



1997 SENATE BILL 379

December 17, 1997 – Introduced by Senators DRZEWIECKI, ROSENZWEIG, HUELSMAN, DARLING, COWLES, CLAUSING, ROESSLER and PANZER, cosponsored by Representatives WALKER, KREIBICH, LADWIG, F. LASEE, DOBYNS, STASKUNAS, SCHAFFER, AINSWORTH, ALBERS, HUTCHISON, GUNDERSON, BRANDEMUEHL, HARSDF, GOETSCH, HANSON, M. LEHMAN, GREEN and URBAN. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT to amend** 343.10 (5) (b), 343.30 (1q) (b) (intro.), 343.305 (10) (b) 3.,
2 343.305 (10) (em), 343.307 (1) (intro.), 343.307 (3), 343.31 (3) (bm) (intro.),
3 346.65 (2) (intro.), 346.65 (2c), 346.65 (2e), 346.65 (2g) (a), 346.65 (2i), 346.65
4 (2m) (a), 346.65 (2m) (b), 346.65 (7) and 971.17 (1); and **to create** 343.30 (1q)
5 (bm), 343.31 (3) (br) and 346.65 (2bg) of the statutes; **relating to:** driving a
6 motor vehicle while under the influence of an intoxicant and providing
7 penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person who drives a motor vehicle while the amount of alcohol in his or her blood (alcohol concentration) is above a specified level is subject to penalties for operating a motor vehicle while under the influence of an intoxicant (OWI). Currently, the prohibited alcohol concentration for persons who have one or no prior OWI offenses is 0.1. If a person has 2 or more prior OWI offenses, the prohibited alcohol concentration is 0.08. The severity of the penalties, which include loss of operating privileges, forfeitures or fines, and imprisonment, depend on the number of prior OWI offenses the person has committed and the type of OWI offense. The 4 types of OWI offenses are regular OWI, OWI causing injury, OWI causing great bodily harm and OWI causing death.

Currently, the penalties for regular OWI offenses are as follows:

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1. For the first offense, suspension of the person's operating privilege for 6 to 9 months with the right to obtain an occupational license immediately and a forfeiture of \$150 to \$300.

2. For the 2nd offense, revocation of the person's operating privilege for 1 year to 18 months and the right to obtain an occupational license after 60 days, a fine of \$300 to \$1,000 and imprisonment of 5 days to 6 months.

3. For the 3rd or subsequent offense, revocation of the person's operating privilege for 2 to 3 years and the right to obtain an occupational license after 90 days and a fine of \$600 to \$2,000. In addition, for the 3rd offense, imprisonment of 30 days to 1 year.

4. For the 4th offense the imprisonment is from 60 days to 1 year.

5. For the 5th or subsequent offense, the imprisonment is from 6 months to 1 year.

This bill creates a different set of penalties if the regular OWI offense was committed while the person had an alcohol concentration of 0.18 or greater. The penalties are as follows:

1. For the first offense, revocation of the person's operating privilege for 1 year to 18 months and the right to obtain an occupational license after 60 days, a fine of \$300 to \$1,000 and imprisonment of 5 days to 6 months.

2. For the 2nd or subsequent offense, revocation of the person's operating privilege for 2 to 3 years and the right to obtain an occupational license after 90 days. In addition, for the 2nd offense, a fine of \$600 to \$2,000 and imprisonment of 30 days to 1 year.

3. For the 3rd offense, a fine of \$1,000 to \$2,500 and imprisonment of 60 days to 1 year.

4. For the 4th or subsequent offense, a fine of \$1,000 to \$3,000 and imprisonment of 6 months to 1 year.

If a passenger under 16 years of age was in the vehicle at the time of the offense, the penalties are doubled under current law and for these new penalties.

The bill increases the operating privilege revocation period for a refusal to submit to a test to determine the person's alcohol concentration when the person has one prior OWI conviction to the same amount, 2 to 3 years, as is assessed for a regular OWI offense with an alcohol concentration of 0.18 or more if the person has one prior OWI offense.

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.** 343.10 (5) (b) of the statutes is amended to read:

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1 343.10 (5) (b) *Limitations*. Occupational licenses are subject to the limitations
2 specified in ss. 343.30 (1q) (b), (bm) and (h), 343.305 (8) (d) and (10) (b) and (em),
3 343.31 (3m), 343.32 (1m) and 767.303 and 961.50.

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

5 343.30 (1q) (b) (intro.) For persons convicted under s. 346.63 (1) or a local
6 ordinance in conformity therewith whose alcohol concentration is less than 0.18:

7 **SECTION 3.** 343.30 (1q) (bm) of the statutes is created to read:

8 343.30 (1q) (bm) For persons convicted under s. 346.63 (1) or a local ordinance
9 in conformity therewith whose alcohol concentration is 0.18 or greater:

10 1. The court shall suspend or revoke the person's operating privilege under this
11 paragraph according to the number of previous suspensions, revocations or
12 convictions that would be counted under s. 343.307 (1). Suspensions, revocations
13 and convictions arising out of the same incident shall be counted as one. If a person
14 has a conviction, suspension or revocation for any offense that is counted under s.
15 343.307 (1), that conviction, suspension or revocation shall count as a prior
16 conviction, suspension or revocation under this subdivision.

17 2. Except as provided in subd. 4., for the first conviction, the court shall revoke
18 the person's operating privilege for not less than one year nor more than 18 months.
19 After the first 60 days of the revocation period, the person is eligible for an
20 occupational license under s. 343.10 if he or she has completed the assessment and
21 is complying with the driver safety plan ordered under par. (c).

22 3. Except as provided in subd. 4., if the number of convictions, suspensions and
23 revocations within a 10-year period equals 2 or more, the court shall revoke the
24 person's operating privilege for not less than 2 years nor more than 3 years. After
25 the first 90 days of the revocation period, the person is eligible for an occupational

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1 license under s. 343.10 if he or she has completed the assessment and is complying
2 with the driver safety plan ordered under par. (c).

3 4. If there was a minor passenger under 16 years of age in the motor vehicle
4 at the time of the violation that gave rise to the conviction under s. 346.63 (1) or a
5 local ordinance in conformity with s. 346.63 (1), the applicable minimum and
6 maximum revocation periods under subd. 2. or 3. for the conviction are doubled.

7 5. The 10-year period under this paragraph shall be measured from the dates
8 of the refusals or violations which resulted in the suspensions, revocations or
9 convictions.

10 **SECTION 4.** 343.305 (10) (b) 3. of the statutes is amended to read:

11 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions,
12 suspensions and revocations in a 5-year period equals 2, the court shall revoke the
13 person's operating privilege for not less than 2 years nor more than 3 years. After
14 the first 90 days of the revocation period, the person is eligible for an occupational
15 license under s. 343.10 if he or she has completed the assessment and is complying
16 with the driver safety plan.

17 **SECTION 5.** 343.305 (10) (em) of the statutes is amended to read:

18 343.305 (10) (em) One penalty for improperly refusing to submit to a test for
19 intoxication regarding a person arrested for a violation of s. 346.63 (2m) or (7) or a
20 local ordinance in conformity therewith is revocation of the person's operating
21 privilege for 6 months. If there was a minor passenger under 16 years of age in the
22 motor vehicle at the time of the incident that gave rise to the improper refusal, the
23 revocation period is 12 months. After the first 15 days of the revocation period, the
24 person is eligible for an occupational license under s. 343.10. Any such improper
25 refusal or revocation for the refusal does not count as a prior refusal or a prior

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1 revocation under this section or ss. 343.30 (1q), 343.307 and 346.65 (2) and (2bg). The
2 person shall not be required to submit to and comply with any assessment or driver
3 safety plan under pars. (c) and (d).

4 **SECTION 6.** 343.307 (1) (intro.) of the statutes is amended to read:

5 343.307 (1) (intro.) The court shall count the following to determine the length
6 of a revocation or suspension under s. 343.30 (1q) (b) or (bm) and to determine the
7 penalty under s. 346.65 (2) or (2bg):

8 **SECTION 7.** 343.307 (3) of the statutes is amended to read:

9 343.307 (3) If the same elements of the offense must be proven under a local
10 ordinance or under a law of a federally recognized American Indian tribe or band in
11 this state as under s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), the local ordinance
12 or the law of a federally recognized American Indian tribe or band in this state shall
13 be considered to be in conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5),
14 for purposes of ss. 343.30 (1q) (b) 1. and (bm) 1., 343.305 (10) (b) 1. and 346.65 (2),
15 (2bg) and (2j).

16 **SECTION 8.** 343.31 (3) (bm) (intro.) of the statutes is amended to read:

17 343.31 (3) (bm) (intro.) For any person convicted under a law of a federally
18 recognized American Indian tribe or band in this state in conformity with s. 346.63
19 (1) whose alcohol concentration is less than 0.18:

20 **SECTION 9.** 343.31 (3) (br) of the statutes is created to read:

21 343.31 (3) (br) For any person convicted under a law of a federally recognized
22 American Indian tribe or band in this state in conformity with s. 346.63 (1) whose
23 alcohol concentration is 0.18 or greater:

24 1. The department shall suspend or revoke the person's operating privilege
25 under this paragraph according to the number of previous suspensions, revocations

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1 or convictions that would be counted under s. 343.307 (1). Suspensions, revocations
2 and convictions arising out of the same incident shall be counted as one. If a person
3 has a conviction, suspension or revocation for any offense that is counted under s.
4 343.307 (1), that conviction, suspension or revocation shall count as a prior
5 conviction, suspension or revocation under this subdivision.

6 2. Except as provided in subd. 4., for the first conviction, the department shall
7 revoke the person's operating privilege for not less than one year nor more than 18
8 months. If an Indian tribal court in this state revokes the person's privilege to
9 operate a motor vehicle on tribal lands for not less than one year nor more than 18
10 months for the conviction specified in par. (br) (intro.), the department shall impose
11 the same period of revocation. After the first 60 days of the revocation period, the
12 person is eligible for an occupational license under s. 343.10.

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

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

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1 5. The 10-year period under this paragraph shall be measured from the dates
2 of the refusals or violations which resulted in the suspensions, revocations or
3 convictions.

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

5 346.65 (2) (intro.) Any person violating s. 346.63 (1) whose alcohol
6 concentration is less than 0.18:

7 **SECTION 11.** 346.65 (2bg) of the statutes is created to read:

8 346.65 (2bg) Any person violating s. 346.63 (1) whose alcohol concentration is
9 0.18 or greater:

10 (a) Except as provided in par. (e), shall be fined not less than \$300 nor more than
11 \$1,000 and imprisoned for not less than 5 days nor more than 6 months.

12 (b) Except as provided in par. (e), shall be fined not less than \$600 nor more than
13 \$2,000 and imprisoned for not less than 30 days nor more than one year in the county
14 jail if the total number of suspensions, revocations and convictions counted under s.
15 343.307 (1) equals 2 in a 10-year period, except that suspensions, revocations or
16 convictions arising out of the same incident or occurrence shall be counted as one.

17 (c) Except as provided in par. (e), shall be fined not less than \$1,000 nor more
18 than \$2,500 and imprisoned for not less than 60 days nor more than one year in the
19 county jail if the total number of suspensions, revocations and convictions counted
20 under s. 343.307 (1) equals 3 in a 10-year period, except that suspensions,
21 revocations or convictions arising out of the same incident or occurrence shall be
22 counted as one.

23 (d) Except as provided in par. (e), shall be fined not less than \$1,000 nor more
24 than \$3,000 and imprisoned for not less than 6 months nor more than one year in the
25 county jail if the total number of suspensions, revocations and convictions counted

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1 under s. 343.307 (1) equals 4 or more in a 10-year period, except that suspensions,
2 revocations or convictions arising out of the same incident or occurrence shall be
3 counted as one.

4 (e) If there was a minor passenger under 16 years of age in the motor vehicle
5 at the time of the violation that gave rise to the conviction under s. 346.63 (1), the
6 applicable minimum and maximum fines or imprisonment under pars. (a), (b), (c)
7 and (d) for the conviction are doubled. An offense under s. 346.63 (1) that subjects
8 a person to a penalty under par. (b), (c) or (d) when there is a minor passenger under
9 16 years of age in the motor vehicle is a felony and the place of imprisonment shall
10 be determined under s. 973.02.

11 **SECTION 12.** 346.65 (2c) of the statutes is amended to read:

12 346.65 (2c) In ~~sub. subs.~~ (2) (b) to (e) and (2bg) (b) to (d), the 5-year or 10-year
13 period shall be measured from the dates of the refusals or violations that resulted in
14 the revocation or convictions. If a person has a suspension, revocation or conviction
15 for any offense under a local ordinance or a state statute of another state that would
16 be counted under s. 343.307 (1), that suspension, revocation or conviction shall count
17 as a prior suspension, revocation or conviction under ~~sub. subs.~~ (2) (b) to (e) and (2bg)
18 (b) to (d).

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

20 346.65 (2e) If the court determines that a person does not have the ability to
21 pay the costs and fine or forfeiture imposed under sub. (2) ~~(a), (b), (c), (d), (e) or (f) or~~
22 (2bg), the court may reduce the costs, fine and forfeiture imposed and order the
23 person to pay, toward the cost of the assessment and driver safety plan imposed
24 under s. 343.30 (1q) (c), the difference between the amount of the reduced costs and

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1 fine or forfeiture and the amount of costs and fine or forfeiture imposed under sub.
2 (2) ~~(a), (b), (c), (d), (e) or (f)~~ or (2bg).

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

4 346.65 **(2g)** (a) In addition to the authority of the court under s. 973.05 (3) (a)
5 to provide that a defendant perform community service work for a public agency or
6 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
7 (2) (b) to (f) or (2bg) (a) to (e), the court may provide that a defendant perform
8 community service work for a public agency or a nonprofit charitable organization
9 in lieu of part or all of a forfeiture under sub. (2) (a) or may require a person who is
10 subject to sub. (2) or (2bg) to perform community service work for a public agency or
11 a nonprofit charitable organization in addition to the penalties specified under sub.
12 (2) or (2bg). Notwithstanding s. 973.05 (3) (b), an order may only apply if agreed to
13 by the organization or agency. The court shall ensure that the defendant is provided
14 a written statement of the terms of the community service order and that the
15 community service order is monitored. Any organization or agency acting in good
16 faith to which a defendant is assigned pursuant to an order under this subsection has
17 immunity from any civil liability in excess of \$25,000 for acts or omissions by or
18 impacting on the defendant. The issuance or possibility of the issuance of a
19 community service order under this subsection does not entitle an indigent
20 defendant who is subject to sub. (2) (a) to representation by counsel under ch. 977.

21 **SECTION 15.** 346.65 (2i) of the statutes is amended to read:

22 346.65 **(2i)** In addition to the authority of the court under sub. (2g) and s. 973.05
23 (3) (a), the court may order a defendant subject to sub. (2) or (2bg), or a defendant
24 subject to s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1) or 940.25, to visit a
25 site that demonstrates the adverse effects of substance abuse or of operating a

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1 vehicle while under the influence of an intoxicant or other drug, including an
2 alcoholism treatment facility approved under s. 51.45 or an emergency room of a
3 general hospital in lieu of part or all of any forfeiture imposed or in addition to any
4 penalty imposed. The court may order the defendant to pay a reasonable fee, based
5 on the person's ability to pay, to offset the costs of establishing, maintaining and
6 monitoring the visits ordered under this subsection. The court may order a visit to
7 the site only if agreed to by the person responsible for the site. If the opportunities
8 available to visit sites under this subsection are fewer than the number of defendants
9 eligible for a visit, the court shall, when making an order under this subsection, give
10 preference to defendants who were under 21 years of age at the time of the offense.
11 The court shall ensure that the visit is monitored. A visit to a site may be ordered
12 for a specific time and a specific day to allow the defendant to observe victims of
13 vehicle accidents involving intoxicated drivers. If it appears to the court that the
14 defendant has not complied with the court order to visit a site or to pay a reasonable
15 fee, the court may order the defendant to show cause why he or she should not be held
16 in contempt of court. Any organization or agency acting in good faith to which a
17 defendant is assigned pursuant to an order under this subsection has immunity from
18 any civil liability in excess of \$25,000 for acts or omissions by or impacting on the
19 defendant. The issuance or possibility of the issuance of an order under this
20 subsection does not entitle an indigent defendant who is subject to sub. (2) (a) to
21 representation by counsel under ch. 977.

22 **SECTION 16.** 346.65 (2m) (a) of the statutes, as affected by 1997 Wisconsin Act
23 27, is amended to read:

24 346.65 **(2m)** (a) In imposing a sentence under sub. (2), (2bg) or (2j) for a
25 violation of s. 346.63 (1) (b) or (5) or a local ordinance in conformity therewith, the

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1 court shall review the record and consider the aggravating and mitigating factors in
2 the matter. If the level of the person's blood alcohol level is known, the court shall
3 consider that level as a factor in sentencing. The chief judge of each judicial
4 administrative district shall adopt guidelines, under the chief judge's authority to
5 adopt local rules under SCR 70.34, for the consideration of aggravating and
6 mitigating factors.

7 **SECTION 17.** 346.65 (2m) (b) of the statutes, as created by 1997 Wisconsin Act
8 27, is amended to read:

9 346.65 **(2m)** (b) The court shall consider a report submitted under s. 85.53 (2)
10 (d) when imposing a sentence under sub. (2), (2bg), (2j), (2q) or (3m).

11 **SECTION 18.** 346.65 (7) of the statutes is amended to read:

12 346.65 **(7)** A person convicted under sub. (2) (b), (c), (d) or (e), (2bg) or (2j) (b)
13 or (c) shall be required to remain in the county jail for not less than a
14 48-consecutive-hour period.

15 **SECTION 19.** 971.17 (1) of the statutes is amended to read:

16 971.17 **(1)** COMMITMENT PERIOD. When a defendant is found not guilty by reason
17 of mental disease or mental defect, the court shall commit the person to the
18 department of health and family services for a specified period not exceeding
19 two-thirds of the maximum term of imprisonment that could be imposed under s.
20 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
21 imprisonment authorized by ss. 346.65 (2) (f), (2bg) (e), (2j) (d) or (3m), 939.62,
22 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b) and 940.25 (1b) and
23 961.48 and other penalty enhancement statutes, as applicable, subject to the credit
24 provisions of s. 973.155. If the maximum term of imprisonment is life, the

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1 commitment period specified by the court may be life, subject to termination under
2 sub. (5).

3 **SECTION 20. Initial applicability.**

4 (1) This act first applies to offenses committed on the effective date of this
5 subsection, but does not preclude the counting of other violations as prior
6 convictions, suspensions or revocations for purposes of administrative action by the
7 department of transportation, sentencing by a court or revocation or suspension of
8 operating privileges.

9 **SECTION 21. Effective date.**

10 (1) This act takes effect on the first day of the 3rd month beginning after
11 publication.

12 (END)