

2019 DRAFTING REQUEST

Bill

For: **Jim Ott (608) 266-0486** Drafter: **emueller**
 By: **Rep. Ott** Secondary Drafters:
 Date: **12/4/2018** May Contact:
 Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.OttJ@legis.wisconsin.gov**
 Carbon copy (CC) to: **eric.mueller@legis.wisconsin.gov**
zachary.wyatt@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Criminalizing first OWI offense with amendment to civil violation after 5 years

Instructions:

Redraft 2015 AB 363

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 12/7/2018	eweiss 12/10/2018			
/P1	emueller 1/3/2019		mbarman 12/10/2018		State S&L
/1		anienaja 1/3/2019	dwalker 1/3/2019	dwalker 1/3/2019	State S&L

Per EMM

FE Sent For: *2*

<END>

*act
intro*



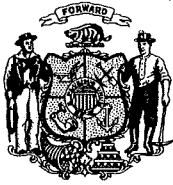
12/14 Dep. Ott

- Drafted in a prev. session

2015
AB
363

- make 1st Owl undecreaser
but reverts to civil if no
affi offense in 5 yrs

- Eliminate 10yr lookback



State of Wisconsin
2015 - 2016 LEGISLATURE

CORRECTED
COPY

LRB-2665/1 1007/PT

PJH:wlj
EVM EMW

2019

2015 ASSEMBLY BILL 363

RMNR

September 25, 2015 - Introduced by Representatives BERCEAU, J. OTT, HEATON, HINTZ, JACQUE, JOHNSON, POPE, SINICKI and C. TAYLOR, cosponsored by Senators CARPENTER and HARRIS DODD. Referred to Committee on Criminal Justice and Public Safety.

INSERT

SAM
xrec
PWF

- Regen.

12/10/18

1 AN ACT to repeal 346.65 (2) (f) 1. and 346.65 (2g) (d); to renumber and amend
2 346.65 (2) (am) 1. and 346.65 (2) (f) 2.; to amend 343.30 (1q) (b) (intro.), 343.30
3 (1q) (b) 3., 343.305 (10) (b) 3., 343.31 (3) (bm) 3., 345.20 (2) (c), 345.24 (1), 346.65
4 (2) (am) 2., 346.65 (2) (bm), 346.65 (2c), 346.65 (2e), 346.65 (2g) (a), 346.65 (2g)
5 (ag), 346.65 (2g) (am), 346.65 (2i), 939.51 (1) (intro.) and 972.11 (3m); and to
6 create 346.65 (2) (am) 1. b., c. and d. of the statutes; relating to: offenses ✓
7 related to operating a vehicle while intoxicated and providing a criminal ✓
8 penalty. ✓

penalties for

Analysis by the Legislative Reference Bureau

This bill makes changes to certain offenses relating to operating a vehicle while intoxicated (OWI-related offenses).

Under current law, a first OWI-related offense is a civil violation, unless there was a minor passenger under the age of 16 in the vehicle at the time of the offense. A person who commits a civil OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Current law increases the penalty for a second OWI-related offense if the person committed the second offense within ten years of the first offense or if the

criminalizes a first offense

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person committed an OWI-related offense that caused death or great bodily harm to another.

Under this bill, a person who commits a first OWI-related offense is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. Under the bill, a person who commits a second OWI-related offense is subject to the increased penalties regardless of whether the person commits the offense within ten years of his or her first OWI-related offense.

Under the bill, a court may, upon petition by the person who has been convicted of a first OWI-related offense, vacate the person's criminal conviction and amend the record to a civil violation if, in the five years since the person was convicted of the offense, he or she has not committed any other OWI-related offense. Under the bill, the clerk of courts amends the court records that are available in person and online to show only the civil violation.

anal. crime → 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.** 343.30 (1q) (b) (intro.) of the statutes is amended to read:

2 343.30 (1q) (b) ^(intro.) For persons convicted under s. 346.63 (1) ~~or a local ordinance~~
3 in conformity therewith:

4 **SECTION 2.** 343.30 (1q) (b) 3. of the statutes is amended to read:

5 343.30 (1q) (b) 3. Except as provided in sub. (1r) or subd. 4m., if the number
6 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
7 number of other convictions, suspensions, and revocations counted under s. 343.307
8 (1) ~~within a 10-year period~~, equals 2, the court shall revoke the person's operating
9 privilege for not less than one year nor more than 18 months. After the first 45 days
10 of the revocation period has elapsed, the person is eligible for an occupational license
11 under s. 343.10 if he or she has completed the assessment and is complying with the
12 driver safety plan ordered under par. (c).

13 **SECTION 3.** 343.305 (10) (b) 3. of the statutes is amended to read:

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1 343.305 (10) (b) 3. Except as provided in subd. 4m., if the number of convictions
2 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
3 convictions, suspensions, and revocations counted under s. 343.307 (2) ~~within a~~
4 ~~10-year period~~, equals 2, the court shall revoke the person's operating privilege for
5 2 years. After the first 90 days of the revocation period or, if the total number of
6 convictions, suspensions, and revocations counted under this subdivision within any
7 5-year period equals 2 or more, after one year of the revocation period has elapsed,
8 the person is eligible for an occupational license under s. 343.10 if he or she has
9 completed the assessment and is complying with the driver safety plan.

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

11 343.31 (3) (bm) 3. Except as provided in subd. 4m., if the number of convictions
12 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
13 suspensions, revocations, and other convictions counted under s. 343.307 (1) ~~within~~
14 ~~a 10-year period~~, equals 2, the department shall revoke the person's operating
15 privilege for not less than one year nor more than 18 months. If an Indian tribal court
16 in this state revokes the person's privilege to operate a motor vehicle on tribal lands
17 for not less than one year nor more than 18 months for the conviction specified in par.
18 (bm) (intro.), the department shall impose the same period of revocation. After the
19 first 60 days of the revocation period or, if the total number of convictions,
20 suspensions, and revocations counted under this subdivision within any 5-year
21 period equals 2 or more, after one year of the revocation period has elapsed, the
22 person is eligible for an occupational license under s. 343.10.

23 **SECTION 5.** 345.20 (2) (c) of the statutes is amended to read:

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1 345.20 (2) (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture
 2 actions for violations of s. 346.63 (1) or (5) or a local ordinance in conformity
 3 therewith.

4 **SECTION 6.** 345.24 (1) of the statutes is amended to read:

5 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in
 6 conformity therewith with s. 346.63 (5) or s. 346.63 (2) or (6) or 940.25, or s. 940.09
 7 where the offense involved the use of a vehicle, may not be released until 12 hours
 8 have elapsed from the time of his or her arrest or unless a chemical test administered
 9 under s. 343.305 shows that the person has an alcohol concentration of less than 0.04,
 10 but the person may be released to his or her attorney, spouse, relative or other
 11 responsible adult at any time after arrest.

12 **SECTION 7.** 346.65 (2) (am) 1. of the statutes is renumbered 346.65 (2) (am) 1.

13 a. and amended to read:

14 346.65 (2) (am) 1. a. ~~Shall forfeit not less than \$150 nor more than \$300, except~~
 15 Except as provided in subds. 2. to 5. 7. and par. (f), is guilty of a Class C misdemeanor
 16 and shall be imprisoned for not less than one day.

17 **SECTION 8.** 346.65 (2) (am) 1. b., c. and d. of the statutes are created to read:

18 346.65 (2) (am) 1. b. A person who is convicted of a violation under subd. 1. a.
 19 may petition the court to vacate his or her conviction. The court shall order that the
 20 conviction be vacated and the record of the conviction be expunged, and that a record
 21 of a civil violation be entered if the person has completed his or her sentence, as
 22 defined in s. 973.015 (1) (b), and, in the 5 years after the person was convicted of the
 23 violation, the person was not convicted or adjudicated of committing a subsequent
 24 violation that is counted as a suspension, revocation, or conviction under s. 343.307.

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ASSEMBLY BILL 363**SECTION 8**

1 c. The clerk of court shall forward a copy of the order to amend the record of the
2 conviction to a civil offense to the department of justice and to the department of
3 transportation.

4 d. A conviction that is vacated under subd. 1. b. is not a conviction for any
5 matter relating to an application for employment or for the rental, purchase, or
6 financing of housing.

7 **SECTION 9.** 346.65 (2) (am) 2. of the statutes is amended to read:

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

15 **SECTION 10.** 346.65 (2) (bm) of the statutes is amended to read:

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

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SECTION 10

1 5 nor more than 7 days. A person may be sentenced under this paragraph or under
 2 par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

3 **SECTION 11.** 346.65 (2) (f) 1. of the statutes is repealed.

4 **SECTION 12.** 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and
 5 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 fines and imprisonment under par. (am) 2-
 9 to 7. for the conviction are doubled. An offense under s. 346.63 (1) that subjects a
 10 person to a penalty under par. (am) 3., 4., 4m., 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 13.** 346.65 (2c) of the statutes is amended to read:

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

21 **SECTION 14.** 346.65 (2e) of the statutes is amended to read:

22 346.65 (2e) If the court determines that a person does not have the ability to
 23 pay the costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g), the court
 24 may reduce the costs, ~~or fine, and forfeiture~~ imposed and order the person to pay,
 25 toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q)

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1 (c), the difference between the amount of the reduced costs and fine or forfeiture and
2 the amount of costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g).

3 **SECTION 15.** 346.65 (2g) (a) of the statutes is amended to read:

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

13 **SECTION 16.** 346.65 (2g) (ag) of the statutes is amended to read:

14 346.65 (2g) (ag) If the court determines that a person does not have the ability
15 to pay a fine imposed under sub. (2) (am) 1, 2., 3., 4., 4m., or 5., (f), or (g), the court
16 shall require the defendant to perform community service work for a public agency
17 or a nonprofit charitable organization in lieu of paying the fine imposed or, if the
18 amount of the fine was reduced under sub. (2e), in lieu of paying the remaining
19 amount of the fine. Each hour of community service performed in compliance with
20 an order under this paragraph shall reduce the amount of the fine owed by an amount
21 determined by the court.

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

23 346.65 (2g) (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or
24 (ag) may apply only if agreed to by the organization or agency. The court shall ensure
25 that the defendant is provided a written statement of the terms of the community

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SECTION 17

1 service order and that the community service order is monitored. Any organization
2 or agency acting in good faith to which a defendant is assigned pursuant to an order
3 under this subsection has immunity from any civil liability in excess of \$25,000 for
4 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~
5 ~~issuance of a community service order under this subsection does not entitle an~~
6 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
7 ~~under ch. 977.~~

8 **SECTION 18.** 346.65 (2g) (d) of the statutes is repealed.

9 **SECTION 19.** 346.65 (2i) of the statutes is amended to read:

10 346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05
11 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
12 s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that
13 demonstrates the adverse effects of substance abuse or of operating a vehicle while
14 under the influence of an intoxicant or other drug, including an alcoholism treatment
15 facility approved under s. 51.45 or an emergency room of a general hospital ~~in lieu~~
16 ~~of part or all of any forfeiture imposed or in addition to any penalty imposed.~~ The
17 court may order the defendant to pay a reasonable fee, based on the person's ability
18 to pay, to offset the costs of establishing, maintaining, and monitoring the visits
19 ordered under this subsection. The court may order a visit to the site only if agreed
20 to by the person responsible for the site. If the opportunities available to visit sites
21 under this subsection are fewer than the number of defendants eligible for a visit,
22 the court shall, when making an order under this subsection, give preference to
23 defendants who were under 21 years of age at the time of the offense. The court shall
24 ensure that the visit is monitored. A visit to a site may be ordered for a specific time
25 and a specific day to allow the defendant to observe victims of vehicle accidents

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1 involving intoxicated drivers. If it appears to the court that the defendant has not
 2 complied with the court order to visit a site or to pay a reasonable fee, the court may
 3 order the defendant to show cause why he or she should not be held in contempt of
 4 court. Any organization or agency acting in good faith to which a defendant is
 5 assigned pursuant to an order under this subsection has immunity from any civil
 6 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.
 7 ~~The issuance or possibility of the issuance of an order under this subsection does not~~
 8 ~~entitle an indigent defendant who is subject to sub. (2) (am) 1. to representation by~~
 9 ~~counsel under ch. 977.~~

10 **SECTION 20.** 939.51 (1) (intro.) of the statutes is amended to read:

11 939.51 (1) (intro.) Misdemeanors in chs. 346 and 939 to 951 are classified as
 12 follows:

13 **SECTION 21.** 972.11 (3m) of the statutes is amended to read:

14 972.11 (3m) A court may not exclude evidence in any criminal action ~~or traffic~~
 15 ~~forfeiture action~~ for violation of s. 346.63 (1) or any criminal action or traffic
 16 forfeiture action for a violation of s. 346.63 (5), or a local ordinance in conformity with
 17 s. 346.63 (1) or (5), on the ground that the evidence existed or was obtained outside
 18 of this state.

19 **SECTION 22. Initial applicability.**

20 (1) This act first applies to violations committed on the effective date of this
 21 subsection but does not preclude the counting of other convictions, suspensions, or
 22 revocations as prior convictions, suspensions, or revocations for purposes of
 23 administrative action by the department of transportation or sentencing by a court.

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STEP

ASSEMBLY BILL 363

SECTION 23

1

✓ **SECTION 23. Effective date.** This act takes effect on the first day of the 9th
2 month beginning after publication.

3

(END)

1 INS 4-16

2

3 SECTION 1. 346.65 (2) (am) 1. of the statutes is renumbered 346.65 (2) (am) 1.

4 a. and amended to read:

5 346.65 (2) (am) 1. a. ~~Shall forfeit not less than \$150 nor more than \$300, except~~
6 Except as provided in subds. 2. to 7. and par. (f), is guilty of a Class C misdemeanor
7 and shall be imprisoned for not less than one day.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258; 2013 a. 39, 224; 2015 a. 55, 371; 2017 a. 34, 363; s. 35.17 correction in (2q).

Cross-reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

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9 INS 6-20

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11 SECTION 2. 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and

12 amended to read:

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

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258; 2013 a. 39, 224; 2015 a. 55, 371; 2017 a. 34, 363; s. 35.17 correction in (2q).

Cross-reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

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

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

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258; 2013 a. 39, 224; 2015 a. 55, 371; 2017 a. 34, 363; s. 35.17 correction in (2q).

Cross-reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

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8 INS 7-21

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10 **SECTION 4.** 346.65 (2g) (a) of the statutes is amended to read:

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

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258; 2013 a. 39, 224; 2015 a. 55, 371; 2017 a. 34, 363; s. 35.17 correction in (2q).

Cross-reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

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21 **SECTION 5.** 346.65 (2g) (ag) of the statutes is amended to read:
 22 **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) 1., 2., 3., 4., or 5., (f), or (g), the court shall

1 require the defendant to perform community service work for a public agency or a
 2 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
 3 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
 4 fine. Each hour of community service performed in compliance with an order under
 5 this paragraph shall reduce the amount of the fine owed by an amount determined
 6 by the court.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258; 2013 a. 39, 224; 2015 a. 55, 371; 2017 a. 34, 363; s. 35.17 correction in (2q).

Cross-reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

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 8 **INS 9-9**

9
 10 **SECTION 6.** 346.65 (2i) of the statutes is amended to read:

11 **346.65 (2i)** In addition to the authority of the court under sub. (2g) and s. 973.05
 12 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
 13 s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that
 14 demonstrates the adverse effects of substance abuse or of operating a vehicle while
 15 under the influence of an intoxicant or other drug, including a treatment facility
 16 approved under s. 51.45 or an emergency room of a general hospital ~~in lieu of part~~
 17 ~~or all of any forfeiture imposed or~~ in addition to any penalty imposed. The court may
 18 order the defendant to pay a reasonable fee, based on the person's ability to pay, to
 19 offset the costs of establishing, maintaining, and monitoring the visits ordered under
 20 this subsection. The court may order a visit to the site only if agreed to by the person
 21 responsible for the site. If the opportunities available to visit sites under this
 22 subsection are fewer than the number of defendants eligible for a visit, the court
 23 shall, when making an order under this subsection, give preference to defendants

1 who were under 21 years of age at the time of the offense. The court shall ensure that
2 the visit is monitored. A visit to a site may be ordered for a specific time and a specific
3 day to allow the defendant to observe victims of vehicle accidents involving
4 intoxicated drivers. If it appears to the court that the defendant has not complied
5 with the court order to visit a site or to pay a reasonable fee, the court may order the
6 defendant to show cause why he or she should not be held in contempt of court. Any
7 organization or agency acting in good faith to which a defendant is assigned pursuant
8 to an order under this subsection has immunity from any civil liability in excess of
9 \$25,000 for acts or omissions by or impacting on the defendant. ~~The issuance or~~
10 ~~possibility of the issuance of an order under this subsection does not entitle an~~
11 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
12 ~~under ch. 977.~~

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109; 2003 a. 33, 97, 139, 326; 2005 a. 149, 317, 389; 2007 a. 97, 111; 2009 a. 100, 180; 2011 a. 258; 2013 a. 39, 224; 2015 a. 55, 371; 2017 a. 34, 363; s. 35.17 correction in (2q).

Cross-reference: For suspension or revocation of operating privileges upon convictions for OWI see s. 343.30.

Mueller, Eric

From: Havey, Mike
Sent: Thursday, January 03, 2019 9:06 AM
To: Mueller, Eric
Subject: Jackets

Good Morning Eric,

Rep. Ott has signed off on LRB-1007 and LRB-1009 and would like them jacketed.

Thank you,
Mike

Michael Havey
Legislative Assistant
608-237-9419
Representative Jim Ott
23rd Assembly District



RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAK
PWS

1/3/19

No changes

1 **AN ACT to repeal** 346.65 (2) (f) 1. and 346.65 (2g) (d); **to renumber and amend**
2 346.65 (2) (am) 1. and 346.65 (2) (f) 2.; **to amend** 343.30 (1q) (b) (intro.), 343.30
3 (1q) (b) 3., 343.305 (10) (b) 3., 343.31 (3) (bm) 3., 345.20 (2) (c), 345.24 (1), 346.65
4 (2) (am) 2., 346.65 (2) (bm), 346.65 (2c), 346.65 (2e), 346.65 (2g) (a), 346.65 (2g)
5 (ag), 346.65 (2g) (am), 346.65 (2i), 939.51 (1) (intro.) and 972.11 (3m); and **to**
6 **create** 346.65 (2) (am) 1. b., c. and d. of the statutes; **relating to:** penalties for
7 offenses related to operating a vehicle while intoxicated and providing a
8 penalty.

Analysis by the Legislative Reference Bureau

This bill criminalizes a first offense relating to operating a vehicle while intoxicated (OWI-related offense).

Under current law, a first OWI-related offense is a civil violation, unless there was a minor passenger under the age of 16 in the vehicle at the time of the offense. A person who commits a civil OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Current law increases the penalty for a second OWI-related offense if the person committed the second offense within ten years of the first offense or if the

person committed an OWI-related offense that caused death or great bodily harm to another.

Under this bill, a person who commits a first OWI-related offense is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. Under the bill, a person who commits a second OWI-related offense is subject to the increased penalties regardless of whether the person commits the offense within ten years of his or her first OWI-related offense.

Under the bill, a court may, upon petition by the person who has been convicted of a first OWI-related offense, vacate the person's criminal conviction and amend the record to a civil violation if, in the five years since the person was convicted of the offense, he or she has not committed any other OWI-related offense. Under the bill, the clerk of courts amends the court records that are available in person and online to show only the civil violation.

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.

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.** 343.30 (1q) (b) (intro.) of the statutes is amended to read:

2 343.30 (1q) (b) (intro.) For persons convicted under s. 346.63 (1) or a local
3 ordinance in conformity therewith:

4 **SECTION 2.** 343.30 (1q) (b) 3. of the statutes is amended to read:

5 343.30 (1q) (b) 3. Except as provided in sub. (1r) or subd. 4m., if the number
6 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
7 number of other convictions, suspensions, and revocations counted under s. 343.307
8 (1) within a 10-year period, equals 2, the court shall revoke the person's operating
9 privilege for not less than one year nor more than 18 months. After the first 45 days
10 of the revocation period has elapsed, the person is eligible for an occupational license
11 under s. 343.10 if he or she has completed the assessment and is complying with the
12 driver safety plan ordered under par. (c).

1 **SECTION 3.** 343.305 (10) (b) 3. of the statutes is amended to read:

2 343.305 **(10)** (b) 3. Except as provided in subd. 4m., if the number of convictions
3 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
4 convictions, suspensions, and revocations counted under s. 343.307 (2) ~~within a~~
5 ~~10-year period~~, equals 2, the court shall revoke the person's operating privilege for
6 2 years. After the first 90 days of the revocation period or, if the total number of
7 convictions, suspensions, and revocations counted under this subdivision within any
8 5-year period equals 2 or more, after one year of the revocation period has elapsed,
9 the person is eligible for an occupational license under s. 343.10 if he or she has
10 completed the assessment and is complying with the driver safety plan.

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

12 343.31 **(3)** (bm) 3. Except as provided in subd. 4m., if the number of convictions
13 under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of
14 suspensions, revocations, and other convictions counted under s. 343.307 (1) ~~within~~
15 ~~a 10-year period~~, equals 2, the department shall revoke the person's operating
16 privilege for not less than one year nor more than 18 months. If an Indian tribal court
17 in this state revokes the person's privilege to operate a motor vehicle on tribal lands
18 for not less than one year nor more than 18 months for the conviction specified in par.
19 (bm) (intro.), the department shall impose the same period of revocation. After the
20 first 60 days of the revocation period or, if the total number of convictions,
21 suspensions, and revocations counted under this subdivision within any 5-year
22 period equals 2 or more, after one year of the revocation period has elapsed, the
23 person is eligible for an occupational license under s. 343.10.

24 **SECTION 5.** 345.20 (2) (c) of the statutes is amended to read:

1 345.20 (2) (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture
2 actions for violations of s. 346.63 (1) ~~or~~ (5) or a local ordinance in conformity
3 therewith.

4 **SECTION 6.** 345.24 (1) of the statutes is amended to read:

5 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in
6 conformity ~~therewith~~ with s. 346.63 (5) or s. 346.63 (2) or (6) or 940.25, or s. 940.09
7 where the offense involved the use of a vehicle, may not be released until 12 hours
8 have elapsed from the time of his or her arrest or unless a chemical test administered
9 under s. 343.305 shows that the person has an alcohol concentration of less than 0.04,
10 but the person may be released to his or her attorney, spouse, relative or other
11 responsible adult at any time after arrest.

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

14 346.65 (2) (am) 1. a. ~~Shall forfeit not less than \$150 nor more than \$300, except~~
15 Except as provided in subds. 2. to 7. and par. (f), is guilty of a Class C misdemeanor
16 and shall be imprisoned for not less than one day.

17 **SECTION 8.** 346.65 (2) (am) 1. b., c. and d. of the statutes are created to read:

18 346.65 (2) (am) 1. b. A person who is convicted of a violation under subd. 1. a.
19 may petition the court to vacate his or her conviction. The court shall order that the
20 conviction be vacated and the record of the conviction be expunged and that a record
21 of a civil violation be entered if the person has completed his or her sentence, as
22 defined in s. 973.015 (1m) (b), and, in the 5 years after the person was convicted of
23 the violation, the person was not convicted or adjudicated of committing a
24 subsequent violation that is counted as a suspension, revocation, or conviction under
25 s. 343.307 (1).

1 c. The clerk of court shall forward a copy of the order to amend the record of the
2 conviction to a civil offense to the department of justice and to the department of
3 transportation.

4 d. A conviction that is vacated under subd. 1. b. is not a conviction for any
5 matter relating to an application for employment or for the rental, purchase, or
6 financing of housing.

7 **SECTION 9.** 346.65 (2) (am) 2. of the statutes is amended to read:

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

15 **SECTION 10.** 346.65 (2) (bm) of the statutes is amended to read:

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

1 5 nor more than 7 days. A person may be sentenced under this paragraph or under
2 par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

3 **SECTION 11.** 346.65 (2) (f) 1. of the statutes is repealed.

4 **SECTION 12.** 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and
5 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 fines and imprisonment under par. (am) 2.
9 to 7. for the conviction are doubled. An offense under s. 346.63 (1) that subjects a
10 person to a penalty under par. (am) 3., 4., 5., 6., or 7. when there is a minor passenger
11 under 16 years of age in the motor vehicle is a felony and the place of imprisonment
12 shall be determined under s. 973.02.

13 **SECTION 13.** 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 14.** 346.65 (2e) of the statutes is amended to read:

21 346.65 (2e) If the court determines that a person does not have the ability to
22 pay the costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g), the court
23 may reduce the costs, or fine, ~~and forfeiture~~ imposed and order the person to pay,
24 toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q)

1 (c), the difference between the amount of the reduced costs and fine or forfeiture and
2 the amount of costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g).

3 **SECTION 15.** 346.65 (2g) (a) of the statutes is amended to read:

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

13 **SECTION 16.** 346.65 (2g) (ag) of the statutes is amended to read:

14 346.65 (2g) (ag) If the court determines that a person does not have the ability
15 to pay a fine imposed under sub. (2) (am) 1., 2., 3., 4., or 5., (f), or (g), the court shall
16 require the defendant to perform community service work for a public agency or a
17 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount
18 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the
19 fine. Each hour of community service performed in compliance with an order under
20 this paragraph shall reduce the amount of the fine owed by an amount determined
21 by the court.

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

23 346.65 (2g) (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or
24 (ag) may apply only if agreed to by the organization or agency. The court shall ensure
25 that the defendant is provided a written statement of the terms of the community

1 service order and that the community service order is monitored. Any organization
2 or agency acting in good faith to which a defendant is assigned pursuant to an order
3 under this subsection has immunity from any civil liability in excess of \$25,000 for
4 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~
5 ~~issuance of a community service order under this subsection does not entitle an~~
6 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
7 ~~under ch. 977.~~

8 **SECTION 18.** 346.65 (2g) (d) of the statutes is repealed.

9 **SECTION 19.** 346.65 (2i) of the statutes is amended to read:

10 **346.65 (2i)** In addition to the authority of the court under sub. (2g) and s. 973.05
11 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
12 s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that
13 demonstrates the adverse effects of substance abuse or of operating a vehicle while
14 under the influence of an intoxicant or other drug, including a treatment facility
15 approved under s. 51.45 or an emergency room of a general hospital ~~in lieu of part~~
16 ~~or all of any forfeiture imposed or in addition to any penalty imposed.~~ The court may
17 order the defendant to pay a reasonable fee, based on the person's ability to pay, to
18 offset the costs of establishing, maintaining, and monitoring the visits ordered under
19 this subsection. The court may order a visit to the site only if agreed to by the person
20 responsible for the site. If the opportunities available to visit sites under this
21 subsection are fewer than the number of defendants eligible for a visit, the court
22 shall, when making an order under this subsection, give preference to defendants
23 who were under 21 years of age at the time of the offense. The court shall ensure that
24 the visit is monitored. A visit to a site may be ordered for a specific time and a specific
25 day to allow the defendant to observe victims of vehicle accidents involving

1 intoxicated drivers. If it appears to the court that the defendant has not complied
2 with the court order to visit a site or to pay a reasonable fee, the court may order the
3 defendant to show cause why he or she should not be held in contempt of court. Any
4 organization or agency acting in good faith to which a defendant is assigned pursuant
5 to an order under this subsection has immunity from any civil liability in excess of
6 \$25,000 for acts or omissions by or impacting on the defendant. ~~The issuance or~~
7 ~~possibility of the issuance of an order under this subsection does not entitle an~~
8 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~
9 ~~under ch. 977.~~

10 **SECTION 20.** 939.51 (1) (intro.) of the statutes is amended to read:

11 939.51 (1) (intro.) Misdemeanors in chs. 346 and 939 to 951 are classified as
12 follows:

13 **SECTION 21.** 972.11 (3m) of the statutes is amended to read:

14 972.11 (3m) A court may not exclude evidence in any criminal action ~~or traffic~~
15 ~~forfeiture action~~ for violation of s. 346.63 (1) or any criminal action or traffic
16 forfeiture action for a violation of s. 346.63 (5), or a local ordinance in conformity with
17 s. 346.63 (1) or (5), on the ground that the evidence existed or was obtained outside
18 of this state.

19 **SECTION 22. Initial applicability.**

20 (1) This act first applies to violations committed on the effective date of this
21 subsection but does not preclude the counting of other convictions, suspensions, or
22 revocations as prior convictions, suspensions, or revocations for purposes of
23 administrative action by the department of transportation or sentencing by a court.

