



2009 ASSEMBLY BILL 156

March 19, 2009 – Introduced by Representatives BIES, MURSAU, A. OTT and ZEPNICK.
Referred to Committee on Public Safety.

1 **AN ACT** *to repeal* 346.65 (2g) (d); *to renumber and amend* 346.65 (2) (am) 1.,
2 346.65 (2) (am) 2., 346.65 (2) (am) 3., 346.65 (2) (am) 4., 346.65 (2) (am) 5., 346.65
3 (2) (am) 6. and 346.65 (2) (am) 7.; *to amend* 48.685 (5) (bm) 4., 346.65 (2) (f),
4 346.65 (2c), 346.65 (2e), 346.65 (2g) (a), 346.65 (2g) (ag), 346.65 (7) and 973.09
5 (1) (d) 1.; and *to create* 302.372 (7), 343.38 (1) (d), 346.65 (2) (am) 1. b., 346.65
6 (2) (am) 1m., 346.65 (2) (am) 2. b., 346.65 (2) (am) 2m., 346.65 (2) (am) 3. b.,
7 346.65 (2) (am) 3m., 346.65 (2) (am) 4. b., 346.65 (2) (am) 5. b., 346.65 (2) (am)
8 5m., 346.65 (2) (am) 6. b., 346.65 (2) (am) 6g., 346.65 (2) (am) 6m., 346.65 (2)
9 (am) 7. b. and 346.65 (2) (h) of the statutes; **relating to:** reimbursement to
10 counties by prisoners and increasing drunk driving penalties.

Analysis by the Legislative Reference Bureau

The bill changes the monetary and imprisonment penalties for operation of a motor vehicle while under the influence of an intoxicant or controlled substance offenses (OWI) as follows:

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	<i>Current law</i>	<i>Proposed</i>
First offense	<p>Forfeiture of: \$150–\$300</p> <p>No imprisonment</p>	<p>Fine of: \$150–\$300</p> <p>If BAC (blood alcohol concentration) is less than 0.15: imprisonment for 5 days</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 5 days</p> <p>If BAC is greater than or equal to 0.15: imprisonment for 8 days</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 8 days</p>
Second offense	<p>Fine of: \$350–\$1,100</p> <p>Imprisonment of: 5 days to 6 months</p>	<p>Same</p> <p>If BAC is less than 0.15: 45 days to 9 months</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 45 days</p> <p>If BAC is greater than or equal to 0.15: 60 days to 9 months</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 60 days</p>

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Third offense	<p>Fine of: \$600–\$2,000</p> <p>Imprisonment of: 30 days to 1 year</p>	<p>Same</p> <p>If BAC is less than 0.15: 6 months to one year</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 6 months</p> <p>If BAC is greater than or equal to 0.15: 9 to 18 months</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 9 months</p>
Fourth offense	<p>Fine of: \$600–\$2,000</p> <p>Imprisonment of: 60 days to 1 year</p>	<p>Same</p> <p>21 months to 3 years</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 21 months</p>
	<i>Current law</i>	<i>Proposed</i>
Fifth offense	<p>Fine of: \$600–\$10,000</p> <p>Imprisonment of: 6 months to 6 years</p>	<p>\$2,000–\$10,000</p> <p>2 to 6 years</p> <p>Not eligible for home detention, good time, work release, work camp, or community service release for 2 years</p>

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Sixth offense	Fine of: \$600–\$10,000 Imprisonment of: 6 months to 6 years (Same as fifth offense)	\$2,500–\$10,000 3 to 6 years Not eligible for home detention, good time, work release, work camp, or community service release for 3 years
Seventh offense	Fine of: not more than \$25,000 Imprisonment of: not more than 10 years	Same 4 to 10 years Not eligible for home detention, good time, work release, work camp, or community service release for 4 years
Eighth offense	Fine of: not more than \$25,000 Imprisonment of: not more than 10 years (Same as seventh)	Same 5 to 10 years Not eligible for home detention, good time, work release, work camp, or community service release for 5 years
Ninth offense	Fine of: not more than \$25,000 Imprisonment of: not more than 10 years (Same as seventh)	Same 6 to 10 years Not eligible for home detention, good time, work release, work camp, or community service release for 6 years
Tenth or more offenses	Fine of: not more than \$25,000 Imprisonment of: not more than 12 years and 6 months	Same 7 to 12 years and 6 months Not eligible for home detention, good time, work release, work camp, or community service release for 7 years

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To determine the number of previous OWI offenses under current law, the court counts the number of convictions during the person's lifetime of OWI-related offenses that resulted in injury or death plus the number of suspensions, revocations, and convictions for violations related to OWI, except that for second offenses, only the number of suspensions, revocations, and convictions related to OWI violations within any 10-year period are counted. Under the bill, the court counts the number of convictions during the person's lifetime of OWI-related offenses that resulted in injury or death plus the number of suspensions, revocations and other convictions of violations related to OWI within the 10 years immediately preceding the current violation.

Under current law, a county may seek reimbursement from a person who was confined to the county jail for the actual per-day cost of maintaining the person in the jail, for the cost of investigating the person's financial status, and for other county expenses related to collecting the reimbursement. Under this bill, if the county decides to seek reimbursement from a person who was confined in the county jail as the result of an OWI-related violation, the Department of Transportation (DOT) may not reinstate the violator's operating privilege until the county notifies DOT that the person has reimbursed the county or that the county is no longer seeking reimbursement from the person.

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.** 48.685 (5) (bm) 4. of the statutes is amended to read:

2 48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1),
3 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5),
4 or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2),
5 (5), or (6) that is a felony under s. 346.65 (2) (am) 4., 5., 5m., 6., 6g., 6m., or 7., or (f),
6 (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more
7 than 5 years before the date of the investigation under sub. (2) (am).

8 **SECTION 2.** 302.372 (7) of the statutes is created to read:

9 302.372 (7) RESTRICTION ON VIOLATOR'S OPERATING PRIVILEGE. If the county seeks
10 reimbursement under this section or as otherwise provided in chs. 301 to 303 from
11 a prisoner who was confined to the jail as the result of a violation under s. 346.63,

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1 940.09 (1), or 940.25, the department of transportation may not reinstate the
2 violator's operating privilege until the county notifies the department that the
3 violator has reimbursed the amount owed to the county or that the county is no longer
4 seeking reimbursement from the violator.

5 **SECTION 3.** 343.38 (1) (d) of the statutes is created to read:

6 343.38 (1) (d) Has paid any amount specified in s. 302.372 (7).

7 **SECTION 4.** 346.65 (2) (am) 1. of the statutes is renumbered 346.65 (2) (am) 1.
8 a. and amended to read:

9 346.65 (2) (am) 1. a. ~~Shall forfeit~~ If the person had an alcohol concentration of
10 less than 0.15, shall be fined not less than \$150 nor more than \$300 and imprisoned
11 for 5 days, except as provided in subds. 2. to ~~5.~~ 7. and par. (f).

12 **SECTION 5.** 346.65 (2) (am) 1. b. of the statutes is created to read:

13 346.65 (2) (am) 1. b. The person is not eligible for home detention under s.
14 302.425, good time under s. 302.43, release from jail for employment under s. 303.08
15 (1) (b), transfer to a county work camp under s. 303.10, release to perform community
16 service unless s. 973.07 applies, or diminution of the sentence under s. 303.19 (3), for
17 the first 5 days of confinement.

18 **SECTION 6.** 346.65 (2) (am) 1m. of the statutes is created to read:

19 346.65 (2) (am) 1m. a. If the person had an alcohol concentration of 0.15 or
20 more, shall be fined not less than \$150 nor more than \$300 and imprisoned for 8 days,
21 except as provided in subds. 2. to 7. and par. (f).

22 b. The person is not eligible for home detention under s. 302.425, good time
23 under s. 302.43, release from jail for employment under s. 303.08 (1) (b), transfer to
24 a county work camp under s. 303.10, release to perform community service unless

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1 s. 973.07 applies, or diminution of the sentence under s. 303.19 (3), for the first 8 days
2 of confinement.

3 **SECTION 7.** 346.65 (2) (am) 2. of the statutes is renumbered 346.65 (2) (am) 2.
4 a. and amended to read:

5 346.65 (2) (am) 2. a. Except as provided in pars. (bm) and (f), shall be fined not
6 less than \$350 nor more than \$1,100 and imprisoned for not less than ~~5~~ 45 days nor
7 more than ~~6~~ 9 months if the person had an alcohol concentration of less than 0.15 and
8 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
9 plus the total number of suspensions, revocations, and other convictions counted
10 under s. 343.307 (1) within a 10-year period the immediately preceding 10 years,
11 equals 2, except that suspensions, revocations, or convictions arising out of the same
12 incident or occurrence shall be counted as one.

13 **SECTION 8.** 346.65 (2) (am) 2. b. of the statutes is created to read:

14 346.65 (2) (am) 2. b. The person sentenced under subd. 2. a. is not eligible for
15 home detention under s. 302.425, good time under s. 302.43, release from jail for
16 employment under s. 303.08 (1) (b), transfer to a county work camp under s. 303.10,
17 release to perform community service unless s. 973.07 applies, or diminution of the
18 sentence under s. 303.19 (3), for the first 45 days of confinement.

19 **SECTION 9.** 346.65 (2) (am) 2m. of the statutes is created to read:

20 346.65 (2) (am) 2m. a. Except as provided in pars. (bm) and (f), shall be fined
21 not less than \$350 nor more than \$1,100 and imprisoned for not less than 60 days
22 nor more than 9 months if the person had an alcohol concentration of 0.15 or more
23 and if the number of convictions under ss. 940.09 (1) and 940.25 in the person's
24 lifetime, plus the total number of suspensions, revocations, and other convictions
25 counted under s. 343.307 (1) within the immediately preceding 10 years, equals 2.

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1 b. The person sentenced under subd. 2m. a. is not eligible for home detention
2 under s. 302.425, good time under s. 302.43, release from jail for employment under
3 s. 303.08 (1) (b), transfer to a county work camp under s. 303.10, release to perform
4 community service unless s. 973.07 applies, or diminution of the sentence under s.
5 303.19 (3), for the first 60 days of confinement.

6 **SECTION 10.** 346.65 (2) (am) 3. of the statutes is renumbered 346.65 (2) (am)
7 3. a. and amended to read:

8 346.65 (2) (am) 3. a. Except as provided in pars. (cm), (f), and (g), shall be fined
9 not less than \$600 nor more than \$2,000 and imprisoned for not less than ~~30 days~~
10 6 months nor more than one year in the county jail if the person had an alcohol
11 concentration of less than 0.15 and if the number of convictions under ss. 940.09 (1)
12 and 940.25 in the person's lifetime, plus the total number of suspensions,
13 revocations, and other convictions counted under s. 343.307 (1) within the
14 immediately preceding 10 years, equals 3, ~~except that suspensions, revocations, or~~
15 ~~convictions arising out of the same incident or occurrence shall be counted as one.~~

16 **SECTION 11.** 346.65 (2) (am) 3. b. of the statutes is created to read:

17 346.65 (2) (am) 3. b. The person sentenced under subd. 3. a. is not eligible for
18 home detention under s. 302.425, good time under s. 302.43, release from jail for
19 employment under s. 303.08 (1) (b), transfer to a county work camp under s. 303.10,
20 release to perform community service unless s. 973.07 applies, or diminution of the
21 sentence under s. 303.19 (3), for the first 6 months of confinement.

22 **SECTION 12.** 346.65 (2) (am) 3m. of the statutes is created to read:

23 346.65 (2) (am) 3m. a. Except as provided in pars. (cm), (f), and (g), shall be
24 fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 9
25 months nor more than 18 months if the person had an alcohol concentration of 0.15

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1 or more and if the number of convictions under ss. 940.09 (1) and 940.25 in the
2 person's lifetime, plus the total number of suspensions, revocations, and other
3 convictions counted under s. 343.307 (1) within the immediately preceding 10 years,
4 equals 3.

5 b. The person sentenced under subd. 3m. a. is not eligible for home detention
6 under s. 302.425, good time under s. 302.43, release from jail for employment under
7 s. 303.08 (1) (b), transfer to a county work camp under s. 303.10, release to perform
8 community service unless s. 973.07 applies, or diminution of the sentence under s.
9 303.19 (3), for the first 9 months of confinement.

10 **SECTION 13.** 346.65 (2) (am) 4. of the statutes is renumbered 346.65 (2) (am)
11 4. a. and amended to read:

12 346.65 (2) (am) 4. a. Except as provided in pars. (f) and (g), shall be fined not
13 less than \$600 nor more than \$2,000 and imprisoned for not less than ~~60 days~~ 21
14 months nor more than ~~one year in the county jail~~ 3 years if the number of convictions
15 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
16 suspensions, revocations and other convictions counted under s. 343.307 (1) within
17 the immediately preceding 10 years, equals 4, ~~except that suspensions, revocations~~
18 ~~or convictions arising out of the same incident or occurrence shall be counted as one.~~

19 **SECTION 14.** 346.65 (2) (am) 4. b. of the statutes is created to read:

20 346.65 (2) (am) 4. b. The person sentenced under subd. 4. a. is not eligible for
21 home detention under s. 302.425, good time under s. 302.43, release from jail for
22 employment under s. 303.08 (1) (b), transfer to a county work camp under s. 303.10,
23 release to perform community service unless s. 973.07 applies, or diminution of the
24 sentence under s. 303.19 (3), for the first 21 months of confinement.

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1 **SECTION 15.** 346.65 (2) (am) 5. of the statutes is renumbered 346.65 (2) (am)
2 5. a. and amended to read:

3 346.65 (2) (am) 5. a. Except as provided in pars. (f) and (g), is guilty of a Class
4 H felony and shall be fined not less than \$600 \$2,000 and imprisoned for not less than
5 ~~6 months~~ 2 years if the number of convictions under ss. 940.09 (1) and 940.25 in the
6 person's lifetime, plus the total number of suspensions, revocations and other
7 convictions counted under s. 343.307 (1) within the immediately preceding 10 years,
8 ~~equals 5 or 6, except that suspensions, revocations or convictions arising out of the~~
9 ~~same incident or occurrence shall be counted as one.~~

10 **SECTION 16.** 346.65 (2) (am) 5. b. of the statutes is created to read:

11 346.65 (2) (am) 5. b. The person sentenced under subd. 5. a. is not eligible for
12 home detention under s. 302.425, good time under s. 302.43, release from jail for
13 employment under s. 303.08 (1) (b), transfer to a county work camp under s. 303.10,
14 release to perform community service unless s. 973.07 applies, or diminution of the
15 sentence under s. 303.19 (3), for the first 2 years of confinement.

16 **SECTION 17.** 346.65 (2) (am) 5m. of the statutes is created to read:

17 346.65 (2) (am) 5m. a. Except as provided in par. (f), is guilty of a Class H felony
18 and shall be fined not less than \$2,500 and imprisoned for not less than 3 years if the
19 number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus
20 the total number of suspensions, revocations, and other convictions counted under
21 s. 343.307 (1) within the immediately preceding 10 years, equals 6.

22 b. The person sentenced under subd. 5m a. is not eligible for home detention
23 under s. 302.425, good time under s. 302.43, release from jail for employment under
24 s. 303.08 (1) (b), transfer to a county work camp under s. 303.10, release to perform

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1 community service unless s. 973.07 applies, or diminution of the sentence under s.
2 303.19 (3), for the first 3 years of confinement.

3 **SECTION 18.** 346.65 (2) (am) 6. of the statutes is renumbered 346.65 (2) (am)
4 6. a. and amended to read:

5 346.65 (2) (am) 6. a. Except as provided in par. (f), is guilty of a Class G felony
6 and shall be imprisoned for not less than 4 years if the number of convictions under
7 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
8 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
9 the immediately preceding 10 years, equals 7, ~~8, or 9~~, except that suspensions,
10 ~~revocations, or convictions arising out of the same incident or occurrence shall be~~
11 ~~counted as one.~~

12 **SECTION 19.** 346.65 (2) (am) 6. b. of the statutes is created to read:

13 346.65 (2) (am) 6. b. The person sentenced under subd. 6. a. is not eligible for
14 home detention under s. 302.425, good time under s. 302.43, release from jail for
15 employment under s. 303.08 (1) (b), transfer to a county work camp under s. 303.10,
16 release to perform community service unless s. 973.07 applies, or diminution of the
17 sentence under s. 303.19 (3), for the first 4 years of confinement.

18 **SECTION 20.** 346.65 (2) (am) 6g. of the statutes is created to read:

19 346.65 (2) (am) 6g. a. Except as provided in par. (f), is guilty of a Class G felony
20 and shall be imprisoned for not less than 5 years if the number of convictions under
21 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
22 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
23 the immediately preceding 10 years, equals 8.

24 b. The person sentenced under subd. 6g a. is not eligible for home detention
25 under s. 302.425, good time under s. 302.43, release from jail for employment under

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1 s. 303.08 (1) (b), transfer to a county work camp under s. 303.10, release to perform
2 community service unless s. 973.07 applies, or diminution of the sentence under s.
3 303.19 (3), for the first 5 years of confinement.

4 **SECTION 21.** 346.65 (2) (am) 6m. of the statutes is created to read:

5 346.65 (2) (am) 6m. Except as provided in par. (f), is guilty of a Class G felony
6 and shall be imprisoned for not less than 6 years if the number of convictions under
7 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
8 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
9 the immediately preceding 10 years, equals 9.

10 b. The person sentenced under subd. 6m. a. is not eligible for home detention
11 under s. 302.425, good time under s. 302.43, release from jail for employment under
12 s. 303.08 (1) (b), transfer to a county work camp under s. 303.10, release to perform
13 community service unless s. 973.07 applies, or diminution of the sentence under s.
14 303.19 (3), for the first 6 years of confinement.

15 **SECTION 22.** 346.65 (2) (am) 7. of the statutes is renumbered 346.65 (2) (am)
16 7. a. and amended to read:

17 346.65 (2) (am) 7. a. Except as provided in par. (f), is guilty of a Class F felony
18 and shall be imprisoned for not less than 7 years if the number of convictions under
19 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
20 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
21 the immediately preceding 10 years, equals 10 or more ~~except that suspensions,~~
22 ~~revocations, or convictions arising out of the same incident or occurrence shall be~~
23 ~~counted as one.~~

24 **SECTION 23.** 346.65 (2) (am) 7. b. of the statutes is created to read:

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1 346.65 (2) (am) 7. b. The person sentenced under subd. 7. a. is not eligible for
2 home detention under s. 302.425, good time under s. 302.43, release from jail for
3 employment under s. 303.08 (1) (b), transfer to a county work camp under s. 303.10,
4 release to perform community service unless s. 973.07 applies, or diminution of the
5 sentence under s. 303.19 (3), for the first 7 years of confinement.

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

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

14 **SECTION 25.** 346.65 (2) (h) of the statutes is created to read:

15 346.65 (2) (h) In this subsection, suspensions, revocations, or convictions
16 arising out of the same incident or occurrence shall be counted as one.

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

18 346.65 (2c) In sub. (2) (am) ~~2., 3., 4., 5., 6., and 7.,~~ the time period shall be
19 measured from the dates of the refusals or violations that resulted in the revocation
20 or convictions. If a person has a suspension, revocation, or conviction for any offense
21 under a local ordinance or a state statute of another state that would be counted
22 under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior
23 suspension, revocation, or conviction under sub. (2) (am) ~~2., 3., 4., 5., 6., and 7.~~

24 **SECTION 27.** 346.65 (2e) of the statutes is amended to read:

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

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

8 346.65 **(2g)** (a) In addition to the authority of the court under s. 973.05 (3) (a)
9 to provide that a defendant perform community service work for a public agency or
10 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
11 (2) (am) 2., 2m., 3., 3m., 4., and 5., and 5m., (f), and (g) ~~and except as provided in par.~~
12 ~~(ag), the court may provide that a defendant perform community service work for a~~
13 ~~public agency or a nonprofit charitable organization in lieu of part or all of a forfeiture~~
14 ~~under sub. (2) (am) 1. or the court may require a person who is subject to sub. (2) to~~
15 perform community service work for a public agency or a nonprofit charitable
16 organization in addition to the penalties specified under sub. (2).

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

18 346.65 **(2g)** (ag) If the court determines that a person does not have the ability
19 to pay a fine imposed under sub. (2) (am) 2., 2m., 3., 3m., 4., ~~or~~ 5., or 5m., (f), or (g),
20 the court shall require the defendant to perform community service work for a public
21 agency or a nonprofit charitable organization in lieu of paying the fine imposed or,
22 if the amount of the fine was reduced under sub. (2e), in lieu of paying the remaining
23 amount of the fine. Each hour of community service performed in compliance with
24 an order under this paragraph shall reduce the amount of the fine owed by an amount
25 determined by the court.

