



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0465/P4  
PJH&MGD:jd:pg P5

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT *to renumber and amend* 23.33 (4c) (b) 4., 30.681 (2) (d) 1., 343.305 (8)  
2 (b) 5., 346.63 (2) (b), 350.101 (2) (d), 940.09 (1m), 940.09 (2), 940.25 (1m), 940.25  
3 (2) and 967.055 (1m); *to amend* 23.33 (4c) (a) 4., 23.33 (4c) (b) 3., 23.33 (13) (b)  
4 1., 23.33 (13) (b) 2., 23.33 (13) (b) 3., 30.681 (1) (b) (title), 30.681 (1) (c), 30.681  
5 (2) (b) (title), 30.681 (2) (c), 343.305 (5) (d), 343.305 (7) (a), 343.305 (7) (b),  
6 343.305 (8) (b) 2. bm. and d., 343.305 (9) (a) 5. a., 343.307 (1) (d), 343.307 (2) (e),  
7 343.307 (3), 343.31 (1) (am), 343.31 (2), 343.315 (2) (a) 5., 343.315 (2) (a) 6.,  
8 344.576 (2) (b), 346.63 (1) (c), 346.63 (2) (am), 346.65 (2g) (c), 346.65 (2m) (a),  
9 346.65 (6) (a) 1., 346.65 (6) (c), 346.65 (6) (d), 350.101 (1) (d), 350.101 (2) (c),  
10 350.104 (4), 350.11 (3) (a) 1., 350.11 (3) (a) 2., 350.11 (3) (a) 3., 351.02 (1) (a) 10.,  
11 885.235 (4), 939.75 (1), 939.75 (2) (b), 939.75 (3) (intro.), 940.09 (1d) (a) 1.,  
12 940.09 (1d) (a) 2., 940.09 (1d) (b), 940.25 (1d) (a) 1., 940.25 (1d) (a) 2., 940.25 (1d)  
13 (b), 949.08 (2) (e), 949.08 (2) (em), 967.055 (1) (a) and 967.055 (2) (a); and *to*  
14 *create* 23.33 (1) (jo), 23.33 (4c) (a) 2m., 23.33 (4c) (a) 5., 23.33 (4c) (b) 2m., 23.33  
15 (4c) (b) 4. b., 30.50 (10m), 30.681 (1) (b) 1m., 30.681 (1) (d), 30.681 (2) (b) 1m.,

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

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

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

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

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

12 23.33 (1) (jo) “Restricted controlled substance” means any of the following:

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

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

17 3. Cocaine or any of its metabolites.

18 4. Methamphetamine.

19 5. Delta-9-tetrahydrocannabinol.

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

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

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

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

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

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

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

23           23.33 (4c) (b) 2m. ‘Causing injury while operating with a restricted controlled  
24 substance.’ No person who has a detectable amount of a restricted controlled  
25 substance in his or her blood may cause injury to another person by the operation of  
an all-terrain vehicle.

INS  
3/17

INS 3/20  
INS

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

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

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

14           23.33 (4c) (b) 4. a. 'Defenses.' In an action under this paragraph, the defendant  
15 has a defense if he or she proves by a preponderance of the evidence that the injury  
16 would have occurred even if he or she had been exercising due care and he or she had  
17 not been under the influence of an intoxicant ~~or~~, did not have an alcohol  
18 concentration of 0.1 or more, or did not have a detectable amount of a restricted  
19 controlled substance in his or her blood.

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

21           23.33 (4c) (b) 4. b. In an action under subd. 2m. that is based on the defendant  
22 allegedly having a detectable amount of methamphetamine ~~in~~ his or her blood, the  
23 defendant has a defense if he or she proves by a preponderance of the evidence that  
24 at the time of the incident or occurrence he or she had a valid prescription for  
25 methamphetamine or one of its metabolic precursors.

INS 4/22 ✓

INS 4/25 ✓

1           **SECTION 9.** 23.33 (13) (b) 1. of the statutes is amended to read:

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

5           **SECTION 10.** 23.33 (13) (b) 2. of the statutes is amended to read:

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

11           **SECTION 11.** 23.33 (13) (b) 3. of the statutes is amended to read:

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

17           **SECTION 12.** 30.50 (10m) of the statutes is created to read:

18           30.50 (10m) “Restricted controlled substance” means any of the following:

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

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

23           (c) Cocaine or any of its metabolites.

24           (d) Methamphetamine.

25           (e) Delta-9-tetrahydrocannabinol.

1           **SECTION 13.** 30.681 (1) (b) (title) of the statutes is amended to read:

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

4           **SECTION 14.** 30.681 (1) (b) 1m. of the statutes is created to read:

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

8           **SECTION 15.** 30.681 (1) (c) of the statutes is amended to read:

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

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

20           30.681 (1) (d) *Defenses.* In an action under par. (b) 1m. that is based on the  
21 defendant allegedly having a detectable amount of methamphetamine, in his or her  
22 blood, the defendant has a defense if he or she proves by a preponderance of the  
23 evidence that at the time of the incident or occurrence he or she had a valid  
24 prescription for methamphetamine or one of its metabolic precursors.

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

INS 6/21 ✓

INS 6/24 ✓

1           30.681 (2) (b) (title) *Causing injury ~~with~~ after using a controlled substance or*  
2 *alcohol concentrations at or above specified levels.*

3           **SECTION 18.** 30.681 (2) (b) 1m. of the statutes is created to read:

4           30.681 (2) (b) 1m. No person who has a detectable amount of a restricted  
5 controlled substance in his or her blood may cause injury to another person by the  
6 operation of a motorboat.

7           **SECTION 19.** 30.681 (2) (c) of the statutes is amended to read:

8           30.681 (2) (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. in the complaint, the crimes shall be joined  
13 under s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination  
14 of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence,  
15 there shall be a single conviction for purposes of sentencing and for purposes of  
16 counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m.,  
17 and 2. each require proof of a fact for conviction which the ~~other does~~ others do not  
18 require.

19           **SECTION 20.** 30.681 (2) (d) 1. of the statutes is renumbered 30.681 (2) (d) 1. a.  
20 and amended to read:

21           30.681 (2) (d) 1. a. In an action under this subsection for a violation of the  
22 intoxicated boating law where the defendant was operating a motorboat that is not  
23 a commercial motorboat, the defendant has a defense if he or she proves by a  
24 preponderance of the evidence that the injury would have occurred even if he or she  
25 had been exercising due care and he or she had not been under the influence of an

1 intoxicant or did not have an alcohol concentration of 0.1 or more or a detectable  
2 amount of a restricted controlled substance in his or her blood.

3 SECTION 21. 30.681 (2) (d) 1. b. of the statutes is created to read: ~~INS 8/5~~ ✓

4 30.681 (2) (d) 1. b. In an action under par. (b) 1m. that is based on the defendant  
5 allegedly having a detectable amount of methamphetamine in his or her blood, the  
6 defendant has a defense if he or she proves by a preponderance of the evidence that  
7 at the time of the incident or occurrence he or she had a valid prescription for  
8 methamphetamine or one of its metabolic precursors. ~~INS 8/8~~ ✓

9 SECTION 22. 340.01 (50m) of the statutes is created to read:

10 340.01 (50m) "Restricted controlled substance" means any of the following:

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

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

15 (c) Cocaine or any of its metabolites.

16 (d) Methamphetamine.

17 (e) Delta-9-tetrahydrocannabinol.

18 SECTION 23. 343.305 (5) (d) of the statutes is amended to read:

19 343.305 (5) (d) At the trial of any civil or criminal action or proceeding arising  
20 out of the acts committed by a person alleged to have been driving or operating a  
21 motor vehicle while under the influence of an intoxicant, a controlled substance, a  
22 controlled substance analog or any other drug, or under the influence of any  
23 combination of alcohol, a controlled substance, a controlled substance analog and  
24 any other drug, to a degree which renders him or her incapable of safely driving, or  
25 under the combined influence of an intoxicant and any other drug to a degree which



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

18 **SECTION 24.** 343.305 (7) (a) of the statutes is amended to read:

19 343.305 (7) (a) If a person submits to chemical testing administered in  
20 accordance with this section and any test results indicate the presence of a detectable  
21 amount of a restricted controlled substance or a prohibited alcohol concentration, the  
22 law enforcement officer shall report the results to the department and take  
23 possession of the person's license and forward it to the department. The person's  
24 operating privilege is administratively suspended for 6 months.

25 ~~**SECTION 25.** 343.305 (7) (b) of the statutes is amended to read:~~

1 343.305 (7) (b) If a person who was driving or operating or on duty time with  
2 respect to a commercial motor vehicle submits to chemical testing administered in  
3 accordance with this section and any test results indicate an alcohol concentration  
4 above 0.0 or indicate that the person was driving or operating the vehicle with a  
5 detectable amount of a restricted controlled substance in his or her blood, the law  
6 enforcement officer may take possession of the person's license and retain the license  
7 for 24 hours. The person may reclaim a seized license in person or request return  
8 of the license by mail. The law enforcement officer shall issue a citation for violation  
9 of s. 346.63 (7) (a) 1., issue citations for such other violations as may apply and issue  
10 an out-of-service order to the person for the 24 hours after the testing, and report  
11 both the out-of-service order and the test results to the department in the manner  
12 prescribed by the department. If the person is a nonresident, the department shall  
13 report issuance of the out-of-service order to the driver licensing agency in the  
14 person's home jurisdiction.

15 SECTION 26. 343.305 (8) (b) 2. bm. and d. of the statutes are amended to read:

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

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

23 SECTION 27. 343.305 (8) (b) 2. g. of the statutes is created to read:

1           343.305 (8) (b) 2. g. Whether the person had a valid prescription for  
2 methamphetamine or one of its metabolic precursors in a case in which subd. 4m. a.  
3 and b. apply.

4           **SECTION 28.** 343.305 (8) (b) 4m. of the statutes is created to read:

5           343.305 (8) (b) 4m. If, at the time the offense allegedly occurred, all of the  
6 following apply, the hearing officer shall determine whether the person had a valid  
7 prescription for methamphetamine or one of its metabolic precursors: ① INS 11/7 ✓

8           a. A blood test administered in accordance with this section indicated that the  
9 person had a detectable amount of methamphetamine ① INS 11/9 ✓ but did not have a detectable  
10 amount of any other restricted controlled substance in his or her blood.

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

13           **SECTION 29.** 343.305 (8) (b) 5. of the statutes is renumbered 343.305 (8) (b) 5.  
14 (intro.) and amended to read:

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

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

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

7           **SECTION 30.** 343.305 (8) (b) 5. a. of the statutes is created to read:

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

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

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

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

15          343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had  
16 a valid prescription for methamphetamine or one of its metabolic precursors.

17          **SECTION 33.** 343.305 (8) (b) 6. a. of the statutes is created to read:

18          343.305 (8) (b) 6. a. The criteria for administrative suspension have been  
19 satisfied.

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

21          343.305 (8) (b) 6. b. The person had a prohibited alcohol concentration or a  
22 detectable amount of a restricted controlled substance in his or her blood at the time  
23 the offense allegedly occurred.

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

delta-9-  
tetrahydrocannabinol

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

4           **SECTION 36.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

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

17           **SECTION 37.** 343.307 (1) (d) of the statutes is amended to read:

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

1           **SECTION 38.** 343.307 (2) (e) of the statutes is amended to read:

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

10           **SECTION 39.** 343.307 (3) of the statutes is amended to read:

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

19           **SECTION 40.** 343.31 (1) (am) of the statutes is amended to read:

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

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

4 **SECTION 41.** 343.31 (2) of the statutes is amended to read:

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

20 **SECTION 42.** 343.315 (2) (a) 1m. of the statutes is created to read:

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

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

3 **SECTION 43.** 343.315 (2) (a) 5. of the statutes is amended to read:

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

11 **SECTION 44.** 343.315 (2) (a) 6. of the statutes is amended to read:

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

23 **SECTION 45.** 344.576 (2) (b) of the statutes is amended to read:



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

4           **SECTION 46.** 346.63 (1) (am) of the statutes is created to read:

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

7           **SECTION 47.** 346.63 (1) (c) of the statutes is amended to read:

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

18           **SECTION 48.** 346.63 (1) (d) of the statutes is created to read:

19           346.63 (1) (d) In an action under par. (am) that is based on the defendant  
20 allegedly having a detectable amount of methamphetamine in his or her blood, 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 he or she had a valid prescription for  
23 methamphetamine or one of its metabolic precursors. ~~(a)~~ INS 17/23 ✓

24           **SECTION 49.** 346.63 (2) (a) 3. of the statutes is created to read:

1           346.63 (2) (a) 3. The person has a detectable amount of a restricted controlled  
2 substance in his or her blood.

3           **SECTION 50.** 346.63 (2) (am) of the statutes is amended to read:

4           346.63 (2) (am) A person may be charged with and a prosecutor may proceed  
5 upon a complaint based upon a violation of ~~par. (a) 1. or 2. or both~~ any combination  
6 of par. (a) 1., 2., or 3. for acts arising out of the same incident or occurrence. If the  
7 person is charged with violating ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2.,  
8 or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is  
9 found guilty of ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2., or 3. for acts arising  
10 out of the same incident or occurrence, there shall be a single conviction for purposes  
11 of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and  
12 343.305. Paragraph (a) 1. ~~and 2., and 3.~~ each require proof of a fact for conviction  
13 which the ~~other does~~ others do not require.

14           **SECTION 51.** 346.63 (2) (b) of the statutes is renumbered 346.63 (2) (b) 1.  
15 amended to read:

16           346.63 (2) (b) 1. In an action under this subsection, the defendant has a defense  
17 if he or she proves by a preponderance of the evidence that the injury would have  
18 occurred even if he or she had been exercising due care and he or she had not been  
19 under the influence of an intoxicant, a controlled substance, a controlled substance  
20 analog or a combination thereof, under the influence of any other drug to a degree  
21 which renders him or her incapable of safely driving, or under the combined  
22 influence of an intoxicant and any other drug to a degree which renders him or her  
23 incapable of safely driving ~~or~~, did not have a prohibited alcohol concentration  
24 described under par. (a) 2., or did not have a detectable amount of a restricted  
25 controlled substance in his or her blood.

1 SECTION 52. 346.63 (2) (b) 2. of the statutes is created to read: (P) INS 19/3 ✓

2 346.63 (2) (b) 2. In an action under par. (a) 3. that is based on the defendant  
3 allegedly having a detectable amount of methamphetamine in his or her blood, the  
4 defendant has a defense if he or she proves by a preponderance of the evidence that  
5 at the time of the incident or occurrence he or she had a valid prescription for  
6 methamphetamine or one of its metabolic precursors. (P) INS 19/6 ✓

7 SECTION 53. 346.65 (2g) (c) of the statutes is amended to read:

8 346.65 (2g) (c) If there was a minor passenger under 16 years of age in the  
9 motor vehicle or commercial motor vehicle at the time of the violation that gave rise  
10 to the conviction, the court may require a person ordered to perform community  
11 service work under par. (a) or (ag), ~~or~~ under s. 973.05 (3) (a) if that person's fine  
12 resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, or under  
13 s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (1) (am) and the  
14 motor vehicle that the person was driving or operating was a commercial motor  
15 vehicle, to participate in community service work that benefits children or that  
16 demonstrates the adverse effects on children of substance abuse or of operating a  
17 vehicle while under the influence of an intoxicant or other drug. The court may order  
18 the person to pay a reasonable fee, based on the person's ability to pay, to offset the  
19 cost of establishing, maintaining and monitoring the community service work  
20 ordered under this paragraph.

21 SECTION 54. 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 in the person's blood

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

6 **SECTION 55.** 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 56.** 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 57.** 346.65 (6) (d) of the statutes is amended to read:

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

20 **SECTION 58.** 350.01 (10v) of the statutes is created to read:

21 350.01 (10v) "Restricted controlled substance" means any of the following:

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

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

1 (c) Cocaine or any of its metabolites.

2 (d) Methamphetamine.

3 (e) Delta-9-tetrahydrocannabinol.

4 **SECTION 59.** 350.101 (1) (bm) of the statutes is created to read:

5 350.101 (1) (bm) *Operating with a restricted controlled substance.* No person  
6 may engage in the operation of a snowmobile with a detectable amount of a restricted  
7 controlled substance in his or her blood.

8 **SECTION 60.** 350.101 (1) (d) of the statutes is amended to read:

9 350.101 (1) (d) *Related charges.* A person may be charged with and a prosecutor  
10 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any  
11 combination of par. (a), (b), or (bm) for acts arising out of the same incident or  
12 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any  
13 combination of par. (a), (b), or (bm), the offenses shall be joined. If the person is found  
14 guilty of ~~both pars. (a) and (b)~~ any combination of par. (a), (b), or (bm) for acts arising  
15 out of the same incident or occurrence, there shall be a single conviction for purposes  
16 of sentencing and for purposes of counting convictions under s. 350.11 (3) (a) 2. and  
17 3. Paragraphs (a) ~~and, (b), and (bm)~~ and (bm) each require proof of a fact for conviction which  
18 ~~the other does~~ others do not require.

19 **SECTION 61.** 350.101 (1) (e) of the statutes is created to read:

20 350.101 (1) (e) *Defenses.* In an action under par. (bm) that is based on the  
21 defendant allegedly having a detectable amount of methamphetamine ~~in his or her~~  
22 blood, the defendant has a defense if he or she proves by a preponderance of the  
23 evidence that at the time of the incident or occurrence he or she had a valid  
24 prescription for methamphetamine or one of its metabolic precursors.

25 **SECTION 62.** 350.101 (2) (bm) of the statutes is created to read:

INS 22/21 ✓

INS 22/24 ✓

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

5           **SECTION 63.** 350.101 (2) (c) of the statutes is amended to read:

6           350.101 (2) (c) *Related charges.* A person may be charged with and a prosecutor  
7 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any  
8 combination of par. (a), (b), or (bm) for acts arising out of the same incident or  
9 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any  
10 combination of par. (a), (b), or (bm) in the complaint, the crimes shall be joined under  
11 s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of  
12 par. (a), (b), or (bm) for acts arising out of the same incident or occurrence, there shall  
13 be a single conviction for purposes of sentencing and for purposes of counting  
14 convictions under s. 350.11 (3) (a) 2. and 3. Paragraphs (a) ~~and, (b), and (bm)~~ each  
15 require proof of a fact for conviction which the ~~other does~~ others do not require.

16           **SECTION 64.** 350.101 (2) (d) of the statutes is renumbered 350.101 (2) (d) 1. and  
17 amended to read:

18           350.101 (2) (d) 1. In an action under this subsection, the defendant has a  
19 defense if he or she proves by a preponderance of the evidence that the injury would  
20 have occurred even if he or she had been exercising due care and he or she had not  
21 been under the influence of an intoxicant or did not have an alcohol concentration  
22 of 0.1 or more or a detectable amount of a restricted controlled substance in his or her  
23 blood.

24           **SECTION 65.** 350.101 (2) (d) 2. of the statutes is created to read:

INS 24/2 ✓  
SECTION 65

1           350.101 (2) (d) 2. In an action under par. (bm) that is based on the defendant  
2 allegedly having a detectable amount of methamphetamine in his or her blood, the  
3 defendant has a defense if he or she proves by a preponderance of the evidence that  
4 at the time of the incident or occurrence he or she had a valid prescription for  
5 methamphetamine or one of its metabolic precursors. INS 24/5 ✓

6           **SECTION 66.** 350.104 (4) of the statutes is amended to read:

7           350.104 (4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results  
8 of a chemical test required or administered under sub. (1), (2) or (3) are admissible  
9 in any civil or criminal action or proceeding arising out of the acts committed by a  
10 person alleged to have violated the intoxicated snowmobiling law on the issue of  
11 whether the person was under the influence of an intoxicant or the issue of whether  
12 the person had alcohol concentrations at or above specified levels or a detectable  
13 amount of a restricted controlled substance in his or her blood. Results of these  
14 chemical tests shall be given the effect required under s. 885.235. This section does  
15 not limit the right of a law enforcement officer to obtain evidence by any other lawful  
16 means.

17           **SECTION 67.** 350.11 (3) (a) 1. of the statutes is amended to read:

18           350.11 (3) (a) 1. Except as provided under subds. 2. and 3., a person who violates  
19 s. 350.101 (1) (a) ~~or~~, (b), or (bm) or s. 350.104 (5) shall forfeit not less than \$400 nor  
20 more than \$550.

21           **SECTION 68.** 350.11 (3) (a) 2. of the statutes is amended to read:

22           350.11 (3) (a) 2. Except as provided under subd. 3., a person who violates s.  
23 350.101 (1) (a) ~~or~~, (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest  
24 for the current violation, was convicted previously under the intoxicated



1 snowmobiling law or the refusal law shall be fined not less than \$300 nor more than  
2 \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

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

4 350.11 (3) (a) 3. A person who violates s. 350.101 (1) (a) ~~or~~, (b), or (bm) or 350.104  
5 (5) and who, within 5 years prior to the arrest for the current violation, was convicted  
6 2 or more times previously under the intoxicated snowmobiling law or refusal law  
7 shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not  
8 less than 30 days nor more than one year in the county jail.

9 **SECTION 70.** 351.02 (1) (a) 10. of the statutes is amended to read:

10 351.02 (1) (a) 10. Any offense committed by the person under the law of another  
11 jurisdiction prohibiting conduct described in sections 6-207, 6-302, 10-102, 10-103,  
12 10-104, 11-901, 11-902, 11-907 or 11-908 of the uniform vehicle code and model  
13 traffic ordinance (1987), or prohibiting homicide or manslaughter resulting from the  
14 operation of a motor vehicle, use of a motor vehicle in the commission of a felony,  
15 reckless or careless driving or driving a motor vehicle with willful or wanton  
16 disregard for the safety of persons or property, driving or operating a motor vehicle  
17 while under the influence of alcohol, a controlled substance, a controlled substance  
18 analog or any other drug or a combination thereof as prohibited, driving or operating  
19 a motor vehicle while having a detectable amount of a restricted controlled substance  
20 in the person's blood, refusal to submit to chemical testing, perjury or the making  
21 false statements or affidavits to a governmental agency in connection with the  
22 ownership or operation of a motor vehicle, failing to stop and identify oneself as the  
23 driver or operator in the event of a motor vehicle accident with a person or an  
24 attended motor vehicle or fleeing from or attempting to elude a police, law

1 enforcement or other peace officer, as those or substantially similar terms are used  
2 in that jurisdiction's laws.

3 SECTION 71. 885.235 (1) (d) of the statutes is created to read:

4 885.235 (1) (d) "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 SECTION 72. 885.235 (1k) of the statutes is created to read:

13 885.235 (1k) In any action or proceeding in which it is material to prove that  
14 a person had a detectable amount of a restricted controlled substance in his or her  
15 blood while operating or driving a motor vehicle or, if the vehicle is a commercial  
16 motor vehicle, on duty time, while operating a motorboat, except a sailboat operating  
17 under sail alone, while operating a snowmobile, while operating an all-terrain

18 vehicle or while handling a firearm, ~~evidence of the amount of a restricted controlled~~

19 ~~substance in the person's blood at the time in question, as shown by chemical~~

20 ~~analysis of a sample of the person's blood, is admissible on the issue of whether he~~

21 ~~or she had a detectable amount of a restricted controlled substance in his or her blood,~~

22 ~~if the sample was taken within 3 hours after the event to be proved. If <sup>the</sup> chemical~~

23 ~~analysis shows that the person had a detectable amount of a restricted controlled~~

24 ~~substance in his or her blood, the court shall treat the analysis as prima facie~~

*Handwritten annotations:*  
- A large circle around line 18.  
- A large bracket spanning lines 18 through 22.  
- A handwritten word "MUD" written vertically on the left side of the bracket.  
- A handwritten signature or initials on the right side of the bracket.

1 evidence on the issue of the person having a detectable amount of a restricted  
2 controlled substance in his or her blood without requiring any expert testimony.

3 **SECTION 73.** 885.235 (4) of the statutes is amended to read:

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

11 **SECTION 74.** 939.22 (33) of the statutes is created to read:

12 939.22 (33) “Restricted controlled substance” means any of the following:

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

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

17 (c) Cocaine or any of its metabolites.

18 (d) Methamphetamine.

19 (e) Delta-9-tetrahydrocannabinol.

20 **SECTION 75.** 939.75 (1) of the statutes, as affected by 2001 Wisconsin Act 109,  
21 is amended to read:

22 939.75 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02  
23 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm),  
24 and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to

1 (e), “unborn child” means any individual of the human species from fertilization until  
2 birth that is gestating inside a woman.

3 **SECTION 76.** 939.75 (2) (b) of the statutes is amended to read:

4 939.75 (2) (b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06  
5 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195,  
6 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the  
7 following:

8 **SECTION 77.** 939.75 (3) (intro.) of the statutes is amended to read:

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

15 **SECTION 78.** 940.09 (1) (am) of the statutes is created to read:

16 940.09 (1) (am) Causes the death of another by the operation or handling of a  
17 vehicle while the person has a detectable amount of a restricted controlled substance  
18 in his or her blood.

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

20 940.09 (1) (cm) Causes the death of an unborn child by the operation or  
21 handling of a vehicle while the person has a detectable amount of a restricted  
22 controlled substance in his or her blood.

23 **SECTION 80.** 940.09 (1d) (a) 1. of the statutes is amended to read:

24 940.09 (1d) (a) 1. Except as provided in subd. 2., if the person who committed  
25 an offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more prior convictions,

1 suspensions, or revocations, counting convictions under sub. (1) and s. 940.25 in the  
2 person's lifetime, plus other convictions, suspensions, or revocations counted under  
3 s. 343.307 (1), the procedure under s. 343.301 shall be followed if the court enters an  
4 order regarding operating privilege restriction or enters an order regarding  
5 immobilization.

6 **SECTION 81.** 940.09 (1d) (a) 2. of the statutes is amended to read:

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

13 **SECTION 82.** 940.09 (1d) (b) of the statutes is amended to read:

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

20 **SECTION 83.** 940.09 (1g) (am) of the statutes is created to read:

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

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

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

**SECTION 85.** 940.09 (1m) of the statutes is renumbered 940.09 (1m) (a) and amended to read:

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

(b) ~~If the a person is charged with violating both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c) and (d) in the an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c) and (d) more than one of the crimes so charged for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e), and sub. (1g) (a), (b), (c) and (d), each require proof of a fact for conviction which the other does others do not require, and sub. (1g) (a), (am), (b), (c), (cm), and (d) each require proof of a fact for conviction which the others do not require.~~

1           **SECTION 86.** 940.09 (2) of the statutes is renumbered 940.09 (2) (a) and  
2 amended to read:

3           940.09 (2) (a) The In any action under this section, the defendant has a defense  
4 if he or she proves by a preponderance of the evidence that the death would have  
5 occurred even if he or she had been exercising due care and he or she had not been  
6 under the influence of an intoxicant, did not have a detectable amount of a restricted  
7 controlled substance in his or her blood, or did not have an alcohol concentration  
8 described under sub. (1) (b), (bm), (d) or (e) or (1g) (b) or (d).

9           **SECTION 87.** 940.09 (2) (b) of the statutes is created to read:

10          940.09 (2) (b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm) that  
11 is based on the defendant allegedly having a detectable amount of  
12 methamphetamine in his or her blood, the defendant has a defense if he or she proves  
13 by a preponderance of the evidence that at the time of the incident or occurrence he  
14 or she had a valid prescription for methamphetamine or one of its metabolic  
15 precursors.

16          **SECTION 88.** 940.25 (1) (am) of the statutes is created to read:

17          940.25 (1) (am) Causes great bodily harm to another human being by the  
18 operation of a vehicle while the person has a detectable amount of a restricted  
19 controlled substance in his or her blood.

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

21          940.25 (1) (cm) Causes great bodily harm to an unborn child by the operation  
22 of a vehicle while the person has a detectable amount of a restricted controlled  
23 substance in his or her blood.

24          **SECTION 90.** 940.25 (1d) (a) 1. of the statutes is amended to read:

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

8           **SECTION 91.** 940.25 (1d) (a) 2. of the statutes is amended to read:

9           940.25 (1d) (a) 2. Notwithstanding par. (b), if the person who committed an  
10 offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more convictions,  
11 suspensions, or revocations counted under s. 343.307 (1) within any 5-year period,  
12 the procedure under s. 343.301 shall be followed if the court enters an order  
13 regarding operating privilege restriction and the installation of an ignition interlock  
14 device or enters an order regarding immobilization.

15           **SECTION 92.** 940.25 (1d) (b) of the statutes is amended to read:

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

22           **SECTION 93.** 940.25 (1m) of the statutes is renumbered 940.25 (1m) (a) and  
23 amended to read:

24           940.25 (1m) (a) A person may be charged with and a prosecutor may proceed  
25 upon an information based upon a violation of any combination of sub. (1) (a), (am),



1 or (b) ~~or both~~; any any combination of sub. (1) (a), (am), or (bm) or both; any  
2 combination of sub. (1) (c), (cm), or (d) or both; any combination of or sub. (1) (c), (cm),  
3 or (e) ~~or both~~ for acts arising out of the same incident or occurrence.

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

15 SECTION 94. 940.25 (2) of the statutes is renumbered 940.25 (2) (a) and  
16 amended to read:

17 940.25 (2) (a) The defendant has a defense if he or she proves by a  
18 preponderance of the evidence that the great bodily harm would have occurred even  
19 if he or she had been exercising due care and he or she had not been under the  
20 influence of an intoxicant, did not have a detectable amount of a restricted controlled  
21 substance in his or her blood, or did not have an alcohol concentration described  
22 under sub. (1) (b), (bm), (d) or (e).

23 SECTION 95. 940.25 (2) (b) of the statutes is created to read:

24 940.25 (2) (b) In any action under this section that is based on the defendant  
25 allegedly having a detectable amount of methamphetamine in his or her blood, the

INS 3/25 ✓

1 defendant has a defense if he or she proves by a preponderance of the evidence that  
2 at the time of the incident or occurrence he or she had a valid prescription for  
3 methamphetamine or one of its metabolic precursors. ~~(X)~~ INS 34/3 ✓

4 **SECTION 96.** 941.20 (1) (bm) of the statutes is created to read:

5 941.20 (1) (bm) Operates or goes armed with a firearm while he or she has a  
6 detectable amount of a restricted controlled substance in his or her blood. A  
7 defendant has a defense to any action under this paragraph that is based on the  
8 defendant allegedly having a detectable amount of methamphetamine ~~in his or her~~ ~~(X)~~ INS 34/8 ✓  
9 blood, if he or she proves by a preponderance of the evidence that at the time of the  
10 incident or occurrence he or she had a valid prescription for methamphetamine or  
11 one of its metabolic precursors. ~~(X)~~ INS 34/11 ✓

12 **SECTION 97.** 949.08 (2) (e) of the statutes is amended to read:

13 949.08 (2) (e) Is an adult passenger in the offender's vehicle and, the crime  
14 involved is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender  
15 was ~~under the influence of an intoxicant, a controlled substance, a controlled~~  
16 ~~substance analog or any combination of an intoxicant, controlled substance and~~  
17 ~~controlled substance analog, or had a prohibited alcohol concentration, as defined in~~  
18 ~~s. 340.01 (46m) committing that offense.~~ This paragraph does not apply if the victim  
19 is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

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

21 949.08 (2) (em) Is an adult passenger in the offender's commercial motor  
22 vehicle and, the crime involved is specified in s. 346.63 (6) or 940.25, and the  
23 passenger knew the offender was ~~under the influence of an intoxicant, a controlled~~  
24 ~~substance, a controlled substance analog or any combination of an intoxicant,~~  
25 ~~controlled substance and controlled substance analog, or had an alcohol~~

1 ~~concentration of 0.04 or more but less than 0.1 committing that offense.~~ This  
2 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,  
3 940.305, 940.31 or 948.30.

4 **SECTION 99.** 967.055 (1) (a) of the statutes is amended to read:

5 967.055 (1) (a) The legislature intends to encourage the vigorous prosecution  
6 of offenses concerning the operation of motor vehicles by persons under the influence  
7 of an intoxicant, a controlled substance, a controlled substance analog or any  
8 combination of an intoxicant, controlled substance and controlled substance analog,  
9 under the influence of any other drug to a degree which renders him or her incapable  
10 of safely driving, or under the combined influence of an intoxicant and any other drug  
11 to a degree which renders him or her incapable of safely driving or having a  
12 prohibited alcohol concentration, as defined in s. 340.01 (46m), ~~or offenses~~  
13 concerning the operation of motor vehicles by persons with a detectable amount of  
14 a restricted controlled substance in his or her blood, and offenses concerning the  
15 operation of commercial motor vehicles by persons with an alcohol concentration of  
16 0.04 or more.

17 **SECTION 100.** 967.055 (1m) of the statutes is renumbered 967.055 (1m) (intro.)  
18 and amended to read:

19 967.055 (1m) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, ~~“drug”~~:

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

21 **SECTION 101.** 967.055 (1m) (b) of the statutes is created to read:

22 967.055 (1m) (b) “Restricted controlled substance” means any of the following:

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

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

3           3. Cocaine or any of its metabolites.

4           4. Methamphetamine.

5           5. Delta-9-tetrahydrocannabinol.

6           **SECTION 102.** 967.055 (2) (a) of the statutes is amended to read:

7           967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss  
8 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity  
9 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the  
10 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply  
11 to the court. The application shall state the reasons for the proposed amendment or  
12 dismissal. The court may approve the application only if the court finds that the  
13 proposed amendment or dismissal is consistent with the public's interest in deterring  
14 the operation of motor vehicles by persons who are under the influence of an  
15 intoxicant, a controlled substance, a controlled substance analog or any combination  
16 of an intoxicant, controlled substance and controlled substance analog, under the  
17 influence of any other drug to a degree which renders him or her incapable of safely  
18 driving, or under the combined influence of an intoxicant and any other drug to a  
19 degree which renders him or her incapable of safely driving, in deterring the  
20 operation of motor vehicles by persons with a detectable amount of a restricted  
21 controlled substance in his or her blood, or in deterring the operation of commercial  
22 motor vehicles by persons with an alcohol concentration of 0.04 or more. The court  
23 may not approve an application to amend the vehicle classification from a  
24 commercial motor vehicle to a noncommercial motor vehicle unless there is evidence

1 in the record that the motor vehicle being operated by the defendant at the time of  
2 his or her arrest was not a commercial motor vehicle.

3 **SECTION 103. Initial applicability.**

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

10 (END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0465/P5ins  
MGD:.....

- 1            **INSERT 3/17**
- 2            ~~FB~~ or delta-9-tetrahydrocannabinol ✓
- 3            **INSERT 3/20**
- 4            ~~FB~~ or delta-9-tetrahydrocannabinol
- 5            **INSERT 4/22**
- 6            ~~FB~~ or delta-9-tetrahydrocannabinol
- 7            **INSERT 4/25**
- 8            ~~FB~~ or delta-9-tetrahydrocannabinol
- 9            **INSERT 6/21**
- 10           ~~FB~~ or delta-9-tetrahydrocannabinol
- 11           **INSERT 6/24**
- 12           ~~FB~~ or delta-9-tetrahydrocannabinol
- 13           **INSERT 8/5**
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- 15           **INSERT 8/8**
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- 17           **INSERT 11/7**
- 18           ~~FB~~ or delta-9-tetrahydrocannabinol
- 19           **INSERT 11/9**
- 20           ~~FB~~ or delta-9-tetrahydrocannabinol
- 21           **INSERT 17/20**
- 22           ~~FB~~ or delta-9-tetrahydrocannabinol
- 23           **INSERT 17/23**



INS 17/23 CONT

- 1 ~~FS~~ or delta-9-tetrahydrocannabinol
- 2 **INSERT 19/3**
- 3 ~~FS~~ or delta-9-tetrahydrocannabinol
- 4 **INSERT 19/6**
- 5 ~~FS~~ or delta-9-tetrahydrocannabinol
- 6 **INSERT 22/21**
- 7 ~~FS~~ or delta-9-tetrahydrocannabinol
- 8 **INSERT 22/24**
- 9 ~~FS~~ or delta-9-tetrahydrocannabinol
- 10 **INSERT 24/2**
- 11 ~~FS~~ or delta-9-tetrahydrocannabinol
- 12 **INSERT 24/5**
- 13 ~~FS~~ or delta-9-tetrahydrocannabinol
- 14 **INSERT 33/25**
- 15 ~~FS~~ or delta-9-tetrahydrocannabinol
- 16 **INSERT 34/3**
- 17 ~~FS~~ or delta-9-tetrahydrocannabinol
- 18 **INSERT 34/8**
- 19 ~~FS~~ or delta-9-tetrahydrocannabinol
- 20 **INSERT 34/11**
- 21 ~~FS~~ or delta-9-tetrahydrocannabinol

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

PS  
LRB-0465/~~Adn~~  
PJH&MGD:jld:pg

May 27, 2003

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 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  
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Phone: (608) 266-8906  
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Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

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

LRB-0465/P5dn  
PJH&MGD:jld:jf

June 2, 2003

Rep. Gundrum:

1. 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 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?

2. 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  
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Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**Dsida, Michael**

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**From:** Gundrum, Mark  
**Sent:** Friday, June 06, 2003 12:00 AM  
**To:** Dsida, Michael; Hurley, Peggy

With regard to your June 2nd memo and the inquiries therein: The answer to #1 is YES, that is just fine. #2 is also fine as you have it. If there are any major problems with that, hopefully prosecutors will share that with me over the next week or maybe it will be addressed in committee; but I am fine with it.

I will now be circulating it to prosecutors for any final thoughts. If no major changes come from that, I will be introducing it within about a week or so.

Thanks so much for all your help.

## Dsida, Michael

---

**From:** Harding, Patrick [bayouboy@mail.slh.wisc.edu]  
**Sent:** Thursday, June 12, 2003 1:59 PM  
**To:** 'Dsida, Michael'  
**Cc:** Neuser, Thomas; Liddicoat, Laura  
**Subject:** RE: Drugged driving - /P5 version

Hello Mike,

Yes, that seems to be the best course of action (or in this case inaction) - leave the current provisions in place.

Pat

Patrick Harding  
Toxicology Section Supervisor  
Wisconsin State Laboratory of Hygiene  
PO Box 7996  
Madison, WI 53707-7996  
(608) 224-6247 FAX (608) 224-6259

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

**From:** Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]  
**Sent:** Thursday, June 12, 2003 11:24 AM  
**To:** Liddicoat, Laura  
**Cc:** Harding, Patrick; Neuser, Thomas  
**Subject:** RE: Drugged driving - /P5 version

I understand that there is no alternate test that works, but sub. (2) appears to require the police to be prepared to administer a breath or urine test anyway. Nevertheless, if subs. (2) and (5) are now read to mean that the police, in a controlled substance case, are only required to offer another blood test, I won't include anything in the bill to affect those provisions.

Mike

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

**From:** Liddicoat, Laura [mailto:ll@mail.slh.wisc.edu]  
**Sent:** Thursday, June 12, 2003 10:17 AM  
**To:** 'Dsida, Michael'  
**Cc:** Harding, Patrick; Neuser, Thomas  
**Subject:** RE: Drugged driving - /P5 version

There is no alternate "test" - the only specimen type that is accepted for drug testing here at the WSLH and at the Crime Labs is blood. So the answer to your question is "No, s/he is not required to offer an alternate test" for drug testing.

The statute as it is written has worked well to date for drug testing in the following ways:

- 1) If a subject asks for an "alternate" test, the officer will give them a blood collection kit and the subject is free to pay for his own blood draw and subsequent testing at the lab of his choice. This happens rarely.
- 2) What happens more often is for the subject to request the officer's sample (that we have already tested) be sent to another lab for testing. We

forward  
the sample free of charge, but the testing is paid for by the subject.

We hope this answers your question and sheds some light on how this area of the process works.

Laura, Tom & Pat

Laura J. Liddicoat  
Supervisor, Toxicology Section  
Wisconsin State Laboratory of Hygiene  
2601 Agriculture Drive, P.O. Box 7996  
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-----Original Message-----

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]  
Sent: Wednesday, June 11, 2003 5:00 PM  
To: Neuser, Thomas  
Cc: Liddicoat, Laura; Harding, Patrick  
Subject: RE: Drugged driving - /P5 version

I hadn't considered whether an officer might have contact with the driver after the initial stop. If that happens regularly, then your suggestion to retain 343.305 (7) (a) makes sense.

I also found a couple of other provisions that perhaps I should have treated but did not. Current s. 343.305 (2) requires the law enforcement agency to administer two of the three possible tests. If the officer suspects that a person has used a controlled substance but not alcohol, should s/he be required to offer an alternative test under sub. (5)? (I realize that many (most?) cases that involve drugs will often involve alcohol, but I assume that there will be a significant number that will only involve drugs.)

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

From: Neuser, Thomas [mailto:noisey@mail.slh.wisc.edu]  
Sent: Wednesday, June 11, 2003 1:26 PM  
To: 'Dsida, Michael'; Liddicoat, Laura; Harding, Patrick  
Subject: RE: Drugged driving - /P5 version

Hello, Michael:

Pat and Laura are out of the lab today, so I am going to respond for them. You may want to wait before taking any action, however, in case they disagree with my assessment.

I think you should leave 343.305 (7) (a) in the new bill. My reasoning is that under current law, an officer will initiate additional contact with a driver (after the driver's release on the date of the incident) when the officer needs to issue a citation for prohibited alcohol concentration. The driver is cited on the date of the incident for operating while impaired and blood is

collected  
under the implied consent law. Some days - sometimes many days! - later,  
the  
laboratory will test the blood and issue a report. If the testing shows a  
prohibited alcohol concentration, the officer issues the PAC citation. At  
that  
point all the provisions of 343.305 (8) come into play. It seems to me that  
the  
administrative procedures which apply when the testing reveals a prohibited  
alcohol concentration continue to serve well when the testing shows the  
presence  
of a restricted controlled substance.

Just for clarification, our concern with 343.305 (7) (b) is that a 24 hour  
out-of-service order is only practical where testing results are instantly  
available, i.e., following a breath alcohol test. Technology to accomplish  
this  
with drug testing is not going to be available any time soon. When  
laboratory  
testing shows the presence of a restricted controlled substance, the 6-month  
administrative suspension provision contained in 343.305 (7) (a) makes a 24  
hour  
out-of-service order unnecessary. (There is also the issue of impairment at  
blood alcohol concentrations below the prohibited alcohol concentration.  
Since  
the new bill does not address the issue of impairment - presence of drug  
alone  
is prohibited - we do not need to open that can of worms!)

I hope this answers your question. Laura has a number of things on her  
calendar, but I expect her to check email frequently. Pat should be in the  
lab  
tomorrow. Let us know if you need any more information.

Tom

Thomas P. Neuser, MT(ASCP)  
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-----Original Message-----

From: Dsida, Michael [mailto:Michael.Dsida@legis.state.wi.us]  
Sent: Wednesday, June 11, 2003 12:10 PM  
To: Liddicoat, Laura; Harding, Patrick; Neuser, Thomas  
Subject: RE: Drugged driving - /P5 version

In a recent email, you suggested deleting the treatment of s. 343.305 (7)  
(b).  
Should I also delete the treatment of s. 343.305 (7) (a), since the officer  
will  
not be conducting the blood test?

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

## Dsida, Michael

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**From:** Gundrum, Mark  
**Sent:** Thursday, June 12, 2003 8:38 PM  
**To:** Churchill, Jolene; Dsida, Michael  
**Subject:** RE: drugged driving bill

Yes Mike. I agree with MAY be admissible, instead of IS admissible.

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

**From:** Churchill, Jolene  
**Sent:** Wednesday, June 11, 2003 3:30 PM  
**To:** Dsida, Michael  
**Subject:** RE: drugged driving bill

Dear Mike,

I conveyed your message and Rep. Gundrum said re-draft would be fine. - Jolene

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

**From:** Dsida, Michael  
**Sent:** Tuesday, June 10, 2003 4:51 PM  
**To:** Rep.Gundrum  
**Subject:** drugged driving bill

In reviewing the bill (which I am doing to make sure that the analysis that I am drafting is correct), I noticed that Section 23 should be redrafted. As currently drafted, that section explicitly states that a **breath or urine** test is admissible on any issue relating to the presence of a detectable amount of a restricted controlled substance in a person's **blood**. Section 72 of the bill indicates that such a test may be admissible, but the bill probably should not go beyond that.

Laura Liddicoat agrees that Section 23 should be changed to address this problem.

Mike Dsida  
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