



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0465/P3 P4
PJH&MGD:jd:rs

D Note

Matthew J. Regen

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

soon

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)

soon

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~~ ^{ing}
 4 ^{certain} controlled substance^s and providing penalties.

Analysis by the Legislative Reference Bureau

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

INS 2/4 ✓ *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 ^{restricted} controlled substance ~~of 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 ^{restricted} controlled substance ~~of 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.

a detectable

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2/2/04

INS 3/2

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;~~ INS 3/4

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 ^{restricted} controlled substance
16 or a controlled substance analog.' No person who has ^{restricted} any amount of a controlled
17 substance ~~of 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

SECTION 5

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, ^{a detectable} ~~or did not have any amount of a~~ ^{restricted} ~~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, ^{INS 4/14} 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 ^{INS 4/16} 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:

I → after using a

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~~ ^{a detectable} amount of a ~~controlled substance or a controlled substance analog~~
6 in his or her blood or urine. ~~restricted~~

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:

INS 5/19 ✓

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~~ ✓

INS 5/21 ✓

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 ^{a detectable} any amount of a ^{restricted} 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 ^{a detectable} ~~any~~ amount of
9 ^{restricted} 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, ^{INS 7/11 ✓} 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 ^{INS 7/13 ✓} 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

SECTION 17

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, ^{a detectable} ~~having any amount of a controlled~~ ^{restricted}
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 ^{a detectable} ~~any amount of a controlled~~ ^{restricted}
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 detectable} ~~any amount~~
25 ~~of a controlled substance or a controlled substance analog~~ or a prohibited alcohol

restricted

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

✓
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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.

7
a detectable

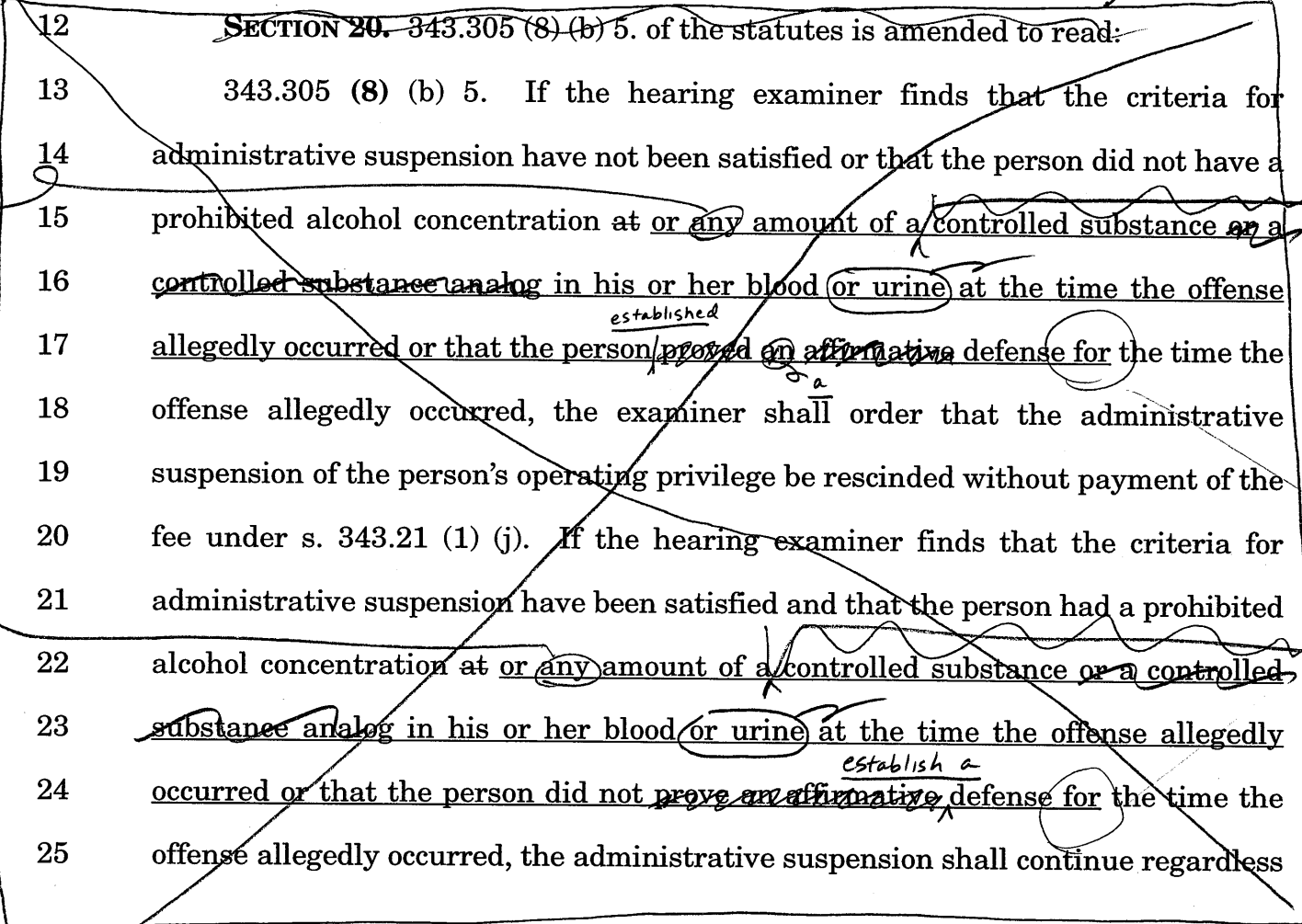
8 d. If one or more tests were administered in accordance with this section,
9 whether each of the test results for those tests indicate the person had a prohibited
10 alcohol concentration or any amount of a controlled substance or ~~a controlled~~
11 ~~substance analog~~ in his or her blood or urine.

INS ✓
9/11

restricted

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 ^{established} ~~proved an affirmative~~ defense for the time the
18 offense allegedly occurred, the examiner shall ^a 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 ^{establish a} ~~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 ^{restricted} 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) ^{PLAIN} or (b) or both ² 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

, (am),

, (am),

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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 detectable controlled substance ~~or a controlled substance analog~~
13 in his or her blood or urine or has a prohibited restricted alcohol concentration and which is
14 criminal under s. 346.63 (2).

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11/14

15 SECTION 24. 343.315 (2) (a) ^{Im} ~~of~~ of the statutes is ^{created} amended to read:

16 343.315 (2) (a) ^{Im} ~~of~~ Section 346.63 (1) (am) ^{Plain} ~~or (5) or~~ 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) ^{Plain} ~~or (b) or (5) or~~ or the law of
19 another jurisdiction ^{that} prohibiting ^s ~~ing~~ 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:

having a detectable amount of a restricted controlled substance in ~~the~~ his or her blood

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11/22

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 ^{a detectable} ~~any~~ amount of ~~a~~ ^{restricted} controlled substance ~~or~~
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~~ do ~~does~~ not
17 require.

INS 12/19 ✓

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~~

INS 12/21 ✓

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 ^{a detectable} any amount of a controlled substance or ~~a~~
9 ~~controlled substance analog~~ in his or her blood or urine. ^{restricted}

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 ^{a detectable} any amount of a controlled substance ~~or~~
 7 ~~a controlled substance analog~~ in his or her blood or urine restricted ✓

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. ^{✓(a)3.} ~~(a) 2.~~, the defendant has a defense if he ^{INS 14/9 ✓}
 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:~~ ^{INS 14/11 ✓}

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

in the person's blood or urine ~~the amount of~~ restricted (a)

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.

✓
INS
16/19

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

21 350.101 (1) (bm) Operating with a ^{restricted ← (I)} ~~controlled substance or a controlled~~
22 ~~substance analog~~. No person may engage in the operation of a snowmobile with any
23 ^{detectable} amount of a ^{restricted} ~~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.

⑨ INS 17/12 ✓

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~~ ✓

⑨ INS 17/14 ✓

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:

restricted ^①

^① a detectable

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 ^{a detectable} ~~any~~ amount of a ^{restricted} ~~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 ^{a detectable} ~~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:

restricted ✓

INS 19/11 ✓

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: ~~INS 19/3 ✓~~

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 ^{a detectable} any amount of
20 ~~a controlled substance or a controlled substance analog~~ ^{restricted} 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 ^{Fix Component} SECTION 45. 885.235 (1g) ~~885.235~~ ^{created} of the statutes is amended to read:

INS 19/23

restricted

K R B

a detectable

PLAIN

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 ~~prohibited alcohol~~
 3 ~~concentration or~~ a specified alcohol concentration, ~~or any amount of a controlled~~ ^{a detectable}
 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~~ ^{detectable a} 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 ~~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. ^{if} The chemical analysis shall
 16 be given effect as follows without requiring any expert testimony as to its effect.

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

18 885.235 (1g) (cm) The fact that the analysis ND shows that the person had any ^{keep}
 19 amount of a controlled substance or a controlled substance analog in his or her blood,
 20 ^{the court shall treat the analysis as} is prima facie evidence on the issue of ^{the person} having a controlled substance or a controlled
 21 substance analog in his or her blood ~~or urine~~ ^{a detectable amount of}

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

restricted ✓

✓ *a detectable*

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).

INS ✓
2/1/4

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:

SECTION 51

restricted ✓

1 940.09 (1) (am) Causes the death of another by the operation or handling of a
2 vehicle while the person has ~~any~~ ^{a detectable} 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~~ ^{a detectable} 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,

✓ restricted

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. a detectable

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:

any combination of

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) ^{strike} or both, ~~any~~
17 ~~combination thereof~~; sub. (1) (a), (am), or (bm) ^{strike} or both, ~~any combination thereof~~; sub.
18 (1) (c), (cm), or (d) ^{strike} or both, ~~any combination thereof~~; sub. (1) (c), (cm), or (e) ^{strike} or both,
19 ~~any combination thereof~~; sub. (1g) (a), (am), or (b) ^{strike} or both ~~any combination thereof~~;
20 ^{strike} or sub. (1g) (c), (cm), or (d) ^{strike} 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 ^{of the} combination _S
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, ^{a detectable} did not have any amount of a controlled
 17 substance or a controlled substance analog in his or her blood (or urine), ^{restricted} 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: ^{INS 24/22} ✓

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, ^{INS 24/22} ✓

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:

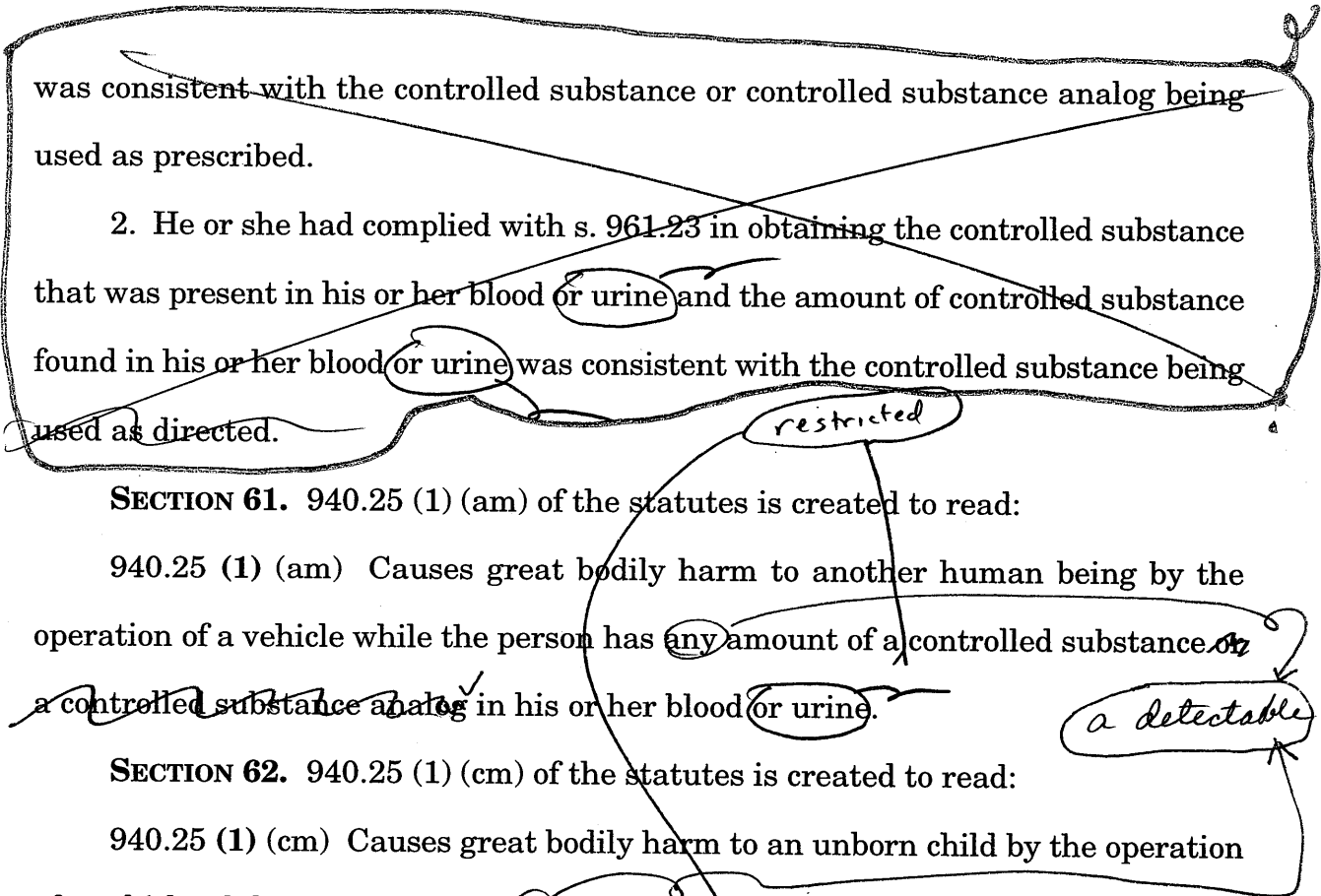
12 940.25 (1) (cm) Causes great bodily harm to an unborn child by the operation
13 of a vehicle while the person has any amount of a controlled substance or a controlled
14 substance analog in his or her blood or urine.

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) ^{may} or both, ~~any~~
16 ~~combination thereof~~; sub. (1) (a), (am), or (bm) ^{may} or both, ~~any combination thereof~~; sub.
17 (1) (c), (cm), or (d) ^{may} or both ~~any combination thereof~~; or sub. (1) (c), (cm), or (e) ^{may} 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 the} 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, ^{a detectable} ~~did not have (any) amount of a controlled substance or a~~ ^{restricted} ~~controlled substance analog~~ [✓] in his or her blood or urine, or did not have an alcohol
11 concentration described under sub. (1) (b), (bm), (d) or (e).

12 SECTION 68. 940.25 (2) (b) of the statutes is created to read: INS 27/14 ✓

13 940.25 (2) (b) In any action under this section, ^{INS 27/16 ✓} the defendant has a defense if
14 he or she proves by a preponderance of the evidence that at the time of the incident
15 or occurrence one of the following applied ✓

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

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

INS 28/4 ✓

restricted

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 detectable 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~~ *a detestable*
 19 ~~restricted~~ *restricted* ~~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

✓
(NS)
29/21

SECTION 73

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 ^{a detectable}controlled substance ~~or~~
 12 ~~a controlled substance analog~~ in his or her blood or urine, or in ^{restricted}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.

SECTION 74. Effective date.

18
 19 (1) This act takes effect on February 1, 2003, or on the day after publication,
 20 whichever is later.

(END)

INS 30/17 ✓

dnote
↓

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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1 **INSERT 2/4**

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

3 23.33 (1) (jo) "Restricted controlled substance" means any of the following:

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

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

8 3. Cocaine or any of its metabolites.

9 4. Methamphetamine.

10 5. Delta-9-tetrahydrocannabinol.

11 **INSERT 3/2**

12 (2) that is based on the defendant allegedly having a detectable amount of
13 methamphetamine in his or her blood.

14 **INSERT 3/4**

15 (4) methamphetamine or one of its metabolic precursors.

16 **INSERT 4/14**

17 (14) that is based on the defendant allegedly having a detectable amount of
18 methamphetamine in his or her blood.

19 **INSERT 4/16**

20 (16) methamphetamine or one of its metabolic precursors.

21 **SECTION 2.** 23.33 (13) (b) 1. of the statutes is amended to read:



INS 4/16 cont

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

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109.

4 **SECTION 3.** 23.33 (13) (b) 2. of the statutes is amended to read:

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

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109.

10 **SECTION 4.** 23.33 (13) (b) 3. of the statutes is amended to read:

11 23.33 (13) (b) 3. A person who violates sub. (4c) (a) 1. ~~or, 2., or 2m.~~ or (4p) (e)
12 and who, within 5 years prior to the arrest for the current violation, was convicted
13 2 or more times previously under the intoxicated operation of an all-terrain vehicle
14 law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall
15 be imprisoned not less than 30 days nor more than one year in the county jail.

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109.

16 **SECTION 5.** 30.50 (10m) of the statutes is created to read:

17 30.50 (10m) "Restricted controlled substance" means any of the following:

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

20 (b) A controlled substance analog, as defined in s. 961.01 [✓] (4m), of a controlled
21 substance described in ~~subd. 1.~~ par. (a)

22 (c) Cocaine or any of its metabolites.

23 (d) Methamphetamine.



INS 4/16 CORR

(e) Delta-9-tetrahydrocannabinol.

INSERT 5/19

that is based on the defendant allegedly having a detectable amount of methamphetamine in his or her blood.

INSERT 5/21

methamphetamine or one of its metabolic precursors.

INSERT 7/11

that is based on the defendant allegedly having a detectable amount of methamphetamine in his or her blood.

INSERT 7/13

methamphetamine or one of its metabolic precursors.

SECTION 6. 340.01 (50m) of the statutes is created to read:

340.01 (50m) "Restricted controlled substance" means any of the following:

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

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

(c) Cocaine or any of its metabolites.

(d) Methamphetamine.

(e) Delta-9-tetrahydrocannabinol.

INSERT 9/3

SECTION 7. 343.305 (7) (b) of the statutes is amended to read:

343.305 (7) (b) If a person who was driving or operating or on duty time with respect to a commercial motor vehicle submits to chemical testing administered in accordance with this section and any test results indicate an alcohol concentration

1 above 0.0 or indicate that the person was driving or operating the vehicle with a
 2 detectable amount of a restricted controlled substance in his or her blood, the law
 3 enforcement officer may take possession of the person's license and retain the license
 4 for 24 hours. The person may reclaim a seized license in person or request return
 5 of the license by mail. The law enforcement officer shall issue a citation for violation
 6 of s. 346.63 (7) (a) 1., issue citations for such other violations as may apply and issue
 7 an out-of-service order to the person for the 24 hours after the testing, and report
 8 both the out-of-service order and the test results to the department in the manner
 9 prescribed by the department. If the person is a nonresident, the department shall
 10 report issuance of the out-of-service order to the driver licensing agency in the
 11 person's home jurisdiction.

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 **INSERT 9/11**

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

14 343.305 (8) (b) 2. g. Whether the person had a valid prescription for
 15 methamphetamine or one of its metabolic precursors in a case in which subd. 4m. a.
 16 and b. apply.

17 **SECTION 9.** 343.305 (8) (b) 4m. of the statutes is created to read:

18 343.305 (8) (b) 4m. If, at the time the offense allegedly occurred, all of the
 19 following apply, the hearing officer shall determine whether the person had a valid
 20 prescription for methamphetamine or one of its metabolic precursors:

21 a. A blood test administered in accordance with this section indicated that the
 22 person had a detectable amount of methamphetamine but did not have a detectable
 23 amount of any other restricted controlled substance in his or her blood.



INS 9-11
cont

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

3 SECTION 10. 343.305 (8) (b) 5. of the statutes is renumbered 343.305 (8) (b) 5.
4 (intro.) and amended to read:

5 343.305 (8) (b) 5. (intro.) If the hearing examiner finds that ~~the criteria for~~
6 ~~administrative suspension have not been satisfied or that the person did not have a~~
7 ~~prohibited alcohol concentration at the time the offense allegedly occurred~~ any of the
8 following ^{applies} ~~the~~, the examiner shall order that the administrative suspension of the
9 person's operating privilege be rescinded without payment of the fee under s. 343.21

10 (1) (j):

11 6. If the hearing examiner finds that ^{plain} ~~the criteria for administrative suspension~~
12 ~~have been satisfied and that the person had a prohibited alcohol concentration at the~~
13 ~~time the offense allegedly occurred~~ all of the following apply, the administrative
14 suspension shall continue regardless of the type of vehicle driven or operated at the
15 time of the violation:

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

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. 3423g to 3423j, 4060gk, 4060hw, 4060hy; 2001 a. 104.

22 SECTION 11. 343.305 (8) (b) 5. a. of the statutes is created to read:

23 343.305 (8) (b) 5. a. The criteria for administrative suspension have not been
24 satisfied.



WS 9-11
Cont

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

2 343.305 (8) (b) 5. b. The person did not have a prohibited alcohol concentration
3 or a detectable amount of a restricted controlled substance in his or her blood at the
4 time the offense allegedly occurred.

5 SECTION 13. 343.305 (8) (b) 5. c. of the statutes is created to read:

6 343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had
7 a valid prescription for methamphetamine or one of its metabolic precursors.

8 SECTION 14. 343.305 (8) (b) 6. a. of the statutes is created to read:

9 343.305 (8) (b) 6. a. The criteria for administrative suspension have been
10 satisfied.

11 SECTION 15. 343.305 (8) (b) 6. b. of the statutes is created to read:

12 343.305 (8) (b) 6. b. The person had a prohibited alcohol concentration or a
13 detectable amount of a restricted controlled substance in his or her blood at the time
14 the offense allegedly occurred.

15 SECTION 16. 343.305 (8) (b) 6. c. of the statutes is created to read:

16 343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did
17 not have a valid prescription for methamphetamine or one of its metabolic
18 precursors.

19 **INSERT 10/20**

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

21 343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits
22 ~~refusal of a person from refusing~~ chemical testing or ~~use of~~ using a motor vehicle
23 while intoxicated or under the influence of a controlled substance or controlled
24 substance analog, or a combination thereof, ~~or~~ with an excess or specified range of
25 alcohol concentration, ~~or~~ while under the influence of any drug to a degree that



INS 10/20
cont

1 renders the person incapable of safely driving; or while having a detectable amount
2 of a restricted controlled substance in his or her blood, ✓ as those or substantially
3 similar terms are used in that jurisdiction's laws.

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

4 **SECTION 18.** 343.307 (2) (e) ✓ of the statutes is amended to read:

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

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.

13 **INSERT 11/14**

14 **SECTION 19.** 343.31 (2) ✓ of the statutes is amended to read:

15 343.31 (2) The department shall revoke the operating privilege of any resident
16 upon receiving notice of the conviction of such person in another jurisdiction for an
17 offense therein which, if committed in this state, would have been cause for
18 revocation under this section or for revocation under s. 343.30 (1q). Such offenses
19 shall include violation of any law of another jurisdiction that prohibits ~~use of a person~~
20 from using a motor vehicle while intoxicated or under the influence of a controlled
21 substance or controlled substance analog, or a combination thereof, ~~or;~~ with an
22 excess or specified range of alcohol concentration, ~~or;~~ while ✓ under the influence of any
23 drug to a degree that renders the person incapable of safely driving; or while having
24 a detectable amount of a restricted ✓ controlled substance in his or her blood, as those



INS 11/14 cont

1 or substantially similar terms are used in that jurisdiction's laws. Upon receiving
2 similar notice with respect to a nonresident, the department shall revoke the
3 privilege of the nonresident to operate a motor vehicle in this state. Such revocation
4 shall not apply to the operation of a commercial motor vehicle by a nonresident who
5 holds a valid commercial driver license issued by another state.

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.

6 INSERT 11/14 22

7 **SECTION 20.** 343.315 (2) (a) 5. of the statutes is amended to read:

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

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

15 **SECTION 21.** 343.315 (2) (a) 6. of the statutes is amended to read:

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



INS 11/22 cont

1 restricted controlled substance in the person's blood, as those or substantially
2 similar terms are used in that jurisdiction's laws.

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

3 **INSERT 12/19**

4 (20/4) that is based on the defendant allegedly having a detectable amount of
5 methamphetamine in his or her blood.

6 **INSERT 12/21**

7 (20/4) methamphetamine or one of its metabolic precursors.

8 **INSERT 14/9**

9 (20/4) that is based on the defendant allegedly having a detectable amount of
10 methamphetamine in his or her blood.

11 **INSERT 14/11**

12 (20/4) methamphetamine or one of its metabolic precursors.

13 **SECTION 22.** 346.65 (2g) (c) of the statutes is amended to read:

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



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1 cost of establishing, maintaining and monitoring the community service work
2 ordered under this paragraph.

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 **INSERT 16/19**

4 **SECTION 23.** 350.01 (10v) of the statutes is created to read:

5 350.01 (10v) "Restricted controlled substance" means any of the following:

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

8 (b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
9 substance described in ~~subd. 1.~~ par. (a)

10 (c) Cocaine or any of its metabolites.

11 (d) Methamphetamine.

12 (e) Delta-9-tetrahydrocannabinol.

13 **INSERT 17/12**

14 (b) that is based on the defendant allegedly having a detectable amount of
15 methamphetamine in his or her blood.

16 **INSERT 17/14**

17 (b) methamphetamine or one of its metabolic precursors.

18 **INSERT 19/1**

19 (b) that is based on the defendant allegedly having a detectable amount of
20 methamphetamine in his or her blood.

21 **INSERT 19/3**

22 (b) methamphetamine or one of its metabolic precursors.

23 **INSERT 19/23**

24 **SECTION 24.** 350.11 (3) (a) 1. of the statutes is amended to read:



INS 19/23

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

4 History: 1971 c. 277; 1973 c. 218; 1975 c. 365; 1987 a. 399; 1991 a. 269; 1993 a. 119, 436; 1995 a. 417, 448; 1997 a. 27, 283; 2001 a. 109.

4 **SECTION 25.** 350.11 (3) (a) 2. of the statutes is amended to read:

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

10 History: 1971 c. 277; 1973 c. 218; 1975 c. 365; 1987 a. 399; 1991 a. 269; 1993 a. 119, 436; 1995 a. 417, 448; 1997 a. 27, 283; 2001 a. 109.

10 **SECTION 26.** 350.11 (3) (a) 3. of the statutes is amended to read:

11 350.11 (3) (a) 3. A person who violates s. 350.101 (1) (a) ~~or~~, (b), or (bm) or 350.104
12 (5) and who, within 5 years prior to the arrest for the current violation, was convicted
13 2 or more times previously under the intoxicated snowmobiling law or refusal law
14 shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not
15 less than 30 days nor more than one year in the county jail.

16 History: 1971 c. 277; 1973 c. 218; 1975 c. 365; 1987 a. 399; 1991 a. 269; 1993 a. 119, 436; 1995 a. 417, 448; 1997 a. 27, 283; 2001 a. 109.

16 **SECTION 27.** 351.02 (1) (a) 10. of the statutes is amended to read:

17 351.02 (1) (a) 10. Any offense committed by the person under the law of another
18 jurisdiction prohibiting conduct described in sections 6-207, 6-302, 10-102, 10-103,
19 10-104, 11-901, 11-902, 11-907 or 11-908 of the uniform vehicle code and model
20 traffic ordinance (1987), or prohibiting homicide or manslaughter resulting from the
21 operation of a motor vehicle, use of a motor vehicle in the commission of a felony,
22 reckless or careless driving or driving a motor vehicle with willful or wanton
23 disregard for the safety of persons or property, driving or operating a motor vehicle
24 while under the influence of alcohol, a controlled substance, a controlled substance



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CONT

[Handwritten signatures and initials]

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

History: 1979 c. 333; 1983 a. 189 s. 329 (34); 1983 a. 459, 525, 535; 1985 a. 71, 337; 1987 a. 3, 399; 1989 a. 56, 105; 1991 a. 39; 1995 a. 448; 1997 a. 84, 258; 1999 a. 9.

SECTION 28. 885.235 (1) (d) of the statutes is created to read:

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

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

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

3. Cocaine or any of its metabolites.

4. Methamphetamine.

5. Delta-9-tetrahydrocannabinol.

INSERT 21/4

SECTION 29. 939.22 (33) of the statutes is created to read:

939.22 (33) "Restricted controlled substance" means any of the following:

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



INS 21/4 cont

1 (b) A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
2 substance described in ~~subd. 1.~~ *par. (a)*

3 (c) Cocaine or any of its metabolites.

4 (d) Methamphetamine.

5 (e) Delta-9-tetrahydrocannabinol.

6 **INSERT 24/20**

7 (20) that is based on the defendant allegedly having a detectable amount of
8 methamphetamine in his or her blood.

9 **INSERT 24/22**

10 (20) methamphetamine or one of its metabolic precursors.

11 **INSERT 27/14**

12 (20) that is based on the defendant allegedly having a detectable amount of
13 methamphetamine in his or her blood.

14 **INSERT 27/16**

15 (20) methamphetamine or one of its metabolic precursors.

16 **INSERT 28/4**

17 (20) that is based on the defendant allegedly having a detectable amount of
18 methamphetamine in his or her blood, ✓

19 **INSERT 28/6**

20 (20) methamphetamine or one of its metabolic precursors.

21 **INSERT 29/21**

22 **SECTION 30.** ✓ 967.055 (1m) of the statutes is renumbered 967.055 (1m) (intro.)
23 and amended to read:

24 967.055 (1m) (intro.) DEFINITION DEFINITIONS. In this section, "drug":



INS 29/21

1 (a) "Drug" has the meaning specified in s. 450.01 (10).

2 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.

3 SECTION 31. 967.055 (1m) (b) of the statutes is created to read:

4 967.055 (1m) (b) "Restricted controlled substance" means any of the following:

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

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

9 3. Cocaine or any of its metabolites.

10 4. Methamphetamine.

11 5. Delta-9-tetrahydrocannabinol.

12 **INSERT 30/17**

13 **SECTION 32. Initial applicability.**

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0465/P4dn
RJH + MGD: r:....
jld

Rep. Gundrum:

1. Should this bill have provisions comparable to ss. 23.33 (4x), 30.687, 345.24 (1), and 350.107? Those sections prohibit releasing someone who has been arrested for an OWI offense for 12 hours, unless the person's blood alcohol content is below a certain level or unless the person is released to a responsible adult. When considering this issue, please note that those sections do not currently prevent the police from releasing someone under the influence of a controlled substance earlier, so long as the person's blood alcohol content does not exceed the specified level.

2. Current law permits a person who is 21 or over to get an occupational license if the person is convicted of operating a motor vehicle either while under the influence of an intoxicant or with a prohibited alcohol content. The bill treats a person who is 21 or over and who drives with a restricted controlled substance in his or her blood in the same way. But under current law, if a person is under 21, he or she cannot get an occupational license after driving with a prohibited alcohol content (*i.e.*, greater than 0.0) but can ~~drive or she~~ after driving while under the influence of an intoxicant. Since the illegality of the use of a controlled substance does not depend on a person's age, this draft of the bill treats a person who is under 21 and who drives with a restricted controlled substance in his or her blood in the same way that it treats adults; namely, it permits the person to get an occupational license. Is that okay?

3. A law enforcement officer will probably rarely request a blood test from a person who has a valid prescription for methamphetamine or one of its precursors unless there is some evidence that the person's ability to drive was impaired. Therefore, s. 343.305 (8) and (9), which relate to administrative suspension of a driver's license and a driver's refusal to submit to a blood, breath, or urine test, still apply under the bill to individuals with prescriptions for methamphetamine or one of its precursors. If you want to exempt those individuals, in cases in which there is no evidence of impaired driving, from either the administrative suspension procedures or from the implied consent provisions (for example, if the person shows a valid prescription to the law enforcement officer), or if you want to permit those individuals to refuse to submit to

a chemical test and provide a prescription defense at the refusal hearing, please let us know.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.state.wi.us

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

Dsida, Michael

From: Harding, Patrick [bayouboy@mail.slh.wisc.edu]
Sent: Wednesday, May 28, 2003 3:42 PM
To: 'Michael.Dsida@legis.state.wi.us'
Cc: Liddicoat, Laura; Neuser, Thomas
Subject: Latest draft

Michael,

We have reviewed the latest draft of the per se drug bill that you sent this week. There are just a few comments/suggestions:

Page 3, Line 16, "Defenses"

There is need to include delta-9-THC in this section, and all of the other places where this language occurs. A person can have a valid prescription for this compound (it is the active ingredient in Marinol for instance).

Suggestion- Line 17: "methamphetamine and/or delta-9-tetrahydrocannabinol", Line 20: "precursors and/or delta-9-tetrahydrocannabinol"

Page 10, Line 4-5, 343.305 (7) (b)

No provision is made in other commercial driver legislation regarding drug use. Adding it here, for an officer to retain the license for 24 hours, is unenforceable. The purpose of this section is to remove a commercial driver from service for 24 hours after the test, which would normally be a breath alcohol test with immediate results. It is a safety, rather than a punitive measure. Waiting 3-4 months until the drug testing is completed and then tracking down the driver and retaining the license for 24 hours makes no sense.

Suggestion- remove added drug language, leaving this section unchanged.

Page 19, Line 25; Page 20, Line 1 346.65 (2m) (a)

Suggestion: Remove "or the amount of a restricted controlled substance in the person's blood"

Since it is illegal to have any amount present, rather than a prohibited amount like there is for alcohol, the relative amount of the drug found is irrelevant. Impairment due to alcohol is dose-related, so the more found the more impaired a person will be. This is not always the case with drugs.

Page 26, Line 13, 885.235(1k)

The concept of collection within 3 hours of the offense doesn't have the same application with drugs as it does with alcohol. With alcohol the evidence is fleeting and the concentration declines at a fairly well-defined rate. Not the same for the drugs covered here. If a detectable amount of a restricted controlled substance is found 3, 4, 10, etc. hours after the offense occurs, it still means it was there at the time of the offense (absent use subsequent to driving). 3 hours in this instance is an artificial restriction

Suggestion: Strike 3 hour language from Line 22 or eliminate entire section.

As always, please call the lab if we can provide further information.

Sincerely,

Patrick Harding 224-6247
Laura Liddicoat 224-6245
Thomas Neuser 224-6248

Dsida, Michael

From: Dsida, Michael
Sent: Friday, May 30, 2003 11:26 AM
To: 'Harding, Patrick'; 'Liddicoat, Laura'; 'Neuser, Thomas'
Subject: RE: Additional questions re drugged driving bill

You can ignore this question -- I just realized that the police will never be drawing blood and that the crime labs will continue to test blood drawn elsewhere.

Finally, with respect to your comment regarding s. 343.305 (7) (b) -- is there any technology that allows or any new technology that will soon allow law enforcement officers to test for controlled substances in the field?

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

Dsida, Michael

From: Dsida, Michael
Sent: Friday, May 30, 2003 10:47 AM
To: 'Harding, Patrick'; Liddicoat, Laura; Neuser, Thomas
Subject: Additional questions re drugged driving bill

I've attached a "Drafter's Note." I had addressed the questions to Rep. Gundrum when I was working on the bill, but I just realized that I should have sent it to you earlier in the week. Could you let me know your thoughts on the issues that it raises? (If you need me to send you any of the relevant statutes that the note mentions, let me know.)



03-0465/P4dn

Also, Rep. Gundrum called this morning to check on the status of the bill and to ask me to send it to you one more time (which I will do later today or at the start of next week). In the course of our conversation, he asked me about your comment regarding the language on pages 19-20. He ultimately asked that I leave that language as it is in the bill.

Finally, with respect to your comment regarding s. 343.305 (7) (b) -- is there any technology that allows or any new technology that will soon allow law enforcement officers to test for controlled substances in the field?

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

Dsida, Michael

From: Liddicoat, Laura [ll@mail.slh.wisc.edu]
Sent: Friday, May 30, 2003 2:50 PM
To: 'Dsida, Michael'
Cc: Harding, Patrick; Neuser, Thomas
Subject: RE: Additional questions re drugged driving bill

Mike,

Pat, Tom and I met to discuss the "Drafter's Note" you sent. Ultimately we will only comment on Note #1.

As for Notel, our response is "No".

Brief explanation: Unlike alcohol, there is no current technology available for officers to test for drugs in blood, hence no way to make the determination of when to be able to release. - Or if there were drugs present at the time of arrest for that matter.

We await the next draft of the bill -
Laura, Tom & Pat

Laura J. Liddicoat
Supervisor, Toxicology Section
Wisconsin State Laboratory of Hygiene
2601 Agriculture Drive, P.O. Box 7996
Madison, WI 53707-7996
Ph: (608) 224-6245 FAX: (608) 224-6259
ll@mail.slh.wisc.edu

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

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]
Sent: Friday, May 30, 2003 10:47 AM
To: Harding, Patrick; Liddicoat, Laura; Neuser, Thomas
Subject: Additional questions re drugged driving bill

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<<03-0465/P4dn>>

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Finally, with respect to your comment regarding s. 343.305 (7) (b) -- is there any technology that allows or any new technology that will soon allow law enforcement officers to test for controlled substances in the field?

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