



State of Wisconsin  
1999 - 2000 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO 1999 ASSEMBLY BILL 238**

September 29, 1999 – Offered by Representatives HUBER, STONE, BLACK, YOUNG and  
JOHNSRUD.

1     **AN ACT to amend** 85.53 (1) (d), 342.12 (4) (a), 343.16 (5) (a), 343.30 (1g), 343.30  
2           (1q) (a), 343.303, 343.305 (3) (a), 343.305 (3) (b), 343.305 (5) (b), 343.305 (9) (a)  
3           1., 343.305 (9) (a) 5. a., 343.305 (9) (d), 343.31 (3) (g), 343.31 (3m) (a), 343.315  
4           (2) (a) 6., 343.44 (2g) (intro.), 343.44 (2p) (c), 345.24 (1), 345.60 (3), 346.635,  
5           346.65 (2g) (b), 346.65 (2g) (c), 346.65 (2i), 346.65 (6) (a) 1., 346.65 (6) (a) 2.,  
6           346.65 (6) (d), 346.655 (1), 949.03 (1) (b), 949.08 (2) (e) and 967.055 (2) (a); and  
7           **to create** 340.01 (19d), 343.31 (3) (k), 346.705 and 346.74 (6) of the statutes;  
8           **relating to:** the consumption of alcohol after a reportable traffic accident and  
9           providing a penalty.

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

10           **SECTION 1.** 85.53 (1) (d) of the statutes is amended to read:

1           85.53 (1) (d) “Operating while intoxicated” means a violation of s. 346.63 (1) or  
2 (2m) or a local ordinance in conformity therewith or of s. 346.63 (2) or (6), 346.705,  
3 940.09 (1) or 940.25.

4           **SECTION 2.** 340.01 (19d) of the statutes is created to read:

5           340.01 (19d) “Great bodily harm” has the meaning given in s. 939.22 (14).

6           **SECTION 3.** 342.12 (4) (a) of the statutes is amended to read:

7           342.12 (4) (a) The district attorney shall notify the department when he or she  
8 files a criminal complaint against a person who has been arrested for violating s.  
9 346.63 (1) or (2), 346.705, 940.09 (1) or 940.25 and who has 2 or more prior  
10 convictions, suspensions or revocations, as counted under s. 343.307 (1). Except as  
11 provided under par. (c), the department may not issue a certificate of title  
12 transferring ownership of any motor vehicle owned by the person upon receipt of a  
13 notice under this subsection until the court assigned to hear the criminal complaint  
14 issues an order permitting the department to issue a certificate of title.

15           **SECTION 4.** 343.16 (5) (a) of the statutes is amended to read:

16           343.16 (5) (a) The secretary may require any applicant for a license or any  
17 licensed operator to submit to a special examination by such persons or agencies as  
18 the secretary may direct to determine incompetency, physical or mental disability,  
19 disease or any other condition which might prevent such applicant or licensed person  
20 from exercising reasonable and ordinary control over a motor vehicle. When the  
21 department requires the applicant to submit to an examination, the applicant shall  
22 pay the cost thereof. If the department receives an application for a renewal or  
23 duplicate license after voluntary surrender under s. 343.265 or receives a report from  
24 a physician or optometrist under s. 146.82 (3), or if the department has a report of  
25 2 or more arrests within a one-year period for any combination of violations of s.

1 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally  
2 recognized American Indian tribe or band in this state in conformity with s. 346.63  
3 (1) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6), 346.705 or 940.25, or  
4 s. 940.09 where the offense involved the use of a vehicle, the department shall  
5 determine, by interview or otherwise, whether the operator should submit to an  
6 examination under this section. The examination may consist of an assessment. If  
7 the examination indicates that education or treatment for a disability, disease or  
8 condition concerning the use of alcohol, a controlled substance or a controlled  
9 substance analog is appropriate, the department may order a driver safety plan in  
10 accordance with s. 343.30 (1q). If there is noncompliance with assessment or the  
11 driver safety plan, the department shall suspend the person's operating privilege in  
12 the manner specified in s. 343.30 (1q) (d).

13 **SECTION 5.** 343.30 (1g) of the statutes is amended to read:

14 343.30 (1g) A court may revoke a person's operating privilege upon the person's  
15 conviction for violating s. 343.44 (1) or a local ordinance in conformity therewith by  
16 operating a motor vehicle while operating privileges are suspended or revoked. A  
17 court shall revoke a person's operating privilege upon the person's conviction for  
18 violating s. 343.44 (1) or a local ordinance in conformity therewith by operating a  
19 motor vehicle while operating privileges are suspended or revoked if the suspension  
20 or revocation was for improperly refusing to take a test under s. 343.305, violating  
21 s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63  
22 (2) or (6), 346.705, 940.09 (1) or 940.25. The revocation shall be for any period not  
23 exceeding 6 months.

24 **SECTION 6.** 343.30 (1q) (a) of the statutes is amended to read:

1           343.30 (1q) (a) If a person is convicted under s. 346.63 (1) or a local ordinance  
2 in conformity therewith, the court shall proceed under this subsection. If a person  
3 is convicted under s. 346.63 (2), 346.705 or 940.25, or s. 940.09 where the offense  
4 involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a  
5 person is referred by the department acting under s. 343.16 (5) (a), the department  
6 shall proceed under pars. (c) and (d) without the order of the court.

7           **SECTION 7.** 343.303 of the statutes is amended to read:

8           **343.303 Preliminary breath screening test.** If a law enforcement officer  
9 has probable cause to believe that the person is violating or has violated s. 346.63 (1)  
10 or (2m) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 346.705  
11 or 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer  
12 detects any presence of alcohol, a controlled substance, controlled substance analog  
13 or other drug, or a combination thereof, on a person driving or operating or on duty  
14 time with respect to a commercial motor vehicle or has reason to believe that the  
15 person is violating or has violated s. 346.63 (7) or a local ordinance in conformity  
16 therewith, the officer, prior to an arrest, may request the person to provide a sample  
17 of his or her breath for a preliminary breath screening test using a device approved  
18 by the department for this purpose. The result of this preliminary breath screening  
19 test may be used by the law enforcement officer for the purpose of deciding whether  
20 or not the person shall be arrested for a violation of s. 346.63 (1), (2m), (5) or (7) or  
21 a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 346.705, 940.09 (1)  
22 or 940.25 and whether or not to require or request chemical tests as authorized under  
23 s. 343.305 (3). The result of the preliminary breath screening test shall not be  
24 admissible in any action or proceeding except to show probable cause for an arrest,  
25 if the arrest is challenged, or to prove that a chemical test was properly required or

1 requested of a person under s. 343.305 (3). Following the screening test, additional  
2 tests may be required or requested of the driver under s. 343.305 (3). The general  
3 penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary  
4 breath screening test.

5 **SECTION 8.** 343.305 (3) (a) of the statutes is amended to read:

6 343.305 (3) (a) Upon arrest of a person for violation of s. 346.63 (1), (2m) or (5)  
7 or a local ordinance in conformity therewith, or for a violation of s. 346.63 (2) or (6),  
8 346.705 or 940.25, or s. 940.09 where the offense involved the use of a vehicle, a law  
9 enforcement officer may request the person to provide one or more samples of his or  
10 her breath, blood or urine for the purpose specified under sub. (2). Compliance with  
11 a request for one type of sample does not bar a subsequent request for a different type  
12 of sample.

13 **SECTION 9.** 343.305 (3) (b) of the statutes is amended to read:

14 343.305 (3) (b) A person who is unconscious or otherwise not capable of  
15 withdrawing consent is presumed not to have withdrawn consent under this  
16 subsection, and if a law enforcement officer has probable cause to believe that the  
17 person has violated s. 346.63 (1), (2m) or (5) or a local ordinance in conformity  
18 therewith, or s. 346.63 (2) or (6), 346.705 or 940.25, or s. 940.09 where the offense  
19 involved the use of a vehicle, or detects any presence of alcohol, controlled substance,  
20 controlled substance analog or other drug, or a combination thereof, on a person  
21 driving or operating or on duty time with respect to a commercial motor vehicle or  
22 has reason to believe the person has violated s. 346.63 (7), one or more samples  
23 specified in par. (a) or (am) may be administered to the person.

24 **SECTION 10.** 343.305 (5) (b) of the statutes is amended to read:

1           343.305 (5) (b) Blood may be withdrawn from the person arrested for violation  
2 of s. 346.63 (1), (2), (2m), (5) or (6), 346.705 or 940.25, or s. 940.09 where the offense  
3 involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m)  
4 or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of  
5 alcohol, a controlled substance, a controlled substance analog or any other drug, or  
6 any combination of alcohol, controlled substance, controlled substance analog and  
7 any other drug in the blood only by a physician, registered nurse, medical  
8 technologist, physician assistant or person acting under the direction of a physician.

9           **SECTION 11.** 343.305 (9) (a) 1. of the statutes is amended to read:

10           343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed  
11 the person under arrest for a violation of s. 346.63 (1), (2m) or (5) or a local ordinance  
12 in conformity therewith or s. 346.63 (2) or (6), 346.705, 940.09 (1) or 940.25.

13           **SECTION 12.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

14           343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the  
15 person was driving or operating a motor vehicle while under the influence of alcohol,  
16 a controlled substance or a controlled substance analog or any combination of  
17 alcohol, a controlled substance and a controlled substance analog, under the  
18 influence of any other drug to a degree which renders the person incapable of safely  
19 driving, or under the combined influence of alcohol and any other drug to a degree  
20 which renders the person incapable of safely driving or having a prohibited alcohol  
21 concentration or, if the person was driving or operating a commercial motor vehicle,  
22 an alcohol concentration of 0.04 or more and whether the person was lawfully placed  
23 under arrest for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity  
24 therewith or s. 346.63 (2) or (6), 346.705, 940.09 (1) or 940.25.

25           **SECTION 13.** 343.305 (9) (d) of the statutes is amended to read:

1           343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court  
2 shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined  
3 adversely to the person, the court shall proceed under sub. (10). If one or more of the  
4 issues is determined favorably to the person, the court shall order that no action be  
5 taken on the operating privilege on account of the person's refusal to take the test in  
6 question. This section does not preclude the prosecution of the person for violation  
7 of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, or s.  
8 346.63 (2) or (6), 346.705, 940.09 (1) or 940.25.

9           **SECTION 14.** 343.31 (3) (g) of the statutes is amended to read:

10           343.31 (3) (g) Any person convicted for operating a motor vehicle while  
11 operating privileges are suspended or revoked shall have his or her operating  
12 privilege revoked for 6 months if the suspension or revocation was for improperly  
13 refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local  
14 ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 346.705, 940.09  
15 (1) or 940.25.

16           **SECTION 15.** 343.31 (3) (k) of the statutes is created to read:

17           343.31 (3) (k) Any person convicted under s. 346.705 shall have his or her  
18 operating privilege revoked for not less than one year nor more than 2 years. If a  
19 person is convicted under s. 346.705 where the accident involved great bodily harm  
20 to another person, the period of revocation is 2 years. If a person is convicted under  
21 s. 346.705 where the accident involved death, the period of revocation is 5 years. If  
22 there was a minor passenger under 16 years of age or an unborn child, as defined in  
23 s. 939.75 (1), in the motor vehicle at the time of the violation that gave rise to the  
24 conviction under s. 346.705, the minimum and maximum revocation periods are  
25 doubled.

1           **SECTION 16.** 343.31 (3m) (a) of the statutes is amended to read:

2           343.31 **(3m)** (a) Any person who has his or her operating privilege revoked  
3 under sub. (3) (c) ~~or~~, (f) or (k) is eligible for an occupational license under s. 343.10  
4 after the first 120 days of the revocation period.

5           **SECTION 17.** 343.315 (2) (a) 6. of the statutes is amended to read:

6           343.315 **(2)** (a) 6. Section 346.63 (2) or (6), 346.705, 940.09 (1) or 940.25 or a law  
7 of a federally recognized American Indian tribe or band in this state in conformity  
8 with s. 346.63 (2) or (6), 346.705, 940.09 (1) or 940.25, or the law of another  
9 jurisdiction prohibiting causing or inflicting injury, great bodily harm or death  
10 through use of a motor vehicle while intoxicated or under the influence of alcohol, a  
11 controlled substance, a controlled substance analog or a combination thereof, or with  
12 an alcohol concentration of 0.04 or more or with an excess or specified range of alcohol  
13 concentration, or under the influence of any drug to a degree that renders the person  
14 incapable of safely driving, as those or substantially similar terms are used in that  
15 jurisdiction's laws.

16           **SECTION 18.** 343.44 (2g) (intro.) of the statutes is amended to read:

17           343.44 **(2g)** (intro.) Except as provided in sub. (2m), any person who violates  
18 sub. (1) while his or her operating privilege is suspended or revoked for improperly  
19 refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local  
20 ordinance in conformity therewith, or violating s. 346.63 (2) or (6), 346.705, 940.09  
21 (1) or 940.25, is subject to the following penalties:

22           **SECTION 19.** 343.44 (2p) (c) of the statutes is amended to read:

23           343.44 **(2p)** (c) Violating s. 346.63 (2) or (6), 346.705, 940.09 (1) or 940.25.

24           **SECTION 20.** 345.24 (1) of the statutes is amended to read:



1           345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in  
2 conformity therewith or s. 346.63 (2) or (6), 346.705 or 940.25, or s. 940.09 where the  
3 offense involved the use of a vehicle, may not be released until 12 hours have elapsed  
4 from the time of his or her arrest or unless a chemical test administered under s.  
5 343.305 shows that the person has an alcohol concentration of less than 0.04, but the  
6 person may be released to his or her attorney, spouse, relative or other responsible  
7 adult at any time after arrest.

8           **SECTION 21.** 345.60 (3) of the statutes is amended to read:

9           345.60 (3) In addition to other penalties provided by law for violation of s.  
10 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (2), 346.705 or  
11 940.25, or s. 940.09 where the offense involved the use of a vehicle, the convicted  
12 person may be required under s. 343.30 (1q) to attend, for a certain number of school  
13 days, a school under sub. (1).

14           **SECTION 22.** 346.635 of the statutes is amended to read:

15           **346.635 Report arrest or out-of-service order to department.**

16 Whenever a law enforcement officer arrests a person for a violation of s. 346.63 (1),  
17 (5) or (7), or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 346.705  
18 or 940.25, or s. 940.09 where the offense involved the use of a vehicle, the officer shall  
19 notify the department of the arrest and of issuance of an out-of-service order under  
20 s. 343.305 (7) (b) or (9) (am) as soon as practicable.

21           **SECTION 23.** 346.65 (2g) (b) of the statutes is amended to read:

22           346.65 (2g) (b) The court may require a person ordered to perform community  
23 service work under par. (a), or under s. 973.05 (3) (a) if that person's fine resulted from  
24 violating s. 346.63 (2), 346.705, 940.09 (1) or 940.25, to participate in community  
25 service work that demonstrates the adverse effects of substance abuse or of operating

1 a vehicle while under the influence of an intoxicant or other drug, including working  
2 at an alcoholism treatment facility approved under s. 51.45, an emergency room of  
3 a general hospital or a driver awareness program under s. 346.637. The court may  
4 order the person to pay a reasonable fee, based on the person's ability to pay, to offset  
5 the cost of establishing, maintaining and monitoring the community service work  
6 ordered under this paragraph. If the opportunities available to perform community  
7 service work are fewer in number than the number of defendants eligible under this  
8 subsection, the court shall, when making an order under this paragraph, give  
9 preference to defendants who were under 21 years of age at the time of the offense.  
10 All provisions of par. (a) apply to any community service work ordered under this  
11 paragraph.

12 **SECTION 24.** 346.65 (2g) (c) of the statutes is amended to read:

13 346.65 (2g) (c) If there was a minor passenger under 16 years of age in the  
14 motor vehicle or commercial motor vehicle at the time of the violation that gave rise  
15 to the conviction, the court may require a person ordered to perform community  
16 service work under par. (a), or under s. 973.05 (3) (a) if that person's fine resulted from  
17 violating s. 346.63 (2), (5) (a) or (6) (a), 346.705, 940.09 (1) or 940.25, to participate  
18 in community service work that benefits children or that demonstrates the adverse  
19 effects on children of substance abuse or of operating a vehicle while under the  
20 influence of an intoxicant or other drug. The court may order the person to pay a  
21 reasonable fee, based on the person's ability to pay, to offset the cost of establishing,  
22 maintaining and monitoring the community service work ordered under this  
23 paragraph.

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

1           346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05  
2           (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to  
3           s. 973.05 (3) (a) who violated s. 346.63 (2), 346.705, 940.09 (1) or 940.25, to visit a site  
4           that demonstrates the adverse effects of substance abuse or of operating a vehicle  
5           while under the influence of an intoxicant or other drug, including an alcoholism  
6           treatment facility approved under s. 51.45 or an emergency room of a general  
7           hospital in lieu of part or all of any forfeiture imposed or in addition to any penalty  
8           imposed. The court may order the defendant to pay a reasonable fee, based on the  
9           person's ability to pay, to offset the costs of establishing, maintaining and monitoring  
10          the visits ordered under this subsection. The court may order a visit to the site only  
11          if agreed to by the person responsible for the site. If the opportunities available to  
12          visit sites under this subsection are fewer than the number of defendants eligible for  
13          a visit, the court shall, when making an order under this subsection, give preference  
14          to defendants who were under 21 years of age at the time of the offense. The court  
15          shall ensure that the visit is monitored. A visit to a site may be ordered for a specific  
16          time and a specific day to allow the defendant to observe victims of vehicle accidents  
17          involving intoxicated drivers. If it appears to the court that the defendant has not  
18          complied with the court order to visit a site or to pay a reasonable fee, the court may  
19          order the defendant to show cause why he or she should not be held in contempt of  
20          court. Any organization or agency acting in good faith to which a defendant is  
21          assigned pursuant to an order under this subsection has immunity from any civil  
22          liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.  
23          The issuance or possibility of the issuance of an order under this subsection does not  
24          entitle an indigent defendant who is subject to sub. (2) (a) to representation by  
25          counsel under ch. 977.

1           **SECTION 26.** 346.65 (6) (a) 1. of the statutes is amended to read:

2           346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a  
3 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered  
4 seized, shall order a law enforcement officer to equip the motor vehicle with an  
5 ignition interlock device or immobilize any motor vehicle owned by the person whose  
6 operating privilege is revoked under s. 343.305 (10) or who committed a violation of  
7 s. 346.63 (1) (a), (b) or (2) (a) 1. or 2., 346.705, 940.09 (1) (a), (b), (c) or (d) or 940.25  
8 (1) (a), (b), (c) or (d) if the person whose operating privilege is revoked under s.  
9 343.305 (10) or who is convicted of the violation has 2 prior suspensions, revocations  
10 or convictions that would be counted under s. 343.307 (1). The court shall not order  
11 a motor vehicle equipped with an ignition interlock device or immobilized if that  
12 would result in undue hardship or extreme inconvenience or would endanger the  
13 health and safety of a person.

14           **SECTION 27.** 346.65 (6) (a) 2. of the statutes is amended to read:

15           346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor  
16 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)  
17 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 346.705, 940.09  
18 (1) (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) if the person whose operating  
19 privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 3  
20 or more prior suspensions, revocations or convictions that would be counted under  
21 s. 343.307 (1).

22           **SECTION 28.** 346.65 (6) (d) of the statutes is amended to read:

23           346.65 (6) (d) At the hearing set under par. (c), the state has the burden of  
24 proving to a reasonable certainty by the greater weight of the credible evidence that  
25 the motor vehicle is a motor vehicle owned by a person who committed a violation of

1 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 346.705, 940.09 (1) (a), (b), (c) or (d) or 940.25  
2 (1) (a), (b), (c) or (d) and, if the seizure is under par. (a) 1., that the person had 2 prior  
3 convictions, suspensions or revocations, as counted under s. 343.307 (1) or, if the  
4 seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations,  
5 as counted under s. 343.307 (1). If the ~~,, (e) or (d) ,, (e) or (d)~~ state fails to meet the  
6 burden of proof required under this paragraph, the motor vehicle shall be returned  
7 to the owner upon the payment of storage costs.

8 **SECTION 29.** 346.655 (1) of the statutes is amended to read:

9 346.655 (1) ~~On or after July 1, 1988, if~~ If a court imposes a fine or a forfeiture  
10 for a violation of s. 346.63 (1) or (5), or a local ordinance in conformity therewith, or  
11 s. 346.63 (2) or (6), 346.705 or 940.25, or s. 940.09 where the offense involved the use  
12 of a vehicle, it shall impose a driver improvement surcharge in an amount of \$340  
13 in addition to the fine or forfeiture, penalty assessment, jail assessment and crime  
14 laboratories and drug law enforcement assessment.

15 **SECTION 30.** 346.705 of the statutes is created to read:

16 **346.705 Prohibited blood alcohol concentration after an accident.** The  
17 operator of a motor vehicle who was involved in an accident that is reportable under  
18 s. 346.70 (1) may not have an alcohol concentration of 0.1 or more within 3 hours after  
19 that accident occurred. If the operator of a motor vehicle who was involved in an  
20 accident that is reportable under s. 346.70 (1) has 2 or more prior convictions,  
21 suspensions or revocations, as counted under s. 343.307 (1), he or she may not have  
22 an alcohol concentration of 0.08 or more within 3 hours after that accident occurred.

23 **SECTION 31.** 346.74 (6) of the statutes is created to read:

24 346.74 (6) Any person violating s. 346.705 shall be penalized as follows:

1 (a) Except as provided in pars. (b), (c) and (d), by a fine of not less than \$300  
2 nor more than \$2,000 and imprisonment for not less than 30 days nor more than one  
3 year in the county jail.

4 (b) If the person's operation of the motor vehicle resulted in great bodily harm  
5 to another person, by a fine of not more than \$10,000 and imprisonment for not more  
6 than 5 years.

7 (c) If the person's operation of the motor vehicle resulted in death to another  
8 person, by a fine of not more than \$10,000 and imprisonment for not more than 40  
9 years.

10 (d) If there was a minor passenger under 16 years of age in the motor vehicle  
11 at the time of the violation that gave rise to the conviction under s. 346.705, the  
12 offense is a felony, the applicable minimum and maximum fines or periods of  
13 imprisonment for the conviction are doubled and the place of imprisonment shall be  
14 determined under s. 973.02.

15 **SECTION 32.** 949.03 (1) (b) of the statutes is amended to read:

16 949.03 (1) (b) The commission or the attempt to commit any crime specified in  
17 s. 346.62 (4), 346.63 (2) or (6), 346.705, 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,  
18 940.08, 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23,  
19 940.24, 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02,  
20 943.03, 943.04, 943.10, 943.20, 943.23 (1g), (1m) or (1r), 943.32, 948.02, 948.025,  
21 948.03, 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

22 **SECTION 33.** 949.08 (2) (e) of the statutes is amended to read:

23 949.08 (2) (e) Is an adult passenger in the offender's vehicle and the crime  
24 involved is specified in s. 346.63 (2), 346.705 or 940.25 and the passenger knew the  
25 offender was under the influence of an intoxicant, a controlled substance, a

1 controlled substance analog or any combination of an intoxicant, controlled  
2 substance and controlled substance analog, or had a prohibited alcohol  
3 concentration, as defined in s. 340.01 (46m). This paragraph does not apply if the  
4 victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

5 **SECTION 34.** 967.055 (2) (a) of the statutes is amended to read:

6 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss  
7 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity  
8 therewith, or s. 346.63 (2) or (6), 346.705 or 940.25, or s. 940.09 where the offense  
9 involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor  
10 shall apply to the court. The application shall state the reasons for the proposed  
11 amendment or dismissal. The court may approve the application only if the court  
12 finds that the proposed amendment or dismissal is consistent with the public's  
13 interest in deterring the operation of motor vehicles by persons who are under the  
14 influence of an intoxicant, a controlled substance, a controlled substance analog or  
15 any combination of an intoxicant, controlled substance and controlled substance  
16 analog, under the influence of any other drug to a degree which renders him or her  
17 incapable of safely driving, or under the combined influence of an intoxicant and any  
18 other drug to a degree which renders him or her incapable of safely driving, or in  
19 deterring the operation of commercial motor vehicles by persons with an alcohol  
20 concentration of 0.04 or more. The court may not approve an application to amend  
21 the vehicle classification from a commercial motor vehicle to a noncommercial motor  
22 vehicle unless there is evidence in the record that the motor vehicle being operated  
23 by the defendant at the time of his or her arrest was not a commercial motor vehicle.

24 **SECTION 35. Initial applicability.**

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

5

(END)