

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

LRB-1064/P2dn  
EVM:med:rs

January 23, 2012

ATTN: Tom Jackson

The drafting instructions included a request that violations of s. 346.63, stats., that result in harm to a vulnerable highway user be made Class H felonies. As explained below, this draft makes only a partial change to current penalties for violations of s. 346.63, stats. Section 346.63, stats., contains a number of offenses. These are, in general:

1. Operating while intoxicated (OWI).
2. Causing injury by OWI.
3. Operating a motor vehicle with any detectable blood alcohol content if the driver is under the legal drinking age.
4. OWI of a commercial motor vehicle.
5. Causing injury by OWI of a commercial motor vehicle.
6. Driving or being on duty time with respect to a commercial motor vehicle while having a detectable blood alcohol content.

I have not provided any treatment regarding item 3. or 6. because I was uncertain whether these were relevant to your request. Please let me know if you want enhanced penalties for these items.

The other components of s. 346.63 are generally already subject to greater penalties. Harm to a vulnerable highway user, as defined in this draft, includes causing bodily harm or great bodily harm to, or the death of, a vulnerable highway user. Under current law causing the death of another by OWI, including by use of a commercial motor vehicle, is generally a Class D felony. Causing great bodily harm to another by OWI, including by use of a commercial motor vehicle, is a Class F felony. Both of these already exceed the requested enhancement.

Causing injury by OWI, including by use of a commercial motor vehicle, is a Class H felony if the driver has a prior OWI conviction. Because in some situations this would lead to a lesser penalty than provided in your draft request, I have provided a treatment of s. 940.25 that would make causing bodily harm to a vulnerable highway

user by OWI, including by use of a commercial motor vehicle, a Class H felony regardless of prior OWI convictions.

Also, current law provides for a revocation of operating privilege for at least 2 years for a person convicted of causing any injury by OWI. I do not, therefore, believe any additional treatments are necessary for this portion of your request.

Please let me know if you have any questions or further instructions.

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