

State of Wisconsin



2013 Assembly Bill 180

Date of enactment: April 8, 2014
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2013 WISCONSIN ACT 224

AN ACT *to amend* 23.33 (4p) (b) 4., 30.684 (2) (d), 343.305 (5) (b), 346.65 (2) (am) 6., 346.65 (2) (am) 7., 346.65 (3m), 346.65 (3r) and 350.104 (2) (d); and *to create* 346.63 (2) (c), 346.63 (6) (d) and 346.65 (3t) of the statutes; **relating to:** elements of, and penalties and testing for, certain operating-while-intoxicated offenses and providing a penalty.

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

SECTION 1. 23.33 (4p) (b) 4. of the statutes is amended to read:

23.33 (4p) (b) 4. 'Validity; procedure.' A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an all-terrain vehicle or utility terrain vehicle law only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53

SECTION 2. 30.684 (2) (d) of the statutes is amended to read:

30.684 (2) (d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this section. Blood may be withdrawn from a person arrested for a violation of the intoxicated boating law only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

SECTION 3. 343.305 (5) (b) of the statutes is amended to read:

343.305 (5) (b) Blood may be withdrawn from the person arrested for violation of s. 346.63 (1), (2), (2m), (5), or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol, a controlled substance, a controlled substance

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

analog, or any other drug, or any combination of alcohol, controlled substance, controlled substance analog, and any other drug in the blood only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician.

SECTION 3g. 346.63 (2) (c) of the statutes is created to read:

346.63 (2) (c) In this subsection, “injury” has the meaning given for “substantial bodily harm” in s. 939.22 (38).

SECTION 3r. 346.63 (6) (d) of the statutes is created to read:

346.63 (6) (d) In this subsection, “injury” has the meaning given for “substantial bodily harm” in s. 939.22 (38).

SECTION 4. 346.65 (2) (am) 6. of the statutes is amended to read:

346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person’s lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one. The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of ~~a the~~ bifurcated sentence imposed on the person under ~~s. 973.01~~ shall be not less than 3 years.

SECTION 5. 346.65 (2) (am) 7. of the statutes is amended to read:

346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class F felony if the number of convictions under ss. 940.09 (1) and 940.25 in the person’s lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one. The court shall impose a bifurcated sentence under s. 973.01 and the confinement portion of ~~a the~~ bifurcated sentence imposed on the person under ~~s. 973.01~~ shall be not less than 4 years.

SECTION 6. 346.65 (3m) of the statutes is amended to read:

346.65 (3m) Except as provided in sub. (3p) ~~or (3r)~~, or (3t), any person violating s. 346.63 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may ~~shall~~ be imprisoned for not less than 30 days nor more than one year in the county jail. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02.

SECTION 6g. 346.65 (3r) of the statutes is amended to read:

346.65 (3r) ~~In~~ Subject to sub. (3t), in any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 15 days. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02. A person may be sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once in his or her lifetime. This subsection does not apply to a person sentenced under sub. (3p).

SECTION 6r. 346.65 (3t) of the statutes is created to read:

346.65 (3t) If the person injured was an adult who was in the vehicle operated by the person violating s. 346.63 (2) or (6), the court may impose a sentence that is less than the minimum sentence required under sub. (3m) if the court finds that the best interest of the community will be served and the public will not be harmed by the sentence, and the court places the reasons for imposing a sentence that is less than the minimum sentence required under sub. (3m) on the record.

SECTION 7. 350.104 (2) (d) of the statutes is amended to read:

350.104 (2) (d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this section. Blood may be withdrawn from a person arrested for a violation of the intoxicated snowmobiling law only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, or other medical professional who is authorized to draw blood, or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53

SECTION 8. Initial applicability.

(1) The treatment of sections 346.63 (2) (c) and (6) (d) and 346.65 (2) (am) 6. and 7., (3m), (3r), and (3t) of the statutes first applies to violations committed or refus-

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als occurring on the effective date of this subsection, but does not preclude the counting of other convictions, suspensions, or revocations as prior convictions, suspensions, or revocations for purposes of administrative

action by the department of transportation, sentencing by a court, or revocation or suspension of motor vehicle operating privileges.

