



## 2019 SENATE BILL 9

January 29, 2019 - Introduced by Senators DARLING, CARPENTER, JACQUE, KOOYENGA, LARSON, MARKLEIN, NASS and L. TAYLOR, cosponsored by Representatives OTT, ANDERSON, KERKMAN, SINICKI, SORTWELL, SPIROS, SUBECK and WICHGERS. Referred to Committee on Judiciary and Public Safety.

1     **AN ACT to repeal** 346.65 (2) (f) 1. and 346.65 (2g) (d); **to renumber and amend**  
2             346.65 (2) (am) 1. and 346.65 (2) (f) 2.; **to amend** 343.30 (1q) (b) (intro.), 343.30  
3             (1q) (b) 3., 343.305 (10) (b) 3., 343.31 (3) (bm) 3., 345.20 (2) (c), 345.24 (1), 346.65  
4             (2) (am) 2., 346.65 (2) (bm), 346.65 (2c), 346.65 (2e), 346.65 (2g) (a), 346.65 (2g)  
5             (ag), 346.65 (2g) (am), 346.65 (2i), 939.51 (1) (intro.) and 972.11 (3m); and **to**  
6             **create** 346.65 (2) (am) 1. b., c. and d. of the statutes; **relating to:** penalties for  
7             offenses related to operating a vehicle while intoxicated and providing a  
8             penalty.

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

This bill criminalizes a first offense relating to operating a vehicle while intoxicated (OWI-related offense).

Under current law, a first OWI-related offense is a civil violation, unless there was a minor passenger under the age of 16 in the vehicle at the time of the offense. A person who commits a civil OWI-related offense is subject to a forfeiture of not less than \$150 nor more than \$300. Subsequent OWI-related offenses are crimes punishable by fines and periods of imprisonment that increase with every subsequent offense.

Current law increases the penalty for a second OWI-related offense if the person committed the second offense within ten years of the first offense or if the

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person committed an OWI-related offense that caused death or great bodily harm to another.

Under this bill, a person who commits a first OWI-related offense is guilty of a Class C misdemeanor and may be fined up to \$500, imprisoned for up to 30 days, or both. Under the bill, a person who commits a second OWI-related offense is subject to the increased penalties regardless of whether the person commits the offense within ten years of his or her first OWI-related offense.

Under the bill, a court may, upon petition by the person who has been convicted of a first OWI-related offense, vacate the person's criminal conviction and amend the record to a civil violation if, in the five years since the person was convicted of the offense, he or she has not committed any other OWI-related offense. Under the bill, the clerk of courts amends the court records that are available in person and online to show only the civil violation.

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.

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.** 343.30 (1q) (b) (intro.) of the statutes is amended to read:

2           343.30 **(1q)** (b) (intro.) For persons convicted under s. 346.63 (1) ~~or a local~~  
3 ~~ordinance in conformity therewith:~~

4           **SECTION 2.** 343.30 (1q) (b) 3. of the statutes is amended to read:

5           343.30 **(1q)** (b) 3. Except as provided in sub. (1r) or subd. 4m., if the number  
6 of convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total  
7 number of other convictions, suspensions, and revocations counted under s. 343.307  
8 (1) ~~within a 10-year period~~, equals 2, the court shall revoke the person's operating  
9 privilege for not less than one year nor more than 18 months. After the first 45 days  
10 of the revocation period has elapsed, the person is eligible for an occupational license  
11 under s. 343.10 if he or she has completed the assessment and is complying with the  
12 driver safety plan ordered under par. (c).

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1           **SECTION 3.** 343.305 (10) (b) 3. of the statutes is amended to read:

2           343.305 **(10)** (b) 3. Except as provided in subd. 4m., if the number of convictions  
3           under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of other  
4           convictions, suspensions, and revocations counted under s. 343.307 (2) ~~within a~~  
5           ~~10-year period~~, equals 2, the court shall revoke the person's operating privilege for  
6           2 years. After the first 90 days of the revocation period or, if the total number of  
7           convictions, suspensions, and revocations counted under this subdivision within any  
8           5-year period equals 2 or more, after one year of the revocation period has elapsed,  
9           the person is eligible for an occupational license under s. 343.10 if he or she has  
10          completed the assessment and is complying with the driver safety plan.

11          **SECTION 4.** 343.31 (3) (bm) 3. of the statutes is amended to read:

12          343.31 **(3)** (bm) 3. Except as provided in subd. 4m., if the number of convictions  
13          under ss. 940.09 (1) and 940.25 in the person's lifetime, plus the total number of  
14          suspensions, revocations, and other convictions counted under s. 343.307 (1) ~~within~~  
15          ~~a 10-year period~~, equals 2, the department shall revoke the person's operating  
16          privilege for not less than one year nor more than 18 months. If an Indian tribal court  
17          in this state revokes the person's privilege to operate a motor vehicle on tribal lands  
18          for not less than one year nor more than 18 months for the conviction specified in par.  
19          (bm) (intro.), the department shall impose the same period of revocation. After the  
20          first 60 days of the revocation period or, if the total number of convictions,  
21          suspensions, and revocations counted under this subdivision within any 5-year  
22          period equals 2 or more, after one year of the revocation period has elapsed, the  
23          person is eligible for an occupational license under s. 343.10.

24          **SECTION 5.** 345.20 (2) (c) of the statutes is amended to read:

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1           345.20 (2) (c) Sections 967.055 and 972.11 (3m) apply to traffic forfeiture  
2 actions for violations of s. 346.63 (1) ~~or~~ (5) or a local ordinance in conformity  
3 therewith.

4           **SECTION 6.** 345.24 (1) of the statutes is amended to read:

5           345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in  
6 conformity ~~therewith~~ with s. 346.63 (5) or s. 346.63 (2) or (6) or 940.25, or s. 940.09  
7 where the offense involved the use of a vehicle, may not be released until 12 hours  
8 have elapsed from the time of his or her arrest or unless a chemical test administered  
9 under s. 343.305 shows that the person has an alcohol concentration of less than 0.04,  
10 but the person may be released to his or her attorney, spouse, relative or other  
11 responsible adult at any time after arrest.

12           **SECTION 7.** 346.65 (2) (am) 1. of the statutes is renumbered 346.65 (2) (am) 1.  
13 a. and amended to read:

14           346.65 (2) (am) 1. a. ~~Shall forfeit not less than \$150 nor more than \$300, except~~  
15 Except as provided in subds. 2. to 7. and par. (f), is guilty of a Class C misdemeanor  
16 and shall be imprisoned for not less than one day.

17           **SECTION 8.** 346.65 (2) (am) 1. b., c. and d. of the statutes are created to read:

18           346.65 (2) (am) 1. b. A person who is convicted of a violation under subd. 1. a.  
19 may petition the court to vacate his or her conviction. The court shall order that the  
20 conviction be vacated and the record of the conviction be expunged and that a record  
21 of a civil violation be entered if the person has completed his or her sentence, as  
22 defined in s. 973.015 (1m) (b), and, in the 5 years after the person was convicted of  
23 the violation, the person was not convicted or adjudicated of committing a  
24 subsequent violation that is counted as a suspension, revocation, or conviction under  
25 s. 343.307 (1).

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1 c. The clerk of court shall forward a copy of the order to amend the record of the  
2 conviction to a civil offense to the department of justice and to the department of  
3 transportation.

4 d. A conviction that is vacated under subd. 1. b. is not a conviction for any  
5 matter relating to an application for employment or for the rental, purchase, or  
6 financing of housing.

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

8 346.65 (2) (am) 2. Except as provided in pars. (bm) and (f), shall be fined not  
9 less than \$350 nor more than \$1,100 and imprisoned for not less than 5 days nor more  
10 than 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the  
11 person's lifetime, plus the total number of suspensions, revocations, and other  
12 convictions counted under s. 343.307 (1) ~~within a 10-year period~~, equals 2, except  
13 that suspensions, revocations, or convictions arising out of the same incident or  
14 occurrence shall be counted as one.

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

16 346.65 (2) (bm) 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) ~~within a 10-year~~  
21 ~~period~~, equals 2, except that suspensions, revocations, or convictions arising out of  
22 the same incident or occurrence shall be counted as one, the fine shall be the same  
23 as under par. (am) 2., but the period of imprisonment shall be not less than 5 days,  
24 except that if the person successfully completes a period of probation that includes  
25 alcohol and other drug treatment, the period of imprisonment shall be not less than

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1 5 nor more than 7 days. A person may be sentenced under this paragraph or under  
2 par. (cm) or (dm) or sub. (2j) (bm), (cm), or (cr) or (3r) once in his or her lifetime.

3 **SECTION 11.** 346.65 (2) (f) 1. of the statutes is repealed.

4 **SECTION 12.** 346.65 (2) (f) 2. of the statutes is renumbered 346.65 (2) (f) and  
5 amended to read:

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

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

14 346.65 (2c) In sub. (2) (am) ~~2., 3., 4., 5., 6., and 7.~~, the time period shall be  
15 measured from the dates of the refusals or violations that resulted in the revocation  
16 or convictions. If a person has a suspension, revocation, or conviction for any offense  
17 under a local ordinance or a state statute of another state that would be counted  
18 under s. 343.307 (1), that suspension, revocation, or conviction shall count as a prior  
19 suspension, revocation, or conviction under sub. (2) (am) ~~2., 3., 4., 5., 6., and 7.~~

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

21 346.65 (2e) If the court determines that a person does not have the ability to  
22 pay the costs and fine or forfeiture imposed under sub. (2) (am), (f), or (g), the court  
23 may reduce the costs, or fine, and forfeiture imposed and order the person to pay,  
24 toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q)

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1 (c), the difference between the amount of the reduced costs and fine ~~or forfeiture~~ and  
2 the amount of costs and fine ~~or forfeiture~~ imposed under sub. (2) (am), (f), or (g).

3 **SECTION 15.** 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) 1., 2., 3., 4., 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 16.** 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) 1., 2., 3., 4., 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 17.** 346.65 (2g) (am) of the statutes is amended to read:

23 346.65 (2g) (am) Notwithstanding s. 973.05 (3) (b), an order under par. (a) or  
24 (ag) may apply only if agreed to by the organization or agency. The court shall ensure  
25 that the defendant is provided a written statement of the terms of the community

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1 service order and that the community service order is monitored. Any organization  
2 or agency acting in good faith to which a defendant is assigned pursuant to an order  
3 under this subsection has immunity from any civil liability in excess of \$25,000 for  
4 acts or omissions by or impacting on the defendant. ~~The issuance or possibility of the~~  
5 ~~issuance of a community service order under this subsection does not entitle an~~  
6 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~  
7 ~~under ch. 977.~~

8 **SECTION 18.** 346.65 (2g) (d) of the statutes is repealed.

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

10 346.65 **(2i)** In addition to the authority of the court under sub. (2g) and s. 973.05  
11 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to  
12 s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that  
13 demonstrates the adverse effects of substance abuse or of operating a vehicle while  
14 under the influence of an intoxicant or other drug, including a treatment facility  
15 approved under s. 51.45 or an emergency room of a general hospital ~~in lieu of part~~  
16 ~~or all of any forfeiture imposed or in addition to any penalty imposed.~~ The court may  
17 order the defendant to pay a reasonable fee, based on the person's ability to pay, to  
18 offset the costs of establishing, maintaining, and monitoring the visits ordered under  
19 this subsection. The court may order a visit to the site only if agreed to by the person  
20 responsible for the site. If the opportunities available to visit sites under this  
21 subsection are fewer than the number of defendants eligible for a visit, the court  
22 shall, when making an order under this subsection, give preference to defendants  
23 who were under 21 years of age at the time of the offense. The court shall ensure that  
24 the visit is monitored. A visit to a site may be ordered for a specific time and a specific  
25 day to allow the defendant to observe victims of vehicle accidents involving



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1 intoxicated drivers. If it appears to the court that the defendant has not complied  
2 with the court order to visit a site or to pay a reasonable fee, the court may order the  
3 defendant to show cause why he or she should not be held in contempt of court. Any  
4 organization or agency acting in good faith to which a defendant is assigned pursuant  
5 to an order under this subsection has immunity from any civil liability in excess of  
6 \$25,000 for acts or omissions by or impacting on the defendant. ~~The issuance or~~  
7 ~~possibility of the issuance of an order under this subsection does not entitle an~~  
8 ~~indigent defendant who is subject to sub. (2) (am) 1. to representation by counsel~~  
9 ~~under ch. 977.~~

10 **SECTION 20.** 939.51 (1) (intro.) of the statutes is amended to read:

11 939.51 (1) (intro.) Misdemeanors in chs. 346 and 939 to 951 are classified as  
12 follows:

13 **SECTION 21.** 972.11 (3m) of the statutes is amended to read:

14 972.11 (3m) A court may not exclude evidence in any criminal action ~~or traffic~~  
15 ~~forfeiture action~~ for violation of s. 346.63 (1) or any criminal action or traffic  
16 forfeiture action for a violation of s. 346.63 (5), or a local ordinance in conformity with  
17 s. 346.63 (1) or (5), on the ground that the evidence existed or was obtained outside  
18 of this state.

19 **SECTION 22. Initial applicability.**

20 (1) This act first applies to violations committed on the effective date of this  
21 subsection but does not preclude the counting of other convictions, suspensions, or  
22 revocations as prior convictions, suspensions, or revocations for purposes of  
23 administrative action by the department of transportation or sentencing by a court.

