



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0465/P5
PJH&MGD:jd:jf

EWJ

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

by 5 PM
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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 (8) (b) 2. bm.
6 and d., 343.305 (9) (a) 5. a., 343.307 (1) (d), 343.307 (2) (e), 343.307 (3), 343.31
7 (1) (am), 343.31 (2), 343.315 (2) (a) 5., 343.315 (2) (a) 6., 344.576 (2) (b), 346.63
8 (1) (c), 346.63 (2) (am), 346.65 (2g) (c), 346.65 (2m) (a), 346.65 (6) (a) 1., 346.65
9 (6) (c), 346.65 (6) (d), 350.101 (1) (d), 350.101 (2) (c), 350.104 (4), 350.11 (3) (a)
10 1., 350.11 (3) (a) 2., 350.11 (3) (a) 3., 351.02 (1) (a) 10., 885.235 (4), 939.75 (1),
11 939.75 (2) (b), 939.75 (3) (intro.), 940.09 (1d) (a) 1., 940.09 (1d) (a) 2., 940.09 (1d)
12 (b), 940.25 (1d) (a) 1., 940.25 (1d) (a) 2., 940.25 (1d) (b), 949.08 (2) (e), 949.08 (2)
13 (em), 967.055 (1) (a) and 967.055 (2) (a); and *to create* 23.33 (1) (jo), 23.33 (4c)
14 (a) 2m., 23.33 (4c) (a) 5., 23.33 (4c) (b) 2m., 23.33 (4c) (b) 4. b., 30.50 (10m),
15 30.681 (1) (b) 1m., 30.681 (1) (d), 30.681 (2) (b) 1m., 30.681 (2) (d) 1. b., 340.01

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

Analysis by the Legislative Reference Bureau

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

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

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

11 23.33 (1) (jo) "Restricted controlled substance" means any of the following:

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

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

16 3. Cocaine or any of its metabolites.

17 4. Methamphetamine.

18 5. Delta-9-tetrahydrocannabinol.

19 **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 or
18 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
19 or she proves by a preponderance of the evidence that at the time of the incident or
20 occurrence he or she had a valid prescription for methamphetamine or one of its
21 metabolic precursors or delta-9-tetrahydrocannabinol.

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

1 substance in his or her blood may cause injury to another person by the operation of
2 an all-terrain vehicle.

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

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

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

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

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

23 23.33 (4c) (b) 4. b. In an action under subd. 2m. that is based on the defendant
24 allegedly having a detectable amount of methamphetamine or
25 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he

1 or she proves by a preponderance of the evidence that at the time of the incident or
2 occurrence he or she had a valid prescription for methamphetamine or one of its
3 metabolic precursors or delta-9-tetrahydrocannabinol.

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

5 23.33 (13) (b) 1. Except as provided under subds. 2. and 3., a person who
6 violates sub. (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e) shall forfeit not less than \$150 nor more
7 than \$300.

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

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

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

15 23.33 (13) (b) 3. A person who violates sub. (4c) (a) 1. ~~or 2.~~ or 2m. or (4p) (e)
16 and who, within 5 years prior to the arrest for the current violation, was convicted
17 2 or more times previously under the intoxicated operation of an all-terrain vehicle
18 law or refusal law shall be fined not less than \$600 nor more than \$2,000 and shall
19 be imprisoned not less than 30 days nor more than one year in the county jail.

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

21 30.50 (10m) “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 13.** 30.681 (1) (b) (title) of the statutes is amended to read:

5 30.681 (1) (b) (title) *Operating with after using a controlled substance or alcohol*
6 *concentrations at or above specified levels.*

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

8 30.681 (1) (b) 1m. No person may engage in the operation of a motorboat while
9 the person has a detectable amount of a restricted controlled substance in his or her
10 blood.

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

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

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

23 30.681 (1) (d) *Defenses.* In an action under par. (b) 1m. that is based on the
24 defendant allegedly having a detectable amount of methamphetamine or
25 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he

1 or she proves by a preponderance of the evidence that at the time of the incident or
2 occurrence he or she had a valid prescription for methamphetamine or one of its
3 metabolic precursors or delta-9-tetrahydrocannabinol.

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

5 30.681 (2) (b) (title) *Causing injury with after using a controlled substance or*
6 *alcohol concentrations at or above specified levels.*

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

8 30.681 (2) (b) 1m. No person who has a detectable amount of a restricted
9 controlled substance in his or her blood may cause injury to another person by the
10 operation of a motorboat.

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

12 30.681 (2) (c) *Related charges.* A person may be charged with and a prosecutor
13 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any
14 combination of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or
15 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any
16 combination of par. (a) or (b) 1., 1m., or 2. in the complaint, the crimes shall be joined
17 under s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination
18 of par. (a) or (b) 1., 1m., or 2. for acts arising out of the same incident or occurrence,
19 there shall be a single conviction for purposes of sentencing and for purposes of
20 counting convictions under s. 30.80 (6) (a) 2. and 3. Paragraphs (a) and (b) 1., 1m.,
21 and 2. each require proof of a fact for conviction which the ~~other does~~ others do not
22 require.

23 **SECTION 20.** 30.681 (2) (d) 1. of the statutes is renumbered 30.681 (2) (d) 1. a.

24 and amended to read:

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

8 **SECTION 21.** 30.681 (2) (d) 1. b. of the statutes is created to read:

9 30.681 (2) (d) 1. b. In an action under par. (b) 1m. that is based on the defendant
10 allegedly having a detectable amount of methamphetamine or
11 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
12 or she proves by a preponderance of the evidence that at the time of the incident or
13 occurrence he or she had a valid prescription for methamphetamine or one of its
14 metabolic precursors or delta-9-tetrahydrocannabinol.

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

16 340.01 (50m) “Restricted controlled substance” means any of the following:

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

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

21 (c) Cocaine or any of its metabolites.

22 (d) Methamphetamine.

23 (e) Delta-9-tetrahydrocannabinol.

24 **SECTION 23.** 343.305 (5) (a) of the statutes is ^{created} ~~amended~~ to read:

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1 343.305 (5) (d) At the trial of any civil or criminal action or proceeding arising
 2 out of the acts committed by a person alleged to have been driving or operating a
 3 motor vehicle while under the influence of an intoxicant, a controlled substance, a
 4 controlled substance analog or any other drug, or under the influence of any
 5 combination of alcohol, a controlled substance, a controlled substance analog and
 6 any other drug, to a degree which renders him or her incapable of safely driving, or
 7 under the combined influence of an intoxicant and any other drug to a degree which
 8 renders him or her incapable of safely driving, having a detectable amount of a

9 restricted controlled substance in his or her blood, or having a prohibited alcohol
 10 concentration, or alleged to have been driving or operating or on duty time with
 11 respect to a commercial motor vehicle while having an alcohol concentration above
 12 0.0 or possessing an intoxicating beverage, regardless of its alcohol content, or within
 13 4 hours of having consumed or having been under the influence of an intoxicating
 14 beverage, regardless of its alcohol content, or of having an alcohol concentration of
 15 0.04 or more, the results of a ^{blood} test administered in accordance with this section are

16 admissible on the issue of whether the person was under the influence of an
 17 intoxicant, a controlled substance, a controlled substance analog or any other drug,
 18 or under the influence of any combination of alcohol, a controlled substance, a
 19 controlled substance analog and any other drug, to a degree which renders him or
 20 her incapable of safely driving or under the combined influence of an intoxicant and
 21 any other drug to a degree which renders him or her incapable of safely driving, or
 22 any issue relating to the presence of a detectable amount of a restricted controlled

23 substance in the person's blood ~~or to the person's alcohol concentration~~. Test results
 24 shall be given the effect required under s. 885.235.

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

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in the person's blood

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

7 **SECTION 25.** 343.305 (8) (b) 2. bm. and d. of the statutes are amended to read:

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

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

15 **SECTION 26.** 343.305 (8) (b) 2. g. of the statutes is created to read:

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

19 **SECTION 27.** 343.305 (8) (b) 4m. of the statutes is created to read:

20 343.305 (8) (b) 4m. If, at the time the offense allegedly occurred, all of the
21 following apply, the hearing officer shall determine whether the person had a valid
22 prescription for methamphetamine or one of its metabolic precursors or
23 delta-9-tetrahydrocannabinol:

24 a. A blood test administered in accordance with this section indicated that the
25 person had a detectable amount of methamphetamine or

1 delta-9-tetrahydrocannabinol but did not have a detectable amount of any other
2 restricted controlled substance in his or her blood.

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

5 **SECTION 28.** 343.305 (8) (b) 5. of the statutes is renumbered 343.305 (8) (b) 5.
6 (intro.) and amended to read:

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

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

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

24 **SECTION 29.** 343.305 (8) (b) 5. a. of the statutes is created to read:

1 343.305 (8) (b) 5. a. The criteria for administrative suspension have not been
2 satisfied.

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

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

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

8 343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had
9 a valid prescription for methamphetamine or one of its metabolic precursors or
10 delta-9-tetrahydrocannabinol.

11 **SECTION 32.** 343.305 (8) (b) 6. a. of the statutes is created to read:

12 343.305 (8) (b) 6. a. The criteria for administrative suspension have been
13 satisfied.

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

15 343.305 (8) (b) 6. b. The person had a prohibited alcohol concentration or a
16 detectable amount of a restricted controlled substance in his or her blood at the time
17 the offense allegedly occurred.

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

19 343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did
20 not have a valid prescription for methamphetamine or one of its metabolic precursors
21 or delta-9-tetrahydrocannabinol.

22 **SECTION 35.** 343.305 (9) (a) 5. a. of the statutes is amended to read:

23 343.305 (9) (a) 5. a. Whether the officer had probable cause to believe the
24 person was driving or operating a motor vehicle while under the influence of alcohol,
25 a controlled substance or a controlled substance analog or any combination of

1 alcohol, a controlled substance and a controlled substance analog, under the
2 influence of any other drug to a degree which renders the person incapable of safely
3 driving, or under the combined influence of alcohol and any other drug to a degree
4 which renders the person incapable of safely driving, having a restricted controlled
5 substance in his or her blood, or having a prohibited alcohol concentration or, if the
6 person was driving or operating a commercial motor vehicle, an alcohol
7 concentration of 0.04 or more and whether the person was lawfully placed under
8 arrest for violation of s. 346.63 (1), (2m) or (5) or a local ordinance in conformity
9 therewith or s. 346.63 (2) or (6), 940.09 (1) or 940.25.

10 **SECTION 36.** 343.307 (1) (d) of the statutes is amended to read:

11 343.307 (1) (d) Convictions under the law of another jurisdiction that prohibits
12 ~~refusal of a person from refusing~~ chemical testing or ~~use of~~ using a motor vehicle
13 while intoxicated or under the influence of a controlled substance or controlled
14 substance analog, or a combination thereof, ~~or;~~ with an excess or specified range of
15 alcohol concentration, ~~or;~~ while under the influence of any drug to a degree that
16 renders the person incapable of safely driving; or while having a detectable amount
17 of a restricted controlled substance in his or her blood, as those or substantially
18 similar terms are used in that jurisdiction's laws.

19 **SECTION 37.** 343.307 (2) (e) of the statutes is amended to read:

20 343.307 (2) (e) Convictions under the law of another jurisdiction that prohibits
21 ~~refusal of a person from refusing~~ chemical testing or ~~use of~~ using a motor vehicle
22 while intoxicated or under the influence of a controlled substance or controlled
23 substance analog, or a combination thereof, ~~or;~~ with an excess or specified range of
24 alcohol concentration, ~~or;~~ while under the influence of any drug to a degree that
25 renders the person incapable of safely driving; or while having a detectable amount

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

3 **SECTION 38.** 343.307 (3) of the statutes is amended to read:

4 343.307 (3) If the same elements of the offense must be proven under a local
5 ordinance or under a law of a federally recognized American Indian tribe or band in
6 this state as under s. 346.63 (1) (a), (am), or (b) ~~or both~~, any combination of s. 346.63
7 (1) (a), (am), or (b), or s. 346.63 (5), the local ordinance or the law of a federally
8 recognized American Indian tribe or band in this state shall be considered to be in
9 conformity with s. 346.63 (1) (a), (am), or (b) ~~or both~~, any combination of s. 346.63 (1)
10 (a), (am), or (b), or s. 346.63 (5), for purposes of ss. 343.30 (1q) (b) 1., 343.305 (10) (b)
11 1. and 346.65 (2) and (2j).

12 **SECTION 39.** 343.31 (1) (am) of the statutes is amended to read:

13 343.31 (1) (am) Injury by the operation of a vehicle while under the influence
14 of an intoxicant, a controlled substance or a controlled substance analog, or any
15 combination of an intoxicant, a controlled substance and a controlled substance
16 analog, under the influence of any other drug to a degree which renders him or her
17 incapable of safely driving, or under the combined influence of an intoxicant and any
18 other drug to a degree which renders him or her incapable of safely driving or while
19 the person has a detectable amount of a restricted controlled substance in his or her
20 blood or has a prohibited alcohol concentration and which is criminal under s. 346.63
21 (2).

22 **SECTION 40.** 343.31 (2) of the statutes is amended to read:

23 343.31 (2) The department shall revoke the operating privilege of any resident
24 upon receiving notice of the conviction of such person in another jurisdiction for an
25 offense therein which, if committed in this state, would have been cause for

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

13 **SECTION 41.** 343.315 (2) (a) 1m. of the statutes is created to read:

14 343.315 (2) (a) 1m. Section 346.63 (1) (am) or a local ordinance in conformity
15 therewith or a law of a federally recognized American Indian tribe or band in this
16 state in conformity with s. 346.63 (1) (am) or the law of another jurisdiction that
17 prohibits a person from driving or operating a commercial motor vehicle while
18 having a detectable amount of a restricted controlled substance in his or her blood,
19 as those or substantially similar terms are used in that jurisdiction's laws.

20 **SECTION 42.** 343.315 (2) (a) 5. of the statutes is amended to read:

21 343.315 (2) (a) 5. Section 343.305 (9) 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. 343.305 (9) or the law of another jurisdiction prohibiting
24 refusal of a person driving or operating a motor vehicle to submit to chemical testing
25 to determine the person's alcohol concentration or intoxication or the amount of a

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

3 **SECTION 43.** 343.315 (2) (a) 6. of the statutes is amended to read:

4 343.315 (2) (a) 6. Section 346.63 (2) or (6), 940.09 (1) or 940.25 or a law of a
5 federally recognized American Indian tribe or band in this state in conformity with
6 s. 346.63 (2) or (6), 940.09 (1) or 940.25, or the law of another jurisdiction prohibiting
7 causing or inflicting injury, great bodily harm or death through use of a motor vehicle
8 while intoxicated or under the influence of alcohol, a controlled substance, a
9 controlled substance analog or a combination thereof, or with an alcohol
10 concentration of 0.04 or more or with an excess or specified range of alcohol
11 concentration, ~~or while~~ under the influence of any drug to a degree that renders the
12 person incapable of safely driving, or while having a detectable 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.

15 **SECTION 44.** 344.576 (2) (b) of the statutes is amended to read:

16 344.576 (2) (b) The damage occurs while the renter or authorized driver
17 operates the private passenger vehicle in this state while under the influence of an
18 intoxicant or other drug, as described under s. 346.63 (1) (a), (am), or (b) or (2m).

19 **SECTION 45.** 346.63 (1) (am) of the statutes is created to read:

20 346.63 (1) (am) The person has a detectable amount of a restricted controlled
21 substance in his or her blood.

22 **SECTION 46.** 346.63 (1) (c) of the statutes is amended to read:

23 346.63 (1) (c) A person may be charged with and a prosecutor may proceed upon
24 a complaint based upon a violation of ~~par. (a) or (b) or both~~ any combination of par.
25 (a), (am), or (b) for acts arising out of the same incident or occurrence. If the person

1 is charged with violating ~~both pars. (a) and (b)~~ any combination of par. (a), (am), or
2 (b), the offenses shall be joined. If the person is found guilty of ~~both pars. (a) and (b)~~
3 any combination of par. (a), (am), or (b) 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 ss. 343.30 (1q) and 343.305. Paragraphs (a),
6 (am), and (b) each require proof of a fact for conviction which the ~~other does~~ others
7 do not require.

8 **SECTION 47.** 346.63 (1) (d) of the statutes is created to read:

9 346.63 (1) (d) In an action under par. (am) that is based on the defendant
10 allegedly having a detectable amount of methamphetamine or
11 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
12 or she proves by a preponderance of the evidence that at the time of the incident or
13 occurrence he or she had a valid prescription for methamphetamine or one of its
14 metabolic precursors or delta-9-tetrahydrocannabinol.

15 **SECTION 48.** 346.63 (2) (a) 3. of the statutes is created to read:

16 346.63 (2) (a) 3. The person has a detectable amount of a restricted controlled
17 substance in his or her blood.

18 **SECTION 49.** 346.63 (2) (am) of the statutes is amended to read:

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

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

4 **SECTION 50.** 346.63 (2) (b) of the statutes is renumbered 346.63 (2) (b) 1.
5 amended to read:

6 346.63 (2) (b) 1. In an action under this subsection, the defendant has a defense
7 if he or she proves by a preponderance of the evidence that the injury would have
8 occurred even if he or she had been exercising due care and he or she had not been
9 under the influence of an intoxicant, a controlled substance, a controlled substance
10 analog or a combination thereof, under the influence of any other drug to a degree
11 which renders him or her incapable of safely driving, or under the combined
12 influence of an intoxicant and any other drug to a degree which renders him or her
13 incapable of safely driving ~~or~~, did not have a prohibited alcohol concentration
14 described under par. (a) 2., or did not have a detectable amount of a restricted
15 controlled substance in his or her blood.

16 **SECTION 51.** 346.63 (2) (b) 2. of the statutes is created to read:

17 346.63 (2) (b) 2. In an action under par. (a) 3. that is based on the defendant
18 allegedly having a detectable amount of methamphetamine or
19 delta-9-tetrahydrocannabinol in his or her blood, 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 he or she had a valid prescription for methamphetamine or one of its
22 metabolic precursors or delta-9-tetrahydrocannabinol.

23 **SECTION 52.** 346.65 (2g) (c) of the statutes is amended to read:

24 346.65 (2g) (c) If there was a minor passenger under 16 years of age in the
25 motor vehicle or commercial motor vehicle at the time of the violation that gave rise

1 to the conviction, the court may require a person ordered to perform community
2 service work under par. (a) or (ag), ~~or~~ under s. 973.05 (3) (a) if that person's fine
3 resulted from violating s. 346.63 (2), (5) (a) or (6) (a), 940.09 (1) or 940.25, or under
4 s. 973.05 (3) (a) if that person's fine resulted from violating s. 346.63 (1) (am) and the
5 motor vehicle that the person was driving or operating was a commercial motor
6 vehicle, to participate in community service work that benefits children or that
7 demonstrates the adverse effects on children of substance abuse or of operating a
8 vehicle while under the influence of an intoxicant or other drug. The court may order
9 the person to pay a reasonable fee, based on the person's ability to pay, to offset the
10 cost of establishing, maintaining and monitoring the community service work
11 ordered under this paragraph.

12 **SECTION 53.** 346.65 (2m) (a) of the statutes is amended to read:

13 346.65 (2m) (a) In imposing a sentence under sub. (2) for a violation of s. 346.63
14 (1) (am) or (b) or (5) or a local ordinance in conformity therewith, the court shall
15 review the record and consider the aggravating and mitigating factors in the matter.
16 ~~If the level of the person's blood alcohol level~~ amount of alcohol in the person's blood
17 or urine or the amount of a restricted controlled substance in the person's blood is
18 known, the court shall consider that ~~level~~ amount as a factor in sentencing. The chief
19 judge of each judicial administrative district shall adopt guidelines, under the chief
20 judge's authority to adopt local rules under SCR 70.34, for the consideration of
21 aggravating and mitigating factors.

22 **SECTION 54.** 346.65 (6) (a) 1. of the statutes is amended to read:

23 346.65 (6) (a) 1. The court may order a law enforcement officer to seize the
24 motor vehicle used in the violation or improper refusal and owned by the person
25 whose operating privilege is revoked under s. 343.305 (10) or who committed a

1 violation of s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or~~ 2., or 3., 940.09 (1) (a), (am),
2 (b), (c), (cm), or (d), or 940.25 (1) (a), (am), (b), (c), (cm), or (d) if the person whose
3 operating privilege is revoked under s. 343.305 (10) or who is convicted of the
4 violation has 2 or more prior suspensions, revocations, or convictions, counting
5 convictions under ss. 940.09 (1) and 940.25 in the person's lifetime, plus other
6 convictions, suspensions, or revocations counted under s. 343.307 (1). The court may
7 not order a motor vehicle seized if the court enters an order under s. 343.301 to
8 immobilize the motor vehicle or equip the motor vehicle with an ignition interlock
9 device or if seizure would result in undue hardship or extreme inconvenience or
10 would endanger the health and safety of a person.

11 **SECTION 55.** 346.65 (6) (c) of the statutes is amended to read:

12 346.65 (6) (c) The district attorney of the county where the motor vehicle was
13 seized, or where the owner improperly refused to take the test under s. 343.305 or
14 violated s. 346.63 (1) (a), (am), or (b) or (2) (a) 1. ~~or~~ 2., or 3., 940.09 (1) (a), (am), (b),
15 (c), (cm), or (d) or 940.25 (1) (a), (am), (b), (c), (cm), or (d), shall commence an action
16 to forfeit the motor vehicle within 30 days after the motor vehicle is seized. The
17 action shall name the owner of the motor vehicle and all lienholders of record as
18 parties. The forfeiture action shall be commenced by filing a summons, complaint
19 and affidavit of the law enforcement agency with the clerk of circuit court. Upon
20 service of an answer, the action shall be set for hearing within 60 days after the
21 service of the answer. If no answer is served or no issue of law or fact joined and the
22 time for that service or joining of issues has expired, the court may render a default
23 judgment as provided in s. 806.02.

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

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

12 **SECTION 57.** 350.01 (10v) of the statutes is created to read:

13 350.01 (10v) "Restricted controlled substance" means any of the following:

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

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

18 (c) Cocaine or any of its metabolites.

19 (d) Methamphetamine.

20 (e) Delta-9-tetrahydrocannabinol.

21 **SECTION 58.** 350.101 (1) (bm) of the statutes is created to read:

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

25 **SECTION 59.** 350.101 (1) (d) of the statutes is amended to read:

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

11 **SECTION 60.** 350.101 (1) (e) of the statutes is created to read:

12 350.101 (1) (e) *Defenses*. In an action under par. (bm) that is based on the
13 defendant allegedly having a detectable amount of methamphetamine or
14 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
15 or she proves by a preponderance of the evidence that at the time of the incident or
16 occurrence he or she had a valid prescription for methamphetamine or one of its
17 metabolic precursors or delta-9-tetrahydrocannabinol.

18 **SECTION 61.** 350.101 (2) (bm) of the statutes is created to read:

19 350.101 (2) (bm) *Causing injury while operating a snowmobile with a*
20 *detectable amount of a restricted controlled substance*. No person who has a
21 detectable amount of a restricted controlled substance in his or her blood may cause
22 injury to another person by the operation of a snowmobile.

23 **SECTION 62.** 350.101 (2) (c) of the statutes is amended to read:

24 350.101 (2) (c) *Related charges*. A person may be charged with and a prosecutor
25 may proceed upon a complaint based upon a violation of ~~par. (a) or (b) or both~~ any

1 combination of par. (a), (b), or (bm) for acts arising out of the same incident or
2 occurrence. If the person is charged with violating ~~both pars. (a) and (b)~~ any
3 combination of par. (a), (b), or (bm) in the complaint, the crimes shall be joined under
4 s. 971.12. If the person is found guilty of ~~both pars. (a) and (b)~~ any combination of
5 par. (a), (b), or (bm) for acts arising out of the same incident or occurrence, there shall
6 be a single conviction for purposes of sentencing and for purposes of counting
7 convictions under s. 350.11 (3) (a) 2. and 3. Paragraphs (a) ~~and, (b), and (bm)~~ each
8 require proof of a fact for conviction which the ~~other does~~ others do not require.

9 **SECTION 63.** 350.101 (2) (d) of the statutes is renumbered 350.101 (2) (d) 1. and
10 amended to read:

11 350.101 (2) (d) 1. In an action under this subsection, the defendant has a
12 defense if he or she proves by a preponderance of the evidence that the injury would
13 have occurred even if he or she had been exercising due care and he or she had not
14 been under the influence of an intoxicant or did not have an alcohol concentration
15 of 0.1 or more or a detectable amount of a restricted controlled substance in his or her
16 blood.

17 **SECTION 64.** 350.101 (2) (d) 2. of the statutes is created to read:

18 350.101 (2) (d) 2. In an action under par. (bm) that is based on the defendant
19 allegedly having a detectable amount of methamphetamine or
20 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
21 or she proves by a preponderance of the evidence that at the time of the incident or
22 occurrence he or she had a valid prescription for methamphetamine or one of its
23 metabolic precursors or delta-9-tetrahydrocannabinol.

24 **SECTION 65.** 350.104 (4) of the statutes is amended to read:

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

11 **SECTION 66.** 350.11 (3) (a) 1. of the statutes is amended to read:

12 350.11 (3) (a) 1. Except as provided under subds. 2. and 3., a person who violates
13 s. 350.101 (1) (a) ~~or~~, (b), or (bm) or s. 350.104 (5) shall forfeit not less than \$400 nor
14 more than \$550.

15 **SECTION 67.** 350.11 (3) (a) 2. of the statutes is amended to read:

16 350.11 (3) (a) 2. Except as provided under subd. 3., a person who violates s.
17 350.101 (1) (a) ~~or~~, (b), or (bm) or 350.104 (5) and who, within 5 years prior to the arrest
18 for the current violation, was convicted previously under the intoxicated
19 snowmobiling law or the refusal law shall be fined not less than \$300 nor more than
20 \$1,000 and shall be imprisoned not less than 5 days nor more than 6 months.

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

22 350.11 (3) (a) 3. A person who violates s. 350.101 (1) (a) ~~or~~, (b), or (bm) or 350.104
23 (5) and who, within 5 years prior to the arrest for the current violation, was convicted
24 2 or more times previously under the intoxicated snowmobiling law or refusal law

1 shall be fined not less than \$600 nor more than \$2,000 and shall be imprisoned not
2 less than 30 days nor more than one year in the county jail.

3 **SECTION 69.** 351.02 (1) (a) 10. of the statutes is amended to read:

4 351.02 (1) (a) 10. Any offense committed by the person under the law of another
5 jurisdiction prohibiting conduct described in sections 6-207, 6-302, 10-102, 10-103,
6 10-104, 11-901, 11-902, 11-907 or 11-908 of the uniform vehicle code and model
7 traffic ordinance (1987), or prohibiting homicide or manslaughter resulting from the
8 operation of a motor vehicle, use of a motor vehicle in the commission of a felony,
9 reckless or careless driving or driving a motor vehicle with willful or wanton
10 disregard for the safety of persons or property, driving or operating a motor vehicle
11 while under the influence of alcohol, a controlled substance, a controlled substance
12 analog or any other drug or a combination thereof as prohibited, driving or operating
13 a motor vehicle while having a detectable amount of a restricted controlled substance
14 in the person's blood, refusal to submit to chemical testing, perjury or the making
15 false statements or affidavits to a governmental agency in connection with the
16 ownership or operation of a motor vehicle, failing to stop and identify oneself as the
17 driver or operator in the event of a motor vehicle accident with a person or an
18 attended motor vehicle or fleeing from or attempting to elude a police, law
19 enforcement or other peace officer, as those or substantially similar terms are used
20 in that jurisdiction's laws.

21 **SECTION 70.** 885.235 (1) (d) of the statutes is created to read:

22 885.235 (1) (d) "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 71.** 885.235 (1k) of the statutes is created to read:

7 885.235 (1k) In any action or proceeding in which it is material to prove that
8 a person had a detectable amount of a restricted controlled substance in his or her
9 blood while operating or driving a motor vehicle or, if the vehicle is a commercial
10 motor vehicle, on duty time, while operating a motorboat, except a sailboat operating
11 under sail alone, while operating a snowmobile, while operating an all-terrain
12 vehicle, or while handling a firearm, if a chemical analysis of a sample of the person's
13 blood shows that the person had a detectable amount of a restricted controlled
14 substance in his or her blood, the court shall treat the analysis as prima facie
15 evidence on the issue of the person having a detectable amount of a restricted
16 controlled substance in his or her blood without requiring any expert testimony.

17 **SECTION 72.** 885.235 (4) of the statutes is amended to read:

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18 885.235 (4) The provisions of this section relating to the admissibility of
19 chemical tests for alcohol concentration or intoxication shall not be construed as
20 limiting the introduction of any other competent evidence bearing on the question
21 of whether or not a person was under the influence of an intoxicant, had a detectable
22 amount of a restricted controlled substance in his or her blood, had a specified alcohol
23 concentration, or had an alcohol concentration in the range specified in s. 23.33 (4c)
24 (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101 (1) (c).

25 **SECTION 73.** 939.22 (33) of the statutes is created to read:

1 939.22 (33) “Restricted controlled substance” means any of the following:

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

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

6 (c) Cocaine or any of its metabolites.

7 (d) Methamphetamine.

8 (e) Delta-9-tetrahydrocannabinol.

9 **SECTION 74.** 939.75 (1) of the statutes, as affected by 2001 Wisconsin Act 109,
10 is amended to read:

11 939.75 (1) In this section and ss. 939.24 (1), 939.25 (1), 940.01 (1) (b), 940.02
12 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm),
13 and (d), 940.10 (2), 940.195, 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to
14 (e), “unborn child” means any individual of the human species from fertilization until
15 birth that is gestating inside a woman.

16 **SECTION 75.** 939.75 (2) (b) of the statutes is amended to read:

17 939.75 (2) (b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06
18 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195,
19 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the
20 following:

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

22 939.75 (3) (intro.) When the existence of an exception under sub. (2) has been
23 placed in issue by the trial evidence, the state must prove beyond a reasonable doubt
24 that the facts constituting the exception do not exist in order to sustain a finding of
25 guilt under s. 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09

1 (1) (c) to (e) or (1g) (c), (cm), or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24
2 (2) or 940.25 (1) (c) to (e).

3 **SECTION 77.** 940.09 (1) (am) of the statutes is created to read:

4 940.09 (1) (am) Causes the death of another by the operation or handling of a
5 vehicle while the person has a detectable amount of a restricted controlled substance
6 in his or her blood.

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

8 940.09 (1) (cm) Causes the death of an unborn child by the operation or
9 handling of a vehicle while the person has a detectable amount of a restricted
10 controlled substance in his or her blood.

11 **SECTION 79.** 940.09 (1d) (a) 1. of the statutes is amended to read:

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

19 **SECTION 80.** 940.09 (1d) (a) 2. of the statutes is amended to read:

20 940.09 (1d) (a) 2. Notwithstanding par. (b), if the person who committed an
21 offense under sub. (1) (a), (am), (b), (c), (cm), or (d) has 2 or more convictions,
22 suspensions, or revocations counted under s. 343.307 (1) within any 5-year period,
23 the procedure under s. 343.301 shall be followed if the court enters an order
24 regarding operating privilege restriction and the installation of an ignition interlock
25 device or enters an order regarding immobilization.

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

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

8 **SECTION 82.** 940.09 (1g) (am) of the statutes is created to read:

9 940.09 (1g) (am) Causes the death of another by the operation or handling of
10 a firearm or airgun while the person has a detectable amount of a restricted
11 controlled substance in his or her blood.

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

13 940.09 (1g) (cm) Causes the death of an unborn child by the operation or
14 handling of a firearm or airgun while the person has a detectable amount of a
15 restricted controlled substance in his or her blood.

16 **SECTION 84.** 940.09 (1m) of the statutes is renumbered 940.09 (1m) (a) and
17 amended to read:

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

24 (b) If ~~the a~~ person is charged with ~~violating both sub. (1) (a) and (b), both sub.~~
25 ~~(1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a)~~

1 and (b) or both sub. (1g) (e) and (d) in the an information with any of the combinations
2 of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the
3 person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub.
4 (1) (c) and (d), both sub. (1) (e) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (e)
5 and (d) more than one of the crimes so charged for acts arising out of the same
6 incident or occurrence, there shall be a single conviction for purposes of sentencing
7 and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s.
8 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3.
9 Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e), and sub. (1g) (a), (b), (e) and
10 (d), each require proof of a fact for conviction which the other does others do not
11 require, and sub. (1g) (a), (am), (b), (c), (cm), and (d) each require proof of a fact for
12 conviction which the others do not require.

13 SECTION 85. 940.09 (2) of the statutes is renumbered 940.09 (2) (a) and
14 amended to read:

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

21 SECTION 86. 940.09 (2) (b) of the statutes is created to read:

22 940.09 (2) (b) In any action under sub. (1) (am) or (cm) or (1g) (am) or (cm) that
23 is based on the defendant allegedly having a detectable amount of
24 methamphetamine in his or her blood, the defendant has a defense if he or she proves
25 by a preponderance of the evidence that at the time of the incident or occurrence he

1 or she had a valid prescription for methamphetamine or one of its metabolic
2 precursors.

3 **SECTION 87.** 940.25 (1) (am) of the statutes is created to read:

4 940.25 (1) (am) Causes great bodily harm to another human being by the
5 operation of a vehicle while the person has a detectable amount of a restricted
6 controlled substance in his or her blood.

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

8 940.25 (1) (cm) Causes great bodily harm to an unborn child by the operation
9 of a vehicle while the person has a detectable amount of a restricted controlled
10 substance in his or her blood.

11 **SECTION 89.** 940.25 (1d) (a) 1. of the statutes is amended to read:

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

19 **SECTION 90.** 940.25 (1d) (a) 2. of the statutes is amended to read:

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

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

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

8 **SECTION 92.** 940.25 (1m) of the statutes is renumbered 940.25 (1m) (a) and
9 amended to read:

10 940.25 (1m) (a) A person may be charged with and a prosecutor may proceed
11 upon an information based upon a violation of any combination of sub. (1) (a), (am),
12 or (b) ~~or both;~~ any any combination of sub. (1) (a), (am), or (bm) ~~or both;~~ any
13 combination of sub. (1) (c), (cm), or (d) ~~or both;~~ any combination of or sub. (1) (c), (cm),
14 or (e) ~~or both~~ for acts arising out of the same incident or occurrence.

15 **(b)** ~~If the a person is charged with violating both sub. (1) (a) and (b), both sub.~~
16 ~~(1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) in the an~~
17 ~~information with any of the combinations of crimes referred to in par. (a), the crimes~~
18 ~~shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and~~
19 ~~(b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) more~~
20 ~~than one of the crimes so charged for acts arising out of the same incident or~~
21 ~~occurrence, there shall be a single conviction for purposes of sentencing and for~~
22 ~~purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)~~
23 ~~(a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3.~~
24 Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for
25 conviction which the ~~other does~~ others do not require.

1 **SECTION 93.** 940.25 (2) of the statutes is renumbered 940.25 (2) (a) and
2 amended to read:

3 940.25 (2) (a) The defendant has a defense if he or she proves by a
4 preponderance of the evidence that the great bodily harm would have occurred even
5 if he or she had been exercising due care and he or she had not been under the
6 influence of an intoxicant, did not have a detectable amount of a restricted controlled
7 substance in his or her blood, or did not have an alcohol concentration described
8 under sub. (1) (b), (bm), (d) or (e).

9 **SECTION 94.** 940.25 (2) (b) of the statutes is created to read:

10 940.25 (2) (b) In any action under this section that is based on the defendant
11 allegedly having a detectable amount of methamphetamine or
12 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
13 or she proves by a preponderance of the evidence that at the time of the incident or
14 occurrence he or she had a valid prescription for methamphetamine or one of its
15 metabolic precursors or delta-9-tetrahydrocannabinol.

16 **SECTION 95.** 941.20 (1) (bm) of the statutes is created to read:

17 941.20 (1) (bm) Operates or goes armed with a firearm while he or she has a
18 detectable amount of a restricted controlled substance in his or her blood. A
19 defendant has a defense to any action under this paragraph that is based on the
20 defendant allegedly having a detectable amount of methamphetamine or
21 delta-9-tetrahydrocannabinol in his or her blood, if he or she proves by a
22 preponderance of the evidence that at the time of the incident or occurrence he or she
23 had a valid prescription for methamphetamine or one of its metabolic precursors or
24 delta-9-tetrahydrocannabinol.

25 **SECTION 96.** 949.08 (2) (e) of the statutes is amended to read:

1 949.08 (2) (e) Is an adult passenger in the offender's vehicle and, the crime
2 involved is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender
3 was ~~under the influence of an intoxicant, a controlled substance, a controlled~~
4 ~~substance analog or any combination of an intoxicant, controlled substance and~~
5 ~~controlled substance analog, or had a prohibited alcohol concentration, as defined in~~
6 ~~s. 340.01 (46m) committing that offense.~~ This paragraph does not apply if the victim
7 is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

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

9 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
10 vehicle and, the crime involved is specified in s. 346.63 (6) or 940.25, and the
11 passenger knew the offender was ~~under the influence of an intoxicant, a controlled~~
12 ~~substance, a controlled substance analog or any combination of an intoxicant,~~
13 ~~controlled substance and controlled substance analog, or had an alcohol~~
14 ~~concentration of 0.04 or more but less than 0.1 committing that offense.~~ This
15 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
16 940.305, 940.31 or 948.30.

17 **SECTION 98.** 967.055 (1) (a) of the statutes is amended to read:

18 967.055 (1) (a) The legislature intends to encourage the vigorous prosecution
19 of offenses concerning the operation of motor vehicles by persons under the influence
20 of an intoxicant, a controlled substance, a controlled substance analog or any
21 combination of an intoxicant, controlled substance and controlled substance analog,
22 under the influence of any other drug to a degree which renders him or her incapable
23 of safely driving, or under the combined influence of an intoxicant and any other drug
24 to a degree which renders him or her incapable of safely driving or having a
25 prohibited alcohol concentration, as defined in s. 340.01 (46m), ~~or offenses~~

1 concerning the operation of motor vehicles by persons with a detectable amount of
2 a restricted controlled substance in his or her blood, and offenses concerning the
3 operation of commercial motor vehicles by persons with an alcohol concentration of
4 0.04 or more.

5 **SECTION 99.** 967.055 (1m) of the statutes is renumbered 967.055 (1m) (intro.)
6 and amended to read:

7 967.055 (1m) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, “drug”:

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

9 **SECTION 100.** 967.055 (1m) (b) of the statutes is created to read:

10 967.055 (1m) (b) “Restricted controlled substance” means any of the following:

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

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

15 3. Cocaine or any of its metabolites.

16 4. Methamphetamine.

17 5. Delta-9-tetrahydrocannabinol.

18 **SECTION 101.** 967.055 (2) (a) of the statutes is amended to read:

19 967.055 (2) (a) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
20 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity
21 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the
22 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply
23 to the court. The application shall state the reasons for the proposed amendment or
24 dismissal. The court may approve the application only if the court finds that the
25 proposed amendment or dismissal is consistent with the public’s interest in deterring

1 the operation of motor vehicles by persons who are under the influence of an
2 intoxicant, a controlled substance, a controlled substance analog or any combination
3 of an intoxicant, controlled substance and controlled substance analog, under the
4 influence of any other drug to a degree which renders him or her incapable of safely
5 driving, or under the combined influence of an intoxicant and any other drug to a
6 degree which renders him or her incapable of safely driving, in deterring the
7 operation of motor vehicles by persons with a detectable amount of a restricted
8 controlled substance in his or her blood, or in deterring the operation of commercial
9 motor vehicles by persons with an alcohol concentration of 0.04 or more. The court
10 may not approve an application to amend the vehicle classification from a
11 commercial motor vehicle to a noncommercial motor vehicle unless there is evidence
12 in the record that the motor vehicle being operated by the defendant at the time of
13 his or her arrest was not a commercial motor vehicle.

14 **SECTION 102. Initial applicability.**

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

21 (END)

analysis INSERT

Under current law, a person may not operate a motor vehicle, an all-terrain vehicle (ATV), a snowmobile, or a motorboat if he or she: 1) has an alcohol concentration of 0.1 or more in his or her blood, breath, or urine; or 2) is under the influence of an intoxicant (alcohol, drugs, or a combination of alcohol and drugs). Penalties for a person who violates one of these prohibitions (which include suspension of the person's driver's license) depend on the number of prior offenses, whether the person injured or killed another as a result of operating the motor vehicle, ATV, snowmobile, or motorboat, and, if another person was injured, the extent of that person's injury. Current law, however, provides a person a defense to prosecution for causing injury or death if the person can prove that the injury or death would have occurred even if he or she had been exercising due care and did not have a prohibited alcohol concentration or was not under the influence of an intoxicant. Current law also prohibits a person from operating or going armed with a firearm while under the influence of an intoxicant, with more severe penalties applying if another person is killed as a result.

This bill prohibits a person from operating a motor vehicle, an ATV, a snowmobile, or a motorboat or operating or going armed with a firearm if he or she has a detectable amount of a restricted controlled substance in his or her blood. The bill defines a restricted controlled substance as: 1) delta-9-tetrahydrocannabinol (the primary active ingredient in marijuana); 2) a controlled substance (other than marijuana) included in Schedule I under the state's controlled substance law, which includes heroin, LSD, PCP, and certain "club drugs"; 3) cocaine or any of its metabolites; and 4) methamphetamine. Penalties for a person who violates one of these prohibitions are the same as those that would apply if the person had a prohibited alcohol concentration or had been under the influence of an intoxicant. The bill, however, provides a person who has a detectable amount of a restricted controlled substance in his or her blood a defense to causing death or injury if the person can prove that the injury or death would have occurred even if he or she had been exercising due care and did not have a detectable amount of a restricted controlled substance in his or her blood. In addition, a person has a defense to prosecution for any offense created under the bill that is based on the person having a detectable amount of methamphetamine or delta-9-tetrahydrocannabinol in his or her blood if the person can prove that he or she had a valid prescription for methamphetamine, a drug that metabolizes into methamphetamine, or delta-9-tetrahydrocannabinol.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

that
not ~~it~~ impairs his or her
ability to ~~safely~~ operate
the motor vehicle, ~~ATV~~ or motor-
snowmobile, or motor-
boat
safely

safely
↑ regardless of whether the
person's ability to ~~operate~~ operate
the motor vehicle, ~~ATV~~ snowmobile,
or motorboat, has been impaired

No 9

INSERT 26/19

or for determining whether a person had a detectable amount of a restricted controlled substance in his or her blood

Basford, Sarah

From: Churchill, Jolene
Sent: Tuesday, July 01, 2003 10:55 AM
To: Basford, Sarah
Subject: Please jacket LRB 465/1 for Rep. Gundrum. Thanks! - Jolene