

1999 DRAFTING REQUEST

Bill

Received: 11/9/98

Received By: nelsorpl

Wanted: As time permits

Identical to LRB:

For: Alvin Ott (608) 2664831

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorpl

May Contact:

Alt. Drafters:

Subject: Drunk Driving - penalties

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Counting of OWI convictions

Instructions:

Permanently count OWI homicide and great bodily harm convictions

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reauired</u>
/P1	nelsorp 1 11/25/98		martykr 11/25/98	_____	lrb-docadmin 11/25/98		
/P2	nelsorp 1 12/5/98	j geller 12/5/98	martykr 12/7/98	_____	lrb-docadmin 12/7/98		
/1	nelsorp 1 02/1/99	jgeller 02/1/99	lpaasch 02/1/99	_____	lrb-docadmin 02/1/99	lrb_docadminState 03/31/99	

FE Sent For:

<END>



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/P1	nelsorp 1 11/25/98		martykr 11/25/98	_____	lrb-docadmin ⁰ 11/25/98		-
/P2	nelsorp 1 12/5/98	jgeller 12/5/98	martykr 12/7/98	_____	lrb-docadmin 12/7/98		
/1	nelsorp 1 02/1/99	jgeller 02/1/99	lpaasch 02/1/99	_____	lrb-docadmin 02/1/99		State

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<END>

→ for Assm per RPN

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Alt. Drafters:

Subject: Drunk Driving - penalties

Extra Copies:

Topic:

Counting of OWI convictions

Instructions:

Permanently count OWI homicide and great bodily harm convictions

2/1 Ott: Go with John S's suggestions and prepare draft for introduction.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Reaired</u>
/P1	nelsorp 1 11/25/98		martykr 11/25/98	_____	lrb-docadmin 11/25/98		
/P2	nelsorp 1 12/5/98	j geller 12/5/98	martykr 12/7/98	_____	lrb-docadmin 12/7/98		

FE Sent For:

1 2/1 jlg all L.P. 2/1 L.D. <END>

100

1999 DRAFTING REQUEST

Bill

Received: 11/9/98

Received By: nelsorpl

Wanted: As time permits

Identical to LRB:

For: Alvin Ott (608) 266-5831

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorpl

May Contact:

Alt. Drafters:

Subject: Drunk Driving - penalties

Extra Copies:

Topic:

Counting of OWI convictions

Instructions:

Permanently count OWI homicide and great bodily harm convictions

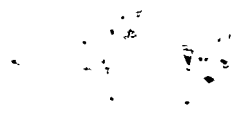
Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

Handwritten signatures and dates: km 12/7, km 12/7

<END>



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1999 DRAFTING REQUEST

Bill

Received: **11/9/98**

Received By: **nelsorpl**

Wanted: **As time permits**

Identical to LRB:

For: **Alvin Ott (608) 2664831**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **nelsorpl**

May Contact: *Calumet Co. Sheriff
Oscar Beilke 920-849-2335*

Alt. Drafters:

Subject: **Drunk Driving - penalties**

Extra Copies: *John Sobotta,
Dept. of Trans*

T o p i c :

Counting of OWI convictions

Instructions:

Permanently count OWI homicide and great bodily harm convictions

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?	nelsorp 1	<i>PI-11-24-98 JCS</i>	<i>dm/25</i>	<i>ll</i>	<i>ll</i>		

Please submit

FE Sent For:

<END>

Chairman:
Agriculture Committee



Member:
Consumer Affairs
Government Operations
Natural Resources

Al Ott

State Representative • 3rd Assembly District

To: Bob Nelson

From: Rep. Al Ott

Re: November 1st meeting regarding
OWI laws

For your review I have attached the letter I received from Bill Tyson that explains his concerns about the current OWI laws. I thought you might want to review the letter before the meeting.

Let me know if you have any questions.

3/18 North

Office: P.O. Box 8953 • Madison, WI 53708 • (608) 266-5831 • Fax: (608) 282-3603
Toll-Free (888) 534-0003 • Rep.Ott@legis.state.wi.us

Home: P.O. Box 112 • Fores Junction, WI 54123-0112 • (920) 989-1240

October 14, 1998

Dear Greg,

Below is a copy of the letter sent to the Wisconsin Professional Police Association. Calumet County sheriff, Sheriff Oscar Beilke, will be distributing a similar copy to the other 71 sheriffs at the Badger State Sheriff's Association meeting in early November. I would like to thank you and Representative Ott for taking time to listen to my concerns.

I am writing to you in regards to our telephone conversation on Tuesday, October 6th, 1998. During our conversation, I expressed a desire to change the current Operating while Intoxicated law. Under current law, if a person has been convicted of Homicide by Intoxicated use of a Motor Vehicle, and his/her driving record does not show any OWI convictions with the 5 year period after the Homicide by Intoxicated use of a Motor Vehicle conviction, if arrested for OWI after the 5th year anniversary of the homicide conviction, the arrest is considered their first offense for OWI, state statute 346.65(2)(a).

Imagine this unbelievable scenario. You raise your daughter for 17 years. One evening that 17-year-old daughter goes out to a birthday party. Within one hour of your daughter leaving your residence, the police are at your door to inform you that your daughter was dead, a victim of a hit and run drunk driver. Fourteen years later, with the memories of your daughter very much alive, you are informed that the person who killed your daughter was recently arrested and convicted of drunk driving and that the offense is considered his first offense. He will pay a fine and lose his license for 7 months. This story is not so unbelievable to Dale and Suzanne Diener, residing at W2639 STH 114 Hilbert, WI 53129.

On March 31, 1984, Raymond Liebzeit was travelling, based on witness statements, 90 mph in a posted 25-mph speed zone. In his path was a 17-year-old female named Cheri Diener. Cheri was walking across the street when she was hit by Raymond Liebzeit's vehicle. Cheri Diener lay dead in the street. Raymond Liebzeit never stopped but was apprehended shortly thereafter. Raymond was arrested and convicted of Homicide by Intoxicated Use of a Motor Vehicle and sentenced to two years in a correctional facility, in which he served 13 months, in what the victim's family considered a "country club",

In December of 1997, I personally met Raymond Liebzeit. He was a victim of a mysterious car fire on a country highway. Being the officer sent to investigate the incident, I met and spoke with Raymond Liebzeit. Raymond spoke of his life and how he felt he was a failure. He had an out-of-control son who was on drugs and being a single parent, felt that he was losing the battle with his son. He told me that he was an alcoholic and had been clean for the past 13 years. Smelling an odor of that relating to alcohol emitting from his breath, I asked Raymond if he had been consuming alcohol. Shamefully, Raymond told me that he was at his parent's house for a Christmas party and with all his current pressures, fell off the wagon and did consume some alcohol. He expressed the necessity to continue with his AA meetings. The Department of Transportation records indicated that Raymond Liebzeit had a spotless driving record. Being Christmas time along with the fact that Raymond Liebzeit had a clear driving record, I decided to give Raymond Liebzeit a break and not arrest him for OWI. While I was driving Raymond Liebzeit to his residence, he told me that he should have learned his lesson, having served a prison sentence. I inquired about the prison sentence that he served and he informed me that he served a prison sentence for Homicide by Intoxicated Use of a Motor Vehicle. When I dropped Raymond off at his residence, we spoke in length of the incident that put him in prison. I informed Raymond that if he ever drank again and even thought about grabbing his car keys, he should see the face of the girl that he ran down 14 years ago. Raymond told me that he has nightmares every night and promised me that he would continue going to his AA meetings, and would never touch a drop of alcohol again.

Feeling rather ashamed of myself for not arresting Raymond Liebzeit originally, I told this story only to my closest friends within the department. On April 26, 1998, one of those close friends met Raymond Liebzeit at approximately 4:00 a.m. Raymond almost hit a station wagon head on and nearly killed the family members inside that station wagon. The chilling 911 call received from the operator of the station wagon describes Raymond's vehicle crossing the centerline and entering their lane of travel. Raymond went into

the ditch, on the wrong side of the highway. Raymond was arrested for OWI and possession of drug paraphernalia.

Raymond was charged with OWI (1st offense), guidelines found under state statute 346.65. Under this statute, no consideration can be taken in regards to the homicide he committed 14 years ago. He was found guilty on July 20, 1998. Besides a fine, Raymond lost his license for 7 months. He gets his license back in February 1999. Raymond was also found guilty of the possession of paraphernalia charge. He was ordered to pay a \$307.00 fine and his license was suspended for 6 months, concurrent to the 7 month suspension for the OWI conviction, meaning he only lost his license for 7 months.

If you're wondering if the current OWI arrest and conviction impacted Raymond Liebszeit's life, I met Raymond again in September, 1998, while I was in a local tavern looking for an individual who had an active warrant. The wanted subject was not there. Raymond was there, with a glass of beer in his hand.

I spoke with Cheri Diener's parents, Dale and Suzanne Diener, and informed them that Raymond Liebszeit was convicted of OWI recently, and that under Wisconsin law, he was found guilty of his first offense OWI. The Diener's were very shocked that the current law allows for their daughter's killer to be treated equally to those who are convicted of their first OWI offense, persons who probably were never in trouble with the law, prior to their arrest for OWI. I informed them that I have spoken with our state legislator, Al Ott, and that I was determined to change the law. They did not find much comfort in knowing that the man who killed their daughter did not learn something from her tragic death. He will be legally driving on Wisconsin highways in February 1999.

There are a lot of "Raymond's" out there. Some are driving on the highway, and some are still in prison awaiting their release date. I would like to make it clear to all the "Raymond's" in Wisconsin. You have been convicted of Homicide by Intoxicated Use of a Motor Vehicle (a felony). If you ever get convicted of OWI, it will be a Class E felony, a fine not to exceed \$10,000.00 or imprisonment not to exceed 2 years (mandatory 1 year imprisonment will be ordered), or both, regardless of how long ago you were convicted of Homicide by Intoxicated Use of a Motor Vehicle.

In June 1993, I attend the funeral of Lt. Jeffrey Williams. Lt. Williams was run over by a drunk driver on a tractor. The man convicted of Homicide by Intoxicated Use of a Motor Vehicle was sentenced to ten years in prison. Under current law, if the man gets out after serving his ten year sentence, he can (on the day he is released from prison) get drunk, drive a vehicle, get arrested, and be charged with his first offense drunk driving. I'm determined to not allow that to happen.

I have been in contact with State Legislator, Al Ott. Mr. Ott requested me to seek support from a police organization. I am hoping I can rely on the Wisconsin Professional Police Association to publicly back my proposed legislation and me. Any assistance will be greatly appreciated.

Respectfully,

Bill Tyson
Calumet County Sheriff's Department
206 Court Street
Chilton, WI 53014
1-800-442-9878 (work)
(920) 849-2335 (work)
(920) 849-7898 (home)



Jlg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 ^{gen cat}
AN ACT ...; relating to: counting of certain convictions in drunk driving cases.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

2 **SECTION 1.** 343.30 (lq) (b) 6. [✓] of the statutes is created to read:
3 343.30 **(lq)** (b) 6. Notwithstanding subd. 3., [✓] when counting the number of
4 suspensions, revocations or convictions under s. 343.307 (1) [✓] to determine the length
5 of the suspension or revocation under this paragraph, [✓] the court shall count any
6 conviction under s. 940.09 (1) [✓] or 940.25 [✓], regardless of the period of time between the
7 date of the violation that resulted in the conviction under s. 940.09 (1) or 940.25 [✓] and
8 the date of the violation that resulted in the current conviction under s. 346.63 (1).
9 **SECTION 2.** 343.305 (10) (b) 6. [✓] of the statutes is created to read:
10 343.305 **(10)** (b) 6. Notwithstanding subd 3., [✓] when counting the number of
11 suspensions, revocations or convictions under s. 343.307 (2) [✓] to determine the length

1 of the revocation under this paragraph[✓], the court shall count any conviction under
2 s. 940.09 (1) or 940.25[✓], regardless of the period of time between the date of the
3 violation that resulted in the conviction under s. 940.09 (1) or 940.25 and the date
4 of the current refusal under sub. (3) (a)!

5 **SECTION 3. 343.31 (3) (bm) 6.**[✓] of the statutes is created to read:

6 343.31 (3) (bm) 6. Notwithstanding subd 3.,[✓] when counting the number of
7 suspensions, revocations or convictions under s. 343.307 (1)[✓] to determine the length
8 of the revocation under this paragraph[✓], the court shall count any conviction under
9 s. 940.09 (1) or 940.25[✓], regardless of the period of time between the date of the
10 violation that resulted in the conviction under s. 940.09 (1) or 940.25 and the[✓] *date of the* current
11 conviction under a law of a federally recognized American Indian tribe or band in this
12 state in conformity with s. 346.63 (1).[✓]

13 **SECTION 4. 346.65 (2) (g)**[✓] of the statutes is created to read:

14 346.65 (2) (g) Notwithstanding par. (b), when counting the number of
15 suspensions, revocations or convictions under s. 343.307 (1)[✓] to determine the penalty
16 under this subsection[✓], the court shall count any conviction under s. 940.09 (1) or
17 940.25[✓], regardless of the period of time between the date of the violation that resulted
18 in the conviction under s. 940.09 (1) or 940.25[✓] and the date of the violation that
19 resulted in the current conviction under s. 346.63 (1).[✓]

20 **SECTION 5. 346.65 (2j) (e)**[✓] of the statutes is created to read:

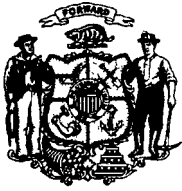
21 346.65 (2j) (e) Notwithstanding par. (b),[✓] when counting the number of
22 suspensions, revocations or convictions under s. 343.307 (2)[✓] to determine the penalty
23 under this subsection[✓], the court shall count any conviction under s. **940.09** (1) or
24 940.25[✓], regardless of the period of time between the date of the violation that resulted

1 in the conviction under s. 940.09 (1) or 940.25[✓] and the date of the violation that
2 resulted in the current conviction under s. 346.63⁽¹⁾~~(1)~~[✓].

3 **SECTION 6. 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 convictions, suspensions or
6 revocations as prior convictions, suspensions or revocations for purposes of
7 administrative action by the department of transportation!& sentencing by a court.

8 (END)[✓]



State of Wisconsin
1999 - 2000 LEGISLATURE

P2
LRB-0791/E1
RPN;jlg:km
↑
Stays

D - Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{regen} ~~to create~~ 343.30 (1q) (b) 6., 343.305 (10) (b) 6., 343.31 (3) (bm) 6., 346.65
2 ~~(2) (g) and 346.65 (2) (e)~~ of the statutes; relating to: ✓ counting of certain
3 convictions in drunk driving cases.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

4 **SECTION 1.** ~~343.30 (1q) (b) 6. of the statutes @created to read:~~
5 343.30 (1q) (b) 6. Notwithstanding subd. 3., when counting the number of
6 suspensions, revocations or convictions under s. 343.307 (1) to determine the length
7 of the suspension or revocation under this paragraph, the court shall count any
8 conviction under s. 940.09 (1) or 940.25, regardless of the period of time between the
9 date of the violation that resulted in the conviction under s. 940.09 (1) or 940.25 and
10 the date of the violation that resulted in the current conviction under s. 346.63 (1).

1 **SECTION 2.** 343.305 (10) (b) 6. of the statutes is created to read:

2 343.305 **(10)** (b) 6. Notwithstanding subd 3., when counting the number of
3 suspensions, revocations or convictions under s. 343.307 (2) to determine the length
4 of the revocation under this paragraph, the court shall count any conviction under
5 s. 940.09 (1) or 940.25, regardless of the period of time between the date of the
6 violation that resulted in the conviction under s. 940.09 (1) or 940.25 and the date
7 of the current refusal under sub. (3)(a).

8 **SECTION 3.** 343.31 (3) (bm) 6. of the statutes is created to read:

9 343.31 **(3)** (bm) 6. Notwithstanding subd 3., when counting the number of
10 suspensions, revocations or convictions under s. 343.307 (1) to determine the length
11 of the revocation under this paragraph, the court shall count any conviction under
12 s. 940.09 (1) or 940.25, regardless of the period of time between the date of the
13 violation that resulted in the conviction under s. 940.09 (1) or 940.25 and the date
14 of the current conviction under a law of a federally recognized American Indian tribe
15 or band in this state in conformity with s. 346.63 (1).

16 **SECTION 4.** 346.65 (2) (g) of the statutes is created to read:

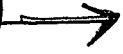
17 346.65 (2) (g) Notwithstanding par. (b), when counting the number of
18 suspensions, revocations or convictions under s. 343.307 (1) to determine the penalty
19 under this subsection, the court shall count any conviction under s. 940.09 (1) or
20 940.25, regardless of the period of time between the date of the violation that resulted
21 in the conviction under s. 940.09 (1) or 940.25 and the date of the violation that
22 resulted in the current conviction under s. 346.63 (1).

23 **SECTION 5.** 346.65 (2j) (e) of the statutes is created to read:

24 346.65 **(2j)** (e) Notwithstanding par. (b), when counting the number of
25 suspensions, revocations or convictions under s. 343.307 (2) to determine the penalty

1 under this subsection, the court shall count any conviction under s. 940.09 (1) or
 2 940.25, regardless of the period of time between the date of the violation that resulted
 3 in the conviction under s. 940.09 (1) or 940.25 and the date of the violation that
 4 resulted in the current conviction under s. 346.63 (5).

Insert
3-4



SECTION 6. Initial applicability.

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

10

(END) ✓

D-NOTE
↓

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0791/P2ins
RPN:jlg:km

1 insert 3-4:

2 SECTION 1. 343.30 (lq) (b) 3. of the statutes is amended to read:

3 343.30 (lq) (b) 3. Except as provided in subd. 4m., if the number of convictions
4 under ^{ss.} 940.09 (1) and 940.25, plus the number of other convictions, suspensions and
5 revocations counted under ^{s.} 343.307 (1) within a lo-year period, equals 2, the court
6 shall revoke the person's operating privilege for not less than one year nor more than
7 18 months. After the first 60 days of the revocation period, the person is eligible for
8 an occupational license under s. 343.10 if he or she has completed the assessment and
9 is complying with the driver safety plan ordered under par. (c).

History: 1971 c. 213 s. 5; 1971 c. 278; 1973 c. 70,218; 1975 c. 5; 1975 c. 184 s. 13; 1975 c. 199, 297, 421; 1977 c. 29 s. 1654 (7) (a), (c); 1977 c. 30, 64, 193,203; 1979 c. 221, 300, 331, 333, 355; 1981 c. 20; 1981 c. 79 s. 18; 1983 a. 17; 1983 a. 74 ss. 26m to 26.32; 1983 a. 192; 1985 a. 80, 176, 337; 1987 a. 3, 17, 285; 1987 338. 64; 1989 a. 7, 31, 105. 121,336; 1991 a. 39, 251, 277, 316; 1993 a. 16, 227, 317; 1995 a. 27, 37, 269, 338, 401, 425, 448; 1997 a. 35, 84, 135, 237, 283; s. 13.93 (2) (c).

10 SECTION 2. 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 under ^{ss.} 940.09 (1) and 940.25, plus the number of other convictions, suspensions and
13 revocations counted under ^{s.} 343.307 (2) within a lo-year period, equals 2, the court
14 shall revoke the person's operating privilege for 2 years. After the first 90 days of the
15 revocation period, the person is eligible for an occupational license under s. 343.10
16 if he or she has completed the assessment and is complying with the driver safety
17 plan.

History: 1987 a.3, 27, 399; 1989 a.7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436,448; 1997 a. 35, 84, 107, 191, 237, 290.

18 SECTION 3. 343.31 (3) (bm) 3. of the statutes is amended to read:

19 343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of convictions
20 under ^{ss.} 940.09 (1) and 940.25, plus the number of suspensions, revocations and other
21 convictions counted under ^{s.} 343.307 (1) within a lo-year period, equals 2, the
22 department shall revoke the person's operating privilege for not less than one year

1 nor more than 18 months. If an Indian tribal court in this state revokes the person's
2 privilege to operate a motor vehicle on tribal lands for not less than one year nor more
3 than 18 months for the conviction specified in par. (bm) (intro.), the department shall
4 impose the same period of revocation. After the first 60 days of the revocation period,
5 the person is eligible for an occupational license under s. 343.10.

History: 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 s. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304.1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399, 1989 a. 31,105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 258, 295.

6 SECTION 4. 346.65 (2) (b) of the statutes is amended to read:

7 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300
8 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
9 if the ~~total~~ ^{crim} number of convictions under ~~940.09 (1) and 940.25~~ ^{SS} ~~plus the number of~~
10 ^{Prior} ~~suspensions, revocations and other~~ convictions counted under s. 343.307 (1) within
11 a 2-year period, equals 2 ~~within a 10-year period~~. Suspensions, revocations or
12 convictions arising out of the same incident or occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399, 1989 a. 105, 176,271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317,475; 1995 a. 44, 338, 359,425; 1997 a. 27, 135, 199, 237, 271, 283, 295; s. 13.93 (2) (c).

13 SECTION 5. 346.65 (2j) (b) of the statutes is amended to read:

14 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
15 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
16 if the ~~total~~ ^{claim} number of ~~prior~~ ^{SS} convictions under ~~940.09 (1) and 940.25~~ ^Δ ~~plus the~~
17 ~~number of other~~ ^{Prior} convictions, suspension and revocations counted under s. 343.307
18 (2) within a 10-year period, equals 2 ~~within a 10-year period~~.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80,337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317,475, 1995 a. 44, 338, 359,425; 1997 a. 27, 135, 199,237, 271, 283, 295; s. 13.93 (2) (c).

(end ins)

10

3

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0791/P2dn

RPN:jlg:km

↑
stays

I discussed the first version of this draft with John Sobotick of DOT. Based on those discussions, I drafted this version. Please review it and share a copy with John for his review to see if the draft has the intended result.

Robert P. Nelson
Senior Legislative Attorney
267-7511

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0791/P2dn
RPN:jlg:km

December 7, 1998

I discussed the first version of this draft with John Sobotick of DOT. Based on those discussions, I drafted this version. Please review it and share a copy with John for his review to see if the draft has the intended result.

Robert P. Nelson
Senior Legislative Attorney
267-7511



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James S. Thiel
Joe Maassen
Barbara Bird
Alynn Lepeska
Mike Kernats
Fred Wisner
John Sobotik

MEMORANDUM

To: Rep. Al Ott
cc: Bob Nelson, LRB
From: John Sobotik, WISDOT
Re: LRB 0791/P1
OGC #: 98-349
Date: January 11, 1999

Dear Rep. Ott:

Shortly after receiving your note regarding LRB 0791/P1, I had a fairly lengthy conversation with Bob Nelson from the LRB regarding the drafting style he used for the bill.

The gist of the conversation was that I thought it might be preferable to simply state the time **frame** over which offenses count directly in the relevant penalty section of the statutes rather than in a "notwithstanding" paragraph later in the statute. Either way, the same purpose is accomplished. My experience, however, is that prosecutors, police, judge-d defense counsel often miss such provisions when they are off in a seldom referred to provision by themselves.

For example, this might be done along these lines:

346.65(2)(b) 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 convictions under s. 940.090) or 940.25 in the defendant's lifetime plus the total number of other suspensions, revocations and convictions counted under s. 343.307 (1) ~~equals 2~~ within a 1 O-year period equals two. Suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

Bob said he would draft a version of the bill up with the timeline provision incorporated into the current statutory language along the above lines and provide it to you.

As we discussed in your office, my comments are related only to the technical drafting of the bill. Only the Secretary's **office** can tell you how the agency would view this bill **from** a policy standpoint.

Very truly yours,



John Sobotik
Assistant General Counsel



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

✓ in the person's lifetime

Regen

1 **AN ACT to amend** 343.30 (1q) (b) 3., 343.305 (10) (b) 3., 343.31 (3) (bm) 3., 346.65
2 (2) (b) and 346.65 (2j) (b) of the statutes; **relating to:** counting of certain
3 convictions in drunk driving cases.

Insert and

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

4 SECTION 1. 343.30 (1q) (b) 3. of the statutes is amended to read:
5 343.30 (1q) (b) 3. Except as provided in subd. 4m., if the number of convictions
6 under ss. 940.09 (1) and 940.25, ^{total ✓} plus the number of other convictions, suspensions
7 and revocations counted under s. 343.307 (1) within a 10-year period, equals 2, the
8 court shall revoke the person's operating privilege for not less than one year nor more
9 than 18 months. After the first 60 days of the revocation period, the person is eligible
10 for an occupational license under s. 343.10 if he or she has completed the assessment
11 and is complying with the driver safety plan ordered under par. (c).

(use 3 times) 2

in the person's lifetime

SECTION 2. 343.305 (10) (b) 3. of the statutes is amended to read:

343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25, plus the ^{total} number of other convictions, suspensions and revocations counted under s. 343.307 (2) within a 10-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.

SECTION 3. 343.31 (3) (bm) 3. of the statutes is amended to read:

343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25, plus the ^{total} number of suspensions, revocations and other convictions counted under s. 343.307 (1) within a 10-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.

SECTION 4. 346.65 (2) (b) of the statutes is amended to read:

346.65 (2) (b) 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 prior convictions under ss. 940.09 (1) and 940.25, plus the ^{total} number of prior suspensions, revocations and other convictions counted under s. 343.307 (1) ¹⁰ within a 7-year period, equals 2 ~~within a 10-year period~~. Suspensions,

1 revocations or convictions arising out of the same incident or occurrence shall be
2 counted as one.

in the person's lifetime

3 **SECTION 5.** 346.65 (2j) (b) of the statutes is amended to read:

4 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
5 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months

6 if the ~~total~~ total number of prior convictions under ss. 940.09 (1) and 940.25, plus the
7 total
8 number of nrrior other convictions, suspension and revocations counted under s.
9 343.307 (2) within a 10-year period, equals 2 ~~within a 10-year period~~.

9 **SECTION 6. Initial applicability.**

10 (1) This act first applies to offenses committed on the effective date of this
11 subsection, but does not preclude the counting of other convictions, suspensions or
12 revocations as prior convictions, suspensions or revocations for purposes of
13 administrative action by the department of transportation or sentencing by a court.

14

(END)

insert anl:

Under current law, when sentencing a person for the operation of a motor vehicle while under the influence of an intoxicant (OWI), the court is required to count the number of ~~prior OWI~~ offenses that the person has committed within certain time periods. Prior OWI offenses that the court must count include driving while under the influence of an intoxicant, driving while the person has a prohibited alcohol concentration, causing injury, great bodily harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration and improperly refusing to submit to a test to determine the alcohol concentration in the person's blood.

Currently, if a person is convicted of driving while under the influence of an intoxicant or while the person has a prohibited alcohol concentration or of driving a commercial motor vehicle while having a blood alcohol concentration of 0.04 to 0.1[✓] and the person has one prior OWI conviction within the previous ten-year period, the court revokes the person's operating privilege for not less than one year nor more than 18 months, fines the person not less than \$300 nor more than \$1,000⁴ and imprisons the person for not less than five days nor more than six months. Under this bill, in addition to counting OWI offenses committed within the previous ten-year period, if the person has, at any time in his or her life, caused great bodily harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration, that offense is counted as a prior OWI offense and the penalties listed above apply

Currently, if a court determines that a person improperly refused to submit to a test to determine the alcohol concentration in the person's blood and the person has one prior OWI conviction within the previous ten-year period, the court revokes the person's operating privilege for ~~1~~^{two} years. Under this bill, in addition to counting OWI offenses committed within the previous ten-year period, if the person has, at any time in his or her life, caused great bodily harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration, that offense is counted as a prior OWI offense and the court is required to revoke the person's operating privilege for ~~1~~^{two} years.

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

, Nelson, Robert

From: Gustafson, Andrew
Sent: Tuesday, March 30, 1999 4:07 PM
To: Nelson, Robert

Bob,
I was wondering if you could provide me with a draft approval form for LRB **0791/1** if this **email** does not suffice. We are ready to introduce the proposal.
Andy

Barman, Mike

From: Barman, Mike
Sent: Thursday, April 08, 1999 11:42 AM
To: Gustafson, Andrew
Subject: LRB 99-0791/1 (Per Your Request)



99-0791/1

Mike Barman

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