March 5, 2008 – Introduced by Representatives KAUFERT, HINTZ, OWENS, BIES, ALBERS, GRIGSBY, HAHN, JESKEWITZ and A. OTT, cosponsored by Senators TAYLOR, ROESSLER, CARPENTER, RISSER, ROBSON, KAPANKE, DARLING, ERPENBACH, COWLES, LASA and VINEHOUT. Referred to Committee on Judiciary and Ethics.

AN ACT to amend 346.65 (2) (bm), 346.65 (2) (cm), 346.65 (2j) (bm), 346.65 (2j) (cm) and 346.65 (3r) of the statutes; relating to: drunken driving and creating a penalty.

Analysis by the Legislative Reference Bureau

2005 Wisconsin Act 389 created a pilot program for sentencing persons in Winnebago county who are convicted of certain second or third offenses involving operating a motor vehicle with a prohibited alcohol concentration, or under the influence of an intoxicant, a controlled substance or its analog, or any combination thereof (OWI). Under that act, the period of imprisonment for an OWI offense in Winnebago county may be reduced if the violator successfully completes a period of probation that includes alcohol and other drug treatment. A person may complete a treatment program and receive a reduced period of imprisonment only once.

This bill expands the sentencing option to any county that opts to allow a violator to successfully complete a period of probation that includes alcohol and other drug treatment in exchange for a shorter period of imprisonment.

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.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
SECTION 1. 346.65 (2) (bm) of the statutes is amended to read:

346.65 (2) (bm) In Winnebago County, any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (b) par. (am) 2., but the period of imprisonment shall be not less than 5 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

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

346.65 (2) (cm) In Winnebago County, any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (c) par. (am) 3., but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of
imprisonment shall be not less than 10 days. A person may be sentenced under this paragraph or under par. (bm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

SECTION 3. 346.65 (2j) (bm) of the statutes is amended to read:

346.65 (2j) (bm) In Winnebago County any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person’s lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (b) par. (am) 2., but the period of imprisonment shall be not less than 5 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 5 nor more than 7 days. A person may be sentenced under this paragraph or under par. (cm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

SECTION 4. 346.65 (2j) (cm) of the statutes is amended to read:

346.65 (2j) (cm) In Winnebago County any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1) and 940.25 in the person’s lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1) within a 10-year period, equals 3 or more, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one, the fine shall be the same as under par. (e) par. (am) 3., but the period of imprisonment
shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 10 days. A person may be sentenced under this paragraph or under par. (bm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

**SECTION 5.** 346.65 (3r) of the statutes is amended to read:

346.65 (3r) In Winnebago County any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall be not less than 30 days, except that if the person successfully completes a period of probation that includes alcohol and other drug treatment, the period of imprisonment shall be not less than 15 days. If there was a minor passenger under 16 years of age in the motor vehicle at the time of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and maximum fines or periods of imprisonment for the conviction are doubled and the place of imprisonment shall be determined under s. 973.02. A person may be sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once in his or her lifetime.