

1991 Senate Bill 308

Date of enactment: **April 29, 1992**Date of publication\*: **May 13, 1992**

# 1991 WISCONSIN ACT 277

AN ACT *to renumber* 346.65 (2g); *to renumber and amend* 343.10 (5) (a); *to amend* 46.03 (18) (f), 121.555 (2) (c) 5, 343.10 (2) (a) (intro.), 343.12 (2) (d), 343.23 (2), 343.30 (1q) (b) 1, 343.30 (1q) (b) 2, 343.30 (1q) (b) 3 and 4, 343.30 (1q) (b) 5, 343.30 (1q) (d), 343.303, 343.305 (4) (b), 343.305 (4) (c) 1, 343.305 (5) (d), 343.305 (7) (a), 343.305 (8) (b) 2. bm. and d., 343.305 (8) (b) 5, 343.305 (9) (a) 1, 343.305 (9) (a) 5. a., 343.305 (9) (d), 343.305 (10) (b) 1, 343.305 (10) (b) 3 and 4, 343.305 (10) (d), 343.31 (title), 343.31 (1) (am), 343.31 (1) (f), 343.31 (3) (a), 343.31 (3) (bm) 1 and 3 to 5, 343.31 (3) (g), 343.315 (2) (a) 6, 343.44 (2) (intro.), 343.44 (2) (a), 343.44 (2) (b) 1, 343.44 (2) (b) 2, 343.44 (2) (c) 1, 343.44 (2) (c) 2, 343.44 (2) (d) 1, 343.44 (2) (d) 2, 343.44 (2) (e) 1, 343.44 (2) (e) 2, 346.63 (1) (b), 346.63 (2) (a) 2, 346.65 (2) (b) to (e), 346.65 (2c), 346.65 (2j) (b) and (c), 346.65 (2w), 347.50 (1), 885.235 (1) (intro.), 940.09 (1) (intro.), (a) and (b), 940.09 (1m), 940.09 (2), 940.25 (1) (b), 940.25 (2), 949.08 (2) (e), 967.055 (1) (a) and 973.01 (1) (d); *to repeal and recreate* 343.307; and *to create* 340.01 (23v), 340.01 (23w), 340.01 (46m), 342.12 (4), 343.10 (2) (e), 343.10 (5) (a) 2, 343.10 (5) (a) 3, 343.10 (7) (cm), 343.30 (1g), 343.30 (1q) (c) 1m, 343.305 (10m), 343.31 (2m), 343.38 (5), 343.39 (3), 343.44 (2g), 343.44 (2p), 346.65 (2e), 346.65 (2g) (b), 346.65 (2i), 346.65 (6), 346.65 (7), 347.413, 347.417, 347.50 (1s), 885.235 (1) (a) 1, 885.235 (1) (bd) and (cd), 940.09 (1d), 940.09 (1g) and 940.25 (1d) of the statutes, **relating to:** alcohol concentration of vehicle operators, seizure, forfeiture and sale or immobilization of motor vehicles, occupational license restriction, counting of prior convictions, revocations and suspensions to determine the penalties for a current violation related to operating a motor vehicle while intoxicated, operator record retention, alcohol and controlled substances use assessment, removing the mandatory revocation of motor vehicle operating privileges, the mandatory minimum jail terms and the mandatory minimum fines for operating a vehicle after a person's operating privilege is revoked or suspended, home detention in lieu of imprisonment for operating a motor vehicle after a person's operating privilege is revoked or suspended, ignition interlock devices, instalment payments of assessment or driver safety plan costs, permitting a victim awareness component in driver safety plans and providing penalties.

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

**SECTION 1.** 46.03 (18) (f) of the statutes is amended to read:

46.03 (18) (f) Notwithstanding par. (a), any person who submits to an assessment or driver safety plan under s. 23.33 (13) (e), 30.80 (6) (d), 343.16 (5) (a), 343.30 (1q), 343.305 (10) or 350.11 (3) (d) shall pay a reasonable fee therefor to the appropriate county department under s. 51.42 or traffic safety school under s. 345.60. The person may pay the fee in 1, 2, 3 or 4 equal instalments. The

fee for the driver safety plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for assessment or attendance at a traffic safety school under s. 345.60 may be reduced or waived. Nonpayment of the fee is noncompliance with the court order that required completion of an assessment and driver safety plan.

**SECTION 2.** 121.555 (2) (c) 5. of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

121.555 (2) (c) 5. Notwithstanding ss. 111.321, 111.322 and 111.335, may not be a person convicted within a 2-year period of reckless driving under s. 346.62

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or a local ordinance in conformity with s. 346.62 (2) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62 (2), ~~operating a motor vehicle while under the influence of an intoxicant or of a controlled substance under s. 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5), a violation of s. 346.63 (2) or (6), a violation of s. 346.63 (1m), 1985 stats., a refusal to submit to testing under s. 343.305 (9) (d) or operating a motor vehicle while operating privileges are suspended or revoked under s. 343.44 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.44 (1) with respect to operation of a motor vehicle while operating privileges are suspended or revoked,~~ any of the offenses enumerated under s. 343.31 (1) or (2), or 2. or more offenses under s. 346.63 (7) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (7), or a conviction of a under the law of another jurisdiction, as those terms are defined in s. 340.01 (9r) and (41m), respectively, ~~which would be counted under s. 343.307 or a law prohibiting reckless or careless driving, as those or substantially similar terms are used in that jurisdiction's laws, or a conviction, suspension or revocation that would be counted under s. 343.307 (2) (a) to (g), or a person convicted within a 5-year period of violating s. 940.09 (1) or 940.25.~~ Upon request of the operator or school, the department shall certify whether the operator meets this requirement.

**SECTION 3.** 340.01 (23v) of the statutes is created to read:

340.01 (23v) "Ignition interlock device" means a device which measures the person's alcohol concentration and which is installed on a vehicle in such a manner that the vehicle will not start if the sample shows that the person has a prohibited alcohol concentration.

**SECTION 4.** 340.01 (23w) of the statutes is created to read:

340.01 (23w) "Immobilization device" means a device or mechanism which immobilizes a motor vehicle, making the motor vehicle inoperable.

**SECTION 5.** 340.01 (46m) of the statutes is created to read:

340.01 (46m) "Prohibited alcohol concentration" means one of the following:

(a) If the person has one or no prior convictions, suspensions or revocations, as counted under s. 343.307 (1), a blood alcohol concentration of 0.1% or more by weight of alcohol in the person's blood or 0.1 grams or more of alcohol in 210 liters of the person's breath.

(b) If the person has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), a blood alcohol concentration of 0.08% or more by

weight of alcohol in the person's blood or 0.08 grams or more of alcohol in 210 liters of the person's breath.

**SECTION 6.** 342.12 (4) of the statutes is created to read:

342.12 (4) (a) The district attorney shall notify the department when he or she files a criminal complaint against a person who has been arrested for violating s. 346.63 (1) or (2), 940.09 (1) or 940.25 and who has 2 or more prior convictions, suspensions or revocations within a 5-year period, as counted under s. 343.307 (1). The department may not issue a certificate of title transferring ownership of any motor vehicle owned by the person upon receipt of a notice under this subsection until the court assigned to hear the criminal complaint issues an order permitting the department to issue a certificate of title.

(b) The department may not issue a certificate of title transferring ownership of any motor vehicle owned by a person upon receipt of a notice of intent to revoke the person's operating privilege under s. 343.305 (9) (a), if the person has 2 or more prior convictions, suspensions or revocations within a 5-year period, as counted under s. 343.307 (1), until the court assigned to the hearing under s. 343.305 (9) issues an order permitting the department to issue a certificate of title.

**SECTION 7.** 343.10 (2) (a) (intro.) of the statutes is amended to read:

343.10 (2) (a) (intro.) Except as provided in ~~par. pars. (b), (c) or (d) to (e)~~, a person is eligible for an occupational license if the following conditions are satisfied:

**SECTION 8.** 343.10 (2) (e) of the statutes is created to read:

343.10 (2) (e) If the court orders a person to submit to and comply with an assessment and driver safety plan and if the person has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), no occupational license may be granted until the person has completed the assessment and is complying with the driver safety plan.

**SECTION 9.** 343.10 (5) (a) of the statutes is renumbered 343.10 (5) (a) 1. and amended to read:

343.10 (5) (a) 1. In addition to any restrictions appearing on the former operator's license of the petitioner, the order for issuance of an occupational license shall contain definite restrictions as to hours of the day, not to exceed 12, hours per week, not to exceed 60, type of occupation and areas or routes of travel which are permitted under the license. The order may permit travel to and from church during specified hours if the travel does not exceed the restrictions as to hours of the day and hours per week in this ~~paragraph~~ subdivision. The order may permit travel necessary to comply with a driver safety plan ordered under s. 343.30 (1q) or 343.305 if the travel does not exceed the restrictions as to hours of the day and hours per week in this ~~paragraph~~ subdivision.

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The order may contain restrictions on the use of alcohol and of controlled substances in violation of s. 161.41.

**SECTION 10.** 343.10 (5) (a) 2. of the statutes is created to read:

343.10 (5) (a) 2. If the petitioner has 2 or more convictions, suspensions or revocations, as counted under s. 343.307 (1), the order for issuance of an occupational license shall prohibit the petitioner from driving or operating a motor vehicle while he or she has a blood alcohol concentration of more than 0.0% by weight of alcohol in the person's blood or more than 0.0 grams of alcohol in 210 liters of that person's breath.

**SECTION 11.** 343.10 (5) (a) 3. of the statutes is created to read:

343.10 (5) (a) 3. If the petitioner has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), the order for issuance of an occupational license to a person may restrict the person's operation under the occupational license to vehicles that are equipped with a functioning ignition interlock device as provided under s. 346.65 (6). A person to whom a restriction under this subdivision applies violates that restriction if he or she requests or permits another to blow into an ignition interlock device or to start a motor vehicle equipped with an ignition interlock device for the purpose of providing the person an operable motor vehicle without the necessity of first submitting a sample of his or her breath to analysis by the ignition interlock device.

**SECTION 12.** 343.10 (7) (cm) of the statutes is created to read:

343.10 (7) (cm) If the order includes the restriction specified in sub. (5) (a) 3, the department shall not issue the occupational license until the person provides evidence satisfactory to the department that any motor vehicle that the person will be permitted to operate has been equipped with a functioning ignition interlock device.

**SECTION 13.** 343.12 (2) (d) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

343.12 (2) (d) Notwithstanding ss. 111.321, 111.322 and 111.335, has not been convicted of reckless driving under s. 346.62 or a local ordinance in conformity with s. 346.62 (2) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62 (2), ~~operating a motor vehicle while under the influence of an intoxicant or of a controlled substance under s. 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5), a violation of s. 346.63 (2) or (6), a violation of s. 346.63 (1m), 1985 stats., a refusal to submit to testing under s. 343.305 (9) (d) or~~ operating a motor vehicle while operating privileges are suspended or revoked under s. 343.44 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity

with s. 343.44 (1) with respect to operation of a motor vehicle while operating privileges are suspended or revoked, any of the offenses enumerated under s. 343.31 (1) or (2), or 2. or more offenses under s. 346.63 (7) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (7), or a conviction of ~~a~~ under the law of another jurisdiction, as those terms are defined in s. 340.01 (9r) and (41m), respectively, ~~which would be counted under s. 343.307 or a law prohibiting reckless or careless driving, as those or substantially similar terms are used in that jurisdiction's laws, or a conviction, suspension or revocation that would be counted under s. 343.307 (2),~~ within the 2-year period immediately preceding the date of application. Upon request of the operator or school, the department shall certify whether the operator meets this requirement.

**SECTION 13m.** 343.23 (2) of the statutes is amended to read:

343.23 (2) The department shall maintain a file for each licensee containing the application for license, permit or endorsement, a record of reports or abstract of convictions, the status of the licensee's authorization to operate different vehicle groups, a record of any out-of-service orders issued under s. 343.305 (7) (b) or (9) (am) and a record of any reportable accident in which the licensee has been involved, including specification of the type of license and endorsements issued under this chapter under which the licensee was operating at the time of the accident and an indication whether or not the accident occurred in the course of the licensee's employment as a law enforcement officer, fire fighter or emergency medical technician — advanced (paramedic). This information must be filed by the department so that the complete operator's record is available for the use of the secretary in determining whether operating privileges of such person shall be suspended, revoked, canceled or withheld in the interest of public safety. The record of suspensions, revocations and convictions that would be counted under s. 343.307 (2) shall be maintained for at least 10 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (f) shall be maintained for at least 3 years. The record of convictions for disqualifying offenses under s. 343.315 (2) (a) to (e) shall be maintained permanently, except that 5 years after a licensee transfers residency to another state such record may be transferred to another state of licensure of the licensee if that state accepts responsibility for maintaining a permanent record of convictions for disqualifying offenses. Such reports and records may be cumulative beyond the period for which a license is granted, but the secretary, in exercising the power of revocation granted under s. 343.32 (2) may consider only those reports and records entered during the 4-year period immediately preceding the exercise of such power of revocation.

**SECTION 13p.** 343.30 (1g) of the statutes is created to read:

343.30 (1g) A court may revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked. A court shall revoke a person's operating privilege upon the person's conviction for violating s. 343.44 (1) or a local ordinance in conformity therewith by operating a motor vehicle while operating privileges are suspended or revoked if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25. The revocation shall be for any period not exceeding 6 months.

**SECTION 14.** 343.30 (1q) (b) 1. of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

343.30 (1q) (b) 1. The court shall suspend or revoke the person's operating privilege under this paragraph according to the number of previous ~~improper refusals under s. 343.305 (9) (d) suspensions, revocations~~ or convictions that would be counted under s. 346.63 (1), or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (9) (d) or 346.63 (1), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. ~~Refusals 343.307 (1). Suspensions, revocations~~ and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense under a local ordinance in conformity with s. 346.63 (1) (a) or (b) or both, or under a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (a) or (b) or both, or under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws that is counted under s. 343.307 (1), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

**SECTION 15.** 343.30 (1q) (b) 2. of the statutes is amended to read:

343.30 (1q) (b) 2. Except as provided in subd. 3 or 4, for the first such conviction, suspension or revocation, the court shall suspend the person's operating privilege for not less than 6 months nor more than 9 months. The person is eligible for an occupational license under s. 343.10 at any time.

**SECTION 16.** 343.30 (1q) (b) 3. and 4. of the statutes are amended to read:

343.30 (1q) (b) 3. If the number of ~~refusals and convictions, suspensions and revocations~~ within a 5-year period equals 2, the court shall revoke the person's operating privilege for not less than one year nor more than 18 months. After the first 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

4. If the number of ~~refusals and convictions, suspensions and revocations~~ within a 5-year period equals 3 or more, the court shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan ordered under par. (c).

**SECTION 17.** 343.30 (1q) (b) 5. of the statutes is amended to read:

343.30 (1q) (b) 5. The 5-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, revocations or convictions.

**SECTION 18.** 343.30 (1q) (c) 1m of the statutes is created to read:

343.30 (1q) (c) 1m. The person may voluntarily submit to an assessment by an approved public treatment facility, as defined in s. 51.45 (2) (c), and driver safety plan under this paragraph before the conviction. A prosecutor may not use that voluntary submission to justify a reduction in the charge made against the person. Upon notification of the person's submission to the voluntary assessment and driver safety plan, the court may take that voluntary submission into account when determining the person's sentence, and shall suspend the order to submit to assessment pending the person's completion of the voluntary assessment and driver safety plan.

**SECTION 18m.** 343.30 (1q) (d) of the statutes is amended to read:

343.30 (1q) (d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol or controlled substances, or attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and with treatment. The school under s.

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345.60 shall notify the department, the county department under s. 51.42 and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee is noncompliance with the court order. If the department is notified of any noncompliance, it shall suspend the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. The department shall notify the person of the suspension, the reason for the suspension and the person's right to a review. A person may request a review of a suspension based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

**SECTION 19.** 343.303 of the statutes is amended to read:

**343.303 Preliminary breath screening test.** If a law enforcement officer has probable cause to believe that the person is violating or has violated s. 346.63 (1) or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer detects any presence of alcohol, a controlled substance or other drug, or a combination thereof, on a person driving or operating or on duty time with respect to a commercial motor vehicle or has reason to believe that the person is violating or has violated s. 346.63 (7) or a local ordinance in conformity therewith, the officer, prior to an arrest, may request the person to provide a sample of his or her breath for a preliminary breath screening test using a device approved by the department for this purpose. The result of this preliminary breath screening test may be used by the law enforcement officer for the purpose of deciding whether or not the person shall be arrested for a violation of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1) or 940.25 and whether or not to require or request chemical tests as authorized under s. 343.305 (3).

The result of the preliminary breath screening test shall not be admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested of a person under s. 343.305 (3). Following the screening test, additional tests may be required or requested of the driver under s. 343.305 (3). The general penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary breath screening test.

**SECTION 20.** 343.305 (4) (b) of the statutes is amended to read:

343.305 (4) (b) If testing is refused, a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior suspensions, revocations or convictions within a 5-year period that would be counted under s. 343.307 (1), the person's operating privilege will be revoked under this section and, if the person was driving or operating or on duty time with respect to a commercial motor vehicle, the person will be issued an out-of-service order for the 24 hours following the refusal;

**SECTION 21.** 343.305 (4) (c) 1. of the statutes is amended to read:

343.305 (4) (c) 1. Has ~~an a~~ a prohibited alcohol concentration of ~~0.1 or more~~ and was driving or operating a motor vehicle, the person will be subject to penalties ~~and~~, the person's operating privilege will be suspended under this section and a motor vehicle owned by the person may be immobilized, seized and forfeited or equipped with an ignition interlock device if the person has 2 or more prior convictions, suspensions or revocations within a 5-year period that would be counted under s. 343.307 (1);

**SECTION 22.** 343.305 (5) (d) of the statutes is amended to read:

343.305 (5) (d) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving, or having ~~an a~~ a prohibited alcohol concentration of ~~0.1 or more~~, or alleged to have been driving or operating or on duty time with respect to a commercial motor vehicle while having any measured alcohol concentration above 0.0 or possessing an intoxicating beverage, regardless of its alcohol content, or within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content, or of having an alcohol concentration of 0.04 or more, the results of a test administered in accordance with this section are admissible on the issue of whether the person was under the influ-

ence of an intoxicant or a controlled substance or a combination of alcohol and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely driving or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or any issue relating to the person's alcohol concentration. Test results shall be given the effect required under s. 885.235.

**SECTION 23.** 343.305 (7) (a) of the statutes is amended to read:

343.305 (7) (a) If a person submits to chemical testing administered in accordance with this section and any test results indicate ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~, the law enforcement officer shall report the results to the department and take possession of the person's license and forward it to the department. The person's operating privilege is administratively suspended for 6 months.

**SECTION 24.** 343.305 (8) (b) 2. bm. and d. of the statutes are amended to read:

343.305 (8) (b) 2. bm. Whether the person had ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~ at the time the offense allegedly occurred.

d. If one or more tests were administered in accordance with this section, whether each of the test results for those tests indicate the person had ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~.

**SECTION 25.** 343.305 (8) (b) 5. of the statutes is amended to read:

343.305 (8) (b) 5. If the hearing examiner finds that the criteria for administrative suspension have not been satisfied or that the person did not have ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~ at the time the offense allegedly occurred, the examiner shall order that the administrative suspension of the person's operating privilege be rescinded without payment of the fee under s. 343.21 (1) (j). If the hearing examiner finds that the criteria for administrative suspension have been satisfied and that the person had ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~ at the time the offense allegedly occurred, the administrative suspension shall continue regardless of the type of vehicle driven or operated at the time of the violation. The hearing examiner shall notify the person in writing of the hearing decision, of the right to judicial review and of the court's authority to issue a stay of the suspension under par. (c). The administrative suspension is vacated and the person's operating privilege shall be automatically reinstated under s. 343.39 if the hearing examiner fails to mail this notice to the person within 30 days after the date of the notification under par. (a).

**SECTION 26.** 343.305 (9) (a) 1. of the statutes is amended to read:

343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed the person under arrest and

issued a citation, if appropriate, for a violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

**SECTION 27.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a combination of both, under the influence of any other drug to a degree which renders the person incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of safely driving or having ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~ or, if the person was driving or operating a commercial motor vehicle, an alcohol concentration of 0.04 or more and whether the person was lawfully placed under arrest for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

**SECTION 28.** 343.305 (9) (d) of the statutes is amended to read:

343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined adversely to the person, the court shall proceed under sub. (10). If one or more of the issues is determined favorably to the person, the court shall order that no action be taken on the operating privilege on account of the person's refusal to take the test in question. This section does not preclude the prosecution of the person for violation of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, s. 346.63 (2) or (6), 940.09 (1) or 940.25.

**SECTION 29.** 343.305 (10) (b) 1. of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

343.305 (10) (b) 1. The court shall revoke the person's operating privilege under this paragraph according to the number of previous ~~improper refusals under sub. (9) (d) suspensions, revocations~~ or convictions that would be counted under s. 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. Refusals 343.307 (2). Suspensions, revocations and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense under a local ordinance in substantial conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (1) (a) or (5) (a), or both, or a law of a federally recognized American Indian tribe or band in this state in substantial conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (1) (a) or (5) (a) or both, or under the law of another jurisdiction that is in conformity with 49 CFR

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383.51 (b) (2) (i) or (ii) or both, or that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws that is counted under s. 343.307 (2), that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

**SECTION 30.** 343.305 (10) (b) 3. and 4. of the statutes are amended to read:

343.305 (10) (b) 3. If the number of ~~refusals and convictions, suspensions and revocations~~ in a 5-year period equals 2, the court shall revoke the person's operating privilege for 2 years. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

4. If the number of ~~refusals and convictions, suspensions and revocations~~ in a 5-year period equals 3 or more, the court shall revoke the person's operating privilege for 3 years. After the first 120 days of the revocation period, the person is eligible for an occupational license under s. 343.10 if he or she has completed the assessment and is complying with the driver safety plan.

**SECTION 30m.** 343.305 (10) (d) of the statutes is amended to read:

343.305 (10) (d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse or dependence on alcohol or controlled substances, attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person's compliance or noncompliance with assessment and treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42 and the person of the person's compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee is noncompliance with the court order. If the department is notified of noncompliance, it shall suspend the person's operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. The department shall notify the person of the

suspension, the reason for the suspension and the person's right to a review. A person may request a review of a suspension based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person's operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person's operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

**SECTION 31.** 343.305 (10m) of the statutes is created to read:

343.305 (10m) REFUSALS; SEIZURE, IMMOBILIZATION OR IGNITION INTERLOCK OF A MOTOR VEHICLE. If the person whose operating privilege is revoked under sub. (10) has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), within a 5-year period, the procedure under s. 346.65 (6) shall be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person or the equipping of a motor vehicle owned by the person with an ignition interlock device.

**SECTION 32.** 343.307 of the statutes, as affected by 1991 Wisconsin Act 39, is repealed and recreated to read:

**343.307 Prior convictions, suspensions or revocations to be counted as offenses.** (1) The court shall count the following to determine the length of a revocation or suspension under s. 343.30 (1q) (b) and to determine the penalty under s. 346.65 (2):

(a) Convictions for violations under s. 346.63 (1), or a local ordinance in conformity with that section.

(b) Convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1).

(c) Convictions for violations under s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle.

(d) Convictions under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or sub-

stantially similar terms are used in that jurisdiction's laws.

(e) Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.

(f) Revocations under s. 343.305 (10).

(2) The court shall count the following to determine the length of a revocation under s. 343.305 (10) and to determine the penalty under s. 346.65 (2j) and to determine the prohibited alcohol concentration under s. 340.01 (46m):

(a) Convictions for violations under s. 346.63 (1) or (5), or a local ordinance in conformity with either section.

(b) Convictions for violations of a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) or (5).

(c) Convictions for violations under s. 346.63 (2) or (6).

(d) Convictions under the law of another jurisdiction that is in substantial conformity with 49 CFR 383.51 (b) (2) (i) or (ii) or both.

(e) Convictions under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.

(f) Operating privilege suspensions or revocations under the law of another jurisdiction arising out of a refusal to submit to chemical testing.

(g) Revocations under s. 343.305 (10).

(h) Convictions for violations under s. 940.09 (1) or 940.25.

(3) If the same elements of the offense must be proven under a local ordinance or under a law of a federally recognized American Indian tribe or band in this state as under s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), the local ordinance or the law of a federally recognized American Indian tribe or band in this state shall be considered to be in conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b) 1. and 346.65 (2) and (2j).

**SECTION 32d.** 343.31 (title) of the statutes is amended to read:

**343.31 (title) Revocation or suspension of licenses after certain convictions.**

**SECTION 33.** 343.31 (1) (am) of the statutes is amended to read:

343.31 (1) (am) Injury by the operation of a vehicle while under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance, under the influence of any other drug to a degree which renders him or her incapable of safely

driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or while the person has a blood prohibited alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath and which is criminal under s. 346.63 (2).

**SECTION 33m.** 343.31 (1) (f) of the statutes is amended to read:

343.31 (1) (f) Operating a motor vehicle while operating privileges are suspended or revoked if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25.

**SECTION 33p.** 343.31 (2m) of the statutes is created to read:

343.31 (2m) The department may revoke the operating privilege of any resident upon receiving notice of the conviction of that person of a law of another jurisdiction or a federally recognized American Indian tribe or band in this state for an offense which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have permitted revocation of the person's operating privilege under s. 343.30 (1g). Upon receiving similar notice with respect to a nonresident, the department may revoke the privilege of the nonresident to operate a motor vehicle in this state. The revocation shall not apply to the operation of a commercial motor vehicle by a nonresident who holds a valid commercial driver license issued by another state. A revocation under this subsection shall be for any period not exceeding 6 months.

**SECTION 33r.** 343.31 (3) (a) of the statutes is amended to read:

343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m), all revocations or suspensions under this section shall be for a period of one year.

**SECTION 34.** 343.31 (3) (bm) 1 and 3 to 5 of the statutes, as created by 1991 Wisconsin Act 39, are amended to read:

343.31 (3) (bm) 1. The department shall suspend or revoke the person's operating privilege under this paragraph according to the number of previous ~~improper refusals under s. 343.305 (9) (d) suspensions, revocations~~ or convictions that would be counted under s. 346.63 (1), or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (9) (d) or 346.63 (1), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle. ~~Refusals 343.307 (1). Suspensions, revocations~~ and convictions arising out of the same incident shall be counted as one. If a person has a conviction, suspension or revocation for any offense under a local ordinance in conformity with s. 346.63 (1) (a) or (b) or both,

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or under a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (a) or (b) or both, or under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws ~~that is counted under s. 343.307 (1)~~, that conviction, suspension or revocation shall count as a prior conviction, suspension or revocation under this subdivision.

3. If the number of ~~refusals~~ suspensions, revocations and convictions within a 5-year period equals 2, the department shall revoke the person's operating privilege for not less than one year nor more than 18 months. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than one year nor more than 18 months for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After the first 60 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

4. If the number of ~~refusals~~ suspensions, revocations and convictions within a 5-year period equals 3 or more, the department shall revoke the person's operating privilege for not less than 2 years nor more than 3 years. If an Indian tribal court in this state revokes the person's privilege to operate a motor vehicle on tribal lands for not less than 2 years nor more than 3 years for the conviction specified in par. (bm) (intro.), the department shall impose the same period of revocation. After the first 90 days of the revocation period, the person is eligible for an occupational license under s. 343.10.

5. The 5-year period under this paragraph shall be measured from the dates of the refusals or violations which resulted in the suspensions, revocations or convictions.

**SECTION 34m.** 343.31 (3) (g) of the statutes is amended to read:

343.31 (3) (g) Any person convicted for operating a motor vehicle while operating privileges are suspended or revoked shall have his or her operating privilege revoked for 6 months if the suspension or revocation was for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25.

**SECTION 35.** 343.315 (2) (a) 6. of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

343.315 (2) (a) 6. Section 346.63 (2) or (6), 940.09 (1) or 940.25 or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (2) or (6), 940.09 (1) or 940.25, or the law of another jurisdiction prohibiting causing or inflicting

injury, great bodily harm or death through use of a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance or a combination thereof, or with an alcohol concentration of 0.04 or more or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws.

**SECTION 36.** 343.38 (5) of the statutes is created to read:

343.38 (5) RESTRICTIONS ON LICENSE. If a court has ordered that the person's operating privilege be restricted for a period of time after the revocation period is completed to operating vehicles equipped with an ignition interlock device, the license issued under this section shall include that restriction.

**SECTION 37.** 343.39 (3) of the statutes is created to read:

343.39 (3) If a court has ordered that the person's operating privilege be restricted for a period of time after the suspension period is completed to operating vehicles equipped with an ignition interlock device, the license shall include that restriction.

**SECTION 37d.** 343.44 (2) (intro.) of the statutes, as affected by 1991 Wisconsin Act 64, is amended to read:

343.44 (2) (intro.) Except as provided in ~~sub. subs. (2g) and (2m)~~, any person violating this section is subject to the following penalties:

**SECTION 37e.** 343.44 (2) (a) of the statutes, as affected by 1991 Wisconsin Act 64, is amended to read:

343.44 (2) (a) For the first conviction under this section or a local ordinance in conformity with this section within a 5-year period the person shall may be required to forfeit not less than \$150 nor more than \$600, except that, if the person's operating privilege was revoked under ch. 351 at the time of the offense, the penalty shall may be a fine of not ~~less than \$150 nor~~ more than \$600.

**SECTION 37f.** 343.44 (2) (b) 1. of the statutes, as affected by 1991 Wisconsin Acts 39 and 64, is amended to read:

343.44 (2) (b) 1. Except as provided in subd. 2, for a 2nd conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person shall may be fined not less than \$300 ~~nor~~ more than \$1,000 and shall be imprisoned for not less than ~~5 days nor~~ more than 6 months.

**SECTION 37g.** 343.44 (2) (b) 2. of the statutes is amended to read:

343.44 (2) (b) 2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person shall may be required to forfeit not less than \$300 ~~nor~~ more than \$1,000. This subdivision applies regardless of

the person's failure to reinstate his or her operating privilege.

**SECTION 37h.** 343.44 (2) (c) 1. of the statutes, as affected by 1991 Wisconsin Act 64, is amended to read:

343.44 (2) (c) 1. Except as provided in subd. 2, for a 3rd conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person shall may be fined not ~~less than \$1,000 nor~~ more than \$2,000 and shall may be imprisoned for not ~~less than 30 days nor~~ more than 9 months.

**SECTION 37j.** 343.44 (2) (c) 2. of the statutes is amended to read:

343.44 (2) (c) 2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person shall may be required to forfeit not ~~less than \$1,000 nor~~ more than \$2,000. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

**SECTION 37k.** 343.44 (2) (d) 1. of the statutes, as affected by 1991 Wisconsin Act 64, is amended to read:

343.44 (2) (d) 1. Except as provided in subd. 2, for a 4th conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person shall may be fined not ~~less than \$1,500 nor~~ more than \$2,000 and shall may be imprisoned for not ~~less than 60 days nor~~ more than one year in the county jail.

**SECTION 37L.** 343.44 (2) (d) 2. of the statutes is amended to read:

343.44 (2) (d) 2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person shall may be required to forfeit not ~~less than \$1,500 nor~~ more than \$2,000. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

**SECTION 37m.** 343.44 (2) (e) 1. of the statutes, as affected by 1991 Wisconsin Act 64, is amended to read:

343.44 (2) (e) 1. Except as provided in subd. 2, for a 5th or subsequent conviction under this section or a local ordinance in conformity with this section within a 5-year period, a person shall may be fined not ~~less than \$2,000 nor~~ more than \$2,500 and shall may be imprisoned for not ~~less than 6 months nor~~ more than one year in the county jail.

**SECTION 37n.** 343.44 (2) (e) 2. of the statutes is amended to read:

343.44 (2) (e) 2. If the revocation or suspension that is the basis of a violation was imposed solely due to a failure to pay a fine or a forfeiture, or was imposed solely due to a failure to pay a fine or forfeiture and one or more subsequent convictions for violating sub. (1), the person

shall may be required to forfeit not ~~less than \$2,000 nor~~ more than \$2,500. This subdivision applies regardless of the person's failure to reinstate his or her operating privilege.

**SECTION 37p.** 343.44 (2g) of the statutes is created to read:

343.44 (2g) Except as provided in sub. (2m), any person who violates sub. (1) while his or her operating privilege is suspended or revoked for improperly refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 940.09 (1) or 940.25, is subject to the following penalties:

(a) For the first conviction under this section or a local ordinance in conformity with this section within a 5-year period the person shall forfeit not less than \$150 nor more than \$600, except that, if the person's operating privilege was revoked under ch. 351 at the time of the offense, the penalty shall be a fine of not less than \$150 nor more than \$600.

(b) For a 2nd conviction under this section or a local ordinance in conformity with this section within a 5-year period, the person shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned for not less than 5 days nor more than 6 months.

(c) For a 3rd conviction under this section or a local ordinance in conformity with this section within a 5-year period, the person shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned for not less than 30 days nor more than 9 months.

(d) For a 4th conviction under this section or a local ordinance in conformity with this section within a 5-year period, the person shall be fined not less than \$1,500 nor more than \$2,000 and shall be imprisoned for not less than 60 days nor more than one year in the county jail.

(e) For a 5th or subsequent conviction under this section or a local ordinance in conformity with this section within a 5-year period, the person shall be fined not less than \$2,000 nor more than \$2,500 and shall be imprisoned for not less than 6 months nor more than one year in the county jail.

**SECTION 37r.** 343.44 (2p) of the statutes is created to read:

343.44 (2p) The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to sub. (2) or (2m) to provide cost savings for the state and for local governments. This option shall not be used if the suspension or revocation was for one of the following:

(a) Improperly refusing to take a test under s. 343.305.

(b) Violating s. 346.63 (1) or (5) or a local ordinance in conformity therewith.

(c) Violating s. 346.63 (2) or (6), 940.09 (1) or 940.25.

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**SECTION 38.** 346.63 (1) (b) of the statutes is amended to read:

346.63 (1) (b) The person has a blood prohibited alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

**SECTION 39.** 346.63 (2) (a) 2. of the statutes is amended to read:

346.63 (2) (a) 2. The person has a blood prohibited alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath.

**SECTION 40.** 346.65 (2) (b) to (e) of the statutes, as affected by 1991 Wisconsin Act 39, are amended to read:

346.65 (2) (b) Shall be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the total number of suspensions, revocations under s. 343.305 (10) (b) and convictions counted under s. 346.63 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (10) (b) or 346.63 (1), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, 343.307 (1) equals 2 in a 5-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total number of suspensions, revocations under s. 343.305 (10) (b) and convictions counted under s. 346.63 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (10) (b) or 346.63 (1), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, 343.307 (1) equals 3 in a 5-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(d) 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 total number of suspensions, revocations under s. 343.305 (10) (b) and convictions counted under s. 346.63 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (10) (b) or 346.63 (1), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, 343.307 (1) equals 4 in a 5-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

(e) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than one year in the county jail if the total number

of suspensions, revocations under s. 343.305 (10) (b) and convictions counted under s. 346.63 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (10) (b) or 346.63 (1), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, 343.307 (1) equals 5 or more in a 5-year period, except that suspensions, revocations or convictions arising out of the same incident or occurrence shall be counted as one.

**SECTION 41.** 346.65 (2c) of the statutes is amended to read:

346.65 (2c) In sub. (2) (b) to (e), the 5-year 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 in or a state statute of another state that is in conformity with s. 346.63 (1) (a) or (b) or both 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) (b) to (e).

**SECTION 42.** 346.65 (2e) of the statutes is created to read:

346.65 (2e) If the court determines that a person does not have the ability to pay the costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d) or (e), the court may reduce the costs, fine and forfeiture imposed and order the person to pay, toward the cost of the assessment and driver safety plan imposed under s. 343.30 (1q) (c), the difference between the amount of the reduced costs and fine or forfeiture and the amount of costs and fine or forfeiture imposed under sub. (2) (a), (b), (c), (d) or (e).

**SECTION 42d.** 346.65 (2g) of the statutes is renumbered 346.65 (2g) (a).

**SECTION 42f.** 346.65 (2g) (b) of the statutes is created to read:

346.65 (2g) (b) The court may require a person ordered to perform community service work under par. (a), or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (2), 940.09 (1) or 940.25, to participate in community service work that demonstrates the adverse effects of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug, including working at an alcoholism treatment facility approved under s. 51.45, an emergency room of a general hospital or a driver awareness program under s. 346.637. The court may order the person to pay a reasonable fee, based on the person's ability to pay, to offset the cost of establishing, maintaining and monitoring the community service work ordered under this paragraph. If the opportunities available to perform community service work are fewer in number than the number of defendants eligible under this subsection, the court shall, when making an order under this paragraph, give preference to

defendants who were under 21 years of age at the time of the offense. All provisions of par. (a) apply to any community service work ordered under this paragraph.

**SECTION 42h.** 346.65 (2i) of the statutes is created to read:

346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1) or 940.25, to visit a site that demonstrates the adverse effects of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug, including an alcoholism treatment facility approved under s. 51.45 or an emergency room of a general hospital in lieu of part or all of any forfeiture imposed or in addition to any penalty imposed. The court may order the defendant to pay a reasonable fee, based on the person's ability to pay, to offset the costs of establishing, maintaining and monitoring the visits ordered under this subsection. The court may order a visit to the site only if agreed to by the person responsible for the site. If the opportunities available to visit sites under this subsection are fewer than the number of defendants eligible for a visit, the court shall, when making an order under this subsection, give preference to defendants who were under 21 years of age at the time of the offense. The court shall ensure that the visit is monitored. A visit to a site may be ordered for a specific time and a specific day to allow the defendant to observe victims of vehicle accidents involving intoxicated drivers. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant. The issuance or possibility of the issuance of an order under this subsection does not entitle an indigent defendant who is subject to sub. (2) (a) to representation by counsel under ch. 977.

**SECTION 43.** 346.65 (2j) (b) and (c) of the statutes are amended to read:

346.65 (2j) (b) Shall be fined not less than \$300 nor more than \$1,000 and imprisoned for not less than 5 days nor more than 6 months if the total of prior convictions, suspension and revocations counted under s. 343.307 (2) equals 2 in a 5-year period.

(c) Shall be fined not less than \$600 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of prior convictions, suspensions and revocations counted under s. 343.307 (2) equals 3 or more in a 5-year period.

**SECTION 44.** 346.65 (2w) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

346.65 (2w) In determining the number of prior convictions for purposes of sub. (2j), the court shall count suspensions, revocations under s. 343.305 (10) (b) and convictions that would be counted under s. 346.63 (1) or (5) or a local ordinance in conformity therewith or a law

of a federally recognized American Indian tribe or band in this state in conformity with s. 343.305 (10) (b) or 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle 343.307 (2). Revocations under s. 343.305 (10) (b), suspensions and convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocation, suspension or convictions. If a person has a suspension, revocation or conviction for any offense under a local ordinance in conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (a) or (b) or both, or s. 346.63 (5), or under the law of another jurisdiction that is in substantial conformity with 49 CFR 383.51 (b) (2) (i) or (ii) or both, or that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance, or a combination thereof, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction's laws that is counted under s. 343.307 (2), that suspension, revocation or conviction shall count as a prior suspension, revocation or conviction under this section.

**SECTION 45.** 346.65 (6) of the statutes is created to read:

346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered seized, shall order a law enforcement officer to equip the motor vehicle with an ignition interlock device or immobilize any motor vehicle owned by the person whose operating privilege is revoked under s. 343.305 (10) or who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 2 prior suspensions, revocations or convictions within a 5-year period that would be counted under s. 343.307 (1). The court shall not order a motor vehicle equipped with an ignition interlock device or immobilized if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person.

2. The court shall order a law enforcement officer to seize a motor vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10) or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior suspensions, revocations or convictions

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within a 5–year period that would be counted under s. 343.307 (1).

3. The court shall notify the department, in a form and manner prescribed by the department, that an order to equip a motor vehicle with an ignition interlock device, to immobilize a motor vehicle or to seize a motor vehicle has been entered. The registration records of the department shall reflect that the order has been entered against the vehicle and remains unexecuted. Any law enforcement officer may execute that order and shall transfer any motor vehicle ordered seized to the law enforcement agency that was originally ordered to seize the vehicle based on the information provided by the department. The law enforcement agency shall notify the department when an order has been executed under this subdivision and the department shall amend its vehicle registration records to reflect that notification.

4. The following motor vehicles are not subject to seizure and forfeiture under this subsection:

a. A motor vehicle used by any person as a common carrier in the transaction of business as a common carrier unless the owner or other person in charge of the motor vehicle had knowledge of or consented to the commission of the violation or refusal.

b. A commercial motor vehicle used by any person unless the owner or other person in charge of the commercial motor vehicle had knowledge of or consented to the commission of the violation or refusal.

c. A rented or leased motor vehicle used by a person other than the owner of the motor vehicle unless the violation or refusal was committed with the knowledge or consent of the owner of the motor vehicle.

(b) Within 10 days after seizing or immobilizing a motor vehicle under par. (a), the law enforcement agency that seized or immobilized the vehicle shall provide notice of the seizure or immobilization by certified mail to the owner of the motor vehicle and to all lienholders of record. The notice shall set forth the year, make, model and serial number of the motor vehicle, where the motor vehicle is located, the reason for the seizure or immobilization, and the forfeiture procedure if the vehicle was seized. When a motor vehicle is seized under this section, the law enforcement agency that seized the vehicle shall place the motor vehicle in a secure place subject to the order of the court.

(c) The district attorney of the county where the motor vehicle was seized shall commence an action to forfeit the motor vehicle within 30 days after the motor vehicle is seized. The action shall name the owner of the motor vehicle and all lienholders of record as parties. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the law enforcement agency with the clerk of circuit court. Upon service of an answer, the action shall be set for hearing within 60 days after the service of the answer. If no answer is served or no issue of law or fact joined and the time for

that service or joining of issues has expired, the court may render a default judgment as provided in s. 806.02.

(d) At the hearing set under par. (c), the state has the burden of proving to a reasonable certainty by the greater weight of the credible evidence that the motor vehicle is a motor vehicle owned by a person who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b) and, if the seizure is under par. (a) 1., that the person had 2 prior convictions, suspensions or revocations within a 5–year period as counted under s. 343.307 (1) or, if the seizure is under par. (a) 2., 3. or more prior convictions, suspensions or revocations within a 5–year period as counted under s. 343.307 (1). If the owner of the motor vehicle proves by a preponderance of the evidence that he or she was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) or (b) or 940.25 (1) (a) or (b), or, if the seizure is under par. (a) 1., that he or she did not have 2 prior convictions, suspensions or revocations within a 5–year period as counted under s. 343.307 (1) or, if the seizure is under par. (a) 2., 3. or more prior convictions, suspensions or revocations within a 5–year period as counted under s. 343.307 (1), the motor vehicle shall be returned to the owner upon the payment of storage costs.

(e) If, upon default or after a hearing, the court determines that the motor vehicle is forfeited to the state, the law enforcement agency that seized the motor vehicle shall dispose of the motor vehicle by sealed bid or auction sale following the procedure under s. 342.40 (3) (c), except as provided in par. (em). The law enforcement agency that seized the motor vehicle shall distribute 50% of the proceeds of the sale in the following order:

1. To pay the costs of the sale and of the seizure and storage of the motor vehicle.

2. To pay the law enforcement agency that arrested the violator for the costs of the arrest, investigation and prosecution.

3. To pay the district attorney’s costs of prosecution.

4. To pay the court costs related to the prosecution.

(em) If there is a perfected security interest in the motor vehicle, the law enforcement officer shall transfer the motor vehicle to the lienholder having the primary perfected security interest for sale following the procedure under s. 342.40 (3) (c). The lienholder shall distribute the proceeds of the sale in the following order:

1. To pay the primary lienholder for the amount of the lien, plus costs incurred in selling the vehicle.

2. To pay any other lienholder of record for the amount of the lien.

3. To pay any balance remaining to the law enforcement officer for distribution under pars. (e), (f) and (g).

(f) If a motor vehicle forfeited and sold under this subsection is owned in whole or in part by a person other than the person who committed the violation under par. (a), any moneys remaining from the sale, after making

any payment to the lienholders under par. (em) and as provided in par. (e) 1. to 4., shall be paid to that person to the extent of the person's interest in the motor vehicle.

(g) Any balance remaining from the proceeds of the sale of the motor vehicle after the distribution under par. (f) shall be deposited in the school fund.

(h) After a determination is made that a motor vehicle seized is not subject to forfeiture, the agency having custody of the motor vehicle shall take reasonable steps to notify the owner or other person in charge of the motor vehicle of the location of the motor vehicle and of his or her right to take possession of the motor vehicle.

(k) No person may transfer ownership of any motor vehicle that is subject to immobilization or seizure or to equipping with an ignition interlock device under this subsection or make application for a new certificate of title under s. 342.18 for the motor vehicle unless the court determines that the transfer is in good faith and not for the purpose of or with the effect of defeating the purposes of this subsection. The department may cancel a title or refuse to issue a new certificate of title in the name of the transferee as owner to any person who violates this paragraph.

(m) The court may order a vehicle to be immobilized under this subsection for not more than the period that the person's operating privilege is revoked under s. 343.31. The court may order a vehicle to be equipped with an ignition interlock device under this subsection for not more than 2 years more than the period that the person's operating privilege is revoked under s. 343.31. If the court orders any motor vehicle immobilized or equipped with an ignition interlock device under this subsection, the owner shall be liable for the reasonable costs of the immobilization or the equipping of the ignition interlock device. If a motor vehicle that is immobilized is subject to a security agreement, the court shall release the motor vehicle to the secured party upon the filing of an affidavit by the secured party that the security agreement is in default and upon payment of the accrued cost of immobilizing the motor vehicle.

**SECTION 45m.** 346.65 (7) of the statutes is created to read:

346.65 (7) A person convicted under sub. (2) (b), (c), (d) or (e) or (2j) (b) or (c) shall be required to remain in the county jail for not less than a 48-consecutive-hour period.

**SECTION 46.** 347.413 of the statutes is created to read:

**347.413 Ignition interlock device tampering. (1)** No person may remove, disconnect, tamper with or otherwise circumvent the operation of an ignition interlock device installed in response to the court order under s. 346.65 (6). This subsection does not apply to the removal of an ignition interlock device upon the expiration of the order requiring the motor vehicle to be so equipped or to necessary repairs to a malfunctioning igni-

tion interlock device by a person authorized by the department.

(2) The department shall promulgate a rule establishing specifications and requirements for approved types of ignition interlock devices and their calibration, installation and maintenance.

(3) The department shall design a warning label which shall be affixed to each ignition interlock device upon installation. The label shall provide notice of the penalties for tampering with or circumventing the operation of the ignition interlock device under sub. (1) and s. 343.10 (5) (a) 2. c.

**SECTION 47.** 347.417 of the statutes is created to read:

**347.417 Immobilization device tampering. (1)** No person may remove, disconnect, tamper with or otherwise circumvent the operation of any immobilization device installed in response to a court order under s. 346.65 (6). This subsection does not apply to the removal of an immobilization device pursuant to a court order or to necessary repairs to a malfunctioning immobilization device.

(2) The department shall design a warning label which shall be affixed by the owner of each immobilization device before the device is used to immobilize any motor vehicle under s. 346.65 (6). The label shall provide notice of the penalties for removing, disconnecting, tampering with or otherwise circumventing the operation of the immobilization device.

**SECTION 48.** 347.50 (1) of the statutes, as affected by 1991 Wisconsin Act 26, is amended to read:

347.50 (1) Any person violating ss. 347.35 to 347.49, except s. 347.413 (1) or s. 347.415 (1), (2) and (3) to (5) or s. 347.417 (1) or s. 347.48 (2m) or (4) (a) or s. 347.489, may be required to forfeit not less than \$10 nor more than \$200.

**SECTION 49.** 347.50 (1s) of the statutes is created to read:

347.50 (1s) Any person violating s. 347.413 (1) or 347.417 (1) may be required to forfeit not less than \$150 nor more than \$600 for the first offense. For a 2nd or subsequent conviction within 5 years, the person may be fined not less than \$300 nor more than \$1,000 or imprisoned for not more than 6 months or both.

**SECTION 50.** 885.235 (1) (intro.) of the statutes is amended to read:

885.235 (1) (intro.) In any action or proceeding in which it is material to prove that a person was under the influence of an intoxicant or had a blood prohibited alcohol concentration of ~~0.1% or more~~ or a specified alcohol concentration while operating or driving a motor vehicle or, if the vehicle is a commercial motor vehicle, on duty time, while operating a motorboat, except a sailboat operating under sail alone, while operating a snowmobile, while operating an all-terrain vehicle or while handling a firearm, evidence of the amount of alcohol in the per-

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son's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she was under the influence of an intoxicant or had a ~~blood prohibited~~ alcohol concentration of ~~0.1% or more~~ or a specified alcohol concentration if the sample was taken within 3 hours after the event to be proved. The chemical analysis shall be given effect as follows without requiring any expert testimony as to its effect:

**SECTION 51.** 885.235 (1) (a) 1. of the statutes is created to read:

885.235 (1) (a) 1. The fact that the analysis shows that there was more than 0.0% but less than 0.08% by weight of alcohol in the person's blood or more than 0.0 grams but less than 0.08 grams of alcohol in 210 liters of the person's breath is relevant evidence on the issue of being under the combined influence of alcohol and a controlled substance or any other drug, but, except as provided in par. (d) or sub. (1m), is not to be given any prima facie effect.

**SECTION 52.** 885.235 (1) (bd) and (cd) of the statutes are created to read:

885.235 (1) (bd) Except with respect to the operation of a commercial motor vehicle as provided in par. (d), the fact that the analysis shows that there was more than 0.04% but less than 0.08% by weight of alcohol in the person's blood or more than 0.04 grams but less than 0.08 grams of alcohol in 210 liters of the person's breath is relevant evidence on the issue of intoxication or an alcohol concentration of 0.08 or more, but is not to be given any prima facie effect.

(cd) In cases involving persons who have 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307 (1), the fact that the analysis shows that there was 0.08% or more by weight of alcohol in the person's blood or 0.08 grams or more of alcohol in 210 liters of the person's breath is prima facie evidence that he or she was under the influence of an intoxicant and is prima facie evidence that he or she had an alcohol concentration of 0.08 or more.

**SECTION 53.** 940.09 (1) (intro.), (a) and (b) of the statutes are amended to read:

940.09 (1) (intro.) Any person who does any of the following is guilty of a Class ~~D~~ C felony:

(a) Causes the death of another by the operation or handling of a vehicle, ~~firearm or airgun~~ and while under the influence of an intoxicant;

(b) Causes the death of another by the operation or handling of a vehicle, ~~firearm or airgun~~ while the person has a ~~blood prohibited~~ alcohol concentration of ~~0.1% or more~~ by weight of alcohol in that person's blood or ~~0.1 grams or more of alcohol in 210 liters of that person's breath, as defined in s. 340.01 (46m).~~

**SECTION 54.** 940.09 (1d) of the statutes is created to read:

940.09 (1d) If the person who committed an offense under sub. (1) (a) or (b) has 2 or more prior convictions, suspensions or revocations in a 5-year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

**SECTION 55.** 940.09 (1g) of the statutes is created to read:

940.09 (1g) Any person who does any of the following is guilty of a Class D felony:

(a) Causes the death of another by the operation or handling of a firearm or airgun while under the influence of an intoxicant.

(b) Causes the death of another by the operation or handling of a firearm or airgun while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in that person's blood or 0.10 grams or more of alcohol in 210 liters of that person's breath.

**SECTION 56.** 940.09 (1m) of the statutes is amended to read:

940.09 (1m) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of sub. (1) (a) or (b) or both or of sub. (1) (a) or (bm) or both ~~or of sub. (1g) (a) or (b) or both~~ for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both~~ sub. (1) (a) and (b) or both sub. (1) (a) and (bm) ~~or both sub. (1g) (a) and (b)~~ in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) or of ~~both~~ sub. (1) (a) and (bm) ~~or of both sub. (1g) (a) and (b)~~ for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. and 3., ~~under ss. 343.30 (1g) and 343.305 s. 343.307 (1)~~ or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (b) and (bm), ~~and sub. (1g) (a) and (b)~~, each require proof of a fact for conviction which the other does not require.

**SECTION 57.** 940.09 (2) of the statutes is amended to read:

940.09 (2) The defendant has a defense if he or she proves by a preponderance of the evidence that the death would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b) or ~~if the actor did not have an alcohol concentration of 0.04 or more but less than 0.1 under sub. (1) (bm) or (1g) (b).~~

**SECTION 58.** 940.25 (1) (b) of the statutes is amended to read:

940.25 (1) (b) Causes great bodily harm to another human being by the operation of a vehicle while the person has a ~~blood prohibited~~ alcohol concentration of 0.1%

or more by weight of alcohol in that person's blood or 0.1 grams or more of alcohol in 210 liters of that person's breath, as defined in s. 340.01 (46m).

**SECTION 59.** 940.25 (1d) of the statutes is created to read:

940.25 (1d) If the person who committed the offense under sub. (1) (a) or (b) has 2 or more prior convictions, suspensions or revocations in a 5-year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

**SECTION 60.** 940.25 (2) of the statutes is amended to read:

940.25 (2) The defendant has a defense if he or she proves by a preponderance of the evidence that the great bodily harm would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration described under sub. (1) (b) or if the actor did not have an alcohol concentration of 0.04 or more but less than 0.1 under sub. (1) (bm).

**SECTION 61.** 949.08 (2) (e) of the statutes is amended to read:

949.08 (2) (e) Is an adult passenger in the offender's vehicle and the crime involved is specified in s. 346.63 (2) or 940.25 and the passenger knew the offender was under the influence of an intoxicant, a controlled substance or both or had a blood prohibited alcohol concentration of 0.1% or more, as defined in s. ~~885.235 (5) (a)~~ 340.01 (46m). This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

**SECTION 62.** 967.055 (1) (a) of the statutes is amended to read:

967.055 (1) (a) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motor vehicles by persons under the influence of an intoxicant, a controlled substance or both, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or having a blood prohibited alcohol concentration of 0.1% or more, as defined in s. 340.01 (46m), or offenses concerning the operation of commercial

motor vehicles by persons with an alcohol concentration of 0.04 or more.

**SECTION 62m.** 973.01 (1) (d) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

973.01 (1) (d) Cooperate with the supreme court in developing instructional programs for judges relating to sentencing, including the intensive sanctions program, restitution policies, visits under s. 346.65 (2i) and community service alternatives to incarceration and probation.

**SECTION 63. Nonstatutory provisions.** (1) **STUDY.** The department of transportation, in consultation with the department of natural resources, shall conduct a feasibility study on establishing a uniform system for reporting violations of the intoxicated operation of an all-terrain vehicle law, as defined in section 23.33 (1) (ic) of the statutes, the intoxicated boating law, as defined in section 30.50 (4m) of the statutes, and the intoxicated snowmobiling law, as defined in section 350.01 (9c) of the statutes, and of the laws related to intoxicated motor vehicle use. The department of transportation shall submit the findings and recommendations resulting from the study to the chief clerk of each house of the legislature for distribution to the legislature in the manner provided in section 13.172 (3) of the statutes no later than January 1, 1993.

(2) **IGNITION INTERLOCK RULES.** The department of transportation shall submit the proposed rule required under section 347.413 (2) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 3rd month beginning after the effective date of this subsection.

**SECTION 64. Initial applicability.** (1) This act first applies to offenses committed on the effective date of this subsection, but does not preclude the counting of other convictions, refusals, revocations or suspensions as prior convictions, refusals, revocations or suspensions for sentencing a person, for immobilization or seizure and forfeiture of a motor vehicle, for equipping a motor vehicle with an ignition interlock device or for suspending or revoking a person's operating privilege.

(2) The treatment of section 46.03 (18) (f) of the statutes first applies to assessments ordered on the effective date of this subsection.

**SECTION 65. Effective date.** This act takes effect on January 1, 1993.