

2009 DRAFTING REQUEST

Bill

Received: 01/12/2009

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Lena Taylor (608) 266-5810

By/Representing:

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - penalties**
Drunk Driving - alcohol level
Drunk Driving - other

Extra Copies: **Peggy Hurley**

Submit via email: YES

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Drunken driving

Instructions:

All 4th offenses = I felony; if 3rd offense within 5 years of first = I felony.
IIDs mandatory for 3rd offenses OR 2d offense if BAC is .16 or above.
IID contractors may not terminate contract without a written order of a court.
If offender is at or below poverty levels suggested by 07-SB 321, then the fine is reduced by the amount necessary to pay for IID installation/coverage.
Close 08-1.0 loophole
No cancelling a professional license for OWI unless the OWI directly related to the person's profession (CTS draft?)
07 SB 546 (statewide expansion of Winnebago county) for 2d offense and 3rd if 3rd is a misdemeanor
No sunset for the Winnebago County pilot program
Nonstat: require judicial council to create a statewide sentencing guideline for OWI crimes

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>
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/?	phurley 01/12/2009			_____			S&L Crime
/P1	rnelson2 01/14/2009	jdyer 01/16/2009	jfrantze 01/20/2009	_____	sbasford 01/20/2009		S&L Crime
/1	rnelson2 01/20/2009	jdyer 01/21/2009	mduchek 01/21/2009	_____	lparisi 01/21/2009	lparisi 02/10/2009	

FE Sent For: "/1" @ intro. 2/18/09
<END>

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

Handwritten notes: 1/21 JLD MD 1/21 MD

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Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

Handwritten signatures and dates: PI/SJL, Jo 1/14, Jo/Ks 1/20

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/?
phurley
01/12/2009
rnelson2

S&L
Crime

FE Sent For:

<END>

2009 DRAFTING REQUEST

Eric Peterson

Bill

Received: 01/12/2009

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Lena Taylor (608) 266-5810

By/Representing: *Eric P.*
cell-607-772-2682

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - penalties**
Drunk Driving - alcohol level
Drunk Driving - other

Extra Copies:

Submit via email: YES

Requester's email: Sen.Taylor@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Drunken driving

Instructions:

- ✓ All 4th offenses = I felony; if 3rd offense within 5 years of first = I felony.
- ✓ IIDs mandatory for 3rd offenses OR 2d offense if BAC is .16 or above. ✓
- ✓ IID contractors may not terminate contract without a written order of a court. ✓
- ✓ If offender is at or below poverty levels suggested by 07-SB 321, then the fine is reduced by the amount necessary to pay for IID installation/coverage. ✓
- ✓ Close 08-1.0 loophole *09-0722*
- ✓ No cancelling a professional license for OWI unless the OWI directly related to the person's profession (CTS draft?) ✓ *490.12 (Cook @ crim. desc.)*
- 07 SB 546 (statewide expansion of Winnebago county) for 2d offense and 3rd if 3rd is a misdemeanor? ✓
- No sunset for the Winnebago County pilot program
- Nonstat: require judicial council to create a statewide sentencing guideline for OWI crimes

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Nelson, Robert P.

To: Peterson, Eric
Subject: 09-1443: OWI draft

3530 1/13

Eric,

These are the questions I have regarding the OWI draft:

1. Is this draft for your office and Sen. Decker wants a duplicate, or just do one draft? *if No sunset exp.*
2. You want to have a statewide expansion of Winnebago Co. pilot but also want no sunset on the Winnebago Co. pilot. I could not find a sunset on that pilot. Is there one somewhere? Also, if there is a statewide expansion of that pilot program, there will no longer be a Winnebago Co. pilot to worry about a sunset. Am I missing something?
3. You requested that IID's be mandatory for 3rd offense or for 2nd offense if BAC is .16 or more. But, s. 343.301 (1) (a) 2. seems to make them mandatory now for 2nd and later offenses within a 5-year period, regardless of BAC level. I don't understand. Or, are you asking that the language about immobilization at the end of s. 343.301 (1) (a) 2. be removed because it provides an exception to installing an IID?

Robert P. Nelson
Senior Legislative Attorney
608-267-7511

*2nd off BAC > .16 mandatory
IID*

*3rd off mandatory IIB
(no within -5 yr period)*

*keep in aob/seizure lang,
but no within -5 yr period*

Effect 9/15/09

Jud. Co. 158.13 (2)

Nelson, Robert P.

From: Sobotik, John - DOT [john.sobotik@dot.state.wi.us]
Sent: Tuesday, January 13, 2009 4:37 PM
To: Nelson, Robert P.
Subject: RE: Ignition interlock

No, there is no error. The 1. provision was Wisconsin law before the feds started in on IIDs. The 2. provision complies with federal requirements.

The feds consider someone a repeater if they EVER had 2 offenses in a 5-year period. So, if you have a prior in 1989 and another in 1991 and get caught today, you are a federal repeater, and the 2. provision applies to you. It could be that you have a prior in 2005 and get caught today. You have only 1 prior, but you have 2 in a 5-year period and you are therefore a federal repeater.

Btw, did you know that the mandatory 1 year hard suspension provisions were repealed?

I have NOT been watching for regulatory changes tied to this change.

If you want the statutory and regulatory cites and legislation, let me know.

- John

 John Sobotik
 Asst. General Counsel
 Wisconsin Dept. of Transportation
 4802 Sheboygan Avenue, Room 115B
 P.O. Box 7910
 Madison, WI 53707-7910
 Phone: (608) 267 9320
 Fax: (608) 267 6734

-----Original Message-----

From: Nelson, Robert P. [mailto:Robert.Nelson@legis.wisconsin.gov]
Sent: Tuesday, January 13, 2009 10:30 AM
To: Sobotik, John - DOT
Subject: Ignition interlock

John,

I hope you and your family are happy and warm. I have been convinced to help with DD drafts and need some advice/clarification. Sorry.

S. 343.301 (1) (a) 1. and 2. confuse me. 1. says that the court may order an IID installed if the person has one or more priors in the person's lifetime, which seems to mean that for a 2nd offense, the court has discretion to order an IID installed. But, 2. says the court shall order an IID installed if the person has 2 or more convictions...("prior" omitted) within any 5-year period. That also sounds like a 2nd offense. Is the only difference the 5-year period between a mandatory and discretionary IID installation. Or is the failure to add "prior" a drafting error?

Another question: what happens after the court orders an IID installed and the offender does not pay the installer?

Bob Nelson

Senior Legislative Attorney
 608-267-7511

01/14/2009



jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

4

Gen ✓

OWI

committed an OWI offense and

1
2

AN ACT ...; relating to: operation of a motor vehicle while under the influence of
an intoxicant and providing a penalty

to the laws ✓
Analysis by the Legislative Reference Bureau

This bill makes numerous changes related to the operation of a motor vehicle while under the influence of an intoxicant, including the following:

1. Current law gives the court discretion to require the installation of a ignition interlock device on a person's motor vehicle if the person who operated a motor vehicle while under the influence of an intoxicant (OWI) has one or more prior convictions, suspensions, or revocations for OWI. If the person has two convictions, suspensions, or revocations for OWI within any 5-year period, under current law, the court is required to order the installation of a ignition interlock device on a person's motor vehicle. This bill requires the court to order the installation of a ignition interlock device on a person's motor vehicle if the person has a 3rd conviction, suspension, or revocation for OWI within any period; or if the person has a 2nd conviction, suspension, or revocation for OWI within any period and had a alcohol concentration of 0.16 or greater at the time of the current offense.

2. The bill requires the court, if it orders the installation of an ignition interlock device, to determine the income of the violator, and if the violator's income is less than the income limit for the Wisconsin Works Program to reduce the amount of the fine imposed by the amount necessary to pay for the installation and maintenance of the ignition interlock device.

3. The bill prohibits the company that equips a motor vehicle with an ignition interlock device from removing the device or terminating the contract for the

check
second

imprisonment
maintenance of the device during the period that the court ordered without first receiving the court's permission.

4. The bill increases the penalties for OWI: ^{third} as follows

a. The penalty for a ^{3rd} OWI offense is currently a fine of \$600 to \$2,000 and 30 days to one year in jail. Under the bill, if the person has a third OWI-related conviction, suspension, or revocation within a ⁵-year period, the current offense is a Class I felony and creates a minimum fine of \$600 and a minimum imprisonment of 60 days. ^{of}

b. The penalty for a ^{4th} OWI offense is currently a fine of \$600 to \$2,000 and 60 days to one year in jail. The bill makes the ^{4th} OWI offense a Class I felony and creates a minimum fine of \$600 and a minimum imprisonment of 60 days.

The bill requires the Judicial Commission to establish advisory sentencing guidelines for OWI offenses and make those guidelines and any revisions available to judges and attorneys at least annually.

The bill prohibits the Department of Regulation and Licensing from denying an application for an initial credential or credential renewal or ~~revoking~~ a credential if the credential applicant or holder has an OWI-related conviction, suspension, or revocation unless the conviction, suspension, or revocation occurred while the applicant or holder of the credential was acting within the scope of the credential.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

Insert
AnLA
+
IS
ANLB

revoking

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

Insert
2-1

1 SECTION 1. 343.301 (1) (a) 1. of the statutes is amended to read:

2 343.301 (1) (a) 1. Except as provided in subd. 2. and 3., if a person improperly
3 refuses to take a test under s. 343.305 or violates s. 346.63 (1) or (2), 940.09 (1), or
4 940.25, and the person has a total of one or more prior convictions, suspensions, or
5 revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's
6 lifetime and other convictions, suspensions, and revocations counted under s.
7 343.307 (1), the court may order that the person's operating privilege for the

1 operation of "Class D" vehicles be restricted to operating "Class D" vehicles that are
2 equipped with an ignition interlock device.

History: 1999 a. 109; 2001 a. 16 ss. 3417m to 3420t, 4060gj, 4060hw, 4060hy; 2001 a. 104.

3 SECTION 2. 343.301 (1) (a) 2. of the statutes is amended to read:

4 343.301 (1) (a) 2. If Except as provided in subd. 3.[✓] if a person improperly
5 refuses to take a test under s. 343.305 or violates s. 346.63 (1) or (2), 940.09 (1), or
6 940.25, and the person has a total of 2 or more convictions, suspensions, or
7 revocations, counted under s. 343.307 (1) within any 5-year period, the court shall
8 order that the person's operating privilege for the operation of "Class D" vehicles be
9 restricted to operating vehicles that are equipped with an ignition interlock device
10 and shall order that each motor vehicle for which the person's name appears on the
11 vehicle's certificate of title or registration be equipped with an ignition interlock
12 device. If equipping each motor vehicle with an ignition interlock device under this
13 subdivision would cause an undue financial hardship, the court may order that one
14 or more motor vehicles subject to this subdivision not be equipped with an ignition
15 interlock device. This subdivision does not apply if the court enters an order under
16 sub. (2) (a) 2. or, if the person has 2 or more prior convictions, suspensions, or
17 revocations for purposes of this subdivision, to the motor vehicle owned by the person
18 and used in the violation or refusal if the court orders the vehicle to be seized and
19 forfeited under s. 346.65 (6).

History: 1999 a. 109; 2001 a. 16 ss. 3417m to 3420t, 4060gj, 4060hw, 4060hy; 2001 a. 104.

20 SECTION 3. 343.301 (1) (a) 3. of the statutes is created to read:

21 343.301 (1) (a) 3. If a person improperly refuses to take a test under s. 343.305[✓]
22 or violates s. 346.63 (1) or (2),[✓] 940.09 (1),[✓] or 940.25[✓], and the person has a total of two²
23 or more prior convictions, suspensions, or revocations, counted under s.[✓] 343.307 (1),
24 or the person has a prior conviction, suspension, or revocation counted under s.

SECTION 3

1 343.307 (1) and has an alcohol concentration of 0.16 or more at the time of the current
2 offense, the court shall order that the person's operating privilege for the operation
3 of "Class D" vehicles be restricted to operating vehicles that are equipped with an
4 ignition interlock device and shall order that each motor vehicle for which the
5 person's name appears on the vehicle's certificate of title or registration be equipped
6 with an ignition interlock device. If equipping each motor vehicle with an ignition
7 interlock device under this subdivision would cause an undue financial hardship, the
8 court may order that one or more motor vehicles subject to this subdivision not be
9 equipped with an ignition interlock device. This subdivision does not apply if the
10 court enters an order under sub. (2) (a) 2. or, if the person has 2 or more prior
11 convictions, suspensions, or revocations for purposes of this subdivision, to the motor
12 vehicle owned by the person and used in the violation or refusal if the court orders
13 the vehicle to be seized and forfeited under s. 346.65 (6).

14 SECTION 4. 343.301 (1) (c) of the statutes is renumbered 343.301 (1) (c) 1.

15 SECTION 5. 343.301 (1) (c) 2. of the statutes is created to read:

16 343.301 (1) (c) 2. If the court enters an order under par. (a), the court shall
17 determine the amount of the person's income, and, if the person's income is less than
18 the income limitations in s. 49.145 (3) (b), the court shall reduce any fine imposed
19 upon the person as a result of his or her conviction under s. 346.63 (1) or (2), s. 940.09
20 (1), or 940.25 by the amount necessary to pay for the installation and maintenance
21 of the ignition interlock device.

22 SECTION 6. 343.301 (1) (cm) of the statutes is created to read:

23 343.301 (1) (cm) The company that equips the ignition interlock device on a
24 motor vehicle may not remove the device or terminate the contract for the

1 maintenance of the device during the period that the court ordered under par. (b) ✓
 2 without the court's permission.

3 SECTION 7. 346.65 (2) (am) 3. of the statutes is amended to read:

4 346.65 (2) (am) 3. Except as provided in subd. 3m. and pars. (cm), (f), and (g),
 5 shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less
 6 than 30 days nor more than one year in the county jail if the number of convictions
 7 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
 8 suspensions, revocations, and other convictions counted under s. 343.307 (1), equals
 9 3, except that suspensions, revocations, or convictions arising out of the same
 10 incident or occurrence shall be counted as one.

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; 1989 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; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111.

11 SECTION 8. 346.65 (2) (am) 3m. of the statutes is created to read:

12 346.65 (2) (am) 3m. Except as provided in pars. (cm), (f), and (g), is guilty of a
 13 Class I felony and shall be fined not less than \$600 and imprisoned for not less than
 14 60 days if the number of suspensions, revocations, and other convictions counted
 15 under s. 343.307 (1) within a 5-year period, equals 3, except that suspensions,
 16 revocations, or convictions arising out of the same incident or occurrence shall be
 17 counted as one.

18 SECTION 9. 346.65 (2) (am) 4. of the statutes is amended to read:

19 346.65 (2) (am) 4. Except as provided in pars. (f) and (g), is guilty of a Class I
 20 felony and shall be fined not less than \$600 ~~nor more than \$2,000~~ and imprisoned
 21 for not less than 60 days ~~nor more than one year in the county jail~~ if the number of
 22 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
 23 number of suspensions, revocations and other convictions counted under s. 343.307

1 (1), equals 4, except that suspensions, revocations or convictions arising out of the
2 same incident or occurrence shall be counted as one.

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; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 128, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 83, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111.

SECTION 10. 440.122 of the statutes is created to read:

440.122 **Credential denial, nonrenewal and revocation based on operation of motor vehicle while under the influence.** Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department may not deny an application for an initial credential or credential renewal or revoke a credential if the credential applicant or holder was convicted of an offense counted under s. 343.307 (2) or whose operating privilege was suspended or revoked as described under s. 343.307 (2) (f) or (g) unless the conviction, suspension, or revocation occurred while the applicant or holder of the credential was acting within the scope of the credential.

Inserts
6-3a
6-3b
6-3c

6

7

8

9

10

11

127
Insert
6-123

SECTION 11. 758.13 (2) (h) of the statutes is created to read:

758.13 (2) (h) Adopt advisory sentencing guidelines for violations of s. 346.63 (1) or (2), s. 940.09 (1), or 940.25 to promote public safety, to reflect changes in sentencing practices, and to preserve the integrity of the judicial, criminal justice, and correctional systems.

14

15

16

17

SECTION 12. 758.13 (2) (i) of the statutes is created to read:

758.13 (2) (i) Provide information to judges and attorneys about the sentencing guidelines adopted under par. (h), which shall include annual reports that include the most current sentencing guidelines and all changes in existing sentencing guidelines adopted during the 12 months preceding the report.

18

19

20

21

22

Insert
6-22

SECTION 13. Initial applicability.

Inserts
Anl A
6-3a

2009 BILL

1 AN ACT *to repeal* 346.65 (8); and *to amend* 346.65 (2) (bm), 346.65 (2) (cm),
2 346.65 (2j) (bm), 346.65 (2j) (cm) and 346.65 (3r) of the statutes; **relating to:**
3 drunken driving and creating a penalty.

Analysis by the Legislative Reference Bureau

45. 2005 Wisconsin Act 389 created a pilot program for sentencing persons in Winnebago county who are convicted of certain second or third offenses involving operating a motor vehicle with a prohibited alcohol concentration, or under the influence of an intoxicant, a controlled substance or its analog, or any combination thereof ~~OWI~~. Under that act, the period of imprisonment for an OWI offense in Winnebago county may be reduced if the violator successfully completes a period of probation that includes alcohol and other drug treatment. A person may complete a treatment program and receive a reduced period of imprisonment only once. ~~NO A~~
~~NO~~ This bill expands the sentencing option to any county that opts to allow a violator to successfully complete a period of probation that includes alcohol and other drug treatment in exchange for a shorter period of imprisonment. (end ms)

insert
anl A

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

BILL

insert 6-3a
↓

1 SECTION 1. 346.65 (2) (bm) ✓ of the statutes is amended to read:

2 346.65 (2) (bm) In ~~Winnebago County~~ any county that opts to offer a reduced
3 minimum period of imprisonment for the successful completion of a probation period
4 that includes alcohol and other drug treatment ✓, if the number of convictions under
5 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
6 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
7 a 10-year period, equals 2, except that suspensions, revocations, or convictions
8 arising out of the same incident or occurrence shall be counted as one, the fine shall
9 be the same as under par. (am) 2., but the period of imprisonment shall be not less
10 than 5 days, except that if the person successfully completes a period of probation
11 that includes alcohol and other drug treatment, the period of imprisonment shall be
12 not less than 5 nor more than 7 days. A person may be sentenced under this
13 paragraph or under par. (cm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

14 SECTION 2. 346.65 (2) (cm) ✓ of the statutes is amended to read:

15 346.65 (2) (cm) In ~~Winnebago County~~ any county that opts to offer a reduced
16 minimum period of imprisonment for the successful completion of a probation period
17 that includes alcohol and other drug treatment, if the number of convictions under
18 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
19 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
20 a 10-year period, equals 3, except that suspensions, revocations, or convictions
21 arising out of the same incident or occurrence shall be counted as one, the fine shall
22 be the same as under par. (am) 3., but the period of imprisonment shall be not less
23 than 30 days, except that if the person successfully completes a period of probation
24 that includes alcohol and other drug treatment, the period of imprisonment shall be

↓

BILL

INS 6-3a
CONT

1 not less than 10 days. A person may be sentenced under this paragraph or under par.
2 (bm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

3 SECTION 3. 346.65 (2j) (bm) of the statutes is amended to read:

4 346.65 (2j) (bm) In Winnebago County any county that opts to offer a reduced
5 minimum period of imprisonment for the successful completion of a probation period
6 that includes alcohol and other drug treatment, if the number of convictions under
7 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
8 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
9 a 10-year period, equals 2, except that suspensions, revocations, or convictions
10 arising out of the same incident or occurrence shall be counted as one, the fine shall
11 be the same as under par. (am) 2., but the period of imprisonment shall be not less
12 than 5 days, except that if the person successfully completes a period of probation
13 that includes alcohol and other drug treatment, the period of imprisonment shall be
14 not less than 5 nor more than 7 days. A person may be sentenced under this
15 paragraph or under par. (cm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

16 SECTION 4. 346.65 (2j) (cm) of the statutes is amended to read:

17 346.65 (2j) (cm) In Winnebago County any county that opts to offer a reduced
18 minimum period of imprisonment for the successful completion of a probation period
19 that includes alcohol and other drug treatment, if the number of convictions under
20 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
21 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
22 a 10-year period, equals 3 or more, except that suspensions, revocations, or
23 convictions arising out of the same incident or occurrence shall be counted as one, the
24 fine shall be the same as under par. (am) 3., but the period of imprisonment shall be
25 not less than 30 days, except that if the person successfully completes a period of



INS 6-3a
cont

BILL

1 probation that includes alcohol and other drug treatment, the period of
2 imprisonment shall be not less than 10 days. A person may be sentenced under this
paragraph or under par. (bm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

Insert
RPN 5

SECTION 5. 346.65 (3r) of the statutes is amended to read:

346.65 (3r) In ~~Winnebago County~~ any county that opts to offer a reduced
minimum period of imprisonment for the successful completion of a probation period
that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or
(6) shall be fined the same as under sub. (3m), but the period of imprisonment shall
be not less than 30 days, except that if the person successfully completes a period of
probation that includes alcohol and other drug treatment, the period of
imprisonment shall be not less than 15 days. If there was a minor passenger under
16 years of age in the motor vehicle at the time of the violation that gave rise to the
conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum
and maximum fines or periods of imprisonment for the conviction are doubled and
the place of imprisonment shall be determined under s. 973.02. A person may be
sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once
in his or her lifetime.

SECTION 6. 346.65 (8) of the statutes is repealed.

(END) of insert 6-3a

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts:
An C-B
2-1
6-3b
6-12
6-22

1 AN ACT *to amend* 165.755 (1) (b), 302.46 (1) (a), 343.23 (2) (b), 343.30 (1q) (c) 1.
2 (intro.), 346.655 (1), 757.05 (1) (a), 814.63 (1) (c), 814.83 (2), 814.65 (1), 814.85
3 (1) (a) and 814.86 (1) of the statutes; **relating to:** penalty surcharges, court
4 fees, drivers' records, and drug and alcohol assessment for persons who commit
5 certain offenses relating to driving while intoxicated.

use twice
a prohibited

Analysis by the Legislative Reference Bureau

Under current law, a person who is subject to a forfeiture or a fine for violating most state laws or local ordinances is also liable for a variety of penalty surcharges and court fees. In addition, a person who commits an offense relating to driving while intoxicated is liable for a penalty surcharge for driver improvement programs and is required to comply with an alcohol and other drug assessment before he or she is eligible for reinstatement of his or her driving privileges.

4.6. Currently, a person who commits his or her first offense related to driving while intoxicated and who has a blood alcohol concentration between 0.08 and 0.99 at the time of the offense is not liable for the surcharges or fees and does not need to comply with an alcohol or other drug assessment program. Further, the Department of Transportation (DOT) must purge its records of a first offense related to driving while intoxicated after ten years; the department keeps all other records of offenses related to driving while intoxicated permanently.

Under this bill, a person who commits his or her first offense related to driving while intoxicated and who has a blood alcohol concentration between 0.08 and 0.99

insert A N C-B

DOT

OWI

penalty

court

sum



end of Aml-B

at the time of the violation is liable for the surcharges or fees and must comply with an alcohol or other drug assessment program before his or her driving privileges may be reinstated. Under this bill, DOT must keep a record of this offense permanently.

For further information see the *state and local* 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:

insert
2-1

SECTION 1. 165.755 (1) (b) of the statutes is amended to read:

165.755 (1) (b) A court may not impose the crime laboratories and drug law enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5) (b), for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use violation under s. 347.48 (2m).

SECTION 2. 302.46 (1) (a) of the statutes is amended to read:

302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), or for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail surcharge under ch. 814 in an amount of 1 percent of the fine or forfeiture imposed



1 or \$10, whichever is greater. If multiple offenses are involved, the court shall
2 determine the jail surcharge on the basis of each fine or forfeiture. If a fine or
3 forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge
4 in proportion to the suspension.

5 **SECTION 3.** 343.23 (2) (b) of the statutes is amended to read:

6 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
7 the department so that the complete operator's record is available for the use of the
8 secretary in determining whether operating privileges of such person shall be
9 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
10 of public safety. The record of suspensions, revocations, and convictions that would
11 be counted under s. 343.307 (2) shall be maintained permanently, ~~except that the~~
12 ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~
13 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~
14 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
15 ~~time of the violation, if the person does not have a commercial driver license, if the~~
16 ~~violation was not committed by a person operating a commercial motor vehicle, and~~
17 ~~if the person has no other suspension, revocation, or conviction that would be counted~~
18 ~~under s. 343.307 during that 10-year period.~~ ✓ The record of convictions for
19 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
20 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and
21 (j), and all records specified in par. (am), shall be maintained for at least 3 years. The
22 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be
23 maintained permanently, except that 5 years after a licensee transfers residency to
24 another state such record may be transferred to another state of licensure of the
25 licensee if that state accepts responsibility for maintaining a permanent record of

(h 9 prt)
2-1
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1 convictions for disqualifying offenses. Such reports and records may be cumulative
 2 beyond the period for which a license is granted, but the secretary, in exercising the
 3 power of suspension granted under s. 343.32 (2) may consider only those reports and
 4 records entered during the 4-year period immediately preceding the exercise of such
 5 power of suspension.

6 **SECTION 4.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

7 343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. or b., and except for
 8 a first violation of s. 346.63 (1) (b), if the person who committed the violation had a
 9 blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
 10 violation, the court shall order the person to submit to and comply with an
 11 assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for
 12 examination of the person's use of alcohol, controlled substances or controlled
 13 substance analogs and development of a driver safety plan for the person. The court
 14 shall notify the department of transportation of the assessment order. The court
 15 shall notify the person that noncompliance with assessment or the driver safety plan
 16 will result in revocation of the person's operating privilege until the person is in
 17 compliance. The assessment order shall:

18 **SECTION 5.** 346.655 (1) of the statutes is amended to read:

19 346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63
 20 (1) or (5), except for a first violation of s. 346.63 (1) (b), if the person who committed
 21 the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at
 22 the time of the violation, or a local ordinance in conformity therewith, or s. 346.63
 23 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall
 24 impose a driver improvement surcharge under ch. 814 in an amount of \$365 in

Insert
2-14

End of ins
2-14

Insert
6-3b



end of 6-36

insert
6-12

insert
6-22

1 addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under
2 ch. 814.

3 **SECTION 6.** 757.05 (1) (a) of the statutes is amended to read:

4 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
5 state law or for a violation of a municipal or county ordinance except for a violation
6 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s.~~
7 ~~23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
8 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
9 ~~than 0.1 at the time of the violation,~~ ✓ ~~or for a violation of state laws or municipal or~~
10 ~~county ordinances involving nonmoving traffic violations, violations under s. 343.51~~
11 ~~(1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be imposed in~~
12 ~~addition a penalty surcharge under ch. 814 in an amount of 26 percent of the fine or~~
13 ~~forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be~~
14 ~~based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is~~
15 ~~suspended in whole or in part, the penalty surcharge shall be reduced in proportion~~
16 ~~to the suspension.~~ (end ins 6-12)

17 **SECTION 7.** 814.63 (1) (c) of the statutes is amended to read:

18 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
19 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~for a first violation of s. 23.33~~
20 ~~(4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
21 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
22 ~~than 0.1 at the time of the violation,~~ ✓ ~~or for a violation under s. 343.51 (1m) (b), or a~~
23 ~~safety belt use violation under s. 347.48 (2m).~~

24 **SECTION 8.** 814.63 (2) of the statutes is amended to read:



INS 6-22
COST

1 814.63 (2) Upon the disposition of a forfeiture action in circuit court for
 2 violation of a county, town, city, village, town sanitary district or public inland lake
 3 protection and rehabilitation district ordinance, except for an action for a first
 4 violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the
 5 person who committed the violation had a blood alcohol concentration of 0.08 or more
 6 but less than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m)
 7 (b) or a safety belt use violation under s. 347.48 (2m), the county, town, city, village,
 8 town sanitary district or public inland lake protection and rehabilitation district
 9 shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

10 **SECTION 9.** 814.65 (1) of the statutes is amended to read:

11 814.65 (1) COURT COSTS. In a municipal court action, except for an action for
 12 a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)
 13 (b), if the person who committed the violation had a blood alcohol concentration of
 14 0.08 or more but less than 0.1 at the time of the violation, or for a violation of an
 15 ordinance in conformity with s. 343.51 (1m) (b) or 347.48 (2m), the municipal judge
 16 shall collect a fee of not less than \$15 nor more than \$28 on each separate matter,
 17 whether it is on default of appearance, a plea of guilty or no contest, on issuance of
 18 a warrant or summons, or the action is tried as a contested matter. Of each fee
 19 received by the judge under this subsection, the municipal treasurer shall pay
 20 monthly \$5 to the secretary of administration for deposit in the general fund and
 21 shall retain the balance for the use of the municipality.

22 **SECTION 10.** 814.85 (1) (a) of the statutes is amended to read:

23 814.85 (1) (a) Except for an action for a first violation of s. 23.33 (4c) (a) 2.,
 24 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the
 25 violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the

INS 6-22
CONT

1 ~~time of the violation, or for~~ a violation under s. 343.51 (1m) (b) or a safety belt use
2 violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68
3 court support services surcharge from any person, including any governmental unit
4 as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or
5 814.63 (1).

6 **SECTION 11.** 814.86 (1) of the statutes is amended to read:

7 814.86 (1) Except for an action for ~~a first violation of s. 23.33 (4c) (a) 2., 30.681~~
8 ~~(1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b),~~ if the person who committed the violation
9 had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
10 violation, ~~or for~~ a violation under s. 343.51 (1m) (b) or a safety belt use violation under
11 s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$12 justice
12 information system surcharge from any person, including any governmental unit, as
13 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
14 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in
15 addition to the surcharge listed in sub. (1m).

16 (END)

of ins 6-22)

insert ~~HAZARD~~
RPN (to INS 6-3a)

under s. 758.13(2)
(h) ~~o~~

Section #. 346.65 (2m) (a) of the statutes is amended to read:

346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall review the record and consider the aggravating and mitigating factors in the matter and the sentencing guidelines adopted. If the amount of alcohol in the person's blood or urine or the amount of a restricted controlled substance in the person's blood is known, the court shall consider that amount as a factor in sentencing. ~~The chief judge of each judicial administrative district shall adopt guidelines, under the chief judge's authority to adopt local rules under SCR 70.34, for the consideration of aggravating and mitigating factors.~~

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; 1989 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; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111.

(end ins RPN to INS
63a)

Nelson, Robert P.

From: Peterson, Eric
Sent: Wednesday, January 21, 2009 9:09 AM
To: Nelson, Robert P.
Subject: RE: Draft review: LRB 09-1443/P1 Topic: Drunken driving

Bob:

I just got back from a leadership meeting. I need to have the professional licensure section removed from the bill draft. Please keep the language around as I will need it drafted as a simple amendment to the bill when introduced.

Any questions, please call me.

Eric

Eric M. Peterson

Chief of Staff, Senator Lena C. Taylor
Staff Director, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing
Joint Review Committee on Criminal Penalties
608-266-5810

From: Nelson, Robert P.
Sent: Wednesday, January 21, 2009 9:01 AM
To: Peterson, Eric
Subject: RE: Draft review: LRB 09-1443/P1 Topic: Drunken driving

Erric,

OK, sorry for the slip-up. Thanks for reading the analysis. I put it in editing last night.

Bob N

From: Peterson, Eric
Sent: Tuesday, January 20, 2009 2:51 PM
To: Basford, Sarah; Nelson, Robert P.
Subject: RE: Draft review: LRB 09-1443/P1 Topic: Drunken driving

Bob:

Can you redraft the bill? The analysis incorrectly says the Judicial Commission is to create Sentencing Guidelines. It should read the "judicial council".

Thanks,
Eric

01/21/2009

Eric M. Peterson

Chief of Staff, Senator Lena C. Taylor

Staff Director, Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing

Joint Review Committee on Criminal Penalties

608-266-5810

From: Basford, Sarah

Sent: Tuesday, January 20, 2009 1:25 PM

To: Sen.Taylor

Subject: Draft review: LRB 09-1443/P1 Topic: Drunken driving

Following is the PDF version of draft LRB 09-1443/P1.



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2009 Bill

~~See anal
p 3~~

repeal ✓

✓

1 **AN ACT to repeal** 346.65 (8); **to renumber** 343.301 (1) (c); **to amend** 165.755 (1)

2 (b), 302.46 (1) (a), 343.23 (2) (b), 343.30 (1q) (c) 1. (intro.), 343.301 (1) (a) 1.,

3 343.301 (1) (a) 2., 346.65 (2) (am) 3., 346.65 (2) (am) 4., 346.65 (2) (bm), 346.65

4 (2) (cm), 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (2m) (a), 346.65 (3r), 346.655

5 (1), 757.05 (1) (a), 814.63 (1) (c), 814.63 (2), 814.65 (1), 814.85 (1) (a) and 814.86

6 (1); and **to create** 343.301 (1) (a) 3., 343.301 (1) (c) 2., 343.301 (1) (cm), 346.65

7 (2) (am) 3m., 440.122, 758.13 (2) (h) and 758.13 (2) (i) of the statutes; **relating**

8 **to:** operation of a motor vehicle while under the influence of an intoxicant and

9 providing a penalty. ✓

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the laws related to the operation of a motor vehicle while under the influence of an intoxicant (OWI), including the following:

1. Current law gives a court discretion to require the installation of an ignition interlock device on a person's motor vehicle if the person ~~who~~^{who} committed an OWI * offense and has one or more prior convictions, suspensions, or revocations for OWI. Under current law, if the person has two convictions, suspensions, or revocations for

OWI within any five-year period, the court is required to order the installation of an ignition interlock device on a person's motor vehicle. This bill requires the court to order the installation of a ignition interlock device on a person's motor vehicle if the person has a third conviction, suspension, or revocation for OWI within any period; or if the person has a second conviction, suspension, or revocation for OWI within any period and had an alcohol concentration of 0.16 or greater at the time of the current offense.

2. The bill requires the court, if it orders the installation of an ignition interlock device, to determine the income of the violator, and if the violator's income is less than the income limit for the Wisconsin Works program to reduce the amount of the fine imposed by the amount necessary to pay for the installation and maintenance of the ignition interlock device.

3. The bill prohibits the company that equips a motor vehicle with an ignition interlock device from removing the device or terminating the contract for the maintenance of the device during the period that the court ordered without first receiving the court's permission.

4. The bill increases the penalties for OWI as follows:

a. The penalty for a third OWI offense is currently a fine of \$600 to \$2,000 and imprisonment of 30 days to one year in jail. Under the bill if the person has a third OWI-related conviction, suspension, or revocation within a five-year period, the current offense is a Class I felony and creates a minimum fine of \$600 and a minimum imprisonment of 60 days.

b. The penalty for a fourth OWI offense is currently a fine of \$600 to \$2,000 and imprisonment of 60 days to one year in jail. The bill makes the fourth OWI offense a Class I felony and creates a minimum fine of \$600 and a minimum imprisonment of 60 days.

5. 2005 Wisconsin Act 389 created a pilot program for sentencing persons in Winnebago County who are convicted of certain second or third offenses involving OWI. Under that act, the period of imprisonment for an OWI offense in Winnebago County may be reduced if the violator successfully completes a period of probation that includes alcohol and other drug treatment. A person may complete a treatment program and receive a reduced period of imprisonment only once. This bill expands the sentencing option to any county that opts to allow a violator to successfully complete a period of probation that includes alcohol and other drug treatment in exchange for a shorter period of imprisonment.

6. Currently, a person who commits his or her first OWI offense and who has a prohibited alcohol concentration between 0.08 and 0.99 at the time of the offense is not liable for penalty surcharges or court fees and does not need to comply with an alcohol or other drug assessment program. Further, the Department of Transportation (DOT) must purge its records of a first OWI offense after ten years; DOT keeps all other records of OWI offenses permanently.

Under this bill, a person who commits his or her first OWI offense and who has a prohibited alcohol concentration between 0.08 and 0.99 at the time of the violation is liable for the surcharges or fees and must comply with an alcohol or other drug

assessment program before his or her driving privileges may be reinstated. Under this bill, DOT must keep a record of this offense permanently.

The bill requires the Judicial ~~Commission~~^{Council} to establish advisory sentencing guidelines for OWI offenses and make those guidelines and any revisions available to judges and attorneys at least annually.

~~The bill prohibits the Department of Regulation and Licensing from denying an application for an initial credential or credential renewal or revoking a credential if the credential applicant or holder has an OWI-related conviction, suspension, or revocation unless the conviction, suspension, or revocation occurred while the applicant or holder of the credential was acting within the scope of the credential.~~

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* 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.** 165.755 (1) (b) of the statutes is amended to read:

2 165.755 (1) (b) A court may not impose the crime laboratories and drug law
3 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),
4 (bm), (br), or (bv) or (5) (b), ~~for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,~~
5 ~~346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood~~
6 ~~alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,~~
7 or for a violation of a state law or municipal or county ordinance involving a
8 nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
9 violation under s. 347.48 (2m).

10 **SECTION 2.** 302.46 (1) (a) of the statutes is amended to read:

11 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
12 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
13 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s. 23.33 (4c) (a)~~

1 ~~2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the~~
2 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
3 ~~time of the violation, or for a violation of state laws or municipal or county ordinances~~
4 ~~involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety~~
5 ~~belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail~~
6 ~~surchage under ch. 814 in an amount of 1 percent of the fine or forfeiture imposed~~
7 ~~or \$10, whichever is greater. If multiple offenses are involved, the court shall~~
8 ~~determine the jail surcharge on the basis of each fine or forfeiture. If a fine or~~
9 ~~forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge~~
10 ~~in proportion to the suspension.~~

11 **SECTION 3.** 343.23 (2) (b) of the statutes is amended to read:

12 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
13 the department so that the complete operator's record is available for the use of the
14 secretary in determining whether operating privileges of such person shall be
15 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
16 of public safety. The record of suspensions, revocations, and convictions that would
17 be counted under s. 343.307 (2) shall be maintained permanently, ~~except that the~~
18 ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~
19 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~
20 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
21 ~~time of the violation, if the person does not have a commercial driver license, if the~~
22 ~~violation was not committed by a person operating a commercial motor vehicle, and~~
23 ~~if the person has no other suspension, revocation, or conviction that would be counted~~
24 ~~under s. 343.307 during that 10-year period. The record of convictions for~~
25 ~~disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10~~

1 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and
2 (j), and all records specified in par. (am), shall be maintained for at least 3 years. The
3 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be
4 maintained permanently, except that 5 years after a licensee transfers residency to
5 another state such record may be transferred to another state of licensure of the
6 licensee if that state accepts responsibility for maintaining a permanent record of
7 convictions for disqualifying offenses. Such reports and records may be cumulative
8 beyond the period for which a license is granted, but the secretary, in exercising the
9 power of suspension granted under s. 343.32 (2) may consider only those reports and
10 records entered during the 4-year period immediately preceding the exercise of such
11 power of suspension.

12 **SECTION 4.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

13 343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. or b., and ~~except for~~
14 ~~a first violation of s. 346.63 (1) (b), if the person who committed the violation had a~~
15 ~~blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the~~
16 ~~violation,~~ the court shall order the person to submit to and comply with an
17 assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for
18 examination of the person's use of alcohol, controlled substances or controlled
19 substance analogs and development of a driver safety plan for the person. The court
20 shall notify the department of transportation of the assessment order. The court
21 shall notify the person that noncompliance with assessment or the driver safety plan
22 will result in revocation of the person's operating privilege until the person is in
23 compliance. The assessment order shall:

24 **SECTION 5.** 343.301 (1) (a) 1. of the statutes is amended to read:

1 343.301 (1) (a) 1. Except as provided in subd. 2. and 3., if a person improperly
2 refuses to take a test under s. 343.305 or violates s. 346.63 (1) or (2), 940.09 (1), or
3 940.25, and the person has a total of one or more prior convictions, suspensions, or
4 revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's
5 lifetime and other convictions, suspensions, and revocations counted under s.
6 343.307 (1), the court may order that the person's operating privilege for the
7 operation of "Class D" vehicles be restricted to operating "Class D" vehicles that are
8 equipped with an ignition interlock device.

9 **SECTION 6.** 343.301 (1) (a) 2. of the statutes is amended to read:

10 343.301 (1) (a) 2. If Except as provided in subd. 3., if a person improperly
11 refuses to take a test under s. 343.305 or violates s. 346.63 (1) or (2), 940.09 (1), or
12 940.25, and the person has a total of 2 or more convictions, suspensions, or
13 revocations, counted under s. 343.307 (1) within any 5-year period, the court shall
14 order that the person's operating privilege for the operation of "Class D" vehicles be
15 restricted to operating vehicles that are equipped with an ignition interlock device
16 and shall order that each motor vehicle for which the person's name appears on the
17 vehicle's certificate of title or registration be equipped with an ignition interlock
18 device. If equipping each motor vehicle with an ignition interlock device under this
19 subdivision would cause an undue financial hardship, the court may order that one
20 or more motor vehicles subject to this subdivision not be equipped with an ignition
21 interlock device. This subdivision does not apply if the court enters an order under
22 sub. (2) (a) 2. or, if the person has 2 or more prior convictions, suspensions, or
23 revocations for purposes of this subdivision, to the motor vehicle owned by the person
24 and used in the violation or refusal if the court orders the vehicle to be seized and
25 forfeited under s. 346.65 (6).

1 **SECTION 7.** 343.301 (1) (a) 3. of the statutes is created to read:

2 343.301 (1) (a) 3. If a person improperly refuses to take a test under s. 343.305
3 or violates s. 346.63 (1) or (2), 940.09 (1), or 940.25, and the person has a total of 2
4 or more prior convictions, suspensions, or revocations, counted under s. 343.307 (1),
5 or the person has a prior conviction, suspension, or revocation counted under s.
6 343.307 (1) and has an alcohol concentration of 0.16 or more at the time of the current
7 offense, the court shall order that the person's operating privilege for the operation
8 of "Class D" vehicles be restricted to operating vehicles that are equipped with an
9 ignition interlock device and shall order that each motor vehicle for which the
10 person's name appears on the vehicle's certificate of title or registration be equipped
11 with an ignition interlock device. If equipping each motor vehicle with an ignition
12 interlock device under this subdivision would cause an undue financial hardship, the
13 court may order that one or more motor vehicles subject to this subdivision not be
14 equipped with an ignition interlock device. This subdivision does not apply if the
15 court enters an order under sub. (2) (a) 2. or, if the person has 2 or more prior
16 convictions, suspensions, or revocations for purposes of this subdivision, to the motor
17 vehicle owned by the person and used in the violation or refusal if the court orders
18 the vehicle to be seized and forfeited under s. 346.65 (6).

19 **SECTION 8.** 343.301 (1) (c) of the statutes is renumbered 343.301 (1) (c) 1.

20 **SECTION 9.** 343.301 (1) (c) 2. of the statutes is created to read:

21 343.301 (1) (c) 2. If the court enters an order under par. (a), the court shall
22 determine the amount of the person's income, and, if the person's income is less than
23 the income limitations in s. 49.145 (3) (b), the court shall reduce any fine imposed
24 upon the person as a result of his or her conviction under s. 346.63 (1) or (2), 940.09

1 (1), or 940.25 by the amount necessary to pay for the installation and maintenance
2 of the ignition interlock device.

3 **SECTION 10.** 343.301 (1) (cm) of the statutes is created to read:

4 343.301 (1) (cm) The company that equips the ignition interlock device on a
5 motor vehicle may not remove the device or terminate the contract for the
6 maintenance of the device during the period that the court ordered under par. (b)
7 without the court's permission.

8 **SECTION 11.** 346.65 (2) (am) 3. of the statutes is amended to read:

9 346.65 (2) (am) 3. Except as provided in subd. 3m. and pars. (cm), (f), and (g),
10 shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less
11 than 30 days nor more than one year in the county jail if the number of convictions
12 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
13 suspensions, revocations, and other convictions counted under s. 343.307 (1), equals
14 3, except that suspensions, revocations, or convictions arising out of the same
15 incident or occurrence shall be counted as one.

16 **SECTION 12.** 346.65 (2) (am) 3m. of the statutes is created to read:

17 346.65 (2) (am) 3m. Except as provided in pars. (cm), (f), and (g), is guilty of a
18 Class I felony and shall be fined not less than \$600 and imprisoned for not less than
19 60 days if the number of suspensions, revocations, and other convictions counted
20 under s. 343.307 (1) within a 5-year period, equals 3, except that suspensions,
21 revocations, or convictions arising out of the same incident or occurrence shall be
22 counted as one.

23 **SECTION 13.** 346.65 (2) (am) 4. of the statutes is amended to read:

24 346.65 (2) (am) 4. Except as provided in pars. (f) and (g), is guilty of a Class I
25 felony and shall be fined not less than \$600 ~~nor more than \$2,000~~ and imprisoned

1 for not less than 60 days ~~nor more than one year in the county jail~~ if the number of
2 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
3 number of suspensions, revocations and other convictions counted under s. 343.307
4 (1), equals 4, except that suspensions, revocations or convictions arising out of the
5 same incident or occurrence shall be counted as one.

6 **SECTION 14.** 346.65 (2) (bm) of the statutes is amended to read:

7 346.65 (2) (bm) In ~~Winnebago County~~ any county that opts to offer a reduced
8 minimum period of imprisonment for the successful completion of a probation period
9 that includes alcohol and other drug treatment, if the number of convictions under
10 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
11 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
12 a 10-year period, equals 2, except that suspensions, revocations, or convictions
13 arising out of the same incident or occurrence shall be counted as one, the fine shall
14 be the same as under par. (am) 2., but the period of imprisonment shall be not less
15 than 5 days, except that if the person successfully completes a period of probation
16 that includes alcohol and other drug treatment, the period of imprisonment shall be
17 not less than 5 nor more than 7 days. A person may be sentenced under this
18 paragraph or under par. (cm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

19 **SECTION 15.** 346.65 (2) (cm) of the statutes is amended to read:

20 346.65 (2) (cm) In ~~Winnebago County~~ any county that opts to offer a reduced
21 minimum period of imprisonment for the successful completion of a probation period
22 that includes alcohol and other drug treatment, if the number of convictions under
23 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
24 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
25 a 10-year period, equals 3, except that suspensions, revocations, or convictions

1 arising out of the same incident or occurrence shall be counted as one, the fine shall
2 be the same as under par. (am) 3., but the period of imprisonment shall be not less
3 than 30 days, except that if the person successfully completes a period of probation
4 that includes alcohol and other drug treatment, the period of imprisonment shall be
5 not less than 10 days. A person may be sentenced under this paragraph or under par.
6 (bm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

7 **SECTION 16.** 346.65 (2j) (bm) of the statutes is amended to read:

8 346.65 (2j) (bm) In ~~Winnebago County~~ any county that opts to offer a reduced
9 minimum period of imprisonment for the successful completion of a probation period
10 that includes alcohol and other drug treatment, if the number of convictions under
11 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
12 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
13 a 10-year period, equals 2, except that suspensions, revocations, or convictions
14 arising out of the same incident or occurrence shall be counted as one, the fine shall
15 be the same as under par. (am) 2., but the period of imprisonment shall be not less
16 than 5 days, except that if the person successfully completes a period of probation
17 that includes alcohol and other drug treatment, the period of imprisonment shall be
18 not less than 5 nor more than 7 days. A person may be sentenced under this
19 paragraph or under par. (cm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

20 **SECTION 17.** 346.65 (2j) (cm) of the statutes is amended to read:

21 346.65 (2j) (cm) In ~~Winnebago County~~ any county that opts to offer a reduced
22 minimum period of imprisonment for the successful completion of a probation period
23 that includes alcohol and other drug treatment, if the number of convictions under
24 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
25 suspensions, revocations, and other convictions counted under s. 343.307 (1) within

1 a 10-year period, equals 3 or more, except that suspensions, revocations, or
2 convictions arising out of the same incident or occurrence shall be counted as one, the
3 fine shall be the same as under par. (am) 3., but the period of imprisonment shall be
4 not less than 30 days, except that if the person successfully completes a period of
5 probation that includes alcohol and other drug treatment, the period of
6 imprisonment shall be not less than 10 days. A person may be sentenced under this
7 paragraph or under par. (bm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

8 **SECTION 18.** 346.65 (2m) (a) of the statutes is amended to read:

9 346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63
10 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall
11 review the record and consider the aggravating and mitigating factors in the matter
12 and the sentencing guidelines adopted under s. 758.13 (2) (h). If the amount of
13 alcohol in the person's blood or urine or the amount of a restricted controlled
14 substance in the person's blood is known, the court shall consider that amount as a
15 factor in sentencing. ~~The chief judge of each judicial administrative district shall~~
16 ~~adopt guidelines, under the chief judge's authority to adopt local rules under SCR~~
17 ~~70.34, for the consideration of aggravating and mitigating factors.~~

18 **SECTION 19.** 346.65 (3r) of the statutes is amended to read:

19 346.65 (3r) In Winnebago County any county that opts to offer a reduced
20 minimum period of imprisonment for the successful completion of a probation period
21 that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or
22 (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall
23 be not less than 30 days, except that if the person successfully completes a period of
24 probation that includes alcohol and other drug treatment, the period of
25 imprisonment shall be not less than 15 days. If there was a minor passenger under

1 16 years of age in the motor vehicle at the time of the violation that gave rise to the
2 conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum
3 and maximum fines or periods of imprisonment for the conviction are doubled and
4 the place of imprisonment shall be determined under s. 973.02. A person may be
5 sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once
6 in his or her lifetime.

7 **SECTION 20.** 346.65 (8) of the statutes is repealed.

8 **SECTION 21.** 346.655 (1) of the statutes is amended to read:

9 346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63
10 (1) or (5), ~~except for a first violation of s. 346.63 (1) (b), if the person who committed~~
11 ~~the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at~~
12 ~~the time of the violation,~~ or a local ordinance in conformity therewith, or s. 346.63
13 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall
14 impose a driver improvement surcharge under ch. 814 in an amount of \$365 in
15 addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under
16 ch. 814.

17 **SECTION 22.** 440.122 of the statutes is created to read:

18 **440.122 Credential denial, nonrenewal, and revocation based on**
19 **operation of motor vehicle while under the influence.** Notwithstanding any
20 other provision of this chapter or of chs. 441 to 480 relating to issuance or renewal
21 of a credential, the department may not deny an application for an initial credential
22 or credential renewal or revoke a credential if the credential applicant or holder was
23 convicted of an offense counted under s. 343.307 (2) or whose operating privilege was
24 suspended or revoked as described under s. 343.307 (2) (f) or (g) unless the conviction,

1 suspension, or revocation occurred while the credential applicant or holder was
2 acting within the scope of the credential.

3 **SECTION 23.** 757.05 (1) (a) of the statutes is amended to read:

4 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
5 state law or for a violation of a municipal or county ordinance except for a violation
6 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s.~~
7 ~~23.33 (4e) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
8 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
9 ~~than 0.1 at the time of the violation,~~ or for a violation of state laws or municipal or
10 county ordinances involving nonmoving traffic violations, violations under s. 343.51
11 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be imposed in
12 addition a penalty surcharge under ch. 814 in an amount of 26 percent of the fine or
13 forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be
14 based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is
15 suspended in whole or in part, the penalty surcharge shall be reduced in proportion
16 to the suspension.

17 **SECTION 24.** 758.13 (2) (h) of the statutes is created to read:

18 758.13 (2) (h) Adopt advisory sentencing guidelines for violations of s. 346.63
19 (1) or (2), 940.09 (1), or 940.25 to promote public safety, to reflect changes in
20 sentencing practices, and to preserve the integrity of the judicial, criminal justice,
21 and correctional systems.

22 **SECTION 25.** 758.13 (2) (i) of the statutes is created to read:

23 758.13 (2) (i) Provide information to judges and attorneys about the sentencing
24 guidelines adopted under par. (h), which shall include annual reports that include

1 the most current sentencing guidelines and all changes in existing sentencing
2 guidelines adopted during the 12 months preceding the report.

3 **SECTION 26.** 814.63 (1) (c) of the statutes is amended to read:

4 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
5 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~for a first violation of s. 23.33~~
6 ~~(4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
7 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
8 ~~than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b), or a~~
9 safety belt use violation under s. 347.48 (2m).

10 **SECTION 27.** 814.63 (2) of the statutes is amended to read:

11 814.63 (2) Upon the disposition of a forfeiture action in circuit court for
12 violation of a county, town, city, village, town sanitary district or public inland lake
13 protection and rehabilitation district ordinance, except for an action ~~for a first~~
14 ~~violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the~~
15 ~~person who committed the violation had a blood alcohol concentration of 0.08 or more~~
16 ~~but less than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m)~~
17 (b) or a safety belt use violation under s. 347.48 (2m), the county, town, city, village,
18 town sanitary district or public inland lake protection and rehabilitation district
19 shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

20 **SECTION 28.** 814.65 (1) of the statutes is amended to read:

21 814.65 (1) COURT COSTS. In a municipal court action, except for an action ~~for~~
22 ~~a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)~~
23 ~~(b), if the person who committed the violation had a blood alcohol concentration of~~
24 0.08 or more but less than 0.1 at the time of the violation, or for a violation of an
25 ordinance in conformity with s. 343.51 (1m) (b) or 347.48 (2m), the municipal judge

1 shall collect a fee of not less than \$15 nor more than \$28 on each separate matter,
2 whether it is on default of appearance, a plea of guilty or no contest, on issuance of
3 a warrant or summons, or the action is tried as a contested matter. Of each fee
4 received by the judge under this subsection, the municipal treasurer shall pay
5 monthly \$5 to the secretary of administration for deposit in the general fund and
6 shall retain the balance for the use of the municipality.

7 **SECTION 29.** 814.85 (1) (a) of the statutes is amended to read:

8 814.85 (1) (a) Except for an action for ~~a first violation of s. 23.33 (4c) (a) 2.,~~
9 ~~30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the~~
10 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
11 ~~time of the violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use~~
12 ~~violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68~~
13 ~~court support services surcharge from any person, including any governmental unit~~
14 ~~as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or~~
15 ~~814.63 (1).~~

16 **SECTION 30.** 814.86 (1) of the statutes is amended to read:

17 814.86 (1) Except for an action for ~~a first violation of s. 23.33 (4c) (a) 2., 30.681~~
18 ~~(1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation~~
19 ~~had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the~~
20 ~~violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under~~
21 ~~s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$12 justice~~
22 ~~information system surcharge from any person, including any governmental unit, as~~
23 ~~defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62~~
24 ~~(1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in~~
25 ~~addition to the surcharge listed in sub. (1m).~~

Duerst, Christina

From: Kulig, Steven
Sent: Tuesday, February 10, 2009 9:49 AM
To: LRB.Legal
Subject: Bill Jacket for LRB 1443/1

Can we get a bill jacket for LRB 1443/1? And can you please put a rush on it?

Thank you,

Steven Kulig
Office of State Senator Jim Sullivan
State Capitol Room 15 South
PO Box 7882
Madison, WI 53707-7882
608-266-2512

*bill jacket
for
Sen. Taylor & send
to their
office*