

# State of Wisconsin



1995 Senate Bill 117

Date of enactment: **June 7, 1996**  
Date of publication\*: **June 20, 1996**

## 1995 WISCONSIN ACT 425

AN ACT to amend 343.30 (1p), 343.30 (1q) (b) 2. to 4., 343.305 (10) (b) 2. to 4., 343.305 (10) (em), 343.31 (3) (bm) 2. to 4., 343.31 (3) (c), 343.31 (3) (e) and (f), 346.65 (2) (a) to (e), 346.65 (2e), 346.65 (2g) (a), 346.65 (2j) (a) to (c), 346.65 (2q), 346.65 (3) and 971.17 (1); and to create 343.30 (1q) (b) 4m., 343.305 (10) (b) 4m., 343.31 (3) (bm) 4m., 346.65 (2) (f), 346.65 (2g) (c), 346.65 (2j) (d), 346.65 (3m), 940.09 (1b) and 940.25 (1b) of the statutes; relating to: operating a motor vehicle while under the influence of an intoxicant when a minor is a passenger in the motor vehicle and providing penalties.

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

**SECTION 1.** 343.30 (1p) of the statutes is amended to read:

343.30 (1p) Notwithstanding sub. (1), a court shall suspend the operating privilege of a person for 3 months upon the person's conviction by the court for violation of s. 346.63 (2m) or a local ordinance in conformity therewith with s. 346.63 (2m). If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2m) or a local ordinance in conformity with s. 346.63 (2m), the court shall suspend the operating privilege of the person for 6 months.

**SECTION 2.** 343.30 (1q) (b) 2. to 4. of the statutes are amended to read:

343.30 (1q) (b) 2. Except as provided in subd. 3. ~~or~~ 4. or 4m., for the first conviction, ~~suspension or revocation~~, the court shall suspend the person's operating privilege for not less than 6 months nor more than 9 months. The person is eligible for an occupational license under s. 343.10 at any time.

3. If Except as provided in subd. 4m. if the number of convictions, suspensions and revocations within a 5-year period equals 2, the court shall revoke the person's operating privilege for not less than one year nor more than 18 months. After the first 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

4. If Except as provided in subd. 4m. if the number of convictions, suspensions and revocations within a 10-year period equals 3 or more, the court shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

**SECTION 3.** 343.30 (1q) (b) 4m. of the statutes is created to read:

343.30 (1q) (b) 4m. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s.

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

346.63 (1) or a local ordinance in conformity with s. 346.63 (1), the applicable minimum and maximum suspension or revocation periods under subd. 2., 3. or 4. for the conviction are doubled.

**SECTION 4.** 343.305 (10) (b) 2. to 4. of the statutes are amended to read:

343.305 (10) (b) 2. Except as provided in subd. 3. ~~or~~ 4. or 4m., for the first improper refusal, the court shall revoke the person's operating privilege for one year. After the first 30 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

3. If Except as provided in subd. 4m., if the number of convictions, suspensions and revocations in a 5-year period equals 2, the court shall revoke the person's operating privilege for 2 years. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

4. If Except as provided in subd. 4m., if the number of convictions, suspensions and revocations in a 10-year period equals 3 or more, the court shall revoke the person's operating privilege for 3 years. After the first 120 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

**SECTION 5.** 343.305 (10) (b) 4m. of the statutes is created to read:

343.305 (10) (b) 4m. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the improper refusal, the applicable minimum and maximum revocation periods under subd. 2., 3. or 4. for the improper refusal are doubled.

**SECTION 6.** 343.305 (10) (em) of the statutes is amended to read:

343.305 (10) (em) One penalty for improperly refusing to submit to a test for intoxication regarding a person arrested for a violation of s. 346.63 (2m) or a local ordinance in conformity therewith is revocation of the person's operating privilege for 6 months. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the improper refusal, the revocation period is 12 months. After the first 15 days of the revocation period, the person is eligible for an occupational license under s. 343.10. Any such improper refusal or revocation for the refusal does not count as a prior refusal or a prior revocation under this section or ss. 343.30 (1q), 343.307 and 346.65 (2). The person shall not be required to submit to and comply with any assessment or driver safety plan under pars. (c) and (d).

**SECTION 7.** 343.31 (3) (bm) 2. to 4. of the statutes are amended to read:

343.31 (3) (bm) 2. Except as provided in subd. 3. ~~or~~ 4. or 4m., for the first ~~such~~ conviction, the department shall suspend the person's operating privilege for not less

than 6 months nor more than 9 months. If an Indian tribal court in this state suspends the person's privilege to operate a motor vehicle on tribal lands for not less than 6 months nor more than 9 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of suspension. The person is eligible for an occupational license under s. 343.10 at any time.

3. If Except as provided in subd. 4m., if the number of suspensions, revocations and convictions within a 5-year period equals 2, the department shall revoke the person's operating privilege for not less than one year nor more than 18 months. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than one year nor more than 18 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After the first 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

4. If Except as provided in subd. 4m., if the number of suspensions, revocations and convictions within a 10-year period equals 3 or more, the department shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more than 3 years for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

**SECTION 8.** 343.31 (3) (bm) 4m. of the statutes is created to read:

343.31 (3) (bm) 4m. If the Indian tribal court that convicted the person determined that there was a minor passenger under 16 years of age in the motor vehicle at the time of the incident that gave rise to the conviction, the applicable minimum and maximum suspension or revocation periods under subd. 2., 3. or 4. for the conviction are doubled.

**SECTION 9.** 343.31 (3) (c) of the statutes is amended to read:

343.31 (3) (c) Any person convicted under s. 940.09 of causing the death of another by the operation or handling of a motor vehicle shall have his or her operating privilege revoked for 5 years. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 940.09, the revocation period is 10 years.

**SECTION 10.** 343.31 (3) (e) and (f) of the statutes are amended to read:

343.31 (3) (e) Any person convicted under s. 346.63 (2) shall have his or her operating privilege revoked for not less than one year nor more than 2 years. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the con-

viction under s. 346.63 (2), the minimum and maximum revocation periods are doubled.

(f) Any person convicted under s. 940.25 shall have his or her operating privilege revoked for 2 years. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 940.25, the revocation period is 4 years.

**SECTION 11.** 346.65 (2) (a) to (e) of the statutes are amended to read:

346.65 (2) (a) Shall forfeit not less than \$150 nor more than \$300, except as provided in pars. (b) to ~~(e)~~ (f).

(b) ~~Shall Except as provided in par. (f), shall~~ be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 2 in a 5-year period; ~~except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.~~ Suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(c) ~~Shall Except as provided in par. (f), shall~~ be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 3 in a 10-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(d) ~~Shall Except as provided in par. (f), shall~~ be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 4 in a 10-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(e) ~~Shall Except as provided in par. (f), shall~~ be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than one year in the county jail if the total number of suspensions, revocations and convictions counted under s. 343.307 (1) equals 5 or more in a 10-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 12.** 346.65 (2) (f) of the statutes is created to read:

346.65 (2) (f) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1), the applicable minimum and maximum forfeitures, fines or imprisonment under par. (a), (b), (c), (d) or (e) for the conviction are doubled. An offense under s. 346.63 (1) that subjects a person to a penalty under par. (c), (d) or (e) when there is a minor passenger under 16 years of age in the motor vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

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

346.65 (2e) If the court determines that a person does not have the ability to pay the costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d) ~~or~~ (e) or (f), the court may reduce the costs, fine and forfeiture imposed and order the person to pay, toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q) (c), the difference between the amount of the reduced costs and fine or forfeiture and the amount of costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d) ~~or~~ (e) or (f).

**SECTION 14.** 346.65 (2g) (a) of the statutes is amended to read:

346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a) to provide that a defendant perform community service work for a public agency or a nonprofit charitable organization in lieu of part or all of a fine imposed under sub. (2) (b) to ~~(e)~~ (f), the court may provide that a defendant perform community service work for a public agency or a nonprofit charitable organization in lieu of part or all of a forfeiture under sub. (2) (a) or may require a person who is subject to sub. (2) to perform community service work for a public agency or a nonprofit charitable organization in addition to the penalties specified under sub. (2). Notwithstanding s. 973.05 (3) (b), an order may only apply if agreed to by the organization or agency. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant. The issuance or possibility of the issuance of a community service order under this subsection does not entitle an indigent defendant who is subject to sub. (2) (a) to representation by counsel under ch. 977.

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

346.65 (2g) (c) If there was a minor passenger under 16 years of age in the motor vehicle or commercial motor vehicle at the time of the violation that gave rise to the conviction, the court may require a person ordered to perform community service work under par. (a), or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, to participate in community service work that benefits children or that demonstrates the adverse effects on children of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug. The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining and monitoring the community service work ordered under this paragraph.

**SECTION 16.** 346.65 (2j) (a) to (c) of the statutes are amended to read:

346.65 (2j) (a) Shall forfeit not less than \$150 nor more than \$300 except as provided in par. (b) ~~or~~ (c) or (d).

(b) ~~Shall~~ Except as provided in par. (d), shall be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the total of prior convictions, suspension and revocations counted under s. 343.307 (2) equals 2 in a 5–year period.

(c) ~~Shall~~ Except as provided in par. (d), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of prior convictions, suspensions and revocations counted under s. 343.307 (2) equals 3 or more in a 10–year period.

**SECTION 17.** 346.65 (2j) (d) of the statutes is created to read:

346.65 (2j) (d) If there was a minor passenger under 16 years of age in the commercial motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (5), the applicable minimum and maximum forfeitures, fines or imprisonment under par. (a), (b) or (c) for the conviction are doubled. An offense under s. 346.63 (5) that subjects a person to a penalty under par. (c) when there is a minor passenger under 16 years of age in the commercial motor vehicle is a felony and the place of imprisonment shall be determined under s. 973.02.

**SECTION 18.** 346.65 (2q) of the statutes is amended to read:

346.65 (2q) Any person violating s. 346.63 (2m) shall forfeit \$10. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under 346.63 (2m), the forfeiture is \$20.

**SECTION 19.** 346.65 (3) of the statutes is amended to read:

346.65 (3) Except as provided in sub. (5m), any person violating s. 346.62 (3) ~~or 346.63 (2) or (6)~~ shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail.

**SECTION 20.** 346.65 (3m) of the statutes is created to read:

346.65 (3m) Any person violating s. 346.63 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and

may be imprisoned for not less than 30 days nor more than one year in the county jail. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02.

**SECTION 21.** 940.09 (1b) of the statutes is created to read:

940.09 (1b) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under sub. (1), any applicable maximum fine or imprisonment specified for the conviction is doubled.

**SECTION 22.** 940.25 (1b) of the statutes is created to read:

940.25 (1b) If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under sub. (1), any applicable maximum fine or imprisonment specified for the conviction is doubled.

**SECTION 23.** 971.17 (1) of the statutes is amended to read:

971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason of mental disease or mental defect, the court shall commit the person to the department of health and social services for a specified period not exceeding two–thirds of the maximum term of imprisonment that could be imposed under s. 973.15 (2) (a) against an offender convicted of the same crime or crimes, including imprisonment authorized by ss. 161.48, 346.65 (2) (f), (2j) (d) or (3m), 939.62, 939.621, 939.63, 939.635, 939.64, 939.641 and, 939.645, 940.09 (1b) and 940.25 (1b) and other penalty enhancement statutes, as applicable, subject to the credit provisions of s. 973.155. If the maximum term of imprisonment is life, the commitment period specified by the court may be life, subject to termination under sub. (5).

**SECTION 24. Initial applicability.**

(1) This act first applies to violations committed on the effective date of this subsection, but does not preclude the counting of other suspensions, revocations or convictions as prior suspensions, revocations or convictions for sentencing a person or for suspending or revoking a person’s operating privilege.