State of Wisconsin
2009 – 2010 LEGISLATURE

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Stays

SENATE SUBSTITUTE AMENDMENT ,

TO 2009 SENATE BILL 66

Now

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AN ACT ***to repeal*** 342.12 (4) (c) 1. b., 343.301 (1) (title) and (a), 343.301 (2), 346.65 (6), 346.65 (8), 973.09 (1) (d) 1., 973.09 (1) (d) 2. and 973.09 (1) (d) 3.; ***to renumber and amend*** 343.301 (1) (c), 343.301 (1) (d), 346.65 (2) (f) and 973.09 (1) (d) (intro.); ***to consolidate, renumber and amend*** 343.301 (1) (b) 1. and 2.; ***to amend*** 165.755 (1) (b), 302.46 (1) (a), 340.01 (46m) (c), 342.12 (4) (c) 1. c., 342.13 (1), 343.10 (2) (a) (intro.), 343.10 (5) (a) 3., 343.23 (2) (b), 343.30 (1q) (b) 2., 343.30 (1q) (b) 3., 343.30 (1q) (b) 4., 343.30 (1q) (c) 1. (intro.), 343.301 (title), 343.305 (8) (b) 5. (intro.), 343.305 (8) (c) 5., 343.38 (2), 343.39 (1) (a), 345.47 (1) (c), 346.65 (2) (am) 3., 346.65 (2) (am) 4., 346.65 (2) (am) 6., 346.65 (2) (am) 7., 346.65 (2) (bm), 346.65 (2) (cm), 346.65 (2c), 346.65 (2g) (a), 346.65 (2g) (ag), 346.65 (2j) (am) 3., 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (2q), 346.65 (3m), 346.65 (3r), 346.65 (7), 346.655 (1), 347.413 (title) and (1), 347.417 (1), 347.417 (2), 347.50 (1s), 757.05 (1) (a), 814.60 (1), 814.63 (1) (c), 814.63 (2), 814.65 (1),

814.85 (1) (a), 814.86 (1), 969.01 (2) (a) and 973.15 (8) (a) 3.; ***to repeal and recreate*** 343.10 (2) (a) (intro.), 343.23 (2) (b), 343.305 (10m), 814.65 (1), 814.85 (1) (a), 814.86 (1), 940.09 (1d) and 940.25 (1d); and ***to create*** 25.40 (1) (a) 3m., 110.10 (4m), 303.08 (10r), 343.10 (2) (f), 343.21 (1) (jr), 343.30 (1r), 343.301 (1g), 343.301 (1m), 343.301 (3) (b), 343.301 (5), 343.305 (10g), 343.31 (4), 346.65 (2) (am) 4m., 346.65 (2) (dm), 346.65 (2) (f) 1., 346.65 (2j) (cr), 346.65 (3p), 347.50 (1t), 814.75 (9m), 814.76 (7m), 814.78 (7m), 814.79 (4r), 973.05 (2m) (rm) and 973.09 (2) (am) of the statutes; **relating to:** operating a vehicle while intoxicated, granting rule–making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This substitute amendment 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 substitute amendment eliminates the option of ordering the person's vehicle to be immobilized or seized and sold at auction. The substitute amendment 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 substitute amendment, with some exceptions, 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 each ignition interlock device. Under the substitute amendment, 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. Moneys generated by the surcharge are retained by the counties.

Under the substitute amendment, 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 substitute amendment 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. Under current law, a person who commits two OWI–related offenses may be eligible for an occupational license after a waiting period of 60 days, and a person with three or more OWI–related offenses may be eligible for an occupational license after a waiting period of 90 days. However, if the person committed two or more OWI–related offenses within five years, he or she is not eligible for an occupational license for a year. Under current law, a person whose operating privilege is suspended or revoked must pay a $50 fee to reinstate his or her operating privilege when the period of suspension or revocation is over. Funds generated from this fee are deposited into the transportation fund.

Under the substitute amendment, a person with two or more OWI–related offenses may be eligible for an occupational license after a waiting period of 45 days. Under the substitute amendment, a person whose operating privilege is revoked for an OWI–related offense must pay, in addition to the $50 reinstatement fee, an additional $40 to have his or her operating privileges reinstated. Funds generated from the additional fee are deposited into the general fund.

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 substitute amendment, 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 substitute amendment, 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 first OWI–related offense is subject to a forfeiture between $150 and $300. 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.

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 substitute amendment makes a first OWI–related offense a crime if, at the time of the offense, a child under the age of 16 was present in the vehicle involved in the offense. Under the substitute amendment, the penalties for committing this crime are the same as for committing a second OWI–related offense.

The substitute amendment increases the minimum period of imprisonment for a third OWI–related offense to 45 days. The substitute amendment 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 OWI–related offense within five years to pay a minimum fine of $600 and to serve a minimum term of six months' imprisonment. The substitute amendment requires a person who commits a seventh, eighth, or ninth OWI–related offense to serve a minimum period of confinement or three years in prison under a bifurcated sentence and requires a

person who commits a tenth or subsequent OWI–related offense to serve a minimum period of confinement 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 substitute amendment, 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 substitute amendment 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. The substitute amendment allows these counties to offer this sentencing option to persons who commit a fourth OWI–related offense.

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 substitute amendment, the period of revocation begins on the date on which the person commits the OWI–related offense, but the period of revocation is extended by the number of days that the person is required to spend in 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 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; the maximum period of probation for a fourth OWI–related offence is two years.

Under this substitute amendment, a trial court may place a person who commits any of those offenses on probation. Under the substitute amendment, 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. The substitute amendment also increases the maximum period of probation for a fourth OWI–related offence to three years.

9. Under current law, a person who is convicted of any criminal offense pays a $20 processing fee to the clerk of court. Half of this amount is retained by the county, and half goes to the general fund.

This substitute amendment increases the fee to $163. Under the substitute amendment, the county forwards 93.87 percent of the fees it collects for deposit into the general fund and retains 6 percent for use by the county.

10. Under current law, a trial court may, at its discretion, release a person who has been convicted of a crime from imprisonment until the time of sentencing. Current law also allows a sentencing court to delay the execution of a sentence of imprisonment for up to 60 days, unless the court finds that there is legal cause to delay the execution of the sentence for a longer period or unless the court places the person on probation. Additionally, under current law, a court may allow a person to participate in the Huber Law program. The Huber Law program allows a person sentenced to a county jail or confined in a county jail as a sanction while the person is on extended supervision to leave the jail for certain purposes, including to work, seek work, attend school, perform community service, attend certain court proceedings, or obtain certain treatment or counseling services.

Under this substitute amendment, if a person has been convicted of a third or subsequent OWI–related offense, a court may not release the person after conviction but before sentencing or delay the execution of a sentence of imprisonment unless the court finds that there is legal cause to delay the execution of the sentence or unless the court places the person on probation. The substitute amendment also requires a person for whom a judge approves participation in the Huber Law program to submit, within two weeks of his or her sentencing date, proof that he or she has complied with an order to install an ignition interlock device on his or her vehicles. A person who fails to submit this proof to the sheriff in the county where he or she is incarcerated within the required period may not be released under the Huber Law program.

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

1 **SECTION 1.** 25.40 (1) (a) 3m. of the statutes is created to read:

2 25.40 (1) (a) 3m. Revenues collected under s. 343.21 (1) (jr) which shall be paid

3 into the general fund.

4 **SECTION 2.** 110.10 (4m) of the statutes is created to read:

110.10 **(4m)** Requiring ignition interlock device providers operating in this state to accept, as payment in full for equipping a motor vehicle with an ignition interlock device and for maintaining the ignition interlock device, the amount ordered by the court under s. 343.301 (3) (b), if applicable.

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

165.755 **(1)** (b) A court may not impose the crime laboratories and drug law enforcement surcharge under par. (a) for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5) (b)~~, for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,~~ or for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use violation under s. 347.48 (2m).

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

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

forfeiture is suspended in whole or in part, the court shall reduce the jail surcharge in proportion to the suspension.

SECTION 5. 303.08 (10r) of the statutes is created to read:

303.08 **(10r)** The sheriff may not permit a prisoner who is subject to an order under s. 343.301 (1g) to leave the jail under sub. (1) unless, within 2 weeks after the court issues the order, the person submits proof to the sheriff that an ignition interlock device has been installed in each motor vehicle to which the order applies.

SECTION 6. 340.01 (46m) (c) of the statutes is amended to read:

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

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

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

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

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

342.13 **(1)** If a certificate of title is lost, stolen, mutilated, or destroyed, or becomes illegible, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a replacement upon furnishing information satisfactory to the department. The replacement certificate of title shall contain a notation, in a form determined by the department, identifying the certificate as a replacement certificate that may be subject to the rights of a person under the original certificate. ~~If applicable under s. 346.65 (6), the replacement certificate of~~

~~title shall include the notation "Per section 346.65 (6) of the Wisconsin statutes, ownership of this motor vehicle may not be transferred without prior court approval".~~

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

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

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

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

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

343.10 **(2)** (f) If the court orders under s. 343.301 (1g) that the person's operating privilege for the operation of "Class D" vehicles be restricted to operating vehicles that are equipped with an ignition interlock device, no occupational license may be granted until the person pays the surcharge under s. 343.301 (5) and submits proof that an ignition interlock device has been installed in each motor vehicle to which the order under s. 343.301 applies.

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

343.10 **(5)** (a) 3. ~~If the applicant has 2 or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (1), the~~ The occupational license of the applicant shall restrict the applicant's operation under the occupational license to vehicles that are equipped with a functioning ignition interlock device if the court has ordered under s. 343.301 ~~(1) (a) 1. or 2.~~ (1g) that the person's operating privilege for Class D vehicles be restricted to operating vehicles that are equipped with an ignition interlock device or has ordered under s. 346.65 (6) (a) 1., 1999 stats., that the

motor vehicle owned by the person and used in the violation or improper refusal be equipped with an ignition interlock device. A person to whom a restriction under this subdivision applies violates that restriction if he or she removes or disconnects an ignition interlock device, requests or permits another to blow into an ignition interlock device or to start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person an operable motor vehicle without the necessity of first submitting a sample of his or her breath to analysis by the ignition interlock device~~. If~~, or otherwise tampers with or circumvents the operation of the ignition interlock device. Except as provided in s. 343.301 (3) (b), if the occupational license restricts the applicant's operation to a vehicle that is equipped with an ignition interlock device, the applicant shall be liable for the reasonable costs of equipping the vehicle with the ignition interlock device.

SECTION 14. 343.21 (1) (jr) of the statutes is created to read:

343.21 **(1)** (jr) In addition to any other fee under this subsection, for reinstatement of an operating privilege previously revoked or suspended following an offense listed in s. 343.307, $40.

SECTION 15. 343.23 (2) (b) of the statutes, as affected by 2009 Wisconsin Act 28, section 2923, is amended to read:

343.23 **(2)** (b) The information specified in pars. (a) and (am) must be filed by the department so that the complete operator's record is available for the use of the secretary in determining whether operating privileges of such person shall be suspended, revoked, canceled, or withheld, or the person disqualified, in the interest of public safety. The record of suspensions, revocations, and convictions that would be counted under s. 343.307 (2) shall be maintained permanently~~, except that the department shall purge the record of a first violation of s. 23.33 (4c) (a) 2., 30.681 (1)~~

~~(b) 1., 346.63 (1) (b), or 350.101 (1) (b) after 10 years, if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, if the person does not have a commercial driver license, if the violation was not committed by a person operating a commercial motor vehicle, and if the person has no other suspension, revocation, or conviction that would be counted under s. 343.307 during that 10–year period~~. The record of convictions for disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f), (j), and (L) and all records specified in par. (am), shall be maintained for at least 3 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to another state such record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions for disqualifying offenses. Such reports and records may be cumulative beyond the period for which a license is granted, but the secretary, in exercising the power of suspension granted under s. 343.32 (2) may consider only those reports and records entered during the 4–year period immediately preceding the exercise of such power of suspension.

SECTION 16. 343.23 (2) (b) of the statutes, as affected by 2009 Wisconsin Acts 28, section 2924, and .... (this act), is repealed and recreated to read:

343.23 **(2)** (b) The information specified in pars. (a) and (am) must be filed by the department so that the complete operator's record is available for the use of the secretary in determining whether operating privileges of such person shall be suspended, revoked, canceled, or withheld, or the person disqualified, in the interest of public safety. The record of suspensions, revocations, and convictions that would

be counted under s. 343.307 (2) shall be maintained permanently. The record of convictions for disqualifying offenses under s. 343.315 (2) (h) shall be maintained for at least 10 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f), (j), and (L), and all records specified in par. (am), shall be maintained for at least 3 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to another state such record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions for disqualifying offenses. Such reports and records may be cumulative beyond the period for which a license is granted, but the secretary, in exercising the power of suspension granted under s. 343.32 (2) may consider only those reports and records entered during the 4–year period immediately preceding the exercise of such power of suspension. The department shall maintain the digital images of documents specified in s. 343.165 (2) (a) for at least 10 years.

SECTION 17. 343.30 (1q) (b) 2. of the statutes is amended to read:

343.30 **(1q)** (b) 2. Except as provided in <u>sub. (1r) or</u> subd. 3., 4. or 4m., for the first conviction, the court shall revoke the person's operating privilege for not less than 6 months nor more than 9 months. The person is eligible for an occupational license under s. 343.10 at any time.

SECTION 18. 343.30 (1q) (b) 3. of the statutes is amended to read:

343.30 **(1q)** (b) 3. Except as provided in <u>sub. (1r) or</u> subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (1) within a 10–year period, equals 2, the court shall revoke the person's operating

privilege for not less than one year nor more than 18 months. After the first ~~60~~ 45 days of the revocation period ~~or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5–year period equals 2 or more, after one year of the revocation period~~ has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

SECTION 19. 343.30 (1q) (b) 4. of the statutes is amended to read:

343.30 **(1q)** (b) 4. Except as provided in sub. (1r) or subd. 4m., if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations counted under s. 343.307 (1), equals 3 or more, the court shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. After the first ~~90~~ 45 days of the revocation period ~~or, if the total number of convictions, suspensions, and revocations counted under this subdivision within any 5–year period equals 2 or more, after one year of the revocation period~~ has elapsed, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

SECTION 20. 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

343.30 **(1q)** (c) 1. (intro.) Except as provided in subd. 1. a. or b., ~~and except for a first violation of s. 346.63 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,~~ the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, controlled substances or controlled substance analogs and development of a driver safety plan for the person. The court

shall notify the department of transportation of the assessment order. The court shall notify the person that noncompliance with assessment or the driver safety plan will result in revocation of the person's operating privilege until the person is in compliance. The assessment order shall:

SECTION 21. 343.30 (1r) of the statutes is created to read:

343.30 **(1r)** For any revocation the court orders under sub. (1q), the court shall extend the revocation period by the number of days to which the court sentences the person to imprisonment in a jail or prison for an offense related to the refusal.

SECTION 22. 343.301 (title) of the statutes is amended to read:

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

SECTION 23. 343.301 (1) (title) and (a) of the statutes are repealed.

SECTION 24. 343.301 (1) (b) 1. and 2. of the statutes are consolidated, renumbered 343.301 (2m) and amended to read:

343.301 **(2m)** The court ~~may~~ shall restrict the operating privilege ~~restriction~~ under ~~par. (a) 1.~~ sub. (1g) for a period of not less than one year nor more than the maximum operating privilege revocation period permitted for the refusal or violation~~. 2. The court shall order the operating privilege restriction and the installation of an ignition interlock device under par. (a) 2. for a period of not less than one year nor more than the maximum operating privilege revocation period permitted for the refusal or violation~~, beginning ~~one year after the operating privilege revocation period begins~~ on the date the department issues any license granted under this chapter, except that if the maximum operating privilege revocation period is less than one year, the court shall restrict the operating privilege

under sub. (1g) for one year. The court may order the installation of an ignition interlock device under sub. (1g) immediately upon issuing an order under sub. (1g).

SECTION 25. 343.301 (1) (c) of the statutes is renumbered 343.301 (3) (a) and amended to read:

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

SECTION 26. 343.301 (1) (d) of the statutes is renumbered 343.301 (4) and amended to read:

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

SECTION 27. 343.301 (1g) of the statutes is created to read:

343.301 **(1g)** A court shall order a person's operating privilege for the operation of "Class D" vehicles be restricted to operating vehicles that are equipped with an ignition interlock device and, except as provided in sub. (1m), shall order that each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration be equipped with an ignition interlock device if either of the following applies:

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

1 (b) The person violated s. 346.63 (1) or (2), 940.09 (1), or 940.25 and either of
2 the following applies:
3 1. The person had an alcohol concentration of 0.15 or more at the time of the
4 offense.
5 2. The person has a total of one or more prior convictions, suspensions, or
6 revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's
7 lifetime and other convictions, suspensions, and revocations counted under s.
8 343.307 (1).
9 **SECTION 28.** 343.301 (1m) of the statutes is created to read:
10 343.301 **(1m)** If equipping each motor vehicle with an ignition interlock device
11 under sub. (1g) would cause an undue financial hardship, the court may order that
12 one or more vehicles described sub. (1g) not be equipped with an ignition interlock
13 device.
14 **SECTION 29.** 343.301 (2) of the statutes is repealed.
15 **SECTION 30.** 343.301 (3) (b) of the statutes is created to read:
16 343.301 **(3)** (b) If the court finds that the person who is subject to an order under
17 sub. (1g) has a household income that is at or below 150 percent of the nonfarm
18 federal poverty line for the continental United States, as defined by the federal
19 department of labor under 42 USC 9902 (2), the court shall limit the person's liability
20 under par. (a) to one–half of the cost of equipping each motor vehicle with an ignition
21 interlock device and one–half of the cost per day per vehicle of maintaining the
22 ignition interlock device.
23 **SECTION 31.** 343.301 (5) of the statutes is created to read:

1 343.301 **(5)** If the court enters an order under sub. (1g), the court shall impose
2 and the person shall pay to the clerk of court an ignition interlock surcharge of $50.
3 The clerk of court shall transmit the amount to the county treasurer.

4 **SECTION 32.** 343.305 (8) (b) 5. (intro.) of the statutes is amended to read:

5 343.305 **(8)** (b) 5. (intro.) If the hearing examiner finds that any of the following
6 applies, the examiner shall order that the administrative suspension of the person's
7 operating privilege be rescinded without payment of any fee under s. 343.21 (1) (j),
8 (jr), or (n):

9 **SECTION 33.** 343.305 (8) (c) 5. of the statutes is amended to read:

10 343.305 **(8)** (c) 5. If any court orders under this subsection that the
11 administrative suspension of the person's operating privilege be rescinded, the
12 person need not pay any fee under s. 343.21 (1) (j), (jr), or (n).

13 **SECTION 34.** 343.305 (10g) of the statutes is created to read:

14 343.305 **(10g)** SUSPENSIONS AND REVOCATIONS; EXTENSIONS. For any suspension
15 or revocation the court orders under sub. (10), the court shall extend the suspension
16 or revocation period by the number of days to which the court sentences the person
17 to imprisonment in a jail or prison.

18 **SECTION 35.** 343.305 (10m) of the statutes is repealed and recreated to read:

19 343.305 **(10m)** REFUSALS; IGNITION INTERLOCK OF A MOTOR VEHICLE. The
20 requirements and procedures for installation of an ignition interlock device under s.
21 343.301 apply when an operating privilege is revoked under sub (10).

22 **SECTION 36.** 343.31 (4) of the statutes is created to read:

23 343.31 **(4)** For any revocation the department orders under sub. (1) (a), if the
24 offense is criminal under 940.09 and involved the use of a motor vehicle, or if the
25 offense is criminal under s. 940.25, (am), (ar), or (b) or under sub. (3) the department

shall extend the revocation period by the number of days to which a court sentences the person to imprisonment in a jail or prison.

SECTION 37. 343.38 (2) of the statutes is amended to read:

343.38 **(2)** REINSTATEMENT OF NONRESIDENT'S OPERATING PRIVILEGE AFTER REVOCATION BY WISCONSIN. A nonresident's operating privilege revoked under the laws of this state is reinstated as a matter of law when the period of revocation has expired and such nonresident obtains a valid operator's license issued by the jurisdiction of the nonresident's residence and pays the fees specified in s. 343.21 (1) (j), (jr), if applicable, and (n).

SECTION 38. 343.39 (1) (a) of the statutes is amended to read:

343.39 **(1)** (a) When, in the case of a suspended operating privilege, the period of suspension has terminated, the fees specified in s. 343.21 (1) (j), (jr), if applicable, and (n) have been paid to the department and, for reinstatement of an operating privilege suspended under ch. 344, the person files with the department proof of financial responsibility, if required, in the amount, form and manner specified under ch. 344.

SECTION 39. 345.47 (1) (c) of the statutes, as affected by 2009 Wisconsin Act 17, is amended to read:

345.47 **(1)** (c) If a court or judge suspends an operating privilege under this section, the court or judge shall immediately take possession of the suspended license and shall forward it to the department together with the notice of suspension, which shall clearly state that the suspension was for failure to pay a forfeiture, plus costs, fees, and surcharges imposed under ch. 814 or for failure to comply with an installment payment plan ordered by the court. The notice of suspension and the suspended license, if it is available, shall be forwarded to the department within 48

hours after the order of suspension. If the forfeiture, plus costs, fees, and surcharges imposed under ch. 814, are paid during a period of suspension, or if the court orders an installment payment plan under sub. (4), the court or judge shall immediately notify the department. Upon receipt of the notice and payment of the fees under s. 343.21 (1) (j), (jr), if applicable, and (n), the department shall return the surrendered license.

SECTION 40. 346.65 (2) (am) 3. of the statutes is amended to read:

346.65 **(2)** (am) 3. Except as provided in pars. (cm), (f), and (g), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than ~~30~~ 45 days nor more than one year in the county jail 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), equals 3, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be counted as one.

SECTION 41. 346.65 (2) (am) 4. of the statutes is amended to read:

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

SECTION 42. 346.65 (2) (am) 4m. of the statutes is created to read:

346.65 **(2)** (am) 4m. Except as provided in pars. (f) and (g), is guilty of a Class H felony and shall be fined not less than $600 and imprisoned for not less than 6

1 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's
2 lifetime, plus the total number of suspensions, revocations, and other convictions
3 counted under s. 343.307 (1), equals 4 and the person committed an offense that
4 resulted in a suspension, revocation, or other conviction counted under s. 343.307 (1)
5 within 5 years prior to the day of current offense, except that suspensions,
6 revocations, or convictions arising out of the same incident or occurrence shall be
7 counted as one.

8 **SECTION 43.** 346.65 (2) (am) 6. of the statutes is amended to read:

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

16 **SECTION 44.** 346.65 (2) (am) 7. of the statutes is amended to read:

17 346.65 **(2)** (am) 7. Except as provided in par. (f), is guilty of a Class F felony if
18 the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,
19 plus the total number of suspensions, revocations, and other convictions counted
20 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or
21 convictions arising out of the same incident or occurrence shall be counted as one.
22 <u>The confinement portion of a bifurcated sentence imposed on the person under s.</u>
23 <u>973.01 shall be not less than 4 years.</u>

24 **SECTION 45.** 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. (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 (dm) or sub. (2j) (bm) ~~or,~~ (cm), or (cr) or (3r) once in his or her lifetime.

SECTION 46. 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. (am) 3., but the period of imprisonment shall be not less than ~~30~~ 45 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~~ 14 days. A person may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm) ~~or~~, (cm), or (cr) or (3r) once in his or her lifetime.

SECTION 47. 346.65 (2) (dm) of the statutes is created to read:

346.65 **(2)** (dm) In 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) equals 4, and par. (am) 4m. does not apply, 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. (am) 4., but the period of imprisonment shall be not less than 60 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 29 days. A person may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

SECTION 48. 346.65 (2) (f) of the statutes is renumbered 346.65 (2) (f) 2. and amended to read:

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

SECTION 49. 346.65 (2) (f) 1. of the statutes is created to read:

346.65 **(2)** (f) 1. 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 (1), the person shall be fined not less than $350 nor more than $1,100 and imprisoned for not less than 5 days nor more than 6 months, except as provided in subd. 2.

SECTION 50. 346.65 (2c) of the statutes is amended to read:

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

SECTION 51. 346.65 (2g) (a) of the statutes is amended to read:

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

SECTION 52. 346.65 (2g) (ag) of the statutes is amended to read:

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

SECTION 53. 346.65 (2j) (am) 3. of the statutes is amended to read:

346.65 **(2j)** (am) 3. Except as provided in pars. (cm), (cr), and (d), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than ~~30~~ 45 days nor more than one year in the county jail if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other convictions, suspensions, and revocations~~,~~ counted under s. 343.307 (2), equals 3 or more.

SECTION 54. 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. (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 (cr) or sub. (2) (bm) ~~or~~, (cm), or (dm) or (3r) once in his or her lifetime.

SECTION 55. 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. (am) 3., but the period of imprisonment shall be not less than ~~30~~ 45 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~~ 14 days. A person may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm) ~~or~~, (cm), or (dm) or (3r) once in his or her lifetime.

SECTION 56. 346.65 (2j) (cr) of the statutes is created to read:

346.65 **(2j)** (cr) In 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) equals 4, and sub. (2) (am) 4m. does not apply, 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. (am) 3., but the period of imprisonment shall be not less than 60 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 29 days. A person may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.

SECTION 57. 346.65 (2q) of the statutes is amended to read:

346.65 **(2q)** Any person violating s. 346.63 (2m) shall forfeit $200. 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 346.63 (2m), the ~~forfeiture is~~ person shall be fined $400.

SECTION 58. 346.65 (3m) of the statutes is amended to read:

346.65 **(3m)** Except as provided in sub. (3p) or (3r), any person violating s. 346.63 (2) or (6) shall be fined not less than $300 nor more than $2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail. 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.

SECTION 59. 346.65 (3p) of the statutes is created to read:

346.65 **(3p)** Any person violating s. 346.63 (2) or (6) is guilty of a Class H felony if the person has one or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (1). 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 and the applicable maximum fines or periods of imprisonment for the conviction are doubled.

SECTION 60. 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. This subsection does not apply to a person sentenced under sub. (3p).

SECTION 61. 346.65 (6) of the statutes is repealed.

SECTION 62. 346.65 (7) of the statutes is amended to read:

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

SECTION 63. 346.65 (8) of the statutes is repealed.

SECTION 64. 346.655 (1) of the statutes is amended to read:

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

SECTION 65. 347.413 (title) and (1) of the statutes are amended to read:

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

SECTION 66. 347.417 (1) of the statutes is amended to read:

347.417 **(1)** No person may remove, disconnect, tamper with, or otherwise circumvent the operation of any immobilization device installed in response to a court order under s. 346.65 (6), 1999 stats., or s. 343.301 (2), 2007 stats. This subsection does not apply to the removal of an immobilization device pursuant to a court order or to necessary repairs to a malfunctioning immobilization device.

SECTION 67. 347.417 (2) of the statutes is amended to read:

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

SECTION 68. 347.50 (1s) of the statutes is amended to read:

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

SECTION 69. 347.50 (1t) of the statutes is created to read:

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

SECTION 70. 757.05 (1) (a) of the statutes is amended to read:

757.05 **(1)** (a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1., (ar), (bm), (br), or (bv) or (5), ~~or for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation,~~ or for a violation of state laws or municipal or county ordinances involving nonmoving traffic violations, violations under s. 343.51 (1m) (b), or safety belt use violations under s. 347.48 (2m), there shall be imposed in addition a penalty surcharge under ch. 814 in an amount of 26 percent of the fine or

forfeiture imposed. If multiple offenses are involved, the penalty surcharge shall be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty surcharge shall be reduced in proportion to the suspension.

SECTION 71. 814.60 (1) of the statutes is amended to read:

814.60 **(1)** In a criminal action, the clerk of circuit court shall collect a fee of ~~$20~~ $163 for all necessary filing, entering, or recording, to be paid by the defendant when judgment is entered against the defendant. Of the fees received by the clerk of circuit court under this subsection, the county treasurer shall pay ~~50%~~ 93.87 percent to the secretary of administration for deposit in the general fund and shall retain the balance for the use of the county.

SECTION 72. 814.63 (1) (c) of the statutes is amended to read:

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

SECTION 73. 814.63 (2) of the statutes is amended to read:

814.63 **(2)** Upon the disposition of a forfeiture action in circuit court for violation of a county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district ordinance, except for an action ~~for a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or~~ for a violation under s. 343.51 (1m)

(b) or a safety belt use violation under s. 347.48 (2m), the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district shall pay a nonrefundable fee of $5 to the clerk of circuit court.

SECTION 74. 814.65 (1) of the statutes is amended to read:

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

SECTION 75. 814.65 (1) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

814.65 **(1)** COURT COSTS. In a municipal court action, for a financial responsibility violation under s. 344.62 (2) or for a violation of an ordinance in conformity with s. 343.51 (1m) (b) or 347.48 (2m), the municipal judge shall collect a fee of not less than $15 nor more than $28 on each separate matter, whether it is on default of appearance, a plea of guilty or no contest, on issuance of a warrant or summons, or the action is tried as a contested matter. Of each fee received by the judge under this subsection, the municipal treasurer shall pay monthly $5 to the

secretary of administration for deposit in the general fund and shall retain the balance for the use of the municipality.

SECTION 76. 814.75 (9m) of the statutes is created to read:

814.75 **(9m)** The ignition interlock surcharge under s. 343.301 (5).

SECTION 77. 814.76 (7m) of the statutes is created to read:

814.76 **(7m)** The ignition interlock surcharge under s. 343.301 (5).

SECTION 78. 814.78 (7m) of the statutes is created to read:

814.78 **(7m)** The ignition interlock surcharge under s. 343.301 (5).

SECTION 79. 814.79 (4r) of the statutes is created to read:

814.79 **(4r)** The ignition interlock surcharge under s. 343.301 (5).

SECTION 80. 814.85 (1) (a) of the statutes is amended to read:

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

SECTION 81. 814.85 (1) (a) of the statutes, as affected by 2009 Wisconsin Acts 28 and .... (this act), is repealed and recreated to read:

814.85 **(1)** (a) Except for an action for a financial responsibility violation under s. 344.62 (2), or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a $68 court support services surcharge from any person, including any governmental unit as

defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am) or 814.63 (1).

SECTION 82. 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act 28, section 3240, is amended to read:

814.86 **(1)** Except for an action for ~~a first violation of s. 23.33 (4c) (a) 2., 30.681 (1) (b) 1., 346.63 (1) (b), or 350.101 (1) (b), if the person who committed the violation had a blood alcohol concentration of 0.08 or more but less than 0.1 at the time of the violation, or for~~ a violation under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a $21.50 justice information system surcharge from any person, including any governmental unit, as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in addition to the surcharge listed in sub. (1m).

SECTION 83. 814.86 (1) of the statutes, as affected by 2009 Wisconsin Act 28, section 3240m, and 2009 Wisconsin Act .... (this act), is repealed and recreated to read:

814.86 **(1)** Except for an action for a financial responsibility violation under s. 344.62 (2), or for a violation under s. 343.51 (1m) (b) or a safety belt use violation under s. 347.48 (2m), the clerk of circuit court shall charge and collect a $21.50 justice information system surcharge from any person, including any governmental unit, as defined in s. 108.02 (17), paying a fee under s. 814.61 (1) (a), (3), or (8) (am), 814.62 (1), (2), or (3) (a) or (b), or 814.63 (1). The justice information system surcharge is in addition to the surcharge listed in sub. (1m).

SECTION 84. 940.09 (1d) of the statutes is repealed and recreated to read:

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

SECTION 85. 940.25 (1d) of the statutes is repealed and recreated to read:

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

SECTION 86. 969.01 (2) (a) of the statutes is amended to read:

969.01 **(2)** (a) Release pursuant to s. 969.02 or 969.03 may be allowed in the discretion of the trial court after conviction and prior to sentencing or the granting of probation. <u>This paragraph does not apply to a conviction for a 3rd or subsequent violation that is counted as a suspension, revocation, or conviction under s. 343.307, or under s. 940.09 (1) or 940.25 in the person's lifetime, or a combination thereof.</u>

SECTION 87. 973.05 (2m) (rm) of the statutes is created to read:

973.05 **(2m)** (rm) To the payment of the ignition interlock surcharge under s. 343.301 (5) until paid in full.

SECTION 88. 973.09 (1) (d) (intro.) of the statutes is renumbered 973.09 (1) (d) and amended to read:

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

SECTION 89. 973.09 (1) (d) 1. of the statutes is repealed.

SECTION 90. 973.09 (1) (d) 2. of the statutes is repealed.

1 **SECTION 91.** 973.09 (1) (d) 3. of the statutes is repealed.

2 **SECTION 92.** 973.09 (2) (am) of the statutes is created to read:

3 973.09 **(2)** (am) Notwithstanding par. (a) 1. d., and except as provided in par.
4 (a) 2., for a misdemeanor punishable under s. 346.65 (2) (am) 4., not less than 6
5 months nor more than 3 years.

6 **SECTION 93.** 973.15 (8) (a) 3. of the statutes is amended to read:

7 973.15 **(8)** (a) 3. For not more than 60 days, except that the court may not stay
8 execution of a person's sentence of imprisonment or to the intensive sanctions
9 program under this subdivision if the sentence is for a 3rd or subsequent violation
10 that is counted as a suspension, revocation, or conviction under s. 343.307, or a
11 violation of s. 940.09 (1) or 940.25 in the person's lifetime, or a combination thereof.

12 **SECTION 94. Nonstatutory provisions.**

13 (1) The department of administration, on behalf of and with the assistance of
14 the state public defender, district attorneys, the department of justice, and the
15 department of corrections, shall, not later than 60 days after the effective date of this
16 subsection, submit to the joint committee on finance a request for funding for a
17 proposed number of created positions and a request for funding necessary to process
18 offenses related to operating a motor vehicle while under the influence of an
19 intoxicant, a controlled substance, a controlled substance analog, or any combination
20 of an intoxicant, a controlled substance, and a controlled substance analog, under the
21 influence of any other drug to a degree that renders him or her incapable of safely
22 driving, or under the combined influence of an intoxicant and any other drug to a
23 degree that renders him or her incapable of safely driving or operating a motor
24 vehicle with a prohibited alcohol concentration or a detectable amount of a restricted
25 controlled substance in his or her blood.

1 **SECTION 95. Fiscal changes.**

14,400,000

2 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
3 to the joint committee on finance under section 20.865 (4) (a) of the statutes, as
4 affected by the acts of 2009, the dollar amount is increased by $26,600,000 for the
5 second fiscal year of the fiscal biennium in which this subsection takes effect to fund
6 increased state costs associated with this act.

7 **SECTION 96. Initial applicability.**

8 (1) This act first applies to violations that are committed or refusals that occur
9 on the effective date of this subsection, but does not preclude the counting of other
10 convictions, suspensions, or revocations as prior convictions, suspensions, or
11 revocations for purposes of administrative action by the department of
12 transportation, sentencing by a court, or revocation or suspension of motor vehicle
13 operating privileges.

14 **SECTION 97. Effective dates.** This act takes effect on first day of the 3rd
15 month beginning after publication, except as follows:

16 (1) The repeal and recreation of sections 343.10 (2) (a) (intro.) and 343.23 (2)
17 (b) of the statutes takes effect on the day after publication, or on the date on which
18 the creation of section 343.165 of the statutes by 2007 Wisconsin Act 20 takes effect,
19 whichever is later.

20 (2) The repeal of section 346.65 (8) of the statutes, the amendment of section
21 346.65 (2) (bm) and (cm), (2j) (bm) and (cm), and (3r) of the statutes, and the creation
22 of sections 346.65 (2) (dm) and (2j) (cr) of the statutes and SECTIONS 94 and 95 of this
23 act take effect on the day after publication.

24 (3) The repeal of sections 342.12 (4) (c) 1. b., 343.301 (1) (title) and (a) and (2),
25 and 346.65 (6) of the statutes, the renumbering and amendment of sections 343.301

1 (1) (c) and (d) of the statutes, the consolidation, renumbering, and amendment of
2 sections 343.301 (1) (b) 1. and 2. of the statutes, the amendment of sections 340.01
3 (46m) (c), 342.12 (4) (c) 1. c., 342.13 (1), 343.10 (2) (a) (intro.) and (5) (a) 3., 343.301
4 (title), 347.413 (title) and (1), 347.417 (1) and (2), and 347.50 (1s) of the statutes, the
5 repeal and recreation of sections 343.305 (10m), 940.09 (1d), and 940.25 (1d) of the
6 statutes, and the creation of sections 343.10 (2) (f), 343.301 (1g) and (1m), (3) (b), and
7 (5), and 347.50 (1t) of the statutes take effect on the first day of the 9th month
8 beginning after publication.

9 (4) The repeal and recreation of sections 814.65 (1), 814.85 (1) (a), and 814.86
10 (1) of the statutes takes effect on July 1, 2010.

11 **(END)**