

2009 DRAFTING REQUEST

Bill

Received: **06/22/2009**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Sheila Harsdorf (608) 266-7745**

By/Representing: **Matt Wuebke**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids
Criminal Law - miscellaneous
Criminal Law - sentencing**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Harsdorf@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Domestic abuse in the presence of a child

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 06/23/2009	jdyer 06/23/2009		_____			S&L Crime
/P1	chanaman 06/30/2009	jdyer 06/30/2009	rschluet 06/23/2009	_____	lparisi 06/23/2009		S&L Crime
/1			mduchek 06/30/2009	_____	sbasford 06/30/2009	mbarman 07/01/2009	

FE Sent For:

*at
intro*

<END>

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/?	chanaman 06/23/2009	jdyer 06/23/2009		_____			S&L Crime
/P1		<i>16/29</i>	rschluet 06/23/2009	_____	lparisi 06/23/2009		

FE Sent For:

6/29
M
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/?	chanaman	PI 6/23jld		_____			

FE Sent For:

<END>

Hanaman, Cathlene

From: Ryan, Robin
Sent: Monday, June 22, 2009 12:49 PM
To: Hanaman, Cathlene; Hurley, Peggy
Subject: FW: Bill draft request

Anyone know who is up for a request?

From: Wuebke, Matt
Sent: Monday, June 22, 2009 12:46 PM
To: Ryan, Robin
Subject: Bill draft request

Hi Robin,

We are interested in drafting a bill to establish an optional penalty enhancer for individuals guilty of domestic violence when a child is present. We have worked with a DA on this issue, and proposed language is attached below for your review. Please let me know if you need additional information or if the suggested language is something you can work with.

Thanks,
Matt

Matt Wuebke
Office of Sen. Sheila Harsdorf

939.621 Increased penalty for certain domestic abuse offenses (1) If a person commits an act of domestic abuse, as defined in § 968.075(1)(a) and the act constitutes the commission of a crime, the maximum term of imprisonment for that crime may be increased by not more than 2 years if the crime is committed during the 72 hours immediately following an arrest for a domestic abuse incident, as set forth in § 968.075(5). The 72-hour period applies whether or not there has been a waiver by the victim under § 968.075(5)(c). The victim of the domestic abuse crime does not have to be the same as the victim of the domestic abuse incident that resulted in the arrest. The penalty increase under this section changes the status of a misdemeanor to a felony.

(2) If a person commits an act of domestic abuse, as defined in § 968.075(1)(a) and the act constitutes the commission of a crime, and is committed in the presence of a child, as defined in § 948.01(1), the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

- (a) The penalty for a crime which is a Class A Misdemeanor may be increased to not more than 2 years
- (am) The penalty for a crime which is a Class B Misdemeanor may be increased to not more than 1 year
- (b) The penalty for a crime which is a felony that is more than 5 years or is a life term, the maximum term for the felony may be increased to not more than 5 years
- (c) The penalty for a crime which is a felony that is more than 2 years, but not more than 5 years, the maximum term for the felony may be increased by not more than 3 years
- (d) The penalty for a crime which is a felony not specified in par. (b) or (c) may be increased by not more than 3 years

(3) "In the presence of a child" constitutes a child being in the physical location where the act of domestic abuse took place and in such physical proximity to the act of domestic abuse that the child heard the act or witnessed the act as it was being committed.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3022/7

CMH:.....

2 note

p1
Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

X

1 AN ACT *revised*; relating to: penalty enhancers for committing domestic abuse in the
2 presence of a child and providing penalties.

Analysis by the Legislative Reference Bureau

a Under current law, a person who commits a crime under specified circumstances may be subject to penalty enhancers, or penalties that are more severe than those that ordinarily apply to the crime. This bill creates a penalty enhancer for person who commits an act of domestic abuse, as defined in current law, that is a crime while in the presence of a child. Under this bill, if the crime is a Class B misdemeanor the maximum sentence may be increased by not more than nine months, if the crime is a Class A misdemeanor, the maximum sentence may be increased by not more than 13 months, if the crime is a Class I felony, the maximum sentence may be increased by not more than three years, and if the crime is a Class A to H felony, the maximum sentence may be increased by not more than five years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 939.621[✓] of the statutes is renumbered 939.621 (2) and amended to
2 read:

3 939.621 (2) If a person commits an act of domestic abuse,[✓] ~~as defined in s.~~
4 ~~968.075 (1) (a)~~ and the act constitutes the commission of a crime, the maximum term
5 of imprisonment for that crime may be increased by not more than 2 years if the crime
6 is committed during the 72 hours immediately following an arrest for a domestic
7 abuse incident, as set forth in s. 968.075 (5). The 72-hour period applies whether or
8 not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the
9 domestic abuse crime does not have to be the same as the victim of the domestic abuse
10 incident that resulted in the arrest. The penalty increase under this section
11 subsection[✓] changes the status of a misdemeanor to a felony.

History: 1987 a. 346; 1995 a. 304.

12 **SECTION 2.** 939.621 (1)[✓] of the statutes is created to read:

13 939.621 (1) In this section:[✓]

14 (a) "Child" means a person who has not attained the age of[✓] 18 years.

15 (b) "Domestic abuse" has the meaning given in s.[✓] 968.075 (1) (a).

16 **SECTION 3.** 939.621 (3)[✓] of the statutes is created to read:

17 939.621 (3) If a person commits an act of domestic abuse[✓] and the act constitutes
18 the commission of a crime,[✓] and if the act is committed in a place or a manner in which
19 the act is observable by or audible to a child or is in the presence of a child and the
20 actor knows or has reason to know that the act is observable by or audible to a child
21 or is in the presence of a child, the maximum term of imprisonment prescribed by law
22 for the crime may be increased as follows:[✓]

23 (a) If the crime is a Class B[✓] misdemeanor, the maximum term of imprisonment
24 may be increased by not more than 9[✓] months.

1 (b) If the crime is a Class A misdemeanor, the maximum term of imprisonment
2 may be increased by not more than 13 months.

3 (c) If the crime is a Class I felony or a felony that is not specified in this
4 paragraph or in par. (d), the maximum term of imprisonment may be increased by
5 not more than 3 years.

6 (d) If the crime is a Class A, B, C, D, E, F, G, or H felony, the maximum term
7 of imprisonment may be increased by not more than 5 years.

8 **SECTION 4.** 968.075 (5) (b) 1. of the statutes is amended to read:

9 968.075 (5) (b) 1. Unless there is a waiver under par. (c), a law enforcement
10 officer or other person who releases a person arrested for a domestic abuse incident
11 from custody less than 72 hours after the arrest shall inform the arrested person
12 orally and in writing of the requirements under par. (a), the consequences of violating
13 the requirements and the provisions of s. 939.621 (2). The arrested person shall sign
14 an acknowledgment on the written notice that he or she has received notice of, and
15 understands the requirements, the consequences of violating the requirements and
16 the provisions of s. 939.621 (2). If the arrested person refuses to sign the notice, he
17 or she may not be released from custody.

18 **History:** 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304; 2005 a. 104

18 **SECTION 5.** 968.075 (5) (b) 2. of the statutes is amended to read:

19 968.075 (5) (b) 2. If there is a waiver under par. (c) and the person is released
20 under subd. 1., the law enforcement officer or other person who releases the arrested
21 person shall inform the arrested person orally and in writing of the waiver and the
22 provisions of s. 939.621 (2).

23 **History:** 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304; 2005 a. 104

23 **SECTION 6.** 968.075 (5) (b) 3. of the statutes is amended to read:

1 968.075 (5) (b) 3. Failure to comply with the notice requirement under subd.
 2 1. regarding a person who is lawfully released from custody bars a prosecution under
 3 par. (a), but does not affect the application of s. 939.621 (2) ✓ in any criminal
 4 prosecution.

5 **History:** 1987 a. 346; 1989 a. 293; 1993 a. 319; 1995 a. 304; 2005 a. 104 X

5 **SECTION 7.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

6 973.01 (2) (c) 2. a. Sections 939.621 (2) and (3) ✓, 939.632, 939.645, 946.42 (4),
 7 961.46, and 961.49.

8 **History:** 1997 a. 283; 2001 a. 109; 2003 a. 33; 2005 a. 277; 2007 a. 116, 226.

8 **SECTION 8. Initial applicability.**

9 (1) ✓ This act first applies to persons sentenced on the effective date of this
 10 subsection.

11 (END)

d-note
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3022/7 dn

CMH: :....

date

PI
jcd

Matt:

Please review this draft carefully. I drafted the possible term increases to fit into our classification scheme. The statute on which the proposed language seems to be based predates Truth in Sentencing so it does not cleanly fit the revised classification scheme. This new provision reflects the current penalties for crimes. Is that okay? ✓

Note that, under a bifurcated sentence, "term of imprisonment" includes both a term of confinement and a term of extended supervision. An increase in the "maximum term of imprisonment," therefore, may not result in the person being confined for a longer period. The person will have a longer sentence but the addition could simply lengthen the person's term of extended supervision. Is that okay? If you prefer to create a mandatory minimum term of confinement in a correctional facility, please let me know and I will redraft.

Please note that I slightly modified the definition of "in the presence of a child." I was concerned that the prosecutor would have to prove beyond a reasonable doubt that the child heard the act or witnessed the act under the suggested definition. This could increase the burden on the prosecutor. For instance, the defense could argue that the baby was sleeping and raise a doubt as to this element. Is my change okay? ✓

Would you like to include a violation of s. 943.01? For instance, if the actor damages property belonging to a former spouse in front of a child, would you like that actor to be subject to the penalty enhancement? In the past requesters asked for that addition and some thought such a provision would cover intentional injuries to pets, as a form of domestic abuse, in the presence of a child. Perhaps the district attorney with whom you are working may have an opinion on that addition.

I drafted this proposal as a preliminary draft in case you want to work through some changes.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3022/P1dn
CMH:jld:rs

June 23, 2009

Matt:

Please review this draft carefully. I drafted the maximum term increases to fit into our classification scheme. The statute on which the proposed language seems to be based predates Truth in Sentencing so it does not cleanly fit the revised classification scheme. This new provision reflects the current penalties for crimes. Is that okay?

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Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

Hanaman, Cathlene

From: Wuebke, Matt
Sent: Monday, June 29, 2009 1:40 PM
To: Hanaman, Cathlene
Subject: Domestic Violence Penalty Enhancer

Cathlene,

The bill draft (09-3022) looks good. Please have the bill drafted for introduction.

Thanks,
Matt

Matt Wuebke
Office of Sen. Sheila Harsdorf



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3022/P1
CMH:jld:rs

[Handwritten signature]

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

X

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1 AN ACT *to renumber and amend* 939.621; *to amend* 968.075 (5) (b) 1., 968.075
2 (5) (b) 2., 968.075 (5) (b) 3. and 973.01 (2) (c) 2. a.; and *to create* 939.621 (1) and
3 939.621 (3) of the statutes; **relating to:** penalty enhancers for committing
4 domestic abuse in the presence of a child and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person who commits a crime under specified circumstances may be subject to penalty enhancers, or penalties that are more severe than those that ordinarily apply to the crime. This bill creates a penalty enhancer for a person who commits an act of domestic abuse, as defined in current law, that is a crime while in the presence of a child. Under this bill, if the crime is a Class B misdemeanor, the maximum sentence may be increased by not more than nine months, if the crime is a Class A misdemeanor, the maximum sentence may be increased by not more than 13 months, if the crime is a Class I felony, the maximum sentence may be increased by not more than three years, and if the crime is a Class A to H felony, the maximum sentence may be increased by not more than five years.

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9 973.01 (2) (c) 2. a. Sections 939.621 (2) and (3), 939.632, 939.645, 946.42 (4),
10 961.46, and 961.49.

11 **SECTION 8. Initial applicability.**

12 (1) This act first applies to persons sentenced on the effective date of this
13 subsection.

14 (END)

The treatment of section 939.621 (3) ✓
th

Basford, Sarah

From: Wuebke, Matt
Sent: Tuesday, June 30, 2009 2:45 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3022/1 Topic: Domestic abuse in the presence of a child

Please Jacket LRB 09-3022/1 for the SENATE.