

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB746)

Received: **02/06/2002**

Received By: **fasttn**

Wanted: **Soon**

Identical to LRB:

For: **Terri McCormick (608) 266-7500**

By/Representing: **Self/Don Dyke**

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

Drafter: **fasttn**

May Contact:

Addl. Drafters: **midsida**

Subject: **Drunk Driving - pcnalties**

Extra Copies: **PJH, RPN, ARG, RLR, Leg.**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Orders for assessment

Instructions:

Permit courts to order assessment as part of sentencing prior to imposing remainder of sentence; 10-year retention of assessment records by courts; no provision on confidentiality of assessment records by courts (i.e., no change to current practice re such records)

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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/2	fasttn 02/12/2002	gilfokm 02/12/2002	haugeca 02/13/2002	_____	lrb_docadmin 02/13/2002	lrb_docadmin 02/13/2002	

02/13/2002 08:19:12 AM

Page 2

FE Sent For:

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FE Sent For:

<END>

Fast, Timothy

From: Murray, Patrick
Sent: Thursday, January 24, 2002 11:31 AM
To: Fast, Timothy; Dyke, Don
Subject: Topics of Discussion on LRB 3902/1

Tim and Don,

Below are some of the ideas Representative McCormick would like to discuss next Wednesday in regard to LRB 3902/1:

- 1) A need to distinguish the term pre-sentence from probation or parole.
- 2) A requirement for courts to hold all records of OWI offenses for up to 7 years as with other misdemeanor offenses.
- 3) A requirement for courts to hold confidential the assessment records offered in the pre-sentence process.

Please let me know if you have any questions. Thanks.

Patrick
266-7500

1/30/02 Meeting w Rep. McCormick, Don Dyke (Leg. Council) and MGD.

Re discussion ideas:

1. MGD suggests using postponing instead of withholding since that implies person will be placed on probation; delay of sentencing would also work
2. Current SCT rules 5 years for traffic forfeiture records, misdemeanor records 20 yrs, and felony records 50 years; discussed 10-year retention so court would have record re repeat offenders
3. concern re confidentiality discussed: treatment records under S. 51.30 for treatment facilities in state; concern re out-of-state facilities. Federal issues will research/renew and draft either simple amts or sub amt

TNF

Fast, Timothy

From: Fast, Timothy
Sent: Thursday, February 07, 2002 10:00 AM
To: Dyke, Don
Subject: Record retention/Sub for Rep. McCormick to AB-746

Don,

I'm not sure we can get around s. 757.54, which I stumbled across (almost literally) last night. What do you think we should do? Two possibilities come to my (alleged) mind:

1. Build in another exception to s. 757.54. I'd rather not, however, for this limited purpose.
2. Create proposed s. 343.30 (1q) (i) to read: "The court is encouraged to retain any court records relating to assessment orders made under this subsection for at least 10 years." I prefer this, but am I covering too much? This would apply to records on any assessment orders, including those that are made when imposing other penalties. Is the intent to have 10-year retention limited to those assessment orders made before imposing other penalties? If so, I can reword.

Also, I think I have to amend s. 343.30 (1q) (f) as well, so it's clear DOT can't make such an order (not that they would...). I'd add a sentence to read: "This paragraph does not apply to an order that the court is authorized to make under this subsection pursuant to s. 346.65 (2d) or (3m) (b), 940.09 (1e), or 940.25 (1e)."

Finally (hang in there with me, Don, I'm on a roll), if the assessment order will be the first stage of sentencing, is it unnecessary to state that the court may postpone imposing any other part of the sentence until it has reviewed the person's compliance with the assessment? Doesn't the court have authority to do this anyway, or is it best just to mention it anyway?

Your thoughts and help are appreciated. Keep the faith. Roll with the tide.

Ciao, Tim

Timothy N. Fast
Senior Legislative Attorney
Legislative Reference Bureau
Phone: (608) 266-9739

2/7/02 t/c Don Dyke

1. Re s. 757.54, suggests provision requesting supreme court to promulgate a rule providing for 10-year retention.
2. Suggests not amending s. 343.30 (1q) (f). DOT unlikely to exercise such authority. I suggested that, in practice, DOT wouldn't be likely to exercise this authority because it won't know about conviction until record of conviction sent to it after court sentencing.
3. Leave in ~~postponing~~ postponing/reviewing language.
4. Discussed amending s. 346.65 (3) - agreed that, while it wouldn't necessarily hurt to add "Subject to s. 346.65 (2d) and (3m)(b)", it isn't necessary and just adds another X-ref. So will not amend.

TNF

7 February 2002

RE: LRBs0313 (ASA
to AB-746)

TO: MGD

From: TNF

I talked to Don Dyke yesterday on the issues that came up in the meeting last week to Rep. McCormick. I took a stab at preparing a sub for us, incorporating your suggestion re using postponing (rather than withholding). Don suggested having a 2-stage sentencing, i.e., the assessment order as part of the sentence. I've tried to incorporate that concept in the sub.

I used in the provisions "enter an order under s. 343.30 (1g)(c) because I ran across s. 303.08 (1)(cg) and wanted the order to be made under s. 343.30 (1g)(c). Also, if the order is made under s. 343.30 (1g)(c), DOT is notified and the person's operating privilege is suspended for noncompliance, etc. That is, all the provisions of (1g) that are relevant apply.

I also noted s. 346.63(4) as a possible problem but we (Don & I) decided not. See my e-mail and notes of today to Don. I want to run the SCT provisions by Bob W. as well. I mentioned them both in s. 343.30 (1g) and 757.54 - thought it should be in both (but I can easily be talked out of).

Please review and let me know what you think. This'll come up in committee next Wed. so I'd like to get it out to McCormick (and for review by Don) next Monday. Thank for your help.

Finally, I'll prob. do a short D-NOTE explaining how sub. differs from bill.

Fast, Timothy

To: Dsida, Michael
Subject: RE: sentence vs forfeiture -- assessnmet bill

RPN reviewed the draft and the record retention provisions looked fine to him. He doesn't, however, like "imposing the sentence" for the reasons you state in your e-mail. RPN is apparently fighting this penalty-forfeiture battle at the present time. So I'm going to change it to "imposing any other penalty or order". Thanks for raising the issue.

TNF

-----Original Message-----

From: Dsida, Michael
Sent: Friday, February 08, 2002 10:44 AM
To: Fast, Timothy
Subject: sentence vs forfeiture -- assessnmet bill

I just thought of something unrelated to anything we've discussed on this bill. I notice that you use the word "sentence" with the intent to cover the imposition of a forfeiture. (which is already in a few places in the statutes, like ss. 346.65(2m)(a) and 346.65(2m)(b)). Is there any significant risk that a municipal court will say that it's not imposing a sentence when it imposes a forfeiture, so the assessment stuff doesn't apply?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

2001

Date (time) needed

D-NOTE

MON. 2/11 NOON LRBs 03/3/1

SUBSTITUTE AMENDMENT [TO A BILL]

TNF&MGD: hmh:

Use the appropriate components and routines developed for substitute amendments.

S (A) SUBSTITUTE AMENDMENT

TO 2001 SB (AB) 746 (LRB- 1)

Generate

AN ACT... [generate catalog] to repeal...; to renumber...; to consolidate and renumber...; to renumber and amend...; to consolidate, renumber and amend...; to amend...; to repeal and recreate...; and to create... of the statutes; relating to: alcohol or other drug abuse assessments in cases involving the intoxicated operation of a motor vehicle,

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

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

SECTION #.

~~2001 ASSEMBLY BILL 746~~

January 28, 2002 - Introduced by Representatives MCCORMICK, STARZYK, HINES, KRAWCZYK, JESKEWITZ, HAHN, MILLER, OWENS, OTT, ALBERS and VRAKAS, cosponsored by Senators DARLING, HUELSMAN, ROSENZWEIG and HARSDOFF. Referred to Committee on Highway Safety.

and requesting the supreme court to promulgate a rule on the retention of certain court records

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4
5

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

Analysis by the Legislative Reference Bureau

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, 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 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.

ASSEMBLY BILL 746

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.

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:

Insert 2-6

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

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

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

8 346.65 (2d) ~~Before imposing a sentence~~ under sub. (2) for a violation of s. 346.63
 9 (1) or a local ordinance in conformity therewith, the court may ~~order the person to~~
 10 ~~submit to and comply with an assessment under s. 343.30 (1e). The court may~~
 11 ~~withhold sentence~~ until it has reviewed the person's compliance with assessment.

Prior to imposing any other penalty or order

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

Insert A

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

14 346.65 (3m) (b) ~~Before imposing a sentence~~ under par. (a) for a violation of s.
 15 346.63 (2), the court may ~~order the person to submit to and comply with an~~
 16 ~~assessment under s. 343.30 (1e). The court may withhold sentence~~ until it has
 17 reviewed the person's compliance with assessment.

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

Insert 2-17

1 940.09 (1e) ~~Before imposing a sentence~~ under sub. (1), the court may ~~order the~~
 2 ~~person to submit to and comply with an assessment under s. 343.30 (1g). The court~~
 3 ~~may withhold sentence~~ until it has reviewed the person's compliance with
 4 assessment.

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

6 940.25 (1e) ~~Before imposing a sentence~~ under sub. (1), the court may ~~order the~~
 7 ~~person to submit to and comply with an assessment under s. 343.30 (1g). The court~~
 8 ~~may withhold sentence~~ until it has reviewed the person's compliance with
 9 assessment.

Prior to
 imposing any
 other penalty
 or order

10 **SECTION 7. Initial applicability.**

11 (1) This act first applies to violations committed or refusals occurring on the
 12 effective date of this subsection, but does not preclude the counting of other
 13 convictions, suspensions, or revocations as prior convictions, suspensions, or
 14 revocations for purposes of administrative action by the department of
 15 transportation, sentencing by a court, or revocation or suspension of motor vehicle
 16 operating privileges.

17 **SECTION 8. Effective date.**

18 (1) This act takes effect on the first day of the 4th month beginning after
 19 publication.

20 (END)

Insert A

D-NOTE

Insert 2-6

X
SECTION #, CR; 343.30 (1g)(i)

④
343.30 (1g)(i) If the supreme court ✓

promulgates the rule specified under s. 757.54

(3), the court shall retain all court records

relating to assessments under this subsection for

at least 10 years.

Insert 2-17

SECTION #. CR; 757.54(3)

③
757.54(3) The supreme court is requested
to promulgate a rule under sub. (1) that provides
for the retention of ^{all} court records relating to
assessments under s. 343.30 (1g) for at least
10 years.

Insert A:

enter an order under s. 343.30(1g)(c)

requiring the person to submit to and comply
with an assessment. The court may postpone
imposing any other penalty or order

LRBs 0313/1dn

TNF: hmh

DRAFTER'S NOTE

ATTN: Rep. Terri McCormick

This substitute amendment incorporates changes discussed in our meeting of January 30, 2002, and in follow-up discussions with Don Dyke of ^{the} Legislative Council. The substitute amendment differs from the bill as follows:

1. The substitute amendment permits a court to order assessment as the first stage in imposing any penalty or order. That is, the assessment order is not made prior to imposition of the rest of the sentence (criminal cases) or forfeiture. In addition, the substitute amendment uses "penalty or order" instead of "sentence" because sentencing refers to criminal cases, whereas first-time OWI is a civil case (forfeiture).

2. The substitute amendment requires the assessment order to be entered under s. 343.30 (1g)(c) so that other relevant provisions of s. 343.30 (1g), such as notification to DOT of the ^{assessment} order and operating privilege revocation for noncompliance with the ^{driver safety plan} assessment or ^{driver safety plan}, apply.

3. The substitute amendment requests the Wisconsin supreme court to promulgate a rule requiring the retention of all court records relating to assessments for at least 10 years. See s. 757.54(1), stats.

¶ Finally, the substitute amendment does not address the issue of the confidentiality of court records relating to such assessments. Current court procedures will apply to these assessments. If you think this needs to be addressed in some way, please let me know.

TNF

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0313/1dn
TNF:hmh:jf

February 11, 2002

ATTN: Rep. Terri McCormick

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2. The substitute amendment requires the assessment order to be entered under s. 343.30 (1q) (c) so that other relevant provisions of s. 343.30 (1q), such as notification to DOT of the assessment order and operating privilege revocation for noncompliance with the assessment or driver safety plan, apply.
3. The substitute amendment requests the Wisconsin supreme court to promulgate a rule requiring the retention of all court records relating to assessments for at least 10 years. See s. 757.54 (1), stats.

Finally, the substitute amendment does not address the issue of the confidentiality of court records relating to such assessments. Current court procedures will apply to these assessments. If you think this needs to be addressed in some way, please let me know.

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

2001 - 2002 LEGISLATURE

LRBs0313/2
TNF&MGD:hmb:hf
2 (Redraft
maker
has been
run)

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ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 746

Gen. Cat.

1 AN ACT to renumber 346.65 (3m); and to create 343.10 (2) (dr), 343.30 (1q) (i),
2 346.65 (2d), 346.65 (3m) (b), 757.54 (3), 940.09 (1e) and 940.25 (1e) of the
3 statutes; relating to: alcohol or other drug abuse assessments in cases
4 involving the intoxicated operation of a motor vehicle, eligibility for an
5 occupational license authorizing the operation of motor vehicles, and
6 requesting the supreme court to promulgate a rule on the retention of certain
7 court records.

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

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

Insert 2-4 ✓

1 no occupational license may be issued to the person until the person has completed
2 the assessment and is complying with the driver safety plan.

3 SECTION 2. 343.30 (1q) (i) of the statutes is created to read:

4 343.30 (1q) (i) If the supreme court promulgates the rule specified under s.
5 757.54 (3), the court shall retain all court records relating to assessments under this
6 subsection for at least 10 years.

7 SECTION 3. 346.65 (2d) of the statutes is created to read:

8 346.65 (2d) Prior to imposing any other penalty or order under sub. (2) for a
9 violation of s. 346.63 (1) or a local ordinance in conformity therewith, the court may
10 enter an order under s. 343.30 (1q) (c) requiring the person to submit to and comply
11 with an assessment. The court may postpone imposing any other penalty or order
12 until it has ~~reviewed~~ the person's compliance with assessment.

13 SECTION 4. 346.65 (3m) of the statutes is renumbered 346.65 (3m) (a).

14 SECTION 5. 346.65 (3m) (b) of the statutes is created to read:

15 346.65 (3m) (b) Prior to imposing any other penalty or order under par. (a) for
16 a violation of s. 346.63 (2), the court may enter an order under s. 343.30 (1q) (c)
17 requiring the person to submit to and comply with an assessment. The court may
18 postpone imposing any other penalty or order until it has ~~reviewed~~
19 compliance with assessment.

20 SECTION 6. 757.54 (3) of the statutes is created to read:

21 757.54 (3) The supreme court is requested to promulgate a rule under sub. (1)
22 that provides for the retention of all court records relating to assessments under s.
23 343.30 (1q) for at least 10 years.

24 SECTION 7. 940.09 (1e) of the statutes is created to read:

requested and reviewed information provided under s.
343.30 (1q) (i) regarding

from the facility

1 940.09 (1e) Prior to imposing any other penalty or order under sub. (1), the
2 court may enter an order under s. 343.30 (1q) (c) requiring the person to submit to
3 and comply with an assessment. The court may postpone imposing any other penalty
4 or order until it has ~~reviewed~~ the person's compliance with assessment.

5 **SECTION 8.** 940.25 (1e) of the statutes is created to read:

6 940.25 (1e) Prior to imposing any other penalty or order under sub. (1), the
7 court may enter an order under s. 343.30 (1q) (c) requiring the person to submit to
8 and comply with an assessment. The court may postpone imposing any other penalty
9 or order until it has ~~reviewed~~ the person's compliance with assessment.

10 **SECTION 9. Initial applicability.**

11 (1) This act first applies to violations committed or refusals occurring on the
12 effective date of this subsection, but does not preclude the counting of other
13 convictions, suspensions, or revocations as prior convictions, suspensions, or
14 revocations for purposes of administrative action by the department of
15 transportation, sentencing by a court, or revocation or suspension of motor vehicle
16 operating privileges.

17 **SECTION 10. Effective date.**

18 (1) This act takes effect on the first day of the 4th month beginning after
19 publication.

20 (END)

requested and reviewed information from the
facility provided under s. 343.30 (1q) (i) ✓
regarding

D-NOTE

Insert 2-4 ✓

If a court enters an order under par. (c) pursuant
to s. 346.65 (2d) or (3m)(b), 940.09 (1e), or
940.25 (1e), the court may request information from
the facility regarding the person's compliance with
assessment. Any information provided to a court under
this paragraph shall be confidential and may not be
made available to any person except upon specific
authorization of
§ SEC. #. CR; 343.30 (1g)(j) the court.
§ 343.30 (1g)(j)

LRB50313/2dn

TNF: Kmg:

DRAFTER'S NOTE

ATTN: Rep. Terri McCormick

This draft is identical to LRB50313/1, except that it addresses the issue of the confidentiality of court records relating to these assessments.

Please see proposed s. 343.30 (1g)(i), which is similar to the confidentiality of presentence investigation reports provided for under s. 972.15 (4), stats.

TNF

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0313/2dn
TNF:kmg:ch

February 13, 2002

ATTN: Representative Terri McCormick

This draft is identical to LRBs0313/1, except that it addresses the issue of the confidentiality of court records relating to these assessments. Please see proposed s. 343.30 (1q) (i), which is similar to the confidentiality of presentence investigation reports provided for under s. 972.15 (4), stats.

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