

2003 ASSEMBLY BILL AB-458

1 **AN ACT** *to renumber and amend* 23.33 (4c) (b) 4., 30.681 (2) (d) 1., 343.305 (8)
2 (b) 5., 346.63 (2) (b), 350.101 (2) (d), 940.09 (1m), 940.09 (2), 940.25 (1m), 940.25
3 (2) and 967.055 (1m); *to amend* 23.33 (4c) (a) 4., 23.33 (4c) (b) 3., 23.33 (4p) (d),
4 23.33 (13) (b) 1., 23.33 (13) (b) 2., 23.33 (13) (b) 3., 30.681 (1) (b) (title), 30.681
5 (1) (c), 30.681 (2) (b) (title), 30.681 (2) (c), 30.684 (4), 343.305 (7) (a), 343.305 (8)
6 (b) 2. bm. and d., 343.305 (9) (a) 5. a., 343.307 (1) (d), 343.307 (2) (e), 343.307
7 (3), 343.31 (1) (am), 343.31 (2), 343.315 (2) (a) 5., 343.315 (2) (a) 6., 344.576 (2)
8 (b), 346.63 (1) (c), 346.63 (2) (am), 346.65 (2g) (c), 346.65 (2m) (a), 346.65 (6) (a)
9 1., 346.65 (6) (c), 346.65 (6) (d), 350.101 (1) (d), 350.101 (2) (c), 350.104 (4),
10 350.11 (3) (a) 1., 350.11 (3) (a) 2., 350.11 (3) (a) 3., 351.02 (1) (a) 10., 885.235 (4),
11 939.75 (1), 939.75 (2) (b), 939.75 (3) (intro.), 940.09 (1d) (a) 1., 940.09 (1d) (a) 2.,
12 940.09 (1d) (b), 940.25 (1d) (a) 1., 940.25 (1d) (a) 2., 940.25 (1d) (b), 949.08 (2)
13 (e), 949.08 (2) (em), 967.055 (1) (a) and 967.055 (2) (a); and *to create* 23.33 (1)
14 (jo), 23.33 (4c) (a) 2m., 23.33 (4c) (a) 5., 23.33 (4c) (b) 2m., 23.33 (4c) (b) 4. b.,

ASSEMBLY BILL AB-458

1 30.50 (10m), 30.681 (1) (b) 1m., 30.681 (1) (d), 30.681 (2) (b) 1m., 30.681 (2) (d)
2 1. b., 340.01 (50m), 343.305 (5) (e), 343.305 (8) (b) 2. g., 343.305 (8) (b) 4m.,
3 343.305 (8) (b) 5. a., 343.305 (8) (b) 5. b., 343.305 (8) (b) 5. c., 343.305 (8) (b) 6.
4 a., 343.305 (8) (b) 6. b., 343.305 (8) (b) 6. c., 343.315 (2) (a) 1m., 346.63 (1) (am),
5 346.63 (1) (d), 346.63 (2) (a) 3., 346.63 (2) (b) 2., 350.01 (10v), 350.101 (1) (bm),
6 350.101 (1) (e), 350.101 (2) (bm), 350.101 (2) (d) 2., 885.235 (1) (d), 885.235 (1k),
7 939.22 (33), 940.09 (1) (am), 940.09 (1) (cm), 940.09 (1g) (am), 940.09 (1g) (cm),
8 940.09 (2) (b), 940.25 (1) (am), 940.25 (1) (cm), 940.25 (2) (b), 941.20 (1) (bm) and
9 967.055 (1m) (b) of the statutes; **relating to:** operating a vehicle or operating
10 or going armed with a firearm after using certain controlled substances and
11 providing penalties.

Analysis by the Legislative Reference Bureau

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

12 **SECTION 1.** 23.33 (1) (jo) of the statutes is created to read:

13 23.33 (1) (jo) “Restricted controlled substance” means any of the following:

14 1. A controlled substance included in schedule I under ch. 961 other than a
15 tetrahydrocannabinol.

16 2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
17 substance described in subd. 1.

18 3. Cocaine or any of its metabolites.

19 4. Methamphetamine.

20 5. Delta-9-tetrahydrocannabinol.

21 **SECTION 2.** 23.33 (4c) (a) 2m. of the statutes is created to read:

ASSEMBLY BILL AB-458

1 23.33 (4c) (a) 2m. ‘Operating with a restricted controlled substance.’ No person
2 may engage in the operation of an all-terrain vehicle while the person has a
3 detectable amount of a restricted controlled substance in his or her blood.

4 **SECTION 3.** 23.33 (4c) (a) 4. of the statutes is amended to read:

5 23.33 (4c) (a) 4. ‘Related charges.’ A person may be charged with and a
6 prosecutor may proceed upon a complaint based upon a violation of ~~subd. 1. or 2. or~~
7 ~~both~~ any combination of subd. 1., 2., or 2m. for acts arising out of the same incident
8 or occurrence. If the person is charged with violating ~~both subds. 1. and 2.~~ any
9 combination of subd. 1., 2., or 2m., the offenses shall be joined. If the person is found
10 guilty of ~~both subds. 1. and 2.~~ any combination of subd. 1., 2., or 2m. for acts arising
11 out of the same incident or occurrence, there shall be a single conviction for purposes
12 of sentencing and for purposes of counting convictions under sub. (13) (b) 2. and 3.
13 Subdivisions 1. ~~and 2.~~ and 2m. each require proof of a fact for conviction which the
14 ~~other does~~ others do not require.

15 **SECTION 4.** 23.33 (4c) (a) 5. of the statutes is created to read:

16 23.33 (4c) (a) 5. ‘Defenses.’ In an action under subd. 2m. that is based on the
17 defendant allegedly having a detectable amount of methamphetamine,
18 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
19 the defendant has a defense if he or she proves by a preponderance of the evidence
20 that at the time of the incident or occurrence he or she had a valid prescription for
21 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
22 or delta-9-tetrahydrocannabinol.

23 **SECTION 5.** 23.33 (4c) (b) 2m. of the statutes is created to read:

24 23.33 (4c) (b) 2m. ‘Causing injury while operating with a restricted controlled
25 substance.’ No person who has a detectable amount of a restricted controlled

ASSEMBLY BILL AB-458**SECTION 5**

1 substance in his or her blood may cause injury to another person by the operation of
2 an all-terrain vehicle.

3 **SECTION 6.** 23.33 (4c) (b) 3. of the statutes is amended to read:

4 23.33 **(4c)** (b) 3. ‘Related charges.’ A person may be charged with and a
5 prosecutor may proceed upon a complaint based upon a violation of ~~subd. 1. or 2. or~~
6 ~~both~~ any combination of subd. 1., 2., or 2m. for acts arising out of the same incident
7 or occurrence. If the person is charged with violating ~~both subds. 1. and 2.~~ any
8 combination of subd. 1., 2., or 2m. in the complaint, the crimes shall be joined under
9 s. 971.12. If the person is found guilty of ~~both subds. 1. and 2.~~ any combination of
10 subd. 1, 2., or 2m. for acts arising out of the same incident or occurrence, there shall
11 be a single conviction for purposes of sentencing and for purposes of counting
12 convictions under sub. (13) (b) 2. and 3. Subdivisions 1. ~~and 2., and 2m.~~ each require
13 proof of a fact for conviction which the ~~other does~~ others do not require.

14 **SECTION 7.** 23.33 (4c) (b) 4. of the statutes is renumbered 23.33 (4c) (b) 4. a. and
15 amended to read:

16 23.33 **(4c)** (b) 4. a. In an action under this paragraph, the defendant has a
17 defense if he or she proves by a preponderance of the evidence that the injury would
18 have occurred even if he or she had been exercising due care and he or she had not
19 been under the influence of an intoxicant ~~or~~, did not have an alcohol concentration
20 of 0.1 or more, or did not have a detectable amount of a restricted controlled
21 substance in his or her blood.

22 **SECTION 8.** 23.33 (4c) (b) 4. b. of the statutes is created to read:

23 23.33 **(4c)** (b) 4. b. In an action under subd. 2m. that is based on the defendant
24 allegedly having a detectable amount of methamphetamine,
25 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,

ASSEMBLY BILL AB-458

1 the defendant has a defense if he or she proves by a preponderance of the evidence
2 that at the time of the incident or occurrence he or she had a valid prescription for
3 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
4 or delta-9-tetrahydrocannabinol.

5 **SECTION 9.** 23.33 (4p) (d) of the statutes is amended to read:

6 23.33 **(4p)** (d) *Admissibility; effect of test results; other evidence.* The results
7 of a chemical test required or administered under par. (a), (b) or (c) are admissible
8 in any civil or criminal action or proceeding arising out of the acts committed by a
9 person alleged to have violated the intoxicated operation of an all-terrain vehicle law
10 on the issue of whether the person was under the influence of an intoxicant or the
11 issue of whether the person had alcohol concentrations at or above specified levels
12 or a detectable amount of a restricted controlled substance in his or her blood.
13 Results of these chemical tests shall be given the effect required under s. 885.235.
14 This subsection does not limit the right of a law enforcement officer to obtain
15 evidence by any other lawful means.

16 **SECTION 10.** 23.33 (13) (b) 1. of the statutes is amended to read:

17 23.33 **(13)** (b) 1. Except as provided under subds. 2. and 3., a person who
18 violates sub. (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e) shall forfeit not less than \$150 nor more
19 than \$300.

20 **SECTION 11.** 23.33 (13) (b) 2. of the statutes is amended to read:

21 23.33 **(13)** (b) 2. Except as provided under subd. 3., a person who violates sub.
22 (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e) and who, within 5 years prior to the arrest for the
23 current violation, was convicted previously under the intoxicated operation of an
24 all-terrain vehicle law or the refusal law shall be fined not less than \$300 nor more
25 than \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

ASSEMBLY BILL AB-458**SECTION 12**

1 **SECTION 12.** 23.33 (13) (b) 3. of the statutes is amended to read:

2 23.33 **(13)** (b) 3. A person who violates sub. (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e)
3 and who, within 5 years prior to the arrest for the current violation, was convicted
4 2 or more times previously under the intoxicated operation of an all-terrain vehicle
5 law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall
6 be imprisoned not less than 30 days nor more than one year in the county jail.

7 **SECTION 13.** 30.50 (10m) of the statutes is created to read:

8 30.50 **(10m)** “Restricted controlled substance” means any of the following:

9 (a) A controlled substance included in schedule I under ch. 961 other than a
10 tetrahydrocannabinol.

11 (b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
12 substance described in par. (a).

13 (c) Cocaine or any of its metabolites.

14 (d) Methamphetamine.

15 (e) Delta-9-tetrahydrocannabinol.

16 **SECTION 14.** 30.681 (1) (b) (title) of the statutes is amended to read:

17 30.681 **(1)** (b) (title) *Operating ~~with~~ after using a controlled substance or alcohol*
18 *concentrations at or above specified levels.*

19 **SECTION 15.** 30.681 (1) (b) 1m. of the statutes is created to read:

20 30.681 **(1)** (b) 1m. No person may engage in the operation of a motorboat while
21 the person has a detectable amount of a restricted controlled substance in his or her
22 blood.

23 **SECTION 16.** 30.681 (1) (c) of the statutes is amended to read:

24 30.681 **(1)** (c) *Related charges.* A person may be charged with and a prosecutor
25 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any

ASSEMBLY BILL AB-458

1 combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or
2 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any
3 combination of par. (a) or (b) 1., 1m., or 2., the offenses shall be joined. If the person
4 is found guilty of ~~both pars. (a) and (b)~~ any combination of par. (a) or (b) 1., 1m., or
5 2. for acts arising out of the same incident or occurrence, there shall be a single
6 conviction for purposes of sentencing and for purposes of counting convictions under
7 s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m., and 2. each require proof of
8 a fact for conviction which the ~~other does~~ others do not require.

9 **SECTION 17.** 30.681 (1) (d) of the statutes is created to read:

10 30.681 (1) (d) *Defenses.* In an action under par. (b) 1m. that is based on the
11 defendant allegedly having a detectable amount of methamphetamine,
12 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
13 the defendant has a defense if he or she proves by a preponderance of the evidence
14 that at the time of the incident or occurrence he or she had a valid prescription for
15 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
16 or delta-9-tetrahydrocannabinol.

17 **SECTION 18.** 30.681 (2) (b) (title) of the statutes is amended to read:

18 30.681 (2) (b) (title) *Causing injury with after using a controlled substance or*
19 *alcohol concentrations at or above specified levels.*

20 **SECTION 19.** 30.681 (2) (b) 1m. of the statutes is created to read:

21 30.681 (2) (b) 1m. No person who has a detectable amount of a restricted
22 controlled substance in his or her blood may cause injury to another person by the
23 operation of a motorboat.

24 **SECTION 20.** 30.681 (2) (c) of the statutes is amended to read:

ASSEMBLY BILL AB-458**SECTION 20**

1 30.681 (2) (c) *Related charges.* A person may be charged with and a prosecutor
2 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any
3 combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or
4 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any
5 combination of par. (a) or (b) 1., 1m., or 2. in the complaint, the crimes shall be joined
6 under s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination
7 of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence,
8 there shall be a single conviction for purposes of sentencing and for purposes of
9 counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m.,
10 and 2. each require proof of a fact for conviction which the ~~other does~~ others do not
11 require.

12 **SECTION 21.** 30.681 (2) (d) 1. of the statutes is renumbered 30.681 (2) (d) 1. a.
13 and amended to read:

14 30.681 (2) (d) 1. a. In an action under this subsection for a violation of the
15 intoxicated boating law where the defendant was operating a motorboat that is not
16 a commercial motorboat, the defendant has a defense if he or she proves by a
17 preponderance of the evidence that the injury would have occurred even if he or she
18 had been exercising due care and he or she had not been under the influence of an
19 intoxicant or did not have an alcohol concentration of 0.1 or more or a detectable
20 amount of a restricted controlled substance in his or her blood.

21 **SECTION 22.** 30.681 (2) (d) 1. b. of the statutes is created to read:

22 30.681 (2) (d) 1. b. In an action under par. (b) 1m. that is based on the defendant
23 allegedly having a detectable amount of methamphetamine,
24 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
25 the defendant has a defense if he or she proves by a preponderance of the evidence

ASSEMBLY BILL AB-458

1 that at the time of the incident or occurrence he or she had a valid prescription for
2 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
3 or delta-9-tetrahydrocannabinol.

4 **SECTION 23.** 30.684 (4) of the statutes is amended to read:

5 30.684 (4) ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results
6 of a chemical test required or administered under sub. (1), (2) or (3) are admissible
7 in any civil or criminal action or proceeding arising out of the acts committed by a
8 person alleged to have violated the intoxicated boating law on the issue of whether
9 the person was under the influence of an intoxicant or the issue of whether the person
10 had alcohol concentrations at or above specified levels or a detectable amount of a
11 restricted controlled substance in his or her blood. Results of these chemical tests
12 shall be given the effect required under s. 885.235. This section does not limit the
13 right of a law enforcement officer to obtain evidence by any other lawful means.

14 **SECTION 24.** 340.01 (50m) of the statutes is created to read:

15 340.01 (50m) “Restricted controlled substance” means any of the following:

16 (a) A controlled substance included in schedule I under ch. 961 other than a
17 tetrahydrocannabinol.

18 (b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
19 substance described in par. (a).

20 (c) Cocaine or any of its metabolites.

21 (d) Methamphetamine.

22 (e) Delta-9-tetrahydrocannabinol.

23 **SECTION 25.** 343.305 (5) (e) of the statutes is created to read:

24 343.305 (5) (e) At the trial of any civil or criminal action or proceeding arising
25 out of the acts committed by a person alleged to have been driving or operating a

ASSEMBLY BILL AB-458**SECTION 25**

1 motor vehicle while having a detectable amount of a restricted controlled substance
2 in his or her blood, the results of a blood test administered in accordance with this
3 section are admissible on any issue relating to the presence of a detectable amount
4 of a restricted controlled substance in the person's blood. Test results shall be given
5 the effect required under s. 885.235.

6 **SECTION 26.** 343.305 (7) (a) of the statutes is amended to read:

7 343.305 (7) (a) If a person submits to chemical testing administered in
8 accordance with this section and any test results indicate the presence of a detectable
9 amount of a restricted controlled substance in the person's blood or a prohibited
10 alcohol concentration, the law enforcement officer shall report the results to the
11 department and take possession of the person's license and forward it to the
12 department. The person's operating privilege is administratively suspended for 6
13 months.

14 **SECTION 27.** 343.305 (8) (b) 2. bm. and d. of the statutes are amended to read:

15 343.305 (8) (b) 2. bm. Whether the person had a prohibited alcohol
16 concentration or a detectable amount of a restricted controlled substance in his or her
17 blood at the time the offense allegedly occurred.

18 d. If one or more tests were administered in accordance with this section,
19 whether each of the test results for those tests indicate the person had a prohibited
20 alcohol concentration or a detectable amount of a restricted controlled substance in
21 his or her blood.

22 **SECTION 28.** 343.305 (8) (b) 2. g. of the statutes is created to read:

23 343.305 (8) (b) 2. g. Whether the person had a valid prescription for
24 methamphetamine or one of its metabolic precursors or gamma-hydroxybutyric acid
25 or delta-9-tetrahydrocannabinol in a case in which subd. 4m. a. and b. apply.

ASSEMBLY BILL AB-458

1 **SECTION 29.** 343.305 (8) (b) 4m. of the statutes is created to read:

2 343.305 **(8)** (b) 4m. If, at the time the offense allegedly occurred, all of the
3 following apply, the hearing officer shall determine whether the person had a valid
4 prescription for methamphetamine or one of its metabolic precursors,
5 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol:

6 a. A blood test administered in accordance with this section indicated that the
7 person had a detectable amount of methamphetamine, gamma-hydroxybutyric acid,
8 or delta-9-tetrahydrocannabinol but did not have a detectable amount of any other
9 restricted controlled substance in his or her blood.

10 b. No test administered in accordance with this section indicated that the
11 person had a prohibited alcohol concentration.

12 **SECTION 30.** 343.305 (8) (b) 5. of the statutes is renumbered 343.305 (8) (b) 5.
13 (intro.) and amended to read:

14 343.305 **(8)** (b) 5. (intro.) If the hearing examiner finds that ~~the criteria for~~
15 ~~administrative suspension have not been satisfied or that the person did not have a~~
16 ~~prohibited alcohol concentration at the time the offense allegedly occurred~~ any of the
17 following applies, the examiner shall order that the administrative suspension of the
18 person's operating privilege be rescinded without payment of the fee under s. 343.21
19 (1) (j):

20 6. If the hearing examiner finds that ~~the criteria for administrative suspension~~
21 ~~have been satisfied and that the person had a prohibited alcohol concentration at the~~
22 ~~time the offense allegedly occurred~~ all of the following apply, the administrative
23 suspension shall continue regardless of the type of vehicle driven or operated at the
24 time of the violation:

ASSEMBLY BILL AB-458**SECTION 30**

1 7. The hearing examiner shall notify the person in writing of the hearing
2 decision, of the right to judicial review and of the court's authority to issue a stay of
3 the suspension under par. (c). The administrative suspension is vacated and the
4 person's operating privilege shall be automatically reinstated under s. 343.39 if the
5 hearing examiner fails to mail this notice to the person within 30 days after the date
6 of the notification under par. (a).

7 **SECTION 31.** 343.305 (8) (b) 5. a. of the statutes is created to read:

8 343.305 **(8)** (b) 5. a. The criteria for administrative suspension have not been
9 satisfied.

10 **SECTION 32.** 343.305 (8) (b) 5. b. of the statutes is created to read:

11 343.305 **(8)** (b) 5. b. The person did not have a prohibited alcohol concentration
12 or a detectable amount of a restricted controlled substance in his or her blood at the
13 time the offense allegedly occurred.

14 **SECTION 33.** 343.305 (8) (b) 5. c. of the statutes is created to read:

15 343.305 **(8)** (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had
16 a valid prescription for methamphetamine or one of its metabolic precursors,
17 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

18 **SECTION 34.** 343.305 (8) (b) 6. a. of the statutes is created to read:

19 343.305 **(8)** (b) 6. a. The criteria for administrative suspension have been
20 satisfied.

21 **SECTION 35.** 343.305 (8) (b) 6. b. of the statutes is created to read:

22 343.305 **(8)** (b) 6. b. The person had a prohibited alcohol concentration or a
23 detectable amount of a restricted controlled substance in his or her blood at the time
24 the offense allegedly occurred.

25 **SECTION 36.** 343.305 (8) (b) 6. c. of the statutes is created to read:

ASSEMBLY BILL AB-458

1 343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did
2 not have a valid prescription for methamphetamine or one of its metabolic
3 precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.

4 **SECTION 37.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

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

17 **SECTION 38.** 343.307 (1) (d) of the statutes is amended to read:

18 343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits
19 ~~refusal of a person from refusing~~ chemical testing or ~~use of~~ using a motor vehicle
20 while intoxicated or under the influence of a controlled substance or controlled
21 substance analog, or a combination thereof, ~~or;~~ with an excess or specified range of
22 alcohol concentration, ~~or;~~ while under the influence of any drug to a degree that
23 renders the person incapable of safely driving; or while having a detectable amount
24 of a restricted controlled substance in his or her blood, as those or substantially
25 similar terms are used in that jurisdiction's laws.

ASSEMBLY BILL AB-458**SECTION 39**

1 **SECTION 39.** 343.307 (2) (e) of the statutes is amended to read:

2 343.307 **(2)** (e) Convictions under the law of another jurisdiction that prohibits
3 ~~refusal of a person from refusing~~ chemical testing or ~~use of~~ using a motor vehicle
4 while intoxicated or under the influence of a controlled substance or controlled
5 substance analog, or a combination thereof, ~~or~~; with an excess or specified range of
6 alcohol concentration, ~~or~~; while under the influence of any drug to a degree that
7 renders the person incapable of safely driving; or while having a detectable amount
8 of a restricted controlled substance in his or her blood, as those or substantially
9 similar terms are used in that jurisdiction's laws.

10 **SECTION 40.** 343.307 (3) of the statutes is amended to read:

11 343.307 **(3)** If the same elements of the offense must be proven under a local
12 ordinance or under a law of a federally recognized American Indian tribe or band in
13 this state as under s. 346.63 (1) (a), (am), or (b) ~~or both~~, any combination of s. 346.63
14 (1) (a), (am), or (b), or s. 346.63 (5), the local ordinance or the law of a federally
15 recognized American Indian tribe or band in this state shall be considered to be in
16 conformity with s. 346.63 (1) (a), (am), or (b) ~~or both~~, any combination of s. 346.63 (1)
17 (a), (am), or (b), or s. 346.63 (5), for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b)
18 1. and 346.65 (2) and (2j).

19 **SECTION 41.** 343.31 (1) (am) of the statutes is amended to read:

20 343.31 **(1)** (am) Injury by the operation of a vehicle while under the influence
21 of an intoxicant, a controlled substance or a controlled substance analog, or any
22 combination of an intoxicant, a controlled substance and a controlled substance
23 analog, under the influence of any other drug to a degree which renders him or her
24 incapable of safely driving, or under the combined influence of an intoxicant and any
25 other drug to a degree which renders him or her incapable of safely driving or while

ASSEMBLY BILL AB-458

1 the person has a detectable amount of a restricted controlled substance in his or her
2 blood or has a prohibited alcohol concentration and which is criminal under s. 346.63
3 (2).

4 **SECTION 42.** 343.31 (2) of the statutes is amended to read:

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

20 **SECTION 43.** 343.315 (2) (a) 1m. of the statutes is created to read:

21 343.315 (2) (a) 1m. Section 346.63 (1) (am) or a local ordinance in conformity
22 therewith or a law of a federally recognized American Indian tribe or band in this
23 state in conformity with s. 346.63 (1) (am) or the law of another jurisdiction that
24 prohibits a person from driving or operating a commercial motor vehicle while

ASSEMBLY BILL AB-458**SECTION 43**

1 having a detectable amount of a restricted controlled substance in his or her blood,
2 as those or substantially similar terms are used in that jurisdiction's laws.

3 **SECTION 44.** 343.315 (2) (a) 5. of the statutes is amended to read:

4 343.315 (2) (a) 5. Section 343.305 (9) or a local ordinance in conformity
5 therewith or a law of a federally recognized American Indian tribe or band in this
6 state in conformity with s. 343.305 (9) or the law of another jurisdiction prohibiting
7 refusal of a person driving or operating a motor vehicle to submit to chemical testing
8 to determine the person's alcohol concentration or intoxication or the amount of a
9 restricted controlled substance in the person's blood, as those or substantially
10 similar terms are used in that jurisdiction's laws.

11 **SECTION 45.** 343.315 (2) (a) 6. of the statutes is amended to read:

12 343.315 (2) (a) 6. Section 346.63 (2) or (6), 940.09 (1) or 940.25 or a law of a
13 federally recognized American Indian tribe or band in this state in conformity with
14 s. 346.63 (2) or (6), 940.09 (1) or 940.25, or the law of another jurisdiction prohibiting
15 causing or inflicting injury, great bodily harm or death through use of a motor vehicle
16 while intoxicated or under the influence of alcohol, a controlled substance, a
17 controlled substance analog or a combination thereof, or with an alcohol
18 concentration of 0.04 or more or with an excess or specified range of alcohol
19 concentration, ~~or~~ while under the influence of any drug to a degree that renders the
20 person incapable of safely driving, or while having a detectable amount of a
21 restricted controlled substance in the person's blood, as those or substantially
22 similar terms are used in that jurisdiction's laws.

23 **SECTION 46.** 344.576 (2) (b) of the statutes is amended to read:

ASSEMBLY BILL AB-458

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

4 **SECTION 47.** 346.63 (1) (am) of the statutes is created to read:

5 346.63 (1) (am) The person has a detectable amount of a restricted controlled
6 substance in his or her blood.

7 **SECTION 48.** 346.63 (1) (c) of the statutes is amended to read:

8 346.63 (1) (c) A person may be charged with and a prosecutor may proceed upon
9 a complaint based upon a violation of ~~par. (a) or (b) or both~~ any combination of par.
10 (a), (am), or (b) for acts arising out of the same incident or occurrence. If the person
11 is charged with violating ~~both pars. (a) and (b)~~ any combination of par. (a), (am), or
12 (b), the offenses shall be joined. If the person is found guilty of ~~both pars. (a) and (b)~~
13 any combination of par. (a), (am), or (b) for acts arising out of the same incident or
14 occurrence, there shall be a single conviction for purposes of sentencing and for
15 purposes of counting convictions under ss. 343.30 (1q) and 343.305. Paragraphs (a),
16 (am), and (b) each require proof of a fact for conviction which the ~~other does~~ others
17 do not require.

18 **SECTION 49.** 346.63 (1) (d) of the statutes is created to read:

19 346.63 (1) (d) In an action under par. (am) that is based on the defendant
20 allegedly having a detectable amount of methamphetamine,
21 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
22 the defendant has a defense if he or she proves by a preponderance of the evidence
23 that at the time of the incident or occurrence he or she had a valid prescription for
24 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
25 or delta-9-tetrahydrocannabinol.

ASSEMBLY BILL AB-458**SECTION 50**

1 **SECTION 50.** 346.63 (2) (a) 3. of the statutes is created to read:

2 346.63 **(2)** (a) 3. The person has a detectable amount of a restricted controlled
3 substance in his or her blood.

4 **SECTION 51.** 346.63 (2) (am) of the statutes is amended to read:

5 346.63 **(2)** (am) A person may be charged with and a prosecutor may proceed
6 upon a complaint based upon a violation of ~~par. (a) 1. or 2. or both~~ any combination
7 of par. (a) 1., 2., or 3. for acts arising out of the same incident or occurrence. If the
8 person is charged with violating ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2.,
9 or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is
10 found guilty of ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2., or 3. for acts arising
11 out of the same incident or occurrence, there shall be a single conviction for purposes
12 of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and
13 343.305. Paragraph (a) 1. ~~and, 2., and 3.~~ each require proof of a fact for conviction
14 which the ~~other does~~ others do not require.

15 **SECTION 52.** 346.63 (2) (b) of the statutes is renumbered 346.63 (2) (b) 1.
16 amended to read:

17 346.63 **(2)** (b) 1. In an action under this subsection, the defendant has a defense
18 if he or she proves by a preponderance of the evidence that the injury would have
19 occurred even if he or she had been exercising due care and he or she had not been
20 under the influence of an intoxicant, a controlled substance, a controlled substance
21 analog or a combination thereof, under the influence of any other drug to a degree
22 which renders him or her incapable of safely driving, or under the combined
23 influence of an intoxicant and any other drug to a degree which renders him or her
24 incapable of safely driving ~~or~~, did not have a prohibited alcohol concentration

ASSEMBLY BILL AB-458

1 described under par. (a) 2., or did not have a detectable amount of a restricted
2 controlled substance in his or her blood.

3 **SECTION 53.** 346.63 (2) (b) 2. of the statutes is created to read:

4 346.63 (2) (b) 2. In an action under par. (a) 3. that is based on the defendant
5 allegedly having a detectable amount of methamphetamine,
6 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
7 the defendant has a defense if he or she proves by a preponderance of the evidence
8 that at the time of the incident or occurrence he or she had a valid prescription for
9 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
10 or delta-9-tetrahydrocannabinol.

11 **SECTION 54.** 346.65 (2g) (c) of the statutes is amended to read:

12 346.65 (2g) (c) If there was a minor passenger under 16 years of age in the
13 motor vehicle or commercial motor vehicle at the time of the violation that gave rise
14 to the conviction, the court may require a person ordered to perform community
15 service work under par. (a) or (ag), ~~or~~ under s. 973.05 (3) (a) if that person's fine
16 resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, or under
17 s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (1) (am) and the
18 motor vehicle that the person was driving or operating was a commercial motor
19 vehicle, to participate in community service work that benefits children or that
20 demonstrates the adverse effects on children of substance abuse or of operating a
21 vehicle while under the influence of an intoxicant or other drug. The court may order
22 the person to pay a reasonable fee, based on the person's ability to pay, to offset the
23 cost of establishing, maintaining and monitoring the community service work
24 ordered under this paragraph.

25 **SECTION 55.** 346.65 (2m) (a) of the statutes is amended to read:

ASSEMBLY BILL AB-458**SECTION 55**

1 346.65 **(2m)** (a) In imposing a sentence under sub. (2) for a violation of s. 346.63
2 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall
3 review the record and consider the aggravating and mitigating factors in the matter.
4 If the level of the ~~person's blood alcohol level~~ amount of alcohol in the person's blood
5 or urine or the amount of a restricted controlled substance in the person's blood is
6 known, the court shall consider that level amount as a factor in sentencing. The chief
7 judge of each judicial administrative district shall adopt guidelines, under the chief
8 judge's authority to adopt local rules under SCR 70.34, for the consideration of
9 aggravating and mitigating factors.

10 **SECTION 56.** 346.65 (6) (a) 1. of the statutes is amended to read:

11 346.65 **(6)** (a) 1. The court may order a law enforcement officer to seize the
12 motor vehicle used in the violation or improper refusal and owned by the person
13 whose operating privilege is revoked under s. 343.305 (10) or who committed a
14 violation of s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or~~ 2., or 3., 940.09 (1) (a), (am),
15 (b), (c), (cm), or (d), or 940.25 (1) (a), (am), (b), (c), (cm), or (d) if the person whose
16 operating privilege is revoked under s. 343.305 (10) or who is convicted of the
17 violation has 2 or more prior suspensions, revocations, or convictions, counting
18 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other
19 convictions, suspensions, or revocations counted under s. 343.307 (1). The court may
20 not order a motor vehicle seized if the court enters an order under s. 343.301 to
21 immobilize the motor vehicle or equip the motor vehicle with an ignition interlock
22 device or if seizure would result in undue hardship or extreme inconvenience or
23 would endanger the health and safety of a person.

24 **SECTION 57.** 346.65 (6) (c) of the statutes is amended to read:

ASSEMBLY BILL AB-458

1 346.65 **(6)** (c) The district attorney of the county where the motor vehicle was
2 seized, or where the owner improperly refused to take the test under s. 343.305 or
3 violated s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or~~ 2., or 3., 940.09 (1) (a), (am), (b),
4 (c), (cm), or (d) or 940.25 (1) (a), (am), (b), (c), (cm), or (d), shall commence an action
5 to forfeit the motor vehicle within 30 days after the motor vehicle is seized. The
6 action shall name the owner of the motor vehicle and all lienholders of record as
7 parties. The forfeiture action shall be commenced by filing a summons, complaint
8 and affidavit of the law enforcement agency with the clerk of circuit court. Upon
9 service of an answer, the action shall be set for hearing within 60 days after the
10 service of the answer. If no answer is served or no issue of law or fact joined and the
11 time for that service or joining of issues has expired, the court may render a default
12 judgment as provided in s. 806.02.

13 **SECTION 58.** 346.65 (6) (d) of the statutes is amended to read:

14 346.65 **(6)** (d) At the hearing set under par. (c), the state has the burden of
15 proving to a reasonable certainty by the greater weight of the credible evidence that
16 the motor vehicle seized under par. (a) 1. is a motor vehicle used in the violation or
17 the improper refusal and owned by a person who committed a violation of s. 346.63
18 (1) (a), (am), or (b) or (2) (a) 1. ~~or~~ 2., or 3., 940.09 (1) (a), (am), (b), (c), (cm), or (d) or
19 940.25 (1) (a), (am), (b), (c), (cm), or (d) and that the person had 2 or more prior
20 convictions, suspensions or revocations, counting convictions under ss. 940.09 (1)
21 and 940.25 in the person's lifetime, plus other convictions, suspensions or
22 revocations counted under s. 343.307 (1). If the state fails to meet the burden of proof
23 required under this paragraph, the motor vehicle shall be returned to the owner upon
24 the payment of storage costs.

25 **SECTION 59.** 350.01 (10v) of the statutes is created to read:

ASSEMBLY BILL AB-458**SECTION 59**

1 350.01 (10v) “Restricted controlled substance” means any of the following:

2 (a) A controlled substance included in schedule I under ch. 961 other than a
3 tetrahydrocannabinol.

4 (b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
5 substance described in par. (a).

6 (c) Cocaine or any of its metabolites.

7 (d) Methamphetamine.

8 (e) Delta-9-tetrahydrocannabinol.

9 **SECTION 60.** 350.101 (1) (bm) of the statutes is created to read:

10 350.101 (1) (bm) *Operating with a restricted controlled substance.* No person
11 may engage in the operation of a snowmobile with a detectable amount of a restricted
12 controlled substance in his or her blood.

13 **SECTION 61.** 350.101 (1) (d) of the statutes is amended to read:

14 350.101 (1) (d) *Related charges.* A person may be charged with and a prosecutor
15 may proceed upon a complaint based upon a violation of par. ~~(a) or (b) or both~~ any
16 combination of par. (a), (b), or (bm) for acts arising out of the same incident or
17 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any
18 combination of par. (a), (b), or (bm), the offenses shall be joined. If the person is found
19 guilty of ~~both pars. (a) and (b)~~ any combination of par. (a), (b), or (bm) for acts arising
20 out of the same incident or occurrence, there shall be a single conviction for purposes
21 of sentencing and for purposes of counting convictions under s. 350.11 (3) (a) 2. and
22 3. Paragraphs (a) ~~and~~, (b), ~~and~~ (bm) each require proof of a fact for conviction which
23 the ~~other does~~ others do not require.

24 **SECTION 62.** 350.101 (1) (e) of the statutes is created to read:

ASSEMBLY BILL AB-458

1 350.101 (1) (e) *Defenses*. In an action under par. (bm) that is based on the
2 defendant allegedly having a detectable amount of methamphetamine,
3 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
4 the defendant has a defense if he or she proves by a preponderance of the evidence
5 that at the time of the incident or occurrence he or she had a valid prescription for
6 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
7 or delta-9-tetrahydrocannabinol.

8 **SECTION 63.** 350.101 (2) (bm) of the statutes is created to read:

9 350.101 (2) (bm) *Causing injury while operating a snowmobile with a*
10 *detectable amount of a restricted controlled substance*. No person who has a
11 detectable amount of a restricted controlled substance in his or her blood may cause
12 injury to another person by the operation of a snowmobile.

13 **SECTION 64.** 350.101 (2) (c) of the statutes is amended to read:

14 350.101 (2) (c) *Related charges*. A person may be charged with and a prosecutor
15 may proceed upon a complaint based upon a violation of par. ~~(a) or (b) or both~~ any
16 combination of par. (a), (b), or (bm) for acts arising out of the same incident or
17 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any
18 combination of par. (a), (b), or (bm) in the complaint, the crimes shall be joined under
19 s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of
20 par. (a), (b), or (bm) for acts arising out of the same incident or occurrence, there shall
21 be a single conviction for purposes of sentencing and for purposes of counting
22 convictions under s. 350.11 (3) (a) 2. and 3. Paragraphs (a) ~~and~~, (b), ~~and~~ (bm) each
23 require proof of a fact for conviction which the ~~other does~~ others do not require.

24 **SECTION 65.** 350.101 (2) (d) of the statutes is renumbered 350.101 (2) (d) 1. and
25 amended to read:

ASSEMBLY BILL AB-458**SECTION 65**

1 350.101 (2) (d) 1. In an action under this subsection, the defendant has a
2 defense if he or she proves by a preponderance of the evidence that the injury would
3 have occurred even if he or she had been exercising due care and he or she had not
4 been under the influence of an intoxicant or did not have an alcohol concentration
5 of 0.1 or more or a detectable amount of a restricted controlled substance in his or her
6 blood.

7 **SECTION 66.** 350.101 (2) (d) 2. of the statutes is created to read:

8 350.101 (2) (d) 2. In an action under par. (bm) that is based on the defendant
9 allegedly having a detectable amount of methamphetamine,
10 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
11 the defendant has a defense if he or she proves by a preponderance of the evidence
12 that at the time of the incident or occurrence he or she had a valid prescription for
13 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
14 or delta-9-tetrahydrocannabinol.

15 **SECTION 67.** 350.104 (4) of the statutes is amended to read:

16 350.104 (4) ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results
17 of a chemical test required or administered under sub. (1), (2) or (3) are admissible
18 in any civil or criminal action or proceeding arising out of the acts committed by a
19 person alleged to have violated the intoxicated snowmobiling law on the issue of
20 whether the person was under the influence of an intoxicant or the issue of whether
21 the person had alcohol concentrations at or above specified levels or a detectable
22 amount of a restricted controlled substance in his or her blood. Results of these
23 chemical tests shall be given the effect required under s. 885.235. This section does
24 not limit the right of a law enforcement officer to obtain evidence by any other lawful
25 means.

ASSEMBLY BILL AB-458

1 **SECTION 68.** 350.11 (3) (a) 1. of the statutes is amended to read:

2 350.11 (3) (a) 1. Except as provided under subs. 2. and 3., a person who violates
3 s. 350.101 (1) (a) ~~or~~, (b), or (bm) or s. 350.104 (5) shall forfeit not less than \$400 nor
4 more than \$550.

5 **SECTION 69.** 350.11 (3) (a) 2. of the statutes is amended to read:

6 350.11 (3) (a) 2. Except as provided under subd. 3., a person who violates s.
7 350.101 (1) (a) ~~or~~, (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest
8 for the current violation, was convicted previously under the intoxicated
9 snowmobiling law or the refusal law shall be fined not less than \$300 nor more than
10 \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

11 **SECTION 70.** 350.11 (3) (a) 3. of the statutes is amended to read:

12 350.11 (3) (a) 3. A person who violates s. 350.101 (1) (a) ~~or~~, (b), or (bm) or 350.104
13 (5) and who, within 5 years prior to the arrest for the current violation, was convicted
14 2 or more times previously under the intoxicated snowmobiling law or refusal law
15 shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not
16 less than 30 days nor more than one year in the county jail.

17 **SECTION 71.** 351.02 (1) (a) 10. of the statutes is amended to read:

18 351.02 (1) (a) 10. Any offense committed by the person under the law of another
19 jurisdiction prohibiting conduct described in sections 6-207, 6-302, 10-102, 10-103,
20 10-104, 11-901, 11-902, 11-907 or 11-908 of the uniform vehicle code and model
21 traffic ordinance (1987), or prohibiting homicide or manslaughter resulting from the
22 operation of a motor vehicle, use of a motor vehicle in the commission of a felony,
23 reckless or careless driving or driving a motor vehicle with willful or wanton
24 disregard for the safety of persons or property, driving or operating a motor vehicle
25 while under the influence of alcohol, a controlled substance, a controlled substance

ASSEMBLY BILL AB-458**SECTION 71**

1 analog or any other drug or a combination thereof as prohibited, driving or operating
2 a motor vehicle while having a detectable amount of a restricted controlled substance
3 in the person's blood, refusal to submit to chemical testing, perjury or the making
4 false statements or affidavits to a governmental agency in connection with the
5 ownership or operation of a motor vehicle, failing to stop and identify oneself as the
6 driver or operator in the event of a motor vehicle accident with a person or an
7 attended motor vehicle or fleeing from or attempting to elude a police, law
8 enforcement or other peace officer, as those or substantially similar terms are used
9 in that jurisdiction's laws.

10 **SECTION 72.** 885.235 (1) (d) of the statutes is created to read:

11 885.235 (1) (d) "Restricted controlled substance" means any of the following:

- 12 1. A controlled substance included in schedule I under ch. 961 other than a
13 tetrahydrocannabinol.
- 14 2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
15 substance described in subd. 1.
- 16 3. Cocaine or any of its metabolites.
- 17 4. Methamphetamine.
- 18 5. Delta-9-tetrahydrocannabinol.

19 **SECTION 73.** 885.235 (1k) of the statutes is created to read:

20 885.235 (1k) In any action or proceeding in which it is material to prove that
21 a person had a detectable amount of a restricted controlled substance in his or her
22 blood while operating or driving a motor vehicle or, if the vehicle is a commercial
23 motor vehicle, on duty time, while operating a motorboat, except a sailboat operating
24 under sail alone, while operating a snowmobile, while operating an all-terrain
25 vehicle, or while handling a firearm, if a chemical analysis of a sample of the person's

ASSEMBLY BILL AB-458

1 blood shows that the person had a detectable amount of a restricted controlled
2 substance in his or her blood, the court shall treat the analysis as prima facie
3 evidence on the issue of the person having a detectable amount of a restricted
4 controlled substance in his or her blood without requiring any expert testimony as
5 to its effect.

6 **SECTION 74.** 885.235 (4) of the statutes is amended to read:

7 885.235 (4) The provisions of this section relating to the admissibility of
8 chemical tests for alcohol concentration or intoxication or for determining whether
9 a person had a detectable amount of a restricted controlled substance in his or her
10 blood shall not be construed as limiting the introduction of any other competent
11 evidence bearing on the question of whether or not a person was under the influence
12 of an intoxicant, had a detectable amount of a restricted controlled substance in his
13 or her blood, had a specified alcohol concentration, or had an alcohol concentration
14 in the range specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101
15 (1) (c).

16 **SECTION 75.** 939.22 (33) of the statutes is created to read:

17 939.22 (33) “Restricted controlled substance” means any of the following:

18 (a) A controlled substance included in schedule I under ch. 961 other than a
19 tetrahydrocannabinol.

20 (b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
21 substance described in par. (a).

22 (c) Cocaine or any of its metabolites.

23 (d) Methamphetamine.

24 (e) Delta-9-tetrahydrocannabinol.

ASSEMBLY BILL AB-458**SECTION 76**

1 **SECTION 76.** 939.75 (1) of the statutes, as affected by 2001 Wisconsin Act 109,
2 is amended to read:

3 **939.75 (1)** In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02
4 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm),
5 and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to
6 (e), “unborn child” means any individual of the human species from fertilization until
7 birth that is gestating inside a woman.

8 **SECTION 77.** 939.75 (2) (b) of the statutes is amended to read:

9 **939.75 (2) (b)** Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06
10 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195,
11 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the
12 following:

13 **SECTION 78.** 939.75 (3) (intro.) of the statutes is amended to read:

14 **939.75 (3) (intro.)** When the existence of an exception under sub. (2) has been
15 placed in issue by the trial evidence, the state must prove beyond a reasonable doubt
16 that the facts constituting the exception do not exist in order to sustain a finding of
17 guilt under s. 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09
18 (1) (c) to (e) or (1g) (c), (cm), or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24
19 (2) or 940.25 (1) (c) to (e).

20 **SECTION 79.** 940.09 (1) (am) of the statutes is created to read:

21 **940.09 (1) (am)** Causes the death of another by the operation or handling of a
22 vehicle while the person has a detectable amount of a restricted controlled substance
23 in his or her blood.

24 **SECTION 80.** 940.09 (1) (cm) of the statutes is created to read:

ASSEMBLY BILL AB-458

1 940.09 (1) (cm) Causes the death of an unborn child by the operation or
2 handling of a vehicle while the person has a detectable amount of a restricted
3 controlled substance in his or her blood.

4 **SECTION 81.** 940.09 (1d) (a) 1. of the statutes is amended to read:

5 940.09 (1d) (a) 1. Except as provided in subd. 2., if the person who committed
6 an offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more prior convictions,
7 suspensions, or revocations, counting convictions under sub. (1) and s. 940.25 in the
8 person's lifetime, plus other convictions, suspensions, or revocations counted under
9 s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court enters an
10 order regarding operating privilege restriction or enters an order regarding
11 immobilization.

12 **SECTION 82.** 940.09 (1d) (a) 2. of the statutes is amended to read:

13 940.09 (1d) (a) 2. Notwithstanding par. (b), if the person who committed an
14 offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more convictions,
15 suspensions, or revocations counted under s. 343.307 (1) within any 5-year period,
16 the procedure under s. 343.301 shall be followed if the court enters an order
17 regarding operating privilege restriction and the installation of an ignition interlock
18 device or enters an order regarding immobilization.

19 **SECTION 83.** 940.09 (1d) (b) of the statutes is amended to read:

20 940.09 (1d) (b) If the person who committed an offense under sub. (1) (a), (am),
21 (b), (c), (cm), or (d) has 2 or more prior convictions, suspensions, or revocations,
22 counting convictions under sub. (1) and s. 940.25 in the person's lifetime, plus other
23 convictions, suspensions, or revocations counted under s. 343.307 (1), the procedure
24 under s. 346.65 (6) shall be followed if the court orders the seizure and forfeiture of
25 the motor vehicle owned by the person and used in the violation.

ASSEMBLY BILL AB-458**SECTION 84**

1 **SECTION 84.** 940.09 (1g) (am) of the statutes is created to read:

2 940.09 **(1g)** (am) Causes the death of another by the operation or handling of
3 a firearm or airgun while the person has a detectable amount of a restricted
4 controlled substance in his or her blood.

5 **SECTION 85.** 940.09 (1g) (cm) of the statutes is created to read:

6 940.09 **(1g)** (cm) Causes the death of an unborn child by the operation or
7 handling of a firearm or airgun while the person has a detectable amount of a
8 restricted controlled substance in his or her blood.

9 **SECTION 86.** 940.09 (1m) of the statutes is renumbered 940.09 (1m) (a) and
10 amended to read:

11 940.09 **(1m)** (a) A person may be charged with and a prosecutor may proceed
12 upon an information based upon a violation of any combination of sub. (1) (a), (am),
13 or (b) or both; any combination of sub. (1) (a), (am), or (bm) or both; any combination
14 of sub. (1) (c), (cm), or (d) or both; any combination of sub. (1) (c), (cm), or (e) or both;
15 any combination of sub. (1g) (a), (am), or (b) or both or; any combination of sub. (1g)
16 (c), (cm), or (d) or both for acts arising out of the same incident or occurrence.

17 **(b)** If the a person is charged with violating both sub. (1) (a) and (b), both sub.
18 (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a)
19 and (b) or both sub. (1g) (c) and (d) in the an information with any of the combinations
20 of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the
21 person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub.
22 (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c)
23 and (d) more than one of the crimes so charged for acts arising out of the same
24 incident or occurrence, there shall be a single conviction for purposes of sentencing
25 and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s.

ASSEMBLY BILL AB-458

1 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3.
2 Subsection (1) (a), ~~(am)~~, (b), (bm), (c), ~~(cm)~~, (d), and (e), ~~and sub. (1g) (a), (b), (c) and~~
3 ~~(d)~~, each require proof of a fact for conviction which the ~~other does~~ others do not
4 require, and sub. (1g) (a), (am), (b), (c), (cm), and (d) each require proof of a fact for
5 conviction which the others do not require.

6 **SECTION 87.** 940.09 (2) of the statutes is renumbered 940.09 (2) (a) and
7 amended to read:

8 940.09 (2) (a) ~~The~~ In any action under this section, the defendant has a defense
9 if he or she proves by a preponderance of the evidence that the death would have
10 occurred even if he or she had been exercising due care and he or she had not been
11 under the influence of an intoxicant, did not have a detectable amount of a restricted
12 controlled substance in his or her blood, or did not have an alcohol concentration
13 described under sub. (1) (b), (bm), (d) or (e) or (1g) (b) or (d).

14 **SECTION 88.** 940.09 (2) (b) of the statutes is created to read:

15 940.09 (2) (b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm) that
16 is based on the defendant allegedly having a detectable amount of
17 methamphetamine or gamma-hydroxybutyric acid or
18 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
19 or she proves by a preponderance of the evidence that at the time of the incident or
20 occurrence he or she had a valid prescription for methamphetamine or one of its
21 metabolic precursors or gamma-hydroxybutyric acid or
22 delta-9-tetrahydrocannabinol.

23 **SECTION 89.** 940.25 (1) (am) of the statutes is created to read:

ASSEMBLY BILL AB-458**SECTION 89**

1 940.25 (1) (am) Causes great bodily harm to another human being by the
2 operation of a vehicle while the person has a detectable amount of a restricted
3 controlled substance in his or her blood.

4 **SECTION 90.** 940.25 (1) (cm) of the statutes is created to read:

5 940.25 (1) (cm) Causes great bodily harm to an unborn child by the operation
6 of a vehicle while the person has a detectable amount of a restricted controlled
7 substance in his or her blood.

8 **SECTION 91.** 940.25 (1d) (a) 1. of the statutes is amended to read:

9 940.25 (1d) (a) 1. Except as provided in subd. 2., if the person who committed
10 an offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more prior convictions,
11 suspensions, or revocations, counting convictions under sub. (1) and s. 940.09 (1) in
12 the person's lifetime, plus other convictions, suspensions, or revocations counted
13 under s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court
14 enters an order regarding operating privilege restriction or enters an order
15 regarding immobilization.

16 **SECTION 92.** 940.25 (1d) (a) 2. of the statutes is amended to read:

17 940.25 (1d) (a) 2. Notwithstanding par. (b), if the person who committed an
18 offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more convictions,
19 suspensions, or revocations counted under s. 343.307 (1) within any 5-year period,
20 the procedure under s. 343.301 shall be followed if the court enters an order
21 regarding operating privilege restriction and the installation of an ignition interlock
22 device or enters an order regarding immobilization.

23 **SECTION 93.** 940.25 (1d) (b) of the statutes is amended to read:

24 940.25 (1d) (b) If the person who committed an offense under sub. (1) (a), (am),
25 (b), (c), (cm), or (d) has 2 or more prior convictions, suspensions, or revocations,

ASSEMBLY BILL AB-458

1 counting convictions under sub. (1) and s. 940.09 (1) in the person's lifetime, plus
2 other convictions, suspensions, or revocations counted under s. 343.307 (1), the
3 procedure under s. 346.65 (6) shall be followed if the court orders the seizure and
4 forfeiture of the motor vehicle owned by the person and used in the violation.

5 **SECTION 94.** 940.25 (1m) of the statutes is renumbered 940.25 (1m) (a) and
6 amended to read:

7 940.25 **(1m)** (a) A person may be charged with and a prosecutor may proceed
8 upon an information based upon a violation of any combination of sub. (1) (a), (am),
9 or (b) or both; any any combination of sub. (1) (a), (am), or (bm) or both; any
10 combination of sub. (1) (c), (cm), or (d) or both; any combination of or sub. (1) (c), (cm),
11 or (e) or both for acts arising out of the same incident or occurrence.

12 (b) If the a person is charged with violating both sub. (1) (a) and (b), both sub.
13 (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) in the an
14 information with any of the combinations of crimes referred to in par. (a), the crimes
15 shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and
16 (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) more
17 than one of the crimes so charged for acts arising out of the same incident or
18 occurrence, there shall be a single conviction for purposes of sentencing and for
19 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)
20 (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3.
21 Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for
22 conviction which the other does others do not require.

23 **SECTION 95.** 940.25 (2) of the statutes is renumbered 940.25 (2) (a) and
24 amended to read:

ASSEMBLY BILL AB-458**SECTION 95**

1 940.25 (2) (a) The defendant has a defense if he or she proves by a
2 preponderance of the evidence that the great bodily harm would have occurred even
3 if he or she had been exercising due care and he or she had not been under the
4 influence of an intoxicant, did not have a detectable amount of a restricted controlled
5 substance in his or her blood, or did not have an alcohol concentration described
6 under sub. (1) (b), (bm), (d) or (e).

7 **SECTION 96.** 940.25 (2) (b) of the statutes is created to read:

8 940.25 (2) (b) In any action under this section that is based on the defendant
9 allegedly having a detectable amount of methamphetamine,
10 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
11 the defendant has a defense if he or she proves by a preponderance of the evidence
12 that at the time of the incident or occurrence he or she had a valid prescription for
13 methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid,
14 or delta-9-tetrahydrocannabinol.

15 **SECTION 97.** 941.20 (1) (bm) of the statutes is created to read:

16 941.20 (1) (bm) Operates or goes armed with a firearm while he or she has a
17 detectable amount of a restricted controlled substance in his or her blood. A
18 defendant has a defense to any action under this paragraph that is based on the
19 defendant allegedly having a detectable amount of methamphetamine,
20 gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol in his or her blood,
21 if he or she proves by a preponderance of the evidence that at the time of the incident
22 or occurrence he or she had a valid prescription for methamphetamine or one of its
23 metabolic precursors, gamma-hydroxybutyric acid, or
24 delta-9-tetrahydrocannabinol.

25 **SECTION 98.** 949.08 (2) (e) of the statutes is amended to read:

ASSEMBLY BILL AB-458

1 949.08 (2) (e) Is an adult passenger in the offender's vehicle and, the crime
2 involved is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender
3 was ~~under the influence of an intoxicant, a controlled substance, a controlled~~
4 ~~substance analog or any combination of an intoxicant, controlled substance and~~
5 ~~controlled substance analog, or had a prohibited alcohol concentration, as defined in~~
6 ~~s. 340.01 (46m) committing that offense.~~ This paragraph does not apply if the victim
7 is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

8 **SECTION 99.** 949.08 (2) (em) of the statutes is amended to read:

9 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
10 vehicle and, the crime involved is specified in s. 346.63 (6) or 940.25, and the
11 passenger knew the offender was ~~under the influence of an intoxicant, a controlled~~
12 ~~substance, a controlled substance analog or any combination of an intoxicant,~~
13 ~~controlled substance and controlled substance analog, or had an alcohol~~
14 ~~concentration of 0.04 or more but less than 0.1 committing that offense.~~ This
15 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
16 940.305, 940.31 or 948.30.

17 **SECTION 100.** 967.055 (1) (a) of the statutes is amended to read:

18 967.055 (1) (a) The legislature intends to encourage the vigorous prosecution
19 of offenses concerning the operation of motor vehicles by persons under the influence
20 of an intoxicant, a controlled substance, a controlled substance analog or any
21 combination of an intoxicant, controlled substance and controlled substance analog,
22 under the influence of any other drug to a degree which renders him or her incapable
23 of safely driving, or under the combined influence of an intoxicant and any other drug
24 to a degree which renders him or her incapable of safely driving or having a
25 prohibited alcohol concentration, as defined in s. 340.01 (46m), ~~or offenses~~

ASSEMBLY BILL AB-458**SECTION 100**

1 concerning the operation of motor vehicles by persons with a detectable amount of
2 a restricted controlled substance in his or her blood, and offenses concerning the
3 operation of commercial motor vehicles by persons with an alcohol concentration of
4 0.04 or more.

5 **SECTION 101.** 967.055 (1m) of the statutes is renumbered 967.055 (1m) (intro.)
6 and amended to read:

7 967.055 **(1m)** ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, “**drug**”:

8 (a) “Drug” has the meaning specified in s. 450.01 (10).

9 **SECTION 102.** 967.055 (1m) (b) of the statutes is created to read:

10 967.055 **(1m)** (b) “Restricted controlled substance” means any of the following:

11 1. A controlled substance included in schedule I under ch. 961 other than a
12 tetrahydrocannabinol.

13 2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
14 substance described in subd. 1.

15 3. Cocaine or any of its metabolites.

16 4. Methamphetamine.

17 5. Delta-9-tetrahydrocannabinol.

18 **SECTION 103.** 967.055 (2) (a) of the statutes is amended to read:

19 967.055 **(2)** (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
20 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity
21 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the
22 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply
23 to the court. The application shall state the reasons for the proposed amendment or
24 dismissal. The court may approve the application only if the court finds that the
25 proposed amendment or dismissal is consistent with the public’s interest in deterring

ASSEMBLY BILL AB-458

1 the operation of motor vehicles by persons who are under the influence of an
2 intoxicant, a controlled substance, a controlled substance analog or any combination
3 of an intoxicant, controlled substance and controlled substance analog, under the
4 influence of any other drug to a degree which renders him or her incapable of safely
5 driving, or under the combined influence of an intoxicant and any other drug to a
6 degree which renders him or her incapable of safely driving, in deterring the
7 operation of motor vehicles by persons with a detectable amount of a restricted
8 controlled substance in his or her blood, or in deterring the operation of commercial
9 motor vehicles by persons with an alcohol concentration of 0.04 or more. The court
10 may not approve an application to amend the vehicle classification from a
11 commercial motor vehicle to a noncommercial motor vehicle unless there is evidence
12 in the record that the motor vehicle being operated by the defendant at the time of
13 his or her arrest was not a commercial motor vehicle.

SECTION 104. Initial applicability.

14
15 (1) This act first applies to offenses committed and refusals occurring on the
16 effective date of this subsection but does not preclude the counting of other
17 convictions, suspensions, or revocations as prior convictions, suspensions, or
18 revocations for purposes of administrative action by the department of
19 transportation, sentencing by a court, or revocation or suspension of motor vehicle
20 operating privileges.

21 (END)