



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-2241/1  
ZDW&MLJ:emw

## 2017 ASSEMBLY BILL 1040

March 21, 2018 - Introduced by Representatives BARCA, BERCEAU, SPREITZER and SUBECK, cosponsored by Senators VINEHOUT and L. TAYLOR. Referred to Committee on Judiciary.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT** *to renumber* 961.475; *to amend* 346.65 (2) (am) 2., 346.65 (2) (am) 3.,  
2           346.65 (2) (bm), 346.65 (2) (cm), 346.65 (2) (dm), 346.65 (2j) (am) 2., 346.65 (2j)  
3           (am) 3., 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (2j) (cr), 346.65 (3r) and  
4           961.475 (title); and *to create* 346.65 (2) (br), 346.65 (2) (cr), 346.65 (2j) (br),  
5           346.65 (2j) (cp), 346.65 (2x), 961.475 (2) and 961.48 (1) (c) of the statutes;  
6           **relating to:** alternative sentencing for certain drunken driving and controlled  
7           substance offenses and providing a criminal penalty.

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### ***Analysis by the Legislative Reference Bureau***

This bill provides sentencing alternatives for persons who commit certain second or third offenses related to operating a motor vehicle while intoxicated (OWI) and certain controlled substance offenses.

Under current law, with certain exceptions, a person who commits an OWI-related offense is subject to a fine and a term of imprisonment. For a second OWI-related offense, the term of imprisonment is not less than five days nor more than six months, and for a third offense the term of imprisonment is not less than 45 days nor more than one year. If the person commits an OWI-related offense while operating a commercial vehicle, for a second offense the term of imprisonment is not less than five days nor more than six months, and for a third or subsequent offense, the term of imprisonment is not less than 45 days nor more than one year. A person

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who possesses a schedule I or II controlled substance is subject to a maximum term of imprisonment of three years and six months for a first offense, and a maximum term of imprisonment of seven years and six months for a second or subsequent offense. A person who possesses a narcotic that is not a schedule I or II controlled substance, or who possesses drug paraphernalia, is subject to a maximum term of imprisonment of 30 days.

Under the bill, if a court places on probation a person who commits his or her second or third OWI-related offense or certain controlled substance offenses, and requires the person to take a therapeutically indicated dose of the drug naltrexone or follow a nonpharmacological treatment plan, the person is subject to the same fine he or she would be subject to under current law, but his or her period of imprisonment is reduced if he or she successfully completes probation. For a person who commits a second OWI-related offense or a second offense related to operating a commercial vehicle with a prohibited alcohol concentration, the period of imprisonment is five to seven days. For a person who commits a third OWI-related offense or a third offense related to operating a commercial vehicle with a prohibited alcohol concentration, the period of imprisonment is not less than 14 days. For a person who possesses a schedule I or II controlled substance, the period of imprisonment is not more than one year and six months for a first offense, and not more than three years and six months for a second or subsequent offense. For a person who possesses a narcotic that is not a schedule I or II controlled substance or who possesses drug paraphernalia, the period of imprisonment is not more than ten days.

Under the bill, a person may not be sentenced under this sentencing alternative or under another sentencing alternative for OWI-related offenses more than once in his or her lifetime, and may not be sentenced under this sentencing alternative for controlled substance-related offenses more than once in his or her lifetime.

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), ~~(br)~~, and (f), shall be fined  
3           not less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor  
4           more than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in  
5           the 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

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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 is amended to read:

4 346.65 (2) (am) 3. Except as provided in pars. (cm), (cr), (f), and (g), shall be  
5 fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 45  
6 days nor more than one year in the county jail if the number of convictions under ss.  
7 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,  
8 revocations, and other convictions counted under s. 343.307 (1), equals 3, except that  
9 suspensions, revocations, or convictions arising out of the same incident or  
10 occurrence shall be counted as one.

11 **SECTION 3.** 346.65 (2) (bm) of the statutes is amended to read:

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

24 **SECTION 4.** 346.65 (2) (br) of the statutes is created to read:

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1           346.65 (2) (br) 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) within a 10-year period, equals 2, except  
4 that suspensions, revocations, or convictions arising out of the same incident or  
5 occurrence shall be counted as one, the fine shall be the same as under par. (am) 2.,  
6 but the period of imprisonment shall be not less than 5 days, except that the period  
7 of imprisonment shall be not less than 5 nor more than 7 days if the court places the  
8 person on probation under s. 973.09 and the conditions of probation require the  
9 person to 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 5.** 346.65 (2) (cm) of the statutes is amended to read:

19           346.65 (2) (cm) 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)  
22 and 940.25 in the person's lifetime, plus the total number of suspensions,  
23 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that  
24 suspensions, revocations, or convictions arising out of the same incident or  
25 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,

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1 but the period of imprisonment shall be not less than 45 days, except that if the  
2 person successfully completes a period of probation that includes alcohol and other  
3 drug treatment, the period of imprisonment shall be not less than 14 days. ~~A person~~  
4 ~~may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm),~~  
5 ~~(em), or (cr) or (3r) once in his or her lifetime.~~

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

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

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

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

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

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1           346.65 (2) (dm) 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, 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) 4.,  
8 but the period of imprisonment shall be not less than 60 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 29 days. ~~A person  
11 may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2j) (bm),  
12 (cm), or (cr) or (3r) once in his or her lifetime.~~

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

14           346.65 (2j) (am) 2. Except as provided in pars. (bm), (br), and (d), shall be fined  
15 not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor  
16 more than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25  
17 in the person's lifetime, plus the total number of other convictions, ~~suspension~~  
18 suspensions, and revocations counted under s. 343.307 (2) within a 10-year period,  
19 equals 2.

20           **SECTION 9.** 346.65 (2j) (am) 3. of the statutes is amended to read:

21           346.65 (2j) (am) 3. Except as provided in pars. (cm), (cp), (cr), and (d), shall be  
22 fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 45  
23 days nor more than one year in the county jail if the number of convictions under ss.  
24 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other

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1 convictions, suspensions, and revocations counted under s. 343.307 (2), equals 3 or  
2 more.

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

4 346.65 (2j) (bm) In any county that opts to offer a reduced minimum period of  
5 imprisonment for the successful completion of a probation period that includes  
6 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)  
7 and 940.25 in the person's lifetime, plus the total number of suspensions,  
8 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
9 period, equals 2, except that suspensions, revocations, or convictions arising out of  
10 the same incident or occurrence shall be counted as one, the fine shall be the same  
11 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
12 except that if the person successfully completes a period of probation that includes  
13 alcohol and other drug treatment, the period of imprisonment shall be not less than  
14 5 nor more than 7 days. ~~A person may be sentenced under this paragraph or under~~  
15 ~~par. (cm) or (cr) or sub. (2) (bm), (cm), or (dm) or (3r) once in his or her lifetime.~~

16 **SECTION 11.** 346.65 (2j) (br) of the statutes is created to read:

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

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

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

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

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

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

23           346.65 **(2j)** (cp) If the number of convictions under ss. 940.09 (1) and 940.25 in  
24           the person's lifetime, plus the total number of suspensions, revocations, and other  
25           convictions counted under s. 343.307 (1) equals 3, except that suspensions,



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1 revocations, or convictions arising out of the same incident or occurrence shall be  
2 counted as one, the fine shall be the same as under par. (am) 3., but the period of  
3 imprisonment shall be not less than 45 days, except that the period of imprisonment  
4 shall be not less than 14 days if the court places the person on probation under s.  
5 973.09 and the conditions of probation require the person to do at least one of the  
6 following:

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

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

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

16 346.65 (2j) (cr) 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) equals 4, except that  
21 suspensions, revocations, or convictions arising out of the same incident or  
22 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,  
23 but the period of imprisonment shall be not less than 60 days, except that if the  
24 person successfully completes a period of probation that includes alcohol and other  
25 drug treatment, the period of imprisonment shall be not less than 29 days. ~~A person~~

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1 ~~may be sentenced under this paragraph or under par. (bm) or (cm) or sub. (2) (bm),~~  
2 ~~(cm), or (dm) or (3r) once in his or her lifetime.~~

3 **SECTION 15.** 346.65 (2x) of the statutes is created to read:

4 346.65 **(2x)** A person may be sentenced under sub. (2) (bm), (br), (cm), (cr), or  
5 (dm), (2j) (bm), (br), (cm), (cp), or (cr), or (3r) once in his or her lifetime.

6 **SECTION 16.** 346.65 (3r) of the statutes is amended to read:

7 346.65 **(3r)** Subject to sub. (3t), in any county that opts to offer a reduced  
8 minimum period of imprisonment for the successful completion of a probation period  
9 that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or  
10 (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall  
11 be not less than 30 days, except that if the person successfully completes a period of  
12 probation that includes alcohol and other drug treatment, the period of  
13 imprisonment shall be not less than 15 days. If there was a minor passenger under  
14 16 years of age in the motor vehicle at the time of the violation that gave rise to the  
15 conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum  
16 and maximum fines or periods of imprisonment for the conviction are doubled and  
17 the place of imprisonment shall be determined under s. 973.02. ~~A person may be~~  
18 ~~sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once~~  
19 ~~in his or her lifetime.~~ This subsection does not apply to a person sentenced under sub.  
20 (3p).

21 **SECTION 17.** 961.475 (title) of the statutes is amended to read:

22 **961.475 (title) Treatment option options.**

23 **SECTION 18.** 961.475 of the statutes is renumbered 961.475 (1).

24 **SECTION 19.** 961.475 (2) of the statutes is created to read:

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1           961.475 (2) (a) Whenever any person pleads guilty to or is found guilty of  
2 possession or attempted possession of a controlled substance or controlled substance  
3 analog under s. 961.41 (3g) (am), if the number of convictions under ss. 940.09 (1) and  
4 940.25 in the person's lifetime, plus the total number of suspensions, revocations,  
5 and other convictions counted under s. 343.307 (1) or 961.41 (3g) (am) within a  
6 10-year period, equals 4 or less, except that suspensions, revocations, or convictions  
7 arising out of the same incident or occurrence shall be counted as one, the period of  
8 imprisonment shall be not more than one year and 6 months if the court places the  
9 person on probation under s. 973.09 and the conditions of probation require the  
10 person to do at least one of the following:

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

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

19           (b) Whenever any person pleads guilty to or is found guilty of possession or  
20 attempted possession of a controlled substance or controlled substance analog under  
21 s. 961.41 (3g) (b) or possession of drug paraphernalia under s. 961.573 (1), if the  
22 number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus  
23 the total number of suspensions, revocations, and other convictions counted under  
24 s. 343.307 (1), 961.41 (3g) (b), or 961.573 (1) within a 10-year period, equals 4 or less,  
25 except that suspensions, revocations, or convictions arising out of the same incident

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1 or occurrence shall be counted as one, the period of imprisonment shall be not more  
2 than 10 days if the court places the person on probation under s. 973.09 and the  
3 conditions of probation require the person to do at least one of the following:

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

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

12 (c) A person may be sentenced under par. (a) or (b) once in his or her lifetime.

13 **SECTION 20.** 961.48 (1) (c) of the statutes is created to read:

14 961.48 (1) (c) Notwithstanding par. (b), by not more than 2 years, if the offense  
15 is a violation of s. 961.41 (3g) (am) and the defendant was sentenced under s. 941.475  
16 (2) (a).

17 **SECTION 21. Initial applicability.**

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

24 **SECTION 22. Effective date.**

