

# State of Wisconsin



2015 Senate Bill 455

Date of enactment: April 25, 2016  
Date of publication\*: April 26, 2016

## 2015 WISCONSIN ACT 371

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

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

**SECTION 1.** 48.685 (5) (bm) 4. of the statutes is amended to read:

48.685 (5) (bm) 4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (am) ~~5., 6., or 4. to 7.~~, or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2) (am).

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

48.685 (5) (br) 6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or (6), 940.20, 940.203, 940.205, 940.207, 940.25, or 943.23 (1g), a violation of s. 948.51 (2) that is a felony under s. 948.51 (3) (b) or (c), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (am) ~~5., 6., or 4. to 7.~~, or (f), (2j) (d), or (3m), or an offense under ch. 961 that is a felony, if the person completed his or her sentence, including any

probation, parole, or extended supervision, or was discharged by the department of corrections, less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1.

**SECTION 3.** 346.63 (2) (c) of the statutes is repealed.

**SECTION 4.** 346.63 (6) (d) of the statutes is repealed.

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

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

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

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

346.65 (2) (am) 5. Except as provided in pars. (f) and (g), is guilty of a Class ~~H~~ G felony and shall be fined not

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

less than \$600 and imprisoned for not less than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of suspensions, revocations and other convictions counted under s. 343.307 (1), equals 5 or 6, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

346.65 (2j) (cr) In any county that opts to offer a reduced minimum period of imprisonment for the successful completion of a probation period that includes alcohol and other drug treatment, if the number of con-

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

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

346.65 (7) A person convicted under sub. (2) (am) 2., 3., 4., ~~4m.~~ 5., 6., or 7. or (2j) (am) 2. or 3. shall be

required to remain in the county jail for not less than a 48-consecutive-hour period.

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

**SECTION 18. Initial applicability.**

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

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

(1) The treatment of section 346.63 (2) (c) and (6) (d) of the statutes takes effect on the day after publication.