



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1143/2

JEO:jlg:km

1999 ASSEMBLY BILL 438

September 2, 1999 – Introduced by Representatives WASSERMAN, BLACK, COLON, F. LASEE, MUSSER and RYBA, cosponsored by Senator ERPENBACH. Referred to Committee on Criminal Justice.

1 AN ACT **to renumber and amend** 973.17 (1); **to amend** 939.50 (1) (intro.),
2 967.05 (1) (b), 968.05 (title), 968.05 (1), 968.05 (2), 970.02 (1) (c), 971.02 (1),
3 973.17 (title), 973.17 (2) and 973.17 (3); and **to create** 939.55 and 973.17 (1g)
4 of the statutes; **relating to:** organizations that are convicted of homicide and
5 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law provides the following maximum penalties for persons convicted of the homicide specified:

<u>Crime</u>	<u>Maximum Period of Imprisonment (for offenses occurring before 12/31/99)</u>	<u>Maximum Period of Imprisonment (for offenses occurring on or after 12/31/99)</u>	<u>Maximum Fine</u>
First-degree intentional homicide	life sentence	life sentence	no fine option
First-degree reckless homicide	40 years	60 years	no fine option
Second-degree intentional homicide	40 years	60 years	no fine option
Second-degree reckless homicide	10 years	15 years	\$10,000

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Homicide by negligent handling of weapon, explosives or fire	5 years	10 years	\$10,000
Homicide by intoxicated use of vehicle	40 years	60 years	no fine option
Homicide by intoxicated use of firearm	5 years	10 years	\$10,000
Homicide by negligent operation of vehicle	2 years	5 years	\$10,000
Homicide by negligent control of vicious animal	10 years	15 years	\$10,000

Also, under current law a corporation, partnership, association or any other organization that is not a human being is considered to be a "legal person". Generally, a legal person may be convicted of violating a criminal law. However, unlike a human being, a legal person may not be imprisoned, although a legal person may be fined. Thus, a legal person convicted of a homicide under current law may be fined up to the maximum amount specified for the homicide in the above chart. If imprisonment is the only sentencing option, as it is in cases involving first-degree or second-degree intentional homicide, first-degree reckless homicide or homicide by intoxicated use of a vehicle, a legal person may not be convicted of the crime. These general principles were recently reaffirmed in *State v. Knutson, Inc.*, 196 Wis. 2d 86 (Ct. App. 1995).

This bill provides that a legal person convicted of any of the homicides specified in the above chart must be fined an amount that is not more than \$250,000. Thus, the bill has the following consequences: 1) it increases for legal persons (but not human beings) the maximum potential fine for those homicides in the above chart that currently have a maximum fine of \$10,000; and 2) it allows a legal person to be convicted of first-degree or second-degree intentional homicide, first-degree reckless homicide or homicide by intoxicated use of a vehicle by providing a fine for legal persons who commit first-degree or second-degree intentional homicide, first-degree reckless homicide or homicide by intoxicated use of a vehicle.

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

1 **SECTION 1.** 939.50 (1) (intro.) of the statutes is amended to read:

2 939.50 (1) (intro.) Except as provided in ss. 939.55 and 946.83 and to 946.85,
3 felonies in chs. 939 to 951 are classified as follows:

4 **SECTION 2.** 939.55 of the statutes is created to read:

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1 **939.55 Penalty for homicide committed by an organization.** (1) In this
2 section, “organization” means a person other than an individual.

3 **(2)** An organization that is convicted of violating s. 940.01, 940.02, 940.05,
4 940.06, 940.07, 940.08, 940.09 or 940.10 is guilty of a felony and shall be fined not
5 more than \$250,000.

6 **SECTION 3.** 967.05 (1) (b) of the statutes is amended to read:

7 967.05 (1) (b) ~~In the case of a corporation or limited liability company an~~
8 ~~organization, as defined in s. 939.55 (1),~~ an information;

9 **SECTION 4.** 968.05 (title) of the statutes is amended to read:

10 **968.05** (title) ~~**Corporations or limited liability companies**~~
11 **Organizations: summons in criminal cases.**

12 **SECTION 5.** 968.05 (1) of the statutes is amended to read:

13 968.05 (1) When ~~a corporation or limited liability company an organization, as~~
14 ~~defined in s. 939.55 (1),~~ is charged with the commission of a criminal offense, the
15 judge or district attorney shall issue a summons setting forth the nature of the
16 offense and commanding the ~~corporation or limited liability company organization~~
17 to appear before a court at a specific time and place.

18 **SECTION 6.** 968.05 (2) of the statutes is amended to read:

19 968.05 (2) The summons ~~under sub. (1)~~ for the appearance of ~~a corporation or~~
20 ~~limited liability company an organization~~ may be served as provided ~~for service of~~
21 ~~a summons upon a corporation or limited liability company in a civil action under s.~~
22 ~~801.11.~~ The summons shall be returnable not less than 10 days after service.

23 **SECTION 7.** 970.02 (1) (c) of the statutes is amended to read:

24 970.02 (1) (c) That the defendant is entitled to a preliminary examination if
25 charged with a felony in any complaint, including a complaint issued under s. 968.26,

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1 or when the defendant has been returned to this state for prosecution through
2 extradition proceedings under ch. 976, or any indictment, unless waived in writing
3 or in open court, or unless the defendant is a ~~corporation or limited liability company~~
4 ~~an organization, as defined in s. 939.55 (1).~~

5 **SECTION 8.** 971.02 (1) of the statutes is amended to read:

6 971.02 (1) If the defendant is charged with a felony in any complaint, including
7 a complaint issued under s. 968.26, or when the defendant has been returned to this
8 state for prosecution through extradition proceedings under ch. 976, or any
9 indictment, no information or indictment shall be filed until the defendant has had
10 a preliminary examination, unless the defendant waives such examination in
11 writing or in open court or unless the defendant is a ~~corporation or limited liability~~
12 ~~company an organization, as defined under s. 939.55 (1).~~ The omission of the
13 preliminary examination shall not invalidate any information unless the defendant
14 moves to dismiss prior to the entry of a plea.

15 **SECTION 9.** 973.17 (title) of the statutes is amended to read:

16 **973.17 (title) Judgment against a ~~corporation or limited liability~~**
17 **~~company an organization.~~**

18 **SECTION 10.** 973.17 (1) of the statutes is renumbered 973.17 (1r) and amended
19 to read:

20 973.17 (1r) If a ~~corporation or limited liability company~~ an organization fails
21 to appear within the time required by the ~~a~~ summons issued under s. 968.05, the
22 default of such ~~corporation or limited liability company~~ organization may be
23 recorded and the charge against it taken as true, and judgment shall be rendered
24 accordingly.

25 **SECTION 11.** 973.17 (1g) of the statutes is created to read:

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1 **973.17 (1g)** In this section, “organization” has the meaning given in s. 939.55
2 (1).

SECTION 12. 973.17 (2) of the statutes is amended to read:

4 973.17 (2) Upon default of the defendant corporation or limited liability
5 company an organization under sub. (1r) or upon conviction of an organization,
6 judgment for the amount of the fine shall be entered.

SECTION 13. 973.17 (3) of the statutes is amended to read:

8 973.17 (3) A judgment against a corporation or limited liability company an
9 organization shall be collected in the same manner as in civil actions.

SECTION 14. Initial applicability.

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

13 (END)