

# OWI AND RELATED ALCOHOL AND DRUG<sup>16</sup> PENALTIES (AS OF 2005 ACT 491; OCTOBER 1, 2006)

Conviction	Fine or Forfeiture <sup>9</sup>	Jail	Suspension or Revocation <sup>10</sup>	Occupational License <sup>13</sup>	Alcohol Assessment <sup>5</sup>	Demerit Points <sup>12</sup>
OWI, First <sup>10</sup> [346.63(1)(a),(am),(b)] (Per se AC ≥ .08) [340.01(46m)(a)] Restricted controlled substance [340.01(50m)] <sup>16</sup>	\$150-\$300 <sup>6</sup> [346.65(2)(am)1.] (plus \$355 OWI surcharge) <sup>14</sup> [346.655]	No	6-9 month revocation <sup>6</sup> [343.30(1q)(b)2]	Immediately [343.30(1q)(b)2]	Yes <sup>14</sup>	6
OWI, Second <sup>1,10,16</sup> (Per se AC ≥ .08) [340.01(46m)(a)]	\$350-\$1,100 <sup>6</sup> [346.65(2)(am)2.] (plus \$355 OWI surcharge)	5 days to 6 months <sup>6</sup> [346.65(2)(am)2.]	12-18 month revocation <sup>6</sup> [343.30(1q)(b)3] Vehicle immobilized or equipped with IID <sup>8</sup>	After 60 days <sup>2,3</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)3],[343.307(1)]	Yes	6
OWI, Third <sup>1,10,16</sup> (Per se AC ≥ .08) [340.01(46m)(a)]	\$600-\$2,000 <sup>6,11</sup> [346.65(2)(am)3.] (plus \$355 OWI surcharge)	30 days to 1 year <sup>6</sup> [346.65(2)(am)3.]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized [346.65(6)(a)1] <sup>8</sup>	After 90 days <sup>2,3,9</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	Yes	6
OWI, Fourth <sup>1,10,16</sup> (Per se AC > .02) [340.01(46m)(c)]	\$600-\$2,000 <sup>6,11</sup> [346.65(2)(am)4.] (plus \$355 OWI surcharge)	60 days to 1 year <sup>6</sup> [346.65(2)(am)4.]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized <sup>8</sup>	After 90 days <sup>2,3</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	Yes	6
OWI, Fifth or more <sup>1,10,16</sup> (Per se AC > .02) [340.01(46m)(c)]	\$600-\$10,000 <sup>11</sup> [346.65(2)(am)5.] [939.50(3)(h)] (plus \$355 OWI surcharge)	6 months to 6 years <sup>6</sup> imprisonment [346.65(2)(am)5.] [939.50(3)(h)]	2-3 year revocation <sup>6</sup> [343.30(1q)(b)4] Vehicle immobilized or equipped with IID or may be seized <sup>8</sup>	After 90 days <sup>2,3</sup> After 12 months if 2 or more offenses within 5 years [343.30(1q)(b)4]	Yes	6
Causing Injury <sup>10,16</sup> While OWI [346.63(2)(a)]	\$300-\$2,000 <sup>6,11</sup> [346.65(3m)] (plus \$355 OWI surcharge)	30 days to 1 year <sup>5,6</sup> [346.65(3m)]	1-2 year revocation <sup>6,8</sup> [343.31(3)(e)]	After 60 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(b)]	Yes	6
Causing Great <sup>4,10,16</sup> Bodily Harm by OWI [940.25(1)]	Up to \$25,000 <sup>6,7,10,11</sup> [939.50(3)(f)] (plus \$355 OWI surcharge)	Up to 12.5 years <sup>6,7,10</sup> imprisonment [939.50(3)(f)]	2 year revocation <sup>4,6,7,8</sup> [343.31(3)(f)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	Yes	6
Homicide While OWI <sup>4,10,16</sup> [940.09(1)]	Up to \$100,000 <sup>6,7,10,11</sup> [939.50(3)(c),(d)] (plus \$355 OWI surcharge)	Up to 25 years or <sup>6,7,10</sup> if one or more prior OWI-related offense, up to 40 years [930.50(3)(c),(d)]	5 year revocation <sup>4,6,7</sup> [343.31(3)(c)]	After 120 days After 12 months if 2 or more offenses within 5 years [343.31(3m)(a)]	Yes	6
Chemical Test Refusal <sup>10,15</sup> (First) [343.305(9)]			1 year revocation <sup>6</sup> [(343.305(10)(b)2)]	After 30 days [(343.305(10)(b)2)]	Yes	0
Chemical Test Refusal <sup>1,10,15</sup> (Second) [343.305(9)]			2 year revocation <sup>6</sup> [343.305(10)(b)3] Vehicle immobilized or equipped with IID <sup>8</sup> [343.305(10m)]	After 90 days <sup>3</sup> After 12 months if 2 or more offenses within 5 years [343.305(10)(b)3]	Yes	0
Chemical Test Refusal <sup>1,10</sup> (Third or greater) [343.305(9)]			3 year revocation <sup>6</sup> [343.305(10)(b)4] Vehicle immobilized or equipped with IID or may be seized <sup>8</sup> [343.305(10m)]	After 120 days <sup>3</sup> After 12 months if 2 or more offenses within 5 years [343.305(10)(b)4]	Yes	0
Administrative Suspension for Prohibited Alcohol Concentration [343.305(7)]			6 month suspension [343.305(7)(a)]	Immediately [343.305(8)(d)]		0
Open Container (Driver or passenger) <sup>15</sup> [346.935]	\$100 [346.95(2m)]					0

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

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

<sup>3</sup> Persons with two or more suspensions, revocations or convictions counted under 343.307(1), must complete assessment and be in compliance with a driver safety plan to be eligible for an occupational license.

<sup>4</sup> [343.10(2)(e), 343.30(1q)(b)]

<sup>5</sup> If repeat offender, court may immobilize, equip with an ignition interlock device (IID) or seize vehicle. [940.09(1d), 940.25(1d)]

<sup>6</sup> Assessment of the offender's use of alcohol or controlled substances is required except for first offenses where alcohol concentration (AC) ≥ .08 and < .10. [343.30(1q)(c)]

<sup>7</sup> Fines, forfeitures, jail and revocation/suspension penalties are doubled for a person convicted of OWI if a person under 16 years of age was in the vehicle at the time of the offense. [343.30(1q)(b)4m], 343.305(10)(b)4m.(em), 343.31(3)(bm)4m.(c),(e),(f) and 346.65(2)(f),(3m).] For third and subsequent OWI offenses, fines are increased according to AC. [346.65(2)] Jail time is not doubled under these provisions for offenses committed in Winnebago county, unless the violation caused injury to another person.

<sup>8</sup> Fines, forfeitures, jail, and revocations or suspensions are doubled if a pregnant woman is in the vehicle at the time the driver committed the offense. [343.31(3)(c),(f)]

<sup>9</sup> The vehicle owned by the offender and used in the offense may be immobilized or equipped with IID or the offender's operating privileges may be restricted to vehicles equipped with IID. [343.301(1)(a) and (2)(a)] For second or subsequent offenses, if there are 2 or more enumerated offenses committed within any 5 years such operating privilege restrictions are mandatory and all vehicles titled or registered in the offenders' name must be immobilized or equipped with IID. [343.301(1)(a) and (2)(a), 343.305(10m)] For third or subsequent the vehicle may be seized and forfeited. [346.65(6)(a)1]

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

<sup>11</sup> Penalties include a 1 year CDL disqualification (3 year disqualification if transporting hazardous materials, or lifetime disqualification for 2nd offense since July 1, 1987.). [343.315(2)(a)(b)(c)]

<sup>12</sup> For third or subsequent OWI offenses, fines are multiplied for alcohol concentration of 0.17 or more. [346.65(2)(g)]

<sup>13</sup> For the scale of demerit points for all traffic violations, see Trans 101.02, Wisconsin Administrative Code, and 343.32(2); newly licensed and unlicensed drivers may be subject to increased demerit points. [343.32(2)(b)]

<sup>14</sup> Persons whose operating privileges have been suspended or revoked may apply for an occupational license to drive between home and work or school. [343.10]

<sup>15</sup> No OWI surcharge and no assessment of offender's alcohol or controlled substance use for first offense prohibited alcohol content [346.63(1)(b)] if AC ≥ .08 and < .10. An OWI surcharge and an assessment are required for all first prohibited alcohol convictions where AC ≥ .10 and for all first OWI convictions. [346.655(1), 343.30(1q)(c)1]

<sup>16</sup> 2005 Act 413 allows police to request test sample from any driver involved in an accident causing injury or death, without probable cause to believe the driver was OMVWI or underage.

<sup>17</sup> 2003 Wisconsin Act 97 prohibits a person from operating a motor vehicle with any detectable presence of a restricted controlled substance in his or her bloodstream. Violations are treated as OWI, and are subject to the same penalties as OWI.

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

# UNDERAGE ALCOHOL OFFENSES AND RELATED PENALTIES (AS OF 2005 ACT 491; OCTOBER 1, 2006)

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

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

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

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

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

<sup>5</sup>Additional fees, assessment and surcharges will apply.

## COMMENTS ON PENALTIES FOR UNDERAGE ALCOHOL OFFENSES

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

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

Underage Alcohol conviction records of juveniles (under age 17) are largely confidential. The Department of Transportation may not disclose information concerning a suspension, revocation or restriction as a result of a juvenile's underage alcohol conviction to any person other than a court, district attorney, municipal prosecuting attorney, law enforcement agency, the underage individual or his/her parents or legal guardian. [343.30(5), 343.24(3)]

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

# COMMERCIAL DRIVER LICENSE ALCOHOL AND OTHER DRUG OFFENSES AND RELATED PENALTIES (AS OF 2005 ACT 491; OCTOBER 1, 2006)

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

<sup>1</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. [343.30(1q)(b)4m and (3)(e), 343.305(10)(b)4m, 343.31(3)(c), 346.65(2)(d),(2q)and(3m)] For third and subsequent regular OWI offenses, fines are also increased according to blood alcohol level. [346.65(2)(g)]

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

<sup>3</sup> Additional fees, assessments and surcharges will apply.

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

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

<sup>6</sup> No occupational license can authorize the operation of a commercial motor vehicle. [343.10(2)(c)]

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

<sup>8</sup> Plus OWI \$355 surcharge [346.655].

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

<sup>10</sup> 2003 Act 33 applies CDL disqualification to any person convicted of disqualifying offenses committed in any motor vehicle after September 29, 2005.

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

CMV = Commercial motor vehicle

OWI = Operating while intoxicated

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

OCC = Occupational license

CDL = Commercial driver license

AC = Alcohol concentration

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