

1989 Assembly Bill 242

Date of enactment: April 20, 1990

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# 1989 WISCONSIN ACT 271

AN ACT to amend 343.307, 346.65 (2) (a), 346.65 (2) (b), 346.65 (2) (c) and 346.65 (2g); and to create 346.65 (2) (d), 346.65 (2) (e) and 346.65 (2c) of the statutes, relating to: operating a motor vehicle while under the influence of an intoxicant, drugs or both and providing penalties.

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

**SECTION 1.** 343.307 of the statutes is amended to read:

**343.307 Prior convictions to be counted.** For purposes of counting the number of refusals, revocations and convictions under s. 343.30 (1q), 343.305 (9) (d) or (10) or 346.65 (2) on and after July 1, 1978, convictions for violations under s. 346.63 (1), or a local ordinance in conformity therewith or a local ordinance in or a state statute of another state in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, refusals under s. 343.305 (9) (d) and revocations under s. 343.305 (10) prior to and after the treatment of any of those sections by chapter 193, laws of 1977, shall be counted and given the effect specified under s. 343.30 (1q), 343.305 (9) (d) or (10) or 346.65 (2) on and after July 1, 1978. If the same elements of the offense must be proved under a local ordinance or state statute of another state as under s. 346.63 (1) (a) or (b) or both, the local ordinance or state statute of the other state shall be considered to be in conformity with s. 346.63 (1) (a) or (b) or both for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b) 1. and 346.65 (2) (b) and (e) to (e).

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

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

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

346.65 (2) (b) Shall be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 2 in a 5-year period, except revocations or convictions arising out of the same incident or occurrence shall be counted as one. ~~The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocation or convictions. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this paragraph.~~

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

346.65 (2) (c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 3 ~~or more~~ in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one. ~~The 5-year period shall be measured from the dates of the~~

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refusals or violations which resulted in the revocation or convictions. If a person has a conviction for any offense under a local ordinance in or a state statute of another state which is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under this paragraph.

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

346.65 (2) (d) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 4 in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one.

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

346.65 (2) (e) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than one year in the county jail if the total of revocations under s. 343.305 (10) (b) and convictions under s. 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, equals 5 or more in a 5-year period, except that revocations or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 7.** 346.65 (2c) of the statutes is created to read:

346.65 (2c) In sub. (2) (b) to (e), the 5-year period shall be measured from the dates of the refusals or violations that resulted in the revocation or convictions. If a person has a conviction for any offense under a local ordi-

nance in or a state statute of another state that is in conformity with s. 346.63 (1) (a) or (b) or both, that conviction shall count as a prior conviction under sub. (2) (b) to (e).

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

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

**SECTION 9. Initial applicability.** This act first applies to offenses occurring on the effective date of this SECTION, but does not preclude the counting of other violations as prior violations for sentencing a person under section 346.65 (2) of the statutes, as affected by this act.