



**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1995 ASSEMBLY BILL 146**

May 10, 1995 - Offered by Representative ALBERS.

1     **AN ACT** *to repeal* 940.04 (1); *to renumber* 940.06, 940.08, 940.10, 940.23 (1),  
2           940.23 (2) and 940.24; *to amend* 302.11 (1g) (a) 2., 343.31 (3) (c), 346.65 (6) (a)  
3           1., 346.65 (6) (a) 2., 346.65 (6) (d), 939.22 (21) (d), 939.24 (1), 939.25 (1), 939.32  
4           (1) (intro.), 939.62 (2m) (a) 2., 940.04 (2) (intro.), 940.04 (2) (a), 940.04 (6), 940.05  
5           (2), 940.09 (1d), 940.09 (1m), 940.09 (2), 940.25 (1d), 940.25 (1m), 940.25 (2),  
6           941.38 (1) (b) 4., 969.035 (1), 969.08 (10) (b), 973.0135 (1) (b) 2. and 980.01 (6)  
7           (b); and *to create* 939.75, 940.02 (1m), 940.05 (2g), 940.05 (2h), 940.06 (2),  
8           940.08 (2), 940.09 (1) (c) to (e), 940.09 (1g) (c) and (d), 940.10 (2), 940.195, 940.23  
9           (1) (b), 940.23 (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) of the statutes; **relating**  
10          **to:** causing harm or death to an unborn child and providing penalties.

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

11           **SECTION 1.** 302.11 (1g) (a) 2. of the statutes is amended to read:  
12           302.11 (1g) (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19  
13           (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02,

1 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03  
2 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

3 **SECTION 2.** 343.31 (3) (c) of the statutes is amended to read:

4 343.31 (3) (c) Any person convicted under s. 940.09 of causing the death of  
5 another or an unborn child by the operation or handling of a motor vehicle shall have  
6 his or her operating privilege revoked for 5 years.

7 **SECTION 3.** 346.65 (6) (a) 1. of the statutes is amended to read:

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

20 **SECTION 4.** 346.65 (6) (a) 2. of the statutes is amended to read:

21 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor  
22 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)  
23 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a)  
24 ~~or~~, (b), (c) or (d) or 940.25 (1) (a) ~~or~~, (b), (c) or (d) if the person whose operating privilege  
25 is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior

1 suspensions, revocations or convictions within a 10-year period that would be  
2 counted under s. 343.307 (1).

3 **SECTION 5.** 346.65 (6) (d) of the statutes is amended to read:

4 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of  
5 proving to a reasonable certainty by the greater weight of the credible evidence that  
6 the motor vehicle is a motor vehicle owned by a person who committed a violation of  
7 s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~, (b), (c) or (d) or 940.25 (1) (a)  
8 ~~or~~, (b), (c) or (d) and, if the seizure is under par. (a) 1., that the person had 2 prior  
9 convictions, suspensions or revocations within a 10-year period as counted under s.  
10 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions,  
11 suspensions or revocations within a 10-year period as counted under s. 343.307 (1).  
12 If the owner of the motor vehicle proves by a preponderance of the evidence that he  
13 or she was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09  
14 (1) (a) ~~or~~, (b), (c) or (d) or 940.25 (1) (a) ~~or~~, (b), (c) or (d), or, if the seizure is under par.  
15 (a) 1., that he or she did not have 2 prior convictions, suspensions or revocations  
16 within a 10-year period as counted under s. 343.307 (1) or, if the seizure is under par.  
17 (a) 2., 3 or more prior convictions, suspensions or revocations within a 10-year period  
18 as counted under s. 343.307 (1), the motor vehicle shall be returned to the owner upon  
19 the payment of storage costs.

20 **SECTION 6.** 939.22 (21) (d) of the statutes is amended to read:

21 939.22 (21) (d) Battery, substantial battery or aggravated battery, as  
22 prohibited in s. 940.19 or 940.195.

23 **SECTION 7.** 939.24 (1) of the statutes is amended to read:

24 939.24 (1) In this section, “criminal recklessness” means that the actor creates  
25 an unreasonable and substantial risk of death or great bodily harm to another

1 human being and the actor is aware of that risk, except that for purposes of ss. 940.02  
2 (1m), 940.06 (2) and 940.23 (1) (b) and (2) (b), “criminal recklessness” means that the  
3 actor creates an unreasonable and substantial risk of death or great bodily harm to  
4 an unborn child, to the woman who is pregnant with that unborn child or to another  
5 and the actor is aware of that risk.

6 **SECTION 8.** 939.25 (1) of the statutes is amended to read:

7 939.25 (1) In this section, “criminal negligence” means ordinary negligence to  
8 a high degree, consisting of conduct ~~which~~ that the actor should realize creates a  
9 substantial and unreasonable risk of death or great bodily harm to another, except  
10 that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), “criminal negligence”  
11 means ordinary negligence to a high degree, consisting of conduct that the actor  
12 should realize creates a substantial and unreasonable risk of death or great bodily  
13 harm to an unborn child, to the woman who is pregnant with that unborn child or  
14 to another.

15 **SECTION 9.** 939.32 (1) (intro.) of the statutes is amended to read:

16 939.32 (1) (intro.) Whoever attempts to commit a felony or a ~~battery as defined~~  
17 ~~by crime specified in~~ s. 940.19 ~~or theft as defined by s., 940.195 or 943.20~~ may be fined  
18 or imprisoned or both not to exceed one-half the maximum penalty for the completed  
19 crime; except:

20 **SECTION 10.** 939.62 (2m) (a) 2. of the statutes is amended to read:

21 939.62 (2m) (a) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09  
22 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b)  
23 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2),  
24 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b)  
25 or (c) or 948.36.

1           **SECTION 11.** 939.75 of the statutes is created to read:

2           **939.75 Death or harm to an unborn child. (1)** In this section and ss. 939.24  
3 (1), 939.25 (1), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c)  
4 to (e) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and  
5 940.25 (1) (c) to (e), “unborn child” means any individual of the human species from  
6 fertilization until birth.

7           **(2)** Sections 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1)  
8 (c) to (e) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2)  
9 and 940.25 (1) (c) to (e) do not apply to an act that is committed in accordance with  
10 the usual and customary standards of medical practice during diagnostic testing or  
11 therapeutic treatment performed by, or under the supervision of, a physician  
12 licensed under ch. 448.

13           **(3)** Sections 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1)  
14 (c) to (e) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2)  
15 and 940.25 (1) (c) to (e) do not apply to an act by a woman who is pregnant with an  
16 unborn child that results in the death of or great bodily harm or bodily harm to that  
17 unborn child.

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

23           **SECTION 12.** 940.02 (1m) of the statutes is created to read:

1           940.02 (1m) Whoever recklessly causes the death of an unborn child under  
2 circumstances that show utter disregard for the life of that unborn child, the woman  
3 who is pregnant with that unborn child or another is guilty of a Class B felony.

4           **SECTION 13.** 940.04 (1) of the statutes is repealed.

5           **SECTION 14.** 940.04 (2) (intro.) of the statutes is amended to read:

6           940.04 (2) (intro.) Any person, other than the mother, who does either of the  
7 following ~~may be imprisoned not more than 15 years~~ is guilty of a Class A felony:

8           **SECTION 15.** 940.04 (2) (a) of the statutes is amended to read:

9           940.04 (2) (a) ~~Intentionally destroys~~ Destroys the life of an unborn quick child  
10 by an act done with intent to kill that unborn child, kill the woman who is pregnant  
11 with that unborn child or kill another; or

12           **SECTION 16.** 940.04 (6) of the statutes is amended to read:

13           940.04 (6) In this section “unborn child” means a ~~human being from the time~~  
14 ~~of conception until it is born alive~~ any individual of the human species from  
15 fertilization until birth.

16           **SECTION 17.** 940.05 (2) of the statutes is amended to read:

17           940.05 (2) In prosecutions under ~~this section sub. (1)~~, it is sufficient to allege  
18 and prove that the defendant caused the death of another human being with intent  
19 to kill that person or another.

20           **SECTION 18.** 940.05 (2g) of the statutes is created to read:

21           940.05 (2g) Whoever causes the death of an unborn child with intent to kill the  
22 woman who is pregnant with that unborn child is guilty of a Class B felony.

23           **SECTION 19.** 940.05 (2h) of the statutes is created to read:

1           940.05 **(2h)** In prosecutions under sub. (2g), it is sufficient to allege and prove  
2 that the defendant caused the death of an unborn child with intent to kill the woman  
3 who is pregnant with that unborn child.

4           **SECTION 20.** 940.06 of the statutes is renumbered 940.06 (1).

5           **SECTION 21.** 940.06 (2) of the statutes is created to read:

6           940.06 **(2)** Whoever recklessly causes the death of an unborn child is guilty of  
7 a Class C felony.

8           **SECTION 22.** 940.08 of the statutes is renumbered 940.08 (1).

9           **SECTION 23.** 940.08 (2) of the statutes is created to read:

10          940.08 **(2)** Whoever causes the death of an unborn child by the negligent  
11 operation or handling of a dangerous weapon, explosives or fire is guilty of a Class  
12 D felony.

13          **SECTION 24.** 940.09 (1) (c) to (e) of the statutes are created to read:

14          940.09 **(1)** (c) Causes the death of an unborn child by the operation or handling  
15 of a vehicle while under the influence of an intoxicant.

16          (d) Causes the death of an unborn child by the operation or handling of a vehicle  
17 while the person has a prohibited alcohol concentration, as defined in s. 340.01  
18 (46m).

19          (e) Causes the death of an unborn child by the operation of a commercial motor  
20 vehicle while the person has an alcohol concentration of 0.04 or more but less than  
21 0.1.

22          **SECTION 25.** 940.09 (1d) of the statutes is amended to read:

23          940.09 **(1d)** If the person who committed an offense under sub. (1) (a) ~~or~~, (b), (c)  
24 or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year period,  
25 as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed

1 regarding the immobilization or seizure and forfeiture of a motor vehicle owned by  
2 the person who committed the offense or the equipping of a motor vehicle owned by  
3 the person with an ignition interlock device.

4 **SECTION 26.** 940.09 (1g) (c) and (d) of the statutes are created to read:

5 940.09 (1g) (c) Causes the death of an unborn child by the operation or handling  
6 of a firearm or airgun while under the influence of an intoxicant.

7 (d) Causes the death of an unborn child by the operation or handling of a  
8 firearm or airgun while the person has a blood alcohol concentration of 0.1% or more  
9 by weight of alcohol in that person's blood or 0.10 grams or more of alcohol in 210  
10 liters of that person's breath.

11 **SECTION 27.** 940.09 (1m) of the statutes is amended to read:

12 940.09 (1m) A person may be charged with and a prosecutor may proceed upon  
13 an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a)  
14 or (bm) or both ~~or of~~, sub. (1) (c) or (d) or both, sub. (1) (c) or (e) or both, sub. (1g) (a)  
15 or (b) or both or sub. (1g) (c) or (d) or both for acts arising out of the same incident or  
16 occurrence. If the person is charged with violating both sub. (1) (a) and (b) ~~or~~, both  
17 sub. (1) (a) and (bm) ~~or~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g)  
18 (a) and (b) or both sub. (1g) (c) and (d) in the information, the crimes shall be joined  
19 under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both  
20 sub. (1) (a) and (bm) ~~or of~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub.  
21 (1g) (a) and (b) or both sub. (1g) (c) and (d) for acts arising out of the same incident  
22 or occurrence, there shall be a single conviction for purposes of sentencing and for  
23 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)  
24 (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1)

1 (a), (b) ~~and~~, (bm), (c), (d) and (e), and sub. (1g) (a) ~~and~~, (b), (c) and (d), each require  
2 proof of a fact for conviction which the other does not require.

3 **SECTION 28.** 940.09 (2) of the statutes is amended to read:

4 940.09 (2) The defendant has a defense if he or she proves by a preponderance  
5 of the evidence that the death would have occurred even if he or she had been  
6 exercising due care and he or she had not been under the influence of an intoxicant  
7 or did not have a blood alcohol concentration described under sub. (1) (b) ~~or~~, (bm), (d)  
8 or (e) or (1g) (b) or (d).

9 **SECTION 29.** 940.10 of the statutes is renumbered 940.10 (1).

10 **SECTION 30.** 940.10 (2) of the statutes is created to read:

11 940.10 (2) Whoever causes the death of an unborn child by the negligent  
12 operation or handling of a vehicle is guilty of a Class E felony.

13 **SECTION 31.** 940.195 of the statutes is created to read:

14 **940.195 Battery to an unborn child; substantial battery to an unborn**  
15 **child; aggravated battery to an unborn child.** (1) Whoever causes bodily harm  
16 to an unborn child by an act done with intent to cause bodily harm to that unborn  
17 child, to the woman who is pregnant with that unborn child or another is guilty of  
18 a Class A misdemeanor.

19 (2) Whoever causes substantial bodily harm to an unborn child by an act done  
20 with intent to cause bodily harm to that unborn child, to the woman who is pregnant  
21 with that unborn child or another is guilty of a Class E felony.

22 (3) Whoever causes substantial bodily harm to an unborn child by an act done  
23 with intent to cause substantial bodily harm to that unborn child, to the woman who  
24 is pregnant with that unborn child or another is guilty of a Class D felony.

1           **(4)** Whoever causes great bodily harm to an unborn child by an act done with  
2 intent to cause bodily harm to that unborn child, to the woman who is pregnant with  
3 that unborn child or another is guilty of a Class D felony.

4           **(5)** Whoever causes great bodily harm to an unborn child by an act done with  
5 intent to cause either substantial bodily harm or great bodily harm to that unborn  
6 child, to the woman who is pregnant with that unborn child or another is guilty of  
7 a Class C felony.

8           **(6)** Whoever intentionally causes bodily harm to an unborn child by conduct  
9 that creates a substantial risk of great bodily harm is guilty of a Class D felony.

10           **SECTION 32.** 940.23 (1) of the statutes is renumbered 940.23 (1) (a).

11           **SECTION 33.** 940.23 (1) (b) of the statutes is created to read:

12           940.23 (1) (b) Whoever recklessly causes great bodily harm to an unborn child  
13 under circumstances that show utter disregard for the life of that unborn child, the  
14 woman who is pregnant with that unborn child or another is guilty of a Class C felony.

15           **SECTION 34.** 940.23 (2) of the statutes is renumbered 940.23 (2) (a).

16           **SECTION 35.** 940.23 (2) (b) of the statutes is created to read:

17           940.23 (2) (b) Whoever recklessly causes great bodily harm to an unborn child  
18 is guilty of a Class D felony.

19           **SECTION 36.** 940.24 of the statutes is renumbered 940.24 (1).

20           **SECTION 37.** 940.24 (2) of the statutes is created to read:

21           940.24 (2) Whoever causes bodily harm to an unborn child by the negligent  
22 operation or handling of a dangerous weapon, explosives or fire is guilty of a Class  
23 E felony.

24           **SECTION 38.** 940.25 (1) (c) to (e) of the statutes are created to read:

1           940.25 (1) (c) Causes great bodily harm to an unborn child by the operation of  
2 a vehicle while under the influence of an intoxicant.

3           (d) Causes great bodily harm to an unborn child by the operation of a vehicle  
4 while the person has a prohibited alcohol concentration, as defined in s. 340.01  
5 (46m).

6           (e) Causes great bodily harm to an unborn child by the operation of a  
7 commercial motor vehicle while the person has an alcohol concentration of 0.04 or  
8 more but less than 0.1.

9           **SECTION 39.** 940.25 (1d) of the statutes is amended to read:

10           940.25 (1d) If the person who committed the offense under sub. (1) (a) ~~or~~, (b),  
11 (c) or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year  
12 period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be  
13 followed regarding the immobilization or seizure and forfeiture of a motor vehicle  
14 owned by the person who committed the offense or the equipping of a motor vehicle  
15 owned by the person with an ignition interlock device.

16           **SECTION 40.** 940.25 (1m) of the statutes is amended to read:

17           940.25 (1m) A person may be charged with and a prosecutor may proceed upon  
18 an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a)  
19 or (b) or both, sub. (1) (c) or (d) or both or sub. (1) (c) or (e) or both for acts arising  
20 out of the same incident or occurrence. If the person is charged with violating both  
21 sub. (1) (a) and (b) ~~or~~, both sub. (1) (a) and (b), both sub. (1) (c) and (d) or both sub.  
22 (1) (c) and (e) in the information, the crimes shall be joined under s. 971.12. If the  
23 person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both sub. (1) (a) and (b), both  
24 sub. (1) (c) and (d) or both sub. (1) (c) and (e) for acts arising out of the same incident  
25 or occurrence, there shall be a single conviction for purposes of sentencing and for

1 purposes of counting convictions under s. 23.33 (13) (b) 2 and 3, under s. 30.80 (6) (a)  
2 2 or 3, under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2 and 3. Subsection  
3 (1) (a), (b) ~~and~~, (bm), (c), (d) and (e) each require proof of a fact for conviction which  
4 the other does not require.

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

6 940.25 (2) The defendant has a defense if he or she proves by a preponderance  
7 of the evidence that the great bodily harm would have occurred even if he or she had  
8 been exercising due care and he or she had not been under the influence of an  
9 intoxicant or did not have a blood alcohol concentration described under sub. (1) (b)  
10 ~~or~~, (bm), (d) or (e).

11 **SECTION 42.** 941.38 (1) (b) 4. of the statutes is amended to read:

12 941.38 (1) (b) 4. Battery, substantial battery or aggravated battery, as  
13 prohibited in s. 940.19 or 940.195.

14 **SECTION 43.** 969.035 (1) of the statutes is amended to read:

15 969.035 (1) In this section, “violent crime” means any crime specified in s.  
16 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195  
17 (5), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025 or 948.03.

18 **SECTION 44.** 969.08 (10) (b) of the statutes is amended to read:

19 969.08 (10) (b) “Serious crime” means any crime specified in s. 346.62 (4),  
20 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195  
21 (5), 940.20, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29,  
22 940.295 (3) (b) 1., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01  
23 (2) (c), 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r),  
24 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03,  
25 948.04, 948.05, 948.06, 948.07 or 948.30.

