



1999 SENATE BILL 508

March 23, 2000 - Introduced by Senators DRZEWIECKI and HUELSMAN, cosponsored by Representatives STONE, GUNDRUM and WASSERMAN. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT to amend** 85.53 (1) (d), 342.12 (4) (a), 342.12 (4) (c) 1. (intro.), 343.16 (5)
2 (a), 343.30 (1g), 343.30 (1q) (a), 343.303, 343.305 (3) (a), 343.305 (3) (b), 343.305
3 (5) (b), 343.305 (9) (a) 1., 343.305 (9) (a) 5. a., 343.305 (9) (d), 343.307 (1) (c),
4 343.307 (2) (c), 343.31 (1) (f), 343.31 (3) (g), 343.31 (3m) (b), 343.315 (2) (a) 6.,
5 343.44 (2g) (intro.), 343.44 (2p) (c), 345.24 (1), 345.60 (3), 346.63 (4), 346.635,
6 346.65 (2g) (b), 346.65 (2g) (c), 346.65 (2i), 346.65 (2m) (b), 346.655 (1), 949.03
7 (1) (b), 949.08 (2) (e), 967.055 (2) (a), 967.055 (3) (b) and 971.17 (1); and **to create**
8 343.31 (1) (ag), 343.31 (3) (dm), 346.63 (1m) and 346.65 (3g) of the statutes;
9 **relating to:** causing property damage by operating a motor vehicle while under
10 the influence of an intoxicant or other drug.

Analysis by the Legislative Reference Bureau

In addition to the absolute sobriety offense applicable to young drivers and the lower blood alcohol concentration limit applicable to commercial motor vehicle drivers, there are currently four kinds of the following offenses related to operating a motor vehicle or commercial motor vehicle while under the influence of an intoxicant (OWI): 1) regular OWI; 2) OWI causing injury; 3) OWI causing great

SENATE BILL 508

bodily harm; and 4) OWI causing death. A person commits an OWI offense when the person operates a motor vehicle while having a prohibited alcohol concentration in his or her blood or while under the influence of an intoxicant, a controlled substance, a controlled substance analog, any other drug or of a combination of any of those, to a degree that renders him or her incapable of safely driving. The penalties for these offenses increase with the severity of the offense and with the number of previous OWI offenses the person has committed within certain time frames. In addition to these offenses, a person is subject to the loss of his or her operating privilege (driver's license) if he or she refuses to take a test to determine his or her blood alcohol concentration.

This bill creates additional offenses for operating of a motor vehicle while under the influence of an intoxicant or while having a prohibited alcohol concentration and that results in damage to property. These offenses are counted as other OWI offenses when determining the applicable penalties. The penalties for these offense are identical to the penalties for second-offense regular OWI offenses.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

5 **SECTION 2.** 342.12 (4) (a) of the statutes is amended to read:

6 342.12 (4) (a) The district attorney shall notify the department when he or she
7 files a criminal complaint against a person who has been arrested for violating s.
8 346.63 (1), (1m) or (2), 940.09 (1) or 940.25 and who has 2 or more prior convictions,
9 suspensions or revocations, as counted under s. 343.307 (1). Except as provided
10 under par. (c), the department may not issue a certificate of title transferring
11 ownership of any motor vehicle owned by the person upon receipt of a notice under
12 this subsection until the court assigned to hear the criminal complaint issues an
13 order permitting the department to issue a certificate of title.

SENATE BILL 508

1 **SECTION 3.** 342.12 (4) (c) 1. (intro.) of the statutes is amended to read:

2 342.12 (4) (c) 1. (intro.) The department shall issue a certificate of title
3 transferring ownership of a motor vehicle that was owned by a person who has
4 received a notice of intent to revoke the person's operating privilege under s. 343.305
5 (9) (a) or has been arrested for violating s. 346.63 (1), (1m) or (2), 940.09 (1) or 940.25
6 and who has 2 or more prior convictions, suspensions or revocations, as counted
7 under s. 343.307 (1), if all of the following conditions are met:

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

9 343.16 (5) (a) The secretary may require any applicant for a license or any
10 licensed operator to submit to a special examination by such persons or agencies as
11 the secretary may direct to determine incompetency, physical or mental disability,
12 disease or any other condition which might prevent such applicant or licensed person
13 from exercising reasonable and ordinary control over a motor vehicle. When the
14 department requires the applicant to submit to an examination, the applicant shall
15 pay the cost thereof. If the department receives an application for a renewal or
16 duplicate license after voluntary surrender under s. 343.265 or receives a report from
17 a physician or optometrist under s. 146.82 (3), or if the department has a report of
18 2 or more arrests within a one-year period for any combination of violations of s.
19 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally
20 recognized American Indian tribe or band in this state in conformity with s. 346.63
21 (1) or (5), ~~or s. 346.63 (1m), 1985 stats.,~~ or s. 346.63 (1m), (2) or (6) or 940.25, or s.
22 940.09 where the offense involved the use of a vehicle, the department shall
23 determine, by interview or otherwise, whether the operator should submit to an
24 examination under this section. The examination may consist of an assessment. If
25 the examination indicates that education or treatment for a disability, disease or

SENATE BILL 508

1 condition concerning the use of alcohol, a controlled substance or a controlled
2 substance analog is appropriate, the department may order a driver safety plan in
3 accordance with s. 343.30 (1q). If there is noncompliance with assessment or the
4 driver safety plan, the department shall suspend the person's operating privilege in
5 the manner specified in s. 343.30 (1q) (d).

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

7 343.30 (1g) A court may revoke a person's operating privilege upon the person's
8 conviction for violating s. 343.44 (1) or a local ordinance in conformity therewith by
9 operating a motor vehicle while operating privileges are suspended or revoked. A
10 court shall revoke a person's operating privilege upon the person's conviction for
11 violating s. 343.44 (1) or a local ordinance in conformity therewith by operating a
12 motor vehicle while operating privileges are suspended or revoked if the suspension
13 or revocation was for improperly refusing to take a test under s. 343.305, violating
14 s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or violating s. 346.63
15 (1m), (2) or (6), 940.09 (1) or 940.25. The revocation shall be for any period not
16 exceeding 6 months.

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

18 343.30 (1q) (a) If a person is convicted under s. 346.63 (1) or a local ordinance
19 in conformity therewith, the court shall proceed under this subsection. If a person
20 is convicted under s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense
21 involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a
22 person is referred by the department acting under s. 343.16 (5) (a), the department
23 shall proceed under pars. (c) and (d) without the order of the court.

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

SENATE BILL 508

1 **343.303 Preliminary breath screening test.** If a law enforcement officer
2 has probable cause to believe that the person is violating or has violated s. 346.63 (1)
3 or (2m) or a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (6) or
4 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer
5 detects any presence of alcohol, a controlled substance, controlled substance analog
6 or other drug, or a combination thereof, on a person driving or operating or on duty
7 time with respect to a commercial motor vehicle or has reason to believe that the
8 person is violating or has violated s. 346.63 (7) or a local ordinance in conformity
9 therewith, the officer, prior to an arrest, may request the person to provide a sample
10 of his or her breath for a preliminary breath screening test using a device approved
11 by the department for this purpose. The result of this preliminary breath screening
12 test may be used by the law enforcement officer for the purpose of deciding whether
13 or not the person shall be arrested for a violation of s. 346.63 (1), (2m), (5) or (7) or
14 a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (6), 940.09 (1) or
15 940.25 and whether or not to require or request chemical tests as authorized under
16 s. 343.305 (3). The result of the preliminary breath screening test shall not be
17 admissible in any action or proceeding except to show probable cause for an arrest,
18 if the arrest is challenged, or to prove that a chemical test was properly required or
19 requested of a person under s. 343.305 (3). Following the screening test, additional
20 tests may be required or requested of the driver under s. 343.305 (3). The general
21 penalty provision under s. 939.61 (1) does not apply to a refusal to take a preliminary
22 breath screening test.

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

24 343.305 (3) (a) Upon arrest of a person for violation of s. 346.63 (1), (2m) or (5)
25 or a local ordinance in conformity therewith, or for a violation of s. 346.63 (1m), (2)

SENATE BILL 508

1 or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, a law
2 enforcement officer may request the person to provide one or more samples of his or
3 her breath, blood or urine for the purpose specified under sub. (2). Compliance with
4 a request for one type of sample does not bar a subsequent request for a different type
5 of sample.

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

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

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

18 343.305 (5) (b) Blood may be withdrawn from the person arrested for violation
19 of s. 346.63 (1), (1m), (2), (2m), (5) or (6) or 940.25, or s. 940.09 where the offense
20 involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m)
21 or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of
22 alcohol, a controlled substance, a controlled substance analog or any other drug, or
23 any combination of alcohol, controlled substance, controlled substance analog and
24 any other drug in the blood only by a physician, registered nurse, medical
25 technologist, physician assistant or person acting under the direction of a physician.

SENATE BILL 508

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

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

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

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

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

18 343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court
19 shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined
20 adversely to the person, the court shall proceed under sub. (10). If one or more of the
21 issues is determined favorably to the person, the court shall order that no action be
22 taken on the operating privilege on account of the person's refusal to take the test in
23 question. This section does not preclude the prosecution of the person for violation
24 of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, or s.
25 346.63 (1m), (2) or (6), 940.09 (1) or 940.25.

SENATE BILL 508

1 **SECTION 14.** 343.307 (1) (c) of the statutes is amended to read:

2 343.307 (1) (c) Convictions for violations under s. 346.63 (1m) or (2) or 940.25,
3 or s. 940.09 where the offense involved the use of a vehicle.

4 **SECTION 15.** 343.307 (2) (c) of the statutes is amended to read:

5 343.307 (2) (c) Convictions for violations under s. 346.63 (1m), (2) or (6).

6 **SECTION 16.** 343.31 (1) (ag) of the statutes is created to read:

7 343.31 (1) (ag) Damage to property by the operation of a vehicle while under
8 the influence of an intoxicant, a controlled substance or a controlled substance
9 analog, or any combination of an intoxicant, a controlled substance and a controlled
10 substance analog, under the influence of any other drug to a degree that renders him
11 or her incapable of safely driving, or under the combined influence of an intoxicant
12 and any other drug to a degree that renders him or her incapable of safely driving
13 or while the person has a prohibited alcohol concentration and that is criminal under
14 s. 346.63 (1m).

15 **SECTION 17.** 343.31 (1) (f) of the statutes is amended to read:

16 343.31 (1) (f) Operating a motor vehicle while operating privileges are
17 suspended or revoked if the suspension or revocation was for improperly refusing to
18 take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in
19 conformity therewith, or violating s. 346.63 (1m), (2) or (6), 940.09 (1) or 940.25.

20 **SECTION 18.** 343.31 (3) (dm) of the statutes is created to read:

21 343.31 (3) (dm) Any person convicted under s. 346.63 (1m) shall have his or her
22 operating privilege revoked for not less than one year nor more than 18 months. If
23 there was a minor passenger under 16 years of age in the motor vehicle at the time
24 of the violation that gave rise to the conviction under s. 346.63 (1m), the minimum
25 and maximum revocation periods are doubled.

SENATE BILL 508

1 **SECTION 19.** 343.31 (3) (g) of the statutes is amended to read:

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

8 **SECTION 20.** 343.31 (3m) (b) of the statutes is amended to read:

9 343.31 **(3m)** (b) Any person who has his or her operating privilege revoked
10 under sub. (3) (dm) or (e) is eligible for an occupational license under s. 343.10 after
11 the first 60 days of the revocation period.

12 **SECTION 21.** 343.315 (2) (a) 6. of the statutes is amended to read:

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

23 **SECTION 22.** 343.44 (2g) (intro.) of the statutes is amended to read:

24 343.44 **(2g)** (intro.) Except as provided in sub. (2m), any person who violates
25 sub. (1) while his or her operating privilege is suspended or revoked for improperly

SENATE BILL 508**SECTION 22**

1 refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local
2 ordinance in conformity therewith, or violating s. 346.63 (1m), (2) or (6), 940.09 (1)
3 or 940.25, is subject to the following penalties:

4 **SECTION 23.** 343.44 (2p) (c) of the statutes is amended to read:

5 343.44 **(2p)** (c) Violating s. 346.63 (1m), (2) or (6), 940.09 (1) or 940.25.

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

7 345.24 **(1)** A person arrested under s. 346.63 (1) or (5) or an ordinance in
8 conformity therewith or s. 346.63 (1m), (2) or (6) or 940.25, or s. 940.09 where the
9 offense involved the use of a vehicle, may not be released until 12 hours have elapsed
10 from the time of his or her arrest or unless a chemical test administered under s.
11 343.305 shows that the person has an alcohol concentration of less than 0.04, but the
12 person may be released to his or her attorney, spouse, relative or other responsible
13 adult at any time after arrest.

14 **SECTION 25.** 345.60 (3) of the statutes is amended to read:

15 345.60 **(3)** In addition to other penalties provided by law for violation of s.
16 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or
17 940.25, or s. 940.09 where the offense involved the use of a vehicle, the convicted
18 person may be required under s. 343.30 (1q) to attend, for a certain number of school
19 days, a school under sub. (1).

20 **SECTION 26.** 346.63 (1m) of the statutes is created to read:

21 346.63 **(1m)** (a) No person may cause property damage by the operation of a
22 motor vehicle while he or she meets any of the following conditions:

23 1. Is under the influence of an intoxicant, a controlled substance, a controlled
24 substance analog or any combination of an intoxicant, a controlled substance and a
25 controlled substance analog, under the influence of any other drug to a degree that

SENATE BILL 508

1 renders him or her incapable of safely driving, or under the combined influence of an
2 intoxicant and any other drug to a degree that renders him or her incapable of safely
3 driving; or

4 2. Has a prohibited alcohol concentration.

5 (b) A person may be charged with and a prosecutor may proceed upon a
6 complaint based upon a violation of par. (a) 1. or 2. or both for acts arising out of the
7 same incident or occurrence. If the person is charged with violating par. (a) 1. and
8 2., the offenses shall be joined. If the person is found guilty of par. (a) 1. and 2. for
9 acts arising out of the same incident or occurrence, there shall be a single conviction
10 for purposes of sentencing and for purposes of counting convictions under ss. 343.30
11 (1q) and 343.305. Paragraph (a) 1. and 2. each require proof of a fact for conviction
12 which the other does not require.

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

22 **SECTION 27.** 346.63 (4) of the statutes is amended to read:

23 346.63 (4) If a person is convicted under sub. (1) or a local ordinance in
24 conformity therewith, or sub. (1m) or (2), the court shall proceed under s. 343.30 (1q).

25 **SECTION 28.** 346.635 of the statutes is amended to read:

SENATE BILL 508**SECTION 28****1 346.635 Report arrest or out-of-service order to department.**

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

7 **SECTION 29.** 346.65 (2g) (b) of the statutes is amended to read:

8 346.65 **(2g)** (b) The court may require a person ordered to perform community
9 service work under par. (a), or under s. 973.05 (3) (a) if that person's fine resulted from
10 violating s. 346.63 (1m) or (2), 940.09 (1) or 940.25, to participate in community
11 service work that demonstrates the adverse effects of substance abuse or of operating
12 a vehicle while under the influence of an intoxicant or other drug, including working
13 at an alcoholism treatment facility approved under s. 51.45, an emergency room of
14 a general hospital or a driver awareness program under s. 346.637. The court may
15 order the person to pay a reasonable fee, based on the person's ability to pay, to offset
16 the cost of establishing, maintaining and monitoring the community service work
17 ordered under this paragraph. If the opportunities available to perform community
18 service work are fewer in number than the number of defendants eligible under this
19 subsection, the court shall, when making an order under this paragraph, give
20 preference to defendants who were under 21 years of age at the time of the offense.
21 All provisions of par. (a) apply to any community service work ordered under this
22 paragraph.

23 **SECTION 30.** 346.65 (2g) (c) of the statutes is amended to read:

24 346.65 **(2g)** (c) If there was a minor passenger under 16 years of age in the
25 motor vehicle or commercial motor vehicle at the time of the violation that gave rise

SENATE BILL 508

1 to the conviction, the court may require a person ordered to perform community
2 service work under par. (a), or under s. 973.05 (3) (a) if that person's fine resulted from
3 violating s. 346.63 (1m), (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, to participate in
4 community service work that benefits children or that demonstrates the adverse
5 effects on children of substance abuse or of operating a vehicle while under the
6 influence of an intoxicant or other drug. The court may order the person to pay a
7 reasonable fee, based on the person's ability to pay, to offset the cost of establishing,
8 maintaining and monitoring the community service work ordered under this
9 paragraph.

10 **SECTION 31.** 346.65 (2i) of the statutes is amended to read:

11 346.65 (2i) In addition to the authority of the court under sub. (2g) and s. 973.05
12 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to
13 s. 973.05 (3) (a) who violated s. 346.63 (1m) or (2), 940.09 (1) or 940.25, to visit a site
14 that demonstrates the adverse effects of substance abuse or of operating a vehicle
15 while under the influence of an intoxicant or other drug, including an alcoholism
16 treatment facility approved under s. 51.45 or an emergency room of a general
17 hospital in lieu of part or all of any forfeiture imposed or in addition to any penalty
18 imposed. The court may order the defendant to pay a reasonable fee, based on the
19 person's ability to pay, to offset the costs of establishing, maintaining and monitoring
20 the visits ordered under this subsection. The court may order a visit to the site only
21 if agreed to by the person responsible for the site. If the opportunities available to
22 visit sites under this subsection are fewer than the number of defendants eligible for
23 a visit, the court shall, when making an order under this subsection, give preference
24 to defendants who were under 21 years of age at the time of the offense. The court
25 shall ensure that the visit is monitored. A visit to a site may be ordered for a specific

SENATE BILL 508**SECTION 31**

1 time and a specific day to allow the defendant to observe victims of vehicle accidents
2 involving intoxicated drivers. If it appears to the court that the defendant has not
3 complied with the court order to visit a site or to pay a reasonable fee, the court may
4 order the defendant to show cause why he or she should not be held in contempt of
5 court. Any organization or agency acting in good faith to which a defendant is
6 assigned pursuant to an order under this subsection has immunity from any civil
7 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.
8 The issuance or possibility of the issuance of an order under this subsection does not
9 entitle an indigent defendant who is subject to sub. (2) (a) to representation by
10 counsel under ch. 977.

11 **SECTION 32.** 346.65 (2m) (b) of the statutes is amended to read:

12 346.65 **(2m)** (b) The court shall consider a report submitted under s. 85.53 (2)
13 (d) when imposing a sentence under sub. (2), (2q), (3g) or (3m).

14 **SECTION 33.** 346.65 (3g) of the statutes is created to read:

15 346.65 **(3g)** Any person violating s. 346.63 (1m) shall be fined not less than \$300
16 nor more than \$1,000 and may be imprisoned for not less than 5 days nor more than
17 6 months. If there was a minor passenger under 16 years of age in the motor vehicle
18 at the time of the violation that gave rise to the conviction under s. 346.63 (1m), the
19 applicable minimum and maximum fines or periods of imprisonment for the
20 conviction are doubled.

21 **SECTION 34.** 346.655 (1) of the statutes is amended to read:

22 346.655 **(1)** On or after July 1, 1988, if a court imposes a fine or a forfeiture for
23 a violation of s. 346.63 (1) or (5), or a local ordinance in conformity therewith, or s.
24 346.63 (1m), (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a
25 vehicle, it shall impose a driver improvement surcharge in an amount of \$340 in

SENATE BILL 508

1 addition to the fine or forfeiture, penalty assessment, jail assessment and crime
2 laboratories and drug law enforcement assessment.

3 **SECTION 35.** 949.03 (1) (b) of the statutes is amended to read:

4 949.03 (1) (b) The commission or the attempt to commit any crime specified in
5 s. 346.62 (4), 346.63 (1m), (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07,
6 940.08, 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23,
7 940.24, 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02,
8 943.03, 943.04, 943.10, 943.20, 943.23 (1g), (1m) or (1r), 943.32, 948.02, 948.025,
9 948.03, 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

10 **SECTION 36.** 949.08 (2) (e) of the statutes is amended to read:

11 949.08 (2) (e) Is an adult passenger in the offender's vehicle and the crime
12 involved is specified in s. 346.63 (1m) or (2) or 940.25 and the passenger knew the
13 offender was under the influence of an intoxicant, a controlled substance, a
14 controlled substance analog or any combination of an intoxicant, controlled
15 substance and controlled substance analog, or had a prohibited alcohol
16 concentration, as defined in s. 340.01 (46m). This paragraph does not apply if the
17 victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

18 **SECTION 37.** 967.055 (2) (a) of the statutes is amended to read:

19 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
20 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity
21 therewith, or s. 346.63 (1m), (2) or (6) or 940.25, or s. 940.09 where the offense
22 involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor
23 shall apply to the court. The application shall state the reasons for the proposed
24 amendment or dismissal. The court may approve the application only if the court
25 finds that the proposed amendment or dismissal is consistent with the public's

SENATE BILL 508**SECTION 37**

1 interest in deterring the operation of motor vehicles by persons who are under the
2 influence of an intoxicant, a controlled substance, a controlled substance analog or
3 any combination of an intoxicant, controlled substance and controlled substance
4 analog, under the influence of any other drug to a degree which renders him or her
5 incapable of safely driving, or under the combined influence of an intoxicant and any
6 other drug to a degree which renders him or her incapable of safely driving, or in
7 deterring the operation of commercial motor vehicles by persons with an alcohol
8 concentration of 0.04 or more. The court may not approve an application to amend
9 the vehicle classification from a commercial motor vehicle to a noncommercial motor
10 vehicle unless there is evidence in the record that the motor vehicle being operated
11 by the defendant at the time of his or her arrest was not a commercial motor vehicle.

12 **SECTION 38.** 967.055 (3) (b) of the statutes is amended to read:

13 967.055 (3) (b) A violation of s. 346.63 (1m), (2) or (6).

14 **SECTION 39.** 971.17 (1) of the statutes is amended to read:

15 971.17 (1) COMMITMENT PERIOD. When a defendant is found not guilty by reason
16 of mental disease or mental defect, the court shall commit the person to the
17 department of health and family services for a specified period not exceeding
18 two-thirds of the maximum term of imprisonment that could be imposed under s.
19 973.15 (2) (a) against an offender convicted of the same crime or crimes, including
20 imprisonment authorized by ss. 346.65 (2) (f), (2j) (d), (3g) or (3m), 939.62, 939.621,
21 939.63, 939.635, 939.64, 939.641, 939.645, 940.09 (1b), 940.25 (1b) and 961.48 and
22 other penalty enhancement statutes, as applicable, subject to the credit provisions
23 of s. 973.155. If the maximum term of imprisonment is life, the commitment period
24 specified by the court may be life, subject to termination under sub. (5).

25 **SECTION 40. Initial applicability.**

