00	10.00
Justice Information Service Fee	21.50	21.50	21.50	21.50
Court Support Services Fee	68.00	68.00	68.00	68.00
Court Costs	25.00	25.00	25.00	25.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$754.50	\$867.50	\$930.50	\$930.50
Revocation	6 months	7 months	8 months	9 months
IID		12 months*	12 months*	12 months*

* If IID is ordered on a 1st offense the IID order must be for a period of 1 year. 343.301(2m)

**First Offense With Minor Passenger
Mitigating Factors**

Bac Level	.08 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Fine	350.00	400.00	450.00	500.00
Penalty Surcharge (26%)	91.00	104.00	117.00	130.00
Ignition Interlock Device		50.00	50.00	50.00
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$1,059.00	\$1,172.00	\$1,235.00	\$1,298.00
Jail	5-30 days	10-60 days	20-90 days	90-180 days
Revocation and IID	12 months*	14 months	16 months	18 months

* IID is not an option for .15 <

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

Aggravating Factors

Bac Level	.08 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Fine	400.00	450.00	500.00	550.00
Penalty Surcharge (26%)	104.00	117.00	130.00	143.00
Ignition Interlock Device		50.00	50.00	50.00
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$1,122.00	\$1,235.00	\$1,298.00	\$1,361.00
Jail	30-60 days	60-90 days	90-180 days	120-180 days
Revocation and IID	14 months*	16 months	18 months	18 months

* IID is not an option for .15 <

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

Second Offense

Mitigating Factors

Bac Level	.02 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Fine	350.00	400.00	450.00	500.00
Penalty Surcharge (26%)	91.00	104.00	117.00	130.00
Ignition Interlock Device	50.00	50.00	50.00	50.00
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$1,109.00	\$1,172.00	\$1,235.00	\$1,298.00
Jail	5-30 days	10-60 days	20-90 days	90-180 days
Revocation and IID	12 months	14 months	16 months	18 months

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

Aggravating Factors

Bac Level	.02 to .149	.15 to .199	.20 to .249	.25 and above or refusal
Fine	400.00	450.00	500.00	550.00
Penalty Surcharge (26%)	104.00	117.00	130.00	143.00
Ignition Interlock Device	50.00	50.00	50.00	50.00
Jail Surcharge	10.00	10.00	10.00	10.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$1,172.00	\$1,235.00	\$1,298.00	\$1,361.00
Jail	30-60 days	60-90 days	90-180 days	120-180 days
Revocation and IID	14 months	16 months	18 months	18 months

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

Third Offense

(ineligible for bail or stay after conviction - 973.15(8)(a)(3))

Mitigating Factors

Bac Level	.02 to .169	.17 to .199	.20 to .249	.25 and above or refusal
Fine	600.00	1200.00	1800.00	2400.00
Penalty Surcharge (26%)	156.00	312.00	468.00	624.00
Ignition Interlock Device	50.00	50.00	50.00	50.00
Jail Surcharge	10.00	12.00	18.00	24.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$1,424.00	\$2,182.00	\$2,944.00	\$3,706.00
Jail	45 days -5 months	60 days - 6 months	3-7 months	4-9 months
Revocation and IID	24 months	27 months	30 months	33 months

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

Aggravating Factors

Bac Level	.02 to .169	.17 to .199	.20 to .249	.25 and above or refusal
Fine	650.00	1300.00	1950.00	2600.00
Penalty Surcharge (26%)	169.00	338.00	507.00	676.00
Ignition Interlock Device	50.00	50.00	50.00	50.00
Jail Surcharge	10.00	13.00	19.50	26.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00
Total Financial	\$1,487.00	\$2,309.00	\$3,134.50	\$3,960.00
Jail	60 days -6 months	4-8 months	7 mo.-1 yr.	9 mo.-1 yr.
Revocation and IID	27 months	30 months	33 months	36 months

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

Fourth Offense Misdemeanor
(ineligible for bail or stay after conviction - 973.15(8)(a)(3))

Mitigating Factors

Bac Level	.02 to .079	.08 - .169	.17 - .199	.20 to .249	.25 and above or refusal
Fine	650.00	750.00	1500.00	2250.00	3000.00
Penalty Surcharge (26%)	169.00	195.00	390.00	585.00	780.00
Ignition Interlock Device	50.00	50.00	50.00	50.00	50.00
Jail Surcharge	10.00	10.00	15.00	22.50	30.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00	13.00
Total Financial	\$1,487.00	\$1,613.00	\$2,563.00	\$3,515.50	\$4,468.00
Jail	2 mo.-1yr.	3 mo.-1yr.	4 mo.-1yr.	6 mo.-1yr.	7 mo.-1yr.
Revocation and IID	24 months	24 months	27 months	33 months	36 months

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

Aggravating Factors

Bac Level	.02 to .079	.08 - .169	.17 - .199	.20 to .249	.25 and above or refusal
Fine	900.00	1000.00	2000.00	3000.00	4000.00
Penalty Surcharge (26%)	234.00	260.00	520.00	780.00	1040.00
Ignition Interlock Device	50.00	50.00	50.00	50.00	50.00
Jail Surcharge	10.00	10.00	20.00	30.00	40.00
Victim-Witness Surcharge A	40.00	40.00	40.00	40.00	40.00
Victim-Witness Surcharge B	27.00	27.00	27.00	27.00	27.00
Court Costs	163.00	163.00	163.00	163.00	163.00
Driver Improvement Surcharge	365.00	365.00	365.00	365.00	365.00
Crime Lab. & Drug Surcharge	13.00	13.00	13.00	13.00	13.00
Total Financial	\$1,802.00	\$1,928.00	\$3,198.00	\$4,468.00	\$5,738.00
Jail	5 mo.-1yr.	7 mo.-1yr.	9 mo.-1yr.	10 mo.-1yr.	10 mo.-1yr.
Revocation and IID	27 months	33 months	36 months	36 months	36 months

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