

1999 SENATE BILL 95

March 23, 1999 – Introduced by Senators DRZEWIECKI, ROSENZWEIG, ROESSLER, SCHULTZ, FARROW, DARLING, CLAUSING, HUELSMAN, ZIEN, GROBSCHMIDT and PANZER, cosponsored by Representatives LADWIG, STASKUNAS, ALBERS, HUTCHISON, AINSWORTH, BOCK, LA FAVE, PETTIS, GUNDRUM, HUNDERTMARK and MONTGOMERY. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to amend** 346.65 (2) (intro.), 346.65 (2c), 346.65 (2e), 346.65 (2g) (a),
 2 346.65 (2i), 346.65 (2m) (a), 346.65 (2m) (b), 346.65 (7) and 971.17 (1); and **to**
 3 **create** 346.65 (2bg) of the statutes; **relating to:** driving a motor vehicle while
 4 under the influence of an intoxicant and providing 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 two 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, depends on the number of prior OWI offenses the person has committed and the type of OWI offense. The four types of OWI offenses are regular OWI, OWI causing injury, OWI causing great bodily harm and OWI causing death.

This bill increases the fines and forfeitures if the regular OWI offense was committed while a person had an alcohol concentration of 0.18 or greater. The penalties are as follows:

1. For the first offense, a fine of \$300 to \$1,000 and imprisonment of five days to six months.
2. For the second offense, a fine of \$600 to \$2,000 and imprisonment of 30 days to one year.

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

4. For the fourth or subsequent offense, a fine of \$1,000 to \$3,000 and imprisonment of six months to five years.

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) (intro.) of the statutes is amended to read:

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

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

5 346.65 **(2bg)** Any person violating s. 346.63 (1) whose alcohol concentration is
6 0.18 or greater:

7 (a) Except as provided in par. (e), shall be fined not less than \$300 nor more than
8 \$1,000 and imprisoned for not less than 5 days nor more than 6 months.

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

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

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1 (d) Except as provided in par. (e), shall be fined not less than \$1,000 nor more
2 than \$3,000 and imprisoned for not less than 6 months nor more than 5 years if the
3 total number of suspensions, revocations and convictions counted under s. 343.307
4 (1) equals 4 or more, except that suspensions, revocations or convictions arising out
5 of the same incident or occurrence shall be counted as one. The place of
6 imprisonment under this paragraph shall be determined under s. 973.02.

7 (e) If there was a minor passenger under 16 years of age in the motor vehicle
8 at the time of the violation that gave rise to the conviction under s. 346.63 (1), the
9 applicable minimum and maximum fines or imprisonment under pars. (a), (b), (c)
10 and (d) for the conviction are doubled. An offense under s. 346.63 (1) that subjects
11 a person to a penalty under par. (b), (c) or (d) when there is a minor passenger under
12 16 years of age in the motor vehicle is a felony and the place of imprisonment shall
13 be determined under s. 973.02.

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

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

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

22 346.65 **(2e)** If the court determines that a person does not have the ability to
23 pay the costs and fine or forfeiture imposed under sub. (2) ~~(a), (b), (c), (d), (e) or (f) or~~
24 (2bg), the court may reduce the costs, fine and forfeiture imposed and order the
25 person to pay, toward the cost of the assessment and driver safety plan imposed

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1 under s. 343.30 (1q) (c), the difference between the amount of the reduced costs and
2 fine or forfeiture and the amount of costs and fine or forfeiture imposed under sub.
3 (2) ~~(a), (b), (c), (d), (e) or (f)~~ or (2bg).

4 **SECTION 5.** 346.65 (2g) (a) of the statutes is amended to read:

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

22 **SECTION 6.** 346.65 (2i) of the statutes is amended to read:

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

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

23 **SECTION 7.** 346.65 (2m) (a) of the statutes 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 8.** 346.65 (2m) (b) of the statutes is amended to read:

8 346.65 **(2m)** (b) The court shall consider a report submitted under s. 85.53 (2)
9 (d) when imposing a sentence under sub. (2), (2bg), (2j), (2q) or (3m).

10 **SECTION 9.** 346.65 (7) of the statutes is amended to read:

11 346.65 **(7)** A person convicted under sub. (2) (b), (c), (d) or (e), (2bg) (a) (b), (c)
12 or (d) or (2j) (b) or (c) shall be required to remain in the county jail for not less than
13 a 48-consecutive-hour period.

14 **SECTION 10.** 971.17 (1) of the statutes is amended to read:

15 971.17 **(1)** COMMITMENT PERIOD. When a defendant is found not guilty by reason
16 of mental disease or mental defect, the court shall commit the person to the
17 department of health and family services for a specified period not exceeding
18 two-thirds of the maximum term of imprisonment that could be imposed under s.
19 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
20 imprisonment authorized by ss. 346.65 (2) (f), (2bg) (e), (2j) (d) or (3m), 939.62,
21 939.621, 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and
22 961.48 and other penalty enhancement statutes, as applicable, subject to the credit
23 provisions of s. 973.155. If the maximum term of imprisonment is life, the
24 commitment period specified by the court may be life, subject to termination under
25 sub. (5).

SENATE BILL 95**1 SECTION 11. Initial applicability.**

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

6 SECTION 12. Effective date.

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

9 (END)