

Vote Record

Senate - Committee on Environmental Resources

Date: 1/31/02

Bill Number: SB 336

Moved by: Schultz

Seconded by: Baumgart

Motion: Adoption of SA 1-10 SB 336

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Sen. Jim Baumgart, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. David Hansen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Robert Cowles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Dale Schultz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: 5

Env

Motion Carried

Motion Failed

Vote Record

Senate - Committee on Environmental Resources

Date: _____

Bill Number: SB 336

Moved by: Cowles

Seconded by: Hansen

Motion: Recommend for Passage as amended

Committee Member

Sen. Jim Baumgart, Chair

Aye

No

Absent Not Voting

Sen. David Hansen

Sen. Robert Wirch

Sen. Robert Cowles

Sen. Dale Schultz

Totals:

5

Motion Carried

Motion Failed

**Minors Involved in Boating Fatalities
1993-2001**

YEAR	AGE	BOAT TYPE	COMMENTS
1993		No one under 18 years of age died in a boating accident this year.	
1994	8 9	14-foot homemade rowboat	Both victims were in boat that capsized. They were not wearing PFD's and drowned.
1995		No one under 18 years of age died in a boating accident this year.	
1996	11	14-foot rowboat	Victim fell overboard from boat. Was not wearing PFD, although a Type IV cushion was thrown to her. Victim drowned.
1997	9	24-foot pontoon	Victim fell from boat and was struck by propeller. Was not wearing a PFD. Died from trauma injuries.
	17	personal watercraft	Victim struck a piling and died as a result of trauma. Was not wearing a PFD.
	6	19-foot pontoon	Victim fell overboard, was not wearing a PFD, and drowned.
1998	16	19-foot motorboat	Victim was water-skiing and wearing a PFD that was not buckled. Victim fell out of PFD and drowned.
	13	19-foot motorboat	Victim was water-skiing and wearing an improper size PFD. Victim fell out of PFD and drowned.
	14	rental kayak	Kayak capsized. Victim was not wearing a PFD and drowned.
1999	12	15-foot motorboat	Boat capsized. Victim was wearing a PFD, but was caught under capsized boat.
	12	14-foot motorboat	Boat capsized. Victim was not wearing a PFD and drowned.
2000	17	14-foot rowboat	Victim jumped overboard to retrieve an oar. Was not wearing a PFD and drowned.
	13	Inner Tube	Victim was tubing on a river and fell off tube. Victim was not wearing a PFD and drown.
	14	19-foot motorboat	Victim and 3 companions were on Lake Mich. When coast guard received mayday. Boat capsized - all 4 had PFD's on and died of hypothermia.
2001	17	14-foot motorboat	Victim and 2 companions on Lake Mich. fishing when their boat begin taking on water. Victim did not have a PFD on.
	17 17	Paddleboat	Victims took paddleboat out on Lake Mich. with no PFD's. Wind was pushing boat away from shore so victims decided to leave boat and swim to shore. Three of the 4 people on board drown.
	11 Mo.	Inner Tube	Victim and father were tubing on a river and victim fell out of father's grasp and drown. Victim had no PFD on.
	9	Inner Tube	Victim being pulled by 19-foot motorboat when a PWC struck the victim. Victim died from trauma injuries.



12-0
39/10/01

**WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE**

**Legislation on Recodification of Operating While Intoxicated
and Safety Laws Pertaining to Motor Vehicle, All-Terrain
Vehicle, Boat or Snowmobile Operation**

- Assembly Bill 667 and Senate Bill 335, Relating to the Intoxicated Operation of an All-Terrain Vehicle, Motorboat or Snowmobile
- Assembly Bill 668 and Senate Bill 336, Relating to Safety Training for All-Terrain Vehicle and Motorboat Operation
- Assembly Bill 669 and Senate Bill 337, Relating to Requiring That Personal Flotation Devices be Worn by Certain Underaged Persons in Certain Boats
- Assembly Bill 670 and Senate Bill 338, Relating to Intoxicated Operation of a Motor Vehicle and Providing a Penalty

December 5, 2001

RL 2001-01

**LEGISLATION ON
RECODIFICATION OF OPERATING WHILE INTOXICATED AND
SAFETY LAWS PERTAINING TO MOTOR VEHICLE, ALL-TERRAIN
VEHICLE, BOAT OR SNOWMOBILE OPERATION**

Prepared by:
Don Salm and Ronald Sklansky, Senior Staff Attorneys
December 5, 2001

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PART I

KEY PROVISIONS OF LEGISLATION

The proposals recommended by the Special Committee on Recodification of Operating While Intoxicated and Safety Laws Pertaining to Motor Vehicle, All-Terrain Vehicle, Boat or Snowmobile Operation do the following:

Assembly Bill 667 and Senate Bill 335 accomplish all of the following:

- Consolidate statutory provisions regarding the intoxicated operation of all-terrain vehicles (hereafter, "ATVs"), motorboats and snowmobiles into one subchapter of the statutes. In general, a number of policies expressed in the Motor Vehicle Code with respect to the issue of operating a motor vehicle while intoxicated are applied to the operation of ATVs, motorboats and snowmobiles, which are collectively referred to as "sport recreational vehicles" and "commercial motorboats."
- Create a definition of the term "under the influence of an intoxicant."
- Expand the areas to which the law applies.
- Authorize a court to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a sport recreational vehicle or a commercial motorboat.

Assembly Bill 668 and Senate Bill 336 amend current law relating to ATVs and motorboats in order to make them consistent with the current law applicable to snowmobiles, providing that no person who is at least 12 years of age and who is born on or after January 1, 1986, may operate an ATV or a motorboat without a valid safety certificate.

Assembly Bill 669 and Senate Bill 337 prohibit a person who is under the age of 16 from riding in a boat that is less than 26 feet in length without wearing a personal flotation device unless the person is in a cabin space or below the deck. Current law generally provides that every boat must carry at least one personal flotation device prescribed by federal regulations for each person on board or being attended by the boat. The flotation devices must be placed so as to be readily accessible and available to all persons on the boat.

Assembly Bill 670 and Senate Bill 338 accomplish all of the following:

- Create a definition of the terms "intoxicant" and "under the influence of an intoxicant" for use in the Motor Vehicle Code and the Criminal Code.
- Create a license suspension provision applicable to persons who are convicted of tampering with an ignition interlock device.
- Clarify that pretrial discovery is not available in a refusal hearing.

- Expand the areas to which the law applies.
- Authorize a court to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a motor vehicle.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee and appointed the Cochairs by a June 13, 2000 mail ballot. 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 ATV, a boat or a snowmobile, whether enforcement mechanisms need to be increased or created to ensure compliance with the law.

The membership of the Special Committee, appointed by an August 14, 2000 mail ballot, consisted of 2 Senators, 7 Representatives and 10 Public Members. A list of the committee membership is set forth in Appendix 3.

B. SUMMARY OF MEETINGS

The Special Committee held four meetings at the State Capitol in Madison on the following dates:

September 27, 2000

November 21, 2000

December 21, 2000

February 6, 2001

At the September 27, 2000 meeting, the Special Committee reviewed various memos prepared by the staff relating to the current laws on operation of a motor vehicle, ATV, boat or snowmobile while under the influence of an intoxicant or a drug, or both. The committee also engaged in a general discussion of the direction of the committee and suggested some possible specific changes in the statutes relating to the study committee's topic.

At the November 21, 2000 meeting, the Special Committee heard testimony from conservation wardens Mike McKenzie and Dave Youngquist on problems and issues relating to enforcement of the operating while intoxicated (OWI) laws out in the field. After a general discussion of possible changes in the laws relating to drunken operation of ATVs, boats and snowmobiles, the committee reviewed WLC: 0011/1, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile, and suggested changes in the draft for consideration at the next meeting.

At the December 21, 2000 meeting, the Special Committee reviewed drafts relating to sport recreational vehicles, safety training, flotation devices and operation of a motor vehicle while intoxicated (WLC: 0011/2, 0021/1, 0024/1 and 0032/1, respectively). The committee also reviewed Memo No. 11, *Additional Suggestions for Recodification of Statutes Relating to Operating a Motor Vehicle While Intoxicated* (December 14, 2000), and suggested changes in

the drafts based on those suggestions. Finally, the committee reviewed suggestions in a letter from committee member Barry Cohen, dated November 16, 2000, and agreed to include various parts of those suggestions in the drafts.

At its February 6, 2001 meeting, the Special Committee reviewed the remaining drafts and voted to recommend WLC: 0024/2, relating to wearing of flotation devices to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. The Special Committee directed that WLC: 0011/3 and WLC: 0032/2 be prepared in final form, incorporating committee amendments, and be sent to the members for final approval by mail ballot.

PART III

RECOMMENDATIONS

This part of the report provides background information on, and a description of, the bills recommended by the Special Committee on Recodification of Operating While Intoxicated and Safety Laws Pertaining to Motor Vehicle, All-Terrain Vehicle, Boat or Snowmobile Operation for introduction in the 2001-02 Session of the Legislature.

A. ASSEMBLY BILL 667 AND SENATE BILL 335

Assembly Bill 667 and Senate Bill 335, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile.

1. Background

Under current Wisconsin law, statutory provisions relating to the intoxicated operation of ATVs, motorboats and snowmobiles are found, in major part, in separate chapters of the statutes (ATVs in ch. 23, Stats., motorboats in ch. 30, Stats., and snowmobiles in ch. 350, Stats.), and have, to a certain extent, differing substantive and procedural provisions as well as differing penalties.

2. Description of the Bills

In general, the bills consolidate the treatment of the intoxicated operation of ATVs, motorboats and snowmobiles and applies a number of the policies expressed in the Motor Vehicle Code with respect to the issue of operating a motor vehicle while intoxicated to the operation of these vehicles, which are collectively referred to in the bills as "sport recreational vehicles" and "commercial motorboats." Specifically, the bills:

a. Provide that no operator of an ATV, a motorboat or a snowmobile may refuse to comply with orders or instructions of a law enforcement officer, resist a law enforcement officer by failing to stop, or flee from a law enforcement officer. *Current law* provides that no operator of an ATV, a boat or a snowmobile may refuse to stop after being requested or signaled to do so by a law enforcement officer. Under the bills, the penalties for these increasingly serious offenses range from a forfeiture not exceeding \$40 for the first offense and not exceeding \$100 for the second or subsequent conviction within a year to a fine of not less than \$1,100 nor more than \$10,000 and imprisonment for not more than seven years and six months. These provisions are taken directly from ss. 346.04 and 346.17, Stats., in the Motor Vehicle Code, relating to obedience to traffic officers, signs and signals and to fleeing from an officer.

b. Create a definition section for the purpose of the new subchapter on intoxicated operation of sport recreational vehicles and commercial motorboats. Included in the definitions is a definition of the term "under the influence of an intoxicant." The term is defined to mean a condition in which a person's ability to operate a sport recreational vehicle or a commercial motorboat, 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 sport recreational vehicle or commercial motorboat. This definition codifies language contained in Wisconsin Criminal Jury Instructions, s. 2663, with respect to a person operating a motor vehicle while under the influence of an intoxicant. The new standard replaces the phrase "incapable of safe operation" that currently applies to ATVs, motorboats and snowmobiles. In addition, the bills add to the definition of the term "intoxicant" by including the term "a vapor releasing substance."

c. Uniformly provide that persons under the age of 21 must maintain absolute sobriety when operating any type of sport recreational vehicle or commercial motorboat. Under *current law*, a person under the age of 19 may not operate an ATV or a snowmobile if the person has alcohol in his or her system. Also, under current law, a person under the age of 21 may not operate a motorboat if the person has alcohol in his or her system.

d. Make use of the definition of the term "prohibited alcohol concentration," as used in the Motor Vehicle Code, in the new subchapter. Thus, in general, no person may operate a sport recreational vehicle, or cause injury to another person by operation of a sport recreational vehicle with alcohol concentrations listed below:

- (1) If the person has one or no prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.1 or more.
- (2) If the person has two prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.08 or more.
- (3) If the person has three or more prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of more than 0.02.

It should be noted that instead of using the term "injury" as is used in the drunk driving statutes [s. 346.63 (2), Stats.], the new subchapter refers to "bodily harm" which is defined in s. 350.50 (7), Stats., to mean physical pain or injury, illness or any impairment of physical condition. This definition is adopted from a provision in the Criminal Code, s. 939.22 (4), Stats. Finally, the 10 year look back period does not extend beyond January 1, 1998.

e. Apply the decision of the Wisconsin Supreme Court in *County of Jefferson v. Renz*, 231 Wis. 2d 293 (1999), by specifying that a law enforcement officer may require a preliminary breath screening test (PBST) if there is a "reasonable suspicion" rather than "probable cause" to believe that a violation has occurred. In addition, the bills specify that the result of a PBST also may be used as evidence of the presence of an intoxicant in a person. *Current law* provides that a PBST 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.

f. Combine the provisions describing applicability of the intoxicated operation of a sport recreational vehicle law and a commercial motorboat law as those provisions apply to ATVs and snowmobiles. Under the bills, the law will be applicable upon frozen water and upon all property, whether the property is publicly or privately owned and whether or not a fee is charged for the use of that property. The law will not apply to the operation of an ATV

or a snowmobile on private land not designated as an ATV trail or as a snowmobile trail unless an accident involving personal injury occurs as a result of the operation of the ATV or snowmobile or the ATV or the snowmobile was operated on the private land without the consent of the owner of that land.

g. Reduce the alcohol concentration level that will authorize immediate release after arrest for a sport recreational vehicle or a commercial motorboat OWI violation from the current level of 0.05 or less to less than 0.02.

h. Require the Department of Natural Resources (DNR) to distribute to a motorboat registrant an educational pamphlet on the intoxicated operation of a sport recreational vehicle law.

i. Consolidate the statutory intoxicated use provisions for ATVs, motorboats and snowmobiles, with the result that a conviction for the intoxicated use of one vehicle will count as a prior conviction when repeat offender penalties are applied to a person convicted of the intoxicated use of another type of vehicle. Under *current law*, a conviction for the intoxicated use of one vehicle is not counted as a prior conviction when considering the application of repeat offender penalties to a person convicted of the intoxicated use of a different type of vehicle.

j. Follow the format of the current statutory definition of "intoxicated operation of an all-terrain vehicle law" by including a local ordinance in conformity with the prohibitions against both intoxicated operation and the causing of injury. Under the bills, a county, town, city or village may enact an ordinance, for which a forfeiture may be imposed, in strict conformity with the new subchapter. The effect of this definitional format is that if a person is found guilty of causing injury by intoxicated use under a local ordinance, that conviction will count as a repeat offense for purposes of determining the penalty imposed on a repeat offender.

k. Apply the forfeiture range for a first offense OWI motor vehicle violation (not less than \$150 nor more than \$300) to all operators of sport recreational vehicles and commercial motorboats. In contrast, *current law* provides that a first offense involving intoxicated operation of a snowmobile will result in a forfeiture of not less than \$400 nor more than \$550. The bills also provide that a violator will have his or her operating privilege revoked for a period of one to five years depending on the repeater status of the violator. Operation during revocation will result in a fine of not more than \$2,500 and imprisonment for not more than one year. Along with this change, current law is amended to provide that a violation of the refusal law will result in the application of a civil penalty, but not the application of a criminal penalty.

l. Apply certain intoxicating boating law provisions to all sport recreational vehicles and commercial motorboats and increase the maximum period of imprisonment to a period of seven years and six months in accordance with similar provisions in 1997 Wisconsin Act 283 (truth in sentencing). Under *current law*, with respect to ATVs and snowmobiles, a second offense within five years and third or subsequent offenses within five years will result in additional penalties. However, the intoxicated boating law also adds two additional

categories of increased penalties for a person who has been convicted four times within five years or five or more times within five years. In addition, the bills increase the current five-year look-back period to 10 years for the purpose of reviewing prior convictions. However, the increased look-back period will be phased-in so that convictions occurring prior to January 1, 1998, will not be counted.

m. Authorize a court to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a sport recreational vehicle or a commercial motorboat.

n. Incorporate various current statutory provisions applicable to motor vehicle OWI under s. 346.65 (1) (f) and (g), Stats., to the operation of sport recreational vehicles and commercial motorboats. First, if a minor passenger under 16 years of age was in or on a vehicle at the time of a violation, the applicable minimum and maximum forfeitures, fines or imprisonment for the convictions are doubled. Second, the applicable minimum and maximum fines will be doubled, tripled or quadrupled if the operator of the sport recreational vehicle or a commercial motorboat had an alcohol concentration of 0.17 to 0.199, 0.20 to 0.249 or 0.25 or above, respectively. Unlike the law relating to the operation of motor vehicles, the bills provide that the increased penalties 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.

o. Apply to motorboats the current statutory provision requiring a conviction relating to the use of an ATV or snowmobile to be reported to DNR.

p. Apply the motor vehicle OWI surcharge provisions found in s. 346.655, Stats., to a person who violates the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law. *Current law* provides that an operator of a motor vehicle who violates various OWI provisions must pay a driver improvement surcharge in the amount of \$355 in addition to the fine or forfeiture, penalty assessment, jail assessment and crime laboratories and drug law enforcement assessment.

q. Create an effective date of *January 1, 2003* for the bills.

B. ASSEMBLY BILL 668 AND SENATE BILL 336

Assembly Bill 668 and Senate Bill 336, relating to safety training for all-terrain vehicle and motorboat operation.

1. Background

Current law provides that a person who is at least 12 years old and less than 16 years old may operate an ATV under the following circumstances:

- a. If the person has a safety certificate from DNR.
- b. If the person is accompanied by another person who is over 18 years of age.

- c. If the person, with a physical disability, is on a roadway and has a hunting permit and a safety certificate.
- d. If the person is operating an implement of husbandry on a roadway if the person has a safety certificate.
- e. If the person holds a valid certificate from another state or Canadian province.
- f. If the person is on land exclusively under the control of the person's immediate family.

With respect to a motorboat, current law provides that a person at least 12 years old and less than 16 years old may operate a motorboat if the person is accompanied by a parent, guardian or person at least 18 years of age who is designated by a parent or guardian or if the person has a safety certificate from DNR.

The snowmobile law was amended in the 1999 Session of the Legislature to provide that, beginning on January 1, 2001, any person, at least 12 years of age and born on or after January 1, 1985, must hold a valid snowmobile safety certificate in order to operate the snowmobile. The only exception to this provision is if the person operates the snowmobile upon lands owned or leased by a parent or guardian. The requirement to obtain a safety certificate applies to all persons, at least 12 years old and born on or after January 1, 1985, regardless of the person's age.

2. Description of the Bills

In general, the bills amend the law relating to ATVs and motorboats in order to make the law consistent with the law applicable to snowmobiles. Thus, the bills provide that no person at least 12 years of age and born on or after January 1, 1986, may operate an ATV or a motorboat without a valid safety certificate. As in current law, the bills exempt from this requirement an operator of an ATV who holds a valid certificate from another state or Canadian province or who operates the ATV on land exclusively under the control of the person's immediate family. The provisions of the bills take effect on *January 1, 2002*.

C. ASSEMBLY BILL 669 AND SENATE BILL 337

Assembly Bill 669 and Senate Bill 337, relating to requiring that personal flotation devices be worn by certain underaged persons in certain boats.

1. Background

Current law generally provides that every boat must carry at least one personal flotation device prescribed by federal regulations for each person on board or being attended by the boat. The flotation devices must be placed so as to be readily accessible and available to all persons on the boat.

2. Description of the Bills

The bills prohibit a person, under the age of 16, from riding in a boat that is less than 26 feet in length without wearing a personal flotation device unless the person is in a cabin space or below the deck.

D. ASSEMBLY BILL 670 AND SENATE BILL 338

Assembly Bill 670 and Senate Bill 338, relating to intoxicated operation of a motor vehicle and providing a penalty.

1. Background

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 section 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, 344.576, 346.63 and 346.65, Stats. In addition, the term "intoxicant" is intermittently used throughout the OWI and OWI-related statutes.

2. Description of the Bills

In general, the bills create a definition of the terms "intoxicant" and "under the influence of an intoxicant" for use in the Motor Vehicle Code and the Criminal Code. The term "intoxicant" is defined to mean 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.

Thus, 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.

The bills also create a definition of the term "under the influence of an intoxicant" by codifying the language of Wisconsin Criminal Jury Instruction, s. 2663. Rather than using two standards, as under current law, the bills apply 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. The Criminal Jury Instruction states 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. It specifies that: "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 Wis. JI-CRIMINAL, s. 2666.]

Under the bills, "under the influence of an intoxicant" is defined to mean 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.

In addition to these changes, the bills:

- a. Provide 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. *Current law* 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 his or her operating privilege and a specified period of time within which the person is not eligible to obtain an occupational license. [s. 343.30 (1q) (b), Stats.] 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.
- b. Create a license suspension provision applicable to persons who are convicted of tampering with an ignition interlock device (IID), either under the general tampering provisions in s. 347.413, Stats., or the tampering language in s. 343.10, Stats. As with the *current law* relating to IID tampering, this suspension applies to whoever commits the tampering violation (i.e., the operator subject to the IID restriction or anyone else tampering with the device). Except when an occupational license is involved, the suspension period and the provision making the operator liable for an occupational license at any time is the same as that currently applicable to a first offense OWI violator. 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.
- c. Apply the decision of the Wisconsin Supreme Court in *County of Jefferson v. Renz*, 231 Wis. 2d 293 (1999), by providing that a law enforcement officer may require a PBST if there is a *reasonable suspicion*, rather than probable cause, to believe that a violation has occurred. The bills also provide that the result of a PBST may be used as evidence of the

presence of an intoxicant in a person in an action or proceeding. *Current law* provides that a PBST is not admissible in any action or proceeding except to show probable cause for arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested.

d. Require that when a chemical test specimen is requested, the person to be tested is notified that he or she does not have the right to contact an attorney prior to testing. *Current law* requires a law enforcement officer to provide a person specified notifications at the time the specimen is requested. The new information regarding the right to contact an attorney adds to the list of specified items in the notice. The bills also clarify that pretrial discovery is not available in a refusal hearing. This change reverses the holding in *State v. Schoepp*, 204 Wis. 2d 266 (Ct. App. 1996).

e. Amend current law to provide that an OWI arrestee must be released when he or she has an alcohol concentration of less than 0.02. *Current law* provides for such release when the person has an alcohol concentration less than 0.04.

f. Specify that the statutes relating to reckless and drunken driving are applicable upon highways, all premises and frozen water. Under current s. 346.61, Stats., 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 four 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.

g. Replace the currently undefined term "injury" with the term "bodily harm" and defines "bodily harm" to mean physical pain or injury, illness or any impairment of physical condition. This definition is based on the definition of "bodily harm" in the Criminal Code [s. 939.22 (4), Stats.]. Also, the bills create a definition of the term "great bodily harm" based on the definition in s. 939.22 (14), Stats. Under *current law*, a person may not cause *injury* while operating a motor vehicle while under the influence of an intoxicant or other drug. [s. 346.63 (2) and (6), Stats.]

h. Authorize a court to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a motor vehicle.

i. Increase the maximum term of imprisonment for a person with five or more suspensions, revocations and convictions related to intoxicated operation from five years to seven years and six months. The increase is similar to adjustments in maximum sentences made in 1997 Wisconsin Act 283 (truth in sentencing).

j. Provide 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. *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 was 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

finest are 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.

k. Revise current law to provide that a violation of the absolute sobriety provision will result in a forfeiture of \$50. A similar change is made in the absolute sobriety requirement applicable to commercial motor vehicle drivers, increasing the forfeiture from \$10 to \$50. *Current law* provides that a person under the legal drinking age must forfeit \$10 if the person drove or operated a motor vehicle while the person had an alcohol concentration of more than 0.0 but not more than 0.1. If a minor passenger under 16 years of age was in the motor vehicle, the forfeiture is \$20.

l. Revise current law to provide that, with respect to imprisonment, a violator may be imprisoned for not more than one year in the county jail, but that the violator will be required to remain in the county jail for not less than a 48-hour consecutive period. *Current law* 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 or may be imprisoned for not less than 30 days nor more than one year in the county jail.

m. Create a new provision providing 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 such personal appearances.

n. Creates a definition of the term "intoxicant" for purposes of the Criminal Code. The definition is the same as that used in s. 340.01 (52d), Stats., as created in the bills, for purposes of the Motor Vehicle Code. In addition, the term "under the influence of an intoxicant" as defined in the Criminal Code [s. 939.22 (42), Stats.] is amended to conform to the definition of that same term in s. 340.01 (73e), as created in the bill.

o. Clarify that the offense 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.

p. Establish an effective date of *January 1, 2003*.

Committee and Joint Legislative Council Votes

At its December 21, 2000 meeting, the Special Committee voted to recommend WLC: 0021/1 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. The Special Committee also voted to recommend WLC: 0024/2 at its February 6, 2001 meeting. Finally, by a mail ballot dated February 23, 2001, the Special Committee voted to recommend WLC: 0011/4 and WLC: 0032/3 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. The votes on the four bills were as follows:

- WLC: 0021/1, relating to safety training for all-terrain vehicle and motorboat operation: Ayes, 13 (Sen. Burke; Reps. Freese, Ainsworth, Black, Huber and Leibham; and Public Members Cohen, Gavronski, Hammer, Harding, Hargarten, Langdon and Madson); Noes, 0; Absent, 4 (Sen. Huelsman; Rep. Staskunas; and Public Members Allen and Roiger); and Not Voting, 2 (Rep. Stone; and Public Member McAdams).
- WLC: 0011/4, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile: Ayes, 17 (Sen. Burke; Rep. Freese; Sen. Huelsman; Reps. Ainsworth, Black, Huber, Leibham and Staskunas; and Public Members Allen, Gavronski, Hammer, Harding, Hargarten, Langdon, Madson, McAdams and Roiger); Noes, 1 (Public Member Cohen); and Not Voting, 1 (Rep. Stone).
- WLC: 0024/2, relating to wearing of flotation devices: Ayes, 16 (Sen. Burke; Rep. Freese; Sen. Huelsman; Reps. Ainsworth, Huber, Staskunas and Stone; and Public Members Allen, Cohen, Gavronski, Hammer, Harding, Langdon, Madson, McAdams and Roiger); Noes, 1 (Rep. Leibham); and Absent, 2 (Rep. Black and Public Member Hargarten).
- WLC: 0032/3, relating to operating a motor vehicle while intoxicated: Ayes, 16 (Sen. Burke; Rep. Freese; Sen. Huelsman; Reps. Black, Huber, Leibham and Staskunas; and Public Members Allen, Gavronski, Hammer, Harding, Hargarten, Langdon, Madson, McAdams and Roiger); Noes, 2 (Rep. Ainsworth; and Public Member Cohen); and Not Voting, 1 (Rep. Stone).

At its March 14, 2001 meeting, the Joint Legislative Council voted to introduce the four bills as follows:

Sen. Chvala moved, seconded by Rep. Stone, that WLC: 0011/4, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 19 (Sens. Risser, Baumgart, Burke, Chvala, Darling, Grobschmidt, Panzer, Robson, Rosenzweig and Zien;

and Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Lehman and Stone); Noes, 0; and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George and Rep. Jensen asked that the record reflect that had they been present, they would have voted in favor of WLC: 0011/4.]

Sen. Chvala moved, seconded by Rep. Stone, that WLC: 0021/1, relating to safety training for all-terrain vehicle and motor boat operation, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 19 (Sens. Risser, Baumgart, Burke, Chvala, Darling, Grobschmidt, Panzer, Robson, Rosenzweig and Zien; and Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Lehman and Stone); Noes, 0; and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George and Rep. Jensen asked that the record reflect that had they been present, they would have voted in favor of WLC: 0021/1.]

Sen. Chvala moved, seconded by Rep. Black, that WLC: 0024/2, relating to wearing of flotation devices, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 12 (Sens. Risser, Baumgart, Burke, Chvala, Grobschmidt, Robson and Rosenzweig; and Reps. Black, Bock, Freese, Huber and Stone); Noes, 7 (Sens. Darling, Panzer and Zien; and Reps. Rhoades, Foti, Gard and Lehman); and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George asked that the record reflect that had he been present, he would have voted in favor of WLC: 0024/2. Rep. Jensen asked that the record reflect that had he been present, he would have voted against WLC: 0024/2.]

Sen. Chvala moved, seconded by Rep. Stone, that WLC: 0032/3, relating to operating a motor vehicle while intoxicated, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 19 (Sens. Risser, Baumgart, Burke, Chvala, Darling, Grobschmidt, Panzer, Robson, Rosenzweig and Zien; and Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Lehman and Stone); Noes, 0; and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George and Rep. Jensen asked that the record reflect that had they been present, they would have voted in favor of WLC: 0032/3.]

APPENDIX 2

JOINT LEGISLATIVE COUNCIL
s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

**RECODIFICATION OF OPERATING WHILE INTOXICATED AND
SAFETY LAWS PERTAINING TO MOTOR VEHICLE, ALL-TERRAIN VEHICLE, BOAT
OR SNOWMOBILE OPERATION, SPECIAL COMMITTEE ON**

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STUDY ASSIGNMENT: The Committee is directed to study current statutes relating to operating a vehicle while under the influence of an intoxicant or drugs. The Committee is to reorganize, simplify, modernize and clarify these statutes and make minor substantive changes necessary to effect these goals. In addition, the Committee is 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. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established by a May 18, 2000 mail ballot; Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

19 MEMBERS: 2 Senators; 7 Representatives and 10 Public Members.

LEGISLATIVE COUNCIL STAFF: Ron Sklansky, Senior Staff Attorney; Don Salm, Senior Staff Attorney; and Julie Learned, Support Staff.

Committee Materials List

September 27, 2000 Meeting

Memo No. 1, Review of **Laws** Relating to **Operating While Intoxicated and Safety Laws Pertaining to Motor Vehicle, All-Terrain Vehicle, Boat or Snowmobile Operation** (9-19-00)

Memo No. 2, Chart Setting Forth the **Penalties for Drunk Driving and Related Offenses** (9-19-00)

Memo No. 3, **Intoxicated Operation of All-Terrain Vehicles, Boats and Snowmobiles** (9-20-00)

November 21, 2000 Meeting

Memo No. 4, **Safety Instruction and Age of Operation** Relating to All-Terrain Vehicles, Boats and Snowmobiles (10-30-00)

Memo No. 5, **Suggested Amendments to the Statutes** Related to the Operation of All-Terrain Vehicles, Boats and Snowmobiles (11-13-00)

Memo No. 6, **Information Requested Relating to Hit and Run Crashes** by Crash Severity and Alcohol Involvement; Persons Involved in Alcohol-Related Crashes by Role and Drinking Status; and Persons Involved in Alcohol-Related Crashes by Role and Injury Severity (11-10-00)

Memo No. 7, Analysis of **Current Law Prohibiting "Hit and Run" Motor Vehicle Accidents** and Comparison of Current Penalties for "Hit and Run" With Penalties for Drunk Driving (11-10-00)

Memo No. 8, **State Excise Taxes on Intoxicating Liquor and Beer** (11-10-00)

Memo No. 9, **Suggestions for Recodification of Statutes** Relating to Operating a Motor Vehicle While Intoxicated (11-13-00)

Memo No. 10, **Information Regarding Recreational Vehicles Requested From the Department of Natural Resources** (11-13-00)

Statement, National Marine Manufacturers Association (11-2-00)

WLCS: 0011/1, relating to recreational vehicles

December 21, 2000 Meeting

Memo No. 11, **Additional Suggestions for Recodification of Statutes Relating to Operating a Motor Vehicle While Intoxicated** (12-14-00)

WLCS: 0011/2, relating to recreational vehicles

WLCS: 0021/1, relating to safety training for all-terrain vehicle and motorboat operation

WLCS: 0024/1, relating to wearing of flotation devices

WLCS: 0032/1, relating to operating a motor vehicle while intoxicated

Memo, Suggestions for Recodification of OWI Statutes, distributed by Public Member Barry Cohen (11-16-00)

February 6, 2001 Meeting

Memo No. 12, Meaning of the Term "Clear Proceeds" as Used in Wisconsin Constitution, Article X, Section 2 (1-30-01)

1999 Senate Bill 508, relating to causing property damage by operating a motor vehicle while under the influence of an intoxicant or other drug [See Sections 16, 18, 26 and 33.]

WLC: 0011/3, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile

WLC: 0024/2, relating to wearing of flotation devices

WLC: 0032/2, relating to operating a motor vehicle while intoxicated

Email message, from Committee Member James Langdon, relating to the places of applicability of the intoxicated operation of a sport recreational vehicle law