



2011 ASSEMBLY BILL 405

December 7, 2011 – Introduced by Representatives STASKUNAS, J. OTT, JACQUE, KERKMAN, ZEPNICK, BERCEAU, BERNARD SCHABER, STEINBRINK and RICHARDS, cosponsored by Senators CARPENTER and S. COGGS. Referred to Committee on Transportation.

1 **AN ACT to repeal** 346.65 (2) (am) 4., 346.65 (2) (am) 4m., 346.65 (2) (dm), 346.65
2 (2j) (cr) and 973.09 (2) (am); and **to amend** 346.65 (2) (am) 5., 346.65 (2) (bm),
3 346.65 (2) (cm), 346.65 (2) (f) 2., 346.65 (2c), 346.65 (2g) (a), 346.65 (2g) (ag),
4 346.65 (2j) (am) 3., 346.65 (2j) (bm), 346.65 (2j) (cm) and 346.65 (7) of the
5 statutes; **relating to:** making fourth offense operating while intoxicated a
6 felony and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who commits an offense relating to operating a vehicle while intoxicated or under the influence of a controlled substance (OWI) is subject to a forfeiture or fine and, for a second or subsequent offense, a period of imprisonment. Penalties increase with each subsequent conviction.

Currently, a person who commits a fourth OWI offense is guilty of a misdemeanor and may be fined between \$600 and \$2,000 and may be imprisoned for not less than 60 days nor more than one year unless the person committed an earlier OWI offense within five years prior to his or her fourth OWI offense. In that case, the person is guilty of a Class H felony and is subject to the same penalties as a person who commits a fifth or sixth OWI offense: a minimum fine of \$600, a six-month minimum term of imprisonment, and a six-year maximum term of imprisonment.

Current law also allows, if the sentencing court is in a county that provides a treatment-based sentencing option, a person who commits a second, third, or fourth

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OWI offense to receive a reduced minimum period of imprisonment if the person completes a probation period that includes alcohol and other drug treatment.

Under this bill, a person who commits a fourth OWI offense, regardless of the time elapsed since his or her last prior offense, is guilty of a Class H felony and subject to the same penalties as a person who commits a fifth or sixth OWI offense: a minimum fine of \$600, a six-month minimum term of imprisonment, and a six-year maximum term of imprisonment. The bill eliminates, for a person who commits a fourth OWI offense, the option for a reduced period of imprisonment based on completing a period of probation that includes alcohol and other drug treatment.

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) 4. of the statutes is repealed.

2 **SECTION 2.** 346.65 (2) (am) 4m. of the statutes is repealed.

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

4 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H
5 felony and shall be fined not less than \$600 and imprisoned for not less than 6 months
6 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
7 plus the total number of suspensions, revocations and other convictions counted
8 under s. 343.307 (1), equals 4, 5 or 6, except that suspensions, revocations or
9 convictions arising out of the same incident or occurrence shall be counted as one.

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

11 346.65 (2) (bm) In any county that opts to offer a reduced minimum period of
12 imprisonment for the successful completion of a probation period that includes
13 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
14 and 940.25 in the person's lifetime, plus the total number of suspensions,

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1 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
2 period, equals 2, except that suspensions, revocations, or convictions arising out of
3 the same incident or occurrence shall be counted as one, the fine shall be the same
4 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,
5 except that if the person successfully completes a period of probation that includes
6 alcohol and other drug treatment, the period of imprisonment shall be not less than
7 5 nor more than 7 days. A person may be sentenced under this paragraph or under
8 par. (cm) ~~or (dm)~~ or sub. (2j) (bm), or (cm), ~~or (er)~~ or (3r) once in his or her lifetime.

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

10 346.65 (2) (cm) In any county that opts to offer a reduced minimum period of
11 imprisonment for the successful completion of a probation period that includes
12 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
13 and 940.25 in the person's lifetime, plus the total number of suspensions,
14 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
15 suspensions, revocations, or convictions arising out of the same incident or
16 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
17 but the period of imprisonment shall be not less than 45 days, except that if the
18 person successfully completes a period of probation that includes alcohol and other
19 drug treatment, the period of imprisonment shall be not less than 14 days. A person
20 may be sentenced under this paragraph or under par. (bm) ~~or (dm)~~ or sub. (2j) (bm),
21 or (cm), ~~or (er)~~ or (3r) once in his or her lifetime.

22 **SECTION 6.** 346.65 (2) (dm) of the statutes is repealed.

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

24 346.65 (2) (f) 2. If there was a minor passenger under 16 years of age in the
25 motor vehicle at the time of the violation that gave rise to the conviction under s.

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1 346.63 (1), the applicable minimum and maximum fines and imprisonment under
2 par. (am) 2. to 7. for the conviction are doubled. An offense under s. 346.63 (1) that
3 subjects a person to a penalty under par. (am) 3., ~~4., 4m.,~~ 5., 6., or 7. when there is
4 a minor passenger under 16 years of age in the motor vehicle is a felony and the place
5 of imprisonment shall be determined under s. 973.02.

6 **SECTION 8.** 346.65 (2c) of the statutes is amended to read:

7 346.65 (2c) In sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5., 6., and 7., the time period shall
8 be measured from the dates of the refusals or violations that resulted in the
9 revocation or convictions. If a person has a suspension, revocation, or conviction for
10 any offense under a local ordinance or a state statute of another state that would be
11 counted under s. 343.307 (1), that suspension, revocation, or conviction shall count
12 as a prior suspension, revocation, or conviction under sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5.,
13 6., and 7.

14 **SECTION 9.** 346.65 (2g) (a) of the statutes is amended to read:

15 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)
16 to provide that a defendant perform community service work for a public agency or
17 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
18 (2) (am) 2., 3., ~~4., 4m.,~~ and 5., (f), and (g) and except as provided in par. (ag), the court
19 may provide that a defendant perform community service work for a public agency
20 or a nonprofit charitable organization in lieu of part or all of a forfeiture under sub.
21 (2) (am) 1. or may require a person who is subject to sub. (2) to perform community
22 service work for a public agency or a nonprofit charitable organization in addition
23 to the penalties specified under sub. (2).

24 **SECTION 10.** 346.65 (2g) (ag) of the statutes is amended to read:

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1 346.65 **(2g)** (ag) If the court determines that a person does not have the ability
2 to pay a fine imposed under sub. (2) (am) 2., 3., ~~4., 4m.,~~ or 5., (f), or (g), the court shall
3 require the defendant to perform community service work for a public agency or a
4 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
5 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
6 fine. Each hour of community service performed in compliance with an order under
7 this paragraph shall reduce the amount of the fine owed by an amount determined
8 by the court.

9 **SECTION 11.** 346.65 (2j) (am) 3. of the statutes is amended to read:

10 346.65 **(2j)** (am) 3. Except as provided in pars. (cm), ~~(er)~~, and (d), shall be fined
11 not less than \$600 nor more than \$2,000 and imprisoned for not less than 45 days
12 nor more than one year in the county jail if the number of convictions under ss. 940.09
13 (1) and 940.25 in the person's lifetime, plus the total number of other convictions,
14 suspensions, and revocations counted under s. 343.307 (2), equals 3 or more.

15 **SECTION 12.** 346.65 (2j) (bm) of the statutes is amended to read:

16 346.65 **(2j)** (bm) In any county that opts to offer a reduced minimum period of
17 imprisonment for the successful completion of a probation period that includes
18 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
19 and 940.25 in the person's lifetime, plus the total number of suspensions,
20 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
21 period, equals 2, except that suspensions, revocations, or convictions arising out of
22 the same incident or occurrence shall be counted as one, the fine shall be the same
23 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,
24 except that if the person successfully completes a period of probation that includes
25 alcohol and other drug treatment, the period of imprisonment shall be not less than

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1 5 nor more than 7 days. A person may be sentenced under this paragraph or under
2 par. (cm) ~~or (er)~~ or sub. (2) (bm), or (cm), ~~or (dm)~~ or (3r) once in his or her lifetime.

3 **SECTION 13.** 346.65 (2j) (cm) of the statutes is amended to read:

4 346.65 (2j) (cm) In any county that opts to offer a reduced minimum period of
5 imprisonment for the successful completion of a probation period that includes
6 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
7 and 940.25 in the person's lifetime, plus the total number of suspensions,
8 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
9 suspensions, revocations, or convictions arising out of the same incident or
10 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
11 but the period of imprisonment shall be not less than 45 days, except that if the
12 person successfully completes a period of probation that includes alcohol and other
13 drug treatment, the period of imprisonment shall be not less than 14 days. A person
14 may be sentenced under this paragraph or under par. (bm) ~~or (er)~~ or sub. (2) (bm), or
15 (cm), ~~or (dm)~~ or (3r) once in his or her lifetime.

16 **SECTION 14.** 346.65 (2j) (cr) of the statutes is repealed.

17 **SECTION 15.** 346.65 (7) of the statutes is amended to read:

18 346.65 (7) A person convicted under sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5., 6., or 7. or
19 (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than a
20 48-consecutive-hour period.

21 **SECTION 16.** 973.09 (2) (am) of the statutes is repealed.

22 **SECTION 17. Initial applicability.**

23 (1) This act first applies to violations committed or refusals occurring on the
24 effective date of this subsection, but does not preclude the counting of other
25 convictions, suspensions, or revocations as prior convictions, suspensions, or

