

**2011 DRAFTING REQUEST**

**Bill**

Received: **01/14/2011**

Received By: **agary**

Wanted: **As time permits**

Companion to LRB:

For: **Dale Schultz (608) 266-0703**

By/Representing: **Tom Jackson**

May Contact:

Drafter: **agary**

Subject: **Transportation - traffic laws  
Drunk Driving - penalties**

Addl. Drafters: **emueller**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Schultz@legis.wisconsin.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

---

**Topic:**

Creating penalty enhancements for traffic violations resulting in harm to vulnerable highway users

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**Instructions:**

See attached

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**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>
/?	agary 05/02/2011	csicilia 05/27/2011		_____			Crime
	agary 06/08/2011			_____			
/P1	agary 08/25/2011	csicilia 09/09/2011	jfrantze 09/09/2011	_____	sbasford 09/09/2011		S&L Crime
	agary 12/12/2011	mduchek 01/23/2012		_____			
	emueller			_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/06/2012			_____			
/P2			rschluet 01/23/2012	_____ _____	sbasford 01/23/2012		S&L Crime
/1	agary 01/30/2012	csicilia 01/31/2012	jfrantze 01/31/2012	_____ _____	sbasford 01/31/2012	sbasford 01/31/2012	

FE Sent For:

<END>

↳ At Intro.

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	emueller			_____			

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Please  
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Thx Aaron

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

01/06/2012

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01/23/2012

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01/23/2012

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/1 gjs  $\frac{1/31}{12}$

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/P1	agary 08/25/2011	csicilia 09/09/2011	jfrantze 09/09/2011	_____	sbasford 09/09/2011		
	agary			_____			

*Handwritten signatures and dates:*  
1/23/11  
1/23/11  
J  
M

FE Sent For:

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1?	agary 05/02/2011	csicilia 05/27/2011	IP1 MD	_____	_____	_____	_____
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	agary		9/9/11	_____	_____	_____	_____

FE Sent For:

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**Gary, Aaron**

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**From:** Jackson, Tom  
**Sent:** Thursday, January 27, 2011 3:54 PM  
**To:** Kevin Hardman  
**Cc:** Gary, Aaron  
**Subject:** Vulnerable Users bill drafting 27Jan11

Kevin --

To follow-up on our email exchange this morning, I'm happy to meet with you and Greg Hubbard, but drafting attorney Aaron Gary in his below email discusses questions that we need BFW answers to in order to proceed with bill drafting. I have asked Gary to put further drafting on hold until we hear from BFW and better understand the essence of the public policy goal(s) BFW wants.

WI law is structured differently than Oregon's for this subject, making it impossible to neatly fit the OR model to WI statutes. It also appears monetary and other penalties in WI are already right up there for comparable crimes.

In regard to the point about a defendant making court appearances in person, a question would be, at what point in the adjudication process would a judge determine the case involves a vulnerable user? If the Vulnerable User bill fits the general category of a penalty enhancer proposal, penalties do not arise until after a person is found guilty and the vulnerable user determination would come at the sentencing hearing.

If the goal is for a vulnerable user determination to be made prior to sentencing, doing so may necessitate a separate court hearing -- something our already-overloaded court system, and the state legislature and county governments that fund most of the court system would be sure to oppose.

Another question is what authority and latitude circuit court judges already have to make community service a part of a sentence for these cases. A member of your federation's executive committee is welcome to contact a judge they know, or, let us know and we can email the question to one of the circuit court judges in our senate district. Community service could typically be viewed as an penalty alternative rather than penalty enhancer, judges often say, if effect, if you do this community service, another aspect of your sentence will be reduce. Does BFW want the community service to be specifically made a penalty addition, as opposed to an alternative?

Perhaps you will want to be ready with BFW's answers to questions like these when we meet and I could ask Aaron Gary to meet with us on the same occasion.

Thank you.  
 - Tom Jackson

-----  
 From Jackson, Tom  
 Sent Thursday, January 27, 2011  
 To tjackson@legis.wi.gov  
 Re Aaron Gary, LRB: Vulnerable Users bill drafting 27Jan11

From Gary, Aaron  
 Sent January 27, 2011  
 To Sen.Schultz  
 Re Sen.Schultz to LRB Aaron Gary: Vulnerable Users bill draft request 14Jan11

Hi Tom,

I started working on this (now entered as LRB-1064) but the Oregon law is rather confusing and doesn't fit very well with Wisconsin statutes, so I need to follow up on a few things.

My understanding of the request is that it is intended to be a penalty *enhancement* draft. Therefore, I am assuming you do not want to *lower* penalties for offenses against vulnerable users.

Under current law in Wisconsin, a person who commits reckless driving and causes bodily harm is subject to a fine of \$300-\$2000 and/or up to 30 days in jail. [This offense would *not* be covered by the enhancement provision of the Oregon law.] A person who commits reckless driving in Wisconsin and causes great bodily harm [probably the equivalent of serious physical injury under Oregon law] is guilty of a Class I felony, which is punishable by a fine of up to \$10,000 and/or imprisonment of up to 3 1/2 years. These penalties would apply with respect to any victim, not just vulnerable persons. In addition, these monetary penalties can be doubled under Wisconsin law if the offense is committed where persons are engaged in highway work or utility work.

While the e-mail below refers only to reckless driving under s. 346.62, this statute covers only bodily harm and not death to a person. The Oregon provision (and elsewhere in the instructions) also apply to death of a vulnerable user. The applicable Wisconsin statute there would be s. 940.10, homicide by negligent operation of a vehicle, which is a Class G felony punishable by a fine of up to \$25,000 and/or imprisonment of up to 10 years.

In summary, it seems that Wisconsin already has penalties for these offenses (if anybody suffers serious injury or death, not just a vulnerable user) that are as high or higher than the enhanced penalties for vulnerable users under Oregon law. The operating privilege penalty is also higher in Wisconsin, as Wisconsin requires operating privilege revocation rather than suspension. See s. 343.31 (1) (a). I therefore do not see how the Oregon statute can be incorporated into Wisconsin law without *reducing* penalties for the applicable offenses in at least some situations. The Oregon law also has a few other administrative-type quirks that I would have to modify to make it fit here.

Given the foregoing information, how would you like to proceed with the draft?

Thanks. Aaron

Aaron R. Gary  
 Attorney, Legislative Reference Bureau  
 608.261.6926 (voice)  
 608.264.6948 (fax)  
 aaron.gary@legis.state.wi.us

-----  
**From:** Sen.Schultz  
**Sent:** Friday, January 14, 2011 3:39 PM  
**To:** Gary, Aaron  
**Cc:** Jackson, Tom; 'kevin.hardman@bfw.org'  
**Subject:** Sen.Schultz to LRB Aaron Gary: Vulnerable Users bill draft request 14Jan11  
 To Aaron Gary, Senior Atty, WI Legislative Reference Bureau  
 266.7290, aaron.gary@legis.wisconsin.gov  
 From Tom Jackson for Senator Dale Schultz, 266.0703  
 tjackson@legis.wi.gov, sen.schultz@legis.wi.gov  
 Cc Kevin Hardman, kevin.hardman@bfw.org, 414.412.1397

1/27/2011

Date January 14, 2011

Re Bill Draft Request: Zero Vulnerable Users in Wisconsin

Senator Dale Schultz has directed me to request LRB draft this bill with LRB questions/contacts to just me or Kevin Hardman. Please email Tom Jackson to confirm who at LRB will be drafting this.

“Zero in Wisconsin” establishes social goals on our roadways of fewer crashes and greater safety for all. Recent records show marked progress toward the goals for occupants of cars and trucks, but little or no progress toward the goals for pedestrians, motorcyclists, bicyclists and other vulnerable roadway users.

The intent of this proposal is to complement and advance “Zero in Wisconsin” primarily through enhanced awareness and education for all members of the Wisconsin community.

This proposal defines “vulnerable users” and in cases of reckless driving causing injury or fatality of a vulnerable user provides either enhanced penalties or education/community service. The State of Oregon vulnerable user law (ORS811.135) is a model for this proposal.

Definition of vulnerable user:

- Law enforcement officers performing their duties
- EMTs, other medical persons or Good Samaritans engaged in the act of rendering emergency assistance to others
- Firefighters performing their duties
- Pedestrians
- Highway construction workers
- Persons boarding or exiting municipal buses, motor coaches or school busses
- Equestrians
- Operators of and passengers in animal-drawn implements and vehicles
- Operators of and passengers in agricultural machinery
- Bicyclists
- Motorcyclists
- A person determined to be a vulnerable user by a Wisconsin court

Provisions:

If a Wisconsin court determines an offense committed constitutes reckless driving under 346.62 and resulted in the serious physical injury, disability or death of a vulnerable user of a public way, in addition to extant penalties, the court shall impose a sentence as follows:

- The defendant is required to make all court appearances in person
- Fine of up to \$10,000 plus one-year suspension of license unless person completes a court-approved traffic safety course and contributes 200 hours of court-approved community service. Community service must include activities relating to driver improvement and providing public education on traffic safety.
- Court hearing required within one year of sentencing. Judge to dismiss penalties if above conditions are fulfilled, impose the penalties if not, or grant extension for good cause.

**Oregon Vulnerable User Law, ORS 811.135**

**811.135 Careless driving; penalty.** (1) A person commits the offense of careless driving if the person drives any vehicle upon a highway or other premises described in this section in a manner that endangers or would be likely to endanger any person or property.

(2) The offense described in this section, careless driving, applies on any premises open to the public and is a Class B traffic violation unless commission of the offense contributes to an accident. If commission of the offense contributes to an accident, the offense is a Class A traffic violation.

(3) In addition to any other penalty imposed for an offense committed under this section, if the court determines that the commission of the offense described in this section contributed to the serious physical injury or death of a vulnerable user of a public way, the court shall:

(a) Impose a sentence that requires the person to:

(A) Complete a traffic safety course; and

(B) Perform between 100 and 200 hours of community service, notwithstanding ORS 137.129. The community service must include activities related to driver improvement and providing public education on traffic safety;

(b) Impose, but suspend on the condition that the person complete the requirements of paragraph (a) of this subsection:

(A) A fine of up to \$12,500, notwithstanding ORS 153.018; and

(B) A suspension of driving privileges as provided in ORS 809.280; and

(c) Set a hearing date up to one year from the date of sentencing.

(4) At the hearing described in subsection (3)(c) of this section, the court shall:

(a) If the person has successfully completed the requirements described in subsection (3)(a) of this section, dismiss the penalties imposed under subsection (3)(b) of this section; or

(b) If the person has not successfully completed the requirements described in subsection (3)(a) of this section:

(A) Grant the person an extension based on good cause shown; or

(B) Impose the penalties under subsection (3)(b) of this section.

(5) When a court imposes a suspension under subsection (4) of this section, the court shall prepare and send to the Department of Transportation an order of suspension of driving privileges of the person. Upon receipt of an order under this subsection, the department shall take action as directed under ORS 809.280.

(6) The police officer issuing the citation for an offense under this section shall note on the citation if the cited offense contributed to the serious physical injury or death of a vulnerable user of a public way. [1983 c.338 §570; 1995 c.383 §20; 2007 c.784 §3]

**Gary, Aaron**

**From:** Gary, Aaron  
**Sent:** Wednesday, June 08, 2011 10:29 AM  
**To:** Jackson, Tom  
**Subject:** RE: Vulnerable Users bill draft request Sen.Schultz 24May11  
**Attachments:** SB-528.pdf; 05Act466.pdf

Hi Tom,

I think perhaps the motorcycle group ABATE is one step ahead on this and got there first. Based on the comments below, the desire seems to be to create a penalty enhancer for failure-to-yield violations involving harm to vulnerable users even if the prosecution cannot show negligence associated with the failure-to-yield violation.

In the 2005 legislative session, the motorcycle group ABATE had the exact same concern (but as it relates to motorcyclists). ABATE participated in crafting a bill that was introduced as 2005 SB-528 by Senator Zien. With one amendment (SA1), the bill was passed and became 2005 Act 466. (The bill and the Act are attached.) While the intent of the legislation was aimed at providing protection and recourse for motorcyclists (and bicyclists too), the bill created penalty enhancers for failure-to-yield violations that caused harm to any person (including vulnerable users, as well as others). The bill also required, for failure-to-yield violations, that the offender attend traffic school to "acquaint the person with vehicle right-of-way rules and provide instruction on motorcycle, pedestrian, and bicycle awareness." The legislation also requires driver ed classes to provide instruction on motorcycle, bicycle, and pedestrian awareness. The penalty enhancement provisions for failure-to-yield violations that cause harm are created in s. 346.22 of the statutes and appear in sections 12 to 14 of Act 466, attached. Although this legislation does not use the term "vulnerable users" and is not limited to "vulnerable users," it appears to me that BFW's intent was already accomplished in 2005 Act 466.

I also note that a pending bill, 2011 AB 55, makes modifications desired by ABATE to what was done in 2005 Act 466.

Please let me know if you have any further questions or if I can do anything else for you.

Aaron

Aaron R. Gary  
*Attorney, Legislative Reference Bureau*  
 608.261.6926 (voice)  
 608.264.6948 (fax)  
 aaron.gary@legis.state.wi.us

---

**From:** Jackson, Tom  
**Sent:** Tuesday, May 24, 2011 1:19 AM  
**To:** Gary, Aaron  
**Cc:** kevin.hardman@bfw.org; ghubbard@hwz-gov.com  
**Subject:** Vulnerable Users bill draft request Sen.Schultz 24May11

Aaron Gary -

This message responds to your questions/comments related to Sen.Schultz's 'vulnerable user' bill draft request of 27Jan11.

Dale's responses, below, are supplied by Kevin Hardman, Executive Director, Bicycle

8/16/2011

Federation of WI.

We ask you to respond with any follow-up questions/comments. We would welcome a meeting if/when needed with Hardman, Greg Hubbard, you and me.

Thank you.

- Tom Jackson

1. AG: My understanding of the request is that it is intended to be a penalty enhancement draft. Therefore, I am assuming you do not want to lower penalties for offenses against vulnerable users.

**KH: Yes, the draft is intended to enhance penalties for offenses against defined "Vulnerable Users."**

2. AG: Under current law in Wisconsin, a person who commits reckless driving and causes bodily harm is subject to a fine of \$300-\$2000 and/or up to 30 days in jail. [This offense would not be covered by the enhancement provision of the Oregon law.] A person who commits reckless driving in Wisconsin and causes great bodily harm [probably the equivalent of serious physical injury under Oregon law] is guilty of a Class I felony, which is punishable by a fine of up to \$10,000 and/or imprisonment of up to 3 1/2 years. These penalties would apply with respect to any victim, not just vulnerable persons. In addition, these monetary penalties can be doubled under Wisconsin law if the offense is committed where persons are engaged in highway work or utility work.

**KH: This proposed statute is intended to fill a gap in the law wherein a "vulnerable" legal road user is either injured or killed however the crash is not found to be a Class I felony. The statute is intended to prevent the situation where a vulnerable user is either injured or killed and the operator is only required to pay a simple "Failure to Yield" ticket.**

3. AG: While the e-mail below refers only to reckless driving under s. 346.62, this statute covers only bodily harm and not death to a person. The Oregon provision (and elsewhere in the instructions) also apply to death of a vulnerable user. The applicable Wisconsin statute there would be s. 940.10, homicide by negligent operation of a vehicle, which is a Class G felony punishable by a fine of up to \$25,000 and/or imprisonment of up to 10 years.

**KH: My understanding of current statute is that unless crashes are consider as a result of negligence then the officer or DA only is left to issue a simple traffic ticket. This is the gap we intend to fill because a failure to yield between two motor vehicles often ends in a fender bender. An automobile that fails to yield to a "vulnerable user" often ends in the serious injury or death of that user. I am not certain how this should best be handled in the drafting.**

4. AG: In summary, it seems that Wisconsin already has penalties for these offenses (if anybody suffers serious injury or death, not just a vulnerable user) that are as high or higher than the enhanced penalties for vulnerable users under Oregon law. The operating privilege penalty is also higher in Wisconsin, as Wisconsin requires operating privilege revocation rather than suspension. See s. 343.31 (1) (a). I therefore do not see how the Oregon statute can be incorporated into Wisconsin law without reducing penalties for the applicable offenses in at least some situations. The Oregon law also has a few other administrative-type quirks that I would have to modify to make it fit here.

**KH: It appears that the Oregon statute might not provide the best example. I have attached two other documents for reference: 1) a proposed change to the Oregon statute 2) a copy of a**

**Maryland statute that passed a few weeks back.**

8/16

Y/C w/ Tom Jackson, Greg Hubbard

- inattentive driving →

"vulnerable user" → bicyclist, ped., horse, Amish,

- any violation →

- penalty enhancer for any violation of ch. 346 →

- ~~inattentive driving~~

- vulnerable user → harm to a vulnerable user

ch. 346

highway ~~work~~ work zone

- community service → add this

- model after work zone →



**Gary, Aaron**

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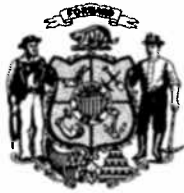
**From:** Jackson, Tom  
**Sent:** Thursday, August 18, 2011 1:29 PM  
**To:** Gary, Aaron  
**Cc:** Greg Hubbard  
**Subject:** Sen.Schultz - Aaron Gary, LRB: vulnerable user bill draft request, 18Aug11

Aaron -

Senator Schultz requests you draft a bill using as a model Wisconsin's law doubling fines for traffic violations in work zones, establishing a definition of vulnerable user, and doubling penalties for traffic violations involving bodily harm or death of a vulnerable users. If feasible, please include an enhancement of the court's authority/discretion to impose public service.

Thank you.  
- Tom Jackson

-----  
From Greg Hubbard ghubbard@hwz-gov.com  
Sent Thursday, August 18, 2011  
To Jackson, Tom  
Re BFW is good with what we discussed for Vulnerable User draft



in  
8/25  
med+ej's



D-Note

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA

Gen

2

1 AN ACT ...; relating to: the penalty for traffic violations resulting in harm to  
2 vulnerable highway users and providing a penalty

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

CRIME tag

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

1

- 3 SECTION 1. 340.01 (74p) of the statutes is created to read:
- 4 340.01 (74p) "Vulnerable highway user" means any of the following:
- 5 (a) A pedestrian.
- 6 (b) A bicyclist.
- 7 (c) An operator of an electric personal assistive mobility device.
- 8 (d) An operator of a motorcycle, moped, or motor bicycle.
- 9 (e) An operator of, or passenger on, an animal-drawn vehicle, farm tractor,
- 10 farm truck tractor, farm trailer, or implement of husbandry.

1 (f) A person riding upon in-line skates, a horse, or a play vehicle.

2 (g) A law enforcement officer, traffic officer, fire fighter, or emergency medical  
3 technician, while performing his or her official duties.

4 (h) A person who is rendering medical or emergency assistance to another  
5 person.

6 **SECTION 2.** 345.47 (1) (intro.) of the statutes is amended to read:

7 345.47 (1) (intro.) If the defendant is found guilty, the court may enter  
8 judgment against the defendant for a monetary amount not to exceed the maximum  
9 forfeiture provided for the violation, plus costs, fees, and surcharges imposed under  
10 ch. 814, and, in addition, may suspend or revoke his or her operating privilege under  
11 s. 343.30. If the forfeiture for the violation has been doubled under s. 346.17 (6),  
12 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56 (5), 346.60 (6), 346.65  
13 (8), 346.74 (7), 346.82 (3), 346.95 (12), or 349.06 (4), the court may also order the  
14 defendant to perform community service work. Upon entering judgment, the court  
15 shall notify the defendant personally, if the defendant is present, and in writing that  
16 the defendant should notify the court if he or she is unable to pay the judgment  
17 because of poverty, as that term is used in s. 814.29 (1) (d). If the defendant is present  
18 and the court, using the criteria in s. 814.29 (1) (d), determines that the defendant  
19 is unable to pay the judgment because of poverty, the court shall provide the  
20 defendant with an opportunity to pay the judgment in installments, taking into  
21 account the defendant's income. If the judgment is not paid or if the defendant fails  
22 to make any ordered installment payment, the court shall order:

**History:** 1971 c. 278; 1973 c. 218; 1977 c. 29 ss. 1477 to 1482, 1654 (7) (c); 1979 c. 34; 1981 c. 165; 1987 a. 27, 389; 1989 a. 31, 107; 1991 a. 34, 39, 189; 1993 a. 16; 1995 a. 269; 1997 a. 27, 84, 135, 237, 252; 1999 a. 9, 32, 185; 2001 a. 16; 2003 a. 139; 2007 a. 20; 2009 a. 17, 100, 103, 402; s. 13.92 (2) (i).

23 **SECTION 3.** 346.17 (6) of the statutes is created to read:

Λ

1           346.17 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.  
2 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death. ✓✓

3           (b) If any violation under ss. 346.04 to 346.16 results in harm to a vulnerable  
4 highway user, the amount of any forfeiture or fine specified in subs. (1) to (5) or s.  
5 939.50 for the violation shall be doubled. If sub. (5) applies with respect to the  
6 violation, the doubling of the forfeiture under this subsection shall apply after the  
7 forfeiture has been doubled under sub. (5). ✓

8           **SECTION 4.** 346.22 (5) of the statutes is created to read: ✓

9           346.22 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
10 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death. ✓

11           (b) If any violation under s. 346.18, 346.19, 346.20, 346.21, or 346.215 results  
12 in harm to a vulnerable highway user, the amount of any forfeiture specified in subs.  
13 (1) to (3) for the violation shall be doubled. If sub. (1) (b) applies with respect to the  
14 violation, the doubling of the forfeiture under this subsection shall apply after the  
15 forfeiture has been doubled under sub. (1) (b). ✓

16           **SECTION 5.** 346.30 (5) of the statutes is created to read: ✓

17           346.30 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
18 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death. ✓

19           (b) If any violation under ss. 346.23 to 346.29 results in harm to a vulnerable  
20 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation  
21 shall be doubled. ✓

22           **SECTION 6.** 346.36 (3) of the statutes is created to read: ✓

23           346.36 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.  
24 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death. ✓

1 (b) If any violation under ss. 346.31 to 346.35 results in harm to a vulnerable  
2 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the  
3 violation shall be doubled.

4 SECTION 7. 346.43 (4) of the statutes is created to read:

5 346.43 (4) (a) In this subsection, "harm" means bodily harm, as defined in s.  
6 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

7 (b) If any violation under ss. 346.37 to 346.42 results in harm to a vulnerable  
8 highway user, the amount of any forfeiture specified in subs. (1) to (3) for the violation  
9 shall be doubled. If sub. (1) (b) applies with respect to the violation, the doubling of  
10 the forfeiture under this subsection shall apply after the forfeiture has been doubled  
11 under sub. (1) (b).

12 SECTION 8. 346.49 (5) of the statutes is created to read:

13 346.49 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
14 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

15 (b) If any violation under s. 346.44, 346.45, 346.455, 346.46, or 346.47 to 346.48  
16 results in harm to a vulnerable highway user, the amount of any forfeiture specified  
17 in subs. (1), (1g), (2), (2m), and (4) for the violation shall be doubled. If sub. (1) (c)  
18 applies with respect to the violation, the doubling of the forfeiture under this  
19 subsection shall apply after the forfeiture has been doubled under sub. (1) (c).

20 SECTION 9. 346.56 (5) of the statutes is created to read:

21 346.56 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
22 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

23 (b) If any violation under ss. 346.503 to 346.55 results in harm to a vulnerable  
24 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation  
25 shall be doubled.

^

1 SECTION 10. 346.60 (6) of the statutes is created to read:

2 346.60 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.  
3 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

4 (b) If any violation under <sup>ss.</sup> §. 346.57 to 346.595 results in harm to a vulnerable  
5 highway user, the amount of any forfeiture specified in subs. (1) to (5) for the violation  
6 shall be doubled. If sub. (3m) applies with respect to the violation, the doubling of  
7 the forfeiture under this subsection shall apply after the forfeiture has been doubled  
8 under sub. (3m). ✓

9 SECTION 11. 346.65 (8) of the statutes is created to read: ^

10 346.65 (8) (a) In this subsection, "harm" means bodily harm, as defined in s.  
11 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

12 (b) If any violation under ss. 346.62 to 346.64 results in harm to a vulnerable  
13 highway user, the amount of any forfeiture or fine specified in subs. (1) to (7) or s.

14 939.50 for the violation shall be doubled. If sub. (2) (f) 2., (2) (g), (3m), (3p), (3r), or  
15 (5m) applies with respect to the violation, the doubling of the forfeiture under this <sup>or fine</sup>  
16 subsection shall apply after the forfeiture has been doubled, tripled, or quadrupled,  
17 as applicable, under sub. (2) (f) 2., (2) (g), (3m), (3p), (3r), or (5m). (2j)(d) ✓

18 SECTION 12. 346.74 (7) of the statutes is created to read:

19 346.74 (7) (a) In this subsection, "harm" means bodily harm, as defined in s.  
20 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

21 (b) If any violation under <sup>s.</sup> §. 346.67 or <sup>ss.</sup> 346.68 to 346.70 results in harm to a  
22 vulnerable highway user, the amount of any forfeiture or fine specified in subs. (2)  
23 to (5) or s. 939.50 for the violation shall be doubled. ✓

24 SECTION 13. 346.82 (3) of the statutes is created to read: ^

1 346.82 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.  
2 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

3 (b) If any violation under ss. 346.77 to 346.805 results in harm to a vulnerable  
4 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the  
5 violation shall be doubled.

6 SECTION 14. 346.95 (12) of the statutes is created to read:

7 346.95 (12) (a) In this subsection, "harm" means bodily harm, as defined in s.  
8 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

9 (b) If any violation under ss. 346.87 to 346.94 results in harm to a vulnerable  
10 highway user, the amount of any forfeiture specified in subs. (1) to (5e) and (6) to (11)  
11 for the violation shall be doubled.

12 SECTION 15. 349.06 (4) of the statutes is created to read:

13 349.06 (4) (a) In this subsection, "harm" means bodily harm, as defined in s.  
14 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

15 (b) If a violation of a local ordinance in strict conformity with ss. 346.04 to  
16 346.16, 346.18, 346.19, 346.20, 346.21, 346.215, 346.23 to 346.29, 346.31 to 346.35,  
17 346.37 to 346.42, 346.44, 346.45, 346.455, 346.46, 346.47 to 346.48, 346.503 to  
18 346.55, 346.57 to 346.595, 346.62 to 346.64, 346.67, 346.68 to 346.70, 346.77 to  
19 346.805, or 346.87 to 346.94 results in harm to a vulnerable highway user, the  
20 applicable penalty for the violation under the ordinance shall include the doubling  
21 of the forfeiture as provided under s. 346.17 (6), 346.22 (5), 346.30 (5), 346.36 (3),  
22 346.43 (4), 346.49 (5), 346.56 (5), 346.60 (6), 346.65 (8), 346.74 (7), 346.82 (3), or  
23 346.95 (12).

24 SECTION 16. Initial applicability.

1           (1) This act first applies to violations committed on the effective date of this  
2 subsection.

3           **SECTION 17. Effective date.**

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

6

7

8

(END)



A handwritten note "P-Note" is circled in black ink.



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

LRB-1064/P1dn

ARG:.....

(Date)

med - gs

ATTN: Tom Jackson

Please review the attached draft carefully to ensure that it is consistent with your intent.

In preparing the definition of "vulnerable highway user" under s. 340.01 (74p), I did not include a person who is boarding or exiting a mass transit vehicle, motor bus, or school bus because it seems that such a person would always be a pedestrian and would therefore already be covered by the definition. *See also* s. 340.01 (43) (definition of pedestrian). I also did not include highway workers as vulnerable highway users because, under current law, penalties are already doubled for many violations in highway work zones.

The attached draft provides for an enhanced penalty for most violations under ch. 346 if harm to a vulnerable highway user results. I did not apply this penalty enhancement to violations that impose "owner liability" but did apply the enhancement to almost all other violations under ch. 346. Given the instructions, I erred on the side of inclusion; however, there are probably many violations covered by this draft for which the penalty enhancement provision makes little sense. You may wish to review the violations covered in ch. 346 and with an eye toward applying the penalty enhancement to those violations where it makes the most sense.

As I have drafted this bill, if a driver causes harm to a vulnerable highway user, such as a pedestrian, in a highway work zone, the penalty is quadrupled (doubled and doubled again). Please advise if this is not consistent with your intent.

Chapters 345 and 799 govern citation and trial procedures for traffic regulation violations tried in circuit court. Chapter 800 governs procedures for traffic regulation violations (ordinance violations) tried in municipal court. Section 800.09 (1b) (b) explicitly allows the municipal court judge to order community service work, but neither chapter 345 nor chapter 799 contains an analogous provision. I have added an analogous provision, but limited its scope to situations involving harm to vulnerable highway users. Both s. 800.09 (1b) (b) and created s. 345.47 (1) (intro.) under this draft allow, but do not require, the judge to order community service work. Please advise if this is not consistent with your intent. Also, in the rare situations in which a traffic violation is a crime, a court already has many sentencing and probation options, and community service is among them.

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

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

LRB-1064/P1dn  
ARG:med&cjs:jf

September 9, 2011

ATTN: Tom Jackson

Please review the attached draft carefully to ensure that it is consistent with your intent.

In preparing the definition of "vulnerable highway user" under s. 340.01 (74p), I did not include a person who is boarding or exiting a mass transit vehicle, motor bus, or school bus because it seems that such a person would always be a pedestrian and would therefore already be covered by the definition. *See also* s. 340.01 (43) (definition of pedestrian). I also did not include highway workers as vulnerable highway users because, under current law, penalties are already doubled for many violations in highway work zones.

The attached draft provides for an enhanced penalty for most violations under ch. 346 if harm to a vulnerable highway user results. I did not apply this penalty enhancement to violations that impose "owner liability" but did apply the enhancement to almost all other violations under ch. 346. Given the instructions, I erred on the side of inclusion; however, there are probably many violations covered by this draft for which the penalty enhancement provision makes little sense. You may wish to review the violations covered in ch. 346 and with an eye toward applying the penalty enhancement to those violations where it makes the most sense.

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Chapters 345 and 799 govern citation and trial procedures for traffic regulation violations tried in circuit court. Chapter 800 governs procedures for traffic regulation violations (ordinance violations) tried in municipal court. Section 800.09 (1b) (b) explicitly allows the municipal court judge to order community service work, but neither chapter 345 nor chapter 799 contains an analogous provision. I have added an analogous provision, but limited its scope to situations involving harm to vulnerable highway users. Both s. 800.09 (1b) (b) and created s. 345.47 (1) (intro.) under this draft allow, but do not require, the judge to order community service work. Please advise if this is not consistent with your intent. Also, in the rare situations in which a traffic violation is a crime, a court already has many sentencing and probation options, and community service is among them.

Please let me know if you would like any changes made to the attached draft or if you have any questions.

Aaron R. Gary  
Legislative Attorney  
Phone: (608) 261-6926  
E-mail: [aaron.gary@legis.state.wi.us](mailto:aaron.gary@legis.state.wi.us)

**Gary, Aaron**

---

**From:** Kevin Luecke [kevin.luecke@bfw.org]  
**Sent:** Friday, December 09, 2011 8:29 AM  
**To:** Gary, Aaron  
**Cc:** Kevin Hardman; Jackson, Tom; Greg Hubbard; Dave Schlabowske  
**Subject:** Re: Scheduling: Th, Dec 8, 1:00: vulnerable user phone mtg  
**Attachments:** 2011.12.09 Bike Fed Vulnerable User Drafting Memo.doc

Hello Aaron.

Attached are updated Vulnerable User drafting instructions based on our conversation yesterday. Please let me know if you have any questions or need further clarifications.

Thank you,  
Kevin

-----  
Kevin Luecke - Lead Planner  
Bicycle Federation of Wisconsin  
[www.bfw.org](http://www.bfw.org) | 608-251-4456

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**Memorandum**

**From:** Kevin Luecke, Bicycle Federation of Wisconsin  
**To:** Aaron Gary  
**CC:** Tom Jackson, Greg Hubbard, Kevin Hardman, Dave Schlabowske  
**Date:** December 9, 2011  
**Re:** Wisconsin Vulnerable Users Legislation

---

Based on our conversation on December 8, 2011, the Bicycle Federation of Wisconsin requests the following changes to the Vulnerable Users draft bill:

1. Maintain the drafted definition of the Vulnerable User class.
2. Maintain the penalty enhancements for all statute violations currently proposed in the draft except for the statutes cited below.
3. Violations of 346.18 – 346.215 (failure to yield), 346.075 (unsafe passing), and 346.89 (inattentive driving) that result in harm of a vulnerable highway user shall be a Class I felony and shall include a minimum one-year suspension of license in addition to the standard penalties.
4. Violations of 346.62 (reckless driving) and 346.63 (operating under influence of intoxicant or other drug) that result in harm of a vulnerable highway user shall be a Class H felony and shall include a minimum two-year suspension of license in addition to the standard penalties.

For items 3 and 4 above, clarification may be needed that existing penalties may be stricter than those proposed if the violation meets escalation clauses already in the statutes (eg. repeat violation, youth in vehicle if OWI, etc.).

For simplicity, I have not included the following penalty provisions that have previously been discussed in regards to this bill:

- All court appearances must be made in person
- In counties that have an established community service system, 200 hours of court-approved community service; community service must include activities relating to driver improvement and providing public education on traffic safety

If these penalty provisions are relatively easy to include in the bill, they should be included with provisions 3 and 4 above.

The intent of these changes is to impose more stringent penalties on the violations that are most likely to result in harm to a vulnerable user. The proposed penalties are further differentiated into Class H and Class I felonies based on the perceived severity of the infraction. Although we are proposing significant penalties for these infractions, there are relatively few of these infractions each year, and we do not believe this change to the law will present a significant burden to the court and criminal justice system.

Thank you for your work on this issue. Please let me know if you have any questions.

**Gary, Aaron**

---

**From:** Jackson, Tom  
**Sent:** Friday, December 09, 2011 12:49 PM  
**To:** Gary, Aaron  
**Cc:** Kevin Hardman; Greg Hubbard; Dave Schlabowske; Kevin Luecke  
**Subject:** Sen.Schultz to Aaron Gary vulnerable user bill draft instructions 9Dec11

Aaron –  
Senator Schultz concurs with Luecke's requested drafting instructions.  
For questions, you're welcome to contact me or Luecke.  
Thank you.  
- Tom Jackson  
Office of Senator Dale Schultz

-----  
**From:** Kevin Luecke, Bicycle Federation of Wisconsin  
**To:** Aaron Gary  
**CC:** Tom Jackson, Greg Hubbard, Kevin Hardman, Dave Schlabowske  
**Date:** December 9, 2011  
**Re:** Wisconsin Vulnerable Users Legislation

Based on our conversation on December 8, 2011, the Bicycle Federation of Wisconsin requests the following changes to the Vulnerable Users draft bill:

Maintain the drafted definition of the Vulnerable User class.

Maintain the penalty enhancements for all statute violations currently proposed in the draft except for the statutes cited below.

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Violations of 346.62 (reckless driving) and 346.63 (operating under influence of intoxicant or other drug) that result in harm of a vulnerable highway user shall be a Class H felony and shall include a minimum two-year suspension of license in addition to the standard penalties.

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All court appearances must be made in person

In counties that have an established community service system, 200 hours of court-approved community service; community service must include activities relating to driver improvement and providing public education on traffic safety

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Thank you for your work on this issue. Please let me know if you have any questions.

-----  
From Kevin Luecke [kevin.luecke@bfw.org](mailto:kevin.luecke@bfw.org)  
Sent December 09, 2011 8:29 AM  
To Gary, Aaron  
Cc Kevin Hardman; Jackson, Tom; Greg Hubbard; Dave Schlabowske  
Re Scheduling: Th, Dec 8, 1:00: vulnerable user phone mtg

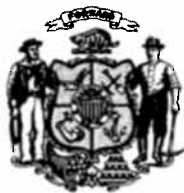
Hello Aaron.

Attached are updated Vulnerable User drafting instructions based on our conversation yesterday. Please let me know if you have any questions or need further clarifications.

Thank you,  
Kevin

-----  
Kevin Luecke - Lead Planner  
Bicycle Federation of Wisconsin  
[www.bfw.org](http://www.bfw.org) | 608-251-4456





State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-1064 PZ

ARG:med&cjs:jf

stays (RMR)

Note

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

INSERTS

In 1/6/11

TODAY

~~Sen~~

rejen

1 **AN ACT** to amend 345.47 (1) (intro.); and to create 340.01 (74p), 346.17 (6),  
2 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56 (5), 346.60 (6),  
3 346.65 (8), 346.74 (7), 346.82 (3), 346.95 (12) and 349.06 (4) of the statutes;  
4 **relating to:** traffic violations resulting in harm to vulnerable highway users  
5 and providing a penalty.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

insert ANAL

CRIM

FE-SL

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

6 **SECTION 1.** 340.01 (74p) of the statutes is created to read:  
7 340.01 (74p) "Vulnerable highway user" means any of the following:

- 1 (a) A pedestrian. ✓  
 2 (b) A bicyclist. ✓  
 3 (c) An operator of an electric personal assistive mobility device. ✓  
 4 (d) An operator of a motorcycle, moped, or motor bicycle. ✓  
 5 (e) An operator of, or passenger on, an animal-drawn vehicle, farm tractor,  
 6 farm truck tractor, farm trailer, or implement of husbandry. ✓  
 7 (f) A person riding upon in-line skates, a horse, or a play vehicle.  
 8 (g) A law enforcement officer, traffic officer, fire fighter, or emergency medical  
 9 technician, while performing his or her official duties.  
 10 (h) A person who is rendering medical or emergency assistance to another  
 11 person.

12 **SECTION 2.** 345.47 (1) (intro.) of the statutes is amended to read:

13 345.47 (1) (intro.) If the defendant is found guilty, the court may enter  
 14 judgment against the defendant for a monetary amount not to exceed the maximum  
 15 forfeiture provided for the violation, plus costs, fees, and surcharges imposed under  
 16 ch. 814, and, in addition, may suspend or revoke his or her operating privilege under  
 17 s. 343.30. If the forfeiture for the violation has been doubled under s. 346.17 (6),  
 18 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56 (5), 346.60 (6),  
 19 ~~346.67~~ 346.74 (7), 346.82 (3), 346.95 (12), or 349.06 (4), the court may also order the  
 20 defendant to perform community service work. Upon entering judgment, the court  
 21 shall notify the defendant personally, if the defendant is present, and in writing that  
 22 the defendant should notify the court if he or she is unable to pay the judgment  
 23 because of poverty, as that term is used in s. 814.29 (1) (d). If the defendant is present  
 24 and the court, using the criteria in s. 814.29 (1) (d), determines that the defendant  
 25 is unable to pay the judgment because of poverty, the court shall provide the

1 defendant with an opportunity to pay the judgment in installments, taking into  
2 account the defendant's income. If the judgment is not paid or if the defendant fails  
3 to make any ordered installment payment, the court shall order:

Insert  
3-3

4 SECTION 3. 346.17 (6) of the statutes is created to read:

5 346.17 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.  
6 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

7 (b) If any violation under ss. 346.04 to <sup>346.072 or 346.08 to</sup> 346.16 results in harm to a vulnerable  
8 highway user, the amount of any forfeiture or fine specified in subs. (1) to <sup>3</sup> (5) or s.  
9 939.50 for the violation shall be doubled. If sub. (5) applies with respect to the  
10 violation, the doubling of the forfeiture under this subsection shall apply ~~after the~~  
11 ~~forfeiture has been doubled~~ under sub. (5). *in addition to any doubling*

Insert  
3-11

12 SECTION 4. 346.22 (5) of the statutes is created to read:

13 346.22 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
14 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

15 (b) If any violation under s. 346.18, 346.19, 346.20, 346.21 or 346.215 results  
16 in harm to a vulnerable highway user, the amount of any forfeiture specified in subs.  
17 (1) to (3) for the violation shall be doubled. If sub. (1) (b) applies with respect to the  
18 violation, the doubling of the forfeiture under this subsection shall apply ~~after the~~  
19 ~~forfeiture has been doubled~~ under sub. (1) (b). *in addition to any doubling*

Insert  
3-19

20 SECTION 5. 346.30 (5) of the statutes is created to read:

21 346.30 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
22 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

23 (b) If any violation under ss. 346.23 to 346.29 results in harm to a vulnerable  
24 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation  
25 shall be doubled.

1 SECTION 6. 346.36 (3) of the statutes is created to read:

2 346.36 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.  
3 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

4 (b) If any violation under ss. 346.31 to 346.35 results in harm to a vulnerable  
5 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the  
6 violation shall be doubled.

7 SECTION 7. 346.43 (4) of the statutes is created to read:

8 346.43 (4) (a) In this subsection, "harm" means bodily harm, as defined in s.  
9 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

10 (b) If any violation under ss. 346.37 to 346.42 results in harm to a vulnerable  
11 highway user, the amount of any forfeiture specified in subs. (1) to (3) for the violation  
12 shall be doubled. If sub. (1) (b) 3. applies with respect to the violation, the doubling  
13 of the forfeiture under this subsection shall apply ~~after the forfeiture has been~~  
14 ~~doubled~~ under sub. (1) (b) 3. *in addition to any doubling*

15 SECTION 8. 346.49 (5) of the statutes is created to read:

16 346.49 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
17 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

18 (b) If any violation under s. 346.44, 346.45, 346.455, 346.46, or 346.47 to 346.48  
19 results in harm to a vulnerable highway user, the amount of any forfeiture specified  
20 in subs. (1), (1g), (2), (2m), and (4) for the violation shall be doubled. If sub. (1) (c)  
21 applies with respect to the violation, the doubling of the forfeiture under this  
22 subsection shall apply ~~after the forfeiture has been doubled~~ *in addition to any doubling* under sub. (1) (c).

23 SECTION 9. 346.56 (5) of the statutes is created to read:

24 346.56 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
25 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

1 (b) If any violation under ss. 346.503 to 346.55 results in harm to a vulnerable  
2 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation  
3 shall be doubled.

4 **SECTION 10.** 346.60 (6) of the statutes is created to read:

5 346.60 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.  
6 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

7 (b) If any violation under ss. 346.57 to 346.595 results in harm to a vulnerable  
8 highway user, the amount of any forfeiture specified in subs. (1) to (5) for the violation  
9 shall be doubled. If sub. (3m) applies with respect to the violation, the doubling of  
10 the forfeiture under this subsection shall apply *in addition to any doubling or*  
*after the forfeiture has been doubled*  
11 under sub. (3m). *other penalty enhancement*

12 **SECTION 11.** 346.65 (8) of the statutes is created to read:

13 346.65 (8) (a) In this subsection, "harm" means bodily harm, as defined in s.  
14 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

15 (b) If any violation under ss. 346.62 to 346.64 results in harm to a vulnerable  
16 highway user, the amount of any forfeiture or fine specified in subs. (1) to (7) or s.  
17 939.50 for the violation shall be doubled. If sub. (2) (f) 2., (2) (g), (2j) (d), (3m), (3p),  
18 (3r), or (5m) applies with respect to the violation, the doubling of the forfeiture or fine  
19 under this subsection shall apply after the forfeiture or fine has been doubled,  
20 tripled, or quadrupled, as applicable, under sub. (2) (f) 2., (2) (g), (2j) (d), (3m), (3p),  
21 (3r), or (5m).

22 **SECTION 12.** 346.74 (7) of the statutes is created to read:

23 346.74 (7) (a) In this subsection, "harm" means bodily harm, as defined in s.  
24 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

Insert  
§-12

1 (b) If any violation under s. 346.67 or ss. 346.68 to 346.70 results in harm to  
2 a vulnerable highway user, the amount of any forfeiture or fine specified in subs. (2)  
3 to (5) or s. 939.50 for the violation shall be doubled.

4 SECTION 13. 346.82 (3) of the statutes is created to read:

5 346.82 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.  
6 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

7 (b) If any violation under ss. 346.77 to 346.805 results in harm to a vulnerable  
8 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the  
9 violation shall be doubled.

Handwritten: "max 6-9" with an arrow pointing to line 9.

10 SECTION 14. 346.95 (12) of the statutes is created to read:

11 346.95 (12) (a) In this subsection, "harm" means bodily harm, as defined in s.  
12 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

Handwritten: "13" circled.

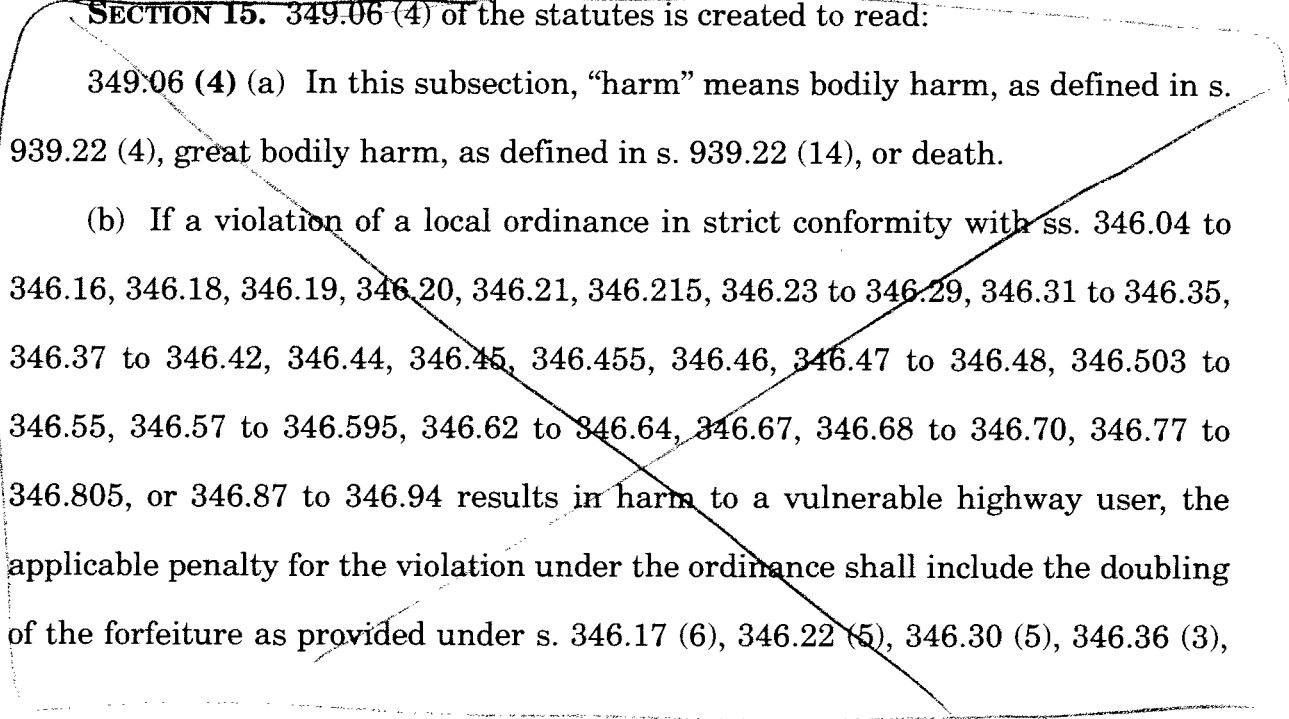
13 (b) If any violation under ss. 346.87<sup>346.88, or 346.90</sup> to 346.94 results in harm to a vulnerable  
14 highway user, the amount of any forfeiture specified in subs. (1) to (5e) and (6) to (11)  
15 for the violation shall be doubled.

Handwritten: "insert 6-16" with an arrow pointing to line 16.

16 SECTION 15. 349.06 (4) of the statutes is created to read:

17 349.06 (4) (a) In this subsection, "harm" means bodily harm, as defined in s.  
18 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

19 (b) If a violation of a local ordinance in strict conformity with ss. 346.04 to  
20 346.16, 346.18, 346.19, 346.20, 346.21, 346.215, 346.23 to 346.29, 346.31 to 346.35,  
21 346.37 to 346.42, 346.44, 346.45, 346.455, 346.46, 346.47 to 346.48, 346.503 to  
22 346.55, 346.57 to 346.595, 346.62 to 346.64, 346.67, 346.68 to 346.70, 346.77 to  
23 346.805, or 346.87 to 346.94 results in harm to a vulnerable highway user, the  
24 applicable penalty for the violation under the ordinance shall include the doubling  
25 of the forfeiture as provided under s. 346.17 (6), 346.22 (5), 346.30 (5), 346.36 (3),



1 ~~346.43 (4), 346.49 (5), 346.56 (5), 346.60 (6), 346.65 (8), 346.74 (7), 346.82 (3), or~~  
2 ~~346.95 (12).~~

3 **SECTION 16. Initial applicability.**

4 (1) This act first applies to violations committed on the effective date of this  
5 subsection.

6 **SECTION 17. Effective date.**

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

9 (END)

INS  
7-3

Note

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

LRB-1064/P2dn

EVM:.....

*med*

Date

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.

Eric V. Mueller  
Legislative Attorney  
Phone: (608) 261-7032  
E-mail: [eric.mueller@legis.wisconsin.gov](mailto:eric.mueller@legis.wisconsin.gov)

*offense relating to*

1           INS Analysis-A

2

Under current law, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant is guilty of a Class D felony or, if the person has been convicted of a prior operating under the influence of an intoxicant or other drug (OWI) related offense, a Class C felony. A Class C felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 40 years or both. A Class D felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 25 years or both. A person who causes great bodily harm to another by OWI is guilty of a Class F felony. A Class F felony is punishable by a fine not exceeding \$25,000 or imprisonment not exceeding 12 years and 6 months or both. A person who causes injury to another by OWI may be fined not less than \$300 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year or, if the person has been convicted of a prior OWI-related offense, is guilty of a class H felony.

Under this bill, a person who causes bodily harm by OWI to a vulnerable highway user is guilty of a class H felony.

3

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5           INS 2-11-A

6

7           **SECTION 1.** 343.31 (1) (a) of the statutes is amended to read:

8           343.31 (1) (a) Homicide or, great bodily harm, or harm to a vulnerable highway  
9           user resulting from the operation of a motor vehicle and which is criminal under s.  
10           346.62 (4), 940.06, 940.09, 940.10 or 940.25.

**History:** 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 258, 295; 1999 a. 109, 143; 2001 a. 16, 38, 109; 2003 a. 30, 97, 200; 2005 a. 387; 2009 a. 100, 102, 121.

11

12           INS 7-3

13

14           **SECTION 2.** 939.22 (44m) of the statutes is created to read:

1 939.22 (44m) "Vulnerable highway user" has the meaning given in s. 340.01  
2 (74p).

3 SECTION 3. 940.25 (1b) of the statutes is created to read:

4 940.25 (1b) Any person who does any of the following is guilty of a Class H  
5 felony:

6 (a) Causes bodily harm to a vulnerable highway user by the operation of a  
7 vehicle while under the influence of an intoxicant.

8 (b) Causes bodily harm to a vulnerable highway user by the operation of a  
9 vehicle while the person has a detectable amount of a restricted controlled substance  
10 in his or her blood.

11 (c) Causes bodily harm to a vulnerable highway user by the operation of a  
12 vehicle while the person has a prohibited alcohol concentration, as defined in s.  
13 340.01 (46m).

14 (d) Causes bodily harm to a vulnerable highway user by the operation of a  
15 commercial motor vehicle while the person has an alcohol concentration of 0.04 or  
16 more but less than 0.08.

17 SECTION 4. 940.25 (1m) (a) of the statutes is amended to read:

18 940.25 (1m) (a) A person may be charged with and a prosecutor may proceed  
19 upon an information based upon a violation of any combination of sub. (1) (a), (am),  
20 or (b); any combination of sub. (1) (a), (am), or (bm); any combination of sub. (1) (c),  
21 (cm), or (d); ~~or any combination of sub. (1) (c), (cm), or (e); any combination of sub. (1b)~~  
22 (a), (b), or (c); or any combination of sub. (1b) (a), (b), or (d) for acts arising out of the  
23 same incident or occurrence.

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109; 2003 a. 30, 97; 2005 a. 253; 2009 a. 100.

24 SECTION 5. 940.25 (1m) (b) of the statutes is amended to read:

1           940.25 (1m) (b) If a person is charged in an information with any of the  
2 combinations of crimes referred to in par. (a), the crimes shall be joined under s.  
3 971.12. If the person is found guilty of more than one of the crimes so charged for  
4 acts arising out of the same incident or occurrence, there shall be a single conviction  
5 for purposes of sentencing and for purposes of counting convictions under s. 23.33  
6 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or  
7 under s. 350.11 (3) (a) 2. and 3. ~~Subsection~~ Subsections (1) (a), (am), (b), (bm), (c),  
8 (cm), (d), and (e) and (1b) (a), (b), (c), and (d) each require proof of a fact for conviction  
9 which the others do not require.

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109; 2003 a. 30, 97; 2005 a. 253; 2009 a. 100.

10           **SECTION 6.** 940.25 (2) (a) of the statutes is amended to read:

11           940.25 (2) (a) The defendant has a defense if he or she proves by a  
12 preponderance of the evidence that the great bodily harm or bodily harm would have  
13 occurred even if he or she had been exercising due care and he or she had not been  
14 under the influence of an intoxicant, did not have a detectable amount of a restricted  
15 controlled substance in his or her blood, or did not have an alcohol concentration  
16 described under sub. (1) (b), (bm), (d) or (e) or (1b) (c) or (d).

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109; 2003 a. 30, 97; 2005 a. 253; 2009 a. 100.

**2011-2012 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1064/P2ins  
ARG:.....

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**INSERT ANAL:**

This bill creates penalty enhancements for traffic violations that result in bodily harm, great bodily harm, or death (collectively "harm") to vulnerable highway users. The bill defines "vulnerable highway user" as any of the following: 1) a pedestrian; 2) a bicyclist; 3) an operator of an electric personal assistive mobility device (EPAMD, commonly referred to by the tradename "Segway"); 4) an operator of a motorcycle, moped, or motor bicycle; 5) an operator of, or passenger on, an animal-drawn vehicle, farm tractor, farm truck tractor, farm trailer, or implement of husbandry; 6) a person riding upon in-line skates, a horse, or a play vehicle; 7) a law enforcement officer, traffic officer, fire fighter, or emergency medical technician, while performing his or her official duties; or 8) a person who is rendering medical or emergency assistance to another person. For most traffic violations, the bill doubles the applicable forfeiture or fine if the violation results in harm to a vulnerable highway user, and this doubling is in addition to any other applicable penalty enhancement, such as the doubling for certain traffic violations committed in highway maintenance or construction areas or in utility work areas. However, for specific violations, the bill makes the offense a Class I or Class H felony if the violation results in harm to a vulnerable highway user. A Class I felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding three years and six months or both. A Class H felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding six years or both. Provisions of current law that increase the forfeiture or fine for violations committed under certain circumstances, such as in highway maintenance or construction areas or in utility work areas, continue to apply to these new, higher penalties.

*CNS-  
Analysis - A*

Under current law, the operator of a vehicle must yield the right-of-way to another vehicle under certain circumstances, including: when turning left across traffic; at an intersection posted with a yield sign; when entering a through highway or a highway from an alley or driveway or from a parked or standing position; or when entering a highway from another highway that ends at a "T" intersection. A person who fails to yield the right-of-way as required is subject to a forfeiture of not less than \$20 nor more than \$50 for a first offense and not less than \$50 nor more than \$100 for any subsequent offense within a year. However, if the violation results in bodily harm, great bodily harm, or death to another, the person must forfeit, respectively, \$200, \$500, or \$1,000 for the violation and the court must suspend the person's operating privilege for, respectively, 30 days, 90 days, or 9 months.

Under this bill, if such a failure to yield violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony, punishable by a fine not exceeding \$10,000 or imprisonment not exceeding three years and six months or both, and the court must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle must yield the right-of-way to livestock being driven over or along the highway. A person who fails to yield the right-of-way to livestock is subject to a forfeiture of not less than \$10 nor more than \$20 for the first offense and not less than \$25 nor more than \$50 for the second or subsequent offense within a year.

Under this bill, if such a failure to yield to livestock violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle overtaking a bicycle or EPAMD proceeding in the same direction must exercise due care, leaving a safe distance but at least three feet clearance when passing the bicycle or EPAMD, and must maintain clearance until safely past the overtaken bicycle or EPAMD. Also, if the operator of a motor vehicle overtakes a motor bus that is stopped at an intersection on the right side of the roadway and that is receiving or discharging passengers, the operator must pass at a safe distance to the left of the motor bus and may not turn to the right in front of the motor bus at that intersection. A person who commits such a passing violation is subject to a forfeiture of not less than \$25 nor more than \$200 for the first offense and not less than \$50 nor more than \$500 for the second or subsequent offense within four years.

Under this bill, if such a passing violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits inattentive driving of a motor vehicle, which includes: 1) being so engaged or occupied, while driving a motor vehicle, as to interfere with the safe driving of the vehicle; 2) operating a motor vehicle equipped with a television or similar device in the front of the vehicle or otherwise visible to the operator; and 3) driving a motor vehicle while composing or sending an electronic text message or an e-mail message. Any person who commits forms 1) and 3) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$400 and any person who commits form 2) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the second or subsequent offense within a year.

Under this bill, if any inattentive driving violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits a person from causing bodily harm or great bodily harm to another by the negligent operation of a vehicle (reckless driving). A person who commits a reckless driving violation that causes bodily harm is subject to a fine of not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year. A person who commits a reckless driving violation that causes great bodily harm is guilty of a Class I felony and must have his or her operating privilege revoked by the Department of Transportation (DOT).

→ \*

Under this bill, a reckless driving violation that causes harm or great bodily harm to a vulnerable highway user is punishable as a Class H felony and the violator must have his or her operating privilege revoked by DOT for a period of two years.

for one year

Under current law, local authorities may enact and enforce traffic regulations that are in strict conformity with state statutes and that provide for a forfeiture as a penalty.

Under this bill, if a local authority enacts a traffic regulation in strict conformity with a state statute and the statutory penalty is doubled if the violation results in harm to a vulnerable highway user, the applicable ordinance penalty for the ordinance violation must also include the doubling of the forfeiture.

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**INSERT 2-11:**

**SECTION 1.** 343.30 (1j) (d) of the statutes is created to read:

343.30 (1j) (d) Notwithstanding pars. (a) to (c), for a period of one year, if the offense resulted in bodily harm, great bodily harm, or death to a vulnerable highway user.

346.075  
↓

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

5  
↓

343.30 (1m) Upon conviction of a person for violating s. 346.072, 346.21, or 346.89, the court shall suspend the violator's operating privilege for a period of one year if the offense resulted in bodily harm, great bodily harm, or death to a vulnerable highway user.

**SECTION 3.** 343.31 (1) (ag) of the statutes is created to read:

343.31 (1) (ag) Bodily harm to a vulnerable highway user resulting from the operation of a motor vehicle and which is criminal under s. 346.62 (3).

**SECTION 4.** 343.31 (3) (cm) of the statutes is created to read:

343.31 (3) (cm) Any person convicted under s. 346.62 (3) or (4) or 940.10, or under s. 940.06 if the offense resulted from the operation of a motor vehicle, shall have his or her operating privilege revoked for 2 years if the offense resulted in bodily harm, great bodily harm, or death to a vulnerable highway user.

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**INSERT 2-17:**

violation is one described in s. 346.17 (6) (c), 346.22 (5) (c), 346.65 (3) (b) or (5) (b), or 346.95 (12) (c), or if the

**INSERT 3-3:**

**SECTION 5.** 346.17<sup>✓</sup> (4) of the statutes is amended to read:

346.17 (4) Any Except as provided in sub. (6)<sup>✓</sup>(c), any person violating s. 346.075 may be required to forfeit not less than \$25 nor more than \$200 for the first offense and not less than \$50 nor more than \$500 for the 2nd or subsequent violation within 4 years.

**History:** 1971 c. 278; 1973 c. 182; 1977 c. 208; 1981 c. 324; 1983 a. 27; 1985 a. 82; 1993 a. 189, 198; 1997 a. 32, 88, 237, 277, 283; 2001 a. 15, 109.

**INSERT 3-11:**

(c) If any violation under s. 346.075<sup>✓</sup> results in harm to a vulnerable highway user, the person who commits the violation is guilty of a Class I felony.

**SECTION 6.** 346.22<sup>✓</sup> (1) (a), (b), (c), (d) and (e) of the statutes are amended to read:

346.22 (1) (a) Except as provided in par. (b), (c), (d), or (e) or sub. (5)<sup>✓</sup>(c), any person violating s. 346.18, 346.20 (1), or 346.215 (2) (b) or (3) may be required to forfeit not less than \$20 nor more than \$50 for the first offense and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within a year.

(b) If an operator of a vehicle violates s. 346.18 (6) where persons engaged in work in a highway maintenance or construction area or in a utility work area are at risk from traffic, any applicable minimum and maximum forfeiture or fine<sup>✓</sup> specified in par. (a), (c), (d), or (e) or sub. (5)<sup>✓</sup>(c) and s. 939.50 for the violation shall be doubled.



1 (c) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the  
 2 violation results in bodily harm, as defined in s. 939.22 (4), to another, the person  
 3 shall forfeit \$200 and shall have his or her operating privilege suspended as provided  
 4 in s. 343.30 (1j).

5 (d) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the  
 6 violation results in great bodily harm, as defined in s. 939.22 (14), to another, the  
 7 person shall forfeit \$500 and shall have his or her operating privilege suspended as  
 8 provided in s. 343.30 (1j).

9 (e) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the  
 10 violation results in death to another, the person shall forfeit \$1,000 and shall have  
 11 his or her operating privilege suspended as provided in s. 343.30 (1j).

12 **SECTION 7.** 346.22 (3) of the statutes is amended to read:

13 346.22 (3) ~~Any~~ Except as provided in sub. (5) (c), any person violating s. 346.20  
 14 (2), (3) or (4) (b) or (c) or 346.21 may be required to forfeit not less than \$10 nor more  
 15 than \$20 for the first offense and not less than \$25 nor more than \$50 for the 2nd or  
 16 subsequent conviction within a year.

17 **History:** 1971 c. 278; 1983 a. 27; 1991 a. 73; 1993 a. 198; 1995 a. 121; 1997 a. 277; 2005 a. 466; 2009 a. 46.

18 **INSERT 3-19:**

19 (c) If any violation under s. 346.18 or 346.21 results in harm to a vulnerable  
 20 highway user, the person who commits the violation is guilty of a Class I felony.

21 **INSERT 5-12:**

22 **SECTION 8.** 346.65 (3) of the statutes is renumbered 346.65 (3) (a) and amended  
 23 to read:  
 24

1           346.65 (3) (a) Except as provided in par. (b) and sub. (5m), any person violating  
2           s. 346.62 (3) shall be fined not less than \$300 nor more than \$2,000 and may be  
3           imprisoned for not less than 30 days nor more than one year in the county jail.

**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; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; s. 13.92 (2) (i).

4           **SECTION 9.** 346.65 (3) (b) of the statutes is created to read:

5           346.65 (3) (b) If the violation of s. 346.62 (3) causes bodily harm to a vulnerable  
6           highway user, the person who commits the violation is guilty of a Class H felony.

7           **SECTION 10.** 346.65 (5) of the statutes is renumbered 346.65 (5) (a) and  
8           amended to read:

9           346.65 (5) (a) Except as provided in par. (b) and sub. (5m), any person violating  
10          s. 346.62 (4) is guilty of a Class I felony.

**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; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; s. 13.92 (2) (i).

11          **SECTION 11.** 346.65 (5) (b) of the statutes is created to read:

12          346.65 (5) (b) If the violation of s. 346.62 (4) causes great bodily harm to a  
13          vulnerable highway user, the person who commits the violation is guilty of a Class  
14          H felony.

15

16          **INSERT 6-9:**

17          **SECTION 12.** 346.95 (1) and (2) of the statutes are amended to read:

18          346.95 (1) Any Except as provided in sub. (12) (c), any person violating s.  
19          346.87, 346.88, 346.89 (2), 346.90 to 346.92 or 346.94 (1), (9), (10), (11), (12) or (15)  
20          may be required to forfeit not less than \$20 nor more than \$40 for the first offense  
21          and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within  
22          a year.

1           (2) Any Except as provided in sub. (12) (c), any person violating s. 346.89 (1)  
2           or (3) (a) or 346.94 (2), (4), or (7) may be required to forfeit not less than \$20 nor more  
3           than \$400.

History: 1971 c. 278; 1973 c. 182, 314, 336; 1975 c. 297, 320; 1977 c. 68; 1983 a. 56, 175, 538; 1989 a. 335 s. 89; 1991 a. 83; 1993 a. 260, 455; 1995 a. 194, 373, 420; 1999 a. 109; 2001 a. 90; 2003 a. 192, 297, 327; 2005 a. 250; 2009 a. 22, 157, 220, 311.

4

5           **INSERT 6-16:**

5

6           (c) If any violation under s. 346.89 results in harm to a vulnerable highway  
7           user, the person who commits the violation is guilty of a Class I felony.

7

8           **SECTION 13.** 349.06 (1) (a) of the statutes is amended to read:

8

9           349.06 (1) (a) Except for the suspension or revocation of motor vehicle  
10           operator's licenses or except as provided in par. (b), any local authority may enact and  
11           enforce any traffic regulation which is in strict conformity with one or more  
12           provisions of chs. 341 to 348 and 350 for which the penalty for violation thereof is a  
13           forfeiture. If a local authority enacts a traffic regulation in strict conformity with any  
14           provision of ch. 346 for which the penalty under ch. 346 is doubled if the violation  
15           results in harm to a vulnerable highway user, the applicable penalty for the violation  
16           under the ordinance shall also include the doubling of the forfeiture.

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History: 1971 c. 277, 278, 307; 1973 c. 336; 1975 c. 248; 1981 c. 20; 1987 a. 3, 27; 1993 a. 198, 256; 1995 a. 44; 1997 a. 190, 277.

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**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.

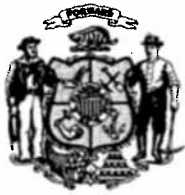
Causing injury by OWI, including by use of a commercial motor vehicle, is a Class H felony if the driver has a prior OWI conviction. Because in some situations this would lead to a lesser penalty than provided in your draft request, I have provided a treatment of s. 940.25 that would make causing bodily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

Eric V. Mueller  
Legislative Attorney  
Phone: (608) 261-7032  
E-mail: [eric.mueller@legis.wisconsin.gov](mailto:eric.mueller@legis.wisconsin.gov)



State of Wisconsin  
2011 - 2012 LEGISLATURE

in  
1/30



LRB-1064/DZ 1

ARG:med&cjs:rs

wanted  
by 2/1 stay  
KMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA ✓

Gen Cont

No changes

1 **AN ACT** *to renumber and amend* 346.65 (3) and 346.65 (5); *to amend* 343.31  
2 (1) (a), 345.47 (1) (intro.), 346.17 (4), 346.22 (1) (a), (b), (c), (d) and (e), 346.22  
3 (3), 346.95 (1) and (2), 349.06 (1) (a), 940.25 (1m) (a), 940.25 (1m) (b) and 940.25  
4 (2) (a); and *to create* 340.01 (74p), 343.30 (1j) (d), 343.30 (1m), 343.31 (1) (ag),  
5 343.31 (3) (cm), 346.17 (6), 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49  
6 (5), 346.56 (5), 346.60 (6), 346.65 (3) (b), 346.65 (5) (b), 346.74 (7), 346.82 (3),  
7 346.95 (12), 939.22 (44m) and 940.25 (1b) of the statutes; **relating to:** traffic  
8 violations resulting in harm to vulnerable highway users and providing a  
9 penalty.

***Analysis by the Legislative Reference Bureau***

This bill creates penalty enhancements for traffic violations that result in bodily harm, great bodily harm, or death (collectively "harm") to vulnerable highway users. The bill defines "vulnerable highway user" as any of the following: 1) a pedestrian; 2) a bicyclist; 3) an operator of an electric personal assistive mobility device (EPAMD, commonly referred to by the tradename "Segway"); 4) an operator of a motorcycle, moped, or motor bicycle; 5) an operator of, or passenger on, an animal-drawn vehicle, farm tractor, farm truck tractor, farm trailer, or implement

of husbandry; 6) a person riding upon in-line skates, a horse, or a play vehicle; 7) a law enforcement officer, traffic officer, fire fighter, or emergency medical technician, while performing his or her official duties; or 8) a person who is rendering medical or emergency assistance to another person. For most traffic violations, the bill doubles the applicable forfeiture or fine if the violation results in harm to a vulnerable highway user, and this doubling is in addition to any other applicable penalty enhancement, such as the doubling for certain traffic violations committed in highway maintenance or construction areas or in utility work areas. However, for specific violations, the bill makes the offense a Class I or Class H felony if the violation results in harm to a vulnerable highway user. A Class I felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding three years and six months or both. A Class H felony is punishable by a fine not exceeding \$10,000 or imprisonment not exceeding six years or both. Provisions of current law that increase the forfeiture or fine for violations committed under certain circumstances, such as in highway maintenance or construction areas or in utility work areas, continue to apply to these new, higher penalties.

Under current law, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant is guilty of a Class D felony or, if the person has been convicted of a prior operating under the influence of an intoxicant or other drug (OWI) offense relating to, a Class C felony. A Class C felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 40 years or both. A Class D felony is punishable by a fine not exceeding \$100,000 or imprisonment not exceeding 25 years or both. A person who causes great bodily harm to another by OWI is guilty of a Class F felony. A Class F felony is punishable by a fine not exceeding \$25,000 or imprisonment not exceeding 12 years and 6 months or both. A person who causes injury to another by OWI may be fined not less than \$300 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year or, if the person has been convicted of a prior OWI-related offense, is guilty of a Class H felony.

Under this bill, a person who causes bodily harm by OWI to a vulnerable highway user is guilty of a Class H felony.

Under current law, the operator of a vehicle must yield the right-of-way to another vehicle under certain circumstances, including: when turning left across traffic; at an intersection posted with a yield sign; when entering a through highway or a highway from an alley or driveway or from a parked or standing position; or when entering a highway from another highway that ends at a "T" intersection. A person who fails to yield the right-of-way as required is subject to a forfeiture of not less than \$20 nor more than \$50 for a first offense and not less than \$50 nor more than \$100 for any subsequent offense within a year. However, if the violation results in bodily harm, great bodily harm, or death to another, the person must forfeit, respectively, \$200, \$500, or \$1,000 for the violation and the court must suspend the person's operating privilege for, respectively, 30 days, 90 days, or 9 months.

Under this bill, if such a failure to yield violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony, punishable by a fine not exceeding \$10,000 or imprisonment not exceeding three years and six months or

both, and the court must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle must yield the right-of-way to livestock being driven over or along the highway. A person who fails to yield the right-of-way to livestock is subject to a forfeiture of not less than \$10 nor more than \$20 for the first offense and not less than \$25 nor more than \$50 for the second or subsequent offense within a year.

Under this bill, if such a failure to yield to livestock violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Under current law, the operator of a motor vehicle overtaking a bicycle or EPAMD proceeding in the same direction must exercise due care, leaving a safe distance but at least three feet clearance when passing the bicycle or EPAMD, and must maintain clearance until safely past the overtaken bicycle or EPAMD. Also, if the operator of a motor vehicle overtakes a motor bus that is stopped at an intersection on the right side of the roadway and that is receiving or discharging passengers, the operator must pass at a safe distance to the left of the motor bus and may not turn to the right in front of the motor bus at that intersection. A person who commits such a passing violation is subject to a forfeiture of not less than \$25 nor more than \$200 for the first offense and not less than \$50 nor more than \$500 for the second or subsequent offense within four years.

Under this bill, if such a passing violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits inattentive driving of a motor vehicle, which includes: 1) being so engaged or occupied, while driving a motor vehicle, as to interfere with the safe driving of the vehicle; 2) operating a motor vehicle equipped with a television or similar device in the front of the vehicle or otherwise visible to the operator; and 3) driving a motor vehicle while composing or sending an electronic text message or an e-mail message. Any person who commits forms 1) and 3) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$400 and any person who commits form 2) of inattentive driving is subject to a forfeiture of not less than \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100 for the second or subsequent offense within a year.

Under this bill, if any inattentive driving violation results in harm to a vulnerable highway user, the penalty is increased to a Class I felony and the court must suspend the person's operating privilege for a period of one year.

Current law prohibits a person from causing bodily harm or great bodily harm to another by the negligent operation of a vehicle (reckless driving). A person who commits a reckless driving violation that causes bodily harm is subject to a fine of not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year. A person who commits a reckless driving violation that causes great bodily harm is guilty of a Class I felony and must have his or her operating privilege revoked by the Department of Transportation (DOT) for one year.



Under this bill, a reckless driving violation that causes harm or great bodily harm to a vulnerable highway user is punishable as a Class H felony and the violator must have his or her operating privilege revoked by DOT for a period of two years.

Under current law, local authorities may enact and enforce traffic regulations that are in strict conformity with state statutes and that provide for a forfeiture as a penalty.

Under this bill, if a local authority enacts a traffic regulation in strict conformity with a state statute and the statutory penalty is doubled if the violation results in harm to a vulnerable highway user, the applicable ordinance penalty for the ordinance violation must also include the doubling of the forfeiture.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 340.01 (74p) of the statutes is created to read:

2           340.01 (**74p**) "Vulnerable highway user" means any of the following:

3           (a) A pedestrian.

4           (b) A bicyclist.

5           (c) An operator of an electric personal assistive mobility device.

6           (d) An operator of a motorcycle, moped, or motor bicycle.

7           (e) An operator of, or passenger on, an animal-drawn vehicle, farm tractor,  
8 farm truck tractor, farm trailer, or implement of husbandry.

9           (f) A person riding upon in-line skates, a horse, or a play vehicle.

10          (g) A law enforcement officer, traffic officer, fire fighter, or emergency medical  
11 technician, while performing his or her official duties.

12          (h) A person who is rendering medical or emergency assistance to another  
13 person.

1           **SECTION 2.** 343.30 (1j) (d) of the statutes is created to read:

2           343.30 (1j) (d) Notwithstanding pars. (a) to (c), for a period of one year, if the  
3 offense resulted in bodily harm, great bodily harm, or death to a vulnerable highway  
4 user.

5           **SECTION 3.** 343.30 (1m) of the statutes is created to read:

6           343.30 (1m) Upon conviction of a person for violating s. 346.075, 346.21, or  
7 346.89, the court shall suspend the violator's operating privilege for a period of one  
8 year if the offense resulted in bodily harm, great bodily harm, or death to a  
9 vulnerable highway user.

10          **SECTION 4.** 343.31 (1) (a) of the statutes is amended to read:

11          343.31 (1) (a) Homicide ~~or, great bodily harm, or harm to a vulnerable highway~~  
12 user resulting from the operation of a motor vehicle and which is criminal under s.  
13 346.62 (4), 940.06, 940.09, 940.10 or 940.25.

14          **SECTION 5.** 343.31 (1) (ag) of the statutes is created to read:

15          343.31 (1) (ag) Bodily harm to a vulnerable highway user resulting from the  
16 operation of a motor vehicle and which is criminal under s. 346.62 (3).

17          **SECTION 6.** 343.31 (3) (cm) of the statutes is created to read:

18          343.31 (3) (cm) Any person convicted under s. 346.62 (3) or (4) or 940.10, or  
19 under s. 940.06 if the offense resulted from the operation of a motor vehicle, shall  
20 have his or her operating privilege revoked for 2 years if the offense resulted in bodily  
21 harm, great bodily harm, or death to a vulnerable highway user.

22          **SECTION 7.** 345.47 (1) (intro.) of the statutes is amended to read:

23          345.47 (1) (intro.) If the defendant is found guilty, the court may enter  
24 judgment against the defendant for a monetary amount not to exceed the maximum  
25 forfeiture provided for the violation, plus costs, fees, and surcharges imposed under

**SECTION 7**

1 ch. 814, and, in addition, may suspend or revoke his or her operating privilege under  
2 s. 343.30. If the violation is one described in s. 346.17 (6) (c), 346.22 (5) (c), 346.65  
3 (3) (b) or (5) (b), or 346.95 (12) (c), or if the forfeiture for the violation has been doubled  
4 under s. 346.17 (6), 346.22 (5), 346.30 (5), 346.36 (3), 346.43 (4), 346.49 (5), 346.56  
5 (5), 346.60 (6), 346.74 (7), 346.82 (3), 346.95 (12), or 349.06 (4), the court may also  
6 order the defendant to perform community service work. Upon entering judgment,  
7 the court shall notify the defendant personally, if the defendant is present, and in  
8 writing that the defendant should notify the court if he or she is unable to pay the  
9 judgment because of poverty, as that term is used in s. 814.29 (1) (d). If the defendant  
10 is present and the court, using the criteria in s. 814.29 (1) (d), determines that the  
11 defendant is unable to pay the judgment because of poverty, the court shall provide  
12 the defendant with an opportunity to pay the judgment in installments, taking into  
13 account the defendant's income. If the judgment is not paid or if the defendant fails  
14 to make any ordered installment payment, the court shall order:

15 **SECTION 8.** 346.17 (4) of the statutes is amended to read:

16 346.17 (4) Any Except as provided in sub. (6) (c), any person violating s. 346.075  
17 may be required to forfeit not less than \$25 nor more than \$200 for the first offense  
18 and not less than \$50 nor more than \$500 for the 2nd or subsequent violation within  
19 4 years.

20 **SECTION 9.** 346.17 (6) of the statutes is created to read:

21 346.17 (6) (a) In this subsection, "harm" means bodily harm, as defined in s.  
22 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

23 (b) If any violation under ss. 346.04 to 346.072 or 346.08 to 346.16 results in  
24 harm to a vulnerable highway user, the amount of any forfeiture or fine specified in  
25 subs. (1) to (3) or s. 939.50 for the violation shall be doubled. If sub. (5) applies with

1 respect to the violation, the doubling of the forfeiture under this subsection shall  
2 apply in addition to any doubling under sub. (5).

3 (c) If any violation under s. 346.075 results in harm to a vulnerable highway  
4 user, the person who commits the violation is guilty of a Class I felony.

5 **SECTION 10.** 346.22 (1) (a), (b), (c), (d) and (e) of the statutes are amended to  
6 read:

7 346.22 (1) (a) Except as provided in par. (b), (c), (d), or (e) or sub. (5) (c), any  
8 person violating s. 346.18, 346.20 (1), or 346.215 (2) (b) or (3) may be required to  
9 forfeit not less than \$20 nor more than \$50 for the first offense and not less than \$50  
10 nor more than \$100 for the 2nd or subsequent conviction within a year.

11 (b) If an operator of a vehicle violates s. 346.18 (6) where persons engaged in  
12 work in a highway maintenance or construction area or in a utility work area are at  
13 risk from traffic, any applicable minimum and maximum forfeiture or fine specified  
14 in par. (a), (c), (d), or (e) or sub. (5) (c) and s. 939.50 for the violation shall be doubled.

15 (c) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the  
16 violation results in bodily harm, as defined in s. 939.22 (4), to another, the person  
17 shall forfeit \$200 and shall have his or her operating privilege suspended as provided  
18 in s. 343.30 (1j).

19 (d) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the  
20 violation results in great bodily harm, as defined in s. 939.22 (14), to another, the  
21 person shall forfeit \$500 and shall have his or her operating privilege suspended as  
22 provided in s. 343.30 (1j).

23 (e) If Except as provided in sub. (5) (c), if a person violates s. 346.18 and the  
24 violation results in death to another, the person shall forfeit \$1,000 and shall have  
25 his or her operating privilege suspended as provided in s. 343.30 (1j).

**SECTION 11**

1           **SECTION 11.** 346.22 (3) of the statutes is amended to read:

2           346.22 (3) Any Except as provided in sub. (5) (c), any person violating s. 346.20  
3 (2), (3) or (4) (b) or (c) or 346.21 may be required to forfeit not less than \$10 nor more  
4 than \$20 for the first offense and not less than \$25 nor more than \$50 for the 2nd or  
5 subsequent conviction within a year.

6           **SECTION 12.** 346.22 (5) of the statutes is created to read:

7           346.22 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
8 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

9           (b) If any violation under s. 346.19, 346.20, or 346.215 results in harm to a  
10 vulnerable highway user, the amount of any forfeiture specified in subs. (1) to (3) for  
11 the violation shall be doubled. If sub. (1) (b) applies with respect to the violation, the  
12 doubling of the forfeiture under this subsection shall apply in addition to any  
13 doubling under sub. (1) (b).

14           (c) If any violation under s. 346.18 or 346.21 results in harm to a vulnerable  
15 highway user, the person who commits the violation is guilty of a Class I felony.

16           **SECTION 13.** 346.30 (5) of the statutes is created to read:

17           346.30 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
18 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

19           (b) If any violation under ss. 346.23 to 346.29 results in harm to a vulnerable  
20 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation  
21 shall be doubled.

22           **SECTION 14.** 346.36 (3) of the statutes is created to read:

23           346.36 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.  
24 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

1 (b) If any violation under ss. 346.31 to 346.35 results in harm to a vulnerable  
2 highway user, the amount of any forfeiture specified in subs. (1) and (2) for the  
3 violation shall be doubled.

4 **SECTION 15.** 346.43 (4) of the statutes is created to read:

5 346.43 (4) (a) In this subsection, "harm" means bodily harm, as defined in s.  
6 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

7 (b) If any violation under ss. 346.37 to 346.42 results in harm to a vulnerable  
8 highway user, the amount of any forfeiture specified in subs. (1) to (3) for the violation  
9 shall be doubled. If sub. (1) (b) 3. applies with respect to the violation, the doubling  
10 of the forfeiture under this subsection shall apply in addition to any doubling under  
11 sub. (1) (b) 3.

12 **SECTION 16.** 346.49 (5) of the statutes is created to read:

13 346.49 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
14 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

15 (b) If any violation under s. 346.44, 346.45, 346.455, 346.46, or 346.47 to 346.48  
16 results in harm to a vulnerable highway user, the amount of any forfeiture specified  
17 in subs. (1), (1g), (2), (2m), and (4) for the violation shall be doubled. If sub. (1) (c)  
18 applies with respect to the violation, the doubling of the forfeiture under this  
19 subsection shall apply in addition to any doubling under sub. (1) (c).

20 **SECTION 17.** 346.56 (5) of the statutes is created to read:

21 346.56 (5) (a) In this subsection, "harm" means bodily harm, as defined in s.  
22 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

23 (b) If any violation under ss. 346.503 to 346.55 results in harm to a vulnerable  
24 highway user, the amount of any forfeiture specified in subs. (1) to (4) for the violation  
25 shall be doubled.

1           **SECTION 18.** 346.60 (6) of the statutes is created to read:

2           346.60 **(6)** (a) In this subsection, "harm" means bodily harm, as defined in s.  
3 939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

4           (b) If any violation under ss. 346.57 to 346.595 results in harm to a vulnerable  
5 highway user, the amount of any forfeiture specified in subs. (1) to (5) for the violation  
6 shall be doubled. If sub. (3m) applies with respect to the violation, the doubling of  
7 the forfeiture under this subsection shall apply in addition to any doubling or other  
8 penalty enhancement under sub. (3m).

9           **SECTION 19.** 346.65 (3) of the statutes is renumbered 346.65 (3) (a) and  
10 amended to read:

11           346.65 **(3)** (a) Except as provided in par. (b) and sub. (5m), any person violating  
12 s. 346.62 (3) shall be fined not less than \$300 nor more than \$2,000 and may be  
13 imprisoned for not less than 30 days nor more than one year in the county jail.

14           **SECTION 20.** 346.65 (3) (b) of the statutes is created to read:

15           346.65 **(3)** (b) If the violation of s. 346.62 (3) causes bodily harm to a vulnerable  
16 highway user, the person who commits the violation is guilty of a Class H felony.

17           **SECTION 21.** 346.65 (5) of the statutes is renumbered 346.65 (5) (a) and  
18 amended to read:

19           346.65 **(5)** (a) Except as provided in par. (b) and sub. (5m), any person violating  
20 s. 346.62 (4) is guilty of a Class I felony.

21           **SECTION 22.** 346.65 (5) (b) of the statutes is created to read:

22           346.65 **(5)** (b) If the violation of s. 346.62 (4) causes great bodily harm to a  
23 vulnerable highway user, the person who commits the violation is guilty of a Class  
24 H felony.

25           **SECTION 23.** 346.74 (7) of the statutes is created to read:

1           346.74 (7) (a) In this subsection, "harm" means bodily harm, as defined in s.  
2           939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

3           (b) If any violation under s. 346.67 or ss. 346.68 to 346.70 results in harm to  
4           a vulnerable highway user, the amount of any forfeiture or fine specified in subs. (2)  
5           to (5) or s. 939.50 for the violation shall be doubled.

6           **SECTION 24.** 346.82 (3) of the statutes is created to read:

7           346.82 (3) (a) In this subsection, "harm" means bodily harm, as defined in s.  
8           939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.

9           (b) If any violation under ss. 346.77 to 346.805 results in harm to a vulnerable  
10          highway user, the amount of any forfeiture specified in subs. (1) and (2) for the  
11          violation shall be doubled.

12          **SECTION 25.** 346.95 (1) and (2) of the statutes are amended to read:

13          346.95 (1) Any Except as provided in sub. (12) (c), any person violating s.  
14          346.87, 346.88, 346.89 (2), 346.90 to 346.92 or 346.94 (1), (9), (10), (11), (12) or (15)  
15          may be required to forfeit not less than \$20 nor more than \$40 for the first offense  
16          and not less than \$50 nor more than \$100 for the 2nd or subsequent conviction within  
17          a year.

18          (2) Any Except as provided in sub. (12) (c), any person violating s. 346.89 (1)  
19          or (3) (a) or 346.94 (2), (4), or (7) may be required to forfeit not less than \$20 nor more  
20          than \$400.

21          **SECTION 26.** 346.95 (12) of the statutes is created to read:

22          346.95 (12) (a) In this subsection, "harm" means bodily harm, as defined in s.  
23          939.22 (4), great bodily harm, as defined in s. 939.22 (14), or death.



1 (b) If any violation under ss. 346.87, 346.88, or 346.90 to 346.94 results in harm  
2 to a vulnerable highway user, the amount of any forfeiture specified in subs. (1) to  
3 (5e) and (6) to (11) for the violation shall be doubled.

4 (c) If any violation under s. 346.89 results in harm to a vulnerable highway  
5 user, the person who commits the violation is guilty of a Class I felony.

6 **SECTION 27.** 349.06 (1) (a) of the statutes is amended to read:

7 349.06 (1) (a) Except for the suspension or revocation of motor vehicle  
8 operator's licenses or except as provided in par. (b), any local authority may enact and  
9 enforce any traffic regulation which is in strict conformity with one or more  
10 provisions of chs. 341 to 348 and 350 for which the penalty for violation thereof is a  
11 forfeiture. If a local authority enacts a traffic regulation in strict conformity with any  
12 provision of ch. 346 for which the penalty under ch. 346 is doubled if the violation  
13 results in harm to a vulnerable highway user, the applicable penalty for the violation  
14 under the ordinance shall also include the doubling of the forfeiture.

15 **SECTION 28.** 939.22 (44m) of the statutes is created to read:

16 939.22 (44m) "Vulnerable highway user" has the meaning given in s. 340.01  
17 (74p).

18 **SECTION 29.** 940.25 (1b) of the statutes is created to read:

19 940.25 (1b) Any person who does any of the following is guilty of a Class H  
20 felony:

21 (a) Causes bodily harm to a vulnerable highway user by the operation of a  
22 vehicle while under the influence of an intoxicant.

23 (b) Causes bodily harm to a vulnerable highway user by the operation of a  
24 vehicle while the person has a detectable amount of a restricted controlled substance  
25 in his or her blood.

1 (c) Causes bodily harm to a vulnerable highway user by the operation of a  
2 vehicle while the person has a prohibited alcohol concentration, as defined in s.  
3 340.01 (46m).

4 (d) Causes bodily harm to a vulnerable highway user by the operation of a  
5 commercial motor vehicle while the person has an alcohol concentration of 0.04 or  
6 more but less than 0.08.

7 **SECTION 30.** 940.25 (1m) (a) of the statutes is amended to read:

8 940.25 (1m) (a) A person may be charged with and a prosecutor may proceed  
9 upon an information based upon a violation of any combination of sub. (1) (a), (am),  
10 or (b); any combination of sub. (1) (a), (am), or (bm); any combination of sub. (1) (c),  
11 (cm), or (d); ~~or any combination of sub. (1) (c), (cm), or (e);~~ any combination of sub. (1b)  
12 (a), (b), or (c); or any combination of sub. (1b) (a), (b), or (d) for acts arising out of the  
13 same incident or occurrence.

14 **SECTION 31.** 940.25 (1m) (b) of the statutes is amended to read:

15 940.25 (1m) (b) If a person is charged in an information with any of the  
16 combinations of crimes referred to in par. (a), the crimes shall be joined under s.  
17 971.12. If the person is found guilty of more than one of the crimes so charged for  
18 acts arising out of the same incident or occurrence, there shall be a single conviction  
19 for purposes of sentencing and for purposes of counting convictions under s. 23.33  
20 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or  
21 under s. 350.11 (3) (a) 2. and 3. ~~Subsection~~ Subsections (1) (a), (am), (b), (bm), (c),  
22 (cm), (d), and (e) and (1b) (a), (b), (c), and (d) each require proof of a fact for conviction  
23 which the others do not require.

24 **SECTION 32.** 940.25 (2) (a) of the statutes is amended to read:

