



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4801/1
PJH:emw

2015 SENATE BILL 786

March 10, 2016 – Introduced by Senator VINEHOUT, cosponsored by Representatives BARCA, SPREITZER, CONSIDINE, BERCEAU, ZAMARRIPA and KAHL. Referred to Committee on Judiciary and Public Safety.

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 (2) (dm), 346.65 (2j) (am) 2., 346.65 (2j) (am) 3.,
3 346.65 (2j) (bm), 346.65 (2j) (cm), 346.65 (2j) (cr) and 346.65 (3r); and **to create**
4 346.65 (2) (br), 346.65 (2) (cr), 346.65 (2) (dr), 346.65 (2j) (br), 346.65 (2j) (cp),
5 346.65 (2j) (cu) and 346.65 (2x) of the statutes; **relating to:** alternative
6 sentencing for certain drunken driving offenses and providing penalties.

Analysis by the Legislative Reference Bureau

This bill provides sentencing alternatives for persons who commit certain second, third, or fourth offenses related to operating a motor vehicle while intoxicated. Under the bill, a court may sentence a person who commits his or her second, third, or fourth OWI-related offense to probation with a reduced minimum period of confinement in prison if, as a condition of probation, the court requires the person to take a therapeutically indicated dose of the drug naltrexone or to follow a nonpharmacological treatment plan.

Under current law, with certain exceptions, a person who commits a second 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 45 days nor more than one year. A person who commits a fourth OWI-related offense more than five years after

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his or her most recent previous 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.

A person who operates a commercial motor vehicle with a prohibited alcohol concentration is subject, for a second offense, to a fine of not less than \$300 nor more than \$1,000 and imprisonment for not less than five days nor more than six months. For a third or subsequent offense, a person who operates a commercial motor vehicle with a prohibited alcohol concentration is subject to a fine of not less than \$600 nor more than \$2,000 and imprisonment for not less than 45 days nor more than one year.

Under the bill, if a court sentences a person to probation 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 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 commits a fourth OWI-related offense or a fourth offense related to operating a commercial vehicle with a prohibited alcohol concentration more than five years after his or her most recent previous OWI-related offense, the period of imprisonment is not less than 29 days.

Under the bill, a person may not be sentenced under this alternative sentencing or under another sentencing alternative for OWI-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.

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) (am) 4. of the statutes is amended to read:

12 346.65 (2) (am) 4. Except as provided in subd. 4m. and pars. (dm), (dr), (f), and
13 (g), shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not
14 less than 60 days nor more than one year in the county jail if the number of
15 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total
16 number of suspensions, revocations, and other convictions counted under s. 343.307
17 (1), equals 4, except that suspensions, revocations, or convictions arising out of the
18 same incident or occurrence shall be counted as one.

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

20 346.65 (2) (bm) In any county that opts to offer a reduced minimum period of
21 imprisonment for the successful completion of a probation period that includes
22 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
23 and 940.25 in the person's lifetime, plus the total number of suspensions,
24 revocations, and other convictions counted under s. 343.307 (1) within a 10-year
25 period, equals 2, except that suspensions, revocations, or convictions arising out of

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

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

8 346.65 (2) (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 fine shall be the same as under par. (am) 2.,
13 but the period of imprisonment shall be not less than 5 days, except that the period
14 of imprisonment shall be not less than 5 nor more than 7 days if the court places the
15 person on probation under s. 973.09 and the conditions of probation require the
16 person to do at least one of the following:

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

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

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

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1 346.65 (2) (cm) 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 3, 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) 3.,
8 but the period of imprisonment shall be not less than 45 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 14 days. ~~A person
11 may be sentenced under this paragraph or under par. (bm) or (dm) or sub. (2j) (bm),
12 (em), or (cr) or (3r) once in his or her lifetime.~~

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

14 346.65 (2) (cr) If the number of convictions under ss. 940.09 (1) and 940.25 in
15 the person's lifetime, plus the total number of suspensions, revocations, and other
16 convictions counted under s. 343.307 (1) equals 3, except that suspensions,
17 revocations, or convictions arising out of the same incident or occurrence shall be
18 counted as one, the fine shall be the same as under par. (am) 3., but the period of
19 imprisonment shall be not less than 45 days, except that the period of imprisonment
20 shall be not less than 14 days if the court places the person on probation under s.
21 973.09 and the conditions of probation require the person to do at least one of the
22 following:

23 1. Follow a pharmacological treatment plan that includes, unless
24 contraindicated, taking naltrexone, its drug product equivalent, or another
25 pharmacological agent that is approved by the federal drug administration for the

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1 treatment of alcohol dependence, and that is administered in a therapeutically
2 appropriate manner and in a therapeutically appropriate dosage for the duration of
3 the period of probation.

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

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

7 346.65 (2) (dm) In any county that opts to offer a reduced minimum period of
8 imprisonment for the successful completion of a probation period that includes
9 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
10 and 940.25 in the person's lifetime, plus the total number of suspensions,
11 revocations, and other convictions counted under s. 343.307 (1) equals 4, and par.
12 (am) 4m. does not apply, except that suspensions, revocations, or convictions arising
13 out of the same incident or occurrence shall be counted as one, the fine shall be the
14 same as under par. (am) 4., but the period of imprisonment shall be not less than 60
15 days, except that if the person successfully completes a period of probation that
16 includes alcohol and other drug treatment, the period of imprisonment shall be not
17 less than 29 days. ~~A person may be sentenced under this paragraph or under par.~~
18 ~~(bm) or (cm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.~~

19 **SECTION 9.** 346.65 (2) (dr) of the statutes is created to read:

20 346.65 (2) (dr) If the number of convictions under ss. 940.09 (1) and 940.25 in
21 the person's lifetime, plus the total number of suspensions, revocations, and other
22 convictions counted under s. 343.307 (1) equals 4, and par. (am) 4m. does not apply,
23 except that suspensions, revocations, or convictions arising out of the same incident
24 or occurrence shall be counted as one, the fine shall be the same as under par. (am)
25 4., but the period of imprisonment shall be not less than 60 days, except that the

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1 period of imprisonment shall be not less than 29 days if the court places the person
2 on probation under s. 973.09 and the conditions of probation require the person to
3 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 **SECTION 10.** 346.65 (2j) (am) 2. of the statutes is amended to read:

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

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

20 346.65 (2j) (am) 3. Except as provided in pars. (cm), (cp), (cr), (cu), and (d), shall
21 be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than
22 45 days nor more than one year in the county jail if the number of convictions under
23 ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other
24 convictions, suspensions, and revocations counted under s. 343.307 (2), equals 3 or
25 more.

SENATE BILL 786**SECTION 12**

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

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

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

15 346.65 **(2j)** (br) If the number of convictions under ss. 940.09 (1) and 940.25 in
16 the person's lifetime, plus the total number of suspensions, revocations, and other
17 convictions counted under s. 343.307 (1) within a 10-year period, equals 2, except
18 that suspensions, revocations, or convictions arising out of the same incident or
19 occurrence shall be counted as one, the fine shall be the same as under par. (am) 2.,
20 but the period of imprisonment shall be not less than 5 days, except that the period
21 of imprisonment shall be not less than 5 nor more than 7 days if the court places the
22 person on probation under s. 973.09 and the conditions of probation require the
23 person to do at least one of the following:

24 1. Follow a pharmacological treatment plan that includes, unless
25 contraindicated, taking naltrexone, its drug product equivalent, or another

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1 pharmacological agent that is approved by the federal drug administration for the
2 treatment of alcohol dependence, and that is administered in a therapeutically
3 appropriate manner and in a therapeutically appropriate dosage for the duration of
4 the period of probation.

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

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

8 346.65 **(2j)** (cm) In any county that opts to offer a reduced minimum period of
9 imprisonment for the successful completion of a probation period that includes
10 alcohol and other drug treatment, if the number of convictions under ss. 940.09 (1)
11 and 940.25 in the person's lifetime, plus the total number of suspensions,
12 revocations, and other convictions counted under s. 343.307 (1) equals 3, except that
13 suspensions, revocations, or convictions arising out of the same incident or
14 occurrence shall be counted as one, the fine shall be the same as under par. (am) 3.,
15 but the period of imprisonment shall be not less than 45 days, except that if the
16 person successfully completes a period of probation that includes alcohol and other
17 drug treatment, the period of imprisonment shall be not less than 14 days. ~~A person~~
18 ~~may be sentenced under this paragraph or under par. (bm) or (cr) or sub. (2) (bm),~~
19 ~~(cm), or (dm) or (3r) once in his or her lifetime.~~

20 **SECTION 15.** 346.65 (2j) (cp) of the statutes is created to read:

21 346.65 **(2j)** (cp) If the number of convictions under ss. 940.09 (1) and 940.25 in
22 the person's lifetime, plus the total number of suspensions, revocations, and other
23 convictions counted under s. 343.307 (1) equals 3, except that suspensions,
24 revocations, or convictions arising out of the same incident or occurrence shall be
25 counted as one, the fine shall be the same as under par. (am) 3., but the period of

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1 imprisonment shall be not less than 45 days, except that the period of imprisonment
2 shall be not less than 14 days if the court places the person on probation under s.
3 973.09 and the conditions of probation require the person to do at least one of the
4 following:

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

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

13 **SECTION 16.** 346.65 (2j) (cr) of the statutes is amended to read:

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

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1 **SECTION 17.** 346.65 (2j) (cu) of the statutes is created to read:

2 346.65 **(2j)** (cu) If the number of convictions under ss. 940.09 (1) and 940.25 in
3 the person's lifetime, plus the total number of suspensions, revocations, and other
4 convictions counted under s. 343.307 (1) equals 4, and sub. (2) (am) 4m. does not
5 apply, except that suspensions, revocations, or convictions arising out of the same
6 incident or occurrence shall be counted as one, the fine shall be the same as under
7 par. (am) 3., but the period of imprisonment shall be not less than 60 days, except that
8 the period of imprisonment shall be not less than 29 days 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 **SECTION 18.** 346.65 (2x) of the statutes is created to read:

20 346.65 **(2x)** A person may be sentenced under sub. (2) (bm), (br), (cm), (cr), (dm),
21 or (dr), (2j) (bm), (br), (cm), (cp), (cr), or (cu), or (3r) once in his or her lifetime.

22 **SECTION 19.** 346.65 (3r) of the statutes is amended to read:

23 346.65 **(3r)** Subject to sub. (3t), in any county that opts to offer a reduced
24 minimum period of imprisonment for the successful completion of a probation period
25 that includes alcohol and other drug treatment, any person violating s. 346.63 (2) or

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1 (6) shall be fined the same as under sub. (3m), but the period of imprisonment shall
2 be not less than 30 days, except that if the person successfully completes a period of
3 probation that includes alcohol and other drug treatment, the period of
4 imprisonment shall be not less than 15 days. If there was a minor passenger under
5 16 years of age in the motor vehicle at the time of the violation that gave rise to the
6 conviction under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum
7 and maximum fines or periods of imprisonment for the conviction are doubled and
8 the place of imprisonment shall be determined under s. 973.02. ~~A person may be~~
9 ~~sentenced under this subsection or under sub. (2) (bm) or (cm) or (2j) (bm) or (cm) once~~
10 ~~in his or her lifetime.~~ This subsection does not apply to a person sentenced under sub.
11 (3p).

SECTION 20. Initial applicability.

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

SECTION 21. Effective date.

19 (1) This act takes effect on July 1, 2017.
20

21 (END)