

2001 DRAFTING REQUEST

Bill

Received: **03/19/2001**

Received By: **fasttn**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Ron Sklansky**

This file may be shown to any legislator: **NO**

Drafter: **fasttn**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - boats snomos ATVs
 Drunk Driving - penalties
 Drunk Driving - procedures
 Drunk Driving - refusals**

Extra Copies: **MGG, RNK, PJH, ARG - 1**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Intoxicated operation of sport recreational vehicles

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P2	fasttn 11/14/2001	gilfokm 11/16/2001	jfrantze 11/19/2001	_____	lrb_docadmin 11/19/2001		
/1	nelsorp1 11/20/2001	gilfokm 11/26/2001	pgreensl 11/26/2001	_____	lrb_docadmin 11/26/2001		
/2	fasttn 11/27/2001	gilfokm 11/27/2001	kfollet 11/28/2001	_____	lrb_docadmin 11/28/2001	lrb_docadminS&L 11/29/2001	

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/1	nelsorp1 11/20/2001	gilfokm 11/26/2001	pgreensl 11/26/2001	_____	lrb_docadmin 11/26/2001		

FE Sent For:

*12-11/27
KMG*

11/28

11/28

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[Handwritten signatures and notes]
 King
 11/26
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RS:jal;rv

11/03/2000

Tim -
 If anything looks
 grossly wrong here, let
 me know - Ron (I haven't checked
 cross references)

1 **AN ACT** to repeal 23.33 (1) (am), (ar), (dm), (e), (f), (i), (ic), (je), (jm) and (js), (4c) to
 2 (4z) and (13) (b) to (f), 30.50 (1e), (1g), (1m), (3g), (3h), (3r), (4m), (9g), (9x) and
 3 (13m), 30.681 to 30.687, 30.80 (6), 350.01 (1g), (1i), (2), (2d), (3m), (9c), (10g) and
 4 (10r), 350.01 (21), 350.101 to 350.108 and 350.11 (4); to renumber and amend
 5 350.99; to amend 23.33 (5) (d), chapter 350 (title), 350.01 (intro.), 350.01 (16),
 6 350.045, 350.055, 350.11 (1), 350.115 (1) (a), 350.12 (3) (b) and (4) (a) 4., 350.12
 7 (4) (b) 3., 350.17 (1) and (3), 350.18 (2) and 350.19; to repeal and recreate 350.11
 8 (3); and to create subchapter I (title) of chapter 350 [precedes 350.01] and
 9 subchapter II of chapter 350 [precedes 350.50] of the statutes; relating to: the
 10 intoxicated operation of an all-terrain vehicle, motorboat or snowmobile.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft is recommended by the joint legislative council's special committee on recodification of operating while intoxicated and safety laws pertaining to motor vehicle, all-terrain vehicle, boat or snowmobile operation. The special committee was directed to study current statutes relating to operating a vehicle while under the influence of an intoxicant or drug and to reorganize, simplify, modernize and clarify these statutes and make minor substantive changes necessary to effect these goals. In addition, the special committee was directed to study, with respect to an all-terrain vehicle, a boat or a snowmobile, whether enforcement mechanisms need to be increased or created to ensure compliance with the law.

This draft consolidates statutory provisions regarding the intoxicated operation of all-terrain vehicles, motorboats and snowmobiles into one subchapter of the statutes. The special committee explicitly intends that, unless expressly noted, the draft makes no substantive changes in the statutory provisions treated by the draft. Substantive changes in the draft are identified in NOTES to the provisions substantively affected. The

1 within the scope of their duties under this section. Each person satisfactorily completing this
2 program shall receive a snowmobile safety certificate from the department. The department
3 shall establish by rule an instruction fee for this program. An instructor conducting a program
4 of instruction under this section shall collect the instruction fee from each person who receives
5 instruction. The department may determine the portion of this fee, which may not exceed
6 50%, that the instructor may retain to defray expenses incurred by the instructor in conducting
7 the program. The instructor shall remit the remainder of the fee or, if nothing is retained, the
8 entire fee to the department. A person who is required to hold a valid snowmobile safety
9 certificate may operate a snowmobile in this state if the person holds a valid snowmobile safety
10 certificate issued by another state or province of the Dominion of Canada and if the course
11 content of the program in such other state or province substantially meets that established by
12 the department under this section.

13 **SECTION 14.** 350.101 to 350.108 of the statutes are repealed.

14 **SECTION 15.** 350.11 (1) of the statutes is amended to read:

15 350.11 (1) (a) Except as provided in par. (b) and subs. (2g), (2m) and (3), any person
16 who violates any provision of this ~~chapter~~ subchapter shall forfeit not more than \$250.

17 (b) Except as provided in subs. (2g), (2m) and (3), any person who violates any
18 provision of this ~~chapter~~ subchapter and who, within the last 3 years prior to the conviction
19 for the current violation, was 2 or more times previously convicted for violating the same
20 provision of this ~~chapter~~ subchapter shall forfeit not more than \$500.

21 **SECTION 16.** 350.11 (3) of the statutes is repealed and recreated to read:

22 350.11 (3) A person who violates s. 350.17 (2) shall be fined not less than \$300 nor more
23 than \$2,000 and may be imprisoned for not less than 30 days nor more than one year in the
24 county jail.

1 **SECTION 17.** 350.11 (4) of the statutes is repealed.

2 **SECTION 18.** 350.115 (1) (a) of the statutes is amended to read:

3 350.115 (1) (a) If a court imposes a forfeiture for a violation of a provision of this ~~chapter~~
4 subchapter where the payment of a registration fee is required, the court shall impose a
5 snowmobile registration restitution payment equal to the amount of the fee that was required
6 and should have been obtained.

7 **SECTION 19.** 350.12 (3) (b) and (4) (a) 4. of the statutes are amended to read:

8 350.12 (3) (b) Any person who is a resident of this state and the owner of a snowmobile
9 which has a model year of 1966 or earlier may, upon application, register the snowmobile as
10 an antique snowmobile. Upon payment of a fee of \$20, the applicant shall be furnished a
11 registration certificate and decals of a distinctive design, in lieu of the design on the decals
12 issued under par. (d). The design shall show that the snowmobile is an antique. The
13 registration shall be valid without payment of any additional registration fee while the
14 snowmobile is owned by the applicant. Unless inconsistent with this paragraph, the provisions
15 of this ~~chapter~~ subchapter applicable to other snowmobiles shall apply to antique
16 snowmobiles.

17 (4) (a) 4. An amount necessary to pay the cost of law enforcement aids to counties as
18 appropriated under s. 20.370 (5) (es). On or before June 1, a county shall file with the
19 department on forms prescribed by the department a detailed statement of the costs incurred
20 by the county in the enforcement of this ~~chapter~~ subchapter during the preceding May 1 to
21 April 30. The department shall audit the statements and determine the county's net costs for
22 enforcement of this ~~chapter~~ subchapter. The department shall compute the state aids on the
23 basis of 100% of these net costs and shall pay these aids on or before October 1. If the state

1 aids payable to counties exceed the moneys available for such purpose, the department shall
2 prorate the payments.

3 **SECTION 20.** 350.12 (4) (b) 3. of the statutes is amended to read:

4 350.12 (4) (b) 3. Not more than \$30,000 for a route signing program of aids to cities,
5 villages, towns or counties of up to 100% of the cost of initial signing of snowmobile routes
6 which connect authorized trails or which offer entrance to or exit from trails leading to such
7 municipalities. Aid may be provided under this subdivision to cities, villages, towns and
8 counties for up to 100% of the cost of placing signs developed under s. ~~350.108~~ 350.66 (1)
9 (b) which briefly explain the intoxicated snowmobiling operation of a recreational vehicle law
10 along snowmobile routes. Applications and documentation shall be submitted to the
11 department by April 15 of each year on forms prescribed by departmental rule.

12 **SECTION 21.** 350.17 (1) and (3) of the statutes are amended to read:

13 350.17 (1) Any officer of the state traffic patrol under s. 110.07 (1), inspector under s.
14 110.07 (3), warden of the department under s. 23.10, county sheriff or municipal peace officer
15 may enforce the provisions of this ~~chapter~~ subchapter.

16 (3) Notwithstanding subs. (1) and (2), no law enforcement officer may stop a
17 snowmobile operator for a violation of a statutory provision under this ~~chapter~~ subchapter or
18 a rule promulgated or an ordinance adopted under this ~~chapter~~ subchapter unless the law
19 enforcement officer has reasonable cause to believe the snowmobile operator has committed
20 such a violation.

21 **SECTION 22.** 350.18 (2) of the statutes is amended to read:

22 350.18 (2) Any county, town, city or village may enact an ordinance that is in strict
23 conformity with ss. 350.02 to 350.05, 350.07 to ~~350.107~~ 350.10, 350.11, 350.12, 350.13,
24 350.135, 350.15 to 350.17, 350.19 and 350.99.

1 (12) "Intoxicated operation of a recreational vehicle law" means s. 350.52 or a local
2 ordinance in conformity with that section or, if the operation of a recreational vehicle is
3 involved, s. 940.09 or 940.25.

4 (13) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c) and includes
5 a person appointed as a conservation warden by the department under s. 23.10 (1).

6 (14) "Motorboat" means any boat equipped with propulsion machinery, whether or not
7 the machinery is the principal source of propulsion.

8 (15) "Operate" means to exercise physical control over the speed or direction of a
9 recreational vehicle or to physically manipulate or activate any of the controls of a recreational
10 vehicle necessary to put it in motion.

11 (16) "Operation" means the exercise of physical control over the speed or direction of
12 a recreational vehicle or the physical manipulation or activation of any of the controls of a
13 recreational vehicle necessary to put it in motion. "Operation", with respect to a motorboat,
14 does not include a sailboat operating under sail alone.

15 (17) "Operator" means a person who operates a recreational vehicle, who is responsible
16 for the operation of a recreational vehicle or who is supervising the operation of a recreational
17 vehicle.

18 (18) "Purpose of authorized analysis" means for the purpose of determining or
19 obtaining evidence of the presence, quantity or concentration of any intoxicant in a person's
20 blood, breath or urine.

21 (19) "Refusal law" means s. 350.58 (5) or a local ordinance in conformity with that
22 section.

23 (20) "Recreational vehicle" means an all-terrain vehicle, a motorboat or a snowmobile.

24 (21) "Snowmobile" has the meaning given in s. 340.01.

1 (22) "Snowmobile trail" means a marked corridor on public property or on private lands
2 subject to public easement or lease, designated for use by snowmobile operators by the
3 governmental agency having jurisdiction, but excluding highways except those highways on
4 which the roadway is not normally maintained for other vehicular traffic by the removal of
5 snow.

6 (23) "Test facility" means a test facility or agency prepared to administer tests under
7 s. 343.305 (2).

8 (24) "Waters of this state" means any waters within the territorial limits of this state,
9 including the Wisconsin portion of boundary waters.

NOTE: This section restates definitions from ss. 23.33 (1), 30.50 and
350.01, stats. For purposes of consolidated treatment, the term
"recreational vehicle" is created to mean an all-terrain vehicle, a
motorboat or a snowmobile.

10 **350.52 Intoxicated operation of a recreational vehicle. (1) OPERATION. (a)**
11 *Operating while under the influence of an intoxicant.* No person may operate a recreational
12 vehicle while under the influence of an intoxicant to a degree which renders him or her
13 incapable of safe operation of the recreational vehicle.

14 (b) *Operating with alcohol concentrations at or above specified levels.* 1. No person
15 may operate a recreational vehicle while the person has an alcohol concentration of 0.1 or
16 more. This subdivision does not apply to commercial motorboats.

17 2. No person may operate a commercial motorboat while the person has a blood alcohol
18 concentration of 0.04% or more by weight of alcohol in his or her blood. No person may
19 operate a commercial motorboat while the person has 0.04 grams or more of alcohol in 210
20 liters of his or her breath.

1 (c) *Operating with alcohol concentrations at specified levels; below age [19] [21]*. If
2 a person has not attained the age of [19] [21], the person may not operate a recreational vehicle
3 while he or she has an alcohol concentration of more than 0.0 but not more than 0.1.

4 (d) *Related charges*. A person may be charged with and a prosecutor may proceed upon
5 a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same
6 incident or occurrence. If the person is charged with violating both pars. (a) and (b), the
7 offenses shall be joined. If the person is found guilty of both pars. (a) and (b) for acts arising
8 out of the same incident or occurrence, there shall be a single conviction for purposes of
9 sentencing and for purposes of counting convictions under s. 350.68 (1) [(b) and (c)] [(b) to
10 (e)]. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does
11 not require.

12 (2) **CAUSING INJURY**. (a) *Causing injury while under the influence of an intoxicant*. No
13 person while under the influence of an intoxicant to a degree which renders him or her
14 incapable of safe operation of a recreational vehicle may cause injury to another person by the
15 operation of the recreational vehicle.

16 (b) *Causing injury with alcohol concentrations at or above specified levels*. 1. No
17 person who has an alcohol concentration of 0.1 or more may cause injury to another person
18 by the operation of the recreational vehicle. This subdivision does not apply to commercial
19 motorboats.

20 2. No person who has a blood alcohol concentration of 0.04% or more by weight of
21 alcohol in his or her blood may cause injury to another person by the operation of a commercial
22 motorboat. No person who has 0.04 grams or more of alcohol in 210 liters of his or her breath
23 may cause injury to another person by the operation of a commercial motorboat.

1 (c) *Related charges.* A person may be charged with and a prosecutor may proceed upon
2 a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same
3 incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the
4 complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of both pars.
5 (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single
6 conviction for purposes of sentencing and for purposes of counting convictions under s.
7 350.68 (1) [(b) and (c)] [(b) to (e)]. Paragraphs (a) and (b) each require proof of a fact for
8 conviction which the other does not require.

9 (d) *Defenses.* 1. Except as provided in subd. 2., in an action under this subsection, the
10 defendant has a defense if he or she proves by a preponderance of the evidence that the injury
11 would have occurred even if he or she had been exercising due care and he or she had not been
12 under the influence of an intoxicant or did not have an alcohol concentration of 0.1 or more.

13 2. In an action under this subsection for a violation of the intoxicated operation of a
14 recreational vehicle law where the defendant was operating a commercial motorboat, the
15 defendant has a defense if he or she proves by a preponderance of the evidence that the injury
16 would have occurred even if he or she had been exercising due care and he or she had not been
17 under the influence of an intoxicant or did not have a blood alcohol concentration of 0.04%
18 or more by weight of alcohol in his or her blood or 0.04 grams or more of alcohol in 210 liters
19 of his or her breath.

NOTE: This section restates ss. 23.33 (4c), 30.681 and 350.101, stats. Subsection (1) (c) presents an option regarding the topic of absolute sobriety. Under current law, a person under the age of 19 may not operate an all-terrain vehicle or a snowmobile if the person has alcohol in his or her system. Also, under current law, a person under the age of 21 may not operate a motorboat if the person has alcohol in his or her system. This bill draft provides the special committee with the option, in

sub. (1) (c), of making this age limitation uniform for all recreational vehicles.

1 **350.54 Preliminary breath screening test. (1) REQUIREMENT.** A person shall provide
2 a sample of his or her breath for a preliminary breath screening test if a law enforcement officer
3 has probable cause to believe that the person is violating or has violated the intoxicated
4 operation of a recreational vehicle law and if, prior to an arrest, the law enforcement officer
5 requested the person to provide this sample.

6 **(2) USE OF TEST RESULTS.** A law enforcement officer may use the results of a preliminary
7 breath screening test for the purpose of deciding whether or not to arrest a person for a
8 violation of the intoxicated operation of a recreational vehicle law or for the purpose of
9 deciding whether or not to request a chemical test under s. 350.60. Following the preliminary
10 breath screening test, chemical tests may be required of the person under s. 350.60.

11 **(3) ADMISSIBILITY.** The result of a preliminary breath screening test is not admissible
12 in any action or proceeding except to show probable cause for an arrest, if the arrest is
13 challenged, or to show that a chemical test was properly required of a person under s. 350.60.

14 **(4) REFUSAL.** There is no penalty for a violation of sub. (1). The general penalty
15 provision under s. 939.61 does not apply to that violation.

NOTE: This section restates ss. 23.33 (4g), 30.682 and 350.102, stats.

16 **350.56 Application of intoxicated operation of a recreational vehicle law. (1)**
17 **ALL-TERRAIN VEHICLES.** In addition to being applicable upon highways, the intoxicated
18 operation of a recreational vehicle law is applicable to the operation of an all-terrain vehicle
19 upon all premises held out to the public for use of their all-terrain vehicles, whether the
20 premises are publicly or privately owned and whether or not a fee is charged for the use of the
21 premises.

1 (2) **MOTORBOATS.** The intoxicated operation of a vehicle law is applicable to the
2 operation of a motorboat upon the waters of this state.

3 (3) **SNOWMOBILES.** Except as provided in this subsection, the intoxicated operation of
4 a recreational vehicle law is applicable to the operation of a snowmobile upon all property,
5 whether the property is publicly or privately owned and whether or not a fee is charged for the
6 use of that property. The intoxicated operation of a recreational vehicle law does not apply
7 to the operation of a snowmobile on private land not designated as a snowmobile trail unless
8 an accident involving personal injury occurs as the result of the operation of a snowmobile and
9 the snowmobile was operated on the private land without the consent of the owner of that land.

NOTE: This section restates ss. 23.33 (4j) and 350.1025, stats. This section also incorporates the phrase "upon the waters of this state" from s. 30.683, stats., for the purpose of stating the place of application of the intoxicated operation of a recreational vehicle law to motorboats.

10 **350.58 Implied consent.** A person who engages in the operation of a recreational
11 vehicle in or on those areas enumerated in s. 350.56, is deemed to have given consent to
12 provide one or more samples of his or her breath, blood or urine for the purpose of authorized
13 analysis as required under s. 350.60. A person who engages in the operation of a recreational
14 vehicle within this state is deemed to have given consent to submit to one or more chemical
15 tests of his or her breath, blood or urine for the purpose of authorized analysis as required under
16 s. 350.60.

NOTE: This section restates ss. 23.33 (4L), 30.683 and 350.103, stats.

17 **350.60 Chemical tests. (1) REQUIREMENT.** (a) *Samples; submission to tests.* A person
18 shall provide one or more samples of his or her breath, blood or urine for the purpose of
19 authorized analysis if he or she is arrested for a violation of the intoxicated operation of a
20 recreational vehicle law and if he or she is requested to provide the sample by a law
21 enforcement officer. A person shall submit to one or more chemical tests of his or her breath,

1 blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of
2 the intoxicated operation of a recreational vehicle law and if he or she is requested to submit
3 to the test by a law enforcement officer.

4 (b) *Information.* A law enforcement officer requesting a person to provide a sample
5 or to submit to a chemical test under par. (a) shall inform the person of all of the following at
6 the time of the request and prior to obtaining the sample or administering the test:

7 1. That he or she is deemed to have consented to tests under s. 350.58.

8 2. That a refusal to provide a sample or to submit to a chemical test constitutes a
9 violation under sub. (5) and is subject to the same penalties and procedures as a violation of
10 s. 350.52 (1) (a).

11 3. That in addition to the designated chemical test under sub. (2) (b), he or she may have
12 an additional chemical test under sub. (3) (a).

13 (c) *Unconscious person.* A person who is unconscious or otherwise not capable of
14 withdrawing consent is presumed not to have withdrawn consent under this subsection, and
15 if a law enforcement officer has probable cause to believe that the person violated the
16 intoxicated operation of a recreational vehicle law, one or more chemical tests may be
17 administered to the person without a request under par. (a) and without providing information
18 under par. (b).

19 (2) CHEMICAL TESTS. (a) *Test facility.* Upon the request of a law enforcement officer,
20 a test facility shall administer a chemical test of breath, blood or urine for the purpose of
21 authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests
22 of breath, blood or urine for the purpose of authorized analysis. The department may enter
23 into agreements for the cooperative use of test facilities.

1 (b) *Designated chemical test.* A test facility shall designate one chemical test of breath,
2 blood or urine which it is prepared to administer first for the purpose of authorized analysis.

3 (c) *Additional chemical test.* A test facility shall specify one chemical test of breath,
4 blood or urine, other than the test designated under par. (b), which it is prepared to administer
5 for the purpose of authorized analysis as an additional chemical test.

6 (d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose
7 of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities
8 of the laboratory of hygiene, department of health and family services and department of
9 transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for
10 the purpose of authorized analysis under this section. Blood may be withdrawn from a person
11 arrested for a violation of the intoxicated operation of a recreational vehicle law only by a
12 physician, registered nurse, medical technologist, physician assistant or person acting under
13 the direction of a physician and the person who withdraws the blood, the employer of that
14 person and any hospital where blood is withdrawn have immunity from civil or criminal
15 liability as provided under s. 895.53

16 (e) *Report.* A test facility that administers a chemical test of breath, blood or urine for
17 the purpose of authorized analysis under this section shall prepare a written report which shall
18 include the findings of the chemical test, the identification of the law enforcement officer or
19 the person who requested a chemical test and the identification of the person who provided
20 the sample or submitted to the chemical test. The test facility shall transmit a copy of the report
21 to the law enforcement officer and the person who provided the sample or submitted to the
22 chemical test.

23 (3) ADDITIONAL AND OPTIONAL CHEMICAL TESTS. (a) *Additional chemical test.* If a person
24 is arrested for a violation of the intoxicated operation of a recreational vehicle law or is the

1 operator of a recreational vehicle involved in an accident resulting in great bodily harm to or
2 the death of someone and if the person is requested to provide a sample or to submit to a test
3 under sub. (1) (a), the person may request the test facility to administer the additional chemical
4 test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have
5 any qualified person administer a chemical test of his or her breath, blood or urine for the
6 purpose of authorized analysis.

7 (b) *Optional test.* If a person is arrested for a violation of the intoxicated operation of
8 a recreational vehicle law and if the person is not requested to provide a sample or to submit
9 to a test under sub. (1) (a), the person may request the test facility to administer a chemical
10 test of his or her breath or, at his or her own expense, reasonable opportunity to have any
11 qualified person administer a chemical test of his or her breath, blood or urine for the purpose
12 of authorized analysis. If a test facility is unable to perform a chemical test of breath, the
13 person may request the test facility to administer the designated chemical test under sub. (2)
14 (b) or the additional chemical test under sub. (2) (c).

15 (c) *Compliance with request.* A test facility shall comply with a request under this
16 subsection to administer any chemical test it is able to perform.

17 (d) *Inability to obtain chemical test.* The failure or inability of a person to obtain a
18 chemical test at his or her own expense does not preclude the admission of evidence of the
19 results of a chemical test required and administered under subs. (1) and (2).

20 (4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results of a chemical
21 test required or administered under sub. (1), (2) or (3) are admissible in any civil or criminal
22 action or proceeding arising out of the acts committed by a person alleged to have violated the
23 intoxicated operation of a recreational vehicle law on the issue of whether the person was
24 under the influence of an intoxicant or the issue of whether the person had alcohol

1 concentrations at or above specified levels. Results of these chemical tests shall be given the
2 effect required under s. 885.235. This section does not limit the right of a law enforcement
3 officer to obtain evidence by any other lawful means.

4 (5) REFUSAL. No person may refuse a lawful request to provide one or more samples
5 of his or her breath, blood or urine or to submit to one or more chemical tests under sub. (1).
6 A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if
7 it is shown by a preponderance of the evidence that the refusal was due to a physical inability
8 to provide the sample or to submit to the test due to a physical disability or disease unrelated
9 to the use of an intoxicant. Issues in any action concerning violation of sub. (1) or this
10 subsection are limited to:

11 (a) Whether the law enforcement officer had probable cause to believe the person was
12 violating or had violated the intoxicated operation of a recreational vehicle law.

13 (b) Whether the person was lawfully placed under arrest for violating the intoxicated
14 operation of a recreational vehicle law.

15 (c) Whether the law enforcement officer requested the person to provide a sample or
16 to submit to a chemical test and provided the information required under sub. (1) (b) or
17 whether the request and information was unnecessary under sub. (1) (c).

18 (d) Whether the person refused to provide a sample or to submit to a chemical test.

NOTE: This section restates ss. 23.33 (4p), 30.684 and 350.104, stats.

19 **350.62 Report arrest to department.** If a law enforcement officer arrests a person for
20 a violation of the intoxicated operation of a recreational vehicle law or the refusal law, the law
21 enforcement officer shall notify the department of the arrest as soon as practicable.

NOTE: This section restates ss. 23.33 (4t), 30.686 and 350.106, stats.

1 **350.64 Officer's action after arrest for operating a recreational vehicle while under**
2 **influence of intoxicant.** A person arrested for a violation of s. 350.52 (1) (a) or (b) or a local
3 ordinance in conformity with those paragraphs or s. 350.52 (2) (a) or (b) may not be released
4 until 12 hours have elapsed from the time of his or her arrest or unless a chemical test
5 administered under s. 350.60 (1) (a) shows that the person has an alcohol concentration of 0.05
6 or less, but the person may be released to his or her attorney, spouse, relative or other
7 responsible adult at any time after arrest.

NOTE: This section restates ss. 23.33 (4x), 30.687 and 350.107, stats.

8 **350.66 Public education program.** (1) The department shall promulgate rules to
9 provide for a public education program to:

10 (a) Inform recreational vehicle operators of the prohibitions and penalties included in
11 the intoxicated operation of a recreational vehicle law. The snowmobile recreational council
12 may assist the department in developing the public education program.

13 (b) Provide for the development of signs briefly explaining the intoxicated operation
14 of a recreational vehicle law.

15 (2) The department shall develop and issue an educational pamphlet on the intoxicated
16 operation of a recreational vehicle law to be distributed to persons issued registration
17 certificates or cards under s. 23.33 (2) or (2g), 30.52 (5) (b), 350.12 or 350.122.

NOTE: This section restates ss. 23.33 (4z) and 350.108, stats. A similar
provision is not found in ch. 30, stats., relating to motorboats; however,
s. 30.74 (1), stats., requires the department of natural resources (DNR) to
create comprehensive courses on boating safety and operation. The bill
draft additionally requires the DNR to distribute to a motorboat
registrant an educational pamphlet on the intoxicated operation of a
recreational vehicle law.

18 **350.68 Penalties.** (1) *Penalties related to prohibited operation of a recreational*
19 *vehicle; intoxicants; refusal.* (a) Except as provided under [pars. (b) and (c)] [pars. (b) to (e)],

1 a person who violates s. 350.52 (1) (a) or (b)[, a local ordinance in conformity with s. 350.52
2 (1) (a) or (b)] or the refusal law shall forfeit not less than [\$150 nor more than \$300] [\$400
3 nor more than \$550].

4 (b) A person who violates s. 350.52 (1) (a) or (b)[, a local ordinance in conformity with
5 s. 350.52 (1) (a) or (b)] or the refusal law and who, within 5 years prior to the arrest for the
6 current violation, was convicted previously under the intoxicated operation of a recreational
7 vehicle law or the refusal law shall be fined not less than \$300 nor more than \$1,000 and shall
8 be imprisoned not less than 5 days nor more than 6 months.

9 (c) A person who violates s. 350.52 (1) (a) or (b)[, a local ordinance in conformity with
10 s. 350.52 (1) (a) or (b)] or the refusal law and who, within 5 years prior to the arrest for the
11 current violation, was convicted 2 [or more times] previously under the intoxicated operation
12 of a recreational vehicle law or refusal law shall be fined not less than \$600 nor more than
13 \$2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

14 [(d) A person who violates s. 350.52 (1) (a) or (b), a local ordinance in conformity with
15 s. 350.52 (1) (a) or (b) or the refusal law and who, within 5 years prior to the arrest for the
16 current violation, was convicted 3 times previously under the intoxicated operation of a
17 recreational vehicle law or refusal law shall be fined not less than \$600 nor more than \$2,000
18 and shall be imprisoned for not less than 60 days nor more than one year in the county jail.

19 (e) A person who violates s. 350.52 (1) (a) or (b), a local ordinance in conformity with
20 s. 350.52 (1) (a) or (b) or the refusal law and who, within 5 years prior to the arrest for the
21 current violation, was convicted 4 or more times previously under the intoxicated operation
22 of a recreational vehicle law or refusal law shall be fined not less than \$600 nor more than
23 \$2,000 and shall be imprisoned for not less than 6 months nor more than one year in the county
24 jail.]

1 (f) A person who violates s. 350.52 (1) (c) or a local ordinance in conformity with s.
2 350.52 (1) (c) shall forfeit \$50.

3 (2) *Penalties related to causing injury; intoxicants.* A person who violates s. 350.52
4 (2) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned not less than
5 30 days nor more than one year in the county jail.

6 (3) *Sentence of detention.* The legislature intends that courts use the sentencing option
7 under s. 973.03 (4) whenever appropriate for persons subject to par. (a) 2. or 3. or (b). The
8 use of this option can result in significant cost savings for the state and local governments.

9 (4) *Calculation of previous convictions.* In determining the number of previous
10 convictions under par. (a) 2. and 3., convictions arising out of the same incident or occurrence
11 shall be counted as one previous conviction.

12 [(5) *Reporting convictions to the department.* Whenever a person is convicted of a
13 violation of the intoxicated operation of a recreational vehicle law, the clerk of the court in
14 which the conviction occurred, or the justice, judge or magistrate of a court not having a clerk,
15 shall forward to the department the record of such conviction. The record of conviction
16 forwarded to the department shall state whether the offender was involved in an accident at
17 the time of the offense.]

18 (6) *Alcohol, controlled substances or controlled substance analogs; assessment.* In
19 addition to any other penalty or order, a person who violates s. 350.52 (1) or (2) or 350.60 (5)
20 or who violates s. 940.09 or 940.25 if the violation involves the operation of a recreational
21 vehicle, shall be ordered by the court to submit to and comply with an assessment by an
22 approved public treatment facility for an examination of the person's use of alcohol, controlled
23 substances or controlled substance analogs. The assessment order shall comply with s. 343.30

1 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this
2 paragraph constitutes contempt of court, punishable under ch. 785.

3 (7) *Certificate of satisfactory completion of safety course.* In addition to any other
4 penalty or order, a person who violates s. 350.52 (1) or (2) or 350.60 (5) or who violates s.
5 940.09 or 940.25 and the violation involves the operation of a motorboat, shall be ordered by
6 the court to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1).
7 If the person has a valid certificate at the time that the court imposes sentence, the court shall
8 permanently revoke the certificate and order the person to obtain a certificate of satisfactory
9 completion of a safety course under s. 30.74 (1).

10 (8) *Restoration or replacement of signs and standards.* In addition to any other penalty,
11 a court may order a defendant to restore or replace any uniform all-terrain vehicle or
12 snowmobile route or trail sign or standard that the defendant removed, damaged, defaced,
13 moved or obstructed.

NOTE: This section, in most respects, restates ss. 23.33 (13) (b) to (f), 30.80 (6) and 350.11 (3) and (4), stats. The following differences between the draft and current law are noted:

1. The definition of the term "intoxicated operation of an all-terrain vehicle law" includes a local ordinance in conformity with the provisions prohibiting intoxicated operation and the causing of injury while under the influence of an intoxicant. The definitions of the similar terms relating to motorboats and snowmobiles do not include a local ordinance in conformity with the prohibition against causing injury. The bill draft follows the format of the current statutory definition of "intoxicated operation of a recreational vehicle law" by including a local ordinance in conformity with the prohibitions against both intoxicated operation and the causing of injury. The effect of this definitional format is that if a person is found guilty of causing injury by intoxicated use under a local ordinance, that conviction will count as a repeat offense for purposes of determining the penalty imposed on a repeat offender.

2. Under current law, a person who illegally operates an all-terrain vehicle or snowmobile while intoxicated, contrary to statutory provisions, will be subject to a range of penalties. The intoxicated

boating law provides that a similar range of penalties will be applicable to a person who violates either the statutory provisions regarding intoxicated operation or a local ordinance in conformity with statutory provisions. The bill draft presents the option, in sub. (1) (b) to (e), of applying the intoxicated boating law provision to all recreational vehicles.

3. Under current law, a first offense while operating an all-terrain vehicle or a motorboat will result in a forfeiture of not less than \$150 nor more than \$300. However, current law provides that a first offense involving the intoxicated operation of a snowmobile will result in a forfeiture of not less than \$400 nor more than \$550. The bill draft presents the option, in sub. (1) (a), of applying one of these 2 penalties to all recreational vehicles.

4. Under current law, with respect to all-terrain vehicles and snowmobiles, a second offense within 5 years and third or subsequent offenses within 5 years will result in additional penalties. However, the intoxicated boating law adds 2 additional categories of increased penalties for a person who has been convicted 4 times within 5 years or 5 or more times within 5 years. The bill draft presents the option, in sub. (1) (d) and (e), of increasing the categories and penalties applicable to repeat offenders.

5. Under current law, a conviction relating to the use of an all-terrain vehicle or a snowmobile must be reported to the DNR. The bill draft presents the option, in sub. (5), of applying this requirement to a conviction relating to the use of a motorboat.

1 **350.70 Liability of landowners.** Section 895.52 applies to this subchapter.

 NOTE: This section restates ss. 23.33 (10) and 350.19, stats.

2 **350.72 Local ordinances.** A county, town, city or village may enact an ordinance in
3 strict conformity with this subchapter.

 NOTE: This section restates portions of ss. 23.33 (11) (am), 30.77 (2)
and 350.18 (2), stats.

4 **350.74 Enforcement.** (1) Any officer of the state traffic patrol under s. 110.07 (1),
5 inspector under s. 110.07 (3), warden of the department under s. 23.10, county sheriff or
6 municipal peace officer may enforce the provisions of this subchapter.

