



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-5506/1  
EAW&ZDW:wlj

## 2019 SENATE BILL 769

January 30, 2020 - Introduced by Senators KAPENGA, KOOYENGA, FITZGERALD, CRAIG, DARLING, FEYEN, NASS, STROEBEL and WANGGAARD, cosponsored by Representatives HUTTON, SANFELIPPO, KNODL, EDMING, GUNDRUM, JAMES, KUGLITSCH, NEYLON, RAMTHUN, RODRIGUEZ, SKOWRONSKI, TITTL, WICHGERS and DITTRICH. Referred to Committee on Judiciary and Public Safety.

1     **AN ACT** *to renumber and amend* 938.34 (14m); *to amend* 346.17 (3) (a), 346.17  
2           (3) (b), 346.17 (3) (c), 346.17 (3) (d), 346.65 (1) (a), 346.65 (1) (b), 346.65 (3),  
3           346.65 (4m), 346.65 (5), 943.23 (1g), 943.23 (1r), 943.23 (2) (a), 943.23 (2) (b),  
4           943.23 (2g), 943.23 (3) (a), 943.23 (3) (b) and 943.23 (3g); and *to create* 938.266,  
5           938.34 (8m), 938.34 (14m) (b), 939.6197, 967.055 (2) (c), 967.055 (2) (d), 967.056  
6           and 973.0337 of the statutes; **relating to:** theft of a vehicle; victim impact  
7           panels; increased penalties for reckless driving; increased penalties for fleeing  
8           an officer; and providing a penalty.

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### ***Analysis by the Legislative Reference Bureau***

This bill increases the penalties for vehicle theft, reckless driving, and fleeing an officer.

#### **VEHICLE THEFT**

Under current law, if a person takes or operates a vehicle or commercial motor vehicle without the consent of the owner (vehicle theft), the person is guilty of a felony. Under current law, the class of felony for the crime of vehicle theft depends on whether the person used force, the type of force used, whether it is a repeat offense, and whether the vehicle was a commercial vehicle.

The bill increases the penalties for vehicle theft by one felony classification and imposes a 30-day mandatory minimum term of incarceration for vehicle theft, for

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knowingly being a passenger in a stolen vehicle, or for removing a part of a vehicle without the consent of the owner.

Currently, subject to certain exceptions, a person under 17 years of age who is alleged to have violated a criminal law is subject to the jurisdiction of the Juvenile Court, which is assigned to exercise jurisdiction under the Juvenile Justice Code, and is subject to the procedures and dispositions specified in the Juvenile Justice Code. Under current law, a person who is under the jurisdiction of the Juvenile Court is not subject to the sentencing requirements under the Criminal Code. Under the bill, if a juvenile has been adjudged delinquent for vehicle theft, for knowingly being a passenger in a stolen vehicle, or for stealing a part of a vehicle, the Juvenile Court is required to place the juvenile in a secured placement in a juvenile detention facility, juvenile portion of a county jail, or juvenile correctional facility for a minimum of 30 days, in addition to any other dispositions that are available under the Juvenile Justice Code.

Under the bill, if a prosecutor seeks to amend or dismiss a charge of vehicle theft, or if a petitioner seeks to amend or dismiss a petition that alleges that a juvenile has violated the vehicle theft laws, the charge or petition may be amended or dismissed only if the court finds that doing so is consistent with the public's interest in deterring the theft of motor vehicles.

**RECKLESS DRIVING**

Under current law, no person may endanger the safety of any person or property by the negligent operation of a vehicle, commonly referred to as "reckless driving." Under the bill:

1. The penalty for reckless driving is increased from a \$25-\$200 forfeiture to a \$50-\$500 forfeiture.
2. The penalty for a second or subsequent reckless driving offense in a four-year period is increased from a fine of \$50-\$500 to a fine of \$100-\$1,000.
3. The penalty for recklessly driving on or across a railroad crossing is increased from a \$300-\$1,000 forfeiture to a \$600-\$10,000 forfeiture.
4. The penalty for reckless driving that causes bodily harm to another is increased from a \$300-\$2,000 fine and imprisonment of up to a year to a Class I felony.
5. The penalty for reckless driving that causes great bodily harm to another is increased from a Class I felony to a Class H felony.
6. If the prosecutor seeks to dismiss or amend a reckless driving charge, the prosecutor must apply to the court and the court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the negligent operation of motor vehicles.

**FLEEING AN OFFICER**

Under current law, no operator of a vehicle, after having received a visual or audible signal from a traffic officer, federal law enforcement officer, or marked or unmarked police vehicle that the operator knows or reasonably should know is being operated by a law enforcement officer, shall knowingly flee so as to endanger other vehicles or pedestrians. Under the bill:

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1. The penalty for fleeing an officer is increased from a Class I felony to a Class H felony.

2. The penalty for fleeing an officer and causing bodily harm to another or damage to the property of another is increased from a Class H felony to a Class G felony.

3. The penalty for fleeing an officer and causing great bodily harm to another is increased from a Class F felony to a Class E felony.

4. The penalty for fleeing an officer and causing death to another is increased from a Class E felony to a Class D felony.

5. If the prosecutor seeks to dismiss or amend a charge of fleeing an officer, the prosecutor must apply to the court and the court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring fleeing from an officer.

**VICTIM IMPACT PANELS**

The bill allows a court to order a person who is found guilty of certain crimes relating to reckless driving or vehicle theft, or a juvenile who is adjudicated delinquent for certain violations related to reckless driving or vehicle theft, to attend a victim impact panel or similar program as a part of his or her sentence or disposition.

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.

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.** 346.17 (3) (a) of the statutes is amended to read:

2           346.17 (3) (a) Except as provided in par. (b), (c) or (d), any person violating s.  
3           346.04 (3) is guilty of a Class ~~I~~ H felony.

4           **SECTION 2.** 346.17 (3) (b) of the statutes is amended to read:

5           346.17 (3) (b) If the violation results in bodily harm, as defined in s. 939.22 (4),  
6           to another, or causes damage to the property of another, as defined in s. 939.22 (28),  
7           the person is guilty of a Class ~~H~~ G felony.

8           **SECTION 3.** 346.17 (3) (c) of the statutes is amended to read:

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1           346.17 (3) (c) If the violation results in great bodily harm, as defined in s. 939.22  
2 (14), to another, the person is guilty of a Class ~~F~~ E felony.

3           **SECTION 4.** 346.17 (3) (d) of the statutes is amended to read:

4           346.17 (3) (d) If the violation results in the death of another, the person is guilty  
5 of a Class ~~E~~ D felony.

6           **SECTION 5.** 346.65 (1) (a) of the statutes is amended to read:

7           346.65 (1) (a) May be required to forfeit not less than ~~\$25~~ \$50 nor more than  
8 ~~\$200~~ \$500, except as provided in par. (b).

9           **SECTION 6.** 346.65 (1) (b) of the statutes is amended to read:

10          346.65 (1) (b) May be fined not less than ~~\$50~~ \$100 nor more than ~~\$500~~ \$1,000  
11 or imprisoned for not more than one year in the county jail or both if the total of  
12 convictions under s. 346.62 (2) or a local ordinance in conformity therewith or a law  
13 of a federally recognized American Indian tribe or band in this state in conformity  
14 with s. 346.62 (2) equals 2 or more in a 4-year period. The 4-year period shall be  
15 measured from the dates of the violations which resulted in the convictions.

16          **SECTION 7.** 346.65 (3) of the statutes is amended to read:

17          346.65 (3) Except as provided in sub. (5m), any person violating s. 346.62 (3)  
18 shall be fined not less than ~~\$300~~ nor more than ~~\$2,000~~ and may be imprisoned for  
19 not less than ~~30 days~~ nor more than one year in the county jail is guilty of a Class  
20 I felony.

21          **SECTION 8.** 346.65 (4m) of the statutes is amended to read:

22          346.65 (4m) Except as provided in sub. (5m), any person violating s. 346.62  
23 (2m) shall forfeit not less than ~~\$300~~ \$600 nor more than ~~\$1,000~~ \$10,000.

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

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1           346.65 (5) Except as provided in sub. (5m), any person violating s. 346.62 (4)  
2 is guilty of a Class ~~I~~ H felony.

3           **SECTION 10.** 938.266 of the statutes is created to read:

4           **938.266 Amendment or dismissal of petition; theft of a vehicle.**

5 Notwithstanding s. 938.263, if the petitioner seeks to amend or dismiss a petition  
6 that alleges a violation of s. 943.23 or a local ordinance in conformity therewith, the  
7 petitioner shall apply to the court. The application shall state the reasons for the  
8 proposed amendment or dismissal. The court may approve the application only if the  
9 court finds that the proposed amendment or dismissal is consistent with the public's  
10 interest in deterring the theft of motor vehicles. The court may not approve an  
11 application to amend the vehicle classification from a commercial motor vehicle to  
12 a noncommercial motor vehicle unless there is evidence in the record that the motor  
13 vehicle being operated by the juvenile at the time he or she was taken into custody  
14 was not a commercial motor vehicle.

15           **SECTION 11.** 938.34 (8m) of the statutes is created to read:

16           **938.34 (8m) VICTIM IMPACT PANELS.** In addition to any other disposition imposed  
17 under this section, if the juvenile has been adjudicated delinquent for committing a  
18 violation of s. 346.62 (2), (3), or (4) or 943.23 that would be a crime if committed by  
19 an adult, the court may order the juvenile to attend a program, such as a victim  
20 impact panel, that demonstrates the adverse effects of the juvenile's acts on a victim  
21 or a victim's family. The court may order the juvenile to pay a reasonable fee, based  
22 on the juvenile's ability to pay, to offset the costs of assembling and holding the  
23 program ordered under this section.

24           **SECTION 12.** 938.34 (14m) of the statutes is renumbered 938.34 (14m) (a) and  
25 amended to read:

**SENATE BILL 769****SECTION 12**

1           938.34 (14m) (a) Restrict or suspend the operating privilege, as defined in s.  
2           340.01 (40), of a juvenile who is adjudicated delinquent under a violation of any law  
3           in which a motor vehicle is involved. If the court suspends a juvenile's operating  
4           privilege under this ~~subsection~~ paragraph, the court may take possession of the  
5           suspended license. If the court takes possession of a license, it shall destroy the  
6           license. The court shall forward to the department of transportation a notice stating  
7           the reason for and duration of the suspension. If the court limits a juvenile's  
8           operating privilege under this ~~subsection~~ paragraph, the court shall immediately  
9           notify the department of transportation of that limitation.

10           **SECTION 13.** 938.34 (14m) (b) of the statutes is created to read:

11           938.34 (14m) (b) In addition to any other dispositions imposed under this  
12           section, if the juvenile is found to have violated s. 943.23, the court shall place the  
13           juvenile in secured custody under sub. (3) (f) or (4m) for a minimum period of 30 days.

14           **SECTION 14.** 939.6197 of the statutes is created to read:

15           **939.6197 Mandatory minimum sentence for operating a vehicle**  
16           **without owner's consent.** If a person is convicted of a violation of s. 943.23, the  
17           court shall impose a bifurcated sentence under s. 973.01. The term of confinement  
18           in prison portion of a bifurcated sentence imposed under this section may not be less  
19           than 30 days, but otherwise the penalties for the crime apply, subject to any  
20           applicable penalty enhancement.

21           **SECTION 15.** 943.23 (1g) of the statutes is amended to read:

22           943.23 (1g) Whoever, while possessing a dangerous weapon and by the use of,  
23           or the threat of the use of, force or the weapon against another, intentionally takes  
24           any vehicle without the consent of the owner is guilty of a Class ~~C~~ B felony.

25           **SECTION 16.** 943.23 (1r) of the statutes is amended to read:

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1           943.23 (1r) Whoever, by the use of force against another or by the threat of the  
2 use of force against another, intentionally takes any vehicle without the consent of  
3 the owner is guilty of a Class ~~E~~ D felony.

4           **SECTION 17.** 943.23 (2) (a) of the statutes is amended to read:

5           943.23 (2) (a) Except as provided in par. (b), a Class ~~H~~ G felony.

6           **SECTION 18.** 943.23 (2) (b) of the statutes is amended to read:

7           943.23 (2) (b) For a 2nd or subsequent offense, a Class ~~F~~ E felony.

8           **SECTION 19.** 943.23 (2g) of the statutes is amended to read:

9           943.23 (2g) Except as provided in sub. (3m), whoever intentionally takes and  
10 drives any commercial motor vehicle without the consent of the owner is guilty of a  
11 Class ~~G~~ F felony.

12          **SECTION 20.** 943.23 (3) (a) of the statutes is amended to read:

13          943.23 (3) (a) Except as provided in par. (b), a Class ~~I~~ H felony.

14          **SECTION 21.** 943.23 (3) (b) of the statutes is amended to read:

15          943.23 (3) (b) For a 2nd or subsequent offense, a Class ~~G~~ F felony.

16          **SECTION 22.** 943.23 (3g) of the statutes is amended to read:

17          943.23 (3g) Except as provided in sub. (3m), whoever intentionally drives or  
18 operates any commercial motor vehicle without the consent of the owner is guilty of  
19 a Class ~~H~~ G felony.

20          **SECTION 23.** 967.055 (2) (c) of the statutes is created to read:

21          967.055 (2) (c) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or  
22 amend a charge under s. 346.62 (2) to (4) or a local ordinance in conformity therewith,  
23 the prosecutor shall apply to the court. The application shall state the reasons for  
24 the proposed amendment or dismissal. The court may approve the application only

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1 if the court finds that the proposed amendment or dismissal is consistent with the  
2 public's interest in deterring the negligent operation of motor vehicles.

3 **SECTION 24.** 967.055 (2) (d) of the statutes is created to read:

4 967.055 (2) (d) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss  
5 or amend a charge under s. 346.04 (3), the prosecutor shall apply to the court. The  
6 application shall state the reasons for the proposed amendment or dismissal. The  
7 court may approve the application only if the court finds that the proposed  
8 amendment or dismissal is consistent with the public's interest in deterring fleeing  
9 from an officer.

10 **SECTION 25.** 967.056 of the statutes is created to read:

11 **967.056 Prosecution of offenses; theft of a vehicle.** Notwithstanding s.  
12 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 943.23 or a local  
13 ordinance in conformity therewith, the prosecutor shall apply to the court. The  
14 application shall state the reasons for the proposed amendment or dismissal. The  
15 court may approve the application only if the court finds that the proposed  
16 amendment or dismissal is consistent with the public's interest in deterring the theft  
17 of motor vehicles. The court may not approve an application to amend the vehicle  
18 classification from a commercial motor vehicle to a noncommercial motor vehicle  
19 unless there is evidence in the record that the motor vehicle being operated by the  
20 defendant at the time of his or her arrest was not a commercial motor vehicle.

21 **SECTION 26.** 973.0337 of the statutes is created to read:

22 **973.0337 Sentencing; victim impact panels.** If a person pleads guilty to or  
23 is found guilty of a criminal violation of s. 346.62 (2), (3), or (4) or 943.23, the court  
24 may order the person to attend a program, such as a victim impact panel, that  
25 demonstrates the adverse effects of the person's acts on a victim or a victim's family

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1 in addition to any forfeiture or penalty imposed. The court may order the defendant  
2 to pay a reasonable fee, based on the person's ability to pay, to offset the costs of  
3 assembling and holding the program ordered under this section.

4 **SECTION 27. Initial applicability.**

5 (1) The treatment of ss. 938.266, 939.6197, 943.23 (1g), (1r), (2) (a) and (b), (2g),  
6 (3) (a) and (b), and (3g), and 967.056, the renumbering and amendment of s. 938.34  
7 (14m), and the creation of s. 938.34 (14m) (b) first apply to an offense committed on  
8 the effective date of this subsection but does not preclude the counting of an offense  
9 committed before the effective date of this subsection as a prior offense for the  
10 purposes of sentencing.

11 (2) The treatment of ss. 973.0337 and 938.34 (8m) first applies to a sentence  
12 or a dispositional order entered on the effective date of this subsection.

13

(END)