

State of Wisconsin



1997 Assembly Bill 221

Date of enactment: **June 16, 1998**
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1997 WISCONSIN ACT 295

AN ACT to *renumber* 940.01 (1), 940.06, 940.08, 940.10, 940.23 (1), 940.23 (2) and 940.24; to *amend* 302.11 (1g) (a) 2., 343.31 (3) (c), 343.31 (3) (f), 346.65 (6) (a) 1., 346.65 (6) (a) 2., 346.65 (6) (d), 939.22 (21) (d), 939.24 (1), 939.25 (1), 939.32 (1) (intro.), 939.62 (2m) (a) 2., 940.01 (1) (title), 940.05 (2), 940.09 (1b), 940.09 (1d), 940.09 (1m), 940.09 (2), 940.25 (1b), 940.25 (1d), 940.25 (1m), 940.25 (2), 941.38 (1) (b) 4., 969.035 (1), 969.08 (10) (b), 973.0135 (1) (b) 2. and 980.01 (6) (b); and to *create* 939.75, 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.05 (2h), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e), 940.09 (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b), 940.23 (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) of the statutes; **relating to**: causing harm or death to an unborn child and providing penalties.

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

SECTION 1. 302.11 (1g) (a) 2. of the statutes is amended to read:

302.11 (1g) (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 2. 343.31 (3) (c) of the statutes is amended to read:

343.31 (3) (c) Any person convicted under s. 940.09 of causing the death of another or of an unborn child by the operation or handling of a motor vehicle shall have his or her operating privilege revoked for 5 years. If there was a minor passenger under 16 years of age or an unborn child, as defined in s. 939.75 (1), in the motor vehicle at the time of the violation that gave rise to the conviction under s. 940.09, the revocation period is 10 years.

SECTION 3. 343.31 (3) (f) of the statutes is amended to read:

343.31 (3) (f) Any person convicted under s. 940.25 shall have his or her operating privilege revoked for 2 years. If there was a minor passenger under 16 years of age or an unborn child, as defined in s. 939.75 (1), in the motor vehicle at the time of the violation that gave rise to the conviction under s. 940.25, the revocation period is 4 years.

SECTION 4. 346.65 (6) (a) 1. of the statutes is amended to read:

346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered seized, shall order a law enforcement officer to equip the motor vehicle with an ignition interlock device or immobilize any motor vehicle owned by the person whose operating privilege is revoked under s. 343.305 (10) or who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~ (b), ~~(c) or (d)~~ or 940.25 (1) (a) ~~or~~ (b), ~~(c) or (d)~~ if the person whose operating privilege is revoked under s. 343.305 (10) or who is

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

convicted of the violation has 2 prior suspensions, revocations or convictions within a 10-year period that would be counted under s. 343.307 (1). The court shall not order a motor vehicle equipped with an ignition interlock device or immobilized if that would result in undue hardship or extreme inconvenience or would endanger the health and safety of a person.

SECTION 5. 346.65 (6) (a) 2. of the statutes is amended to read:

346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10) or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~ (b), (c) or (d) or 940.25 (1) (a) ~~or~~ (b), (c) or (d) if the person whose operating privilege is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior suspensions, revocations or convictions within a 10-year period that would be counted under s. 343.307 (1).

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

346.65 (6) (d) At the hearing set under par. (c), the state has the burden of proving to a reasonable certainty by the greater weight of the credible evidence that the motor vehicle is a motor vehicle owned by a person who committed a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~ (b), (c) or (d) or 940.25 (1) (a) ~~or~~ (b), (c) or (d) and, if the seizure is under par. (a) 1., that the person had 2 prior convictions, suspensions or revocations within a 10-year period as counted under s. 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations within a 10-year period as counted under s. 343.307 (1). If the owner of the motor vehicle proves by a preponderance of the evidence that he or she was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a) ~~or~~ (b), (c) or (d) or 940.25 (1) (a) ~~or~~ (b), (c) or (d), or, if the seizure is under par. (a) 1., that he or she did not have 2 prior convictions, suspensions or revocations within a 10-year period as counted under s. 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions, suspensions or revocations within a 10-year period as counted under s. 343.307 (1), the motor vehicle shall be returned to the owner upon the payment of storage costs.

SECTION 7. 939.22 (21) (d) of the statutes is amended to read:

939.22 (21) (d) Battery, substantial battery or aggravated battery, as prohibited in s. 940.19 or 940.195.

SECTION 8. 939.24 (1) of the statutes is amended to read:

939.24 (1) In this section, “criminal recklessness” means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk, except that for purposes of ss. 940.02 (1m), 940.06 (2) and 940.23 (1) (b)

and (2) (b), “criminal recklessness” means that the actor creates an unreasonable and substantial risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another and the actor is aware of that risk.

SECTION 9. 939.25 (1) of the statutes is amended to read:

939.25 (1) In this section, “criminal negligence” means ordinary negligence to a high degree, consisting of conduct which that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another, except that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), “criminal negligence” means ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to an unborn child, to the woman who is pregnant with that unborn child or to another.

SECTION 10. 939.32 (1) (intro.) of the statutes is amended to read:

939.32 (1) (intro.) Whoever attempts to commit a felony or a battery as defined by crime specified in s. 940.19 or theft as defined by s. 940.195 or 943.20 may be fined or imprisoned or both not to exceed one-half the maximum penalty for the completed crime; except:

SECTION 11. 939.62 (2m) (a) 2. of the statutes is amended to read:

939.62 (2m) (a) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 12. 939.75 of the statutes is created to read:

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

(2) (a) In this subsection, “induced abortion” means the use of any instrument, medicine, drug or other substance or device in a medical procedure with the intent to terminate the pregnancy of a woman and with an intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

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

1. An act committed during an induced abortion. This subdivision does not limit the applicability of ss. 940.04, 940.13, 940.15 and 940.16 to an induced abortion.

2. An act that is committed in accordance with the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a physician licensed under ch. 448.

2h. An act by any health care provider, as defined in s. 155.01 (7), that is in accordance with a pregnant woman's power of attorney for health care instrument under ch. 155 or in accordance with a decision of a health care agent who is acting under a pregnant woman's power of attorney for health care instrument under ch. 155.

3. An act by a woman who is pregnant with an unborn child that results in the death of or great bodily harm, substantial bodily harm or bodily harm to that unborn child.

4. The prescription, dispensation or administration by any person lawfully authorized to do so and the use by a woman of any medicine, drug or device that is used as a method of birth control or is intended to prevent pregnancy.

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

SECTION 13. 940.01 (1) (title) of the statutes is amended to read:

940.01 (1) (title) ~~OFFENSE~~ OFFENSES.

SECTION 14. 940.01 (1) of the statutes is renumbered 940.01 (1) (a).

SECTION 15. 940.01 (1) (b) of the statutes is created to read:

940.01 (1) (b) Except as provided in sub. (2), whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class A felony.

SECTION 16. 940.02 (1m) of the statutes is created to read:

940.02 (1m) Whoever recklessly causes the death of an unborn child under circumstances that show utter disregard for the life of that unborn child, the woman who is pregnant with that unborn child or another is guilty of a Class B felony.

SECTION 17. 940.05 (2) of the statutes is amended to read:

940.05 (2) In prosecutions under ~~this section~~ sub. (1), it is sufficient to allege and prove that the defendant caused the death of another human being with intent to kill that person or another.

SECTION 18. 940.05 (2g) of the statutes is created to read:

940.05 (2g) Whoever causes the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another is guilty of a Class B felony if:

(a) In prosecutions under s. 940.01, the state fails to prove beyond a reasonable doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist as required by s. 940.01 (3); or

(b) The state concedes that it is unable to prove beyond a reasonable doubt that the mitigating circumstances specified in s. 940.01 (2) did not exist. By charging under this section, the state so concedes.

SECTION 19. 940.05 (2h) of the statutes is created to read:

940.05 (2h) In prosecutions under sub. (2g), it is sufficient to allege and prove that the defendant caused the death of an unborn child with intent to kill that unborn child, kill the woman who is pregnant with that unborn child or kill another.

SECTION 20. 940.06 of the statutes is renumbered 940.06 (1).

SECTION 21. 940.06 (2) of the statutes is created to read:

940.06 (2) Whoever recklessly causes the death of an unborn child is guilty of a Class C felony.

SECTION 22. 940.08 of the statutes is renumbered 940.08 (1).

SECTION 23. 940.08 (2) of the statutes is created to read:

940.08 (2) Whoever causes the death of an unborn child by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class D felony.

SECTION 24. 940.09 (1) (c) to (e) of the statutes are created to read:

940.09 (1) (c) Causes the death of an unborn child by the operation or handling of a vehicle while under the influence of an intoxicant.

(d) Causes the death of an unborn child by the operation or handling of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(e) Causes the death of an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1.

SECTION 25. 940.09 (1b) of the statutes is amended to read:

940.09 (1b) If there was a minor passenger under 16 years of age or an unborn child in the motor vehicle at the time of the violation that gave rise to the conviction under sub. (1), any applicable maximum fine or imprisonment specified for the conviction is doubled.

SECTION 26. 940.09 (1d) of the statutes is amended to read:

940.09 (1d) If the person who committed an offense under sub. (1) (a) ~~or~~, (b), (c) or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

SECTION 27. 940.09 (1g) (c) and (d) of the statutes are created to read:

940.09 (1g) (c) Causes the death of an unborn child by the operation or handling of a firearm or airgun while under the influence of an intoxicant.

(d) Causes the death of an unborn child by the operation or handling of a firearm or airgun while the person has an alcohol concentration of 0.1 or more.

SECTION 28. 940.09 (1m) of the statutes is amended to read:

940.09 (1m) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a) or (bm) or both ~~or of~~, sub. (1) (c) or (d) or both, sub. (1) (c) or (e) or both, sub. (1g) (a) or (b) or both or sub. (1g) (c) or (d) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both sub. (1) (a) and (b) or both sub. (1) (a) and (bm) or both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c) and (d) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both sub. (1) (a) and (bm) ~~or of~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b) or both sub. (1g) (c) and (d) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (b) ~~and~~, (bm), (c), (d) and (e), and sub. (1g) (a) ~~and~~, (b), (c) and (d), each require proof of a fact for conviction which the other does not require.

SECTION 29. 940.09 (2) of the statutes is amended to read:

940.09 (2) The defendant has a defense if he or she proves by a preponderance of the evidence that the death would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration described under sub. (1) (b) ~~or~~, (bm), (d) or (e) or (1g) (b) or (d).

SECTION 30. 940.10 of the statutes is renumbered 940.10 (1).

SECTION 31. 940.10 (2) of the statutes is created to read:

940.10 (2) Whoever causes the death of an unborn child by the negligent operation or handling of a vehicle is guilty of a Class E felony.

SECTION 32. 940.195 of the statutes is created to read:

940.195 Battery to an unborn child; substantial battery to an unborn child; aggravated battery to an unborn child. (1) Whoever causes bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class A misdemeanor.

(2) Whoever causes substantial bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class E felony.

(3) Whoever causes substantial bodily harm to an unborn child by an act done with intent to cause substantial bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class D felony.

(4) Whoever causes great bodily harm to an unborn child by an act done with intent to cause bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class D felony.

(5) Whoever causes great bodily harm to an unborn child by an act done with intent to cause either substantial bodily harm or great bodily harm to that unborn child, to the woman who is pregnant with that unborn child or another is guilty of a Class C felony.

(6) Whoever intentionally causes bodily harm to an unborn child by conduct that creates a substantial risk of great bodily harm is guilty of a Class D felony.

SECTION 33. 940.23 (1) of the statutes is renumbered 940.23 (1) (a).

SECTION 34. 940.23 (1) (b) of the statutes is created to read:

940.23 (1) (b) Whoever recklessly causes great bodily harm to an unborn child under circumstances that show utter disregard for the life of that unborn child, the woman who is pregnant with that unborn child or another is guilty of a Class C felony.

SECTION 35. 940.23 (2) of the statutes is renumbered 940.23 (2) (a).

SECTION 36. 940.23 (2) (b) of the statutes is created to read:

940.23 (2) (b) Whoever recklessly causes great bodily harm to an unborn child is guilty of a Class D felony.

SECTION 37. 940.24 of the statutes is renumbered 940.24 (1).

SECTION 38. 940.24 (2) of the statutes is created to read:

940.24 (2) Whoever causes bodily harm to an unborn child by the negligent operation or handling of a dangerous weapon, explosives or fire is guilty of a Class E felony.

SECTION 39. 940.25 (1) (c) to (e) of the statutes are created to read:

940.25 (1) (c) Causes great bodily harm to an unborn child by the operation of a vehicle while under the influence of an intoxicant.

(d) Causes great bodily harm to an unborn child by the operation of a vehicle while the person has a prohibited alcohol concentration, as defined in s. 340.01 (46m).

(e) Causes great bodily harm to an unborn child by the operation of a commercial motor vehicle while the person has an alcohol concentration of 0.04 or more but less than 0.1.

SECTION 40. 940.25 (1b) of the statutes is amended to read:

940.25 (1b) If there was a minor passenger under 16 years of age or an unborn child in the motor vehicle at the time of the violation that gave rise to the conviction under sub. (1), any applicable maximum fine or imprisonment specified for the conviction is doubled.

SECTION 41. 940.25 (1d) of the statutes is amended to read:

940.25 (1d) If the person who committed the offense under sub. (1) (a) ~~or~~, (b), (c) or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be followed regarding the immobilization or seizure and forfeiture of a motor vehicle owned by the person who committed the offense or the equipping of a motor vehicle owned by the person with an ignition interlock device.

SECTION 42. 940.25 (1m) of the statutes is amended to read:

940.25 (1m) A person may be charged with and a prosecutor may proceed upon an information based upon a violation of sub. (1) (a) or (b) or both ~~or~~ sub. (1) (a) or (bm) or both, sub. (1) (c) or (d) or both or sub. (1) (c) or (e) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both sub. (1) (a) and (b) ~~or~~, both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) ~~or~~, both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub. (1) (c) and (e) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (b) ~~and~~, (bm), (c), (d) and (e) each require proof of a fact for conviction which the other does not require.

SECTION 43. 940.25 (2) of the statutes is amended to read:

940.25 (2) The defendant has a defense if he or she proves by a preponderance of the evidence that the great bodily harm would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration described under sub. (1) ~~(b)~~, or (bm), (d) or (e).

SECTION 44. 941.38 (1) (b) 4. of the statutes is amended to read:

941.38 (1) (b) 4. Battery, substantial battery or aggravated battery, as prohibited in s. 940.19 or 940.195.

SECTION 45. 969.035 (1) of the statutes is amended to read:

969.035 (1) In this section, "violent crime" means any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195 (5), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025 or 948.03.

SECTION 46. 969.08 (10) (b) of the statutes is amended to read:

969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

SECTION 47. 973.0135 (1) (b) 2. of the statutes is amended to read:

973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 48. 980.01 (6) (b) of the statutes is amended to read:

980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.05, 940.06, 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

SECTION 49. Initial applicability.

(1) This act first applies to offenses occurring on the effective date of this subsection.