



2009 ASSEMBLY BILL 547

November 5, 2009 – Introduced by Representatives KRUSICK, J. OTT and BIES, cosponsored by Senators DARLING, OLSEN and CARPENTER, by request of Paul and Judy Jenkins of Mequon (in memory of Jennifer Bukosky, Courtney Bella and Sophie Bukosky), Wendy Calvillo of Fort Atkinson (in memory of Alan and Bailey Calvillo), Steve Meinel of Weston (in memory of Lacey Meinel), Scott and Missy Heroux of Green Bay (in memory of Talhia Heroux), Jennifer M. Loppnow of Watertown (in memory of Randall James Engel), Elizabeth Klumb of Addison (in memory of Parker Klumb), Bruce and Nan Browne of Sheboygan, Bryan and Julie Gagnon of Shawano, Debbie Wermeling of Fort Atkinson, David Meredith of Oconto Falls, Milwaukee County Sheriff David A. Clarke Jr., Neenah Police Chief Kevin E. Wilkinson, Jamie Schumacher, Ramona Erickson of Greenfield (in memory of Clint Erickson), Dennis, Geraldine, Julie, Carl and Rebecca Bartoli of Campbellsport (in memory of Michael Bartoli) and Mothers Against Drunk Driving (MADD). Referred to Committee on Criminal Justice.

1 **AN ACT** *to repeal* 346.65 (2g) (d); *to amend* 165.755 (1) (b), 302.372 (2) (a)
2 (intro.), 302.46 (1) (a), 340.01 (46m) (a), 343.23 (2) (b), 343.30 (1q) (c) 1. (intro.),
3 345.20 (2) (c), 346.65 (2) (am) 1., 346.65 (2) (f), 346.65 (2c), 346.65 (2e), 346.65
4 (2g) (a), 346.65 (2g) (ag), 346.65 (2g) (am), 346.65 (2i), 346.655 (1), 349.02 (2) (a),
5 753.19, 757.05 (1) (a), 814.63 (1) (c), 814.63 (2), 814.65 (1), 814.85 (1) (a), 814.86
6 (1), 969.01 (2) (a), 972.11 (3m), 973.09 (1) (d) 1. and 973.15 (8) (a) 3.; **to repeal**
7 **and recreate** 343.23 (2) (b), 814.65 (1), 814.85 (1) (a) and 814.86 (1); and **to**
8 **create** 16.185, 20.435 (5) (q), 20.475 (1) (q), 20.505 (6) (q), 20.550 (1) (q), 20.625
9 (1) (q), 25.975, 46.03 (44), 139.27, 165.85 (4r), 340.01 (46m) (am), 346.65 (2) (h),
10 977.02 (2g) and 978.05 (1p) of the statutes; **relating to:** operating a vehicle
11 while intoxicated, granting rule-making authority, and providing a penalty.

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. A person who commits a first 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, 2011 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.

Under this bill, beginning on July 1, 2011, \$10,000,000 from revenues generated by the wine and liquor tax are deposited into the intoxicated and drugged driver fund. The bill requires the Department of Administration, the Public

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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 driver trust 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 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. Current law also allows a sentencing court to delay the execution of a sentence of imprisonment for up to 60 days, unless 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 an 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 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 who is subject to a forfeiture or a fine for violating most state laws or local ordinances is also liable for a variety of penalty surcharges and court fees. In addition, a person who commits an OWI-related offense is liable for a penalty surcharge for driver improvement programs and is required to comply with an alcohol and other drug assessment before he or she is eligible for reinstatement of his or her driving privileges.

Currently, a person who commits his or her first OWI-related offense and who has a blood alcohol concentration between 0.08 and 0.099 at the time of the offense is not liable for the surcharges or fees and does not need to comply with an alcohol or other drug assessment program. Further, the Department of Transportation (DOT) must purge its records of a first offense related to driving while intoxicated after ten years; the department keeps all other records of offenses related to driving while intoxicated permanently.

Under this bill, a person who commits his or her first OWI-related offense and who has a blood alcohol concentration between 0.08 and 0.099 at the time of the violation is liable for the surcharges or fees and must comply with an alcohol or other drug assessment program before his or her driving privileges may be reinstated. Under this bill, DOT must keep a record of this offense permanently.

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

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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.

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 (44).

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 (44) of the statutes is created to read:

13 46.03 (44) 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.** 165.755 (1) (b) of the statutes is amended to read:

21 165.755 (1) (b) A court may not impose the crime laboratories and drug law
22 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),
23 (bm), (br), or (bv) or (5) (b), ~~for a first violation of s. 23.33 (4e) (a) 2., 30.681 (1) (b) 1.,~~
24 ~~346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood~~
25 ~~alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,~~

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1 or for a violation of a state law or municipal or county ordinance involving a
2 nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use
3 violation under s. 347.48 (2m).

4 **SECTION 11.** 165.85 (4r) of the statutes is created to read:

5 165.85 (4r) SOBRIETY CHECKPOINTS. (a) The board shall promulgate rules for
6 administering a sobriety checkpoint program that are consistent with par. (b). No
7 local authority may conduct a sobriety checkpoint program that does not comply with
8 the rules established under this subsection.

9 (b) A sobriety checkpoint program shall:

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

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

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

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

18 5. Minimize the disruption of regular traffic flow while the sobriety checkpoint
19 is being conducted.

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

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

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

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

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

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

7 **SECTION 12.** 302.372 (2) (a) (intro.) of the statutes is amended to read:

8 302.372 (2) (a) (intro.) Except as provided in pars. (c) and (d), a county ~~may~~ shall
9 seek reimbursement for any expenses incurred by the county in relation to the crime
10 for which a person was sentenced to a county jail, or for which the person was placed
11 on probation and confined in jail, as follows:

12 **SECTION 13.** 302.46 (1) (a) of the statutes is amended to read:

13 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
14 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
15 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s. 23.33 (4c) (a)~~
16 ~~2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the~~
17 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
18 ~~time of the violation,~~ or for a violation of state laws or municipal or county ordinances
19 involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety
20 belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail
21 surcharge under ch. 814 in an amount of 1 percent of the fine or forfeiture imposed
22 or \$10, whichever is greater. If multiple offenses are involved, the court shall
23 determine the jail surcharge on the basis of each fine or forfeiture. If a fine or
24 forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge
25 in proportion to the suspension.

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1 **SECTION 14.** 340.01 (46m) (a) of the statutes is amended to read:

2 340.01 (**46m**) (a) If the person has ~~2 or fewer~~ no prior convictions, suspensions,
3 ~~or revocations~~ violation, conviction, suspension, or revocation, as counted under s.
4 343.307 (1), an alcohol concentration of 0.08 or more.

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

6 340.01 (**46m**) (am) If the person has one or 2 prior violations, convictions,
7 suspensions, or revocations, as counted under s. 343.307 (1), within 2 years of the
8 current offense, an alcohol concentration of more than 0.02.

9 **SECTION 16.** 343.23 (2) (b) of the statutes, as affected by 2009 Wisconsin Act 28,
10 section 2923, is amended to read:

11 343.23 (**2**) (b) The information specified in pars. (a) and (am) must be filed by
12 the department so that the complete operator's record is available for the use of the
13 secretary in determining whether operating privileges of such person shall be
14 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
15 of public safety. The record of suspensions, revocations, and convictions that would
16 be counted under s. 343.307 (2) shall be maintained permanently, ~~except that the~~
17 ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~
18 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~
19 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
20 ~~time of the violation, if the person does not have a commercial driver license, if the~~
21 ~~violation was not committed by a person operating a commercial motor vehicle, and~~
22 ~~if the person has no other suspension, revocation, or conviction that would be counted~~
23 ~~under s. 343.307 during that 10-year period.~~ The record of convictions for
24 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
25 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f), (j),

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1 and (L) and all records specified in par. (am), shall be maintained for at least 3 years.
2 The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall
3 be maintained permanently, except that 5 years after a licensee transfers residency
4 to another state such record may be transferred to another state of licensure of the
5 licensee if that state accepts responsibility for maintaining a permanent record of
6 convictions for disqualifying offenses. Such reports and records may be cumulative
7 beyond the period for which a license is granted, but the secretary, in exercising the
8 power of suspension granted under s. 343.32 (2) may consider only those reports and
9 records entered during the 4-year period immediately preceding the exercise of such
10 power of suspension.

11 **SECTION 17.** 343.23 (2) (b) of the statutes, as affected by 2009 Wisconsin Acts
12 28, section 2924, and ... (this act), is repealed and recreated to read:

13 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
14 the department so that the complete operator's record is available for the use of the
15 secretary in determining whether operating privileges of such person shall be
16 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
17 of public safety. The record of suspensions, revocations, and convictions that would
18 be counted under s. 343.307 (2) shall be maintained permanently. The record of
19 convictions for disqualifying offenses under s. 343.315 (2) (h) shall be maintained for
20 at least 10 years. The record of convictions for disqualifying offenses under s.
21 343.315 (2) (f), (j), and (L), and all records specified in par. (am), shall be maintained
22 for at least 3 years. The record of convictions for disqualifying offenses under s.
23 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a
24 licensee transfers residency to another state such record may be transferred to
25 another state of licensure of the licensee if that state accepts responsibility for

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1 maintaining a permanent record of convictions for disqualifying offenses. Such
2 reports and records may be cumulative beyond the period for which a license is
3 granted, but the secretary, in exercising the power of suspension granted under s.
4 343.32 (2) may consider only those reports and records entered during the 4-year
5 period immediately preceding the exercise of such power of suspension. The
6 department shall maintain the digital images of documents specified in s. 343.165
7 (2) (a) for at least 10 years.

8 **SECTION 18.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

9 343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. or b., and except for
10 a first violation of s. 346.63 (1) (b), if the person who committed the violation had a
11 blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the
12 violation, the court shall order the person to submit to and comply with an
13 assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for
14 examination of the person's use of alcohol, controlled substances or controlled
15 substance analogs and development of a driver safety plan for the person. The court
16 shall notify the department of transportation of the assessment order. The court
17 shall notify the person that noncompliance with assessment or the driver safety plan
18 will result in revocation of the person's operating privilege until the person is in
19 compliance. The assessment order shall:

20 **SECTION 19.** 345.20 (2) (c) of the statutes is amended to read:

21 345.20 (2) (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture
22 actions for violations of s. 346.63 (1) ~~or~~ (5) or a local ordinance in conformity
23 therewith.

24 **SECTION 20.** 346.65 (2) (am) 1. of the statutes is amended to read:

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

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

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

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

12 346.65 (2) (h) Notwithstanding s. 973.03 (4) (a), a person sentenced under this
13 subsection is not eligible for home detention under s. 302.425, good time under s.
14 302.43, release from jail for employment under s. 303.08 (1) (b), transfer to a county
15 work camp under s. 303.10, release to perform community service unless s. 973.07
16 applies, probation under s. 973.09, or diminution of the sentence under s. 303.19 (3)
17 until the person has been confined in a prison or jail for the minimum term of
18 imprisonment for the offense.

19 **SECTION 23.** 346.65 (2c) of the statutes is amended to read:

20 346.65 (2c) In sub. (2) (am) ~~2., 3., 4., 5., 6., and 7.~~, the time period shall be
21 measured from the dates of the refusals or violations that resulted in the revocation
22 or convictions. If a person has a suspension, revocation, or conviction for any offense
23 under a local ordinance or a state statute of another state that would be counted
24 under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior
25 suspension, revocation, or conviction under sub. (2) (am) ~~2., 3., 4., 5., 6., and 7.~~

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1 **SECTION 24.** 346.65 (2e) of the statutes is amended to read:

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

8 **SECTION 25.** 346.65 (2g) (a) of the statutes is amended to read:

9 346.65 **(2g)** (a) In addition to the authority of the court under s. 973.05 (3) (a)
10 to provide that a defendant perform community service work for a public agency or
11 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
12 (2) (am) ~~2., 3., 4., and 5.~~, (f), and (g) and except as provided in par. (ag), the court ~~may~~
13 ~~provide that a defendant perform community service work for a public agency or a~~
14 ~~nonprofit charitable organization in lieu of part or all of a forfeiture under sub. (2)~~
15 ~~(am) 1. or~~ may require a person who is subject to sub. (2) to perform community
16 service work for a public agency or a nonprofit charitable organization in addition
17 to the penalties specified under sub. (2).

18 **SECTION 26.** 346.65 (2g) (ag) of the statutes is amended to read:

19 346.65 **(2g)** (ag) If the court determines that a person does not have the ability
20 to pay a fine imposed under sub. (2) (am) 1., 2., 3., 4., or 5., (f), or (g), the court shall
21 require the defendant to perform community service work for a public agency or a
22 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
23 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
24 fine. Each hour of community service performed in compliance with an order under

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1 this paragraph shall reduce the amount of the fine owed by an amount determined
2 by the court.

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

4 346.65 **(2g)** (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or
5 (ag) may apply only if agreed to by the organization or agency. The court shall ensure
6 that the defendant is provided a written statement of the terms of the community
7 service order and that the community service order is monitored. Any organization
8 or agency acting in good faith to which a defendant is assigned pursuant to an order
9 under this subsection has immunity from any civil liability in excess of \$25,000 for
10 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~
11 ~~issuance of a community service order under this subsection does not entitle an~~
12 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
13 ~~under ch. 977.~~

14 **SECTION 28.** 346.65 (2g) (d) of the statutes is repealed.

15 **SECTION 29.** 346.65 (2i) of the statutes is amended to read:

16 346.65 **(2i)** In addition to the authority of the court under sub. (2g) and s. 973.05
17 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
18 s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that
19 demonstrates the adverse effects of substance abuse or of operating a vehicle while
20 under the influence of an intoxicant or other drug, including an alcoholism treatment
21 facility approved under s. 51.45 or an emergency room of a general hospital in lieu
22 of part or all of any forfeiture imposed or in addition to any penalty imposed. The
23 court may order the defendant to pay a reasonable fee, based on the person's ability
24 to pay, to offset the costs of establishing, maintaining, and monitoring the visits
25 ordered under this subsection. The court may order a visit to the site only if agreed

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

16 **SECTION 30.** 346.655 (1) of the statutes is amended to read:

17 346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63
18 (1) or (5), ~~except for a first violation of s. 346.63 (1) (b), if the person who committed~~
19 ~~the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at~~
20 ~~the time of the violation,~~ or a local ordinance in conformity therewith, or s. 346.63
21 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall
22 impose a driver improvement surcharge under ch. 814 in an amount of \$365 in
23 addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under
24 ch. 814.

25 **SECTION 31.** 349.02 (2) (a) of the statutes is amended to read:

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1 349.02 (2) (a) Notwithstanding sub. (1), a police officer, sheriff, deputy sheriff,
2 traffic officer or motor vehicle inspector may not stop or inspect a vehicle solely to
3 determine compliance with a statute or ordinance specified under par. (b) unless the
4 police officer, sheriff, deputy sheriff, traffic officer, or motor vehicle inspector has
5 reasonable cause to believe that a violation of a statute or ordinance specified under
6 par. (b) has been committed. This paragraph does not limit the authority of a police
7 officer, sheriff, deputy sheriff, traffic officer, or motor vehicle inspector to make an
8 arrest or issue a citation for a violation of any statute or ordinance specified under
9 par. (b) observed in the course of a stop or inspection made for a lawful purpose. This
10 paragraph does not apply to a traffic officer or motor vehicle inspector in the
11 performance of duties under s. 110.075 (2) or to a police officer, sheriff, deputy sheriff,
12 or traffic officer in the performance of duties under rules promulgated under s.
13 165.85 (4r).

14 **SECTION 32.** 753.19 of the statutes is amended to read:

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

22 **SECTION 33.** 757.05 (1) (a) of the statutes is amended to read:

23 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
24 state law or for a violation of a municipal or county ordinance except for a violation
25 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s.~~

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1 ~~23.33 (4e) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
2 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
3 ~~than 0.1 at the time of the violation, or for a violation of state laws or municipal or~~
4 ~~county ordinances involving nonmoving traffic violations, violations under s. 343.51~~
5 ~~(1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be imposed in~~
6 ~~addition a penalty surcharge under ch. 814 in an amount of 26 percent of the fine or~~
7 ~~forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be~~
8 ~~based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is~~
9 ~~suspended in whole or in part, the penalty surcharge shall be reduced in proportion~~
10 ~~to the suspension.~~

11 **SECTION 34.** 814.63 (1) (c) of the statutes is amended to read:

12 814.63 (1) (c) This subsection does not apply to an action for a violation of s.
13 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~for a first violation of s. 23.33~~
14 ~~(4e) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
15 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
16 ~~than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m) (b), or a~~
17 ~~safety belt use violation under s. 347.48 (2m).~~

18 **SECTION 35.** 814.63 (2) of the statutes is amended to read:

19 814.63 (2) Upon the disposition of a forfeiture action in circuit court for
20 violation of a county, town, city, village, town sanitary district or public inland lake
21 protection and rehabilitation district ordinance, except for an action for ~~a first~~
22 ~~violation of s. 23.33 (4e) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the~~
23 ~~person who committed the violation had a blood alcohol concentration of 0.08 or more~~
24 ~~but less than 0.1 at the time of the violation, or for a violation under s. 343.51 (1m)~~
25 ~~(b) or a safety belt use violation under s. 347.48 (2m), the county, town, city, village,~~

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1 town sanitary district or public inland lake protection and rehabilitation district
2 shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

3 **SECTION 36.** 814.65 (1) of the statutes is amended to read:

4 814.65 (1) COURT COSTS. In a municipal court action, except for an action for
5 a first violation of s. ~~23.33 (4e) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)~~
6 ~~(b), if the person who committed the violation had a blood alcohol concentration of~~
7 ~~0.08 or more but less than 0.1 at the time of the violation, or for a violation of an~~
8 ordinance in conformity with s. 343.51 (1m) (b) or 347.48 (2m), the municipal judge
9 shall collect a fee of not less than \$15 nor more than \$28 on each separate matter,
10 whether it is on default of appearance, a plea of guilty or no contest, on issuance of
11 a warrant or summons, or the action is tried as a contested matter. Of each fee
12 received by the judge under this subsection, the municipal treasurer shall pay
13 monthly \$5 to the secretary of administration for deposit in the general fund and
14 shall retain the balance for the use of the municipality.

15 **SECTION 37.** 814.65 (1) of the statutes, as affected by 2009 Wisconsin Acts 28
16 and ... (this act), is repealed and recreated to read:

17 814.65 (1) COURT COSTS. In a municipal court action, for a financial
18 responsibility violation under s. 344.62 (2) or for a violation of an ordinance in
19 conformity with s. 343.51 (1m) (b) or 347.48 (2m), the municipal judge shall collect
20 a fee of not less than \$15 nor more than \$28 on each separate matter, whether it is
21 on default of appearance, a plea of guilty or no contest, on issuance of a warrant or
22 summons, or the action is tried as a contested matter. Of each fee received by the
23 judge under this subsection, the municipal treasurer shall pay monthly \$5 to the
24 secretary of administration for deposit in the general fund and shall retain the
25 balance for the use of the municipality.

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1 **SECTION 38.** 814.85 (1) (a) of the statutes is amended to read:

2 814.85 (1) (a) Except for an action for ~~a first violation of s. 23.33 (4e) (a) 2.,~~
3 ~~30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the~~
4 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
5 ~~time of the violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use~~
6 ~~violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68~~
7 ~~court support services surcharge from any person, including any governmental unit~~
8 ~~as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or~~
9 ~~814.63 (1).~~

10 **SECTION 39.** 814.85 (1) (a) of the statutes, as affected by 2009 Wisconsin Acts
11 28 and (this act), is repealed and recreated to read:

12 814.85 (1) (a) Except for an action for a financial responsibility violation under
13 s. 344.62 (2), or for a violation under s. 343.51 (1m) (b) or a safety belt use violation
14 under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68 court
15 support services surcharge from any person, including any governmental unit as
16 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or 814.63
17 (1).

18 **SECTION 40.** 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
19 section 3240, is amended to read:

20 814.86 (1) Except for an action for ~~a first violation of s. 23.33 (4e) (a) 2., 30.681~~
21 ~~(1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation~~
22 ~~had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the~~
23 ~~violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under~~
24 ~~s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$21.50 justice~~
25 ~~information system surcharge from any person, including any governmental unit, as~~

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1 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
2 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in
3 addition to the surcharge listed in sub. (1m).

4 **SECTION 41.** 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act 28,
5 section 3240m, and 2009 Wisconsin Act (this act), is repealed and recreated to
6 read:

7 814.86 (1) Except for an action for a financial responsibility violation under s.
8 344.62 (2), or for a violation under s. 343.51 (1m) (b) or a safety belt use violation
9 under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$21.50 justice
10 information system surcharge from any person, including any governmental unit, as
11 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
12 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in
13 addition to the surcharge listed in sub. (1m).

14 **SECTION 42.** 969.01 (2) (a) of the statutes is amended to read:

15 969.01 (2) (a) Release pursuant to s. 969.02 or 969.03 may be allowed in the
16 discretion of the trial court after conviction and prior to sentencing or the granting
17 of probation. This paragraph does not apply to a person convicted of violating s.
18 346.63 (1) or (2) or 940.25 or of s. 940.09, if the offense involved the use of a vehicle,
19 until after the person has been imprisoned for at least the applicable minimum
20 period of imprisonment for the violation.

21 **SECTION 43.** 972.11 (3m) of the statutes is amended to read:

22 972.11 (3m) A court may not exclude evidence in any criminal action ~~or traffic~~
23 ~~forfeiture action~~ for violation of s. 346.63 (1) or any criminal action or traffic
24 forfeiture action for a violation of s. 346.63 (5), or a local ordinance in conformity with

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1 s. 346.63 (1) or (5), on the ground that the evidence existed or was obtained outside
2 of this state.

3 **SECTION 44.** 973.09 (1) (d) 1. of the statutes is amended to read:

4 973.09 (1) (d) 1. A violation under s. 346.63 (1) that subjects the person to a
5 mandatory minimum period of imprisonment under s. 346.65 (2) (am) ~~2. or 3.~~

6 **SECTION 45.** 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 a court may not stay
8 execution of a sentence of imprisonment or to the intensive sanctions program under
9 this subdivision for a conviction under s. 346.63 (1) or (2) or 940.25 or under s. 940.09,
10 if the offense involved the use of a vehicle.

11 **SECTION 46.** 977.02 (2g) of the statutes is created to read:

12 977.02 (2g) From the appropriation under s. 20.550 (1) (q), provide legal
13 services in cases involving persons charged with offenses that are punishable under
14 s. 346.65 (2) (am) 1.

15 **SECTION 47.** 978.05 (1p) of the statutes is created to read:

16 978.05 (1p) INTOXICATED AND DRUGGED DRIVING ACTIONS. The district attorney
17 of any prosecutorial unit shall use funds from the appropriation under s. 20.475 (1)
18 (q) to prosecute persons charged with offenses that are punishable under s. 346.65
19 (2) (am) 1.

20 **SECTION 48. Nonstatutory provisions.**

21 (1) DISTRICT ATTORNEYS. The department of administration shall prepare a
22 budget request for the 2011–2013 fiscal biennium for allocation of funds deposited
23 into the trust fund under section 25.975 of the statutes. The budget request shall
24 include a proposed number of created assistant district attorney positions necessary
25 to prosecute first offenses related to operating a motor vehicle while under the

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1 influence of an intoxicant, a controlled substance, a controlled substance analog or
2 any combination of an intoxicant, a controlled substance and a controlled substance
3 analog, under the influence of any other drug to a degree which renders him or her
4 incapable of safely driving, or under the combined influence of an intoxicant and any
5 other drug to a degree which renders him or her incapable of safely driving or
6 operating a motor vehicle with a prohibited alcohol concentration or a detectable
7 amount of a restricted controlled substance in his or her blood.

8 (2) PUBLIC DEFENDERS. The public defender board shall prepare a budget
9 request for the 2011-2013 fiscal biennium for allocation of funds deposited into the
10 trust fund under section 25.975 of the statutes. The budget request shall include a
11 proposed number of created positions necessary to provide criminal defense services
12 for first offenses related to operating a motor vehicle while under the influence of an
13 intoxicant, a controlled substance, a controlled substance analog or any combination
14 of an intoxicant, a controlled substance and a controlled substance analog, under the
15 influence of any other drug to a degree which renders him or her incapable of safely
16 driving, or under the combined influence of an intoxicant and any other drug to a
17 degree which renders him or her incapable of safely driving or operating a motor
18 vehicle with a prohibited alcohol concentration or a detectable amount of a restricted
19 controlled substance in his or her blood.

20 (3) STATE CIRCUIT COURTS. The director of state courts shall prepare a budget
21 request for the 2011-2013 fiscal biennium for allocation of funds deposited into the
22 trust fund under section 25.975 of the statutes. The budget request shall include a
23 proposed number of created positions and circuit court branches necessary to process
24 first offenses related to operating a motor vehicle while under the influence of an
25 intoxicant, a controlled substance, a controlled substance analog or any combination

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1 of an intoxicant, a controlled substance and a controlled substance analog, under the
2 influence of any other drug to a degree which renders him or her incapable of safely
3 driving, or under the combined influence of an intoxicant and any other drug to a
4 degree which renders him or her incapable of safely driving or operating a motor
5 vehicle with a prohibited alcohol concentration or a detectable amount of a restricted
6 controlled substance in his or her blood.

7 (4) COUNTIES. The department of administration shall prepare a budget request
8 for the 2011–2013 fiscal biennium for allocation of funds deposited into the trust fund
9 under section 25.975 of the statutes. Each county shall submit to the department of
10 administration, by July 1, 2010, an estimate of costs for the 2011–2013 fiscal
11 biennium related to prosecuting and defending in circuit court, and imprisoning,
12 persons charged with and and convicted of first offenses related to operating a motor
13 vehicle while under the influence of an intoxicant, a controlled substance, a
14 controlled substance analog or any combination of an intoxicant, a controlled
15 substance and a controlled substance analog, under the influence of any other drug
16 to a degree which renders him or her incapable of safely driving, or under the
17 combined influence of an intoxicant and any other drug to a degree which renders
18 him or her incapable of safely driving or operating a motor vehicle with a prohibited
19 alcohol concentration or a detectable amount of a restricted controlled substance in
20 his or her blood. The budget request prepared by the department of administration
21 shall include the costs set forth by the counties and shall request how the funds into
22 the trust fund under section 25.975 of the statutes shall be distributed, on an
23 equitable basis, among the counties.

24 (5) HEALTH SERVICES. The department of health services shall prepare a budget
25 request for the 2011–2013 fiscal biennium for allocation of funds deposited into the

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1 trust fund under section 25.975 of the statutes. The department shall submit to the
2 department of administration, by July 1, 2010, an estimate of costs for the 2011-2013
3 fiscal biennium related to providing alcohol and drug abuse treatment services to
4 persons charged with and and convicted of first offenses related to operating a motor
5 vehicle while under the influence of an intoxicant, a controlled substance, a
6 controlled substance analog or any combination of an intoxicant, a controlled
7 substance and a controlled substance analog, under the influence of any other drug
8 to a degree which renders him or her incapable of safely driving, or under the
9 combined influence of an intoxicant and any other drug to a degree which renders
10 him or her incapable of safely driving or operating a motor vehicle with a prohibited
11 alcohol concentration or a detectable amount of a restricted controlled substance in
12 his or her blood.

13 **SECTION 49. Initial applicability.**

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

18 **SECTION 50. Effective dates.** This act takes effect on first day of the 3rd
19 month beginning after publication, except as follows:

20 (1) The repeal and recreation of section 343.23 (2) (b) of the statutes takes effect
21 on the day after publication, or on the date on which the creation of section 343.165
22 of the statutes by 2007 Wisconsin Act 20 takes effect, whichever is later.

23 (2) The repeal and recreation of sections 814.65 (1), 814.85 (1) (a), and 814.86
24 (1) of the statutes takes effect on June 1, 2010.

25 (3) SECTION 48 of this act takes effect on the day after publication.

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1 (4) The amendment of sections 302.372 (2) (a) (intro), 345.20 (2) (c), 346.65 (2)
2 (am) 1., 346.65 (2) (f), 346.65 (2c), 346.65 (2e), 346.65 (2g) (a), 346.65 (2g) (ag), 346.65
3 (2g) (am), 346.65 (2i), 753.19, 972.11 (3m), and 973.09 (1) (d) 1. of the statutes, the
4 creation of sections 16.185, 20.435 (5) (q), 20.475 (1) (q), 20.505 (6) (q), 20.550 (1) (q),
5 20.625 (1) (q), 25.975, 46.03 (44), 139.27, 977.02 (2g), and 978.05 (1p) of the statutes,
6 and the repeal of section 346.65 (2g) (d) of the statutes take effect on July 1, 2011.

7 (END)