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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

4  
3-6-03

Regen

1 AN ACT *to renumber and amend* 23.33 (4c) (b) 4., 30.681 (2) (d) 1., 346.63 (2)  
2 (b), 350.101 (2) (d), 940.09 (1m), 940.09 (2), 940.25 (1m) and 940.25 (2); *to*  
3 *amend* 23.33 (4c) (a) 4., 23.33 (4c) (b) 3., 30.681 (1) (b) (title), 30.681 (1) (c),  
4 30.681 (2) (b) (title), 30.681 (2) (c), 343.305 (5) (d), 343.305 (7) (a), 343.305 (8)  
5 (b) 2. bm. and d., 343.305 (8) (b) 5., 343.305 (9) (a) 5. a., 343.307 (3), 343.31 (1)  
6 (am), 343.315 (2) (a) 2., 344.576 (2) (b), 346.63 (1) (c), 346.63 (2) (am), 346.65  
7 (2m) (a), 346.65 (6) (a) 1., 346.65 (6) (c), 346.65 (6) (d), 350.101 (1) (d), 350.101  
8 (2) (c), 350.104 (4), 885.235 (1g) (intro.), 885.235 (4), 939.75 (1), 939.75 (2) (b),  
9 939.75 (3) (intro.), 940.09 (1d) (a) 1., 940.09 (1d) (a) 2., 940.09 (1d) (b), 940.25  
10 (1d) (a) 1., 940.25 (1d) (a) 2., 940.25 (1d) (b), 949.08 (2) (e), 949.08 (2) (em),  
11 967.055 (1) (a) and 967.055 (2) (a); and *to create* 23.33 (4c) (a) 2m., 23.33 (4c)  
12 (a) 5., 23.33 (4c) (b) 2m., 23.33 (4c) (b) 4. b., 30.681 (1) (b) 1m., 30.681 (1) (d),  
13 30.681 (2) (b) 1m., 30.681 (2) (d) 1. b., 346.63 (1) (am), 346.63 (1) (d), 346.63 (2)  
14 (a) 3., 346.63 (2) (b) 2., 350.101 (1) (bm), 350.101 (1) (e), 350.101 (2) (bm),  
15 350.101 (2) (d) 2., 885.235 (1g) (cm), 940.09 (1) (am), 940.09 (1) (cm), 940.09 (1g)

1 (am), 940.09 (1g) (cm), 940.09 (2) (b), 940.25 (1) (am), 940.25 (1) (cm), 940.25 (2)  
2 (b) and 941.20 (1) (bm) of the statutes; **relating to:** operating a vehicle or  
3 operating or going armed with a firearm after the unauthorized use of a  
4 controlled substance and providing penalties.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

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

5 SECTION 1. 23.33 (4c) (a) 2m. of the statutes is created to read:

6 23.33 (4c) (a) 2m. ‘Operating with a controlled substance or a controlled  
7 substance analog.’ No person may engage in the operation of an all-terrain vehicle  
8 while the person has any amount of a controlled substance or a controlled substance  
9 analog in his or her blood or urine.

10 SECTION 2. 23.33 (4c) (a) 4. of the statutes is amended to read:

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

1           **SECTION 3.** 23.33 (4c) (a) 5. of the statutes is created to read:

2           23.33 (4c) (a) 5. 'Defenses.' In an action under subd. 2m., the defendant has  
3 a defense if he or she proves by a preponderance of the evidence that at the time of  
4 the incident or occurrence one of the following applied:

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

15           23.33 (4c) (b) 2m. 'Causing injury while operating with a controlled substance  
16 or a controlled substance analog.' No person who has any amount of a controlled  
17 substance or a controlled substance analog in his or her blood or urine may cause  
18 injury to another person by the operation of an all-terrain vehicle.

19           **SECTION 5.** 23.33 (4c) (b) 3. of the statutes is amended to read:

20           23.33 (4c) (b) 3. 'Related charges.' A person may be charged with and a  
21 prosecutor may proceed upon a complaint based upon a violation of ~~subd. 1. or 2. or~~  
22 ~~both~~ any combination of subd. 1., 2., or 2m. for acts arising out of the same incident  
23 or occurrence. If the person is charged with violating ~~both subds. 1. and 2. any~~  
24 combination of subd. 1., 2., or 2m. in the complaint, the crimes shall be joined under  
25 s. 971.12. If the person is found guilty of ~~both subds. 1. and 2. any combination of~~

1 subd. 1, 2., or 2m. for acts arising out of the same incident or occurrence, there shall  
2 be a single conviction for purposes of sentencing and for purposes of counting  
3 convictions under sub. (13) (b) 2. and 3. Subdivisions 1. and, 2., and 2m. each require  
4 proof of a fact for conviction which the ~~other does~~ others do not require.

5 **SECTION 6.** 23.33 (4c) (b) 4. of the statutes is renumbered 23.33 (4c) (b) 4. a. and  
6 amended to read:

7 23.33 (4c) (b) 4. a. 'Defenses.' In an action under this paragraph, the defendant  
8 has a defense if he or she proves by a preponderance of the evidence that the injury  
9 would have occurred even if he or she had been exercising due care and he or she had  
10 not been under the influence of an intoxicant ~~or~~, did not have an alcohol  
11 concentration of 0.1 or more, or did not have any amount of a controlled substance  
12 or a controlled substance analog in his or her blood or urine.

13 **SECTION 7.** 23.33 (4c) (b) 4. b. of the statutes is created to read:

14 23.33 (4c) (b) 4. b. In an action under subd. 2m., the defendant has a defense  
15 if he or she proves by a preponderance of the evidence that at the time of the incident  
16 or occurrence he or she had a valid prescription for the controlled substance or  
17 controlled substance analog that was present in his or her blood or urine and the  
18 amount of controlled substance or controlled substance analog found in his or her  
19 blood or urine was consistent with the controlled substance or controlled substance  
20 analog being used as prescribed or he or she had complied with s. 961.23 in obtaining  
21 the controlled substance that was present in his or her blood or urine and the amount  
22 of controlled substance found in his or her blood or urine was consistent with the  
23 controlled substance being used as directed.

24 **SECTION 8.** 30.681 (1) (b) (title) of the statutes is amended to read:

1           30.681 (1) (b) (title) *Operating with controlled substance or alcohol*  
2 *concentrations at or above specified levels.*

3           **SECTION 9.** 30.681 (1) (b) 1m. of the statutes is created to read:

4           30.681 (1) (b) 1m. No person may engage in the operation of a motorboat while  
5 the person has any amount of a controlled substance or a controlled substance analog  
6 in his or her blood or urine.

7           **SECTION 10.** 30.681 (1) (c) of the statutes is amended to read:

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

18           **SECTION 11.** 30.681 (1) (d) of the statutes is created to read:

19           30.681 (1) (d) *Defenses.* In an action under par. (b) 1m., the defendant has a  
20 defense if he or she proves by a preponderance of the evidence that at the time of the  
21 incident or occurrence one of the following applied:

22           1. He or she had a valid prescription for the controlled substance or controlled  
23 substance analog that was present in his or her blood or urine and the amount of  
24 controlled substance or controlled substance analog found in his or her blood or urine

1 was consistent with the controlled substance or controlled substance analog being  
2 used as prescribed.

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

7 **SECTION 12.** 30.681 (2) (b) (title) of the statutes is amended to read:

8 30.681 (2) (b) (title) *Causing injury with controlled substance or alcohol*  
9 *concentrations at or above specified levels.*

10 **SECTION 13.** 30.681 (2) (b) 1m. of the statutes is created to read:

11 30.681 (2) (b) 1m. No person who has any amount of a controlled substance or  
12 a controlled substance analog in his or her blood or urine may cause injury to another  
13 person by the operation of a motorboat.

14 **SECTION 14.** 30.681 (2) (c) of the statutes is amended to read:

15 30.681 (2) (c) *Related charges.* A person may be charged with and a prosecutor  
16 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any  
17 combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or  
18 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any  
19 combination of par. (a) or (b) 1., 1m., or 2. in the complaint, the crimes shall be joined  
20 under s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination  
21 of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence,  
22 there shall be a single conviction for purposes of sentencing and for purposes of  
23 counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m.,  
24 and 2. each require proof of a fact for conviction which the ~~other does~~ others do not  
25 require.

1           **SECTION 15.** 30.681 (2) (d) 1. of the statutes is renumbered 30.681 (2) (d) 1. a.  
2 and amended to read:

3           30.681 (2) (d) 1. a. In an action under this subsection for a violation of the  
4 intoxicated boating law where the defendant was operating a motorboat that is not  
5 a commercial motorboat, the defendant has a defense if he or she proves by a  
6 preponderance of the evidence that the injury would have occurred even if he or she  
7 had been exercising due care and he or she had not been under the influence of an  
8 intoxicant or did not have an alcohol concentration of 0.1 or more or any amount of  
9 a controlled substance or a controlled substance analog in his or her blood or urine.

10           **SECTION 16.** 30.681 (2) (d) 1. b. of the statutes is created to read:

11           30.681 (2) (d) 1. b. In an action under par. (b) 1m., the defendant has a defense  
12 if he or she proves by a preponderance of the evidence that at the time of the incident  
13 or occurrence he or she had a valid prescription for the controlled substance or  
14 controlled substance analog that was present in his or her blood or urine and the  
15 amount of controlled substance or controlled substance analog found in his or her  
16 blood or urine was consistent with the controlled substance or controlled substance  
17 analog being used as prescribed or he or she had complied with s. 961.23 in obtaining  
18 the controlled substance that was present in his or her blood or urine and the amount  
19 of controlled substance found in his or her blood or urine was consistent with the  
20 controlled substance being used as directed.

21           **SECTION 17.** 343.305 (5) (d) of the statutes is amended to read:

22           343.305 (5) (d) At the trial of any civil or criminal action or proceeding arising  
23 out of the acts committed by a person alleged to have been driving or operating a  
24 motor vehicle while under the influence of an intoxicant, a controlled substance, a  
25 controlled substance analog or any other drug, or under the influence of any

1 combination of alcohol, a controlled substance, a controlled substance analog and  
 2 any other drug, to a degree which renders him or her incapable of safely driving, or  
 3 under the combined influence of an intoxicant and any other drug to a degree which  
 4 renders him or her incapable of safely driving, having any amount of a controlled  
 5 substance or a controlled substance analog in his or her blood or urine, or having a  
 6 prohibited alcohol concentration, or alleged to have been driving or operating or on  
 7 duty time with respect to a commercial motor vehicle while having an alcohol  
 8 concentration above 0.0 or possessing an intoxicating beverage, regardless of its  
 9 alcohol content, or within 4 hours of having consumed or having been under the  
 10 influence of an intoxicating beverage, regardless of its alcohol content, or of having  
 11 an alcohol concentration of 0.04 or more, the results of a test administered in  
 12 accordance with this section are admissible on the issue of whether the person was  
 13 under the influence of an intoxicant, a controlled substance, a controlled substance  
 14 analog or any other drug, or under the influence of any combination of alcohol, a  
 15 controlled substance, a controlled substance analog and any other drug, to a degree  
 16 which renders him or her incapable of safely driving or under the combined influence  
 17 of an intoxicant and any other drug to a degree which renders him or her incapable  
 18 of safely driving, or any issue relating to the presence of any amount of a controlled  
 19 substance or a controlled substance analog in the person's blood or urine or to the  
 20 person's alcohol concentration. Test results shall be given the effect required under  
 21 s. 885.235.

22 SECTION 18. 343.305 (7) (a) of the statutes is amended to read:

23 343.305 (7) (a) If a person submits to chemical testing administered in  
 24 accordance with this section and any test results indicate the presence of a controlled  
 25 substance or a controlled substance analog or a prohibited alcohol concentration, the

any  
amount  
of



1 law enforcement officer shall report the results to the department and take  
2 possession of the person's license and forward it to the department. The person's  
3 operating privilege is administratively suspended for 6 months.

4 SECTION 19. 343.305 (8) (b) 2. bm. and d. of the statutes are amended to read:

5 343.305 (8) (b) 2. bm. Whether the person had a prohibited alcohol  
6 concentration or any amount of a controlled substance or a controlled substance  
7 analog in his or her blood or urine at the time the offense allegedly occurred.

8 d. If one or more tests were administered in accordance with this section,  
9 whether each of the test results for those tests indicate the person had a prohibited  
10 alcohol concentration or any amount of a controlled substance or a controlled  
11 substance analog in his or her blood or urine.

12 SECTION 20. 343.305 (8) (b) 5. of the statutes is amended to read:

13 343.305 (8) (b) 5. If the hearing examiner finds that the criteria for  
14 administrative suspension have not been satisfied or that the person did not have a  
15 prohibited alcohol concentration at or any amount of a controlled substance or a  
16 controlled substance analog in his or her blood or urine at the time the offense  
17 allegedly occurred or that the person proved an affirmative defense for the time the  
18 offense allegedly occurred, the examiner shall order that the administrative  
19 suspension of the person's operating privilege be rescinded without payment of the  
20 fee under s. 343.21 (1) (j). If the hearing examiner finds that the criteria for  
21 administrative suspension have been satisfied and that the person had a prohibited  
22 alcohol concentration at or any amount of a controlled substance or a controlled  
23 substance analog in his or her blood or urine at the time the offense allegedly  
24 occurred or that the person did not prove an affirmative defense for the time the  
25 offense allegedly occurred, the administrative suspension shall continue regardless

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

8 **SECTION 21.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

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

21 **SECTION 22.** 343.307 (3) of the statutes is amended to read:

22 343.307 (3) If the same elements of the offense must be proven under a local  
23 ordinance or under a law of a federally recognized American Indian tribe or band in  
24 this state as under ~~s. 346.63 (1) (a) or (b) or both~~ any combination of s. 346.63 (1) (a),  
25 (am), or (b), or s. 346.63 (5), the local ordinance or the law of a federally recognized

1 American Indian tribe or band in this state shall be considered to be in conformity  
2 with ~~s. 346.63 (1) (a) or (b) or both~~ any combination of s. 346.63 (1) (a), (am), or (b),  
3 or s. 346.63 (5), for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b) 1. and 346.65  
4 (2) and (2j).

5 **SECTION 23.** 343.31 (1) (am) of the statutes is amended to read:

6 343.31 (1) (am) Injury by the operation of a vehicle while under the influence  
7 of an intoxicant, a controlled substance or a controlled substance analog, or any  
8 combination of an intoxicant, a controlled substance and a controlled substance  
9 analog, under the influence of any other drug to a degree which renders him or her  
10 incapable of safely driving, or under the combined influence of an intoxicant and any  
11 other drug to a degree which renders him or her incapable of safely driving or while  
12 the person has any amount of a controlled substance or a controlled substance analog  
13 in his or her blood or urine or has a prohibited alcohol concentration and which is  
14 criminal under s. 346.63 (2).

15 **SECTION 24.** 343.315 (2) (a) 2. of the statutes is amended to read:

16 343.315 (2) (a) 2. Section 346.63 (1) (am) or (b) or (5) (a) or a local ordinance in  
17 conformity therewith or a law of a federally recognized American Indian tribe or  
18 band in this state in conformity with s. 346.63 (1) (am) or (b) or (5) (a) or the law of  
19 another jurisdiction prohibiting driving or operating a commercial motor vehicle  
20 while the person's alcohol concentration is 0.04 or more or with an excess or specified  
21 range of alcohol concentration, as those or substantially similar terms are used in  
22 that jurisdiction's laws.

23 **SECTION 25.** 344.576 (2) (b) of the statutes is amended to read:

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 26.** 346.63 (1) (am) of the statutes is created to read:

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

7           **SECTION 27.** 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 28.** 346.63 (1) (d) of the statutes is created to read:

19           346.63 (1) (d) In an action under par. (am), the defendant has a defense if he  
20 or she proves by a preponderance of the evidence that at the time of the incident or  
21 occurrence one of the following applied:

22           1. He or she had a valid prescription for the controlled substance or controlled  
23 substance analog that was present in his or her blood or urine and the amount of  
24 controlled substance or controlled substance analog found in his or her blood or urine

1 was consistent with the controlled substance or controlled substance analog being  
2 used as prescribed.

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

7 **SECTION 29.** 346.63 (2) (a) 3. of the statutes is created to read:

8 346.63 (2) (a) 3. The person has any amount of a controlled substance or a  
9 controlled substance analog in his or her blood or urine.

10 **SECTION 30.** 346.63 (2) (am) of the statutes is amended to read:

11 346.63 (2) (am) A person may be charged with and a prosecutor may proceed  
12 upon a complaint based upon a violation of ~~par. (a) 1. or 2. or both~~ any combination  
13 of par. (a) 1., 2., or 3. for acts arising out of the same incident or occurrence. If the  
14 person is charged with violating ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2.,  
15 or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is  
16 found guilty of ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2., or 3. for acts arising  
17 out of the same incident or occurrence, there shall be a single conviction for purposes  
18 of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and  
19 343.305. Paragraph (a) 1. ~~and, 2., and 3.~~ each require proof of a fact for conviction  
20 which the ~~other does~~ others do not require.

21 **SECTION 31.** 346.63 (2) (b) of the statutes is renumbered 346.63 (2) (b) 1.  
22 amended to read:

23 346.63 (2) (b) 1. In an action under this subsection, the defendant has a defense  
24 if he or she proves by a preponderance of the evidence that the injury would have  
25 occurred even if he or she had been exercising due care and he or she had not been

1 under the influence of an intoxicant, a controlled substance, a controlled substance  
2 analog or a combination thereof, under the influence of any other drug to a degree  
3 which renders him or her incapable of safely driving, or under the combined  
4 influence of an intoxicant and any other drug to a degree which renders him or her  
5 incapable of safely driving ~~or~~, did not have a prohibited alcohol concentration  
6 described under par. (a) 2., or did not have any amount of a controlled substance or  
7 a controlled substance analog in his or her blood or urine.

8 **SECTION 32.** 346.63 (2) (b) 2. of the statutes is created to read:

9 346.63 (2) (b) 2. In an action under par. (am), the defendant has a defense if he  
10 or she proves by a preponderance of the evidence that at the time of the incident or  
11 occurrence one of the following applied:

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

17 b. He or she had complied with s. 961.23 in obtaining the controlled substance  
18 that was present in his or her blood or urine and the amount of controlled substance  
19 found in his or her blood or urine was consistent with the controlled substance being  
20 used as directed.

21 **SECTION 33.** 346.65 (2m) (a) of the statutes is amended to read:

22 346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63  
23 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall  
24 review the record and consider the aggravating and mitigating factors in the matter.  
25 ~~If the level of the person's blood alcohol level~~ amount of alcohol or controlled

1 substance or controlled substance analog in the person's blood or urine is known, the  
2 court shall consider that level amount as a factor in sentencing. The chief judge of  
3 each judicial administrative district shall adopt guidelines, under the chief judge's  
4 authority to adopt local rules under SCR 70.34, for the consideration of aggravating  
5 and mitigating factors.

6 **SECTION 34.** 346.65 (6) (a) 1. of the statutes is amended to read:

7 346.65 (6) (a) 1. The court may order a law enforcement officer to seize the  
8 motor vehicle used in the violation or improper refusal and owned by the person  
9 whose operating privilege is revoked under s. 343.305 (10) or who committed a  
10 violation of s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or~~ 2., or 3., 940.09 (1) (a), (am),  
11 (b), (c), (cm), or (d), or 940.25 (1) (a), (am), (b), (c), (cm), or (d) if the person whose  
12 operating privilege is revoked under s. 343.305 (10) or who is convicted of the  
13 violation has 2 or more prior suspensions, revocations, or convictions, counting  
14 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other  
15 convictions, suspensions, or revocations counted under s. 343.307 (1). The court may  
16 not order a motor vehicle seized if the court enters an order under s. 343.301 to  
17 immobilize the motor vehicle or equip the motor vehicle with an ignition interlock  
18 device or if seizure would result in undue hardship or extreme inconvenience or  
19 would endanger the health and safety of a person.

20 **SECTION 35.** 346.65 (6) (c) of the statutes is amended to read:

21 346.65 (6) (c) The district attorney of the county where the motor vehicle was  
22 seized, or where the owner improperly refused to take the test under s. 343.305 or  
23 violated s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or~~ 2., or 3., 940.09 (1) (a), (am), (b),  
24 (c), (cm), or (d) or 940.25 (1) (a), (am), (b), (c), (cm), or (d), shall commence an action  
25 to forfeit the motor vehicle within 30 days after the motor vehicle is seized. The

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

8 **SECTION 36.** 346.65 (6) (d) of the statutes is amended to read:

9 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of  
10 proving to a reasonable certainty by the greater weight of the credible evidence that  
11 the motor vehicle seized under par. (a) 1. is a motor vehicle used in the violation or  
12 the improper refusal and owned by a person who committed a violation of s. 346.63  
13 (1) (a), (am), or (b) or (2) (a) 1. ~~or 2., or 3.,~~ 940.09 (1) (a), (am), (b), (c), (cm), or (d) or  
14 940.25 (1) (a), (am), (b), (c), (cm), or (d) and that the person had 2 or more prior  
15 convictions, suspensions or revocations, counting convictions under ss. 940.09 (1)  
16 and 940.25 in the person's lifetime, plus other convictions, suspensions or  
17 revocations counted under s. 343.307 (1). If the state fails to meet the burden of proof  
18 required under this paragraph, the motor vehicle shall be returned to the owner upon  
19 the payment of storage costs.

20 **SECTION 37.** 350.101 (1) (bm) of the statutes is created to read:

21 350.101 (1) (bm) *Operating with a controlled substance or a controlled*  
22 *substance analog.* No person may engage in the operation of a snowmobile with any  
23 amount of a controlled substance or a controlled substance analog in his or her blood  
24 or urine.

25 **SECTION 38.** 350.101 (1) (d) of the statutes is amended to read:



1           350.101 (1) (d) *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), (b), or (bm) 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), (b), or (bm), the offenses shall be joined. If the person is found  
6 guilty of ~~both pars. (a) and (b)~~ any combination of par. (a), (b), or (bm) for acts arising  
7 out of the same incident or occurrence, there shall be a single conviction for purposes  
8 of sentencing and for purposes of counting convictions under s. 350.11 (3) (a) 2. and  
9 3. Paragraphs (a) ~~and~~, (b), and (bm) each require proof of a fact for conviction which  
10 the ~~other does~~ others do not require.

11           **SECTION 39.** 350.101 (1) (e) of the statutes is created to read:

12           350.101 (1) (e) *Defenses*. In an action under par. (bm), the defendant has a  
13 defense if he or she proves by a preponderance of the evidence that at the time of the  
14 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.

24           **SECTION 40.** 350.101 (2) (bm) of the statutes is created to read:

1           350.101 (2) (bm) *Causing injury while operating a snowmobile with any*  
2 *amount of a controlled substance or a controlled substance analog.* No person who  
3 has any amount of a controlled substance or a controlled substance analog in his or  
4 her blood or urine may cause injury to another person by the operation of a  
5 snowmobile.

6           **SECTION 41.** 350.101 (2) (c) of the statutes is amended to read:

7           350.101 (2) (c) *Related charges.* A person may be charged with and a prosecutor  
8 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any  
9 combination of par. (a), (b), or (bm) for acts arising out of the same incident or  
10 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any  
11 combination of par. (a), (b), or (bm) in the complaint, the crimes shall be joined under  
12 s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of  
13 par. (a), (b), or (bm) for acts arising out of the same incident or occurrence, there shall  
14 be a single conviction for purposes of sentencing and for purposes of counting  
15 convictions under s. 350.11 (3) (a) 2. and 3. Paragraphs (a) ~~and~~, (b), ~~and~~ (bm) each  
16 require proof of a fact for conviction which the ~~other does~~ others do not require.

17           **SECTION 42.** 350.101 (2) (d) of the statutes is renumbered 350.101 (2) (d) 1. and  
18 amended to read:

19           350.101 (2) (d) 1. In an action under this subsection, the defendant has a  
20 defense if he or she proves by a preponderance of the evidence that the injury would  
21 have occurred even if he or she had been exercising due care and he or she had not  
22 been under the influence of an intoxicant or did not have an alcohol concentration  
23 of 0.1 or more or any amount of a controlled substance or a controlled substance  
24 analog in his or her blood or urine.

25           **SECTION 43.** 350.101 (2) (d) 2. of the statutes is created to read:

1           350.101 (2) (d) 2. In an action under par. (bm), the defendant has a defense if  
2 he or she proves by a preponderance of the evidence that, at the time of the incident  
3 or occurrence, one of the following applied:

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

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

13           **SECTION 44.** 350.104 (4) of the statutes is amended to read:

14           350.104 (4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results  
15 of a chemical test required or administered under sub. (1), (2) or (3) are admissible  
16 in any civil or criminal action or proceeding arising out of the acts committed by a  
17 person alleged to have violated the intoxicated snowmobiling law on the issue of  
18 whether the person was under the influence of an intoxicant or the issue of whether  
19 the person had alcohol concentrations at or above specified levels or any amount of  
20 a controlled substance or a controlled substance analog in his or her blood or urine.  
21 Results of these chemical tests shall be given the effect required under s. 885.235.  
22 This section does not limit the right of a law enforcement officer to obtain evidence  
23 by any other lawful means.

24           **SECTION 45.** 885.235 (1g) (intro.) of the statutes is amended to read:

1           885.235 (1g) (intro.) In any action or proceeding in which it is material to prove  
2 that a person was under the influence of an intoxicant ~~or~~, had a prohibited alcohol  
3 concentration ~~or~~, a specified alcohol concentration, or any amount of a controlled  
4 substance or a controlled substance analog in his or her blood or urine while  
5 operating or driving a motor vehicle or, if the vehicle is a commercial motor vehicle,  
6 on duty time, while operating a motorboat, except a sailboat operating under sail  
7 alone, while operating a snowmobile, while operating an all-terrain vehicle or while  
8 handling a firearm, evidence of the amount of alcohol, controlled substance, or  
9 controlled substance analog in the person's blood or urine at the time in question, as  
10 shown by chemical analysis of a sample of the person's blood or urine or evidence of  
11 the amount of alcohol in the person's breath, is admissible on the issue of whether  
12 he or she was under the influence of an intoxicant ~~or~~, had a prohibited alcohol  
13 concentration ~~or~~, a specified alcohol concentration, or any amount of a controlled  
14 substance or a controlled substance analog in his or her blood or urine if the sample  
15 was taken within 3 hours after the event to be proved. The chemical analysis shall  
16 be given effect as follows without requiring any expert testimony as to its effect:

17           **SECTION 46.** 885.235 (1g) (cm) of the statutes is created to read:

18           885.235 (1g) (cm) The fact that the analysis shows that the person had any  
19 amount of a controlled substance or a controlled substance analog in his or her blood  
20 is prima facie evidence on the issue of having a controlled substance or a controlled  
21 substance analog in his or her blood or urine.

22           **SECTION 47.** 885.235 (4) of the statutes is amended to read:

23           885.235 (4) The provisions of this section relating to the admissibility of  
24 chemical tests for alcohol concentration or intoxication shall not be construed as  
25 limiting the introduction of any other competent evidence bearing on the question

1 of whether or not a person was under the influence of an intoxicant, had any amount  
2 of a controlled substance or a controlled substance analog in his or her blood or urine,  
3 had a specified alcohol concentration, or had an alcohol concentration in the range  
4 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101 (1) (c).

5 **SECTION 48.** 939.75 (1) of the statutes, as affected by 2001 Wisconsin Act 109,  
6 is amended to read:

7 939.75 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02  
8 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm),  
9 and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to  
10 (e), “unborn child” means any individual of the human species from fertilization until  
11 birth that is gestating inside a woman.

12 **SECTION 49.** 939.75 (2) (b) of the statutes is amended to read:

13 939.75 (2) (b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06  
14 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195,  
15 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the  
16 following:

17 **SECTION 50.** 939.75 (3) (intro.) of the statutes is amended to read:

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

24 **SECTION 51.** 940.09 (1) (am) of the statutes is created to read:

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

4           **SECTION 52.** 940.09 (1) (cm) of the statutes is created to read:

5           940.09 (1) (cm) Causes the death of an unborn child by the operation or  
6 handling of a vehicle while the person has any amount of a controlled substance or  
7 a controlled substance analog in his or her blood or urine.

8           **SECTION 53.** 940.09 (1d) (a) 1. of the statutes is amended to read:

9           940.09 (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. 940.25 in the  
12 person's lifetime, plus other convictions, suspensions, or revocations counted under  
13 s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court enters an  
14 order regarding operating privilege restriction or enters an order regarding  
15 immobilization.

16           **SECTION 54.** 940.09 (1d) (a) 2. of the statutes is amended to read:

17           940.09 (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 55.** 940.09 (1d) (b) of the statutes is amended to read:

24           940.09 (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,

1 counting convictions under sub. (1) and s. 940.25 in the person's lifetime, plus other  
2 convictions, suspensions, or revocations counted under s. 343.307 (1), the procedure  
3 under s. 346.65 (6) shall be followed if the court orders the seizure and forfeiture of  
4 the motor vehicle owned by the person and used in the violation.

5 **SECTION 56.** 940.09 (1g) (am) of the statutes is created to read:

6 940.09 (1g) (am) Causes the death of another by the operation or handling of  
7 a firearm or airgun while the person has any amount of a controlled substance or a  
8 controlled substance analog in his or her blood or urine.

9 **SECTION 57.** 940.09 (1g) (cm) of the statutes is created to read:

10 940.09 (1g) (cm) Causes the death of an unborn child by the operation or  
11 handling of a firearm or airgun while the person has any amount of a controlled  
12 substance or a controlled substance analog in his or her blood or urine.

13 **SECTION 58.** 940.09 (1m) of the statutes is renumbered 940.09 (1m) (a) and  
14 amended to read:

15 940.09 (1m) (a) A person may be charged with and a prosecutor may proceed  
16 upon an information based upon a violation of sub. (1) (a), (am), or (b) or ~~both~~, any  
17 combination thereof; sub. (1) (a), (am), or (bm) or ~~both~~, any combination thereof; sub.  
18 (1) (c), (cm), or (d) or ~~both~~, any combination thereof; sub. (1) (c), (cm), or (e) or ~~both~~,  
19 any combination thereof; sub. (1g) (a), (am), or (b) or ~~both~~ any combination thereof;  
20 or sub. (1g) (c), (cm), or (d) or ~~both~~ any combination thereof for acts arising out of the  
21 same incident or occurrence.

22 ~~(b) If the a person is charged with violating both sub. (1) (a) and (b), both sub.~~  
23 ~~(1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a)~~  
24 ~~and (b) or both sub. (1g) (c) and (d) in the an information with any combination of~~  
25 crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person

1 is found guilty of ~~both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (e)~~  
2 ~~and (d), both sub. (1) (e) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (e) and (d)~~  
3 more than one of the crimes so charged for acts arising out of the same incident or  
4 occurrence, there shall be a single conviction for purposes of sentencing and for  
5 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)  
6 (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1)  
7 (a), ~~(am), (b), (bm), (c), (cm), (d), and (e), and sub. (1g) (a), (b), (e) and (d),~~ each require  
8 proof of a fact for conviction which the ~~other does~~ others do not require, and sub. (1g)  
9 (a), ~~(am), (b), (c), (cm), and (d)~~ each require proof of a fact for conviction which the  
10 others do not require.

11 **SECTION 59.** 940.09 (2) of the statutes is renumbered 940.09 (2) (a) and  
12 amended to read:

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

19 **SECTION 60.** 940.09 (2) (b) of the statutes is created to read:

20 940.09 (2) (b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm), the  
21 defendant has a defense if he or she proves by a preponderance of the evidence that  
22 at the time of the incident or occurrence one of the following applied:

23 1. He or she had a valid prescription for the controlled substance or controlled  
24 substance analog that was present in his or her blood or urine and the amount of  
25 controlled substance or controlled substance analog found in his or her blood or urine



1 was consistent with the controlled substance or controlled substance analog being  
2 used as prescribed.

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

7 **SECTION 61.** 940.25 (1) (am) of the statutes is created to read:

8 940.25 (1) (am) Causes great bodily harm to another human being by the  
9 operation of a vehicle while the person has any amount of a controlled substance or  
10 a controlled substance analog in his or her blood or urine.

11 **SECTION 62.** 940.25 (1) (cm) of the statutes is created to read:

12 940.25 (1) (cm) Causes great bodily harm to an unborn child by the operation  
13 of a vehicle while the person has any amount of a controlled substance or a controlled  
14 substance analog in his or her blood or urine.

15 **SECTION 63.** 940.25 (1d) (a) 1. of the statutes is amended to read:

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

23 **SECTION 64.** 940.25 (1d) (a) 2. of the statutes is amended to read:

24 940.25 (1d) (a) 2. Notwithstanding par. (b), if the person who committed an  
25 offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more convictions,

1 suspensions, or revocations counted under s. 343.307 (1) within any 5-year period,  
2 the procedure under s. 343.301 shall be followed if the court enters an order  
3 regarding operating privilege restriction and the installation of an ignition interlock  
4 device or enters an order regarding immobilization.

5 **SECTION 65.** 940.25 (1d) (b) of the statutes is amended to read:

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

12 **SECTION 66.** 940.25 (1m) of the statutes is renumbered 940.25 (1m) (a) and  
13 amended to read:

14 940.25 (1m) (a) A person may be charged with and a prosecutor may proceed  
15 upon an information based upon a violation of sub. (1) (a), (am), or (b) or ~~both~~, any  
16 combination thereof; sub. (1) (a), (am), or (bm) or ~~both~~, any combination thereof; sub.  
17 (1) (c), (cm), or (d) or ~~both~~ any combination thereof; or sub. (1) (c), (cm), or (e) or ~~both~~  
18 any combination thereof for acts arising out of the same incident or occurrence.

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

1 convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss.  
2 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am),  
3 (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for conviction which the  
4 ~~other does~~ others do not require.

5 SECTION 67. 940.25 (2) of the statutes is renumbered 940.25 (2) (a) and  
6 amended to read:

7 940.25 (2) (a) The defendant has a defense if he or she proves by a  
8 preponderance of the evidence that the great bodily harm would have occurred even  
9 if he or she had been exercising due care and he or she had not been under the  
10 influence of an intoxicant, did not have any amount of a controlled substance or a  
11 controlled substance analog in his or her blood or urine, or did not have an alcohol  
12 concentration described under sub. (1) (b), (bm), (d) or (e).

13 SECTION 68. 940.25 (2) (b) of the statutes is created to read:

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

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

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

1           **SECTION 69.** 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 70.** 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.

24           **SECTION 71.** 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.

9           **SECTION 72.** 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.

22           **SECTION 73.** 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  
25 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the

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

18 **SECTION 74. Effective date.**

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

21 (END)

**Dsida, Michael**

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**From:** Dsida, Michael  
**Sent:** Thursday, March 06, 2003 11:01 AM  
**To:** Rep.Gundrum  
**Cc:** Hurley, Peggy  
**Subject:** The ADA and your drugged driving bill

Title II of the Americans with Disabilities Act protects people with disabilities against discrimination by states. 42 U.S.C. § 12132. This protection would cover many people who have been prescribed and who properly use controlled substances.

Under your bill, those individuals are arguably subject to discrimination based on their disability. Unlike an individual without a disability, they are subject to being charged with a crime based on their use of the prescribed medication. The bill also requires them to present the "used as prescribed" defense, a burden not borne by a person without a disability. Unfortunately, I have not been able to find any cases regarding this issue, nor have I thought of a way to address it in your bill without significantly changing the bill's overall structure. But if you would like to talk about it, please let me know.

Mike Dsida  
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