



## 2011 ASSEMBLY BILL 670

March 6, 2012 - Introduced by Representatives KRUSICK, J. OTT, BIES, BERCEAU, KOOYENGA and A. OTT, by request of Paul and Judy Jenkins of Mequon (in memory of Jennifer Bukosky, Courtney Bella and Sophia Bukosky). Referred to Committee on Criminal Justice and Corrections.

1     **AN ACT** *to repeal* 346.65 (2) (f) 1. and 346.65 (2g) (d); *to renumber and amend*  
2             340.01 (46m) (c) and 346.65 (2) (f) 2.; *to amend* 302.372 (2) (a) (intro.), 340.01  
3             (46m) (a), 345.20 (2) (c), 345.24 (1), 346.65 (2) (am) 1., 346.65 (2c), 346.65 (2e),  
4             346.65 (2g) (a), 346.65 (2g) (ag), 346.65 (2g) (am), 346.65 (2i), 349.02 (2) (a),  
5             753.19, 969.01 (2) (a), 972.11 (3m) and 973.15 (8) (a) 3.; and *to create* 16.185,  
6             20.435 (5) (q), 20.475 (1) (q), 20.505 (6) (q), 20.550 (1) (q), 20.625 (1) (q), 25.975,  
7             46.03 (45), 139.27, 165.85 (4r), 340.01 (46m) (c) 1., 340.01 (46m) (c) 2., 340.01  
8             (46m) (c) 3., 345.24 (1m), 345.24 (3), 346.65 (2) (h), 977.02 (2g) and 978.05 (1p)  
9             of the statutes; **relating to:** offenses related to operating a vehicle while  
10            intoxicated, releasing persons arrested for offenses related to operating a  
11            vehicle while intoxicated, granting rule-making authority, and providing a  
12            penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill makes a number of changes relating to operating a vehicle while under the influence of an intoxicant (OWI-related offense), including the following:

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1. Under current law, a first OWI-related offense is a civil violation, unless there was a minor passenger under the age of 16 in the vehicle at the time of the offense. A person who commits a civil OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Under this bill, a person who commits a first OWI-related offense on or after July 1, 2013, is guilty of a Class C misdemeanor and may be fined not more than \$500, imprisoned for not more than 30 days, or both.

Under the bill, if a person is subject to a minimum period of imprisonment for any OWI-related offense, the person is not eligible for home detention, good time, release from jail for employment, transfer to a county work camp, release to perform community service except under special circumstances, probation, or diminution of the sentence until he or she serves at least the minimum period of time in jail or prison.

2. Under current law, with few exceptions, a law enforcement officer may not stop a motor vehicle without reasonable cause to believe that the operator of the motor vehicle has violated a law or ordinance.

This bill requires the Law Enforcement Standards Board (LESB) to establish rules for a sobriety checkpoint program and requires local law enforcement agencies to comply with the rules whenever they conduct a sobriety checkpoint. When a law enforcement agency conducts a sobriety checkpoint, drivers are briefly stopped without individualized suspicion that they may be intoxicated, and drivers who demonstrate some level of impairment or other signs of drug or alcohol use are detained for additional testing and possible arrest.

The bill requires the LESB rules to ensure that drivers are stopped in a neutral, nondiscretionary manner and that the initial stops are conducted in a way that minimizes the disruption of traffic flow and minimizes the amount of time the driver is stopped. The rules must also ensure that the sobriety checkpoint has fixed beginning and ending times, and is publicized before it is conducted. The rules must ensure that, at the sobriety checkpoint, approaching drivers are given adequate warning that a sobriety checkpoint is underway, and that officers clearly identify themselves and explain the purpose of the sobriety checkpoint to each driver they stop. Finally, the rules must establish criteria for determining which drivers may be detained beyond the initial stop to undergo testing for intoxication.

3. Under current law, counties may seek reimbursement from persons who are sentenced to a county jail or placed on probation and confined in jail, for the costs the counties incur in relation to the crime for which the persons are sentenced to jail or placed on probation. The counties may also seek reimbursement from other sources, but they cannot collect for the same costs twice.

The bill requires counties to seek reimbursement from persons sentenced to a county jail or placed on probation and confined in jail.

4. Currently, revenues generated from the wine and liquor tax are deposited into the general fund.

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Under this bill, beginning on July 1, 2013, \$10,000,000 from revenues generated by the wine and liquor tax are deposited into the intoxicated and drugged drivers fund. The bill requires the Department of Administration, the Public Defender Board, the Department of Health Services, and the director of state courts to prepare budget requests that would allocate funds from the intoxicated and drugged drivers fund to pay costs incurred by district attorneys, public defenders, circuit courts, and counties in relation to prosecuting first OWI-related offenses and providing treatment programs for offenders.

5. Under current law, no person may operate a motor vehicle with a prohibited alcohol concentration. For most operators, the prohibited alcohol concentration is 0.08 or more. However, if a person is subject to a court order that requires his or her vehicle to be equipped with an ignition interlock device or if he or she has committed three or more OWI-related violations, the prohibited alcohol concentration for that person is more than 0.02.

This bill adds a definition of a prohibited alcohol concentration as an alcohol concentration of more than 0.02 for the two-year period after a person has committed a first or second OWI-related offense.

6. Under current law, a trial court may, at its discretion, release a person who has been convicted of a crime from imprisonment until the time of sentencing, unless the person was convicted of a 3rd or subsequent OWI-related offense. Current law also allows a sentencing court to delay the execution of a sentence of imprisonment for up to 60 days, unless the person was convicted of a third or subsequent OWI-related offense or the court finds that there is legal cause to delay the execution of the sentence for a longer period or unless the court places the person on probation.

Under this bill, if a person has been convicted of any OWI-related offense, and the conviction carries a minimum period of imprisonment, a court may not release the person after conviction but before sentencing until after the person has served at least the minimum period of imprisonment. Under the bill, a court may not delay the execution of a sentence of imprisonment for an OWI-related offense unless the court finds that there is legal cause to delay the execution of the sentence or unless the court places the person on probation.

7. Under current law, a person arrested for certain OWI-related offenses may not be released from police custody until 12 hours have elapsed from the time of his or her arrest or unless a chemical test shows that the person has an alcohol concentration of less than 0.04 except that the person may be released to his or her attorney, spouse, relative, or other responsible adult (responsible party) at any time after arrest.

Under this bill, a person may be released to a responsible party if the responsible party signs a form acknowledging that he or she accepts legal responsibility for the actions of the arrested person for 12 hours after the time the person was arrested and that, if the arrested person is arrested for another OWI-related offense within that period, the responsible party may be guilty of a Class C misdemeanor. In addition, the bill requires a law enforcement officer to seize or immobilize the vehicle used in the incident that gave rise to the arrest for 12 hours, except that, if the vehicle is the only vehicle owned or leased by any member of the

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arrested person's household, the officer may release the vehicle to a member of the household.

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.** 16.185 of the statutes is created to read:

2           **16.185 Assistance to counties; operating while intoxicated.** From the  
3 appropriation under s. 20.505 (6) (q), the department may make payments to  
4 counties for costs incurred relating to persons charged with offenses that are  
5 punishable under s. 346.65 (2) (am) 1.

6           **SECTION 2.** 20.435 (5) (q) of the statutes is created to read:

7           **20.435 (5) (q) Intoxicated and drugged driving assistance programs.** From the  
8 intoxicated and drugged drivers fund, the amounts in the schedule for intoxicated  
9 and drugged driving programs administered under s. 46.03 (45).

10          **SECTION 3.** 20.475 (1) (q) of the statutes is created to read:

11          **20.475 (1) (q) Prosecutions related to operating while intoxicated.** From the  
12 intoxicated and drugged drivers fund, the amounts in the schedule for prosecutions  
13 under s. 978.05 (1p).

14          **SECTION 4.** 20.505 (6) (q) of the statutes is created to read:

15          **20.505 (6) (q) Assistance to counties related to operating while intoxicated.**  
16 From the intoxicated and drugged drivers fund, the amounts in the schedule to  
17 reimburse counties under s. 16.185.

18          **SECTION 5.** 20.550 (1) (q) of the statutes is created to read:

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1           20.550 (1) (q) *Representation related to operating while intoxicated.* From the  
2 intoxicated and drugged drivers fund, the amounts in the schedule for  
3 representation under s. 977.02 (2g).

4           **SECTION 6.** 20.625 (1) (q) of the statutes is created to read:

5           20.625 (1) (q) *Operation costs related to operating while intoxicated.* From the  
6 intoxicated and drugged drivers fund, the amounts in the schedule for circuit court  
7 costs under s. 753.19.

8           **SECTION 7.** 25.975 of the statutes is created to read:

9           **25.975 Intoxicated and drugged drivers fund.** There is established a  
10 separate nonlapsible trust fund designated as the intoxicated and drugged drivers  
11 fund, to consist of all moneys received under s. 139.27.

12          **SECTION 8.** 46.03 (45) of the statutes is created to read:

13          46.03 (45) INTOXICATED AND DRUGGED DRIVING. From the appropriation under  
14 s. 20.435 (5) (q), provide services to persons charged with offenses that are  
15 punishable under s. 346.65 (2) (am) 1.

16          **SECTION 9.** 139.27 of the statutes is created to read:

17          **139.27 Revenue distribution.** The first \$10,000,000 collected in each fiscal  
18 year from the taxes imposed under s. 139.03 shall be deposited into the fund created  
19 under s. 25.975.

20          **SECTION 10.** 165.85 (4r) of the statutes is created to read:

21          165.85 (4r) SOBRIETY CHECKPOINTS. (a) The board shall promulgate rules for  
22 administering a sobriety checkpoint program that are consistent with par. (b). No  
23 local authority may conduct a sobriety checkpoint program that does not comply with  
24 the rules established under this subsection.

25          (b) A sobriety checkpoint program shall do all of the following:

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1           1. Establish a nondiscretionary system for determining which motor vehicles  
2 are stopped at the checkpoint.

3           2. Minimize the length of time a motor vehicle is stopped.

4           3. Give public notice that a sobriety checkpoint program will be in effect no  
5 more than 5 days before the law enforcement agency conducts the sobriety  
6 checkpoint.

7           4. Give adequate warning to motor vehicle operators approaching the sobriety  
8 checkpoint that a sobriety checkpoint is being conducted.

9           5. Minimize the disruption of regular traffic flow while the sobriety checkpoint  
10 is being conducted.

11           6. Establish criteria for a motor vehicle operator to be detained beyond the  
12 initial stop at the sobriety checkpoint for a test under s. 343.305.

13           7. Establish a fixed period of time for each sobriety checkpoint to be conducted.

14           8. Require law enforcement officers to do all of the following at a sobriety  
15 checkpoint:

16           a. Wear an official uniform that clearly identifies him or her as a law  
17 enforcement officer.

18           b. Identify himself or herself as a law enforcement officer to each motor vehicle  
19 operator that is stopped at the sobriety checkpoint.

20           c. Explain the purpose of the sobriety checkpoint to each motor vehicle operator  
21 that is stopped at the sobriety checkpoint.

22           **SECTION 11.** 302.372 (2) (a) (intro.) of the statutes is amended to read:

23           302.372 (2) (a) (intro.) Except as provided in pars. (c) and (d), a county ~~may~~ shall  
24 seek reimbursement for any expenses incurred by the county in relation to the crime

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1 for which a person was sentenced to a county jail, or for which the person was placed  
2 on probation and confined in jail, as follows:

3 **SECTION 12.** 340.01 (46m) (a) of the statutes is amended to read:

4 340.01 **(46m)** (a) If the person has ~~2 or fewer~~ no prior ~~convictions, suspensions,~~  
5 ~~or revocations~~ violation, conviction, suspension, or revocation or if par. (c) does not  
6 apply, as counted under s. 343.307 (1), an alcohol concentration of 0.08 or more.

7 **SECTION 13.** 340.01 (46m) (c) of the statutes is renumbered 340.01 (46m) (c)  
8 (intro.) and amended to read:

9 340.01 **(46m)** (c) (intro.) ~~If the person is subject to an order under s. 343.301~~  
10 ~~or if the person has 3 or more prior convictions, suspensions or revocations, as~~  
11 ~~counted under s. 343.307 (1), an~~ An alcohol concentration of more than 0.02. if any  
12 of the following applies:

13 **SECTION 14.** 340.01 (46m) (c) 1. of the statutes is created to read:

14 340.01 **(46m)** (c) 1. The person is subject to an order under s. 343.301.

15 **SECTION 15.** 340.01 (46m) (c) 2. of the statutes is created to read:

16 340.01 **(46m)** (c) 2. The person has one or 2 prior convictions, suspensions, or  
17 revocations, as counted under s. 343.307 (1), within 2 years of the current offense.

18 **SECTION 16.** 340.01 (46m) (c) 3. of the statutes is created to read:

19 340.01 **(46m)** (c) 3. The person has 3 or more prior convictions, suspensions,  
20 or revocations, as counted under s. 343.307 (1).

21 **SECTION 17.** 345.20 (2) (c) of the statutes is amended to read:

22 345.20 **(2)** (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture  
23 actions for violations of s. 346.63 ~~(1)~~ or (5) or a local ordinance in conformity  
24 therewith.

25 **SECTION 18.** 345.24 (1) of the statutes is amended to read:

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1           345.24 (1) ~~A~~ Except as provided in sub. (1m) (a), a person arrested under s.  
2           346.63 (1) or (5) or an ordinance in conformity ~~therewith~~ with s. 346.63 (5) or s. 346.63  
3           (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, may  
4           not be released until 12 hours have elapsed from the time of his or her arrest or unless  
5           a chemical test administered under s. 343.305 shows that the person has an alcohol  
6           concentration of less than 0.04, ~~but the person may be released to his or her attorney,~~  
7           ~~spouse, relative or other responsible adult at any time after arrest.~~

8           **SECTION 19.** 345.24 (1m) of the statutes is created to read:

9           345.24 (1m) (a) An officer may release the arrested person to his or her  
10          attorney, spouse, relative, or other responsible adult if the person to whom the  
11          arrested person is released accepts, in writing, legal responsibility for the actions of  
12          the arrested person for 12 hours after the time of the arrest and acknowledges the  
13          penalty set forth in sub. (3). Except as provided in par. (b), the officer shall seize or  
14          immobilize the vehicle used in the offense for 12 hours after the time of the arrest.

15          (b) An officer may release the vehicle used in the offense to a member of the  
16          arrested person's household if the member of the household is licensed to operate the  
17          vehicle and the vehicle is the only vehicle owned or leased by any member of the  
18          arrested person's household.

19          **SECTION 20.** 345.24 (3) of the statutes is created to read:

20          345.24 (3) If, subsequent to being released under sub. (1m), the arrested person  
21          is convicted of a violation of s. 346.63 (1) or (5) or an ordinance in conformity with s.  
22          346.63 (5) or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the  
23          use of a vehicle, and the violation occurred within 12 hours after the person was  
24          arrested, the attorney, spouse, relative, or other responsible adult to whom the  
25          arrested person was released is guilty of a Class C misdemeanor.



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1           **SECTION 21.** 346.65 (2) (am) 1. of the statutes is amended to read:

2           346.65 (2) (am) 1. ~~Shall forfeit not less than \$150 nor more than \$300, except~~  
3           Except as provided in subds. 2. to 5. 7. and par. (f), is guilty of a Class C misdemeanor.

4           **SECTION 22.** 346.65 (2) (f) 1. of the statutes is repealed.

5           **SECTION 23.** 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and  
6           amended to read:

7           346.65 (2) (f) If there was a minor passenger under 16 years of age in the motor  
8           vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (1),  
9           the applicable minimum and maximum fines and imprisonment under par. (am) ~~2.~~  
10          ~~to 7.~~ for the conviction are doubled. An offense under s. 346.63 (1) that subjects a  
11          person to a penalty under par. (am) 3., 4., 4m., 5., 6., or 7. when there is a minor  
12          passenger under 16 years of age in the motor vehicle is a felony and the place of  
13          imprisonment shall be determined under s. 973.02.

14          **SECTION 24.** 346.65 (2) (h) of the statutes is created to read:

15          346.65 (2) (h) Notwithstanding s. 973.03 (4) (a), a person sentenced under this  
16          subsection is not eligible for home detention under s. 302.425, good time under s.  
17          302.43, release from jail for employment under s. 303.08 (1) (b), transfer to a county  
18          work camp under s. 303.10, release to perform community service unless s. 973.07  
19          applies, probation under s. 973.09, or diminution of the sentence under s. 303.19 (3)  
20          until the person has been confined in a prison or jail for the minimum term of  
21          imprisonment for the offense.

22          **SECTION 25.** 346.65 (2c) of the statutes is amended to read:

23          346.65 (2c) In sub. (2) (am) ~~2., 3., 4., 4m., 5., 6., and 7.,~~ the time period shall  
24          be measured from the dates of the refusals or violations that resulted in the  
25          revocation or convictions. If a person has a suspension, revocation, or conviction for

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1 any offense under a local ordinance or a state statute of another state that would be  
2 counted under s. 343.307 (1), that suspension, revocation, or conviction shall count  
3 as a prior suspension, revocation, or conviction under sub. (2) (am) ~~2., 3., 4., 4m., 5.,~~  
4 ~~6., and 7.~~

5 **SECTION 26.** 346.65 (2e) of the statutes is amended to read:

6 346.65 (2e) If the court determines that a person does not have the ability to  
7 pay the costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g), the court  
8 may reduce the costs, or fine, ~~and forfeiture~~ imposed and order the person to pay,  
9 toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q)  
10 (c), the difference between the amount of the reduced costs and fine ~~or forfeiture~~ and  
11 the amount of costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g).

12 **SECTION 27.** 346.65 (2g) (a) of the statutes is amended to read:

13 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)  
14 to provide that a defendant perform community service work for a public agency or  
15 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.  
16 (2) (am) ~~2., 3., 4., 4m., and 5.~~ 1., (f), and (g) and except as provided in par. (ag), the  
17 court ~~may provide that a defendant perform community service work for a public~~  
18 ~~agency or a nonprofit charitable organization in lieu of part or all of a forfeiture under~~  
19 ~~sub. (2) (am) 1.~~ ~~or~~ may require a person who is subject to sub. (2) to perform  
20 community service work for a public agency or a nonprofit charitable organization  
21 in addition to the penalties specified under sub. (2).

22 **SECTION 28.** 346.65 (2g) (ag) of the statutes is amended to read:

23 346.65 (2g) (ag) If the court determines that a person does not have the ability  
24 to pay a fine imposed under sub. (2) (am) 1., 2., 3., 4., 4m., or 5., (f), or (g), the court  
25 shall require the defendant to perform community service work for a public agency

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1 or a nonprofit charitable organization in lieu of paying the fine imposed or, if the  
2 amount of the fine was reduced under sub. (2e), in lieu of paying the remaining  
3 amount of the fine. Each hour of community service performed in compliance with  
4 an order under this paragraph shall reduce the amount of the fine owed by an amount  
5 determined by the court.

6 **SECTION 29.** 346.65 (2g) (am) of the statutes is amended to read:

7 346.65 (2g) (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or  
8 (ag) may apply only if agreed to by the organization or agency. The court shall ensure  
9 that the defendant is provided a written statement of the terms of the community  
10 service order and that the community service order is monitored. Any organization  
11 or agency acting in good faith to which a defendant is assigned pursuant to an order  
12 under this subsection has immunity from any civil liability in excess of \$25,000 for  
13 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~  
14 ~~issuance of a community service order under this subsection does not entitle an~~  
15 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~  
16 ~~under ch. 977.~~

17 **SECTION 30.** 346.65 (2g) (d) of the statutes is repealed.

18 **SECTION 31.** 346.65 (2i) of the statutes is amended to read:

19 346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05  
20 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to  
21 s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that  
22 demonstrates the adverse effects of substance abuse or of operating a vehicle while  
23 under the influence of an intoxicant or other drug, including an alcoholism treatment  
24 facility approved under s. 51.45 or an emergency room of a general hospital in lieu  
25 of part or all of any forfeiture imposed or in addition to any penalty imposed. The

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1 court may order the defendant to pay a reasonable fee, based on the person's ability  
2 to pay, to offset the costs of establishing, maintaining, and monitoring the visits  
3 ordered under this subsection. The court may order a visit to the site only if agreed  
4 to by the person responsible for the site. If the opportunities available to visit sites  
5 under this subsection are fewer than the number of defendants eligible for a visit,  
6 the court shall, when making an order under this subsection, give preference to  
7 defendants who were under 21 years of age at the time of the offense. The court shall  
8 ensure that the visit is monitored. A visit to a site may be ordered for a specific time  
9 and a specific day to allow the defendant to observe victims of vehicle accidents  
10 involving intoxicated drivers. If it appears to the court that the defendant has not  
11 complied with the court order to visit a site or to pay a reasonable fee, the court may  
12 order the defendant to show cause why he or she should not be held in contempt of  
13 court. Any organization or agency acting in good faith to which a defendant is  
14 assigned pursuant to an order under this subsection has immunity from any civil  
15 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.  
16 ~~The issuance or possibility of the issuance of an order under this subsection does not~~  
17 ~~entitle an indigent defendant who is subject to sub. (2) (am) 1. to representation by~~  
18 ~~counsel under ch. 977.~~

19 **SECTION 32.** 349.02 (2) (a) of the statutes is amended to read:

20 349.02 (2) (a) Notwithstanding sub. (1), a police officer, sheriff, deputy sheriff,  
21 traffic officer or motor vehicle inspector may not stop or inspect a vehicle solely to  
22 determine compliance with a statute or ordinance specified under par. (b) unless the  
23 police officer, sheriff, deputy sheriff, traffic officer, or motor vehicle inspector has  
24 reasonable cause to believe that a violation of a statute or ordinance specified under  
25 par. (b) has been committed. This paragraph does not limit the authority of a police

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1 officer, sheriff, deputy sheriff, traffic officer, or motor vehicle inspector to make an  
2 arrest or issue a citation for a violation of any statute or ordinance specified under  
3 par. (b) observed in the course of a stop or inspection made for a lawful purpose. This  
4 paragraph does not apply to a traffic officer or motor vehicle inspector in the  
5 performance of duties under s. 110.075 (2) or to a police officer, sheriff, deputy sheriff,  
6 or traffic officer in the performance of duties under rules promulgated under s.  
7 165.85 (4r).

8 **SECTION 33.** 753.19 of the statutes is amended to read:

9 **753.19 Operating costs; circuit court.** The cost of operation of the circuit  
10 court for each county, except for the salaries of judges and court reporters provided  
11 to be paid by the state, and except for the cost assumed by the state under this chapter  
12 and chs. 40 and 230, and except as otherwise provided, shall be paid by the county.  
13 The county may use moneys from the appropriation under s. 20.625 (1) (q) to pay  
14 costs associated with prosecuting persons charged with offenses that are punishable  
15 under s. 346.65 (2) (am) 1.

16 **SECTION 34.** 969.01 (2) (a) of the statutes is amended to read:

17 969.01 (2) (a) Release pursuant to s. 969.02 or 969.03 may be allowed in the  
18 discretion of the trial court after conviction and prior to sentencing or the granting  
19 of probation. This paragraph does not apply to a conviction ~~for a 3rd or subsequent~~  
20 ~~violation that is counted as a suspension, revocation, or conviction under s. 343.307,~~  
21 ~~or under s. 940.09 (1) or 940.25 in the person's lifetime~~ under s. 346.63 (1) or (2) or  
22 940.25 or under s. 940.09, if the offense involved the use of a vehicle, or a combination  
23 thereof, until after the person has been imprisoned for at least the applicable  
24 minimum period of imprisonment for the violation.

25 **SECTION 35.** 972.11 (3m) of the statutes is amended to read:

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1           972.11 **(3m)** A court may not exclude evidence in any criminal action ~~or traffic~~  
2 ~~forfeiture action~~ for violation of s. 346.63 (1) or any criminal action or traffic  
3 forfeiture action for a violation of s. 346.63 (5), or a local ordinance in conformity with  
4 s. 346.63 (1) or (5), on the ground that the evidence existed or was obtained outside  
5 of this state.

6           **SECTION 36.** 973.15 (8) (a) 3. of the statutes is amended to read:

7           973.15 **(8)** (a) 3. For not more than 60 days, except that the court may not stay  
8 execution of a person's sentence of imprisonment or to the intensive sanctions  
9 program under this subdivision if the sentence is for a ~~3rd or subsequent violation~~  
10 ~~that is counted as a suspension, revocation, or conviction under s. 343.307, or a~~  
11 ~~violation of s. 940.09 (1) or 940.25 in the person's lifetime, a conviction under s. 346.63~~  
12 (1) or (2) or 940.25 or under s. 940.09, if the offense involved the use of a vehicle, or  
13 a combination thereof.

14           **SECTION 37.** 977.02 (2g) of the statutes is created to read:

15           977.02 **(2g)** From the appropriation under s. 20.550 (1) (q), provide legal  
16 services in cases involving persons charged with offenses that are punishable under  
17 s. 346.65 (2) (am) 1.

18           **SECTION 38.** 978.05 (1p) of the statutes is created to read:

19           978.05 **(1p)** INTOXICATED AND DRUGGED DRIVING ACTIONS. The district attorney  
20 of any prosecutorial unit shall use funds from the appropriation under s. 20.475 (1)  
21 (q) to prosecute persons charged with offenses that are punishable under s. 346.65  
22 (2) (am) 1.

23           **SECTION 39. Nonstatutory provisions.**

24           (1) DISTRICT ATTORNEYS. The department of administration shall prepare a  
25 budget request for the 2013-15 fiscal biennium for allocation of funds deposited into

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1 the trust fund under section 25.975 of the statutes. The budget request shall include  
2 a proposed number of created assistant district attorney positions necessary to  
3 prosecute first offenses related to operating a motor vehicle while under the  
4 influence of an intoxicant, a controlled substance, a controlled substance analog or  
5 any combination of an intoxicant, a controlled substance and a controlled substance  
6 analog, under the influence of any other drug to a degree which renders him or her  
7 incapable of safely driving, or under the combined influence of an intoxicant and any  
8 other drug to a degree which renders him or her incapable of safely driving or  
9 operating a motor vehicle with a prohibited alcohol concentration or a detectable  
10 amount of a restricted controlled substance in his or her blood.

11 (2) PUBLIC DEFENDERS. The public defender board shall prepare a budget  
12 request for the 2013-15 fiscal biennium for allocation of funds deposited into the  
13 trust fund under section 25.975 of the statutes. The budget request shall include a  
14 proposed number of created positions necessary to provide criminal defense services  
15 for first offenses related to operating a motor vehicle while under the influence of an  
16 intoxicant, a controlled substance, a controlled substance analog or any combination  
17 of an intoxicant, a controlled substance and a controlled substance analog, under the  
18 influence of any other drug to a degree which renders him or her incapable of safely  
19 driving, or under the combined influence of an intoxicant and any other drug to a  
20 degree which renders him or her incapable of safely driving or operating a motor  
21 vehicle with a prohibited alcohol concentration or a detectable amount of a restricted  
22 controlled substance in his or her blood.

23 (3) STATE CIRCUIT COURTS. The director of state courts shall prepare a budget  
24 request for the 2013-15 fiscal biennium for allocation of funds deposited into the  
25 trust fund under section 25.975 of the statutes. The budget request shall include a

**ASSEMBLY BILL 670****SECTION 39**

1 proposed number of created positions and circuit court branches necessary to process  
2 first offenses related to operating a motor vehicle while under the influence of an  
3 intoxicant, a controlled substance, a controlled substance analog or any combination  
4 of an intoxicant, a controlled substance and a controlled substance analog, under the  
5 influence of any other drug to a degree which renders him or her incapable of safely  
6 driving, or under the combined influence of an intoxicant and any other drug to a  
7 degree which renders him or her incapable of safely driving or operating a motor  
8 vehicle with a prohibited alcohol concentration or a detectable amount of a restricted  
9 controlled substance in his or her blood.

10 (4) COUNTIES. The department of administration shall prepare a budget request  
11 for the 2013-15 fiscal biennium for allocation of funds deposited into the trust fund  
12 under section 25.975 of the statutes. Each county shall submit to the department of  
13 administration, by July 1, 2012, an estimate of costs for the 2013-15 fiscal biennium  
14 related to prosecuting and defending in circuit court, and imprisoning, persons  
15 charged with and convicted of first offenses related to operating a motor vehicle while  
16 under the influence of an intoxicant, a controlled substance, a controlled substance  
17 analog or any combination of an intoxicant, a controlled substance and a controlled  
18 substance analog, under the influence of any other drug to a degree which renders  
19 him or her incapable of safely driving, or under the combined influence of an  
20 intoxicant and any other drug to a degree which renders him or her incapable of  
21 safely driving or operating a motor vehicle with a prohibited alcohol concentration  
22 or a detectable amount of a restricted controlled substance in his or her blood. The  
23 budget request prepared by the department of administration shall include the costs  
24 set forth by the counties and shall request how the funds into the trust fund under



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1 section 25.975 of the statutes shall be distributed, on an equitable basis, among the  
2 counties.

3 (5) HEALTH SERVICES. The department of health services shall prepare a budget  
4 request for the 2013-2015 fiscal biennium for allocation of funds deposited into the  
5 trust fund under section 25.975 of the statutes. The department shall submit to the  
6 department of administration, by July 1, 2012, an estimate of costs for the 2013-15  
7 fiscal biennium related to providing alcohol and drug abuse treatment services to  
8 persons charged with and convicted of first offenses related to operating a motor  
9 vehicle while under the influence of an intoxicant, a controlled substance, a  
10 controlled substance analog or any combination of an intoxicant, a controlled  
11 substance and a controlled substance analog, under the influence of any other drug  
12 to a degree which renders him or her incapable of safely driving, or under the  
13 combined influence of an intoxicant and any other drug to a degree which renders  
14 him or her incapable of safely driving or operating a motor vehicle with a prohibited  
15 alcohol concentration or a detectable amount of a restricted controlled substance in  
16 his or her blood.

17 **SECTION 40. Initial applicability.**

18 (1) This act first applies to violations committed on the effective date of this  
19 subsection but does not preclude the counting of other convictions, suspensions, or  
20 revocations as prior convictions, suspensions, or revocations for purposes of  
21 administrative action by the department of transportation or sentencing by a court.

22 **SECTION 41. Effective dates.** This act takes effect on first day of the 3rd  
23 month beginning after publication, except as follows:

24 (1) SECTION 39 of this act takes effect on the day after publication.

**ASSEMBLY BILL 670****SECTION 41**

1           (2) The treatment of sections 16.185, 20.435 (5) (q), 20.475 (1) (q), 20.505 (6) (q),  
2           20.550 (1) (q), 20.625 (1) (q), 25.975, 46.03 (45), 139.27, 302.372 (2) (a) (intro), 345.20  
3           (2) (c), 346.65 (2) (am) 1. and (f) 1. and 2., (2c), (2e), (2g) (a), (ag), (am), and (d), and  
4           (2i), 753.19, 972.11 (3m), 973.09 (1) (d) 1., 977.02 (2g), and 978.05 (1p) of the statutes  
5           takes effect on July 1, 2013.

6

**(END)**