



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-2419/1  
EVM:amn

## 2015 ASSEMBLY BILL 444

October 22, 2015 – Introduced by Representatives J. OTT, THIESFELDT, E. BROOKS, HORLACHER, BERCEAU, KOoyENGA, MURPHY, PETRYK and EDMING, cosponsored by Senators DARLING and MARKLEIN. Referred to Committee on Criminal Justice and Public Safety.

1     **AN ACT** *to repeal* 346.65 (2) (am) 4m.; and *to amend* 346.65 (2) (am) 2., 346.65  
2           (2) (am) 4., 346.65 (2) (bm), 346.65 (2) (dm), 346.65 (2) (f) 2., 346.65 (2c), 346.65  
3           (2g) (a), 346.65 (2g) (ag), 346.65 (2j) (cr) and 346.65 (7) of the statutes; **relating**  
4           **to:** penalties for certain repeat operating-while-intoxicated offenses.

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### *Analysis by the Legislative Reference Bureau*

This bill eliminates two provisions, altering the penalty for certain offenses related to drunken driving or driving under the influence of an intoxicant or other drug (OWI offenses).

Under current law, the penalty increases for a second OWI offense if the person commits the second offense within ten years of the first offense. Under this bill, a person who commits a second OWI offense is subject to the increased penalties regardless of whether the person commits the offense within ten years of his or her first OWI offense.

Also under current law, the penalty is greater for a fourth OWI offense if the fourth offense is committed within five years of a prior offense. Under this bill, all fourth OWI offenses are subject to the same penalty regardless of how much time has passed since the previous OWI offense.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

10          346.65 (2) (am) 4. Except as provided in ~~subd. 4m.~~ and pars. (dm), (f), and (g),  
11 shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less  
12 than 60 days nor more than one year in the county jail 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), equals  
15 4, except that suspensions, revocations, or convictions arising out of the same  
16 incident or occurrence shall be counted as one.

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

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

19          346.65 (2) (bm) In any county that opts to offer a reduced minimum period of  
20 imprisonment for the successful completion of a probation period that includes  
21 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)

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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) (dm) of the statutes is amended to read:

11 346.65 (2) (dm) 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) equals 4, and par.  
16 ~~(am) 4m. does not apply~~, except that suspensions, revocations, or convictions arising  
17 out of the same incident or occurrence shall be counted as one, the fine shall be the  
18 same as under par. (am) 4., but the period of imprisonment shall be not less than 60  
19 days, except that if the person successfully completes a period of probation that  
20 includes alcohol and other drug treatment, the period of imprisonment shall be not  
21 less than 29 days. A person may be sentenced under this paragraph or under par.  
22 (bm) or (cm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

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

24 346.65 (2) (f) 2. If there was a minor passenger under 16 years of age in the  
25 motor vehicle at the time of the violation that gave rise to the conviction under s.

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

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

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

14 **SECTION 8.** 346.65 (2g) (a) of the statutes is amended to read:

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

24 **SECTION 9.** 346.65 (2g) (ag) of the statutes is amended to read:

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

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

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

22           **SECTION 11.** 346.65 (7) of the statutes is amended to read:

23           346.65 **(7)** A person convicted under sub. (2) (am) 2., 3., 4., ~~4m.~~ 5., 6., or 7. or  
24 (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than a  
25 48-consecutive-hour period.

