2001 ASSEMBLY BILL 670

December 3, 2001 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Highway Safety.

AN ACT to repeal 346.62 (1) (a) and (b), 885.235 (1) (bd) and 967.055 (1m); to renumber and amend 343.303; to amend 85.53 (1) (c), 343.10 (8) (intro.), 343.16 (5) (a), 343.30 (1g) (a), 343.30 (1g) (b), 343.30 (1q) (c) 1. (intro.), 343.30 (1q) (d), 343.30 (1q) (h), 343.305 (2), (3) (am) and (b), (4) (form) and (5) (b), 343.305 (6) (a), 343.305 (9) (a) (intro.) and 4., 343.305 (9) (a) 5. a. and c., 343.305 (9) (am) (intro.) and 4., 343.305 (9) (am) 5. a. and c., 343.305 (9) (c), 343.305 (10) (c) 1. (intro.), 343.305 (10) (d), 343.307 (1) (d) and (2) (e), 343.31 (1) (ar), 343.31 (1) (b), 343.31 (2) and (3) (b), 343.315 (2) (a) 1. and 6., 343.44 (1) (a) and (b), 344.576 (2) (b) and (c), 345.24 (1), 346.17 (3) (b), 346.17 (3) (c), 346.61, 346.63 (title), 346.63 (1) (a) and (b), 346.63 (2) (a) (intro.) and 1. and (b), 346.63 (6) (a) and (c), 346.637 (1) and (2), 346.65 (2) (e), 346.65 (2g) (b) and (c) and (2i), 346.65 (2q) and (2u) (a), 346.65 (3m) and (7), 346.66, 351.02 (1) (a) 10., 885.235 (1g) (a), 895.53 (2), 949.08 (2) (e) and (em), 967.055 (title) and (1) (a) and 967.055 (2) (a); to repeal and recreate 343.305 (5) (d), 885.235 (1) (b) and (c) and 939.22 (42);
and to create 340.01 (5u) and (19d), 340.01 (25d) and (73e), 343.30 (1g) (c),
343.305 (5) (e), 346.65 (2) (g) 4., 346.65 (8), 800.08 (5) and 939.22 (19m) of the
statutes; relating to: intoxicated operation of a motor vehicle and providing a
penalty.

Analysis by the Legislative Reference Bureau
This bill is explained in the NOTES provided by the joint legislative council in the bill.
For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

prefatory note. This bill 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.

This bill 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 bill are concerned with the use of these terms and a description of this issue can be found in the note following section 3 of the bill. Other changes to the statutes made in the bill are identified in notes to the provisions affected.

section 1. 85.53 (1) (c) of the statutes is amended to read:

85.53 (1) (c) “Intoxicant” means any alcohol beverage, controlled substance, controlled substance analog or other drug or any combination thereof has the meaning given in s. 340.01 (25d).

section 2. 340.01 (5u) and (19d) of the statutes are created to read:

340.01 (5u) “Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.
(19d) “Great bodily harm” means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

NOTE: This Section creates definitions for “bodily harm” and “great bodily harm,” using definitions currently set forth in s. 939.22 (4) and (14).

SECTION 3. 340.01 (25d) and (73e) of the statutes are created to read:

340.01 (25d) “Intoxicant” means any of the following:

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

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

(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 or use 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 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, 343.307, 343.44, 346.637, and 895.53, stats. Other sections of the statutes make use of these terms plus the term “other drug”: ss. 85.53, 343.303, 343.305, 343.31, 343.315, 343.63, 344.576, 351.02, 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 bill is the meaning of the phrase “operating a motor vehicle while under the influence”. For example, s. 343.305 (9) (a) 5. a., 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, a vapor–releasing substance, or any combination of these items.

**SECTION 4.** 343.10 (8) (intro.) of the statutes is amended to read:

> 343.10 (8) VIOLATION OF RESTRICTIONS. (intro.) Any person who violates a restriction on an occupational license as to hours of the day, area, routes or purpose of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety, or use of alcohol, controlled substances or controlled substance analogs an intoxicant shall be:

**SECTION 5.** 343.16 (5) (a) of the statutes, as affected by 1997 Wisconsin Act 84, is amended to read:

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

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

343.30 (1g) (a) Except as provided in **par. (b) and (c)**, a court may suspend a person’s operating privilege for any period not exceeding 6 months upon the person’s conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in conformity therewith.

**SECTION 7.** 343.30 (1g) (b) of the statutes is amended to read:
343.30 (1g) (b) Except as provided in par. (c), a court shall revoke a person’s operating privilege upon the person’s conviction for violating s. 343.44 (1) (a), (b), or (d) or a local ordinance in conformity therewith if the person has been convicted of 3 or more prior violations of s. 343.44 (1) (a), (b), or (d), or similar violations under s. 343.44 (1), 1997 stats., or a local ordinance in conformity therewith, within the 5-year period preceding the violation. The revocation shall be for a period of 6 months, unless the court orders a period of revocation of less than 6 months and places its reasons for ordering the lesser period of revocation on the record.

SECTION 8. 343.30 (1g) (c) of the statutes is created to read:

343.30 (1g) (c) A court shall suspend a person’s operating privilege upon the person’s conviction under s. 343.44 for violating s. 343.10 (5) (a) 3. or under s. 347.413. The revocation shall be for a period of not less than 6 months nor more than 9 months. If a person is convicted under s. 347.413, the person is eligible for an occupational license at any time.

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.

SECTION 9. 343.30 (1q) (c) 1. (intro.) of the statutes is amended to read:

343.30 (1q) (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall order the person to submit to and comply with an assessment by an approved public treatment facility, as defined in s. 51.45 (2) (c), for examination of the person’s use of alcohol, controlled substances or controlled substance analogs an intoxicant and
development of a driver safety plan for the person. The court shall notify the
department of transportation of the assessment order. The court shall notify the
person that noncompliance with assessment or the driver safety plan will result in
revocation of the person’s operating privilege until the person is in compliance. The
assessment order shall:

**SECTION 10.** 343.30 (1q) (d) of the statutes, as affected by 1997 Wisconsin Act
84, is amended to read:

343.30 (1q) (d) The assessment report shall order compliance with a driver
safety plan. The report shall inform the person of the fee provisions under s. 46.03
(18) (f). The driver safety plan may include a component that makes the person
aware of the effect of his or her offense on a victim and a victim’s family. The driver
safety plan may include treatment for the person’s misuse, abuse, or dependence on
alcohol, controlled substances or controlled substance analogs an intoxicant, or
attendance at a school under s. 345.60, or both. If the plan requires inpatient
treatment, the treatment shall not exceed 30 days. A driver safety plan under this
paragraph shall include a termination date consistent with the plan which shall not
extend beyond one year. The county department under s. 51.42 shall assure
notification of the department of transportation and the person of the person’s
compliance or noncompliance with assessment and with treatment. The school
under s. 345.60 shall notify the department, the county department under s. 51.42,
and the person of the person’s compliance or noncompliance with the requirements
of the school. Nonpayment of the assessment fee or, if the person has the ability to
pay, nonpayment of the driver safety plan fee is noncompliance with the court order.
If the department is notified of any noncompliance, other than for nonpayment of the
assessment fee or driver safety plan fee, it shall revoke the person’s operating
privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. If the department is notified that a person has not paid the assessment fee, or that a person with the ability to pay has not paid the driver safety plan fee, the department shall suspend the person’s operating privilege for a period of 2 years or until it receives notice that the person has paid the fee, whichever occurs first. The department shall notify the person of the suspension or revocation, the reason for the suspension or revocation, and the person’s right to a review. A person may request a review of a revocation based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and, if the person is otherwise eligible, the department shall reinstate the person’s operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person’s operating privilege. If there is no decision within the 10–day period, the department shall issue an order reinstating the person’s operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

**SECTION 11.** 343.30 (1q) (h) of the statutes is amended to read:

343.30 (1q) (h) The court or department shall provide that the period of suspension or revocation imposed under this subsection shall be reduced by any
period of suspension or revocation previously served under s. 343.305 if the
suspension or revocation under s. 343.305 and the conviction for violation of s. 346.63
(1) or (2m) or a local ordinance in conformity therewith arise out of the same incident
or occurrence. The court or department shall order that the period of suspension or
revocation imposed under this subsection run concurrently with any period of time
remaining on a suspension or revocation imposed under s. 343.305 arising out of the
same incident or occurrence. The court or department shall order that any period
of time that must expire before a person is eligible for an occupational license under
this subsection be reduced by any similar period previously expired under s. 343.305
if the suspension or revocation under s. 343.305 and the conviction for violation of
s. 346.63 (1) or a local ordinance in conformity therewith arise out of the same
incident or occurrence. The court or department shall order that any period of time
that must expire before a person is eligible for an occupational license under this
subsection run concurrently with any similar period of time remaining under s.
343.305 arising out of the same incident or occurrence. The court may modify an
occupational license authorized under s. 343.305 (8) (d) in accordance with this
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 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 for an occupational license under s. 343.30, stats.
SECTION 12. 343.303 of the statutes is renumbered 343.303 (1) (intro.) and amended to read:

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

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

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

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

(2) The result of this the preliminary breath screening test under sub. (1) may be used by the law enforcement officer for the purpose of deciding whether or not the person shall be arrested for a violation of s. 346.63 (1), (2m), (5), or (7) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6), 940.09 (1), or 940.25 and whether or not to require or request chemical tests as authorized under s. 343.305 (3).
(3) The result of the preliminary breath screening test under sub. (1) shall not be admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, to show the presence of an intoxicant in a person’s breath, blood, or urine, or to prove that a chemical test was properly required or requested of a person under s. 343.305 (3). Following the screening test, additional tests may be required or requested of the driver under s. 343.305 (3).

(4) The general penalty provision under s. 939.61 (1) does not apply to a refusal 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 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’s breath, blood, or urine; 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 13. 343.305 (2), (3) (am) and (b), (4) (form) 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, for the purpose of determining the presence or quantity of an intoxicant in his or her breath, 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 breath, blood, or urine, when requested to do so by a law enforcement
section 13

as the bill is administered under sub. (5) or (am) or when required to do so under sub. (3) (b). Any such

2 tests shall be administered upon the request of a law enforcement officer. The law

3 enforcement agency by which the officer is employed shall be prepared to administer,

4 either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a)

5 or (am), and may designate which of the tests shall be administered first.

6 (3) (am) Prior to arrest, a law enforcement officer may request the person to

7 provide one or more samples of his or her breath, blood, or urine for the purpose

8 specified under sub. (2) whenever a law enforcement officer detects any presence of

9 alcohol, a controlled substance, a controlled substance analog or other drug, or a

10 combination thereof, an intoxicant on a person driving or operating or on duty time

11 with respect to a commercial motor vehicle or has reason to believe the person is

12 violating or has violated s. 346.63 (7). Compliance with a request for one type of

13 sample does not bar a subsequent request for a different type of sample. For the

14 purposes of this paragraph, “law enforcement officer” includes inspectors in the

15 performance of duties under s. 110.07 (3).

16 (b) A person who is unconscious or otherwise not capable of withdrawing

17 consent is presumed not to have withdrawn consent under this subsection, and if a

18 law enforcement officer has probable cause to believe that the person has violated

19 s. 346.63 (1), (2m), (5) or a local ordinance in conformity therewith, or s. 346.63 (2)

20 or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, or detects

21 any presence of alcohol, controlled substance, controlled substance analog or other

22 drug, or a combination thereof, an intoxicant on a person driving or operating or on

23 duty time with respect to a commercial motor vehicle or has reason to believe the

24 person has violated s. 346.63 (7), one or more samples tests specified in par. (a) or

25 (am) may be administered to the person.
“You have either been arrested for an offense that involves driving or operating a motor vehicle while under the influence of alcohol or drugs, or both an intoxicant, or you are suspected of driving or being on duty time with respect to a commercial motor vehicle after consuming an intoxicating beverage.

This law enforcement agency now wants to test one or more samples of your breath, blood, or urine to determine the concentration of alcohol or drugs an intoxicant in your system. If any test shows more alcohol in your system than the law permits while driving, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court. The law does not provide you with a right to contact an attorney before submitting to a chemical test.

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

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

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

SECTION 14. 343.305 (5) (d) of the statutes is repealed and recreated to read:

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

1. Driven or operated a motor vehicle while under the influence of an
intoxicant.
2. Had a prohibited alcohol concentration.
3. Driven or operated or been on duty time with respect to a commercial motor
vehicle in violation of s. 346.63 (7).

SECTION 15. 343.305 (5) (e) of the statutes is created to read:

343.305 (5) (e) Test results under this section shall be given the effect required
under s. 885.235.

SECTION 16. 343.305 (6) (a) of the statutes is amended to read:

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

**SECTION 17.** 343.305 (9) (a) (intro.) and 4. of the statutes are amended to read:

343.305 (9) (a) (intro.) If a person refuses to take a test under sub. (3) (a), the law enforcement officer shall immediately take possession of the person’s license and prepare a notice of intent to revoke, by court order under sub. (10), the person’s operating privilege. If the person was driving or operating a commercial motor vehicle, the officer shall issue an out−of−service order to the person for the 24 hours after the refusal and notify the department in the manner prescribed by the department. The officer shall issue a copy of the notice of intent to revoke the privilege to the person and submit or mail a copy with the person’s license to the clerk of the circuit court for the county in which the arrest under sub. (3) (a) was made. The officer shall also mail a copy of the notice of intent to revoke to the district attorney for that county and the department. The notice of intent to revoke the person’s operating privilege shall contain substantially all of the following information:

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

SECTION 18. 343.305 (9) (a) 5. a. and c. of the statutes are amended to read:

343.305 (9) (a) 5. a. 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 an intoxicant or having a
prohibited alcohol concentration or, if the person was driving or operating a
commercial motor vehicle, an alcohol concentration of 0.04 or more and whether the
person was lawfully placed under arrest for violation of s. 346.63 (1), (2m), or (5) or
a local ordinance in conformity therewith or s. 346.63 (2) or (6), 940.09 (1), or 940.25.

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

SECTION 19. 343.305 (9) (am) (intro.) and 4. of the statutes are amended to read:

343.305 (9) (am) (intro.) If a person driving or operating or on duty time with
respect to a commercial motor vehicle refuses a test under sub. (3) (am), the law
enforcement officer shall immediately take possession of the person’s license, issue
an out-of-service order to the person for the 24 hours after the refusal and notify the
department in the manner prescribed by the department, and prepare a notice of
intent to revoke, by court order under sub. (10), the person’s operating privilege. The
officer shall issue a copy of the notice of intent to revoke the privilege to the person
and submit or mail a copy with the person’s license to the clerk of the circuit court
for the county in which the refusal is made. The officer shall also mail a copy of the
notice of intent to revoke to the district attorney for that county and the department.
The notice of intent to revoke the person’s operating privilege shall contain
substantially all of the following information:

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

SECTION 20. 343.305 (9) (am) 5. a. and c. of the statutes are amended to read:

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

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

NOTE: Sections 17 to 20 amend 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.

SECTION 21. 343.305 (9) (c) of the statutes is amended to read:
343.305 (9) (c) If a law enforcement officer informs the circuit court that a person has refused to submit to a test under sub. (3) (a) or (am), the court shall be prepared to hold any requested hearing to determine if the refusal was proper. The scope of the hearing shall be limited to the issues outlined in par. (a) 5. or (am) 5. Neither party is entitled to pretrial discovery. Section 967.055 applies to any hearing under this subsection.

NOTE: This section amends s. 343.305 (9) (c), stats., to clarify 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).

SECTION 22. 343.305 (10) (c) 1. (intro.) of the statutes is amended to read:

343.305 (10) (c) 1. (intro.) Except as provided in subd. 1. a. or b., the court shall order the person to submit to and comply with an assessment by an approved public treatment facility as defined in s. 51.45 (2) (c) for examination of the person's use of alcohol, controlled substances or controlled substance analogs an intoxicant and development of a driver safety plan for the person. The court shall notify the person and the department of transportation of the assessment order. The court shall also notify the person that noncompliance with assessment or the driver safety plan will result in license suspension until the person is in compliance. The assessment order shall:

SECTION 23. 343.305 (10) (d) of the statutes, as affected by 1997 Wisconsin Act 84, is amended to read:

343.305 (10) (d) The assessment report shall order compliance with a driver safety plan. The report shall inform the person of the fee provisions under s. 46.03 (18) (f). The driver safety plan may include a component that makes the person aware of the effect of his or her offense on a victim and a victim's family. The driver safety plan may include treatment for the person's misuse, abuse, or dependence on
alcohol, controlled substances or controlled substance analogs, an intoxicant or attendance at a school under s. 345.60, or both. If the plan requires inpatient treatment, the treatment shall not exceed 30 days. A driver safety plan under this paragraph shall include a termination date consistent with the plan which shall not extend beyond one year. The county department under s. 51.42 shall assure notification of the department of transportation and the person of the person’s compliance or noncompliance with assessment and treatment. The school under s. 345.60 shall notify the department, the county department under s. 51.42, and the person of the person’s compliance or noncompliance with the requirements of the school. Nonpayment of the assessment fee or, if the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order. If the department is notified of noncompliance, other than for nonpayment of the assessment fee or driver safety plan fee, it shall revoke the person’s operating privilege until the county department under s. 51.42 or the school under s. 345.60 notifies the department that the person is in compliance with assessment or the driver safety plan. If the department is notified that a person has not paid the assessment fee, or that a person with the ability to pay has not paid the driver safety plan fee, the department shall suspend the person’s operating privilege for a period of 2 years or until it receives notice that the person has paid the fee, whichever occurs first. The department shall notify the person of the suspension or revocation, the reason for the suspension or revocation, and the person’s right to a review. A person may request a review of a revocation based upon failure to comply with a driver safety plan within 10 days of notification. The review shall be handled by the subunit of the department of transportation designated by the secretary. The issues at the review are limited to whether the driver safety plan, if challenged, is appropriate and
whether the person is in compliance with the assessment order or the driver safety plan. The review shall be conducted within 10 days after a request is received. If the driver safety plan is determined to be inappropriate, the department shall order a reassessment and if the person is otherwise eligible, the department shall reinstate the person’s operating privilege. If the person is determined to be in compliance with the assessment or driver safety plan, and if the person is otherwise eligible, the department shall reinstate the person’s operating privilege. If there is no decision within the 10-day period, the department shall issue an order reinstating the person’s operating privilege until the review is completed, unless the delay is at the request of the person seeking the review.

SECTION 24. 343.307 (1) (d) and (2) (e) of the statutes are amended to read:

343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof, an intoxicant, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction’s laws.

(2) (e) Convictions under the law of another jurisdiction that prohibits refusal of chemical testing or use of a motor vehicle while intoxicated or under the influence of a controlled substance or controlled substance analog, or a combination thereof, an intoxicant, or with an excess or specified range of alcohol concentration, or under the influence of any drug to a degree that renders the person incapable of safely driving, as those or substantially similar terms are used in that jurisdiction’s laws.

SECTION 25. 343.31 (1) (am) and (ar) of the statutes are amended to read:
343.31 (1) (am) Injury Bodily harm by the operation of a vehicle while under the influence of an intoxicant, a controlled substance or a controlled substance analog, or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or while the person has a prohibited alcohol concentration and which is criminal under s. 346.63 (2).

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

SECTION 26. 343.31 (1) (b) of the statutes, as affected by 1997 Wisconsin Act 84, is amended to read:

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

SECTION 27. 343.31 (2) and (3) (b) of the statutes, as affected by 1997 Wisconsin Act 84, are amended to read:

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

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

SECTION 28. 343.315 (2) (a) 1. and 6. of the statutes are amended to read:

343.315 (2) (a) 1. Section 346.63 (1) (a) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (1) (a) or the law of another jurisdiction prohibiting driving or operating a motor vehicle while intoxicated or under the influence of alcohol, a controlled substance, a controlled substance analog or a combination thereof, or under the influence of any drug which renders the person incapable of
safely driving an intoxicant, as those or substantially similar terms are used in that jurisdiction’s laws.

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

SECTION 29. 343.44 (1) (a) and (b) of the statutes are amended to read:

343.44 (1) (a) Operating while suspended. No person whose operating privilege has been duly suspended under the laws of this state may operate a motor vehicle upon any highway in this state during the period of suspension or in violation of any restriction on an occupational license issued to the person during the period of suspension. A person’s knowledge that his or her operating privilege is suspended is not an element of the offense under this paragraph. In this paragraph, “restriction on an occupational license” means restrictions imposed under s. 343.10 (5) (a) as to hours of the day, area, routes or purpose of travel, vehicles allowed to be operated, use of an ignition interlock device, sobriety, or use of alcohol, controlled substances or controlled substance analogs an intoxicant.

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

SECTION 30. 344.576 (2) (b) and (c) of the statutes are amended to read:

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

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

SECTION 31. 345.24 (1) of the statutes is amended to read:

345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in
conformity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense
involved the use of a vehicle, may not be released until 12 hours have elapsed from
the time of his or her arrest or unless a chemical test administered under s. 343.305
shows that the person has an alcohol concentration of less than 0.04 0.02, but the
person may be released to his or her attorney, spouse, relative, or other responsible
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.
SECTION 32. 346.17 (3) (b) of the statutes is amended to read:

346.17 (3) (b) If the violation results in bodily harm, as defined in s. 939.22 (4), to another, or causes damage to the property of another, as defined in s. 939.22 (28), the person shall be fined not less than $1,000 nor more than $10,000 and may be imprisoned for not more than 3 years.

SECTION 33. 346.17 (3) (c) of the statutes is amended to read:

346.17 (3) (c) If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 3 years.

SECTION 34. 346.61 of the statutes is amended to read:

346.61 Applicability of sections relating to reckless and drunken driving. In addition to being applicable upon highways, ss. 346.62 to 346.64 are applicable upon 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 such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. Sections 346.62 to 346.64 do not apply to private parking areas at farms or single-family residences and frozen 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 waters.

SECTION 35. 346.62 (1) (a) and (b) of the statutes are repealed.
SECTION 36. 346.63 (title) of the statutes is amended to read:

346.63 (title) Operating under influence of intoxicant or other drug.

SECTION 37. 346.63 (1) (a) and (b) of the statutes are amended to read:

346.63 (1) (a) Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or. A violation of this paragraph is not an included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).

(b) The person has a prohibited alcohol concentration. A violation of this paragraph is not an included offense of s. 346.63 (2), 940.09 (1), or 940.25 (1).

NOTE: 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.

SECTION 38. 346.63 (2) (a) (intro.) and 1. and (b) of the statutes are amended to read:

346.63 (2) (a) (intro.) It is unlawful for any person to cause injury bodily harm to another person by the operation of a vehicle while:

1. Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or
(b) In an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury bodily harm would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, a controlled substance, a controlled substance analog or a combination thereof, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving or did not have a prohibited alcohol concentration 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 Section 39 also prohibit the causing of bodily harm. The term “bodily harm” is defined in Section 2 to mean physical pain or injury, illness or any impairment of physical condition. The definition is adopted from s. 939.22 (4), stats.

Section 39. 346.63 (6) (a) and (c) of the statutes are amended to read:

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

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

Section 40. 346.637 (1) and (2) of the statutes are amended to read:
346.637 (1) The laws relating to operating a motor vehicle and drinking alcohol, using controlled substances or controlled substance analogs, or using any combination of alcohol, controlled substances and controlled substance analogs an intoxicant.

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

SECTION 41. 346.65 (2) (e) of the statutes is amended to read:

346.65 (2) (e) Except as provided in pars. (f) and (g), shall be fined not less than $600 nor more than $2,000 and imprisoned for not less than 6 months nor more than 5 7 years and 6 months if the number of convictions under ss. 940.09 (1) and 940.25 in the person’s lifetime, plus the total number of suspensions, revocations, and other convictions counted under s. 343.307 (1), equals 5 or more, except that suspensions, revocations, or convictions arising out of the same incident or occurrence shall be 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.

SECTION 42. 346.65 (2) (g) 4. of the statutes is created to read:

346.65 (2) (g) 4. The increased fines provided in this paragraph do not apply 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 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 concentrations may not be applied if the penalty relating to a minor passenger under the age of 16 years is applicable to the offense.
SECTION 43. 346.65 (2g) (b) and (c) and (2i) of the statutes are amended to read:

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

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

(2i) In addition to the authority of the court under sub. (2g) and s. 973.05 (3) (a), the court may order a defendant subject to sub. (2), or a defendant subject to s. 973.05 (3) (a) who violated s. 346.63 (2), 940.09 (1), or 940.25, to visit a site that demonstrates the adverse effects of substance abuse or of operating a vehicle while under the influence of an intoxicant or other drug, including an alcoholism treatment facility approved under s. 51.45 or an emergency room of a general hospital in lieu of part or all of any forfeiture imposed or in addition to any penalty imposed. The court may order the defendant to pay a reasonable fee, based on the person’s ability to pay, to offset the costs of establishing, maintaining, and monitoring the visits ordered under this subsection. The court may order a visit to the site only if agreed to by the person responsible for the site. If the opportunities available to visit sites under this subsection are fewer than the number of defendants eligible for a visit, the court shall, when making an order under this subsection, give preference to defendants who were under 21 years of age at the time of the offense. The court shall ensure that the visit is monitored. A visit to a site may be ordered for a specific time and a specific day to allow the defendant to observe victims of vehicle accidents involving intoxicated drivers. If it appears to the court that the defendant has not complied with the court order to visit a site or to pay a reasonable fee, the court may order the defendant to show cause why he or she should not be held in contempt of court. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this subsection has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant. The issuance or possibility of the issuance of an order under this subsection does not
entitle an indigent defendant who is subject to sub. (2) (a) to representation by
counsel under ch. 977.

**SECTION 44.** 346.65 (2q) and (2u) (a) of the statutes are amended to read:

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

(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 this absolute sobriety provision will result in a
forfeiture of $50, regardless of whether there was a minor passenger in the motor vehicle
at the time of the violation.

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.

**SECTION 45.** 346.65 (3m) and (7) of the statutes are amended to read:

346.65 (3m) Any person violating s. 346.63 (2) or (6) shall 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. If there was a minor passenger under 16 years of
age in the motor vehicle at the time of the violation that gave rise to the conviction
under s. 346.63 (2) or (6), the offense is a felony, the applicable minimum and
maximum fines or periods of imprisonment for the conviction are doubled, and the
place of imprisonment shall be determined under s. 973.02.

(7) A person **convicted sentenced to imprisonment** under sub. (2) (b), (c), (d),
or (e) or (2j) (b) or (c), or (3m) shall be required to remain in the county jail for not
less 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.

**SECTION 46.** 346.65 (8) of the statutes is created to read:

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

**SECTION 47.** 346.66 of the statutes is amended to read:

346.66 **Applicability of sections relating to accidents and accident
reporting.** In addition to being applicable upon highways, ss. 346.67 to 346.70 are
applicable upon frozen waters, 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 such premises are
publicly or privately owned and whether or not a fee is charged for the use thereof.
These sections do not apply to 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.

**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 waters.

SECTION 47. ASSEMBLY BILL 670

SECTION 48. 351.02 (1) (a) 10. of the statutes is amended to read:

351.02 (1) (a) 10. Any offense under the law of another jurisdiction prohibiting conduct described in sections 6–207, 6–302, 10–102, 10–103, 10–104, 11–901, 11–902, 11–907 or 11–908 of the uniform vehicle code and model traffic ordinance (1987), or prohibiting homicide or manslaughter resulting from the operation of a motor vehicle, use of a motor vehicle in the commission of a felony, reckless or careless driving or driving a motor vehicle with wilful or wanton disregard for the safety of persons or property, driving or operating a motor vehicle while under the influence of alcohol, a controlled substance, a controlled substance analog or any other drug or a combination thereof as prohibited an intoxicant, refusal to submit to chemical testing, perjury or the making false statements or affidavits to a governmental agency in connection with the ownership or operation of a motor vehicle, failing to stop and identify oneself as the driver or operator in the event of a motor vehicle accident with a person or an attended motor vehicle or fleeing from or attempting to elude a police, law enforcement or other peace officer, as those or substantially similar terms are used in that jurisdiction’s laws.

SECTION 49. 800.08 (5) of the statutes is created to read:

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

**SECTION 50.** 885.235 (1) (b) and (c) of the statutes are repealed and recreated
to read:

885.235 (1) (b) “Intoxicant” has the meaning given in s. 939.22 (19m).

(c) “Under the influence of an intoxicant” has the meaning given in s. 939.22 (42).

**SECTION 51.** 885.235 (1) (bd) of the statutes is repealed.

**SECTION 52.** 885.235 (1g) (a) of the statutes is amended to read:

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

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

**SECTION 53.** 895.53 (2) of the statutes is amended to read:

895.53 (2) Any person withdrawing blood at the request of a traffic officer, law
enforcement officer or conservation warden for the purpose of determining the
presence or quantity of alcohol, controlled substances, controlled substance analogs
or any combination of alcohol, controlled substances and controlled substance
analogs an intoxicant, as defined in s. 340.01 (25d), is immune from any civil or
criminal liability for the act, except for civil liability for negligence in the
performance of the act.

SECTION 54. 939.22 (19m) of the statutes is created to read:

939.22 (19m) “Intoxicant” means any of the following:

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

(b) Any combination of alcohol, a controlled substance, a controlled substance
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 (25d) as created in SECTION 3
of the bill.

SECTION 55. 939.22 (42) of the statutes is repealed and recreated to read:

939.22 (42) “Under the influence of an intoxicant” means any of the following:

(a) A condition in which a person’s ability to operate a vehicle, because of the
consumption or use 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 vehicle.

(b) A condition in which a person’s ability to handle a firearm or airgun is
materially impaired because of the consumption or use 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 repealed and recreated to
conform to the definition of the same term in s. 340.01 (73e) as created in SECTION 3 of the
bill.

SECTION 56. 949.08 (2) (e) and (em) of the statutes are amended to read:

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

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

SECTION 57. 967.055 (title) and (1) (a) of the statutes are amended to read:

967.055 (title) Prosecution of offenses; operation of a motor vehicle or motorboat; alcohol, or intoxicant or drug. (1) (a) The legislature intends to encourage the vigorous prosecution of offenses concerning the operation of motor vehicles by persons under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving as defined in s. 340.01 (25d), or having a prohibited alcohol concentration, as defined in s. 340.01 (46m), or offenses concerning the operation of commercial motor vehicles by persons with an alcohol concentration of 0.04 or more.

SECTION 58. 967.055 (1m) of the statutes is repealed.

SECTION 59. 967.055 (2) (a) of the statutes is amended to read:
967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public’s interest in deterring the operation of motor vehicles by persons who are under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving as defined in s. 340.01 (25d), or in deterring the operation of commercial motor vehicles by persons with an alcohol concentration of 0.04 or more. The court may not approve an application to amend the vehicle classification from a commercial motor vehicle to a noncommercial motor vehicle unless there is evidence in the record that the motor vehicle being operated by the defendant at the time of his or her arrest was not a commercial motor vehicle.

**SECTION 60. Initial applicability.**

(1) This act first applies to violations committed or refusals occurring on the effective date of this subsection, but does not preclude the counting of other convictions, suspensions, or revocations as prior convictions, suspensions, or revocations for purposes of administrative action by the department of
transportation, sentencing by a court, or revocation or suspension of motor vehicle operating privileges.

SECTION 61. Effective date.

(1) This act takes effect on January 1, 2003.