2013 DRAFTING REQUEST

Assembly Amendment (AA-AB70)

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:

Pre Topic:

No specific pre topic given

Topic:

Penalties presumptive rather than mandatory for homicide by OWI

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	phurley 9/9/2013	wjackson 9/9/2013	rschluet 9/9/2013	_____ _____	lparisi 9/9/2013	lparisi 9/9/2013	

FE Sent For:

<END>

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/1	phurley	/1 WLJ 9/9	9/13	_____			

FE Sent For:

<END>

State of Wisconsin
2013 - 2014 LEGISLATURE

LRB-0730/1
PJH:jld:jf

2013 ASSEMBLY BILL 70

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

1 AN ACT ***to renumber and amend*** 940.09 (1c) (a) and 940.09 (1c) (b); and ***to***
2 ***create*** 940.09 (1c) (a) 2. and 940.09 (1c) (b) 2. of the statutes; **relating to:**
3 mandatory period of confinement for homicide by intoxicated use of a vehicle
4 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant, with a detectable amount of a restricted controlled substance in his or her blood, or with a prohibited alcohol concentration, is guilty of a felony. If the person has no prior convictions, operator's license suspensions, or operator's license revocations related to operating a vehicle while intoxicated, he or she is guilty of a Class D felony and subject to a maximum fine of $100,000, imprisonment for up to 25 years, or both. If the person has one or more prior convictions, operator's license suspensions, or operator's license revocations related to operating a vehicle while intoxicated, he or she is guilty of a Class C felony and subject to the same maximum fine, imprisonment for up to 40 years, or both.

Under current law, if a person is sentenced to imprisonment for a felony, he or she is sentenced to serve a portion of his or her sentence incarcerated in prison (period of confinement) and a portion of his or her sentence under extended supervision in the community. Current law does not generally require a minimum period of confinement for a person who is sentenced to imprisonment for a felony. However, there are exceptions, including some minimum periods of confinement for

persons who are sentenced to imprisonment for committing a seventh or subsequent offense related to operating a vehicle while intoxicated.

Under this bill, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant, with a detectable amount of a restricted controlled substance in his or her blood, or with a prohibited alcohol concentration, must be sentenced to imprisonment and his or her period of confinement must be at least ten years. Under the bill, if the decedent 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.

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

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

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

1 **SECTION 1.** 940.09 (1c) (a) of the statutes is renumbered 940.09 (1c) (a) 1. and
2 amended to read:

3 940.09 **(1c)** (a) 1. Except as provided in par. (b), a person who violates sub. (1)
4 is guilty of a Class D felony. <u>Except as provided in subd. 2., upon conviction, the court</u>
5 <u>shall impose a bifurcated sentence under s. 973.01 and the term of confinement in</u>
6 <u>prison portion of the bifurcated sentence shall be at least 10 years.</u>

7 **SECTION 2.** 940.09 (1c) (a) 2. of the statutes is created to read:

8 940.09 **(1c)** (a) 2. If the person or persons whose death was caused by the
9 violation was or were in the vehicle operated by the convicted person at the time of
10 the violation, the court may impose a sentence that is less than the sentence required
11 under subd. 1. if the court finds that the best interests of the community will be
12 served and the public will not be harmed, and if the court places its reasons on the
13 record.

1 **SECTION 3.** 940.09 (1c) (b) of the statutes is renumbered 940.09 (1c) (b) 1. and
2 amended to read:
3 940.09 **(1c)** (b) 1. A person who violates sub. (1) is guilty of a Class C felony if
4 the person has one or more prior convictions, suspensions, or revocations, as counted
5 under s. 343.307 (2). Except as provided in subd. 2., upon conviction, the court shall
6 impose a bifurcated sentence under s. 973.01 and the term of confinement in prison
7 portion of the bifurcated sentence shall be at least 10 years.
8 **SECTION 4.** 940.09 (1c) (b) 2. of the statutes is created to read:
9 940.09 **(1c)** (b) 2. If the person or persons whose death was caused by the
10 violation was or were in the vehicle operated by the convicted person at the time of
11 the violation, the court may impose a sentence that is less than the sentence required
12 under subd. 1. if the court finds that the best interests of the community will be
13 served and the public will not be harmed, and if the court places its reasons on the
14 record.
15 **SECTION 5. Initial applicability.**
16 (1) This act first applies to violations committed on the effective date of this
17 subsection, but does not preclude the counting of other convictions, suspensions, or
18 revocations as prior convictions, suspensions, or revocations for purposes of
19 administrative action by the department of transportation or sentencing by a court.
20 **(END)**

State of Wisconsin
2013 – 2014 LEGISLATURE

LRBa0790/1
PJH:.1.:...
WLJ

ASSEMBLY AMENDMENT ,

TO ASSEMBLY BILL 70

today

At the locations indicated, amend the bill as follows:

1. Page 2, line 8: delete the material beginning with "If" and ending with "violation, the" on line 10 and substitute: "The".

2. Page 3, line 9: delete the material beginning with "If" and ending with "violation, the" on line 11 and substitute: "The".

(END)