



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0794/1
TJD&EVM:sac:rs

2013 ASSEMBLY BILL 32

February 18, 2013 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on State Affairs.

1 **AN ACT** *to renumber and amend* 346.655 (3); *to amend* 20.435 (5) (hy), 46.03
2 (18) (f), 343.30 (1q) (c) 1. (intro.), 343.30 (1q) (c) 2., 343.30 (1q) (d) and 345.60
3 (1); and *to create* 51.01 (2c), 51.45 (7) (h), 343.30 (1q) (c) 1. d. and 346.655 (3)
4 (b) of the statutes; **relating to:** tribal treatment facility participation in the
5 intoxicated driver program.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in
the bill.

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

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint
Legislative Council's Special Committee on State-Tribal Relations.

The intoxicated driver program (IDP) is designed to provide education or
treatment to persons convicted of operating a motor vehicle while intoxicated, with the
intent of reducing recidivism. In brief, upon conviction, the court orders the offender to
be assessed by an agency operated or contracted by the county for this purpose. Based

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on the results of the assessment, the offender is referred either to an educational program or to an approved public treatment facility. The plan for an individual's treatment at an approved public treatment facility is termed a "driver safety plan".

This draft does all of the following:

1. Directs the department of health services (DHS) to authorize a tribal facility, termed an "approved tribal treatment facility" in the draft, to conduct assessments and prepare driver safety plans if the tribal facility agrees to notify the county assessment agency of each case it receives and to execute the duties of a treatment facility under the IDP for those cases.

2. Allows an offender who is a tribal member or a relative of a tribal member to receive assessment services from a tribal facility.

3. Specifies that a tribal facility may both conduct assessments and provide treatment services under the IDP. (Current DHS rules regarding conflicts of interest prohibit this, in general.)

4. Expressly states in the statutes that traditional practices may be included in treatment plans.

5. Directs the department of transportation (DOT), at the request of an accredited tribal college, to certify the college as a traffic safety school program, if the college meets all of the requirements of such a program. This requirement applies to traffic safety schools related to any traffic violation.

6. Specifies that a county must remit to a tribal facility the county's share of any driver improvement surcharge paid by an OWI offender who receives treatment at the facility.

7. Specifies that a tribal facility is eligible for a supplemental grant from DHS in proportion to the number of OWI offenders who receive treatment at a facility of the tribe.

1 **SECTION 1.** 20.435 (5) (hy) of the statutes is amended to read:

2 20.435 (5) (hy) *Services for drivers, local assistance.* As a continuing
3 appropriation, the amounts in the schedule for ~~the purpose of grants to county~~
4 departments under s. 51.42 and to approved tribal treatment facilities, as defined in
5 s. 51.01 (2c), for drivers referred through assessment, to be allocated according to a
6 plan developed by the department of health services. All moneys transferred from
7 par. (hx) shall be credited to this appropriation.

NOTE: Specifies that tribal facilities are eligible for supplemental grants from the DHS.

8 **SECTION 2.** 46.03 (18) (f) of the statutes is amended to read:

9 46.03 (18) (f) Notwithstanding par. (a), any person who submits to an
10 assessment or airman or driver safety plan under s. 23.33 (13) (e), 30.80 (6) (d), 114.09

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1 (2) (bm), 343.16 (5) (a), 343.30 (1q), 343.305 (10) or 350.11 (3) (d) shall pay a
2 reasonable fee therefor to the appropriate county department under s. 51.42,
3 approved tribal treatment facility, as defined in s. 51.01 (2c), or traffic safety school
4 under s. 345.60. A county may allow the person to pay the assessment fee in 1, 2, 3
5 or 4 equal installments. The fee for the airman or driver safety plan may be reduced
6 or waived if the person is unable to pay the complete fee, but no fee for assessment
7 or attendance at a traffic safety school under s. 345.60 may be reduced or waived.
8 Nonpayment of the assessment fee is noncompliance with the court order that
9 required completion of an assessment and airman or driver safety plan. Upon a
10 finding that the person has the ability to pay, nonpayment of the airman or driver
11 safety plan fee is noncompliance with the court order that required completion of an
12 assessment and airman or driver safety plan.

NOTE: Specifies that the offender pay the fee for assessment to a tribal facility, if
that is the facility that conducts the assessment.

13 **SECTION 3.** 51.01 (2c) of the statutes is created to read:

14 51.01 (2c) “Approved tribal treatment facility” means a treatment agency that
15 operates under the direction and control of a federally recognized American Indian
16 tribe or band in this state and meets the standards prescribed for approved
17 treatment facilities under s. 51.45 (8) (a) and is approved under s. 51.45 (8) (c).

18 **SECTION 4.** 51.45 (7) (h) of the statutes is created to read:

19 51.45 (7) (h) The department shall authorize approved tribal treatment
20 facilities to conduct assessments under s. 343.30 (1q) (c) and prepare driver safety
21 plans under s. 343.30 (1q) (d) if, with regard to each person for whom the approved
22 tribal treatment facility conducts an assessment under s. 343.30 (1q) (c), the
23 approved tribal treatment facility agrees in writing to do all of the following:

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1 1. Notify the department of transportation and the county assessment agency
2 identified in the order under s. 343.30 (1q) (c) 1. that the approved tribal treatment
3 facility has conducted the assessment.

4 2. Execute all duties of an approved public treatment facility under s. 343.30
5 (1q) and rules promulgated under s. 343.30 (1q).

6 **SECTION 5.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

7 343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. ~~or~~ b., or d., the court
8 shall order the person to submit to and comply with an assessment by an approved
9 public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's
10 use of alcohol, controlled substances or controlled substance analogs and
11 development of a driver safety plan for the person. The court shall notify the
12 department of transportation of the assessment order. The court shall notify the
13 person that noncompliance with assessment or the driver safety plan will result in
14 revocation of the person's operating privilege until the person is in compliance. The
15 assessment order shall:

16 **SECTION 6.** 343.30 (1q) (c) 1. d. of the statutes is created to read:

17 343.30 (1q) (c) 1. d. Include a statement that if the person is a member or the
18 relative of a member of a federally recognized American Indian tribe or band, the
19 person may receive the assessment required under this subdivision from an
20 approved tribal treatment facility as defined in s. 51.01 (2c).

NOTE: Allows an offender who is a tribal member or a relative of a tribal member
the option of receiving assessment services from a tribal facility by requiring that the
court order issued with an OWI conviction inform the offender of this option.

21 **SECTION 7.** 343.30 (1q) (c) 2. of the statutes is amended to read:

22 343.30 (1q) (c) 2. The department of health services shall establish standards
23 for assessment procedures and the driver safety plan programs by rule. The

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1 department of health services shall establish by rule conflict of interest guidelines
2 for providers. The conflict of interest guidelines may not preclude an approved tribal
3 treatment facility, as defined in s. 51.02 (2c), from conducting assessments and
4 providing treatment under this subsection.

5 **SECTION 8.** 343.30 (1q) (d) of the statutes is amended to read:

6 343.30 (1q) (d) 1. The assessment report shall order compliance with a driver
7 safety plan. The report shall inform the person of the fee provisions under s. 46.03
8 (18) (f). The driver safety plan may include a component that makes the person
9 aware of the effect of his or her offense on a victim and a victim's family. The driver
10 safety plan may include treatment for the person's misuse, abuse or dependence on
11 alcohol, controlled substances or controlled substance analogs, or attendance at a
12 school under s. 345.60, or both. If the plan requires treatment at an approved tribal
13 treatment facility, as defined in s. 51.02 (2c), the plan may include traditional tribal
14 treatment modes. If the plan requires inpatient treatment, the treatment shall not
15 exceed 30 days. A driver safety plan under this paragraph shall include a
16 termination date consistent with the plan which shall not extend beyond one year.

17 2. The county department under s. 51.42 shall assure notification of the
18 department of transportation and the person of the person's compliance or
19 noncompliance with assessment and with treatment. The school under s. 345.60
20 shall notify the department, the county department under s. 51.42, and the person
21 of the person's compliance or noncompliance with the requirements of the school.
22 Nonpayment of the assessment fee or, if the person has the ability to pay,
23 nonpayment of the driver safety plan fee is noncompliance with the court order. If
24 the department is notified of any noncompliance, other than for nonpayment of the
25 assessment fee or driver safety plan fee, it shall revoke the person's operating

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1 privilege until the county department under s. 51.42 or the school under s. 345.60
2 notifies the department that the person is in compliance with assessment or the
3 driver safety plan. If the department is notified that a person has not paid the
4 assessment fee, or that a person with the ability to pay has not paid the driver safety
5 plan fee, the department shall suspend the person's operating privilege for a period
6 of 2 years or until it receives notice that the person has paid the fee, whichever occurs
7 first.

8 3. The department shall notify the person of the suspension or revocation under
9 subd. 2., the reason for the suspension or revocation and the person's right to a
10 review. A person may request a review of a revocation based upon failure to comply
11 with a driver safety plan within 10 days of notification. The review shall be handled
12 by the subunit of the department of transportation designated by the secretary. The
13 issues at the review are limited to whether the driver safety plan, if challenged, is
14 appropriate and whether the person is in compliance with the assessment order or
15 the driver safety plan. The review shall be conducted within 10 days after a request
16 is received. If the driver safety plan is determined to be inappropriate, the
17 department shall order a reassessment and, if the person is otherwise eligible, the
18 department shall reinstate the person's operating privilege. If the person is
19 determined to be in compliance with the assessment or driver safety plan, and if the
20 person is otherwise eligible, the department shall reinstate the person's operating
21 privilege. If there is no decision within the 10-day period, the department shall issue
22 an order reinstating the person's operating privilege until the review is completed,
23 unless the delay is at the request of the person seeking the review.

24 **SECTION 9.** 345.60 (1) of the statutes is amended to read:

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1 345.60 (1) Except as provided in sub. (3) and s. 343.31 (2t) (b), in addition to
2 or in lieu of other penalties provided by law for violation of chs. 346 to 348, the trial
3 court may in its judgment of conviction order the convicted person to attend, for a
4 certain number of school days, a traffic safety school whose course and mode of
5 instruction is approved by the secretary and which is conducted by the police
6 department of the municipality, by the sheriff's office of the county, by an accredited
7 institution of higher education operated by a federally recognized American Indian
8 tribe or band in this state, or by any regularly established safety organization. The
9 trial court may not order a person to attend a traffic safety school under this
10 subsection if the department is required to order that the person attend a vehicle
11 right-of-way course under s. 343.31 (2t) (b).

12 **SECTION 10.** 346.655 (3) of the statutes is renumbered 346.655 (3) (a) and
13 amended to read:

14 346.655 (3) (a) ~~All~~ Except as provided in par. (b), all moneys collected from the
15 driver improvement surcharge that are transmitted to the county treasurer under
16 sub. (2) (a) or (b), except the amounts that the county treasurer is required to
17 transmit to the secretary of administration under sub. (2) (a) or (b), shall be retained
18 by the county treasurer and disbursed to the county department under s. 51.42 for
19 services under s. 51.42 for drivers referred through assessment.

20 **SECTION 11.** 346.655 (3) (b) of the statutes is created to read:

21 346.655 (3) (b) If a person receives treatment from an approved tribal
22 treatment facility, as defined in s. 51.01 (2c), in accordance with a driver safety plan
23 under s. 343.30 (1q) (d), the county treasurer shall transmit the amount collected
24 from the person's driver improvement surcharge except the amounts that the

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1 treasurer is required to transmit to the secretary of administration under sub. (2) (a)
2 or (b), to the facility for treatment services for drivers referred through assessment.

NOTE: Specifies that the county share of the driver improvement surcharge must be paid to a tribal treatment facility for each person it provides treatment to under a driver safety plan; that is to say, specifies that “the funding follows the client”.

3 **SECTION 12. Initial applicability.**

4 (1) This act first applies to an assessment order issued on the effective date of
5 this subsection.

6 (END)