

2001 DRAFTING REQUEST

Bill

Received: 09/27/2001

Received By: phurley

Wanted: Today

Identical to LRB:

For: Terri McCormick (608) 266-7500

By/Representing:

This file may be shown to any legislator: NO

Drafter: fasttn

May Contact:

Addl. Drafters:

Subject: Drunk Driving - procedures

Extra Copies: PJH, ARG, MGD, RPN - 1

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Delaying sentencing and eligibility for occupational license in OWI cases

Instructions:

Allow courts to delay sentencing and/or delay eligibility for occupational licenses in OWI cases until after alcohol assessment is complete (WLC:0191/P1)

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>
/?	phurley 10/12/2001			_____			
/P2	fasttn 12/20/2001	hhagen 12/20/2001	jfrantze 12/20/2001	_____	lrb_docadmin 12/20/2001		
/1	fasttn 01/03/2002	csicilia 01/03/2002	haugeca 01/03/2002	_____	lrb_docadmin 01/03/2002	lrb_docadminS&L 01/04/2002	

FE Sent For:

01-15-2002
("1")

Per
TNF

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/?	phurley 10/12/2001						
/P2	fasttn 12/20/2001	hhagen 12/20/2001	jfrantze 12/20/2001	ck KPK	lrb_docadmin 12/20/2001		

FE Sent For:

1 cjs 1/3/02
ck 1-3-02
KPK
<END>

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1/?	phurley 10/12/2001 fasttn		<i>[Signature]</i> 12/20	<i>[Signature]</i> 12/20			

FE Sent For:

<END>

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Received: 09/27/2001

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Wanted: As time permits

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By/Representing:

This file may be shown to any legislator: NO

Drafter: fasttn

May Contact:

Addl. Drafters:

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/?	phurley 10/12/2001 fasttn		CH LE conw. 11-1	_____	_____	_____	_____

FE Sent For:

<END>

1 **PRELIMINARY**

2 **AN ACT** to create 343.10 (2) (dr), 343.30 (1q) (c) 1m. and 343.305 (10) (c) 1m. of the
3 statutes: relating to:

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

COMMENT: For operating while intoxicated (OWI)-related violations and improper refusal cases, this draft:

1. Authorizes the court to order a presentence alcohol and drug assessment so that the court may review the assessment before imposing sentence.
2. Authorizes the court, in those cases where the defendant is otherwise immediately eligible for an occupational license (less than 2 priors), to order that no occupational license may be issued until completion of the alcohol and drug assessment.

4 **SECTION 1.** 343.10 (2) (dr) of the statutes is created to read:

5 343.10 (2) (dr) If the court orders a person to submit to and comply with an assessment
6 and driver safety plan and the person has less than 2 prior convictions, suspensions, or
7 revocations, as counted under s. 343.307 (1), the court may order that no occupational license
8 may be issued to the person until the person has completed the assessment and is complying
9 with the driver safety plan.

10 **SECTION 2.** 343.30 (1q) (c) 1m. of the statutes is created to read:

11 343.30 (1q) (c) 1m. The court may order the person to submit to an assessment before
12 the court imposes sentence under this subsection. The court may withhold sentence until the
13 completed assessment has been reviewed by the court.

1 **SECTION 3. 343.305 (10) (c) 1m. of the statutes is created to read:**

2 **343.305 (10) (c) 1m. The court may order the person to submit to an assessment before**
3 **the court imposes sentence under this subsection. The court may withhold sentence until the**
4 **completed assessment has been reviewed by the court.**

5 **(END)**

Fast, Timothy

From: Fast, Timothy
Sent: Thursday, November 01, 2001 11:55 AM
To: Dyke, Don
Subject: Eureka!

Don,

I have tracked down the elusive McCormick request. I have a copy of WLC:0191/P1. Please feel free to give me a call to discuss. Alternatively, I'm going to be on your side of the Square later. I could stop in anytime between 12:30 and 1:30 today. Please advise.

Peace, Tim

11/2 Voice Mail Message from Don Dyke

In Items 2 and 3, allow court to waive mandatory minimum fine to allow defendant to pay for AODA. Assumption is that other assessments and surcharges will apply.

TNF

12/19 t/c Pat

Rep McCormick would like draft tomorrow (Thurs.)

12/19 t/c Don Dyke

1. Item in 11/2 covered by 346.65 (2e); Don suggested D-Noting.

2. I recommended placing withholding sentence in 346.65 (rather than 343.30). OK with Don.

TNF

P2 (Redraft
notes
has been
run)

WANTED
NOW

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

withholding sentences in cases involving operating a motor vehicle while intoxicated and eligibility for an occupational license authorizing the operation of motor vehicles

Generate

1 AN ACT to create 343.10 (2) (dr), 343.30 (1q) (c) 1m. and 343.305 (10) (c) 1m. of
2 the statutes; relating to: ~~the~~

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:

3 SECTION 1. 343.10 (2) (dr) of the statutes is created to read: one or no

4 if 343.10 (2) (dr) If the court orders a person to submit to and comply with an
5 assessment and driver safety plan and the person has ~~less than 2~~ prior convictions,
6 suspensions, or revocations, as counted under s. 343.307 (1), the court may order that
7 no occupational license may be issued to the person until the person has completed
8 the assessment and is complying with the driver safety plan.

9 ~~SECTION 2. 343.30 (1q) (c) 1m. of the statutes is created to read:~~

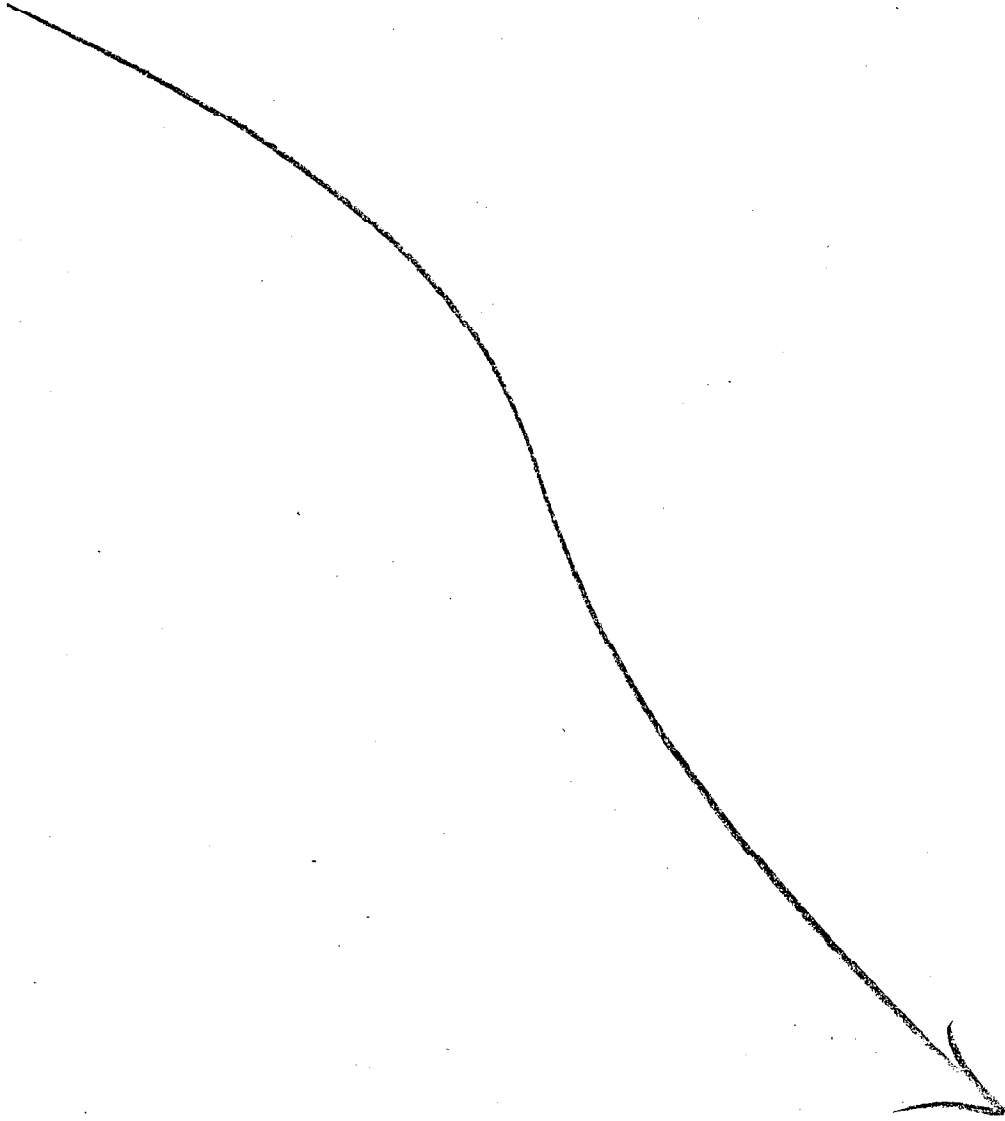
1
2
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~~343.30 (1q) (c) 1m. The court may order the person to submit to an assessment before the court imposes sentence under this subsection. The court may withhold sentence until the completed assessment has been reviewed by the court.~~

~~SECTION 3. 343.305 (10) (c) 1m. of the statutes is created to read:~~

~~343.305 (10) (c) 1m. The court may order the person to submit to an assessment before the court imposes sentence under this subsection. The court may withhold sentence until the completed assessment has been reviewed by the court.~~

~~(END)~~



SECTION #, CR; 346.65 (2d)

③

346.65 (2d) Before imposing a sentence

under sub. (2) for a violation of s. 346.63 (1) or a

local ordinance in conformity therewith, the court

may order the person to submit to and comply with

an assessment under s. 343.30 (1g). The court

may withhold sentence until it has reviewed the

person's compliance with assessment.

SECTION #, RN; 346.65 (3m); 346.65 (3m)(a)

SECTION #, CR; 346.65 ~~(3m)~~ (3m)(b)

346.65 ~~(3m)~~ Before imposing a sentence ⁽²⁾
par. (a)

under ~~s. 346.63~~ for a violation of s. 346.63 ~~(2)~~

~~to a bonding~~ ~~a conformity~~ ~~there~~ the court

may order the person to submit to and comply with

an assessment under s. 343.30 (1g). The court

may withhold sentence until it has reviewed the

person's compliance with assessment.

940.09 (1e)

SECTION # ~~CR~~; ~~344.35(2)(a)~~

940.09 (1e)

~~344.35(2)(a)~~ Before imposing a sentence
(1) ✓

under sub. ~~(1)(b) or violation of s. 343.30(1)(a) or a~~

~~local ordinance in conformity therewith~~, the court

may order the person to submit to and comply with

an assessment under s. 343.30 (1g). The court

may withhold sentence until it has reviewed the

person's compliance with assessment.

940.25 (1e)

SECTION #. CR; ~~346.25 (2d)~~

940.25 (1e)

~~346.25 (2d)~~ (1) Before imposing a sentence

under sub. ~~for a violation of s. 216.23 (1) or~~

~~or a violation of conformity therewith~~ the court

may order the person to submit to and comply with

an assessment under s. 343.30 (1g). The court

may withhold sentence until it has reviewed the

person's compliance with assessment.

ASSEMBLY BILL 670

1 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
2 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity
3 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the
4 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply
5 to the court. The application shall state the reasons for the proposed amendment or
6 dismissal. The court may approve the application only if the court finds that the
7 proposed amendment or dismissal is consistent with the public's interest in deterring
8 the operation of motor vehicles by persons who are under the influence of an
9 intoxicant, ~~a controlled substance, a controlled substance analog or any combination~~
10 ~~of an intoxicant, controlled substance and controlled substance analog, under the~~
11 ~~influence of any other drug to a degree which renders him or her incapable of safely~~
12 ~~driving, or under the combined influence of an intoxicant and any other drug to a~~
13 ~~degree which renders him or her incapable of safely driving as defined in s. 340.01~~
14 ~~(25d), or in deterring the operation of commercial motor vehicles by persons with an~~
15 alcohol concentration of 0.04 or more. The court may not approve an application to
16 amend the vehicle classification from a commercial motor vehicle to a noncommercial
17 motor vehicle unless there is evidence in the record that the motor vehicle being
18 operated by the defendant at the time of his or her arrest was not a commercial motor
19 vehicle.

SECTION 60. Initial applicability.

20
21 (1) This act first applies to violations committed or refusals occurring on the
22 effective date of this subsection, but does not preclude the counting of other
23 convictions, suspensions, or revocations as prior convictions, suspensions, or
24 revocations for purposes of administrative action by the department of

ASSEMBLY BILL 670

SECTION 60

1 transportation, sentencing by a court, or revocation or suspension of motor vehicle
2 operating privileges.

3 **SECTION 61. Effective date.**

4 (1) This act takes effect on ~~January 1, 2003~~.

5 (END)

D-NOTE

the first day of the 4th month beginning
after publication.

LRB-3902/2dn

TNF: hmr

DATE

DRAFTER'S NOTE

I have prepared this draft in preliminary form because it differs somewhat from the Legislative Council draft prepared by Don Dyke. I have discussed the underlying issues with Don. The draft ~~does the following~~ in ~~it~~ permits a court to order a presentence alcohol and drug assessment in cases involving operating a motor vehicle while intoxicated (OWI). The draft also permits the court to withhold sentence until it has reviewed compliance with the presentence assessment. The draft also

allows a court to condition eligibility for an occupational license on completing the assessment and complying with the driver safety plan in those

cases where the person has less than 2 priors.

Currently, a court has this authority only in those cases where the person has at least 2 priors.

Also, please note the following:

1. Since ^{an} improper refusal is not a violation that results in a conviction, there is no sentence to withhold.

2. Current law permits a court to reduce the costs and fine or forfeiture imposed on a person convicted of OWI ^{who has limited financial means} and order the person to pay the amount of the reduction toward the cost of assessment and the driver safety plan. See

s. 346.65 (2e), stats. Should similar provisions be created for violations of ss. 346.63(2), 940.09, and 940.25?

This provision only applies to violations of s. 346.63(1), stats.

3. The draft contains a delayed effective date and initial applicability provisions. Please let me know if you want something different.

TNF

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3902/P2dn
TNF:hmh:jf

December 20, 2001

I have prepared this draft in preliminary form because it differs somewhat from the Legislative Council draft prepared by Don Dyke. I have discussed the underlying issues with Don. The draft permits a court to order a presentence alcohol and drug assessment in cases involving operating a motor vehicle while intoxicated (OWI). The draft also permits the court to withhold sentence until it has reviewed compliance with the presentence assessment. The draft also allows a court to condition eligibility for an occupational license on completing the assessment and complying with the driver safety plan in those cases where the person has less than 2 priors. Currently, a court has this authority only in those cases where the person has at least 2 priors.

Also, please note the following:

1. Since an improper refusal is not a violation that results in a conviction, there is no sentence to withhold.
2. Current law permits a court to reduce the costs and fine or forfeiture imposed on a person convicted of OWI who has limited financial means and order the person to pay the amount of the reduction toward the cost of assessment and the driver safety plan. See s. 346.65 (2e), stats. This provision only applies to violations of s. 346.63 (1), stats. Should similar provisions be created for violations of ss. 346.63 (2), 940.09, and 940.25?
3. The draft contains a delayed effective date and initial applicability provisions. Please let me know if you want something different.

Timothy N. Fast
Senior Legislative Attorney
Phone: (608) 266-9739
E-mail: tim.fast@legis.state.wi.us

LRB-3902/PZ
TNF:hmb/jf
1 (Redraft makes has been run)

§ CS

~~PRELIMINARY DRAFT NOT READY FOR INTRODUCTION~~

WANTED NOW

Insert A

Revised

1 AN ACT to renumber 346.65 (3m); and to create 343.10 (2) (dr), 346.65 (2d),
 2 346.65 (3m) (b), 940.09 (1e) and 940.25 (1e) of the statutes; relating to:
 3 withholding sentences in cases involving operating a motor vehicle while
 4 intoxicated and eligibility for an occupational license authorizing the operation
 5 of motor vehicles.

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:

6 SECTION 1. 343.10 (2) (dr) of the statutes is created to read:
 7 343.10 (2) (dr) If the court orders a person to submit to and comply with an
 8 assessment and driver safety plan and if the person has one or no prior convictions,
 9 suspensions, or revocations, as counted under s. 343.307 (1), the court may order that
 10 no occupational license may be issued to the person until the person has completed
 11 the assessment and is complying with the driver safety plan.

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

2 346.65 (2d) Before imposing a sentence under sub. (2) for a violation of s. 346.63
3 (1) or a local ordinance in conformity therewith, the court may order the person to
4 submit to and comply with an assessment under s. 343.30 (1q). The court may
5 withhold sentence until it has reviewed the person's compliance with assessment.

6 **SECTION 3.** 346.65 (3m) of the statutes is renumbered 346.65 (3m) (a).

7 **SECTION 4.** 346.65 (3m) (b) of the statutes is created to read:

8 346.65 (3m) (b) Before imposing a sentence under par. (a) for a violation of s.
9 346.63 (2), the court may order the person to submit to and comply with an
10 assessment under s. 343.30 (1q). The court may withhold sentence until it has
11 reviewed the person's compliance with assessment.

12 **SECTION 5.** 940.09 (1e) of the statutes is created to read:

13 940.09 (1e) Before imposing a sentence under sub. (1), the court may order the
14 person to submit to and comply with an assessment under s. 343.30 (1q). The court
15 may withhold sentence until it has reviewed the person's compliance with
16 assessment.

17 **SECTION 6.** 940.25 (1e) of the statutes is created to read:

18 940.25 (1e) Before imposing a sentence under sub. (1), the court may order the
19 person to submit to and comply with an assessment under s. 343.30 (1q). The court
20 may withhold sentence until it has reviewed the person's compliance with
21 assessment.

22 **SECTION 7. Initial applicability.**

23 (1) This act first applies to violations committed or refusals occurring on the
24 effective date of this subsection, but does not preclude the counting of other
25 convictions, suspensions, or revocations as prior convictions, suspensions, or

Insert (A)

¶ Under current law, if a person is convicted of operating a motor vehicle while intoxicated or while having a prohibited alcohol concentration (OWI), the court, in addition to imposing penalties, is required to order the person to submit to and comply with an assessment by an approved public treatment facility^A to determine the person's use of alcohol or controlled substances, and a driver safety plan.

¶ This bill permits the court to order the person to submit to and comply with an assessment and driver safety plan before the court imposes sentence. The court may withhold sentencing the person until it has reviewed the person's compliance with assessment.

¶ Also under current law, if a court orders a person to submit to and comply with ^{an} assessment and driver safety plan, and the person has two or more prior

Insert (A) (page 2 of 2)

OWI-related convictions, suspensions, or revocations, no occupational license (a license that permits limited operation of a motor vehicle for purposes of an occupational trade, including full-time or part-time study) may be issued to the person until he or she has completed the assessment and is complying with the driver safety plan.

¶ This bill provides that, if a court orders a person to submit to and comply with an assessment and driver safety plan and the person has one or no prior OWI-related convictions, suspensions, or revocations, the court may order that no occupational license be issued to the person until he or she has completed the assessment and is complying with the driver safety plan.

FE - S/L

(end of insert)

Pat-Rep
McCormick
Jacket

J 3902/1
(per RPN)

NCSL
Your Legislative Support System

Emery, Lynn

From: Emery, Lynn
Sent: Friday, January 04, 2002 11:46 AM
To: Rep.McCormick
Subject: LRB-3902/1 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

1/4/2002