

**2013 DRAFTING REQUEST**

**Bill**

Received: **12/5/2012** Received By: **phurley**  
 Wanted: **As time permits** Same as LRB:  
 For: **Jim Ott (608) 266-0486** By/Representing: **Ginger**  
 May Contact: Drafter: **phurley**  
 Subject: **Drunk Driving - penalties** Addl. Drafters:  
 Extra Copies:

Submit via email: **YES**  
 Requester's email: **Rep.OttJ@legis.wisconsin.gov**  
 Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Mandatory minimum for OWI involving bodily injury

**Instructions:**

3 year minimum period of confinement for OWI involving injury

**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>
/P1	phurley 2/1/2013	kfollett 12/19/2012	rschluet 12/19/2012	_____	srose 12/19/2012		State S&L Crime
/P2	phurley 2/6/2013	kfollett 2/5/2013	jmurphy 2/6/2013	_____	sbasford 2/6/2013		State S&L Crime
/1		kfollett 2/6/2013	jmurphy 2/6/2013	_____	sbasford 2/6/2013	sbasford 2/6/2013	State S&L

Vers. Drafted

Reviewed

Typed

Proofed

Submitted

Jacketed

Required  
Crime

FE Sent For:

*at int  
3/14*

<END>

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/1		kfollett 2/6/2013	jmurphy 2/6/2013	_____	sbasford 2/6/2013		State S&L

Vers. Drafted      Reviewed    Typed      Proofed      Submitted      Jacketed      Required  
Crime

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/P1	phurley 2/1/2013	kfollett 12/19/2012	rschluet 12/19/2012	_____	srose 12/19/2012		State S&L Crime
/P2		kfollett 2/5/2013 <i>11/5f</i>	jmurphy 2/6/2013 <i>jm 2/6/13 self</i>	_____	sbasford 2/6/2013		State S&L Crime

FE Sent For: *2/6*

<END>

2013 DRAFTING REQUEST

Bill

Received: 12/5/2012 Received By: phurley  
 Wanted: As time permits Companion to LRB:  
 For: Jim Ott (608) 266-0486 By/Representing: Ginger  
 May Contact: Drafter: phurley  
 Subject: Drunk Driving - penalties Addl. Drafters:  
 Extra Copies:

Submit via email: YES  
 Requester's email: Rep.OttJ@legis.wisconsin.gov  
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Mandatory minimum for OWI involving bodily injury

Instructions:

3 year minimum period of confinement for OWI involving injury

Drafting History:

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/P1	phurley 12/11/2012	kfollett 12/19/2012	12/19/2012	_____	srose 12/19/2012		State S&L Crime

*1 P2/f*  
*2/5*  
*Jim*  
*2/5/12*  
*Jim*  
*2/6/12*

FE Sent For:

<END>

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Mandatory minimum for OWI involving bodily injury

Instructions:

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376.6 3(2) = inj  
(b) = comm. vch inj

65 (3m), (3p)  
940 25 = 654  
~~440 09~~

Drafting History:

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/P1 phurley

1P1/gf  
12/19

1P1/gf  
12/19

*(Handwritten signature and initials)*  
JM

FE Sent For:

<END>

**Hurley, Peggy**

---

**From:** Mueller, Virginia  
**Sent:** Tuesday, December 04, 2012 1:54 PM  
**To:** Hurley, Peggy; Mueller, Eric  
**Subject:** drunk driving

317N

Peggy and Eric,

Representative Jim Ott would like to re-introduce AB 207 and AB 208 along with some other drunk driving bills. I apologies for the short notice but he was wondering if one or both of you might be available tomorrow at 10:30 AM?

Thanks

Ginger

**Hurley, Peggy**

---

**From:** Jim Ott <votejimott@yahoo.com>  
**Sent:** Monday, December 10, 2012 10:29 AM  
**To:** Hurley, Peggy  
**Cc:** Mueller, Virginia  
**Subject:** Re: OWI causing injury

Peggy,

It would be fine with me to use the term "bodily harm" throughout the bill in place of injury. Moving all levels of harm to the general criminal statutes may be something we could handle in the committee that cleans up the statutes at the end of the session.

Thanks,

Jim

**From:** "Hurley, Peggy" <Peggy.Hurley@legis.wisconsin.gov>  
**To:** votejimott@yahoo.com  
**Sent:** Monday, December 10, 2012 9:25 AM  
**Subject:** RE: OWI causing injury

Thanks, again, for your response. I don't think it would be too complicated to write the bill in that manner – I think it makes sense to use the same terminology in the drunken driving statutes and to tie the sentence to the level of harm caused. With your permission, I'd like to replace the term "injury" with "bodily harm," so that the three levels of harm (bodily harm, substantial bodily harm, and great bodily harm) are used consistently in the drunken driving statutes and the general criminal statutes. Once we use the same terminology and sentencing staircasing in the drunken driving statutes, it might be worth considering moving all levels of harm into either the drunken driving statutes or the general criminal statutes. Otherwise, bodily harm and substantial bodily harm will be in the drunken driving statutes, and great bodily harm (and death) will be in the general criminal statutes. There's nothing wrong with that, technically, but it is a little unusual. That's probably beyond the scope of this request, however.

There may be some complicating factors in the repeater/presence of a child sentencing structure, but I will try to work through those as I draft. As we discussed, I will write this as a preliminary draft and we can work out any wrinkles as we proceed.

Peggy

Peggy,

bh = 6m<sup>o</sup>  
sbh = 2y<sup>r</sup>s (follow-up)  
gbh = 3y<sup>r</sup>

Thank you for the clarification. Do you think it would be too complicated to write the bill with a three year minimum sentence for a crash in which the drunk driver causes "great bodily harm", a two year minimum sentence in which the drunk driver causes "substantial bodily harm", and a six month minimum sentence if the drunk driver causes "injury"? It would be up to the district attorney issuing charges to determine the level of injury. We could also leave out the reduction of sentence for completing a treatment program since the sentences are graduated according to seriousness. Let me know what you think and if I am overlooking anything.

Thanks,

Jim

**From:** "Hurley, Peggy" <Peggy.Hurley@legis.wisconsin.gov>  
**To:** Jim Ott <votejimott@yahoo.com>  
**Sent:** Friday, December 7, 2012 9:33 AM  
**Subject:** RE: OWI causing injury

Thank you for your response. This can get a bit tricky because this is one of the areas where the drunken driving laws diverged from the other criminal laws. The drunken driving law prohibits causing "injury" but doesn't define that term. A person causing any "injury" (whether it's, like you said, a sprained finger v. a broken arm) faces the penalties under s. 346.65 (3m) – the \$300-2000 fine and the minimum 30 days – maximum one year in jail (unless there was a minor present or the person has prior OWIs).

If, however, the "injury" is considered great bodily harm, the person can be prosecuted under the general criminal statutes. The term "great bodily harm" is defined in s. 939.22(14) as a "bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury." This definition applies only to the general criminal statutes – the term "great bodily harm" is not generally used in the drunken driving statutes.

Within the criminal statutes, the term "bodily harm" means any physical pain or injury, illness, or impairment. This is probably the closest definition to how "injury" is used in the drunken driving statutes. The criminal statutes also offer a kind of in-between term: "substantial bodily harm" means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth. Both of these terms, however, are not generally applicable to drunken driving incidents under current law.

In sum, there really is no differentiation in the current statutes between a drunken driving incident that causes a bloody nose and one that causes a broken arm. Both would be considered an "injury" but not serious enough to be considered "great bodily harm." This may go beyond the scope of your request, but if your intent is to allow courts to differentiate between the more serious injuries and have a staircased sentencing scheme, it might make sense to replace the use of "injury" within the drunken driving statutes with "bodily harm" and "substantial bodily harm" and to adjust the sentencing minimums accordingly. Please let me know your thoughts on this.

Peggy

---

**From:** Jim Ott [<mailto:votejimott@yahoo.com>]  
**Sent:** Friday, December 07, 2012 6:29 AM  
**To:** Hurley, Peggy  
**Cc:** Mueller, Virginia  
**Subject:** FW: OWI causing injury

Peggy,

It would probably make sense to write the bill with a straight 3 year minimum penalty for any OWI causing injury. It could be written with the option for the sentence being reduced to a two year confinement with the period of probation and successfully completing the treatment if the person's county offers a treatment program.

The other thing that concerns me is that perhaps we should give the court some flexibility in the minimum sentence if the court determines the injured person was not "seriously injured", in which case perhaps the minimum sentence could be six months. This would be the difference of someone suffering a sprained finger

vs. a broken arm. It's also possible this issue could be addressed with an amendment, but it's probably best to write it into the bill.

I'll be in my office today if you need to discuss.

Thanks for your help.

Jim

**From:** "Mueller, Virginia" <[Virginia.Mueller@legis.wisconsin.gov](mailto:Virginia.Mueller@legis.wisconsin.gov)>

**To:** [votejimott@yahoo.com](mailto:votejimott@yahoo.com)

**Sent:** Wednesday, December 5, 2012 4:52 PM

**Subject:** Fwd: FW: OWI causing injury

----- Original message -----

Subject: FW: OWI causing injury

From: "Hurley, Peggy" <[Peggy.Hurley@legis.wisconsin.gov](mailto:Peggy.Hurley@legis.wisconsin.gov)>

To: "Mueller, Virginia" <[Virginia.Mueller@legis.wisconsin.gov](mailto:Virginia.Mueller@legis.wisconsin.gov)>

CC:

Representative Ott,

Thank you for meeting with Eric and me earlier today. In reviewing the statutes to draft your request regarding a mandatory 3-year imprisonment for persons who cause injury while driving drunk, a few questions arose. As you know, s. 346.63 (2) prohibits a person from causing an injury while under the influence of an intoxicant, with a prohibited alcohol concentration, or with a detectable amount of a restricted controlled substance; s. 346.63 (6) prohibits a person from causing injury while driving a commercial vehicle with a lower prohibited alcohol concentration.

A violation of either of these statutes is subject to a \$300 to \$2000 fine and imprisonment for at least 30 days but not more than a year in county jail. A person who violates either of these statutes has the option to accept a reduced minimum period of imprisonment in exchange for successfully completing a probation period that includes treatment, if the person's county offers such a program. Neither of these violations is generally a felony.

However, if there was a minor in the vehicle at the time of the incident OR if the operator committed a prior OWI-related offense, the offense is a felony. It is an unclassified felony for having a minor in the vehicle, with doubled fines and periods of imprisonment; it is a Class H felony with no minimum period of imprisonment if the person has priors (penalties are doubled here, too, if there was a minor in the vehicle). The option for a reduced period of confinement in exchange for a treatment program is not available for persons who commit the Class H felony because they have a prior OWI-related offense.

Section 940.25 makes it a Class F felony to cause great bodily harm by the intoxicated use of a vehicle. There is no minimum period of imprisonment for this crime.

Do you want me to impose a minimum 3 year period of confinement for any OWI-related injury? Or just to those that would otherwise be a felony (or, I suppose, to only those that would otherwise be a classified felony, i.e., causing injury if you have a prior OWI or causing great bodily harm)? If you want to bump all of the offenses to a minimum 3-year term of imprisonment, then all of them would be felonies; is that your intent? If

it is, do you also want to eliminate the option for reduced imprisonment if the person completes treatment? Please let me know your thoughts. If you would like to discuss this further, please let me know.

Peggy Hurley  
Legislative Reference Bureau  
608 266 8906



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

12-11-12  
d-note

Gen

1 **AN ACT ...; relating to:** requiring a mandatory minimum sentence for causing  
2 bodily harm to another while driving while intoxicated and providing a  
3 penalty.

---

*Analysis by the Legislative Reference Bureau*

X Under current law, no person may cause injury to another person by the operation of a vehicle while under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination thereof, with a prohibited alcohol concentration, or with a detectable amount of a restricted controlled substance in his or her blood (OWI-related injury). A person who does so is generally subject to a fine of not less than \$300 nor more than \$2,000, imprisonment for not less than 30 days nor more than one year in the county jail, or both.

Under current law, if a person causes an OWI-related injury with a minor passenger in his or her vehicle, the person is guilty of a felony and the applicable fine and jail sentence are doubled. Current law offers a first offender an opportunity to receive a shorter jail sentence if he or she completes a period of probation that includes successful completion of alcohol or drug counseling.

Under current law, if the person has committed a prior OWI-related offense, causing an OWI-related injury is a Class H felony, and the person may be fined up to \$10,000, imprisoned for up to six years, or both. Current law doubles the applicable maximum fine and term of imprisonment for these offenses if the person has a passenger who is under the age 16 in his or her vehicle at the time of the offense. If a person causes an OWI-related injury that results in great bodily harm to another

person or to an unborn child, the person is guilty of a Class F felony, and may be fined up to \$25,000, imprisonment for 12 years and six months, or both.

Current law requires a person who is sentenced to prison for a felony to serve a bifurcated sentence, with a portion of the term of imprisonment to be served confined in prison, and the remainder to be served under supervision in the community.

Under this bill, if a person causes an OWI-related injury and the injured person suffers bodily harm, the offender who caused the OWI-related injury must serve at least six months in jail. If the injured person suffers substantial bodily harm, the offender is guilty of a Class H felony and must serve at least two years confined in prison, and if the injured person suffers great bodily harm, the offender is guilty of a Class F felony and must serve at least three years confined in prison. The bill doubles the maximum penalties for causing an OWI-related injury that results in bodily harm or substantial bodily harm if the person who caused the injury had a passenger under the age of 16 in his or her vehicle at the time of the offense.

Under the bill, a person with a prior OWI-related offense is guilty of a Class H felony and must serve a minimum of one year confined in prison if the OWI-related injury causes bodily harm, and a minimum of three years confined in prison if the OWI-related injury causes substantial bodily harm. The bill eliminates the opportunity for a reduced sentence in exchange for completing a period of probation that includes drug or alcohol treatment.

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

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:***

- 1           SECTION 1. 346.65 (2) (bm) of the statutes is amended to read:
- 2           346.65 (2) (bm) In any county that opts to offer a reduced minimum period of
- 3 imprisonment for the successful completion of a probation period that includes
- 4 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
- 5 and 940.25 in the person's lifetime, plus the total number of suspensions,
- 6 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
- 7 period, equals 2, except that suspensions, revocations, or convictions arising out of

1 the same incident or occurrence shall be counted as one, the fine shall be the same  
 2 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
 3 except that if the person successfully completes a period of probation that includes  
 4 alcohol and other drug treatment, the period of imprisonment shall be not less than  
 5 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
 6 par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) ~~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; 2011 a. 258.

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

8 346.65 (2) (cm) In any county that opts to offer a reduced minimum period of  
 9 imprisonment for the successful completion of a probation period that includes  
 10 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
 11 and 940.25 in the person's lifetime, plus the total number of suspensions,  
 12 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that  
 13 suspensions, revocations, or convictions arising out of the same incident or  
 14 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
 15 but the period of imprisonment shall be not less than 45 days, except that if the  
 16 person successfully completes a period of probation that includes alcohol and other  
 17 drug treatment, the period of imprisonment shall be not less than 14 days. A person  
 18 may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm),  
 19 (cm), or (cr) ~~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; 2011 a. 258.

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

21 346.65 (2) (dm) In any county that opts to offer a reduced minimum period of  
 22 imprisonment for the successful completion of a probation period that includes  
 23 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)

1 and 940.25 in the person's lifetime, plus the total number of suspensions,  
 2 revocations, and other convictions counted under s. 343.307 (1) equals 4, and par.  
 3 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising  
 4 out of the same incident or occurrence shall be counted as one, the fine shall be the  
 5 same as under par. (am) 4., but the period of imprisonment shall be not less than 60  
 6 days, except that if the person successfully completes a period of probation that  
 7 includes alcohol and other drug treatment, the period of imprisonment shall be not  
 8 less than 29 days. A person may be sentenced under this paragraph or under par.  
 9 (bm) or (cm) or sub. (2j) (bm), (cm), or (cr) ~~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; 2011 a. 258.

10 **SECTION 4.** 346.65 (2j) (bm) of the statutes is amended to read:

11 346.65 (2j) (bm) In any county that opts to offer a reduced minimum period of  
 12 imprisonment for the successful completion of a probation period that includes  
 13 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
 14 and 940.25 in the person's lifetime, plus the total number of suspensions,  
 15 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
 16 period, equals 2, except that suspensions, revocations, or convictions arising out of  
 17 the same incident or occurrence shall be counted as one, the fine shall be the same  
 18 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
 19 except that if the person successfully completes a period of probation that includes  
 20 alcohol and other drug treatment, the period of imprisonment shall be not less than  
 21 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
 22 par. (cm) or (cr) or sub. (2) (bm), (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; 2011 a. 258.

23 **SECTION 5.** 346.65 (2j) (cm) of the statutes is amended to read:

1           346.65 (2j) (cm) In any county that opts to offer a reduced minimum period of  
2 imprisonment for the successful completion of a probation period that includes  
3 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
4 and 940.25 in the person's lifetime, plus the total number of suspensions,  
5 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that  
6 suspensions, revocations, or convictions arising out of the same incident or  
7 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
8 but the period of imprisonment shall be not less than 45 days, except that if the  
9 person successfully completes a period of probation that includes alcohol and other  
10 drug treatment, the period of imprisonment shall be not less than 14 days. A person  
11 may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm),  
12 (cm), or (dm) or <sup>✓</sup>(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; 2011 a. 258.

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

14           346.65 (2j) (cr) In any county that opts to offer a reduced minimum period of  
15 imprisonment for the successful completion of a probation period that includes  
16 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
17 and 940.25 in the person's lifetime, plus the total number of suspensions,  
18 revocations, and other convictions counted under s. 343.307 (1) equals 4, and sub. (2)  
19 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising  
20 out of the same incident or occurrence shall be counted as one, the fine shall be the  
21 same as under par. (am) 3., but the period of imprisonment shall be not less than 60  
22 days, except that if the person successfully completes a period of probation that  
23 includes alcohol and other drug treatment, the period of imprisonment shall be not

1 less than 29 days. A person may be sentenced under this paragraph or under par.  
 2 (bm) or (cm) or sub. (2) (bm), (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; 2011 a. 258.

3 **SECTION 7. 346.65 (3m) of the statutes is repealed and recreated to read:**

4 **346.65 (3m)** Any person violating s. 346.63 (2) or (6):

5 (a) 1. Except as provided in <sup>subd.</sup> 2., if the violation results in bodily harm, as defined  
 6 in s. 939.22 (4), to another, shall be fined not less than \$300 nor more than \$2000 and  
 7 shall be imprisoned for not less than six months nor more than one year <sup>the</sup> in county  
 8 jail. If there was a minor passenger under 16 years of age in the motor vehicle at the  
 9 time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the  
 10 person is guilty of a felony, the applicable minimum and maximum fines or periods  
 11 of imprisonment for the conviction are doubled, and the place of imprisonment shall  
 12 be determined under s. 973.02. If the person is sentenced for a felony under this  
 13 subdivision, the sentencing court shall impose a <sup>e</sup> bifurcated sentence under s.  
 14 973.01 and the confinement in prison portion of the bifurcated sentence shall be not  
 15 less than one year.

16 2. Is guilty of a Class H felony if the violation results in bodily harm, as defined  
 17 in s. 939.22 (4), to another, and the person has one or more prior convictions,  
 18 suspensions, or revocations, as counted under s. 343.307 (1). The sentencing court  
 19 shall impose a bifurcated sentence under s. 973.01 and the confinement in prison  
 20 portion of the bifurcated sentence shall be not less than one year. If there was a minor  
 21 passenger under 16 years of age in the motor vehicle at the time of the violation that  
 22 gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony and the  
 23 applicable minimum period of confinement in prison portion of the bifurcated

1 sentence and the maximum fines or periods of imprisonment for the conviction are  
2 doubled.

3 (b) 1. Except as provided in <sup>subd.</sup> 2., if the violation results in substantial bodily  
4 harm, as defined in s. 939.22 (38), to another, is guilty of a Class H felony. The  
5 sentencing court shall impose a bifurcated sentence under s. 973.01 and the  
6 confinement in prison portion of the bifurcated sentence shall be not less than <sup>2</sup> two  
7 years. If there was a minor passenger under 16 years of age in the motor vehicle at  
8 the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the  
9 offense is a felony and the applicable the applicable minimum period of confinement  
10 in prison portion of the bifurcated sentence and the maximum fines or periods of  
11 imprisonment for the conviction are doubled.

12 2. Is guilty of a Class H felony if the violation results in substantial bodily harm,  
13 as defined in s. 939.22 (38), to another and the person has one or more prior  
14 convictions, suspensions, or revocations, as counted under s. 343.307 (1). The  
15 sentencing court shall impose a bifurcated sentence under s. 973.01 and the  
16 confinement in prison portion of the bifurcated sentence shall be not less than <sup>3</sup> three  
17 years. If there was a minor passenger under 16 years of age in the motor vehicle at  
18 the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the  
19 offense is a felony and the applicable minimum period of confinement in prison  
20 portion of the bifurcated sentence and the maximum fines or periods of  
21 imprisonment for the conviction are doubled. X

22 SECTION 8. 346.65 (3p) of the statutes is repealed. X

23 SECTION 9. 346.65 (3r) of the statutes is repealed. X

24 SECTION 10. 940.25 (1g) of the statutes is created to read:

1           940.25 (1g) Upon conviction for a violation of sub. (1), the sentencing court  
2 shall impose a bifurcated sentence under s. 973.01 and the confinement in prison  
3 portion of the bifurcated sentence shall be not less than 3 years.

4           **SECTION 11.** 973.11 (1) (intro.) of the statutes is amended to read:

5           973.11 (1) PLACEMENTS. (intro.) If a person is convicted of or pleads guilty or  
6 no contest to one or more misdemeanors for which either mandatory periods of  
7 imprisonment are not required or the person is sentenced under s. 346.65 (2) (bm)  
8 or (cm) <sup>of</sup> (2j) (bm) or (cm), ~~or (3r)~~, if the chief judge of the judicial administrative  
9 district has approved a volunteers in probation program established in the  
10 applicable county, and if the court decides that volunteer supervision under the  
11 program will likely benefit the person and the community and subject to the  
12 limitations under sub. (3), the court may withhold sentence or judgment of conviction  
13 and order that the person be placed with that volunteers in probation program. A  
14 person's participation in the program may not be used to conceal, withhold, or mask  
15 information regarding the judgment of conviction if the conviction is required to be  
16 included in a record kept under s. 343.23 (2) (a). Except as provided in sub. (3), the  
17 order shall provide any conditions that the court determines are reasonable and  
18 appropriate and may include, but need not be limited to, one or more of the following:

19 **History:** 1991 a. 253; 1993 a. 213; 2003 a. 33; 2005 a. 389; 2007 a. 84.

19           **SECTION 12. Initial applicability.**

20           (1) This act first applies to violations committed on the effective date of this  
21 subsection, but does not preclude the counting of other violations as prior violations  
22 for purposes of administrative action by the department of transportation or  
23 sentencing by a court.

24           (END)

O-Note

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

LRB-0729/P1dn

PJH: *[Signature]*

*Date*

Representative Ott,

Please review this draft to ensure that it is consistent with your intent. Please look carefully at the mandatory minimum sentences for causing bodily harm or substantial bodily harm, the enhanced sentences for repeaters, and the doubling of those sentences if a child under the age of 16 was a passenger in the car at the time of the violation.

*(S)* Current law doubles the applicable minimum and maximum fines and minimum and maximum term of imprisonment for a first offender who causes injury, and doubles the applicable maximum fine and term of imprisonment for a repeat offender. Current law also makes it a Class H felony, with no minimum period of confinement (but a maximum fine of \$10,000, maximum imprisonment of six years, or both), to cause injury if the offender has a prior OWI violation.

I tried to keep the gist of these provisions intact, but this has the effect of creating theoretically inconsistent sentencing. The bill imposes the following mandatory minimums:

Bodily harm, no priors: minimum six months in jail. If a minor passenger, minimum one year in prison and the violation is an unclassified felony.

Bodily harm, one or more priors: minimum one year confinement in prison, guilty of a Class H felony. If a minor passenger, minimum two years in prison.

Substantial bodily harm, no priors: minimum two years in prison, and guilty of a Class H felony. If a minor passenger, minimum four years in prison.

Substantial bodily harm, one or more priors: minimum three years in prison, guilty of a Class H felony. If a minor passenger, minimum six years in prison.

*X*  
*X*  
*X*  
*X* Current law does not employ the same doubling for causing great bodily harm with a minor passenger in the vehicle, nor does it increase the sentence for a repeat offender (unless the person committed a felony within *five* years prior to the offense or committed three misdemeanors within *five* years prior to the current offense; if this is the case, the maximum period of imprisonment can be increased by *two to six* years). Under the bill, a person who causes great bodily harm is guilty of a class F felony (as under current law) and must spend a mandatory minimum of three years in prison.

↓  
X Thus, under the bill, a person who commits substantial bodily harm but either has a prior OWI violation or has a minor passenger at the time of the violation will be serving a longer mandatory minimum term of confinement in prison than a person who causes great bodily harm, even if the person who causes great bodily harm has a prior OWI violation or has a minor passenger at the time of the violation. In practice, given that the person who causes great bodily harm is guilty of a higher class felony and subject to a much greater maximum term of imprisonment, it may well be that a sentencing court would ensure that the person who causes great bodily harm serves a longer stint in prison, but I still wanted to call the matter to your attention.

X Finally, when the mandatory minimums imposed under this bill for causing substantial bodily harm are doubled, the mandatory minimums exceed the maximum terms of confinement allowed under s. 973.01 (2) (b) 8. I think this is okay under s. 973.01 (2) (c), which allows for longer periods of incarceration under "any applicable penalty enhancement statute." However, you might want to have someone at the department of corrections and/or at the director of state courts' office take a look at it to be sure that the doubling provisions are considered "penalty enhancement statutes" for purposes of extending the maximum term of confinement in prison.

Please let me know if you would like any changes to this draft or if you have any questions. When the draft meets your approval, I can convert it to introducible form.

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

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

LRB-0729/P1dn  
PJH:kjfrs

December 19, 2012

Representative Ott,

Please review this draft to ensure that it is consistent with your intent. Please look carefully at the mandatory minimum sentences for causing bodily harm or substantial bodily harm, the enhanced sentences for repeaters, and the doubling of those sentences if a child under the age of 16 was a passenger in the car at the time of the violation.

Current law doubles the applicable minimum and maximum fines and minimum and maximum terms of imprisonment for a first offender who causes injury, and doubles the applicable maximum fine and term of imprisonment for a repeat offender. Current law also makes it a Class H felony, with no minimum period of confinement (but a maximum fine of \$10,000, maximum imprisonment of six years, or both), to cause injury if the offender has a prior OWI violation.

I tried to keep the gist of these provisions intact, but this has the effect of creating theoretically inconsistent sentencing. The bill imposes the following mandatory minimums:

Bodily harm, no priors: minimum six months in jail. If a minor passenger, minimum one year in prison and the violation is an unclassified felony.

Bodily harm, one or more priors: minimum one year confinement in prison, guilty of a Class H felony. If a minor passenger, minimum two years in prison.

Substantial bodily harm, no priors: minimum two years in prison, and guilty of a Class H felony. If a minor passenger, minimum four years in prison.

Substantial bodily harm, one or more priors: minimum three years in prison, guilty of a Class H felony. If a minor passenger, minimum six years in prison.

Current law does not employ the same doubling for causing great bodily harm with a minor passenger in the vehicle, nor does it increase the sentence for a repeat offender (unless the person committed a felony within five years prior to the offense or committed three misdemeanors within five years prior to the current offense; if this is the case, the maximum period of imprisonment can be increased by two to six years). Under the bill, a person who causes great bodily harm is guilty of a Class F felony (as under current law) and must spend a mandatory minimum of three years in prison.

Thus, under the bill, a person who commits substantial bodily harm but either has a prior OWI violation or has a minor passenger at the time of the violation will be serving a longer mandatory minimum term of confinement in prison than a person who causes great bodily harm, even if the person who causes great bodily harm has a prior OWI violation or has a minor passenger at the time of the violation. In practice, given that the person who causes great bodily harm is guilty of a higher class felony and subject to a much greater maximum term of imprisonment, it may well be that a sentencing court would ensure that the person who causes great bodily harm serves a longer stint in prison, but I still wanted to call the matter to your attention.

Finally, when the mandatory minimums imposed under this bill for causing substantial bodily harm are doubled, the mandatory minimums exceed the maximum terms of confinement allowed under s. 973.01 (2) (b) 8. I think this is okay under s. 973.01 (2) (c), which allows for longer periods of incarceration under "any applicable penalty enhancement statute." However, you might want to have someone at the Department of Corrections and/or at the director of state courts' office take a look at it to be sure that the doubling provisions are considered "penalty enhancement statutes" for purposes of extending the maximum term of confinement in prison.

Please let me know if you would like any changes to this draft or if you have any questions. When the draft meets your approval, I can convert it to introducible form.

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



P2  
rnr

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

soon  
2-1-13  
note

repen

1 **AN ACT to repeal** 346.65 (3p) and 346.65 (3r); **to amend** 346.65 (2) (bm), 346.65  
 2 (2) (cm), 346.65 (2) (dm), 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (2j) (cr) and  
 3 973.11 (1) (intro.); **to repeal and recreate** 346.65 (3m); and **to create** 940.25  
 4 (1g) of the statutes; **relating to:** requiring a mandatory minimum sentence for  
 5 causing bodily harm to another while driving while intoxicated and providing  
 6 a penalty.

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

Under current law, no person may cause injury to another person by the operation of a vehicle while under the influence of an intoxicant, a controlled substance, or a controlled substance analog or any combination thereof, with a prohibited alcohol concentration, or with a detectable amount of a restricted controlled substance in his or her blood (OWI-related injury). A person who does so is generally subject to a fine of not less than \$300 nor more than \$2,000, imprisonment for not less than 30 days nor more than one year in the county jail, or both.

Under current law, if a person causes an OWI-related injury with a minor passenger in his or her vehicle, the person is guilty of a felony and the applicable fine and jail sentence are doubled. Current law offers a first offender an opportunity to receive a shorter jail sentence if he or she completes a period of probation that includes successful completion of alcohol or drug counseling.

Under current law, if the person has committed a prior OWI-related offense, causing an OWI-related injury is a Class H felony, and the person may be fined up to \$10,000, imprisoned for up to six years, or both. Current law doubles the applicable maximum fine and term of imprisonment for these offenses if the person has a passenger who is under the age 16 in his or her vehicle at the time of the offense. If a person causes an OWI-related injury that results in great bodily harm to another person or to an unborn child, the person is guilty of a Class F felony, and may be fined up to \$25,000, imprisoned for 12 years and six months, or both.

Current law requires a person who is sentenced to prison for a felony to serve a bifurcated sentence, with a portion of the term of imprisonment to be served confined in prison, and the remainder to be served under supervision in the community.

Under this bill, if a person causes an OWI-related injury and the injured person suffers bodily harm, the offender who caused the OWI-related injury must serve at least six months in jail. If the injured person suffers substantial bodily harm, the offender is guilty of a Class H felony and must serve at least two years confined in prison, and if the injured person suffers great bodily harm, the offender is guilty of a Class F felony and must serve at least three years confined in prison. The bill doubles the maximum penalties for causing an OWI-related injury that results in bodily harm or substantial bodily harm if the person who caused the injury had a passenger under the age of 16 in his or her vehicle at the time of the offense.

Under the bill, a person with a prior OWI-related offense is guilty of a Class H felony and must serve a minimum of one year confined in prison if the OWI-related injury causes bodily harm, and a minimum of three years confined in prison if the OWI-related injury causes substantial bodily harm. The bill eliminates the opportunity for a reduced sentence in exchange for completing a period of probation that includes drug or alcohol 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.

New P  
insert  
analysis  
  
insert  
analysis  
2

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

✓

- 1 SECTION 1. 346.65 (2) (bm) of the statutes is amended to read:
- 2 346.65 (2) (bm) In any county that opts to offer a reduced minimum period of
- 3 imprisonment for the successful completion of a probation period that includes
- 4 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)

1 and 940.25 in the person's lifetime, plus the total number of suspensions,  
2 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
3 period, equals 2, except that suspensions, revocations, or convictions arising out of  
4 the same incident or occurrence shall be counted as one, the fine shall be the same  
5 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
6 except that if the person successfully completes a period of probation that includes  
7 alcohol and other drug treatment, the period of imprisonment shall be not less than  
8 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
9 par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) ~~or (3r)~~ once in his or her lifetime.

10 SECTION 2. 346.65 (2) (cm) of the statutes <sup>✓</sup> is amended to read:

11 346.65 (2) (cm) In any county that opts to offer a reduced minimum period of  
12 imprisonment for the successful completion of a probation period that includes  
13 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
14 and 940.25 in the person's lifetime, plus the total number of suspensions,  
15 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that  
16 suspensions, revocations, or convictions arising out of the same incident or  
17 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
18 but the period of imprisonment shall be not less than 45 days, except that if the  
19 person successfully completes a period of probation that includes alcohol and other  
20 drug treatment, the period of imprisonment shall be not less than 14 days. A person  
21 may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm),  
22 (cm), or (cr) ~~or (3r)~~ once in his or her lifetime.

23 SECTION 3. 346.65 (2) (dm) of the statutes is amended to read:

24 346.65 (2) (dm) In any county that opts to offer a reduced minimum period of  
25 imprisonment for the successful completion of a probation period that includes

1 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
2 and 940.25 in the person's lifetime, plus the total number of suspensions,  
3 revocations, and other convictions counted under s. 343.307 (1) equals 4, and par.  
4 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising  
5 out of the same incident or occurrence shall be counted as one, the fine shall be the  
6 same as under par. (am) 4., but the period of imprisonment shall be not less than 60  
7 days, except that if the person successfully completes a period of probation that  
8 includes alcohol and other drug treatment, the period of imprisonment shall be not  
9 less than 29 days. A person may be sentenced under this paragraph or under par.  
10 (bm) or (cm) or sub. (2j) (bm), (cm), or (cr) ~~or (3r)~~ once in his or her lifetime.

11 SECTION 4. 346.65 (2j) (bm) of the statutes is amended to read: ✓

12 346.65 (2j) (bm) In any county that opts to offer a reduced minimum period of  
13 imprisonment for the successful completion of a probation period that includes  
14 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
15 and 940.25 in the person's lifetime, plus the total number of suspensions,  
16 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
17 period, equals 2, except that suspensions, revocations, or convictions arising out of  
18 the same incident or occurrence shall be counted as one, the fine shall be the same  
19 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
20 except that if the person successfully completes a period of probation that includes  
21 alcohol and other drug treatment, the period of imprisonment shall be not less than  
22 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
23 par. (cm) or (cr) or sub. (2) (bm), (cm), or (dm) ~~or (3r)~~ once in his or her lifetime.

24 SECTION 5. 346.65 (2j) (cm) of the statutes is amended to read: ✓

1           346.65 (2j) (cm) In any county that opts to offer a reduced minimum period of  
2 imprisonment for the successful completion of a probation period that includes  
3 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
4 and 940.25 in the person's lifetime, plus the total number of suspensions,  
5 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that  
6 suspensions, revocations, or convictions arising out of the same incident or  
7 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
8 but the period of imprisonment shall be not less than 45 days, except that if the  
9 person successfully completes a period of probation that includes alcohol and other  
10 drug treatment, the period of imprisonment shall be not less than 14 days. A person  
11 may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm),  
12 (cm), or (dm) ~~or (3r)~~ once in his or her lifetime.

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

14           346.65 (2j) (cr) In any county that opts to offer a reduced minimum period of  
15 imprisonment for the successful completion of a probation period that includes  
16 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
17 and 940.25 in the person's lifetime, plus the total number of suspensions,  
18 revocations, and other convictions counted under s. 343.307 (1) equals 4, and sub. (2)  
19 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising  
20 out of the same incident or occurrence shall be counted as one, the fine shall be the  
21 same as under par. (am) 3., but the period of imprisonment shall be not less than 60  
22 days, except that if the person successfully completes a period of probation that  
23 includes alcohol and other drug treatment, the period of imprisonment shall be not  
24 less than 29 days. A person may be sentenced under this paragraph or under par.  
25 (bm) or (cm) or sub. (2) (bm), (cm), or (dm) ~~or (3r)~~ once in his or her lifetime.

and sub. (3m)

1 SECTION 7. 346.65 (3m) of the statutes is repealed and recreated to read:

2 346.65 (3m) Any person violating s. 346.63 (2) or (6):

3 (a) 1. Except as provided in subd. 2, if the violation results in bodily harm, as  
4 defined in s. 939.22 (4), to another, shall be fined not less than \$300 nor more than  
5 \$2,000 and shall be imprisoned for not less than six months nor more than one year  
6 in the county jail. If there was a minor passenger under 16 years of age in the motor  
7 vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2)  
8 or (6), the person is guilty of a felony, the applicable minimum and maximum fines  
9 or periods of imprisonment for the conviction are doubled, and the place of  
10 imprisonment shall be determined under s. 973.02. If the person is sentenced for a  
11 felony under this subdivision, the sentencing court shall impose a bifurcated  
12 sentence under s. 973.01 and the confinement in prison portion of the bifurcated  
13 sentence shall be not less than one year.

Except as provided in sub. (3m), the

14 2. Is guilty of a Class H felony if the violation results in bodily harm, as defined  
15 in s. 939.22 (4), to another, and the person has one or more prior convictions,  
16 suspensions, or revocations, as counted under s. 343.307 (1). The sentencing court  
17 shall impose a bifurcated sentence under s. 973.01 and the confinement in prison  
18 portion of the bifurcated sentence shall be not less than one year. If there was a minor  
19 passenger under 16 years of age in the motor vehicle at the time of the violation that  
20 gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony and the  
21 applicable minimum period of confinement in prison portion of the bifurcated  
22 sentence and the maximum fines or periods of imprisonment for the conviction are  
23 doubled.

24 (b) 1. Except as provided in subd. 2., if the violation results in substantial bodily  
25 harm, as defined in s. 939.22 (38), to another, is guilty of a Class H felony. The

Except as provided in sub. (3m), the

1 sentencing court shall impose a bifurcated sentence under s. 973.01 and the  
 2 confinement in prison portion of the bifurcated sentence shall be not less than 2  
 3 years. If there was a minor passenger under 16 years of age in the motor vehicle at  
 4 the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the  
 5 offense is a felony and the applicable minimum period of confinement in prison  
 6 portion of the bifurcated sentence and the maximum fines or periods of  
 7 imprisonment for the conviction are doubled.

8 2. Is guilty of a Class H felony if the violation results in substantial bodily harm  
 9 as defined in s. 939.22 (38), to another and the person has one or more prior  
 10 convictions, suspensions, or revocations, as counted under s. 343.307 (1). The  
 11 sentencing court shall impose a bifurcated sentence under s. 973.01 and the  
 12 confinement in prison portion of the bifurcated sentence shall be not less than 3  
 13 years. If there was a minor passenger under 16 years of age in the motor vehicle at  
 14 the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the  
 15 offense is a felony and the applicable minimum period of confinement in prison  
 16 portion of the bifurcated sentence and the maximum fines or periods of  
 17 imprisonment for the conviction are doubled.

Except as provided in sub. (3m), the

Insert 7.17

18 SECTION 8. 346.65 (3p) of the statutes is repealed.

19 SECTION 9. 346.65 (3r) of the statutes is repealed.

20 SECTION 10. 940.25 (1g) of the statutes is created to read:

Except as provided in par (b), upon

(a) 21 940.25 (1g) Upon conviction for a violation of sub. (1), the sentencing court  
 22 shall impose a bifurcated sentence under s. 973.01 and the confinement in prison  
 23 portion of the bifurcated sentence shall be not less than 3 years.

24 SECTION 11. 973.11 (1) (intro.) of the statutes is amended to read:

Insert 7.23



1 INSERT ANALYSIS 1:

2 ~~P~~ Under the bill, if the injured party was a passenger in the person's car, a court  
3 may sentence the person to less than the minimum if the court finds that the best  
4 interests of the community will be served and that the public will not be harmed. If  
5 the court sentences a person to less than the minimum, the bill requires the court to  
6 put its findings in writing.

7

8 INSERT ANALYSIS 2:

9 ~~no P~~ the doubling provisions for causing an OWI-related injury that results in  
10 bodily harm or substantial bodily harm and eliminates

11

12 INSERT 7.17:

13 SECTION 1. 346.65 (3n) of the statutes is created to read:

14

15 346.65 (3n) When sentencing a person under sub. (3m), if the person or persons  
16 injured was or were in the vehicle operated by the convicted person at the time of the  
17 violation, the court may impose a sentence that is less than the sentence required  
18 under sub. (3m) if the court finds that the best interests of the community will be  
19 served and the public will not be harmed, and if the court places its reasons on the  
20 record.

21 INSERT 7.23:

22

23 (b) When sentencing a person under par. (a), if the person or persons injured  
24 was or were in the vehicle operated by the convicted person at the time of the  
25 violation, the court may impose a sentence that is less than the sentence required  
26 under sub. (3m) if the court finds that the best interests of the community will be  
27 served and the public will not be harmed, and if the court places its reasons on the  
28 record.

29

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

LRB-0729/P2 dn  
PZH:kjf:rs

Date

Representative Ott:

Sto

a Please review this draft to ensure it is consistent with your intent. This version of the draft eliminates the doubling provisions for causing any OWI-related injury with passenger who is under the age of 16 in the vehicle. This version allows a court to deviate from the mandatory minimum sentences if the injured person was a passenger in the vehicle, the court finds it in the interest of justice to deviate from the minimum, and the court explains its reasons in writing. If you have any questions or would like any changes to the draft, please let me know. When the draft meets your approval, I can redraft it in ~~an~~introducible form.

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

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

LRB-0729/P2dn  
PJH:kjf:jm

February 5, 2013

Representative Ott:

Please review this draft to ensure it is consistent with your intent. This version of the draft eliminates the doubling provisions for causing any OWI-related injury with a passenger who is under the age of 16 in the vehicle. This version allows a court to deviate from the mandatory minimum sentences if the injured person was a passenger in the vehicle, the court finds it in the interest of justice to deviate from the minimum, and the court explains its reasons in writing. If you have any questions or would like any changes to the draft, please let me know. When the draft meets your approval, I can redraft it into introducible form.

Peggy Hurley  
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Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.wisconsin.gov](mailto:peggy.hurley@legis.wisconsin.gov)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0729/P2  
PJH:kjf:jm

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mr

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

2-5-13

No changes

Regen

1 AN ACT *to repeal* 346.65 (3p) and 346.65 (3r); *to amend* 346.65 (2) (bm), 346.65  
 2 (2) (cm), 346.65 (2) (dm), 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (2j) (cr) and  
 3 973.11 (1) (intro.); *to repeal and recreate* 346.65 (3m); and *to create* 346.65  
 4 (3n) and 940.25 (1g) of the statutes; **relating to:** requiring a mandatory  
 5 minimum sentence for causing bodily harm to another while driving while  
 6 intoxicated and providing a penalty.

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

Under current law, no person may cause injury to another person by the operation of a vehicle while under the influence of an intoxicant, a controlled substance, or a controlled substance analog or any combination thereof, with a prohibited alcohol concentration, or with a detectable amount of a restricted controlled substance in his or her blood (OWI-related injury). A person who does so is generally subject to a fine of not less than \$300 nor more than \$2,000, imprisonment for not less than 30 days nor more than one year in the county jail, or both.

Under current law, if a person causes an OWI-related injury with a minor passenger in his or her vehicle, the person is guilty of a felony and the applicable fine and jail sentence are doubled. Current law offers a first offender an opportunity to receive a shorter jail sentence if he or she completes a period of probation that includes successful completion of alcohol or drug counseling.

Under current law, if the person has committed a prior OWI-related offense, causing an OWI-related injury is a Class H felony, and the person may be fined up to \$10,000, imprisoned for up to six years, or both. Current law doubles the applicable maximum fine and term of imprisonment for these offenses if the person has a passenger who is under the age 16 in his or her vehicle at the time of the offense. If a person causes an OWI-related injury that results in great bodily harm to another person or to an unborn child, the person is guilty of a Class F felony, and may be fined up to \$25,000, imprisoned for 12 years and six months, or both.

Current law requires a person who is sentenced to prison for a felony to serve a bifurcated sentence, with a portion of the term of imprisonment to be served confined in prison, and the remainder to be served under supervision in the community.

Under this bill, if a person causes an OWI-related injury and the injured person suffers bodily harm, the offender who caused the OWI-related injury must serve at least six months in jail. If the injured person suffers substantial bodily harm, the offender is guilty of a Class H felony and must serve at least two years confined in prison, and if the injured person suffers great bodily harm, the offender is guilty of a Class F felony and must serve at least three years confined in prison.

Under the bill, a person with a prior OWI-related offense is guilty of a Class H felony and must serve a minimum of one year confined in prison if the OWI-related injury causes bodily harm, and a minimum of three years confined in prison if the OWI-related injury causes substantial bodily harm.

Under the bill, if the injured party was a passenger in the person's car, a court may sentence the person to less than the minimum if the court finds that the best interests of the community will be served and that the public will not be harmed. If the court sentences a person to less than the minimum, the bill requires the court to put its findings in writing. The bill eliminates the doubling provisions for causing an OWI-related injury that results in bodily harm or substantial bodily harm and eliminates the opportunity for a reduced sentence in exchange for completing a period of probation that includes drug or alcohol 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.

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

- 1           **SECTION 1.** 346.65 (2) (bm) of the statutes is amended to read:
- 2           346.65 (2) (bm) In any county that opts to offer a reduced minimum period of
- 3           imprisonment for the successful completion of a probation period that includes

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

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

12 346.65 (2) (cm) In any county that opts to offer a reduced minimum period of  
13 imprisonment for the successful completion of a probation period that includes  
14 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
15 and 940.25 in the person's lifetime, plus the total number of suspensions,  
16 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that  
17 suspensions, revocations, or convictions arising out of the same incident or  
18 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
19 but the period of imprisonment shall be not less than 45 days, except that if the  
20 person successfully completes a period of probation that includes alcohol and other  
21 drug treatment, the period of imprisonment shall be not less than 14 days. A person  
22 may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm),  
23 (cm), or (cr) ~~or (3r)~~ once in his or her lifetime.

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

1           346.65 (2) (dm) In any county that opts to offer a reduced minimum period of  
2 imprisonment for the successful completion of a probation period that includes  
3 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
4 and 940.25 in the person's lifetime, plus the total number of suspensions,  
5 revocations, and other convictions counted under s. 343.307 (1) equals 4, and par.  
6 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising  
7 out of the same incident or occurrence shall be counted as one, the fine shall be the  
8 same as under par. (am) 4., but the period of imprisonment shall be not less than 60  
9 days, except that if the person successfully completes a period of probation that  
10 includes alcohol and other drug treatment, the period of imprisonment shall be not  
11 less than 29 days. A person may be sentenced under this paragraph or under par.  
12 (bm) or (cm) or sub. (2j) (bm), (cm), or (cr) ~~or (3r)~~ once in his or her lifetime.

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

14           346.65 (2j) (bm) In any county that opts to offer a reduced minimum period of  
15 imprisonment for the successful completion of a probation period that includes  
16 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
17 and 940.25 in the person's lifetime, plus the total number of suspensions,  
18 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
19 period, equals 2, except that suspensions, revocations, or convictions arising out of  
20 the same incident or occurrence shall be counted as one, the fine shall be the same  
21 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
22 except that if the person successfully completes a period of probation that includes  
23 alcohol and other drug treatment, the period of imprisonment shall be not less than  
24 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
25 par. (cm) or (cr) or sub. (2) (bm), (cm), or (dm) ~~or (3r)~~ once in his or her lifetime.

1           **SECTION 5.** 346.65 (2j) (cm) of the statutes is amended to read:

2           346.65 (2j) (cm) In any county that opts to offer a reduced minimum period of  
3 imprisonment for the successful completion of a probation period that includes  
4 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
5 and 940.25 in the person's lifetime, plus the total number of suspensions,  
6 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that  
7 suspensions, revocations, or convictions arising out of the same incident or  
8 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
9 but the period of imprisonment shall be not less than 45 days, except that if the  
10 person successfully completes a period of probation that includes alcohol and other  
11 drug treatment, the period of imprisonment shall be not less than 14 days. A person  
12 may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm),  
13 (cm), or (dm) ~~or (3f)~~ once in his or her lifetime.

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

15           346.65 (2j) (cr) In any county that opts to offer a reduced minimum period of  
16 imprisonment for the successful completion of a probation period that includes  
17 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
18 and 940.25 in the person's lifetime, plus the total number of suspensions,  
19 revocations, and other convictions counted under s. 343.307 (1) equals 4, and sub. (2)  
20 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising  
21 out of the same incident or occurrence shall be counted as one, the fine shall be the  
22 same as under par. (am) 3., but the period of imprisonment shall be not less than 60  
23 days, except that if the person successfully completes a period of probation that  
24 includes alcohol and other drug treatment, the period of imprisonment shall be not

1 less than 29 days. A person may be sentenced under this paragraph or under par.  
2 (bm) or (cm) or sub. (2) (bm), (cm), or (dm) ~~or (3r)~~ once in his or her lifetime.

3 **SECTION 7.** 346.65 (3m) of the statutes is repealed and recreated to read:

4 **346.65 (3m)** Any person violating s. 346.63 (2) or (6):

5 (a) 1. Except as provided in subd. 2. and sub. (3n), if the violation results in  
6 bodily harm, as defined in s. 939.22 (4), to another, shall be fined not less than \$300  
7 nor more than \$2,000 and shall be imprisoned for not less than six months nor more  
8 than one year in the county jail.

9 2. Is guilty of a Class H felony if the violation results in bodily harm, as defined  
10 in s. 939.22 (4), to another, and the person has one or more prior convictions,  
11 suspensions, or revocations, as counted under s. 343.307 (1). Except as provided in  
12 sub. (3n), the sentencing court shall impose a bifurcated sentence under s. 973.01 and  
13 the confinement in prison portion of the bifurcated sentence shall be not less than  
14 one year.

15 (b) 1. Except as provided in subd. 2., if the violation results in substantial bodily  
16 harm, as defined in s. 939.22 (38), to another, is guilty of a Class H felony. Except  
17 as provided in sub. (3n), the sentencing court shall impose a bifurcated sentence  
18 under s. 973.01 and the confinement in prison portion of the bifurcated sentence  
19 shall be not less than 2 years.

20 2. Is guilty of a Class H felony if the violation results in substantial bodily harm,  
21 as defined in s. 939.22 (38), to another and the person has one or more prior  
22 convictions, suspensions, or revocations, as counted under s. 343.307 (1). Except as  
23 provided in sub. (3n), the sentencing court shall impose a bifurcated sentence under  
24 s. 973.01 and the confinement in prison portion of the bifurcated sentence shall be  
25 not less than 3 years.

1           **SECTION 8.** 346.65 (3n) of the statutes is created to read:

2           **346.65 (3n)** When sentencing a person under sub. (3m), if the person injured  
3 was in the vehicle operated by the convicted person at the time of the violation, the  
4 court may impose a sentence that is less than the sentence required under sub. (3m)  
5 if the court finds that the best interests of the community will be served and the  
6 public will not be harmed, and if the court places its reasons on the record.

7           **SECTION 9.** 346.65 (3p) of the statutes is repealed.

8           **SECTION 10.** 346.65 (3r) of the statutes is repealed.

9           **SECTION 11.** 940.25 (1g) of the statutes is created to read:

10           **940.25 (1g)** (a) Except as provided in par. (b), upon conviction for a violation  
11 of sub. (1), the sentencing court shall impose a bifurcated sentence under s. 973.01  
12 and the confinement in prison portion of the bifurcated sentence shall be not less  
13 than 3 years.

14           (b) When sentencing a person under par. (a), if the person injured was in the  
15 vehicle operated by the convicted person at the time of the violation, the court may  
16 impose a sentence that is less than the sentence required under sub. (3m) if the court  
17 finds that the best interests of the community will be served and the public will not  
18 be harmed, and if the court places its reasons on the record.

19           **SECTION 12.** 973.11 (1) (intro.) of the statutes is amended to read:

20           **973.11 (1) PLACEMENTS.** (intro.) If a person is convicted of or pleads guilty or  
21 no contest to one or more misdemeanors for which either mandatory periods of  
22 imprisonment are not required or the person is sentenced under s. 346.65 (2) (bm)  
23 or (cm), or (2j) (bm) or (cm), ~~or (3r)~~, if the chief judge of the judicial administrative  
24 district has approved a volunteers in probation program established in the  
25 applicable county, and if the court decides that volunteer supervision under the

1 program will likely benefit the person and the community and subject to the  
2 limitations under sub. (3), the court may withhold sentence or judgment of conviction  
3 and order that the person be placed with that volunteers in probation program. A  
4 person's participation in the program may not be used to conceal, withhold, or mask  
5 information regarding the judgment of conviction if the conviction is required to be  
6 included in a record kept under s. 343.23 (2) (a). Except as provided in sub. (3), the  
7 order shall provide any conditions that the court determines are reasonable and  
8 appropriate and may include, but need not be limited to, one or more of the following:

9 **SECTION 13. Initial applicability.**

10 (1) This act first applies to violations committed on the effective date of this  
11 subsection, but does not preclude the counting of other violations as prior violations  
12 for purposes of administrative action by the department of transportation or  
13 sentencing by a court.

14 (END)

**Barman, Mike**

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**From:** Hurley, Peggy  
**Sent:** Monday, February 04, 2013 10:40 AM  
**To:** Barman, Mike  
**Cc:** Mueller, Virginia  
**Subject:** FW:

Mike,

Can you please have this jacketed?

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**From:** Mueller, Virginia  
**Sent:** Monday, February 04, 2013 10:32 AM  
**To:** Hurley, Peggy  
**Subject:**

Peggy could I please get LRB 0729/1 jacketed for the Assembly?

Thanks

Ginger