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09/13/2012

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

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, based on drafting instructions given by the committee at its July 18, 2012 meeting.

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 on the results of the assessment, the offender is referred either to an educational program or to an approved public treatment facility.

This draft does all of the following:

1. Allows a native offender to receive assessment services from a tribal facility, termed an "approved tribal treatment facility" in the draft.
2. Specifies that a tribal facility may both conduct assessments and provide treatment services under the IDP. (Current department of health services (DHS) rules regarding conflicts of interest prohibit this, in general.)
3. Expressly states in the statutes that traditional practices may be included in treatment plans.
4. Directs the department of transportation (DOT), at the request of a tribal college, to certify the college as a traffic safety school program, if the college meets all of the requirements of such a program. The draft specifies that this requirement applies to traffic safety schools related to any traffic violation.

5. 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.

6. 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 appropriation,
3 the amounts in the schedule for the purpose of grants to county departments under s. 51.42 and
4 to approved tribal treatment facilities, as defined in s. 343.30 (1q) (a), for drivers referred
5 through assessment, to be allocated according to a plan developed by the department of health
6 services. All moneys transferred from par. (hx) shall be credited to this appropriation.

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

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

8 46.03 **(18)** (f) Notwithstanding par. (a), any person who submits to an assessment or
9 airman or driver safety plan under s. 23.33 (13) (e), 30.80 (6) (d), 114.09 (2) (bm), 343.16 (5)
10 (a), 343.30 (1q), 343.305 (10) or 350.11 (3) (d) shall pay a reasonable fee therefor to the
11 appropriate county department under s. 51.42, approved tribal treatment facility, as defined
12 in s. 343.30 (1q) (a), or traffic safety school under s. 345.60. A county may allow the person
13 to pay the assessment fee in 1, 2, 3 or 4 equal installments. The fee for the airman or driver
14 safety plan may be reduced or waived if the person is unable to pay the complete fee, but no
15 fee for assessment or attendance at a traffic safety school under s. 345.60 may be reduced or
16 waived. Nonpayment of the assessment fee is noncompliance with the court order that
17 required completion of an assessment and airman or driver safety plan. Upon a finding that
18 the person has the ability to pay, nonpayment of the airman or driver safety plan fee is

1 noncompliance with the court order that required completion of an assessment and airman or
2 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.

3 **SECTION 3.** 343.30 (1q) (a) of the statutes is renumbered 343.30 (1q) (am).

4 **SECTION 4.** 343.30 (1q) (a) of the statutes is created to read:

5 343.30 **(1q)** (a) In this subsection, “approved tribal treatment facility” means a
6 treatment agency operating under the direction and control of a federally recognized
7 American Indian tribe or band in this state and meeting the standards prescribed under s. 51.45
8 (8) (a) and approved under s. 51.45 (8) (c).

NOTE: Creates a defined term to refer to tribal facilities, modeled on the existing definition of “approved public treatment facility”.

9 **SECTION 5.** 343.30 (1q) (c) 1. d. of the statutes is created to read:

10 343.30 **(1q)** (c) 1. d. Include a statement that, if the person is a member of a federally
11 recognized American Indian tribe or band, the person may receive the assessment required
12 under this subdivision from an approved tribal treatment facility [operated by the tribe or band
13 of which the person is an enrolled member].

NOTE: Allows a native offender 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.

QUESTION: Should this be limited to the tribe or band in which the person is enrolled, or should any native person be given the opportunity to receive services from any tribal facility? For a person living off-reservation or living on a reservation of a tribe other than the person’s tribe, limiting this option to the tribe in which the person is enrolled could be a barrier to receiving service from a tribal facility.

14 **SECTION 6.** 343.30 (1q) (c) 2. of the statutes is amended to read:

15 343.30 **(1q)** (c) 2. The department of health services shall establish standards for
16 assessment procedures and the driver safety plan programs by rule. The department of health

1 services shall establish by rule conflict of interest guidelines for providers. The conflict of
2 interest guidelines shall not preclude an approved tribal treatment facility from conducting
3 assessments and providing treatment under this subsection.

4 **SECTION 7.** 343.30 (1q) (d) of the statutes is amended to read:

5 343.30 (1q) (d) 1. The assessment report shall order compliance with a driver safety
6 plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The
7 driver safety plan may include a component that makes the person aware of the effect of his
8 or her offense on a victim and a victim's family. The driver safety plan may include treatment
9 for the person's misuse, abuse or dependence on alcohol, controlled substances or controlled
10 substance analogs, or attendance at a school under s. 345.60, or both. If the plan requires
11 treatment at an approved public treatment facility, the plan may include treatment modes that
12 are traditional within the culture of the person [.. provided that the plan also includes treatment
13 modes that are conventional within modern medicine]. If the plan requires inpatient
14 treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph
15 shall include a termination date consistent with the plan which shall not extend beyond one
16 year.

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

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

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

NOTE: Specifies that an IDP treatment plan may include treatment modes that are traditional within the culture of the client. Note that only the underscored language on page 4, lines 10 to 13, is new; all the other language in this SECTION is existing law.

QUESTION: This refers to treatment modes that are traditional within the culture of the client. As such, it applies to cultures other than Native

American cultures, but it also allows these treatment modes only if traditional in the culture of the client; that is, a non-native person would not be able to have traditional native treatment modes included in a treatment plan. Is this what the committee wants, or should it be revised?

QUESTION: Should the bracketed language be included, to specify that conventional treatment modes must be included, as well?

1 **SECTION 8.** 345.60 (1) of the statutes is amended to read:

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

NOTE: Specifies that tribal colleges may serve as traffic safety schools, including convictions for OWI, as well as other traffic violations.

12 **SECTION 9.** 346.655 (3) of the statutes is renumbered 346.655 (3) (a) and amended to
13 read:

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

1 to the county department under s. 51.42 for services under s. 51.42 for drivers referred through
2 assessment.

3 **SECTION 10.** 346.655 (3) (b) of the statutes is created to read:

4 346.655 (3) (b) If a person receives treatment from an approved tribal treatment facility,
5 as defined in s. 343.30 (1q) (a), in accordance with a driver safety plan under s. 343.30 (1q)
6 (d), the county treasurer shall transmit the amount described in par. (a) to the facility for
7 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”.

8 (END)