



## 2007 ASSEMBLY BILL 490

August 23, 2007 - Introduced by Representatives BIES, ALBERS, HAHN, LEMAHIEU, MONTGOMERY and OWENS, cosponsored by Senators A. LASEE and LEIBHAM. Referred to Committee on Judiciary and Ethics.

1     **AN ACT to amend** 346.65 (2) (am) 2., 346.65 (2) (am) 3., 346.65 (2) (am) 4., 346.65  
2           (2) (am) 5., 346.65 (2g) (d), 346.65 (2j) (am) 2., 346.65 (2j) (am) 3., 346.65 (2j) (cm)  
3           and 346.65 (2j) (d); and **to create** 346.65 (2j) (am) 4. and 346.65 (2j) (cr) of the  
4           statutes; **relating to:** terms of imprisonment for certain drunken driving  
5           offenses and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a person who is convicted of, or who has his or her driver's license suspended or revoked for, an offense related to operating a motor vehicle while intoxicated or using drugs (drunken driving offense) is subject to a fine and a term of imprisonment. A person with two drunken driving offenses may be imprisoned for not less than five days nor more than six months. A person with three drunken driving offenses may be imprisoned for not less than 30 days nor more than one year. A person with four drunken driving offenses may be imprisoned for not less than 60 days nor more than one year, and a person with five or more drunken driving offenses may be imprisoned for not less than six months.

Further, current law provides that a person who is convicted of, or who has his or her driver's license suspended or revoked for a drunken driving offense while operating a commercial motor vehicle is subject to a fine and a term of imprisonment. For a second offense, the person is subject to not less than five days nor more than six months' imprisonment. For a third or subsequent offense, the person may be imprisoned for not less than 30 days nor more than one year.

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This bill increases the terms of imprisonment for persons convicted of a second or subsequent drunken driving offense. Under this bill, a person with two drunken driving offenses is subject to a minimum of 30 days' imprisonment. For a third offense, a person is subject to one year imprisonment. For a fourth offense, a person is subject to two years' imprisonment. For a fifth and subsequent offense, a person is subject to three years' imprisonment plus one year imprisonment for each offense exceeding five.

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.

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*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) and (f), shall be fined not  
3 less than \$350 nor more than \$1,100 and imprisoned for not less than 5 30 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), (f), and (g), shall be fined  
11 not less than \$600 nor more than \$2,000 and imprisoned for ~~not less than 30 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 suspensions,  
14 revocations, and other convictions counted under s. 343.307 (1), equals 3, except that

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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) (am) 4. of the statutes is amended to read:

4 346.65 (2) (am) 4. Except as provided in pars. (f) and (g), shall be fined not less  
5 than \$600 nor more than \$2,000 and imprisoned for not less than ~~60 days nor more~~  
6 ~~than one year in the county jail~~ 2 years if the number of convictions under ss. 940.09  
7 (1) 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 4, except that  
9 suspensions, revocations, or convictions arising out of the same incident or  
10 occurrence shall be counted as one.

11 **SECTION 4.** 346.65 (2) (am) 5. of the statutes is amended to read:

12 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H  
13 felony and shall be fined not less than \$600 ~~and imprisoned for not less than 6 months~~  
14 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
15 plus the total number of suspensions, revocations, and other convictions counted  
16 under s. 343.307 (1), equals 5 or more, except that suspensions, revocations, or  
17 convictions arising out of the same incident or occurrence shall be counted as one.  
18 In addition, the person shall be imprisoned for not less than 3 years plus one year  
19 for each suspension, revocation, or other conviction counted under s. 343.307 (1) that  
20 exceeds 5.

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

22 346.65 (2g) (d) With respect to imprisonment under sub. (2) (am) 2., the court  
23 shall ensure that the person is imprisoned for not less than ~~5~~ 30 days or ordered to  
24 perform not less than 30 days of community service work under s. 973.03 (3) (a).

25 **SECTION 6.** 346.65 (2j) (am) 2. of the statutes is amended to read:

**ASSEMBLY BILL 490****SECTION 6**

1           346.65 (2j) (am) 2. Except as provided in pars. (bm) and (d), shall be fined not  
2 less than \$300 nor more than \$1,000 and imprisoned for not less than ~~5~~ 30 days nor  
3 more than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25  
4 in the person's lifetime, plus the total number of other convictions, suspension, and  
5 revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

6           **SECTION 7.** 346.65 (2j) (am) 3. of the statutes is amended to read:

7           346.65 (2j) (am) 3. Except as provided in pars. (cm) and (d), shall be fined not  
8 less than \$600 nor more than \$2,000 and imprisoned for not less than ~~30 days nor~~  
9 ~~more than~~ one year in the county jail if the number of convictions under ss. 940.09  
10 (1) and 940.25 in the person's lifetime, plus the total number of other convictions,  
11 suspensions, and revocations, counted under s. 343.307 (2), equals 3 ~~or more~~.

12           **SECTION 8.** 346.65 (2j) (am) 4. of the statutes is created to read:

13           346.65 (2j) (am) 4. Except as provided in pars. (cr) and (d), shall be fined not  
14 less than \$600 if the number of convictions under ss. 940.09 (1) and 940.25 in the  
15 person's lifetime, plus the total number of other convictions, suspensions, and  
16 revocations, counted under s. 343.307 (2), equals 4 or more. In addition, the person  
17 shall be imprisoned for not less than 2 years plus one year for each suspension,  
18 revocation, or other conviction counted under s. 343.307 (1) that exceeds 4.

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

20           346.65 (2j) (cm) In Winnebago County, if the number of convictions under ss.  
21 940.09 (1) 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 3 ~~or more~~, except that suspensions, revocations, or convictions arising  
24 out of the same incident or occurrence shall be counted as one, the fine shall be the  
25 same as under par. (e) ~~(am) 3.~~, but the period of imprisonment shall be not less than

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1     ~~30 days~~ one year, 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 10 days. A person may be sentenced under this  
4     paragraph or under par. (bm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

5             **SECTION 10.** 346.65 (2j) (cr) of the statutes is created to read:

6             346.65 **(2j)** (cr) In Winnebago County, if the number of convictions under ss.  
7     940.09 (1) 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 4 or more, except that suspensions, revocations, or convictions arising  
10    out of the same incident or occurrence shall be counted as one, the fine shall be the  
11    same as under par. (am) 4., but the period of imprisonment shall be not less than 2  
12    years, except that, if the person successfully completes a period of probation that  
13    includes alcohol and other drug treatment, the period of imprisonment shall be not  
14    less than 10 days. A person may be sentenced under this paragraph or under par.  
15    (bm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

16            **SECTION 11.** 346.65 (2j) (d) of the statutes is amended to read:

17            346.65 **(2j)** (d) If there was a minor passenger under 16 years of age in the  
18    commercial motor vehicle at the time of the violation that gave rise to the conviction  
19    under s. 346.63 (5), the applicable minimum and maximum forfeitures, fines, or  
20    imprisonment under par. (am) 1., 2., ~~or 3.~~ or 4. for the conviction are doubled. An  
21    offense under s. 346.63 (5) that subjects a person to a penalty under par. (am) 3. when  
22    there is a minor passenger under 16 years of age in the commercial motor vehicle is  
23    a felony and the place of imprisonment shall be determined under s. 973.02.

24

(END)