



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0465A²
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2003 BILL

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

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

Analysis by the Legislative Reference Bureau

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) that impairs his or her ability to operate the motor vehicle, ATV, snowmobile, or motorboat safely. 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, regardless of whether the person's ability to operate the motor vehicle, ATV, snowmobile, or motorboat safely has been impaired. 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,

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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.

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

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

2 23.33 (1) (jo) “Restricted controlled substance” means any of the following:

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

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

7 3. Cocaine or any of its metabolites.

8 4. Methamphetamine.

9 5. Delta-9-tetrahydrocannabinol.

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

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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

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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

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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).

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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

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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:

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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) (e) of the statutes is created to read:

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1 343.305 (5) (e) 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 having a detectable amount of a restricted controlled substance
4 in his or her blood, the results of a blood test administered in accordance with this
5 section are admissible on any issue relating to the presence of a detectable amount
6 of a restricted controlled substance in the person's blood. Test results shall be given
7 the effect required under s. 885.235.

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

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

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

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

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

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

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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 27.** 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 or
8 delta-9-tetrahydrocannabinol:

9 a. A blood test administered in accordance with this section indicated that the
10 person had a detectable amount of methamphetamine or
11 delta-9-tetrahydrocannabinol but did not have a detectable amount of any other
12 restricted controlled substance in his or her blood.

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

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

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

23 6. If the hearing examiner finds that ~~the criteria for administrative suspension~~
24 ~~have been satisfied and that the person had a prohibited alcohol concentration at the~~
25 ~~time the offense allegedly occurred~~ all of the following apply, the administrative

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1 suspension shall continue regardless of the type of vehicle driven or operated at the
2 time of the violation;

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

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

10 343.305 (8) (b) 5. a. The criteria for administrative suspension have not been
11 satisfied.

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

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

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

17 343.305 (8) (b) 5. c. In a case in which subd. 4m. a. and b. apply, the person had
18 a valid prescription for methamphetamine or one of its metabolic precursors or
19 delta-9-tetrahydrocannabinol.

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

21 343.305 (8) (b) 6. a. The criteria for administrative suspension have been
22 satisfied.

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

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1 343.305 (8) (b) 6. b. The person had a prohibited alcohol concentration or a
2 detectable amount of a restricted controlled substance in his or her blood at the time
3 the offense allegedly occurred.

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

5 343.305 (8) (b) 6. c. In a case in which subd. 4m. a. and b. apply, the person did
6 not have a valid prescription for methamphetamine or one of its metabolic precursors
7 or delta-9-tetrahydrocannabinol.

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

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

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

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

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1 alcohol concentration, ~~or~~; while under the influence of any drug to a degree that
2 renders the person incapable of safely driving; or while having a detectable amount
3 of a restricted controlled substance in his or her blood, as those or substantially
4 similar terms are used in that jurisdiction's laws.

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

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

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

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

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

24 343.31 (1) (am) Injury by the operation of a vehicle while under the influence
25 of an intoxicant, a controlled substance or a controlled substance analog, or any

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

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

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

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

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

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

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

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

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

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

4 344.576 (2) (b) The damage occurs while the renter or authorized driver
5 operates the private passenger vehicle in this state while under the influence of an
6 intoxicant or other drug, as described under s. 346.63 (1) (a), (am), or (b) or (2m).

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

8 346.63 (1) (am) The person has a detectable amount of a restricted controlled
9 substance in his or her blood.

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

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

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

22 346.63 (1) (d) In an action under par. (am) that is based on the defendant
23 allegedly having a detectable amount of methamphetamine or
24 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
25 or she proves by a preponderance of the evidence that at the time of the incident or

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1 occurrence he or she had a valid prescription for methamphetamine or one of its
2 metabolic precursors or delta-9-tetrahydrocannabinol.

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

4 346.63 (2) (a) 3. The person has a detectable amount of a restricted controlled
5 substance in his or her blood.

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

7 346.63 (2) (am) A person may be charged with and a prosecutor may proceed
8 upon a complaint based upon a violation of ~~par. (a) 1. or 2. or both~~ any combination
9 of par. (a) 1., 2., or 3. for acts arising out of the same incident or occurrence. If the
10 person is charged with violating ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2.,
11 or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is
12 found guilty of ~~par. (a) 1. and 2.~~ any combination of par. (a) 1., 2., or 3. for acts arising
13 out of the same incident or occurrence, there shall be a single conviction for purposes
14 of sentencing and for purposes of counting convictions under ss. 343.30 (1q) and
15 343.305. Paragraph (a) 1. ~~and, 2., and 3.~~ each require proof of a fact for conviction
16 which the ~~other does~~ others do not require.

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

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

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1 incapable of safely driving ~~or~~, did not have a prohibited alcohol concentration
2 described under par. (a) 2., or did not have a detectable amount of a restricted
3 controlled substance in his or her blood.

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

5 346.63 (2) (b) 2. In an action under par. (a) 3. that is based on the defendant
6 allegedly having a detectable amount of methamphetamine or
7 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
8 or she proves by a preponderance of the evidence that at the time of the incident or
9 occurrence he or she had a valid prescription for methamphetamine or one of its
10 metabolic precursors or delta-9-tetrahydrocannabinol.

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

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

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

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

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

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

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

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

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

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

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

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1 350.01 (10v) “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 58.** 350.101 (1) (bm) of the statutes is created to read:

10 350.101 (1) (bm) *Operating with a restricted controlled substance.* No person
11 may engage in the operation of a snowmobile with a detectable amount of a restricted
12 controlled substance in his or her blood.

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

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

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

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

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

8 350.101 (2) (bm) *Causing injury while operating a snowmobile with a*
9 *detectable amount of a restricted controlled substance*. No person who has a
10 detectable amount of a restricted controlled substance in his or her blood may cause
11 injury to another person by the operation of a snowmobile.

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

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

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

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

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

8 350.101 (2) (d) 2. In an action under par. (bm) that is based on the defendant
9 allegedly having a detectable amount of methamphetamine or
10 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
11 or she proves by a preponderance of the evidence that at the time of the incident or
12 occurrence he or she had a valid prescription for methamphetamine or one of its
13 metabolic precursors or delta-9-tetrahydrocannabinol.

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

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

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

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

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

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

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

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

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

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

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

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

10 885.235 (1) (d) "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 71.** 885.235 (1k) of the statutes is created to read:

19 885.235 (1k) In any action or proceeding in which it is material to prove that
20 a person had a detectable amount of a restricted controlled substance in his or her
21 blood while operating or driving a motor vehicle or, if the vehicle is a commercial
22 motor vehicle, on duty time, while operating a motorboat, except a sailboat operating
23 under sail alone, while operating a snowmobile, while operating an all-terrain
24 vehicle, or while handling a firearm, if a chemical analysis of a sample of the person's
25 blood shows that the person had a detectable amount of a restricted controlled

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1 substance in his or her blood, the court shall treat the analysis as prima facie
2 evidence on the issue of the person having a detectable amount of a restricted
3 controlled substance in his or her blood without requiring any expert testimony.

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

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

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

15 939.22 (33) “Restricted controlled substance” means any of the following:

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

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

20 (c) Cocaine or any of its metabolites.

21 (d) Methamphetamine.

22 (e) Delta-9-tetrahydrocannabinol.

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

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

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

7 939.75 (2) (b) Sections 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06
8 (2), 940.08 (2), 940.09 (1) (c) to (e) and (1g) (c), (cm), and (d), 940.10 (2), 940.195,
9 940.23 (1) (b) and (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) do not apply to any of the
10 following:

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

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

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

19 940.09 (1) (am) Causes the death of another by the operation or handling of a
20 vehicle while the person has a detectable amount of a restricted controlled substance
21 in his or her blood.

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

23 940.09 (1) (cm) Causes the death of an unborn child by the operation or
24 handling of a vehicle while the person has a detectable amount of a restricted
25 controlled substance in his or her blood.

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

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

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

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

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

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

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

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

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

5 940.09 (1g) (cm) Causes the death of an unborn child by the operation or
6 handling of a firearm or airgun while the person has a detectable amount of a
7 restricted controlled substance in his or her blood.

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

10 940.09 (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 combination of sub. (1) (a), (am), or (bm) ~~or both~~; any combination
13 of sub. (1) (c), (cm), or (d) ~~or both~~; any combination of sub. (1) (c), (cm), or (e) ~~or both~~;
14 any combination of sub. (1g) (a), (am), or (b) ~~or both~~ or; any combination of sub. (1g)
15 (c), (cm), or (d) ~~or both~~ for acts arising out of the same incident or occurrence.

16 (b) If the a person is charged with violating both sub. (1) (a) and (b), both sub.
17 (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a)
18 and (b) ~~or both~~ sub. (1g) (c) and (d) in the an information with any of the combinations
19 of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the
20 person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub.
21 (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) ~~or both~~ sub. (1g) (c)
22 and (d) more than one of the crimes so charged for acts arising out of the same
23 incident or occurrence, there shall be a single conviction for purposes of sentencing
24 and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s.
25 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3.

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

5 **SECTION 85.** 940.09 (2) of the statutes is renumbered 940.09 (2) (a) and
6 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **940.25 (1m) (a)** A person may be charged with and a prosecutor may proceed
4 upon an information based upon a violation of any combination of sub. (1) (a), (am),
5 or (b) ~~or both~~; any any combination of sub. (1) (a), (am), or (bm) ~~or both~~; any
6 combination of sub. (1) (c), (cm), or (d) ~~or both~~; any combination of or sub. (1) (c), (cm),
7 or (e) ~~or both~~ for acts arising out of the same incident or occurrence.

8 **(b)** If ~~the a~~ person is charged with ~~violating both sub. (1) (a) and (b), both sub.~~
9 ~~(1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) in the an~~
10 ~~information with any of the combinations of crimes referred to in par. (a), the crimes~~
11 ~~shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and~~
12 ~~(b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) more~~
13 ~~than one of the crimes so charged~~ 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 s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)
16 (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3.
17 Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for
18 conviction which the ~~other does~~ others do not require.

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

21 **940.25 (2) (a)** The defendant has a defense if he or she proves by a
22 preponderance of the evidence that the great bodily harm would have occurred even
23 if he or she had been exercising due care and he or she had not been under the
24 influence of an intoxicant, did not have a detectable amount of a restricted controlled

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1 substance in his or her blood, or did not have an alcohol concentration described
2 under sub. (1) (b), (bm), (d) or (e).

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

4 940.25 (2) (b) In any action under this section that is based on the defendant
5 allegedly having a detectable amount of methamphetamine or
6 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
7 or she proves by a preponderance of the evidence that at the time of the incident or
8 occurrence he or she had a valid prescription for methamphetamine or one of its
9 metabolic precursors or delta-9-tetrahydrocannabinol.

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

11 941.20 (1) (bm) Operates or goes armed with a firearm while he or she has a
12 detectable amount of a restricted controlled substance in his or her blood. A
13 defendant has a defense to any action under this paragraph that is based on the
14 defendant allegedly having a detectable amount of methamphetamine or
15 delta-9-tetrahydrocannabinol in his or her blood, if he or she proves by a
16 preponderance of the evidence that at the time of the incident or occurrence he or she
17 had a valid prescription for methamphetamine or one of its metabolic precursors or
18 delta-9-tetrahydrocannabinol.

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

20 949.08 (2) (e) Is an adult passenger in the offender's vehicle and, the crime
21 involved is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender
22 was ~~under the influence of an intoxicant, a controlled substance, a controlled~~
23 ~~substance analog or any combination of an intoxicant, controlled substance and~~
24 ~~controlled substance analog, or had a prohibited alcohol concentration, as defined in~~

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1 ~~s. 340.01 (46m) committing that offense.~~ This paragraph does not apply if the victim
2 is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

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

4 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
5 vehicle ~~and,~~ the crime involved is specified in s. 346.63 (6) or 940.25, and the
6 passenger knew the offender was ~~under the influence of an intoxicant, a controlled~~
7 ~~substance, a controlled substance analog or any combination of an intoxicant,~~
8 ~~controlled substance and controlled substance analog, or had an alcohol~~
9 ~~concentration of 0.04 or more but less than 0.1~~ committing that offense. This
10 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
11 940.305, 940.31 or 948.30.

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

13 967.055 (1) (a) The legislature intends to encourage the vigorous prosecution
14 of offenses concerning the operation of motor vehicles by persons under the influence
15 of an intoxicant, a controlled substance, a controlled substance analog or any
16 combination of an intoxicant, controlled substance and controlled substance analog,
17 under the influence of any other drug to a degree which renders him or her incapable
18 of safely driving, or under the combined influence of an intoxicant and any other drug
19 to a degree which renders him or her incapable of safely driving or having a
20 prohibited alcohol concentration, as defined in s. 340.01 (46m), ~~or~~ offenses
21 concerning the operation of motor vehicles by persons with a detectable amount of
22 a restricted controlled substance in his or her blood, and offenses concerning the
23 operation of commercial motor vehicles by persons with an alcohol concentration of
24 0.04 or more.

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

3 **967.055 (1m) DEFINITION DEFINITIONS.** (intro.) In this section, ~~“drug”;~~

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

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

6 **967.055 (1m) (b)** “Restricted controlled substance” means any of the following:

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

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

11 3. Cocaine or any of its metabolites.

12 4. Methamphetamine.

13 5. Delta-9-tetrahydrocannabinol.

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

15 **967.055 (2) (a)** Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
16 or amend a charge under s. 346.63 (1) or (5) or a local ordinance in conformity
17 therewith, or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the
18 use of a vehicle or an improper refusal under s. 343.305, the prosecutor shall apply
19 to the court. The application shall state the reasons for the proposed amendment or
20 dismissal. The court may approve the application only if the court finds that the
21 proposed amendment or dismissal is consistent with the public’s interest in deterring
22 the operation of motor vehicles by persons who are under the influence of an
23 intoxicant, a controlled substance, a controlled substance analog or any combination
24 of an intoxicant, controlled substance and controlled substance analog, under the
25 influence of any other drug to a degree which renders him or her incapable of safely

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

SECTION 102. Initial applicability.

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

17 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0465/lins
PJH&MGD:jd&wlj:cph

1 INSERT A:

2 **SECTION 1.** 23.33 (4p) (d) [✓] of the statutes is amended to read:

3 23.33 (4p) (d) *Admissibility; effect of test results; other evidence.* The results
4 of a chemical test required or administered under par. (a), (b) or (c) are admissible
5 in any civil or criminal action or proceeding arising out of the acts committed by a
6 person alleged to have violated the intoxicated operation of an all-terrain vehicle law
7 on the issue of whether the person was under the influence of an intoxicant or the
8 issue of whether the person had alcohol concentrations at or above specified levels
9 or a [✓] detectable amount of a restricted controlled substance in his or her blood.
10 Results of these chemical tests shall be given the effect required under s. 885.235.
11 This subsection does not limit the right of a law enforcement officer to obtain
12 evidence by any other lawful means.

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

13 INSERT B:

14 **SECTION 2.** 30.684 (4) [✓] of the statutes is amended to read:

15 30.684 (4) **ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE.** The results
16 of a chemical test required or administered under sub. (1), (2) or (3) are admissible
17 in any civil or criminal action or proceeding arising out of the acts committed by a
18 person alleged to have violated the intoxicated boating law on the issue of whether
19 the person was under the influence of an intoxicant or the issue of whether the person
20 had alcohol concentrations at or above specified levels or a detectable amount of a
21 restricted controlled substance in his or her blood. [✓] Results of these chemical tests

1 shall be given the effect required under s. 885.235. This section does not limit the
2 right of a law enforcement officer to obtain evidence by any other lawful means.

History: 1985 a. 331; 1987 a. 3; 1993 a. 105; 1995 a. 27 s. 9126 (19).