



1995 SENATE BILL 573

February 21, 1996 - Introduced by Senators HUELSMAN, ROSENZWEIG, PANZER, DARLING and BUETTNER, cosponsored by Representatives GOETSCH, ALBERS, SERATTI, MUSSER, BRANDEMUEHL, OLSEN, OTTE, WASSERMAN, CULLEN, HUBER, HANSON, WARD, KLUSMAN, ROBSON, LORGE and KELSO. Referred to Committee on Judiciary.

1 **AN ACT to amend** 23.33 (4c) (a) 2., 23.33 (4c) (a) 3., 23.33 (4c) (b) 2., 23.33 (4c) (b)
2 4., 23.33 (4x), 30.681 (1) (b), 30.681 (2) (b), 30.681 (2) (d), 30.687, 340.01 (46m)
3 (a), 340.01 (46m) (b), 343.10 (5) (a) 2., 343.305 (4m) (b), 343.305 (5) (d), 343.305
4 (7) (b), 345.24 (1), 346.63 (2) (b), 346.63 (2m), 346.63 (7) (a) 1., 350.101 (1) (b),
5 350.101 (1) (c), 350.101 (2) (b), 350.101 (2) (d), 350.107, 885.235 (1) (a) 1.,
6 885.235 (1) (a) 2., 885.235 (1) (b), 885.235 (1) (bd), 885.235 (1) (c), 885.235 (1)
7 (cd), 885.235 (1) (d), 885.235 (1m), 885.235 (4), 905.04 (4) (f), 940.09 (1g) (b),
8 940.09 (2), 940.25 (2) and 967.055 (1) (b); and **to create** 23.33 (1) (ar), 30.50 (1g),
9 350.01 (1h) and 939.22 (3) of the statutes; **relating to:** the definition of alcohol
10 concentration.

Analysis by the Legislative Reference Bureau

Current law uses the terms "alcohol concentration" and "blood alcohol concentration" and the concepts that these terms relate to in inconsistent ways in various chapters of the statutes dealing with the intoxicated operation of all-terrain vehicles, motorboats, motor vehicles and snowmobiles. This bill uses the term "alcohol concentration" consistently throughout the statutes to mean the number of grams of alcohol per 100 milliliters of a person's blood or the number of grams of alcohol per 210 liters of a person's breath.

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

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

2 23.33 (1) (ar) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

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

4 23.33 (4c) (a) 2. 'Operating with alcohol concentrations at or above specified
5 levels.' No person may engage in the operation of an all-terrain vehicle while the
6 person has a blood an alcohol concentration of ~~0.1%~~ 0.1 or more ~~by weight of alcohol~~
7 ~~in his or her blood.~~ No person may engage in the operation of an all-terrain vehicle
8 while the person has ~~0.1 grams or more of alcohol in 210 liters of his or her breath.~~

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

10 23.33 (4c) (a) 3. 'Operating with alcohol concentrations at specified levels; be-
11 low age 19.' If a person has not attained the age of 19, the person may not engage
12 in the operation of an all-terrain vehicle while he or she has a blood an alcohol con-
13 centration of more than ~~0.0%~~ 0.0 but not more than ~~0.1%~~ 0.1 ~~by weight of alcohol in his~~
14 ~~or her blood or more than 0.0 grams but not more than 0.1 grams of alcohol in 210~~
15 ~~liters of his or her breath~~ 0.1.

16 **SECTION 4.** 23.33 (4c) (b) 2. of the statutes is amended to read:

17 23.33 (4c) (b) 2. 'Causing injury with alcohol concentrations at or above speci-
18 fied levels.' No person who has a blood an alcohol concentration of ~~0.1%~~ 0.1 or more
19 ~~by weight of alcohol in his or her blood~~ may cause injury to another person by the op-
20 eration of an all-terrain vehicle. No person who has ~~0.1 grams or more of alcohol in~~
21 ~~210 liters of his or her breath~~ may cause injury to another person by the operation
22 of an all-terrain vehicle.

23 **SECTION 5.** 23.33 (4c) (b) 4. of the statutes is amended to read:

24 23.33 (4c) (b) 4. 'Defenses.' In an action under this paragraph, the defendant
25 has a defense if he or she proves by a preponderance of the evidence that the injury

1 would have occurred even if he or she had been exercising due care and he or she had
2 not been under the influence of an intoxicant or did not have a blood an alcohol con-
3 centration of ~~0.1% or more by weight of alcohol in his or her blood~~ or 0.1 grams or more
4 of alcohol in ~~210 liters of his or her breath~~.

5 **SECTION 6.** 23.33 (4x) of the statutes is amended to read:

6 **23.33 (4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN ALL-TERRAIN VEHICLE**
7 **WHILE UNDER INFLUENCE OF INTOXICANT.** A person arrested for a violation of sub. (4c)
8 (a) 1. or 2, or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may
9 not be released until 12 hours have elapsed from the time of his or her arrest or unless
10 a chemical test administered under sub. (4p) (a) 1. shows that ~~there is 0.05% or less~~
11 ~~by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters~~
12 ~~of the person's breath~~ the person has an alcohol concentration of 0.05 or less, but the
13 person may be released to his or her attorney, spouse, relative or other responsible
14 adult at any time after arrest.

15 **SECTION 7.** 30.50 (1g) of the statutes is created to read:

16 **30.50 (1g)** "Alcohol concentration" has the meaning given in s. 340.01 (1v).

17 **SECTION 8.** 30.681 (1) (b) of the statutes is amended to read:

18 **30.681 (1) (b)** *Operating with alcohol concentrations at or above specified levels.*

19 No person may engage in the operation of a motorboat while the person has a blood
20 an alcohol concentration of ~~0.1%~~ 0.1 or more by weight of alcohol in his or her blood.
21 ~~No person may engage in the operation of a motorboat while the person has 0.1 grams~~
22 ~~or more of alcohol in 210 liters of his or her breath.~~

23 **SECTION 9.** 30.681 (2) (b) of the statutes is amended to read:

24 **30.681 (2) (b)** *Causing injury with alcohol concentrations at or above specified*
25 *levels.* No person who has a blood an alcohol concentration of ~~0.1%~~ 0.1 or more by

1 ~~weight of alcohol in his or her blood may cause injury to another person by the opera-~~
2 ~~tion of a motorboat. No person who has 0.1 grams or more of alcohol in 210 liters of~~
3 ~~his or her breath may cause injury to another person by the operation of a motorboat.~~

4 **SECTION 10.** 30.681 (2) (d) of the statutes is amended to read:

5 30.681 (2) (d) *Defenses.* In an action under this subsection, the defendant has
6 a defense if he or she proves by a preponderance of the evidence that the injury would
7 have occurred even if he or she had been exercising due care and he or she had not
8 been under the influence of an intoxicant or did not have a blood an alcohol con-
9 centration of ~~0.1% or more by weight of alcohol in his or her blood or 0.1 grams or more~~
10 ~~of alcohol in 210 liters of his or her breath.~~

11 **SECTION 11.** 30.687 of the statutes is amended to read:

12 **30.687 Officer's action after arrest for violating intoxicated boating**
13 **law.** A person arrested for a violation of the intoxicating boating law, may not be re-
14 leased until 12 hours have elapsed from the time of his or her arrest or unless a chem-
15 ical test administered under s. 30.684 (1) (a) shows that ~~there is 0.05% or less by~~
16 ~~weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters~~
17 ~~of the person's breath~~ the person has an alcohol concentration of 0.05 or less, but the
18 person may be released to his or her attorney, spouse, relative or other responsible
19 adult at any time after arrest.

20 **SECTION 12.** 340.01 (46m) (a) of the statutes is amended to read:

21 340.01 (46m) (a) If the person has one or no prior convictions, suspensions or
22 revocations, as counted under s. 343.307 (1), a blood an alcohol concentration of ~~0.1%~~
23 ~~or more by weight of alcohol in the person's blood or 0.1 grams or more of alcohol in~~
24 ~~210 liters of the person's breath.~~

25 **SECTION 13.** 340.01 (46m) (b) of the statutes is amended to read:

1 340.01 (**46m**) (b) If the person has 2 or more prior convictions, suspensions or
2 revocations, as counted under s. 343.307 (1), ~~a blood an alcohol concentration of~~
3 ~~0.08% or more by weight of alcohol in the person's blood or 0.08 grams or more of alco-~~
4 ~~hol in 210 liters of the person's breath.~~

5 **SECTION 14.** 343.10 (5) (a) 2. of the statutes is amended to read:

6 343.10 (**5**) (a) 2. If the petitioner has 2 or more convictions, suspensions or re-
7 vocations, as counted under s. 343.307 (1), the order for issuance of an occupational
8 license shall prohibit the petitioner from driving or operating a motor vehicle while
9 he or she has ~~a blood an alcohol concentration of more than 0.0% by weight of alcohol~~
10 ~~in the person's blood or more than 0.0 grams of alcohol in 210 liters of that person's~~
11 ~~breath.~~

12 **SECTION 15.** 343.305 (4m) (b) of the statutes is amended to read:

13 343.305 (**4m**) (b) That, if one or more tests are taken and the results of any test
14 indicate that the person has ~~any measured an alcohol concentration above 0.0 and~~
15 ~~was driving or operating or on duty time with respect to a commercial motor vehicle,~~
16 ~~the person will be subject to penalties and issuance of an out-of-service order for the~~
17 ~~24 hours following the test.~~

18 **SECTION 16.** 343.305 (5) (d) of the statutes is amended to read:

19 343.305 (**5**) (d) At the trial of any civil or criminal action or proceeding arising
20 out of the acts committed by a person alleged to have been driving or operating a mo-
21 tor vehicle while under the influence of an intoxicant or a controlled substance or a
22 combination of alcohol and a controlled substance, under the influence of any other
23 drug to a degree which renders him or her incapable of safely driving, or under the
24 combined influence of an intoxicant and any other drug to a degree which renders
25 him or her incapable of safely driving, or having a prohibited alcohol concentration,

1 or alleged to have been driving or operating or on duty time with respect to a commer-
2 cial motor vehicle while having ~~any measured~~ an alcohol concentration above 0.0 or
3 possessing an intoxicating beverage, regardless of its alcohol content, or within 4
4 hours of having consumed or having been under the influence of an intoxicating bev-
5 erage, regardless of its alcohol content, or of having an alcohol concentration of 0.04
6 or more, the results of a test administered in accordance with this section are admis-
7 sible on the issue of whether the person was under the influence of an intoxicant or
8 a controlled substance or a combination of alcohol and a controlled substance, under
9 the influence of any other drug to a degree which renders him or her incapable of safe-
10 ly driving or under the combined influence of an intoxicant and any other drug to a
11 degree which renders him or her incapable of safely driving or any issue relating to
12 the person's alcohol concentration. Test results shall be given the effect required un-
13 der s. 885.235.

14 **SECTION 17.** 343.305 (7) (b) of the statutes is amended to read:

15 343.305 (7) (b) If a person who was driving or operating or on duty time with
16 respect to a commercial motor vehicle submits to chemical testing administered in
17 accordance with this section and any test results indicate ~~any measured~~ an alcohol
18 concentration above 0.0, the law enforcement officer may take possession of the per-
19 son's license and retain the license for 24 hours. The person may reclaim a seized
20 license in person or request return of the license by mail. The law enforcement officer
21 shall issue a citation for violation of s. 346.63 (7) (a) 1., issue citations for such other
22 violations as may apply and issue an out-of-service order to the person for the 24
23 hours after the testing, and report both the out-of-service order and the test results
24 to the department in the manner prescribed by the department. If the person is a

1 nonresident, the department shall report issuance of the out-of-service order to the
2 driver licensing agency in the person's home jurisdiction.

3 **SECTION 18.** 345.24 (1) of the statutes is amended to read:

4 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in confor-
5 mity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved
6 the use of a vehicle, may not be released until 12 hours have elapsed from the time
7 of his or her arrest or unless a chemical test administered under s. 343.305 shows
8 that there is 0.04% or less by weight of alcohol in the person's blood or 0.04 grams
9 or less of alcohol in 210 liters of the person's breath the person has an alcohol con-
10 centration of less than 0.04, but the person may be released to his or her attorney,
11 spouse, relative or other responsible adult at any time after arrest.

12 **SECTION 19.** 346.63 (2) (b) of the statutes is amended to read:

13 346.63 (2) (b) In an action under this subsection, the defendant has a defense
14 if he or she proves by a preponderance of the evidence that the injury would have oc-
15 curred even if he or she had been exercising due care and he or she had not been under
16 the influence of an intoxicant or a controlled substance or a combination thereof, un-
17 der the influence of any other drug to a degree which renders him or her incapable
18 of safely driving, or under the combined influence of an intoxicant and any other drug
19 to a degree which renders him or her incapable of safely driving or did not have a
20 blood prohibited alcohol concentration described under par. (a) 2.

21 **SECTION 20.** 346.63 (2m) of the statutes is amended to read:

22 346.63 (2m) If a person has not attained the age of 19, the person may not drive
23 or operate a motor vehicle while he or she has a blood an alcohol concentration of
24 more than 0.0% 0.0 but not more than 0.1% by weight of alcohol in the person's blood
25 or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of that

1 person's breath 0.1. One penalty for violation of this subsection is suspension of a
2 person's operating privilege under s. 343.30 (1p). The person is eligible for an occupa-
3 tional license under s. 343.10 at any time. If a person arrested for a violation of this
4 subsection refuses to take a test under s. 343.305, the refusal is a separate violation
5 and the person is subject to revocation of the person's operating privilege under s.
6 343.305 (10) (em).

7 **SECTION 21.** 346.63 (7) (a) 1. of the statutes is amended to read:

8 346.63 (7) (a) 1. While having any measured an alcohol concentration above
9 0.0.

10 **SECTION 22.** 350.01 (1h) of the statutes is created to read:

11 350.01 (1h) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

12 **SECTION 23.** 350.101 (1) (b) of the statutes is amended to read:

13 350.101 (1) (b) *Operating with alcohol concentrations at or above specified lev-*
14 *els.* No person may engage in the operation of a snowmobile while the person has a
15 blood an alcohol concentration of 0.1% 0.1 or more by weight of alcohol in his or her
16 blood. ~~No person may engage in the operation of a snowmobile while the person has~~
17 ~~0.1 grams or more of alcohol in 210 liters of his or her breath.~~

18 **SECTION 24.** 350.101 (1) (c) of the statutes is amended to read:

19 350.101 (1) (c) *Operating with alcohol concentrations at specified levels; below*
20 *age 19.* If a person has not attained the age of 19, the person may not engage in the
21 operation of a snowmobile while he or she has a blood an alcohol concentration of
22 more than 0.0% 0.0 but not more than 0.1% by weight of alcohol in his or her blood
23 or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of his or
24 her breath 0.1.

25 **SECTION 25.** 350.101 (2) (b) of the statutes is amended to read:

1 350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified*
2 *levels.* No person who has a blood an alcohol concentration of ~~0.1%~~ 0.1 or more by
3 ~~weight of alcohol in his or her blood~~ may cause injury to another person by the opera-
4 ~~tion of a snowmobile.~~ No person who has ~~0.1 grams or more of alcohol in 210 liters~~
5 ~~of his or her breath may cause injury to another person by the operation of a snowmo-~~
6 ~~bile.~~

7 **SECTION 26.** 350.101 (2) (d) of the statutes is amended to read:

8 350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has
9 a defense if he or she proves by a preponderance of the evidence that the injury would
10 have occurred even if he or she had been exercising due care and he or she had not
11 been under the influence of an intoxicant or did not have a blood an alcohol con-
12 ~~centration of 0.1% or more by weight of alcohol in his or her blood or 0.1 grams or more~~
13 ~~of alcohol in 210 liters of his or her breath.~~

14 **SECTION 27.** 350.107 of the statutes is amended to read:

15 **350.107 Officer's action after arrest for operating a snowmobile while**
16 **under influence of intoxicant.** A person arrested for a violation of s. 350.101 (1)
17 (a) or (b) or a local ordinance in conformity therewith or s. 350.101 (2) (a) or (b) may
18 not be released until 12 hours have elapsed from the time of his or her arrest or unless
19 a chemical test administered under s. 350.104 (1) (a) shows that ~~there is 0.05% or less~~
20 ~~by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters~~
21 ~~of the person's breath~~ the person has an alcohol concentration of 0.05 or less, but the
22 person may be released to his or her attorney, spouse, relative or other responsible
23 adult at any time after arrest.

24 **SECTION 28.** 885.235 (1) (a) 1. of the statutes is amended to read:

1 885.235 (1) (a) 1. The fact that the analysis shows that ~~there was more than~~
2 ~~0.0% but less than 0.08% by weight of alcohol in the person's blood or more than 0.0~~
3 ~~grams but less than 0.08 grams of alcohol in 210 liters of the person's breath~~ the per-
4 son had an alcohol concentration of more than 0.0 but less than 0.08 is relevant evi-
5 dence on the issue of being under the combined influence of alcohol and a controlled
6 substance or any other drug, but, except as provided in par. (d) or sub. (1m), is not
7 to be given any prima facie effect.

8 **SECTION 29.** 885.235 (1) (a) 2. of the statutes is amended to read:

9 885.235 (1) (a) 2. The fact that the analysis shows that ~~there was more than~~
10 ~~0.0% but less than 0.1% by weight of alcohol in the person's blood or more than 0.0~~
11 ~~grams but less than 0.1 grams of alcohol in 210 liters of the person's breath~~ the person
12 had an alcohol concentration of more than 0.0 but less than 0.1 is relevant evidence
13 on the issue of being under the combined influence of alcohol and a controlled sub-
14 stance or any other drug but, except as provided in par. (d) or sub. (1m), is not to be
15 given any prima facie effect.

16 **SECTION 30.** 885.235 (1) (b) of the statutes is amended to read:

17 885.235 (1) (b) Except with respect to the operation of a commercial motor ve-
18 hicle as provided in par. (d), the fact that the analysis shows that ~~there was more than~~
19 ~~0.04% but less than 0.1% by weight of alcohol in the person's blood or more than 0.04~~
20 ~~grams but less than 0.1 grams of alcohol in 210 liters of the person's breath~~ the person
21 had an alcohol concentration of more than 0.04 but less than 0.1 is relevant evidence
22 on the issue of intoxication or an alcohol concentration of 0.1 or more but is not to be
23 given any prima facie effect.

24 **SECTION 31.** 885.235 (1) (bd) of the statutes is amended to read:

1 885.235 (1) (bd) Except with respect to the operation of a commercial motor ve-
2 hicle as provided in par. (d), the fact that the analysis shows that ~~there was more than~~
3 ~~0.04% but less than 0.08% by weight of alcohol in the person's blood or more than 0.04~~
4 ~~grams but less than 0.08 grams of alcohol in 210 liters of the person's breath~~ the per-
5 son had an alcohol concentration of more than 0.04 but less than 0.08 is relevant evi-
6 dence on the issue of intoxication or an alcohol concentration of 0.08 or more, but is
7 not to be given any prima facie effect.

8 **SECTION 32.** 885.235 (1) (c) of the statutes is amended to read:

9 885.235 (1) (c) The fact that the analysis shows that ~~there was 0.1% or more~~
10 ~~by weight of alcohol in the person's blood or 0.1 grams or more of alcohol in 210 liters~~
11 ~~of the person's breath~~ the person had an alcohol concentration of 0.1 or more is prima
12 facie evidence that he or she was under the influence of an intoxicant and is prima
13 facie evidence that he or she had an alcohol concentration of 0.1 or more.

14 **SECTION 33.** 885.235 (1) (cd) of the statutes is amended to read:

15 885.235 (1) (cd) In cases involving persons who have 2 or more prior convic-
16 tions, suspensions or revocations, as counted under s. 343.307 (1), the fact that the
17 analysis shows that ~~there was 0.08% or more by weight of alcohol in the person's~~
18 ~~blood or 0.08 grams or more of alcohol in 210 liters of the person's breath~~ the person
19 had an alcohol concentration of 0.08 or more is prima facie evidence that he or she
20 was under the influence of an intoxicant and is prima facie evidence that he or she
21 had an alcohol concentration of 0.08 or more.

22 **SECTION 34.** 885.235 (1) (d) of the statutes is amended to read:

23 885.235 (1) (d) The fact that the analysis shows that ~~there was 0.04% or more~~
24 ~~by weight of alcohol in the person's blood or 0.04 grams or more of alcohol in 210 liters~~
25 ~~of the person's breath~~ the person had an alcohol concentration of 0.04 or more is

1 prima facie evidence that he or she was under the influence of an intoxicant with
2 respect to operation of a commercial motor vehicle and is prima facie evidence that
3 he or she had an alcohol concentration of 0.04 or more.

4 **SECTION 35.** 885.235 (1m) of the statutes is amended to read:

5 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 346.63 (2m) or (7) or
6 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the time in
7 question, as shown by chemical analysis of a sample of the person's blood or urine or
8 evidence of the amount of alcohol in the person's breath, is admissible on the issue
9 of whether he or she had a blood an alcohol concentration in the range specified in
10 s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c) or a measured an alcohol concentra-
11 tion above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours after the
12 event to be proved. The fact that the analysis shows that ~~there was more than 0.0%~~
13 ~~but not more than 0.1% by weight of alcohol in the person's blood or more than 0.0~~
14 ~~grams but not more than 0.1 grams of alcohol in 210 liters of the person's breath~~ the
15 person had an alcohol concentration of more than 0.0 but not more than 0.1 is prima
16 facie evidence that the person had a blood an alcohol concentration in the range spe-
17 cified in s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c) or a measured an alcohol
18 concentration above 0.0 under s. 346.63 (7).

19 **SECTION 36.** 885.235 (4) of the statutes is amended to read:

20 885.235 (4) The provisions of this section relating to the admissibility of chemi-
21 cal tests for alcohol concentration, or intoxication ~~or blood alcohol concentration~~ shall
22 not be construed as limiting the introduction of any other competent evidence bear-
23 ing on the question of whether or not a person was under the influence of an intoxi-
24 cant, had a specified alcohol concentration or had a blood an alcohol concentration
25 in the range specified in s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c).

1 **SECTION 37.** 905.04 (4) (f) of the statutes is amended to read:

2 905.04 (4) (f) *Tests for intoxication.* There is no privilege concerning the results
3 of or circumstances surrounding any chemical tests for intoxication or blood alcohol
4 concentration, as defined in s. 340.01 (1v).

5 **SECTION 38.** 939.22 (3) of the statutes is created to read:

6 939.22 (3) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

7 **SECTION 39.** 940.09 (1g) (b) of the statutes is amended to read:

8 940.09 (1g) (b) Causes the death of another by the operation or handling of a
9 firearm or airgun while the person has a blood an alcohol concentration of ~~0.1%~~ 0.1
10 or more by weight of alcohol in that person's blood or ~~0.10 grams or more of alcohol~~
11 ~~in 210 liters of that person's breath.~~

12 **SECTION 40.** 940.09 (2) of the statutes is amended to read:

13 940.09 (2) The defendant has a defense if he or she proves by a preponderance
14 of the evidence that the death would have occurred even if he or she had been exercis-
15 ing due care and he or she had not been under the influence of an intoxicant or did
16 not have a blood an alcohol concentration described under sub. (1) (b) or (bm) or (1g)
17 (b).

18 **SECTION 41.** 940.25 (2) of the statutes is amended to read:

19 940.25 (2) The defendant has a defense if he or she proves by a preponderance
20 of the evidence that the great bodily harm would have occurred even if he or she had
21 been exercising due care and he or she had not been under the influence of an intoxi-
22 cant or did not have a blood an alcohol concentration described under sub. (1) (b) or
23 (bm).

24 **SECTION 42.** 967.055 (1) (b) of the statutes is amended to read:

