



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 1

TO: MEMBERS OF THE STUDY COMMITTEE ON THE REVIEW OF CRIMINAL PENALTIES

FROM: David Moore and Michael Queensland, Staff Attorneys

RE: Overview of Criminal Penalties in Wisconsin

DATE: June 17, 2014

Criminal justice is generally under the jurisdiction of the state. Therefore, the state determines what constitutes a crime in the state and assigns a penalty for each crime. A discussion of Wisconsin criminal penalties follows. Because the study committee is directed to review misdemeanor penalties, included with this Memo is Brief 13-5, *Statutory Misdemeanors in Wisconsin*, published by the Legislative Reference Bureau. Also included are the following:

- Felony Procedure Flowchart (published by the Wisconsin Department of Justice).
- Misdemeanor Procedure Flowchart (published by the Wisconsin Department of Justice).

CRIMES IN WISCONSIN

Crime is “conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by a forfeiture is not a crime.” [s. 939.12, Stats.] Each criminal offense is either a felony or a misdemeanor. A crime punishable by imprisonment for more than one year is a felony. A crime that is punishable by imprisonment for less than one year is a misdemeanor. If a statute specifies a maximum term of imprisonment of one year, the crime is a misdemeanor if the statute specifies that a one-year sentence should be served in a county jail; otherwise, the crime is a felony.

Felonies

According to the Office of the Director of State Courts, the most frequently charged felonies in Wisconsin in 2013 were:

- Felony bail-jumping.
- Burglary of a building or dwelling.
- Possession of narcotic drugs.
- Possession of tetrahydrocannabinols (THC), second or subsequent offense.
- Forgery (uttering).
- Unauthorized use of an individual's personal identifying information or documents.
- Strangulation and suffocation.
- Failure to provide child support for 120 or more days.
- Substantial battery.

Misdemeanors

According to the Office of the Director of State Courts, the most frequently charged misdemeanors in Wisconsin in 2013 were:

- Disorderly conduct.
- Misdemeanor bail-jumping.
- Operating while revoked when the revocation was for an offense related to operating while intoxicated (OWI).
- Battery.
- Possession of drug paraphernalia.
- Resisting or obstructing an officer.
- Theft of moveable property (value of property less than \$2,500).
- Criminal damage to property.
- Possession of THC.
- OWI, second offense.
- Operating with a prohibited alcohol concentration, second offense.
- Retail theft (value of the merchandise less than \$500).
- Issue of worthless check (payment of not more than \$2,500).

CRIMINAL PENALTIES

Nearly all of the misdemeanors located within the Criminal Code -- chs. 939 to 951, Stats. -- and all felonies in the statutes (with the exception of three offenses) are "classified." That is, each offense is assigned to a class that corresponds to a penalty range. Misdemeanors that are codified in the portions of the Wisconsin statutes outside the Criminal Code are not classified. For unclassified offenses, penalties are established separately for each offense. With the exception of crimes for which the statutes specify a minimum penalty, criminal penalties are expressed, in the Wisconsin statutes, as a fine not to exceed a specified amount, imprisonment not to exceed a specified amount of time, or both.

Felony Penalties

Wisconsin currently has nine classes of felonies. The classes of felonies and their penalties are shown below:

Felony Class	Fine (not to exceed)	Term of Imprisonment (not to exceed)
Class A	n/a	Life
Class B	n/a	60 years
Class C	\$100,000	40 years
Class D	\$100,000	25 years
Class E	\$50,000	15 years
Class F	\$25,000	12 years and 6 months
Class G	\$25,000	10 years
Class H	\$10,000	6 years
Class I	\$10,000	3 years and 6 months

Misdemeanor Penalties

There are three classes of misdemeanors in Wisconsin. These classes and their penalties are as follows:

Misdemeanor Class	Fine (not to exceed)	Term of Imprisonment (not to exceed)
Class A	\$10,000	9 months
Class B	\$1,000	90 days
Class C	\$500	30 days

If a person is convicted of a misdemeanor under state law for which no penalty is expressed, the person may be fined not more than \$500 or imprisoned not more than 30 days or both.

Penalty Enhancers

Certain criminal penalties may also be affected by a penalty enhancer. A penalty enhancer permits the judge to increase the penalty for a crime if the crime was committed under certain circumstances. Penalty enhancers under current law include: use or possession of a dangerous weapon when committing a crime; distribution of controlled substances within 1,000 feet of a school, park, correctional institution, or other specified facility; committing a violent

crime in a school zone; distribution of a controlled substance to a person under 17 years of age; habitual criminality; and the commission of subsequent drug offenses.

IMPOSITION OF PENALTY

With limited exceptions, a judge is not required to impose a minimum penalty when sentencing a defendant, but may impose any penalty within the authorized range. The sentence imposed, therefore, will depend on the facts and circumstances of each case. Generally, when making a sentencing decision, a court is required to consider:

- The protection of the public.
- The gravity of the offense.
- The rehabilitative needs of the defendant.

For felonies committed on or after February 1, 2003, a court must also consider any applicable mitigating factors and any applicable aggravating factors, including aggravating factors specified by statute.

Imprisonment and Community Supervision

Unless probation is prohibited for a particular offense by statute, a court may place a person convicted of a crime on probation. A court may do this in conjunction with either withholding sentence or imposing sentence and staying its execution. A person on probation is under the supervision of the Department of Corrections (DOC) in the community, and is subject to conditions imposed by the court or DOC.

Under Wisconsin case law, probation is to be favored over imprisonment unless the sentencing court finds that: (a) confinement is necessary to protect the public from further criminal activity by the offender; or (b) the offender is in need of correctional treatment which can most effectively be provided if he or she is confined; or (c) it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed. [*State v. Gallion*, 2004 WI 42, ¶ 25.]

If a person's sentence includes a period of imprisonment in jail, the sentence is served in the county jail. County jails are maintained and managed by county sheriff departments.

If a person is sentenced to a period of imprisonment in state prison, the sentence is served in one of 36 state correctional facilities operated by DOC. A person is sentenced to a Wisconsin state prison if the term of confinement is for one year or more. Whenever a court sentences a person to imprisonment in a state prison for a felony committed on or after December 31, 1999, or a misdemeanor committed on or after February 1, 2003, the court is required to impose a sentence that is bifurcated into a term of initial confinement and a term of extended supervision. The term of extended supervision may not be less than 25% of the length of the term of confinement.

Just as there is a maximum term of imprisonment for every class of crime, there is also a maximum term of initial confinement for each class of crime. For example, the maximum term of imprisonment for a Class I felony is three years and six months; however, the maximum initial term of confinement is one year and six months.

When a person is released from prison and enters the extended supervision component of the sentence, the person is monitored by DOC and subject to conditions set by the sentencing court and DOC. If a person's extended supervision is revoked, a judge may sentence the person to prison for any amount of time up to the full length of the original term of extended supervision set by the court.

Financial Obligations

The fine that corresponds with the penalty for a crime is one component of the financial obligations that conviction of a crime entails, but it is not the only one. In addition to a fine, there are a variety of costs, fees, and surcharges a defendant may be required to pay. Commonly imposed financial obligations are:

- Court fees.
- A penalty surcharge equal to 26% of the total amount of the fine.
- The crime lab and drug law enforcement surcharge.
- The crime victim and witness surcharge.
- The jail surcharge.
- Restitution

In addition to the above fees and surcharges, the statutes also require persons convicted of certain crimes to pay surcharges that generate additional revenue for state programs. Examples of these surcharges include: the DNA surcharge; the drug abuse program surcharge; the driver improvement surcharge; and the domestic abuse surcharge.¹

The following example illustrates the difference between the fine that may be imposed upon conviction of a crime and the total financial obligations conviction may entail. The fine for second offense operating while intoxicated is \$350 to \$1,100. Typical court costs and surcharges associated with this offense, assuming the fine imposed was \$350, are:

Courts Costs and Surcharges	Amount
Driver improvement surcharge	\$365
Penalty surcharge	\$91
Jail surcharge	\$10
Crime lab drug system surcharge	\$13
Victim/witness surcharge	\$67

¹ For a complete listing of costs, fees, and surcharges that may be imposed on a person convicted of a crime in Wisconsin, see *Informational Paper 59, Wisconsin Court System*, published by the Legislative Fiscal Bureau and available here: http://legis.wisconsin.gov/lfb/publications/Informational-Papers/Documents/2013/59_Wisconsin%20Court%20System.pdf.

Courts Costs and Surcharges	Amount
Criminal court costs	\$163
Ignition interlock surcharge	\$50

When fees and surcharges are added to the \$350 fine, the total amount the offender may be required to pay upon conviction for this offense is \$1,109.²

FORFEITURES

As noted above, conduct that is punishable only by a monetary forfeiture is not a crime. Examples of law violations that are forfeitures include noncriminal traffic offenses, such as speeding or failing to yield the right of way.

Like misdemeanors, forfeitures may also be either classified or unclassified. Within the Criminal Code, they are classified; in the portions of the statutes outside the Criminal Code, they are unclassified. The classes of forfeitures and their penalties are:

Forfeiture Class	Amount of Forfeiture (not to exceed)
Class A	\$10,000
Class B	\$1,000
Class C	\$500
Class D	\$200
Class E	\$25

As with fines for criminal offenses, the forfeiture amount is one component of the financial obligations conviction of a forfeiture offense entails, but it is not the only one. A person convicted of a forfeiture offense must also generally pay various court costs and surcharges.

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Enclosures

² A person convicted of an operating while intoxicated offense may also be required to pay additional costs related to his or her driver's license, including: the driver assessment fee; the occupational license fee; a license reinstatement fee; and ignition interlock costs.