



2009 ASSEMBLY BILL 244

April 30, 2009 – Introduced by Representatives ZIGMUNT, STASKUNAS, STRACHOTA and BARCA, cosponsored by Senator PLALE. Referred to Committee on Public Safety.

1 **AN ACT** *to repeal* 346.65 (2) (am) 4.; and *to amend* 346.65 (2) (am) 5., 346.65 (2)
2 (am) 6., 346.65 (2) (am) 7., 346.65 (2) (f), 346.65 (2c), 346.65 (2g) (a), 346.65 (2g)
3 (ag) and 346.65 (7) of the statutes; **relating to:** fines and terms of
4 imprisonment for certain drunken driving offenses and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, a person who commits an offense relating to operating a vehicle while intoxicated or under the influence of a controlled substance (OWI) is subject to a forfeiture or fine and, for a second or subsequent offense, a period of imprisonment. Currently, a person who commits a second OWI offense is subject to a fine between \$350 and \$1,100 and may be imprisoned for not less than five days nor more than six months, a person who commits a third offense is subject to a fine between \$600 and \$2000 and may be imprisoned for not less than 30 days nor more than one year, a person who commits a fourth offense may be fined between \$600 and \$2000 and may be imprisoned for not less than 60 days nor more than one year.

Upon committing a fifth or sixth OWI offense, a person is guilty of a Class H felony, and is subject to a minimum fine of \$600, a six month minimum term of imprisonment and a maximum term of imprisonment of six years. A seventh, eighth, or ninth OWI offense is a Class G felony, and the person is subject to a maximum fine of \$25,000 and a maximum term of imprisonment of ten years. A tenth or subsequent OWI offense is a Class F felony, and the person is subject to a maximum fine of \$25,000, and a maximum term of imprisonment of 12 years and six months.

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Under current law, a person who is sentenced for a felony is sentenced to a bifurcated sentence, and the person serves a portion of his or her sentence confined in a prison and a portion under extended supervision outside of prison.

This bill makes a fourth OWI offense a Class H felony and requires a person who commits a fourth, fifth, or sixth OWI offense to serve a minimum of two years in prison under a bifurcated sentence. The bill requires a person who commits a seventh, eighth, or ninth OWI offense to serve a minimum of three years in prison under a bifurcated sentence and a person who commits a tenth or subsequent OWI offense to serve a minimum of four years in prison under a bifurcated sentence.

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.** 346.65 (2) (am) 4. of the statutes is repealed.

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

3 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H
4 felony and shall be fined not less than \$600 and imprisoned for ~~not less than 6 months~~
5 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
6 plus the total number of suspensions, revocations and other convictions counted
7 under s. 343.307 (1), equals 4, 5, or 6, except that suspensions, revocations or
8 convictions arising out of the same incident or occurrence shall be counted as one.
9 The confinement portion of a bifurcated sentence imposed on the person under s.
10 973.01 shall be not less than 2 years.

11 **SECTION 3.** 346.65 (2) (am) 6. of the statutes is amended to read:

12 346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G felony if
13 the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
14 plus the total number of suspensions, revocations, and other convictions counted
15 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or
16 convictions arising out of the same incident or occurrence shall be counted as one.

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1 The confinement portion of a bifurcated sentence imposed on the person under s.
2 973.01 shall be not less than 3 years.

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

4 346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class F felony if
5 the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
6 plus the total number of suspensions, revocations, and other convictions counted
7 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or
8 convictions arising out of the same incident or occurrence shall be counted as one.

9 The confinement portion of a bifurcated sentence imposed on the person under s.
10 973.01 shall be not less than 4 years.

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

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

19 **SECTION 6.** 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 7.** 346.65 (2g) (a) of the statutes is amended to read:

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

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

12 346.65 **(2g)** (ag) If the court determines that a person does not have the ability
13 to pay a fine imposed under sub. (2) (am) 2., 3., ~~4.~~, or 5., (f), or (g), the court shall
14 require the defendant to perform community service work for a public agency or a
15 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
16 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
17 fine. Each hour of community service performed in compliance with an order under
18 this paragraph shall reduce the amount of the fine owed by an amount determined
19 by the court.

20 **SECTION 9.** 346.65 (7) of the statutes is amended to read:

21 346.65 **(7)** A person convicted under sub. (2) (am) 2., 3., ~~4.~~, 5., 6., or 7. or (2j)
22 (am) 2. or 3. shall be required to remain in the county jail for not less than a
23 48–consecutive–hour period.

24

(END)