



1995 ASSEMBLY BILL 146

February 16, 1995 - Introduced by Representatives FREESE, VANDER LOOP, AINSWORTH, BAUMGART, BRANDEMUEHL, DOBYNS, DUFF, FOTI, GARD, GOETSCH, GROBSCHMIDT, GUNDERSON, HAHN, HARSDFORF, HOVEN, HUEBSCH, JOHNSRUD, LADWIG, LEHMAN, LORGE, MUSSER, NASS, OTT, OTTE, OWENS, OURADA, PORTER, RYBA, SCHNEIDERS, SERATTI, URBAN, WALKER, WARD, WOOD and ZIEGELBAUER, cosponsored by Senators PETAK, BUETTNER, DRZEWIECKI, FARROW, A LASEE and SCHULTZ, by request of Tracy Scheide (formerly Tracy Black), her family, and the family of Jeanette Chase. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber** 940.01 (1), 940.06, 940.08, 940.10, 940.23 (1), 940.23 (2) and
2 940.24; **to amend** 302.11 (1g) (a) 2., 343.31 (3) (c), 346.65 (6) (a) 1., 346.65 (6)
3 (a) 2., 346.65 (6) (d), 939.22 (21) (d), 939.24 (1), 939.25 (1), 939.32 (1) (intro.),
4 939.62 (2m) (a) 2., 940.01 (1) (title), 940.05 (2), 940.09 (1d), 940.09 (1m), 940.09
5 (2), 940.25 (1d), 940.25 (1m), 940.25 (2), 941.38 (1) (b) 4., 969.035 (1), 969.08 (10)
6 (b), 973.0135 (1) (b) 2. and 980.01 (6) (b); and **to create** 939.75, 940.01 (1) (b),
7 940.02 (1m), 940.05 (2g), 940.05 (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e),
8 940.09 (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b), 940.23 (2) (b), 940.24
9 (2) and 940.25 (1) (c) to (e) of the statutes; **relating to:** causing harm or death
10 to an unborn child and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, there are various penalties for homicides and other crimes against life and bodily security. These crimes usually apply to offenses committed against a human being after he or she has been born alive. This bill creates a similar series of crimes providing penalties, based on current law, for persons who cause death, great bodily harm or harm to an unborn child. The following chart shows the maximum penalties for persons convicted of the crimes involved:

<u>Crime</u>	<u>Maximum Period of Imprisonment</u>	<u>Maximum Fine</u>
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First-degree intentional homicide	life sentence	no fine option
First-degree reckless homicide	40 years	no fine option
Second-degree intentional homicide	40 years	no fine option
Second-degree reckless homicide	10 years	\$10,000
Homicide/negligent handling of weapon, explosives or fire	5 years	\$10,000
Homicide/intoxicated use of vehicle	10 years	\$10,000
Homicide/intoxicated use of firearm	5 years	\$10,000
Homicide/negligent operation of vehicle	2 years	\$10,000
Battery	10 years, 5 years, 2 years or 9 months depending on the intent of the actor and the harm that results	\$10,000
Reckless injury, great bodily harm	10 years or 5 years depend- ing on the circumstances	\$10,000
Injury/negligent handling of weapon, explosives or fire	2 years	\$10,000
Injury/intoxicated use of a vehicle	2 years	\$10,000

The bill provides various exceptions to these crimes against unborn children. The crimes do not apply to any of the following:

1. An act that causes the death of an unborn child during an induced abortion.
2. An act that follows the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a licensed physician.
3. An act by the pregnant woman toward her unborn child.
4. The prescription by a physician or the use by a woman of any medicine, drug or device for birth control or pregnancy prevention.

For further information see the *state* 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.** 302.11 (1g) (a) 2. of the statutes is amended to read:

2 302.11 **(1g)** (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19
3 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02,
4 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03
5 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

6 **SECTION 2.** 343.31 (3) (c) of the statutes is amended to read:

7 343.31 **(3)** (c) Any person convicted under s. 940.09 of causing the death of
8 another or an unborn child by the operation or handling of a motor vehicle shall have
9 his or her operating privilege revoked for 5 years.

10 **SECTION 3.** 346.65 (6) (a) 1. of the statutes is amended to read:

11 346.65 **(6)** (a) 1. Except as provided in this paragraph, the court may order a
12 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered
13 seized, shall order a law enforcement officer to equip the motor vehicle with an
14 ignition interlock device or immobilize any motor vehicle owned by the person whose
15 operating privilege is revoked under s. 343.305 (10) or who committed a violation of
16 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~, (b), (c) or (d) or 940.25 (1) (a)
17 ~~or~~, (b), (c) or (d) if the person whose operating privilege is revoked under s. 343.305
18 (10) or who is convicted of the violation has 2 prior suspensions, revocations or
19 convictions within a 10-year period that would be counted under s. 343.307 (1). The
20 court shall not order a motor vehicle equipped with an ignition interlock device or

1 immobilized if that would result in undue hardship or extreme inconvenience or
2 would endanger the health and safety of a person.

3 **SECTION 4.** 346.65 (6) (a) 2. of the statutes is amended to read:

4 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor
5 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)
6 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a)
7 ~~or, (b), (c) or (d)~~ or 940.25 (1) (a) ~~or, (b), (c) or (d)~~ if the person whose operating privilege
8 is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior
9 suspensions, revocations or convictions within a 10-year period that would be
10 counted under s. 343.307 (1).

11 **SECTION 5.** 346.65 (6) (d) of the statutes is amended to read:

12 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
13 proving to a reasonable certainty by the greater weight of the credible evidence that
14 the motor vehicle is a motor vehicle owned by a person who committed a violation of
15 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or, (b), (c) or (d)~~ or 940.25 (1) (a)
16 ~~or, (b), (c) or (d)~~ and, if the seizure is under par. (a) 1., that the person had 2 prior
17 convictions, suspensions or revocations within a 10-year period as counted under s.
18 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions,
19 suspensions or revocations within a 10-year period as counted under s. 343.307 (1).
20 If the owner of the motor vehicle proves by a preponderance of the evidence that he
21 or she was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09
22 (1) (a) ~~or, (b), (c) or (d)~~ or 940.25 (1) (a) ~~or, (b), (c) or (d)~~, or, if the seizure is under par.
23 (a) 1., that he or she did not have 2 prior convictions, suspensions or revocations
24 within a 10-year period as counted under s. 343.307 (1) or, if the seizure is under par.
25 (a) 2., 3 or more prior convictions, suspensions or revocations within a 10-year period

1 as counted under s. 343.307 (1), the motor vehicle shall be returned to the owner upon
2 the payment of storage costs.

3 **SECTION 6.** 939.22 (21) (d) of the statutes is amended to read:

4 939.22 (21) (d) Battery, substantial battery or aggravated battery, as
5 prohibited in s. 940.19 or 940.195.

6 **SECTION 7.** 939.24 (1) of the statutes is amended to read:

7 939.24 (1) In this section, “criminal recklessness” means that the actor creates
8 an unreasonable and substantial risk of death or great bodily harm to another
9 human being and the actor is aware of that risk, except that for purposes of ss. 940.02
10 (1m), 940.06 (2) and 940.23 (1) (b) and (2) (b), “criminal recklessness” means that the
11 actor creates an unreasonable and substantial risk of death or great bodily harm to
12 an unborn child, to the woman who is pregnant with that unborn child or to another
13 and the actor is aware of that risk.

14 **SECTION 8.** 939.25 (1) of the statutes is amended to read:

15 939.25 (1) In this section, “criminal negligence” means ordinary negligence to
16 a high degree, consisting of conduct ~~which~~ that the actor should realize creates a
17 substantial and unreasonable risk of death or great bodily harm to another, except
18 that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), “criminal negligence”
19 means ordinary negligence to a high degree, consisting of conduct that the actor
20 should realize creates a substantial and unreasonable risk of death or great bodily
21 harm to an unborn child, to the woman who is pregnant with that unborn child or
22 to another.

23 **SECTION 9.** 939.32 (1) (intro.) of the statutes is amended to read:

24 939.32 (1) (intro.) Whoever attempts to commit a felony or a battery as defined
25 by crime specified in s. 940.19 ~~or theft as defined by s., 940.195~~ or 943.20 may be fined

1 or imprisoned or both not to exceed one-half the maximum penalty for the completed
2 crime; except:

3 **SECTION 10.** 939.62 (2m) (a) 2. of the statutes is amended to read:

4 939.62 (2m) (a) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
5 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b)
6 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2),
7 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b)
8 or (c) or 948.36.

9 **SECTION 11.** 939.75 of the statutes is created to read:

10 **939.75 Death or harm to an unborn child. (1)** In this section and ss. 939.24
11 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2),
12 940.09 (1) (c) to (e) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b),
13 940.24 (2) and 940.25 (1) (c) to (e), “unborn child” means any individual of the human
14 species from fertilization until birth.

15 **(2)** (a) In this subsection, “induced abortion” means the use of any instrument,
16 medicine, drug or other substance or device in a medical procedure with the intent
17 to terminate the pregnancy of a woman and with an intent other than to increase the
18 probability of a live birth, to preserve the life or health of the infant after live birth
19 or to remove a dead fetus.

20 (b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08
21 (2), 940.09 (1) (c) to (e) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2)
22 (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the following:

23 1. An act that causes the death of an unborn child if the act was committed
24 during any induced abortion, whether lawful or unlawful.

1 2. An act that is committed in accordance with the usual and customary
2 standards of medical practice during diagnostic testing or therapeutic treatment
3 performed by, or under the supervision of, a physician licensed under ch. 448.

4 3. An act by a woman who is pregnant with an unborn child that results in the
5 death of or great bodily harm or bodily harm to that unborn child.

6 4. The prescription by a physician or the use by a woman of any medicine, drug
7 or device that is used as a method of birth control or is intended to prevent pregnancy.

8 **(3)** When the existence of an exception under sub. (2) has been placed in issue
9 by the trial evidence, the state must prove beyond a reasonable doubt that the facts
10 constituting the exception do not exist in order to sustain a finding of guilt under s.
11 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) or
12 (1g) (c) or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24 (2) or 940.25 (1) (c)
13 to (e).

14 **SECTION 12.** 940.01 (1) (title) of the statutes is amended to read:

15 940.01 (1) (title) ~~OFFENSE~~ OFFENSES.

16 **SECTION 13.** 940.01 (1) of the statutes is renumbered 940.01 (1) (a).

17 **SECTION 14.** 940.01 (1) (b) of the statutes is created to read:

18 940.01 (1) (b) Except as provided in sub. (2), whoever causes the death of an
19 unborn child with intent to kill that unborn child, kill the woman who is pregnant
20 with that unborn child or kill another is guilty of a Class A felony.

21 **SECTION 15.** 940.02 (1m) of the statutes is created to read:

22 940.02 (1m) Whoever recklessly causes the death of an unborn child under
23 circumstances that show utter disregard for the life of that unborn child, the woman
24 who is pregnant with that unborn child or another is guilty of a Class B felony.

25 **SECTION 16.** 940.05 (2) of the statutes is amended to read:

1 940.05 (2) In prosecutions under ~~this section~~ sub. (1), it is sufficient to allege
2 and prove that the defendant caused the death of another human being with intent
3 to kill that person or another.

4 **SECTION 17.** 940.05 (2g) of the statutes is created to read:

5 940.05 (2g) Whoever causes the death of an unborn child with intent to kill that
6 unborn child, kill the woman who is pregnant with that unborn child or kill another
7 is guilty of a Class B felony if:

8 (a) In prosecutions under s. 940.01, the state fails to prove beyond a reasonable
9 doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist as
10 required by s. 940.01 (3); or

11 (b) The state concedes that it is unable to prove beyond a reasonable doubt that
12 the mitigating circumstances specified in s. 940.01 (2) did not exist. By charging
13 under this section, the state so concedes.

14 **SECTION 18.** 940.05 (2h) of the statutes is created to read:

15 940.05 (2h) In prosecutions under sub. (2g), it is sufficient to allege and prove
16 that the defendant caused the death of an unborn child with intent to kill that unborn
17 child, kill the woman who is pregnant with that unborn child or kill another.

18 **SECTION 19.** 940.06 of the statutes is renumbered 940.06 (1).

19 **SECTION 20.** 940.06 (2) of the statutes is created to read:

20 940.06 (2) Whoever recklessly causes the death of an unborn child is guilty of
21 a Class C felony.

22 **SECTION 21.** 940.08 of the statutes is renumbered 940.08 (1).

23 **SECTION 22.** 940.08 (2) of the statutes is created to read:

1 940.08 (2) Whoever causes the death of an unborn child by the negligent
2 operation or handling of a dangerous weapon, explosives or fire is guilty of a Class
3 D felony.

4 **SECTION 23.** 940.09 (1) (c) to (e) of the statutes are created to read:

5 940.09 (1) (c) Causes the death of an unborn child by the operation or handling
6 of a vehicle while under the influence of an intoxicant.

7 (d) Causes the death of an unborn child by the operation or handling of a vehicle
8 while the person has a prohibited alcohol concentration, as defined in s. 340.01
9 (46m).

10 (e) Causes the death of an unborn child by the operation of a commercial motor
11 vehicle while the person has an alcohol concentration of 0.04 or more but less than
12 0.1.

13 **SECTION 24.** 940.09 (1d) of the statutes is amended to read:

14 940.09 (1d) If the person who committed an offense under sub. (1) (a) ~~or~~, (b), (c)
15 or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year period,
16 as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed
17 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by
18 the person who committed the offense or the equipping of a motor vehicle owned by
19 the person with an ignition interlock device.

20 **SECTION 25.** 940.09 (1g) (c) and (d) of the statutes are created to read:

21 940.09 (1g) (c) Causes the death of an unborn child by the operation or handling
22 of a firearm or airgun while under the influence of an intoxicant.

23 (d) Causes the death of an unborn child by the operation or handling of a
24 firearm or airgun while the person has a blood alcohol concentration of 0.1% or more

1 by weight of alcohol in that person's blood or 0.10 grams or more of alcohol in 210
2 liters of that person's breath.

3 **SECTION 26.** 940.09 (1m) of the statutes is amended to read:

4 940.09 **(1m)** A person may be charged with and a prosecutor may proceed upon
5 an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a)
6 or (bm) or both ~~or of~~, sub. (1) (c) or (d) or both, sub. (1) (c) or (e) or both, sub. (1g) (a)
7 or (b) or both or sub. (1g) (c) or (d) or both for acts arising out of the same incident or
8 occurrence. If the person is charged with violating both sub. (1) (a) and (b) ~~or~~, both
9 sub. (1) (a) and (bm) ~~or~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g)
10 (a) and (b) or both sub. (1g) (c) and (d) in the information, the crimes shall be joined
11 under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both
12 sub. (1) (a) and (bm) ~~or of~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub.
13 (1g) (a) and (b) or both sub. (1g) (c) and (d) for acts arising out of the same incident
14 or occurrence, there shall be a single conviction for purposes of sentencing and for
15 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)
16 (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1)
17 (a), (b) ~~and~~, (bm), (c), (d) and (e), and sub. (1g) (a) ~~and~~, (b), (c) and (d), each require
18 proof of a fact for conviction which the other does not require.

19 **SECTION 27.** 940.09 (2) of the statutes is amended to read:

20 940.09 **(2)** The defendant has a defense if he or she proves by a preponderance
21 of the evidence that the death would have occurred even if he or she had been
22 exercising due care and he or she had not been under the influence of an intoxicant
23 or did not have a blood alcohol concentration described under sub. (1) (b) ~~or~~, (bm), (d)
24 or (e) or (1g) (b) or (d).

25 **SECTION 28.** 940.10 of the statutes is renumbered 940.10 (1).

1 **SECTION 29.** 940.10 (2) of the statutes is created to read:

2 940.10 **(2)** Whoever causes the death of an unborn child by the negligent
3 operation or handling of a vehicle is guilty of a Class E felony.

4 **SECTION 30.** 940.195 of the statutes is created to read:

5 **940.195 Battery to an unborn child; substantial battery to an unborn**
6 **child; aggravated battery to an unborn child.** (1) Whoever causes bodily harm
7 to an unborn child by an act done with intent to cause bodily harm to that unborn
8 child, to the woman who is pregnant with that unborn child or another is guilty of
9 a Class A misdemeanor.

10 **(2)** Whoever causes substantial bodily harm to an unborn child by an act done
11 with intent to cause bodily harm to that unborn child, to the woman who is pregnant
12 with that unborn child or another is guilty of a Class E felony.

13 **(3)** Whoever causes substantial bodily harm to an unborn child by an act done
14 with intent to cause substantial bodily harm to that unborn child, to the woman who
15 is pregnant with that unborn child or another is guilty of a Class D felony.

16 **(4)** Whoever causes great bodily harm to an unborn child by an act done with
17 intent to cause bodily harm to that unborn child, to the woman who is pregnant with
18 that unborn child or another is guilty of a Class D felony.

19 **(5)** Whoever causes great bodily harm to an unborn child by an act done with
20 intent to cause either substantial bodily harm or great bodily harm to that unborn
21 child, to the woman who is pregnant with that unborn child or another is guilty of
22 a Class C felony.

23 **(6)** Whoever intentionally causes bodily harm to an unborn child by conduct
24 that creates a substantial risk of great bodily harm is guilty of a Class D felony.

25 **SECTION 31.** 940.23 (1) of the statutes is renumbered 940.23 (1) (a).

1 **SECTION 32.** 940.23 (1) (b) of the statutes is created to read:

2 940.23 (1) (b) Whoever recklessly causes great bodily harm to an unborn child
3 under circumstances that show utter disregard for the life of that unborn child, the
4 woman who is pregnant with that unborn child or another is guilty of a Class C felony.

5 **SECTION 33.** 940.23 (2) of the statutes is renumbered 940.23 (2) (a).

6 **SECTION 34.** 940.23 (2) (b) of the statutes is created to read:

7 940.23 (2) (b) Whoever recklessly causes great bodily harm to an unborn child
8 is guilty of a Class D felony.

9 **SECTION 35.** 940.24 of the statutes is renumbered 940.24 (1).

10 **SECTION 36.** 940.24 (2) of the statutes is created to read:

11 940.24 (2) Whoever causes bodily harm to an unborn child by the negligent
12 operation or handling of a dangerous weapon, explosives or fire is guilty of a Class
13 E felony.

14 **SECTION 37.** 940.25 (1) (c) to (e) of the statutes are created to read:

15 940.25 (1) (c) Causes great bodily harm to an unborn child by the operation of
16 a vehicle while under the influence of an intoxicant.

17 (d) Causes great bodily harm to an unborn child by the operation of a vehicle
18 while the person has a prohibited alcohol concentration, as defined in s. 340.01
19 (46m).

20 (e) Causes great bodily harm to an unborn child by the operation of a
21 commercial motor vehicle while the person has an alcohol concentration of 0.04 or
22 more but less than 0.1.

23 **SECTION 38.** 940.25 (1d) of the statutes is amended to read:

24 940.25 (1d) If the person who committed the offense under sub. (1) (a) ~~or~~, (b),
25 (c) or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year

1 period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be
2 followed regarding the immobilization or seizure and forfeiture of a motor vehicle
3 owned by the person who committed the offense or the equipping of a motor vehicle
4 owned by the person with an ignition interlock device.

5 **SECTION 39.** 940.25 (1m) of the statutes is amended to read:

6 940.25 (1m) A person may be charged with and a prosecutor may proceed upon
7 an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a)
8 or (bm) or both, sub. (1) (c) or (d) or both or sub. (1) (c) or (e) or both for acts arising
9 out of the same incident or occurrence. If the person is charged with violating both
10 sub. (1) (a) and (b) ~~or~~, both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub.
11 (1) (c) and (e) in the information, the crimes shall be joined under s. 971.12. If the
12 person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both sub. (1) (a) and (bm), both
13 sub. (1) (c) and (d) or both sub. (1) (c) and (e) for acts arising out of the same incident
14 or occurrence, there shall be a single conviction for purposes of sentencing and for
15 purposes of counting convictions under s. 23.33 (13) (b) 2 and 3, under s. 30.80 (6) (a)
16 2 or 3, under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2 and 3. Subsection
17 (1) (a), (b) ~~and~~, (bm), (c), (d) and (e) each require proof of a fact for conviction which
18 the other does not require.

19 **SECTION 40.** 940.25 (2) of the statutes is amended to read:

20 940.25 (2) The defendant has a defense if he or she proves by a preponderance
21 of the evidence that the great bodily harm would have occurred even if he or she had
22 been exercising due care and he or she had not been under the influence of an
23 intoxicant or did not have a blood alcohol concentration described under sub. (1) (b)
24 ~~or~~, (bm), (d) or (e).

25 **SECTION 41.** 941.38 (1) (b) 4. of the statutes is amended to read:

1 941.38 (1) (b) 4. Battery, substantial battery or aggravated battery, as
2 prohibited in s. 940.19 or 940.195.

3 **SECTION 42.** 969.035 (1) of the statutes is amended to read:

4 969.035 (1) In this section, “violent crime” means any crime specified in s.
5 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195
6 (5), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025 or 948.03.

7 **SECTION 43.** 969.08 (10) (b) of the statutes is amended to read:

8 969.08 (10) (b) “Serious crime” means any crime specified in s. 346.62 (4),
9 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195
10 (5), 940.20, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29,
11 940.295 (3) (b) 1., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01
12 (2) (c), 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r),
13 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03,
14 948.04, 948.05, 948.06, 948.07 or 948.30.

15 **SECTION 44.** 973.0135 (1) (b) 2. of the statutes is amended to read:

16 973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
17 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b)
18 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2),
19 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b)
20 or (c) or 948.36.

21 **SECTION 45.** 980.01 (6) (b) of the statutes is amended to read:

22 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19
23 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined, in
24 a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

25 **SECTION 46. Initial applicability.**

