

# LC Abstract

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## **Laws Relating to Penalties and License Sanctions for Operating a Motor Vehicle While Intoxicated**



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# CONTENTS

<b>General Definitions .....</b>	<b>1</b>
<b>OWI: The Basic Offense .....</b>	<b>2</b>
<i>Definitions .....</i>	<i>2</i>
<i>Where OWI Law is Enforceable .....</i>	<i>2</i>
<i>Prohibited Alcohol Concentration Defined .....</i>	<i>2</i>
<i>Elements of the Basic Offense .....</i>	<i>3</i>
<i>Single Conviction if Person Guilty of Both Violations .....</i>	<i>3</i>
<i>Limits on Plea Bargaining; Deferred Prosecution Not Permitted.....</i>	<i>3</i>
<i>Consideration of Level of AC in Sentencing; Guidelines .....</i>	<i>3</i>
<b>Counting Offenses .....</b>	<b>4</b>
<i>Under 1999 Wisconsin Act 237 (Effective January 1, 1999).....</i>	<i>4</i>
<i>Under 1999 Wisconsin Act 109 (Effective January 1, 2001) .....</i>	<i>4</i>
<i>Convictions, Suspensions, and Revocations to Be Counted .....</i>	<i>5</i>
<i>Use of Date of Offense .....</i>	<i>6</i>
<b>Penalties and License Sanctions .....</b>	<b>6</b>
<i>Penalties in the Attachment; General Provisions .....</i>	<i>6</i>
<i>Increased Penalties for Higher Levels of Prohibited AC .....</i>	<i>7</i>
<i>Increased Penalties Where Passenger Under 16 Years of Age or Unborn Child is in Motor Vehicle.....</i>	<i>7</i>
<i>Seizing or Immobilizing Vehicle or Equipping Vehicle With Ignition Interlock (Third Offense OWI) ....</i>	<i>8</i>
<i>Other Possible Sanctions.....</i>	<i>9</i>
<b>Assessment for Alcohol or Drug Use and Driver Safety Plan .....</b>	<b>11</b>
<i>Assessment .....</i>	<i>11</i>
<i>Assessment Facility's Report and Driver Safety Plan .....</i>	<i>11</i>
<i>Voluntary Submission to Assessment and Safety Plan .....</i>	<i>12</i>
<i>Notification of Compliance or Noncompliance With Plan .....</i>	<i>12</i>
<i>Review of Suspension for Inappropriateness of or Noncompliance With Plan.....</i>	<i>12</i>
<i>Fee for Assessment and Driver Safety Plan; Installment Payments .....</i>	<i>12</i>

<b>OWI-Related Offenses .....</b>	<b>13</b>
<i>Injury by OWI .....</i>	<i>13</i>
<i>Causing Great Bodily Harm by OWI .....</i>	<i>13</i>
<i>Causing Death by OWI .....</i>	<i>14</i>
<i>Absolute Sobriety for Drivers Under the Legal Drinking Age .....</i>	<i>15</i>
<b>Special OWI Provisions Applicable to CMV Drivers .....</b>	<b>15</b>
<i>Prohibitions Against Operating CMV With an AC of 0.04 to 0.1.....</i>	<i>15</i>
<i>CMV Absolute Sobriety Provision .....</i>	<i>16</i>
<i>Requests for Breath, Blood, and Urine Samples; “On Duty” Time .....</i>	<i>16</i>
<i>Occupational Licenses.....</i>	<i>16</i>
<b>Time Period Prior to Release of Person Arrested for OWI or an OWI-Related Offense.....</b>	<b>16</b>
<b>Occupational Licenses .....</b>	<b>17</b>
<i>Waiting Periods.....</i>	<i>17</i>
<i>Procedures and Requirements for Issuance of Occupational License.....</i>	<i>17</i>
<i>Order for Occupational License .....</i>	<i>18</i>
<i>Absolute Sobriety Requirement.....</i>	<i>18</i>
<i>Ignition Interlock .....</i>	<i>18</i>
<i>Penalty and License Sanction for Violation of Restriction .....</i>	<i>19</i>
<b>Attachment .....</b>	<b>21</b>

This **LC Abstract** describes a particular aspect of Wisconsin law in effect as of the date printed on the document cover. The abstract is a general discussion and should not be used as legal advice for fact-specific situations. This LC Abstract was written by Don Salm, Senior Staff Attorney. The document is available on-line at [www.legis.state.wi.us/lc/reports\\_by\\_topic.htm](http://www.legis.state.wi.us/lc/reports_by_topic.htm). Additional paper copies are available by contacting the Legislative Council office and requesting document LCA 02-4.



# Laws Relating to Penalties and License Sanctions for Operating a Motor Vehicle While Intoxicated

This document provides a general overview of current Wisconsin offenses, and the penalties and license sanctions for those offenses, relating to operating a motor vehicle while intoxicated (“drunk driving”). Other aspects of drunk driving law in Wisconsin are dealt with in a companion document to this one which considers: (1) the Implied Consent Law applicable to operators of motor vehicles; and (2) the administrative suspension of a person’s license as a result of having a high-level chemical test under the Implied Consent Law (see LC Abstract 02-3: *Implied Consent and Administrative Suspension of Driver’s License in Drunk Driving Cases*).

## GENERAL DEFINITIONS

In this document:

1. “**Alcohol concentration**” (AC) means any of the following: (a) the number of grams of alcohol per 100 milliliters of a person’s blood; or (b) the number of grams of alcohol per 210 liters of a person’s breath.
2. “**OWI**” (operating a motor vehicle while intoxicated) refers to the basic offense of operating a motor vehicle:
  - (a) While under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, 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; or
  - (b) With a prohibited level of alcohol concentration, as described below. The offense may be a violation of s. 346.63 (1), Stats. (the OWI statute), a local ordinance in conformity therewith, or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1), Stats.
3. “**OWI-related offense**” refers to: (a) causing injury by OWI [s. 346.63 (2), Stats.]; (b) causing great bodily harm by OWI [s. 940.25, Stats.]; or (c) causing death by OWI [s. 940.09, Stats.].

# OWI: THE BASIC OFFENSE

**Cite:** s. 346.63 (1), Stats.

## Definitions

For purposes of the OWI statute [and s. 346.63 (2), Stats., causing injury by OWI]:

1. “**Drive**” means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.
2. “**Motor vehicle**” refers to self-propelled devices in, upon, or by which persons or property may be transported or drawn upon a highway, but excludes snowmobiles, railroad trains, and conveyances that are not self-propelled, such as bicycles and animal-drawn vehicles. [s. 340.01 (35) and (74), Stats.]
3. “**Operate**” means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion. [s. 346.63 (3), Stats.] A number of Wisconsin court decisions have held that an intoxicated driver seated behind the wheel of a parked vehicle with the engine running is an “operator” for purposes of the basic OWI statute.

## Where OWI Law is Enforceable

Enforcement of the OWI statute is limited to driving or operation on “highways” or upon “premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of four or more units for the use of their motor vehicles whether such premises are publicly or privately owned and whether or not a fee is charged for use thereof.” The OWI statute does not apply to private parking areas at farms or to single-family residences.

## Prohibited Alcohol Concentration Defined

Under current law, a person may not operate a motor vehicle while he or she has a “prohibited alcohol concentration.” “**Prohibited alcohol concentration**” means one of the following:

1. If the person has one or no prior OWI or OWI-related convictions, suspensions, or revocations, as counted on pages 4-6, below, an AC of 0.1 or more by weight of alcohol in the person’s blood or 0.1 grams or more of alcohol in 210 liters of the person’s breath.
2. If the person has two or more prior OWI or OWI-related convictions, suspensions, or revocations, as counted on pages 4-6, below, an AC of 0.08 or more.
3. If the person has three or more prior convictions, suspensions, or revocations, as counted below, an AC of more than 0.02. This, and not 0.00, is considered to be an “absolute sobriety” level because of the limitations in breath testing devices and the fact that the slight alcohol content of mouthwash or some medications can influence test results.

As noted above, this prohibited AC standard applies to OWI and to OWI-related offenses involving causing injury, great bodily harm, or death by operation of vehicles [ss. 343.63 (2) (a) 2., 940.09 (1) (b) and 940.25 (1) (b), Stats.]. In addition, this prohibited AC standard is used in the administrative suspension provisions in the Implied Consent Law relating to drunk driving. Under s. 343.305 (7), Stats., if a driver submits to a chemical test for intoxication under the Implied Consent Law

and the test results indicate a prohibited AC, the person's operating privilege is administratively suspended for six months.

## **Elements of the Basic Offense**

Under current law, no person may drive or operate a motor vehicle:

- While under the influence of an intoxicant, a controlled substance, a controlled substance analog, or any combination of an intoxicant, a controlled substance, and a controlled substance analog, 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 (hereafter, referred to as “under the influence of an intoxicant or drugs, or both”); **or**
- While the person has a prohibited AC.

## **Single Conviction if Person Guilty of Both Violations**

A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of item 1. or 2., above, or both, for acts arising out of the same incident or occurrence. If the person is charged with violating both, the offenses must be joined. If the person is found guilty of both for acts arising out of the same incident or occurrence, there can be only a single conviction for purposes of: (1) sentencing; and (2) counting convictions under ss. 343.30 (1q) and 343.305, Stats.

## **Limits on Plea Bargaining; Deferred Prosecution Not Permitted**

**Cite:** s. 967.055 (2) (a) and (3), Stats.

Under current law, if the prosecutor seeks to dismiss or amend an OWI or OWI-related charge, the prosecutor must apply to the court. The application must state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring OWI.

Current law specifies that a prosecutor may not place a person in a deferred prosecution program if the person is accused of or charged with an OWI or OWI-related violation.

## **Consideration of Level of AC in Sentencing; Guidelines**

**Cite:** s. 346.65 (2m), Stats.

Under current law, in imposing a sentence for a violation based on the person's AC, the court is required to review the record and consider the aggravating and mitigating factors in the matter. If the level of the person's blood alcohol level is known, the court is required to consider that level as a factor in sentencing. The chief judge of each judicial administrative district must adopt guidelines for the consideration of aggravating and mitigating factors.

# COUNTING OFFENSES

Cite: s. 343.30 (1q) (b), Stats.

## Effective January 1, 1999 (1999 Wisconsin Act 237)

1997 Wisconsin Act 237 provided that, effective January 1, 1999, if a person has only one OWI or OWI-related conviction, suspension, or revocation within a 10-year period, the person's conviction, suspension, or revocation is not relevant after that 10-year period has expired and the Department of Transportation (DOT) does not have to maintain a record of the offense. For example, if the person committed an OWI violation in January 1999 and then commits another OWI violation in March 2013, the second violation would be beyond the 10-year period and would start a new 10-year period (beginning in 2013) for purposes of counting convictions, suspensions, and revocations related to OWI. However, under Act 237:

1. If there are two or more OWI or OWI-related suspensions, revocations, or convictions within any 10-year period, the DOT record must be maintained permanently. Once a person has two or more in a 10-year period, his or her DOT records as to those suspensions, revocations, or convictions are maintained forever (i.e., even if he or she goes 10 or more years without an OWI or OWI-related sanction). For example, if the driver in the example above has another violation 20 or 30 years after the violations in the examples, that violation would be Driver M's third violation and Driver Z's fourth violation and Driver N's third violation. However, if a driver has only one violation in the 10-year period 2001-2010 and then has another violation in 2013 (three years after that 10-year period), the 2013 violation will be subject to the penalties and license sanctions applicable to a first offense OWI.

2. Provisions in current law applicable if the number of convictions, suspensions, and revocations within a five-year period equals two are amended so they apply to situations where the number of convictions, suspensions, and revocations within a 10-year period equals two. If there are more than two, item 3., below, applies.

3. If the number of convictions, suspensions, and revocations equals three or more, there is no time period applicable for counting the offenses for purposes of determining the appropriate penalty or license sanction for an OWI or OWI-related violation. For example, if a person commits separate OWI violations in 1990, 1998, and 2005, the violation in year 2005 would be the person's third OWI or OWI-related violation and the penalties and license sanctions applicable to a third offense would apply. If that person commits another violation in 2012, that violation would be the person's fourth OWI violation. As noted in item 1., above, DOT has to maintain records permanently if there are two or more OWI or OWI-related violations within any 10-year period; thus, in situations involving three or more violations, DOT would have the records available on these violations.

The law clarified that the counting of other violations as prior convictions, suspensions, or revocations does not apply to offenses that occurred **before January 1, 1989**. The DOT's database does not, in general, include records on violations prior to that date so that there would be no information available to include those violations in the counting of prior offenses.

## Effective January 1, 2001 (1999 Wisconsin Act 109)

1999 Wisconsin Act 109 provided that, effective January 1, 2001, all convictions for ***homicide by OWI*** and ***causing great bodily harm by OWI*** must be counted in determining the level of the person's OWI violation, including any such offenses committed before 1989 (as under current law, other OWI or OWI-related offenses committed prior to 1989 are not counted).

**EXAMPLE #1:**

Date of Offense	February 1985	August 2001
Offense	Homicide by OWI	OWI
Number of OWI Offense Using Counting Statute	First offense OWI	Second offense OWI

Driver N's 2001 OWI violation would be a second offense (even though the first offense occurred 16 years prior and before 1989) because the first offense (homicide by OWI) is counted no matter when it occurs. The same result would apply in the following example, with the 2030 violation being a second violation and the 2034 violation being a third violation.

**EXAMPLE #2:**

Date of Offense	March 2004	July 2030	April 2034
Offense	Great bodily harm by OWI	OWI	Causing injury by OWI
Number of OWI Offense Using Counting Statute	First offense OWI	Second offense OWI	Third offense OWI

## **Convictions, Suspensions, and Revocations to Be Counted**

**Cite:** s. 343.307, Stats.

Under current law on counting offenses, the court is required to count the following to determine the: (1) length of a revocation for refusing to submit to a chemical test; (2) penalty for a commercial motor vehicle (CMV) driver with an AC of 0.04 or more but less than 0.1; and (3) prohibited AC as used to determine the applicable penalty and license sanctions in the other OWI laws:

- OWI convictions and convictions for CMV/OWI offenses or a local ordinance in conformity with either of those statutes.
- OWI or CMV/OWI convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with those statutes.
- Convictions for causing injury by OWI or for a CMV driver causing injury by OWI.
- Convictions under the law of another jurisdiction that is in substantial conformity with 49 C.F.R. s. 383.51 (b) (2) (i) or (ii), or both.
- Convictions under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess of a specified range of AC, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.
- Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.

- Revocations for refusing to submit to a chemical test.
- Convictions for causing great bodily harm or death by OWI under s. 940.09 (1) or 940.25, Stats.

Current law provides that if the same elements of the offense must be proven under a local ordinance or under a law of a federally recognized American Indian tribe or band in this state as under the OWI or OWI/CMV statutes, the local ordinance or the law of a federally recognized American Indian tribe or band in this state must be considered to be in conformity with those state statutory provisions

## **Use of Date of Offense**

With reference to identifying prior relevant OWI or OWI-related convictions or refusals within the applicable time period, time is calculated with reference to date of offense or refusal and not the date of conviction. For example, if Driver X committed an OWI offense on January 5, 1990, commits a second OWI offense in 1994, and then commits an OWI offense on January 10, 2000, the last offense would not be considered Driver X's third OWI offense (subjecting Driver X to the criminal penalties applicable to such an offense); but a first OWI offense (a civil forfeiture offense), since the last offense is committed more than 10 years after the January 5, 1990 offense.

# **PENALTIES AND LICENSE SANCTIONS**

## **Penalties in the Attachment; General Provisions**

The attachment to this Abstract summarizes the various penalties and license sanctions, including the waiting period for obtaining an occupational license, applicable to OWI and OWI-related offenses. With reference to these penalties, current law:

1. Allows a court, if the court determines that a person does not have the ability to pay the costs, fine, or forfeiture imposed for an OWI or OWI-related offense, to reduce the costs, fine, or forfeiture and order that the person pay the difference toward the cost of the alcohol use assessment and driver safety plan. [s. 346.65 (2e), Stats.]
2. Requires that the penalty for repeat OWI offenders include a requirement that the person convicted remain in the county jail for not less than a 48-consecutive hour period. [s. 346.65 (7), Stats.]
3. Provides that the DOC may not grant work release privileges to a prisoner who is imprisoned for a violation of s. 346.63 (1), (2), (5) or (6), Stats., and who fails to obtain the assessment or to comply with the driver safety plan related to the violation for which he or she was imprisoned. This provision does not apply if the prisoner does not have sufficient funds to make any payments necessary to obtain the assessment or to comply with the driver safety plan.
4. Provides that the sheriff may not permit a prisoner who is imprisoned for a violation of s. 346.63 (1), (2), (5) or (6), Stats., to leave the jail under the Huber Law work release statute if the prisoner fails to obtain the assessment or to comply with the driver safety plan. This provision does not apply if the prisoner does not have sufficient funds to make any payments necessary to obtain the assessment or to comply with the driver safety plan.

## Increased Penalties for Higher Levels of Prohibited AC

Current law provides for higher penalties for a third or subsequent violation involving a high level of prohibited AC:

- If a person convicted had an AC of 0.17 to 0.199, the applicable minimum and maximum fines for these offenses are doubled.
- If a person convicted had an AC of 0.20 to 0.249, the applicable minimum and maximum fines are tripled.
- If a person convicted had an AC of 0.25 or above, the applicable minimum and maximum fines are quadrupled.

## Increased Penalties Where Passenger Under 16 Years of Age or Unborn Child is in Motor Vehicle

Current law **doubles** the following if there is a passenger under 16 years of age in the motor vehicle at the time that a person commits any OWI or OWI-related offense, including improperly refusing to take a test to determine the presence of an intoxicant (i.e., a violation of the Implied Consent Law under which a driver's consent to such a test is implied): (1) the minimum and maximum forfeitures, fines, and periods of imprisonment; and (2) the applicable periods of suspension or revocation of the person's motor vehicle operating privilege.

1997 Act 295 (effective July 1, 1998) added "unborn child" to this doubling provision in ss. 940.09 and 940.25, Stats. (causing death or great bodily harm by OWI, respectively). Thus, under those crimes, the doubling takes effect if there is a passenger under 16 years of age or an "unborn child" in the motor vehicle at the time of the violation. "Unborn child" is defined to mean any individual of the human species from fertilization until birth that is gestating inside a woman.

This law does not affect the period of disqualification of a CMV operator (see below for the current law relating to CMV operators), but doubles the minimum and maximum forfeitures, fines, and periods of imprisonment if there is a passenger under 16 years of age in the CMV at the time that the person commits an OWI or OWI-related offense while operating a CMV.

Current law specifies that if there was a passenger under 16 years of age in the motor vehicle or a CMV at the time of the violation that gave rise to the OWI or OWI-related conviction, the court may require a person ordered to perform community service work (one of the penalty options under the OWI laws) to participate in community service work that benefits children or that demonstrates the adverse effects on children of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug. The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining, and monitoring the community service work ordered under this provision.

With reference to the offenses of causing death by OWI [s. 940.09, Stats.] and causing great bodily harm by OWI [s. 940.25, Stats.], current law refers only to minor passengers in **motor vehicles**. It should be noted that these statutes, in general, refer to causing death or great bodily harm to another human being by operation of a **vehicle** while under the influence of an intoxicant. For purposes of these provisions and the Criminal Code [chs. 939 to 951, Stats.] in general, "vehicle" is defined to mean any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air. [s. 939.22 (44), Stats.] This definition is broader than the "motor vehicle" definition applicable to OWI and injury by OWI under s. 346.63, Stats. [i.e., the s. 939.22 (44) definition includes boats, snowmobiles, all-terrain vehicles (ATV's), trains, and other vehicles in addition to motor vehicles].

## **Seizing or Immobilizing Vehicle or Equipping Vehicle With Ignition Interlock (Third Offense OWI)**

***Ignition Interlock.*** 1999 Wisconsin Act 125 (law effective January 1, 2002) specifies if a person improperly refuses to take a test under s. 343.305 or violates s. 346.63 (1) or (2), 940.09 (1) or 940.25, Stats., and the person has a total of one or more prior convictions, suspensions, or revocations, county convictions under ss. 940.09 (1) and 940.25 in the person's lifetime and other convictions, suspensions, and revocations counted under s. 343.307 (1), the court may order that the person's operating privilege for the operation of "Class D" vehicles (basically automobiles and small trucks; not commercial motor vehicles) be restricted to operating "Class D" vehicles that are equipped with an ignition interlock device. The law specifies:

- The court may restrict the operating privilege restriction for a period of not less than one year nor more than the maximum operating privilege revocation period permitted for the refusal or violation.
- If the court restricts the person's operating privilege, the person is liable for the reasonable cost of equipping and maintaining any ignition interlock device installed in his or her motor vehicle.
- A person to whom a restriction applies violates that restriction if he or she requests or permits another to blow into an ignition interlock device or to start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person an operable motor vehicle without the necessity of first submitting a sample of his or her breath to analysis by the ignition interlock device.

***Immobilization.*** Act 125 also specifies that if a person improperly refuses to take a test under s. 343.305 or violates s. 346.63 (1) or (2), 940.09 (1), or 940.25, and the person has a total of one or more prior convictions, suspensions, or revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's lifetime and other convictions, suspensions, and revocations counted under s. 343.307 (1), the court may order that the motor vehicle used during the refusal or violation and owned by the person be immobilized (e.g., by use of the so-called "Denver Boot" which is attached to one of the vehicle's tires and prevents movement of the vehicle). The law specifies that:

- The court may order the immobilization for a period of not less than one year nor more than the maximum operating privilege revocation period permitted for the refusal or violation.
- If the court orders that the person's motor vehicle be immobilized, the person is liable for reasonable cost of equipping and maintaining any immobilization device installed on his or her motor vehicle.
- The court must notify the DOT in a form and manner prescribed by the DOT that an order to immobilize a motor vehicle has been entered. The registration records of the DOT must reflect that the order has been entered against the motor vehicle and remains unexecuted.
- Within 10 days after immobilizing a motor vehicle item, the law enforcement agency that immobilized the vehicle must provide notice of the immobilization to all lien holders of record.

***Penalites.*** Current law provides that no person may remove, disconnect, tamper with, or otherwise circumvent the operation of an ignition interlock device or an immobilization device. A person violating this provision may be required to forfeit not less than \$150 nor more than \$600 for the first offense. For a second or subsequent conviction within five years, the person may be fined not less than \$300 nor more than \$1,000 or imprisoned for not more than six months, or both. [ss. 346.65 (6), 347.417 and 347.50 (1s), Stats.]

## Other Possible Sanctions

**Community Service [s. 346.65 (2g), Stats.]** Under current law, the court may: (1) provide that an OWI violator perform community service work for a public agency or a nonprofit charitable organization in lieu of part or all of a forfeiture (i.e., penalty for first offense OWI); or (2) require an OWI violator to perform community service work for a public agency or a nonprofit charitable organization in addition to the penalties specified for OWI. Current law specifies that: (1) an order may only apply if agreed to by the organization or agency; and (2) the court must ensure that the violator is provided a written statement of the terms of the community service order and that the community service order is monitored.

Current law authorizes a court to include, as a component of community service work, work that demonstrates the adverse effects of substance abuse or of OWI, including work at an alcoholism treatment facility, an emergency room of a general hospital, or a driver awareness program. In addition, the court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining, and monitoring the work.

Current law also specifies that if the court determines that a person does not have the ability to pay a fine imposed for an OWI or OWI-related violation, the court must require the defendant to perform community service work for a public agency or a nonprofit charitable organization in lieu of paying the fine imposed or, if the amount of the fine was reduced, in lieu of paying the remaining amount of the fine. Each hour of community service performed in compliance with such an order must reduce the amount of the fine owed by an amount determined by the court.

**Visits to Sites Demonstrating Effects of OWI [s. 346.65 (2i), Stats.]** Current law authorizes a court to order a visit to a site that demonstrates the adverse effects of substance abuse or of OWI, including an alcoholism treatment facility or an emergency room of a general hospital. Other pertinent provisions specify that:

- The court may order the defendant to pay a reasonable fee, based on the person's ability to pay, to offset the costs of establishing, maintaining, and monitoring the visits.
- The court may order a visit to the site only if agreed to by the person responsible for the site.
- The court must ensure that the visit is monitored. A visit to a site may be ordered for a specific time and a specific day to allow the defendant to observe victims of vehicle accidents involving intoxicated drivers.

**Mandatory Seizing and Forfeiting of Vehicle (Fourth Offense OWI) [s. 346.65 (6), Stats.]** Under current law:

- For a fourth OWI or OWI-related conviction within a 10-year period, the court is required to order seizure and forfeiture of a vehicle owned by the offender. Current law sets forth procedures for: (a) notification of the owner and all lien holders of record of the seizure; (b) a hearing on forfeiture of the vehicle; (c) sale of the vehicle, if forfeited, by the law enforcement agency or, if there is a perfected security interest, the lien holder; and (d) distribution of the proceeds of the sale. Current law exempts the following vehicles from seizure and forfeiture: a common carrier; a CMV; and a rented or leased motor vehicle used by a person other than the owner of the vehicle.
- As discussed below, for a third OWI or OWI-related offense within a 10-year period, the court is permitted to order a motor vehicle owned by the violator to be seized and forfeited.

To ensure that the seizure and forfeiture provisions can be appropriately enforced (i.e., prevent the owner from transferring ownership of a vehicle to avoid this sanction), current law:

- Requires the district attorney to notify the DOT when he or she files a criminal complaint against a person who has been arrested for an OWI or OWI-related violation and who has

two or more prior OWI or OWI-related convictions, suspensions, or revocations within a 10-year period. The DOT may not issue a certificate of title transferring ownership of any motor vehicle owned by the person upon receipt of a notice until the court assigned to hear the criminal complaint issues an order permitting the DOT to issue a certificate of title.

- Prohibits the DOT from issuing a certificate of title transferring ownership of any motor vehicle owned by a person upon receipt of a notice of intent to revoke the person's driver's license for refusing to submit to a chemical test if the person has two or more prior OWI or OWI-related convictions, suspensions or revocations within a 10-year period until the court assigned to the hearing on the refusal issues an order permitting the DOT to issue a certificate of title.

**Surrendering Certificate of Title to All Motor Vehicles Owned by Driver [s. 346.65 (6) (a) 2m., Stats.]** Current law specifies that a person who owns a motor vehicle subject to seizure, equipping with an ignition interlock device, or immobilization must surrender to the clerk of circuit court the certificate of title for every motor vehicle owned by the person. The person must comply with this requirement within five working days after receiving notification of the requirement from the district attorney. Current law sets forth when a district attorney is to provide this notification and the contents of the notification, which are the time limits for that surrender, the penalty for failure to comply with the requirement, and the address of the clerk of circuit court. The clerk of circuit court is required to promptly return each certificate of title surrendered to the clerk after stamping the certificate with the notation: "Per section 346.65 (6) of the Wisconsin Statutes, ownership of this motor vehicle may not be transferred without prior court approval." Any person failing to surrender a certificate of title as required under this provision must forfeit not more than \$500.

**Restitution [s. 346.65 (2r), Stats.]** In addition to the other penalties for an OWI violation, current law **permits** a judge to order a violator to pay restitution under s. 973.20, Stats., which sets forth the requirements and procedures applicable to restitution orders under the Criminal Code. However, for purposes of OWI, s. 973.20, Stats., also applies to first offense OWI (a civil offense), whether the offense is a statutory OWI violation or a violation of an ordinance in conformity with the statute.

**Driver Improvement Surcharge [s. 346.655, Stats.]** Current law specifies that if a court imposes a fine or a forfeiture for an OWI or OWI-related violation, it must impose a driver improvement surcharge in an amount of \$355. This surcharge is in addition to the fine or forfeiture, penalty assessment, jail assessment, and other assessments (see below). Moneys collected from the driver improvement surcharge are used, as prescribed in the statutes: (1) by county "51.42 boards" for drivers referred through drug or alcohol assessment (see below) to such boards; (2) by the Department of Health and Family Services (DHFS) to finance state operations associated with administrative costs for services to drivers; (3) by the Department of Public Instruction and the State Laboratory of Hygiene for services they provide to drivers; and (4) by the Department of Justice to provide crime victim compensation services.

If a court imposes a driver improvement surcharge and the person fails to pay the surcharge within 60 days after the date by which the court ordered the surcharge to be paid, the court may suspend the person's operating privilege until the person pays the surcharge, except that the suspension period may not exceed five years. [s. 343.30 (1z), Stats.]

As with other statutory assessments and surcharges, a person who fails to pay the driver improvement surcharge may be committed to county jail until the surcharge is paid, for a period fixed by the court not to exceed six months. [s. 973.07, Stats.]

**Other Surcharges and Special Assessments.** The following other surcharges and special assessments may also be applicable depending on the OWI or OWI-related offense involved: (1) whenever a court imposes a fine or forfeiture for any violation of state or municipal law, except nonmoving traffic violations or safety belt use violations, it must impose a penalty assessment equal to 23% of the fine or forfeiture; (2) whenever a court imposes a fine or forfeiture for any violation of state or municipal law, except nonmoving traffic violations or safety belt use violations, it must impose a jail assessment of 1% of the fine or forfeiture, or \$10, whichever is greater; (3) except for a nonmoving traffic

violation (e.g., a parking ticket) or a safety belt use violation, the court must impose a crime laboratories and drug law enforcement assessment of \$4 if the court imposes a sentence, places a person on probation or imposes a forfeiture for violation of state law or a municipal or county ordinance; (4) whenever the court imposes a sentence or places a person on probation for any felony or misdemeanor violation, it must also impose a crime victim and witness surcharge of \$50 for each misdemeanor count and \$70 for each felony count; (5) if the court imposes a fine or forfeiture for a violation of chs. 346 to 348 and the violation involved a CMV, it must impose a truck driver education assessment of \$8; (6) if the court orders restitution as part of a sentence or as a condition of probation, an amount equal to 10% of the restitution ordered is a statutory cost taxable against the defendant; (7) except for a safety belt use violation, the clerk of circuit court must charge and collect a \$7 justice information system fee on forfeiture actions that are filed in circuit court (i.e., not applicable to municipal costs); and (8) whenever the clerk of circuit court in Milwaukee County charges and collects a fee under item (6), above, the clerk must also charge and collect a \$2 special prosecution clerks fee.

## **ASSESSMENT FOR ALCOHOL OR DRUG USE AND DRIVER SAFETY PLAN**

**Cite:** s. 343.30 (1q) (c) to (e), Stats.

### **Assessment**

Under current law, except as otherwise provided in item 1. or 2., below, the court is required to order a person convicted of OWI or an OWI-related offense to submit to and comply with an assessment by an “approved public treatment facility” [defined in s. 51.45 (2) (c), Stats.] for examination of a person’s use of alcohol, controlled substances, or controlled substance analogs and development of a driver safety plan for the person. The court must notify the DOT of the assessment order. The assessment order must:

1. If the person is a **resident**, refer the person to an approved public treatment facility in the county in which the person resides. The facility named in the order may provide for assessment of the person in another approved public treatment facility. The order must provide that if the person is temporarily residing in another state, the facility named in the order may refer the person to an appropriate treatment facility in that state for assessment and development of a driver safety plan for the person satisfying the requirements of that state.
2. If the person is a **nonresident**, refer the person to an approved public treatment facility in this state. The order must provide that the facility named in the order may refer the person to an appropriate treatment facility in the state in which the person resides for assessment and development of a driver safety plan for the person satisfying the requirements of that state.
3. Require a person who is referred to a treatment facility **in another state** under item 1. or 2., above, to furnish the DOT written verification of his or her compliance from the agency which administers the assessment and driver safety plan program. The person must provide initial verification of compliance within 60 days after the date of his or her conviction.

### **Assessment Facility’s Report and Driver Safety Plan**

Prior to developing a driver safety plan which specifies treatment, the facility must make a finding that: (1) treatment is necessary; and (2) appropriate services are available. The facility must submit a report of the assessment and the plan within 14 days to the county 51.42 board, the plan

provider, the DOT, and the person. However, upon request by the facility and the person, the 51.42 board may extend the period for assessment for not more than 20 additional work days.

The assessment report must order compliance with a driver safety plan which may include: (1) treatment for the person's misuse, abuse, or dependence on alcohol, controlled substances, or controlled substance analogs; (2) attendance at a driver's school under s. 345.60, Stats.; or (3) both. If the plan requires inpatient treatment, the treatment may not exceed 30 days.

Current law specifies that the plan may also include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The plan must include a termination date consistent with the plan which may not extend beyond one year.

## **Voluntary Submission to Assessment and Safety Plan**

Under current law, the person may voluntarily submit to an assessment by a facility and driver safety plan before the conviction. A prosecutor may not use that voluntary submission to justify a reduction in the charge made against the person. Upon notification of the person's submission to the voluntary assessment and driver safety plan, the court may take that voluntary submission into account when determining the person's sentence and must suspend the order applicable to the person to submit to an assessment pending the person's completion of the voluntary assessment and driver safety plan.

## **Notification of Compliance or Noncompliance With Plan**

The 51.42 board is required to assure notification of the DOT and the person of the person's compliance or noncompliance with assessment and with treatment. The driver's school is required to notify the DOT, the 51.42 board, and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee or, if the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order. If the DOT is notified of any noncompliance, it must suspend the person's license until the 51.42 board or the driver's school notifies the DOT that the person is in compliance with the assessment or the driver safety plan. The DOT must notify the person of the suspension, the reason for the suspension, and the person's right to a review.

## **Review of Suspension for Inappropriateness of or Noncompliance With Plan**

A person may request a review, by the DOT, of a suspension based upon failure to comply with a driver safety plan within 10 days of notification of suspension by the DOT. The issues at the review are limited to: (1) whether the driver safety plan, if challenged, is appropriate; and (2) whether the person is in compliance with the assessment order or the driver safety plan. The review must be conducted within 10 days after a request is received.

If the driver safety plan is determined to be inappropriate, the DOT must order a reassessment and if the person is otherwise eligible, the DOT must reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the DOT must reinstate the person's operating privilege.

## **Fee for Assessment and Driver Safety Plan; Installment Payments**

Under current law, any person who submits to an assessment or driver safety plan is required to pay a reasonable fee for the assessment or plan to the appropriate 51.42 board or traffic safety school. Current law specifies that: (1) the fee for the driver safety plan may be reduced or waived if the person is

unable to pay the complete fee, but no fee for assessment or attendance at a traffic safety school may be reduced or waived; (2) the person may pay the fee in one, two, three, or four equal installments; and (3) nonpayment of the fee is noncompliance with the court order that required completion of an assessment and driver safety plan.

## OWI-RELATED OFFENSES

### Injury by OWI

**Cite:** s. 346.63 (2), Stats.

**Elements of Offense.** Under current law, it is unlawful for any person to cause “injury” (which is not defined in the Motor Vehicle Code) to another person by the operation of a vehicle: (1) while under the influence of an intoxicant or drugs, or both; or (2) while the person has a “prohibited alcohol concentration.”

Current law specifies that the defendant has a defense if it appears by a preponderance of the evidence that the injury would have occurred even if: (1) he or she had been exercising due care; and (2) he or she had not been under the influence of an intoxicant or drugs, or both, or did not have a prohibited AC. For example, this defense might be used by Driver X who, with an AC of 0.17, is stopped at a red light and is rear-ended by Driver Y, resulting in injury to a passenger in Driver Y’s vehicle.

**Penalties and License Sanctions.** The attachment summarizes the various penalties and license sanctions, including the waiting period for obtaining an occupational license, applicable to causing injury by OWI.

### Causing Great Bodily Harm by OWI

**Cite:** s. 940.25, Stats.

**Elements of Offense.** Under current law, it is unlawful for any person to do any of the following:

1. Cause great bodily harm to another human being by the operation of a vehicle while under the influence of an intoxicant. For purposes of s. 940.25, Stats.:
  - a. “Great bodily harm” is defined to mean “bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.” [s. 939.22 (14), Stats.]
  - b. “Vehicle” is defined to mean any self-propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water, or in the air [s. 939.22 (44), Stats.]; this is broader than the “motor vehicle” definition applicable to OWI and injury by OWI under s. 346.63, Stats. (i.e., includes boats, snowmobiles, ATV’s, trains and other vehicles in addition to motor vehicles). This definition also applies to causing death by OWI, discussed below.
2. Cause great bodily harm to another human being by the operation of a vehicle while the person has a “prohibited alcohol concentration.”

3. Cause great bodily harm to another human being by the operation of a CMV while the person has an AC of 0.04 or more but less than 0.1.

4. Cause great bodily harm to an “unborn child” by the operation of a vehicle while under the influence of an intoxicant. “Unborn child” is defined to mean any individual of the human species from fertilization until birth that is gestating inside a woman.

5. Cause great bodily harm to an unborn child by the operation of a vehicle while the person has a prohibited AC.

6. Cause great bodily harm to an unborn child by the operation of a CMV while the person has an AC of 0.04 or more but less than 0.1.

Current law specifies that the defendant has a defense if it appears by a preponderance of the evidence that the great bodily harm would have occurred even if: (1) he or she had been exercising due care; and (2) he or she had not been under the influence of an intoxicant or did not have a prohibited AC.

**Penalties and License Sanctions.** The attachment summarizes the various penalties and license sanctions, including the waiting period for obtaining an occupational license, applicable to causing great bodily harm by OWI. If there was a minor passenger under 16 years of age or an unborn child in the motor vehicle at the time of the violation that gave rise to the conviction under this provision, any applicable maximum fine or imprisonment specified for the conviction is doubled.

## Causing Death by OWI

**Cite:** s. 940.09, Stats.

**Elements of Offense.** Under current law, it is unlawful for any person to do any of the following:

- Cause the death of another by the operation or handling of a vehicle, while under the influence of an intoxicant.
- Cause the death of another by the operation or handling of a vehicle, while the person has a prohibited AC.
- Cause the death of another by the operation of a CMV [as defined in s. 340.01 (8), Stats.] while the person has an AC of 0.04 or more but less than 0.1.
- Cause the death of an unborn child by the operation or handling of a vehicle while under the influence of an intoxicant.
- Cause the death of an unborn child by the operation or handling of a vehicle while the person has a prohibited AC, as defined in s. 340.01 (46m).
- Cause the death of an unborn child by the operation of a CMV while the person has an AC of 0.04 or more but less than 0.1.

The defendant has a defense if it appears by a preponderance of the evidence that the death would have occurred even if: (1) he or she had been exercising due care; and (2) he or she had not been under the influence of an intoxicant or did not have a prohibited AC.

**Penalties and License Sanctions.** The attachment summarizes the various penalties and license sanctions, including the waiting period for obtaining an occupational license, applicable to death by OWI. If there was a minor passenger under 16 years of age or an unborn child in the motor vehicle at the time of the violation that gave rise to the conviction under this provision, any applicable maximum fine or imprisonment specified for the conviction is doubled.

**Offense Under “Three Strikes” Law.** 1993 Wisconsin Act 289, effective April 28, 1994, included causing death by OWI under s. 940.09, Stats., as one of the “serious felonies” which is counted as a “strike” in the “three strikes and you’re out” approach to repeat serious offenders established in the Act. The Act created a persistent serious felony offender repeater category which provides that, for a person who is a persistent repeater, the term of imprisonment for the felony for which the person presently is being sentenced is life imprisonment without the possibility of parole. In general, the Act specifies that a person is subject to this persistent repeater status if he or she is currently being sentenced for a “serious felony” as defined in the Act, and has had convictions on two or more separate occasions for serious felonies preceding the current serious felony violation. The Act permits the counting of serious felonies (including death by OWI) which occurred prior to the Act’s effective date as prior serious felonies for sentencing a person under the “persistent repeat serious felony offender” provision created in the Act.

## **Absolute Sobriety for Drivers Under the Legal Drinking Age**

**Cite:** s. 346.63 (2m), Stats.

Under current law, if a person has not attained the legal drinking age, as defined in s. 125.02 (8m), Stats. (currently age 21), the person may not drive or operate a motor vehicle while he or she has an AC of more than 0.0 but not more than 0.1. That is, the person may not drive or operate a motor vehicle with even a trace of alcohol in his or her system (i.e., absolute sobriety). The attachment summarizes the various penalties and license sanctions applicable to violation of the “absolute sobriety” law.

## **SPECIAL OWI PROVISIONS APPLICABLE TO CMV DRIVERS**

1989 Wisconsin Act 105 implemented the requirements of the Federal Commercial Motor Vehicle Safety Act of 1986 [P.L. 99-570] in Wisconsin. The federal Act was enacted to, among other things, improve the quality of CMV drivers and to remove problem CMV drivers from the highways. The provisions in Act 105 referred to in this Abstract took effect on January 1, 1991. As a result of that Act, current law contains, among others, the following provisions relating to OWI by CMV drivers:

## **Prohibitions Against Operating CMV With an AC of 0.04 to 0.1**

**Cite:** s. 346.63 (5) and (6), Stats.

Current law prohibits persons from: (1) driving or operating a CMV with an AC between 0.04 and 0.1; and (2) causing injury by driving or operating a CMV with an AC between 0.04 and 0.1. The penalties for these violations are the current fines and forfeitures and terms of imprisonment applicable to a person who operates, or causes injury by operation of, any vehicle while the person has an AC of 0.1 or greater (see attachment). However, there is no administrative suspension or assessment for alcohol or drug problems for these offenders. In addition, offenders are subject to disqualification from operating CMV’s for a specified period of time, depending on the offense. Any CMV operator found to have an AC of 0.1 or greater is subject to all the current OWI laws, including administrative suspension and assessment.

## CMV Absolute Sobriety Provision

**Cite:** s. 346.63 (7) (a), Stats.

Current law prohibits a person from driving or operating or being on duty time with respect to a CMV:

- With an AC above 0.0;
- Within four hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content; or
- While possessing an intoxicating beverage, regardless of its alcohol content (unless the beverage is unopened and is transported as part of a shipment).

If a law enforcement officer administers an AC test which indicates an AC above 0.0, the officer must take possession of the license and retain it for 24 hours, during which time period the operator would be considered “out of service.” In addition, the CMV operator is subject to a \$10 forfeiture.

## Requests for Breath, Blood, and Urine Samples; “On Duty” Time

Current law permits a law enforcement officer to request, under specified conditions, one or more samples of breath, blood, or urine from a CMV operator for purposes of chemical testing prior to his or her arrest. In addition, current law provides that a person operating or “on duty time” with respect to a CMV is considered to have given his or her implied consent for chemical testing. “On duty time” is defined as the period the operator begins to work or is required to be in readiness to work until the time the operator is relieved from work and all responsibility for performing work.

## Occupational Licenses

Current law prohibits disqualified CMV drivers from operating CMV’s under the authority of an occupational license. However, if a person’s commercial driver’s license is suspended or revoked due to an OWI violation in a noncommercial motor vehicle and the person was not operating a CMV at the time of the violation, the person may apply to the DOT for an occupational license that would authorize the operation of certain CMV’s. There is no minimum waiting period for the application to be considered, and the license may contain limitations and restrictions imposed by DOT. [s. 343.10 (10), Stats.]

## TIME PERIOD PRIOR TO RELEASE OF PERSON ARRESTED FOR OWI OR AN OWI-RELATED OFFENSE

**Cite:** s. 345.24, Stats.

A person arrested for OWI or an OWI-related offense may not be released: (1) until **12 hours** have elapsed from the time of his or her arrest; or (2) unless a chemical test administered in accordance with s. 343.305, Stats. (the Implied Consent Law), shows that the person has an AC of 0.04, or less. However, the person may be released to his or her attorney, spouse, relative, or other responsible adult at any time after arrest.

If the person is a CMV operator who was issued an “out-of-service” order, the person may be released under the same conditions, but his or her license may be retained until the out-of-service order has expired.

## OCCUPATIONAL LICENSES

**Cite:** s. 343.10, Stats.

### Waiting Periods

The waiting periods for occupational licenses applicable to persons convicted of OWI, OWI-related and other pertinent violations are set forth in the attachment.

### Procedures and Requirements for Issuance of Occupational License

The current law relating to issuance of occupational licenses to persons whose licenses are revoked or suspended is set forth, for the most part, in s. 343.10, Stats. In general, provisions in that statute applicable to OWI and OWI-related offenses specify that:

1. If a person’s license is revoked or suspended and if the person is engaged in an occupation (including homemaking, full-time, or part-time study, or a trade) making it essential that he or she operate a motor vehicle, the person, if he or she pays a \$40 fee to the DOT and if he or she complies with the conditions in item 2., below, may file an application with the DOT setting forth in detail the need for operating a motor vehicle. No person may file more than one application with respect to each revocation or suspension, except that this limitation does not apply to an application to amend an occupational license restriction. There are special provisions permitting a CMV driver to file his or her petition directly with the DOT and to have the occupational license issued administratively by the DOT.

2. Upon receipt of the petition, the DOT may issue an occupational license to the person if **all of the following apply:**

- The person’s license or operating privilege was not revoked or suspended under ch. 343 or 344 or s. 161.50, Stats., within the one-year period immediately preceding the present revocation or suspension, except as provided in s. 344.40, Stats.
- The person files proof of financial responsibility (e.g., insurance) covering all vehicles for which the person seeks permission to operate.
- The person surrenders his or her former operator’s license unless the license is already in the possession of the court or DOT.
- At least 15 days have elapsed since the date of revocation or suspension or, in the case of an appeal that is subsequently dismissed or affirmed, at least 15 days have elapsed since the date of revocation or suspension following the dismissal or affirmance of the appeal, unless another minimum waiting period or immediate eligibility is expressly provided by law.

3. The occupational license must contain **definite restrictions** as to hours of the day, not to exceed 12; hours per week, not to exceed 60; type of occupation; and areas or routes of travel which are permitted under the license.

4. The DOT must consider the number and seriousness of prior traffic convictions in determining whether to issue an occupational license and what restrictions to specify. Notwithstanding s. 343.40, Stats., the denial by the DOT of an application for an occupational license is not subject to judicial review.

5. Occupational licenses are subject to the waiting periods set forth in the attachment.

6. The DOT must inform a person whose application for an occupational license is denied in whole or in part of the specific reasons for the denial and that he or she may file one petition for an occupational license under item 7., below.

7. A person whose application for an occupational license is denied by the DOT in whole or in part may file a petition with the clerk of the circuit court in the county in which the person resides for an order authorizing the issuance of an occupational license to the person. No person may file a petition unless he or she first pays the fee specified in s. 814.61 (14), Stats. (currently \$40), to the clerk of the circuit court. The person's petition must include a copy of the person's current motor vehicle operating record and the reasons why the person should be granted an occupational license. The court must consider the number and seriousness of prior traffic convictions in determining whether to grant the petition and shall state, in writing, its reasons for granting or denying the petition. No person may file more than one petition with respect to a denial of an application for an occupational license.

## **Order for Occupational License**

If the court grants the petition for an occupational license, the court must issue an order authorizing the issuance of an occupational license to the person. The order for issuance of an occupational license must include definite restrictions. [See item 3., above.] A copy of the order must be forwarded to the DOT. Upon receipt of the court order, the petitioner is considered an applicant for an occupational license by the DOT. The occupational license issued by the DOT must contain the restrictions ordered by the court. If the court denies the petition, the clerk of the court must notify the DOT of the denial of the petition.

An occupational license is valid from the date of issuance by the DOT until the second working day after the date of the termination of the period of revocation or suspension, unless the occupational license is revoked, suspended, or canceled prior to termination of that period.

As a condition of eligibility for an occupational license after a second or subsequent OWI or OWI-related offense within a five-year period, that the applicant have completed the current requirement for an alcohol use assessment and be complying with the driver safety plan (required under current law).

## **Absolute Sobriety Requirement**

An absolute sobriety requirement (0.0 AC when driving or operating a motor vehicle) is applicable to holders of occupational licenses who have two or more OWI or OWI-related offenses.

## **Ignition Interlock**

If a person applying for an occupational license has two or more OWI or OWI-related offenses, the occupational license of the applicant must restrict the applicant's operation under the license to vehicles that are equipped with a functioning ignition interlock device if the court has ordered [under s. 346.65 (6) (a) 1., Stats.] that a motor vehicle owned by the person be equipped with an ignition interlock device. If the occupational license restricts the applicant's operation to a vehicle that is equipped with an ignition interlock device, the applicant is liable for the reasonable costs of equipping the vehicle with the ignition interlock device.

## **Penalty and License Sanction for Violation of Restriction**

Any person who violates any restriction of an occupational license is subject to immediate revocation of the license and:

1. Except under item 2., below, forfeiture of not less than \$150 nor more than \$600.
2. A fine of not less than \$300 nor more than \$1,000 and imprisonment for not more than six months, if the number of convictions for violating occupational license restrictions equals two or more in a five-year period. The five-year period is measured from the date of the violations which resulted in the convictions.



**OWI and Related Alcohol Penalties (effective January 1, 2002; penalty provisions in bold, February 1, 2003)**

**Source:** DOT-Bureau of Transportation Safety; DOT-Office of General Counsel; Legislative Council staff.

<b>CONVICTION</b>	<b>FINE OR FORFEITURE<sup>1</sup></b>	<b>JAIL</b>	<b>SUSPENSION OR REVOCATION</b>	<b>OCCUPATIONAL LICENSE<sup>2</sup></b>	<b>ASSESSMENT<sup>3</sup></b>	<b>POINTS<sup>4</sup></b>
OWI, First <sup>5</sup> [s. 346.63 (1) (a) and (b)] (Per se AC ≥ .10) [s. 340.01 (46m) (a)]	\$150 - \$300 <sup>6</sup> [s. 346.65 (2) (a)] (plus \$355 OWI surcharge) [s. 346.655]		6-9 month revocation <sup>6</sup> [s. 343.30 (1q) (b) 2.].	Immediately [s. 343.30 (1q) (b) 2.].	Yes	6
OWI, Second <sup>5,7</sup> (Per se AC ≥ .10) [s. 340.01 (46m) (a)]	\$350 - \$1,100 <sup>6</sup> [s. 346.65 (2) (b)] (plus \$355 OWI surcharge)	5 days to 6 months <sup>6</sup> [s. 346.65 (2) (b)]	12-18 month revocation <sup>6</sup> [s. 343.30 (1q) (b) 3.]. Vehicle immobilized or equipped with IID. <sup>8</sup>	After 60 days <sup>9,10</sup> [s. 343.30 (1q) (b) 3.]. After 12 months if 2 or more offenses within 5 years [s. 346.307 (1)].	Yes	6
OWI, Third <sup>5,7</sup> (Per se AC ≥ .08) [s. 340.01 (46m) (b)]	\$600 - \$2,000 <sup>6</sup> [s. 346.65 (2) (c)] (plus \$355 OWI surcharge)	30 days to 1 year <sup>6</sup> [s. 346.65 (2) (c)]	2-3-year revocation <sup>6</sup> [s. 343.30 (1q) (b) 4.]. Vehicle immobilized or equipped with IID, or may be seized [s. 346.65 (6) (a) 1.]. <sup>8</sup>	After 90 days <sup>9,10</sup> and <sup>11</sup> [s. 343.30 (1q) (b) 4.]. After 12 months if 2 or more offenses within 5 years.	Yes	6

<sup>1</sup> Additional fees, assessments, and surcharges will also apply.

<sup>2</sup> s. 343.10, Stats.

<sup>3</sup> Assessments are required under s. 343.30 (1q) (c).

<sup>4</sup> For the scale of demerit points for all traffic violations, see s. Trans 101.02, Wis. Adm. Code, and s. 343.32 (2), Stats., newly licensed drivers may be subject to increased demerit points. [s. 343.32 (2) (bc).]

<sup>5</sup> If offense is committed while operating as a commercial driver, then penalties will include a one year CDL disqualification (three year disqualification if transporting hazardous materials, or lifetime disqualification for second or subsequent OWI). [s. 343.315 (2) (a), (b), and (c).]

<sup>6</sup> Fines, forfeitures, jail, and revocation/suspension penalties are doubled for a person convicted of OWI when a person under 16 years of age was in the vehicle at the time of the offense. [ss. 346.65 (2) (f) and (2j) (d), 343.30 (1q) (b) 4m., and 343.305 (10) (b) 4m.]

<sup>7</sup> Generally, second offenses are counted within a 10-year period. Most other offenses (third and subsequent) are counted within an individual's lifetime dating back to 1/1/89. [ss. 346.65 (2) (b) to (e), 343.305 (10) (b) 3. and 4., 1997 Wisconsin Act 237, s. 9348 (2f).] The 10-year and lifetime periods are measured from the date of refusal or violation that resulted in conviction. [s. 346.65 (2c).] If second offenses occur within five years, vehicle must be immobilized or equipped with IID.

<sup>8</sup> The vehicle owned by the offender and used in the offense may be immobilized or equipped with IID [s. 343.301 (1) (a) and (2) (a)]. For second or subsequent offenses within five years, all vehicles titled or registered in the offenders' name must be immobilized or equipped with IID [ss. 343.301 (1) (a) and (2) (a) and 343.305 (10m)]. For third or subsequent offenses, the vehicle may be seized. [s. 346.65 (6) (a) 1.]

<sup>9</sup> Absolute sobriety is mandatory for an occupational license for persons with two or more suspensions, revocations, or convictions. [ss. 343.307 (1) and 343.10 (5) (a) 2.]

<sup>10</sup> Persons with two or more suspensions, revocations, or convictions counted under s. 343.307 (1), must complete assessment and be in compliance with a driver safety plan to be eligible for an occupational license. [ss. 343.30 (1q) (b) 3. and 4. and 343.10 (2) (c).]

<sup>11</sup> Additional fees, assessments, and surcharges will also apply.

<b>CONVICTION</b>	<b>FINE OR FORFEITURE<sup>1</sup></b>	<b>JAIL</b>	<b>SUSPENSION OR REVOCATION</b>	<b>OCCUPATIONAL LICENSE<sup>2</sup></b>	<b>ASSESSMENT<sup>3</sup></b>	<b>POINTS<sup>4</sup></b>
OWI, Fourth <sup>5,7</sup> (Per se AC > .02) [s. 340.01 (46m) (c)]	\$600-\$2,000 <sup>6</sup> [s. 346.65 (2) (d)] (plus \$355 OWI surcharge)	60 days to 1 year <sup>6</sup> [s. 346.65 (2) (d)]	2-3 years revocation <sup>6</sup> [s. 343.30 (1q) (b) 4.]. Vehicle immobilized or equipped with IID or may be seized. <sup>8</sup>	After 90 days <sup>9,10</sup> [s. 343.30 (1q) (b) 4.]. After 12 months if 2 or more offenses within 5 years.	Yes	6
OWI, Fifth or more <sup>5,7</sup> (Per se AC > .02) [s. 340.01 (46m) (c)]	\$600-\$2,000 <sup>12</sup> [s. 346.65 (2) (e)] (plus \$355 OWI surcharge)	6 months to 5 years <sup>13</sup> imprisonment [s. 346.65 (2) (e)]	2-3 years revocation <sup>6</sup> [s. 343.30 (1q) (b) 4.]. Vehicle immobilized or equipped with IID or may be seized. <sup>8</sup>	After 90 days <sup>9,10</sup> [s. 343.30 (1q) (b) 4.]. After 12 months if 2 or more offenses within 5 years.	Yes	6
Causing Injury <sup>5</sup> While OWI [s. 346.63 (2) (a)]	\$300-\$2,000 <sup>12</sup> [s. 346.65 (3m)] (plus \$355 OWI surcharge)	30 days to 1 year [s. 346.65 (3m)]	1-2 year revocation [s. 343.31 (3) (e)].	After 60 days [s. 343.31 (3m) (b)]. After 12 months if 2 or more offenses within 5 years.	Yes	6
Causing Great <sup>5,13</sup> and <sup>14</sup> Bodily Harm by OWI [s. 940.25 (1)]	Class F felony: up to \$25,000 <sup>12</sup> [s. 939.50 (3) (f)] (plus \$355 OWI surcharge) <sup>15</sup>	Class F felony: up to 12 years and 6 months imprisonment [s. 939.50 (3) (f)] <sup>15</sup>	2 year revocation [s. 343.31 (3) (f)].	After 120 days [s. 343.31 (3m) (a)]. After 12 months if 2 or more offenses within 5 years.	Yes	6
Homicide While OWI <sup>5,13</sup> and <sup>14</sup> [s. 940.09 (1)]	Class D felony: up to \$100,000 [s. 939.50 (3) (d)], <b>except</b> if one or more prior OWI convictions, suspensions, or revocations, a Class C felony: up to \$100,000 [s. 939.50 (3) (c)]	Class D felony: up to 25 years imprisonment [s. 939.50 (3) (d)], <b>except</b> if one or more prior OWI convictions, suspensions, or revocations, a Class C felony: up to 40 years [s. 939.50 (3) (c)] <sup>15</sup>	5 year revocation [s. 343.31 (3) (c)].	After 120 days [s. 343.31 (3m) (a)]. After 12 months if 2 or more offenses within 5 years.	Yes	6
Chemical Test Refusal (First) [s. 343.305 (9) and (10) (b) 2.]			1 year revocation <sup>6</sup> [s. 343.305 (10) (b) 2.].	After 30 days [s. 343.305 (10) (b) 2.].	Yes	0

<sup>12</sup> For third or subsequent OWI offenses, fines are increased according to blood AC. [s. 346.65 (2) (g).]

<sup>13</sup> 1997 Wisconsin Act 295 created new offenses of causing death or great bodily harm to unborn children by OWI and doubles the penalties if an unborn child is in the vehicle at the time the driver committed the offense of causing death or great bodily harm by OWI.

<sup>14</sup> If repeat offender, court may immobilize, equip with an IID, or seize vehicle. [ss. 940.09 (1d) and 940.25 (1d).]

<sup>15</sup> This penalty provision is effective February 1, 2003; prior to that date, the penalty is a fine not to exceed \$10,000 or imprisonment not to exceed 10 years, or both.

<b>CONVICTION</b>	<b>FINE OR FORFEITURE<sup>1</sup></b>	<b>JAIL</b>	<b>SUSPENSION OR REVOCATION</b>	<b>OCCUPATIONAL LICENSE<sup>2</sup></b>	<b>ASSESSMENT<sup>3</sup></b>	<b>POINTS<sup>4</sup></b>
Chemical Test Refusal (Second) [s. 343.305 (9) and (10) (b) 3.]			2 year revocation <sup>6,8</sup> [s. 343.305 (10) (b) 3.].	After 90 days <sup>10</sup> [s. 343.305 (10) (b) 3.].	Yes	0
Chemical Test Refusal (Third or Greater) <sup>16</sup> [s. 343.305 (9) and (10) (b) 4.]			3 year revocation <sup>2,13</sup> [s. 343.305 (10) (b) 4.]. Vehicle immobilized or equipped with IID or may be seized.	After 120 days <sup>10</sup> [s. 343.305 (10) (b) 4.].	Yes	0
Administrative Suspension for Prohibited AC [s. 343.305 (7)]			6 month suspension [s. 343.305 (7) (a)].	Immediately [s. 343.305 (8) (d)].	No	0
Absolute Sobriety (if under age 21) [s. 346.63 (2m)]	\$10 [s. 346.65 (2q)]		3 month suspension; if minor passenger in vehicle, 6 month suspension [s. 343.30 (1p)].	Immediately [s. 346.63 (2m)].	No	0
Open Container (Driver) [s. 346.935]	\$100 [s. 346.95 (2m)]					0
Open Container (Passenger) [s. 346.935]	\$50 [s. 346.95 (2m)]					0

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<sup>16</sup> This penalty provision is effective February 1, 2003; prior to that date, the penalty is a fine not to exceed \$10,000 or imprisonment not to exceed 60 years, or both.