

1999 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB665)

Received: **03/24/2000**

Received By: **nelsorpl**

Wanted: Soon

Identical to LRB:

For: Alvin Ott (608) 2664831

By/Representing:

This file may be shown to any legislator: NO

Drafter: **nelsorpl**

May Contact:

Alt. Drafters:

Subject: **Drunk Driving - procedures**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Counting of certain drunk driving offenses

Instructions:

Correct bill to include changes made for engrossed SB 125

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			martykr 03/27/2000	_____	lrb-docadmin 03/27/2000	lrb-docadmin 03/27/2000	

FE Sent For:

<END>

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1/?	nelsorpl	cm# 3/24	km ³ 24	JK ³ km/27			

FE Sent For:

1

<END>



cmv

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~
**ASSEMBLY SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 665**

WPO.
please
not
draft

refer

AN ACT ..!; relating to: ???

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

(END)

U

1999 ASSEMBLY BILL 665

January 19, 2000 - Introduced by Representatives OTT, STONE, BRANDEMUEHL, AINSWORTH, HUNDERTMARK, HUTCHISON, KESTELL, KLUSMAN, KREIBICH, LADWIG, MONTGOMERY, SPILLNER and VRAKAS, cosponsored by Senators DRZEWIECKI, DARLING and ROSENZWEIG. Referred to Committee on Highway Safety.

1 **AN ACT to amend 343.30(1q) (b) 3., 343.305 (10) (b) 3., 343.31 (3) (bm) 3., 346.65**
 2 **(2) (b) and 346.65 (2j) (b) of the statutes; relating to: counting of certain**
 3 **/convictions in drunk driving cases.**

Analysis by the Legislative Reference Bureau

Under current law, when sentencing a person for the operation of a motor vehicle while under the influence of an intoxicant (OWI), the court is required to count the number of prior OWI offenses that the person has committed within certain time periods. Prior OWI offenses that the court must count include driving while under the influence of an intoxicant, driving while the person has a prohibited alcohol concentration, causing injury, great bodily harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration and improperly refusing to submit to a test to determine the alcohol concentration in the person's blood.

Currently, if a person is convicted of driving while under the influence of an intoxicant or while the person has a prohibited alcohol concentration or of driving a commercial motor vehicle while having a blood alcohol concentration of 0.04 to 0.1 and the person has one prior OWI conviction within the previous ten-year period, the court revokes the person's operating privilege for not less than one year nor more than 18 months, fines the person not less than \$300 nor more than \$1,000 and imprisons the person for not less than five days nor more than six months. Under this bill, in addition to counting OWI offenses committed within the previous ten-year period, if the person has, at any time in his or her life, caused, great bodily

. ASSEMBLY BILL 665

harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration, that offense is counted as a prior OWI offense and the penalties listed above apply.

Currently, if a court determines that a person improperly refused to submit to a test to determine the alcohol concentration in the person's blood and the person has one prior OWI conviction within the previous ten-year period, the court revokes the person's operating privilege for two years. Under this bill, in addition to counting OWI offenses committed within the previous ten-year period, if the person has, at any time in his or her life, caused great bodily harm or death while driving while under the influence of an intoxicant or while having a prohibited alcohol concentration, that offense is counted as a prior OWI offense and the court is required to revoke the person's operating privilege for two years.

For further information see the *state* 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. 343.30 (1q) (b) 3. of the statutes is amended to read:

2 343.30 (1q) (b) 3. Except as provided in subd. 4m., if the number of convictions
 3 under ss. 940.09 (1) and 940.25 in the person's lifetime. plus the total number of other
 4 convictions, suspensions and revocations counted under s. 343.307 (1) within a
 5 10-year period, equals 2, the court shall revoke the person's operating privilege for
 6 not less than one year nor more than 18 months. After the first 60 days of the
 7 revocation period, the person is eligible for an occupational license under s. 343.10
 8 if he or she has completed the assessment and is complying with the driver safety
 9 plan ordered under par. (c).

10 SECTION 2. 343.305 (10) (b) 3. of the statutes is amended to read:

11 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions
 12 under ss. 940.09 (1) and 940.25 in the person's lifetime? plus the total number of other
 13 convictions, suspensions and revocations counted under s. 343.307 (2) within a
 14 lo-year period, equals 2, the court shall revoke the person's operating privilege for

ASSEMBLY BILL 665

1 2 years. After the first 90 days of the revocation period, the person is eligible for an
2 occupational license under s. 343.10 if he or she has completed the assessment and
3 is complying with the driver safety plan.

Insert
3-3
and
insert
3-14a

4 SECTION 3. 343.31 (3) (bm) 3. of the statutes is amended to read:

5 343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of convictions
6 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
7 suspensions, revocations and ~~other~~ convictions counted under s. 343.367 (1) within
8 a lo-year period, [✓] equals 2, the department shall revoke the person's operating
9 privilege for not less than one year nor more than 18 months. If an Indian tribal court
10 in this state revokes the person's privilege to operate a motor vehicle on tribal lands
11 for not less than one year nor more than 18 months for the conviction specified in par.
12 (bm) (intro.), the department shall impose the same period of revocation. After the
13 first 60 days of the revocation period, the person is eligible for an occupational license
14 under s. 343.10.

Insert
3-14b

15 SECTION 4. 346.65 (2) (b) of the statutes is amended to read:

16 346.65 (2) (b) Except as provided in par. (f), shall be fined not less than \$300
17 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months
18 if the ~~total~~ number of ~~convictions~~ convictions under ss. 940.09 (1) and 940.25 in the nerson's
19 lifetime. plus the total number of ~~other~~ suspensions, revocations and other
20 convictions counted under s. 343.307 (1) ~~within a 10-year period~~, equals 2 ~~within a~~
21 10-year period. Suspensions, revocations or convictions arising out of the same
22 incident or occurrence shall be counted as one.

Insert
3-223

23 SECTION 5. 346.65 (2j) (b) of the statutes is amended to read:

24 346.65 (2j) (b) Except as provided in par. (d), shall be fined not less than \$300
25 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months

. ASSEMBLY BILL 665

1

if the ~~total number of~~ [↓] ~~prior~~ convictions under ss. 940.09 (1) and 940.25 in the nerson's

2

lifetime, plus the total number of ~~other~~ other convictions, suspension and revocations

3

counted under s. 343.307 (2) within a 10-year period, equals 2 ~~within a 10-year~~

4

period. ✓

insert
4-1/4
4-4b

→

SECTION 6. Initial applicability.

6

(1) This act first applies to offenses committed on the effective date of this

7

subsection, but does not preclude the counting of other convictions, suspensions or

8

revocations as prior convictions, suspensions or revocations for purposes of

9

administrative action by the department of transportation or sentencing by a court.

10

(END)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT,
TO 1999 SENATE BILL 125**

*Insert (G)
(some)*

WPO - please show proper section #s

1 At the locations indicated, amend the engrossed bill as follows:

2 **1.** Page 9, line 3: delete "2 3" and substitute "2".

3 **2.** Page 11, line 19: after that line insert:

4 ~~SECTION 4m.~~ 343.30 (fq) (b) 4. of the statutes is amended to read:

5 343.30 (lq) (b) 4. Except as provided in subd. 4m., if the number of convictions
6 under ss. 940.09 (1) and 940.25 in the nerson's lifetime: plus the total number of other
7 convictions, suspensions and revocations counted under s. 343.307 (1), equals 3 or
8 more, the court shall revoke the person's operating privilege for not less than 2 years
9 nor more than 3 years. After the first 90 days of the revocation period, the person
10 is eligible for an occupational license under s. 343.10 if he or she has completed the
11 assessment and is complying with the driver safety plan ordered under par. (c).

insert 12-9

12 **3.** Page 11, line 20: delete that line.

(end of insert)

1 4. Page 14, line 2: after that line insert:

2 ~~SECTION 35m.~~ 343.305 (10) (b) 4. of the statutes is amended to read:

3 343.305 (10) (b) 4. Except as provided in subd. 4m., if the number of convictions
4 under ss. 940.09 (1) and 940.25 in the person's lifetime. plus the total number of other
5 convictions, suspensions and revocations counted under s. 343.307 (2), equals 3 or
6 more, the court shall revoke the person's operating privilege for 3 years. After the
7 first 126 days of the revocation period, the person is eligible for an occupational
8 license under s. 343.10 if he or she has completed the assessment and is complying
9 with the driver safety plan. (easy to miss)

Insert 33

10 5. Page 14, line 3: delete that line.

11 6. Page 14, line 9: delete "or seizure" and substitute "or seizure".

12 7. Page 14, line 10: delete "equipping" and substitute "equipping".

13 8. Page 14, line 11: delete lines 11 to 13 and substitute "or if the court requires
14 that the person's operating privilege for the operation of "Class D" vehicles be
15 restricted to operating "Class D" vehicles equipped with an ignition interlock device.
16 If the number of convictions under ss. 940.09 (1) and 940.25 in the lifetime of the
17 person whose operating privilege is revoked under sub. (10), plus the total number
18 of other convictions, suspensions and revocations counted under s. 343.307 (1),
19 equals 2 or more, the procedure under s. 346.65 (6) shall be followed if".

20 9. Page 15, line 3: delete lines 3 to 12 and substitute:

21 ~~SECTION 41m.~~ 343.31 (3) (bm) 4. of the statutes is amended to read:

22 343.31 (3) (bm) 4. Except as provided in subd. 4m., if the number of convictions
23 under ss. 940.09 (1) and 940.25 in the person's lifetime. plus the total number of other
24 suspensions, revocations and convictions counted under s. 343.307 (1), equals 3 or

Insert 32 14b

other



1 more, the department shall revoke the person's operating privilege for not less than
 2 2 years nor more than 3 years. If an Indian tribal court in this state revokes the
 3 person's privilege to operate a motor vehicle on tribal lands for not less than 2 years
 4 nor more than 3 years for the conviction specified in par. (bm) (intro.), the department
 5 shall impose the same period of revocation. After the first 90 days of the revocation
 6 period, the person is eligible for an occupational license under s. 343.10.

Insert
3-146

↑

↑

7 **10.** Page 15, line 17: delete "prior".

8 **11.** Page 15, line 24: after "if the" insert "number of ~~prior~~ convictions under
 9 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the".

10 **12.** Page 15, line 25: before "convictions" insert "other".

11 **13.** Page 15, line 25: delete "(1)" and substitute "(1)".

12 **14.** Page 16, line 6: after "if the" insert "number of ~~prior~~ convictions under ss.
 13 940.09 (1) and 940.25 in the person's lifetime, plus the".

14 **15.** Page 16, line 7: before "convictions" insert "other".

15 **16.** Page 16, line 7: delete "(1)" and substitute "(1)".

16 **17.** Page 16, line 13: after "the" insert "number of ~~prior~~ convictions under ss.
 17 940.09 (1) and 940.25 in the person's lifetime, plus the".

18 **18.** Page 16, line 13: after "revocations and" insert "other".

19 **19.** Page 16, line 14: delete "(1)" and substitute "(1)".

20 **20.** Page 19, line 24: delete "prior".

21 **21.** Page 20, line 3: delete lines 3 to 12 and substitute: - - -

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

Insert 4-4a

↓

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

6 **22.** Page 24, line 24: delete the material beginning with that line and ending
 7 with page 25, line 9.

8 **23.** Page 29, line 9: delete "as counted" and substitute "as counting convictions
 9 under sub. (1) and s. 940.25 in the person's lifetime plus other convictions,
 10 suspensions or revocations counted".

11 **24.** Page 29, line 16: delete "convictions, suspensions or revocations, as
 12 counted" and substitute "prior convictions, suspensions and revocations, counting
 13 convictions, under sub. (1) and s. 940.25 in the person's lifetime plus other
 14 convictions, suspensions or revocations counted".

15 **25.** Page 29, line 23: delete "as counted" and substitute "as counting
 16 convictions under sub. (1) and s. 940.09 (1) in the person's lifetime plus other
 17 convictions, suspensions or revocations counted".

18 **26.** Page 30, line 5: delete "as counted" and substitute "counting convictions
 19 under this section and s. 940.09 (1) in the person's lifetime plus other convictions,
 20 suspensions or revocations counted".

21 **27.** Page 32, line 4: delete that line and substitute "and (c), 343.23 (2) (b),
 22 343.30 (lq) (b) 3. and 4., 343.305 (10) (b) 3. and 4., 343.31 (3) (bm) 3."

23 **28.** Page 32, line 5: delete "and 5., 346.63 (2m)," and substitute "and 4.,".

1 **29.** Page 32, line 6: delete "(2w)" and substitute "(c)".

2 **30.** Page 32, line 14: delete ", (km)".

3 (END)

Insert 3-14a

Section #. 343.305 (10m) of the statutes is amended to read:

✓
343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A MOTOR VEHICLE.

If the person whose operating privilege is revoked under sub. (10) has 2 or more prior convictions, ~~suspensions or revocations, as counted under s. 343.307 (l),~~ *Counting convictions under ss. 940.03(1) and 940.125 in the person's lifetime,* the procedure under s. 346.65 (6) shall be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person or the equipping of a motor vehicle owned by the person with an ignition interlock device.

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9.

the other
plus convictions, suspensions and revocations

(end of insert)

Insert 3-22

Section #. 346.65 (2) (c), (d) and (e) of the statutes are amended to read:

Convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of

346.65 (2) (c) Except as provided in par. (f), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the ~~total number~~ of suspensions, revocations and ^{other} convictions counted under s. 343.3077(1) equals 3, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80,337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).

(d) Except as provided in par. (f), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year in the county jail if the ~~total~~ number of suspensions, revocations and ^{other} convictions counted under s. 343.307 (1) equals 4, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80,337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).

(e) Except as provided in par. (f), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than 5 years if the ~~&& number of~~ ^{suspensions}, revocations and ^{other} convictions counted under s. 343.307 (1) equals 5 or more, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80,337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).

(end of insert)

Tyrell - So Penal it doesn't come on.

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0484/?ins
RPN.....

1 insert 4-4b:

2 SECTION 1. 346.65 (2w) of the statutes is amended to read:

3 346.65 (2w) In determining the number of prior convictions for purposes of sub.
4 (2j), the court shall count convictions under ss. 940.09 (1) and 940.25 during the
5 person's lifetime. plus the total number of ~~other~~ suspensions, revocations and
6 convictions ~~that would be~~ counted under s. 343.307 (2). Revocations, suspensions
7 and convictions arising out of the same incident or occurrence shall be counted as
8 one. The time period shall be measured from the dates of the refusals or violations
9 which resulted in the revocation, suspension or convictions. If a person has a
10 suspension, revocation or conviction for any offense that is counted under s. 343.307
11 (2), that suspension, revocation or conviction shall count as a prior suspension,
12 revocation or conviction under this section.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80,337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993
a 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27,135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).

13 SECTION 2. 346.65 (6) (a) 1. of the statutes is amended to read:

14 346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a
15 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered
16 seized, shall order a law enforcement officer to equip the motor vehicle **with** an
17 ignition interlock device or immobilize any motor vehicle owned by the person whose
18 operating privilege is revoked under s. 343.305 (10) or who committed a violation of
19 s. 346.63 (1) (a), (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b),
20 (c) or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or
21 who is convicted of the violation has 2 prior suspensions, revocations or convictions
22 that would be, counting convictions under ss. 940.09 (1) and 940.25 in the oerson's
23 lifetime? plus other suspensions, revocations or convictions counted under s. 343.307

1 (1). The courts ~~in~~ ~~to~~ order a motor vehicle equipped with an ignition interlock
2 device or immobilized if that would result in undue hardship or extreme
3 inconvenience or would endanger the health and safety of a person.

NOTE: NOTE: ~~Subd. 1 is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).~~NOTE:

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a 80, 337; 1987 a 3, 27, 398, 399; 1989 a 105, 176, 271; 1991 a 39, 251, 277, 315; 1993
a 198, 317, 475; 1995 a 44, 338, 359, 425; 1997 a 27, 135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).

4 SECTION 3. 346.65 (6) (a) 2. of the statutes is amended to read:

5 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor
6 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)
7 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a),
8 (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) if the person whose operating privilege is
9 revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior
10 suspensions, revocations or convictions ~~that would be, counting convictions under ss.~~

11 940.09 (1) and 940.25 in the person's lifetime? plus other suspensions, revocations or
12 convictions counted under s. 343.307 (1).

NOTE: NOTE: ~~Subd. 2 is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).~~NOTE:

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a 105, 176, 271; 1991 a 39, 251, 277, 315; 1993
a 198, 317, 475; 1995 a 44, 338, 359, 425; 1997 a 27, 135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).

13

14 SECTION 4. 346.65 (6) (a) 2m. of the statutes is amended to read:

15 346.65 (6) (a) 2m. A person who owns a motor vehicle subject to seizure,
16 equipping with an ignition interlock device or immobilization under this paragraph
17 shall surrender to the clerk of circuit court the certificate of title issued under ch. 342
18 for every motor vehicle owned by the person. The person shall comply with this
19 subdivision within 5 working days after receiving notification of this requirement
20 from the district attorney When a district attorney receives a copy of a notice of
21 intent to revoke the operating privilege under s. 343.305 (9) (a) of a person who has
22 2 or more convictions, suspensions or revocations, as counting convictions under ss.
23 940.09 (1) and 940.25 in the person's lifetime! plus other suspensions, revocations or

other

1 convictions counted under s. 343.307 (1), or when a district attorney notifies the
 2 department of the filing of a criminal complaint against a person under s. 342.12 (4)
 3 (a), the district attorney shall notify the person of the requirement to surrender all
 4 certificates of title to the clerk of circuit court. The notification shall include the time
 5 limits for that surrender, the penalty for failure to comply with the requirement and
 6 the address of the clerk of circuit court. The clerk of circuit court shall promptly
 7 return each certificate of title surrendered to the clerk of circuit court under this
 8 subdivision after stamping the certificate of title with the notation "Per section
 9 346.65 (6) of the Wisconsin statutes, ownership of this motor vehicle may not be
 10 transferred without prior court approval". Any person failing to surrender a
 11 certificate of title as required under this subdivision shall forfeit not more than \$500.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).

12 SECTION 6. 346.65 (6) (d) of the statutes is amended to read:

13 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
 14 proving to a reasonable certainty by the greater weight of the credible evidence that
 15 the motor vehicle is a motor vehicle owned by a person who committed a violation of
 16 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1) (a),
 17 (b), (c) or (d) and, if the seizure is under par. (a) 1., that the person had 2 prior
 18 convictions, suspensions or revocations, as counting convictions under ss. 940.09 (1)
 19 and 940.25 in the nerson's lifetime, plus other suspensions? revocations or
 20 convictions counted under s. 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more
 21 prior convictions, suspensions or revocations, as counting: convictions under ss.
 22 940.09 (1) and 940.25 in the person's lifetime, plus other suspensions, revocations or
 23 convictions counted under s. 343.307 (1). If the ~~it, (e) or (d)~~, ~~(e) or (d)~~ state fails to

1 meet the burden of proof required under this paragraph, the motor vehicle shall be
2 returned to the owner upon the payment of storage costs.

~~NOTE: NOTE: Par. (d) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2)(c). The bracketed language was inserted by 1997 Wis. Act 296, but rendered surplusage by 1997 Wis. Act 237. Corrective legislation is pending. NOTE:~~

~~History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; s. 13.93 (2) (c).~~

3 **SECTION 6. 940.09 (1d) of the statutes is amended to read:**

4 940.09 (1d) If the person who committed an offense under sub. (1) (a), (b), (c)
5 or (d) has 2 or more prior convictions, suspensions or revocations, as counting
6 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other
7 suspensions, revocations or convictions counted under s. 343.307 (1), the procedure
8 under s. 346.65 (6) may be followed regarding the immobilization or seizure and
9 forfeiture of a motor vehicle owned by the person who committed the offense or the
10 equipping of a motor vehicle owned by the person with an ignition interlock device.

~~NOTE: NOTE: Sub. (1d) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

~~History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 336; s. 13.93 (2) (c).~~

11 **SECTION 7. 940.25 (1d) of the statutes is amended to read:**

12 940.25 (1d) If the person who committed the offense under sub. (1) (a), (b), (c)
13 or (d) has 2 or more prior convictions, suspensions or revocations, as counting
14 convictions under ss. 940.09 (1) and 940.25 in the nerson's lifetime, plus other
15 suspensions, revocations or convictions counted under s. 343.307 (1), the procedure
16 under s. 346.65 (6) may be followed regarding the immobilization or seizure and
17 forfeiture of a motor vehicle owned by the person who committed the offense or the
18 equipping of a motor vehicle owned by the person with an ignition interlock device.

~~NOTE: NOTE: Sub. (1d) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

~~History: 1977 c. 173; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295, 336; s. 13.93 (2) (c).~~

19
20 END of insert 4-4b