

THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES

FOR CITATIONS ISSUED ON OR AFTER

July 1, 2009

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

HON. J. MAC DAVIS
Chief Judge

MICHAEL G. NEIMON
District Court Administrator

DISTRICT OAWI SENTENCING GUIDELINES COMMITTEE:

HON. JACQUELINE ERWIN, Jefferson Co.
HON. DAVID C. RESHESKE, Washington Co.
HON. RALPH RAMIREZ, Waukesha Co.
HON. TOM R. WOLFGRAM, Ozaukee Co., Chairperson

Modifications: Per the 2009 Wisconsin ACT 28 the Justice Information Service Fee increased from \$12 to \$21.50. The Crime Lab and Drug Enforcement surcharge increased from \$8 to \$13. The Victim Witness, Part B surcharge increased from \$20 to \$27.

SENTENCE OPTIONS/ALTERNATIVES

Alcohol Assessment and Driver Safety Plan. (All offenses)

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

IMMOBILIZATION OR IGNITION INTERLOCK OF OWNED VEHICLE 2nd offense or greater (Unless undue hardship, extreme inconvenience or endangerment of person's health and safety)

Court may order a motor vehicle owned and operated by a violator to be seized and forfeited. **(3rd offense and above only)**

MITIGATING AND AGGRAVATING FACTORS IN SENTENCING

MITIGATING FACTORS:

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

AGGRAVATING FACTORS:

- *Poor Driving; *Accident or Injury Involved; *Poor Prior Driving Record; *Lack of Remorse
- *Recent Prior OAWI/BAC Offense/Conviction
- *Operating Without Valid Driving Privileges (i.e. OAR, OAS, OWL, HTO)
- *Circumstances of Consumption (Binge Drinking, Amount Consumed, Medication Use, etc.)
- *Poor/Limited Problem Recognition as Evidenced by Prior Treatment History or Lack Thereof
- *Uncooperative/Belligerent/Violent Toward Arresting Officer
- *Prior Uncounted Offenses for OAWI/BAC
- *For 3rd Plus Offenses: Previously Uncounted Offenses from January 1, 1988, per (1993 Wisconsin Act 317, Effective April 30, 1994)
- *Combination of alcohol and controlled substance use

THIRD JUDICIAL DISTRICT OAWI SENTENCING GUIDELINES

PENALTY RANGES PER STATUTE

| | 1st Offense (Alcohol Only) .08<.10 | 1st Offense | 2nd Offense | 3rd Offense | 4th Offense | 5th Offense Or Higher |
|--|---|--------------------|--------------------|--------------------|--------------------|--------------------------------------|
| Fine or Forfeiture | \$150 - 300 | \$150 - 300 | \$350 - 1100 | \$600 - 8000 | \$600 - 8000 | \$600 - 8000 |
| Penalty Assessment | | 26% | 26% | 26% | 26% | 26% |
| Jail Assessment | | \$10 | \$10 | 1% (\$10 min) | 1% (\$10 min) | 1% (\$10 min) |
| Justice Information Service Fee | | \$21.50 | none | none | None | none |
| Court Support Services Fee | | \$68 | none | none | None | none |
| Victim-Witness Surcharge A | | None | \$40 | \$40 | \$40 | \$65 |
| Victim-Witness Surcharge B | | None | \$27 | \$27 | \$27 | \$27 |
| Court Costs | | \$25 | \$20 | \$20 | \$20 | \$20 |
| Driver Improvement Surcharge | | \$365 | \$365 | \$365 | \$365 | \$365 |
| Crime Lab.& Drug Assessment | | \$13 | \$13 | \$13 | \$13 | \$13 |
| | | | | | | |
| Jail Sentence | None | none | 5 days to 6 mos.* | 30 days to 1 yr* | 60 days to 1 yr* | 6 mos. to 5 yrs* |
| | | | | | | |
| Revocation | 6-9 months | 6-9 months | 12-18 months | 24-36 months | 24-36 months | 24-36 months |
| (No Refusal) Waiting period for occupational license | None | None | 60 days** | 90 days** | 90 days** | 90 days** |
| (Refusal) Waiting period for occupational license | 30 days | 30 days | 90 days** | 120 days** | 120 days** | 120 days** |

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

Third Judicial District OAWI Sentencing Guidelines

First Offense

Mitigating Factors

| Bac Level | .08 < .10 (Alcohol only) | .08 < .10 (Alcohol & Drug) | .10 to .149 | .15 to .199 | .20 to .249 | .25 and above or refusal |
|---------------------------------|-----------------------------|-------------------------------|-----------------|-----------------|-----------------|-----------------------------|
| Forfeiture | 250.00 | 150.00 | 150.00 | 200.00 | 250.00 | 250.00 |
| Penalty Surcharge (26%) | | 39.00 | 39.00 | 52.00 | 65.00 | 65.00 |
| Jail Surcharge | | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 |
| Justice Information Service Fee | | 21.50 | 21.50 | 21.50 | 21.50 | 21.50 |
| Court Support Services Fee | | 68.00 | 68.00 | 68.00 | 68.00 | 68.00 |
| Court Costs | | 25.00 | 25.00 | 25.00 | 25.00 | 25.00 |
| Driver Improvement Surcharge | | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$250.00 | \$691.50 | \$691.50 | \$754.50 | \$817.50 | \$817.50 |
| Revocation | 6 months | 6 months | 6 months | 7 months | 8 months | 9 months |

Aggravating Factors

| Bac Level | .08 < .10 (Alcohol only) | .08 < .10 (Alcohol & Drug) | .10 to .149 | .15 to .199 | .20 to .249 | .25 and above or refusal |
|---------------------------------|-----------------------------|-------------------------------|-----------------|-----------------|-----------------|-----------------------------|
| Forfeiture | 300.00 | 200.00 | 200.00 | 250.00 | 300.00 | 300.00 |
| Penalty Surcharge (26%) | | 52.00 | 52.00 | 65.00 | 78.00 | 78.00 |
| Jail Surcharge | | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 |
| Justice Information Service Fee | | 21.50 | 21.50 | 21.50 | 21.50 | 21.50 |
| Court Support Services Fee | | 68.00 | 68.00 | 68.00 | 68.00 | 68.00 |
| Court Costs | | 25.00 | 25.00 | 25.00 | 25.00 | 25.00 |
| Driver Improvement Surcharge | | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$300 | \$754.50 | \$754.50 | \$817.50 | \$880.50 | \$880.50 |
| Revocation | 7 months | 7 months | 7 months | 8 months | 9 months | 9 months |

Third Judicial District OAWI Sentencing Guidelines

Second Offense

Mitigating Factors

| Bac Level | .08 to .149 | .15 to .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|--------------------|--------------------|--------------------|-------------------------------------|
| Fine | 350.00 | 400.00 | 450.00 | 500.00 |
| Penalty Surcharge (26%) | 91.00 | 104.00 | 117.00 | 130.00 |
| Jail Surcharge | 10.00 | 10.00 | 10.00 | 10.00 |
| Victim-Witness Surcharge A | 40.00 | 40.00 | 40.00 | 40.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$916.00 | \$979.00 | \$1,042.00 | \$1,105.00 |
| | | | | |
| Jail | 5-30 days | 10-60 days | 20-90 days | 90-180 days |
| Revocation | 12 months | 14 months | 16 months | 18 months |

Aggravating Factors

| Bac Level | .08 to .149 | .15 to .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|--------------------|--------------------|--------------------|-------------------------------------|
| Fine | 400.00 | 450.00 | 500.00 | 550.00 |
| Penalty Surcharge (26%) | 104.00 | 117.00 | 130.00 | 143.00 |
| Jail Surcharge | 10.00 | 10.00 | 10.00 | 10.00 |
| Victim-Witness Surcharge A | 40.00 | 40.00 | 40.00 | 40.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$979.00 | \$1,042.00 | \$1,105.00 | \$1,168.00 |
| | | | | |
| Jail | 30-60 days | 60-90 days | 90-180 days | 120-180 days |
| Revocation | 14 months | 16 months | 18 months | 18 months |

Third Judicial District OAWI Sentencing Guidelines

Third Offense

Mitigating Factors

| Bac Level | .08 to .169 | .17 to .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|-------------------|--------------------|-------------------|-----------------------------|
| Fine | 600.00 | 1200.00 | 1800.00 | 2400.00 |
| Penalty Surcharge (26%) | 156.00 | 312.00 | 468.00 | 624.00 |
| Jail Surcharge | 10.00 | 12.00 | 18.00 | 24.00 |
| Victim-Witness Surcharge A | 40.00 | 40.00 | 40.00 | 40.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$1,231.00 | \$1,989.00 | \$2,751.00 | \$3,513.00 |
| Jail | 30 days -5 months | 45 days - 6 months | 3-7 months | 4-9 months |
| Revocation | 24 months | 27 months | 30 months | 33 months |

Aggravating Factors

| Bac Level | .08 to .169 | .17 to .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|-------------------|-------------------|-------------------|-----------------------------|
| Fine | 650.00 | 1300.00 | 1950.00 | 2600.00 |
| Penalty Surcharge (26%) | 169.00 | 338.00 | 507.00 | 676.00 |
| Jail Surcharge | 10.00 | 13.00 | 19.50 | 26.00 |
| Victim-Witness Surcharge A | 40.00 | 40.00 | 40.00 | 40.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$1,294.00 | \$2,116.00 | \$2,941.50 | \$3,767.00 |
| Jail | 45 days -6 months | 4-8 months | 7 mo.-1 yr. | 9 mo.-1 yr. |
| Revocation | 27 months | 30 months | 33 months | 36 months |

Third Judicial District OAWI Sentencing Guidelines

Fourth Offense

Mitigating Factors

| Bac Level | .02 to .079 | .08 - .169 | .17 - .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|-------------------|-------------------|-------------------|-------------------|-----------------------------|
| Fine | 650.00 | 750.00 | 1500.00 | 2250.00 | 3000.00 |
| Penalty Surcharge (26%) | 169.00 | 195.00 | 390.00 | 585.00 | 780.00 |
| Jail Surcharge | 10.00 | 10.00 | 15.00 | 22.50 | 30.00 |
| Victim-Witness Surcharge A | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$1,294.00 | \$1,420.00 | \$2,370.00 | \$3,322.50 | \$4,275.00 |
| Jail | 2 mo.-1yr. | 3 mo.-1yr. | 4 mo.-1yr. | 6 mo.-1yr. | 7 mo.-1yr. |
| Revocation | 24 months | 24 months | 27 months | 33 months | 36 months |

Aggravating Factors

| Bac Level | .02 to .079 | .08 - .169 | .17 - .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|-------------------|-------------------|-------------------|-------------------|-----------------------------|
| Fine | 900.00 | 1000.00 | 2000.00 | 3000.00 | 4000.00 |
| Penalty Surcharge (26%) | 234.00 | 260.00 | 520.00 | 780.00 | 1040.00 |
| Jail Surcharge | 10.00 | 10.00 | 20.00 | 30.00 | 40.00 |
| Victim-Witness Surcharge A | 40.00 | 40.00 | 40.00 | 40.00 | 40.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$1,609.00 | \$1,735.00 | \$3,005.00 | \$4,275.00 | \$5,545.00 |
| Jail | 5 mo.-1yr. | 7 mo.-1yr. | 9 mo.-1yr. | 10 mo.-1yr. | 10 mo.-1yr. |
| Revocation | 27 months | 33 months | 36 months | 36 months | 36 months |

Third Judicial District OAWI Sentencing Guidelines

Fifth Offense

Mitigating Factors

| Bac Level | .02 to .079 | .08 - .169 | .17 - .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|-------------------|-------------------|-------------------|-------------------|-----------------------------|
| Fine | 1200.00 | 1500.00 | 3000.00 | 4500.00 | 6000.00 |
| Penalty Surcharge (26%) | 312.00 | 390.00 | 780.00 | 1170.00 | 1560.00 |
| Jail Surcharge | 12.00 | 15.00 | 30.00 | 45.00 | 60.00 |
| Victim-Witness Surcharge A | 65.00 | 65.00 | 65.00 | 65.00 | 65.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$2,014.00 | \$2,395.00 | \$4,300.00 | \$6,205.00 | \$8,110.00 |
| Jail | 6 months -6 yrs | 1-6 yrs | 1-6 yrs | 1-6 yrs | 1-6 yrs |
| Revocation | 36 months | 36 months | 36 months | 36 months | 36 months |

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

Aggravating Factors

| Bac Level | .02 to .079 | .08 - .169 | .17 - .199 | .20 to .249 | .25 and above or refusal |
|------------------------------|-------------------|-------------------|-------------------|-------------------|-----------------------------|
| Fine | 1500.00 | 1700.00 | 3400.00 | 5100.00 | 6800.00 |
| Penalty Surcharge (26%) | 390.00 | 442.00 | 884.00 | 1326.00 | 1768.00 |
| Jail Surcharge | 15.00 | 17.00 | 34.00 | 51.00 | 68.00 |
| Victim-Witness Surcharge A | 65.00 | 65.00 | 65.00 | 65.00 | 65.00 |
| Victim-Witness Surcharge B | 27.00 | 27.00 | 27.00 | 27.00 | 27.00 |
| Court Costs | 20.00 | 20.00 | 20.00 | 20.00 | 20.00 |
| Driver Improvement Surcharge | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| Total Financial | \$2,395.00 | \$2,649.00 | \$4,808.00 | \$6,967.00 | \$9,126.00 |
| Jail | 1-6 yrs | 1-6 yrs | 1-6 yrs | 2-6 yrs | 2-6 yrs |
| Revocation | 36 months | 36 months | 36 months | 36 months | 36 months |

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

Third Judicial District OAWI Sentencing Guidelines

Municipal Court First Offense

Mitigating Factors

| Bac Level | .08 < .10 (Alcohol Only) | .08 < .10 (Alcohol & Drug) | .10 to .149 | .15 to .199 | .20 + above | Refusal |
|---------------------------------|-----------------------------|-------------------------------|-----------------|-----------------|-----------------|-----------------|
| Forfeiture | 250.00 | 150.00 | 150.00 | 200.00 | 250.00 | 250.00 |
| Penalty Surcharge (26%) | | 39.00 | 39.00 | 52.00 | 65.00 | 65.00 |
| Jail Surcharge | | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 |
| Court Costs* | | \$15 - \$28 | \$15 - \$28 | \$15 - \$28 | \$15 - \$28 | \$15 - \$28 |
| Driver Improvement Surcharge | | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| otal Financial From | | \$592.00 | \$592.00 | \$655.00 | \$718.00 | \$718.00 |
| Factoring Court Costs To | \$250.00 | \$605.00 | \$605.00 | \$668.00 | \$731.00 | \$731.00 |
| Revocation | 6 months | 6 months | 6 months | 7 months | 8 months | 9 months |

Aggravating Factors

| Bac Level | .08 < .10 (Alcohol Only) | .08 < .10 (Alcohol & Drug) | .10 to .149 | .15 to .199 | .20 + above | Refusal |
|---------------------------------|-----------------------------|-------------------------------|-----------------|-----------------|-----------------|-----------------|
| Forfeiture | 300.00 | 200.00 | 200.00 | 250.00 | 300.00 | 300.00 |
| Penalty Surcharge (26%) | | 52.00 | 52.00 | 65.00 | 78.00 | 78.00 |
| Jail Surcharge | | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 |
| Court Costs* | | \$15 - \$28 | \$15 - \$28 | \$15 - \$28 | \$15 - \$28 | \$15 - \$28 |
| Driver Improvement Surcharge | | 365.00 | 365.00 | 365.00 | 365.00 | 365.00 |
| Crime Lab. & Drug Surcharge | | 13.00 | 13.00 | 13.00 | 13.00 | 13.00 |
| otal Financial From | | \$655.00 | \$655.00 | \$718.00 | \$781.00 | \$781.00 |
| Factoring Court Costs To | \$300.00 | \$668.00 | \$668.00 | \$731.00 | \$794.00 | \$794.00 |
| Revocation | 7 months | 6 months | 6 months | 7 months | 8 months | 9 months |