



1997 ASSEMBLY BILL 653

December 11, 1997 - Introduced by Representatives HUBER, GOETSCH, MURAT, DOBYNS, ZIEGELBAUER, WALKER, BAUMGART, SCHAFFER, REYNOLDS, AINSWORTH, STASKUNAS, GROTHMAN, WASSERMAN and GUNDERSON, cosponsored by Senators BURKE, HUELSMAN, DECKER, ROSENZWEIG, WIRCH, DARLING and PLACHE. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to repeal** 346.65 (2) (e); and **to amend** 346.65 (2) (d), 346.65 (2) (f), 346.65
2 (2c), 346.65 (2e), 346.65 (7) and 973.09 (1) (d) of the statutes; **relating to:**
3 sentencing of a person convicted of driving while under the influence of an
4 intoxicant or other drug, the counting of the period of imprisonment when
5 determining a penalty for driving while under the influence of an intoxicant or
6 other drug and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the penalty imposed for driving while under the influence of an intoxicant or other drug (OWI) depends on the number of previous OWI offenses within either a 5-year or 10-year period. Currently, if a person is convicted of an OWI offense and he or she has 3 previous OWI offenses within a 10-year period, that person may be fined from \$600 to \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail. Currently, if a person is convicted of an OWI offense and he or she has 4 or more previous OWI offenses within a 10-year period, that person may be fined from \$600 to \$2,000 and imprisoned for not less than 6 months nor more than one year in the county jail. This bill provides that, if a person is convicted of an OWI offense and he or she has 3 or more previous OWI offenses within a 10-year period, that person may be fined not more than \$10,000 and imprisoned for not more than 10 years, which is the same maximum penalties as a Class C felony.

Current law also prohibits a court from placing a person convicted of OWI on probation; instead, a court must sentence the person to pay the minimum fine and serve the minimum sentence of imprisonment prescribed for the offense. This bill allows a court to place a person convicted of OWI on probation if the court requires that the person serve the minimum sentence of imprisonment prescribed for the

offense as a condition of probation. Thus, a person with one previous OWI offense would have to serve at least 5 days in jail as a condition of probation, a person with 2 previous OWI offenses would have to serve at least 30 days in jail as a condition of probation, and a person with 3 or more previous OWI offenses would have to serve at least 6 months in jail as a condition of probation.

Finally, under current law, any time a person was confined serving a sentence for a crime is counted when determining whether the person has any previous OWI offenses within a 5-year or 10-year period for purposes of determining the penalty the court may impose on the person for a current OWI conviction. This bill provides that the time a person was confined serving a sentence for a crime is not counted when determining whether the person has any previous OWI offenses within a 5-year or 10-year period.

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) (d) of the statutes is amended to read:

2 346.65 (2) (d) Except as provided in par. (f), shall be fined not less than \$600
3 nor more than ~~\$2,000~~ \$10,000 and imprisoned for not less than ~~60 days~~ 6 months nor
4 more than ~~one year in the county jail~~ 10 years if the total number of suspensions,
5 revocations and convictions counted under s. 343.307 (1) equals 4 or more in a
6 10-year period, except that suspensions, revocations or convictions arising out of the
7 same incident or occurrence shall be counted as one.

8 **SECTION 2.** 346.65 (2) (e) of the statutes is repealed.

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

10 346.65 (2) (f) If there was a minor passenger under 16 years of age in the motor
11 vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1),
12 the applicable minimum and maximum forfeitures, fines or imprisonment under par.
13 (a), (b), (c), or (d) ~~or (e)~~ for the conviction are doubled. An offense under s. 346.63 (1)
14 that subjects a person to a penalty under par. (c), or (d) ~~or (e)~~ when there is a minor

1 passenger under 16 years of age in the motor vehicle is a felony and the place of
2 imprisonment shall be determined under s. 973.02.

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

4 346.65 (2c) In sub. (2) (b) to ~~(e)~~ (d), the 5-year or 10-year period shall be
5 measured from the dates of the refusals or violations that resulted in the revocation
6 or convictions. In computing the 5-year or 10-year period in sub. (2) (b) to (d), the
7 time that a person spent in actual confinement serving a criminal sentence shall be
8 excluded. If a person has a suspension, revocation or conviction for any offense under
9 a local ordinance or a state statute of another state that would be counted under s.
10 343.307 (1), that suspension, revocation or conviction shall count as a prior
11 suspension, revocation or conviction under sub. (2) (b) to ~~(e)~~ (d).

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

13 346.65 (2e) If the court determines that a person does not have the ability to
14 pay the costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d),~~(e)~~ or (f),
15 the court may reduce the costs, fine and forfeiture imposed and order the person to
16 pay, toward the cost of the assessment and driver safety plan imposed under s. 343.30
17 (1q) (c), the difference between the amount of the reduced costs and fine or forfeiture
18 and the amount of costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d),
19 ~~(e)~~ or (f).

20 **SECTION 6.** 346.65 (7) of the statutes is amended to read:

21 346.65 (7) A person convicted under sub. (2) (b), (c), or (d) ~~or~~ ~~(e)~~ or (2j) (b) or (c)
22 shall be required to remain in the county jail for not less than a 48-consecutive-hour
23 period.

24 **SECTION 7.** 973.09 (1) (d) of the statutes is amended to read:

