



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1583/2
PJH:cjs

2015 ASSEMBLY BILL 446

October 22, 2015 - Introduced by Representatives J. OTT, BERCEAU, THIESFELDT, HORLACHER, KOoyENGA, MURPHY and PETRYK, cosponsored by Senators DARLING and NASS. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to renumber and amend** 940.09 (1c) (a) and 940.09 (1c) (b); and **to**
2 **create** 940.09 (1c) (a) 2. and 940.09 (1c) (b) 2. of the statutes; **relating to:**
3 mandatory period of confinement for homicide by intoxicated use of a vehicle
4 and providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill imposes a mandatory minimum period of confinement in prison for a person who commits homicide by intoxicated use of a vehicle.

Under current law, a person who causes the death of another by operating or handling a vehicle while under the influence of an intoxicant, with a detectable amount of a restricted controlled substance in his or her blood, or with a prohibited alcohol concentration (homicide by intoxicated use of a vehicle) is guilty of a felony. If the person has no prior convictions, operator's license suspensions, or operator's license revocations related to operating a vehicle while intoxicated, he or she is guilty of a Class D felony and subject to a maximum fine of \$100,000, imprisonment for up to 25 years, or both. If the person has one or more prior convictions, operator's license suspensions, or operator's license revocations related to operating a vehicle while intoxicated, he or she is guilty of a Class C felony and subject to the same maximum fine, imprisonment for up to 40 years, or both.

Under current law, if a person is sentenced to imprisonment for a felony, he or she is sentenced to serve a portion of his or her sentence incarcerated in prison (period of confinement) and a portion of his or her sentence under extended supervision in the community. Current law does not generally require a minimum

ASSEMBLY BILL 446

period of confinement for a person who is sentenced to imprisonment for a felony. However, there are exceptions, including some minimum periods of confinement for persons who are sentenced to imprisonment for committing a seventh or subsequent offense related to operating a vehicle while intoxicated.

Under this bill, a person who is convicted of homicide by intoxicated use of a vehicle must be sentenced to imprisonment and his or her period of confinement must be at least seven years. Under the bill, if the decedent was a passenger in the person's car, a court may sentence the person to less than the minimum if the court finds that the best interests of the community will be served and that the public will not be harmed. If the court sentences a person to less than the minimum, the bill requires the court to put its findings in writing.

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:

1 **SECTION 1.** 940.09 (1c) (a) of the statutes is renumbered 940.09 (1c) (a) 1. and
2 amended to read:

3 940.09 (1c) (a) 1. Except as provided in par. (b), a person who violates sub. (1)
4 is guilty of a Class D felony. Except as provided in subd. 2., upon conviction, the court
5 shall impose a bifurcated sentence under s. 973.01 and the term of confinement in
6 prison portion of the bifurcated sentence shall be at least 7 years.

7 **SECTION 2.** 940.09 (1c) (a) 2. of the statutes is created to read:

8 940.09 (1c) (a) 2. If the person or persons whose death was caused by the
9 violation was or were in the vehicle operated by the convicted person at the time of
10 the violation, the court may impose a sentence that is less than the sentence required
11 under subd. 1. if the court finds that the best interests of the community will be
12 served and the public will not be harmed, and if the court places its reasons on the
13 record.

14 **SECTION 3.** 940.09 (1c) (b) of the statutes is renumbered 940.09 (1c) (b) 1. and
15 amended to read:

ASSEMBLY BILL 446

1 940.09 (1c) (b) 1. A person who violates sub. (1) is guilty of a Class C felony if
2 the person has one or more prior convictions, suspensions, or revocations, as counted
3 under s. 343.307 (2). Except as provided in subd. 2., upon conviction, the court shall
4 impose a bifurcated sentence under s. 973.01 and the term of confinement in prison
5 portion of the bifurcated sentence shall be at least 7 years.

6 **SECTION 4.** 940.09 (1c) (b) 2. of the statutes is created to read:

7 940.09 (1c) (b) 2. If the person or persons whose death was caused by the
8 violation was or were in the vehicle operated by the convicted person at the time of
9 the violation, the court may impose a sentence that is less than the sentence required
10 under subd. 1. if the court finds that the best interests of the community will be
11 served and the public will not be harmed, and if the court places its reasons on the
12 record.

13 **SECTION 5. Initial applicability.**

14 (1) This act first applies to violations committed on the effective date of this
15 subsection, but does not preclude the counting of other convictions, suspensions, or
16 revocations as prior convictions, suspensions, or revocations for purposes of
17 administrative action by the department of transportation or sentencing by a court.

18

(END)