



## 2013 SENATE BILL 174

May 8, 2013 – Introduced by Senator DARLING, cosponsored by Representatives J. OTT and RICHARDS. Referred to Committee on Transportation, Public Safety, and Veterans and Military Affairs.

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

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### *Analysis by the Legislative Reference Bureau*

Under current law, a person who commits a seventh, eighth, or ninth offense related to drunken driving or driving under the influence of an intoxicant or other drug (OWI) is guilty of a Class G felony. The penalty for a Class G felony is a fine not to exceed \$25,000 or imprisonment not to exceed ten years, or both. The confinement portion of a bifurcated sentence imposed on a person convicted of a seventh, eighth, or ninth OWI may not be less than three years. A person who commits a tenth or subsequent OWI is guilty of a Class F felony. The penalty for a Class F felony is a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both. The confinement portion of a bifurcated sentence imposed on a person convicted of a tenth or subsequent OWI may not be less than four years.

This bill specifies that a person who is convicted of a seventh, eighth, or ninth OWI must be given a bifurcated sentence and that the confinement portion of the sentence may not be less than three years and that a person who is convicted of a tenth or subsequent OWI must be given a bifurcated sentence and that the confinement portion of the sentence may not be less than four years.

Current law specifies that a person who is convicted of causing injury to another while committing an OWI or while operating a commercial motor vehicle while the

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person has an alcohol concentration of 0.04 or more but less than 0.08 must be fined not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail. This bill specifies that the convicted person must be imprisoned for not less than 30 days nor more than one year.

Current law also specifies that a blood draw for alcohol or other controlled substance testing may be performed only by a physician, registered nurse, medical technologist, physician assistant, or person acting under the direction of a physician. This bill adds phlebotomists and other medical professionals who are authorized to draw blood to the list of persons who may perform a blood draw.

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.

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

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

2           23.33 (4p) (b) 4. ‘Validity; procedure.’ A chemical test of blood or urine  
3           conducted for the purpose of authorized analysis is valid as provided under s. 343.305  
4           (6). The duties and responsibilities of the laboratory of hygiene, department of  
5           health services and department of transportation under s. 343.305 (6) apply to a  
6           chemical test of blood or urine conducted for the purpose of authorized analysis  
7           under this subsection. Blood may be withdrawn from a person arrested for a  
8           violation of the intoxicated operation of an all-terrain vehicle or utility terrain  
9           vehicle law only by a physician, registered nurse, medical technologist, physician  
10          assistant, phlebotomist, or other medical professional who is authorized to draw  
11          blood, or person acting under the direction of a physician and the person who  
12          withdraws the blood, the employer of that person and any hospital where blood is  
13          withdrawn have immunity from civil or criminal liability as provided under s. 895.53

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

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1           30.684 (2) (d) *Validity; procedure.* A chemical test of blood or urine conducted  
2 for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The  
3 duties and responsibilities of the laboratory of hygiene, department of health  
4 services and department of transportation under s. 343.305 (6) apply to a chemical  
5 test of blood or urine conducted for the purpose of authorized analysis under this  
6 section. Blood may be withdrawn from a person arrested for a violation of the  
7 intoxicated boating law only by a physician, registered nurse, medical technologist,  
8 physician assistant, phlebotomist, or other medical professional who is authorized  
9 to draw blood, or person acting under the direction of a physician and the person who  
10 withdraws the blood, the employer of that person and any hospital where blood is  
11 withdrawn have immunity from civil or criminal liability as provided under s.  
12 895.53.

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

14           343.305 (5) (b) Blood may be withdrawn from the person arrested for violation  
15 of s. 346.63 (1), (2), (2m), (5), or (6) or 940.25, or s. 940.09 where the offense involved  
16 the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m), or (5),  
17 or as provided in sub. (3) (am) or (b) to determine the presence or quantity of alcohol,  
18 a controlled substance, a controlled substance analog, or any other drug, or any  
19 combination of alcohol, controlled substance, controlled substance analog, and any  
20 other drug in the blood only by a physician, registered nurse, medical technologist,  
21 physician assistant, phlebotomist, or other medical professional who is authorized  
22 to draw blood, or person acting under the direction of a physician.

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

24           346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G felony if  
25 the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,

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1 plus the total number of suspensions, revocations, and other convictions counted  
2 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or  
3 convictions arising out of the same incident or occurrence shall be counted as one.  
4 The court shall impose a bifurcated sentence under s. 973.01 and the confinement  
5 portion of a the bifurcated sentence imposed on the person under s. 973.01 shall be  
6 not less than 3 years.

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

8 346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class F felony if  
9 the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
10 plus the total number of suspensions, revocations, and other convictions counted  
11 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or  
12 convictions arising out of the same incident or occurrence shall be counted as one.  
13 The court shall impose a bifurcated sentence under s. 973.01 and the confinement  
14 portion of a the bifurcated sentence imposed on the person under s. 973.01 shall be  
15 not less than 4 years.

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

17 346.65 (3m) Except as provided in sub. (3p) or (3r), any person violating s.  
18 346.63 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may shall  
19 be imprisoned for not less than 30 days nor more than one year in the county jail.  
20 If there was a minor passenger under 16 years of age in the motor vehicle at the time  
21 of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense  
22 is a felony, the applicable minimum and maximum fines or periods of imprisonment  
23 for the conviction are doubled and the place of imprisonment shall be determined  
24 under s. 973.02.

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

