

Wisconsin OWI/Drunk Driving Offenses

If you have been charged with drunk driving (Operating a Motor Vehicle While Intoxicated and/or Operating a Motor Vehicle with a Prohibited Alcohol Concentration) in Wisconsin, this can be a very stressful time in your life. There are deadlines that you must attend to that arrive quickly after your arrest. On top of the fact that you have been arrested and there are deadlines to meet, you undoubtedly have lots of questions and concerns. You may feel your rights were violated.

This brochure will explain your rights and walk you through the Operating While Intoxicated (OWI/drunken driving) process followed in Wisconsin by the Courts and the Department of Transportation. By knowing the process, you and your attorney can take control of your case to achieve the best possible result for you.

YOU HAVE BEEN ARRESTED

You have been arrested for drunk driving, specifically in Wisconsin called Operating While Intoxicated (OWI) and/or Operating with a Prohibited Alcohol Concentration (PAC). You might have received two citations or charges, each of which may have a forfeiture (fine) amount and separate penalties listed. While you have been charged or cited with two separate offenses (OWI and PAC), you will not be convicted and sentenced for two separate offenses. You cannot receive double penalties for the same incident.

With the OWI citation, the State does not have to prove that your blood-alcohol concentration was over the legal limit. The State has to prove that your ability to operate a motor vehicle was impaired. The PAC citation requires the State to prove that you operated a motor vehicle with a prohibited alcohol concentration (blood alcohol concentration over .08).

You might have also received additional traffic citations or criminal charges in connection with your arrest. All of your citations/charges will be taken care of together in one court case. You will not have to attend separate court dates for each of the charges; rather they will all "track" together in one case. All of the citations or charges you received can be dealt with by your attorney.

MEETING WITH AN ATTORNEY

After you have been arrested, it is important that you speak with an attorney as soon as possible. During your first meeting with your attorney, you will discuss the specifics of your case, what happened leading up to and during your arrest, what must be done to meet the time limits in your case, and go over any questions you may have. Your attorney will also discuss with you potential defenses. Each case is different and each set of facts must be reviewed very carefully to determine the applicable defenses to the charges against you.

IMPORTANT TIMELINES

Breath Test

If you took a breath test at the police station, you should have received a "Notice of Intent to Suspend Operating Privileges." You will see on that Notice that you must respond within ten days of receiving the Notice. This means that you must mail your request for an Administrative Review Hearing within ten days of receiving that Notice. By responding and mailing that Notice back within ten days, you are requesting an Administrative Review Hearing be conducted by the Department of Transportation/Department of Motor Vehicles on whether your license should be administratively suspended pending the outcome of your court case.

Blood Test

If you took a blood test at a hospital upon being arrested, your blood was sent to be tested by the Wisconsin State Hygiene Lab. The Wisconsin State Hygiene Lab will send the results to you and the police department. If the lab results show that your blood alcohol concentration was over .08, the police department will issue you a citation for Operating with a Prohibited Alcohol Concentration. The police department will mail you this citation with the Notice of Intent to Suspend Operating Privileges. You will have ten to thirteen days to request an Administrative Review Hearing after receiving the Notice of Intent to Suspend.

Refusal

If you are cited for Refusal to Submit to a Test, you must request a hearing with the court within ten days of receiving that citation. If you do not request a hearing, you will be automatically found guilty of that Refusal.

Administrative Review Hearing

There are many reasons for requesting an Administrative Review Hearing. First, that hearing gives you an opportunity to argue to the Department of Transportation that your license should not be suspended while your case is pending in Court. (This is only challenging the administrative suspension. You will face a license revocation at the end of your court case if you are found guilty). Second, requesting an Administrative Review Hearing allows you to receive copies of the police reports sooner than if you waited to go to court. Third, at the hearing your attorney may subpoena the arresting officer. This will give you an early chance to see how he or she will testify.

Your Administrative Review Hearing will happen within two to three weeks of your request. You should discuss with your attorney what will happen at that Administrative Review Hearing as well as your options following that hearing.

Temporary Driver's License

Following your arrest, if you took a breath test at the police station or after you receive your blood test results back, you should also receive a Temporary Driver's Permit from the officer. For the next thirty days, you can drive with this temporary permit. However, upon the expiration of those thirty days, your driver's license will be administratively suspended. It is quite possible that you will not have been to court within thirty days and almost certain that your case will not be resolved within thirty days. Regardless, the Department of Transportation takes the position that because you have been charged/cited with drunk driving, your license should be suspended. Your license will be administratively suspended for six months regardless of the fact that your case has not yet been resolved in court. This is another reason why it is important to request the Administrative Review Hearing discussed above.

COURT APPEARANCES

Initial Appearance

An initial court appearance date is listed on your citation. That appearance may be listed as mandatory or non-mandatory. If this is a first offense and you wish to contest the citation or negotiate with the prosecutor regarding your charges, you must enter an appearance at that court date. If this is a first offense, your attorney can enter your appearance and “not guilty” plea in writing rather than appear in court. If this is a second or subsequent offense, you and your attorney must personally appear in court.

For second and subsequent offenses, when you appear at the first court appearance you will receive a copy of the criminal complaint outlining the criminal charges against you. The court will also order a Bond. You will then have further court dates scheduled. For first offenses, if your “not guilty” plea is submitted in writing, a Pre-Trial Conference notice will be mailed to you.

Other court appearances you will attend may include: pretrial and/or status conferences, motion hearings, a plea hearing, a trial, and a sentencing hearing. These hearings are discussed below.

Pretrial and/or Status Conferences

You may have multiple Status Conferences and Pretrial Conferences throughout your case to keep the court informed of the status of your case.

Your attorney will likely discuss your case with the prosecutor on numerous occasions to attempt to negotiate a possible resolution or plea agreement. Any potential settlements will be communicated to you by your attorney. Your case is your case. You can decide to accept a settlement or enter into any plea agreements. Your attorney will advise you on what to expect and whether a prosecutor’s offer is reasonable. At the Status and Pretrial Conferences your attorney will let the judge know whether you have reached an agreement with the prosecutor or whether your case should be set for motion hearings and/or trial.

Motion Hearings

A motion hearing may be held to litigate any legal issues in your case. Motions are filed to request information from the prosecution or to challenge the legality of the police officers’ or prosecutor’s actions against you. The motions may request that evidence be suppressed or charges be dismissed based on constitutional rights violations.

At motion hearings, evidence will be presented, witnesses may testify, arguments will be made, and the judge will make a ruling. The judge's ruling dictates what evidence the State can use against you in your case. The judge's ruling could also result in the dismissal of the charges against you.

Following the motion hearing, depending on the outcome, your case could proceed further through the court system. You may have additional Status Conferences and Pretrial Conferences after the motion hearing to keep the court informed of the status of your case.

Trial

If you do not reach an agreement with the prosecutor and the judge does not dismiss your case at a motion hearing, your case will proceed to a trial. Most trials for drunk driving cases are jury trials. However, you also have the option of having a court (or "bench") trial where only the judge decides whether you are guilty or not guilty. Your attorney will discuss with you the best way to proceed in your case.

A jury trial for a first offense OWI is conducted by a six-person jury. Because a first offense is not criminal, only five out of the six jurors have to find that you are guilty by clear, satisfactory and convincing evidence. Because this is not a criminal case, you do not have the right against self-incrimination. Thus, you could be called by the prosecutor to testify at any point during your case.

If this is a second or subsequent offense, the jury consists of twelve people. All jurors must be unanimous with their verdict against you; all twelve jurors must agree that you are guilty or not guilty. You have the right not to testify at a motion hearing or trial and that silence cannot be used against you to argue that you are guilty. The jury must find that you are guilty beyond a reasonable doubt.

Sentencing

A sentencing hearing will be held if you plead guilty or no contest or are found guilty at a trial. The sentencing can take place at the same time as you enter your plea or can be scheduled a few months after your trial. At the sentencing hearing, the judge will consider your position (as presented by your attorney) and the State's/Prosecutor's position for your sentence.

POTENTIAL PENALTIES/SENTENCE

The potential penalties you could receive for drunk driving (OWI or PAC) offenses can change frequently based on legislative action. Currently, for a first offense OWI in Wisconsin, a person cannot go to jail because a first offense is not a criminal offense.*

First Offense OWI/PAC Penalties Include:

- Driver's license revocation for six to twelve months;*
- Fine/forfeiture of \$600 to over \$1,000;*
- Installation of an Ignition Interlock Device (if blood alcohol concentration is .15 or higher);
- Driver's Safety Plan;
- Alcohol and Other Drug Abuse Assessment. (AODA)

* Note: If a minor, under the age of sixteen, is present in the vehicle at the time you are arrested, the penalties can be doubled and you can be sentenced to jail, even on a first offense.

Second or Subsequent OWI/PAC Penalties Include:

- Driver's license revocation for one to three years;
- Fines of \$1,000 to over \$3,000;
- Mandatory installation of an Ignition Interlock Device;
- Jail time of ten days to many months or even prison;
- Driver's Safety Plan;
- Alcohol and Other Drug Abuse Assessment. (AODA)

Second and third offense OWIs are misdemeanors. Fourth offenses may be considered felonies. Fifth and subsequent offenses are felonies.

APPEAL

If you are not satisfied with the jury's or judge's verdict at trial, a judge's decision at a motion hearing or the legality of your sentence, you can appeal your case to the Court of Appeals within a specified time limit. This process and decision should be discussed with your attorney.

DEFINITIONS

Bond: The condition(s) imposed by the judge on a defendant while the case is pending. Conditions of bond can be non-monetary such as absolute sobriety and/or not being present in a bar or restaurant where the primary purpose is to serve alcohol. A cash or money component of bond may be set or the court may impose a signature bond.

Felony: A serious crime punishable by a fine and/or jail for over one year or prison.

HGN: Horizontal Gaze Nystagmus test. A standardized field sobriety test officers use to test for alcohol impairment. This test involves having the person look at a stimulus (usually a pen or light) while it is moved horizontally to track the movement of a person's eyes.

Misdemeanor: A crime less serious than a felony, punishable by a fine and/or jail time up to one year.

Occupational License: A limited driver's license allowing you to drive to and from work, school, treatment and other limited places. An occupational license allows for driving up to twelve hours a day, but no more than 60 hours each week. Your attorney will provide you with information on obtaining an occupational license if your license is administratively suspended or revoked.

OLS: One Leg Stand test. A standardized field sobriety test officers use to test for impairment by having the person stand with one foot elevated while counting to thirty.

OWI: Operating While Intoxicated.

PAC: Prohibited Alcohol Concentration.

PBT: Portable Breath Test. Officers use a PBT at the scene of a traffic stop to test whether the person has a detectible amount of alcohol on his/her breath. This test is not admissible at trial, but is admissible at a motion hearing to prove the officer had probable cause to arrest a person. Only the breath test conducted at the police station with the EC/IR machine is admissible during trial.

Pretrial/Status Conference: A hearing where the prosecutor and defendant, with his or her attorney, appear before the judge to discuss the status of the case.

Refusal: A citation alleging that you improperly refused to submit to a chemical test of your blood, breath or urine. You are subject to increased penalties if you refuse to submit to a chemical test.

Signature Bond: A written assurance that a defendant will appear at all future court dates and not violate any bond conditions. Failure to abide by the terms of a signature bond may result in a monetary penalty for non-compliance or further criminal penalties such as bail jumping.

SFST: Standardized Field Sobriety Tests. Divided attention and coordination tests established by the National Highway Traffic Safety Administration to measure whether a person is impaired or under the influence of alcohol or other drugs.

WAT: Walk and Turn test. A standardized field sobriety test officers use to test for impairment by having a person walk heel to toe on a real or imaginary straight line.

FAQ

Q: The police did not read me my Miranda Rights. Does this mean my case should be dismissed?

A: Miranda warnings are required when a police officer subjects an individual to a custodial interrogation. Miranda warnings are not required simply because you are arrested. Miranda warnings generally only protect statements you give to the police and any evidence the police get as the result of those statements. You and your attorney can discuss whether Miranda warnings were given and if not, whether that has any effect on the statements or evidence in your case.

Q: I do not have a Wisconsin driver's license. How will the Wisconsin drunk driving offense affect my license?

A: Wisconsin will apply its penalties regardless of what state issued your license. However, you may have additional penalties based on your home state's laws on drunk driving offenses. The penalties you face while your case is pending may be different if you do not have a Wisconsin driver's license. It might be necessary to work with an attorney licensed in your home state regarding additional penalties you may face. Eckberg Lammers has attorneys licensed in both Wisconsin and Minnesota and thus penalties assessed in Wisconsin to a Minnesota driver (and vice versa) can be dealt with by our firm. We also have affiliations with attorneys throughout the country, and routinely work with attorneys outside of Wisconsin and Minnesota to resolve all aspects of a case.

Q: How much will an attorney cost?

A: The attorneys at Eckberg Lammers handle drunk driving offenses on a flat fee basis. The amount of the fee will depend on whether this is a first or subsequent offense and the specific facts of your case. Your attorney may work out a fee schedule wherein your case is handled for one flat fee, including trial. If it is unlikely that you will go to trial, a stage-billing arrangement could be set up wherein you pay one amount which does not include representation at trial. If you then proceed to trial, an additional amount would be required. Additionally, your attorney might feel it is necessary to hire experts. You will be responsible for those additional costs. Your attorney will discuss all potential costs associated with your case at the first meeting.

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