

DLL:jal;

11/19/2012

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

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. 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 a native offender 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 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. 51.01 (2c), for drivers referred through
5 assessment, to be allocated according to a plan developed by the department of health services.
6 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. 51.01 (2c), or traffic safety school under s. 345.60. A county may allow the person to pay
13 the assessment fee in 1, 2, 3 or 4 equal installments. The fee for the airman or driver safety
14 plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for
15 assessment or attendance at a traffic safety school under s. 345.60 may be reduced or waived.
16 Nonpayment of the assessment fee is noncompliance with the court order that required

1 completion of an assessment and airman or driver safety plan. Upon a finding that the person
2 has the ability to pay, nonpayment of the airman or driver safety plan fee is noncompliance
3 with the court order that required completion of an assessment and airman or driver safety
4 plan.

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

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

6 51.01 (2c) “Approved tribal treatment facility” means a treatment agency operating
7 under the direction and control of a federally recognized American Indian tribe or band in this
8 state and meeting the standards prescribed under s. 51.45 (8) (a) and approved under s. 51.45
9 (8) (c).

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

11 51.45 (7) (h) The department shall authorize an approved tribal treatment facility to
12 conduct assessments under s. 343.30 (1q) (c) and prepare driver safety plans under s. 343.30
13 (1q) (d) if, with regard to each person for whom the approved tribal treatment facility conducts
14 an assessment under s. 343.30 (1q) (c), the approved tribal treatment facility agrees in writing
15 to do all of the following:

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

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

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

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

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.

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

5 343.30 (1q) (c) 2. The department of health services shall establish standards for
6 assessment procedures and the driver safety plan programs by rule. The department of health
7 services shall establish by rule conflict of interest guidelines for providers. The conflict of
8 interest guidelines shall not preclude an approved tribal treatment facility from conducting
9 assessments and providing treatment under this subsection.

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

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

1 2. The county department under s. 51.42 shall assure notification of the department of
2 transportation and the person of the person's compliance or noncompliance with assessment
3 and with treatment. The school under s. 345.60 shall notify the department, the county
4 department under s. 51.42 and the person of the person's compliance or noncompliance with
5 the requirements of the school. Nonpayment of the assessment fee or, if the person has the
6 ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order.
7 If the department is notified of any noncompliance, other than for nonpayment of the
8 assessment fee or driver safety plan fee, it shall revoke the person's operating privilege until
9 the county department under s. 51.42 or the school under s. 345.60 notifies the department that
10 the person is in compliance with assessment or the driver safety plan. If the department is
11 notified that a person has not paid the assessment fee, or that a person with the ability to pay
12 has not paid the driver safety plan fee, the department shall suspend the person's operating
13 privilege for a period of 2 years or until it receives notice that the person has paid the fee,
14 whichever occurs first.

15 3. The department shall notify the person of the suspension or revocation under subd.
16 2., the reason for the suspension or revocation and the person's right to a review. A person
17 may request a review of a revocation based upon failure to comply with a driver safety plan
18 within 10 days of notification. The review shall be handled by the subunit of the department
19 of transportation designated by the secretary. The issues at the review are limited to whether
20 the driver safety plan, if challenged, is appropriate and whether the person is in compliance
21 with the assessment order or the driver safety plan. The review shall be conducted within 10
22 days after a request is received. If the driver safety plan is determined to be inappropriate, the
23 department shall order a reassessment and if the person is otherwise eligible, the department
24 shall reinstate the person's operating privilege. If the person is determined to be in compliance

1 with the assessment or driver safety plan, and if the person is otherwise eligible, the
2 department shall reinstate the person's operating privilege. If there is no decision within the
3 10-day period, the department shall issue an order reinstating the person's operating privilege
4 until the review is completed, unless the delay is at the request of the person seeking the review.

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

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

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

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

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

1 346.655 (3) (b) If a person receives treatment from an approved tribal treatment facility,
2 as defined in s. 51.01 (2c), in accordance with a driver safety plan under s. 343.30 (1q) (d),
3 the county treasurer shall transmit the amount described in par. (a) to the facility for treatment
4 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”.

5

(END)