



2009 ASSEMBLY BILL 283

May 27, 2009 – Introduced by Representatives STASKUNAS, ZEPNICK, SMITH, ZIGMUNT, HINTZ, SHERIDAN, BLACK, TURNER, CLARK, MASON, NELSON, HIXSON, HEBL and BERCEAU, cosponsored by Senator CARPENTER. Referred to Committee on Public Safety.

1 **AN ACT** *to repeal* 342.12 (4) (c) 1. b., 343.301 (1) (title), 343.301 (2), 346.65 (6),
2 346.65 (8), 973.09 (1) (d) 1., 973.09 (1) (d) 2. and 973.09 (1) (d) 3.; *to renumber*
3 *and amend* 343.301 (1) (c), 343.301 (1) (d) and 973.09 (1) (d) (intro.); *to*
4 *consolidate, renumber and amend* 343.301 (1) (b) 1. and 2.; *to amend*
5 165.755 (1) (b), 302.46 (1) (a), 340.01 (46m) (c), 342.12 (4) (c) 1. c., 342.13 (1),
6 343.10 (2) (a) (intro.), 343.10 (5) (a) 3., 343.23 (2) (b), 343.30 (1q) (b) 5., 343.30
7 (1q) (c) 1. (intro.), 343.301 (title), 343.305 (10) (b) 5., 343.31 (3) (bm) 5., 346.65
8 (2) (am) 4., 346.65 (2) (am) 5., 346.65 (2) (am) 6., 346.65 (2) (am) 7., 346.65 (2)
9 (bm), 346.65 (2) (cm), 346.65 (2) (f), 346.65 (2c), 346.65 (2g) (a), 346.65 (2g) (ag),
10 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (3m), 346.65 (3r), 346.65 (7), 346.655
11 (1), 347.413 (title) and (1), 347.417 (1), 347.417 (2), 347.50 (1s), 757.05 (1) (a),
12 814.63 (1) (c), 814.63 (2), 814.65 (1), 814.85 (1) (a), 814.86 (1) and 973.09 (2) (a)
13 1. d.; *to repeal and recreate* 343.10 (2) (a) (intro.), 343.301 (1), 343.305 (10m),
14 940.09 (1d) and 940.25 (1d); and *to create* 20.395 (5) (hj), 25.40 (1) (a) 17.,

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1 340.01 (46m) (d), 343.10 (2) (f), 343.301 (1m), 343.301 (3) (b), 343.301 (5), 346.65
2 (2) (am) 4m., 346.65 (3p) and 347.50 (1t) of the statutes; **relating to:** operating
3 a vehicle while intoxicated, granting rule-making authority, making an
4 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes relating to operating a vehicle under the influence of an intoxicant (OWI-related offense), including the following:

1. Under current law, if a person is convicted of a second OWI-related offense, a judge may immobilize the person's motor vehicles or require that the person's operating privilege be limited to operating vehicles that are equipped with an ignition interlock device. If a person is convicted of a third or subsequent OWI-related offense within five years, a judge must limit the person's operating privilege to operating vehicles that are equipped with an ignition interlock device unless the judge orders that the person's motor vehicles be immobilized or seized and sold at auction.

Current law requires the person to pay for the costs of installing and monitoring the ignition interlock device on every motor vehicle he or she owns. If the judge determines that this would work a hardship to the person, current law allows the judge to require an ignition interlock device on some, but not all, of the person's motor vehicles.

Under current law, no one may remove, disconnect, tamper with, or otherwise circumvent the operation of an ignition interlock device. A person who does so may be required to forfeit not less than \$150 nor more than \$600 for the first offense and, for a second or subsequent offense within five years, may be fined not less than \$300 nor more than \$1,000, or imprisoned for not more than six months, or both.

This bill eliminates the option of ordering the person's vehicle to be immobilized or seized and sold at auction. The bill makes it mandatory for a judge to require that the person's operating privilege be limited, for a minimum of one year, to operating vehicles that are equipped with an ignition interlock device if either of the following are true: 1) the person commits a first OWI-related offense with an alcohol concentration of 0.15 or more; or 2) the person commits a second OWI-related offense.

Under the bill, the judge must order that every motor vehicle the person owns be equipped with an ignition interlock device. If the judge determines that the person's income is at or below 150 percent of the federal poverty level, the person is required to pay a \$50 surcharge upon the installation of the first ignition interlock device and, for each ignition interlock device, half of the installation cost, and one-half of the cost per day toward the cost of monitoring the ignition interlock device. A person whose income is above 150 percent of the federal poverty level is required to pay the surcharge and assume the full cost of installing and monitoring

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each ignition interlock device. Under the bill, if a person who is ordered to do so fails to pay the surcharge or fails to have an ignition interlock device installed, he or she may not obtain an occupational license.

Under the bill, a court may order a person who removes, disconnects, tampers with, or otherwise circumvents the operation of an ignition interlock device to be imprisoned for not more than six months for a first offense. The bill also subjects a person who fails to have an ignition interlock device installed as ordered by the court to the same penalties as a person who removes, disconnects, tampers with, or otherwise circumvents the operation of an ignition interlock device.

2. Current law defines a “prohibited alcohol concentration” as an alcohol concentration of 0.08 or more if the person has two or fewer prior OWI-related convictions, suspensions, or revocations. If the person has three or more prior OWI-related convictions, suspensions, or revocations, the prohibited alcohol concentration is defined as an alcohol concentration of more than 0.02.

This bill adds a definition of a prohibited alcohol concentration as an alcohol concentration of more than 0.02 for the two-year period after a person has committed an OWI offense.

3. Under current law, a person who is subject to a forfeiture or a fine for violating most state laws or local ordinances is also liable for a variety of penalty surcharges and court fees. In addition, a person who commits an OWI-related offense is liable for a penalty surcharge for driver improvement programs and is required to comply with an alcohol and other drug assessment before he or she is eligible for reinstatement of his or her driving privileges.

Currently, a person who commits his or her first OWI-related offense and who has a blood alcohol concentration between 0.08 and 0.099 at the time of the offense is not liable for the surcharges or fees and does not need to comply with an alcohol or other drug assessment program. Further, the Department of Transportation (DOT) must purge its records of a first offense related to driving while intoxicated after ten years; the department keeps all other records of offenses related to driving while intoxicated permanently.

Under this bill, a person who commits his or her first OWI-related offense and who has a blood alcohol concentration between 0.08 and 0.099 at the time of the violation is liable for the surcharges or fees and must comply with an alcohol or other drug assessment program before his or her driving privileges may be reinstated. Under this bill, DOT must keep a record of this offense permanently.

4. Under current law, a person who commits an OWI-related offense 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-related 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 \$2,000 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 \$2,000 and may be imprisoned for not less than 60 days nor more than one year.

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Upon committing a fifth or sixth OWI-related 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-related 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-related 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.

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-related offense committed within five years of a prior offense a Class H felony and requires a person who commits a fourth, fifth, or sixth OWI-related 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-related offense to serve a minimum of three years in prison under a bifurcated sentence and a person who commits a tenth or subsequent OWI-related offense to serve a minimum of four years in prison under a bifurcated sentence.

5. Under current law, a person who commits an OWI-related offense and causes injury to another is subject to a fine of not less than \$300 nor more than \$2,000, imprisonment for not less than 30 days nor more than one year, or both.

Under this bill, a person who commits a second or subsequent OWI-related offense and causes injury to another person is guilty of a Class H felony, and is subject to a fine up to \$10,000, imprisonment for not more than six years, or both.

6. 2005 Wisconsin Act 389 created a pilot program for sentencing persons in Winnebago County who are convicted of certain second or third OWI-related offenses. Under that act, the period of imprisonment for an OWI-related 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.

7. Under current law, a person who commits an OWI-related offense has his or her operating privileges revoked for a specified period. The period of revocation lengthens with each subsequent OWI-related offense, and generally begins on the date on which the person commits the OWI-related offense.

Under this bill, the period of revocation begins on the date on which the person commits the OWI-related offense, but is tolled for any time period that the person spends in jail or in prison. The bill makes the person whose operating privileges are revoked responsible for notifying DOT that he or she has been released from jail or prison.

8. Under current law, after a person is convicted of most crimes, the trial court may withhold the person's sentence, or impose a sentence of imprisonment but stay the imposition of imprisonment, and place the person on probation for a period of

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time. If the crime carries a mandatory minimum period of incarceration of one year or less, the person must be incarcerated for at least the mandatory minimum period as a condition of his or her probation.

Under current law, a trial court may not place a person on probation if the person has committed a second or third OWI-related offense or three or fewer offenses related to operating a commercial vehicle or causing injury while operating a vehicle while intoxicated or with a prohibited alcohol concentration. A trial court may place a person who commits more than three of these offenses on probation under current law.

Under this bill, a trial court may place a person who commits any of those offenses on probation. Under the bill, a person who commits an offense that carries a mandatory minimum period of incarceration of one year or less must be incarcerated for at least the mandatory minimum period as a condition of his or her probation.

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.

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.** 20.395 (5) (hj) of the statutes is created to read:

2 20.395 (5) (hj) *Ignition interlock device administration and enforcement.* All
3 moneys in the general fund received under s. 343.301 (5) for expenditures related to
4 administering the ignition interlock device program under ss. 110.10 and 343.301.

5 **SECTION 2.** 25.40 (1) (a) 17. of the statutes is created to read:

6 25.40 (1) (a) 17. Moneys collected under s. 343.301 (5) that are deposited into
7 the general fund and credited to the appropriation under s. 20.395 (5) (hj).

8 **SECTION 3.** 165.755 (1) (b) of the statutes is amended to read:

9 165.755 (1) (b) A court may not impose the crime laboratories and drug law
10 enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar),
11 (bm), (br), or (bv) or (5) (b), ~~for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1.,~~

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1 ~~346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood~~
2 ~~alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,~~
3 ~~or for a violation of a state law or municipal or county ordinance involving a~~
4 ~~nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use~~
5 ~~violation under s. 347.48 (2m).~~

6 **SECTION 4.** 302.46 (1) (a) of the statutes is amended to read:

7 302.46 (1) (a) If a court imposes a fine or forfeiture for a violation of state law
8 or for a violation of a municipal or county ordinance except for a violation of s. 101.123
9 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s. 23.33 (4c) (a)~~
10 ~~2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the~~
11 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
12 ~~time of the violation,~~ or for a violation of state laws or municipal or county ordinances
13 involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety
14 belt use violations under s. 347.48 (2m), the court, in addition, shall impose a jail
15 surcharge under ch. 814 in an amount of 1 percent of the fine or forfeiture imposed
16 or \$10, whichever is greater. If multiple offenses are involved, the court shall
17 determine the jail surcharge on the basis of each fine or forfeiture. If a fine or
18 forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge
19 in proportion to the suspension.

20 **SECTION 5.** 340.01 (46m) (c) of the statutes is amended to read:

21 340.01 (46m) (c) If the person is subject to an order under s. 343.301 or if the
22 person has 3 or more prior convictions, suspensions or revocations, as counted under
23 s. 343.307 (1), an alcohol concentration of more than 0.02.

24 **SECTION 6.** 340.01 (46m) (d) of the statutes is created to read:

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1 340.01 **(46m)** (d) If the person has a prior conviction, suspension, or revocation,
2 as counted under s. 343.307 (1), within 2 years of the current offense, an alcohol
3 concentration of more than 0.02.

4 **SECTION 7.** 342.12 (4) (c) 1. b. of the statutes is repealed.

5 **SECTION 8.** 342.12 (4) (c) 1. c. of the statutes is amended to read:

6 342.12 **(4)** (c) 1. c. The person requesting the issuance of the certificate of title
7 files an affidavit with the department attesting that the ~~conditions~~ condition under
8 subd. 1. a. ~~and b.~~ are is met.

9 **SECTION 9.** 342.13 (1) of the statutes is amended to read:

10 342.13 **(1)** If a certificate of title is lost, stolen, mutilated, or destroyed, or
11 becomes illegible, the owner or legal representative of the owner named in the
12 certificate, as shown by the records of the department, shall promptly make
13 application for and may obtain a replacement upon furnishing information
14 satisfactory to the department. The replacement certificate of title shall contain a
15 notation, in a form determined by the department, identifying the certificate as a
16 replacement certificate that may be subject to the rights of a person under the
17 original certificate. ~~If applicable under s. 346.65 (6), the replacement certificate of~~
18 ~~title shall include the notation “Per section 346.65 (6) of the Wisconsin statutes,~~
19 ~~ownership of this motor vehicle may not be transferred without prior court approval”.~~

20 **SECTION 10.** 343.10 (2) (a) (intro.) of the statutes is amended to read:

21 343.10 **(2)** (a) (intro.) Except as provided in pars. (b) to ~~(e)~~ (f), a person is eligible
22 for an occupational license if the following conditions are satisfied:

23 **SECTION 11.** 343.10 (2) (a) (intro.) of the statutes, as affected by 2007 Wisconsin
24 Act 20 and 2009 Wisconsin Act ... (this act), is repealed and recreated to read:

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1 343.10 (2) (a) (intro.) Except as provided in pars. (b) to (f), and subject to s.
2 343.165 (5), a person is eligible for an occupational license if the following conditions
3 are satisfied:

4 **SECTION 12.** 343.10 (2) (f) of the statutes is created to read:

5 343.10 (2) (f) If the court orders under s. 343.301 (1) that the person's operating
6 privilege for the operation of "Class D" vehicles be restricted to operating vehicles
7 that are equipped with an ignition interlock device, no occupational license may be
8 granted until the person pays the surcharge under s. 343.301 (5) and submits proof
9 that an ignition interlock device has been installed in each motor vehicle for which
10 the person's name appears on the vehicle's certificate of title or registration.

11 **SECTION 13.** 343.10 (5) (a) 3. of the statutes is amended to read:

12 343.10 (5) (a) 3. ~~If the applicant has 2 or more prior convictions, suspensions,~~
13 ~~or revocations, as counted under s. 343.307 (1), the~~ The occupational license of the
14 applicant shall restrict the applicant's operation under the occupational license to
15 vehicles that are equipped with a functioning ignition interlock device if the court
16 has ordered under s. 343.301 (1) ~~(a) 1. or 2.~~ that the person's operating privilege for
17 Class D vehicles be restricted to operating vehicles that are equipped with an
18 ignition interlock device or has ordered under s. 346.65 (6) (a) 1., 1999 stats., that the
19 motor vehicle owned by the person and used in the violation or improper refusal be
20 equipped with an ignition interlock device. A person to whom a restriction under this
21 subdivision applies violates that restriction if he or she removes or disconnects an
22 ignition interlock device. requests or permits another to blow into an ignition
23 interlock device or to start a motor vehicle equipped with an ignition interlock device
24 for the purpose of providing the person an operable motor vehicle without the
25 necessity of first submitting a sample of his or her breath to analysis by the ignition

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1 ~~interlock device. If, or otherwise tampers with or circumvents the operation of the~~
2 ~~ignition interlock device. Except as provided in s. 343.301 (3) (b), if the occupational~~
3 license restricts the applicant's operation to a vehicle that is equipped with an
4 ignition interlock device, the applicant shall be liable for the reasonable costs of
5 equipping the vehicle with the ignition interlock device.

6 **SECTION 14.** 343.23 (2) (b) of the statutes is amended to read:

7 343.23 (2) (b) The information specified in pars. (a) and (am) must be filed by
8 the department so that the complete operator's record is available for the use of the
9 secretary in determining whether operating privileges of such person shall be
10 suspended, revoked, canceled, or withheld, or the person disqualified, in the interest
11 of public safety. The record of suspensions, revocations, and convictions that would
12 be counted under s. 343.307 (2) shall be maintained permanently, ~~except that the~~
13 ~~department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~
14 ~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the~~
15 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
16 ~~time of the violation, if the person does not have a commercial driver license, if the~~
17 ~~violation was not committed by a person operating a commercial motor vehicle, and~~
18 ~~if the person has no other suspension, revocation, or conviction that would be counted~~
19 ~~under s. 343.307 during that 10-year period.~~ The record of convictions for
20 disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10
21 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) and
22 (j), and all records specified in par. (am), shall be maintained for at least 3 years. The
23 record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be
24 maintained permanently, except that 5 years after a licensee transfers residency to
25 another state such record may be transferred to another state of licensure of the

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1 licensee if that state accepts responsibility for maintaining a permanent record of
2 convictions for disqualifying offenses. Such reports and records may be cumulative
3 beyond the period for which a license is granted, but the secretary, in exercising the
4 power of suspension granted under s. 343.32 (2) may consider only those reports and
5 records entered during the 4–year period immediately preceding the exercise of such
6 power of suspension.

7 **SECTION 15.** 343.30 (1q) (b) 5. of the statutes is amended to read:

8 343.30 **(1q)** (b) 5. The time period under this paragraph shall be measured from
9 the dates of the refusals or violations which resulted in the suspensions, revocations
10 or convictions, except that the time period shall be tolled whenever and for as long
11 as the person is imprisoned. A person whose revocation period is tolled under this
12 subdivision is responsible for notifying the department that he or she has been
13 released from prison.

14 **SECTION 16.** 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

15 343.30 **(1q)** (c) 1. (intro.) Except as provided in subd. 1. a. or b., and except for
16 ~~a first violation of s. 346.63 (1) (b), if the person who committed the violation had a~~
17 ~~blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the~~
18 ~~violation,~~ the court shall order the person to submit to and comply with an
19 assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for
20 examination of the person's use of alcohol, controlled substances or controlled
21 substance analogs and development of a driver safety plan for the person. The court
22 shall notify the department of transportation of the assessment order. The court
23 shall notify the person that noncompliance with assessment or the driver safety plan
24 will result in revocation of the person's operating privilege until the person is in
25 compliance. The assessment order shall:

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1 **SECTION 17.** 343.301 (title) of the statutes is amended to read:

2 **343.301** (title) **Installation of ignition interlock device or**
3 **immobilization of a motor vehicle.**

4 **SECTION 18.** 343.301 (1) (title) of the statutes is repealed.

5 **SECTION 19.** 343.301 (1) of the statutes is repealed and recreated to read:

6 **343.301 (1)** A court shall order a person's operating privilege for the operation
7 of "Class D" vehicles be restricted to operating vehicles that are equipped with an
8 ignition interlock device and, except as provided in sub. (1m), shall order that each
9 motor vehicle in the person's household operated by the person be equipped with an
10 ignition interlock device if either of the following applies:

11 (a) The person improperly refused to take a test under s. 343.305.

12 (b) The person violated s. 346.63 (1) or (2), 940.09 (1), or 940.25 and either of
13 the following applies:

14 1. The person had an alcohol concentration of 0.15 or more at the time of the
15 offense.

16 2. The person has a total of one or more prior convictions, suspensions, or
17 revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's
18 lifetime and other convictions, suspensions, and revocations counted under s.
19 343.307 (1).

20 **SECTION 20.** 343.301 (1) (b) 1. and 2. of the statutes are consolidated,
21 renumbered 343.301 (2m) and amended to read:

22 **343.301 (2m)** The court ~~may~~ shall restrict the operating privilege restriction
23 under ~~par. (a) 1.~~ sub. (1) for a period of not less than one year nor more than the
24 maximum operating privilege revocation period permitted for the refusal or
25 violation. ~~2. The court shall order the operating privilege restriction and the~~

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1 ~~installation of an ignition interlock device under par. (a) 2. for a period of not less than~~
2 ~~one year nor more than the maximum operating privilege revocation period~~
3 ~~permitted for the refusal or violation, beginning one year after the operating~~
4 ~~privilege revocation period begins on the date the department issues any license~~
5 ~~granted under this chapter. The court may order the installation of an ignition~~
6 ~~interlock device under sub. (1) immediately upon issuing an order under sub. (1).~~

7 **SECTION 21.** 343.301 (1) (c) of the statutes is renumbered 343.301 (3) (a) and
8 amended to read:

9 343.301 **(3)** (a) ~~If Except as provided in par. (b), if~~ the court enters an order
10 under ~~par. (a) sub. (1),~~ the person shall be liable for the reasonable cost of equipping
11 and maintaining any ignition interlock device installed on his or her motor vehicle.

12 **SECTION 22.** 343.301 (1) (d) of the statutes is renumbered 343.301 (4) and
13 amended to read:

14 343.301 **(4)** A person to whom an order under ~~par. (a) sub. (1)~~ applies violates
15 that order if he or she ~~fails to have an ignition interlock device installed as ordered,~~
16 ~~removes or disconnects an ignition interlock device,~~ requests or permits another to
17 blow into an ignition interlock device or to start a motor vehicle equipped with an
18 ignition interlock device for the purpose of providing the person an operable motor
19 vehicle without the necessity of first submitting a sample of his or her breath to
20 analysis by the ignition interlock device, ~~or otherwise tampers with or circumvents~~
21 ~~the operation of the ignition interlock device.~~

22 **SECTION 23.** 343.301 (1m) of the statutes is created to read:

23 343.301 **(1m)** If equipping each motor vehicle with an ignition interlock device
24 under sub. (1) would cause an undue financial hardship, the court may order that one
25 or more vehicles described sub. (1) not be equipped with an ignition interlock device.

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1 **SECTION 24.** 343.301 (2) of the statutes is repealed.

2 **SECTION 25.** 343.301 (3) (b) of the statutes is created to read:

3 343.301 **(3)** (b) If the court finds that the person who is subject to an order under
4 sub. (1) has a household income that is at or below 150 percent of the nonfarm federal
5 poverty line for the continental United States, as defined by the federal department
6 of labor under 42 USC 9902 (2), the court shall limit the person's liability under par.
7 (a) to one-half of the cost of equipping each motor vehicle with an ignition interlock
8 device and one-half of the cost per day per vehicle of maintaining the ignition
9 interlock device.

10 **SECTION 26.** 343.301 (5) of the statutes is created to read:

11 343.301 **(5)** If the court enters an order under sub. (1), the court shall impose
12 and the person shall pay to the court an interlock surcharge of \$50. The court shall
13 transmit the surcharge to the county treasurer for the county in which the order is
14 entered. The county treasurer shall retain \$40 of each surcharge and make payment
15 of the remaining \$10 to the department.

16 **SECTION 27.** 343.305 (10) (b) 5. of the statutes is amended to read:

17 343.305 **(10)** (b) 5. The time period under this paragraph shall be measured
18 from the dates of the refusals or violations which resulted in revocations or
19 convictions, except that the time period shall be tolled whenever and for as long as
20 the person is imprisoned. A person whose revocation period is tolled under this
21 subdivision is responsible for notifying the department that he or she has been
22 released from prison.

23 **SECTION 28.** 343.305 (10m) of the statutes is repealed and recreated to read:

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1 343.305 **(10m)** REFUSALS; IGNITION INTERLOCK OF A MOTOR VEHICLE. The
2 requirements and procedures for installation of an ignition interlock device under s.
3 343.301 apply when an operating privilege is revoked under sub (10).

4 **SECTION 29.** 343.31 (3) (bm) 5. of the statutes is amended to read:

5 343.31 **(3)** (bm) 5. The time period under this paragraph shall be measured
6 from the dates of the refusals or violations which resulted in the suspensions,
7 revocations or convictions, except that the time period shall be tolled whenever and
8 for as long as the person is imprisoned. A person whose revocation period is tolled
9 under this subdivision is responsible for notifying the department that he or she has
10 been released from prison.

11 **SECTION 30.** 346.65 (2) (am) 4. of the statutes is amended to read:

12 346.65 **(2)** (am) 4. Except as provided in subd. 4m. and pars. (f) and (g), shall
13 be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than
14 60 days nor more than one year in the county jail if the number of convictions under
15 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), equals
17 4, except that suspensions, revocations or convictions arising out of the same
18 incident or occurrence shall be counted as one.

19 **SECTION 31.** 346.65 (2) (am) 4m. of the statutes is created to read:

20 346.65 **(2)** (am) 4m. Except as provided in pars. (f) and (g), is guilty of a Class
21 H felony and shall be fined not less than \$600 if the number of convictions under ss.
22 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
23 revocations, and other convictions counted under s. 343.307 (1), equals 4 and the
24 person committed an offense that resulted in a suspension, revocation, or other
25 conviction counted under s. 343.307 (1) within 5 years prior to the current conviction,

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1 except that suspensions, revocations, or convictions arising out of the same incident
2 or occurrence shall be counted as one. The confinement portion of a bifurcated
3 sentence imposed on the person under s. 973.01 shall be not less than 2 years.

4 **SECTION 32.** 346.65 (2) (am) 5. of the statutes is amended to read:

5 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class H
6 felony and shall be fined not less than \$600 and imprisoned for not less than 6 months
7 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
8 plus the total number of suspensions, revocations and other convictions counted
9 under s. 343.307 (1), equals 5 or 6, except that suspensions, revocations or
10 convictions arising out of the same incident or occurrence shall be counted as one.
11 The confinement portion of a bifurcated sentence imposed on the person under s.
12 973.01 shall be not less than 2 years.

13 **SECTION 33.** 346.65 (2) (am) 6. of the statutes is amended to read:

14 346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class G felony if
15 the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
16 plus the total number of suspensions, revocations, and other convictions counted
17 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or
18 convictions arising out of the same incident or occurrence shall be counted as one.
19 The confinement portion of a bifurcated sentence imposed on the person under s.
20 973.01 shall be not less than 3 years.

21 **SECTION 34.** 346.65 (2) (am) 7. of the statutes is amended to read:

22 346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class F felony if
23 the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
24 plus the total number of suspensions, revocations, and other convictions counted
25 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or

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1 convictions arising out of the same incident or occurrence shall be counted as one.
2 The confinement portion of a bifurcated sentence imposed on the person under s.
3 973.01 shall be not less than 4 years.

4 **SECTION 35.** 346.65 (2) (bm) of the statutes is amended to read:

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

17 **SECTION 36.** 346.65 (2) (cm) of the statutes is amended to read:

18 346.65 (2) (cm) In ~~Winnebago County~~ any county that opts to offer a reduced
19 minimum period of imprisonment for the successful completion of a probation period
20 that includes alcohol and other drug treatment, 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 a 10-year period, equals 3, except that suspensions, revocations, or convictions
24 arising out of the same incident or occurrence shall be counted as one, the fine shall
25 be the same as under par. (am) 3., but the period of imprisonment shall be not less

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1 than 30 days, except that if the person successfully completes a period of probation
2 that includes alcohol and other drug treatment, the period of imprisonment shall be
3 not less than 10 days. A person may be sentenced under this paragraph or under par.
4 (bm) or sub. (2j) (bm) or (cm) or (3r) once in his or her lifetime.

5 **SECTION 37.** 346.65 (2) (f) of the statutes is amended to read:

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

13 **SECTION 38.** 346.65 (2c) of the statutes is amended to read:

14 346.65 (2c) In sub. (2) (am) 2., 3., ~~4.~~ 5., 6., and 7., the time period shall be
15 measured from the dates of the refusals or violations that resulted in the revocation
16 or convictions. If a person has a suspension, revocation, or conviction for any offense
17 under a local ordinance or a state statute of another state that would be counted
18 under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior
19 suspension, revocation, or conviction under sub. (2) (am) 2., 3., ~~4.~~ 5., 6., and 7.

20 **SECTION 39.** 346.65 (2g) (a) of the statutes is amended to read:

21 346.65 (2g) (a) In addition to the authority of the court under s. 973.05 (3) (a)
22 to provide that a defendant perform community service work for a public agency or
23 a nonprofit charitable organization in lieu of part or all of a fine imposed under sub.
24 (2) (am) 2., 3., ~~4.~~ and 5., (f), and (g) and except as provided in par. (ag), the court may
25 provide that a defendant perform community service work for a public agency or a

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1 nonprofit charitable organization in lieu of part or all of a forfeiture under sub. (2)
2 (am) 1. or may require a person who is subject to sub. (2) to perform community
3 service work for a public agency or a nonprofit charitable organization in addition
4 to the penalties specified under sub. (2).

5 **SECTION 40.** 346.65 (2g) (ag) of the statutes is amended to read:

6 346.65 **(2g)** (ag) If the court determines that a person does not have the ability
7 to pay a fine imposed under sub. (2) (am) 2., 3., ~~4.~~ or 5., (f), or (g), the court shall
8 require the defendant to perform community service work for a public agency or a
9 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
10 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
11 fine. Each hour of community service performed in compliance with an order under
12 this paragraph shall reduce the amount of the fine owed by an amount determined
13 by the court.

14 **SECTION 41.** 346.65 (2j) (bm) of the statutes is amended to read:

15 346.65 **(2j)** (bm) In ~~Winnebago County~~ any county that opts to offer a reduced
16 minimum period of imprisonment for the successful completion of a probation period
17 that includes alcohol and other drug treatment, if the number of convictions under
18 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
19 suspensions, revocations, and other convictions counted under s. 343.307 (1) within
20 a 10-year period, equals 2, except that suspensions, revocations, or convictions
21 arising out of the same incident or occurrence shall be counted as one, the fine shall
22 be the same as under par. (am) 2., but the period of imprisonment shall be not less
23 than 5 days, except that if the person successfully completes a period of probation
24 that includes alcohol and other drug treatment, the period of imprisonment shall be

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1 not less than 5 nor more than 7 days. A person may be sentenced under this
2 paragraph or under par. (cm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

3 **SECTION 42.** 346.65 (2j) (cm) of the statutes is amended to read:

4 346.65 **(2j)** (cm) In ~~Winnebago County~~ any county that opts to offer a reduced
5 minimum period of imprisonment for the successful completion of a probation period
6 that includes alcohol and other drug treatment, 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 a 10-year period, equals 3 or more, except that suspensions, revocations, or
10 convictions arising out of the same incident or occurrence shall be counted as one, the
11 fine shall be the same as under par. (am) 3., but the period of imprisonment shall be
12 not less than 30 days, except that if the person successfully completes a period of
13 probation that includes alcohol and other drug treatment, the period of
14 imprisonment shall be not less than 10 days. A person may be sentenced under this
15 paragraph or under par. (bm) or sub. (2) (bm) or (cm) or (3r) once in his or her lifetime.

16 **SECTION 43.** 346.65 (3m) of the statutes is amended to read:

17 346.65 **(3m)** Except as provided in sub. (3p) or (3r), any person violating s.
18 346.63 (2) or (6) shall be fined not less than \$300 nor more than \$2,000 and may be
19 imprisoned for not less than 30 days nor more than one year in the county jail. If
20 there was a minor passenger under 16 years of age in the motor vehicle at the time
21 of the violation that gave rise to the conviction under s. 346.63 (2) or (6), the offense
22 is a felony, the applicable minimum and maximum fines or periods of imprisonment
23 for the conviction are doubled and the place of imprisonment shall be determined
24 under s. 973.02.

25 **SECTION 44.** 346.65 (3p) of the statutes is created to read:

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1 346.65 (3p) Any person violating s. 346.63 (2) or (6) is guilty of a Class G felony
2 if the person has one or more prior convictions, suspensions, or revocations, as
3 counted under s. 343.307 (1). If there was a minor passenger under 16 years of age
4 in the motor vehicle at the time of the violation that gave rise to the conviction under
5 s. 346.63 (2) or (6), the offense is a felony and the applicable maximum fines or
6 periods of imprisonment for the conviction are doubled.

7 **SECTION 45.** 346.65 (3r) of the statutes is amended to read:

8 346.65 (3r) In ~~Winnebago County~~ any county that opts to offer a reduced
9 minimum period of imprisonment for the successful completion of a probation period
10 that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or
11 (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall
12 be not less than 30 days, except that if the person successfully completes a period of
13 probation that includes alcohol and other drug treatment, the period of
14 imprisonment shall be not less than 15 days. If there was a minor passenger under
15 16 years of age in the motor vehicle at the time of the violation that gave rise to the
16 conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum
17 and maximum fines or periods of imprisonment for the conviction are doubled and
18 the place of imprisonment shall be determined under s. 973.02. A person may be
19 sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once
20 in his or her lifetime. This section does not apply to a person sentenced under sub.
21 (3p).

22 **SECTION 46.** 346.65 (6) of the statutes is repealed.

23 **SECTION 47.** 346.65 (7) of the statutes is amended to read:

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1 346.65 (7) A person convicted under sub. (2) (am) 2., 3., ~~4.,~~ 5., 6., or 7. or (2j)
2 (am) 2. or 3. shall be required to remain in the county jail for not less than a
3 48-consecutive-hour period.

4 **SECTION 48.** 346.65 (8) of the statutes is repealed.

5 **SECTION 49.** 346.655 (1) of the statutes is amended to read:

6 346.655 (1) If a court imposes a fine or a forfeiture for a violation of s. 346.63
7 (1) or (5), ~~except for a first violation of s. 346.63 (1) (b), if the person who committed~~
8 ~~the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at~~
9 ~~the time of the violation,~~ or a local ordinance in conformity therewith, or s. 346.63
10 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, it shall
11 impose a driver improvement surcharge under ch. 814 in an amount of \$365 in
12 addition to the fine or forfeiture, plus costs, fees, and other surcharges imposed under
13 ch. 814.

14 **SECTION 50.** 347.413 (title) and (1) of the statutes are amended to read:

15 **347.413 (title) Ignition interlock device tampering; failure to install.**
16 **(1)** No person may remove, disconnect, tamper with, or otherwise circumvent the
17 operation of an ignition interlock device installed in response to the court order under
18 s. 346.65 (6), 1999 stats., or s. 343.301 (1), or fail to have the ignition interlock device
19 installed as ordered by the court. This subsection does not apply to the removal of
20 an ignition interlock device upon the expiration of the order requiring the motor
21 vehicle to be so equipped or to necessary repairs to a malfunctioning ignition
22 interlock device by a person authorized by the department.

23 **SECTION 51.** 347.417 (1) of the statutes is amended to read:

24 347.417 (1) No person may remove, disconnect, tamper with, or otherwise
25 circumvent the operation of any immobilization device installed in response to a

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1 court order under s. 346.65 (6), 1999 stats., or s. 343.301 (2), 2007 stats. This
2 subsection does not apply to the removal of an immobilization device pursuant to a
3 court order or to necessary repairs to a malfunctioning immobilization device.

4 **SECTION 52.** 347.417 (2) of the statutes is amended to read:

5 347.417 (2) The department shall design a warning label which shall be affixed
6 by the owner of each immobilization device before the device is used to immobilize
7 any motor vehicle under s. 346.65 (6), 1999 stats., or s. 343.301 (2), 2007 stats. The
8 label shall provide notice of the penalties for removing, disconnecting, tampering
9 with, or otherwise circumventing the operation of the immobilization device.

10 **SECTION 53.** 347.50 (1s) of the statutes is amended to read:

11 347.50 (1s) Any person violating s. 347.413 (1) or 347.417 (1) may be required
12 ~~to forfeit~~ fined not less than \$150 nor more than \$600, or may be imprisoned for not
13 more than 6 months, or both for the first offense. For a 2nd or subsequent conviction
14 within 5 years, the person may be fined not less than \$300 nor more than \$1,000, or
15 imprisoned for not more than 6 months, or both.

16 **SECTION 54.** 347.50 (1t) of the statutes is created to read:

17 347.50 (1t) In addition to the penalty under sub. (1s), if a person who is subject
18 to an order under s. 343.301 violates s. 347.413, the court shall extend the order
19 under s. 343.301 (1) or (2m) for 6 months for each violation.

20 **SECTION 55.** 757.05 (1) (a) of the statutes is amended to read:

21 757.05 (1) (a) Whenever a court imposes a fine or forfeiture for a violation of
22 state law or for a violation of a municipal or county ordinance except for a violation
23 of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s.~~
24 ~~23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
25 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~

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1 ~~than 0.1 at the time of the violation,~~ or for a violation of state laws or municipal or
2 county ordinances involving nonmoving traffic violations, violations under s. 343.51
3 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be imposed in
4 addition a penalty surcharge under ch. 814 in an amount of 26 percent of the fine or
5 forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be
6 based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is
7 suspended in whole or in part, the penalty surcharge shall be reduced in proportion
8 to the suspension.

9 **SECTION 56.** 814.63 (1) (c) of the statutes is amended to read:

10 814.63 **(1)** (c) This subsection does not apply to an action for a violation of s.
11 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~for a first violation of s. 23.33~~
12 ~~(4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who~~
13 ~~committed the violation had a blood alcohol concentration of 0.08 or more but less~~
14 ~~than 0.1 at the time of the violation,~~ or for a violation under s. 343.51 (1m) (b), or a
15 safety belt use violation under s. 347.48 (2m).

16 **SECTION 57.** 814.63 (2) of the statutes is amended to read:

17 814.63 **(2)** Upon the disposition of a forfeiture action in circuit court for
18 violation of a county, town, city, village, town sanitary district or public inland lake
19 protection and rehabilitation district ordinance, except for an action ~~for a first~~
20 ~~violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the~~
21 ~~person who committed the violation had a blood alcohol concentration of 0.08 or more~~
22 ~~but less than 0.1 at the time of the violation,~~ or for a violation under s. 343.51 (1m)
23 (b) or a safety belt use violation under s. 347.48 (2m), the county, town, city, village,
24 town sanitary district or public inland lake protection and rehabilitation district
25 shall pay a nonrefundable fee of \$5 to the clerk of circuit court.

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1 **SECTION 58.** 814.65 (1) of the statutes is amended to read:

2 814.65 (1) COURT COSTS. In a municipal court action, except for an action for
3 a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1)
4 (b), if the person who committed the violation had a blood alcohol concentration of
5 0.08 or more but less than 0.1 at the time of the violation, or for a violation of an
6 ordinance in conformity with s. 343.51 (1m) (b) or 347.48 (2m), the municipal judge
7 shall collect a fee of not less than \$15 nor more than \$28 on each separate matter,
8 whether it is on default of appearance, a plea of guilty or no contest, on issuance of
9 a warrant or summons, or the action is tried as a contested matter. Of each fee
10 received by the judge under this subsection, the municipal treasurer shall pay
11 monthly \$5 to the secretary of administration for deposit in the general fund and
12 shall retain the balance for the use of the municipality.

13 **SECTION 59.** 814.85 (1) (a) of the statutes is amended to read:

14 814.85 (1) (a) Except for an action for ~~a first violation of s. 23.33 (4c) (a) 2.,~~
15 ~~30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b),~~ if the person who committed the
16 ~~violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the~~
17 ~~time of the violation,~~ or for a violation under s. 343.51 (1m) (b) or a safety belt use
18 violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$68
19 court support services surcharge from any person, including any governmental unit
20 as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or
21 814.63 (1).

22 **SECTION 60.** 814.86 (1) of the statutes is amended to read:

23 814.86 (1) Except for an action for ~~a first violation of s. 23.33 (4c) (a) 2., 30.681~~
24 ~~(1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b),~~ if the person who committed the violation
25 ~~had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the~~

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1 violation, or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under
2 s. 347.48 (2m), the clerk of circuit court shall charge and collect a \$12 justice
3 information system surcharge from any person, including any governmental unit, as
4 defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62
5 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in
6 addition to the surcharge listed in sub. (1m).

7 **SECTION 61.** 940.09 (1d) of the statutes is repealed and recreated to read:

8 940.09 (1d) A person who violates sub. (1) is subject to the requirements and
9 procedures for installation of an ignition interlock device under s. 343.301.

10 **SECTION 62.** 940.25 (1d) of the statutes is repealed and recreated to read:

11 940.25 (1d) A person who violates sub. (1) is subject to the requirements and
12 procedures for installation of an ignition interlock device under s. 343.301.

13 **SECTION 63.** 973.09 (1) (d) (intro.) of the statutes is renumbered 973.09 (1) (d)
14 and amended to read:

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

22 **SECTION 64.** 973.09 (1) (d) 1. of the statutes is repealed.

23 **SECTION 65.** 973.09 (1) (d) 2. of the statutes is repealed.

24 **SECTION 66.** 973.09 (1) (d) 3. of the statutes is repealed.

25 **SECTION 67.** 973.09 (2) (a) 1. d. of the statutes is amended to read:

