

Chapter Trans 107

DRIVER LICENSING OF PERSONS WITH CHEMICAL ABUSE OR DEPENDENCY PROBLEMS

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Note: Chapter Trans 107 was created by emergency rule effective 5-1-82.

Trans 107.01 Purpose and scope. (1) **STATUTORY AUTHORITY.** As authorized by ss. 110.06 (1) and 227.014, Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 110.08, 227.064, 227.14, 343.06 (4), 343.16 (2), 343.25 (4) and (7), 343.30 (1q) (c), 343.30 (1q) (d), 343.30 (1q) (f), 343.305 (9) (c), 343.305 (9) (d), 343.305 (9) (f), 343.32 (2) (e) and 343.40, 346.63 (1), 346.63 (2), 345.635, 940.25 and 940.09.; Stats., relating to driver licensing of persons who have chemical abuse or chemical dependency problems.

(2) **APPLICABILITY.** This chapter applies to anyone operating a motor vehicle and to actions of the department in carrying out its driver licensing responsibilities under ch. 343, Stats.

Note: Forms used in administering this chapter are department of transportation MVD 3218 report of interview, MVD 3259, Michigan alcohol screening test, MVD 3257 certificate of assessment by competent authority, MVD 3030 medical report, general, MVD 3030M medical report, mental, MVD 3113 medical report, epilepsy, MVD 3289 confidential medical hospital report, MVD 3304 course completion certificate, MVD 3323 alcohol/drug followup report, MVD 3395 operator's license receipt, MVD 3141 driver behavior report, and department of health and social services forms DCS 750, 751, 753, 756, and 757.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.02 Definitions. In this chapter:

(1) "Analyst" means an employe of the department who interviews persons for the purpose of documenting the degree and effects of chemical usage.

(2) "Assessment" means an examination of the person's use of chemicals and development of a rehabilitation or driver safety plan for the person by an approved public treatment facility as defined in s. 51.45 (2) (c), Stats.

(3) "Assessor" means a person who conducts assessments under s. 51.42, Stats., in a public treatment facility, as defined in s. 51.42 (2) (c), Stats., according to the standards and instructions of the department of health and social services.

(4) "Chemical abuse" means the use of alcohol or other drugs, prescription or non-prescription, which may adversely affect driving ability.

(5) "Chemical dependency" means dependence on alcohol or addiction to the use of a controlled substance that has attained such a degree that it interferes with a person's physical or mental health or social or economic functioning.

(6) "Controlled substance" has the same meaning as in s. 161.01 (4), Stats.

(7) "Department" means the Wisconsin department of transportation.

(8) "Driver safety plan" means an individualized plan based on an assessment referral May 1, 1982 or after which specifies a traffic safety school defined under s. 345.60, Stats., or treatment services, or a combination, for alleviation of identified chemical abuse or dependency problems.

(9) "Improper refusal" means refusing to submit to chemical testing for alcohol or controlled substances, or any combination, and no request for a court refusal hearing, or an adverse finding in an implied consent hearing under s. 343.305, Stats.

(10) "Licensing action" means any action by the department involving the denial, cancellation, revocation, suspension, restriction, or issuance of a license under this chapter.

(11) "Medical condition" means any condition affecting a person's health for which a person is receiving medical treatment, or for which medical treatment is usually prescribed.

(12) "OWI" means operating a motor vehicle while under the influence of an intoxicant or controlled substance, or both, in violation of ss. 346.63 (1) or (2), 940.09 or 940.25, Stats., a local ordinance in conformity with s. 346.63 (1), Stats., or any similar conviction in another jurisdiction.

(13) "Rehabilitation plan" means an individualized plan based on an assessment referral prior to May 1, 1982, which specifies a traffic safety school as defined under s. 345.60, Stats., or treatment services, or combination, for alleviation of identified chemical abuse or dependency problems.

(14) "Released" means that a revocation, suspension or cancellation license action has been withdrawn because of an appeal, reopening or a vacation of a conviction or a finding that the license action, as ordered by the department or court, was in error or inappropriate.

(15) "Review board" or "board" means any board established by the department to provide advisory review of a licensing decision based on the special examination referred to in s. 343.16 (2) (b), Stats.

(16) "Review unit" means the driver improvement review unit in the department's division of motor vehicles.

(17) "51.42 board" means the community services program board established under s. 51.42, Stats., or its approved agency, or the community human services board established under s. 46.23, Stats., that is re-

sponsible for each Wisconsin county's provision of services for chemical abuse or dependency under ss. 51.42 and 51.45, Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.03 Information sources. (1) The department shall identify persons who have chemical abuse or dependency problems through:

- (a) Any and all operator's license applications.
- (b) Medical information which the department has requested under the provisions of s. 343.06 (4) (b) or 343.16 (2) (a), Stats.,
- (c) Reports or information on driver condition or behavior,
- (d) Interviews with analysts,
- (e) Accident reports with chemical involvement,
- (f) Court ordered assessment reports in accordance with s. 343.30 (1q) or 343.305 (9), Stats.,
- (g) 51.42 board assessment and final reports,
- (h) Driving records with chemically involved entries, or
- (i) Department ordered assessment reports as a result of arrests in accordance with s. 343.16 (2), Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.04 Information to be considered in licensing actions. (1) The following information shall be considered in taking administrative licensing action:

- (a) Medical, assessment, driver safety plan, final reports, or combination of, information including:
 1. Hospitalization for chemical abuse or dependency.
 2. Outpatient treatment for chemical abuse or dependency.
 3. Participation in self-help groups for chemical abuse or dependency.
 4. Use of control agents, such as antabuse or methadone.
 5. Physician treatment for chemical abuse or dependency.
- (b) Analyst interview documenting the effects of chemical use on a person's social or economic functioning in terms of:
 1. Employment status.
 2. Physical condition.
 3. Family situation.
 4. Social environment.
 5. Chemical use habits.
- (c) Driving Record
 1. Accidents involving chemical use.
 2. Traffic convictions involving chemical use.

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3. Arrests for chemically related violations, for example, pending charges for OWI. Once the charge has been disposed of by a court, for example, convicted, dismissed, amended or withdrawn, the arrest information will no longer be considered in taking licensing action under s. Trans 107.08 (1) (b), (c), (d), (e), and (f).

4. Evidence of chemically related charges reduced or amended to lesser charges when the department has information, such as a medical or assessment report, on file.

(d) Review board recommendations, if any.

(e) Information from other sources about a person's physical and mental health, as affected by chemical use, and other medical problems which might interfere with reasonable and ordinary control over a motor vehicle.

(2) Some or all of the information described in sub. (1) shall be included in medical, assessment, driver safety plan, final report, or combination of, reports required under this chapter.

(3) Reasons may be required to furnish additional medical or assessment reports, or combination of, if the department determines that the information available is not adequate to make a licensing decision.

(4) Persons may be referred for assessment as described in s. Trans 107.06.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.05 Medical reports. (1) As authorized by s. 343.06 (4), Stats., the department shall require a hospitalization certificate signed by the superintendent of the treatment facility or authorized representative, or attending physician, when there is information that a person has received inpatient treatment for chemical abuse or dependency within the past 2 years.

Note: Form MVD 3289.

(2) All physician medical reports under 343.16 (2), Stats., shall be based on an examination by a physician within the previous 3 months.

Note: Forms MVD 3030, 3030M and 3113.

(3) Medical reports under 343.16 (2), Stats., shall be submitted within 30 days from license application, or department request, unless an extension has been granted by the department.

(4) Failure to submit the medical examination report as required under s. 343.16, Stats., and this chapter shall result in cancellation of all operating privileges, and denial of all licenses applied for, in accordance with ss. 343.25 (7) and 343.06 (4), Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.06 Assessment referrals and driver improvement interviews. (1) **WHEN INTERVIEW REQUIRED.** A driver improvement interview shall be scheduled when:

(a) A person has been identified from one or more sources described in s. Trans 107.03 as possibly having a chemical abuse or dependency problem and this is the first time the department has received any infor-

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mation that this person may have a problem, except as provided in s. Trans 107.08 (2) (a), (b) and (c).

(b) There is an OWI revocation and the person is not participating in a rehabilitation or driver safety plan, such as for out-of-state convictions.

(c) When, under s. 343.16 (2) (a), Stats., a person has 2 arrests for OWI except as provided in sub. (3).

(2) WHEN ASSESSMENT REQUIRED AFTER INTERVIEW. The interview consists of a meeting with an analyst which involves:

(a) Discussion of the five life style categories listed in s. Trans 107.04 (1) (b).

(b) Administration of a screening test for alcohol or controlled substance use.

Note: The dependency screening test is form MVD 3259.

(c) Adding the total number of traits identified in the 5 life style categories to the screening test score. Each of the 5 categories have identifiable traits which are characteristic of persons addicted to excess use of chemicals in varying degrees. The degree can be based upon the length and number of occurrences and whether the condition is gradually becoming worse or improving. Each trait identified as positive has a point value of one. A person whose interview responses indicate a 5 or more point total shall be required to obtain an assessment. The person shall be referred to a 51.42 board for the assessment.

(3) IMMEDIATE ASSESSMENT REFERRAL. A person shall be referred for assessment without the driver improvement interview described in sub. (2) when:

(a) The department has information that a person has had 2 arrests within 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and there is no previous chemically related information on file with the department.

(b) A person has one OWI arrest within the past 12 months and the department has an assessment, final report, medical, or combination of, reports that are chemically related on file within the past 2 years.

(c) A person has been identified from one or more sources described in s. Trans 107.03 as possibly having a chemical abuse or dependency problem and the department has an assessment, final report, medical, or combination of, reports that are chemically related on file within the past 2 years.

(d) A person has one OWI arrest within the past 12 months, and the person had had 2 OWI convictions or implied consent revocations within the past 2 years.

(e) The department receives a physician medical report indicating a possible chemical use problem and the physician is not currently treating the person for the chemical use problem.

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Trans 107.07 Reporting procedures. (1) Assessments and assessment reporting procedures shall be those established by the department of health and social services.

(2) Traffic safety school final report information forms shall be provided to the 51.42 board when documentation by the traffic safety school indicates a need for additional assessment which may require additional treatment not recommended at the time of the original assessment.

(3) Amended driver safety plans shall be accepted by the department within the period established by ss. 343.30 (1q) (d) and 343.305 (9) (d), Stats., and, when submitted to the department by the 51.42 board, document the reason for changes in assessment findings or recommendations. As provided by ss. 343.30 (1q) (d) and 343.305 (9) (d), Stats., a driver safety plan, including amendments and followup, cannot be for more than one year from the beginning date to the ending date of the plan.

(4) If the department does not receive a report of compliance with the order to obtain an assessment within 60 days from the date of OWI conviction or revocation for improper refusal or if the department receives information that the court has not ordered an assessment, the department shall order an assessment under s. 343.30 (1q) (f), or 343.305 (9) (f), Stats., and the person shall have 30 days to provide notification of compliance with assessment order or the license shall be cancelled, denied or suspended as provided in s. Trans 107.08 (1).

(5) When a department ordered assessment under s. Trans 107.06 has not been completed by the date of the OWI conviction, and the court subsequently orders an assessment, the person shall not be required to comply with the department ordered assessment. If a driver safety plan has already been ordered as a result of a department ordered assessment, the person shall complete the first driver safety plan even if the court orders another assessment and driver safety plan.

(6) If convicted of an amended charge, or if the charge is dismissed, prior to completion of department ordered assessment under s. Trans 107.06, compliance with the assessment order shall not be required. If the person has already completed an assessment and is participating in a driver safety plan, the person shall be required to comply with the plan even if the charges are amended.

(7) Compliance with a court ordered driver safety plan shall not be required when an OWI conviction is appealed or vacated.

(8) A report of noncompliance with a driver safety plan shall include the reason for noncompliance.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.08 Licensing action. (1) **DENIAL, CANCELLATION OR SUSPENSION.** A person is considered to be subject to the provisions of this chapter:

(a) When a hospitalization certificate shows inpatient treatment for chemical abuse or dependency and the person has not been absolutely or conditionally released from the institution, the operating privilege shall

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be denied or cancelled until the conditions in sub. (2) (a) have been met.

(b) When a person has 2 OWI arrests in 12 months and there is an assessment, final report, medical report, or combination of, on file with the department within the previous 2 years identifying chemical abuse or dependency and recommending no further involvement with chemicals, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) have been met.

(c) When a person has had 3 OWI arrests in 12 months, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) have been met.

(d) When a person has 2 arrests in 12 months, and has had 2 OWI convictions or implied consent revocations within the past 2 years, the person shall be immediately referred for an assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) have been met.

(e) When a person has 2 arrests in 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and the person has had a prior OWI conviction or implied consent revocation within the past 2 years, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) have been met.

(f) When a person has 2 arrests in 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and there is an assessment, final report, medical report, or combination of, reports on file with the department within the past 2 years identifying possible chemical abuse or dependency, the person shall be referred for immediate assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) or (c) have been met.

(g) When, under s. 343.06 (4), Stats., the findings of an assessment, information from a medical report, other information in the file, or a combination of, indicate that the person's chemical use may effect his or her driving ability, the operating privilege shall be denied or canceled until the conditions in sub. (2) (b) or (c) have been met. For purposes of this paragraph, the types of information considered are those described in s. Trans 107.04.

(h) Under ss. 343.06 (4), 343.16 (2) (a) or 343.25 (7), Stats., failure to meet with an analyst, obtain an assessment as directed by the department, comply with the recommended rehabilitation or driver safety plan, or submit the required medical report shall result in denial or cancellation of all licenses, including occupational license, until the department is notified of compliance.

(i) Under s. 343.25 (7), Stats., failure to meet with an analyst scheduled according to s. Trans 107.06 (1) shall result in denial or cancellation of operating privilege.

(j) Under ss. 343.16 (2) (a), 343.30 (1q) (c) or (d), or s. 343.305 (9) (c) or (d), Stats., failure to comply with court-ordered or department-ordered assessment, assessment fee, or driver safety plan, shall result in

the suspension of the operating privilege, including occupational license. Non-payment of any treatment fee shall not be grounds for a noncompliance suspension. The suspension shall be ordered upon receipt of noncompliance report from the 51.42 board, or traffic safety school approved under s. 345.60, Stats., and the suspension shall remain in effect during any department review and for the 5 year period that the department maintains records, or until the conditions in sub. (2) have been met. No occupational license shall be issued during a suspension for non-compliance.

(k) When the court has ordered an occupational license, but because of requirements in ss. 343.10 (1), 343.30 (1q) (b), 343.305 (9) (b), 343.31 (3m), or 343.35 (1), Stats., the person is not eligible for licensing, the occupational license shall be denied.

(2) APPROVAL. If all other reasons for license denial, cancellation, revocation or suspension and related conditions for reinstatement are met, a person may be licensed:

(a) When the person has received inpatient treatment and the hospitalization certificate shows satisfactory release, or there is verification of participation or satisfactory completion in another treatment program approved under s. 51.42 or 51.45, Stats., and there is no evidence from a medical report or assessment of chemical abuse since treatment, and there has been no OWI arrest, conviction or improper refusal revocation within the past 2 years.

(b) When the assessment report or compliance report from a 51.42 board shows the person has agreed to participate in a recommended driver safety plan or satisfactorily completed a treatment program, and the person is no longer abusing chemicals.

(c) When the medical report submitted by the personal physician indicates the person is receiving, or has received, adequate treatment for chemical abuse or dependency, has responded favorably to the treatment and is no longer abusing chemicals.

(d) When the department has received notice that a person has an OWI conviction and the operating privilege is presently suspended or cancelled for non-compliance as a result of sub. (1) (d), (e) or (f), the person shall be eligible to reinstate the license upon receipt of a new driver safety plan and if all licensing requirements have been satisfied.

(e) When a person, 51.42 board, or traffic safety school under s. 345.60, Stats., submits the report or reports showing compliance with an assessment or driver safety plan after the operating privilege has been suspended as a result of sub. (1) (j) for any noncompliance with assessment or plan.

(f) If the person has not had his or her license revoked or suspended under ch. 343 within the one year period immediately preceding the present revocation or suspension, and has a first OWI conviction, the person is eligible for a court issued temporary occupational license immediately and is not subject to the 15 day waiting period in s. 343.10, Stats.

(3) DEPARTMENT ACTION IN LIEU OF COURT ACTION. As provided under ss. 343.30 (1q) (f) and 343.305 (9) (f), Stats., the department shall order:

(a) The minimum revocation or suspension provided under statute when the court fails to order a revocation or suspension.

(b) An assessment when the court fails to order one.

(4) NOTICE OF LICENSING ACTION. (a) Person affected by any departmental licensing action shall be given written notice, by first class mail, sent to the person's last known address with the department.

(b) A notice of license denial, cancellation, revocation or suspension, shall include the reason for the action. Cancellations and notices of suspension for non-compliance shall include information on any applicable review and appeal procedures.

(5) RECORD RETENTION. Department records of licensing action are maintained for 5 years.

Note: Form MVD 3035.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.09 Departmental review. (1) In accordance with s. 343.30 (1q) (d) or 343.305 (9) (d), Stats., a person may request in writing within 10 days of license suspension, a review of license suspension for not complying with an assessment or driver safety plan as a result of a court ordered or department ordered assessment.

(2) The review shall be conducted by the review unit.

(3) The issues of the review shall be limited to:

(a) Whether the person is in compliance with the assessment order or the driver safety plan, and

(b) Whether the driver safety plan is appropriate.

(4) Within 10 days of receipt of the written request for review under ss. 343.30 (1q) (d) and 343.305 (9) (d), Stats., the department shall review the assessment or driver safety plan or amended driver safety plan. The driver safety plan shall be considered inappropriate if:

(a) The diagnostic level of symptoms identified on the assessment report of physiological, behavioral, psychological, attitudinal, or combination of, do not support the assessment findings recommended by the assessor on the forms provided by the department of health and social services as follows:

1. When one or more level 1 indicators of physiological dependency from the major criteria in track I (indicators 32-35) are present, AN ASSESSMENT FINDING OF ALCOHOL DEPENDENCY IS APPROPRIATE, or

2. When one or more level 1 indicators of psychological dependency from the major criteria in track II (indicators 28 and 29) are present along with any 3 or more level 2 indicators, AN ASSESSMENT FINDING OF ALCOHOL DEPENDENCY IS APPROPRIATE, or

3. When 5 or more level 2 indicators of psychological, attitudinal and behavioral indicators from the minor criteria in track II are, present but overall evidence is not conclusive, AN ASSESSMENT FINDING OF SUSPECTED ALCOHOL DEPENDENCY IS APPROPRIATE, or

4. When there is insufficient evidence for a progressive pattern of abusive drinking (that is, in the absence of level 1 indicators, fewer than 5 level 2 indicators, or any number of level 3 indicators) or the only evidence was a conviction for OWI, AN ASSESSMENT FINDING OF IRRESPONSIBLE USE OF ALCOHOL IS APPROPRIATE.

Note: Department of Health and Social Services form DSC 753.

(b) The diagnostic levels support the findings as described in sub. (1), but the findings do not support the driver safety plan as follows:

1. A finding of irresponsible use does not support in-patient treatment or extensive out-patient treatment.

2. A finding of suspected dependency does not support in-patient treatment.

3. A finding of irresponsible use does support educational program recommendations.

4. A finding of suspected alcohol dependency does support out-patient treatment or combination of education and out-patient treatment.

5. A finding of chemical dependency does support in-patient treatment, extensive outpatient treatment, or combination of treatment.

(c) The noncompliance was based on non-payment of treatment fees.

(5) When the driver safety plan is found to be inappropriate, the suspension shall remain in effect until notification from a 51.42 board that the person is complying with the driver safety plan received by the department and the person has paid the reinstatement fee(s) required by s. 343.21 (1) (j), Stats.

(6) When the driver safety plan is found to be inappropriate or the person is found to be in compliance with the driver safety plan, the suspension shall be released under the provisions of s. 343.39 (1) (c) and (2), Stats., and the fee specified in s. 343.21 (1) (j), Stats., shall not be charged for reinstatement of the license, under the provisions of s. 343.30 (1q) (d) or 343.305 (9) (d), Stats., and

(7) When the driver safety plan is found to be inappropriate, the person shall be requested to furnish the department with another assessment and driver safety plan within 30 days under s. 343.30 (1q) (d), or 343.305 (9) (d), Stats.

(8) Under s. 343.30 (1q) (d) or 343.305 (9) (d), Stats., the department shall grant a delay in the appropriateness decision at the written request of the person seeking the review.

(9) Driver safety plans recommending treatment in other states are acceptable if approved by the 51.42 board.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.10 Review boards. (1) If the decision to deny or cancel operating privileges is based in part on the results of a special examination and a medical report involving chemical abuse or dependency under s. 343.16 (2), Stats., a person may request an appearance before a review board, or a review by a board of the information on file with the department.

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(2) After receiving the recommendation of a review board, the department shall notify the person of the department's decision within 10 working days after the person's appearance before the review board. The notice shall include the review board's recommendations and department's decision and shall state the reasons for the decision.

Note: The department's decision to cancel, deny, suspend or revoke licenses under this chapter are subject to judicial review, in accordance with s. 343.40., Stats.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Trans 107.11 Effective dates, transition provisions, and miscellaneous provisions. (1) The effective date of all departmental suspensions or revocations under this chapter shall be the date the order was mailed, except if the person is currently under suspension or revocation, the effective date shall be the date the license was surrendered for the previous action, or the date of the conviction causing the new suspensions or revocation, whichever is later.

(2) When the violation date is May 1, 1982 or after, persons shall be considered subject to this chapter. Violations which occurred prior to May 1, 1982, regardless of conviction date, shall be considered subject to provisions in effect prior to May 1, 1982, unless otherwise ordered by the court.

(3) Persons completing group dynamics as a result of violations prior to May 1, 1982, and for whom the group dynamics instructor documents a need for additional assessment, shall be required to attend a driver improvement interview and, if documentation supports a referral to a 51.42 agency, comply with any additional treatment recommended prior to reinstatement. No driver improvement interviews shall be required for reinstatement if the violation occurred after May 1, 1982.

(4) For the purpose of counting the number of refusal revocations, OWI convictions, or arrests, all such convictions, refusal revocations, or arrests prior to, on, or after May 1, 1982 shall be counted by the department using violation date.

(5) Reductions in periods of revocation or suspension under ss. 343.30 (1q) (h) and 343.305 (9) (g) shall be made by the department as provided in ss. 343.30 (1q) (f) and 343.305 (9) (f), Stats.

(6) The reinstatement date for suspensions for non-compliance with assessment or a driver safety plan under ss. 343.30 (1q) (d) and 343.305 (9) (d), Stats., shall be the date the reinstatement fee is paid or the date the department receives the notice of compliance, whichever is later.

(7) Implied consent refusals and OWI convictions from the same incident shall be counted as one.

(8) As authorized by ss. 343.30 (1q) (b) 1. and 346.63 (1) (c), Stats., if two citations are issued for the same arrest incident under ss. 346.63 (1) (a) and (b), 346.63 (2) (a) 1. and 2. or 2 citations or complaints for ss. 940.25 (1) (a) and (b) or 940.09 (1) (a) and (b), Stats., they shall be considered as one arrest incident under this chapter.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.