



2009 SENATE BILL 22

January 30, 2009 – Introduced by Senator ERPENBACH, by request of Mike and Lori Farrell of Waunakee, in honor and remembrance of the life and death of their grandson Aaron Michael. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to amend** 973.01 (2) (c) 2. a.; and **to create** 939.640 of the statutes;
2 **relating to:** reckless homicide of a child by a parent or caregiver and providing
3 a penalty.

Analysis by the Legislative Reference Bureau

Under current law, if an individual is convicted of a crime, the court has discretion in determining the length of any sentence that it imposes and, if the person is sentenced to prison, how much of the sentence is to be served in prison (the term of confinement) and how much is to be served in the community (the term of extended supervision). The court's discretion, however, is limited by statutes that set maximum penalties for crimes. For instance, for the crime of first-degree reckless homicide, the maximum term of confinement is either 40 years, for causing a death under circumstances that show utter disregard for human life, or 25 years, for causing a death by manufacturing, distributing, delivering, or administering a controlled substance and, for the crime of second-degree reckless homicide, the maximum term of confinement is 15 years.

Under this bill, an individual who is convicted of first-degree or second-degree reckless homicide is subject to a penalty enhancer if the victim of the reckless homicide is a child who is not older than five years of age and the convicted individual is a parent or caregiver of that child. The penalty enhancer varies based on the age of the victim: if the victim is under the age of one year, the maximum term of confinement is increased by 20 years; if the victim is at least one year old but younger than three years old, the maximum term of confinement is increased by ten years;

SENATE BILL 22

and if the victim is at least three years old but not older than five years old, the maximum term of confinement is increased by 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.** 939.640 of the statutes is created to read:

2 **939.640 Increased penalty for reckless homicide of a child.** (1) In this
3 section, “caregiver” means, with respect to the child who is the victim of a violation
4 of s. 940.02 or 940.06:

5 (a) The child’s parent, grandparent, greatgrandparent, stepparent, brother,
6 sister, stepbrother, stepsister, half brother, or half sister.

7 (b) The child’s guardian.

8 (c) The child’s legal custodian.

9 (d) A person who resides or has resided regularly or intermittently in the same
10 dwelling as the child.

11 (e) An employee of a residential facility or residential care center for children
12 and youth in which the child was or is placed.

13 (f) A person who provides or has provided care for the child in or outside of the
14 child’s home.

15 (g) Any other person who exercises or has exercised temporary or permanent
16 control over the child or who temporarily or permanently supervises or has
17 supervised the child.

18 (h) Any relative of the child other than a relative specified in par. (a).

