

1999 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB111)

Received: 02/16/2000

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Gary George (608) 266-2500**

By/Representing: **Dan**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - sentencing**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Theft from vulnerable persons

Instructions:

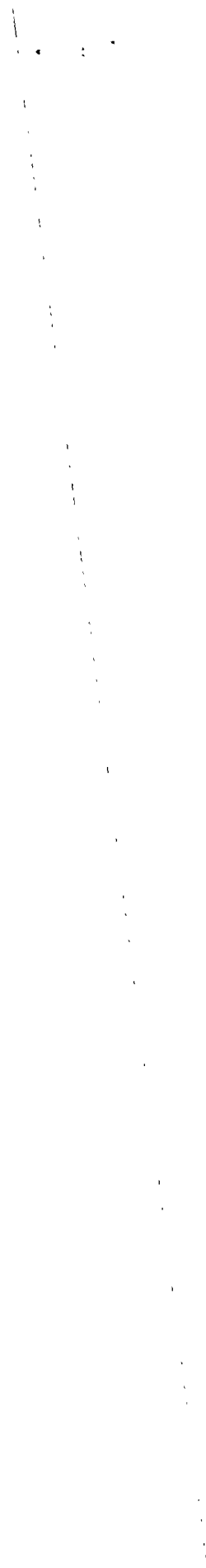
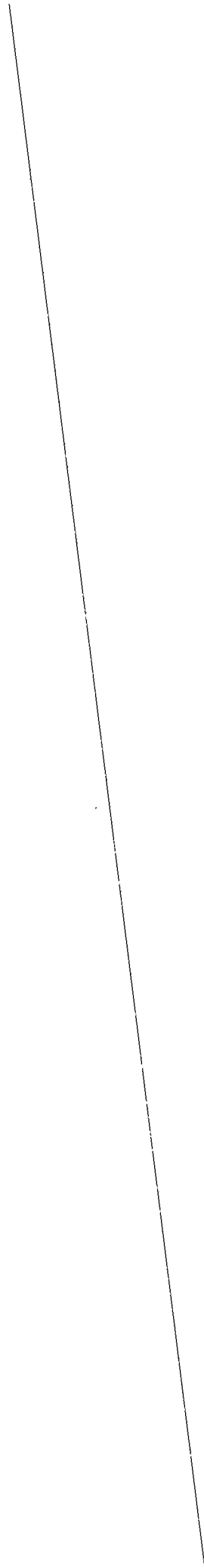
See Attached

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>
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/1			martykr 02/17/2000	_____	lrb_docadmin 02/17/2000	lrb_docadmin 02/17/2000	
/2	mdsida 03/08/2000	jgeller 03/08/2000	hhagen 03/08/2000	_____	lrb_docadmin 03/08/2000	lrb_docadmin 03/08/2000	

FE Sent For:

<END>



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		3/8 hh		_____			

FE Sent For:

<END>

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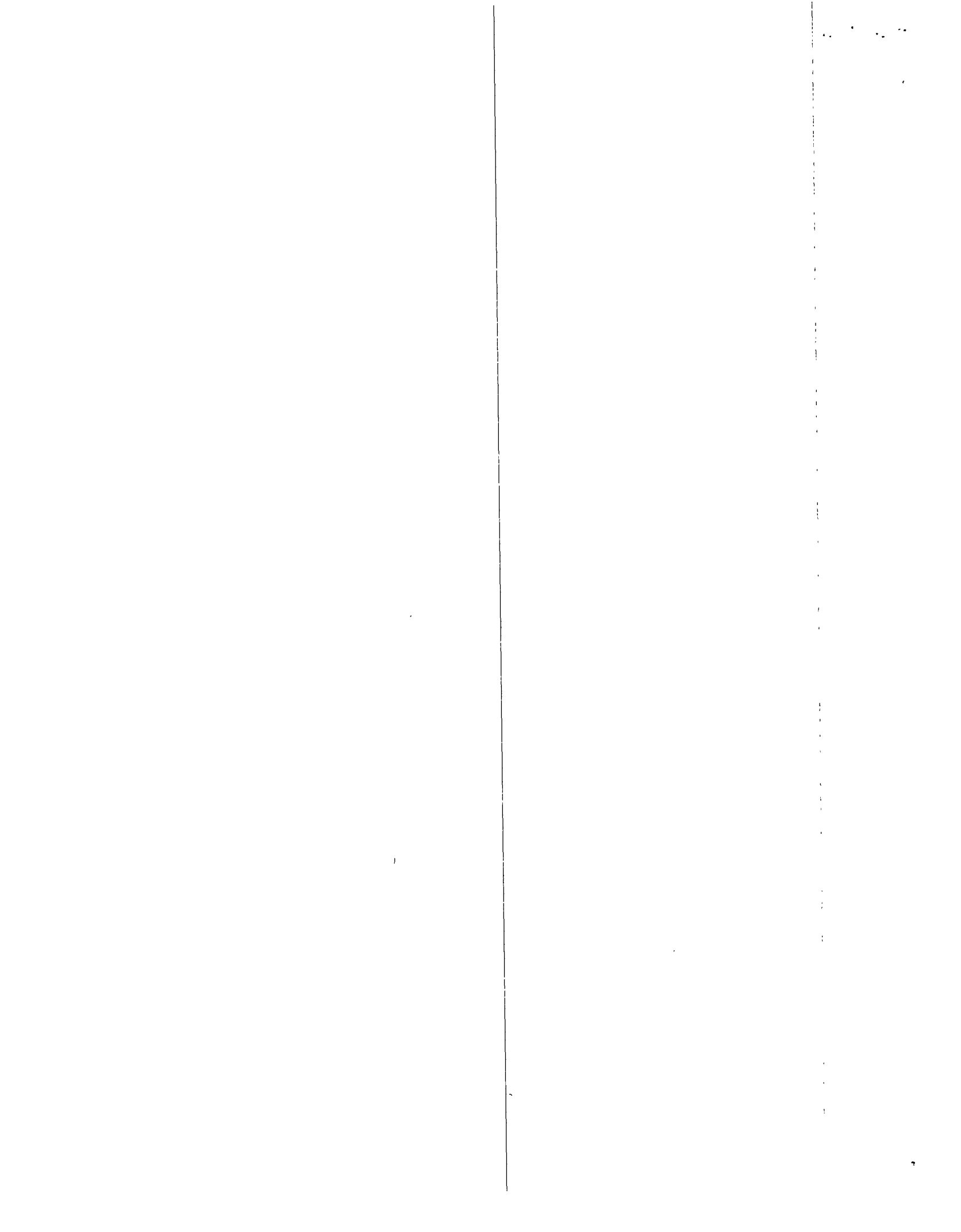
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/?	olsenje	<i>cmx /1</i>	<i>km 2 /17</i>	<i>ls 2 /km 17</i>			
FE Sent For:		<i>2/16</i>					<END>



Olsen, Jefren

From: Rossmiller, Dan
Sent: Thursday, February 10, 2000 11:22 AM
To: Olsen, Jefren; Dsida, Michael
Subject: FW: AB 111 - embezzlement penalty enhancer

Jefren and Mike:

I spoke with Mike about having these suggested changes drafted. You have permission from our office to speak with Ellen Henningsen if you have any questions or need additional information.

-----Original Message-----

From: Henningsen, Ellen J.
Sent: Thursday, February 10, 2000 10:43 AM
To: Rossmiller, Dan
Cc: Richard, JoAnna M.; Henningsen, Ellen J.
Subject: AB 111 - embezzlement penalty enhancer

Dan - JoAnna Richard asked that I e-mail to you the attached memo from me to Joanna which contains the Department's proposed language changes to AB 111, as amended by the Sub Amendment. Thanks.



AB 111 - memo
-proposed change..

Ellen Henningsen
Elder Advocate
Wisconsin Department of Justice
Office of Crime Victim Services
608-261-8643

MEMO

**Department of Justice
Office of Crime Victim Services**

To: JoAnna Richard

CC: Kitty Kocol; Steve Tinker

From: Ellen J. Henningsen
Elder Advocate

Date: February 10, 2000

Re: **1999 AB 111**
Penalty Enhancer for Embezzlement from Vulnerable Adults

Here are my proposed changes to 1999 Assembly Bill 111, as amended by Assembly Substitute Amendment 1. The order of the proposed changes follows the order in my February 2 memo to the Senate Judiciary Committee. The language quoted below is directly from the Sub Am with my underlined additions and struck-threw deletions.

1) Expand the bill to **cover all financial crimes** committed by caregivers, not just embezzlement.

"(2) (a) If a person commits a violation of ss. 939.32, 943.20 ~~(1)-(b)~~, 943.201, 943.38, 943.39, or 943.40, under all of the following circumstances, the penalties are increased as provided in par. (b): . . . "

*NB:
Value
long - doesn't
make sense*

The crimes that I have included in the list are (in order of appearance): attempted theft (all types); theft (all types); misappropriation of personal identifying information or documents; forgery (including uttering and possession with intent to utter); fraudulent writings; and fraudulent destruction of certain writings.

2) Expand the bill to **protect all elderly people**, regardless of capacity, place of residence or participation in programs.

"(1) In this section:

(a) 'Caretaker' means a guardian, custodian, trustee or other person, whether or not appointed by a court, who is responsible for the care, custody or control of a vulnerable protected adult or the estate of a vulnerable protected adult, or any other person who stands in a position of trust with a vulnerable protected adult. 'Caretaker' includes a person acting under a durable power of attorney.

* * * *

(#) 'Elder person' means a person who is 60 years or older.¹

(#) 'Protected adult' means any of the following:

1. A vulnerable adult.
2. A patient of resident of a facility or program specified in s. 940.295 (2).
3. An elder person.

(2) (a) If a person commits a violation of s ss. 939.32, 943.20 (1)-(b), 943.201, 943.38, 943.39, or 943.40, under all of the following circumstances, the penalties are increased as provided in par. (b):

1. The person who commits the violation is a caretaker.
2. The victim of the violation is a vulnerable protected adult for whom the person is a caretaker.
3. The value of the property taken exceeds \$2,500."

You will note that I created a new category, that of "protected adult," which contains all three categories of victims. I felt this was the clearest way to accomplish the goal of covering all three categories of victims while maintaining the definition of "vulnerable adult" as found elsewhere in the statutes.

Consideration should be given to expanding the current penalty enhancer for theft for property valued at \$2,500 or less to all financial crimes and to all elderly. See sec. 943.20 (3).

3) Make the **definition of "vulnerable adult"** identical to the definition of that term used elsewhere in the statutes (chs. 55, 813 and 940).

~~"(g) 'Vulnerable adult' means a person who meets any of the following criteria:~~

~~1. The person is 18 years of age or older, is a developmentally disabled person or has infirmities of aging, mental illness or other like incapacities, and is substantially mentally incapable of providing for his or her needs for food, shelter, clothing or personal or health care. has the meaning given in s. 940.285 (1) (e).~~

~~2. The person is a patient or resident of a facility or program specified in s. 940.295 (2)."~~

¹ I chose "60 years or older" because it is the age used in the Elder Abuse Reporting System, sec. 46.90, Stats. I purposely did not refer back to sec. 46.90 because the definition there includes not only those 60 years and older, but also those suffering from the infirmities of aging. This latter group is covered by the definition of "vulnerable adults" contained in the bill, and I wanted to avoid redundant definitions. You should be aware that "62 years or older" is the age used in secs. 100.264 and 134.95 relating to certain violations of civil unfair trade practices.

If you combine this suggestion with my suggestion in item 2) above, the bill will still cover the specified patients and residents, even if they are not covered by the definition of "vulnerable adult."

If you adopt this suggestion, I think the definitions of "developmentally disabled person," "infirmities of aging," "mental illness," and "other like incapacities" can be deleted from the bill; these terms are defined in s. 940.285.

I believe my suggestions also take care of the problem that children were included in the bill's definition of "vulnerable adult" by virtue of their residence at certain facilities. However, they're now included in the definition of "protected adult." If that's a problem, you could change the term to "protected person," except that there may cause confusion over whether "person" is the victim or the perpetrator.

4) **Include all Powers of Attorney**, whether durable or non-durable.

"(1) In this section:

(a) 'Caretaker' means a guardian, custodian, trustee, agent, attorney-in-fact or other person, whether or not appointed by a court, who is responsible for the care, custody or control of a vulnerable protected adult or the estate of a vulnerable protected adult, or any other person who stands in a position of trust with a vulnerable protected adult. 'Caretaker' includes a person acting under a durable power of attorney, durable or otherwise."

* * * *

(c) Durable Ppower of attorney' means a ^{writing by} ~~power of attorney~~ by which a principal designates another as his or her agent ~~in writing~~. ^{has the meaning} given in s. 243.07 (1) (a)."

In order to have the bill cover non-durable Powers of Attorney, as well as durable Powers of Attorney, I have used the phrase "durable or otherwise" which is the phrase used in sec. 243.07. I have also changed the definition to exclude the requirement that the document be durable; I have taken the language from the first part of sec. 243.07 (1) (a). However, a definition of power of attorney may not be needed at all.

Don't define

I added "agent" to the definition of caretaker in order to make sure that all types of caretakers are covered.

I also added "attorney-in-fact" to the definition of caretaker on the recommendation of AAG Judy Schultz, to make it clear that licensed attorneys acting on behalf of protected adults are included in the definition of "caretaker."

N/A

- 5) Absent passage of the Truth in Sentencing revisions, the penalty enhancer created by this bill should be located in the same place as the current penalty enhancer for embezzling property worth \$2,500 or less.

Because we are proposing to expand the covered crimes to all financial crimes, it no longer makes sense to include the proposed enhancer in the embezzlement section. The proposed location is appropriate. However, if that suggestion is rejected and the bill will be limited to embezzlement, the enhancer should be placed in sec. 943.20.

NO

N/A

- 6) Consideration should be given to using the present language in sec. 943.20.

Because we are proposing to expand the covered crimes to all financial crimes, the suggestion of using the present language of sec. 943.20 no longer applies.

SENATE

Soon

~~XXXXXXXXXX~~

~~ASSEMBLY~~ SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 111

0307/1

September 14, 1999 - Offered by Representative GOETSCH

1 AN ACT ^{regulate} relating to: committing theft against certain persons and providing
2 a penalty.

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

3 SECTION 1. 939.627 (title) of the statutes, as created by 1999 Wisconsin Act
4 (this act), is renumbered ~~973.017 (5m) (title)~~ and amended to read:
5 973.017 (5m) (title) INCREASED PENALTY AGGRAVATING FACTORS; THEFT BY
6 CARETAKER OF VULNERABLE ADULT.

7 SECTION 2. 939.627 of the statutes is created to read:
8 ^{crimes committed} 939.627 Increased penalty; ~~theft~~ ^{person} by caretaker of vulnerable ~~adult~~ (1)

9 In this section: ^{agent, attorney-in-fact}

10 (a) "Caretaker" means a guardian, custodian, trustee or other person, whether
11 or not appointed by a court, who is responsible for the care, custody or control of a
12 vulnerable ^{person} ~~adult~~ or the estate of a vulnerable ~~adult~~, or any other person who stands

① in a position of trust with a vulnerable ^{person} adult. "Caretaker" includes a person acting
② under a ~~power~~ power of attorney, durable or otherwise

③ (b) "Developmentally disabled person" has the meaning given in s. 55.01 (2)

④ (c) "Durable power of attorney" has the meaning given in s. 243.07 (1)(a).

5 (d) "Infirmities of aging" has the meaning given in s. 55.01 (3).

6 (e) "Mental illness" has the meaning given in s. 55.01 (4m).

7 (f) "Other like incapacities" has the meaning given in s. 55.01 (5).

⑧ (B) (g) "Vulnerable ^{person} adult" means a ^{person} person who ^{meets} any of the following ^{criteria} criteria: stays

⑨ 1. The person is 18 years of age or older, is a developmentally disabled person
10 or has infirmities of aging, mental illness or other like incapacities, and is
11 substantially mentally incapable of providing for his or her needs for food, shelter,
12 clothing or personal or health care.

13 2. ~~The person is~~ is a patient or resident of a facility or program specified in s.
14 940.295 (2). is convicted of committing or attempting to or of committing a violation of s. 943.201 and

15 (2) (a) If a person commits a violation of s. 943.20 under all of the and
16 following circumstances or attempts to commit the penalties are increased as provided in par. (b):

17 1. The person who commits the violation is a caretaker.

18 2. The victim of the violation is a vulnerable ^{person} adult for whom the ^{convicted} person is a
19 caretaker. or attempted violation

20 3. The value of the property when exceeds \$2,500. that is involved in the violation

SNS 2-21

21 (b) If par. (a) applies, the maximum period of imprisonment may be increased
22 by 5 years and the maximum fine may be increased by \$5,000.

23 (3) This section provides for the enhancement of the penalties applicable for
24 the underlying crime. The court shall direct that the trier of fact find a special verdict
25 as to all of the issues specified in sub. (2) (a) or (am), whichever is applicable

93. An individual who is 60 years of age or older.

A vulnerable adult, as defined in s. 940.285 (1)(e).

1 **SECTION 3.** 939.627 (1) of the statutes, as created by 1999 Wisconsin Act ... (this
2 act), is renumbered 973.017 (5m) (a), and 973.017 (5m) (a) (intro.), as renumbered,
3 is amended to read:

4 973.017 (5m) (a) (intro.) In this ~~section~~ subsection:

5 **SECTION 4.** 939.627 (2) (a) of the statutes, as created by 1999 Wisconsin Act
6 (this act), is renumbered 973.017 (5m) (b), and 973.017 (5m) (b) (intro.), 1. and 2., as
7 renumbered, are amended to read:

8 973.017 (5m) (b) (intro.) ~~If~~ When making a sentencing decision concerning a
9 ~~person commits a violation of~~ convicted of violating s. 943.20 (1) (b), the court shall
10 consider as an aggravating factor the fact that the violation was committed under all
11 of the following circumstances, ~~the penalties are increased as provided in par. (b):~~

- 12 1. The person who ~~commits~~ committed the violation is a caretaker.
- 13 2. The victim of the violation ~~is~~ was a vulnerable adult for whom the person ~~is~~
14 was a caretaker.

15 **SECTION 5.** 939.627 (2) (b) of the statutes, as created by 1999 Wisconsin Act
16 (this act), is repealed.

17 **SECTION 6.** 939.627 (3) of the statutes, as created by 1999 Wisconsin Act (this
18 act), is repealed.

19 **SECTION 7. Nonstatutory provisions.**

20 (1) RECONCILIATION PROVISION. The renumbering and amendment of section
21 939.627 (title), (1) and (2) (a) of the statutes, as created by this act, the repeal of
22 section 939.627 (2) (b) and (3) of the statutes, as created by this act, and SECTION 8
23 (1), (2) and (3) of this act are void unless 1999 Assembly Bill 465 is enacted into law
24 before July 1, 2000, and unless 1999 Assembly Bill 465 creates section 973.017 of the

1 statutes in exactly the same form as it appears in section 757 of 1999 Assembly Bill
2 465.

3 **SECTION 8. Effective dates.** This act takes effect on the day after publication,
4 except as follows:

5 (1) If 1999 Assembly Bill 465 has been enacted on or before the day after
6 publication of this act and the day after publication of this act is on or before
7 December 31, 1999, the renumbering and amendment of section 939.627 (title), (1)
8 and (2) (a) of the statutes, as created by this act, and the repeal of section 939.627
9 (2) (b) and (3) of the statutes, as created by this act, take effect on December 31, 1999.

10 (2) If 1999 Assembly Bill 465 has been enacted on or before the day after
11 publication of this act and the day after publication of this act is after December 31,
12 1999, the renumbering and amendment of section 939.627 (title), (1) and (2) (a) of the
13 statutes, as created by this act, and the repeal of section 939.627 (2) (b) and (3) of the
14 statutes, as created by this act, take effect on the day after publication of this act.

15 (3) If 1999 Assembly Bill 465 is enacted after the day after publication of this
16 act but before July 1, 2000, the renumbering and amendment of section 939.627
17 (title), (1) and (2) (a) of the statutes, as created by this act, and the repeal of section
18 939.627 (2) (b) and (3) of the statutes, as created by this act, take effect on December
19 31, 1999, or on the date that the creation of section 973.017 of the statutes by 1999

20 ~~Assembly Bill 465 takes effect, whichever is later.~~

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0307/1ins
JEO:.....

1 **INSERT 2-21:**

2 (am) If a person is convicted of committing or attempting to commit a violation
3 of s. 943.38, 943.39 or 943.40[✓] and all of the following apply, the penalties are
4 increased as provided in par. (b):[✓]

5 1. The person who commits or attempts to commit the violation is a caretaker.[✓]

6 2. The victim of the violation or attempted violation is a vulnerable person[✓] for
7 whom the convicted person is a caretaker.[✓]

(END OF
INSERT)

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRBs03071
JEO&MGD:cmh:km

Handwritten initials and circled number 2, including "JLg" and "RMR".

SENATE SUBSTITUTE AMENDMENT,
TO 1999 ASSEMBLY BILL 111

TODAY
@ 1:00 p.m.

Regen

1 AN ACT to create 939.627 of the statutes; relating to: committing theft against
2 certain persons and providing a penalty.

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

3 SECTION 1. 939.627 of the statutes is created to read:

4 **939.627 Increased penalty; crimes committed by caretaker of**
5 **vulnerable person. (1)** In this section:

6 (a) "Caretaker" means a guardian, custodian, trustee, agent, attorney-in-fact
7 or other person, whether or not appointed by a court, who is responsible for the care,
8 custody or control of a vulnerable person or the estate of a vulnerable person, or any
9 other person who stands in a position of trust with a vulnerable person. "Caretaker"
10 includes a person acting under a power of attorney, durable or otherwise.

11 (b) "Vulnerable person" means any of the following:

1 1. A vulnerable adult, as defined in s. 940.285 (1) (e).

2 2. A patient or resident of a facility or program specified in s. 940.295 (2).

3 3. An individual who is 60 years of age or older.

4 (2) (a) If a person is convicted of committing or attempting to commit a violation
5 of s. 943.20 or of committing a violation of s. 943.201 and all of the following apply,
6 the penalties are increased as provided in par. (b):

7 1. The person who commits or attempts to commit the violation is a caretaker.

8 2. The victim of the violation or attempted violation is a vulnerable person for
9 whom the convicted person is a caretaker.

10 3. The value of the property that is involved in the violation exceeds \$2,500.

11 (am) If a person is convicted of committing or attempting to commit a violation
12 of s. 943.38, 943.39 or 943.40 and all of the following apply, the penalties are
13 increased as provided in par. (b):

14 1. The person who commits or attempts to commit the violation is a caretaker.

15 2. The victim of the violation or attempted violation is a vulnerable person for
16 whom the convicted person is a caretaker.

17 (b) If par. (a) or (am) applies, the maximum period of imprisonment may be
18 increased by 5 years and the maximum fine may be increased by \$5,000.

19 (3) This section provides for the enhancement of the penalties applicable for
20 the underlying crime. The court shall direct that the trier of fact find a special verdict
21 as to all of the issues specified in sub. (2) (a) or (am), whichever is applicable.

22 (END)