



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO ASSEMBLY BILL 68**

September 11, 2013 – Offered by Representative J. Ott.

1     **AN ACT** *to repeal* 346.65 (2) (am) 4., 346.65 (2) (am) 4m., 346.65 (2) (dm), 346.65  
2           (2j) (cr) and 973.09 (2) (am); and *to amend* 346.65 (2) (am) 2., 346.65 (2) (am)  
3           5., 346.65 (2) (bm), 346.65 (2) (cm), 346.65 (2) (f) 2., 346.65 (2c), 346.65 (2g) (a),  
4           346.65 (2g) (ag), 346.65 (2j) (am) 2., 346.65 (2j) (am) 3., 346.65 (2j) (bm), 346.65  
5           (2j) (cm) and 346.65 (7) of the statutes; **relating to:** driving a vehicle while  
6           under the influence of an intoxicant.

*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) 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

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.

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 of the statutes is repealed.

5 **SECTION 3.** 346.65 (2) (am) 4m. of the statutes is repealed.

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

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

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

14 346.65 (2) (bm) In any county that opts to offer a reduced minimum period of  
15 imprisonment for the successful completion of a probation period that includes  
16 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
17 and 940.25 in the person's lifetime, plus the total number of suspensions,  
18 revocations, and other convictions counted under s. 343.307 (1) ~~within a 10-year~~  
19 ~~period~~, equals 2, except that suspensions, revocations, or convictions arising out of  
20 the same incident or occurrence shall be counted as one, the fine shall be the same  
21 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
22 except that if the person successfully completes a period of probation that includes  
23 alcohol and other drug treatment, the period of imprisonment shall be not less than  
24 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
25 par. (cm) ~~or (dm)~~ or sub. (2j) (bm), or (cm), ~~or (er)~~ or (3r) once in his or her lifetime.

1           **SECTION 6.** 346.65 (2) (cm) of the statutes is amended to read:

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

14           **SECTION 7.** 346.65 (2) (dm) of the statutes is repealed.

15           **SECTION 8.** 346.65 (2) (f) 2. of the statutes is amended to read:

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

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

24           346.65 (2c) In sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5., 6., and 7., the time period shall  
25 be measured from the dates of the refusals or violations that resulted in the

1 revocation or convictions. If a person has a suspension, revocation, or conviction for  
2 any offense under a local ordinance or a state statute of another state that would be  
3 counted under s. 343.307 (1), that suspension, revocation, or conviction shall count  
4 as a prior suspension, revocation, or conviction under sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5.,  
5 6., and 7.

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

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

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

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

25 **SECTION 12.** 346.65 (2j) (am) 2. of the statutes is amended to read:

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

6           **SECTION 13.** 346.65 (2j) (am) 3. of the statutes is amended to read:

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

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

13           346.65 (2j) (bm) 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) ~~within a 10-year~~  
18 ~~period~~, equals 2, except that suspensions, revocations, or convictions arising out of  
19 the same incident or occurrence shall be counted as one, the fine shall be the same  
20 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
21 except that if the person successfully completes a period of probation that includes  
22 alcohol and other drug treatment, the period of imprisonment shall be not less than  
23 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
24 par. (cm) ~~or (er)~~ or sub. (2) (bm), or (cm), ~~or (dm)~~ or (3r) once in his or her lifetime.

25           **SECTION 15.** 346.65 (2j) (cm) of the statutes is amended to read:

1           346.65 (2j) (cm) 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 3, except that  
6 suspensions, revocations, or convictions arising out of the same incident or  
7 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
8 but the period of imprisonment shall be not less than 45 days, except that if the  
9 person successfully completes a period of probation that includes alcohol and other  
10 drug treatment, the period of imprisonment shall be not less than 14 days. A person  
11 may be sentenced under this paragraph or under par. (bm) ~~or (cr)~~ or sub. (2) (bm), or  
12 (cm), ~~or (dm)~~ or (3r) once in his or her lifetime.

13           **SECTION 16.** 346.65 (2j) (cr) of the statutes is repealed.

14           **SECTION 17.** 346.65 (7) of the statutes is amended to read:

15           346.65 (7) A person convicted under sub. (2) (am) 2., 3., ~~4., 4m.,~~ 5., 6., or 7. or  
16 (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than a  
17 48-consecutive-hour period.

18           **SECTION 18.** 973.09 (2) (am) of the statutes is repealed.

19           **SECTION 19. Initial applicability.**

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

1 transportation, sentencing by a court, or revocation or suspension of motor vehicle  
2 operating privileges.

3 (END)