



## 1997 SENATE BILL 498

March 12, 1998 - Introduced by Senators BURKE, HUELSMAN, WIRCH, DARLING, DECKER and PLACHE, cosponsored by Representatives HUBER, OLSEN, MURAT, GOETSCH, DOBYNS, WOOD, WALKER, ZIEGELBAUER, GROTHMAN, STASKUNAS, AINSWORTH and WASSERMAN. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

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

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### ***Analysis by the Legislative Reference Bureau***

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

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Current law also prohibits a court from placing a person convicted of OWI on probation; instead, a court must sentence the person to pay the minimum fine and serve the minimum sentence of imprisonment prescribed for the offense. This bill allows a court to place a person convicted of OWI on probation if the person has 2 or more previous OWI offenses and if the court requires that the person serve the minimum sentence of imprisonment prescribed for the offense as a condition of probation. Thus, a person with 2 previous OWI offenses would have to serve at least 30 days in jail as a condition of probation, and a person with 3 or more previous OWI offenses would have to serve at least 6 months in jail as a condition of probation.

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

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

2           346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300  
3 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months  
4 if the total number of suspensions, revocations and convictions counted under s.  
5 343.307 (1) equals 2 in a 5-year period. Suspensions, revocations or convictions  
6 arising out of the same incident or occurrence shall be counted as one. The court may  
7 not place a person sentenced under this paragraph on probation.

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

9           346.65 (2) (d) Except as provided in par. (f), shall be fined not less than \$600  
10 nor more than ~~\$2,000~~ \$10,000 and imprisoned for not less than ~~60 days~~ 6 months nor  
11 more than ~~one year in the county jail~~ 10 years if the total number of suspensions,  
12 revocations and convictions counted under s. 343.307 (1) equals 4 or more in a

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1 10-year period, except that suspensions, revocations or convictions arising out of the  
2 same incident or occurrence shall be counted as one.

3 **SECTION 3.** 346.65 (2) (e) of the statutes is repealed.

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

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

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

13 346.65 (2c) In sub. (2) (b) to ~~(e)~~ (d), the 5-year or 10-year period shall be  
14 measured from the dates of the refusals or violations that resulted in the revocation  
15 or convictions. In computing the 5-year or 10-year period in sub. (2) (b) to (d), the  
16 time that a person spent in actual confinement serving a criminal sentence shall be  
17 excluded. If a person has a suspension, revocation or conviction for any offense under  
18 a local ordinance or a state statute of another state that would be counted under s.  
19 343.307 (1), that suspension, revocation or conviction shall count as a prior  
20 suspension, revocation or conviction under sub. (2) (b) to ~~(e)~~ (d).

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

22 346.65 (2e) If the court determines that a person does not have the ability to  
23 pay the costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d), ~~(e)~~ or (f),  
24 the court may reduce the costs, fine and forfeiture imposed and order the person to  
25 pay, toward the cost of the assessment and driver safety plan imposed under s. 343.30

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1 (1q) (c), the difference between the amount of the reduced costs and fine or forfeiture  
2 and the amount of costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d),  
3 ~~(e)~~ or (f).

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

5 346.65 (7) A person convicted under sub. (2) (b), (c), or (d) ~~or (e)~~ or (2j) (b) or (c)  
6 shall be required to remain in the county jail for not less than a 48-consecutive-hour  
7 period.

8 **SECTION 8.** 973.09 (1) (d) of the statutes is amended to read:

9 973.09 (1) (d) If a person is convicted of an offense that provides a mandatory  
10 or presumptive minimum period of one year or less of imprisonment, a court may  
11 place the person on probation under par. (a) if the court requires, as a condition of  
12 probation, that the person be confined under sub. (4) for at least that mandatory or  
13 presumptive minimum period. The person is eligible to earn good time credit  
14 calculated under s. 302.43 regarding the period of confinement. ~~This paragraph does~~  
15 ~~not apply if the conviction is for any violation under s. 346.63.~~

16 **SECTION 9. Initial applicability.**

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

21 **SECTION 10. Effective date.**

22 (1) This act takes effect on January 1, 1999.

23 (END)