

**2001 DRAFTING REQUEST**

**Bill**

Received: **01/15/2001**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Etzler**

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Alt. Drafters:

Subject: **Drunk Driving - penalties**

Extra Copies: **TNF, ARG, RPN**

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**Pre Topic:**

DOA:.....Etzler -

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**Topic:**

Require immobilization or ignition interlock devices after 2nd OWI-related offense

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**Instructions:**

require ignition interlock or immobilization of vehicles after the 2d or subsequent OWI-related offense

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 01/19/2001	gilfokm 01/19/2001	pgreensl 01/22/2001	_____	lrb_docadmin 01/22/2001		State

FE Sent For:

**<END>**

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1?	phurley	1-1/king 1/19-01	1/19 PG	1/19 PG/CA*			State

FE Sent For:

<END>

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON  
GOVERNOR

GEORGE LIGHTBOURN  
SECRETARY



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**Date:** January 12, 2001  
**To:** Steve Miller, LRB  
**From:** John M. Etzler, DOA *JME*  
266-1039  
**Subject:** Department of Transportation Statutory Language

I am forwarding statutory language changes that we would like to have drafted for inclusion in the Department of Transportation's budget.

1. The intent of these two changes to the state's operating while intoxicated (OWI) laws is to ensure Wisconsin's compliance with federal guidelines for repeat OWI offenders:
  - (a) Require the suspension of an individual's driver's license for 2 or more OWI offenses.
  - (b) Require the impoundment or the installation of an immobilization device in an individual's vehicle for 2 or more OWI offenses.

Thanks.

avoid the transfer of Federal-aid highway funds for noncompliance with 23 U.S.C. 164.

### § 1275.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *Driver's motor vehicle* means a motor vehicle with a title or registration on which the repeat intoxicated driver's name appears.

(c) *Driving while intoxicated* means driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(d) *Driving under the influence* has the same meaning as "driving while intoxicated."

(e) *Enact and enforce* means the State's law is in effect and the State has begun to implement the law.

(f) *Ignition interlock system* means a State-certified system designed to prevent drivers from starting their car when their breath alcohol concentration is at or above a preset level.

(g) *Impoundment or immobilization* means the removal of a motor vehicle from a repeat intoxicated driver's possession or the rendering of a repeat intoxicated driver's motor vehicle inoperable. For the purpose of this regulation, "impoundment or immobilization" also includes the forfeiture or confiscation of a repeat intoxicated driver's motor vehicle or the revocation or suspension of a repeat intoxicated driver's motor vehicle license plate or registration.

(h) *Imprisonment* means confinement in a jail, minimum security facility, community corrections facility, house arrest with electronic monitoring, inpatient rehabilitation or treatment center, or other facility, provided the individual under confinement is in fact being detained.

(i) *License suspension* means a hard suspension of all driving privileges.

(j) *Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a ve-

hicle operated solely on a rail line or a commercial vehicle.

(k) *Repeat intoxicated driver* means a person who has been convicted previously of driving while intoxicated or driving under the influence within the past five years.

(l) *Repeat intoxicated driver law* means a State law that imposes the minimum penalties specified in § 1275.4 of this part for all repeat intoxicated drivers.

(m) *State* means any of the 50 States, the District of Columbia or the Commonwealth of Puerto Rico.

### § 1275.4 Compliance criteria.

(a) To avoid the transfer of funds as specified in § 1275.6 of this part, a State must enact and enforce a law that establishes, as a minimum penalty, that all repeat intoxicated drivers shall:

(1) Receive a driver's license suspension of not less than one year;

(2) Be subject to either—

(i) The impoundment of each of the driver's motor vehicles during the one-year license suspension;

(ii) The immobilization of each of the driver's motor vehicles during the one-year license suspension; or

(iii) The installation of a State-approved ignition interlock system on each of the driver's motor vehicles at the conclusion of the one-year license suspension;

(3) Receive an assessment of their degree of alcohol abuse, and treatment as appropriate; and

(4) Receive a mandatory sentence of—

(i) Not less than five days of imprisonment or 30 days of community service for a second offense; and

(ii) Not less than ten days of imprisonment or 60 days of community service for a third or subsequent offense.

(b) *Exceptions.* (1) A State may provide limited exceptions to the impoundment or immobilization requirements contained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section on an individual basis, to avoid undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender.

**§ 1275.5**

(2) Such exceptions may be issued only in accordance with a State law, regulation or binding policy directive establishing the conditions under which vehicles may be released by the State or under Statewide published guidelines and in exceptional circumstances specific to the offender's motor vehicle, and may not result in the unrestricted use of the vehicle by the repeat intoxicated driver.

**§ 1275.5 Certification requirements.**

(a) Until a State has been determined to be in compliance, or after a State has been determined to be in non-compliance, with the requirements of 23 U.S.C. 164, to avoid the transfer of funds in any fiscal year, beginning with FY 2001, the State shall certify to the Secretary of Transportation, on or before September 30 of the previous fiscal year, that it meets the requirements of 23 U.S.C. 164 and this part.

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing a repeat intoxicated driver law that conforms to 23 U.S.C. 164 and § 1275.4 of this part. The certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_, has enacted and is enforcing a repeat intoxicated driver law that conforms to the requirements of 23 U.S.C. 164 and 23 CFR 1275.4, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 164, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's repeat intoxicated driver legislation changes or the State ceases to enforce its law.

**23 CFR Ch. II (4-1-00 Edition)**

**§ 1275.6 Transfer of funds.**

(a) On October 1, 2000, and October 1, 2001, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 1½ percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

(b) On October 1, 2002, and each October 1 thereafter, if a State does not have in effect or is not enforcing the law described in § 1275.4, the Secretary shall transfer an amount equal to 3 percent of the funds apportioned to the State for the fiscal year under each of 23 U.S.C. 104(b)(1), (b)(3), and (b)(4) to the apportionment of the State under 23 U.S.C. 402.

**§ 1275.7 Use of transferred funds.**

(a) Any funds transferred under § 1275.6 may:

(1) Be used for approved projects for alcohol-impaired driving countermeasures; or

(2) Be directed to State and local law enforcement agencies for enforcement of laws prohibiting driving while intoxicated or driving under the influence and other related laws (including regulations), including the purchase of equipment, the training of officers, and the use of additional personnel for specific alcohol-impaired driving countermeasures, dedicated to enforcement of the laws (including regulations).

(b) States may elect to use all or a portion of the transferred funds for hazard elimination activities eligible under 23 U.S.C. 152.

(c) The Federal share of the cost of any project carried out with the funds transferred under § 1275.6 of this part shall be 100 percent.

(d) The amount to be transferred under § 1275.6 of this Part may be derived from one or more of the following:

(1) The apportionment of the State under § 104(b)(1);

(2) The apportionment of the State under § 104(b)(3); or

(3) The apportionment of the State under § 104(b)(4).

H/c to Joe Maasen @ DOT 67364

Q - when does immobil or ignition  
interlock take effect?

stat 1 yr → max permitted for  
violation  
min waiting period of 1 yr for  
occ license

1-15-01  
Joe called - imm or ignition is  
immediate w/ conviction.

Draft so that ign-int starts after 1  
year and immobi starts immediately

1-16-01

f/c to Joe Maasen & John Sabotik  
@ DOT.

Q - Does "either" in fed regs = only 1  
need be required after 1 offense? or  
must all 3 be options after 1st  
offense?

- Answer: Only 1 need be mandatory

Solution: and 343.301 but not 346.65(6)

Q - Konrath problem?

- NO; immobilization / in-lieu of seizure  
and forfeiture.

"the" vehicle language not legally required

Solution - ~~fed~~ and to comply w/

federal regs: any vehicle



PJH: *king*

DOA:.....Etzler – Require immobilization or ignition interlock devices after  
20 OWI-related offense

FOR 2001-03 BUDGET – NOT READY FOR INTRODUCTION

*2nd*  
*SDR*  
*1-19-01*  
*On file*  
*File Request Sheet*

- ①
- ②
- 3

*Don't*  
*GEN. CAT.*  
AN ACT relating to: immobilization of, and installation of ignition interlock devices <sup>on,</sup> in motor vehicles owned by persons who commit drunken driving offenses, and providing a penalty.

**Analysis by the Legislative Reference Bureau**  
**TRANSPORTATION**

**DRIVERS AND MOTOR VEHICLES**

A person may not operate a motor vehicle while under the influence of an intoxicant, controlled substance, or other drug (OWI), or improperly refuse to submit to a test to determine his or her blood alcohol concentration. Under current law, if a person commits either of these OWI-related offenses, the person's motor vehicle operating privilege is suspended or revoked for a certain period of time, depending on the number of the person's prior OWI-related convictions, suspensions, or revocations.

Under current law, if a person is convicted of an OWI-related offense and the person has two or more prior OWI-related convictions, suspensions, or revocations, a court may, but is not required to, order that the vehicle owned by the person and involved in the violation or refusal be seized and subject to forfeiture. If the court does not order that the vehicle be seized and subject to forfeiture, the court is required to order that the vehicle be immobilized or equipped with an ignition interlock device.

Beginning on January 1, 2002, a court will not be required to order that the vehicle owned by the person and involved in the violation or refusal be immobilized or equipped with an ignition interlock device even if the court does not order that the vehicle be seized and subject to forfeiture, and even if the person has two or more prior OWI-related convictions, suspensions, or revocations. Rather, the court may, but is not required to, order any of those options.

Also beginning on January 1, 2002, if a person is convicted of an OWI-related offense and the person has one or more prior OWI-related convictions, suspensions, or revocations, the court may, but is not required to, order that the vehicle owned by the person and involved in the violation or refusal be immobilized or equipped with an ignition interlock device.

This bill makes the following changes, beginning on January 1, 2002: <sup>→ ; and 2) if</sup> if a person is convicted of an OWI-related offense and the person has one or more prior OWI-related convictions, suspensions, or revocations, the court must order that each vehicle owned by the person be immobilized or equipped with an ignition interlock device for a period of not less than one year. <sup>1)</sup> a person is convicted of an OWI-related offense and the person has two or more prior OWI-related convictions, suspensions, or revocations, the court may order that the vehicle owned by the person and involved in the violation or refusal be seized and subject to forfeiture in lieu of the ignition interlock or immobilization options.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 343.301 (1) (a) of the statutes, as created by 1999 Wisconsin Act 109, ✓  
2 is amended to read: ✓

3           343.301 (1) (a) If a person improperly refuses to take a test under s. 343.305  
4 or violates s. 346.63 (1) or (2), 940.09 (1) or 940.25, and the person has a total of one  
5 or more prior convictions, suspensions or revocations, counting convictions under ss.  
6 940.09 (1) and 940.25 in the person's lifetime and other convictions, suspensions and  
7 revocations counted under s. 343.307 (1), the court ~~may~~ shall order that the person's  
8 operating privilege for the operation of "Class D" vehicles be restricted to operating  
9 "Class D" vehicles that are equipped with an ignition interlock device. This  
10 paragraph does not apply if the court orders the immobilization of each motor vehicle

*1-1-2003*

1 owned by the person under sub. (2), or, if the person has 2 or more prior convictions,  
 2 suspensions, or revocations for purposes of this paragraph, the court orders seizure  
 3 and forfeiture under s. 346.65 (6).

History: 1999 a. 109.

4 **SECTION 2.** 343.301 (1) (b) of the statutes, as created by 1999 Wisconsin Act  
 5 ~~1999~~, is amended to read: 109

6 343.301 (1) (b) The court ~~may restrict~~ shall order the operating privilege  
 7 ~~restriction~~ restriction under par. (a) for a period of not less than one year nor more than the  
 8 maximum operating privilege revocation period permitted for the refusal or  
 9 violation, beginning one year after the operating privilege revocation period began.

History: 1999 a. 109.

10 **SECTION 3.** 343.301 (2) (a) of the statutes, as created by 1999 Wisconsin Act 109,  
 11 is amended to read:

12 343.301 (2) (a) If a person improperly refuses to take a test under s. 343.305  
 13 or violates s. 346.63 (1) or (2), 940.09 (1) or 940.25, and the person has a total of one  
 14 or more prior convictions, suspensions or revocations, counting convictions under ss.  
 15 940.09 (1) and 940.25 in the person's lifetime and other convictions, suspensions and  
 16 revocations counted under s. 343.307 (1), the court ~~may~~ shall order that ~~the motor~~  
 17 ~~vehicle used during the refusal or violation and~~ each motor vehicle owned by the  
 18 person be immobilized. This paragraph does not apply if the court orders that the  
 19 person's operating privilege for the operation of "Class D" vehicles be restricted to  
 20 operating "Class D" vehicles that are equipped with an ignition interlock device  
 21 under sub. (1), or, if the person has 2 or more prior convictions, suspensions, or  
 22 revocations for purposes of this paragraph, the court orders seizure and forfeiture  
 23 under s. 346.65 (6).

History: 1999 a. 109.

1 SECTION 4. 343.301 (2) (b) of the statutes, as created by 1999 Wisconsin Act 109,  
2 is amended to read:

3 343.301 (2) (b) The court ~~may~~ shall order the immobilization under par. (a) for  
4 a period of not less than one year nor more than the maximum operating privilege  
5 revocation period permitted for the refusal or violation, beginning on the first day of  
6 the operating privilege revocation period.

History: 1999 a. 109.

7 SECTION 5. 343.305 (10m) of the statutes, as affected by 1999 Wisconsin Act 109  
8 is amended to read:

9 ~~343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A  
10 MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10)  
11 has 2 or more prior convictions, suspensions or revocations, as counted under s.  
12 343.307 (1), the procedure under s. 346.65 (6) shall be followed regarding the  
13 immobilization or seizure and forfeiture of a motor vehicle owned by the person or  
14 the equipping of a motor vehicle owned by the person with an ignition interlock  
15 device.~~

NOTE: NOTE: Sub. (10m) is amended eff. 1-1-02 by 1999 Wis. Act 109 to read: NOTE:

**343.305**

16 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10) has  
17 one or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court orders the  
18 immobilization of the motor vehicle used in the commission of the offense and owned by the person or if the court requires that the person's operating privilege for the  
19 operation of "Class D" vehicles be restricted to operating "Class D" vehicles equipped with an ignition interlock device. If the number of convictions under ss. 940.09  
20 (1) and 940.25 in the lifetime of the person whose operating privilege is revoked under sub. (10), plus the total number of other convictions, suspensions and revocations  
21 counted under s. 343.307 (1), equals 2 or more, the procedure under s. 346.65 (6) shall be followed if the court orders the seizure and forfeiture of the motor vehicle  
22 used in the improper refusal and owned by the person.

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426,  
436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109.

23 SECTION 6. 346.65 (6) (a) 1. of the statutes, as affected by 1999 Wisconsin Act  
24 109, <sup>section 56j</sup> is amended to read:

25 ~~346.65 (6) (a) 1. The court may order a law enforcement officer to seize the  
26 motor vehicle used in the violation or improper refusal and owned by the person, or,  
27 if the motor vehicle is not ordered seized, shall order a law enforcement officer to  
28 equip the motor vehicle with an ignition interlock device or immobilize any motor~~

12 pt.

1 vehicle owned by the person, whose operating privilege is revoked under s. 343.305  
 2 (10) or who committed a violation of s. 346.63 (1) (a), (b) or (2) (a) 1. or 2., 940.09 (1)  
 3 (a) or (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) if the person whose operating  
 4 privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 2  
 5 or more prior suspensions, revocations or convictions, counting convictions under ss.  
 6 940.09 (1) and 940.25 in the person's lifetime, plus other convictions, suspensions or  
 7 revocations counted under s. 343.307 (1). The court may not order a motor vehicle  
 8 seized, equipped with an ignition interlock device or immobilized if that would result  
 9 in undue hardship or extreme inconvenience or would endanger the health and  
 10 safety of a person.

→ 346.65 (b) (a)  
 (b)

NOTE: NOTE: Subd. 1. is amended eff. 1-1-02 by 1999 Wis. Act 109 to read: NOTE:

11 1. The court may order a law enforcement officer to seize the motor vehicle used in the violation or improper refusal and owned by the person whose operating  
 12 privilege is revoked under s. 343.305 (10) or who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c)  
 13 or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 2 or more prior suspensions, revocations or  
 14 convictions, counting convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other convictions, suspensions or revocations counted under s. 343.307  
 15 (1). The court may not order a motor vehicle seized if that the court enters an order under s. 343.301 (1) (a) or (2) (a) or if seizure would result in undue hardship or  
 16 extreme inconvenience or would endanger the health and safety of a person.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399, 389 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993  
 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109.

12  
13  
14  
15  
16  
no 12  
no 13  
no 14  
no 15  
no 16  
B

17 SECTION 7. 940.09 (1d) (a) of the statutes, as ~~created~~ by ~~1991~~ Wisconsin Act ~~109~~, ~~STET~~

18 is amended to read:

19 940.09 (1d) (a) If a person who committed an offense under sub. (1) (a), (b), (c)  
 20 or (d) has one or more prior convictions, suspensions or revocations, counting  
 21 convictions under this section and s. 940.09 (1) in the person's lifetime plus other  
 22 convictions, suspensions or revocations counted under s. 343.307 (1), the procedure  
 23 under s. 343.301 shall be followed ~~if the court orders the the equipping of a motor~~  
 24 ~~vehicle owned by the person with an ignition interlock device or the immobilization~~  
 25 ~~of the motor vehicle.~~

place space

1999

NOTE: NOTE: Par. (a) is created eff. 1-1-02 by 1999 Wis. Act 109. NOTE:

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 325, 359; 1991 a. 32, 277; 1995 a. 425, 436; 1997 a. 237,  
 295, 338; 1999 a. 32, 109.

26 SECTION 8. 940.25 (1d) (a) of the statutes, as ~~created~~ by ~~1991~~ Wisconsin Act ~~109~~, ~~STET~~

27 is amended to read:

affected

1999

186

plain space

1 940.25 (1d) (a) If a person who committed an offense under sub. (1) (a), (b), (c)  
 2 or (d) has one or more prior convictions, suspensions or revocations, counting  
 3 convictions under this section and s. 940.09 (1) in the person's lifetime plus other  
 4 convictions, suspensions or revocations counted under s. 343.307 (1), the procedure  
 5 under s. 343.301 shall be followed ~~if the court orders the equipping of a motor vehicle~~  
 6 ~~owned by the person with an ignition interlock device or the immobilization of the~~  
 7 ~~motor vehicle.~~

History: 1977 c. 133, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186

8 **SECTION 9352. Initial applicability; transportation.**

9 (A) IMMOBILIZATION AND IGNITION INTERLOCK DEVICES. The treatment of sections  
 10 343.301 (1) (a) and (b) and (2) (a) and (b), 346.65 (6) (a) 1., 343.305 (10m), 940.09 (1d)  
 11 (a), and 940.25 (1d) (a) of the statutes first applies to violations committed or refusals  
 12 occurring on the effective date of this subsection, but does not preclude the counting  
 13 of other convictions, suspensions, or revocations as prior convictions, suspensions,  
 14 or revocations for purposes of administrative action by the department of  
 15 transportation, sentencing by a court, or revocation or suspension of motor vehicle  
 16 operating privileges.

17 **SECTION 9452. Effective dates; transportation.**

18 (A) IMMOBILIZATION AND IGNITION INTERLOCK DEVICES. The treatment of sections  
 19 343.301 (1) (a) and (b) and (2) (a) and (b), 346.65 (6) (a) 1., 343.305 (10m), 940.09 (1d)  
 20 (a), and 940.25 (1d) (a) of the statutes and Section 9352 (A) of this act takes effect on  
 21 January 1, 2002.

9  
"KA" auto ref.

(END)  
D. N. H.

CS  
auto ref.  
"KA"

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2056/1dn

PJH:.....  
*mg*

John Etzler:

Please note that the immobilization statute does not currently allow for a "hardship" exception. The federal regulation allows states to provide a limited exception to mandatory immobilization when immobilization of a motor vehicle would cause an "undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender." Do you want me to build in a "hardship" exception?

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.state.wi.us](mailto:peggy.hurley@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2056/1dn  
PJII:kmg:pg

January 19, 2001

John Etzler:

Please note that the immobilization statute does not currently allow for a "hardship" exception. The federal regulation allows states to provide a limited exception to mandatory immobilization when immobilization of a motor vehicle would cause an "undue hardship to any individual who is completely dependent on the motor vehicle for the necessities of life, including any family member of the convicted individual, and any co-owner of the motor vehicle, but not including the offender." Do you want me to build in a "hardship" exception?

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2056/1

PJH:kmg:pg

DOA:.....Etzler – Require immobilization or ignition interlock devices after  
2nd OWI-related offense

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

- 1     **AN ACT** ...; **relating to:** immobilization of, and installation of ignition interlock  
2            devices on, motor vehicles owned by persons who commit drunken driving  
3            offenses, and providing a penalty.

---

*Analysis by the Legislative Reference Bureau*

**TRANSPORTATION**

**DRIVERS AND MOTOR VEHICLES**

A person may not operate a motor vehicle while under the influence of an intoxicant, controlled substance, or other drug (OWI), or improperly refuse to submit to a test to determine his or her blood alcohol concentration. Under current law, if a person commits either of these OWI-related offenses, the person's motor vehicle operating privilege is suspended or revoked for a certain period of time, depending on the number of the person's prior OWI-related convictions, suspensions, or revocations.

Under current law, if a person is convicted of an OWI-related offense and the person has two or more prior OWI-related convictions, suspensions, or revocations, a court may, but is not required to, order that the vehicle owned by the person and involved in the violation or refusal be seized and subject to forfeiture. If the court does not order that the vehicle be seized and subject to forfeiture, the court is required to order that the vehicle be immobilized or equipped with an ignition interlock device.

Beginning on January 1, 2002, a court will not be required to order that the vehicle owned by the person and involved in the violation or refusal be immobilized or equipped with an ignition interlock device even if the court does not order that the vehicle be seized and subject to forfeiture, and even if the person has two or more prior OWI-related convictions, suspensions, or revocations. Rather, the court may, but is not required to, order any of those options.

Also beginning on January 1, 2002, if a person is convicted of an OWI-related offense and the person has one or more prior OWI-related convictions, suspensions, or revocations, the court may, but is not required to, order that the vehicle owned by the person and involved in the violation or refusal be immobilized or equipped with an ignition interlock device.

This bill makes the following changes, beginning on January 1, 2002: 1) if a person is convicted of an OWI-related offense and the person has one or more prior OWI-related convictions, suspensions, or revocations, the court must order that each vehicle owned by the person be immobilized or equipped with an ignition interlock device for a period of not less than one year; and 2) if a person is convicted of an OWI-related offense and the person has two or more prior OWI-related convictions, suspensions, or revocations, the court may order that the vehicle owned by the person and involved in the violation or refusal be seized and subject to forfeiture in lieu of the ignition interlock or immobilization options.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 343.301 (1) (a) of the statutes, as created by 1999 Wisconsin Act 109,  
2 is amended to read:  
3           343.301 (1) (a) If a person improperly refuses to take a test under s. 343.305  
4 or violates s. 346.63 (1) or (2), 940.09 (1) or 940.25, and the person has a total of one  
5 or more prior convictions, suspensions or revocations, counting convictions under ss.  
6 940.09 (1) and 940.25 in the person's lifetime and other convictions, suspensions and  
7 revocations counted under s. 343.307 (1), the court ~~may~~ shall order that the person's  
8 operating privilege for the operation of "Class D" vehicles be restricted to operating  
9 "Class D" vehicles that are equipped with an ignition interlock device. This  
10 paragraph does not apply if the court orders the immobilization of each motor vehicle

1 owned by the person under sub. (2), or, if the person has 2 or more prior convictions,  
2 suspensions, or revocations for purposes of this paragraph, the court orders seizure  
3 and forfeiture under s. 346.65 (6).

4 **SECTION 2.** 343.301 (1) (b) of the statutes, as created by 1999 Wisconsin Act 109,  
5 is amended to read:

6 343.301 (1) (b) The court ~~may restrict~~ shall order the operating privilege  
7 restriction under par. (a) for a period of not less than one year nor more than the  
8 maximum operating privilege revocation period permitted for the refusal or  
9 violation, beginning one year after the operating privilege revocation period began.

10 **SECTION 3.** 343.301 (2) (a) of the statutes, as created by 1999 Wisconsin Act 109,  
11 is amended to read:

12 343.301 (2) (a) If a person improperly refuses to take a test under s. 343.305  
13 or violates s. 346.63 (1) or (2), 940.09 (1) or 940.25, and the person has a total of one  
14 or more prior convictions, suspensions or revocations, counting convictions under ss.  
15 940.09 (1) and 940.25 in the person's lifetime and other convictions, suspensions and  
16 revocations counted under s. 343.307 (1), the court ~~may~~ shall order that ~~the motor~~  
17 ~~vehicle used during the refusal or violation and~~ each motor vehicle owned by the  
18 person be immobilized. This paragraph does not apply if the court orders that the  
19 person's operating privilege for the operation of "Class D" vehicles be restricted to  
20 operating "Class D" vehicles that are equipped with an ignition interlock device  
21 under sub. (1), or, if the person has 2 or more prior convictions, suspensions, or  
22 revocations for purposes of this paragraph, the court orders seizure and forfeiture  
23 under s. 346.65 (6).

24 **SECTION 4.** 343.301 (2) (b) of the statutes, as created by 1999 Wisconsin Act 109,  
25 is amended to read:

1           343.301 (2) (b) The court ~~may~~ shall order the immobilization under par. (a) for  
2 a period of not less than one year nor more than the maximum operating privilege  
3 revocation period permitted for the refusal or violation, beginning on the first day of  
4 the operating privilege revocation period.

5           **SECTION 5.** 343.305 (10m) of the statutes, as affected by 1999 Wisconsin Act 109  
6 is amended to read:

7           343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A  
8 MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10)  
9 has one or more prior convictions, suspensions or revocations, as counted under s.  
10 343.307 (1), the procedure under s. 343.301 shall be followed if ~~the court orders the~~  
11 ~~immobilization of the motor vehicle used in the commission of the offense and owned~~  
12 ~~by the person or if the court requires that the person's operating privilege for the~~  
13 ~~operation of "Class D" vehicles be restricted to operating "Class D" vehicles equipped~~  
14 ~~with an ignition interlock device.~~ If the number of convictions under ss. 940.09 (1)  
15 and 940.25 in the lifetime of the person whose operating privilege is revoked under  
16 sub. (10), plus the total number of other convictions, suspensions and revocations  
17 counted under s. 343.307 (1), equals 2 or more, the procedure under s. 346.65 (6) shall  
18 be followed if the court orders the seizure and forfeiture of the motor vehicle used in  
19 the improper refusal and owned by the person.

20           **SECTION 6.** 346.65 (6) (a) 1. of the statutes, as affected by 1999 Wisconsin Act  
21 109, section 56j, is amended to read:

22           346.65 (6) (a) 1. The court may order a law enforcement officer to seize the  
23 motor vehicle used in the violation or improper refusal and owned by the person  
24 whose operating privilege is revoked under s. 343.305 (10) or who committed a  
25 violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25

1 (1) (a), (b), (c) or (d) if the person whose operating privilege is revoked under s.  
2 343.305 (10) or who is convicted of the violation has 2 or more prior suspensions,  
3 revocations or convictions, counting convictions under ss. 940.09 (1) and 940.25 in  
4 the person's lifetime, plus other convictions, suspensions or revocations counted  
5 under s. 343.307 (1). The court may not order a motor vehicle seized if that the court  
6 enters an order under s. 343.301 (1) (a) or (2) (a) or if seizure would result in undue  
7 hardship or extreme inconvenience or would endanger the health and safety of a  
8 person.

9 **SECTION 7.** 940.09 (1d) (a) of the statutes, as created by 1999 Wisconsin Act 109,  
10 is amended to read:

11 940.09 (1d) (a) If a person who committed an offense under sub. (1) (a), (b), (c)  
12 or (d) has one or more prior convictions, suspensions or revocations, counting  
13 convictions under this section and s. 940.09 (1) in the person's lifetime plus other  
14 convictions, suspensions or revocations counted under s. 343.307 (1), the procedure  
15 under s. 343.301 shall be followed if ~~the court orders the the equipping of a motor~~  
16 ~~vehicle owned by the person with an ignition interlock device or the immobilization~~  
17 ~~of the motor vehicle.~~

18 **SECTION 8.** 940.25 (1d) (a) of the statutes, as affected by 1999 Wisconsin Act  
19 186, is amended to read:

20 940.25 (1d) (a) If a person who committed an offense under sub. (1) (a), (b), (c)  
21 or (d) has one or more prior convictions, suspensions or revocations, counting  
22 convictions under this section and s. 940.09 (1) in the person's lifetime plus other  
23 convictions, suspensions or revocations counted under s. 343.307 (1), the procedure  
24 under s. 343.301 shall be followed if ~~the court orders the equipping of a motor vehicle~~

1 ~~owned by the person with an ignition interlock device or the immobilization of the~~  
2 ~~motor vehicle.~~

3 **SECTION 9352. Initial applicability; transportation.**

4 (1) IMMOBILIZATION AND IGNITION INTERLOCK DEVICES. The treatment of sections  
5 343.301 (1) (a) and (b) and (2) (a) and (b), 343.305 (10m), 346.65 (6) (a) 1., 940.09 (1d)  
6 (a), and 940.25 (1d) (a) of the statutes first applies to violations committed or refusals  
7 occurring on the effective date of this subsection, but does not preclude the counting  
8 of other convictions, suspensions, or revocations as prior convictions, suspensions,  
9 or revocations for purposes of administrative action by the department of  
10 transportation, sentencing by a court, or revocation or suspension of motor vehicle  
11 operating privileges.

12 **SECTION 9452. Effective dates; transportation.**

13 (1) IMMOBILIZATION AND IGNITION INTERLOCK DEVICES. The treatment of sections  
14 343.301 (1) (a) and (b) and (2) (a) and (b), 343.305 (10m), 346.65 (6) (a) 1., 940.09 (1d)  
15 (a), and 940.25 (1d) (a) of the statutes and SECTION 9352 (1) of this act take effect on  
16 January 1, 2002.

17 (END)