



2015 ASSEMBLY BILL 353

September 25, 2015 – Introduced by Representatives J. OTT, E. BROOKS, SANFELIPPO, BERCEAU, T. LARSON, SINICKI, MURPHY, JACQUE, EDMING, KITCHENS, SARGENT and KOYENGA, cosponsored by Senators DARLING, NASS and MARKLEIN. Referred to Committee on Criminal Justice and Public Safety.

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.

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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 30 days 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.

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

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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:

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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.

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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

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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 30 days nor more than
8 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.

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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

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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)