

1999 DRAFTING REQUEST

Bill

Received: **01/11/99**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Kelso (608) 266-0485**

By/Representing: **Tom**

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

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - sentencing**

Extra Copies:

Topic:

Enhanced penalty for committing battery in 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>
/?	olsenje 01/28/99	ygeller 01/31/99		_____			
/1			martykr 01/31/99	_____	lrb_docadmin 01/31/99	lrb_docadmin 02/2/99	

FE Sent For:

*Not
Required*

<END>

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1?	olsenje	1/19/99 1/29/99 1/31	1/31	1/31	1/31		

FE Sent For:

<END>

1999

Date (time) needed _____

LRB - 1697 / 1

BILL

D-Note

JEO : pgt :
+
jlg

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the statutes; relating to:

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

For the 3 titles used in an analysis, in the component bar:

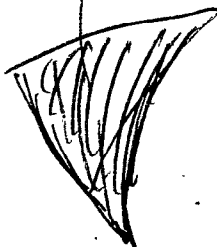
For the main heading [old =M], execute: create → anal: → title: → head

For the subheading [old =S], execute: create → anal: → title: → sub

For the sub-subheading [old =P], execute: create → anal: → title: → sub-sub

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

SECTION #.



1997 ASSEMBLY BILL 868

March 2, 1998 - Introduced by Representatives KEESO, SCHAEFER, SPILLNER, GUNDERSON, LABWIG, KAUFERT and DOBYNS, cosponsored by Senator ROESSLER. Referred to Committee on Criminal Justice and Corrections.

- ① ~~AN ACT to renumber and amend 939.621, and to create 939.621 (2) of the~~
- ② ~~statutes relating to~~ domestic abuse and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law provides a number of penalty enhancement provisions to allow for increased penalties whenever crimes are committed under specified circumstances. One such penalty enhancement provision relates to the commission of a crime following an arrest for a domestic abuse incident. Generally, a person who is arrested in a domestic abuse incident must avoid contact with the alleged victim for 72 hours immediately following the arrest. If the arrested person commits another act of domestic abuse during the 72-hour period and that act constitutes a crime, the maximum period of imprisonment for the crime may be increased by not more than **two** years.

two →
→
five

This bill provides for an enhanced penalty for certain felony battery offenses ~~that are~~ committed during a domestic abuse incident. Under the bill, the maximum period of imprisonment for the covered offenses may be increased by not more than **five** years if all of the following apply: 1) the conduct constituting the battery involved an act by the defendant against his or her spouse or former spouse, against an adult with whom the defendant resides or formerly resided or against an adult with whom the defendant has created a child; and 2) a child of the defendant or the victim was present at the time and place the battery was committed.

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

and for battery or threat to a witness, if the offense is

ASSEMBLY BILL 868

Placed w/ STATs.

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SECTION 1. 939.621 of the statutes is renumbered 939.621 (1) and amended to read:

939.621 (1) (title) OFFENSES COMMITTED DURING NO-CONTACT PERIOD. If a person commits an act of domestic abuse, as defined in s. 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 s. 968.075 (5). The 72-hour period applies whether or not there has been a waiver by the victim under s. 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 subsection changes the status of a misdemeanor to a felony.

SECTION 2. 939.621 (2) of the statutes is created to read:

939.621 (2) COMMITTING BATTERY IN THE PRESENCE OF A CHILD. (a) If an adult person is convicted of a crime specified in ~~§~~ 940.19 (2) to (6) ~~or~~ 940.20 (1m) or ~~§~~ 940.201, the maximum term of imprisonment for the crime may be increased by not more than 5 years if all of the following apply:

1. The conduct constituting the crime involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child.

2. At the time of the conduct constituting the crime, a natural child, adopted child, foster child, treatment foster child or stepchild of the adult person or the victim was present at the place where the crime was committed.

ASSEMBLY BILL 868

1 (b) This subsection provides for the enhancement of the penalties applicable
2 for the underlying crime. The court shall direct that the trier of fact find a special
3 verdict as to all of the issues specified in par. (a).

SECTION 3. Initial applicability.

4 (1) This act first applies to offenses committed on the effective date of this
5 subsection.
6

7 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4607/1dn

JEO:mg:jf

new
date Monday, February 16, 1998

1697/1dn

Ⓟ This is a redraft of
1997 Assembly Bill 868.

~~Matt Phillips:~~

~~Please review this draft carefully to make sure that it does what you want it to do.~~
Note the following when reviewing the draft:

1. The requirement that a child be "present" may be ambiguous in some cases, which might result in practical and due process difficulties in applying the enhancer. The situation in which a child is in the room where a battery occurs is clearly covered; but what about the situation in which, say, the child is in the victim's apartment and the battery takes place in the hallway outside the apartment? Or in the lobby of the apartment building? Or in the parking garage below the apartment building? Or out on the sidewalk in front of the apartment building? Should the child have to see or hear the battery being committed? What is your intent on this issue?

2. Does the list of children covered in proposed s. 939.621 (2) (a) [✓]2. [✓]effect your intent?

3. Do you want to prohibit the application of the enhancer in proposed s. 939.621 (2) (a) [✓]if any other enhancers have already been applied?

4. In part because of the potential ambiguities noted in #1, above, this draft requires that the fact finder determine whether the child was present in the place where the battery was committed. See proposed s. [✓]939.621 (2) (b); compare ss. [✓]939.625 (2), [✓]939.632 (4), [✓]939.645 (3) and [✓]939.648 (4), stats.

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
266-8906

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/31/99

To: Representative Kelso

Relating to LRB drafting number: LRB-1697

Topic

Enhanced penalty for committing battery in presence of a child

Subject(s)

Criminal Law - sentencing

1. **JACKET** the draft for introduction

Carol Kelso

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Jefren E. Olsen, Legislative Attorney
Telephone: (608) 266-8906