



## 1995 SENATE BILL 117

March 15, 1995 - Introduced by Senators FARROW, FITZGERALD, ROSENZWEIG, ANDREA and BUETTNER, cosponsored by Representatives DOBYNS, HANSON, GROBSCHMIDT, OWENS, GUNDERSON, LADWIG, OLSEN, MUSSER, GOETSCH, KREIBICH, SERATTI, BOCK, NASS, AINSWORTH, ROBSON and WALKER. Referred to Committee on Judiciary.

1     **AN ACT** *to amend* 343.30 (1p), 343.30 (1q) (b) 2. to 4., 343.305 (10) (b) 2. to 4.,  
2             343.305 (10) (em), 343.31 (3) (bm) 2. to 4., 343.31 (3) (c), 343.31 (3) (e) and (f),  
3             346.65 (2) (a) to (e), 346.65 (2e), 346.65 (2g) (a), 346.65 (2j) (a) to (c), 346.65 (2q),  
4             346.65 (3) and 971.17 (1); and *to create* 343.30 (1q) (b) 4m., 343.305 (10) (b) 4m.,  
5             343.31 (3) (bm) 4m., 346.65 (2) (f), 346.65 (2g) (c), 346.65 (2j) (d), 346.65 (3m),  
6             940.09 (1b) and 940.25 (1b) of the statutes; **relating to:** operating a motor  
7             vehicle while under the influence of an intoxicant when a minor is a passenger  
8             in the motor vehicle and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

This bill doubles the minimum and maximum forfeitures, fines and periods of imprisonment and of operating privilege suspension or revocation if there is a minor passenger in the motor vehicle at the time that a person commits any offense related to operating a motor vehicle while under the influence of an intoxicant (OWI), including improperly refusing to take a test to determine the presence of an intoxicant. The bill does not affect the period of disqualification of a commercial motor vehicle operator, but doubles the minimum and maximum forfeitures, fines and periods of imprisonment if there is a minor passenger in the commercial motor vehicle at the time that the person commits an OWI offense while operating a commercial motor vehicle.

The bill allows a court to order a person who commits an OWI offense while there is a minor passenger in the vehicle to perform community service work that benefits children or that shows the adverse effects on children of substance abuse or OWI behavior.

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

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

1           **SECTION 1.** 343.30 (1p) of the statutes is amended to read:

2           343.30 **(1p)** Notwithstanding sub. (1), a court shall suspend the operating  
3 privilege of a person for 3 months upon the person's conviction by the court for  
4 violation of s. 346.63 (2m) or a local ordinance in conformity therewith with s. 346.63  
5 (2m). If there was a minor passenger in the motor vehicle at the time of the violation  
6 that gave rise to the conviction under s. 346.63 (2m) or a local ordinance in conformity  
7 with s. 346.63 (2m), the court shall suspend the operating privilege of the person for  
8 6 months.

9           **SECTION 2.** 343.30 (1q) (b) 2. to 4. of the statutes are amended to read:

10          343.30 **(1q)** (b) 2. Except as provided in subd. 3. ~~or~~ 4. or 4m., for the first  
11 conviction, ~~suspension or revocation~~, the court shall suspend the person's operating  
12 privilege for not less than 6 months nor more than 9 months. The person is eligible  
13 for an occupational license under s. 343.10 at any time.

14          3. If Except as provided in subd. 4m., if the number of convictions, suspensions  
15 and revocations within a 5-year period equals 2, the court shall revoke the person's  
16 operating privilege for not less than one year nor more than 18 months. After the  
17 first 60 days of the revocation period, the person is eligible for an occupational license  
18 under s. 343.10 if he or she has completed the assessment and is complying with the  
19 driver safety plan ordered under par. (c).

20          4. If Except as provided in subd. 4m., if the number of convictions, suspensions  
21 and revocations within a 10-year period equals 3 or more, the court shall revoke the

1 person's operating privilege for not less than 2 years nor more than 3 years. After  
2 the first 90 days of the revocation period, the person is eligible for an occupational  
3 license under s. 343.10 if he or she has completed the assessment and is complying  
4 with the driver safety plan ordered under par. (c).

5 **SECTION 3.** 343.30 (1q) (b) 4m. of the statutes is created to read:

6 343.30 **(1q)** (b) 4m. If there was a minor passenger in the motor vehicle at the  
7 time of the violation that gave rise to the conviction under s. 346.63 (1) or a local  
8 ordinance in conformity with s. 346.63 (1), the applicable minimum and maximum  
9 suspension or revocation periods under subd. 2., 3. or 4. for the conviction are  
10 doubled.

11 **SECTION 4.** 343.305 (10) (b) 2. to 4. of the statutes are amended to read:

12 343.305 **(10)** (b) 2. Except as provided in subd. 3. ~~or~~ 4. or 4m., for the first  
13 improper refusal, the court shall revoke the person's operating privilege for one year.  
14 After the first 30 days of the revocation period, the person is eligible for an  
15 occupational license under s. 343.10.

16 3. If Except as provided in subd. 4m., if the number of convictions, suspensions  
17 and revocations in a 5-year period equals 2, the court shall revoke the person's  
18 operating privilege for 2 years. After the first 90 days of the revocation period, the  
19 person is eligible for an occupational license under s. 343.10 if he or she has  
20 completed the assessment and is complying with the driver safety plan.

21 4. If Except as provided in subd. 4m., if the number of convictions, suspensions  
22 and revocations in a 10-year period equals 3 or more, the court shall revoke the  
23 person's operating privilege for 3 years. After the first 120 days of the revocation  
24 period, the person is eligible for an occupational license under s. 343.10 if he or she  
25 has completed the assessment and is complying with the driver safety plan.

1           **SECTION 5.** 343.305 (10) (b) 4m. of the statutes is created to read:

2           343.305 **(10)** (b) 4m. If there was a minor passenger in the motor vehicle at the  
3 time of the incident that gave rise to the improper refusal, the applicable minimum  
4 and maximum revocation periods under subd. 2., 3. or 4. for the improper refusal are  
5 doubled.

6           **SECTION 6.** 343.305 (10) (em) of the statutes is amended to read:

7           343.305 **(10)** (em) One penalty for improperly refusing to submit to a test for  
8 intoxication regarding a person arrested for a violation of s. 346.63 (2m) or a local  
9 ordinance in conformity therewith is revocation of the person's operating privilege  
10 for 6 months. If there was a minor passenger in the motor vehicle at the time of the  
11 incident that gave rise to the improper refusal, the revocation period is 12 months.  
12 After the first 15 days of the revocation period, the person is eligible for an  
13 occupational license under s. 343.10. Any such improper refusal or revocation for the  
14 refusal does not count as a prior refusal or a prior revocation under this section or  
15 ss. 343.30 (1q), 343.307 and 346.65 (2). The person shall not be required to submit  
16 to and comply with any assessment or driver safety plan under pars. (c) and (d).

17           **SECTION 7.** 343.31 (3) (bm) 2. to 4. of the statutes are amended to read:

18           343.31 **(3)** (bm) 2. Except as provided in subd. 3. ~~or~~ 4. or 4m., for the first such  
19 conviction, the department shall suspend the person's operating privilege for not less  
20 than 6 months nor more than 9 months. If an Indian tribal court in this state  
21 suspends the person's privilege to operate a motor vehicle on tribal lands for not less  
22 than 6 months nor more than 9 months for the conviction specified in par. (bm)  
23 (intro.), the department shall impose the same period of suspension. The person is  
24 eligible for an occupational license under s. 343.10 at any time.

1           3. If Except as provided in subd. 4m., if the number of suspensions, revocations  
2 and convictions within a 5-year period equals 2, the department shall revoke the  
3 person's operating privilege for not less than one year nor more than 18 months. If  
4 an Indian tribal court in this state revokes the person's privilege to operate a motor  
5 vehicle on tribal lands for not less than one year nor more than 18 months for the  
6 conviction specified in par. (bm) (intro.), the department shall impose the same  
7 period of revocation. After the first 60 days of the revocation period, the person is  
8 eligible for an occupational license under s. 343.10.

9           4. If Except as provided in subd. 4m., if the number of suspensions, revocations  
10 and convictions within a 10-year period equals 3 or more, the department shall  
11 revoke the person's operating privilege for not less than 2 years nor more than 3  
12 years. If an Indian tribal court in this state revokes the person's privilege to operate  
13 a motor vehicle on tribal lands for not less than 2 years nor more than 3 years for the  
14 conviction specified in par. (bm) (intro.), the department shall impose the same  
15 period of revocation. After the first 90 days of the revocation period, the person is  
16 eligible for an occupational license under s. 343.10.

17           **SECTION 8.** 343.31 (3) (bm) 4m. of the statutes is created to read:

18           343.31 **(3)** (bm) 4m. If the Indian tribal court that convicted the person  
19 determined that there was a minor passenger in the motor vehicle at the time of the  
20 incident that gave rise to the conviction, the applicable minimum and maximum  
21 suspension or revocation periods under subd. 2., 3. or 4. for the conviction are  
22 doubled.

23           **SECTION 9.** 343.31 (3) (c) of the statutes is amended to read:

24           343.31 **(3)** (c) Any person convicted under s. 940.09 of causing the death of  
25 another by the operation or handling of a motor vehicle shall have his or her

1 operating privilege revoked for 5 years. If there was a minor passenger in the motor  
2 vehicle at the time of the violation that gave rise to the conviction under s. 940.09,  
3 the revocation period is 10 years.

4 **SECTION 10.** 343.31 (3) (e) and (f) of the statutes are amended to read:

5 343.31 (3) (e) Any person convicted under s. 346.63 (2) shall have his or her  
6 operating privilege revoked for not less than one year nor more than 2 years. If there  
7 was a minor passenger in the motor vehicle at the time of the violation that gave rise  
8 to the conviction under s. 346.63 (2), the minimum and maximum revocation periods  
9 are doubled.

10 (f) Any person convicted under s. 940.25 shall have his or her operating  
11 privilege revoked for 2 years. If there was a minor passenger in the motor vehicle  
12 at the time of the violation that gave rise to the conviction under s. 940.25, the  
13 revocation period is 4 years.

14 **SECTION 11.** 346.65 (2) (a) to (e) of the statutes are amended to read:

15 346.65 (2) (a) Shall forfeit not less than \$150 nor more than \$300, except as  
16 provided in pars. (b) to (e) ~~(f)~~.

17 (b) ~~Shall~~ Except as provided in par. (f), shall be fined not less than \$300 nor  
18 more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months  
19 if the total number of suspensions, revocations and convictions counted under s.  
20 343.307 (1) equals 2 in a 5-year period, ~~except that suspensions.~~ Suspensions,  
21 revocations or convictions arising out of the same incident or occurrence shall be  
22 counted as one.

23 (c) ~~Shall~~ Except as provided in par. (f), shall be fined not less than \$600 nor more  
24 than \$2,000 and imprisoned for not less than 30 days nor more than one year in the  
25 county jail if the total number of suspensions, revocations and convictions counted

1 under s. 343.307 (1) equals 3 in a 10-year period, except that suspensions,  
2 revocations or convictions arising out of the same incident or occurrence shall be  
3 counted as one.

4 (d) ~~Shall~~ Except as provided in par. (f), shall be fined not less than \$600 nor  
5 more than \$2,000 and imprisoned for not less than 60 days nor more than one year  
6 in the county jail if the total number of suspensions, revocations and convictions  
7 counted under s. 343.307 (1) equals 4 in a 10-year period, except that suspensions,  
8 revocations or convictions arising out of the same incident or occurrence shall be  
9 counted as one.

10 (e) ~~Shall~~ Except as provided in par. (f), shall be fined not less than \$600 nor  
11 more than \$2,000 and imprisoned for not less than 6 months nor more than one year  
12 in the county jail if the total number of suspensions, revocations and convictions  
13 counted under s. 343.307 (1) equals 5 or more in a 10-year period, except that  
14 suspensions, revocations or convictions arising out of the same incident or  
15 occurrence shall be counted as one.

16 **SECTION 12.** 346.65 (2) (f) of the statutes is created to read:

17 346.65 (2) (f) If there was a minor passenger in the motor vehicle at the time  
18 of the violation that gave rise to the conviction under s. 346.63 (1), the applicable  
19 minimum and maximum forfeitures, fines or imprisonment under par. (a), (b), (c), (d)  
20 or (e) for the conviction are doubled. An offense under s. 346.63 (1) that subjects a  
21 person to a penalty under par. (c), (d) or (e) when there is a minor passenger in the  
22 motor vehicle is a felony and the place of imprisonment shall be determined under  
23 s. 973.02.

24 **SECTION 13.** 346.65 (2e) of the statutes is amended to read:

1           346.65 **(2e)** If the court determines that a person does not have the ability to  
2 pay the costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d) ~~or~~, (e) or (f),  
3 the court may reduce the costs, fine and forfeiture imposed and order the person to  
4 pay, toward the cost of the assessment and driver safety plan imposed under s. 343.30  
5 (1q) (c), the difference between the amount of the reduced costs and fine or forfeiture  
6 and the amount of costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d)  
7 ~~or~~, (e) or (f).

8           **SECTION 14.** 346.65 (2g) (a) of the statutes is amended to read:

9           346.65 **(2g)** (a) In addition to the authority of the court under s. 973.05 (3) (a)  
10 to provide that a defendant perform community service work for a public agency or  
11 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.  
12 (2) (b) to (e) (f), the court may provide that a defendant perform community service  
13 work for a public agency or a nonprofit charitable organization in lieu of part or all  
14 of a forfeiture under sub. (2) (a) or may require a person who is subject to sub. (2) to  
15 perform community service work for a public agency or a nonprofit charitable  
16 organization in addition to the penalties specified under sub. (2). Notwithstanding  
17 s. 973.05 (3) (b), an order may only apply if agreed to by the organization or agency.  
18 The court shall ensure that the defendant is provided a written statement of the  
19 terms of the community service order and that the community service order is  
20 monitored. Any organization or agency acting in good faith to which a defendant is  
21 assigned pursuant to an order under this subsection has immunity from any civil  
22 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.  
23 The issuance or possibility of the issuance of a community service order under this  
24 subsection does not entitle an indigent defendant who is subject to sub. (2) (a) to  
25 representation by counsel under ch. 977.



1           **SECTION 15.** 346.65 (2g) (c) of the statutes is created to read:

2           346.65 **(2g)** (c) If there was a minor passenger in the motor vehicle or  
3 commercial motor vehicle at the time of the violation that gave rise to the conviction,  
4 the court may require a person ordered to perform community service work under  
5 par. (a), or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63  
6 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, to participate in community service work  
7 that benefits children or that demonstrates the adverse effects on children of  
8 substance abuse or of operating a vehicle while under the influence of an intoxicant  
9 or other drug. The court may order the person to pay a reasonable fee, based on the  
10 person's ability to pay, to offset the cost of establishing, maintaining and monitoring  
11 the community service work ordered under this paragraph.

12           **SECTION 16.** 346.65 (2j) (a) to (c) of the statutes are amended to read:

13           346.65 **(2j)** (a) Shall forfeit not less than \$150 nor more than \$300 except as  
14 provided in par. (b) ~~or~~, (c) or (d).

15           (b) Shall Except as provided in par. (d), shall be fined not less than \$300 nor  
16 more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months  
17 if the total of prior convictions, suspension and revocations counted under s. 343.307  
18 (2) equals 2 in a 5-year period.

19           (c) ~~Shall~~ Except as provided in par. (d), shall be fined not less than \$600 nor  
20 more than \$2,000 and imprisoned for not less than 30 days nor more than one year  
21 in the county jail if the total of prior convictions, suspensions and revocations  
22 counted under s. 343.307 (2) equals 3 or more in a 10-year period.

23           **SECTION 17.** 346.65 (2j) (d) of the statutes is created to read:

24           346.65 **(2j)** (d) If there was a minor passenger in the commercial motor vehicle  
25 at the time of the violation that gave rise to the conviction under s. 346.63 (5), the

1 applicable minimum and maximum forfeitures, fines or imprisonment under par. (a),  
2 (b) or (c) for the conviction are doubled. An offense under s. 346.63 (5) that subjects  
3 a person to a penalty under par. (c) when there is a minor passenger in the  
4 commercial motor vehicle is a felony and the place of imprisonment shall be  
5 determined under s. 973.02.

6 **SECTION 18.** 346.65 (2q) of the statutes is amended to read:

7 346.65 (2q) Any person violating s. 346.63 (2m) shall forfeit \$10. If there was  
8 a minor passenger in the motor vehicle at the time of the violation that gave rise to  
9 the conviction under 346.63 (2m), the forfeiture is \$20.

10 **SECTION 19.** 346.65 (3) of the statutes is amended to read:

11 346.65 (3) Except as provided in sub. (5m), any person violating s. 346.62 (3)  
12 ~~or 346.63 (2) or (6)~~ shall be fined not less than \$300 nor more than \$2,000 and may  
13 be imprisoned for not less than 30 days nor more than one year in the county jail.

14 **SECTION 20.** 346.65 (3m) of the statutes is created to read:

15 346.65 (3m) Any person violating s. 346.63 (2) or (6) shall be fined not less than  
16 \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more  
17 than one year in the county jail. If there was a minor passenger in the motor vehicle  
18 at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6),  
19 the offense is a felony, the applicable minimum and maximum fines or periods of  
20 imprisonment for the conviction are doubled and the place of imprisonment shall be  
21 determined under s. 973.02.

22 **SECTION 21.** 940.09 (1b) of the statutes is created to read:

23 940.09 (1b) If there was a minor passenger in the motor vehicle at the time of  
24 the violation that gave rise to the conviction under sub. (1), any applicable maximum  
25 fine or imprisonment specified for the conviction is doubled.

