

**2001 DRAFTING REQUEST**

**Bill**

Received: 04/06/2001

Received By: phurley

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: phurley

May Contact:

Addl. Drafters:

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

Extra Copies: **TNF, ARG**

Submit via email: NO

**Pre Topic:**

No specific pre topic given

**Topic:**

Operating sports recreation vehicles while intoxicated

**Instructions:**

See Attached

**Drafting History:**

<u>Vcrs.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P2			kfollet 10/10/2001	_____	lrb_docadmin 10/10/2001		S&L
/P3	phurley 10/12/2001	gilfokm 10/16/2001	pgreensl 10/17/2001	_____	lrb_docadmin 10/17/2001		S&L

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1?	phurley	<i>1/22-10/4 KMG</i>	<i>ec Conversion 4/6 pg 10/9</i>	<i>_____</i>	<i>_____</i>	<i>_____</i>	<i>_____</i>
FE Sent For:				<i>10/10 &lt;END&gt;</i>			

PJH King

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Submitted 10-4-01  
need a by 10-9-01  
we 10/10

LPS: Proof ALL AMENDED stats. w/FOLIO

Coen. cat.

1 AN ACT to repeal 885.235 (1) (bd) and (c) and 967.055 (1m); to renumber 346.63  
2 (3) (a) and (b); to renumber and amend 343.303; to amend 343.10 (8) (intro.),  
3 343.16 (5) (a), 343.30 (1q) (c) 1. (intro.) and (d), 343.30 (1q) (h), 343.305 (2), (3)  
4 (am) and (b), (4) and (5) (b), 343.305 (6) (a), 343.305 (9) (a) 4. and 5. a. and c.,  
5 (am) 4. and 5. a. and c. and (c) , 343.305 (10) (c) 1. (intro.), 343.305 (10) (d),  
6 343.307 (1) (d), 343.31 (1) (am) and (ar), 343.31 (1) (b), 343.31 (2) and (3) (b),  
7 343.315 (2) (a) 1. and 6., 343.44 (1) (a) and (b), 344.576 (2) (b) and (c), 345.24 (1),  
8 346.61, 346.63 (title), (1) (a) and (c) and (2) (a) (intro.) and 1. and (b), 346.63 (6)  
9 (a) and (c), 346.637 (1) and (2), 346.65 (2) (e), 346.65 (2g) (b) and (c) and (2i),  
10 346.65 (2q) and (2u) (a), 346.65 (3m) and (7), 346.66, 347.413 (3), 885.235 (1g)  
11 (a), 940.09 (1d) (a), 949.08 (2) (e) and (em), 967.055 (title) and (1) and 967.055  
12 (2); to repeal and recreate 343.305 (5) (d), 885.235 (1) (b) and 939.22 (42); and  
13 to create 340.01 (25d) and (73e), 343.30 (1r), 343.305 (5) (e), 346.63 (3) (a),

1 346.65 (2) (g) 4., 346.65 (8), 800.08 (5) and 939.22 (19m) of the statutes;

2 relating to: ~~operating a motor vehicle while intoxicated~~ and providing a penalty

Intoxicated operation of

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

FE-S/L

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

PREFATORY NOTE: This ~~draft~~ <sup>bill</sup> was prepared for the 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. ~~o~~ delete extra space

bill

This ~~draft~~ <sup>bill</sup> creates a definition of the terms "intoxicant" and "under the influence of an intoxicant" for use in the motor vehicle code. Most of the SECTIONS of this ~~draft~~ <sup>bill</sup> are concerned with the use of these terms and a description of this issue can be found in the note following SECTION 1 of the ~~draft~~ <sup>bill</sup>. Other changes to the statutes made in the ~~draft~~ <sup>bill</sup> are identified in notes to the provisions affected.

L. II

SECTION 1. 340.01 (25d) ~~and 939.22~~ <sup>STET</sup> of the statutes ~~are~~ <sup>created</sup> to read:

340.01 (25d) "Intoxicant" means any of the following: <sup>STET</sup>

(a) Alcohol, a controlled substance, a controlled substance analog, any other drug <sup>1</sup> or a vapor <sup>2</sup> releasing substance. <sup>3</sup>

(b) Any combination of alcohol, a controlled substance, a controlled substance analog, any other drug <sup>1</sup> or a vapor <sup>2</sup> releasing substance.

~~73e~~ (73e) "Under the influence of an intoxicant" means a condition in which a person's ability to operate a motor vehicle, because of the consumption of an intoxicant, is impaired to the extent that the person is less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle.

NOTE: Current law treats the issue of operating a motor vehicle while intoxicated using various terms, often inconsistently. The terms used are "intoxicant", "alcohol", "controlled substance", "controlled substance analog" and "other drug". In the following

NOTE: See the <sup>CS</sup> NOTE following the next <sup>CS</sup> SECTION.

Insert A

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sections of the statutes, the terms "alcohol", "a controlled substance" and "controlled substance analog" are used: ss. 343.10, 343.16, 343.30, 343.305, 343.44 and 346.637, stats. Other sections of the statutes make use of these terms plus the term "other drug": ss. 343.303, 343.305, 343.31, 343.315, 343.63, 344.576 and 346.65, stats. In addition, the term "intoxicant" is intermittently used.

This SECTION creates a definition of the term "intoxicant" to mean any of the following:

1. Alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.

2. Any combination of alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.

The use of the definition of the term "intoxicant" in the statutes will indicate consistently that a person may be considered intoxicated due to the individual impacts or the combined impacts of alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.

Another issue presented by this draft is the meaning of the phrase "operating a motor vehicle while under the influence". For example, s. 343.305 (9) (a) 5., states in part:

Whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol, a controlled substance or a controlled substance analog or any combination of alcohol, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders the person incapable of safely driving, or under the combined influence of alcohol and any other drug to a degree which renders the person incapable of safely driving.

It appears from the above-cited section of the statutes that the phrase "to a degree which renders the person incapable of safely driving" applies only to a person acting under the influence of "any other drug" or "alcohol and any other drug".

Wisconsin criminal jury instructions state that the phrase "under the influence of an intoxicant" means that a driver's ability to operate a vehicle is impaired because of the consumption of an alcoholic beverage. "Not every person who has consumed alcoholic beverages is 'under the influence' as that term is used here. What must be established is that the person has consumed a sufficient amount of alcohol to cause him to be less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle. It is not required that impaired ability to operate be demonstrated by particular acts of unsafe driving. What is required is that the person's ability to safely control his vehicle be impaired". [See WIS JI-CRIMINAL s. 2663.]

With respect to operating a motor vehicle while under the influence of a drug, the Wisconsin criminal jury instructions state that one element of this offense requires that the defendant drove or operated a motor vehicle while under the influence of a drug to a degree which rendered the defendant incapable of safely driving. [See WI JI-CRIMINAL s. 2666.]

This ~~bill~~ creates a definition of the term "under the influence of an intoxicant" by codifying the language of WI JI-CRIMINAL s. 2663. Rather than using 2 standards, as under current law, the ~~bill~~ applies the definition to the operation of a motor vehicle when the consumption of any intoxicant is involved. Again, the term "intoxicant" is defined to mean alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance or any combination of these items.

SECTION 2. 343.10 (8) (intro.) of the statutes is amended to read:

1           343.10 (8) VIOLATION OF RESTRICTIONS. (intro.) Any person who violates a  
 2 restriction on an occupational license as to hours of the day, area, routes or purpose  
 3 of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety  
 4 or use of ~~alcohol, controlled substances or controlled substance analogs~~ an intoxicant  
 5 shall be: *, as affected by 1997 Wisconsin Act 84,*

6           SECTION 3. 343.16 (5) (a) of the statutes <sup>A</sup> is amended to read:

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

1 accordance with s. 343.30 (1q). If there is noncompliance with assessment or the  
2 driver safety plan, the department shall revoke the person's operating privilege in  
3 the manner specified in s. 343.30 (1q) (d).

Insert  
B

SECTION 4. 343.30 (1q) (c) 1. (intro.) ~~and (d)~~ of the statutes ~~are~~ amended to read:

5 343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall  
6 order the person to submit to and comply with an assessment by an approved public  
7 treatment facility<sup>v</sup> as defined in s. 51.45 (2) (c)<sup>v</sup> for examination of the person's use of  
8 alcohol, ~~controlled substances or controlled substance analogs~~ an intoxicant and  
9 development of a driver safety plan for the person. The court shall notify the  
10 department of transportation of the assessment order. The court shall notify the  
11 person that noncompliance with assessment or the driver safety plan will result in  
12 revocation of the person's operating privilege until the person is in compliance. The  
13 assessment order shall:

~~SEC. #. AM. 343.30 (1q) (d); as affected by 1997 Wisconsin Act 84;~~  
14 (d) The assessment report shall order compliance with a driver safety plan. The  
15 report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver  
16 safety plan may include a component that makes the person aware of the effect of his  
17 or her offense on a victim and a victim's family. The driver safety plan may include  
18 treatment for the person's misuse, abuse<sup>2</sup> or dependence on alcohol, ~~controlled~~  
19 ~~substances or controlled substance analogs~~ an intoxicant, or attendance at a school  
20 under s. 345.60, or both. If the plan requires inpatient treatment, the treatment  
21 shall not exceed 30 days. A driver safety plan under this paragraph shall include a  
22 termination date consistent with the plan which shall not extend beyond one year.  
23 The county department under s. 51.42 shall assure notification of the department of  
24 transportation and the person of the person's compliance or noncompliance with  
25 ~~assessment and with treatment. The school under s. 345.60 shall notify the~~

INS. 5-25

2 ✓

1 ~~department, the county department under s. 51.42 and the person of the person's~~  
2 ~~compliance or noncompliance with the requirements of the school. Nonpayment of~~  
3 ~~the assessment fee or, if the person has the ability to pay, nonpayment of the driver~~  
4 ~~safety plan fee is noncompliance with the court order. If the department is notified~~  
5 ~~of any noncompliance, it shall suspend the person's operating privilege until the~~  
6 ~~county department under s. 51.42 or the school under s. 345.60 notifies the~~  
7 ~~department that the person is in compliance with assessment or the driver safety~~  
8 ~~plan. The department shall notify the person of the suspension, the reason for the~~  
9 ~~suspension, and the person's right to a review. A person may request a review of a~~  
10 ~~suspension based upon failure to comply with a driver safety plan within 10 days of~~  
11 ~~notification. The review shall be handled by the subunit of the department of~~  
12 ~~transportation designated by the secretary. The issues at the review are limited to~~  
13 ~~whether the driver safety plan, if challenged, is appropriate and whether the person~~  
14 ~~is in compliance with the assessment order or the driver safety plan. The review~~  
15 ~~shall be conducted within 10 days after a request is received. If the driver safety plan~~  
16 ~~is determined to be inappropriate, the department shall order a reassessment and~~  
17 ~~if the person is otherwise eligible, the department shall reinstate the person's~~  
18 ~~operating privilege. If the person is determined to be in compliance with the~~  
19 ~~assessment or driver safety plan, and if the person is otherwise eligible, the~~  
20 ~~department shall reinstate the person's operating privilege. If there is no decision~~  
21 ~~within the 10-day period, the department shall issue an order reinstating the~~  
22 ~~person's operating privilege until the review is completed, unless the delay is at the~~  
23 ~~request of the person seeking the review.~~

24 SECTION 5. 343.30 (1q) (h) of the statutes is amended to read:



1           343.30 (1q) (h) The court or department shall provide that the period of  
2 suspension or revocation imposed under this subsection shall be reduced by any  
3 period of suspension or revocation previously served under s. 343.305 if the  
4 suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63  
5 (1) or (2m) or a local ordinance in conformity therewith arise out of the same incident  
6 or occurrence. The court or department shall order that the period of suspension or  
7 revocation imposed under this subsection run concurrently with any period of time  
8 remaining on a suspension or revocation imposed under s. 343.305 arising out of the  
9 same incident or occurrence. The court or department shall order that any period  
10 of time that must expire before a person is eligible for an occupational license under  
11 this subsection be reduced by any similar period previously expired under s. 343.305  
12 if the suspension or revocation under s. 343.305 and the conviction for violation of  
13 s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same  
14 incident or occurrence. The court or department shall order that any period of time  
15 that must expire before a person is eligible for an occupational license under this  
16 subsection run concurrently with any similar period of time remaining under s.  
17 343.305 arising out of the same incident or occurrence. The court may modify an  
18 occupational license authorized under s. 343.305 (8) (d) in accordance with this  
19 subsection.

NOTE: Section 343.30 (1q) (b), stats., provides that a person who is convicted of driving or operating a motor vehicle while under the influence of an intoxicant or other drug or while maintaining a prohibited alcohol concentration will be subject to revocation of the person's operating privilege and a specified period of time within which the person is not eligible to obtain an occupational license. Similarly, s. 343.305 (10) (b), stats., provides that a person who improperly refuses to take a test to determine the presence of alcohol or other drugs will be subject to a revocation of the person's operating privilege and a specified period of time within which the person is not eligible to obtain an occupational license. This SECTION of the ~~stat~~ <sup>stat</sup> provides that, for a conviction and a refusal that arise out of the same incident or occurrence, the periods of time within which a person will not be eligible for an occupational license will run concurrently or, if an

eligibility period has begun to run for a refusal, the latter period will operate as an offset to the period of ineligibility under s. 343.30, stats.

1 SECTION 6. 343.30 (1r) of the statutes is created to read:

2 343.30 (1r) A court shall suspend a person's operating privilege upon  
3 conviction of tampering with an ignition interlock device in violation of s. 343.10 (5)  
4 or 347.413 for a period of not less than 6 months nor more than 9 months. Except  
5 for a violation under s. 343.10 (5), the person is eligible for an occupational license  
6 under s. 343.10 at any time. For a violation under s. 343.10 (5), the person is eligible  
7 for an occupational license pursuant to s. 343.10.

NOTE: This SECTION creates a license suspension provision applicable to persons who are convicted of tampering with an ignition interlock device (IID), either under the general tampering provision in s. 347.413, stats., or the tampering language in s. 343.10, stats. As with the current IID tampering laws, this suspension applies to whoever commits the tampering violation (that is, the operator subject to the IID restriction or anyone else tampering with the device). Except where an occupational license is involved, the suspension period and the provision making the operator eligible for an occupational license at any time is the same as that currently applicable to a first offense violator of the statutes prohibiting the operation of a motor vehicle while under the influence of an intoxicant or other drug (OWI). If the violator is an OWI violator who has an occupational license, the provisions of the occupational license statute determine future eligibility for such a license.

8 SECTION 7. 343.303 of the statutes is renumbered 343.303 (1) (intro.) and  
9 amended to read:

10 343.303 (1) (intro.) *strike a space* ~~If a~~ law enforcement officer has probable cause to believe,  
11 prior to an arrest, may request a person to provide a sample of his or her breath for  
12 a preliminary breath screening test using a device approved by the department for  
13 this purpose if any of the following conditions exists:

14 (a) The law enforcement officer has reasonable suspicion that the person is  
15 violating or has violated s. 346.63 (1) or (2m) or a local ordinance in conformity  
16 therewith, or s. 346.63 (2) or (6) or, 940.09 (1) or 940.25 or s. 940.09 where the offense  
17 involved the use of a vehicle, or if the,

1           **(b)** ~~The law enforcement officer detects any presence of alcohol, a controlled~~  
 2 ~~substance, controlled substance analog or other drug, or a combination thereof, an~~  
 3 ~~intoxicant~~ on a person driving or operating or on duty time with respect to a  
 4 commercial motor vehicle ~~or.~~

5           **(c)** ~~The law enforcement officer has reason to believe that the person is violating~~  
 6 ~~or has violated s. 346.63 (7) or a local ordinance in conformity therewith, the officer,~~  
 7 ~~prior to an arrest, may request the person to provide a sample of his or her breath~~  
 8 ~~for a preliminary breath screening test using a device approved by the department~~  
 9 ~~for this purpose.~~ **(B)**

10           **(2)** The result of ~~this~~ the preliminary breath screening test under sub. (1) may  
 11 be used by the law enforcement officer for the purpose of deciding whether or not the  
 12 person shall be arrested for a violation of s. 346.63 (1), (2m), (5), or (7) or a local  
 13 ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1), or 940.25 and  
 14 whether or not to require or request chemical tests as authorized under s. 343.305  
 15 (3).

16           **(3)** The result of the preliminary breath screening test under sub. (1) shall not  
 17 be admissible in any action or proceeding except to show <sup>✓</sup>probable cause for an arrest,  
 18 if the arrest is challenged, <sup>to show</sup> the presence of an intoxicant in a person, or to prove that  
 19 a chemical test was properly required or requested of a person under s. 343.305 (3).  
 20 Following the screening test, additional tests may be required or requested of the  
 21 driver under s. 343.305 (3).

22           **(4)** The general penalty provision under s. 939.61 (1) does not apply to a refusal  
 23 to take a preliminary breath screening test under this section.

NOTE: This SECTION reorganizes s. 343.303 and provides that a law enforcement officer may require a preliminary breath screening test if there is a reasonable suspicion, rather than probable cause to believe, that a violation has occurred. This change <sup>codifies</sup>

person's breath,  
blood, or urine,

is based on

the decision of the Wisconsin Supreme Court in *County of Jefferson v. Renz*, 231 Wis. 2d 293 (1999).

In addition, current law provides that a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested. This SECTION provides that the result of the preliminary breath screening test also may be used as evidence of the presence of an intoxicant in a person; that is, the result of the test is admissible for the purpose of providing evidence of the existence of an intoxicant but not for the purpose of providing evidence of the amount of an intoxicant.

SECTION 8. 343.305 (2), (3) (am) and (b), (4) <sup>(form)</sup> and (5) (b) of the statutes are amended to read:

343.305 (2) IMPLIED CONSENT. Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in s. 346.61, is deemed to have given consent to one or more tests of his or her ~~breath, blood or urine~~ <sup>of an intoxicant</sup>, for the purpose of determining the presence or quantity ~~in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs~~ <sup>breath, blood or urine</sup> ~~an intoxicant~~, when requested to do so by a law enforcement officer under sub. (3) (a) or (am) or when required to do so under sub. (3) (b). Any such tests shall be administered upon the request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a) or (am), and may designate which of the tests shall be administered first.

(3) (am) Prior to arrest, a law enforcement officer may request the person to provide one or more samples of his or her breath, blood <sup>(2)</sup> or urine for the purpose specified under sub. (2) whenever a law enforcement officer detects any presence of alcohol, ~~a controlled substance, a controlled substance analog or other drug, or a combination thereof~~ <sup>an intoxicant</sup> on a person driving or operating or on duty time

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1 with respect to a commercial motor vehicle or has reason to believe the person is  
 2 violating or has violated s. 346.63 (7). Compliance with a request for one type of  
 3 sample does not bar a subsequent request for a different type of sample. For the  
 4 purposes of this paragraph, "law enforcement officer" includes inspectors in the  
 5 performance of duties under s. 110.07 (3).

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

16 ~~¶ (4) INFORMATION. At the time that a chemical test specimen is requested under~~  
 17 ~~sub. (3) (a) or (am), the law enforcement officer shall read the following to the person~~  
 18 ~~from whom the test specimen is requested:~~

19 ¶ "You have either been arrested for an offense that involves driving or operating  
 20 a motor vehicle while under the influence of alcohol or drugs, or both an intoxicant,  
 21 or you are suspected of driving or being on duty time with respect to a commercial  
 22 motor vehicle after consuming an intoxicating beverage.

23 This law enforcement agency now wants to test one or more samples of your  
 24 breath, blood, or urine to determine the concentration of alcohol or drugs an  
 25 intoxicant in your system. If any test shows more alcohol in your system than the law

1 permits while driving, your operating privilege will be suspended. If you refuse to  
2 take any test that this agency requests, your operating privilege will be revoked and  
3 you will be subject to other penalties. The test results or the fact that you refused  
4 testing can be used against you in court. The law does not provide you with a right  
5 to contact an attorney before submitting to a chemical test.

6 If you take all <sup>of</sup> the requested tests, you may choose to take further tests. You  
7 may take the alternative test that this law enforcement agency provides free of  
8 charge. You also may have a test conducted by a qualified person of your choice at  
9 your expense. You, however, will have to make your own arrangements for that test.

10 If you have a commercial driver license or were operating a commercial motor  
11 vehicle, other consequences may result from positive test results or from refusing  
12 testing, such as being placed out of service or disqualified.”

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

NOTE: Section 343.305 (4), stats., requires that a law enforcement officer provide a person specified notifications at the time that a chemical test specimen is requested. This SECTION adds to the notice a provision that when a chemical test specimen is requested, the person to be tested does not have the right to contact an attorney prior to testing.

21 **SECTION 9.** 343.305 (5) (d) of the statutes is repealed and recreated to read:

1           343.305 (5) (d) The results of a test administered in accordance with this  
2 section are admissible on the issue of whether a person was under the influence of  
3 an intoxicant or any issue relating to the person's alcohol concentration in a civil or  
4 criminal proceeding in which the person is alleged to have done<sup>✓</sup> any of the following:

5           1. Driven or operated a motor vehicle while under the influence of an  
6 intoxicant.

7           2. ~~Having~~ <sup>Had</sup> a prohibited alcohol concentration.

8           3. Driven or operated or been on duty time with respect to a commercial motor  
9 vehicle in violation of s. 346.63 (7).<sup>✓</sup>

10          SECTION 10. 343.305 (5) (e) of the statutes is created to read:

11          343.305 (5) (e) Test results under this section shall be given the effect required  
12 under s. 885.235.<sup>✓</sup>

13          SECTION 11. 343.305 (6) (a) of the statutes is amended to read:

14          343.305 (6) (a) Chemical analyses of blood or urine to be considered valid under  
15 this section shall have been performed substantially according to methods approved  
16 by the laboratory of hygiene and by an individual possessing a valid permit to  
17 perform the analyses issued by the department of health and family services. The  
18 department of health and family services shall approve laboratories for the purpose  
19 of performing chemical analyses of blood or urine for ~~alcohol, controlled substances~~  
20 ~~or controlled substance analogs~~ an intoxicant and shall develop and administer a  
21 program for regular monitoring of the laboratories. A list of approved laboratories  
22 shall be provided to all law enforcement agencies in the state. Urine specimens are  
23 to be collected by methods specified by the laboratory of hygiene. The laboratory of  
24 hygiene shall furnish an ample supply of urine and blood specimen containers to  
25 permit all law enforcement officers to comply with the requirements of this section.

(Intro) and 4

1 SECTION 12. 343.305 (9) (a) ~~4. and 5. a. and c. (am) 4. and 5. a. and c. and (e)~~  
2 of the statutes are amended to read:

Insert C

3 ~~343.305 (9) (a)~~ 4. That the person may request a hearing on the revocation  
4 within 10 days by mailing or delivering a written request to the clerk of the  
5 appropriate circuit court whose address is specified in the notice. If no request for  
6 a hearing is received within the 10-day period, the revocation period commences 30  
7 days after the notice is issued.

SECTION #. 343.305 (9)(a) 5. a. and c. of the statutes are amended to read:

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

19 c. Whether the person refused to permit the test. The person shall not be  
20 considered to have refused the test if it is shown by a preponderance of evidence that  
21 the refusal was due to a physical inability to submit to the test due to a physical  
22 disability or disease unrelated to the use of alcohol, <sup>plain space</sup> ~~controlled substances, controlled~~  
23 ~~substance analogs or other drugs~~ an intoxicant.

24 ~~(am) 4.~~ That the person may request a hearing on the revocation within 10 days  
25 by mailing or delivering a written request to the clerk of the appropriate circuit court

SECTION #. 343.305 (9)(am) (intro) and 4. of the statutes are amended to read: INSERT D

4



1 whose address is specified in the notice. If no request for a hearing is received within  
2 the 10-day period, the revocation period commences 30 days after the notice is  
3 issued.

*SECTION 13. 343.305 (a) (am) s. a. and c. of the statutes are amended to read:*

4 5. a. Whether the officer detected any presence of alcohol, controlled substance,  
5 *343.305 (b) (a) (am)* controlled substance analog or other drug, or a combination thereof an intoxicant, on  
6 the person or had reason to believe that the person was violating or had violated s.  
7 346.63 (7).

8 c. Whether the person refused to permit the test. The person shall not be  
9 considered to have refused the test if it is shown by a preponderance of evidence that  
10 the refusal was due to a physical inability to submit to the test due to a physical  
11 disability or disease unrelated to the use of alcohol, *or plain space* controlled substances, controlled  
12 ~~substance analogs or other drugs~~ an intoxicant.

13 *(c)* If a law enforcement officer informs the circuit court that a person has  
14 *343.305 (b) (a)* refused to submit to a test under sub. (3) (a) or (am), the court shall be prepared to  
15 hold any requested hearing to determine if the refusal was proper. The scope of the  
16 hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5. Neither party  
17 is entitled to pretrial discovery. Section 967.055 applies to any hearing under this  
18 subsection.

*CS*  
*SECTIONS ... to ...*  
NOTE: This SECTION amends s. 343.305 (9) (a) and (am), stats., to clarify that the notice of intent to revoke a person's operating privilege must include the address of the clerk of the appropriate circuit court that may hold a revocation hearing. The amendment to s. 343.305 (9) (c), stats., clarifies that pretrial discovery is not available in a refusal hearing. This amendment reverses the holding in *State v. Schoepp*, 204 Wis. 2d 266 (Ct. App. 1996).

19 SECTION 13. 343.305 (10) (c) 1. (intro.) of the statutes is amended to read:

20 343.305 (10) (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall  
21 order the person to submit to and comply with an assessment by an approved public  
22 treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of

1 ~~alcohol, controlled substances or controlled substance analogs~~ an intoxicant and  
 2 development of a driver safety plan for the person. The court shall notify the person  
 3 and the department of transportation of the assessment order. The court shall also  
 4 notify the person that noncompliance with assessment or the driver safety plan will  
 5 result in license suspension until the person is in compliance. The assessment order  
 6 shall:

*as affected by 1997 Wisconsin Act 84,*  
 SECTION 14. 343.305 (10) (d) of the statutes is amended to read:

8 343.305 (10) (d) The assessment report shall order compliance with a driver  
 9 safety plan. The report shall inform the person of the fee provisions under s. 46.03  
 10 (18) (f). The driver safety plan may include a component that makes the person  
 11 aware of the effect of his or her offense on a victim and a victim's family. The driver  
 12 safety plan may include treatment for the person's misuse, abuse, or dependence on  
 13 ~~alcohol, controlled substances or controlled substance analogs~~ an intoxicant,  
 14 attendance at a school under s. 345.60, or both. If the plan requires inpatient  
 15 treatment, the treatment shall not exceed 30 days. A driver safety plan under this  
 16 paragraph shall include a termination date consistent with the plan which shall not  
 17 extend beyond one year. The county department under s. 51.42 shall assure  
 18 notification of the department of transportation and the person of the person's  
 19 compliance or noncompliance with assessment and treatment. The school under s.  
 20 345.60 shall notify the department, the county department under s. 51.42, and the  
 21 person of the person's compliance or noncompliance with the requirements of the  
 22 school. Nonpayment of the assessment fee or, if the person has the ability to pay,  
 23 nonpayment of the driver safety plan fee is noncompliance with the court order. If  
 24 the department is notified of noncompliance, other than for nonpayment of the  
 25 assessment fee or driver safety plan fee, it shall revoke the person's operating

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✓  
or

1 privilege until the county department under s. 51.42 or the school under s. 345.60  
2 notifies the department that the person is in compliance with assessment or the  
3 driver safety plan. If the department is notified that a person has not paid the  
4 assessment fee, or that a person with the ability to pay has not paid the driver safety  
5 plan fee, the department shall suspend the person's operating privilege for a period  
6 of 2 years or until it receives notice that the person has paid the fee, whichever occurs  
7 first. The department shall notify the person of the suspension or revocation, the  
8 reason for the suspension or revocation, and the person's right to a review. A person  
9 may request a review of a revocation based upon failure to comply with a driver safety  
10 plan within 10 days of notification. The review shall be handled by the subunit of  
11 the department of transportation designated by the secretary. The issues at the  
12 review are limited to whether the driver safety plan, if challenged, is appropriate and  
13 whether the person is in compliance with the assessment order or the driver safety  
14 plan. The review shall be conducted within 10 days after a request is received. If the  
15 driver safety plan is determined to be inappropriate, the department shall order a  
16 reassessment and if the person is otherwise eligible, the department shall reinstate  
17 the person's operating privilege. If the person is determined to be in compliance with  
18 the assessment or driver safety plan, and if the person is otherwise eligible, the  
19 department shall reinstate the person's operating privilege. If there is no decision  
20 within the 10-day period, the department shall issue an order reinstating the  
21 person's operating privilege until the review is completed, unless the delay is at the  
22 request of the person seeking the review.

23 **SECTION 15.** 343.307 (1) (d) of the statutes is amended to read:

24 343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits  
25 refusal of chemical testing or use of a motor vehicle while intoxicated or under the

SECTION 15

① influence of ~~a controlled substance or controlled substance analog, or a combination~~  
 2 ~~thereof an intoxicant~~, or with an excess or specified range of alcohol concentration,  
 3 or under the influence of any drug to a degree that renders the person incapable of  
 4 safely driving, as those or substantially similar terms are used in that jurisdiction's  
 5 laws.

6 SECTION 16. 343.31 (1) (am) and (ar) of the statutes are amended to read:

7 343.31 (1) (am) Injury Bodily harm by the operation of a vehicle while under  
 8 the influence of an intoxicant, ~~a controlled substance or a controlled substance~~  
 9 ~~analog, or any combination of an intoxicant, a controlled substance and a controlled~~  
 10 ~~substance analog, under the influence of any other drug to a degree which renders~~  
 11 ~~him or her incapable of safely driving, or under the combined influence of an~~  
 12 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
 13 ~~safely driving or while the person has a prohibited alcohol concentration and which~~ ✓✓  
 14 is criminal under s. 346.63 (2). \*

15 (ar) Injury Bodily harm by the operation of a commercial motor vehicle while  
 16 the person has an alcohol concentration of 0.04 or more but less than 0.1 and which ✓✓ \*  
 17 is criminal under s. 346.63 (6).

18 *as affected by 1997 Wisconsin Act 84,*  
 SECTION 17. 343.31 (1) (b) of the statutes is amended to read:

19 343.31 (1) (b) Upon conviction for operation of a motor vehicle while under the  
 20 influence of an intoxicant, ~~controlled substance, controlled substance analog or a~~  
 21 ~~combination thereof, under the influence of any other drug to a degree which renders~~  
 22 ~~him or her incapable of safely driving, or under the combined influence of an~~  
 23 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
 24 safely driving, in accordance with the order of the court.

25 *as affected by 1997 Wisconsin Act 84,*  
 SECTION 18. 343.31 (2) and (3) (b) of the statutes are amended to read:

*strike space*

1           343.31 (2) The department shall revoke the operating privilege of any resident  
2 upon receiving notice of the conviction of such person in another jurisdiction for an  
3 offense therein which, if committed in this state, would have been cause for  
4 revocation under this section or for revocation under s. 343.30 (1q). Such offenses  
5 shall include violation of any law of another jurisdiction that prohibits use of a motor  
6 vehicle while intoxicated or under the influence of ~~a controlled substance or~~  
7 ~~controlled substance analog, or a combination thereof~~ an intoxicant, or with an  
8 excess or specified range of alcohol concentration, ~~or under the influence of any drug~~  
9 ~~to a degree that renders the person incapable of safely driving~~, as those or  
10 substantially similar terms are used in that jurisdiction's laws. Upon receiving  
11 similar notice with respect to a nonresident, the department shall revoke the  
12 privilege of the nonresident to operate a motor vehicle in this state. Such revocation  
13 shall not apply to the operation of a commercial motor vehicle by a nonresident who  
14 holds a valid commercial driver license issued by another state.

15           (3) (b) If the revocation results from a first conviction of operation of a motor  
16 vehicle while under the influence of an intoxicant, ~~controlled substance, controlled~~  
17 ~~substance analog or a combination thereof, under the influence of any other drug to~~  
18 ~~a degree which renders him or her incapable of safely driving, or under the combined~~  
19 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
20 ~~incapable of safely driving~~ and the conviction occurs in another jurisdiction, the  
21 period of revocation shall be 6 months.

22           **SECTION 19.** 343.315 (2) (a) 1. and 6. of the statutes are amended to read:

23           343.315 (2) (a) 1. Section 346.63 (1) (a) or a local ordinance in conformity  
24 therewith or a law of a federally recognized American Indian tribe or band in this  
25 state in conformity with s. 346.63 (1) (a) or the law of another jurisdiction prohibiting

1 use of an ignition interlock device, sobriety, or use of alcohol, controlled substances  
2 ~~or controlled substance analogs~~ an intoxicant.

3 (b) *Operating while revoked.* No person whose operating privilege has been  
4 duly revoked under the laws of this state may knowingly operate a motor vehicle  
5 upon any highway in this state during the period of revocation or in violation of any  
6 restriction on an occupational license issued to the person during the period of  
7 revocation. In this paragraph, “restriction on an occupational license” means  
8 restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or  
9 purpose of travel, vehicles allowed to be operated, use of an ignition interlock device,  
10 sobriety, or use of alcohol, controlled substances ~~or controlled substance analogs~~ an  
11 intoxicant.

12 **SECTION 21.** 344.576 (2) (b) and (c) of the statutes are amended to read:

13 344.576 (2) (b) The damage occurs while the renter or authorized driver  
14 operates the private passenger vehicle in this state while under the influence of an  
15 intoxicant ~~or other drug~~, as described under s. 346.63 (1) (a) or (b) or (2m).

16 (c) The damage occurs while the renter or authorized driver operates the  
17 private passenger vehicle in another state while under the influence of an intoxicant  
18 ~~or other drug~~, as described in the laws of that state.

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

20 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in  
21 conformity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense  
22 involved the use of a vehicle, may not be released until 12 hours have elapsed from  
23 the time of his or her arrest or unless a chemical test administered under s. 343.305  
24 shows that the person has an alcohol concentration of less than ~~0.04~~ 0.02, but the

1 person may be released to his or her attorney, spouse, relative, or other responsible  
2 adult at any time after arrest.

NOTE: Current law regarding an officer's action after an arrest for driving under the influence of an intoxicant provides that the arrested person must be released when the person has an alcohol concentration less than 0.04. This SECTION amends the statute to provide that the immediate release alcohol concentration level is reduced to less than 0.02.

3 **SECTION 23.** 346.61 of the statutes is amended to read:

4 **346.61 Applicability of sections relating to reckless and drunken**  
5 **driving.** In addition to being applicable upon highways, ss. 346.62 to 346.64 are  
6 applicable upon all premises held out to the public for use of their motor vehicles, all  
7 premises provided by employers to employees for the use of their motor vehicles and  
8 all premises provided to tenants of rental housing in buildings of 4 or more units for  
9 the use of their motor vehicles, whether such premises are publicly or privately  
10 owned and whether or not a fee is charged for the use thereof. Sections 346.62 to  
11 346.64 do not apply to private parking areas at farms or single-family residences and  
12 frozen water *Waters*

NOTE: Section 346.61, stats., provides that statutory provisions relating to reckless and drunken driving are applicable upon highways, all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for their use. An exception exists for private parking areas at farms or single-family residences. This SECTION amends s. 346.61, stats., to provide that the statutes relating to reckless and drunken driving are applicable upon highways, all premises, and frozen *water* *Waters*.

13 **SECTION 24.** 346.63 (title) ~~(1) (a) and (b) and (2) (a) (intro.) and (b)~~ of the  
14 statutes are amended to read:

15 **346.63 (title) Operating under influence of intoxicant or other drug.**  
16 ~~(1) (a) Under the influence of an intoxicant, a controlled substance, a controlled~~  
17 ~~substance analog or any combination of an intoxicant, a controlled substance and a~~  
18 ~~controlled substance analog, under the influence of any other drug to a degree which~~

*Section # 346.62(1)(a) and (b) of the statutes are repealed.*

*Insert e*

## SECTION 19

1 driving or operating a motor vehicle while intoxicated or under the influence of  
2 ~~alcohol, a controlled substance, a controlled substance analog or a combination~~  
3 ~~thereof, or under the influence of any drug which renders the person incapable of~~  
4 ~~safely driving an intoxicant~~, as those or substantially similar terms are used in that  
5 jurisdiction's laws.

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

16 SECTION 20. 343.44 (1) (a) and (b) of the statutes are amended to read:

17 343.44 (1) (a) *Operating while suspended.* No person whose operating privilege  
18 has been duly suspended under the laws of this state may operate a motor vehicle  
19 upon any highway in this state during the period of suspension or in violation of any  
20 restriction on an occupational license issued to the person during the period of  
21 suspension. A person's knowledge that his or her operating privilege is suspended  
22 is not an element of the offense under this paragraph. In this paragraph, "restriction  
23 on an occupational license" means restrictions imposed under s. 343.10 (5) (a) as to  
24 hours of the day, area, routes<sup>OK</sup> or purpose of travel, vehicles allowed to be operated,



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

4 (c) A person may be charged with and a prosecutor may proceed upon a  
5 complaint based upon a violation of par. (a) or (b) or both for acts arising out of the  
6 same incident or occurrence. If the person is charged with violating both pars. (a)  
7 and (b), the offenses shall be joined. If the person is found guilty of both pars. (a) and  
8 (b) for acts arising out of the same incident or occurrence, there shall be a single  
9 conviction for purposes of sentencing and for purposes of counting convictions under  
10 ss. 343.30 (1q) and 343.305. Paragraphs (a) and (b) each require proof of a fact for  
11 conviction which the other does not require. A crime specified in this subsection is  
12 not an offense included in s. 346.63 (2), 940.09 or 940.25.

Insert  
f

13 (2) (a) (intro.) It is unlawful for any person to cause injury bodily harm to  
14 another person by the operation of a vehicle while: sec. # AM: 346.63(2)(a) (intro.) and 1. and (b)

15 1. Under the influence of an intoxicant, ~~a controlled substance, a controlled~~  
16 ~~substance analog or any combination of an intoxicant, a controlled substance and a~~  
17 ~~controlled substance analog, under the influence of any other drug to a degree which~~  
18 ~~renders him or her incapable of safely driving, or under the combined influence of an~~  
19 ~~intoxicant and any other drug to a degree which renders him or her incapable of~~  
20 ~~safely driving; or~~

21 (b) In an action under this subsection, the defendant has a defense if he or she  
22 proves by a preponderance of the evidence that the injury bodily harm would have  
23 occurred even if he or she had been exercising due care and he or she had not been  
24 under the influence of an intoxicant, ~~a controlled substance, a controlled substance~~  
25 ~~analog or a combination thereof, under the influence of any other drug to a degree~~

## SECTION 24

1 ~~which renders him or her incapable of safely driving, or under the combined~~  
2 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
3 ~~incapable of safely driving~~ or did not have a prohibited alcohol concentration  
4 described under par. (a) 2.

NOTE: Section 346.63 (2) and (6), stats., provides that a person may not cause injury while operating a motor vehicle under the influence of an intoxicant or other drug. This SECTION and SECTIONS 25 to 27 also prohibit the causing of bodily harm. The term "bodily harm" is defined in SECTION 26 to mean physical pain or injury, illness or any impairment of physical condition. The definition is adopted from s. 939.22 (4), stats.

This SECTION clarifies that the crime of driving or operating a motor vehicle while under the influence of an intoxicant or with a prohibited alcohol concentration is not an included offense of the following crimes: causing bodily harm while intoxicated; homicide by intoxicated use of a vehicle; or injury by intoxicated use of a vehicle. <sup>o</sup>

5 ~~SECTION 25. 346.63 (3) (a) and (b) of the statutes are renumbered 346.63 (3) (b)~~  
6 ~~and (c).~~

7 SECTION 26. 346.63 (3) (a) of the statutes is created to read:  
8 346.63 (3) (a) "Bodily harm" means physical pain or injury, illness or any  
9 impairment of physical condition.

NOTE: See the note to SECTION 24.

10 SECTION 27. 346.63 (6) (a) and (c) of the statutes are amended to read:

11 346.63 (6) (a) No person may cause ~~injury~~ bodily harm to another person by the  
12 operation of a commercial motor vehicle while the person has an alcohol  
13 concentration of 0.04 or more but less than 0.1.

14 (c) Under par. (a), the person charged has a defense if it appears by a  
15 preponderance of the evidence that the ~~injury~~ bodily harm would have occurred even  
16 if he or she had not been under the influence of an intoxicant, a controlled substance,  
17 a controlled substance analog or a combination thereof, under the influence of any  
18 other drug to a degree which renders him or her incapable of safely driving, or under  
19 the combined influence of an intoxicant and any other drug to a degree which renders

1 ~~him or her incapable of safely driving~~ or did not have an alcohol concentration  
2 described under par. (a).

NOTE: See the note to SECTION 24.

3 SECTION 28. 346.637 (1) and (2) of the statutes are amended to read:

4 346.637 (1) The laws relating to operating a motor vehicle and ~~drinking~~  
5 alcohol, using ~~controlled substances or controlled substance analogs, or using any~~  
6 combination of alcohol, controlled substances and controlled substance analogs an  
7 intoxicant.

8 (2) The effects of alcohol, ~~controlled substances or controlled substance~~  
9 analogs, an intoxicant or the use of ~~them in any combination~~ an intoxicant, on a  
10 person's ability to operate a motor vehicle.

11 SECTION 29. 346.65 (2) (e) of the statutes is amended to read:

12 346.65 (2) (e) Except as provided in pars. (f) and (g), shall be fined not less than  
13 \$600 nor more than \$2,000 and imprisoned for not less than 6 months nor more than  
14 ~~5~~ 7 years and ~~6~~ <sup>6</sup> months if the number of convictions under ss. 940.09 (1) and 940.25  
15 in the person's lifetime, plus the total number of suspensions, revocations, and other  
16 convictions counted under s. 343.307 (1), equals 5 or more, except that suspensions,  
17 revocations, or convictions arising out of the same incident or occurrence shall be  
18 counted as one.

NOTE: This SECTION increases the maximum term of imprisonment for a person with 5 or more suspensions, revocations and convictions related to intoxicated operation from 5 years to 7 years and 6 months. The increase is similar to adjustments made in 1997 Wisconsin Act 283.

19 SECTION 30. 346.65 (2) (g) 4. of the statutes is created to read:

20 346.65 (2) (g) 4. The increased fines provided in this paragraph do not apply  
21 if a person convicted is subject to par. (f).

NOTE: Current law provides that if a person is convicted of operating a motor vehicle while intoxicated, and if a minor passenger under 16 years of age is in or on a

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6

bill

vehicle at the time of the violation, the applicable minimum and maximum forfeitures, fines or imprisonment for the convictions are doubled. Also, the applicable minimum and maximum fines will be doubled, tripled or quadrupled if the operator of the motor vehicle had an alcohol concentration of 0.17 to 0.199, 0.20 to 0.249, or 0.25 or above, respectively. This ~~draft~~ clarifies that the increased fines for increasing alcohol concentration may not be applied if the penalty relating to a minor passenger under the age of 16 years is applicable to the offense.

1           **SECTION 31.** 346.65 (2g) (b) and (c) and (2i) of the statutes are amended to read:

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

17           (c) If there was a minor passenger under 16 years of age in the motor vehicle  
18 or commercial motor vehicle at the time of the violation that gave rise to the  
19 conviction, the court may require a person ordered to perform community service  
20 work under par. (a) or (ag), or under s. 973.05 (3) (a) if that person's fine resulted from  
21 violating s. 346.63 (2), (5) (a) 2, or (6) (a), 940.09 (1) 2 or 940.25, to participate in

1 community service work that benefits children or that demonstrates the adverse  
2 effects on children of substance abuse or of operating a vehicle while under the  
3 influence of an intoxicant ~~or other drug~~. The court may order the person to pay a  
4 reasonable fee, based on the person's ability to pay, to offset the cost of establishing,  
5 maintaining<sup>(2)</sup> and monitoring the community service work ordered under this  
6 paragraph.

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

## SECTION 31

1 court. Any organization or agency acting in good faith to which a defendant is  
2 assigned pursuant to an order under this subsection has immunity from any civil  
3 liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.  
4 The issuance or possibility of the issuance of an order under this subsection does not  
5 entitle an indigent defendant who is subject to sub. (2) (a) to representation by  
6 counsel under ch. 977.

7 **SECTION 32.** 346.65 (2q) and (2u) (a) of the statutes are amended to read:

8 346.65 (2q) Any person violating s. 346.63 (2m) shall forfeit \$10. If there was  
9 a minor passenger under 16 years of age in the motor vehicle at the time of the  
10 violation that gave rise to the conviction under 346.63 (2m), the forfeiture is \$20 \$50.

11 (2u) (a) Any person violating s. 346.63 (7) shall forfeit \$10 \$50.

NOTE: Current law provides that a person under the legal drinking age must forfeit \$10 if the person drives or operates a motor vehicle while the person has an alcohol concentration of more than 0.0 but not more than 0.1. If a minor passenger under 16 years of age is in the motor vehicle, the forfeiture is \$20. This SECTION amends s. 346.65 (2q), stats., to provide that a violation of the absolute sobriety provision will result in a forfeiture of \$50.

Section 346.63 (7), stats., imposes an absolute sobriety requirement on a person driving or operating, or on duty time with respect to, a commercial motor vehicle. The current penalty for a violation of this provision is a forfeiture of \$10. This SECTION amends s. 346.65 (2u) (a), stats., to provide that a violation of the absolute sobriety provision will result in a forfeiture of \$50.

12 **SECTION 33.** 346.65 (3m) and (7) of the statutes are amended to read:

13 346.65 (3m) Any person violating s. 346.63 (2) or (6) by causing bodily harm  
14 shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned for  
15 not less than 30 days nor more than one year in the county jail. If there was a minor  
16 passenger under 16 years of age in the motor vehicle at the time of the violation that  
17 gave rise to the conviction under s. 346.63 (2) or (6), the offense is a felony, the  
18 applicable minimum and maximum fines or periods of imprisonment for the

1 conviction are doubled, and the place of imprisonment shall be determined under s.  
2 973.02.

3 (7) A person ~~convicted~~ sentenced to imprisonment under sub. (2) (b), (c), (d) or  
4 (e) or (2j) (b) or (c) or (3m) shall be required to remain in the county jail for not less  
5 than a 48-consecutive-hour period.

NOTE: Section 346.65 (3m), stats., provides that a person who causes injury while operating a motor vehicle under the influence of an intoxicant or drug must be fined not less than \$300 nor more than \$2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail. This SECTION amends s. 346.65 (3m) and (7), stats., to provide that, with respect to imprisonment, a violator may be imprisoned for not more than one year in the county jail. However, the violator will be required to remain in the county jail for not less than a 48-consecutive hour period if sentenced to imprisonment under the specified provisions of s. 346.65, stats.

6 SECTION 34. 346.65 (8) of the statutes is created to read:

7 346.65 (8) When sentencing a person convicted for a violation of s. 346.63 (1),  
8 (2) or (6), a court may order the payment of restitution, using the applicable  
9 procedures under s. 800.093 or 973.20, for property damage caused by the person in  
10 the incident that resulted in the conviction.

NOTE: This SECTION authorizes a court to use statutory restitution procedures to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a motor vehicle. Section 973.20, stats., currently may be used for this purpose with respect to ss. 940.09 and 940.25 regarding homicide or injury by intoxicated use of a vehicle.

11 SECTION 35. 346.66 of the statutes is amended to read:

12 346.66 Applicability of sections relating to accidents and accident  
13 reporting. In addition to being applicable upon highways, ss. 346.67 to 346.70 are  
14 applicable upon ~~frozen water~~ <sup>waters</sup> all premises held out to the public for use of their motor  
15 vehicles, all premises provided by employers to employees for the use of their motor  
16 vehicles, and all premises provided to tenants of rental housing in buildings of 4 or  
17 more units for the use of their motor vehicles, whether such premises are publicly or  
18 privately owned and whether or not a fee is charged for the use thereof. These

1 sections do not apply to private parking areas at farms or single-family residences  
 2 or to accidents involving only snowmobiles, all-terrain vehicles or vehicles propelled  
 3 by human power or drawn by animals.

NOTE: Section 346.66 provides that statutes relating to accidents and accident reporting are applicable upon highways, all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in building of 4 or more units for the use of their motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for their use. An exception exists for private parking areas at farms or single-family residences or to accidents involving only snowmobiles, all-terrain vehicles or vehicles propelled by human power or drawn by animals. This SECTION amends s. 346.66, stats., to apply the statutes relating to accidents and accident reporting to frozen water.

4 SECTION 36. 347.413 (3) of the statutes is amended to read:

5 347.413 (3) The department shall design a warning label which shall be affixed  
 6 to each ignition interlock device upon installation. The label shall provide notice of  
 7 the penalties for tampering with or circumventing the operation of the ignition  
 8 interlock device under sub. (1) and s. ss. 343.10 (5) (a) 3. and 343.30 (1r).

NOTE: See the note to SECTION 6.

9 SECTION 37. 800.08 (5) of the statutes is created to read:

10 800.08 (5) In ~~a trial before a~~ municipal court, the results of a blood alcohol  
 11 analysis, as shown by a certified copy of the analysis, are admissible, unless the  
 12 defendant makes a written request to the municipal court for the personal  
 13 appearance of the blood analyst and the person who drew the blood. The request  
 14 shall be made not later than 10 days prior to the trial unless a later date is allowed  
 15 by the court.

NOTE: This SECTION generally provides that a certified copy of a blood alcohol analysis is admissible as evidence in a municipal court trial. A defendant may compel the personal appearance of the blood analyst and the person who drew the defendant's blood if the defendant makes a written request to the court no later than 10 days before trial. The court may approve a later request for the personal appearances.

16 SECTION 38. 885.235 (1) (b) of the statutes is repealed and recreated to read:



1 885.235 (1) (b) "Under the influence of an intoxicant" has the meaning given

2 in s. ~~939.42(22)~~ 939.22(42) ✓

3 SECTION 39. 885.235 (1) (bd) and (c) of the statutes are repealed.

4 SECTION 40. 885.235 (1g) (a) of the statutes is amended to read:

5 885.235 (1g) (a) 1. The fact that the analysis shows that the person had an  
6 alcohol concentration of more than 0.0 but less than 0.08 is relevant evidence on the  
7 issue of being under the combined influence of alcohol and a controlled substance,  
8 a controlled substance analog or any other drug an intoxicant, but, except as  
9 provided in par. (d) or sub. (1m), is not to be given any prima facie effect.

10 2. The fact that the analysis shows that the person had an alcohol concentration  
11 of more than 0.0 but less than 0.1 is relevant evidence on the issue of being under the  
12 combined influence of alcohol and a controlled substance, a controlled substance  
13 analog or any other drug an intoxicant but, except as provided in par. (d) or sub. (1m),  
14 is not to be given any prima facie effect.

15 SECTION 41. 939.22 (19m) of the statutes is created to read:

16 939.22 (19m) "Intoxicant" means any of the following:

17 (a) Alcohol, a controlled substance, a controlled substance analog, any other  
18 drug, or a vapor-releasing substance.

19 (b) Any combination of alcohol, a controlled substance, a controlled substance  
20 analog, any other drug, or vapor-releasing substance.

NOTE: This SECTION creates a definition of the term "intoxicant" for the criminal  
code. The definition is the same as that used in s. 340.01 (52d) as created in SECTION 1  
of the ~~1999~~.

21 SECTION 42. 939.22 (42) of the statutes is repealed and recreated to read:

22 939.22 (42) "Under the influence of an intoxicant" means any of the following:

bill

1 (a) A condition in which a person's ability to operate a vehicle, because of the  
 2 consumption of an intoxicant, is impaired to the extent that the person is less able  
 3 to exercise the clear judgment and steady hand necessary to handle and control a  
 4 vehicle.

5 (b) A condition in which a person's ability to handle a firearm or airgun is  
 6 materially impaired because of the consumption of an intoxicant.

NOTE: Section 939.22 (42), stats., defines the term "under the influence of an  
 intoxicant" for the criminal code. The statutory provision is amended to conform to the  
 definition of the same term in s. 340.01 (73e) as created in SECTION 1 of the ~~bill~~

7 **SECTION 43.** 940.09 (1d) (a) of the statutes is amended to read:

8 940.09 (1d) (a) If a person who committed an offense under sub. (1) (a), (b), (c),  
 9 or (d) has one or more prior convictions, suspensions, or revocations, counting  
 10 convictions under this section and s. 940.09 ~~11~~ 940.25 (1) in the person's lifetime plus  
 11 other convictions, suspensions, or revocations counted under s. 343.307 (1), the  
 12 procedure under s. 343.301 shall be followed if the court orders the the equipping of  
 13 a motor vehicle owned by the person with an ignition interlock device or the  
 14 immobilization of the motor vehicle.

NOTE: This SECTION corrects a cross-reference in s. 940.09 (1d) (a), stats.

15 **SECTION 44.** 949.08 (2) (e) and (em) of the statutes are amended to read:

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

*Proposed Act 16*

*bill*  
*as created by act 16 -*  
*contin Act 16*

1 (em) Is an adult passenger in the offender's commercial motor vehicle and the  
2 crime involved is specified in s. 346.63 (6) or 940.25 and the passenger knew the  
3 offender was under the influence of an intoxicant, ~~a controlled substance, a~~  
4 ~~controlled substance analog or any combination of an intoxicant, controlled~~  
5 ~~substance and controlled substance analog~~, or had an alcohol concentration of 0.04  
6 or more but less than 0.1. This paragraph does not apply if the victim is also a victim  
7 of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

8 SECTION 45. 967.055 (title) and (1) of the statutes are amended to read:

9 967.055 (title) **Prosecution of offenses; operation of a motor vehicle or**  
10 **motorboat; alcohol, or intoxicant or drug.**

11 **(1) INTENT.** (a) The legislature intends to encourage the vigorous prosecution  
12 of offenses concerning the operation of motor vehicles by persons under the influence  
13 of an intoxicant, ~~a controlled substance, a controlled substance analog or any~~  
14 ~~combination of an intoxicant, controlled substance and controlled substance analog,~~  
15 ~~under the influence of any other drug to a degree which renders him or her incapable~~  
16 ~~of safely driving, or under the combined influence of an intoxicant and any other drug~~  
17 ~~to a degree which renders him or her incapable of safely driving or having a~~  
18 prohibited alcohol concentration, as defined in s. 340.01 (46m), or offenses  
19 concerning the operation of commercial motor vehicles by persons with an alcohol  
20 concentration of 0.04 or more.

21 (b) The legislature intends to encourage the vigorous prosecution of offenses  
22 concerning the operation of motorboats by persons under the influence of an  
23 intoxicant, ~~a controlled substance, a controlled substance analog or any combination~~  
24 ~~of an intoxicant, controlled substance and controlled substance analog to a degree~~  
25 ~~which renders him or her incapable of operating a motorboat safely, or under the~~

1 combined influence of an intoxicant and any other drug to a degree which renders  
2 him or her incapable of operating a motorboat safely or having an alcohol  
3 concentration of 0.1 or more.

4 SECTION 46. 967.055 (1m) of the statutes is repealed.

5 SECTION 47. 967.055 (2) of the statutes is amended to read:

6 967.055 (2) DISMISSING OR AMENDING CHARGE. (a) Notwithstanding s. 971.29,  
7 if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or (5) or a  
8 local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09<sup>✓</sup>  
9 where the offense involved the use of a vehicle or an improper refusal under s.  
10 343.305, the prosecutor shall apply to the court. The application shall state the  
11 reasons for the proposed amendment or dismissal. The court may approve the  
12 application only if the court finds that the proposed amendment or dismissal is  
13 consistent with the public's interest in deterring the operation of motor vehicles by  
14 persons who are under the influence of an intoxicant, ~~a controlled substance, a~~  
15 ~~controlled substance analog or any combination of an intoxicant, controlled~~  
16 ~~substance and controlled substance analog, under the influence of any other drug to~~  
17 ~~a degree which renders him or her incapable of safely driving, or under the combined~~  
18 ~~influence of an intoxicant and any other drug to a degree which renders him or her~~  
19 ~~incapable of safely driving,~~ or in deterring the operation of commercial motor  
20 vehicles by persons with an alcohol concentration of 0.04 or more. The court may not  
21 approve an application to amend the vehicle classification from a commercial motor  
22 vehicle to a noncommercial motor vehicle unless there is evidence in the record that  
23 the motor vehicle being operated by the defendant at the time of his or her arrest was  
24 not a commercial motor vehicle.

1 (b) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a  
 2 charge under s. 30.681 (1) or a local ordinance in conformity therewith, a charge  
 3 under s. 30.681 (2), a charge under s. 30.684 (5) or a local ordinance in conformity  
 4 therewith<sup>✓</sup> or a charge under s. 940.09 or 940.25 if the offense involved the use of a  
 5 motorboat, except a sailboat operating under sail alone, the prosecutor shall apply  
 6 to the court. The application shall state the reasons for the proposed amendment or  
 7 dismissal. The court may approve the application only if the court finds that the  
 8 proposed amendment or dismissal is consistent with the public's interest in deterring  
 9 the operation of motorboats by persons who are under the influence of an intoxicant,  
 10 ~~a controlled substance, a controlled substance analog or any combination of an~~  
 11 ~~intoxicant, controlled substance and controlled substance analog, under the~~  
 12 ~~influence of any other drug to a degree which renders him or her incapable of~~  
 13 ~~operating a motorboat safely, or under the combined influence of an intoxicant and~~  
 14 ~~any other drug to a degree which renders him or her incapable of operating a~~  
 15 motorboat safely.

16 SECTION 48. Effective date.

17 (1) This act takes effect on January 1, 2002.

18 (END)

¶ SEC. #. Initial applicability.

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

Ⓜ