



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-3642/2  
EVM:kjf&amn

## 2015 ASSEMBLY BILL 536

November 24, 2015 – Introduced by Representatives J. OTT, E. BROOKS, SANFELIPPO, GANNON, KITCHENS, DUCHOW, SUBECK, TRANEL, T. LARSON, ROHRKASTE, HORLACHER, BERCEAU, PETRYK, R. BROOKS, CRAIG and ZEPNICK, cosponsored by Senators DARLING, WANGGAARD, HARS DORF, LEMAHIEU, NASS, MOULTON, KAPENGA, STROEBEL and VUKMIR. Referred to Committee on Criminal Justice and Public Safety.

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

1     **AN ACT** *to repeal* 346.63 (2) (c), 346.63 (6) (d), 346.65 (2) (am) 4m. and 973.09 (2)  
2             (am); and *to amend* 48.685 (5) (bm) 4., 48.685 (5) (br) 6., 346.65 (2) (am) 4.,  
3             346.65 (2) (am) 5., 346.65 (2) (am) 6., 346.65 (2) (am) 7., 346.65 (2) (dm), 346.65  
4             (2) (f) 2., 346.65 (2c), 346.65 (2g) (a), 346.65 (2g) (ag), 346.65 (2j) (cr) and 346.65  
5             (7) of the statutes; **relating to:** penalties for, and elements of, certain  
6             operating-while-intoxicated offenses and providing a criminal penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill increases the penalties for fourth or subsequent drunken driving offenses, eliminates a special penalty for certain fourth drunken driving offenses, and changes the definition of “injury” for certain purposes.

Under current law, a person who commits a fourth offense related to drunken driving or driving under the influence of an intoxicant or other drug (OWI offense) must be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 60 days nor more than one year. A person who commits a fifth or sixth OWI offense is guilty of a Class H felony and must be fined not less than \$600 and imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI offense is guilty of a Class G felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or subsequent OWI offense is guilty of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not

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be less than four years. Also under current law, the penalty for a Class E felony is a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both; the penalty for a Class F felony is a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and six months, or both; the penalty for a Class G felony is a fine not to exceed \$25,000 or imprisonment not to exceed ten years, or both; and the penalty for a Class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both.

Under this bill, a person who commits a fourth OWI offense is guilty of a Class H felony and the person must be fined not less than \$600 and must be imprisoned for not less than 60 days. A person who commits a fifth or sixth OWI offense is guilty of a Class G felony and the person must be fined not less than \$600 and must be imprisoned for not less than six months. A person who commits a seventh, eighth, or ninth OWI offense is guilty of a Class F felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than three years. A person who commits a tenth or greater OWI offense is guilty of a Class E felony and the confinement portion of a bifurcated sentence imposed on the person may not be less than four years.

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.

Under current law, no person may cause injury to another person by the operation of a vehicle while under the influence of an intoxicant or other drug (OWI-related injury). "Injury" is defined for the purposes of the prohibition on OWI-related injury as "bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight, or hearing; a concussion; or a loss or fracture of a tooth." This bill repeals the specific definition of "injury" for the purposes of the prohibition on OWI-related injury.

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.** 48.685 (5) (bm) 4. of the statutes is amended to read:  
2           48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1),  
3           125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5),  
4           or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2),  
5           (5), or (6) that is a felony under s. 346.65 (2) (am) ~~5., 6., or 4.~~ to 7., or (f), (2j) (d), or

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1 (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years  
2 before the date of the investigation under sub. (2) (am).

3 **SECTION 2.** 48.685 (5) (br) 6. of the statutes is amended to read:

4 48.685 (5) (br) 6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b),  
5 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205,  
6 940.207, 940.25, or 943.23 (1g), a violation of s. 948.51 (2) that is a felony under s.  
7 948.51 (3) (b) or (c), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under  
8 s. 346.65 (2) (am) ~~5., 6., or 4.~~ to 7., or (f), (2j) (d), or (3m), or an offense under ch. 961  
9 that is a felony, if the person completed his or her sentence, including any probation,  
10 parole, or extended supervision, or was discharged by the department of corrections,  
11 less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1.

12 **SECTION 3.** 346.63 (2) (c) of the statutes is repealed.

13 **SECTION 4.** 346.63 (6) (d) of the statutes is repealed.

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

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

22 **SECTION 6.** 346.65 (2) (am) 4m. of the statutes is repealed.

23 **SECTION 7.** 346.65 (2) (am) 5. of the statutes is amended to read:

24 346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class  
25 ~~H- G~~ felony and shall be fined not less than \$600 and imprisoned for not less than

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1 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's  
2 lifetime, plus the total number of suspensions, revocations and other convictions  
3 counted under s. 343.307 (1), equals 5 or 6, except that suspensions, revocations or  
4 convictions arising out of the same incident or occurrence shall be counted as one.

5 **SECTION 8.** 346.65 (2) (am) 6. of the statutes is amended to read:

6 346.65 (2) (am) 6. Except as provided in par. (f), is guilty of a Class ~~G~~ F felony  
7 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
8 plus the total number of suspensions, revocations, and other convictions counted  
9 under s. 343.307 (1), equals 7, 8, or 9, except that suspensions, revocations, or  
10 convictions arising out of the same incident or occurrence shall be counted as one.  
11 The court shall impose a bifurcated sentence under s. 973.01 and the confinement  
12 portion of the bifurcated sentence imposed on the person shall be not less than 3  
13 years.

14 **SECTION 9.** 346.65 (2) (am) 7. of the statutes is amended to read:

15 346.65 (2) (am) 7. Except as provided in par. (f), is guilty of a Class ~~F~~ E felony  
16 if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime,  
17 plus the total number of suspensions, revocations, and other convictions counted  
18 under s. 343.307 (1), equals 10 or more except that suspensions, revocations, or  
19 convictions arising out of the same incident or occurrence shall be counted as one.  
20 The court shall impose a bifurcated sentence under s. 973.01 and the confinement  
21 portion of the bifurcated sentence imposed on the person shall be not less than 4  
22 years.

23 **SECTION 10.** 346.65 (2) (dm) of the statutes is amended to read:

24 346.65 (2) (dm) In any county that opts to offer a reduced minimum period of  
25 imprisonment for the successful completion of a probation period that includes

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

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

12 346.65 (2) (f) 2. If there was a minor passenger under 16 years of age in the  
13 motor vehicle at the time of the violation that gave rise to the conviction under s.  
14 346.63 (1), the applicable minimum and maximum fines and imprisonment under  
15 par. (am) 2. to 7. for the conviction are doubled. An offense under s. 346.63 (1) that  
16 subjects a person to a penalty under par. (am) 3., 4., ~~4m.~~, 5., 6., or 7. when there is  
17 a minor passenger under 16 years of age in the motor vehicle is a felony and the place  
18 of imprisonment shall be determined under s. 973.02.

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

20 346.65 (2c) In sub. (2) (am) 2., 3., 4., ~~4m.~~, 5., 6., and 7., the time period shall  
21 be measured from the dates of the refusals or violations that resulted in the  
22 revocation or convictions. If a person has a suspension, revocation, or conviction for  
23 any offense under a local ordinance or a state statute of another state that would be  
24 counted under s. 343.307 (1), that suspension, revocation, or conviction shall count

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1 as a prior suspension, revocation, or conviction under sub. (2) (am) 2., 3., 4., ~~4m.~~ 5.,  
2 6., and 7.

3 **SECTION 13.** 346.65 (2g) (a) of the statutes is amended to read:

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

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

14 346.65 (2g) (ag) If the court determines that a person does not have the ability  
15 to pay a fine imposed under sub. (2) (am) 2., 3., 4., ~~4m.~~ or 5., (f), or (g), the court shall  
16 require the defendant to perform community service work for a public agency or a  
17 nonprofit charitable organization in lieu of paying the fine imposed or, if the amount  
18 of the fine was reduced under sub. (2e), in lieu of paying the remaining amount of the  
19 fine. Each hour of community service performed in compliance with an order under  
20 this paragraph shall reduce the amount of the fine owed by an amount determined  
21 by the court.

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

23 346.65 (2j) (cr) 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)

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

10 **SECTION 16.** 346.65 (7) of the statutes is amended to read:

11 346.65 (7) A person convicted under sub. (2) (am) 2., 3., 4., ~~4m.~~ 5., 6., or 7. or  
12 (2j) (am) 2. or 3. shall be required to remain in the county jail for not less than a  
13 48-consecutive-hour period.

14 **SECTION 17.** 973.09 (2) (am) of the statutes is repealed.

15 **SECTION 18. Initial applicability.**

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

22 **SECTION 19. Effective dates.** This act takes effect on January 1, 2017, except  
23 as follows:

