



## 2009 ASSEMBLY BILL 79

February 24, 2009 – Introduced by Representatives KLEEFISCH, ZIEGELBAUER, DAVIS, KERKMAN, LEMAHIEU, LOTHIAN, MONTGOMERY, MURSAU, NASS, A. OTT, SPANBAUER, STONE, STRACHOTA, TOWNSEND and ZIPPERER, cosponsored by Senators CARPENTER, DARLING and LEIBHAM. Referred to Committee on Public Safety.

1     **AN ACT** *to renumber and amend* 969.035 (1); *to amend* 346.65 (2) (am) 3.,  
2           346.65 (2) (am) 4., 346.65 (2) (am) 5., 346.65 (2) (am) 6., 346.65 (2) (am) 7.,  
3           938.535, 968.07 (1m), 969.01 (2) (a), (b), (c) and (d), 969.035 (3) (a) and (b) and  
4           969.035 (6) (a); and *to create* 968.077, 968.085 (9), 969.01 (2) (f), 969.035 (1) (a)  
5           and 969.035 (2) (c) of the statutes; **relating to:** release of persons who commit  
6           operating-while-intoxicated offenses and providing penalties.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, a person who commits a third offense related to drunken driving or driving under the influence of an intoxicant or other drug (OWI) must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year. A person who commits a fourth OWI must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year. A person who commits a fifth or sixth OWI is guilty of a Class H felony and may be fined not less than \$600 nor more than \$10,000 and imprisoned for not less than six months nor more than six years, or both. A person who commits a seventh, eighth, or ninth OWI is guilty of a Class G felony and may be fined not more than \$25,000 or imprisoned for not more than ten years, or both. A person who commits a tenth or subsequent OWI is guilty of a Class F felony and may be fined not more than \$25,000 or imprisoned for not more than 12 years and six months, or both.

Under this bill, a person who commits a third OWI is guilty of a Class H felony, although the person must be fined at least \$600 but not more than \$2,000 and must

**ASSEMBLY BILL 79**

be imprisoned for at least 90 days. A person who commits a fourth OWI is guilty of a Class G felony, although the person must be fined at least \$600 but not more than \$2,000 and must be imprisoned for at least one year. A person who commits a fifth or sixth OWI is guilty of a Class F felony, although the person must be fined at least \$600 and must be imprisoned for at least one year. A person who commits a seventh, eighth, or ninth OWI is guilty of a Class E felony, and a person who commits a tenth or subsequent OWI is guilty of a Class D felony. These persons are subject to the current law penalties for the felony classification.

In addition, this bill requires a law enforcement officer to arrest a person if the officer has reasonable grounds to believe that the person is committing a third OWI. The bill grants the circuit court the authority to deny pretrial release to a person who is charged with certain felony OWIs if the person has a previous conviction for a felony OWI. The bill also prohibits the release of a person convicted of a third OWI before the person begins to serve any period of incarceration imposed for the OWI.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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.** 346.65 (2) (am) 3. of the statutes is amended to read:

2           346.65 (2) (am) 3. Except as provided in pars. (cm), (f), and (g), is guilty of a  
3           Class H felony and, notwithstanding s. 939.50 (3) (h), shall be fined not less than  
4           \$600 nor more than \$2,000 and imprisoned for not less than ~~30~~ 90 days ~~nor more than~~  
5           ~~one year in the county jail~~ if the number of convictions under ss. 940.09 (1) and 940.25  
6           in the person's lifetime, plus the total number of suspensions, revocations, and other  
7           convictions counted under s. 343.307 (1), equals 3, except that suspensions,  
8           revocations, or convictions arising out of the same incident or occurrence shall be  
9           counted as one.

10           **SECTION 2.** 346.65 (2) (am) 4. of the statutes is amended to read:

**ASSEMBLY BILL 79**

1           346.65 (2) (am) 4. Except as provided in pars. (f) and (g), is guilty of a Class G  
2 felony and, notwithstanding s. 939.50 (3) (g), shall be fined not less than \$600 nor  
3 more than \$2,000 and imprisoned for not less than ~~60 days nor more than~~ one year  
4 ~~in the county jail~~ if the number of convictions under ss. 940.09 (1) and 940.25 in the  
5 person's lifetime, plus the total number of suspensions, revocations and other  
6 convictions counted under s. 343.307 (1), equals 4, except that suspensions,  
7 revocations or convictions arising out of the same incident or occurrence shall be  
8 counted as one.

9           **SECTION 3.** 346.65 (2) (am) 5. of the statutes is amended to read:

10           346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class ~~H~~  
11 F felony and, notwithstanding s. 939.50 (3) (f), shall be fined not less than \$600 and  
12 imprisoned for not less than ~~6 months~~ one year if the number of convictions under  
13 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of  
14 suspensions, revocations and other convictions counted under s. 343.307 (1), equals  
15 5 or 6, except that suspensions, revocations or convictions arising out of the same  
16 incident or occurrence shall be counted as one.

17           **SECTION 4.** 346.65 (2) (am) 6. of the statutes is amended to read:

18           346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class ~~G~~ E felony  
19 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
20 plus the total number of suspensions, revocations, and other convictions counted  
21 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or  
22 convictions arising out of the same incident or occurrence shall be counted as one.

23           **SECTION 5.** 346.65 (2) (am) 7. of the statutes is amended to read:

24           346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class ~~F~~ D felony  
25 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,

**ASSEMBLY BILL 79**

1 plus the total number of suspensions, revocations, and other convictions counted  
2 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or  
3 convictions arising out of the same incident or occurrence shall be counted as one.

4 **SECTION 6.** 938.535 of the statutes is amended to read:

5 **938.535 Early release and intensive supervision program; limits.** The  
6 department may establish a program for the early release and intensive supervision  
7 of juveniles who have been placed in a juvenile correctional facility or a secured  
8 residential care center for children and youth under s. 938.183 or 938.34 (4m). The  
9 program may not include any juveniles who have been placed in a juvenile  
10 correctional facility or a secured residential care center for children and youth as a  
11 result of a delinquent act involving the commission of a violent crime as defined in  
12 s. 969.035 (1) (b), but not including the crime specified in s. 948.02 (1).

13 **SECTION 7.** 968.07 (1m) of the statutes is amended to read:

14 **968.07 (1m)** Notwithstanding sub. (1), a law enforcement officer shall arrest  
15 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128  
16 (1) (b), ~~or 968.075 (2) (a) or (5) (e)~~, or 968.077 (1).

17 **SECTION 8.** 968.077 of the statutes is created to read:

18 **968.077 Operating while intoxicated; arrest. (1)** Notwithstanding s.  
19 968.07 (1), a law enforcement officer who has reasonable grounds to believe that a  
20 person is committing or has committed a violation of s. 346.63 (1) or (2), 940.09 (1),  
21 or 940.25 and has 2 or more prior convictions, suspensions, or revocations, as counted  
22 under s. 343.307 (1), shall arrest the person and take the person into custody.  
23 Suspensions, revocations, or convictions arising out of the same incident or  
24 occurrence shall be counted under this section as one suspension, revocation, or  
25 conviction.

**ASSEMBLY BILL 79**

1           **(2)** Unless s. 968.08 applies, a law enforcement officer may not release a person  
2 whose arrest is required under sub. (1) before the initial appearance under s. 970.01.

3           **SECTION 9.** 968.085 (9) of the statutes is created to read:

4           **968.085 (9) INAPPLICABILITY TO OPERATING WHILE INTOXICATED CASES.** A law  
5 enforcement officer may not issue a citation to a person for an offense if the officer  
6 is required to arrest the person for that offense under s. 968.077 (1).

7           **SECTION 10.** 969.01 (2) (a), (b), (c) and (d) of the statutes are amended to read:

8           **969.01 (2) (a) Release Except as provided in par. (f),** release pursuant to s.  
9 969.02 or 969.03 may be allowed in the discretion of the trial court after conviction  
10 and prior to sentencing or the granting of probation.

11           (b) ~~In Except as provided in par. (f),~~ in misdemeanors, release may be allowed  
12 upon appeal in the discretion of the trial court.

13           (c) ~~In Except as provided in par. (f),~~ in felonies, release may be allowed upon  
14 appeal in the discretion of the trial court.

15           (d) ~~The Except as provided in par. (f),~~ the supreme court or a justice thereof or  
16 the court of appeals or a judge thereof may allow release after conviction.

17           **SECTION 11.** 969.01 (2) (f) of the statutes is created to read:

18           **969.01 (2) (f)** A person convicted of an offense under s. 346.63 (1) or (2), 940.09  
19 (1), or 940.25 who has 2 or more prior convictions, suspensions, or revocations, as  
20 counted under s. 343.307 (1), may not be released under this chapter before he or she  
21 serves any term of imprisonment required or imposed in connection with the  
22 conviction. Suspensions, revocations, or convictions arising out of the same incident  
23 or occurrence shall be counted under this paragraph as one prior suspension,  
24 revocation, or conviction.

**ASSEMBLY BILL 79**

1           **SECTION 12.** 969.035 (1) of the statutes is renumbered 969.035 (1) (intro.) and  
2 amended to read:

3           969.035 (1) (intro.) In this section, ~~“violent:~~

4           (b) “Violent crime” means any crime specified in s. 940.01, 940.02, 940.03,  
5 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195 (5), 940.21, 940.225 (1),  
6 940.23, 941.327, 948.02 (1) or (2), 948.025, 948.03, or 948.085.

7           **SECTION 13.** 969.035 (1) (a) of the statutes is created to read:

8           969.035 (1) (a) “Felony involving serious bodily harm to another or the threat  
9 of serious bodily harm to another” means a felony under s. 346.63 (1) or (2), 940.09  
10 (1), or 940.25.

11           **SECTION 14.** 969.035 (2) (c) of the statutes is created to read:

12           969.035 (2) (c) A person accused of committing a felony involving serious bodily  
13 harm to another or the threat of serious bodily harm to another if the person has at  
14 least one previous conviction for a felony involving serious bodily harm to another  
15 or the threat of serious bodily harm to another.

16           **SECTION 15.** 969.035 (3) (a) and (b) of the statutes are amended to read:

17           969.035 (3) (a) Alleges that the defendant is eligible for denial of release under  
18 sub. (2) (a) ~~or~~, (b), or (c).

19           (b) Provides a copy of the complaint charging the commission or attempted  
20 commission of the present offense specified in sub. (2) (a) ~~or~~, (b), or (c).

21           **SECTION 16.** 969.035 (6) (a) of the statutes is amended to read:

22           969.035 (6) (a) The state has the burden of going forward and proving by clear  
23 and convincing evidence that the defendant committed an offense specified under  
24 sub. (2) (a), ~~or~~ that the defendant committed or attempted to commit a violent crime  
25 subsequent to a prior conviction for a violent crime, or that the defendant committed

**ASSEMBLY BILL 79**

1 a felony involving serious bodily harm to another or the threat of serious bodily harm  
2 to another and has at least one previous conviction for a felony involving serious  
3 bodily harm to another or the threat of serious bodily harm to another.

4 **SECTION 17. Initial applicability.**

5 (1) This act first applies to violations committed or refusals occurring on the  
6 effective date of this subsection, but does not preclude the counting of other  
7 convictions, suspensions, or revocations as prior convictions, suspensions, or  
8 revocations for purposes of administrative action by the department of  
9 transportation, sentencing by a court, or revocation or suspension of motor vehicle  
10 operating privileges.

11 (END)