



---

---

# Legislative Briefs

---

---

from the Wisconsin  
Legislative Reference Bureau

Legislative Brief 99-1

January 1999

## CHANGES IN WISCONSIN'S DRUNK DRIVING LAWS

The 1997 Wisconsin Legislature enacted a number of changes to the laws regarding operating a motor vehicle while under the influence (OWI) of an intoxicant, controlled substance or other drug. The table of penalties on the reverse of this sheet, prepared by the Wisconsin Department of Transportation, summarizes OWI laws, as of January 1, 1999.

### NEW AND INCREASED PENALTIES AND RESTRICTIONS

**Effective January 1, 1999.** 1997 Wisconsin Act 237 increased the maximum possible incarceration for a 5th OWI conviction from one year to five years, making it a felony.

**Effective July 4, 1998.** 1997 Wisconsin Act 338 increased an OWI homicide charge from a Class C to a Class B felony, which extends the maximum prison term from 10 years to 40 years.

**Effective July 1, 1998.** 1997 Wisconsin Act 295 included an unborn child in the category of penalties for an OWI violation resulting in death or injury to children under age 16.

**Effective October 14, 1997.** 1997 Wisconsin Act 27 changed the age for the "absolute sobriety" law from under age 19 to the current legal drinking age of 21. Persons under 21 can be charged for driving with any measurable blood alcohol content over 0.0% but not more than 0.1%. (At 0.1% the person could be charged with an OWI offense.)

### COUNTING PRIOR CONVICTIONS

Prior to January 1, 1999, conviction records were maintained for 10 years, based on the date of the violation or refusal to be tested. Penalties for 2nd convictions were calculated on a 5-year period only, but penalties for 3rd and subsequent convictions covered the entire 10-year period. Effective January 1, 1999, Act 237 extended the period for counting 2nd convictions to 10 years and the period for calculating 3rd and subsequent OWI convictions to the driver's entire record. Recordkeeping was extended correspondingly, as next described.

### PERMANENT RECORDS

Act 237 required that, beginning with violations dated January 1, 1989, records must be maintained permanently if a person has two or more suspensions, revocations or convictions within a 10-year period. (In the past, OWI convictions records generally were "wiped clean" after a maximum of 10 years with no violations.) The new law states that a record "shall be maintained for 10 years, except that if there are two or more suspensions, revocations or convictions within any 10-year period, the record shall be maintained permanently." Question has arisen as to whether the phrase "maintained for 10 years" refers to a precise number or a minimum time limit. The Wisconsin Department of Transportation has indicated that, until that point is resolved, it will maintain records for **all** OWI violations that occur after January 1, 1989. This means records also continue to be maintained for persons with only one violation within a 10-year period. (It is not clear what effect this will have in calculating subsequent offenses after the 10-year period following the first offense.)

**OWI AND RELATED ALCOHOL PENALTIES - Effective January 1, 1999**

Conviction	Fine or Forfeiture	Jail	Suspension or Revocation	Occupational License	Assessment	Points
OWI, First [346.63(1)(a)(b)] (Per se AC .10)	\$150-\$300 <sup>7</sup> [346.65(2)(a)] (plus \$340 surcharge) [346.655]		6-9 month suspension <sup>7</sup> [343.30(1q)(b)2]	Immediately [343.30(1q)(b)2]	YES	6
OWI, Second (Within 10 years) <sup>1</sup> (Per se AC .10)	\$300-\$1,000 <sup>7</sup> (plus \$340 surcharge) [346.65(2)(b)]	5 days to 6 months <sup>7</sup> [346.65(2)(b)]	12-18 month revocation <sup>7</sup> [343.30(1q)(b)3]	After 60 days <sup>2</sup> and <sup>3</sup> [343.30(1q)(b)3]	YES	6
OWI, Third (Within lifetime) <sup>1</sup> (Per se AC .08)	\$600-\$2,000 <sup>7</sup> (plus \$340 surcharge) [346.65(2)(c)]	30 days to 1 year <sup>7</sup> [346.65(2)(c)]	2-3 year revocation <sup>7</sup> [343.30(1q)(b)4] Vehicle must be immobilized or equipped with IID or may be seized [346.65(6)(a)1]	After 90 days <sup>2</sup> and <sup>3</sup> [343.30(1q)(b)4]	YES	6
OWI, Fourth (Within lifetime) <sup>1</sup> (Per se AC .08)	\$600-\$2,000 <sup>7</sup> (plus \$340 surcharge) [346.65(2)(d)]	60 days to 1 year <sup>7</sup> [346.65(2)(d)]	2-3 year revocation <sup>7</sup> [343.30(1q)(b)4] Vehicle seized if owned by offender [346.65(6)(a)2]	After 90 days <sup>2</sup> and <sup>3</sup> [343.30(1q)(b)4]	YES	6
OWI, Fifth or more (Within lifetime) <sup>1</sup> (Per se AC .08)	\$600-\$2,000 <sup>7</sup> (plus \$340 surcharge) [346.65(2)(e)]	6 months to 5 years <sup>7</sup> [346.65(2)(e)]	2-3 year revocation <sup>7</sup> [343.30(1q)(b)4] Vehicle seized if owned by offender [346.65(6)(a)2]	After 90 days <sup>2</sup> and <sup>3</sup> [343.30(1q)(b)4]	YES	6
Causing Injury While OWI [346.63(2)(a)]	\$300-\$2,000 <sup>7</sup> (plus \$340 surcharge) [346.65(3)]	30 days to 1 year <sup>7</sup> [346.65(3)]	1-2 year revocation <sup>7</sup> [343.31(3)(e)]	After 60 days [343.31(3m)(b)]	YES	6
Causing Great Bodily Harm by OWI <sup>4,8</sup> [940.25(1)]	Up to \$10,000 <sup>7</sup> (plus \$340 surcharge) [939.50(3)(d)]	Up to 5 years <sup>7</sup> imprisonment [939.50(3)(d)]	2 year revocation <sup>7</sup> [343.31(3)(f)]	After 120 days [343.31(3m)(a)]	YES	0
Homicide While OWI <sup>4,8</sup> [940.09(1)]	Up to \$10,000 <sup>7</sup> (plus \$340 surcharge) [939.50(3)(b)]	Up to 40 years <sup>7</sup> imprisonment [939.50(3)(b)]	5 year revocation <sup>7</sup> [343.31(3)(e)]	After 120 days [343.31(3m)(a)]	YES	0
Chemical Test Refusal (First) [343.305(10)(b)2]			1 year revocation <sup>7</sup> [(343.305(10)(b)2)]	After 30 days [(343.305(10)(b)2)]	YES	0
Chemical Test Refusal (Second) (Within 10 years) [343.305(10)(b)3]			2 year revocation <sup>7</sup> [343.305(10)(b)3]	After 90 days <sup>3</sup> [343.305(10)(b)3]	YES	0
Chemical Test Refusal (Third) (Within lifetime) [343.305(10)(b)4]			3 year revocation <sup>7</sup> [343.305(10)(b)4]	After 120 days <sup>3</sup> [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)]	NO	0
Absolute Sobriety (If under age 21) [346.63(2m)]	\$98.30 (Forfeiture and costs) <sup>5</sup> [346.65(2q)]		3 month suspension <sup>6</sup> [343.30(1p)]	Immediately [346.63(2m)]	NO	0
Open Container (Driver)	\$209.00 (Forfeiture and costs) <sup>5</sup> [346.935] [346.95(2m)]					
Open Container (Passenger)	\$147.50 (Forfeiture and costs) <sup>5</sup> [346.935] [346.95(2m)]					

<sup>1</sup>The 10-year and lifetime periods are measured from the date of refusal or violation that resulted in conviction [346.65(2e)]. Offenses occurring prior to 1/1/89 may not be counted. [1997 Wis. Act 237 - s. 9348(2f)].

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

<sup>3</sup>Persons with 2 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. [343.30(1q)(b)3, 343.10(2)(c)]

<sup>4</sup>If repeat offender, court may immobilize, equip with an ignition interlock device (IID) or seize vehicle. [940.09(1d), 940.25(1d)]

<sup>5</sup>This represents the deposit for these offenses as set forth in the Uniform State Traffic Deposit Schedule, 1998 edition.

<sup>6</sup>Absolute sobriety refusal results in a 6 month revocation and cannot be counted as priors. [343.305(10)(cm)]

<sup>7</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. [346.65(2)(1) and (2)(d), 343.30(1q)(b)4m, 343.305(10)(b)4m]

<sup>8</sup>1997 Wis 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.

Source: WisDOT

[As of 1/1/99]