



## 1995 ASSEMBLY BILL 985

March 6, 1996 – Introduced by Representatives GOETSCH, ALBERS, LORGE, MUSSER, BRANDEMUEHL, OLSEN, OTTE, WASSERMAN, CULLEN, HUBER, HANSON, WARD, KLUSMAN, ROBSON, SERATTI and KELSO, cosponsored by Senators HUELSMAN, ROSENZWEIG, PANZER, DARLING and BUETTNER. Referred to Committee on State Affairs.

1     **AN ACT to amend** 23.33 (4c) (a) 2., 23.33 (4c) (a) 3., 23.33 (4c) (b) 2., 23.33 (4c) (b)  
2             4., 23.33 (4x), 30.681 (1) (b), 30.681 (2) (b), 30.681 (2) (d), 30.687, 340.01 (46m)  
3             (a), 340.01 (46m) (b), 343.10 (5) (a) 2., 343.305 (4m) (b), 343.305 (5) (d), 343.305  
4             (7) (b), 345.24 (1), 346.63 (2) (b), 346.63 (2m), 346.63 (7) (a) 1., 350.101 (1) (b),  
5             350.101 (1) (c), 350.101 (2) (b), 350.101 (2) (d), 350.107, 885.235 (1) (a) 1.,  
6             885.235 (1) (a) 2., 885.235 (1) (b), 885.235 (1) (bd), 885.235 (1) (c), 885.235 (1)  
7             (cd), 885.235 (1) (d), 885.235 (1m), 885.235 (4), 905.04 (4) (f), 940.09 (1g) (b),  
8             940.09 (2), 940.25 (2) and 967.055 (1) (b); and **to create** 23.33 (1) (ar), 30.50 (1g),  
9             350.01 (1h) and 939.22 (3) of the statutes; **relating to:** the definition of alcohol  
10            concentration.

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### *Analysis by the Legislative Reference Bureau*

Current law uses the terms “alcohol concentration” and “blood alcohol concentration” and the concepts that these terms relate to in inconsistent ways in various chapters of the statutes dealing with the intoxicated operation of all-terrain vehicles, motorboats, motor vehicles and snowmobiles. This bill uses the term “alcohol concentration” consistently throughout the statutes to mean the number of grams of alcohol per 100 milliliters of a person’s blood or the number of grams of alcohol per 210 liters of a person’s breath.

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

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

2           23.33 (1) (ar) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

3           **SECTION 2.** 23.33 (4c) (a) 2. of the statutes is amended to read:

4           23.33 (4c) (a) 2. 'Operating with alcohol concentrations at or above specified  
5 levels.' No person may engage in the operation of an all-terrain vehicle while the  
6 person has a blood an alcohol concentration of ~~0.1%~~ 0.1 or more ~~by weight of alcohol~~  
7 ~~in his or her blood.~~ No person may engage in the operation of an all-terrain vehicle  
8 while the person has ~~0.1 grams or more of alcohol in 210 liters of his or her breath.~~

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

10          23.33 (4c) (a) 3. 'Operating with alcohol concentrations at specified levels;  
11 below age 19.' If a person has not attained the age of 19, the person may not engage  
12 in the operation of an all-terrain vehicle while he or she has a blood an alcohol  
13 concentration of more than ~~0.0%~~ 0.0 but not more than ~~0.1%~~ 0.1 by weight of alcohol in  
14 his or her blood or more than ~~0.0 grams but not more than 0.1 grams of alcohol in 210~~  
15 liters of his or her breath 0.1.

16          **SECTION 4.** 23.33 (4c) (b) 2. of the statutes is amended to read:

17          23.33 (4c) (b) 2. 'Causing injury with alcohol concentrations at or above  
18 specified levels.' No person who has a blood an alcohol concentration of ~~0.1%~~ 0.1 or  
19 more ~~by weight of alcohol in his or her blood~~ may cause injury to another person by  
20 the operation of an all-terrain vehicle. No person who has ~~0.1 grams or more of~~  
21 alcohol in 210 liters of his or her breath may cause injury to another person by the  
22 operation of an all-terrain vehicle.

23          **SECTION 5.** 23.33 (4c) (b) 4. of the statutes is amended to read:

24          23.33 (4c) (b) 4. 'Defenses.' In an action under this paragraph, the defendant  
25 has a defense if he or she proves by a preponderance of the evidence that the injury

1 would have occurred even if he or she had been exercising due care and he or she had  
2 not been under the influence of an intoxicant or did not have a blood an alcohol  
3 concentration of ~~0.1% or more by weight of alcohol in his or her blood~~ or 0.1 grams  
4 or more of alcohol in 210 liters of his or her breath.

5 **SECTION 6.** 23.33 (4x) of the statutes is amended to read:

6 **23.33 (4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN ALL-TERRAIN VEHICLE**  
7 **WHILE UNDER INFLUENCE OF INTOXICANT.** A person arrested for a violation of sub. (4c)  
8 (a) 1. or 2, or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may  
9 not be released until 12 hours have elapsed from the time of his or her arrest or unless  
10 a chemical test administered under sub. (4p) (a) 1. shows that ~~there is 0.05% or less~~  
11 ~~by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters~~  
12 ~~of the person's breath~~ the person has an alcohol concentration of 0.05 or less, but the  
13 person may be released to his or her attorney, spouse, relative or other responsible  
14 adult at any time after arrest.

15 **SECTION 7.** 30.50 (1g) of the statutes is created to read:

16 30.50 (1g) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

17 **SECTION 8.** 30.681 (1) (b) of the statutes is amended to read:

18 30.681 (1) (b) *Operating with alcohol concentrations at or above specified levels.*

19 No person may engage in the operation of a motorboat while the person has a blood  
20 an alcohol concentration of ~~0.1%~~ 0.1 or more by weight of alcohol in his or her blood.  
21 ~~No person may engage in the operation of a motorboat while the person has 0.1 grams~~  
22 ~~or more of alcohol in 210 liters of his or her breath.~~

23 **SECTION 9.** 30.681 (2) (b) of the statutes is amended to read:

24 30.681 (2) (b) *Causing injury with alcohol concentrations at or above specified*  
25 *levels.* No person who has a blood an alcohol concentration of ~~0.1%~~ 0.1 or more by

1 ~~weight of alcohol in his or her blood may cause injury to another person by the~~  
2 ~~operation of a motorboat. No person who has 0.1 grams or more of alcohol in 210 liters~~  
3 ~~of his or her breath may cause injury to another person by the operation of a~~  
4 ~~motorboat.~~

5 **SECTION 10.** 30.681 (2) (d) of the statutes is amended to read:

6 30.681 (2) (d) *Defenses.* In an action under this subsection, the defendant has  
7 a defense if he or she proves by a preponderance of the evidence that the injury would  
8 have occurred even if he or she had been exercising due care and he or she had not  
9 been under the influence of an intoxicant or did not have a blood an alcohol  
10 concentration of 0.1% or more by weight of alcohol in his or her blood or 0.1 grams  
11 or more of alcohol in 210 liters of his or her breath.

12 **SECTION 11.** 30.687 of the statutes is amended to read:

13 **30.687 Officer's action after arrest for violating intoxicated boating**  
14 **law.** A person arrested for a violation of the intoxicating boating law, may not be  
15 released until 12 hours have elapsed from the time of his or her arrest or unless a  
16 chemical test administered under s. 30.684 (1) (a) shows that there is 0.05% or less  
17 by weight of alcohol in the person's blood or 0.05 grams or less of alcohol in 210 liters  
18 of the person's breath the person has an alcohol concentration of 0.05 or less, but the  
19 person may be released to his or her attorney, spouse, relative or other responsible  
20 adult at any time after arrest.

21 **SECTION 12.** 340.01 (46m) (a) of the statutes is amended to read:

22 340.01 (46m) (a) If the person has one or no prior convictions, suspensions or  
23 revocations, as counted under s. 343.307 (1), a blood an alcohol concentration of 0.1%  
24 or more by weight of alcohol in the person's blood or 0.1 grams or more of alcohol in  
25 210 liters of the person's breath.

1           **SECTION 13.** 340.01 (46m) (b) of the statutes is amended to read:

2           340.01 (**46m**) (b) If the person has 2 or more prior convictions, suspensions or  
3           revocations, as counted under s. 343.307 (1), ~~a blood an alcohol concentration of~~  
4           ~~0.08% or more by weight of alcohol in the person's blood or 0.08 grams or more of~~  
5           ~~alcohol in 210 liters of the person's breath.~~

6           **SECTION 14.** 343.10 (5) (a) 2. of the statutes is amended to read:

7           343.10 (**5**) (a) 2. If the petitioner has 2 or more convictions, suspensions or  
8           revocations, as counted under s. 343.307 (1), the order for issuance of an occupational  
9           license shall prohibit the petitioner from driving or operating a motor vehicle while  
10          he or she has ~~a blood an alcohol concentration of more than 0.0% by weight of alcohol~~  
11          ~~in the person's blood or more than 0.0 grams of alcohol in 210 liters of that person's~~  
12          ~~breath.~~

13          **SECTION 15.** 343.305 (4m) (b) of the statutes is amended to read:

14          343.305 (**4m**) (b) That, if one or more tests are taken and the results of any test  
15          indicate that the person has ~~any measured an alcohol concentration above 0.0 and~~  
16          ~~was driving or operating or on duty time with respect to a commercial motor vehicle,~~  
17          ~~the person will be subject to penalties and issuance of an out-of-service order for the~~  
18          ~~24 hours following the test.~~

19          **SECTION 16.** 343.305 (5) (d) of the statutes is amended to read:

20          343.305 (**5**) (d) At the trial of any civil or criminal action or proceeding arising  
21          out of the acts committed by a person alleged to have been driving or operating a  
22          motor vehicle while under the influence of an intoxicant or a controlled substance or  
23          a combination of alcohol and a controlled substance, under the influence of any other  
24          drug to a degree which renders him or her incapable of safely driving, or under the  
25          combined influence of an intoxicant and any other drug to a degree which renders

1 him or her incapable of safely driving, or having a prohibited alcohol concentration,  
2 or alleged to have been driving or operating or on duty time with respect to a  
3 commercial motor vehicle while having ~~any measured~~ an alcohol concentration  
4 above 0.0 or possessing an intoxicating beverage, regardless of its alcohol content,  
5 or within 4 hours of having consumed or having been under the influence of an  
6 intoxicating beverage, regardless of its alcohol content, or of having an alcohol  
7 concentration of 0.04 or more, the results of a test administered in accordance with  
8 this section are admissible on the issue of whether the person was under the  
9 influence of an intoxicant or a controlled substance or a combination of alcohol and  
10 a controlled substance, under the influence of any other drug to a degree which  
11 renders him or her incapable of safely driving or under the combined influence of an  
12 intoxicant and any other drug to a degree which renders him or her incapable of  
13 safely driving or any issue relating to the person's alcohol concentration. Test results  
14 shall be given the effect required under s. 885.235.

15 **SECTION 17.** 343.305 (7) (b) of the statutes is amended to read:

16 343.305 (7) (b) If a person who was driving or operating or on duty time with  
17 respect to a commercial motor vehicle submits to chemical testing administered in  
18 accordance with this section and any test results indicate ~~any measured~~ an alcohol  
19 concentration above 0.0, the law enforcement officer may take possession of the  
20 person's license and retain the license for 24 hours. The person may reclaim a seized  
21 license in person or request return of the license by mail. The law enforcement officer  
22 shall issue a citation for violation of s. 346.63 (7) (a) 1., issue citations for such other  
23 violations as may apply and issue an out-of-service order to the person for the 24  
24 hours after the testing, and report both the out-of-service order and the test results  
25 to the department in the manner prescribed by the department. If the person is a

1 nonresident, the department shall report issuance of the out-of-service order to the  
2 driver licensing agency in the person's home jurisdiction.

3 **SECTION 18.** 345.24 (1) of the statutes is amended to read:

4 345.24 (1) A person arrested under s. 346.63 (1) or (5) or an ordinance in  
5 conformity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense  
6 involved the use of a vehicle, may not be released until 12 hours have elapsed from  
7 the time of his or her arrest or unless a chemical test administered under s. 343.305  
8 shows that there is ~~0.04% or less by weight of alcohol in the person's blood or 0.04~~  
9 ~~grams or less of alcohol in 210 liters of the person's breath~~ the person has an alcohol  
10 concentration of less than 0.04, but the person may be released to his or her attorney,  
11 spouse, relative or other responsible adult at any time after arrest.

12 **SECTION 19.** 346.63 (2) (b) of the statutes is amended to read:

13 346.63 (2) (b) In an action under this subsection, the defendant has a defense  
14 if he or she proves by a preponderance of the evidence that the injury would have  
15 occurred even if he or she had been exercising due care and he or she had not been  
16 under the influence of an intoxicant or a controlled substance or a combination  
17 thereof, under the influence of any other drug to a degree which renders him or her  
18 incapable of safely driving, or under the combined influence of an intoxicant and any  
19 other drug to a degree which renders him or her incapable of safely driving or did not  
20 have a ~~blood~~ prohibited alcohol concentration described under par. (a) 2.

21 **SECTION 20.** 346.63 (2m) of the statutes is amended to read:

22 346.63 (2m) If a person has not attained the age of 19, the person may not drive  
23 or operate a motor vehicle while he or she has a ~~blood~~ an alcohol concentration of  
24 more than ~~0.0%~~ 0.0 but not more than ~~0.1%~~ by weight of alcohol in the person's blood  
25 ~~or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of that~~

1 person's breath 0.1. One penalty for violation of this subsection is suspension of a  
2 person's operating privilege under s. 343.30 (1p). The person is eligible for an  
3 occupational license under s. 343.10 at any time. If a person arrested for a violation  
4 of this subsection refuses to take a test under s. 343.305, the refusal is a separate  
5 violation and the person is subject to revocation of the person's operating privilege  
6 under s. 343.305 (10) (em).

7 **SECTION 21.** 346.63 (7) (a) 1. of the statutes is amended to read:

8 346.63 (7) (a) 1. While having any measured an alcohol concentration above  
9 0.0.

10 **SECTION 22.** 350.01 (1h) of the statutes is created to read:

11 350.01 (1h) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

12 **SECTION 23.** 350.101 (1) (b) of the statutes is amended to read:

13 350.101 (1) (b) *Operating with alcohol concentrations at or above specified*  
14 *levels.* No person may engage in the operation of a snowmobile while the person has  
15 a blood an alcohol concentration of 0.1% 0.1 or more by weight of alcohol in his or her  
16 blood. ~~No person may engage in the operation of a snowmobile while the person has~~  
17 ~~0.1 grams or more of alcohol in 210 liters of his or her breath.~~

18 **SECTION 24.** 350.101 (1) (c) of the statutes is amended to read:

19 350.101 (1) (c) *Operating with alcohol concentrations at specified levels; below*  
20 *age 19.* If a person has not attained the age of 19, the person may not engage in the  
21 operation of a snowmobile while he or she has a blood an alcohol concentration of  
22 more than 0.0% 0.0 but not more than 0.1% by weight of alcohol in his or her blood  
23 or more than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of his or  
24 her breath 0.1.

25 **SECTION 25.** 350.101 (2) (b) of the statutes is amended to read:



1           350.101 (2) (b) *Causing injury with alcohol concentrations at or above specified*  
2 *levels.* No person who has a blood an alcohol concentration of 0.1% 0.1 or more by  
3 ~~weight of alcohol in his or her blood~~ may cause injury to another person by the  
4 operation of a snowmobile. ~~No person who has 0.1 grams or more of alcohol in 210~~  
5 ~~liters of his or her breath may cause injury to another person by the operation of a~~  
6 ~~snowmobile.~~

7           **SECTION 26.** 350.101 (2) (d) of the statutes is amended to read:

8           350.101 (2) (d) *Defenses.* In an action under this subsection, the defendant has  
9 a defense if he or she proves by a preponderance of the evidence that the injury would  
10 have occurred even if he or she had been exercising due care and he or she had not  
11 been under the influence of an intoxicant or did not have a blood an alcohol  
12 concentration of 0.1% ~~or more by weight of alcohol in his or her blood~~ or 0.1 grams  
13 ~~or more of alcohol in 210 liters of his or her breath.~~

14           **SECTION 27.** 350.107 of the statutes is amended to read:

15           **350.107 Officer's action after arrest for operating a snowmobile while**  
16 **under influence of intoxicant.** A person arrested for a violation of s. 350.101 (1)  
17 (a) or (b) or a local ordinance in conformity therewith or s. 350.101 (2) (a) or (b) may  
18 not be released until 12 hours have elapsed from the time of his or her arrest or unless  
19 a chemical test administered under s. 350.104 (1) (a) shows that ~~there is 0.05% or less~~  
20 ~~by weight of alcohol in the person's blood~~ or 0.05 grams or less of alcohol in 210 liters  
21 ~~of the person's breath~~ the person has an alcohol concentration of 0.05 or less, but the  
22 person may be released to his or her attorney, spouse, relative or other responsible  
23 adult at any time after arrest.

24           **SECTION 28.** 885.235 (1) (a) 1. of the statutes is amended to read:

1           885.235 (1) (a) 1. The fact that the analysis shows that ~~there was more than~~  
2           ~~0.0% but less than 0.08% by weight of alcohol in the person's blood or more than 0.0~~  
3           ~~grams but less than 0.08 grams of alcohol in 210 liters of the person's breath~~ the  
4           person had an alcohol concentration of more than 0.0 but less than 0.08 is relevant  
5           evidence on the issue of being under the combined influence of alcohol and a  
6           controlled substance or any other drug, but, except as provided in par. (d) or sub.  
7           (1m), is not to be given any prima facie effect.

8           **SECTION 29.** 885.235 (1) (a) 2. of the statutes is amended to read:

9           885.235 (1) (a) 2. The fact that the analysis shows that ~~there was more than~~  
10          ~~0.0% but less than 0.1% by weight of alcohol in the person's blood or more than 0.0~~  
11          ~~grams but less than 0.1 grams of alcohol in 210 liters of the person's breath~~ the person  
12          had an alcohol concentration of more than 0.0 but less than 0.1 is relevant evidence  
13          on the issue of being under the combined influence of alcohol and a controlled  
14          substance or any other drug but, except as provided in par. (d) or sub. (1m), is not to  
15          be given any prima facie effect.

16          **SECTION 30.** 885.235 (1) (b) of the statutes is amended to read:

17          885.235 (1) (b) Except with respect to the operation of a commercial motor  
18          vehicle as provided in par. (d), the fact that the analysis shows that ~~there was more~~  
19          ~~than 0.04% but less than 0.1% by weight of alcohol in the person's blood or more than~~  
20          ~~0.04 grams but less than 0.1 grams of alcohol in 210 liters of the person's breath~~ the  
21          person had an alcohol concentration of more than 0.04 but less than 0.1 is relevant  
22          evidence on the issue of intoxication or an alcohol concentration of 0.1 or more but  
23          is not to be given any prima facie effect.

24          **SECTION 31.** 885.235 (1) (bd) of the statutes is amended to read:

1           885.235 (1) (bd) Except with respect to the operation of a commercial motor  
2 vehicle as provided in par. (d), the fact that the analysis shows that ~~there was more~~  
3 ~~than 0.04% but less than 0.08% by weight of alcohol in the person's blood or more~~  
4 ~~than 0.04 grams but less than 0.08 grams of alcohol in 210 liters of the person's breath~~  
5 the person had an alcohol concentration of more than 0.04 but less than 0.08 is  
6 relevant evidence on the issue of intoxication or an alcohol concentration of 0.08 or  
7 more, but is not to be given any prima facie effect.

8           **SECTION 32.** 885.235 (1) (c) of the statutes is amended to read:

9           885.235 (1) (c) The fact that the analysis shows that ~~there was 0.1% or more~~  
10 ~~by weight of alcohol in the person's blood or 0.1 grams or more of alcohol in 210 liters~~  
11 ~~of the person's breath~~ the person had an alcohol concentration of 0.1 or more is prima  
12 facie evidence that he or she was under the influence of an intoxicant and is prima  
13 facie evidence that he or she had an alcohol concentration of 0.1 or more.

14           **SECTION 33.** 885.235 (1) (cd) of the statutes is amended to read:

15           885.235 (1) (cd) In cases involving persons who have 2 or more prior  
16 convictions, suspensions or revocations, as counted under s. 343.307 (1), the fact that  
17 the analysis shows that ~~there was 0.08% or more by weight of alcohol in the person's~~  
18 ~~blood or 0.08 grams or more of alcohol in 210 liters of the person's breath~~ the person  
19 had an alcohol concentration of 0.08 or more is prima facie evidence that he or she  
20 was under the influence of an intoxicant and is prima facie evidence that he or she  
21 had an alcohol concentration of 0.08 or more.

22           **SECTION 34.** 885.235 (1) (d) of the statutes is amended to read:

23           885.235 (1) (d) The fact that the analysis shows that ~~there was 0.04% or more~~  
24 ~~by weight of alcohol in the person's blood or 0.04 grams or more of alcohol in 210 liters~~  
25 ~~of the person's breath~~ the person had an alcohol concentration of 0.04 or more is

1       prima facie evidence that he or she was under the influence of an intoxicant with  
2       respect to operation of a commercial motor vehicle and is prima facie evidence that  
3       he or she had an alcohol concentration of 0.04 or more.

4               **SECTION 35.** 885.235 (1m) of the statutes is amended to read:

5               885.235 **(1m)** In any action under s. 23.33 (4c) (a) 3., 346.63 (2m) or (7) or  
6       350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the time in  
7       question, as shown by chemical analysis of a sample of the person's blood or urine or  
8       evidence of the amount of alcohol in the person's breath, is admissible on the issue  
9       of whether he or she had a blood an alcohol concentration in the range specified in  
10      s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c) or a ~~measured~~ an alcohol  
11      concentration above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours  
12      after the event to be proved. The fact that the analysis shows that ~~there was more~~  
13      ~~than 0.0% but not more than 0.1% by weight of alcohol in the person's blood or more~~  
14      ~~than 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of the person's~~  
15      ~~breath~~ the person had an alcohol concentration of more than 0.0 but not more than  
16      0.1 is prima facie evidence that the person had a blood an alcohol concentration in  
17      the range specified in s. 23.33 (4c) (a) 3., 346.63 (2m) or 350.101 (1) (c) or a ~~measured~~  
18      an alcohol concentration above 0.0 under s. 346.63 (7).

19              **SECTION 36.** 885.235 (4) of the statutes is amended to read:

20              885.235 **(4)** The provisions of this section relating to the admissibility of  
21      chemical tests for alcohol concentration, or intoxication ~~or blood alcohol~~  
22      ~~concentration~~ shall not be construed as limiting the introduction of any other  
23      competent evidence bearing on the question of whether or not a person was under  
24      the influence of an intoxicant, had a specified alcohol concentration or had a blood

1 an alcohol concentration in the range specified in s. 23.33 (4c) (a) 3., 346.63 (2m) or  
2 350.101 (1) (c).

3 **SECTION 37.** 905.04 (4) (f) of the statutes is amended to read:

4 905.04 (4) (f) *Tests for intoxication.* There is no privilege concerning the results  
5 of or circumstances surrounding any chemical tests for intoxication or blood alcohol  
6 concentration, as defined in s. 340.01 (1v).

7 **SECTION 38.** 939.22 (3) of the statutes is created to read:

8 939.22 (3) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

9 **SECTION 39.** 940.09 (1g) (b) of the statutes is amended to read:

10 940.09 (1g) (b) Causes the death of another by the operation or handling of a  
11 firearm or airgun while the person has a blood an alcohol concentration of ~~0.1%~~ 0.1  
12 or more by weight of alcohol in that person's blood or 0.10 grams or more of alcohol  
13 in ~~210 liters of that person's breath.~~

14 **SECTION 40.** 940.09 (2) of the statutes is amended to read:

15 940.09 (2) The defendant has a defense if he or she proves by a preponderance  
16 of the evidence that the death would have occurred even if he or she had been  
17 exercising due care and he or she had not been under the influence of an intoxicant  
18 or did not have a blood an alcohol concentration described under sub. (1) (b) or (bm)  
19 or (1g) (b).

20 **SECTION 41.** 940.25 (2) of the statutes is amended to read:

21 940.25 (2) The defendant has a defense if he or she proves by a preponderance  
22 of the evidence that the great bodily harm would have occurred even if he or she had  
23 been exercising due care and he or she had not been under the influence of an  
24 intoxicant or did not have a blood an alcohol concentration described under sub. (1)  
25 (b) or (bm).

