

# The Strengths and Weaknesses of Wisconsin's OWI Laws: Do We Really Need to Feel Embarrassed?

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WI JOL Todd Meurer

AAG/TSRP Tara Jenswold

AAG/TSRP Emily Thompson





What's the  
Problem?



# DUI Laws in Wisconsin

Hi all,

So I just recently moved to Madison and absolutely love it. I heard a rumor that DUI laws are super lenient here in Madison/Wisconsin, especially for first time offenders. Kind of weird/concerning. I know drinking is a big part of the culture here, so I guess it makes a little bit of sense. Still messed up though. Is this true?



**b-muff** • 2y ago

You can google Wisconsin DUI laws and compare them to your previous home, but yes, in general they are more lenient than many other states. Yes, we know that's a bad thing.



**Particular\_Copy\_666** • 2y ago

I don't think that the penalties are all the minor. It looks like [drivers who blow over a .15 lose their license for a 12-18 months](#). Just because they aren't thrown in jail doesn't mean the penalties are light. But you're right - most other states treat a first offense as a criminal charge and attach a penalty that includes jail.



**Which-Rush-80** • 2y ago

No jail time until you hit the 12th one it seems. But Canada is out of the question after 1



-4



Reply



Award



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# Some Legal Background

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- In Wisconsin, a “criminal offense” is defined as an offense which is punishable by jail or imprisonment
- An offense that carries a money-only penalty is called a “forfeiture”
- Because a person convicted of OWI 1 cannot be sentenced to jail or prison, OWI 1 is not a criminal offense
- Wisconsin has a graduated penalty system, meaning that the minimum and maximum penalties for subsequent convictions are higher than the one before
- Statutes prohibit diversion programs for OWIs and charge amendment/dismissal without judicial approval



# OWI 1 in Wisconsin

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- OWI 1 = civil, not criminal
- OWI 1 with Minor Child in Vehicle = criminal offense (misdemeanor)
- OWI 1 Causing Injury = criminal offense (misdemeanor)
- OWI 1 Causing Great Bodily Harm = criminal offense (felony)
- OWI 1 Causing Death = felony + 5-year presumptive minimum prison sentence

# Wisconsin's OWI 1 Penalties

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## Minimum:

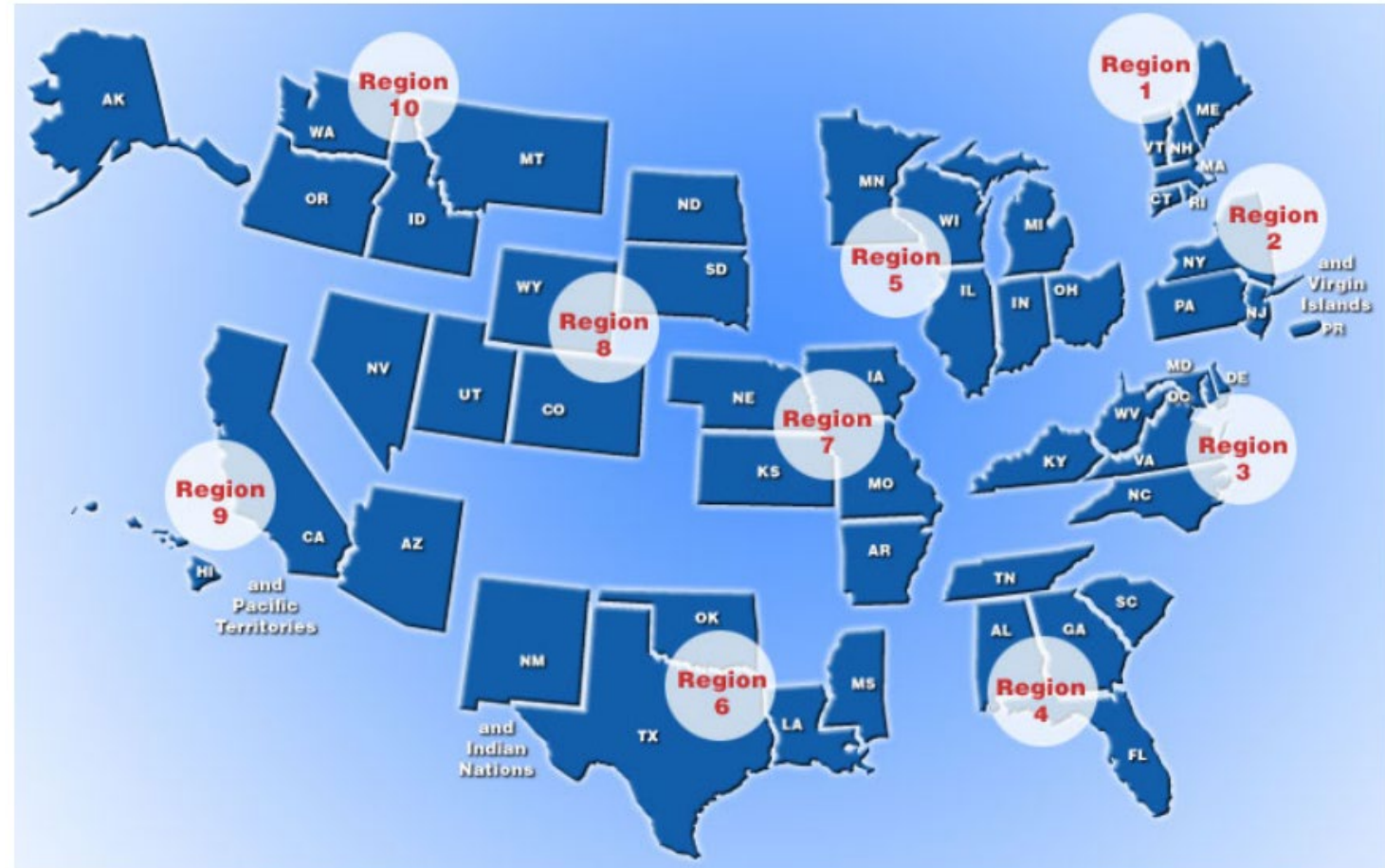
- \$150 forfeiture, plus costs (which are typically \$750-\$1000)
- 6 month revocation of operating privilege
- Alcohol assessment, completion of driver safety plan

## Maximum:

- \$300 forfeiture, plus costs
- 9 month revocation of operating privilege
- IID for 12 months if test shows BAC of .15 or above (or you had a prior OWI more than 10 years ago)
- Alcohol assessment, completion of driver safety plan



# How Do Our Neighbors Compare?





# First Offense Penalties

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# Illinois

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- Minimum:
  - Court supervision (no conviction entered) 12-24 mos
  - Supervision stays on DOT record but not criminal conviction (conviction dismissed upon completion of supervision)
  - No jail sentence
  - Must complete assessment & treatment
  - Almost all 1<sup>st</sup> offenders receive this; offenders may only receive it once
  - 12 mos revocation



# Illinois

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- Maximum:
  - 1 year jail (which means 6 months because they have a 50% rule)
  - 2 years probation
  - \$2,500 fine + fees (up to about \$1000)

# Michigan

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- Minimum:
  - No minimum
    - Can only get jail if the court makes a record as to reasoning
  - 30 days suspension, then 150 days on a restricted license
  - \$100 fine (\$200 with BAC > .17)



# Michigan

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- Maximum:
  - 93 days jail (180 with BAC > .17) / 2 years probation
  - 30 days suspension, then 150 days on a restricted license
  - \$500 fine (\$700 with BAC > .17)
  - 360 hours community service

# Ohio

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- Minimum:
  - 3 days jail or Driver Intervention Program (“DIP”)
    - DIP is the most common sentence
    - Jail MUST be suspended if court grants “unlimited driving privileges” w/ IID
  - 1 year suspension, occupational after 15 days
  - \$565 fine



# Ohio

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- Maximum:
  - 6 months jail
  - 3 years suspension, occupational after 15 days
  - \$1,075 fine

# Indiana

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- Minimum:
  - No minimum jail (and any imposed jail may be suspended)
    - But jail is rarely imposed at all
  - Most common sentence = 60 days jail suspended for 12 mos probation (even in high-BAC cases)



# Indiana

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- Maximum:
  - 60 days jail (12 mos for BAC > .15 or endangering safety)
- 1st offenders can avoid conviction by completing AODA Program (only get this benefit once)

# Minnesota

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- Minimum:
  - No minimum
  - AODA Assessment
  - Most common sentence = no jail, 2 yrs probation, 90 license suspension, 2 days community service
  - If BAC is low and no aggravating factors, could be amended to careless driving (still a criminal offense)

# Minnesota

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- Maximum:
  - 90 days jail; if BAC over .16 or refusal – 364 days jail
  - \$1000 fine; \$3000 if BAC over .16 or refusal
  - 1 yr license revocation





# Third Offense Penalties

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# Wisconsin

## Minimum:

- 45 days jail
- 24 month DL revocation
- 12 month IID
- \$600 fine plus costs
- Lifetime PAC changes to .02

## Maximum:

- 12 mos jail
- 36 month DL revocation
- 36 month IID
- \$2000 fine plus costs

# Illinois

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- Felony
- Minimum:
  - 10 days in jail or 480 hours CS
  - Assessment + tx
  - DL revoked (no specific term), to be renewed upon application



# Illinois

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- Felony
- Maximum:
  - 3-7 years jail, 3 years probation
  - \$25,000 fine

# Michigan

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- Felony
- Minimum:
  - 1 year imprisonment with at 48 hours served consecutively; or probation + 30 days jail + 60 days CS

# Michigan

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- Maximum:
  - 5 years imprisonment; or probation + 12 mos jail + 180 days CS
  - Additional penalty enhancements for having prior felony conviction(s)
  - Vehicle forfeiture also possible; D may also be required to pay costs of prosecution



# Ohio

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- Misdemeanor (w/in 10 years)
- Minimum:
  - 15 days jail (+ 55 days continuous alcohol monitoring)
  - \$1,040 fine
  - 1 year DL suspension; AODA programming

# Ohio

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- Maximum:
  - 1 year jail
  - \$2,750 fine
  - 12 year DL suspension

# Indiana

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- Felony
- Minimum:
  - 6 months jail (10 days or 480 hours CS minimum; the remainder may be suspended),
  - 1 year DL suspension
  - Assessment & tx



# Indiana

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- Felony
- Maximum:
  - 2.5 years in prison, 2.5 years DL suspension
  - Possible other enhancers (habitual offender)

# Minnesota

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- Gross misdemeanor (3 w/in 10)
- Minimum:
  - 30 days jail (90 days but EHM after 30)
  - \$900 + costs
  - 3 yr revocation, but less w/IID

# Minnesota

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- Gross misdemeanor (3 w/in 10)
- Maximum:
  - 1 year jail
  - \$3000 fine + costs



# Other Aspects of OWI Law

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Mandatory  
Jail Hold  
After Arrest?

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# Mandatory Jail Hold After Arrest?

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- WI: Yes, 12 hours / test below .04, or pickup by responsible party
- IL: Officer's/departmental discretion, but no mandatory holding period
- MI: No
- OH: No
- IN: Yes, until certain # of hours have passed, based on BAC at intake
- MN: No



# Administrative Suspension on 1<sup>st</sup> Offense

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- WI: Yes – 6 mos w/ .08+, RCS
- IL: Yes – 6 mos w/ .08+, 5+ ng/mL D9 THC, CS
  - 12 mos for 2d w/in 5
- MI: No
- OH: Yes – 6 mos
- IN: Yes – 6 mos (but can terminate upon conviction/dismissal)
- MN: Yes – Below .16 = 90 days (can be reduced to 30 after plea); .16+ = 12 mos

# What Number OWI is a Felony?

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- WI: 4
- IL: 3
- MI: 3
- OH: 4 w/in 10 or 6 w/in 20
- IN: 2 w/in 7 or 2 when 1<sup>st</sup> is an OWI Homicide, BAC > .15 / CS + minor child (if offender is at least 21)
- MN: 4<sup>th</sup> w/in 10 years; also if any prior OWI is a felony, so is every subsequent OWI

# Look-back Period for Counting Offenses

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- WI: Forever (starting on 1/1/1989)
- IL: Forever
- MI: 7 for 2d offense, forever for 3+ (changed from 10 years in 2006)
- OH: 10 years
- IN: 7 for 2d offense, sentence enhancement for 2 w/in 10 or 3 ever
- MN: 10 years, except lifetime look-back for felony convictions



# Diversion Available for OWIs?

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- WI: Not to result in no conviction (i.e., OWI Court)
- IL: Tx Court participation may result in dismissal, but usually 1<sup>st</sup> offenders are not allowed into Tx Courts
- MI: Tx Court participation may result in dismissal (but stays on DOT record)
- OH: No
- IN: Tx Court participation may result in dismissal, but 1<sup>st</sup> offenders are typically not allowed into Tx Courts
- MN: No

# Expunction of OWI Conviction Legal?

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- WI: Maybe, but it's never done
- IL: No
- MI: Yes, once only, 1<sup>st</sup> offense only, upon application to the court (and it remains on DOT record)
- OH: No
- IN: Yes, via petition after 5 years
  - It only remains on DOT record if they had a CDL, but prosecutors may re-open for counting purposes
- MN: Yes, but it stays on DOT record

# Refusals

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- WI: 12 mos revocation + 12 mos IID + mandatory assessment & compliance
- IL: 6 mos suspension
  - If 2d w/in 5 = 3 year suspension + no occupational
- MI: 1<sup>st</sup> offense = 12 mos suspension, 2d = 24 mos
- OH: 1<sup>st</sup> offense = 12 mos suspension, 2d w/in 7 years = 24 mos, etc.
  - IID for 2+ offense
- IN: 1<sup>st</sup> offense = 12 mos suspension, 2+ = 24 mos suspension
- MN: 1<sup>st</sup> = “gross misdemeanor” – max 1 year jail & \$3000 fine; 12 mos suspension



# Statutory Restrictions to Plea Bargaining

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- WI: Yes
- IL: No
- MI: No
- OH: No
- IN: No
- MN: No



# The Good

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- Only state that has a statutory restriction on plea bargaining of OWI offenses
- 1 of 3 states to NOT allow diversion programs
- Longest look-back period – “lifetime” for counting all prior OWI offenses
- Refusal penalties comparable (except MN)
- Only state that changes lifetime PAC from .08 to .02 after 3 convictions

# The Good

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- 3<sup>rd</sup> offense penalties comparable
- Similar felony classification level (4<sup>th</sup> is a felony)
- Administrative penalties (suspension) comparable
- 1 of 2 states that has mandatory jail hold upon arrest
- Prohibited amount of RCSs is “any detectible amount”



# The Good – Efficient!!!

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- Approximately 23,000 first offense cases in 2023
- Citation v. criminal complaint
- D.A.; SPD; and Circuit Court Resources
- 50% of OWI 1 cases handled in Municipal Courts
- Vast majority of OWI 1 cases resolved at Initial Appearance.

# The Good – Efficiency Leads to Deterrence

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- Shortened time between offense and punishment
- Higher percentage of cases result in conviction
- Consistency of penalties across the state
- Lower Recidivism?

# The Good – Mandatory Assessments

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- Statewide robust system for Assessments and Driver Safety Plan
- “Lifetime” revocation for non-compliance
- Consistency across the state
- Unique!



# Da Bad – Da WAID!!

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- Wisconsin Assessment for Impaired Drivers
- Mandated by Statute and Administrative Code
- Developed by UW Professor in late 1980's – Primarily for Alcohol
- Outdated!
- Under current standards it functions mainly as a screening tool



# The Bad

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- Only state that OWI 1 is not a crime
- IID law is unnecessarily complex and does not apply to all OWI convictions



BUT

WAIT FOR IT





# The Bad Isn't Really That Bad

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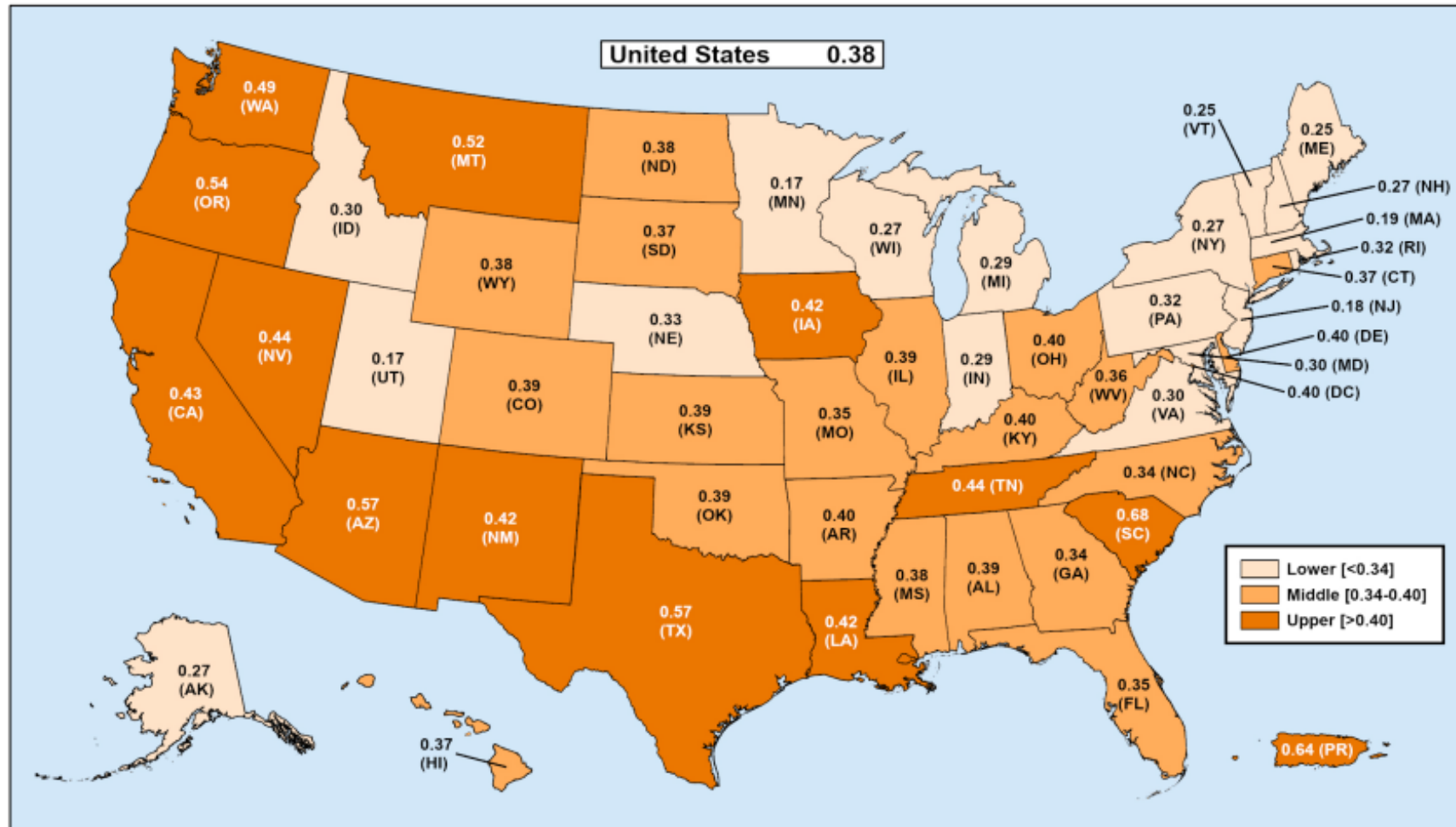
- Only state that OWI 1 is not a crime BUT penalties for 1<sup>st</sup> offense comparable to other states
- 2 of 5 states (Illinois & Indiana) allow diversion w/criminal conviction to be dismissed and Minnesota allows amendment to careless
- Jail is not routinely ordered in any state

# A Summary

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- Wisconsin is indeed the only state (in both Region 5 and nationwide) that does not make OWI 1 a crime, but
- Wisconsin's OWI 1 penalties are not lighter than those of other states
- Wisconsin's OWI 3 penalties are comparable to other states
- Wisconsin is the only state that has a statutory restriction on plea bargaining
- And despite not criminalizing 1<sup>st</sup> offenses, WI still holds its own

**Figure 2. Alcohol-Impaired-Driving Fatality Rates per 100 Million VMT, by State, 2023**



Sources: FARS 2023 ARF; VMT – Federal Highway Administration  
Note: NHTSA estimates BACs when alcohol test results are unknown.



**Table 10. Percentages of Alcohol-Impaired-Driving Fatalities and Alcohol-Impaired Drivers Involved in Fatal Traffic Crashes, by Region and State, 2014 and 2023**

Region and State		Percentage of Alcohol-Impaired-Driving Fatalities		Percentage of Alcohol-Impaired Drivers Involved in Fatal Traffic Crashes	
		2014	2023	2014	2023
Region 5	Illinois	33%	32%	22%	20%
	Indiana	21%	28%	14%	19%
	Michigan	23%	26%	16%	17%
	Minnesota	30%	24%	18%	16%
	Ohio	30%	37%	20%	26%
	Wisconsin	33%	31%	22%	20%

# Maybe There's No Reason to Be Embarrassed After All

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# Questions/Discussion

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# Contact Information

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- Todd Meurer, WI Judicial Outreach Liaison (JOL)
- [wijolmeurer@gmail.com](mailto:wijolmeurer@gmail.com)
- Emily Thompson, WI Traffic Safety Resource Prosecutor (TSRP)
- [Emily.thompson@wisdoj.gov](mailto:Emily.thompson@wisdoj.gov)
- Tara Jenswold, WI Traffic Safety Resource Prosecutor (TSRP)
- [Tara.jenswold@wisdoj.gov](mailto:Tara.jenswold@wisdoj.gov)