



1997 ASSEMBLY BILL 221

March 25, 1997 - Introduced by Representatives FREESE, WALKER, GREEN, RYBA, SCHAFFER, WOOD, SYKORA, STASKUNAS, HANDRICK, BAUMGART, PLALE, OTTE, DUFF, VANDER LOOP, HAHN, PORTER, LORGE, OURADA, UNDERHEIM, DOBYNS, HUEBSCH, KREIBICH, MUSSER, LADWIG, URBAN, KELSO, SERATTI, NASS, OWENS, AINSWORTH, F. LASEE, WARD, OTT, LAZICH, POWERS and GUNDERSON, cosponsored by Senators WELCH, GROBSCHMIDT, DRZEWIECKI, C. POTTER, BUETTNER, A. LASEE, SCHULTZ, WEEDEN and FARROW, by request of Tracy Scheide (formerly Tracy Black), her family, and the family of Jeanette Chase. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to renumber** 940.01 (1), 940.06, 940.08, 940.10, 940.23 (1), 940.23 (2) and
2 940.24; **to amend** 302.11 (1g) (a) 2., 343.31 (3) (c), 343.31 (3) (f), 346.65 (6) (a)
3 1., 346.65 (6) (a) 2., 346.65 (6) (d), 939.22 (21) (d), 939.24 (1), 939.25 (1), 939.32
4 (1) (intro.), 939.62 (2m) (a) 2., 940.01 (1) (title), 940.05 (2), 940.09 (1b), 940.09
5 (1d), 940.09 (1m), 940.09 (2), 940.25 (1b), 940.25 (1d), 940.25 (1m), 940.25 (2),
6 941.38 (1) (b) 4., 969.035 (1), 969.08 (10) (b), 973.0135 (1) (b) 2. and 980.01 (6)
7 (b); and **to create** 939.75, 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.05 (2h),
8 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e), 940.09 (1g) (c) and (d), 940.10 (2),
9 940.195, 940.23 (1) (b), 940.23 (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) of the
10 statutes; **relating to:** causing harm or death to an unborn child and providing
11 penalties.

Analysis by the Legislative Reference Bureau

Under current law, there are various penalties for homicides and other crimes against life and bodily security. These crimes usually apply to offenses committed against a human being after he or she has been born alive. This bill creates a similar series of crimes providing penalties, based on current law, for persons who cause

ASSEMBLY BILL 221

death, great bodily harm or harm to an unborn child. The following chart shows the maximum penalties for persons convicted of the crimes created in the bill:

<u>Crime</u>	<u>Maximum Period of Imprisonment</u>	<u>Maximum Fine</u>
First-degree intentional homicide	life sentence	no fine option
First-degree reckless homicide	40 years	no fine option
Second-degree intentional homicide	40 years	no fine option
Second-degree reckless homicide	10 years	\$10,000
Homicide/negligent handling of weapon, explosives or fire	5 years	\$10,000
Homicide/intoxicated use of vehicle	10 years	\$10,000
Homicide/intoxicated use of firearm	5 years	\$10,000
Homicide/negligent operation of vehicle	2 years	\$10,000
Battery	10 years, 5 years, 2 years or 9 months depending on the intent of the actor and the harm that results	\$10,000
Reckless injury, great bodily harm	10 years or 5 years depend- ing on the circumstances	\$10,000
Injury/negligent handling of weapon, explosives or fire	2 years	\$10,000
Injury/intoxicated use of a vehicle	5 years	\$10,000

The bill provides various exceptions to these crimes against unborn children. The crimes do not apply to any of the following:

1. An act that causes the death of an unborn child during an induced abortion.

ASSEMBLY BILL 221

2. An act that follows the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment performed by, or under the supervision of, a licensed physician.

3. An act by a health care provider in accordance with a pregnant woman's power of attorney for health care or in accordance with a decision of an individual designated by a pregnant woman to act on her behalf under her power of attorney for health care.

4. An act by the pregnant woman toward her unborn child.

5. The prescription, dispensation or administration by any authorized person, and the use by a woman, of any medicine, drug or device for birth control or pregnancy prevention.

For further information see the *state* 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.** 302.11 (1g) (a) 2. of the statutes is amended to read:

2 302.11 (1g) (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19
3 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02,
4 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03
5 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

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

7 343.31 (3) (c) Any person convicted under s. 940.09 of causing the death of
8 another or of an unborn child by the operation or handling of a motor vehicle shall
9 have his or her operating privilege revoked for 5 years. If there was a minor
10 passenger under 16 years of age or an unborn child, as defined in s. 939.75 (1), in the
11 motor vehicle at the time of the violation that gave rise to the conviction under s.
12 940.09, the revocation period is 10 years.

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

14 343.31 (3) (f) Any person convicted under s. 940.25 shall have his or her
15 operating privilege revoked for 2 years. If there was a minor passenger under 16

ASSEMBLY BILL 221**SECTION 3**

1 years of age or an unborn child, as defined in s. 939.75 (1), in the motor vehicle at the
2 time of the violation that gave rise to the conviction under s. 940.25, the revocation
3 period is 4 years.

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

5 346.65 (6) (a) 1. Except as provided in this paragraph, the court may order a
6 law enforcement officer to seize a motor vehicle, or, if the motor vehicle is not ordered
7 seized, shall order a law enforcement officer to equip the motor vehicle with an
8 ignition interlock device or immobilize any motor vehicle owned by the person whose
9 operating privilege is revoked under s. 343.305 (10) or who committed a violation of
10 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)
11 ~~or~~, (b), (c) or (d) if the person whose operating privilege is revoked under s. 343.305
12 (10) or who is convicted of the violation has 2 prior suspensions, revocations or
13 convictions within a 10-year period that would be counted under s. 343.307 (1). The
14 court shall not order a motor vehicle equipped with an ignition interlock device or
15 immobilized if that would result in undue hardship or extreme inconvenience or
16 would endanger the health and safety of a person.

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

18 346.65 (6) (a) 2. The court shall order a law enforcement officer to seize a motor
19 vehicle owned by a person whose operating privilege is revoked under s. 343.305 (10)
20 or who commits a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09 (1) (a)
21 ~~or~~, (b), (c) or (d) or 940.25 (1) (a) ~~or~~, (b), (c) or (d) if the person whose operating privilege
22 is revoked under s. 343.305 (10) or who is convicted of the violation has 3 or more prior
23 suspensions, revocations or convictions within a 10-year period that would be
24 counted under s. 343.307 (1).

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

ASSEMBLY BILL 221

1 346.65 (6) (d) At the hearing set under par. (c), the state has the burden of
2 proving to a reasonable certainty by the greater weight of the credible evidence that
3 the motor vehicle is a motor vehicle owned by a person who committed a violation of
4 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)
5 ~~or~~, (b), (c) or (d) and, if the seizure is under par. (a) 1., that the person had 2 prior
6 convictions, suspensions or revocations within a 10-year period as counted under s.
7 343.307 (1) or, if the seizure is under par. (a) 2., 3 or more prior convictions,
8 suspensions or revocations within a 10-year period as counted under s. 343.307 (1).
9 If the owner of the motor vehicle proves by a preponderance of the evidence that he
10 or she was not convicted of a violation of s. 346.63 (1) (a) or (b) or (2) (a) 1. or 2., 940.09
11 (1) (a) ~~or~~, (b), (c) or (d) or 940.25 (1) (a) ~~or~~, (b), (c) or (d), or, if the seizure is under par.
12 (a) 1., that he or she did not have 2 prior convictions, suspensions or revocations
13 within a 10-year period as counted under s. 343.307 (1) or, if the seizure is under par.
14 (a) 2., 3 or more prior convictions, suspensions or revocations within a 10-year period
15 as counted under s. 343.307 (1), the motor vehicle shall be returned to the owner upon
16 the payment of storage costs.

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

18 939.22 (21) (d) Battery, substantial battery or aggravated battery, as
19 prohibited in s. 940.19 or 940.195.

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

21 939.24 (1) In this section, “criminal recklessness” means that the actor creates
22 an unreasonable and substantial risk of death or great bodily harm to another
23 human being and the actor is aware of that risk, except that for purposes of ss. 940.02
24 (1m), 940.06 (2) and 940.23 (1) (b) and (2) (b), “criminal recklessness” means that the
25 actor creates an unreasonable and substantial risk of death or great bodily harm to

ASSEMBLY BILL 221**SECTION 8**

1 an unborn child, to the woman who is pregnant with that unborn child or to another
2 and the actor is aware of that risk.

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

4 939.25 (1) In this section, “criminal negligence” means ordinary negligence to
5 a high degree, consisting of conduct which that the actor should realize creates a
6 substantial and unreasonable risk of death or great bodily harm to another, except
7 that for purposes of ss. 940.08 (2), 940.10 (2) and 940.24 (2), “criminal negligence”
8 means ordinary negligence to a high degree, consisting of conduct that the actor
9 should realize creates a substantial and unreasonable risk of death or great bodily
10 harm to an unborn child, to the woman who is pregnant with that unborn child or
11 to another.

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

13 939.32 (1) (intro.) Whoever attempts to commit a felony or a ~~battery as defined~~
14 ~~by crime specified in s. 940.19 or theft as defined by s., 940.195 or 943.20~~ may be fined
15 or imprisoned or both not to exceed one-half the maximum penalty for the completed
16 crime; except:

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

18 939.62 (2m) (a) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
19 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b)
20 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2),
21 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b)
22 or (c) or 948.36.

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

24 **939.75 Death or harm to an unborn child. (1)** In this section and ss. 939.24
25 (1), 939.25 (1), 940.01 (1) (b), 940.02 (1m), 940.05 (2g) and (2h), 940.06 (2), 940.08 (2),

ASSEMBLY BILL 221

1 940.09 (1) (c) to (e), (1b) and (1g) (c) and (d), 940.10 (2), 940.195, 940.23 (1) (b) and
2 (2) (b), 940.24 (2) and 940.25 (1) (c) to (e) and (1b), “unborn child” means any
3 individual of the human species from fertilization until birth.

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

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

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

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

17 2h. An act by any health care provider, as defined in s. 155.01 (7), that is in
18 accordance with a pregnant woman’s power of attorney for health care instrument
19 under ch. 155 or in accordance with a decision of a health care agent who is acting
20 under a pregnant woman’s power of attorney for health care instrument under ch.
21 155.

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

ASSEMBLY BILL 221**SECTION 12**

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

4 **(3)** When the existence of an exception under sub. (2) has been placed in issue
5 by the trial evidence, the state must prove beyond a reasonable doubt that the facts
6 constituting the exception do not exist in order to sustain a finding of guilt under s.
7 940.01 (1) (b), 940.02 (1m), 940.05 (2g), 940.06 (2), 940.08 (2), 940.09 (1) (c) to (e) or
8 (1g) (c) or (d), 940.10 (2), 940.195, 940.23 (1) (b) or (2) (b), 940.24 (2) or 940.25 (1) (c)
9 to (e).

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

11 940.01 (1) (title) ~~OFFENSE~~ OFFENSES.

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

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

14 940.01 (1) (b) Except as provided in sub. (2), whoever causes the death of an
15 unborn child with intent to kill that unborn child, kill the woman who is pregnant
16 with that unborn child or kill another is guilty of a Class A felony.

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

18 940.02 (1m) Whoever recklessly causes the death of an unborn child under
19 circumstances that show utter disregard for the life of that unborn child, the woman
20 who is pregnant with that unborn child or another is guilty of a Class B felony.

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

22 940.05 (2) In prosecutions under ~~this section~~ sub. (1), it is sufficient to allege
23 and prove that the defendant caused the death of another human being with intent
24 to kill that person or another.

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

ASSEMBLY BILL 221

1 940.05 **(2g)** Whoever causes the death of an unborn child with intent to kill that
2 unborn child, kill the woman who is pregnant with that unborn child or kill another
3 is guilty of a Class B felony if:

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

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

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

11 940.05 **(2h)** In prosecutions under sub. (2g), it is sufficient to allege and prove
12 that the defendant caused the death of an unborn child with intent to kill that unborn
13 child, kill the woman who is pregnant with that unborn child or kill another.

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

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

16 940.06 **(2)** Whoever recklessly causes the death of an unborn child is guilty of
17 a Class C felony.

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

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

20 940.08 **(2)** Whoever causes the death of an unborn child by the negligent
21 operation or handling of a dangerous weapon, explosives or fire is guilty of a Class
22 D felony.

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

24 940.09 **(1)** (c) Causes the death of an unborn child by the operation or handling
25 of a vehicle while under the influence of an intoxicant.

ASSEMBLY BILL 221**SECTION 24**

1 (d) Causes the death of an unborn child by the operation or handling of a vehicle
2 while the person has a prohibited alcohol concentration, as defined in s. 340.01
3 (46m).

4 (e) Causes the death of an unborn child by the operation of a commercial motor
5 vehicle while the person has an alcohol concentration of 0.04 or more but less than
6 0.1.

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

8 940.09 (1b) If there was a minor passenger under 16 years of age or an unborn
9 child in the motor vehicle at the time of the violation that gave rise to the conviction
10 under sub. (1), any applicable maximum fine or imprisonment specified for the
11 conviction is doubled.

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

13 940.09 (1d) If the person who committed an offense under sub. (1) (a) ~~or~~, (b),
14 (c) or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year
15 period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be
16 followed regarding the immobilization or seizure and forfeiture of a motor vehicle
17 owned by the person who committed the offense or the equipping of a motor vehicle
18 owned by the person with an ignition interlock device.

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

20 940.09 (1g) (c) Causes the death of an unborn child by the operation or handling
21 of a firearm or airgun while under the influence of an intoxicant.

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

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

ASSEMBLY BILL 221

1 940.09 (1m) A person may be charged with and a prosecutor may proceed upon
2 an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a)
3 or (bm) or both ~~or of~~, sub. (1) (c) or (d) or both, sub. (1) (c) or (e) or both, sub. (1g) (a)
4 or (b) or both or sub. (1g) (c) or (d) or both for acts arising out of the same incident or
5 occurrence. If the person is charged with violating both sub. (1) (a) and (b) ~~or~~, both
6 sub. (1) (a) and (bm) ~~or~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g)
7 (a) and (b) or both sub. (1g) (c) and (d) in the information, the crimes shall be joined
8 under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both
9 sub. (1) (a) and (bm) ~~or of~~, both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub.
10 (1g) (a) and (b) or both sub. (1g) (c) and (d) for acts arising out of the same incident
11 or occurrence, there shall be a single conviction for purposes of sentencing and for
12 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)
13 (a) 2. and 3., under s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1)
14 (a), (b) ~~and~~, (bm), (c), (d) and (e), and sub. (1g) (a) ~~and~~, (b), (c) and (d), each require
15 proof of a fact for conviction which the other does not require.

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

17 940.09 (2) The defendant has a defense if he or she proves by a preponderance
18 of the evidence that the death would have occurred even if he or she had been
19 exercising due care and he or she had not been under the influence of an intoxicant
20 or did not have an alcohol concentration described under sub. (1) (b) ~~or~~, (bm), (d) or
21 (e) or (1g) (b) or (d).

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

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

24 940.10 (2) Whoever causes the death of an unborn child by the negligent
25 operation or handling of a vehicle is guilty of a Class E felony.

ASSEMBLY BILL 221

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

2 **940.195 Battery to an unborn child; substantial battery to an unborn**
3 **child; aggravated battery to an unborn child.** (1) Whoever causes bodily harm
4 to an unborn child by an act done with intent to cause bodily harm to that unborn
5 child, to the woman who is pregnant with that unborn child or another is guilty of
6 a Class A misdemeanor.

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

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

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

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

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

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

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

ASSEMBLY BILL 221

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

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

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

6 940.23 (2) (b) Whoever recklessly causes great bodily harm to an unborn child
7 is guilty of a Class D felony.

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

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

10 940.24 (2) Whoever causes bodily harm to an unborn child by the negligent
11 operation or handling of a dangerous weapon, explosives or fire is guilty of a Class
12 E felony.

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

14 940.25 (1) (c) Causes great bodily harm to an unborn child by the operation of
15 a vehicle while under the influence of an intoxicant.

16 (d) Causes great bodily harm to an unborn child by the operation of a vehicle
17 while the person has a prohibited alcohol concentration, as defined in s. 340.01
18 (46m).

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

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

23 940.25 (1b) If there was a minor passenger under 16 years of age or an unborn
24 child in the motor vehicle at the time of the violation that gave rise to the conviction

ASSEMBLY BILL 221**SECTION 40**

1 under sub. (1), any applicable maximum fine or imprisonment specified for the
2 conviction is doubled.

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

4 940.25 (1d) If the person who committed the offense under sub. (1) (a) ~~or~~, (b),
5 (c) or (d) has 2 or more prior convictions, suspensions or revocations in a 10-year
6 period, as counted under s. 343.307 (1), the procedure under s. 346.65 (6) may be
7 followed regarding the immobilization or seizure and forfeiture of a motor vehicle
8 owned by the person who committed the offense or the equipping of a motor vehicle
9 owned by the person with an ignition interlock device.

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

11 940.25 (1m) A person may be charged with and a prosecutor may proceed upon
12 an information based upon a violation of sub. (1) (a) or (b) or both ~~or of~~, sub. (1) (a)
13 or (bm) or both, sub. (1) (c) or (d) or both or sub. (1) (c) or (e) or both for acts arising
14 out of the same incident or occurrence. If the person is charged with violating both
15 sub. (1) (a) and (b) ~~or~~, both sub. (1) (a) and (bm), both sub. (1) (c) and (d) or both sub.
16 (1) (c) and (e) in the information, the crimes shall be joined under s. 971.12. If the
17 person is found guilty of both sub. (1) (a) and (b) ~~or of~~, both sub. (1) (a) and (bm), both
18 sub. (1) (c) and (d) or both sub. (1) (c) and (e) for acts arising out of the same incident
19 or occurrence, there shall be a single conviction for purposes of sentencing and for
20 purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6)
21 (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3.
22 Subsection (1) (a), (b) ~~and~~, (bm), (c), (d) and (e) each require proof of a fact for
23 conviction which the other does not require.

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

ASSEMBLY BILL 221

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

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

7 941.38 (1) (b) 4. Battery, substantial battery or aggravated battery, as
8 prohibited in s. 940.19 or 940.195.

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

10 969.035 (1) In this section, "violent crime" means any crime specified in s.
11 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.10, 940.19 (5), 940.195
12 (5), 940.21, 940.225 (1), 940.23, 941.327, 948.02 (1) or (2), 948.025 or 948.03.

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

14 969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4),
15 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195
16 (5), 940.20, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29,
17 940.295 (3) (b) 1., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01
18 (2) (c), 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r),
19 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03,
20 948.04, 948.05, 948.06, 948.07 or 948.30.

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

22 973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
23 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b)
24 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2),

ASSEMBLY BILL 221

SECTION 47

1 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b)
2 or (c) or 948.36.

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

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

7 **SECTION 49. Initial applicability.**

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

10 (END)