

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

03-0465/P1dn  
PJH&MGD:jld:pg

January 9, 2003

Rep. Gundrum:

This draft does not treat the statutes that address operating an all-terrain vehicle, a boat, or a snowmobile while intoxicated. Please let me know if you want to address these.

Please also note that we did treat s. 343.305 (7) (a), which currently requires a police officer to seize a person's driver's license and DOT to suspend administratively the person's driver's license for 6 months if a chemical test indicates that a person has a prohibited alcohol concentration. In this draft, the same treatment will be given to someone who tests positive for a controlled substance or a controlled substance analog. However, we are not sure if this comports with your request, as there is no opportunity to proffer the affirmative defense that the controlled substance is a prescribed medication. Please review and let us know how you wish to address this issue.

In a similar vein, we treated ss. 343.305 (8) (b) 2. bm. and d., which under current law limits a DOT review of an administrative suspension to deciding, among other things, whether tests revealed that the person had a prohibited alcohol concentration. In this draft, DOT may also review whether the tests revealed the presence of a controlled substance or a controlled substance analog, but may not review whether the person has an affirmative defense. Let us know if you want this changed.

Finally, the last sentence of current s. 940.09 (1m) appears to contain a error. It probably should read: "Subsection (1) (a), (b), (bm), (c), (d) and (e) each require proof of a fact for conviction which the other does not require, and sub. (1g) (a), (b), (c) and (d) each require proof of a fact for conviction which the other does not require." Another alternative would be to amend the provision to delete that language altogether (which you could also probably do with s. 346.63 (1) (c) and (2) (am)). But because of your interest in getting this draft quickly, we have not yet researched the history of this language, which we would want to do before making either of those changes.

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