

# State of Wisconsin



2003 Assembly Bill 458

Date of enactment: **December 4, 2003**  
Date of publication\*: **December 18, 2003**

## 2003 WISCONSIN ACT 97

**AN ACT** *to renumber and amend* 23.33 (4c) (b) 4., 30.681 (2) (d) 1., 343.305 (8) (b) 5., 346.63 (2) (b), 350.101 (2) (d), 940.09 (1m), 940.09 (2), 940.25 (1m), 940.25 (2) and 967.055 (1m); *to amend* 23.33 (4c) (a) 4., 23.33 (4c) (b) 3., 23.33 (4p) (d), 23.33 (13) (b) 1., 23.33 (13) (b) 2., 23.33 (13) (b) 3., 30.681 (1) (b) (title), 30.681 (1) (c), 30.681 (2) (b) (title), 30.681 (2) (c), 30.684 (4), 343.305 (7) (a), 343.305 (8) (b) 2. bm. and d., 343.305 (9) (a) 5. a., 343.307 (1) (d), 343.307 (2) (e), 343.307 (3), 343.31 (1) (am), 343.31 (2), 343.315 (2) (a) 5., 343.315 (2) (a) 6., 344.576 (2) (b), 346.63 (1) (c), 346.63 (2) (am), 346.65 (2g) (c), 346.65 (2m) (a), 346.65 (6) (a) 1., 346.65 (6) (c), 346.65 (6) (d), 350.101 (1) (d), 350.101 (2) (c), 350.104 (4), 350.11 (3) (a) 1., 350.11 (3) (a) 2., 350.11 (3) (a) 3., 351.02 (1) (a) 10., 885.235 (4), 939.75 (1), 939.75 (2) (b), 939.75 (3) (intro.), 940.09 (1d) (a) 1., 940.09 (1d) (a) 2., 940.09 (1d) (b), 940.25 (1d) (a) 1., 940.25 (1d) (a) 2., 940.25 (1d) (b), 949.08 (2) (e), 949.08 (2) (em), 967.055 (1) (a) and 967.055 (2) (a); and *to create* 23.33 (1) (jo), 23.33 (4c) (a) 2m., 23.33 (4c) (a) 5., 23.33 (4c) (b) 2m., 23.33 (4c) (b) 4. b., 30.50 (10m), 30.681 (1) (b) 1m., 30.681 (1) (d), 30.681 (2) (b) 1m., 30.681 (2) (d) 1. b., 340.01 (50m), 343.305 (5) (e), 343.305 (8) (b) 2. g., 343.305 (8) (b) 4m., 343.305 (8) (b) 5. a., 343.305 (8) (b) 5. b., 343.305 (8) (b) 5. c., 343.305 (8) (b) 6. a., 343.305 (8) (b) 6. b., 343.305 (8) (b) 6. c., 343.315 (2) (a) 1m., 346.63 (1) (am), 346.63 (1) (d), 346.63 (2) (a) 3., 346.63 (2) (b) 2., 350.01 (10v), 350.101 (1) (bm), 350.101 (1) (e), 350.101 (2) (bm), 350.101 (2) (d) 2., 885.235 (1) (d), 885.235 (1k), 939.22 (33), 940.09 (1) (am), 940.09 (1) (cm), 940.09 (1g) (am), 940.09 (1g) (cm), 940.09 (2) (b), 940.25 (1) (am), 940.25 (1) (cm), 940.25 (2) (b), 941.20 (1) (bm) and 967.055 (1m) (b) of the statutes; **relating to:** operating a vehicle or operating or going armed with a firearm after using certain controlled substances and providing penalties.

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

**SECTION 1.** 23.33 (1) (jo) of the statutes is created to read:

23.33 (1) (jo) "Restricted controlled substance" means any of the following:

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.
2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.

3. Cocaine or any of its metabolites.
4. Methamphetamine.
5. Delta-9-tetrahydrocannabinol.

**SECTION 2.** 23.33 (4c) (a) 2m. of the statutes is created to read:

23.33 (4c) (a) 2m. 'Operating with a restricted controlled substance.' No person may engage in the operation of an all-terrain vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 3.** 23.33 (4c) (a) 4. of the statutes is amended to read:

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

23.33 (4c) (a) 4. 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~subd. 1. or 2. or both~~ any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both subds. 1. and 2.~~ any combination of subd. 1., 2., or 2m., the offenses shall be joined. If the person is found guilty of ~~both subds. 1. and 2.~~ any combination of subd. 1., 2., or 2m. 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 sub. (13) (b) 2. and 3. Subdivisions 1. ~~and 2.~~ and 2m. each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 4.** 23.33 (4c) (a) 5. of the statutes is created to read:

23.33 (4c) (a) 5. 'Defenses.' In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 5.** 23.33 (4c) (b) 2m. of the statutes is created to read:

23.33 (4c) (b) 2m. 'Causing injury while operating with a restricted controlled substance.' No person who has a detectable amount of a restricted controlled substance in his or her blood may cause injury to another person by the operation of an all-terrain vehicle.

**SECTION 6.** 23.33 (4c) (b) 3. of the statutes is amended to read:

23.33 (4c) (b) 3. 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~subd. 1. or 2. or both~~ any combination of subd. 1., 2., or 2m. for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both subds. 1. and 2.~~ any combination of subd. 1., 2., or 2m. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of ~~both subds. 1. and 2.~~ any combination of subd. 1., 2., or 2m. 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 sub. (13) (b) 2. and 3. Subdivisions 1. ~~and 2.~~ and 2m. each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 7.** 23.33 (4c) (b) 4. of the statutes is renumbered 23.33 (4c) (b) 4. a. and amended to read:

23.33 (4c) (b) 4. a. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury 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 an alcohol concentration of 0.1 or more, ~~or did not have a detectable amount of a restricted controlled substance in his or her blood.~~

**SECTION 8.** 23.33 (4c) (b) 4. b. of the statutes is created to read:

23.33 (4c) (b) 4. b. In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 9.** 23.33 (4p) (d) of the statutes is amended to read:

23.33 (4p) (d) *Admissibility; effect of test results; other evidence.* The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all-terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

**SECTION 10.** 23.33 (13) (b) 1. of the statutes is amended to read:

23.33 (13) (b) 1. Except as provided under subds. 2. and 3., a person who violates sub. (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e) shall forfeit not less than \$150 nor more than \$300.

**SECTION 11.** 23.33 (13) (b) 2. of the statutes is amended to read:

23.33 (13) (b) 2. Except as provided under subd. 3., a person who violates sub. (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of an all-terrain vehicle law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

**SECTION 12.** 23.33 (13) (b) 3. of the statutes is amended to read:

23.33 (13) (b) 3. A person who violates sub. (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an all-terrain vehicle law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be impris-

oned not less than 30 days nor more than one year in the county jail.

**SECTION 13.** 30.50 (10m) of the statutes is created to read:

30.50 (10m) "Restricted controlled substance" means any of the following:

(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

(b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta-9-tetrahydrocannabinol.

**SECTION 14.** 30.681 (1) (b) (title) of the statutes is amended to read:

30.681 (1) (b) (title) *Operating with after using a controlled substance or alcohol concentrations at or above specified levels.*

**SECTION 15.** 30.681 (1) (b) 1m. of the statutes is created to read:

30.681 (1) (b) 1m. No person may engage in the operation of a motorboat while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 16.** 30.681 (1) (c) of the statutes is amended to read:

30.681 (1) (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any combination of par. (a) or (b) 1., 1m., or 2., the offenses shall be joined. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of par. (a) or (b) 1., 1m., or 2. 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. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m., and 2. each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 17.** 30.681 (1) (d) of the statutes is created to read:

30.681 (1) (d) *Defenses.* In an action under par. (b) 1m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 18.** 30.681 (2) (b) (title) of the statutes is amended to read:

30.681 (2) (b) (title) *Causing injury with after using a controlled substance or alcohol concentrations at or above specified levels.*

**SECTION 19.** 30.681 (2) (b) 1m. of the statutes is created to read:

30.681 (2) (b) 1m. No person who has a detectable amount of a restricted controlled substance in his or her blood may cause injury to another person by the operation of a motorboat.

**SECTION 20.** 30.681 (2) (c) of the statutes is amended to read:

30.681 (2) (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any combination of par. (a) or (b) 1., 1m., or 2. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of par. (a) or (b) 1., 1m., or 2. 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. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m., and 2. each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 21.** 30.681 (2) (d) 1. of the statutes is renumbered 30.681 (2) (d) 1. a. and amended to read:

30.681 (2) (d) 1. a. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a motorboat that is not a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury 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 an alcohol concentration of 0.1 or more or a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 22.** 30.681 (2) (d) 1. b. of the statutes is created to read:

30.681 (2) (d) 1. b. In an action under par. (b) 1m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 23.** 30.684 (4) of the statutes is amended to read:

30.684 (4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible

in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated boating law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

**SECTION 24.** 340.01 (50m) of the statutes is created to read:

340.01 (50m) "Restricted controlled substance" means any of the following:

(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

(b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta-9-tetrahydrocannabinol.

**SECTION 25.** 343.305 (5) (e) of the statutes is created to read:

343.305 (5) (e) 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 having a detectable amount of a restricted controlled substance in his or her blood, the results of a blood test administered in accordance with this section are admissible on any issue relating to the presence of a detectable amount of a restricted controlled substance in the person's blood. Test results shall be given the effect required under s. 885.235.

**SECTION 26.** 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 the presence of a detectable amount of a restricted controlled substance in the person's blood or a prohibited alcohol concentration, 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 27.** 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 a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood 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 a prohibited alco-

hol concentration or a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 28.** 343.305 (8) (b) 2. g. of the statutes is created to read:

343.305 (8) (b) 2. g. Whether the person had a valid prescription for methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol in a case in which subd. 4m. a. and b. apply.

**SECTION 29.** 343.305 (8) (b) 4m. of the statutes is created to read:

343.305 (8) (b) 4m. If, at the time the offense allegedly occurred, all of the following apply, the hearing officer shall determine whether the person had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol:

a. A blood test administered in accordance with this section indicated that the person had a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol but did not have a detectable amount of any other restricted controlled substance in his or her blood.

b. No test administered in accordance with this section indicated that the person had a prohibited alcohol concentration.

**SECTION 30.** 343.305 (8) (b) 5. of the statutes is renumbered 343.305 (8) (b) 5. (intro.) and amended to read:

343.305 (8) (b) 5. (intro.) If the hearing examiner finds that ~~the criteria for administrative suspension have not been satisfied or that the person did not have a prohibited alcohol concentration at the time the offense allegedly occurred~~ any of the following applies, 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)-:

6. If the hearing examiner finds that ~~the criteria for administrative suspension have been satisfied and that the person had a prohibited alcohol concentration at the time the offense allegedly occurred~~ all of the following apply, the administrative suspension shall continue regardless of the type of vehicle driven or operated at the time of the violation-:

7. 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 31.** 343.305 (8) (b) 5. a. of the statutes is created to read:

343.305 (8) (b) 5. a. The criteria for administrative suspension have not been satisfied.

**SECTION 32.** 343.305 (8) (b) 5. b. of the statutes is created to read:

343.305 (8) (b) 5. b. The person did not have a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

**SECTION 33.** 343.305 (8) (b) 5. c. of the statutes is created to read:

343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 34.** 343.305 (8) (b) 6. a. of the statutes is created to read:

343.305 (8) (b) 6. a. The criteria for administrative suspension have been satisfied.

**SECTION 35.** 343.305 (8) (b) 6. b. of the statutes is created to read:

343.305 (8) (b) 6. b. The person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance in his or her blood at the time the offense allegedly occurred.

**SECTION 36.** 343.305 (8) (b) 6. c. of the statutes is created to read:

343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did not have a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 37.** 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 controlled substance analog or any combination of alcohol, a controlled substance and a controlled substance analog, 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, having a restricted controlled substance in his or her blood, or having a prohibited alcohol concentration 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 38.** 343.307 (1) (d) of the statutes is amended to read:

343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits ~~refusal of a person from refusing~~ chemical testing or ~~use of~~ using a motor vehicle while

intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof, ~~or~~; with an excess or specified range of alcohol concentration, ~~or~~; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

**SECTION 39.** 343.307 (2) (e) of the statutes is amended to read:

343.307 (2) (e) Convictions under the law of another jurisdiction that prohibits ~~refusal of a person from refusing~~ chemical testing or ~~use of~~ using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof, ~~or~~; with an excess or specified range of alcohol concentration, ~~or~~; while under the influence of any drug to a degree that renders the person incapable of safely driving; or while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

**SECTION 40.** 343.307 (3) of the statutes is amended to read:

343.307 (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), (am), or (b) ~~or both~~, any combination of s. 346.63 (1) (a), (am), or (b), 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), (am), or (b) ~~or both~~, any combination of s. 346.63 (1) (a), (am), or (b), 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 41.** 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, a controlled substance or a controlled substance analog, or any combination of an intoxicant, a controlled substance and a controlled substance analog, 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 detectable amount of a restricted controlled substance in his or her blood or has a prohibited alcohol concentration and which is criminal under s. 346.63 (2).

**SECTION 42.** 343.31 (2) of the statutes is amended to read:

343.31 (2) The department shall revoke the operating privilege of any resident upon receiving notice of the conviction of such person in another jurisdiction for an offense therein which, if committed in this state, would

have been cause for revocation under this section or for revocation under s. 343.30 (1q). Such offenses shall include violation of any law of another jurisdiction that prohibits use of a person from using a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof, ~~or~~ with an excess or specified range of alcohol concentration, ~~or~~ while under the influence of any drug to a degree that renders the person incapable of safely driving; ~~or while having a detectable amount of a restricted controlled substance in his or her blood,~~ as those or substantially similar terms are used in that jurisdiction's laws. Upon receiving similar notice with respect to a nonresident, the department shall revoke the privilege of the nonresident to operate a motor vehicle in this state. Such 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.

**SECTION 43.** 343.315 (2) (a) 1m. of the statutes is created to read:

343.315 (2) (a) 1m. Section 346.63 (1) (am) 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) (am) or the law of another jurisdiction that prohibits a person from driving or operating a commercial motor vehicle while having a detectable amount of a restricted controlled substance in his or her blood, as those or substantially similar terms are used in that jurisdiction's laws.

**SECTION 44.** 343.315 (2) (a) 5. of the statutes is amended to read:

343.315 (2) (a) 5. Section 343.305 (9) 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) or the law of another jurisdiction prohibiting refusal of a person driving or operating a motor vehicle to submit to chemical testing to determine the person's alcohol concentration or intoxication or the amount of a restricted controlled substance in the person's blood, as those or substantially similar terms are used in that jurisdiction's laws.

**SECTION 45.** 343.315 (2) (a) 6. of the statutes 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, a controlled substance analog 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~~ while under the influence of any drug to a degree that renders the person incapable of

safely driving, or while having a detectable amount of a restricted controlled substance in the person's blood, as those or substantially similar terms are used in that jurisdiction's laws.

**SECTION 46.** 344.576 (2) (b) of the statutes is amended to read:

344.576 (2) (b) The damage occurs while the renter or authorized driver operates the private passenger vehicle in this state while under the influence of an intoxicant or other drug, as described under s. 346.63 (1) (a), (am), or (b) or (2m).

**SECTION 47.** 346.63 (1) (am) of the statutes is created to read:

346.63 (1) (am) The person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 48.** 346.63 (1) (c) of the statutes is amended to read:

346.63 (1) (c) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any combination of par. (a), (am), or (b) for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any combination of par. (a), (am), or (b), the offenses shall be joined. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of par. (a), (am), or (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 ss. 343.30 (1q) and 343.305. Paragraphs (a), (am), and (b) each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 49.** 346.63 (1) (d) of the statutes is created to read:

346.63 (1) (d) In an action under par. (am) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 50.** 346.63 (2) (a) 3. of the statutes is created to read:

346.63 (2) (a) 3. The person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 51.** 346.63 (2) (am) of the statutes is amended to read:

346.63 (2) (am) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~par. (a) 1. or 2. or both~~ any combination of par. (a) 1., 2., or 3, for acts arising out of the same incident or occurrence. If the person is charged with violating ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2., or 3, in the complaint, the crimes shall be joined under s. 971.12. If

the person is found guilty of ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2., or 3. 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 ss. 343.30 (1q) and 343.305. Paragraph (a) 1. ~~and 2.~~ and 3. each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 52.** 346.63 (2) (b) of the statutes is renumbered 346.63 (2) (b) 1. amended to read:

346.63 (2) (b) 1. In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury 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, a controlled substance, a controlled substance analog or a combination thereof, 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~~, did not have a prohibited alcohol concentration described under par. (a) 2., or did not have a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 53.** 346.63 (2) (b) 2. of the statutes is created to read:

346.63 (2) (b) 2. In an action under par. (a) 3. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 54.** 346.65 (2g) (c) of the statutes is amended to read:

346.65 (2g) (c) If there was a minor passenger under 16 years of age in the motor vehicle or commercial motor vehicle at the time of the violation that gave rise to the conviction, the court may require a person ordered to perform community service work under par. (a) or (ag), ~~or~~ under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, or under s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (1) (am) and the motor vehicle that the person was driving or operating was a commercial motor vehicle, to participate in community service work that benefits children or that demonstrates the adverse effects on children of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug. 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.

**SECTION 55.** 346.65 (2m) (a) of the statutes is amended to read:

346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall review the record and consider the aggravating and mitigating factors in the matter. If the ~~level of the person's blood alcohol level~~ amount of alcohol in the person's blood or urine or the amount of a restricted controlled substance in the person's blood is known, the court shall consider that level amount as a factor in sentencing. The chief judge of each judicial administrative district shall adopt guidelines, under the chief judge's authority to adopt local rules under SCR 70.34, for the consideration of aggravating and mitigating factors.

**SECTION 56.** 346.65 (6) (a) 1. of the statutes is amended to read:

346.65 (6) (a) 1. The court may order a law enforcement officer to seize the motor vehicle used in the violation or improper refusal and 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), (am), or (b) or (2) (a) 1. ~~or 2., or 3.,~~ 940.09 (1) (a), (am), (b), (c), (cm), or (d), or 940.25 (1) (a), (am), (b), (c), (cm), or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 2 or more prior suspensions, revocations, or convictions, counting convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other convictions, suspensions, or revocations counted under s. 343.307 (1). The court may not order a motor vehicle seized if the court enters an order under s. 343.301 to immobilize the motor vehicle or equip the motor vehicle with an ignition interlock device or if seizure would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person.

**SECTION 57.** 346.65 (6) (c) of the statutes is amended to read:

346.65 (6) (c) The district attorney of the county where the motor vehicle was seized, or where the owner improperly refused to take the test under s. 343.305 or violated s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or 2., or 3.,~~ 940.09 (1) (a), (am), (b), (c), (cm), or (d) or 940.25 (1) (a), (am), (b), (c), (cm), or (d), 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.

**SECTION 58.** 346.65 (6) (d) of the statutes is amended to read:

346.65 (6) (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 seized under par. (a) 1. is a motor vehicle used in the violation or the improper refusal and owned by a person who committed a violation of s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or 2., or 3.,~~ 940.09 (1) (a), (am), (b), (c), (cm), or (d) or 940.25 (1) (a), (am), (b), (c), (cm), or (d) and that the person had 2 or more prior convictions, suspensions or revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other convictions, suspensions or revocations counted under s. 343.307 (1). If the state fails to meet the burden of proof required under this paragraph, the motor vehicle shall be returned to the owner upon the payment of storage costs.

**SECTION 59.** 350.01 (10v) of the statutes is created to read:

350.01 (10v) "Restricted controlled substance" means any of the following:

(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

(b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta-9-tetrahydrocannabinol.

**SECTION 60.** 350.101 (1) (bm) of the statutes is created to read:

350.101 (1) (bm) *Operating with a restricted controlled substance.* No person may engage in the operation of a snowmobile with a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 61.** 350.101 (1) (d) of the statutes is amended to read:

350.101 (1) (d) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any combination of par. (a), (b), or (bm) for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any combination of par. (a), (b), or (bm), the offenses shall be joined. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of par. (a), (b), or (bm) 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. 350.11 (3) (a) 2. and 3. Paragraphs (a) ~~and~~, (b), ~~and~~ (bm) each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 62.** 350.101 (1) (e) of the statutes is created to read:

350.101 (1) (e) *Defenses.* In an action under par. (bm) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 63.** 350.101 (2) (bm) of the statutes is created to read:

350.101 (2) (bm) *Causing injury while operating a snowmobile with a detectable amount of a restricted controlled substance.* No person who has a detectable amount of a restricted controlled substance in his or her blood may cause injury to another person by the operation of a snowmobile.

**SECTION 64.** 350.101 (2) (c) of the statutes is amended to read:

350.101 (2) (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any combination of par. (a), (b), or (bm) for acts arising out of the same incident or occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any combination of par. (a), (b), or (bm) in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of par. (a), (b), or (bm) 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. 350.11 (3) (a) 2. and 3. Paragraphs (a) ~~and~~, (b), ~~and~~ (bm) each require proof of a fact for conviction which the ~~other does~~ others do not require.

**SECTION 65.** 350.101 (2) (d) of the statutes is renumbered 350.101 (2) (d) 1. and amended to read:

350.101 (2) (d) 1. In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury 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 an alcohol concentration of 0.1 or more or a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 66.** 350.101 (2) (d) 2. of the statutes is created to read:

350.101 (2) (d) 2. In an action under par. (bm) that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors,



gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 67.** 350.104 (4) of the statutes is amended to read:

350.104 (4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results of a chemical test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated snowmobiling law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

**SECTION 68.** 350.11 (3) (a) 1. of the statutes is amended to read:

350.11 (3) (a) 1. Except as provided under subds. 2. and 3., a person who violates s. 350.101 (1) (a) ~~or~~ (b), or (bm) or s. 350.104 (5) shall forfeit not less than \$400 nor more than \$550.

**SECTION 69.** 350.11 (3) (a) 2. of the statutes is amended to read:

350.11 (3) (a) 2. Except as provided under subd. 3., a person who violates s. 350.101 (1) (a) ~~or~~ (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted previously under the intoxicated snowmobiling law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

**SECTION 70.** 350.11 (3) (a) 3. of the statutes is amended to read:

350.11 (3) (a) 3. A person who violates s. 350.101 (1) (a) ~~or~~ (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated snowmobiling law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

**SECTION 71.** 351.02 (1) (a) 10. of the statutes is amended to read:

351.02 (1) (a) 10. Any offense committed by the person under the law of another jurisdiction prohibiting conduct described in sections 6-207, 6-302, 10-102, 10-103, 10-104, 11-901, 11-902, 11-907 or 11-908 of the uniform vehicle code and model traffic ordinance (1987), or prohibiting homicide or manslaughter resulting from the operation of a motor vehicle, use of a motor vehicle in the commission of a felony, reckless or careless driving or driving a motor vehicle with willful or wanton disregard for the safety of persons or property, driving or

operating a motor vehicle while under the influence of alcohol, a controlled substance, a controlled substance analog or any other drug or a combination thereof as prohibited, driving or operating a motor vehicle while having a detectable amount of a restricted controlled substance in the person's blood, refusal to submit to chemical testing, perjury or the making false statements or affidavits to a governmental agency in connection with the ownership or operation of a motor vehicle, failing to stop and identify oneself as the driver or operator in the event of a motor vehicle accident with a person or an attended motor vehicle or fleeing from or attempting to elude a police, law enforcement or other peace officer, as those or substantially similar terms are used in that jurisdiction's laws.

**SECTION 72.** 885.235 (1) (d) of the statutes is created to read:

885.235 (1) (d) "Restricted controlled substance" means any of the following:

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.
2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.
3. Cocaine or any of its metabolites.
4. Methamphetamine.
5. Delta-9-tetrahydrocannabinol.

**SECTION 73.** 885.235 (1k) of the statutes is created to read:

885.235 (1k) In any action or proceeding in which it is material to prove that a person had a detectable amount of a restricted controlled substance in his or her blood 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, if a chemical analysis of a sample of the person's blood shows that the person had a detectable amount of a restricted controlled substance in his or her blood, the court shall treat the analysis as prima facie evidence on the issue of the person having a detectable amount of a restricted controlled substance in his or her blood without requiring any expert testimony as to its effect.

**SECTION 74.** 885.235 (4) of the statutes is amended to read:

885.235 (4) The provisions of this section relating to the admissibility of chemical tests for alcohol concentration or intoxication or for determining whether a person had a detectable amount of a restricted controlled substance in his or her blood shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant, had a detectable amount of a restricted controlled substance in his or her blood, had a specified alcohol concentration, or had an

alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101 (1) (c).

**SECTION 75.** 939.22 (33) of the statutes is created to read:

939.22 (33) "Restricted controlled substance" means any of the following:

(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.

(b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in par. (a).

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta-9-tetrahydrocannabinol.

**SECTION 76.** 939.75 (1) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

939.75 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e), "unborn child" means any individual of the human species from fertilization until birth that is gestating inside a woman.

**SECTION 77.** 939.75 (2) (b) of the statutes is amended to read:

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

**SECTION 78.** 939.75 (3) (intro.) of the statutes is amended to read:

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

**SECTION 79.** 940.09 (1) (am) of the statutes is created to read:

940.09 (1) (am) Causes the death of another by the operation or handling of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 80.** 940.09 (1) (cm) of the statutes is created to read:

940.09 (1) (cm) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 81.** 940.09 (1d) (a) 1. of the statutes is amended to read:

940.09 (1d) (a) 1. Except as provided in subd. 2., if the person who committed an offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more prior convictions, suspensions, or revocations, counting convictions under sub. (1) and s. 940.25 in the person's lifetime, plus other convictions, suspensions, or revocations counted under s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court enters an order regarding operating privilege restriction or enters an order regarding immobilization.

**SECTION 82.** 940.09 (1d) (a) 2. of the statutes is amended to read:

940.09 (1d) (a) 2. Notwithstanding par. (b), if the person who committed an offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more convictions, suspensions, or revocations counted under s. 343.307 (1) within any 5-year period, the procedure under s. 343.301 shall be followed if the court enters an order regarding operating privilege restriction and the installation of an ignition interlock device or enters an order regarding immobilization.

**SECTION 83.** 940.09 (1d) (b) of the statutes is amended to read:

940.09 (1d) (b) If the person who committed an offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more prior convictions, suspensions, or revocations, counting convictions under sub. (1) and s. 940.25 in the person's lifetime, plus other convictions, suspensions, or revocations counted under s. 343.307 (1), the procedure under s. 346.65 (6) shall be followed if the court orders the seizure and forfeiture of the motor vehicle owned by the person and used in the violation.

**SECTION 84.** 940.09 (1g) (am) of the statutes is created to read:

940.09 (1g) (am) Causes the death of another by the operation or handling of a firearm or airgun while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 85.** 940.09 (1g) (cm) of the statutes is created to read:

940.09 (1g) (cm) Causes the death of an unborn child by the operation or handling of a firearm or airgun while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 86.** 940.09 (1m) of the statutes is renumbered 940.09 (1m) (a) and amended to read:

940.09 (1m) (a) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of any combination of sub. (1) (a), (am), or (b) ~~or both~~; any combination of sub. (1) (a), (am), or (bm) ~~or both~~; any combination of sub. (1) (c), (cm), or (d) ~~or both~~; any combination of sub. (1) (c), (cm), or (e) ~~or both~~; any combination of sub. (1g) (a), (am), or (b) ~~or both~~ or; any combination of sub. (1g) (c), (cm), or (d) ~~or both~~ for acts arising out of the same incident or occurrence.

~~(b) If the a person is charged with violating both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c) and (d) in the an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c) and (d) more than one of the crimes so charged 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 s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), ~~(am)~~, (b), (bm), (c), ~~(cm)~~, (d), and (e), ~~and sub. (1g) (a), (b), (c) and (d)~~, each require proof of a fact for conviction which the ~~other does others do~~ not require, and sub. (1g) (a), (am), (b), (c), (cm), and (d) each require proof of a fact for conviction which the others do not require.~~

**SECTION 87.** 940.09 (2) of the statutes is renumbered 940.09 (2) (a) and amended to read:

940.09 (2) (a) The ~~In any action under this section,~~ 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, did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have an alcohol concentration described under sub. (1) (b), (bm), (d) or (e) or (1g) (b) or (d).

**SECTION 88.** 940.09 (2) (b) of the statutes is created to read:

940.09 (2) (b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm) that is based on the defendant allegedly having a detectable amount of methamphetamine or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid or delta-9-tetrahydrocannabinol.

**SECTION 89.** 940.25 (1) (am) of the statutes is created to read:

940.25 (1) (am) Causes great bodily harm to another human being by the operation of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 90.** 940.25 (1) (cm) of the statutes is created to read:

940.25 (1) (cm) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.

**SECTION 91.** 940.25 (1d) (a) 1. of the statutes is amended to read:

940.25 (1d) (a) 1. Except as provided in subd. 2., if the person who committed an offense under sub. (1) (a), ~~(am)~~, (b), (c), ~~(cm)~~, or (d) has 2 or more prior convictions, suspensions, or revocations, counting convictions under sub. (1) and s. 940.09 (1) in the person's lifetime, plus other convictions, suspensions, or revocations counted under s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court enters an order regarding operating privilege restriction or enters an order regarding immobilization.

**SECTION 92.** 940.25 (1d) (a) 2. of the statutes is amended to read:

940.25 (1d) (a) 2. Notwithstanding par. (b), if the person who committed an offense under sub. (1) (a), ~~(am)~~, (b), (c), ~~(cm)~~, or (d) has 2 or more convictions, suspensions, or revocations counted under s. 343.307 (1) within any 5-year period, the procedure under s. 343.301 shall be followed if the court enters an order regarding operating privilege restriction and the installation of an ignition interlock device or enters an order regarding immobilization.

**SECTION 93.** 940.25 (1d) (b) of the statutes is amended to read:

940.25 (1d) (b) If the person who committed an offense under sub. (1) (a), ~~(am)~~, (b), (c), ~~(cm)~~, or (d) has 2 or more prior convictions, suspensions, or revocations, counting convictions under sub. (1) and s. 940.09 (1) in the person's lifetime, plus other convictions, suspensions, or revocations counted under s. 343.307 (1), the procedure under s. 346.65 (6) shall be followed if the court orders the seizure and forfeiture of the motor vehicle owned by the person and used in the violation.

**SECTION 94.** 940.25 (1m) of the statutes is renumbered 940.25 (1m) (a) and amended to read:

940.25 (1m) (a) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of any combination of sub. (1) (a), ~~(am)~~, or (b) ~~or both;~~ any any combination of sub. (1) (a), ~~(am)~~, or (bm) ~~or both;~~ any combination of sub. (1) (c), ~~(cm)~~, or (d) ~~or both;~~ any combination of or sub. (1) (c), ~~(cm)~~, or (e) ~~or both;~~ any combination of or sub. (1) (c), ~~(cm)~~, or (e) ~~or both;~~ any combination of for acts arising out of the same incident or occurrence.

~~(b) If the a person is charged with violating both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) in the an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) more than one of the crimes so charged 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. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for conviction which the other does others do not require.

**SECTION 95.** 940.25 (2) of the statutes is renumbered 940.25 (2) (a) and amended to read:

940.25 (2) (a) 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, did not have a detectable amount of a restricted controlled substance in his or her blood, or did not have an alcohol concentration described under sub. (1) (b), (bm), (d) or (e).

**SECTION 96.** 940.25 (2) (b) of the statutes is created to read:

940.25 (2) (b) In any action under this section that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 97.** 941.20 (1) (bm) of the statutes is created to read:

941.20 (1) (bm) Operates or goes armed with a fire-arm while he or she has a detectable amount of a restricted controlled substance in his or her blood. A defendant has a defense to any action under this paragraph that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood, if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

**SECTION 98.** 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, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, or had a prohibited alcohol concentration, as defined in s. 340.01 (46m) committing that offense. 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 99.** 949.08 (2) (em) of the statutes is amended to read:

949.08 (2) (em) Is an adult passenger in the offender's commercial motor vehicle and, the crime involved is specified in s. 346.63 (6) or 940.25, and the passenger knew the offender was under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, or had an alcohol concentration of 0.04 or more but less than 0.1 committing that offense. 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 100.** 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, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, 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 prohibited alcohol concentration, as defined in s. 340.01 (46m), or offenses concerning the operation of motor vehicles by persons with a detectable amount of a restricted controlled substance in his or her blood, and offenses concerning the operation of commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.

**SECTION 101.** 967.055 (1m) of the statutes is renumbered 967.055 (1m) (intro.) and amended to read:

967.055 (1m) DEFINITION DEFINITIONS. (intro.) In this section, "drug";

(a) "Drug" has the meaning specified in s. 450.01 (10).

**SECTION 102.** 967.055 (1m) (b) of the statutes is created to read:

967.055 (1m) (b) "Restricted controlled substance" means any of the following:

1. A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol.
2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled substance described in subd. 1.
3. Cocaine or any of its metabolites.
4. Methamphetamine.
5. Delta-9-tetrahydrocannabinol.

**SECTION 103.** 967.055 (2) (a) of the statutes is amended to read:

967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or (5) 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 an improper refusal under s. 343.305, the prosecutor shall apply to the

court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motor vehicles by persons who are under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, 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, in deterring the operation of motor vehicles by persons with a detectable amount of a restricted controlled substance in his or her blood, or in deterring the operation of commercial

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motor vehicles by persons with an alcohol concentration of 0.04 or more. The court may not approve an application to amend the vehicle classification from a commercial motor vehicle to a noncommercial motor vehicle unless there is evidence in the record that the motor vehicle being operated by the defendant at the time of his or her arrest was not a commercial motor vehicle.

**SECTION 104. Initial applicability.**

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