



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5499/1
ZDW:ahe

2017 SENATE BILL 866

March 7, 2018 - Introduced by Senators VINEHOUT and L. TAYLOR, cosponsored by Representatives BARCA, SPREITZER, BERCEAU, SUBECK and SARGENT. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to amend* 346.65 (2) (am) 2., 346.65 (2) (am) 3., 346.65 (2) (bm), 346.65
2 (2) (cm), 346.65 (2) (dm), 346.65 (2j) (am) 2., 346.65 (2j) (am) 3., 346.65 (2j) (bm),
3 346.65 (2j) (cm), 346.65 (2j) (cr) and 346.65 (3r); and *to create* 346.65 (2) (br),
4 346.65 (2) (cr), 346.65 (2j) (br), 346.65 (2j) (cp) and 346.65 (2x) of the statutes;
5 **relating to:** alternative sentencing for certain drunken driving offenses and
6 providing penalties.

Analysis by the Legislative Reference Bureau

This bill provides sentencing alternatives for persons who commit certain second or third offenses related to operating a motor vehicle while intoxicated (OWI).

Under current law, with certain exceptions, a person who commits an OWI-related offense is subject to a fine and a term of imprisonment. For a second OWI-related offense, the term of imprisonment is not less than five days nor more than six months, and for a third offense the term of imprisonment is not less than 45 days nor more than one year. If the person commits an OWI-related offense while operating a commercial vehicle, for a second offense the term of imprisonment is not less than five days nor more than six months, and for a third or subsequent offense, the term of imprisonment is not less than 45 days nor more than one year.

Under the bill, if a court places on probation a person who commits his or her second or third OWI-related offense and requires the person to take a therapeutically indicated dose of the drug naltrexone or follow a nonpharmacological

SENATE BILL 866

treatment plan, the person is subject to the same fine he or she would be subject to under current law, but his or her period of imprisonment is reduced if he or she successfully completes probation. For a person who commits a second OWI-related offense or a second offense related to operating a commercial vehicle with a prohibited alcohol concentration, the period of imprisonment is five to seven days. For a person who commits a third OWI-related offense or a third offense related to operating a commercial vehicle with a prohibited alcohol concentration, the period of imprisonment is not less than 14 days.

Under the bill, a person may not be sentenced under this sentencing alternative or under another sentencing alternative for OWI-related offenses more than once in his or her lifetime.

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) 2. of the statutes is amended to read:

2 346.65 (2) (am) 2. Except as provided in pars. (bm), (br), and (f), shall be fined
3 not less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor
4 more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in
5 the person's lifetime, plus the total number of suspensions, revocations, and other
6 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
7 that suspensions, revocations, or convictions arising out of the same incident or
8 occurrence shall be counted as one.

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

10 346.65 (2) (am) 3. Except as provided in pars. (cm), (cr), (f), and (g), shall be
11 fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 45
12 days nor more than one year in the county jail if the number of convictions under ss.
13 940.09 (1) 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

SENATE BILL 866

1 suspensions, revocations, or convictions arising out of the same incident or
2 occurrence shall be counted as one.

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

4 346.65 (2) (bm) 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) within a 10-year
9 period, equals 2, except that suspensions, revocations, or convictions arising out of
10 the same incident or occurrence shall be counted as one, the fine shall be the same
11 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,
12 except that if the person successfully completes a period of probation that includes
13 alcohol and other drug treatment, the period of imprisonment shall be not less than
14 5 nor more than 7 days. ~~A person may be sentenced under this paragraph or under~~
15 ~~par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.~~

16 **SECTION 4.** 346.65 (2) (br) of the statutes is created to read:

17 346.65 (2) (br) If the number of convictions under ss. 940.09 (1) and 940.25 in
18 the person's lifetime, plus the total number of suspensions, revocations, and other
19 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
20 that suspensions, revocations, or convictions arising out of the same incident or
21 occurrence shall be counted as one, the fine shall be the same as under par. (am) 2.,
22 but the period of imprisonment shall be not less than 5 days, except that the period
23 of imprisonment shall be not less than 5 nor more than 7 days if the court places the
24 person on probation under s. 973.09 and the conditions of probation require the
25 person to do at least one of the following:

SENATE BILL 866**SECTION 4**

1 1. Follow a pharmacological treatment plan that includes, unless
2 contraindicated, taking naltrexone, its drug product equivalent, or another
3 pharmacological agent that is approved by the federal food and drug administration
4 for the treatment of alcohol dependence, and that is administered in a
5 therapeutically appropriate manner and in a therapeutically appropriate dosage for
6 the duration of the period of probation.

7 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
8 other drug abuse or dependence.

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 ~~(em), or (cr) or (3r) once in his or her lifetime.~~

22 **SECTION 6.** 346.65 (2) (cr) of the statutes is created to read:

23 346.65 (2) (cr) If the number of convictions under ss. 940.09 (1) and 940.25 in
24 the person's lifetime, plus the total number of suspensions, revocations, and other
25 convictions counted under s. 343.307 (1) equals 3, except that suspensions,

SENATE BILL 866

1 revocations, or convictions arising out of the same incident or occurrence shall be
2 counted as one, the fine shall be the same as under par. (am) 3., but the period of
3 imprisonment shall be not less than 45 days, except that the period of imprisonment
4 shall be not less than 14 days if the court places the person on probation under s.
5 973.09 and the conditions of probation require the person to do at least one of the
6 following:

7 1. Follow a pharmacological treatment plan that includes, unless
8 contraindicated, taking naltrexone, its drug product equivalent, or another
9 pharmacological agent that is approved by the federal food and drug administration
10 for the treatment of alcohol dependence, and that is administered in a
11 therapeutically appropriate manner and in a therapeutically appropriate dosage for
12 the duration of the period of probation.

13 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
14 other drug abuse or dependence.

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

16 346.65 (2) (dm) 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) equals 4, except that
21 suspensions, revocations, or convictions arising out of the same incident or
22 occurrence shall be counted as one, the fine shall be the same as under par. (am) 4.,
23 but the period of imprisonment shall be not less than 60 days, except that if the
24 person successfully completes a period of probation that includes alcohol and other
25 drug treatment, the period of imprisonment shall be not less than 29 days. ~~A person~~

SENATE BILL 866**SECTION 7**

1 ~~may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2j) (bm),~~
2 ~~(em), or (cr) or (3r) once in his or her lifetime.~~

3 **SECTION 8.** 346.65 (2j) (am) 2. of the statutes is amended to read:

4 346.65 **(2j)** (am) 2. Except as provided in pars. (bm), (br), and (d), shall be fined
5 not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor
6 more than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25
7 in the person's lifetime, plus the total number of other convictions, ~~suspension~~
8 suspensions, and revocations counted under s. 343.307 (2) within a 10-year period,
9 equals 2.

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

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

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

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

SENATE BILL 866

1 except that if the person successfully completes a period of probation that includes
2 alcohol and other drug treatment, the period of imprisonment shall be not less than
3 5 nor more than 7 days. ~~A person may be sentenced under this paragraph or under~~
4 ~~par. (em) or (er) or sub. (2) (bm), (em), or (dm) or (3r) once in his or her lifetime.~~

5 **SECTION 11.** 346.65 (2j) (br) of the statutes is created to read:

6 346.65 (2j) (br) If the number of convictions under ss. 940.09 (1) and 940.25 in
7 the person's lifetime, plus the total number of suspensions, revocations, and other
8 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
9 that 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) 2.,
11 but the period of imprisonment shall be not less than 5 days, except that the period
12 of imprisonment shall be not less than 5 nor more than 7 days if the court places the
13 person on probation under s. 973.09 and the conditions of probation require the
14 person to do at least one of the following:

15 1. Follow a pharmacological treatment plan that includes, unless
16 contraindicated, taking naltrexone, its drug product equivalent, or another
17 pharmacological agent that is approved by the federal food and drug administration
18 for the treatment of alcohol dependence, and that is administered in a
19 therapeutically appropriate manner and in a therapeutically appropriate dosage for
20 the duration of the period of probation.

21 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
22 other drug abuse or dependence.

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

24 346.65 (2j) (cm) In any county that opts to offer a reduced minimum period of
25 imprisonment for the successful completion of a probation period that includes

SENATE BILL 866**SECTION 12**

1 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
2 and 940.25 in the person's lifetime, plus the total number of suspensions,
3 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
4 suspensions, revocations, or convictions arising out of the same incident or
5 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
6 but the period of imprisonment shall be not less than 45 days, except that if the
7 person successfully completes a period of probation that includes alcohol and other
8 drug treatment, the period of imprisonment shall be not less than 14 days. ~~A person
9 may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm),
10 (em), or (dm) or (3r) once in his or her lifetime.~~

11 **SECTION 13.** 346.65 (2j) (cp) of the statutes is created to read:

12 346.65 (2j) (cp) If the number of convictions under ss. 940.09 (1) and 940.25 in
13 the person's lifetime, plus the total number of suspensions, revocations, and other
14 convictions counted under s. 343.307 (1) equals 3, except that suspensions,
15 revocations, or convictions arising out of the same incident or occurrence shall be
16 counted as one, the fine shall be the same as under par. (am) 3., but the period of
17 imprisonment shall be not less than 45 days, except that the period of imprisonment
18 shall be not less than 14 days if the court places the person on probation under s.
19 973.09 and the conditions of probation require the person to do at least one of the
20 following:

21 1. Follow a pharmacological treatment plan that includes, unless
22 contraindicated, taking naltrexone, its drug product equivalent, or another
23 pharmacological agent that is approved by the federal food and drug administration
24 for the treatment of alcohol dependence, and that is administered in a

SENATE BILL 866

1 therapeutically appropriate manner and in a therapeutically appropriate dosage for
2 the duration of the period of probation.

3 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
4 other drug abuse or dependence.

5 **SECTION 14.** 346.65 (2j) (cr) of the statutes is amended to read:

6 346.65 (2j) (cr) In any county that opts to offer a reduced minimum period of
7 imprisonment for the successful completion of a probation period that includes
8 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
9 and 940.25 in the person's lifetime, plus the total number of suspensions,
10 revocations, and other convictions counted under s. 343.307 (1) equals 4, except that
11 suspensions, revocations, or convictions arising out of the same incident or
12 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
13 but the period of imprisonment shall be not less than 60 days, except that if the
14 person successfully completes a period of probation that includes alcohol and other
15 drug treatment, the period of imprisonment shall be not less than 29 days. ~~A person
16 may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2) (bm),
17 (cm), or (dm) or (3r) once in his or her lifetime.~~

18 **SECTION 15.** 346.65 (2x) of the statutes is created to read:

19 346.65 (2x) A person may be sentenced under sub. (2) (bm), (br), (cm), (cr), or
20 (dm), (2j) (bm), (br), (cm), (cp), or (cr), or (3r) once in his or her lifetime.

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

22 346.65 (3r) Subject to sub. (3t), in any county that opts to offer a reduced
23 minimum period of imprisonment for the successful completion of a probation period
24 that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or
25 (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall

SENATE BILL 866**SECTION 16**

1 be not less than 30 days, except that if the person successfully completes a period of
2 probation that includes alcohol and other drug treatment, the period of
3 imprisonment shall be not less than 15 days. If there was a minor passenger under
4 16 years of age in the motor vehicle at the time of the violation that gave rise to the
5 conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum
6 and maximum fines or periods of imprisonment for the conviction are doubled and
7 the place of imprisonment shall be determined under s. 973.02. ~~A person may be~~
8 ~~sentenced under this subsection or under sub. (2) (bm) or (em) or (2j) (bm) or (em) once~~
9 ~~in his or her lifetime.~~ This subsection does not apply to a person sentenced under sub.
10 (3p).

SECTION 17. Initial applicability.

11
12 (1) This act first applies to violations that are committed or refusals that occur
13 on the effective date of this subsection, but does not preclude the counting of other
14 convictions, suspensions, or revocations as prior convictions, suspensions, or
15 revocations for purposes of administrative action by the department of
16 transportation, sentencing by a court, or revocation or suspension of motor vehicle
17 operating privileges.

SECTION 18. Effective date.

18
19 (1) This act takes effect on July 1, 2018.

20 (END)