

## 2013 DRAFTING REQUEST

### Assembly Amendment (AA-AB69)

Received: 9/6/2013 Received By: phurley  
Wanted: As time permits Same as LRB:  
For: Gary Hebl (608) 266-7678 By/Representing: Mike  
May Contact: Drafter: phurley  
Subject: Drunk Driving - penalties Addl. Drafters:  
Extra Copies:

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

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#### Pre Topic:

No specific pre topic given

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#### Topic:

Penalties presumptive rather than mandatory

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#### Instructions:

See attached

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#### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 9/10/2013	wjackson 9/9/2013	jfrantze 9/9/2013	_____	sbasford 9/9/2013	sbasford 9/9/2013	
/2		wjackson 9/10/2013	jfrantze 9/10/2013	_____	sbasford 9/10/2013	sbasford 9/10/2013	

FE Sent For:

<END>

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/1	phurley 9/9/2013	wjackson 9/9/2013	jfrantze 9/9/2013	_____	sbasford 9/9/2013	sbasford 9/9/2013	

FE Sent For:

12WJ 9/10  
 9/10

<END>

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**Topic:**

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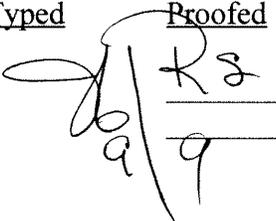
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**Instructions:**

See attached

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/1	phurley	1/1 WJ 9/9		K2			

FE Sent For:

<END>



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0729/1  
PJH:kjf:jm

## 2013 ASSEMBLY BILL 69

March 14, 2013 - Introduced by Representatives J. OTT, STONE, BIES, NASS and T. LARSON, cosponsored by Senators DARLING and LEIBHAM. Referred to Committee on Judiciary.

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.

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### *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.

**ASSEMBLY BILL 69**

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

**ASSEMBLY BILL 69**

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:

**ASSEMBLY BILL 69****SECTION 3**

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.

**ASSEMBLY BILL 69**

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 (3r)~~ 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

**ASSEMBLY BILL 69****SECTION 6**

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.

**ASSEMBLY BILL 69**

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

**ASSEMBLY BILL 69****SECTION 12**

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)



Wij

ASSEMBLY AMENDMENT,  
TO ASSEMBLY BILL 69

today

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 1, line 6: delete "and providing a penalty" and substitute ", providing  
3 a penalty, and making an appropriation".

4 ✓ 2. Page 2, line 1: before that line insert:

5 "SECTION 1g. 20.410 (1) (be) of the statutes is created to read:

6 20.410 (1) (be) *Imprisoning drunken driving offenders*. A sum sufficient to  
7 imprison persons convicted of violating s. 346.63 (2) or (6) or 940.25 (1).

8 SECTION 1g. 20.475 (1) (dm) of the statutes is created to read:

9 20.475 (1) (dm) *Prosecution of drunken driving offenders*. A sum sufficient to  
10 prosecute persons for violations of s. 346.63 (2) or (6) or 940.25 (1).

11 SECTION 1L. 20.550 (1) (cm) of the statutes is created to read:

12 20.550 (1) (cm) *Representation of drunken driving offenders*. A sum sufficient  
13 to pay the costs of representing persons who are charged with violations of s. 346.63

Please  
Fix  
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1 (2) or (6) or 940.25 (1) including costs associated with representation provided by  
2 the office of the state public defender and with reimbursing private attorneys  
3 appointed to act as counsel under s. 977.08. ✓

4 SECTION 1p. 20.625 (1) (am) of the statutes is created to read:

5 20.625 (1) (am) *Drunken driving court costs*. A sum sufficient to pay the costs  
6 associated with prosecuting persons with violations of s. 346.63 (2) or (6) or 940.25  
7 (1). ✓

Please fix font

8 ✓ 3. Page 2, line 1: delete "SECTION 1p" and substitute "SECTION 1p".

9 ✓ 4. Page 7, line 2: delete "if the person injured" and substitute "the".

10 ✓ 5. Page 7, line 3: delete that line.

11 ✓ 6. Page 7, line 14: delete "if the person injured was in the".

12 ✓ 7. Page 7, line 15: delete "vehicle operated by the convicted person at the time  
13 of the violation,".

14 8. Page 8, line 8: after that line insert:

Please fix font

15 "SECTION 12M. Nonstatutory provisions.

16 (1) AUDIT OF COUNTIES AND AGENCIES AFFECTED BY CHANGES TO PENALTIES FOR  
17 CAUSING INJURY WHILE UNDER THE INFLUENCE OF AN INTOXICANT. The legislative audit

18 bureau shall perform a financial audit of counties, of the offices of district attorneys

19 and public defenders, and of the circuit courts to determine the fiscal and

20 administrative costs to counties, the offices, and courts to prosecute violations of

21 sections 346.63 (2), 346.63 (6) or 940.25 (1) of the statutes, as affected by this act.

22 The legislative audit bureau shall prepare a report of its findings and

23 recommendations for addressing any negative consequences of the changes to

24 sentencing under the affected statutes. No later than eighteen months after the

18

*legislative audit bureau shall*

- 1 effective date of this subsection, the/submit copies of the audit report and its
- 2 recommendations to the chief clerk of each house of the legislature for distribution
- 3 to the appropriate standing committees under section 13.172 (3) of the statutes." ✓

4 (END)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBa0789/1  
PJH:wlj/f

2  
rnr

stays

ASSEMBLY AMENDMENT ,  
TO ASSEMBLY BILL 69

today

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 6: before “and” insert “, making an appropriation,”.

3 **2.** Page 2, line 1: before that line insert:

4 “SECTION 1c. 20.410 (1) (be) of the statutes is created to read:

5 20.410 (1) (be) *Imprisoning drunken driving offenders.* A sum sufficient to  
6 imprison persons convicted of violating s. 346.63 (2) or (6) or 940.25 (1).

7 SECTION 1g. 20.475 (1) (dm) of the statutes is created to read:

8 20.475 (1) (dm) *Prosecution of drunken driving offenders.* A sum sufficient to  
9 prosecute persons for violations of s. 346.63 (2) or (6) or 940.25 (1).

10 SECTION 1L. 20.550 (1) (cm) of the statutes is created to read:

11 20.550 (1) (cm) *Representation of drunken driving offenders.* A sum sufficient  
12 to pay the costs of representing persons who are charged with violations of s. 346.63  
13 (2) or (6) or 940.25 (1), including costs associated with representation provided by the

1 office of the state public defender and with reimbursing private attorneys appointed  
2 to act as counsel under s. 977.08.

3 **SECTION 1p.** 20.625 (1) (am) of the statutes is created to read:

4 20.625 (1) (am) *Drunken driving court costs.* A sum sufficient to pay the costs  
5 associated with prosecuting persons with violations of s. 346.63 (2) or (6) or 940.25  
6 (1).”.

7 **3.** Page 2, line 1: delete “SECTION 1” and substitute “SECTION 1t”.

8 **4.** Page 7, line 2: delete “if the person injured” and substitute “the”.

9 **5.** Page 7, line 3: delete that line.

10 **6.** Page 7, line 14: delete “if the person injured was in the”.

11 **7.** Page 7, line 15: delete “vehicle operated by the convicted person at the time  
12 of the violation,”.

13 **8.** Page 8, line 8: after that line insert:

14 **“SECTION 12m. Nonstatutory provisions.**

15 (1) AUDIT OF COUNTIES AND AGENCIES AFFECTED BY CHANGES TO PENALTIES FOR  
16 CAUSING INJURY WHILE UNDER THE INFLUENCE OF AN INTOXICANT. The legislative audit  
17 bureau shall perform a financial audit of counties, offices of district attorneys and  
18 public defenders, and circuit courts to determine the fiscal and administrative costs  
19 to the counties, offices, and courts to prosecute violations of section 346.63 (2) or (6)  
20 or 940.25 (1) of the statutes. The legislative audit bureau shall prepare a report of  
21 its findings and recommendations for addressing any negative consequences of the  
22 changes to sentencing under the affected statutes. No later than 18 months after the  
23 effective date of this subsection, the legislative audit bureau shall submit copies of  
24 the audit report and its recommendations to the chief clerk of each house of the

1 legislature for distribution to the appropriate standing committees under section  
2 13.172 (3) of the statutes.”

3 (END)