

2011 DRAFTING REQUEST

Bill

Received: **09/21/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Anthony Staskunas (608) 266-0620**

By/Representing: **Adrienne**

May Contact:

Drafter: **phurley**

Subject: **Criminal Law - sentencing
Drunk Driving - penalties**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Staskunas@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Felony charge for fourth OWI offense

Instructions:

All 4th OWI offense are felonies

t/c to adrienne: (lump with 4, 5, and 6? yes)

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> |
|--------------|-----------------------|---------------------|------------------------|----------------|-----------------------|------------------------|-----------------|
| /? | | | | _____ | | | S&L Crime |
| /1 | phurley 09/22/2011 | jdyer 10/14/2011 | rschluet 10/14/2011 | _____ | lparisi 10/14/2011 | sbasford 11/22/2011 | |

FE Sent For:

atkins
12/7

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /? | phurley | 10/14 JLD | [Signature] | KM | 10/14 | | S&L Crime |

FE Sent For:

<END>



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2963/1

PJH:....

V10 10/19 (cont)

JLD

2011 BILL

10-22-11
d-note

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Gen

1

AN ACT ...; relating to: making fourth offense operating while intoxicated a felony and providing a penalty.

2

Analysis by the Legislative Reference Bureau

Under current law, a person who commits an offense relating to operating a vehicle while intoxicated or under the influence of a controlled substance (OWI) is subject to a forfeiture or fine and, for a second or subsequent offense, a period of imprisonment. Penalties increase with each subsequent conviction.

* Currently, a person who commits a fourth OWI offense is guilty of a misdemeanor and may be fined between \$600 and \$2000 and may be imprisoned for not less than 60 days nor more than one year unless the person committed an earlier OWI offense within five years prior to his or her fourth offense. In that case, the person is guilty of a Class H felony and is subject to the same penalties as a person who commits a fifth or sixth OWI offense: a minimum fine of \$600, a six month minimum term of imprisonment, and a maximum term of imprisonment of six years.

* Current law also allows, if the sentencing court is in a county that provides a treatment-based sentencing option, a person who commits a second, third, or fourth OWI offense to receive a reduced minimum period of imprisonment if the person completes a probation period that includes alcohol and other drug treatment.

* Under this bill, a person who commits a fourth OWI offense, regardless of the time elapsed since his or her last prior offense, is guilty of a class H felony and subject to the same penalties as a person who commits a fifth or sixth OWI offense: a minimum fine of \$600, a six month minimum term of imprisonment, and a maximum term of imprisonment of six years. The bill eliminates, for a person who commits a

* OWI
a six-yr

*

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fourth OWI offense, the option for a reduced period of imprisonment based on completing a period of probation that includes alcohol and other drug treatment.

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:

~~SECTION 1. 346.65 (2) (am) 4. of the statutes is amended to read:~~

~~346.65 (2) (am) 4. Except as provided in subd. 4m. and pars. (d), (f), and (g), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 4, except that suspensions, revocations, or convictions arising out of the 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. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 287, 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; 2009 a. 100, 180; s. 92 (2) (i).

SECTION 2. 346.65 (2) (am) 4. of the statutes is repealed.

SECTION 3. 346.65 (2) (am) 4m. of the statutes is repealed.

SECTION 4. 346.65 (2) (am) 5. of the statutes is amended to read:

346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H felony and shall be fined not less than \$600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted

BILL

1 under s. 343.307 (1), equals [✓]4, 5 or 6, except that suspensions, revocations or
2 convictions arising out of the 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. 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; 2009 a. 100, 180, [✓]13.92 (2) (i).

3 **SECTION 5.** 346.65 (2) (bm) of the statutes is amended to read:

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

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; 2009 a. 100, 180; s. 13.92 (2) (i).

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

17 346.65 (2) (cm) In any county that opts to offer a reduced minimum period of
18 imprisonment for the successful completion of a probation period that includes
19 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
20 and 940.25 in the person's lifetime, plus the total number of suspensions,
21 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
22 suspensions, revocations, or convictions arising out of the same incident or
23 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,

BILL

SECTION 6

1 but the period of imprisonment shall be not less than 45 days, except that if the
 2 person successfully completes a period of probation that includes alcohol and other
 3 drug treatment, the period of imprisonment shall be not less than 14 days. A person
 4 may be sentenced under this paragraph or under par. (bm) ~~or (dm)~~ or sub. (2j) (bm),
 5 or (cm), ~~or (er)~~ or (3r) once in his or her lifetime.

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; 2009 a. 100, 180; s. 13.92 (2) (i).

6 **SECTION 7.** 346.65 (2) (dm) of the statutes is repealed.

7 **SECTION 8.** 346.65 (2) (f) ^{2.} of the statutes is amended to read:

8 346.65 (2) (f) 2. If there was a minor passenger under 16 years of age in the
 9 motor vehicle at the time of the violation that gave rise to the conviction under s.
 10 346.63 (1), the applicable minimum and maximum fines and imprisonment under
 11 par. (am) 2. to 7. for the conviction are doubled. An offense under s. 346.63 (1) that
 12 subjects a person to a penalty under par. (am) 3., ~~4., 4m.,~~ 5., 6., or 7. when there is
 13 a minor passenger under 16 years of age in the motor vehicle is a felony and the place
 14 of imprisonment shall be determined under s. 973.02.

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; 2009 a. 100, 180; s. 13.92 (2) (i).

15 **SECTION 9.** 346.65 (2c) of the statutes is amended to read:

16 346.65 (2c) In sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5., 6., and 7., the time period shall
 17 be measured from the dates of the refusals or violations that resulted in the
 18 revocation or convictions. If a person has a suspension, revocation, or conviction for
 19 any offense under a local ordinance or a state statute of another state that would be
 20 counted under s. 343.307 (1), that suspension, revocation, or conviction shall count
 21 as a prior suspension, revocation, or conviction under sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5.,
 22 6., and 7.

BILL

1 NOTE: NOTE: NOTE: Sub. (2c) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92
 2 (b) (i). NOTE:

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; 2009 a. 100, 180; s. 13.92 (2) (i).

3 SECTION 10. 346.65 (2g) (a) of the statutes is amended to read:

4 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)

5 to provide that a defendant perform community service work for a public agency or

6 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.

7 (2) (am) 2., 3., ~~4.~~ ^{4m.}, and 5., (f), and (g) and except as provided in par. (ag), the court

8 may provide that a defendant perform community service work for a public agency

9 or a nonprofit charitable organization in lieu of part or all of a forfeiture under sub.

10 (2) (am) 1. or may require a person who is subject to sub. (2) to perform community

11 service work for a public agency or a nonprofit charitable organization in addition

12 to the penalties specified under sub. (2).

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; 2009 a. 100, 180; s. 13.92 (2) (i).

13 SECTION 11. 346.65 (2g) (ag) of the statutes is amended to read:

14 346.65 (2g) (ag) If the court determines that a person does not have the ability

15 to pay a fine imposed under sub. (2) (am) 2., 3., ~~4.~~ ^{4m.}, or 5., (f), or (g), the court shall

16 require the defendant to perform community service work for a public agency or a

17 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount

18 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the

19 fine. Each hour of community service performed in compliance with an order under

20 this paragraph shall reduce the amount of the fine owed by an amount determined

21 by the court.

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; 2009 a. 100, 180; s. 13.92 (2) (i).

22 SECTION 12. 346.65 (2j) (am) 3. of the statutes is amended to read:

BILL**SECTION 12**

1 346.65 (2j) (am) 3. Except as provided in pars. (cm), ~~(er)~~[✓] and (d), shall be fined
 2 not less than \$600 nor more than \$2,000 and imprisoned for not less than 45 days
 3 nor more than one year in the county jail if the number of convictions under ss. 940.09
 4 (1) and 940.25 in the person's lifetime, plus the total number of other convictions,
 5 suspensions, and revocations counted under s. 343.307 (2), equals 3 or more.

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; 2009 a. 100, 180; s. ~~342~~[✓] (2) (i).

6 **SECTION 13.** 346.65 (2j) (bm) of the statutes is amended to read:

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

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; 2009 a. 100, 180; s. ~~342~~[✓] (2) (i).

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

20 346.65 (2j) (cm) In any county that opts to offer a reduced minimum period of
 21 imprisonment for the successful completion of a probation period that includes
 22 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
 23 and 940.25 in the person's lifetime, plus the total number of suspensions,

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1 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
 2 suspensions, revocations, or convictions arising out of the same incident or
 3 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
 4 but the period of imprisonment shall be not less than 45 days, except that if the
 5 person successfully completes a period of probation that includes alcohol and other
 6 drug treatment, the period of imprisonment shall be not less than 14 days. A person
 7 may be sentenced under this paragraph or under par. (bm) ~~or (cr)~~ or sub. (2) (bm), or
 8 (cm), ~~or (dm)~~ or (3r) once in his or her lifetime.

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; 2009 a. 100, 180; s. 13.92 (2) (i).

9 **SECTION 15.** 346.65 (2j) (cr) of the statutes is repealed.

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

11 346.65 (7) A person convicted under sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5., 6., or 7. or
 12 (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than a
 13 48-consecutive-hour period.

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; 2009 a. 100, 180; s. 13.92 (2) (i).

14 **SECTION 17.** 973.09 (2) (am) of the statutes is repealed.

15 **SECTION 18. Initial applicability.**

16 (1) This act first applies to violations committed or refusals occurring on the
 17 effective date of this subsection, but does not preclude the counting of other
 18 convictions, suspensions, or revocations as prior convictions, suspensions, or
 19 revocations for purposes of administrative action by the department of
 20 transportation, sentencing by a court, or revocation or suspension of motor vehicle
 21 operating privileges.

22

(END)

D-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2963/dn

PJH:.....

date

jld

Adrienne,

In addition to repealing the provisions that would allow a four-time OVI offender to participate in a program that allows a reduced period of imprisonment if the person successfully completes a period of probation that includes alcohol and other drug counseling (s. 346.65 (2) (dm)) I also repealed the provisions that would allow a four-time commercial vehicle OVI offender to participate in a similar program (s. 346.65 (2j) (cr)). Please let me know if this is not your intent.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

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

LRB-2963/1dn
PJH:jld:rs

October 14, 2011

Adrienne,

In addition to repealing the provisions that would allow a four-time OWI offender to participate in a program that allows a reduced period of imprisonment if the person successfully completes a period of probation that includes alcohol and other drug counseling (s. 346.65 (2) (dm)), I also repealed the provisions that would allow a four-time commercial vehicle OWI offender to participate in a similar program (s. 346.65 (2j) (cr)). Please let me know if this is not your intent.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

Godwin, Gigi

From: Ramirez, Adrienne
Sent: Monday, November 21, 2011 5:08 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-2963/1 Topic: Felony charge for fourth OWI offense

Please Jacket LRB 11-2963/1 for the ASSEMBLY.