

2003 DRAFTING REQUEST

Bill

Received: 10/15/2002

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Mark Gundrum (608) 267-5158

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - alcohol level**
Criminal Law - drugs
Criminal Law - guns and weapons
Criminal Law - homicide

Extra Copies: **tnf**
arg

Submit via email: YES

Requester's email: **Rep.Gundrum@legis.state.wi.us**

Carbon copy (CC:) to: **Jolene.Churchill@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Driving or going armed while using controlled substances

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan	jdyer		_____			
	11/12/2002	01/08/2003		_____			
	midsida	jdyer		_____			
	12/03/2002	01/09/2003		_____			
	phurley			_____			

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		jdyer 05/23/2003		_____			
/P5	phurley 05/30/2003	jdyer 06/02/2003	jfrantze 06/02/2003	_____	sbasford 06/03/2003		S&L Crime
	mdsida 06/03/2003	jdyer 06/02/2003		_____			
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/3	mdsida 07/31/2003	wjackson 07/31/2003	jfrantze 08/01/2003	_____	sbasford 08/01/2003	sbasford 08/01/2003	

FE Sent For:

AA Intro.

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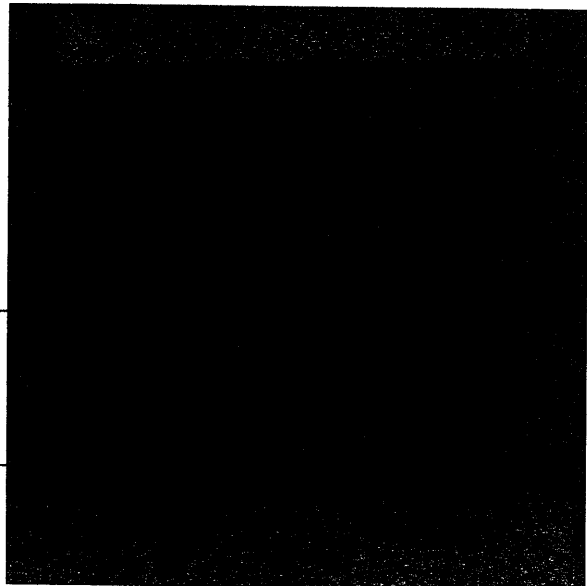
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1/2 2/11 jld

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Topic:

Homicide or great bodily injury by intoxicated use of a vehicle; controlled substances

Instructions:

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		10/15 jld	10/15 P8	10/15 <END> PS/Ch			

FE Sent For:

10/15/02

0465

P/c Gundrum

Amend def. of "Under the influence of an intoxicant" under 39.22(44)
remove requirements of "material impairment"

instead cover anyone who has any amount of controlled substance in his/her body - but allow an affirmative defense - that if not materially impaired are not guilty for ex. if had a joint 2 weeks prior - pot may still be in system, but person isn't materially impaired

I will look at caselaw on how "materially impaired" construed in practice

wants in 2 weeks

relevant

for use in Homicide by intox. use of a vehicle 940.09

& 940.25 Injury by intox. use of a vehicle

Dsida, Michael

From: Churchill, Jolene
Sent: Monday, November 18, 2002 3:34 PM
To: Dsida, Michael; Kennedy, Debora
Subject: FW: Rep. Gundrum: Homicide by intoxicated use of a vehicle

Importance: High

Dear Mike and Debora,

Could you tell me which of you will take over drafting of the bill below that Robin Ryan was helping us with? Thanks! - Jolene Churchil 267-5158

-----Original Message-----

From: Churchill, Jolene
Sent: Monday, November 18, 2002 3:32 PM
To: Ryan, Robin
Subject: Rep. Gundrum: Homicide by intoxicated use of a vehicle

Dear Robin,

Since we received the out-of-office message, I just wanted to make sure you received Rep. Gundrum's message below. Take care! - Jolene

-----Original Message-----

From: Gundrum, Mark
Sent: Friday, November 15, 2002 3:47 PM
To: Ryan, Robin
Subject: RE: Homicide by intoxicated use of a vehicle

I was not looking for it to say any level of "**alcohol or controlled substance** in his or her system," *just* any level of "**controlled substance** in his or her system." The level for alcohol should remain at .10 (or .08 if changed to that in the upcoming legislature) -- and that would be the standard for alcohol, while the standard for illegal drugs would be *any level* in the system. Essentially I am looking to declare that operating the vehicle with any amount of illegal substance in a person's system is per se negligent, but allow for the opportunity for a defendant to argue that the death would have occurred even if the defendant had not had any amount of controlled substance in his/her system.

I don't want to mess with the alcohol issue, I just want to address the controlled substance issue. I believe the alcohol-related portion of the statute is working fine as it is; it's the illegal drug part that seems to be a problem. Thanks.

-----Original Message-----

From: Ryan, Robin
Sent: Thursday, October 24, 2002 2:14 PM
To: Gundrum, Mark
Subject: Homicide by intoxicated use of a vehicle

Representative Gundrum,

This e-mail relates to your request to eliminate the requirement of "material impairment" from the definition of "under the influence of an intoxicant" in s. 939.22 (42).

It is possible that eliminating the requirement from s. 939.22 (42) that a person be "materially impaired" and instead just requiring the state to show that the person have any level of alcohol or controlled substance in his or her system may render the crime of homicide by intoxicated use of a vehicle more difficult to prosecute in cases involving alcohol, because the change may raise due process issues. 940.09 has been challenged several times as violating due process because the crime does not require the state to prove a causal connection between the defendant's intoxication and the victim's death. (There is an affirmative defense under which the defendant may avoid criminal liability by proving that the death would have occurred even if the defendant had not been under the influence of an intoxicant, but the persons challenging 940.09 have argued that the state should have the burden of proving causality instead of requiring the defendant to disprove causality.) The courts have upheld 940.09 against the due process challenges.

The courts have determined that the elements of 940.09 are:

1. that the defendant causes the death of another
2. by operation of a vehicle
3. while under the influence of an intoxicant

The crime requires the state to prove a causal connection between the defendant's operation of a vehicle and the death, but does not require the state to prove a causal connection between the defendant's intoxication and the death. The courts have found that there is no due process violation because operating a vehicle while intoxicated is per se negligent. Relevant cases include: *Caibaosai v. Barrington*, 643 F. Supp. 1007 (1986); *State v. Caibaosai*, 122 Wis. 2d 587 (1985); and *State v. Lechner*, 217 Wis. 2d 392 (1998).

If the terms of the crime are changed so the prosecution only need prove that driver had some amount of alcohol in his or her system, but not that he or she was materially impaired, a person who has a 0.01 blood alcohol level would be covered by the crime. Since driving with a 0.01 alcohol level is not illegal and a person at 0.01 is most likely not intoxicated, the courts probably would not find that driving with a 0.01 blood alcohol level is per se negligent, and therefore 940.09 might be found to violate due process unless the state proves a causal connection between the driver's blood alcohol level and the victim's death. Therefore amending s. 939.22 (42) may actually make it harder to obtain convictions because it might require adding an element that the state must prove.

I have researched Wisconsin case law for clarification on how "materially impaired" as used in the definition of "under the influence of an intoxicant" in s. 939.22 (42) is proven in practice. I have not found any discussion of what a prosecutor must show to prove material impairment. This may be an indication that proof of material impairment has not been a contentious issue, at least with respect to alcohol cases. I imagine that in cases involving alcohol, prosecutors rely on the statutorily defined prohibited alcohol concentration to show material impairment. Certainly the issue of proof is different in cases involving controlled substances because there is no analogy to the prohibited alcohol concentration.

It sounds like you are more interested in addressing cases involving controlled substances than cases involving alcohol. Perhaps it would be better to separate the two, and draft a bill that just addresses controlled substances.

Please let me know if you want to change directions on this request or if you have any questions regarding this e-mail. I am at 261-6927.

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Tougher drugged driving laws urged

Family mourns boy killed in crash as study advocates changes

By LISA SINK and JESSICA HANSEN
lsink@journal sentinel.com

Last Updated: Nov. 15, 2002

A call for Wisconsin and other states to beef up their laws to allow for more harsh prosecution of drugged drivers hit home Thursday as a Glendale couple grieved for their 10-year-old son, killed when the family car was read-ended by a suspected drug-impaired driver in Illinois.

Asad Ali's family had pulled over about 8 p.m. Wednesday on the Tri-State Tollway in Deerfield because the boy was sick, said Master Sgt. Emmet Clifton of the Illinois State Police Department.

The boy's parents, Mohammad and Samina Ali, were standing outside their 1994 Mercedes-Benz, and Asad was leaning out of an open car door vomiting, when they were struck from behind by a 1987 Plymouth Reliant.

The boy was later pronounced dead at an area hospital.

A 40-year-old man, the Reliant driver, was still hospitalized Thursday.

Clifton said cocaine was just one of the illegal substances found in the Zion, Ill.,

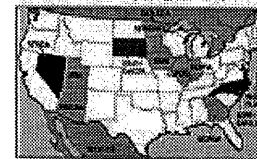
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Driving

DRUG IMPAIRMENT LEVELS
Most states have set a blood alcohol limit of 0.08 percent. Some states have a lower limit of 0.05 percent. Some states have a higher limit of 0.10 percent. Some states have a higher limit of 0.15 percent. Some states have a higher limit of 0.20 percent.



DRUG IMPAIRMENT LEVELS

It is illegal to drive a motor vehicle with a blood alcohol concentration (BAC) of 0.08 percent or higher in most states. Some states have a lower limit of 0.05 percent, and some states have a higher limit of 0.10 percent or higher.

State	BAC Limit
Alabama	0.08
Alaska	0.08
Arizona	0.08
Arkansas	0.08
California	0.08
Colorado	0.05
Connecticut	0.08
Delaware	0.08
District of Columbia	0.08
Florida	0.08
Georgia	0.08
Hawaii	0.08
Idaho	0.05
Illinois	0.08
Indiana	0.08
Iowa	0.08
Kansas	0.08
Kentucky	0.08
Louisiana	0.08
Maine	0.08
Maryland	0.08
Massachusetts	0.08
Michigan	0.08
Minnesota	0.08
Mississippi	0.08
Missouri	0.08
Montana	0.08
Nebraska	0.08
Nevada	0.08
New Hampshire	0.08
New Jersey	0.08
New Mexico	0.08
New York	0.08
North Carolina	0.08
North Dakota	0.08
Ohio	0.08
Oklahoma	0.08
Oregon	0.08
Rhode Island	0.08
South Carolina	0.08
South Dakota	0.08
Tennessee	0.08
Texas	0.08
Utah	0.05
Vermont	0.08
Virginia	0.08
Washington	0.08
West Virginia	0.08
Wisconsin	0.08
Wyoming	0.08

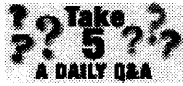
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Drug Impairment Levels

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man's blood.

in Wisconsin



The man could face several charges, including reckless homicide, Clifton said.

News of the boy's death came on the same day a national organization said Wisconsin and most states have laws that are woefully inadequate in prosecuting drugged drivers. The groups said the state should pass legislation that would bar people from driving with any amount of illicit drugs in their systems.

About 9 million Americans have driven within two hours of using marijuana or cocaine, according to a study by The Walsh Group and the American Bar Association that was released Thursday.

But only eight states - not including Wisconsin - have zero-tolerance laws when it comes to drugged driving.

That could change.

Drugged driving bill

State Rep. Mark Gundrum (R-New Berlin) is drafting a bill that he says would beef up Wisconsin's laws and allow prosecutors to deal more harshly with those who drive while on drugs, much like the law now allows for drunken drivers.

Dubbed the "Baby Luke" bill in memory of the newborn son a Waukesha woman lost when a cocaine-addled driver plowed into her car, Gundrum's bill would shift the burden from the prosecution to the defense that illegal drugs in a driver's system did not cause impairment.

Gundrum said he was surprised to learn recently that there is a big discrepancy in the way prosecutors are able to charge drugged drivers, compared with drunken drivers, in fatal crashes.

Lawmakers have made homicide by drunken driving a felony carrying up to 40 years in prison upon conviction. But drugged driving fatal crashes often end up charged as homicide by negligent driving, which has a maximum two-year prison term.

That's because prosecutors and toxicologists have no scientific standard to prove how much marijuana, cocaine or other illegal drug causes a driver to become impaired.

For adult drunken drivers, all a prosecutor has to show is that their blood-alcohol level exceeded the state's 0.10 limit.

But experts say that it would be difficult, if not impossible, to set such

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levels for other drugs because they affect people differently. Only Nevada has set such standards.

"The conclusion of the scientific community is that it's virtually impossible to set a level of a drug that would be indicative of impairment," said Michael Walsh, lead author of the study.

"So that's why the states have basically taken the legal strategy of per se laws," where it is illegal to have any amount of illicit drugs regardless of impairment, Walsh said.

Prosecutors support change

Gundrum and two area prosecutors said that concept was long overdue in Wisconsin.

"I've said before that I think it's ridiculous that we don't have that," Waukesha County District Attorney Paul Bucher said. "Why in God's name would we let someone drive a motor vehicle after ingesting any illegal drugs?"

Milwaukee County District Attorney E. Michael McCann said he, too, supports a per se law.

"I'm very much in favor of it," McCann said.

"Either to set a standard or to set an absolute prohibition - that if you have any marijuana or cocaine or crack or heroin or Ecstasy, you cannot drive," McCann said.

"The penalties should be equivalent to drunk driving."

Robert Jones, a neighbor and friend of the Alis', said he talked with Mohammad Ali on Thursday before Ali and his family left to stay with relatives in Racine.

"He didn't know that I knew. He came over to tell us what happened," Jones said. "We hugged. We cried."

Jones remembered Asad, a fourth-grader at Stormouth School in Fox Point, as his "little buddy." He had gotten to know the boy because his 9-year-old daughter, Leah, played with both Ali children.

"He had something about him," he said. "He was a good little boy, very friendly, very talkative. I just fixed his scooter for him, and he thanked me every time he saw me.

"The last time I saw him was Wednesday morning," Jones added tearfully, "and he thanked me then. That was our last goodbye. I'm going to miss him deeply."

A prayer service was scheduled for 2 p.m. today at Wisconsin Memorial Park Family Center, 12875 W. Capitol Drive, Brookfield.

'Better justice for victims'

In arguing for a stricter law, McCann and Gundrum cited the case of Michelle Logemann, a Waukesha woman who was 30 weeks pregnant when Paul D. Wilson, who had ingested cocaine, ran a red light and rear-ended Logemann's car Dec. 11 in Milwaukee.

Her son Luke was delivered prematurely, and Logemann said Thursday that Luke was able to grasp the hands of her husband before dying in his arms 12 hours later.

McCann said that even though Wilson had enough cocaine in his system to make forensic toxicologists believe he was impaired, they could not prove it scientifically.

"No one would testify that it influenced his driving. Everyone believed it did . . . but they couldn't give an opinion under a reasonable degree of scientific certainty," he said.

So prosecutors offered Wilson a deal in which he pleaded no contest to homicide by negligent use of a vehicle and was sentenced to the maximum two-year prison term. He also must serve another 20 months for his reckless driving causing injury conviction for Michelle Logemann's injuries.

But Logemann said that he should have faced the same 40-year maximum penalty that convicted drunken drivers who cause deaths face.

"This guy got off with a slap. . . . That's just not right," she said.

"I don't know if it would curb the use of drugs," Logemann said of stiffer penalties. "But it would provide better justice for victims."

Gundrum said his bill, which is still being researched, would target only drivers involved in crashes, not those stopped for erratic driving.

A version of this story appeared in the Milwaukee Journal Sentinel on Nov. 15, 2002.

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Dsida, Michael

From: Dsida, Michael
Sent: Wednesday, November 20, 2002 9:01 AM
To: Rep.Gundrum
Subject: "Under the influence of an intoxicant" draft

Based on Robin's notes, it looks like you only want to cover operation of a vehicle, so unless I hear otherwise from you, I will not affect other provisions in the criminal code that use the "under the influence" term, such as ss. 940.09(1g) and 941.20(1)(b) (use of a firearm while intoxicated).

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

11/20
plc to Rep. Gundrum

No -
Cover guns too.

Dsida, Michael

From: Dsida, Michael
Sent: Thursday, November 21, 2002 12:01 PM
To: Rep.Gundrum
Subject: Drugged driving draft

I just talked to Peggy Hurley in our office about this draft. She is not aware of any state that has zero tolerance laws for controlled substances, but if it's okay with you I am going to talk to someone at NCSL to verify that. (Through an internet search, I only found such prohibitions in Germany and Sweden.)

Peggy also noted that the defendant's Fifth Amendment rights may be implicated if the burden is on the defendant to prove that he or she was not impaired once the state proves the presence of a controlled substance. Of course, if there is no affirmative defense (i.e., if you prohibit driving with any controlled substance present, regardless of whether the person was impaired), there should not be any Fifth Amendment issue.

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Dsida, Michael
Sent: Wednesday, November 20, 2002 4:21 PM
To: Rep.Gundrum
Subject: additional questions

How do you want to handle prescription medications (some of which are controlled substances)? Do you only want the new provision to apply if the person was taking the medication as prescribed? Would the state have the burden to prove that the person did not take it as prescribed?

Also, the current definition (s. 939.22 (42)) covers a person whose ability to drive is impaired because of his or her use of a drug other than a controlled substance (either alone or in combination with alcohol). How do you want to handle that part of the definition?

(These questions apply even if you decide to have the narrowest version of this bill.)

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Dsida, Michael

From: Gundrum, Mark
Sent: Monday, November 25, 2002 9:18 PM
To: Dsida, Michael; Ryan, Robin
Subject: FW: Nevada Law on Drugged Driving

1) Besides Nevada, there are several other states that have passed drugged driving laws like the one I am contemplating for WI. There was an article in the Milwaukee Journal Sentinel within the last two weeks (around 10 days ago or so) that discussed what the feds are trying to do in this regard and it mentions that a half dozen or more states have such laws. Could you please track down which states have these laws and see how others have handled the issue of creating a rebuttable presumption that says a drive is intoxicated for purposes of the related laws unless the defendant can prove that he/she was not substantially impaired by the drug at the time of the accident. I believe we have similar instances in our laws/statutes where we do things like this -- either in the drunk driving context or underage drinking or something like that (there might be a rebuttal presumption for servers of alcohol who serve to a minor, but are able to prove that they were duped by the minor using a fake ID or something like that) or perhaps in other situations. I would like as thorough of an analysis as possible on the issue of whether or not we are going to have constitutional problems. Please cite to specific case law and statutes, so I can fairly determine what the likelihood is that this would be upheld or struck down in court. It seems a bit absurd that we could make it flat out intoxication if any trace of illegal drug is found in a person's system and hold them to the much stiffer crime, but we couldn't do the same thing, but allow defs. an opportunity to save themselves by proving they had only smoked marijuana three weeks earlier and had an expert testify that that was consistent with the amount found in the person's system after the accident and that it would have absolutely no effect on a person's ability to drive three weeks after the fact.

2) Also, aren't there certain legal foods like poppy seed muffins for example that could produce a positive reading for marijuana in a person's system. If that is the case, I would definitely think that's another reason why we would want to allow a rebuttable presumption option in this law.

3) Is it illegal for a person to use a drug which is legal with a prescription if they do not have a prescription for the drug? Are such drugs considered to be controlled substances and would they be covered under this law -- i.e. if a person was pulled over for erratic driving and tested positive for a drug like Oxycontin (which I believe is legal with a prescription), but the person did not have a prescription but had it in their system unlawfully, would that person be presumed to be intoxicated under this new legislation WHILE the same person would NOT be presumed to be intoxicated under the new legislation if they in fact DID have a prescription for the drug they had in their system at the time they were tested after an accident or erratic driving, etc.?

Thanks.

Mark

-----Original Message-----

From: Boyle@co.walworth.wi.us [mailto:Boyle@co.walworth.wi.us]
Sent: Friday, November 22, 2002 4:19 PM
To: Gundrum, Mark
Subject: Nevada Law on Drugged Driving

Hi Mark,

I was at a meeting yesterday at which someone stated you were considering introducing an improved law prohibiting drugged driving. Thought you might find this interesting. Good luck with that and prosecutors are behind you!

Happy Thanksgiving!

>November 21, 2002

>
>Supreme Court Upholds Nevada's Law on Drugged Driving

>
>The U.S. Supreme Court declined to review a case brought by a former Las Vegas, Nev., topless dancer, who claimed that the state's driving under the influence of drugs law was unconstitutional, the Associated Press reported Nov. 19.

>
>Jessica Williams was sentenced to prison for killing six teenagers when she crashed her van into a freeway median in March 2000. Williams told police that she was not impaired to drive even though she had been dancing all night at a topless bar and had used ecstasy and marijuana.

>
>In the appeal, John Watkins, Williams' lawyer, argued that Nevada's DUI law is flawed because it fails to make a connection between a prohibited substance and a driver's ability to safely control a vehicle. He said no evidence was submitted to prove that Williams was too impaired to drive.

>
>"How can you put someone in jail for DUI if, in fact, they're not impaired?" he asked.

>
>Watkins also accused prosecutors of allowing his client's blood samples to spoil before the defense could test them.

>
>The Supreme Court declined the case without comment. Watkins plans to file an appeal.

>-----
>Visit <http://www.jointogether.org> for complete news and funding coverage, resource links and advocacy tools supporting community-based efforts to reduce and prevent substance abuse and gun violence.

>
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>(Mail ID: 160770)
Maureen D. Boyle
Assistant District Attorney
Walworth County

National Conference of State Legislatures

State DUI Laws on Drug Impairment as of January 2002

Most states have defined "driving under the influence" to include drugs as well as alcohol. However, the exact measurement of impairment by drugs has not typically been specified by statute. The following five states have included in their drunk driving statutes a measurement of impairment from drugs, either broadly as drugs impact one's ability to drive safely or by specific measurement of the amount of drugs present in a person's blood.

Arizona	§28-1381(A)(1), (2) & (3)	under the influence of 1.) any drug, a vapor-releasing substance containing a toxic substance or 2.) a combination of liquor, drugs or toxic vapor-releasing substance if the person is impaired to the slightest degree
Kentucky	§189A.010(1)(c) & (d)	under the influence of 1) any substance or 2) a combination of alcohol and any substance which may impair driving ability
Maine	29-A MRSA § 2401(4) & (13), 29-A MRSA § 2411(1)(A) & (B) and 17-A MRSA § 1101	under the influence of intoxicants, defined as being under the influence of alcohol a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs; drugs being defined as either scheduled drugs (controlled substances), or any natural or artificial chemical substance that when taken into the human body can impair the ability of a driver to safely operate a motor vehicle
Michigan	§§ 257.625(1)(a) & (b) & 257.625(3)	under the influence of or visibly impaired by 1.) a controlled substance or 2.) a combination of liquor and a controlled substance
Nevada	§§ 484.379(2) & (3)	I. under the influence of 1.) a controlled substance or 2.) a combination of intoxicating liquor and a controlled substance; or II. any person who inhales, ingests, applies, otherwise uses any chemical, poison, organic solvent and any compound or a combination of these to a degree which renders them incapable of driving safely. (The Nevada statute specifies the exact type of controlled substance and the exact nanograms per milliliter of blood.)

Sources: Digest of State Alcohol/Highway Safety Related Legislation, 19th Edition (January, 2001) National Highway Traffic Safety Administration, US Dept. of Transportation; and Westlaw 50-state database searches.

Driving Under the Influence of Intoxicating Liquor or Controlled or Prohibited Substance**NRS 484.379 Driving under the influence of intoxicating liquor or controlled or prohibited substance: Unlawful acts; affirmative defense.**

1. It is unlawful for any person who:
 - (a) Is under the influence of intoxicating liquor;
 - (b) Has a concentration of alcohol of 0.10 or more in his blood or breath; or
 - (c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.10 or more in his blood or breath, to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.
2. It is unlawful for any person who:
 - (a) Is under the influence of a controlled substance;
 - (b) Is under the combined influence of intoxicating liquor and a controlled substance; or
 - (c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle, to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this state is not a defense against any charge of violating this subsection.
3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Marijuana	10	2
(h) Marijuana metabolite	15	5
(i) Methamphetamine	500	100
(j) Phencyclidine	25	10

4. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood or breath was tested, to cause him to have a concentration of alcohol of 0.10 or more in his blood or breath. A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

(Added to NRS by 1969, 1485; A 1971, 2030; 1973, 587, 1277, 1501; 1975, 788; 1981, 1924; 1983, 1068; 1993, 539; 1999, 2451, 3415; 2001, 172)

12-2-02

T/C to Rep Gundrum:

346.65 under influence of intox
or
PBAC - defined

MG wants any ev. of illegal drug use

~~(L) zero tolerance~~

(Lm) zero tolerance UNLESS prove ~~not~~ impairment

Does not apply if valid
scrip

~~At~~ Whenever PBAC, including guns,
make the same change

D. Note

NOW

↑
jed

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2
DUE
by 11/9

Regen

1 AN ACT to amend 346.63 (1) (c), 346.63 (2) (am) and 346.63 (2) (b); and to create
2 346.63 (1) (am), 346.63 (1) (d) and 346.63 (2) (a) 3. of the statutes; relating to:

3 NO \$ operating a vehicle or operating or going armed with a firearm
after the unauthorized use of a controlled substance and providing penalties.

Analysis by the Legislative Reference Bureau

anal:PRELIM COMPONENT →

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

Insert
1/4

4 SECTION 1. 343.307 (3) of the statutes is amended to read:

5 343.307 (3) If the same elements of the offense must be proven under a local
6 ordinance or under a law of a federally recognized American Indian tribe or band in

7 this state as under s. 346.63 (1) (a) or (b) or both, (am), ^{or} (b), or any combination of ~~parts~~ ^{s. 346.63(1)}

8 (a), (am), or (b), or s. 346.63 (5), the local ordinance or the law of a federally recognized

9 American Indian tribe or band in this state shall be considered to be in conformity

10 with s. 346.63 (1) (a) or (b) or both, (am), ^{or} (b), or any combination of ~~parts~~ (a), (am),

1 or (b), or s. 346.63 (5), for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b) 1. and
2 346.65 (2) and (2j).

3 History: 1977 c. 193; 1981 c. 20, 184; 1985 a. 80, 337; 1987 a. 3; 1989 a. 105, 271, 359; 1991 a. 39, 277; 1995 a. 448; 1997 a. 84.

SECTION 2. 343.315 (2) (a) 2. of the statutes is amended to read:

4 343.315 (2) (a) 2. Section 346.63 (1) ~~(b)~~ ^{move} (am) ^{or} ~~(b)~~ ^{or} (5) (a) ^{or} a local ordinance
5 in conformity therewith or a law of a federally recognized American Indian tribe or
6 band in this state in conformity with s. 346.63 (1) ~~(b)~~ ^{move} (am) ^{or} (5) (a) ^{or} the law
7 of another jurisdiction prohibiting driving or operating a commercial motor vehicle
8 while the person's alcohol concentration is 0.04 or more or with an excess or specified
9 range of alcohol concentration, as those or substantially similar terms are used in
10 that jurisdiction's laws.

11 History: 1989 a. 105; 1991 a. 39, 277; 1995 a. 113, 448; 1997 a. 84, 258; 1999 a. 85, 140; 2001 a. 38, 109.

SECTION 3. 344.576 (2) (b) of the statutes is amended to read:

12 344.576 (2) (b) The damage occurs while the renter or authorized driver
13 operates the private passenger vehicle in this state while under the influence of an
14 intoxicant or other drug, as described under s. 346.63 (1) (a), (am), ^{or} (b) or (2m).

15 History: 1989 a. 328; 1995 a. 27.

SECTION 4. 346.63 (1) (am) ^{or} of the statutes is created to read:

16 346.63 (1) (am) The person has any amount of a controlled substance or a
17 controlled substance analog in his or her blood or urine.

18 History: 1971 c. 40 s. 93; 1971 c. 219; 1977 c. 193; 1981 c. 20, 184; 1983 a. 74, 459, 521; 1985 a. 32, 337; 1987 a. 3, 27; 1989 a. 105, 275; 1991 a. 277; 1995 a. 436, 448; 1997 a. 27, 252; 1999 a. 85.

SECTION 5. 346.63 (1) (c) of the statutes is amended to read:

19 346.63 (1) (c) A person may be charged with and a prosecutor may proceed upon
20 a complaint based upon a violation of par. (a) ~~or (b) or both~~ ^{or} (am), ^{or} (b), or any
21 combination of pars. (a), (am), or (b) ^{or} for acts arising out of the same incident or
22 occurrence. If the person is charged with violating both ~~pars. (a) and (b)~~ ^{strike} any
23 combination of pars. (a), (am), or (b), the offenses shall be joined. If the person is

1 found guilty of ~~both pars.~~ ^{par.} (a) and (b), ^{or} (am), ^{or} (b), or any combination of pars. (a), (am),
 2 or (b) for acts arising out of the same incident or occurrence, there shall be a single
 3 conviction for purposes of sentencing and for purposes of counting convictions under
 4 ss. 343.30 (1q) and 343.305. Paragraphs (a) ~~and (am)~~ ^{delete}, and (b) each require proof
 5 of a fact for conviction which the other does others do not require. ^{plain}

History: 1971 c. 40 s. 93; 1971 c. 219; 1977 c. 193; 1981 c. 20, 184; 1983 a. 74, 459, 521; 1985 a. 32, 337; 1987 a. 3, 27; 1989 a. 105, 275; 1991 a. 277; 1995 a. 436, 448; 1997 a. 27, 252; 1999 a. 85.

6 SECTION 6. 346.63 (1) (d) of the statutes is created to read:

7 ~~346.63 (1) (d) In an action under ^{par. (d)} this subsection, the defendant has a defense~~
 8 ~~if he or she proves by a preponderance of the evidence that he or she had, at the time~~
 9 ~~of the incident or occurrence, a valid prescription for the controlled substance or~~
 10 ~~controlled substance analog in his or her blood or urine, and that the amount of~~
 11 ~~controlled substance or controlled substance analog found in his or her ^{blood or} urine is~~
 12 ~~consistent with the ^{controlled} legal ~~use~~ of the substance prescribed. ^{in controlled}~~

13 SECTION 7. 346.63 (2) (a) 3. of the statutes is created to read:

14 346.63 (2) (a) 3. The person has any amount of a controlled substance or a
 15 controlled substance analog ⁱⁿ his or her blood or urine. ✓

16 SECTION 8. 346.63 (2) (am) of the statutes is amended to read:

17 346.63 (2) (am) A person may be charged with and a prosecutor may proceed
 18 upon a complaint based upon a violation of par. (a) 1. ^{plain} or 2. or both, 2., or 3., or any
 19 combination of pars. (a) 1., 2., or 3. ✓ for acts arising out of the same incident or
 20 occurrence. If the person is charged with violating par. (a) 1. and 2. any combination
 21 of pars. (a) 1., 2., or 3. ✓ in the complaint, the crimes shall be joined under s. 971.12.
 22 If the person is found guilty of par. (a) 1. and ^{or} 2., or 3., or any combination of pars.
 23 (a) 1., 2., or 3. ✓ for acts arising out of the same incident or occurrence, there shall be
 24 a single conviction for purposes of sentencing and for purposes of counting

✓IMS
3/6

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plain
score

1 convictions under ss. 343.30 (1q) and 343.305. Paragraph (a) 1. and 2. and 3. each
2 require proof of a fact for conviction which the ~~other does~~ others do not require.

History: 1971 c. 40 s. 93; 1971 c. 219; 1977 c. 193; 1981 c. 20, 184; 1983 a. 74, 459, 521; 1985 a. 32, 337; 1987 a. 3, 27; 1989 a. 105, 275; 1991 a. 277; 1995 a. 436, 448; 1997 a. 27, 252; 1999 a. 85.

3 SECTION 9. 346.63 (2) (b) of the statutes is amended to read:

4 346.63 (2) (b) In an action under this subsection, the defendant has a defense
5 if he or she proves by a preponderance of the evidence that the injury would have
6 occurred even if he or she had been exercising due care and he or she had not been
7 under the influence of an intoxicant, a controlled substance, a controlled substance
8 analog or a combination thereof, under the influence of any other drug to a degree
9 which renders him or her incapable of safely driving, or under the combined
10 influence of an intoxicant and any other drug to a degree which renders him or her
11 incapable of safely driving ~~or~~ did not have a prohibited alcohol concentration
12 described under par. (a) 2. or did not have any amount of a controlled substance in
13 his or her blood or urine.

or a controlled substance analog

History: 1971 c. 40 s. 93; 1971 c. 219; 1977 c. 193; 1981 c. 20, 184; 1983 a. 74, 459, 521; 1985 a. 32, 337; 1987 a. 3, 27; 1989 a. 105, 275; 1991 a. 277; 1995 a. 436, 448; 1997 a. 27, 252; 1999 a. 85.

14 SECTION 10. 346.65 (2m) (a) of the statutes is amended to read:

15 346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63
16 (1) ~~(b) (am)~~ or (5) or a local ordinance in conformity therewith, the court shall
17 review the record and consider the aggravating and mitigating factors in the matter.
18 If the level of the person's blood alcohol level amount of alcohol or controlled
19 substance or controlled substance analog in the person's blood or urine is known, the
20 court shall consider that level amount as a factor in sentencing. The chief judge of
21 each judicial administrative district shall adopt guidelines, under the chief judge's

make or plain

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4/13

1 authority to adopt local rules under SCR 70.34, for the consideration of aggravating
2 and mitigating factors.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109.

3 SECTION 11. 346.65 (6) (a) 1. of the statutes is amended to read:

4 346.65 (6) (a) 1. The court may order a law enforcement officer to seize the
5 motor vehicle used in the violation or improper refusal and owned by the person
6 whose operating privilege is revoked under s. 343.305 (10) or who committed a

7 violation of s. 346.63 (1) (a) ^{move} ~~or (b)~~ (am) ~~or~~ (2) (a) 1. ³ ~~or~~ 2. ^{plain} ~~or~~ 3., 940.09 (1) (a), ^{am} (am),

8 (b), (c), or (d), or 940.25 (1) (a), ^{plain} (b), (c), or (d) if the person whose operating privilege
9 is revoked under s. 343.305 (10) or who is convicted of the violation has 2 or more prior
10 suspensions, revocations, or convictions, counting convictions under ss. 940.09 (1)
11 and 940.25 in the person's lifetime, plus other convictions, suspensions, or
12 revocations counted under s. 343.307 (1). The court may not order a motor vehicle
13 seized if the court enters an order under s. 343.301 to immobilize the motor vehicle
14 or equip the motor vehicle with an ignition interlock device or if seizure would result
15 in undue hardship or extreme inconvenience or would endanger the health and
16 safety of a person.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109.

17 SECTION 12. 346.65 (6) (c) of the statutes is amended to read:

18 346.65 (6) (c) The district attorney of the county where the motor vehicle was
19 seized, or where the owner improperly refused to take the test under s. 343.305 or
20 violated s. 346.63 (1) (a) ^{move} ~~or (b)~~ (am) ~~or~~ (2) (a) 1. ³ ~~or~~ 2. ^{plain} ~~or~~ 3., 940.09 (1) (a), (b),

21 (c) or (d) or 940.25 (1) (a), ^{plain} (b), (c) or (d), shall commence an action to forfeit the motor
22 ² vehicle within 30 days after the motor vehicle is seized. The action shall name the
23 owner of the motor vehicle and all lienholders of record as parties. The forfeiture

1 action shall be commenced by filing a summons, complaint and affidavit of the law
 2 enforcement agency with the clerk of circuit court. Upon service of an answer, the
 3 action shall be set for hearing within 60 days after the service of the answer. If no
 4 answer is served or no issue of law or fact joined and the time for that service or
 5 joining of issues has expired, the court may render a default judgment as provided
 6 in s. 806.02.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109.

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

8 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
 9 proving to a reasonable certainty by the greater weight of the credible evidence that
 10 the motor vehicle seized under par. (a) 1. is a motor vehicle used in the violation or
 11 the improper refusal and owned by a person who committed a violation of s. 346.63

12 (1) (a) ~~or (b)~~ ^(am) ~~or~~ (2) (a) 1. ² ~~or 2.~~ ^{plain} ~~or 3.~~ 940.09 (1) (a), (b), (c) or (d) or 940.25

13 (1) (a), (b), (c) or (d) and that the person had 2 or more prior convictions, suspensions
 14 or revocations, counting convictions under ss. 940.09 (1) and 940.25 in the person's
 15 lifetime, plus other convictions, suspensions or revocations counted under s. 343.307
 16 (1). If the state fails to meet the burden of proof required under this paragraph, the
 17 motor vehicle shall be returned to the owner upon the payment of storage costs.

History: 1971 c. 278; 1973 c. 218; 1977 c. 193; 1979 c. 221; 1981 c. 20; 1985 a. 80, 337; 1987 a. 3, 27, 398, 399; 1989 a. 105, 176, 271; 1991 a. 39, 251, 277, 315; 1993 a. 198, 317, 475; 1995 a. 44, 338, 359, 425; 1997 a. 27, 135, 199, 237, 277, 283, 295; 1999 a. 32, 109; 2001 a. 16 ss. 3443k, 4060gm, 4060hw, 4060hy; 2001 a. 109.

18 (END)

(cm), ✓

(am), ✓

Insert 6/17 ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

03-0465/P1dn
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date

Jld

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.

we are
Please also note that ^{we} ~~I~~ 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, ~~I am~~ ^{we} 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 ~~me~~ ^{us} know how you wish to address this issue.

In a similar vein, ^{we} ~~I~~ 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 ~~me~~ ^{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, ~~I~~ ^{we} have not yet researched the history of this language, which ~~I~~ ^{we} would want to do before making either of those changes.

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2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0465/linsPJH
PJH:.....

1 **Insert 1/4:**

2 **SECTION 1.** 343.305 (5) (d)[✓] of the statutes is amended to read:

3 343.305 (5) (d) At the trial of any civil or criminal action or proceeding arising
4 out of the acts committed by a person alleged to have been driving or operating a
5 motor vehicle while under the influence of an intoxicant, a controlled substance, a
6 controlled substance analog or any other drug, or under the influence of any
7 combination of alcohol, a controlled substance, a controlled substance analog and
8 any other drug, to a degree which renders him or her incapable of safely driving, or
9 under the combined influence of an intoxicant and any other drug to a degree which
10 renders him or her incapable of safely driving,[✓] having any amount of a controlled
11 substance or a controlled substance analog in his or her blood or urine, or having a
12 prohibited alcohol concentration, or alleged to have been driving or operating or on
13 duty time with respect to a commercial motor vehicle while having an alcohol
14 concentration above 0.0 or possessing an intoxicating beverage, regardless of its
15 alcohol content, or within 4 hours of having consumed or having been under the
16 influence of an intoxicating beverage, regardless of its alcohol content, or of having
17 an alcohol concentration of 0.04 or more, the results of a test administered in
18 accordance with this section are admissible on the issue of whether the person was
19 under the influence of an intoxicant, a controlled substance, a controlled substance
20 analog or any other drug, or under the influence of any combination of alcohol, a
21 controlled substance, a controlled substance analog and any other drug, to a degree
22 which renders him or her incapable of safely driving or under the combined influence
23 of an intoxicant and any other drug to a degree which renders him or her incapable



INS 1/4 cont

1 of safely driving, or any issue relating to the presence of any amount of a controlled
2 substance or a controlled substance analog in the person's blood or urine or to the
3 person's alcohol concentration. Test results shall be given the effect required under
4 s. 885.235.

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104.

5 SECTION 2. 343.305 (7) (a) of the statutes is amended to read:

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

on a controlled substance analog

History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104.

12 SECTION 3. 343.305 (8) (b) 2. of the statutes ^{are} is amended to read:

13 343.305 (8) (b) 2. ^{bm. and d.} The administrative hearing under this paragraph is limited
14 to the following issues:
15 a. The correct identity of the person.
16 b. Whether the person was informed of the options regarding tests under this
17 section as required under sub. (4).

18 ^{bm.} Whether the person had a prohibited alcohol concentration or any amount
19 of a controlled substance or a controlled substance analog in his or her blood or urine
20 at the time the offense allegedly occurred.

21 c. Whether one or more tests were administered in accordance with this section.

22 d. If one or more tests were administered in accordance with this section,
23 whether each of the test results for those tests indicate the person had a prohibited



INS 1/4 cont

1 alcohol concentration or any amount of a controlled substance or a controlled
2 substance analog in his or her blood or urine.

3 e. Whether probable cause existed for the arrest.

4 f. Whether the person was driving or operating a commercial motor vehicle
5 when the offense allegedly occurred.

6 History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104.

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

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

19 History: 1987 a. 3, 27, 399; 1989 a. 7, 31, 56, 105, 359; 1991 a. 39, 251, 277; 1993 a. 16, 105, 315, 317, 491; 1995 a. 27 ss. 6412cnL, 9126 (19); 1995 a. 113, 269, 425, 426, 436, 448; 1997 a. 35, 84, 107, 191, 237, 290; 1999 a. 9, 32, 109; 2001 a. 16 ss. 3421m to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104.

20 **Insert 2/3**

21 **SECTION 5. 343.31 (1) (am)** of the statutes is amended to read:

22 343.31 (1) (am) Injury by the operation of a vehicle while under the influence
23 of an intoxicant, a controlled substance or a controlled substance analog, or any



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1 combination of an intoxicant, a controlled substance and a controlled substance
 2 analog, under the influence of any other drug to a degree which renders him or her
 3 incapable of safely driving, or under the combined influence of an intoxicant and any
 4 other drug to a degree which renders him or her incapable of safely driving or while
 5 the person has any amount of a controlled substance or a controlled substance analog
 6 in his or her urine or has a prohibited alcohol concentration and which is criminal
 7 under s. 346.63 (2).

History: 1971 c. 219; 1975 c. 297; 1977 c. 29 s. 1654 (7) (a), (e); 1977 c. 193, 447; 1979 c. 221; 1981 c. 20, 70; 1983 a. 192 s. 304; 1983 a. 459; 1985 a. 80, 82; 1985 a. 293 s. 3; 1987 a. 3, 399; 1989 a. 31, 105; 1991 a. 39, 277, 316; 1993 a. 317; 1995 a. 269, 425, 448; 1997 a. 84, 237, 258, 295; 1999 a. 109, 143; 2001 a. 16, 38, 109.

blood or ✓

(end ins)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0465/1insMD
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1 **INSERT 3/6**

2 346.63 (1) (d) ✓ In an action under par. (am) ✓, the defendant has a defense if he
3 or she proves by a preponderance ✓ of the evidence that, at the time of the incident or
4 occurrence, one of the following applied:

5 1. He or she had a valid prescription for the controlled substance or controlled
6 substance analog ✓ that was present in his or her blood or urine and the amount of
7 controlled substance or controlled substance analog found in his or her blood or urine
8 was consistent with the controlled substance or controlled substance analog being
9 used as prescribed.

10 2. He or she had complied with s. 961.23 ✓ in obtaining the ✓ controlled substance
11 that was present in his or her blood or urine and the amount of ✓ controlled substance
12 found in his or her blood or urine was consistent with the ✓ controlled substance being
13 used as directed.

14 **INSERT 4/13**

15 **SECTION 1.** 346.63 (2) (b) 2. ✓ of the statutes is created to read:

16 346.63 (2) (b) 2. In an action under par. (am) ✓, the defendant has a defense if he
17 or she proves by a preponderance of the evidence that, at the time of the incident or
18 occurrence, one of the following applied:

19 a. He or she had a valid prescription for the controlled substance or controlled
20 substance analog that was present in his or her blood or urine ✓ and the amount of
21 controlled substance or controlled substance analog found in his or her blood or urine
22 was consistent with the controlled substance or controlled substance analog being
23 used as prescribed.

↓

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1 b. He or she had complied with s. 961.23 in obtaining the controlled substance
2 that was present in his or her blood or urine and the amount of controlled substance
3 found in his or her blood or urine was consistent with the controlled substance being
4 used as directed.

5 **INSERT 6/17**

6 **SECTION 2.** 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 shall not be construed as
9 limiting the introduction of any other competent evidence bearing on the question
10 of whether or not a person was under the influence of an intoxicant, had any amount
11 of a controlled substance or a controlled substance analog in his or her blood or urine,
12 had a specified alcohol concentration, or had an alcohol concentration in the range
13 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101 (1) (c).

History: 1971 c. 40; 1973 c. 102; 1981 c. 20, 184; 1983 a. 74, 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 399; 1989 a. 105; 1991 a. 277; 1995 a. 436, 448; 1997 a. 35, 198.

14 **SECTION 3.** 939.75 (1) of the statutes, as affected by 2001 Wisconsin Act 109,
15 is amended to read:

16 939.75 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02
17 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm),
18 and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to
19 (e), "unborn child" means any individual of the human species from fertilization until
20 birth that is gestating inside a woman.

NOTE: NOTE: Sub. (1) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:NOTE:

21 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e), (1b) and (1g) (e) and (d),
22 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) and (1b), "unborn child" means any individual of the human species from fertilization
23 until birth that is gestating inside a woman.

History: 1997 a. 295; 2001 a. 109.

24 **SECTION 4.** 939.75 (2) (b) of the statutes is amended to read:

1 939.75 (2) (b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06
2 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195,
3 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the
4 following:

History: 1997 a. 295; 2001 a. 109.

5 **SECTION 5.** 939.75 (3) (intro.) of the statutes is amended to read:

6 939.75 (3) (intro.) When the existence of an exception under sub. (2) has been
7 placed in issue by the trial evidence, the state must prove beyond a reasonable doubt
8 that the facts constituting the exception do not exist in order to sustain a finding of
9 guilt under s. 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09
10 (1) (c) to (e) or (1g) (c), (cm), or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24
11 (2) or 940.25 (1) (c) to (e).

History: 1997 a. 295; 2001 a. 109.

12 **SECTION 6.** 940.09 (1) (am) of the statutes is created to read:

13 940.09 (1) (am) Causes the death of another by the operation or handling of a
14 vehicle while the person has any amount of a controlled substance or a controlled
15 substance analog in his or her blood or urine.

16 **SECTION 7.** 940.09 (1) (cm) of the statutes is created to read:

17 940.09 (1) (cm) Causes the death of an unborn child by the operation or
18 handling of a vehicle while the person has any amount of a controlled substance or
19 a controlled substance analog in his or her blood or urine.

20 **SECTION 8.** 940.09 (1d) (a) 1. of the statutes is amended to read:

21 940.09 (1d) (a) 1. Except as provided in subd. 2., if the person who committed
22 an offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more prior convictions,
23 suspensions, or revocations, counting convictions under sub. (1) and s. 940.25 in the
24 person's lifetime, plus other convictions, suspensions, or revocations counted under

1 s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court enters an
2 order regarding operating privilege restriction or enters an order regarding
3 immobilization.

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109.

4 **SECTION 9.** 940.09 (1d) (a) 2. of the statutes is amended to read:

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

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109.

11 **SECTION 10.** 940.09 (1d) (b) of the statutes is amended to read:

12 940.09 (1d) (b) If the person who committed an offense under sub. (1) (a), (am),
13 (b), (c), (cm) or (d) has 2 or more prior convictions, suspensions, or revocations,
14 counting convictions under sub. (1) and s. 940.25 in the person's lifetime, plus other
15 convictions, suspensions, or revocations counted under s. 343.307 (1), the procedure
16 under s. 346.65 (6) shall be followed if the court orders the seizure and forfeiture of
17 the motor vehicle owned by the person and used in the violation.

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109.

18 **SECTION 11.** 940.09 (1g) (am) of the statutes is created to read:

19 940.09 (1g) (am) Causes the death of another by the operation or handling of
20 a firearm or airgun while the person has any amount of a controlled substance or a
21 controlled substance analog in his or her blood or urine.

22 **SECTION 12.** 940.09 (1g) (cm) of the statutes is created to read:

1 940.09 (1g) (cm) Causes the death of an unborn child by the operation or
2 handling of a firearm or airgun while the person has any amount of a controlled
3 substance or a controlled substance analog in his or her blood or urine.

4 SECTION 13. 940.09 (1m)^x of the statutes is renumbered 940.09 (1m) (a) and
5 amended to read:

6 940.09 (1m) (a) A person may be charged with and a prosecutor may proceed
7 upon an information based upon a violation of sub. (1) (a), (am)[✓], or (b)[✓] or both, or any
8 combination thereof; sub. (1) (a), (am)[✓], or (bm) or both, or any combination thereof;
9 sub. (1) (c), (cm)[✓], or (d) or both, or any combination thereof; sub. (1) (c), (cm), or (e)
10 or both, or any combination thereof; sub. (1g) (a), (am)[✓], or (b) or both or any
11 combination thereof; or sub. (1g) (c), (cm)[✓], or (d) or both or any combination thereof
12 for acts arising out of the same incident or occurrence.

13 (b) If ~~the a~~ person is charged with ~~violating both sub. (1) (a) and (b), both sub.~~
14 ~~(1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a)~~
15 ~~and (b) or both sub. (1g) (c) and (d) in the~~ ^{an} information with any combination of crimes
16 referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found
17 guilty of ~~both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d),~~
18 ~~both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c) and (d) more~~
19 than one of the crimes so charged for acts arising out of the same incident or
20 occurrence, there shall be a single conviction for purposes of sentencing and for
21 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)
22 (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1)

1 (a), (am), (b), (bm), (c), (cm), (d) and (e), and sub. (1g) (a), (am), (b), (c), (cm), and (d),
2 each require proof of a fact for conviction which the other does not require.

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109.

3 **SECTION 14.** 940.09 (2) of the statutes is renumbered 940.09 (2) (a) and
4 amended to read:

5 940.09 (2) (a) The In any action under this section, the defendant has a defense
6 if he or she proves by a preponderance of the evidence that the death would have
7 occurred even if he or she had been exercising due care and he or she had not been
8 under the influence of an intoxicant, did not have any amount of a controlled
9 substance in his or her blood or urine, or did not have an alcohol concentration
10 described under sub. (1) (b), (bm), (d) or (e) or (1g) (b) or (d).
or a controlled substance analog

History: 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109.

11 **SECTION 15.** 940.09 (2) (b) of the statutes is created to read:
12 940.09 (2) (b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm), the

13 defendant has a defense if he or she proves by a preponderance of the evidence that,
14 at the time of the incident or occurrence, one of the following applied:

15 1. He or she had a valid prescription for the controlled substance or controlled
16 substance analog that was present in his or her blood or urine and the amount of
17 controlled substance or controlled substance analog found in his or her blood or urine
18 was consistent with the controlled substance or controlled substance analog being
19 used as prescribed.

20 2. He or she had complied with s. 961.23 in obtaining the controlled substance
21 that was present in his or her blood or urine and the amount of controlled substance
22 found in his or her blood or urine was consistent with the controlled substance being
23 used as directed.

1 **SECTION 16.** 940.25 (1) (am) of the statutes is created to read:

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

5 **SECTION 17.** 940.25 (1) (cm) of the statutes is created to read:

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

9 **SECTION 18.** 940.25 (1d) (a) 1. of the statutes is amended to read:

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

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109.

17 **SECTION 19.** 940.25 (1d) (a) 2. of the statutes is amended to read:

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

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109.

SECTION 20. 940.25 (1d) (b) of the statutes is amended to read:

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

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109.

SECTION 21. 940.25 (1m) of the statutes is renumbered 940.25 (1m) (a) and amended to read:

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

(b) If the a person is charged with violating both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) in the an information with any combination of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) more than one of the crimes so charged for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am),

1 (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for conviction which the
2 other does not require.

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109.

3 SECTION 22. 940.25 (2) of the statutes is renumbered 940.25 (2) (a) and
4 amended to read:

5 940.25 (2) (a) The defendant has a defense if he or she proves by a
6 preponderance of the evidence that the great bodily harm would have occurred even
7 if he or she had been exercising due care and he or she had not been under the
8 influence of an intoxicant, did not have any amount of a controlled substance in his
9 or her blood or urine, or did not have an alcohol concentration described under sub.

10 (1) (b), (bm), (d) or (e).

in a controlled substance analog

History: 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109.

11 SECTION 23. 940.25 (2) (b) of the statutes is created to read:

12 940.25 (2) (b) In any action under this section, the defendant has a defense if
13 he or she proves by a preponderance of the evidence that, at the time of the incident
14 or occurrence, one of the following applied:

15 1. He or she had a valid prescription for the controlled substance or controlled
16 substance analog that was present in his or her blood or urine and the amount of
17 controlled substance or controlled substance analog found in his or her blood or urine
18 was consistent with the controlled substance or controlled substance analog being
19 used as prescribed.

20 2. He or she had complied with s. 961.23 in obtaining the controlled substance
21 that was present in his or her blood or urine and the amount of controlled substance
22 found in his or her blood or urine was consistent with the controlled substance being
23 used as directed.

1 **SECTION 24.** 941.20 (1) (bm) ✓ of the statutes is created to read:

2 941.20 (1) (bm) Operates or goes armed with a firearm while he or she has any
3 amount of a controlled substance in his or her blood or urine. A defendant has a
4 defense to any action under this paragraph ✓ if he or she proves by a preponderance
5 of the evidence that, at the time of the incident or occurrence, one of the following
6 applied:

7 1. He or she had a valid prescription for the controlled substance or controlled
8 substance analog that was present in his or her blood or urine and the amount of
9 controlled substance or controlled substance analog found in his or her blood or urine
10 was consistent with the controlled substance or controlled substance analog being
11 used as prescribed.

12 2. He or she had complied with s. 961.23 in obtaining the controlled substance
13 that was present in his or her blood or urine and the amount of controlled substance
14 found in his or her blood or urine was consistent with the controlled substance being
15 used as directed.

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

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

9. History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a.

24 **SECTION 26.** 949.08 (2) (em) ✓ of the statutes is amended to read:

1 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
 2 vehicle and, the crime involved is specified in s. 346.63 (6) or 940.25, and the
 3 passenger knew the offender was ~~under the influence of an intoxicant, a controlled~~
 4 ~~substance, a controlled substance analog or any combination of an intoxicant,~~
 5 ~~controlled substance and controlled substance analog, or had an alcohol~~
 6 ~~concentration of 0.04 or more but less than 0.1~~ committing that offense. This
 7 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
 8 940.305, 940.31 or 948.30.

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a.

9 **SECTION 27.** 967.055 (1) (a) of the statutes is amended to read:

10 967.055 (1) (a) The legislature intends to encourage the vigorous prosecution
 11 of offenses concerning the operation of motor vehicles by persons under the influence
 12 of an intoxicant, a controlled substance, a controlled substance analog or any
 13 combination of an intoxicant, controlled substance and controlled substance analog,
 14 under the influence of any other drug to a degree which renders him or her incapable
 15 of safely driving, or under the combined influence of an intoxicant and any other drug
 16 to a degree which renders him or her incapable of safely driving or having a
 17 prohibited alcohol concentration, as defined in s. 340.01 (46m), ~~or~~ offenses
 18 concerning the operation of motor vehicles by persons with any amount of a
 19 controlled substance or a controlled substance analog in his or her blood or urine, and
 20 offenses concerning the operation of commercial motor vehicles by persons with an
 21 alcohol concentration of 0.04 or more.

History: 1981 c. 20, 184; 1983 a. 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 101; 1989 a. 105; 1991 a. 277; 1995 a. 113, 436, 448; 1997 a. 252.

22 **SECTION 28.** 967.055 (2) (a) of the statutes is amended to read:

23 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
 24 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity

1 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the
2 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply
3 to the court. The application shall state the reasons for the proposed amendment or
4 dismissal. The court may approve the application only if the court finds that the
5 proposed amendment or dismissal is consistent with the public's interest in deterring
6 the operation of motor vehicles by persons who are under the influence of an
7 intoxicant, a controlled substance, a controlled substance analog or any combination
8 of an intoxicant, controlled substance and controlled substance analog, under the
9 influence of any other drug to a degree which renders him or her incapable of safely
10 driving, or under the combined influence of an intoxicant and any other drug to a
11 degree which renders him or her incapable of safely driving, in deterring the
12 operation of motor vehicles by persons with any amount of a controlled substance or
13 a controlled substance analog in his or her blood or urine, ✓ or in deterring the
14 operation of commercial motor vehicles by persons with an alcohol concentration of
15 0.04 or more. The court may not approve an application to amend the vehicle
16 classification from a commercial motor vehicle to a noncommercial motor vehicle
17 unless there is evidence in the record that the motor vehicle being operated by the
18 defendant at the time of his or her arrest was not a commercial motor vehicle.

19 History: 1981 c. 20, 184; 1983 a. 459; 1985 a. 146 s. 8; 1985 a. 331, 337; 1987 a. 3, 101; 1989 a. 105; 1991 a. 277; 1995 a. 113, 436, 448; 1997 a. 252.

SECTION 29. Effective date.

20 (1) This act takes effect on February 1, 2003, ✓ or on the day after publication,
21 whichever is later.

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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