

Nov. 1977 Spec. Sess.
Assembly Bill 1

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CHAPTER 193, Laws of 1977
(Vetoed in Part)

AN ACT to repeal 343.305 (7) (d); to amend 51.42 (5) (b), 343.10 (1) to (3), 343.31 (1) (intro.), (a) and (b) and (3), 345.24 and 345.60 (1); to repeal and recreate 343.30 (1q), 343.305 (exc. 343.305 (7) (d)), 346.63 (1), (3) and (4) and 346.65 (2); and to create 46.03 (18) (f), 340.01 (9m), 343.10 (7), 343.307, 345.60 (3) and 940.25 of the statutes, relating to operating a motor vehicle while under the influence of an intoxicant or controlled substance, injuring a person by the intoxicated use of a vehicle, revocation of an operators' license on refusal to submit to tests for being under the influence of an intoxicant or controlled substance, occupational licenses, providing penalties, providing rule-making authority and increasing appropriations.

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

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

46.03 (18) (f) Notwithstanding par. (a), any person who submits to an assessment or rehabilitation plan under s. 343.30 (1q) (a) or 343.305 (9) (a) shall pay a reasonable fee therefor to the appropriate county department of public welfare, board under s. 51.42 or traffic safety school under s. 345.60. The fee may be reduced

or waived if the person is unable to pay the complete fee, except that no fee for attendance at a traffic safety school under s. 345.60 may be reduced or waived.

SECTION 2. 51.42 (5) (b) of the statutes is amended to read:

51.42 (5) (b) Comprehensive diagnostic and evaluation services, including initial assessment as specified under ss. 343.30 (1q) (a) and 343.305 (9) (a);

SECTION 3. 340.01 (9m) of the statutes is created to read:

340.01 (9m) "Controlled substance" has the meaning specified for the term in s. 161.01 (4).

SECTION 4. 343.10 (1) to (3) of the statutes, as affected by chapter 29, laws of 1977, are amended to read:

343.10 (1) If a person has had his or her chauffeur's license revoked he or she may file a petition with the department for a limited chauffeur's license under s. 343.126. If a person has had his or her license revoked under s. ~~343.30 (1q) or 343.31 (1) (b), (c), (d) or (e)~~ this chapter and if ~~such the~~ person is engaged in an occupation or trade making it essential that he or she operate a motor vehicle, ~~he the person~~ may after complying with sub. (2) file with a judge of a court of record in the county of his or her residence or of a municipal ~~justice~~ court in the county of his or her residence a verified petition setting forth in detail his the need for operating a motor vehicle. Thereupon, if the petitioner has ~~not been convicted of any offense requiring the revocation or suspension of his license or resulting in an order revoking or suspending his license~~ had his or her license revoked or suspended under this chapter within the ~~18-month one-year~~ period immediately preceding the present ~~conviction~~ revocation, the judge may order the department to issue an occupational license to ~~such the~~ person. For the purpose of determining whether a person has had his or her license revoked or suspended under this chapter within the one-year period immediately preceding the present revocation, the court shall not consider a prior revocation under s. 343.30 (1q) or 343.305 if the present revocation is under s. 343.30 (1q) or 343.305 and both the prior and present revocations arose out of the same incident or occurrence. The order for issuance of an occupational license shall contain definite restrictions as to hours of the day, not to exceed 12, type of occupation and areas or routes of travel to be permitted under the license. If the petitioner holds a valid chauffeur's license at the time of filing petition the order for issuance shall further restrict operation under the occupational license to travel only between the licensee's place of residence and his or her place of employment, in addition to operation permitted under the chauffeur's license. The ~~court order~~ may permit travel to and from church but ~~such the~~ order shall specify the hours during which ~~such the~~ travel is to be permitted. The order may permit travel necessary to comply with a rehabilitation plan ordered under s. 343.30 (1q) or 343.305. A copy of the petition and the order for the occupational license shall be forwarded to the department. ~~No order for an occupational license shall be issued until at least 30 days have elapsed, since the date of conviction or, in the case of an appeal which is subsequently dropped or affirmed, until at least 30 days have elapsed since the date of revocation following the dropping or affirmance of the appeal.~~ If a certificate of insurance issued by the insuring company or an agent of the insuring company is submitted to the court and at least 15 days have elapsed since the date of conviction or, in the case of an appeal which is subsequently dismissed or affirmed, until at least 15 days have elapsed since the date of revocation following the dismissal or affirmance of the appeal, the court may issue a 30-day temporary occupational license. ~~Such The~~ license shall be on forms provided to the court by the department.

(2) No person ~~18 years of age or over~~ shall may file a petition for an occupational license unless he or she first pays to the county treasurer a fee of \$5. The treasurer shall give ~~such the~~ person a receipt and shall pay the full amount of the fee to the state treasurer for deposit in the general fund.

(3) The department shall issue an occupational license upon receipt of ~~a court an~~ order for such a license if at least 30 days have elapsed since the ~~conviction date of~~ revocation or, in the case of an appeal which is subsequently dismissed or affirmed, if

at least 30 days have elapsed since the date of revocation following the dismissal or affirmance of the appeal and if proof of financial responsibility covering all vehicles which the applicant will be permitted to operate has been furnished as specified in s. 343.38 (1) (c).

SECTION 5. 343.10 (7) of the statutes is created to read:

343.10 (7) The department shall inform a person whose operating privilege has been revoked under this chapter of his or her right to petition the court for issuance of an occupational license under this section.

SECTION 6. 343.30 (1q) of the statutes is repealed and recreated to read:

343.30 (1q) (a) Upon the conviction of any person for violation of s. 346.63 (1) or a local ordinance in conformity therewith, the trial court may, with the person's consent and prior to sentencing the person, order him or her to submit to an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) by examination of the person's use of alcohol or controlled substances and development of a rehabilitation plan for the person. The court may develop criteria to use in determining whether assessment is needed. In developing these criteria, the court shall consult with a board established under s. 51.42. If the court finds that assessment is not needed, it shall, with the person's consent, order attendance at a school under s. 345.60. If the school under s. 345.60 finds that assessment is needed, it shall report this to the court and the court may, with the person's consent, order assessment as provided in this paragraph. The department of health and social services shall establish standards for assessment procedures and rehabilitation plan programs by rule. The department of health and social services shall establish by rule conflict of interest guidelines for providers. Prior to developing a plan which specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the rehabilitation plan within 14 days to the court, the department and the person, except that upon request by the facility and the person, the court may extend the period for assessment. The report submitted to the person shall contain a statement that compliance with the rehabilitation plan shall not be in lieu of any revocation period, forfeiture, fine or imprisonment unless the court orders the person to comply with the rehabilitation plan recommended by the facility. Upon receipt of the report the court may, with the person's written consent, order the person to comply with the rehabilitation plan recommended by the facility. If the court orders assessment or rehabilitation under this paragraph, it shall inform the person that the fee may be reduced or waived under s. 46.03 (18) (f) if the person is unable to pay the complete fee. The court may require the person to appear before the court, in chambers, for the purpose of considering the rehabilitation plan and obtaining the person's written consent if it deems the appearance appropriate. The rehabilitation plan may include treatment for the person's misuse, abuse or dependence on alcohol or controlled substances, attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. An order for rehabilitation under this paragraph shall include a termination date consistent with the plan but in no case shall the order extend beyond one year. A person who fails substantially to comply with rehabilitation ordered under this paragraph shall have his or her operating privilege revoked by the court under par. (c) or (d). Any action by the department of health and social services to create, amend or repeal a rule under this paragraph after notice, hearing and publication as provided under ss. 227.02 to 227.027, shall be forwarded to the speaker of the assembly and the president of the senate for referral to and review by the appropriate standing committee of each house as determined by the presiding officer of each. For the purpose of reviewing such proposed action on a rule, the standing committee may be convened upon call of its chairperson or of a majority of its members. Each standing committee may, within 40 days from receipt of the proposed action, approve or disapprove the proposed action, but failure of a standing committee to disapprove the proposed action within the review time shall constitute approval thereof. The proposed action shall become effective only upon the approval

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~~of both committees. The review of rules required under this paragraph does not apply to emergency rules adopted under s. 227.027.~~

(b) Rehabilitation ordered and substantially complied with under par. (a) or a determination by a court that the person does not need assessment combined with an order to attend a school under s. 345.60 shall:

1. When revocation of an operating privilege would otherwise be required under par. (c), be in lieu of all or part of the revocation, as the court directs.

2. When revocation of an operating privilege would otherwise be required under par. (d), be in lieu of not more than the last 9 months of the revocation, as the court directs.

(c) Except as provided in par. (d), upon conviction of a person for violation of s. 346.63 (1) or a local ordinance in conformity therewith the court shall revoke the person's operating privilege for not less than 3 months nor more than 6 months.

(d) The court shall revoke a person's operating privilege for one year when the total of revocations under s. 343.305 and convictions for violation of s. 346.63 (1) or local ordinances in conformity therewith equals 2 or more within a 5-year period, except that revocations and convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in revocations or convictions.

(e) The period of revocation imposed under this section shall be reduced by any period of revocation previously imposed under s. 343.305 if the revocation under s. 343.305 and the conviction for violation of s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same incident or occurrence. If a court orders assessment and rehabilitation under this subsection and if a court has previously ordered assessment and rehabilitation in a proceeding under s. 343.305 arising out of the same incident or occurrence, the court shall, in lieu of ordering an additional assessment and rehabilitation under this subsection, adopt the order previously issued under s. 343.305 and determine its effect under par. (b).

(f) If a person licensed as a chauffeur is convicted of a violation of s. 346.63 (1) or a local ordinance in conformity therewith and the person was not operating a vehicle as a chauffeur at the time of violation, his or her chauffeur's license shall not be revoked under this subsection.

SECTION 7. 343.305 (exc. 343.305 (7) (d)) of the statutes, as affected by chapter 29, laws of 1977, is repealed and recreated to read:

343.305 Revocation of license on refusal to submit to tests. (1) Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, shall be deemed to have given consent to tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood, of alcohol or controlled substances when requested to do so by a law enforcement officer under sub. (2). Any such test shall be administered upon the request of a law enforcement officer. A law enforcement officer may administer a preliminary breath test under sub. (2) (a). The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (2) (b), and may designate which of the tests shall be administered first.

(2) (a) If a law enforcement officer has probable cause to believe that a person has violated s. 346.63 (1) or a local ordinance in conformity therewith, the officer may request the person, prior to arrest and issuance of a citation, to take a preliminary breath test for the purpose specified under sub. (1), using a device approved by the department for the purpose. A person may refuse to take a preliminary breath test without being subject to revocation under sub. (9) if he or she consents, after arrest, to take a test under par. (b). Neither the results of the preliminary breath test nor the fact that it was administered shall be admissible in any action or proceeding in which

it is material to prove that the person was under the influence of an intoxicant or a controlled substance.

(am) A law enforcement officer shall request any person who was the operator of a motor vehicle involved in an accident resulting in great bodily harm or death to any person to take a test as provided under par. (b) or (c) for the purpose specified in sub. (1).

(b) A law enforcement officer may, upon arrest of and issuance of a citation to a person for violation of s. 346.63 (1) or a local ordinance in conformity therewith, request the person to provide a sample of his or her breath, blood or urine for the purpose specified under sub. (1).

(c) A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person has violated s. 346.63 (1) or a local ordinance in conformity therewith, the person may be arrested therefor and a test may be administered to the person.

(3) (a) A law enforcement officer requesting a person to take a test under sub. (2) shall, at the time of the request and prior to the administration of any such test, inform the person:

1. That he or she is deemed to have consented to tests under sub. (1);
2. That if he or she refuses to submit to any such test, except as permitted under sub. (2) (a), his or her operating privilege shall be revoked for not less than 6 months nor more than one year under sub. (9); and
3. That in addition to the tests designated by the law enforcement agency under sub. (1), he or she may have an additional test under sub. (5).

(b) If the person refuses the request of a law enforcement officer to submit to a test under sub. (2), the officer shall immediately prepare a notice of intent to revoke the person's operating privilege under sub. (9) and give a copy of the notice to the person. The officer shall promptly submit copies of the notice to the department, the district attorney and the court specified under subd. 4. The notice shall contain the following information:

1. That at the time the officer made the request under sub. (2) (am), the person was the operator of a motor vehicle involved in an accident resulting in great bodily harm or death to any person; or that the officer, at the time a request under sub. (2) (a) was made, had probable cause to believe that the person had violated s. 346.63 (1) or a local ordinance in conformity therewith; or, prior to a request under sub. (2) (b), had placed the person under arrest and issued a citation for violation of s. 346.63 (1) or a local ordinance in conformity therewith.

2. That the officer complied with par. (a).

3. That the person refused a request under sub. (2) (am), or under sub. (2) (a) or (b) or both.

4. That on or prior to the citation return date the person may request a hearing by mailing or delivering a written request therefor to a court whose address is specified in the notice.

5. That the issues at the hearing are limited to whether the officer was entitled to request the test, whether the proper notice was given and whether the person refused to take the test.

6. That failure to request the hearing on or prior to the citation return date shall cause the court to order revocation of the person's operating privilege for not less than 6 months nor more than one year.

7. That the person may petition the court for a reduction in the period of revocation as provided under sub. (9).

(c) The use of the notice under par. (b) by a law enforcement officer in connection with the enforcement of this section is adequate process to give the appropriate court jurisdiction over the person.

(4) The person who performs a chemical analysis of breath, blood or urine under sub. (2) shall prepare a written report of the findings of the test which includes the identification of the law enforcement officer or person upon whose request the test was administered. He or she shall promptly transmit a copy thereof to the department, the law enforcement agency and the person from whose breath, blood or urine the analysis was made.

(5) In addition to a test administered upon the request of a law enforcement officer under sub. (2), a person who was the operator of a motor vehicle involved in an accident resulting in great bodily harm or death to any person or a person arrested for a violation of s. 346.63 (1) or a local ordinance in conformity therewith shall be permitted, upon his or her request, the alternative test provided by the agency under sub. (1) or, at his or her own expense, reasonable opportunity to have any qualified person of his or her own choosing administer a chemical test for the purpose specified under sub. (1). If a person has been arrested for such a violation and he or she has not been requested to provide a sample for a test under sub. (2) (b), the person may request a breath test to be administered by the agency or, at his or her own expense, reasonable opportunity to have any qualified person administer any test specified under sub. (2) (b). The failure or inability of a person to obtain a test at his or her own expense shall not preclude the admission of evidence of the results of any test administered under sub. (2) (b). If a person requests the agency to administer a breath test and if the agency is unable to perform that test, the person may request the agency to perform a test under sub. (2) (b) that it is able to perform. The agency shall comply with a request made in accordance with this subsection.

(6) (a) Blood may be withdrawn from the person arrested for the purpose of determining the presence or quantity of alcohol or controlled substance in the blood only by a physician, registered nurse, medical technologist, physician's assistant or person acting under the direction of a physician.

(b) No person acting under par. (a) nor the employer of any such person, nor any hospital where blood is withdrawn may incur any civil or criminal liability for the act if requested by a law enforcement officer to perform it, except for civil liability for negligence in the performance of the act.

(7) At the trial of any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have been driving or operating a motor vehicle while under the influence of an intoxicant or a controlled substance, the results of a test administered under sub. (2) (b) or (c) or (5) are admissible on the issue of whether the person was under the influence of an intoxicant or a controlled substance. Test results shall be given the effect required under s. 885.235 and, if applicable, s. 346.63 (4).

(8) (a) The court shall, upon the failure of the person given the notice under sub. (3) (b) to request a hearing on or prior to the citation return date, proceed under sub. (9).

(b) 1. If the person given the notice under sub. (3) (b) requests a hearing on or prior to the citation return date, the court shall set a time and place for the hearing and shall so notify the person. The hearing shall be held before the court, shall be recorded and shall be limited to the following issues:

a. Whether the law enforcement officer had probable cause to believe that the person had violated s. 346.63 (1) or a local ordinance in conformity therewith, prior to requesting the person to take a preliminary breath test under sub. (2) (a) or whether the officer made a lawful arrest prior to requesting a test under sub. (2) (b) or if the person was the operator of a motor vehicle involved in an accident resulting in great bodily harm or death to any person.

- b. Whether the law enforcement officer complied with sub. (3); and
- c. Whether the person refused to take the test requested.

2. The person shall not be deemed to have refused if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to submit to the test due to a physical disability or disease unrelated to the use of intoxicants or controlled substances.

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

(9) (a) When directed to proceed under this subsection by sub. (8) the court may, with the person's consent, order the person to submit to an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) by examination of the person's use of alcohol or controlled substances and development of a rehabilitation plan for the person. The court may develop criteria to use in determining whether assessment is needed. In developing these criteria, the court shall consult with a board established under s. 51.42. If the court finds that assessment is not needed, it shall, with the person's consent, order attendance at a school under s. 345.60. If the school under s. 345.60 finds that assessment is needed, it shall report this to the court and the court may, with the person's consent, order assessment as provided in this paragraph. The department of health and social services shall establish standards for assessment procedures and rehabilitation plan programs by rule. The department shall establish by rule conflict of interest guidelines for providers. Prior to developing a plan which specifies treatment, the facility shall make a finding that treatment is necessary and appropriate services are available. The facility shall submit a report of the assessment and the rehabilitation plan within 14 days to the court, the department and the person, except that upon request by the facility and the person, the court may extend the period for assessment. The report submitted to the person shall contain a statement that compliance with the rehabilitation plan shall not be in lieu of any revocation period, forfeiture, fine or imprisonment unless the court orders the person to comply with the rehabilitation plan recommended by the facility. Upon receipt of the report the court may, with the person's written consent, order the person to comply with the rehabilitation plan recommended by the facility. If the court orders assessment or rehabilitation under this paragraph, it shall inform the person that the fee may be reduced or waived under s. 46.03 (18) (f) if the person is unable to pay the complete fee. The court may require the person to appear before the court, in chambers, for the purpose of considering the rehabilitation plan and obtaining the person's written consent if it deems the appearance appropriate. The rehabilitation plan may include treatment for the person's misuse, abuse or dependence on alcohol or controlled substances, attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. An order for rehabilitation under this paragraph shall include a termination date consistent with the plan but in no case shall the order extend beyond one year. A person who fails substantially to comply with rehabilitation ordered under this paragraph shall have his or her operating privileges revoked by the court under par. (c) or (d). ~~Any action by the department of health and social services to create, amend or repeal a rule under this paragraph after notice, hearing and publication as provided under ss. 227.02 to 227.027, shall be forwarded to the speaker of the assembly and the president of the senate for referral to and review by the appropriate standing committee of each house as determined by the presiding officer of each. For the purpose of reviewing such proposed action on a rule, the standing committee may be convened upon call of its chairperson or of a majority of its members. Each standing committee may, within 40 days from receipt of the proposed action, approve or disapprove the proposed action, but failure of a standing committee to disapprove the proposed action within the~~

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~~review time shall constitute approval thereof. The proposed action shall become effective only upon the approval of both committees. The review of rules required under this paragraph does not apply to emergency rules adopted under s. 227.027.~~

(b) Rehabilitation ordered and substantially complied with under par. (a) or a determination by a court that the person does not need assessment combined with an order to attend a school under 345.60 shall be in lieu of the last 3 months of the revocation under par. (c) or shall be in lieu of the last 6 months under par. (d).

(c) Except as provided in par. (d), upon refusal to take a test under sub. (2), the court shall revoke the person's operating privilege for 6 months.

(d) The court shall revoke a person's operating privilege for one year when the total of revocations under this section and convictions for violation of s. 346.63 (1) or a local ordinance in conformity therewith equals 2 or more within a 5-year period, except that revocations and convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocations or convictions.

(e) The period of revocation imposed under this section shall be reduced by any period of revocation previously imposed under s. 343.30 (1q) if the revocation under this section and the conviction for violation of s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same incident or occurrence. If a court orders assessment and rehabilitation under this section and if a court has previously ordered assessment and rehabilitation in a proceeding under s. 343.30 (1q) arising out of the same incident or occurrence, the court shall, in lieu of ordering an additional assessment and rehabilitation under this section, adopt the order previously issued under s. 343.30 (1q) and determine its effect under par. (b).

(f) A person given the notice under sub. (3) (b) who fails to request a hearing under sub. (8) (b) on or prior to the citation return date may petition the court for an order for rehabilitation under par. (a).

(10) (a) Chemical analyses of blood or urine to be considered valid under this section shall have been performed substantially according to methods approved by the laboratory of hygiene and by an individual possessing a valid permit to perform the analyses issued by the department of health and social services. The department of health and social services shall approve laboratories for the purpose of performing chemical analyses of blood or urine for alcohol or controlled substances and shall develop and administer a program for regular monitoring of the laboratories. A list of approved laboratories shall be provided to all law enforcement agencies in the state. Urine specimens are to be collected by methods specified by the laboratory of hygiene. The laboratory of hygiene shall furnish ~~each sheriff's department in this state with~~ an ample supply of urine and blood specimen containers to permit all law enforcement officers to comply with the requirements of this section.

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(b) The department of transportation shall approve techniques or methods of performing chemical analysis of the breath and shall:

1. Approve training manuals and courses throughout the state for the training of law enforcement officers in the chemical analysis of a person's breath;
2. Certify the qualifications and competence of individuals to conduct the analysis;
3. Have trained technicians, approved by the secretary, test and certify the accuracy of the equipment to be used by traffic officers for chemical analysis of a person's breath under sub. (2) (b) before regular use of the equipment and periodically thereafter at intervals of not more than 60 days; and
4. Issue permits to individuals according to their qualifications.

(c) The department of transportation may promulgate rules pertaining to the calibration and testing of preliminary breath test devices. ~~Any action by the department of transportation to create, amend or repeal a rule under this paragraph after notice, hearing and publication as provided under ss. 227.02 to 227.027 shall be forwarded to the speaker of the assembly and the president of the senate for referral to~~

and review by the appropriate standing committee of each house as determined by the presiding officer of each. For the purpose of reviewing such proposed action on a rule, the standing committee may be convened upon call of its chairperson or of a majority of its members. Each standing committee may, within 46 days from receipt of the proposed action, approve or disapprove the proposed action, but failure of a standing committee to disapprove the proposed action within the review time shall constitute approval thereof. The proposed action shall become effective only upon the approval of both committees. The review of rules required under this paragraph does not apply to emergency rules adopted under s. 227.027.

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(11) In this section:

(a) "Drive" means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.

(b) "Operate" means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.

SECTION 8. 343.305 (7) (d) of the statutes, as affected by chapter 29, laws of 1977, is repealed.

SECTION 9. 343.307 of the statutes is created to read:

343.307 Prior convictions to be counted. For purposes of counting the number of revocations and convictions under s. 343.30 (1q) (d), 343.305 (9) (d) or 346.65 (2) (a) 2 or 3 on and after July 1, 1978, convictions for violations under s. 346.63 (1), or a local ordinance in conformity therewith, prior to and after the treatment of that section by chapter ... (this act), laws of 1977, shall be counted and given the effect specified under s. 343.30 (1q) (d), 343.305 (9) (d) or 346.65 (2) (a) 2 or 3 on and after July 1, 1978.

SECTION 10. 343.31 (1) (intro.), (a) and (b) and (3) of the statutes, as affected by chapter 29, laws of 1977, are amended to read:

343.31 (1) (intro.) The secretary shall ~~forthwith~~ revoke a person's operating privilege upon receiving a record of conviction showing that such the person has been convicted of any of the following offenses under a state law or under a local ordinance which is in conformity therewith, except that if a person licensed as a chauffeur was convicted for operation of a motor vehicle while under the influence of ~~intoxicating liquor~~ an intoxicant or controlled substance and such the person was not operating a vehicle as a chauffeur at the time of such the offense, only his or her regular license shall be revoked as provided in this section:

(a) Homicide or great bodily harm resulting from the operation of a motor vehicle and which is criminal under s. 940.06, 940.08 ~~or~~ 940.09 or 940.25.

(b) Upon the 2nd or any subsequent conviction for operation of a motor vehicle while under the influence of an ~~intoxicating liquor~~ intoxicant or controlled substance, in accordance with the order of the court.

(3) All revocations under this section shall be for a period of one year, except that when the revocation results from a first conviction of operation of a motor vehicle while under the influence of an intoxicant or controlled substance, and such conviction occurs in another jurisdiction, the period of revocation shall be 90 days, and except that any person convicted under s. 940.09 of negligent operation or handling of a motor vehicle shall have his or her operating privilege revoked for 5 years.

SECTION 11. 345.24 of the statutes is amended to read:

345.24 Officer's action after arrest for driving under influence of intoxicant. A person arrested under s. 346.63 or an ordinance ~~lawfully enacted~~ in conformity therewith for operating a motor vehicle while under the influence of an intoxicant may not be released until 4 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 343.305 (2) (b) shows that there is .05% or less by weight of alcohol in such the person's blood, but such the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

SECTION 12. 345.60 (1) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

345.60 (1) ~~In~~ Except as provided in sub. (3), in addition to or in lieu of other penalties provided by law for violation of chs. 346 to 348, the trial court may in its judgment of conviction order the convicted person to attend, for a certain number of school days, a traffic safety school whose course and mode of instruction is approved by the secretary and which is conducted by the police department of the municipality, the sheriff's office of the county or by any regularly established safety organization.

SECTION 13. 345.60 (3) of the statutes is created to read:

345.60 (3) In addition to other penalties provided by law for violation of s. 346.63 (1) or a local ordinance in conformity therewith, the trial court may in its judgment of conviction order the convicted person to attend, for a certain number of school days, a school under sub. (1).

SECTION 14. 346.63 (1), (3) and (4) of the statutes are repealed and recreated to read:

346.63 (1) No person may drive or operate a motor vehicle while under the influence of an intoxicant or a controlled substance.

(3) In this section:

(a) "Drive" means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.

(b) "Operate" means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.

(4) A person whose blood contains 0.1% or more by weight of alcohol is under the influence of an intoxicant for purposes of this section. Notwithstanding s. 885.235 (1) (c), a chemical analysis of a person's blood, breath or urine which has been admitted into evidence and which shows that there was 0.1% or more by weight of alcohol in the person's blood is sufficient evidence, without corroborating physical evidence, on which to base a finding that the person's blood contained 0.1% or more by weight of alcohol.

SECTION 15. 346.65 (2) of the statutes is repealed and recreated to read:

346.65 (2) (a) Any person violating s. 346.63 (1):

1. Shall forfeit not less than \$100 nor more than \$500, except as provided in subd. 2 or 3.

2. Shall be fined not less than \$250 nor more than \$1,000 and imprisoned not less than 5 days nor more than 6 months if the total of revocations under s. 343.305 and convictions for violation of s. 346.63 (1) or local ordinances in conformity therewith equals 2 within a 5-year period, except that revocations and convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocations or convictions.

3. Shall be fined not less than \$500 nor more than \$2,000 and imprisoned for not less than 30 days nor more than one year in the county jail if the total of revocations under s. 343.305 and convictions for violation of s. 346.63 (1) or local ordinances in conformity therewith equals 3 or more within a 5-year period, except that revocations and convictions arising out of the same incident or occurrence shall be counted as one. The 5-year period shall be measured from the dates of the refusals or violations which resulted in the revocations or convictions.

(b) Rehabilitation ordered and substantially complied with pursuant to s. 343.30 (1q) (a) or a determination by a court that the person does not need assessment combined with an order to attend a school under s. 345.60 may:

1. When a forfeiture would otherwise be required under par. (a) 1, be in lieu of all but the first \$100 of the forfeiture.

2. When fine and imprisonment would otherwise be required under par. (a) 2, be in lieu of all or part of the imprisonment and all but the first \$250 of the fine.

(c) Rehabilitation ordered and substantially complied with pursuant to s. 343.30 (1q) (a) or a determination by a court that the person does not need assessment or an order to attend a school under s. 345.60 or any combination thereof may not be in lieu of any part of the imprisonment or fine ordered under par. (a) 3.

SECTION 16. 940.25 of the statutes is created to read:

940.25 Injury by intoxicated use of a vehicle. Whoever causes great bodily harm to another human being by the negligent operation of a vehicle while under the influence of an intoxicant shall be fined not more than \$10,000 or imprisoned not more than 2 years or both.

SECTION 17. **Cross reference changes.** In the sections of the statutes listed in Column A, the cross references shown in Column B are changed to the cross references shown in Column C:

A	B	C
Statute Sections	Old Cross References	New Cross References
343.12 (2)(d)	346.63 (1)(a)	346.63 (1)
346.96 (2)(b) 5	346.63 (1)(a)	346.63 (1)

SECTION 18. **Program responsibility.** In the list of program responsibilities specified for the department of health and social services under section 15.191 (intro.) of the statutes, reference to sections "343.30 (1q)" and "343.305 (9) (a) and (10) (a)" are inserted.

SECTION 18m. **Local ordinance in conformity.** Any local authority may enact and enforce a traffic regulation which is in strict conformity with section 346.65 (2) (a) 1 of the statutes, as affected by this act, for which the penalty is not more than a forfeiture of \$500. Such forfeiture moneys up to the maximum of \$500 shall be retained entirely by the local unit of government.

SECTION 19. **Appropriation increase.** (1) The appropriation under section 20.435 (2) (b) of the statutes, as affected by the laws of 1977, is increased by \$210,000 in fiscal year 1978-79 and shall be distributed by the department of health and social services to boards established under section 51.42 of the statutes or section 51.437 of the statutes, or both, to provide additional funding for community mental health services. The moneys distributed under this appropriation increase shall not be subject to the limitations imposed under section 51.42 (8) (b) or (d) of the statutes, as affected by the laws of 1977, except that those moneys shall be considered part of the 1977 grants-in-aid level for purposes of future distributions.

(2) The appropriation under section 20.395 (6) (sd) of the statutes, as affected by the laws of 1977, is increased by \$23,300 in 1977-78 to authorize and fund 3 additional positions in the department of transportation for the purpose of handling the increased workload relating to issuances of occupational licenses necessitated by the enactment of this act.

SECTION 20. **Effective date; applicability.** (1) Except as provided in subs. (2) to (7), this act shall take effect on July 1, 1978.

(2) The treatment of section 343.10 (1) to (3) of the statutes by this act shall take effect on the day after publication of the act and shall apply to persons who have had licenses revoked regardless of the date of revocation.

(3) The treatment of section 346.63 of the statutes by this act shall take effect on the day following publication.

(4) The creation of section 940.25 of the statutes by this act shall take effect the day following publication.

(5) The creation of section 343.10 (7) of the statutes by this act shall take effect on the day following publication and applies with respect to revocations occurring after the effective date of section 343.10 (7) of the statutes.

(6) The repeal of section 343.305 (7) (d) of the statutes by this act shall take effect on the day following publication.

(7) SECTIONS 17 and 19 of this act shall take effect the day following publication.
