



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0227/1
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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 366**

February 11, 2010 – Offered by Representatives BARCA and ROYS.

1 **AN ACT to amend** 346.65 (2) (am) 2., 346.65 (2) (am) 3., 346.65 (2) (am) 4., 346.65
2 (2) (bm), 346.65 (2) (cm), 346.65 (2) (dm), 346.65 (2j) (am) 2., 346.65 (2j) (am) 3.,
3 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (2j) (cr) and 346.65 (3r); and **to create**
4 346.65 (2) (br), 346.65 (2) (cr), 346.65 (2) (dr), 346.65 (2j) (br), 346.65 (2j) (cp),
5 346.65 (2j) (cu) and 346.65 (2x) of the statutes; **relating to:** alternative
6 sentencing for certain drunken driving offenses and providing penalties.

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

7 **SECTION 1.** 346.65 (2) (am) 2. of the statutes is amended to read:
8 346.65 (2) (am) 2. Except as provided in pars. (bm), (br), and (f), shall be fined
9 not less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor
10 more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in
11 the 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

1 that suspensions, revocations, or convictions arising out of the same incident or
2 occurrence shall be counted as one.

3 **SECTION 2.** 346.65 (2) (am) 3. of the statutes, as affected by 2009 Wisconsin Act
4 Act 100, is amended to read:

5 346.65 (2) (am) 3. Except as provided in pars. (cm), ~~(cr)~~, (f), and (g), shall be
6 fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 45
7 days nor more than one year in the county jail if the number of convictions under ss.
8 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,
9 revocations, and other convictions counted under s. 343.307 (1), equals 3, except that
10 suspensions, revocations, or convictions arising out of the same incident or
11 occurrence shall be counted as one.

12 **SECTION 3.** 346.65 (2) (am) 4. of the statutes, as affected by 2009 Wisconsin Act
13 100, is amended to read:

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

21 **SECTION 4.** 346.65 (2) (bm) of the statutes, as affected by 2009 Wisconsin Act
22 100, is amended to read:

23 346.65 (2) (bm) In any county that opts to offer a reduced minimum period of
24 imprisonment for the successful completion of a probation period that includes
25 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)

1 and 940.25 in the person's lifetime, plus the total number of suspensions,
2 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
3 period, equals 2, except that suspensions, revocations, or convictions arising out of
4 the same incident or occurrence shall be counted as one, the fine shall be the same
5 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,
6 except that if the person successfully completes a period of probation that includes
7 alcohol and other drug treatment, the period of imprisonment shall be not less than
8 5 nor more than 7 days. ~~A person may be sentenced under this paragraph or under
9 par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.~~

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

11 346.65 (2) (br) If the number of convictions under ss. 940.09 (1) and 940.25 in
12 the person's lifetime, plus the total number of suspensions, revocations, and other
13 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
14 that suspensions, revocations, or convictions arising out of the same incident or
15 occurrence shall be counted as one, the fine shall be the same as under par. (am) 2.,
16 but the period of imprisonment shall be not less than 5 days, except that the period
17 of imprisonment shall be not less than 5 nor more than 7 days if the court places the
18 person on probation under s. 973.09 and the conditions of probation require the
19 person to do at least one of the following:

20 1. Follow a pharmacological treatment plan that includes, unless
21 contraindicated, taking naltrexone, its drug product equivalent, or another
22 pharmacological agent that is approved by the federal drug administration for the
23 treatment of alcohol dependence, and that is administered in a therapeutically
24 appropriate manner and in a therapeutically appropriate dosage for the duration of
25 the period of probation.

1 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
2 other drug abuse or dependence.

3 **SECTION 6.** 346.65 (2) (cm) of the statutes, as affected by 2009 Wisconsin Act
4 100, is amended to read:

5 346.65 (2) (cm) In any county that opts to offer a reduced minimum period of
6 imprisonment for the successful completion of a probation period that includes
7 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
8 and 940.25 in the person's lifetime, plus the total number of suspensions,
9 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
10 suspensions, revocations, or convictions arising out of the same incident or
11 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
12 but the period of imprisonment shall be not less than 45 days, except that if the
13 person successfully completes a period of probation that includes alcohol and other
14 drug treatment, the period of imprisonment shall be not less than 14 days. ~~A person
15 may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm),
16 (cm), or (cr) or (3r) once in his or her lifetime.~~

17 **SECTION 7.** 346.65 (2) (cr) of the statutes is created to read:

18 346.65 (2) (cr) If the number of convictions under ss. 940.09 (1) and 940.25 in
19 the person's lifetime, plus the total number of suspensions, revocations, and other
20 convictions counted under s. 343.307 (1) equals 3, except that suspensions,
21 revocations, or convictions arising out of the same incident or occurrence shall be
22 counted as one, the fine shall be the same as under par. (am) 3., but the period of
23 imprisonment shall be not less than 45 days, except that the period of imprisonment
24 shall be not less than 14 days if the court places the person on probation under s.

1 973.09 and the conditions of probation require the person to do at least one of the
2 following:

3 1. Follow a pharmacological treatment plan that includes, unless
4 contraindicated, taking naltrexone, its drug product equivalent, or another
5 pharmacological agent that is approved by the federal drug administration for the
6 treatment of alcohol dependence, and that is administered in a therapeutically
7 appropriate manner and in a therapeutically appropriate dosage for the duration of
8 the period of probation.

9 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
10 other drug abuse or dependence.

11 **SECTION 8.** 346.65 (2) (dm) of the statutes, as created by 2009 Wisconsin Act
12 100, is amended to read:

13 346.65 (2) (dm) In any county that opts to offer a reduced minimum period of
14 imprisonment for the successful completion of a probation period that includes
15 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
16 and 940.25 in the person's lifetime, plus the total number of suspensions,
17 revocations, and other convictions counted under s. 343.307 (1) equals 4, and par.
18 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising
19 out of the same incident or occurrence shall be counted as one, the fine shall be the
20 same as under par. (am) 4., but the period of imprisonment shall be not less than 60
21 days, except that if the person successfully completes a period of probation that
22 includes alcohol and other drug treatment, the period of imprisonment shall be not
23 less than 29 days. ~~A person may be sentenced under this paragraph or under par.~~
24 ~~(bm) or (cm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.~~

25 **SECTION 9.** 346.65 (2) (dr) of the statutes is created to read:

1 346.65 (2) (dr) If the number of convictions under ss. 940.09 (1) and 940.25 in
2 the person’s lifetime, plus the total number of suspensions, revocations, and other
3 convictions counted under s. 343.307 (1) equals 4, and par. (am) 4m. does not apply,
4 except that suspensions, revocations, or convictions arising out of the same incident
5 or occurrence shall be counted as one, the fine shall be the same as under par. (am)
6 4., but the period of imprisonment shall be not less than 60 days, except that the
7 period of imprisonment shall be not less than 29 days if the court places the person
8 on probation under s. 973.09 and the conditions of probation require the person to
9 do at least one of the following:

10 1. Follow a pharmacological treatment plan that includes, unless
11 contraindicated, taking naltrexone, its drug product equivalent, or another
12 pharmacological agent that is approved by the federal drug administration for the
13 treatment of alcohol dependence, and that is administered in a therapeutically
14 appropriate manner and in a therapeutically appropriate dosage for the duration of
15 the period of probation.

16 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
17 other drug abuse or dependence.

18 **SECTION 10.** 346.65 (2j) (am) 2. of the statutes is amended to read:

19 346.65 (2j) (am) 2. Except as provided in pars. (bm), (br) and (d), shall be fined
20 not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor
21 more than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25
22 in the person’s lifetime, plus the total number of other convictions, ~~suspension~~
23 suspensions, and revocations counted under s. 343.307 (2) within a 10–year period,
24 equals 2.

1 **SECTION 11.** 346.65 (2j) (am) 3. of the statutes, as affected by 2009 Wisconsin
2 Act 100, is amended to read:

3 346.65 **(2j)** (am) 3. Except as provided in pars. (cm), ~~(cp)~~, (cr), ~~(cu)~~, and (d), shall
4 be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than
5 45 days nor more than one year in the county jail if the number of convictions under
6 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
7 convictions, suspensions, and revocations counted under s. 343.307 (2), equals 3 or
8 more.

9 **SECTION 12.** 346.65 (2j) (bm) of the statutes, as affected by 2009 Wisconsin Act
10 100, is amended to read:

11 346.65 **(2j)** (bm) In any county that opts to offer a reduced minimum period of
12 imprisonment for the successful completion of a probation period that includes
13 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
14 and 940.25 in the person's lifetime, plus the total number of suspensions,
15 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
16 period, equals 2, except that suspensions, revocations, or convictions arising out of
17 the same incident or occurrence shall be counted as one, the fine shall be the same
18 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,
19 except that if the person successfully completes a period of probation that includes
20 alcohol and other drug treatment, the period of imprisonment shall be not less than
21 5 nor more than 7 days. ~~A person may be sentenced under this paragraph or under~~
22 ~~par. (cm) or (cr) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.~~

23 **SECTION 13.** 346.65 (2j) (br) of the statutes is created to read:

24 346.65 **(2j)** (br) If the number of convictions under ss. 940.09 (1) and 940.25 in
25 the person's lifetime, plus the total number of suspensions, revocations, and other

1 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
2 that suspensions, revocations, or convictions arising out of the same incident or
3 occurrence shall be counted as one, the fine shall be the same as under par. (am) 2.,
4 but the period of imprisonment shall be not less than 5 days, except that the period
5 of imprisonment shall be not less than 5 nor more than 7 days if the court places the
6 person on probation under s. 973.09 and the conditions of probation require the
7 person to do at least one of the following:

8 1. Follow a pharmacological treatment plan that includes, unless
9 contraindicated, taking naltrexone, its drug product equivalent, or another
10 pharmacological agent that is approved by the federal drug administration for the
11 treatment of alcohol dependence, and that is administered in a therapeutically
12 appropriate manner and in a therapeutically appropriate dosage for the duration of
13 the period of probation.

14 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
15 other drug abuse or dependence.

16 **SECTION 14.** 346.65 (2j) (cm) of the statutes, as affected by 2009 Wisconsin Act
17 100, is amended to read:

18 346.65 (2j) (cm) In any county that opts to offer a reduced minimum period of
19 imprisonment for the successful completion of a probation period that includes
20 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
21 and 940.25 in the person's lifetime, plus the total number of suspensions,
22 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
23 suspensions, revocations, or convictions arising out of the same incident or
24 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
25 but the period of imprisonment shall be not less than 45 days, except that if the

1 person successfully completes a period of probation that includes alcohol and other
2 drug treatment, the period of imprisonment shall be not less than 14 days. ~~A person~~
3 ~~may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm),~~
4 ~~(em), or (dm) or (3r) once in his or her lifetime.~~

5 **SECTION 15.** 346.65 (2j) (cp) of the statutes is created to read:

6 346.65 **(2j)** (cp) If the number of convictions under ss. 940.09 (1) and 940.25 in
7 the person's lifetime, plus the total number of suspensions, revocations, and other
8 convictions counted under s. 343.307 (1) equals 3, except that suspensions,
9 revocations, or convictions arising out of the same incident or occurrence shall be
10 counted as one, the fine shall be the same as under par. (am) 3., but the period of
11 imprisonment shall be not less than 45 days, except that the period of imprisonment
12 shall be not less than 14 days if the court places the person on probation under s.
13 973.09 and the conditions of probation require the person to do at least one of the
14 following:

15 1. Follow a pharmacological treatment plan that includes, unless
16 contraindicated, taking naltrexone, its drug product equivalent, or another
17 pharmacological agent that is approved by the federal drug administration for the
18 treatment of alcohol dependence, and that is administered in a therapeutically
19 appropriate manner and in a therapeutically appropriate dosage for the duration of
20 the period of probation.

21 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
22 other drug abuse or dependence.

23 **SECTION 16.** 346.65 (2j) (cr) of the statutes, as created by 2009 Wisconsin Act
24 100, is amended to read:

1 346.65 (2j) (cr) In any county that opts to offer a reduced minimum period of
2 imprisonment for the successful completion of a probation period that includes
3 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
4 and 940.25 in the person’s lifetime, plus the total number of suspensions,
5 revocations, and other convictions counted under s. 343.307 (1) equals 4, and sub. (2)
6 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising
7 out of the same incident or occurrence shall be counted as one, the fine shall be the
8 same as under par. (am) 3., but the period of imprisonment shall be not less than 60
9 days, except that if the person successfully completes a period of probation that
10 includes alcohol and other drug treatment, the period of imprisonment shall be not
11 less than 29 days. ~~A person may be sentenced under this paragraph or under par.~~
12 ~~(bm) or (cm) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.~~

13 **SECTION 17.** 346.65 (2j) (cu) of the statutes is created to read:

14 346.65 (2j) (cu) If the number of convictions under ss. 940.09 (1) and 940.25 in
15 the person’s lifetime, plus the total number of suspensions, revocations, and other
16 convictions counted under s. 343.307 (1) equals 4, and sub. (2) (am) 4m. does not
17 apply, except that suspensions, revocations, or convictions arising out of the same
18 incident or occurrence shall be counted as one, the fine shall be the same as under
19 par. (am) 3., but the period of imprisonment shall be not less than 60 days, except that
20 the period of imprisonment shall be not less than 29 days if the court places the
21 person on probation under s. 973.09 and the conditions of probation require the
22 person to do at least one of the following:

23 1. Follow a pharmacological treatment plan that includes, unless
24 contraindicated, taking naltrexone, its drug product equivalent, or another
25 pharmacological agent that is approved by the federal drug administration for the

1 treatment of alcohol dependence, and that is administered in a therapeutically
2 appropriate manner and in a therapeutically appropriate dosage for the duration of
3 the period of probation.

4 2. Follow a nonpharmacological treatment plan designed to treat alcohol or
5 other drug abuse or dependence.

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

7 346.65 (2x) A person may be sentenced under sub. (2) (bm), (br), (cm), (cr), (dm),
8 or (dr), (2j) (bm), (br), (cm), (cp), (cr), or (cu), or (3r) once in his or her lifetime.

9 **SECTION 19.** 346.65 (3r) of the statutes, as affected by 2009 Wisconsin Act 100,
10 is amended to read:

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

24 **SECTION 20. Initial applicability.**

