

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: **05/28/99**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Dyck**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters: **nelsorp1**

Subject: **Criminal Law - sentencing**

Extra Copies:

Pre Topic:

LFB:.....Dyck -

Topic:

Probation for OWI offenses

Instructions:

See Attached

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	olsenje 05/31/99	wjackson 06/1/99	jfrantze 06/1/99	_____	lrb_docadmin 06/1/99		
/2	olsenje 06/2/99	wjackson 06/4/99	martykr 06/6/99	_____	lrb_docadmin 06/7/99		

FE Sent For:

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/1	olsenje 05/31/99	wjackson 06/1/99	jfrantze 06/1/99	_____	lrb_docadmin 06/1/99		

12 Wlj 6/4

JmC

*JFL
JmC*

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/1	olsenje	1/1 WJ 6/1	6/6/1	6/6/1			

FE Sent For:

<END>

Representative Huber

68462

CORRECTIONS -- ADULT CORRECTIONAL FACILITIES

Probation for Fourth or Subsequent Operating While Intoxicated (OWI) Offenses

Motion:

Move to permit courts to place a person who is convicted of a fourth or subsequent OWI offense on probation, provided that the court requires, as a condition of probation, that the person be confined for at least the minimum sentence required for the OWI offense.

Note:

Under current law, courts are not permitted to place a person on probation for OWI offenses. This motion would allow courts to place a person on probation for a fourth or subsequent OWI offense as long as the person is confined for at least the minimum period provided for that offense.

Post-It [®] Fax Note 7571		Date	5-28	# of pages	1
To	Jeffrey Olsen	From	Jon Dyck		
Co./Dept.	L.R.B.	Co.	L.R.B.		
Phone #		Phone #	6-9919		
Fax #	4-8522	Fax #			



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0462/1
JEO: /:....
wlj

See D-Note

LFB:.....Dyck – Probation for OWI offenses

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 1234, line 14: after that line insert:

3 “SECTION 2766L. 346.65 (2) (b)[↓] of the statutes is amended to read:

4 346.65 (2) (b) Except as provided in par. (f), 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 number of suspensions, revocations and convictions counted under s.

7 343.307 (1) equals 2 within a 10-year period. Suspensions, revocations or

8 convictions arising out of the same incident or occurrence shall be counted as one.

9 The court may not place a person subject to the penalties under this paragraph on

10 probation.

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, 277, 283, 295; s. 13.93 (2) (c).

11 SECTION 2766m. 346.65 (2) (c)[↓] of the statutes is amended to read:

1 346.65 (2) (c) Except as provided in par. (f), shall be fined not less than \$600
 2 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
 3 year in the county jail if the total number of suspensions, revocations and convictions
 4 counted under s. 343.307 (1) equals 3, except that suspensions, revocations or
 5 convictions arising out of the same incident or occurrence shall be counted as one.
 6 The court may not place a person subject to the penalties under this paragraph on
 7 probation.

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, 277, 283, 295; s. 13.93 (2) (c).

8 **SECTION 2766p.** 346.65 (2j) (b) of the statutes is amended to read:

9 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
 10 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
 11 if the total ^{number} of prior convictions, ^{Suspensions} ~~suspension~~ and revocations counted under s. 343.307
 12 (2) equals 2 within a 10-year period. The court may not place a person subject to the
 13 penalties under this paragraph on probation.

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, 277, 283, 295; s. 13.93 (2) (c).

14 **SECTION 2766q.** 346.65 (2j) (c) of the statutes is amended to read:

15 346.65 (2j) (c) Except as provided in par. (d), shall be fined not less than \$600
 16 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
 17 year in the county jail if the total ^{number} of prior convictions, suspensions and revocations
 18 counted under s. 343.307 (2) equals 3 or more. If a person is subject to the penalties
 19 under this paragraph because the total ^{number} of prior convictions, suspension ^s and
 20 revocations counted under s. ~~343~~ 343.307 (2) equals 3, the court may not place the person
 21 on probation.

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, 277, 283, 295; s. 13.93 (2) (c).

22 **SECTION 2766t.** 346.65 (3m) of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0462/1dn

JEO:/:.....

Wlj

Jon Dyck:

When reviewing 1999 LRB-2304 to prepare this draft I realized that either I made an error in drafting LRB-2304 or that Motion 422 has a different intent from LRB-2304. This is because striking the reference to s. 346.63, stats., in the probation statute (s. 973.09 (1) (d), stats.) has the effect of allowing probation for *all* criminal violations of s. 346.63, stats., and not just for offenses under s. 346.63 (1), stats. (which are penalized under s. 346.65 (2), stats.). Thus, under LRB-2304, probation will also be available for the following offenses:

A) ~~2nd~~^{second} and subsequent OWI involving a *commercial* motor vehicle under s. 346.63 (5), stats., which is penalized under s. 346.65 (2j), stats.; and

B) Causing injury by intoxicated operation under s. 346.63 (2) and (6), stats., which is penalized under s. 346.65 (3m), stats.

The drafting file for LRB-2304 does not say whether Representative Huber intended to cover offenses under s. 346.63 (2), (5) and (6), stats. (I will be contacting him to determine whether that was his intent or whether I erred in simply striking the reference to s. 346.63, stats.) In the meantime, this draft follows the language of Motion 422 very narrowly and provides for probation only for ~~4th~~^{fourth} and subsequent OWI offenses. Thus, under the draft, probation will be available only for persons being sentenced under s. 346.65 (2) (d) or (e), stats., and for persons being sentenced under s. 346.65 (2j) (c), stats., for a ~~4th~~^{fourth} or subsequent (but *not* a ~~3rd~~^{third}) offense. Probation will *not* be available under this draft for persons being sentenced under s. 346.65 (2) (b) or (c), (2j) (b) or (3m), stats.

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0462/1dn
JEO:wlj:jf

June 1, 1999

Jon Dyck:

When reviewing 1999 LRB-2304 to prepare this draft I realized that either I made an error in drafting LRB-2304 or that Motion 422 has a different intent from LRB-2304. This is because striking the reference to s. 346.63, stats., in the probation statute (s. 973.09 (1) (d), stats.) has the effect of allowing probation for *all* criminal violations of s. 346.63, stats., and not just for offenses under s. 346.63 (1), stats. (which are penalized under s. 346.65 (2), stats.). Thus, under LRB-2304 probation will also be available for the following offenses:

A) Second and subsequent OWI involving a *commercial* motor vehicle under s. 346.63 (5), stats., which is penalized under s. 346.65 (2j), stats.; and

B) Causing injury by intoxicated operation under s. 346.63 (2) and (6), stats., which is penalized under s. 346.65 (3m), stats.

The drafting file for LRB-2304 does not say whether Representative Huber intended to cover offenses under s. 346.63 (2), (5) and (6), stats. (I will be contacting him to determine whether that was his intent or whether I erred in simply striking the reference to s. 346.63, stats.) In the meantime, this draft follows the language of Motion 422 very narrowly and provides for probation only for fourth and subsequent OWI offenses. Thus, under the draft, probation will be available only for persons being sentenced under s. 346.65 (2) (d) or (e), stats., and for persons being sentenced under s. 346.65 (2j) (c), stats., for a fourth or subsequent (but *not* a third) offense. Probation will *not* be available under this draft for persons being sentenced under s. 346.65 (2) (b) or (c), (2j) (b) or (3m), stats.

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
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E-mail: Jefren.Olsen@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

Soon

LRBb0462/1
JEO.wlj:jf

2
redraft
miller
run

LFB:.....Dyck - Probation for OWI offenses

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 1234, line 14: after that line insert:

3 "SECTION 2766L. 346.65 (2) (b) of the statutes is amended to read:

4 346.65 (2) (b) Except as provided in par. (f), 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 number of suspensions, revocations and convictions counted under s.

7 343.307 (1) equals 2 within a 10-year period. Suspensions, revocations or

8 convictions arising out of the same incident or occurrence shall be counted as one.

9 The court may not place a person subject to the penalties under this paragraph on

10 probation.

11 SECTION 2766m. 346.65 (2) (c) of the statutes is amended to read:

1 346.65 (2) (c) Except as provided in par. (f), shall be fined not less than \$600
2 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
3 year in the county jail if the total number of suspensions, revocations and convictions
4 counted under s. 343.307 (1) equals 3, except that suspensions, revocations or
5 convictions arising out of the same incident or occurrence shall be counted as one.
6 The court may not place a person subject to the penalties under this paragraph on
7 probation.

8 **SECTION 2766p.** 346.65 (2j) (b) of the statutes is amended to read:

9 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
10 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
11 if the total number of prior convictions, suspension suspensions and revocations
12 counted under s. 343.307 (2) equals 2 within a 10-year period. The court may not
13 place a person subject to the penalties under this paragraph on probation.

14 **SECTION 2766q.** 346.65 (2j) (c) of the statutes is amended to read:

15 346.65 (2j) (c) Except as provided in par. (d), shall be fined not less than \$600
16 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one
17 year in the county jail if the total number of prior convictions, suspensions and
18 revocations counted under s. 343.307 (2) equals 3 or more. If a person is subject to
19 the penalties under this paragraph because the total number of prior convictions,
20 suspensions and revocations counted under s. 343.307 (2) equals 3, the court may not
21 place the person on probation.

22 **SECTION 2766t.** 346.65 (3m) of the statutes is amended to read:

23 346.65 (3m) Any person violating s. 346.63 (2) or (6) shall be fined not less than
24 \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more
25 than one year in the county jail. If there was a minor passenger under 16 years of

1 age in the motor vehicle at the time of the violation that gave rise to the conviction
 2 under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and
 3 maximum fines or periods of imprisonment for the conviction are doubled and the
 4 place of imprisonment shall be determined under s. 973.02. The court may not place
 5 a person subject to the penalties under this subsection on probation."

6 **2.** Page 1360, line 17: after that line insert:

INS
3-7

7 **"SECTION 3205d.** 973.09 (1) (d) of the statutes is amended to read:
 8 973.09 (1) (d) If a person is convicted of an offense that provides a mandatory
 9 or presumptive minimum period of one year or less of imprisonment, a court may
 10 place the person on probation under par. (a) if the court requires, as a condition of
 11 probation, that the person be confined under sub. (4) for at least that mandatory or
 12 presumptive minimum period. The person is eligible to earn good time credit
 13 calculated under s. 302.43 regarding the period of confinement. This paragraph does
 14 not apply if the conviction is for any violation under s. 346.63."

15 **3.** Page 1466, line 22: after that line insert:

renumbering
and amendment

16 "(6m) PROBATION FOR OPERATING WHILE INTOXICATED OFFENSES. The ~~treatment~~ of
 17 sections ~~346.65 (2) (b) and (c), (2) (b) and (c) and (3m) and~~ 973.09 (1) (d) of the statutes
 18 first ~~apply~~ ^{apply} to offenses committed on the effective date of this subsection."

INIT.
APP.

19

(END)

and the creation of
section 973.09 (1)(d)
2. and 3. of the
statutes

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb0462/2ins
JEO&RPN:.....

1 **INSERT 3-7:**

2 "SECTION 3205d. 973.09 (1) (d) of the statutes is renumbered 973.09 (1) (d)
3 (intro.) and amended to read:

4 973.09 (1) (d) (intro.) If a person is convicted of an offense that provides a
5 mandatory or presumptive minimum period of one year or less of imprisonment, a
6 court may place the person on probation under par. (a) if the court requires, as a
7 condition of probation, that the person be confined under sub. (4) for at least that
8 mandatory or presumptive minimum period. The person is eligible to earn good time
9 credit calculated under s. 302.43 regarding the period of confinement. This
10 paragraph does not apply if the conviction is for any of the following:

11 1. A violation under s. 346.63 (1) that subjects the person to a mandatory
12 minimum period of imprisonment under s. 346.65 (2) (b) or (c).

History: 1971 c. 298; 1979 c. 119, 189, 238, 355, 356; 1981 c. 50, 88, 326, 352, 391; 1983 a. 27, 104, 254, 346, 519, 538; 1985 a. 150; 1987 a. 347, 398, 403, 412; 1989 a. 31, 121, 188; 1991 a. 39; 1993 a. 48, 486; 1995 a. 24, 224, 281; 1997 a. 27, 41, 289.

13 **SECTION 3205e.** 973.09 (1) (d) 2. of the statutes is created to read:

14 973.09 (1) (d) 2. A violation under s. 346.63 (2) or (6) that subjects the person
15 to a mandatory minimum period of imprisonment under s. 346.65 (3m), if the person
16 has a total of 3 or fewer convictions, suspensions or revocations counted under s.
17 343.307 (2).

18 **SECTION 3205f.** 973.09 (1) (d) 3. of the statutes is created to read:

19 973.09 (1) (d) 3. A violation under s. 346.63 (5) that subjects the person to a
20 mandatory minimum period of imprisonment under s. 346.65 (2j) (c), if the person
21 has a total of 3 or fewer convictions, suspensions or revocations counted under s.
22 343.307 (2).".

(END OF INSERT)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0462/2
JEO&RPN:wj:km

LFB:.....Dyck - Probation for OWI offenses

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 1360, line 17: after that line insert:

3 "SECTION 3205d. 973.09 (1) (d) of the statutes is renumbered 973.09 (1) (d)
4 (intro.) and amended to read:

5 973.09 (1) (d) (intro.) If a person is convicted of an offense that provides a
6 mandatory or presumptive minimum period of one year or less of imprisonment, a
7 court may place the person on probation under par. (a) if the court requires, as a
8 condition of probation, that the person be confined under sub. (4) for at least that
9 mandatory or presumptive minimum period. The person is eligible to earn good time
10 credit calculated under s. 302.43 regarding the period of confinement. This
11 paragraph does not apply if the conviction is for any of the following:

