JEFFREY A. KREMERS
Chief Judge
Telephone: (414) 278-5116

DAVID A. HANSHER
Deputy Chief Judge
Telephone: (414) 278-5340

MAXINE A. WHITE
Deputy Chief Judge
Telephone: (414) 278-4482

BRUCE M. HARVEY
District Court Administrator
Telephone: (414) 278-5115

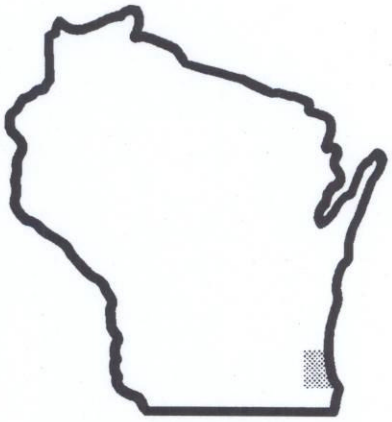
BETH BISHOP PERRIGO
Deputy District Court Administrator
Telephone: (414) 278-5025

STATE OF WISCONSIN

FIRST JUDICIAL DISTRICT

MILWAUKEE COUNTY COURTHOUSE
901 NORTH NINTH STREET, ROOM 609
MILWAUKEE, WISCONSIN 53233-1425

TELEPHONE (414) 278-5112
FAX (414) 223-1264



CHIEF JUDGE
DIRECTIVE
10-09

DATE: June 28, 2010

TO: All Judges, All Court Commissioners, District Court Administrator, Deputy District Court Administrator, County Executive, Clerk of Circuit Court, Corporation Counsel, Sheriff, District Attorney, City Attorney, Public Defender, Court Coordinators, Managing Court Reporter, IMSD, Legal Resource Center, CCAP, Justice 2000, WCS, Facilities Management, and Press

FROM: Chief Judge Jeffrey A. Kremers

RE: **OWI SENTENCING GUIDELINES**

Effective July 1, 2010:

IT IS HEREBY DIRECTED that, the attached sentencing guidelines are adopted and shall apply in all cases in the district in which the defendant is convicted of operating a motor vehicle while under the influence of an intoxicant (OWI).

Dated at Milwaukee, Wisconsin, this 28th day of June, 2010.

Jeffrey A. Kremers
Chief Judge

JAK:bjs

Attachment

FIRST JUDICIAL DISTRICT

OWI SENTENCING GUIDELINES

Effective for offenses occurring on or after July 1, 2010

Wisconsin law recognizes the serious consequences of operating a motor vehicle while under the influence of an intoxicant ("OWI"), and specifies a range of penalties for violation of those laws. The judges of this judicial district understand the extraordinary dangers of drunk driving in a heavily populated community with congested streets and highways.

The Legislature has directed that each judicial district in the state adopt guidelines for the sentencing of certain OWI violations 346.65(2m), Stats. See also State v. Jorgensen, 2003 WI 105 paragraph 26-27, 264 Wis. 2nd 157, 174-175 (2003)(although local guidelines are applicable only to prohibited alcohol concentration ("PAC") offenses, courts may refer to local guidelines when sentencing for other OWI offenses). Indeed, in Milwaukee County, where the criminal courts preside over thousands of OWI cases, guidelines for the sentencing of OWI violations will contribute to consistency among branches and among the case in each branch. Relative consistency will help ensure justice for offenders, victims and the community.

We also appreciate the importance of discretion in evaluating the facts and circumstances of each offender and each case. Therefore, these guidelines identify many of the significant criteria considered by courts in imposing a sentence and the penalty range within which each factor may fall. However, the guidelines do not require any particular sentence. Further, the various aggravating and mitigating criteria may be of varying significance in different cases and must be considered as a whole before a sentence is determined.

We first adopted OWI guidelines in 1995. These guidelines have been reviewed, revised and reaffirmed by our predecessors, have been modified to reflect changes in State law and are now approved as of the date above.

Jeffrey A. Kremers
Chief Judge
First Judicial District

Richard J. Sankovitz
Presiding Judge
Felony Division

Jeffrey A. Wagner
Presiding Judge
Misdemeanor Division

FIRST JUDICIAL DISTRICT OWI SENTENCING GUIDELINES
FIRST OFFENSE NON-COMMERCIAL
ON OR AFTER JULY 1, 2010

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
Below .15 or Detectable Amount of a Restricted or Controlled Substance	$150-$175 6 months Revocation	$175-$225 6-7 months Revocation	$200-$275 7-8 months Revocation
.15 to .199	$175-$225 6-7 months Revocation	$200-$275 7-8 months Revocation	$225-$300 8-9 months Revocation
.20 and above, or if defendant refuses to give a sample	$200-$275 7-8 months Revocation	$225-$300 8-9 months Revocation	$250-$300 9 months Revocation

PENALTY RANGE

FORFEITURE/COSTS
$150-$300 Forfeiture plus all applicable costs, fees, surcharges, and assessments

REVOCATION
6-9 Months
No waiting period for occupational license (343.30(1q) (b) 2)

REFUSAL
If first refusal, 1 year revocation and 30-day waiting period for occupational license (343.305(10) (b) 2)

If no refusal hearing is requested, revocation period begins 30 days after the date of the refusal. If a hearing is requested, revocation period begins 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later. (343.305(10) (a)

If a minor passenger ≤16 years of age, length of revocation doubles (343.305(10) (b) 4m)

PASSENGER UNDER AGE 16 CRIMINALIZES OFFENSE
Criminalizes 1st offense OWI if there is a child ≤ 16 in vehicle (346.65(2) (f)
(See 2nd offense Guidelines)

COURT SHALL ORDER:

- Alcohol Assessment
- Mandatory interlock for all alcohol concentration of .15 or more. License restricted to interlocked vehicles, plus all registered and titled vehicles (unless excepted) for a period of one year to 18 months beginning when license issued 343.301(1g)
- Community service for defendant unable to pay the fine (346.65(2g) (ag)

COURT MAY ORDER:

- Site visit that demonstrates the effects of substance abuse (346.65(2i)
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e)
- Restitution (346.65(2r) (a)

FIRST JUDICIAL DISTRICT OWI SENTENCING GUIDELINES
SECOND OFFENSE NON-COMMERCIAL
ON OR AFTER JULY 1, 2010

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
Below .15 or Detectable Amount of a Restricted or Controlled Substance	$350-$500 5-60 days 12 months Revocation	$400-$800 30-120 days 13-17 months Revocation	$500-$1000 60-150 days 14-18 months Revocation
.15 to .199	$400-$800 10-90 days 13-17 months Revocation	$500-$1000 45-150 days 14-18 months Revocation	$600-$1000 90-180 days 16-18 months Revocation
.20 and above, or if defendant refuses to give a sample	$500-$1000 20-120 days 14-18 months Revocation	$600-$1100 60-180 days 16-18 months Revocation	$800-$1100 120-180 days 18 months Revocation

PENALTY RANGE

JAIL
5 days to 6 months jail (346.65(2) (am) 2

FINE /COSTS
$350-$1100 Fine plus all applicable costs, fees, surcharges, and assessments

REVOCATION
12-18 Months (343.30(1q) (b) 3)
45 day waiting period for occupational license

PASSENGER UNDER AGE 16
Double minimum and maximum fine and jail (346.65(2) (f)

REFUSAL
2 year revocation and 90-day waiting period for occupational license, unless 2 or more offenses in 5 years, then waiting period is 1 year (343.305(10)(b)3)

If no refusal hearing is requested, revocation period begins 30 days after the date of the refusal. If a hearing is requested, revocation period begins 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later. (343.305(10) (a)

If a minor passenger ≤16 years of age, length of revocation doubles (343.305(10) (b) 4m)

COURT SHALL ORDER:

- Alcohol Assessment
- Community service for defendant unable to pay the fine (346.65(2g) (ag)
- Mandatory interlock. License restricted to interlocked vehicles, plus all registered and titled vehicles (unless excepted) for a period of one year to 18 months beginning when license issued 343.301(1g)

COURT MAY ORDER:

- Site visit that demonstrates the effects of substance abuse (346.65(2i)
- Reduction of the fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e)
- Restitution (346.65(2r) (a)
- Probation not less than 6 months nor more than 2 years 973.09(1) (d) and (2), must include mandatory minimum jail with good time (973.09(1) (d) and 302.43)

FIRST JUDICIAL DISTRICT OWI SENTENCING GUIDELINES
THIRD OFFENSE NON-COMMERCIAL
ON OR AFTER JULY 1, 2010

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
Below .17 or Detectable Amount of a Restricted or Controlled Substance	$600-$1200 45-120 days 24 months Revocation	$700-$1500 60-180 days 26-30 months Revocation	$800-$2000 90-240 days 28-32 months Revocation
.17 to .199	$1200-$3000 60-180 days 26-30 months Revocation	$1400-$3500 90-240 days 28-32 months Revocation	$1600-$4000 120-300 days 30-36 months Revocation
.20 to .249	$1800-$4000 90-240 days 28-32 months Revocation	$2000-$5000 120-300 days 30-36 months Revocation	$2200-$6000 120 days-1 year 32-36 months Revocation
.25 and above, or if defendant refuses to give a sample	$2400-$6000 120-300 days 30-36 months Revocation	$2600-$7000 120 days-1 year 32-36 months Revocation	$2800-$8000 180 days-1 year 36 months Revocation

PENALTY RANGE

JAIL
45 days to 12 months jail (346.65(2) (am) 3)

FINE /COSTS
$600-$2000 Fine; if PAC ≥ .17, fine doubles; ≥ .20, fine triples; ≥ .25, fine quadruples (346.65(2) (g) plus all applicable costs, fees, surcharges, and assessments

REVOCATION
24-36 months (343.30 (1q) (b) 4)
45 day waiting period for occupational license

PASSENGER UNDER AGE 16
Felony conviction plus double minimum and maximum fine and jail (346.65(2) (f)

REFUSAL (3rd or Greater)
3 year revocation and 120-day waiting period for occupational license, unless 2 or more offenses in 5 years, then waiting period is 1 year (343.305(10)(b)4)

If no refusal hearing is requested, revocation period begins 30 days after the date of the refusal. If a hearing is requested, revocation period begins 30 days after the date of refusal or immediately upon a final determination that the refusal was improper, whichever is later. (343.305(10) (a)

If a minor passenger ≤16 years of age, length of revocation doubles (343.305(10) (b) 4m)

COURT SHALL ORDER:

- Alcohol Assessment
- Community service for defendant unable to pay the fine (346.65(2g) (ag)
- Mandatory interlock. License restricted to interlocked vehicles, plus all registered and titled vehicles (unless excepted) for a period of one year to 18 months beginning when license issued 343.301(1g)

COURT MAY ORDER:

- Site visit that demonstrates the effects of substance abuse (346.65(2i)
- Reduction of the fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e)
- Restitution (346.65(2r) (a)
- Probation not less than 6 months nor more than 2 years 973.09(1) (d) and (2), must include mandatory minimum jail with good time (973.09(1) (d) and 302.43)

FIRST JUDICIAL DISTRICT OWI SENTENCING GUIDELINES
FOURTH OFFENSE NON-COMMERCIAL
ON OR AFTER JULY 1, 2010

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
Below .17 or Detectable Amount of a Restricted or Controlled Substance	$600-$1200 60-180 days 24 months Revocation	$700-$1500 120-270 days 26-30 months Revocation	$900-$2000 150 days-1 year 30-36 months Revocation
.17 to 199	$1400-$3000 120-270 days 26-30 months Revocation	$1600-$3500 150 days-1 year 30-36 months Revocation	$1800-$4000 180 days-1 year 32-36 months Revocation
.20 to .249	$2100-$4000 150 days-1 year 30-36 months Revocation	$2400-$5000 180 days-1 year 32-36 months Revocation	$2700-$6000 210 days-1 year 36 months Revocation
.25 and above	$2800-$6000 180 days-1 year 32-36 months Revocation	$3000-$7000 210 days-1 year 36 months Revocation	$3200-$8000 240 days-1 year 36 months Revocation

PENALTY RANGE

JAIL
60 days to 12 months jail (346.65(2) (am) 4)

FINE/COSTS
$600 - $2000 Fine; if PAC ≥ .17, fine doubles; ≥ .20, fine triples; ≥ .25, fine quadruples (346.65(2) (g) plus all applicable costs, fees, surcharges, and assessments

REVOCATION
24-36 Months (343.30(1q) (b) 4)
45 day waiting period for occupational license

PASSENGER UNDER AGE 16
Felony conviction, plus double minimum and maximum fine and jail (346.65(2) (f)

FELONY OFFENSE
4th offense OWI committed within 5 years of prior offense is a Class H Felony (346.65(2) (am) 4m) (See 5th offense Guidelines)

COURT SHALL ORDER:

- Alcohol Assessment
- Community service for defendant unable to pay the fine (346.65(2g) (ag)
- Mandatory interlock. License restricted to interlocked vehicles, plus all registered and titled vehicles (unless excepted) for a period of one year to 18 months beginning when license issued 343.301(1g)

COURT MAY ORDER:

- Site visit that demonstrates the effects of substance abuse (346.65(2i)
- Reduction of the fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e)
- Restitution (346.65(2r) (a)
- Probation not less than 6 months nor more than 3 years 973.09(2) (am), must include mandatory minimum jail with good time (973.09(1) (d) and 302.43)

FIRST JUDICIAL DISTRICT OWI SENTENCING GUIDELINES
FIFTH OR SIXTH OFFENSE NON-COMMERCIAL
ON OR AFTER JULY 1, 2010

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
Below .17 or Detectable Amount of a Restricted or Controlled Substance	$600-$1500 180 days-1 year jail 30 months Revocation	$700-$5000 270 days-1 year jail 32-34 months Revocation	$800-$10,000 1 year jail-2 years initial confinement 34-36 months Revocation
.17 to 199	$1500-$15,000 270 days-1 year jail 32-34 months Revocation	$1800-$17,500 1 year jail-2 years initial confinement 34-36 months Revocation	$2100-$20,000 1 year jail-30 months initial confinement 36 months Revocation
.20 to .249	$2000-$20,000 1 year jail-2 years initial confinement 34-36 months Revocation	$2500-$25,000 1 year jail-30 months initial confinement 36 months Revocation	$5000-$30,000 18 months-36 months initial confinement 36 months Revocation
.25 and above	$2500-$30,000 1 year jail-30 months initial confinement 36 months Revocation	$3000-$35,000 18 months-36 months initial confinement 36 months Revocation	$3500-$40,000 24-36 months initial confinement 36 months Revocation

PENALTY RANGE

JAIL/PRISON
6 months jail to 6 years prison (3 years initial confinement/3 years extended supervision) (346.65(2)(am) 5)

FINE/COSTS
$600 - $10,000 Fine; if PAC ≥ .17, fine doubles; ≥ .20, fine triples; ≥ .25, fine quadruples (346.65(2)(g) plus all applicable costs, fees, surcharges, and assessments

REVOCATION
24-36 Months (343.30(1q) (b) 4)
45 day waiting period for occupational license

PASSENGER UNDER AGE 16
Double minimum and maximum fine and jail/prison (346.65(2) (f)

COURT SHALL ORDER:

- Alcohol Assessment
- Community service for defendant unable to pay the fine (346.65(2g) (ag)
- Mandatory interlock. License restricted to interlocked vehicles, plus all registered and titled vehicles (unless excepted) for a period of one year to 18 months beginning when license issued 343.301(1g)

COURT MAY ORDER:

- Site visit that demonstrates the effects of substance abuse (346.65(2i)
- Reduction of the fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e)
- Restitution (346.65(2r) (a)

FIRST JUDICIAL DISTRICT OWI SENTENCING GUIDELINES
SEVENTH, EIGHTH OR NINTH OFFENSE NON-COMMERCIAL
ON OR AFTER JULY 1, 2010

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
Below .17 or Detectable Amount of a Restricted or Controlled Substance	$800-$2500 3-5 years initial confinement 30 months Revocation	$1000-$10,000 3-5 years initial confinement 32-36 months Revocation	$1200-$25,000 3-5 years initial confinement 34-36 months Revocation
.17 to 199	$1600-$5,000 3-5 years initial confinement 32-36 months Revocation	$2000-$25,000 3-5 years initial confinement 34-36 months Revocation	$2500-$50,000 3-5 years initial confinement 36 months Revocation
.20 to .249	$2500-$40,000 3-5 years initial confinement 34-36 months Revocation	$5000-$50,000 3-5 years initial confinement 36 months Revocation	$7500-$75,000 3-5 years initial confinement 36 months Revocation
.25 and above	$3500-$50,000 3-5 years initial confinement 36 months Revocation	$7500-$75,000 3-5 years initial confinement 36 months Revocation	$10,000-$100,000 3-5 years initial confinement 36 months Revocation

PENALTY RANGE

PRISON
Minimum mandatory initial confinement 3 years up to 10 years prison (5 years initial confinement/5 years extended supervision) (346.65(2) (am) 6)

FINE/COSTS
Up to $25,000 Fine; if PAC ≥ .17, fine doubles; ≥ .20, fine triples; ≥ .25, fine quadruples (346.65(2) (g) plus all applicable costs, fees, surcharges, and assessments

REVOCATION
24-36 Months (343.30(1q) (b) 4)
45 day waiting period for occupational license

PASSENGER UNDER AGE 16
Double minimum and maximum fine and prison (346.65(2) (f)

COURT SHALL ORDER:
- Alcohol Assessment
- Mandatory interlock. License restricted to interlocked vehicles, plus all registered and titled vehicles (unless excepted) for a period of one year to 18 months beginning when license issued 343.301(1g)

COURT MAY ORDER:

- Site visit that demonstrates the effects of substance abuse (346.65(2i)
- Reduction of the fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e)
- Restitution (346.65(2r) (a)

FIRST JUDICIAL DISTRICT OWI SENTENCING GUIDELINES
TENTH OR SUBSEQUENT OFFENSE NON-COMMERCIAL
ON OR AFTER JULY 1, 2010

PAC	MITIGATED	INTERMEDIATE	AGGRAVATED
Below .17 or Detectable Amount of a Restricted or Controlled Substance	$1000-$2500 4-7 years initial confinement 30 months Revocation	$1200-$10,000 4-7 years initial confinement 32-36 months Revocation	$1500-$25,000 4-7 years initial confinement 34-36 months Revocation
.17 to 199	$2000-$5,000 4-7 years initial confinement 32-36 months Revocation	$2500-$25,000 4-7 years initial confinement 34-36 months Revocation	$3000-$50,000 4-7 years initial confinement 36 months Revocation
.20 to .249	$3000-$40,000 4-7 years initial confinement 34-36 months Revocation	$6000-$50,000 4-7 years initial confinement 36 months Revocation	$9000-$75,000 4-7 years initial confinement 36 months Revocation
.25 and above	$4000-$50,000 4-7 years initial confinement 36 months Revocation	$7500-$75,000 4-7 years initial confinement 36 months Revocation	$10,000-$100,000 4-7 years initial confinement 36 months Revocation

PENALTY RANGE

PRISON
Minimum mandatory initial confinement 4 years up to 12 years 6 months prison (7 years, 6 months initial confinement/5 years extended supervision) (346.65(2)(am)7)

FINE/COSTS
Up to $25,000 Fine; if PAC ≥ .17, fine doubles; ≥ .20, fine triples; ≥ .25, fine quadruples (346.65(2)(g) plus all applicable costs, fees, surcharges, and assessments

REVOCATION
24-36 Months (343.30(1q) (b) 4)
45 day waiting period for occupational license

PASSENGER UNDER AGE 16
Double minimum and maximum fine and prison (346.65(2) (f)

COURT SHALL ORDER:

- Alcohol Assessment
- Mandatory interlock. License restricted to interlocked vehicles, plus all registered and titled vehicles (unless excepted) for a period of one year to 18 months beginning when license issued 343.301(1g)

COURT MAY ORDER:

- Site visit that demonstrates the effects of substance abuse (346.65(2i)
- Reduction of the fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan (346.65(2e)
- Restitution (346.65(2r) (a)

SENTENCING CRITERIA

Factor **(listed alphabetically)**	**Mitigated**	**Intermediate**	**Aggravated**
Ability to Pay	Defendant is indigent or of low Income	Defendant has average ability to pay	Defendant has substantial ability to pay
Prohibited Alcohol Level	Less than .05 above the legal limit (e.g., BAC of .07 or less in an OWI 4th case, where limit is .02)	.05-.10 over the legal limit	More than .10 over the legal limit
Conduct of Defendant since Offense	Defendant initiated responsible efforts to evaluate self and alcohol problem, and to obtain treatment, if appropriate; and has not committed a subsequent offense	Defendant did nothing to evaluate self and alcohol problem, but has otherwise followed court orders	Defendant violated court orders, and/or missed court appearances, and/or resisted evaluation or treatment, and/or committed a subsequent offense
Consequences of Offense to Defendant	Defendant suffered substantial personal consequences, such a injury, death or injury to a relative or impairment of earning ability	Defendant suffered moderate personal consequences	Defendant did not suffer consequences outside court system
Consequences to Victims	No Accident or Injury	Property damage only, and covered by insurance	Personal injury, or uninsured property loss
Cooperation of Defendant	Defendant cooperated with police and submitted to tests	Defendant did not cooperate or refused to submit to tests	Defendant fled or resisted and refused to submit to tests
Defendant's Driving -Current Offense	Considering time, manner or location of driving, little danger to others	Some present danger to another person or property	Extreme present danger to another person
Defendant's Record	Good driving record, or dated record and no criminal record	Poor driving record, or minor or dated criminal record	Very poor driving record, previous OWI's at short intervals, previous OWI-related OAR/OAS, or moderate to severe criminal record