



## 2009 ASSEMBLY BILL 366

August 6, 2009 - Introduced by Representatives BARCA, ROYS, BENEDICT, BIES, TURNER, HEBL, BERCEAU, GRIGSBY, HILGENBERG and SPANBAUER, cosponsored by Senators LEHMAN and VINEHOUT. Referred to Committee on Health and Healthcare Reform.

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 (2j) (am) 2., 346.65 (2j) (am) 3., 346.65 (2j) (bm),  
3           346.65 (2j) (cm), 973.09 (1) (d) 1. and 973.09 (1) (d) 3.; and **to create** 346.65 (2)  
4           (br), 346.65 (2) (cr), 346.65 (2j) (br) and 346.65 (2j) (cr) of the statutes; **relating**  
5           **to:** probation for certain drunken driving offenses and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

Under current law, with certain exceptions, a person who commits a second offense relating to operating a motor vehicle under the influence of an intoxicant (OWI-related offense) is subject to a fine of not less than \$350 nor more than \$1,100 and imprisonment for not less than five days nor more than six months. A person who commits a third OWI-related offense is subject to a fine of not less than \$600 nor more than \$2,000, and imprisonment for not less than 30 days nor more than one year. A person who commits a fourth OWI-related offense is subject to the same fine and maximum period of imprisonment as a person who commits a third OWI-related offense, but his or her period of imprisonment may not be less than 60 days.

Under current law, a court may place a person who is convicted of a crime on probation instead of ordering the person to serve a sentence for the crime unless probation is prohibited for the crime. With certain exceptions, if a person commits a crime for which a minimum term of imprisonment of one year or less is required, a court may still place the person on probation, but must require that the person serve the minimum term of imprisonment as a condition of probation. The

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exceptions provide that a court may not place a person on probation for a second or third OWI-related offense.

Under this bill, a person who commits a second or third OWI-related offense may be placed on probation if, as a condition of probation, the court requires the person to take a therapeutically indicated dose of the drug naltrexone for the duration of the person's period of probation. If the court chooses to place the person on probation under these circumstances, the bill allows the same minimum and maximum period of imprisonment for the offense, but eliminates the mandatory minimum fine. Under the bill, the court may impose a fine in any amount up to the maximum allowed under current law.

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 concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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  
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) 3. of the statutes is amended to read:

10          346.65 (2) (am) 3. Except as provided in pars. (cm), (cr), (f), and (g), shall be  
11 fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30  
12 days nor more than one year in the county jail if the number of convictions under ss.  
13 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,

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1 revocations, and other convictions counted under s. 343.307 (1), equals 3, except that  
2 suspensions, revocations, or convictions arising out of the same incident or  
3 occurrence shall be counted as one.

4 **SECTION 3.** 346.65 (2) (am) 4. of the statutes is amended to read:

5 346.65 (2) (am) 4. Except as provided in pars. (cr), (f) and (g), shall be fined not  
6 less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor  
7 more than one year in the county jail if the number of convictions under ss. 940.09  
8 (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 4, except that  
10 suspensions, revocations or convictions arising out of the same incident or  
11 occurrence shall be counted as one.

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

13 346.65 (2) (bm) In Winnebago County, if the number of convictions under ss.  
14 940.09 (1) 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. (br), (cm), or (cr) or sub. (2j) (bm), (br), (cm), or (cr) or (3r) once in his or her  
23 lifetime.

24 **SECTION 5.** 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 person may be fined not more than \$1,100,  
6 and the court may place the person on probation under s. 973.09 if the conditions of  
7 probation require the person to take naltrexone, or its drug product equivalent, in  
8 a therapeutically appropriate dosage for the duration of the period of probation. A  
9 person may be sentenced under this paragraph or under par. (bm), (cm), or (cr) or sub.  
10 (2j) (bm), (br), (cm), or (cr), or (3r) once in his or her lifetime.

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

12           346.65 (2) (cm) In Winnebago County, if the number of convictions under ss.  
13 940.09 (1) 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) within a 10-year  
15 period, equals 3, except that suspensions, revocations, or convictions arising out of  
16 the same incident or occurrence shall be counted as one, the fine shall be the same  
17 as under par. (am) 3., but the period of imprisonment shall be not less than 30 days,  
18 except that if the person successfully completes a period of probation that includes  
19 alcohol and other drug treatment, the period of imprisonment shall be not less than  
20 10 days. A person may be sentenced under this paragraph or under par. (bm), (br),  
21 or (cr) or sub. (2j) (bm) ~~or, (br)~~, (cm), or (cr) or (3r) once in his or her lifetime.

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

23           346.65 (2) (cr) 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) within a 10-year period, equals 3 or 4,

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1 except that suspensions, revocations, or convictions arising out of the same incident  
2 or occurrence shall be counted as one, the person may be fined not more than \$2,000,  
3 and the court may place the person on probation under s. 973.09 if the conditions of  
4 probation require the person to take naltrexone, or its drug product equivalent, in  
5 a therapeutically appropriate dosage for the duration of the period of probation. A  
6 person may be sentenced under this paragraph or under par. (bm), (br), or (cm) or  
7 sub. (2j) (bm), (br), (cm), or (cr) or (3r) once in his or her lifetime.

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

9 346.65 (2j) (am) 2. Except as provided in pars. (bm), (br), and (d), shall be fined  
10 not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor  
11 more than 6 months if the number of prior convictions under ss. 940.09 (1) and 940.25  
12 in the person's lifetime, plus the total number of other convictions, suspension, and  
13 revocations counted under s. 343.307 (2) within a 10-year period, equals 2.

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

15 346.65 (2j) (am) 3. Except as provided in pars. (cm), (cr), and (d), shall be fined  
16 not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days  
17 nor more than one year in the county jail if the number of convictions under ss. 940.09  
18 (1) and 940.25 in the person's lifetime, plus the total number of other convictions,  
19 suspensions, and revocations, counted under s. 343.307 (2), equals 3 or more.

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

21 346.65 (2j) (bm) In Winnebago County, if the number of convictions under ss.  
22 940.09 (1) 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) within a 10-year  
24 period, equals 2, except that suspensions, revocations, or convictions arising out of  
25 the same incident or occurrence shall be counted as one, the fine shall be the same

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1 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
2 except that if the person successfully completes a period of probation that includes  
3 alcohol and other drug treatment, the period of imprisonment shall be not less than  
4 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
5 par. ~~(br)~~, (cm), ~~or (cr)~~ or sub. (2) (bm) ~~or (br)~~, (cm), ~~or (cr)~~ or (3r) once in his or her  
6 lifetime.

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

8 346.65 **(2j)** (br) If the number of convictions under ss. 940.09 (1) and 940.25 in  
9 the person's lifetime, plus the total number of suspensions, revocations, and other  
10 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except  
11 that suspensions, revocations, or convictions arising out of the same incident or  
12 occurrence shall be counted as one, the person may be fined not more than \$1,000,  
13 and the court may place the person on probation under s. 973.09 if the conditions of  
14 probation require the person to take naltrexone, or its drug product equivalent, in  
15 a therapeutically appropriate dosage for the duration of the period of probation. A  
16 person may be sentenced under this paragraph or under par. (bm), (cm), or (cr) or sub.  
17 (2) (bm), (br), (cm), or (cr) or (3r) once in his or her lifetime.

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

19 346.65 **(2j)** (cm) In Winnebago County, if the number of convictions under ss.  
20 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions,  
21 revocations, and other convictions counted under s. 343.307 (1) within a 10-year  
22 period, equals 3 or more, except that suspensions, revocations, or convictions arising  
23 out of the same incident or occurrence shall be counted as one, the fine shall be the  
24 same as under par. (am) 3., but the period of imprisonment shall be not less than 30  
25 days, except that if the person successfully completes a period of probation that

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1 includes alcohol and other drug treatment, the period of imprisonment shall be not  
2 less than 10 days. A person may be sentenced under this paragraph or under par.  
3 (bm), (br), or (cr) or sub. (2) (bm) ~~or~~, (br), (cm), or (cr) or (3r) once in his or her lifetime.

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

5 346.65 **(2j)** (cr) If the number of convictions under ss. 940.09 (1) and 940.25 in  
6 the person's lifetime, plus the total number of suspensions, revocations, and other  
7 convictions counted under s. 343.307 (1) within a 10-year period, equals 3 or 4,  
8 except that suspensions, revocations, or convictions arising out of the same incident  
9 or occurrence shall be counted as one, the person may be fined not more than \$2,000,  
10 and the court may place the person on probation under s. 973.09 if the conditions of  
11 probation require the person to take naltrexone, or its drug product equivalent, in  
12 a therapeutically appropriate dosage for the duration of the period of probation. A  
13 person may be sentenced under this paragraph or under par. (bm), (br), or (cm) or  
14 sub. (2) (bm), (br), (cm), or (cr) or (3r) once in his or her lifetime.

15 **SECTION 14.** 973.09 (1) (d) 1. of the statutes is amended to read:

16 973.09 **(1)** (d) 1. ~~A~~ Except as provided in s. 346.65 (2) (br) or (cr), a violation  
17 under s. 346.63 (1) that subjects the person to a mandatory minimum period of  
18 imprisonment under s. 346.65 (2) (am) 2. or 3.

19 **SECTION 15.** 973.09 (1) (d) 3. of the statutes is amended to read:

20 973.09 **(1)** (d) 3. ~~A~~ Except as provided in s. 346.65 (2j) (br) or (cr), a violation  
21 under s. 346.63 (5) that subjects the person to a mandatory minimum period of  
22 imprisonment under s. 346.65 (2j) (am) 3., if the person has a total of 3 or fewer  
23 convictions, suspensions or revocations counted under s. 343.307 (2).

24

(END)