

## 1999 ASSEMBLY BILL 238

March 23, 1999 – Introduced by Representatives JOHNSRUD, BLACK, M. LEHMAN, LADWIG, PETROWSKI, RYBA, BRANDEMUEHL, HUTCHISON, HUEBSCH, KLUSMAN and STASKUNAS, cosponsored by Senators DRZEWIECKI, ROESSLER, RUDE, DARLING and HUELSMAN. Referred to Committee on Highway Safety.

1     **AN ACT** *to amend* 85.53 (1) (d), 342.12 (4) (a), 343.16 (5) (a), 343.30 (1g), 343.30  
 2           (1q) (a), 343.303, 343.305 (3) (a), 343.305 (3) (b), 343.305 (5) (b), 343.305 (9) (a)  
 3           1., 343.305 (9) (a) 5. a., 343.305 (9) (d), 343.307 (1) (c), 343.307 (2) (c), 343.31 (1)  
 4           (f), 343.31 (3) (c), 343.31 (3) (e), 343.31 (3) (f), 343.31 (3) (g), 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 (6) (a) 1., 346.65 (6) (a) 2.,  
 7           346.65 (6) (d), 346.655 (1), 949.03 (1) (b), 949.08 (2) (e), 967.055 (2) (a) and  
 8           967.055 (3) (b); and **to create** 340.01 (19d), 343.31 (1) (ag), 346.63 (1m) and  
 9           346.65 (3g) of the statutes; **relating to:** causing injury, death or property  
 10          damage while under the influence of alcohol and providing a penalty.

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### ***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 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 bodily harm; and 4) OWI

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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 which 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 an additional OWI offense for having a prohibited alcohol concentration within two hours after the operation of a motor vehicle that resulted in injury, great bodily harm or death to another person or damage to property. The penalties for this offense are identical to the penalties for other OWI offenses involving injury, great bodily harm or death, whichever is appropriate.

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

6           340.01 **(19d)** "Great bodily harm" has the meaning given in s. 939.22 (14).

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

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

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1 this subsection until the court assigned to hear the criminal complaint issues an  
2 order permitting the department to issue a certificate of title.

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

4 343.16 (5) (a) The secretary may require any applicant for a license or any  
5 licensed operator to submit to a special examination by such persons or agencies as  
6 the secretary may direct to determine incompetency, physical or mental disability,  
7 disease or any other condition which might prevent such applicant or licensed person  
8 from exercising reasonable and ordinary control over a motor vehicle. When the  
9 department requires the applicant to submit to an examination, the applicant shall  
10 pay the cost thereof. If the department receives an application for a renewal or  
11 duplicate license after voluntary surrender under s. 343.265 or receives a report from  
12 a physician or optometrist under s. 146.82 (3), or if the department has a report of  
13 2 or more arrests within a one-year period for any combination of violations of s.  
14 346.63 (1) or (5) or a local ordinance in conformity therewith or a law of a federally  
15 recognized American Indian tribe or band in this state in conformity with s. 346.63  
16 (1), (1m) or (5), or s. 346.63 (1m), 1985 stats., or s. 346.63 (2) or (6) or 940.25, or s.  
17 940.09 where the offense involved the use of a vehicle, the department shall  
18 determine, by interview or otherwise, whether the operator should submit to an  
19 examination under this section. The examination may consist of an assessment. If  
20 the examination indicates that education or treatment for a disability, disease or  
21 condition concerning the use of alcohol, a controlled substance or a controlled  
22 substance analog is appropriate, the department may order a driver safety plan in  
23 accordance with s. 343.30 (1q). If there is noncompliance with assessment or the  
24 driver safety plan, the department shall suspend the person's operating privilege in  
25 the manner specified in s. 343.30 (1q) (d).

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

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

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

13           **343.30 (1q) (a)** If a person is convicted under s. 346.63 (1) or a local ordinance  
14 in conformity therewith, the court shall proceed under this subsection. If a person  
15 is convicted under s. 346.63 (1m) or (2) or 940.25, or s. 940.09 where the offense  
16 involved the use of a vehicle, the court shall proceed under pars. (c) and (d). If a  
17 person is referred by the department acting under s. 343.16 (5) (a), the department  
18 shall proceed under pars. (c) and (d) without the order of the court.

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

20           **343.303 Preliminary breath screening test.** If a law enforcement officer  
21 has probable cause to believe that the person is violating or has violated s. 346.63 (1)  
22 or (2m) or a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (6) or  
23 940.25 or s. 940.09 where the offense involved the use of a vehicle, or if the officer  
24 detects any presence of alcohol, a controlled substance, controlled substance analog  
25 or other drug, or a combination thereof, on a person driving or operating or on duty

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

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

18 343.305 **(3)** (a) Upon arrest of a person for violation of s. 346.63 (1), (2m) or (5)  
19 or a local ordinance in conformity therewith, or for a violation of s. 346.63 (1m), (2)  
20 or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, a law  
21 enforcement officer may request the person to provide one or more samples of his or  
22 her breath, blood or urine for the purpose specified under sub. (2). Compliance with  
23 a request for one type of sample does not bar a subsequent request for a different type  
24 of sample.

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

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

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

12           343.305 (5) (b) Blood may be withdrawn from the person arrested for violation  
13 of s. 346.63 (1), (1m), (2), (2m), (5) or (6) or 940.25, or s. 940.09 where the offense  
14 involved the use of a vehicle, or a local ordinance in conformity with s. 346.63 (1), (2m)  
15 or (5), or as provided in sub. (3) (am) or (b) to determine the presence or quantity of  
16 alcohol, a controlled substance, a controlled substance analog or any other drug, or  
17 any combination of alcohol, controlled substance, controlled substance analog and  
18 any other drug in the blood only by a physician, registered nurse, medical  
19 technologist, physician assistant or person acting under the direction of a physician.

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

21           343.305 (9) (a) 1. That prior to a request under sub. (3) (a), the officer had placed  
22 the person under arrest for a violation of s. 346.63 (1), (2m) or (5) or a local ordinance  
23 in conformity therewith or s. 346.63 (1m), (2) or (6), 940.09 (1) or 940.25.

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

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

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

13           343.305 (9) (d) At the close of the hearing, or within 5 days thereafter, the court  
14           shall determine the issues under par. (a) 5. or (am) 5. If all issues are determined  
15           adversely to the person, the court shall proceed under sub. (10). If one or more of the  
16           issues is determined favorably to the person, the court shall order that no action be  
17           taken on the operating privilege on account of the person's refusal to take the test in  
18           question. This section does not preclude the prosecution of the person for violation  
19           of s. 346.63 (1), (2m), (5) or (7) or a local ordinance in conformity therewith, or s.  
20           346.63 (1m), (2) or (6), 940.09 (1) or 940.25.

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

22           343.307 (1) (c) Convictions for violations under s. 346.63 (1m) or (2) or 940.25,  
23           or s. 940.09 where the offense involved the use of a vehicle.

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

25           343.307 (2) (c) Convictions for violations under s. 346.63 (1m), (2) or (6).

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

2           343.31 (1) (ag) Having a prohibited alcohol concentration within 2 hours after  
3 the operation of a motor vehicle that resulted in the injury or great bodily harm to,  
4 or death of, another person or damage to property and which is criminal under s.  
5 346.63 (1m).

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

7           343.31 (1) (f) Operating a motor vehicle while operating privileges are  
8 suspended or revoked if the suspension or revocation was for improperly refusing to  
9 take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local ordinance in  
10 conformity therewith, or violating s. 346.63 (1m), (2) or (6), 940.09 (1) or 940.25.

11           **SECTION 18.** 343.31 (3) (c) of the statutes is amended to read:

12           343.31 (3) (c) Any person convicted under s. 346.63 (1m), when the operation  
13 of the motor vehicle resulted in the death of another person, or under s. 940.09 of  
14 causing the death of another or of an unborn child by the operation or handling of a  
15 motor vehicle (1) shall have his or her operating privilege revoked for 5 years. If there  
16 was a minor passenger under 16 years of age or an unborn child, as defined in s.  
17 939.75 (1), in the motor vehicle at the time of the violation that gave rise to the  
18 conviction under s. 940.09, the revocation period is 10 years. If there was a minor  
19 passenger under 16 years of age or an unborn child, as defined in s. 939.75 (1), in the  
20 motor vehicle at the time of the operation of the motor vehicle that gave rise to the  
21 conviction under s. 346.63 (1m), and that operation of the motor vehicle resulted in  
22 the death of another person, the revocation period is 10 years.

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

24           343.31 (3) (e) Any person convicted under s. 346.63 (1m), when the operation  
25 of the motor vehicle resulted in injury to another person or damage to property, or



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1 under s. 346.63 (2) shall have his or her operating privilege revoked for not less than  
2 one year nor more than 2 years. If there was a minor passenger under 16 years of  
3 age in the motor vehicle at the time of the violation that gave rise to the conviction  
4 under s. 346.63 (2), the minimum and maximum revocation periods are doubled. If  
5 there was a minor passenger under 16 years of age in the motor vehicle that was  
6 operated by the person who had a prohibited alcohol concentration within 2 hours  
7 after that operation of the motor vehicle, and that operation resulted in the injury  
8 to another person or damage to property, the minimum and maximum revocation  
9 periods are doubled.

10 **SECTION 20.** 343.31 (3) (f) of the statutes is amended to read:

11 343.31 **(3)** (f) Any person convicted under s. 346.63 (1m), when the operation  
12 of the motor vehicle resulted in great bodily harm to another person, or under s.  
13 940.25 shall have his or her operating privilege revoked for 2 years. If there was a  
14 minor passenger under 16 years of age or an unborn child, as defined in s. 939.75 (1),  
15 in the motor vehicle at the time of the violation that gave rise to the conviction under  
16 s. 940.25, the revocation period is 4 years. If there was a minor passenger under 16  
17 years of age or an unborn child, as defined in s. 939.75 (1), in the motor vehicle at the  
18 time of the operation of the motor vehicle that gave rise to the conviction under s.  
19 346.63 (1m), and that operation of the motor vehicle resulted in great bodily harm  
20 to another person, the revocation period is 10 years.

21 **SECTION 21.** 343.31 (3) (g) of the statutes is amended to read:

22 343.31 **(3)** (g) Any person convicted for operating a motor vehicle while  
23 operating privileges are suspended or revoked shall have his or her operating  
24 privilege revoked for 6 months if the suspension or revocation was for improperly  
25 refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local

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1 ordinance in conformity therewith, or violating s. 346.63 (1m), (2) or (6), 940.09 (1)  
2 or 940.25.

3 **SECTION 22.** 343.315 (2) (a) 6. of the statutes is amended to read:

4 343.315 **(2)** (a) 6. Section 346.63 (1m), (2) or (6), 940.09 (1) or 940.25 or a law  
5 of a federally recognized American Indian tribe or band in this state in conformity  
6 with s. 346.63 (1m), (2) or (6), 940.09 (1) or 940.25, or the law of another jurisdiction  
7 prohibiting causing or inflicting injury, great bodily harm or death through use of a  
8 motor vehicle while intoxicated or under the influence of alcohol, a controlled  
9 substance, a controlled substance analog or a combination thereof, or with an alcohol  
10 concentration of 0.04 or more or with an excess or specified range of alcohol  
11 concentration, or under the influence of any drug to a degree that renders the person  
12 incapable of safely driving, as those or substantially similar terms are used in that  
13 jurisdiction's laws.

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

15 343.44 **(2g)** (intro.) Except as provided in sub. (2m), any person who violates  
16 sub. (1) while his or her operating privilege is suspended or revoked for improperly  
17 refusing to take a test under s. 343.305, violating s. 346.63 (1) or (5) or a local  
18 ordinance in conformity therewith, or violating s. 346.63 (1m), (2) or (6), 940.09 (1)  
19 or 940.25, is subject to the following penalties:

20 **SECTION 24.** 343.44 (2p) (c) of the statutes is amended to read:

21 343.44 **(2p)** (c) Violating s. 346.63 (1m), (2) or (6), 940.09 (1) or 940.25.

22 **SECTION 25.** 345.24 (1) of the statutes is amended to read:

23 345.24 **(1)** A person arrested under s. 346.63 (1) or (5) or an ordinance in  
24 conformity therewith or s. 346.63 (1m), (2) or (6) or 940.25, or s. 940.09 where the  
25 offense involved the use of a vehicle, may not be released until 12 hours have elapsed

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1 from the time of his or her arrest or unless a chemical test administered under s.  
2 343.305 shows that the person has an alcohol concentration of less than 0.04, but the  
3 person may be released to his or her attorney, spouse, relative or other responsible  
4 adult at any time after arrest.

5 **SECTION 26.** 345.60 (3) of the statutes is amended to read:

6 345.60 (3) In addition to other penalties provided by law for violation of s.  
7 346.63 (1) or a local ordinance in conformity therewith, or s. 346.63 (1m) or (2) or  
8 940.25, or s. 940.09 where the offense involved the use of a vehicle, the convicted  
9 person may be required under s. 343.30 (1q) to attend, for a certain number of school  
10 days, a school under sub. (1).

11 **SECTION 27.** 346.63 (1m) of the statutes is created to read:

12 346.63 (1m) No person may have a prohibited alcohol concentration within 2  
13 hours after the operation of a motor vehicle that resulted in injury or great bodily  
14 harm to, or death of, another person or damage to property.

15 **SECTION 28.** 346.63 (4) of the statutes is amended to read:

16 346.63 (4) If a person is convicted under sub. (1) or a local ordinance in  
17 conformity therewith, or sub. (1m) or (2), the court shall proceed under s. 343.30 (1q).

18 **SECTION 29.** 346.635 of the statutes is amended to read:

19 **346.635 Report arrest or out-of-service order to department.**

20 Whenever a law enforcement officer arrests a person for a violation of s. 346.63 (1),  
21 (5) or (7), or a local ordinance in conformity therewith, or s. 346.63 (1m), (2) or (6) or  
22 940.25, or s. 940.09 where the offense involved the use of a vehicle, the officer shall  
23 notify the department of the arrest and of issuance of an out-of-service order under  
24 s. 343.305 (7) (b) or (9) (am) as soon as practicable.

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

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

16           **SECTION 31.** 346.65 (2g) (c) of the statutes is amended to read:

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

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1 maintaining and monitoring the community service work ordered under this  
2 paragraph.

3 **SECTION 32.** 346.65 (2i) of the statutes is amended to read:

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

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1 The issuance or possibility of the issuance of an order under this subsection does not  
2 entitle an indigent defendant who is subject to sub. (2) (a) to representation by  
3 counsel under ch. 977.

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

5 346.65 (3g) Any person violating s. 346.63 (1m) shall be subject to the following  
6 penalties:

7 (a) If the operation of the motor vehicle resulted in injury to another person or  
8 damage to property, a fine of not less than \$300 nor more than \$2,000 and  
9 imprisonment for not less than 30 days nor more than one year in the county jail.

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

12 (c) If the operation of the motor vehicle resulted in death to another person, a  
13 fine of not more than \$10,000 and imprisonment for not more than 10 years.

14 **SECTION 34.** 346.65 (6) (a) 1. of the statutes is amended to read:

15 346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a  
16 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered  
17 seized, shall order a law enforcement officer to equip the motor vehicle with an  
18 ignition interlock device or immobilize any motor vehicle owned by the person whose  
19 operating privilege is revoked under s. 343.305 (10) or who committed a violation of  
20 s. 346.63 (1) (a), (b), (1m) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1)  
21 (a), (b), (c) or (d) if the person whose operating privilege is revoked under s. 343.305  
22 (10) or who is convicted of the violation has 2 prior suspensions, revocations or  
23 convictions that would be counted under s. 343.307 (1). The court shall not order a  
24 motor vehicle equipped with an ignition interlock device or immobilized if that would

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1 result in undue hardship or extreme inconvenience or would endanger the health  
2 and safety of a person.

3 **SECTION 35.** 346.65 (6) (a) 2. of the statutes is amended to read:

4 346.65 **(6)** (a) 2. The court shall order a law enforcement officer to seize a motor  
5 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)  
6 or who commits a violation of s. 346.63 (1) (a) or (b), (1m) or (2) (a) 1. or 2., 940.09 (1)  
7 (a), (b), (c) or (d) or 940.25 (1) (a), (b), (c) or (d) if the person whose operating privilege  
8 is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior  
9 suspensions, revocations or convictions that would be counted under s. 343.307 (1).

10 **SECTION 36.** 346.65 (6) (d) of the statutes is amended to read:

11 346.65 **(6)** (d) At the hearing set under par. (c), the state has the burden of  
12 proving to a reasonable certainty by the greater weight of the credible evidence that  
13 the motor vehicle is a motor vehicle owned by a person who committed a violation of  
14 s. 346.63 (1) (a) or (b), (1m) or (2) (a) 1. or 2., 940.09 (1) (a), (b), (c) or (d) or 940.25 (1)  
15 (a), (b), (c) or (d) and, if the seizure is under par. (a) 1., that the person had 2 prior  
16 convictions, suspensions or revocations, as counted under s. 343.307 (1) or, if the  
17 seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations,  
18 as counted under s. 343.307 (1). If the ~~,, (c) or (d) ,, (c) or (d)~~ state fails to meet the  
19 burden of proof required under this paragraph, the motor vehicle shall be returned  
20 to the owner upon the payment of storage costs.

21 **SECTION 37.** 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

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

3 **SECTION 38.** 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 39.** 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 40.** 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



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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 41.** 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 42. Initial applicability.**

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

19 (END)