

# FIFTH JUDICIAL DISTRICT

## **OWI SENTENCING GUIDELINES**

Citation Issued On or After:

**July 2, 2013**

District Court Administrator  
215 S. Hamilton Street, Room 6111  
Madison WI 53703-3295  
(608) 267-8820

James P. Daley, Chief Judge

Dated: December 30, 2013

### Changes:

- new misdemeanor and felony DNA surcharge applied to sentences imposed after Jan 1, 2014. 973.046(1r) Wis. Stats.
- Municipal Court Cost range increases to \$38

## FIFTH JUDICIAL DISTRICT SENTENCING GUIDELINES

### Costs

Effective 1/1/14

#### Non-Criminal

#### 1<sup>st</sup> Offense Unless Passenger < 16 Years of Age

\$435	Driver Improvement Surcharge
\$ 25	Court Costs with no minor under 16 years of age
\$ 68	Court Support Surcharge
\$ 50	Ignition Interlock Surcharge if PAC >.15
\$ 21.50	Justice Information Surcharge
\$ 13	Crime Lab Surcharge
\$	Jail Surcharge, greater of 1% or \$10
\$	Penalty Surcharge, 26% of fine or forfeiture

#### Criminal

#### 2<sup>nd</sup> – 4<sup>th</sup> Offense & 1<sup>st</sup> Offense w/ Passenger < 16 Years of Age

\$435	Driver Improvement Surcharge
\$163	Court Costs
\$ 50	Ignition Interlock Surcharge
\$ 13	Crime Lab Surcharge
\$ 67	Victim-Witness Surcharge; misdemeanor
\$ 92	Victim-Witness Surcharge; felony
\$200	DNA Surcharge; misdemeanor conviction
\$250	DNA Surcharge; felony conviction
\$	Jail Surcharge; greater of 1% or \$10
\$	Penalty Surcharge; 26% of fine or forfeiture

Fines + Costs in each cell = Total Amount Applied

# FIFTH JUDICIAL DISTRICT SENTENCING GUIDELINES

## 1<sup>st</sup> OFFENSE OWI/PAC

(Citations Issued On or After July 2, 2013)

### Civil – Non-Criminal

**Forfeiture:** \$150 - \$300 [§346.65(2)(am)1]  
**Revocation:** 6-9 months [§343.30(1q)(b)2]  
 Occupational license eligibility immediately  
**Ignition Interlock:** Mandatory 1 year for BAC .150 and above

**With Minor Child <16 in vehicle – Criminal Offense** [§346.65(2)(f)]

**Jail:** 5 days – 6 months **Fine:** \$350-\$1100

**Use Chart for 2<sup>nd</sup> Offense OWI/PAC**

BAC Levels	Minimum Driving No Accident	Aggravated Driving Accident or Injury Bad Driving Record
< .10	\$150 + Costs = \$761.50 6 mo. revocation	\$200 + Costs = \$824.50 6 mo. revocation
<b>.10-.149 Controlled Substance</b>	\$200 + Costs = \$824.50 7 mo. revocation	\$250. + Costs = \$887.50 7 mo. revocation
<b>.150-.199</b>	\$250 + Costs = \$937.50 8 mo. revocation IID-1 year	\$300 + Costs = \$1000.50 8 mo. revocation IID-1 year
<b>.20 and above</b>	\$300 + Costs = \$1000.50 9 mo. revocation IID-1 year	\$300 + Costs = \$1000.50 9 mo. revocation IID-1 year

### No Probation Option

**Treatment:** Good faith progress in qualified AODA treatment prior to sentence may reduce guideline penalties for forfeitures and revocation time to cell for next lowest BAC. Ignition Interlock is mandatory for all cases with a BAC >.15.

## FIFTH JUDICIAL DISTRICT SENTENCING GUIDELINES

### 2<sup>nd</sup> Offense OWI/PAC and 1<sup>st</sup> Offense with Minor Child < 16 in Vehicle

(Citations Issued On or After July 2, 2013)  
(Sentences imposed on or after January 1, 2014)

**Jail:** 5 days – 6 months [§346.65(2)(am)2]  
**Fine:** \$350 - \$1100  
**Revocation:** 12-18 months [§343.30(1q)(b)3]  
Occupational license eligibility – 45 days from conviction  
**Ignition Interlock:** Mandatory for all second offenses  
12 months to 18 months [§303.08(10r)]

**With Minor Child <16 :** Applicable minimum and maximum fines, revocation periods and jail double

BAC	Minimum Driving No Accident	Aggravated Driving Accident or Injury Bad Driving Record
<b>&lt;.10</b>	\$350 + Costs = \$1379 5 days jail 12 mo. revocation	\$400 + Costs = \$1442 10 days jail 14 mo. revocation
<b>.10-.149 Controlled Substance</b>	\$400 + Costs = \$1442 10 days jail 14 mo. revocation	\$600 + Costs = \$1694 30 days jail 16 mo. revocation
<b>.150-.199</b>	\$600 + Costs = \$1694 30 days jail 16 mo. revocation	\$800 + Costs = \$1946 90 days jail 17 mo. revocation
<b>.20 and up Refusal</b>	\$800 + Costs = \$1946 120 days jail 17 mo. revocation	\$1100 + Costs = \$2325 6 months jail 18 mo. revocation

**Probation:** Maximum probation 2 years. If successful completion of treatment on probation, minimum jail is 5 days and maximum jail is 7 days. [§346.65(2)(bm)]

**Treatment:** Good faith progress in qualified AODA treatment prior to sentence reduces guideline penalties to cell for next lowest BAC

# FIFTH JUDICIAL DISTRICT SENTENCING GUIDELINES

## 3rd OFFENSE OWI/PAC

(Citations Issued On or After July 2, 2013)  
 (Sentences imposed on or after January 1, 2014)

- Jail:** 45 days – 1 year [§346.65(2)(am)3]  
 Minimum 48 consecutive hours in jail [§346.65(7)]
- Fine:** \$600 - \$2,000 [plus surcharges and costs]
- Revocation:** 24-36 months  
 Occupational license eligibility – 45 days from conviction
- Ignition Interlock:** Mandatory for all third offenses  
 12 months – 36 months
- No Bail:** No bail after conviction or stay of execution of jail sentence unless jail is a condition of probation [§969.01(2)(a), §973.15(8)(a)(3), §97309(1)(a)]

**With Minor Child <16:** Becomes a felony and applicable minimum and maximum fines, revocation periods and jail double

BAC	Minimum Driving No Accident	Aggravated Driving Accident or Injury Bad Driving Record
<b>&lt;.10</b>	\$600 + Costs = \$1694 45 days jail [14 days]* 24 mo. revocation	\$750 + Costs = \$1883 90 days jail [21days]* 27 mo. revocation
<b>.10-.149 Controlled Substance</b>	\$800 + Costs = \$1946 90 days jail [21 days]* 27 mo. revocation	\$1000 + Costs = \$2198 6 mos. jail [28 days]* 30 mo. revocation
<b>.150 - .199</b>	\$1000 + Costs = \$2198 6 mos. jail [28 days]* [.17-.199 fine doubles] 30 mo. revocation	\$1200 + Costs = \$2452 9 mos. jail [35 days]* [.17-.199 fine doubles] 33 mo. revocation
<b>.20 and up Refusals</b>	\$1200 + Costs = \$2452 9 mos. jail [35 days]* [.20-.249 fine triples] [.25 and up and refusals, fine quadruples] 33 mo. revocation	\$1500 + Costs = \$2833 12 mos. jail [42 days]* [.20-.249 fine triples] [.25 and up and refusals, fine quadruples] 36 mo. revocation

**Probation:** Maximum probation 2 years. If successful completion of treatment on probation, minimum jail is **14 days**. \*Conditional jail days if AODA treatment on probation

**Treatment:** Good faith progress in qualified AODA treatment prior to sentence reduces guideline penalties to cell for next lowest BAC.

**FIFTH JUDICIAL DISTRICT SENTENCING GUIDELINES  
4th OFFENSE OWI/PAC – MISDEMEANOR ONLY**

(Citations Issued On or After July 2, 2013)  
(Sentences imposed on or after January 1, 2014)

**Fourth offense is a misdemeanor unless it was committed within 5 years of last OWI offense or refusal**

**Jail:** 60 days – 1 year [§346.65(2)(am)4]  
Minimum 48 consecutive hours in jail [§346.65(7)]

**Fine:** \$600 - \$2,000 [plus surcharges and costs]

**Revocation:** 24-36 months  
Occupational license eligibility 45 days from conviction

**Ignition Interlock:** Mandatory for all fourth offenses  
12 months – 36 months

**No Bail:** No bail after conviction or stay of execution of jail sentence unless jail is a condition of probation [§969.01(2)(a), §973.15(8)(a)(3), §973.09(1)(a)].

**With Minor Child <16:** Becomes a felony and applicable minimum and maximum fines, jail, and revocation periods double

<b>BAC</b>	<b>Minimum Driving No Accident</b>	<b>Aggravated Driving Accident or Injury Bad Driving Record</b>
<b>&lt;.10</b>	\$700 + Costs = \$1820 60 days jail [29 days]* 24 mo. Revocation	\$900 + Costs = \$2072 90 days jail [36 days]* 27 mo. revocation
<b>.10-.149 Controlled Substance</b>	\$900 + Costs = \$2072 90 days jail [43 days]* 27 mo. Revocation	\$1100 + Costs = \$2125 6 Mos. Jail [50 days]* 30 mo. revocation
<b>.150 - .199</b>	\$1100 + Costs = \$2125 6 Mos. Jail [57 days]* [.17-.199 fine doubles] 30 mo. Revocation	\$1300 + Costs = \$2579 9 Mos. Jail [64 days]* [.17-.19 fine doubles] 33 mo. revocation
<b>.20 and up Refusals</b>	\$1300 + Costs = \$2579 9 Mos. Jail [71 days]* [.20-.249 fine triples] [.25 and up and refusals, fine quadruples] 33 mo. Revocation	\$1500 + Costs = \$2833 12 Mos. Jail [78 days]* [.20-.249 fine triples] [.25 and up and refusals, fine quadruples] 36 mo. revocation

**Probation:** Maximum probation 3 years. If successful completion of treatment on probation, minimum jail is **29 days**. \*Conditional jail days if probation ordered.

**Treatment:** Good faith progress in qualified AODA treatment prior to sentence reduces guideline penalties to cell for next lowest BAC.

# **FIFTH JUDICIAL DISTRICT SENTENCING GUIDELINES**

## **FELONY OWI CONVICTIONS**

(Citations Issued on or After July 2, 2013)

### **CLASS H FELONIES**

5th and 6th Offense OWIs are Class H felonies.

4th Offense OWI is a Class H felony if the defendant committed an offense that resulted in a suspension, revocation, or other conviction for OWI within 5 years prior to the date of the current offense. Section 346.65(2)(am)4m.

2nd Offense (or higher) OWI is a Class H felony if there is injury to another person. Section 346.65(3p).

Prison Time for Class H Felonies: Mandatory minimum six months with up to 3 years maximum

Extended Supervision: Maximum 3 years

Fines: Mandatory minimum \$600 up to \$10,000 maximum

Fines and prison time double if there is a minor under the age of 16 in the vehicle at the time of the violation. Sections 346.65(2)(f)2 and 346.65(3p).

### **CLASS G FELONIES**

7th through 9th OWIs are Class G felonies. Section 346.65(2)(am)6.

Prison time: Mandatory minimum of 3 years with 5 years maximum

Extended Supervision: Maximum of 5 years

Fines: Up to \$25,000

Fines and prison time double if there is a minor under the age of 16 in the vehicle at the time of the violation. Section 346.65(2)(f)2.

### **CLASS F FELONIES**

OWI 10th and above are Class F felonies. Section 346.65(2)(am)7.

Prison time: Mandatory minimum 4 years up to 7.5 years maximum

Extended Supervision: Up to 5 years

Fines: Up to \$25,000

Fines and prison time double if there is a minor under the age of 16 in the vehicle at the time of the violation. Section 346.65(2)(f)2.

# FIFTH JUDICIAL DISTRICT SENTENCING GUIDELINES

## 1<sup>st</sup> OFFENSE OWI/PAC MUNICIPAL

(Citations Issued On or After July 2, 2013)

### Civil – Non-Criminal

**Forfeiture:** \$150 - \$300 [§346.65(2)(am)1]  
**Revocation:** 6-9 months [§343.30(1q)(b)2]  
 Occupational license eligibility immediately  
**Ignition Interlock:** Mandatory 1 year for BAC .150 and above & refusal

**With Minor Child <16 in vehicle: Criminal Offense** [§346.65(2)(f)]; Circuit Court Jurisdiction

BAC Levels	Minimum Driving No Accident	Aggravated Driving Accident or Injury Bad Driving Record
< .10	\$150 + Costs 6 mo. revocation	\$200 + Costs 6 mo. revocation
<b>.10-.149 Controlled Substance</b>	\$200 + Costs 7 mo. revocation	\$250. + Costs 7 mo. revocation
<b>.150-.199</b>	\$250 + Costs 8 mo. revocation IID-1 year	\$300 + Costs 8 mo. revocation IID-1 year
<b>.20 and above</b>	\$300 + Costs 9 mo. revocation IID-1 year	\$300 + Costs 9 mo. revocation IID-1 year

### No Probation Option

**Treatment:** Good faith progress in qualified AODA treatment prior to sentence may reduce guideline penalties of forfeitures and revocation time to cell for next lowest BAC. Ignition Interlock is mandatory for all cases with a BAC > .15.

### Alcohol Assessment and Driver Safety Plan

Court may order:

- Community service work to reduce the amount of a forfeiture or fine. §346.65(2g)(a)
- Site visit that demonstrates the effects of substance abuse. §346.65(2).
- Reduction of the forfeiture/fine and payment of the difference toward the cost of the alcohol assessment and driver safety plan. §346.65(2c)
- Restitution. §346.65(2r)(a)

### Costs

\$435 Driver Improvement Surcharge  
 \$15-38 Range of Court Costs  
 26% of Forfeiture; Penalty Surcharge  
 \$10 Jail Surcharge  
 \$13 Crime Lab/Drug Surcharge  
 \$50 Ignition Interlock Surcharge