

For: 3420/P1

Please compile the following:

99-0590/P5

99-2889/P3

99-3265/P1

99-3266/P1

99-3361/P2

99-3370/P2

1999 DRAFTING REQUEST

BillReceived: **10/15/1998**Received By: **olsenje**Wanted: **As time permits**

Identical to LRB:

For: **Legislative Reference Bureau**By/Representing: **JEO**

This file may be shown to any legislator: NO

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Criminal penalties study committee recommendations

Instructions:

See Attached

Drafting History:

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*****NOTES**

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KMG 8/6

JEO
KMG 7

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I?	olsenje	/P1-11-2 King	11-26.P.	11-26.P. JF	<u>Submitted</u>		
FE Sent For:		/P2-11-17 King /P3-11-23 King				yes P/I - No (sent to hold)	

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JEO
sent copy
to Mike Brennan



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R MILLER
CHIEF

LEGAL SECTION (608) 266-3561
LEGAL FAX (608) 264-8522

REFERENCE SECTION (608) 266-0341
REFERENCE FAX (608) 266-5648

MEMORANDUM

To: Interested persons

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

Subject: Felonies in the Wisconsin Criminal Code (chapters 939 to 951)

Date: July 3, 1998

What this list contains: The following is a list of felonies contained in the Wisconsin criminal code, which is comprised of chapters 939 to 951 of the Wisconsin Statutes. A felony in the criminal code is classified as an A, B, BC, C, D or E felony. The penalty for each class of felony is specified at the beginning of the list for that classification. The list also contains the few felonies in the criminal code that are not classified as an A, B, BC, C, D or E felony.

The list is in ascending order of statutory citation. It gives a common name for or short description of the felony and the statutory citation for the felony. The list does not provide a detailed recital of the elements of the felony (that is, what a prosecutor must prove to secure a conviction against someone charged with the felony). To find out what those elements are, you will have to look at the cited statute.

What crimes this list does NOT contain: The following list does not contain any felony in a statutory provision that is outside the criminal code. The most significant felonies excluded from this list are those relating to violations of the controlled substances (dangerous drug) law. Penalties relating to controlled substances are contained in ss. 961.41 to 961.50 of the Wisconsin Statutes. There are also numerous other felonies outside the criminal code relating to such things as tax fraud and evasion, certain natural resources and environmental law violations and certain motor vehicle violations.

When this list was last updated: The following list was updated on the date indicated above and is current through 1997 Wisconsin Act 338. Thus, any felony in the criminal code created by any later act of the legislature is not included. Likewise, if the penalty provided for an existing felony in the criminal code has been changed by any later act of the legislature, that change is not reflected in this list.

Note: The current printed version of the Wisconsin Statutes will not reflect any changes made in a statute by 1997 Wisconsin Acts 1 through 338 and will not include any felony created by 1997 Wisconsin Acts 1 through 338. Thus, to see the most current version of a felony affected or created by an act of the 1997 legislature, you will have to look at the 1997 Act referred to in the list as affecting or creating the specific felony.

Class A Felonies

A Class A felony is punishable by life imprisonment. *Section 939.50 (3) (a), stats.* The following crimes are Class A felonies:

~~de 1.~~ First-degree intentional homicide. *Section 940.01 (1), stats. (as affected by 1997 Wisconsin Act 295).*

~~for now de 2.~~ Performing a partial-birth abortion. *Section 940.16 (2), stats. (as created by 1997 Wisconsin Act 219).*

~~de 3.~~ Taking hostages. *Section 940.305 (1), stats.* (NB: if, before the time of the defendant's arrest, each person who is held as a hostage is released without bodily harm, the crime is a Class B felony.)

~~de 4.~~ Kidnapping with intent to cause another to transfer property to obtain the release of the victim. *Section 940.31 (2) (a), stats.* (NB: if, before the first witness is sworn at trial, the victim is released without permanent physical injury, the crime is a Class B felony.)

~~change to de 5.~~ Causing death to another by tampering with household products. *Section 941.327 (2) (b) 4., stats.*
Take out "let"

~~RP de 6.~~ Causing death to another during a carjacking. *Section 943.23 (1r), stats.*

~~de 7.~~ Treason. *Section 946.01 (1), stats.*

~~de 8.~~ Absconding after being adjudicated delinquent for a Class A felony. *Section 946.50 (1), stats.*

~~RP de 9.~~ Use of child to commit a Class A felony. *Section 948.36, stats.*

Class B Felonies

A Class B felony committed before December 31, 1999, is punishable by imprisonment of not more than 40 years. A Class B felony committed on or after December 31, 1999, is punishable by imprisonment of not more than 60 years. *Section 939.50 (3) (b), stats. (as affected by 1997 Wisconsin Act 283).* The following crimes are Class B felonies:

~~de 1.~~ Conspiracy to commit a crime for which the penalty is life imprisonment. *Section 939.31, stats.*

~~de 2.~~ Attempt to commit a crime for which the penalty is life imprisonment. *Section 939.32 (1) (a), stats.*

~~de 3.~~ First degree reckless homicide. *Section 940.02, stats. (as affected by 1997 Wisconsin Act 295).*

~~de 4.~~ Second-degree intentional homicide. *Section 940.05, stats. (as affected by 1997 Wisconsin Act 295).*

~~de 5.~~ Homicide by intoxicated use of a vehicle. *Section 940.09 (1), stats. (as affected by 1997 Wisconsin Act 338).*

~~6.~~ Mayhem. *Section 940.21, stats.*

~~7.~~ First degree sexual assault. *Section 940.225 (1), stats.*

~~8.~~ Abuse of vulnerable adults under circumstances causing death. *Section 940.285 (2) (b) lg., stats. (as created by 1997 Wisconsin Act 180).*

~~9.~~ Abuse and neglect of a patient or resident of certain facilities under circumstances that cause death. *Section 940.295 (3) (b) lg., stats. (as created by 1997 Wisconsin Act 180).*

~~10.~~ Taking hostages when, before the time of the actor's arrest, each person who is held as a hostage is released without bodily harm. *Section 940.305 (2), stats.*

~~11.~~ Kidnapping. *Section 940.31 (1) and (2) (b), stats.*

~~12.~~ Arson of a building; damage of property by explosives. *Section 943.02 (1), stats.*

~~13.~~ Aggravated burglary. *Section 943.10 (2), stats.*

~~14.~~ Carjacking. *Section 943.23 (lg) and (lm), stats.*

~~15.~~ Armed robbery. *Section 943.32 (2), stats.*

~~16.~~ Absconding after being adjudicated delinquent for a Class B felony. *Section 946.50 (2), stats.*

~~17.~~ First degree sexual assault of a child. *Section 948.02 (1), stats.*

~~18.~~ Repeated sexual assault of a child. *Section 948.025, stats.*

~~19.~~ Abduction of another's child by force or threat of force. *Section 948.30 (2), stats.*

~~20.~~ Solicitation of a child to commit a Class A felony. *Section 948.35 (1) (b), stats.*

Class BC Felonies

A Class BC felony committed before December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 20 years or both. A Class BC felony committed on or after December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 30 years or both. *Section 939.50 (3) (bc), stats. (as affected by 1997 Wisconsin Act 283).* The following crimes are Class BC felonies:

~~1.~~ ~~Second~~ degree sexual assault. *Section 940.225 (2), stats. (as affected by 1997 Wisconsin Act 220).*

~~2.~~ Second degree sexual assault of a child. *Section 948.02 (2), stats.*

~~3.~~ Incest with a child. *Section 948.06, stats.*

~~4.~~ Child enticement. *Section 948.07, stats.*

~~5.~~ Soliciting a child for prostitution. *Section 948.08, stats.*

Class C Felonies

A Class C felony committed before December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 10 years or both. A Class C felony committed on or after December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 15 years or both. *Section 939.50 (3) (c), stats. (as affected by 1997 Wisconsin Act 283)*. The following crimes are Class C felonies:

1. Solicitation to commit a crime for which the penalty is life imprisonment. *Section 939.30 (2), stats.*

2. Second-degree reckless homicide. *Section 940.06, stats. (as affected by 1997 Wisconsin Act 295)*.

&Homicide resulting from negligent control of vicious animal. *Section 940.07, stats.*

*Mutilating a corpse. *Section 940.11 (1), stats.*

5. Aggravated battery (causing great bodily harm to another by an act done with intent to cause either substantial bodily harm or great bodily harm). *Section 940.19 (5), stats.*

6. Aggravated battery to an unborn child (causing great bodily harm to an unborn child by an act done with intent to cause either substantial bodily harm or great bodily harm). *Section 940.195 (5), stats. (as created by 1997 Wisconsin Act 295)*.

7. Sexual exploitation by a therapist. *Section 940.22 (2), stats.*

8. First-degree reckless injury. *Section 940.23 (1), stats. (as affected by 1997 Wisconsin Act 295)*.

9. Abuse of a vulnerable adult under circumstances causing great bodily harm. *Section 940.285 (2) (b) 1m, stats. (as created by 1997 Wisconsin Act 180)*.

10. Abuse and neglect of a patient or resident of certain facilities under circumstances that cause great bodily harm. *Section 940.295 (3) (b) 1m., stats. (as created by 1997 Wisconsin Act 180)*.

11. Endangering safety by intentionally discharging a firearm from a vehicle while on a highway or public parking lot. *Section 941.20 (3) (a), stats.*

12. Modifying firearm to make it a machine gun. *Section 941.26 (1m) and (2) (b), stats.*

13. Possession of explosives. *Section 941.31 (1), stats.*

14. Administering dangerous or stupefying drug with intent to facilitate commission of a crime. *Section 941.32, stats.*

15. Causing great bodily harm by tampering with household products. *Section 941.327 (2) (b) 3., stats.*

16. Contributing to the death of another by obstructing emergency or rescue personnel. *Section 941.37, stats.*

(4)

- ~~17.~~ Burglary. *Section 943.10 (1), stats.*
- ~~18.~~ Theft (if the value of the property exceeds \$2,500). *Section 943.20 (3) (c), stats.*
- ~~19.~~ Loan sharking. *Section 943.28, stats.*
- ~~20.~~ Robbery. *Section 943.32 (1), stats.*
- ~~21.~~ Receiving stolen property (if the value of the property exceeds \$2,500). *Section 943.34 (1) (c), stats.*
- ~~22.~~ Forgery of certain documents; uttering certain forged documents. *Section 943.38 (1) and (2), stats.*
- ~~23.~~ Fraudulent use of financial transaction cards (if the value of the money, goods, services or property exceeds \$2,500). *Section 943.41 (8) (c), stats.*
- ~~24.~~ Retail theft (if the value of the merchandise exceeds \$2,500). *Section 943.50 (4) (c), stats. (as affected by 1997 Wisconsin Act 262).*
- ~~25.~~ Theft of library material (if the value of the library materials exceeds \$2,500). *Section 943.61 (5) (c), stats.*
- ~~26.~~ Unlawful receipt of payments to obtain loan for another (if the value of the payment exceeds \$2,500). *Section 943.62 (4) (c), stats.*
- ~~27.~~ Computer crimes (if the offense creates a substantial and unreasonable risk of death or great bodily harm to another). *Section 943.70 (2) (b) 4., stats.*
28. Incest. *Section 944.06, stats.*
- ~~29.~~ Pandering (if compensated from earnings of prostitute). *Section 944.33 (2), stats.*
- ~~30.~~ Sabotage. *Section 946.02 (1), stats.*
- ~~31.~~ Seditious. *Section 946.03 (1), stats.*
- ~~32.~~ Assaults by prisoners. *Section 946.43, stats.*
- ~~33.~~ Public officer or public employe assisting or permitting escape. *Section 946.44 (1g), stats.*
& Bringing firearm into prison or jail; transferring firearm to prisoner. *Section 946.44 (1m), stats.*
- ~~35.~~ Absconding after being adjudicated delinquent for a Class C felony. *Section 946.50 (3), stats.*
- ~~36.~~ Engaging in racketeering activity. *Section 946.84 (1), stats.*
- ~~37.~~ Failure by person responsible for the welfare of a child to prevent sexual assault of the child. *Section 948.02 (3), stats.*
- ~~38.~~ Physical abuse of a child (intentionally causing great bodily harm; causing bodily harm by conduct creating a high probability of great bodily harm). *Section 948.03 (2) (a) and (c), stats.*

39. Failure by person responsible for the welfare of a child to prevent great bodily harm to a child. *Section 948.03 (4) (a), stats.*

40. Causing mental harm to a child; failure by person responsible for the welfare of a child to prevent mental harm to child. *Section 948.04 (1) and (2), stats.*

41. Sexual exploitation of a child. *Section 948.05 (1) and (2), stats.*

42. Causing a child under the age of 13 to view or listen to sexual activity. *Section 948.055 (2) (a), stats.*

43. Child sex offender working with children. *Section 948.13 (2), stats.*

44. Neglect of a child resulting in death. *Section 948.21 (1), stats.*

45. Abduction of another's child. *Section 948.30 (1), stats.*

46. Interference with custody of child with intent to deprive custodian of custody rights; concealing child. *Section 948.31 (1) (b) and (3), stats.*

47. Solicitation of a child to commit a Class B felony. *Section 948.35 (1) (c), stats.*

48. Contributing to the delinquency of a child if death is a consequence. *Section 948.40 (4) (a), stats.*

49. Receiving stolen property from a child (if the value of the property exceeds \$2,500). *Section 948.62 (1) (c), stats.*

Class D Felonies

A Class D felony committed before December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years or both. A Class D felony committed on or after December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 10 years or both. *Section 939.50 (3) (d), stats. (as affected by 1997 Wisconsin Act 283).* The following crimes are Class D felonies:

50. Solicitation to commit a felony (other than a Class A or Class E felony). *Section 939.30(1), stats.*

51. Homicide by negligent handling of dangerous weapon, explosives or fire. *Section 940.08, stats. (as affected by 1997 Wisconsin Act 295).*

52. Homicide by intoxicated use of a firearm. *Section 940.09 (1g), stats.*

53. Hiding a corpse. *Section 940.11 (2), stats.*

54. Assisting suicide. *Section 940.12, stats.*

55. Aggravated battery (causing substantial bodily harm to another by an act done with intent to cause substantial bodily harm; causing great bodily harm to another by an act done with intent to cause bodily harm; or causing bodily harm to another by conduct that creates a substantial risk of great bodily harm). *Section 940.19 (3), (4) and (6), stats.*

7. Aggravated battery to an unborn child (causing substantial bodily harm to an unborn child by an act done with intent to cause substantial bodily harm; causing great bodily harm to an unborn child by an act done with intent to cause bodily harm; or causing bodily harm to an **unborn** child by conduct that creates a substantial risk of great bodily harm). *Section 940.195 (3), (4) and (6), stats. (as created by 1997 Wisconsin Act 295).*

8. Battery by prisoners. *Section 940.20 (1), stats.*

9. Battery to law enforcement officers and fire fighters. *Section 940.20 (2), stats.*

& Battery to probation and parole agents and aftercare agents. *Section 940.20 (2m) (b), stats.*

11. Battery to jurors. *Section 940.20 (3), stats. (as affected by 1997 Wisconsin Act 143).*

12. Battery to an emergency department worker, an emergency medical technician, a first responder or an ambulance driver. *Section 940.20 (7) (b), stats.*

13. Battery or threat to witness. *Section 940.201 (2), stats. (as created by 1997 Wisconsin Act 143).*

14. Battery or threat to judge. *Section 940.203 (2), stats.*

15. Battery or threat to department of revenue employe. *Section 940.205 (2), stats.*

16. Battery or threat to department of commerce or department of workforce development employe. *Section 940.207 (2), stats.*

17. Third degree sexual assault. *Section 940.225 (3), stats.*

18. Second-degree reckless injury. *940.23 (2), stats. (as affected by 1997 Wisconsin Act 295).*

19. Injury by intoxicated use of a vehicle. *Section 940.25 (1), stats.*

20. Abuse of a vulnerable adult under circumstances that are likely to cause great bodily harm. *Section 940.285 (2) (b) 1., stats. (as affected by 1997 Wisconsin Act 180).*

21. Abuse or neglect of a patient or resident of certain facilities under circumstances that cause or are likely to cause great bodily harm. *Section 940.295 (3) (b) 1., stats.*

22. Stalking (if defendant intentionally gains access to certain records in order to facilitate the violation or if defendant has a prior stalking or harassment conviction). *Section 940.32 (2m) and (3m), stats.*

23. Felony intimidation of a witness. *Section 940.43, stats.*

24. Felony intimidation of a victim. *Section 940.45, stats.*

25. Unsafe burning of buildings. *Section 941.11, stats.*

26. Using tear gas device to cause bodily harm or bodily discomfort to a peace officer. *Section 941.26 (2) (f), stats.*

27. Using pepper spray device to cause bodily harm or bodily discomfort to a peace officer. *Section 941.26 (4) (d), stats.*

~~28.~~ Unlawful possession of a firearm, second offense. *Section 941.29 (2m), stats.*

~~29.~~ First-degree recklessly endangering safety. *Section 941.30 (1), stats.*

30. Unlawful delivery or distribution of nitrous oxide. *Section 941.315 (3), stats. (as created by 1997 Wisconsin Act 336).*

~~31.~~ Creating a high probability of great bodily harm to another by tampering with household products. *Section 941.327 (2) (b) 2., stats.*

~~32.~~ Damage to certain property. *Section 943.01 (2), stats.*

~~33.~~ Criminal damage to property of a witness. *Section 943.011 (2), stats. (as created by 1997 Wisconsin Act 143).*

~~34.~~ Criminal damage to property of a judge. *Section 943.013 (2), stats.*

~~35.~~ Criminal damage to property of a department of revenue employee. *Section 943.015 (2), stats.*

~~36.~~ Graffiti to certain property. *Section 943.017 (2), stats.*

~~37.~~ Graffiti to property of a witness. *Section 943.017 (2m), stats. (as created by 1997 Wisconsin Act 143).*

~~38.~~ Arson with intent to defraud. *Section 943.04, stats.*

~~39.~~ Theft (under certain circumstances and if the value of the property does not exceed \$2,500). *Section 943.20 (3) (d), stats.*

40. Misappropriation of personal identifying information or personal identification documents. *Section 943.201 (2), stats. (as created by 1997 Wisconsin Act 101).*

~~41.~~ Taking and driving a motor vehicle without owner's consent. *Section 943.23 (2), stats.*

~~42.~~ Threats to injure or accuse of a crime (extortion). *Section 943.30, stats. (as affected by 1997 Wisconsin Act 231).*

~~43.~~ Fraudulent writings. *Section 943.39, stats.*

~~44.~~ Fraudulent destruction of certain writings. *Section 943.40, stats.*

~~45.~~ Theft of telecommunications service (for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense). *Section 943.45 (3) (d), stats.*

~~46.~~ Theft of commercial mobile service (for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense). *Section 943.455 (4) (d), stats. (as affected by 1997 Wisconsin Act 218).*

~~47.~~ Theft of cable television service (for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense). *Section 943.46 (4) (d), stats.*

~~48.~~ Theft of satellite cable programming (for direct or indirect commercial advantage or private financial gain as a 2nd or subsequent offense). *Section 943.47 (3) (d), stats.*

- ~~49.~~ Criminal slander of title. *Section 943.60 (1), stats. (as affected by 1997 Wisconsin Act 27).*
- ~~50.~~ Crime against computers (if the damage is greater than \$2,500 or if it causes an interruption or impairment of governmental operations or public communication, of transportation or of a supply of water, gas or other public service). *Section 943.70 (2) (b) 3. or (3) (b) 3., stats.*
- ~~51.~~ Obscenity (if the person has 2 or more prior obscenity convictions or if the violation is for a wholesale transfer or distribution of obscene material). *Section 944.21 (5) (c) and (e), stats.*
- ~~52.~~ Soliciting prostitutes. *Section 944.32, stats.*
- ~~53.~~ Keeping place of prostitution. *Section 944.34, stats.*
- ~~54.~~ Bribery of participant in a contest. *Section 945.08 (1), stats.*
- ~~55.~~ Bribery of public officers and employes. *Section 946.10, stats.*
- ~~56.~~ Perjury. *Section 946.31 (1), stats.*
- ~~57.~~ False swearing. *Section 946.32 (1), stats.*
- ~~58.~~ Obstructing an officer (by giving providing information or evidence that results in conviction of innocent person). *Section 946.41 (2m), stats.*
- ~~59.~~ Felony escape. *Section 946.42 (3), stats.*
- &Felony failure to report to jail. *Section 946.425 (1), (1m) (b) and (1r) (b), stats.*
- ~~61.~~ Assisting or permitting escape. *Section 946.44 (1), stats.*
- ~~62.~~ False information re: kidnapped or missing persons. *Section 946.48 (1), stats.*
- ~~63.~~ Felony bail jumping. *Section 946.49 (1) (b), stats.*
- &Absconding after being adjudicated delinquent for a Class D felony. *Section 946.50 (4), stats.*
- ~~65.~~ Bribery of a witness. *Section 946.61 (1), stats.*
- ~~66.~~ Simulating legal process (if the act is meant to induce payment of a claim or simulates any criminal process). *Section 946.68 (1r) (b) and (c), stats. (as affected by 1997 Wisconsin Act 27).*
- ~~67.~~ Impersonating a peace officer with intent to commit a crime or aid and abet commission of a crime. *Section 946.70 (2), stats.*
- ~~68.~~ Tampering with public records. *Section 946.72 (1), stats.*
- ~~69.~~ Aiding escape from mental institution (with intent to commit a crime against sexual morality with or upon the inmate of the institution). *Section 946.74 (2), stats.*
- ~~70.~~ Harassment (if defendant has prior conviction or intentionally gains access to certain records in order to facilitate the violation) *Section 947.013 (1v) and (1x), stats.*
- ~~71.~~ Physical abuse of a child (intentionally causing bodily harm). *Section 948.03 (2) (b), stats.*

~~74~~ & Physical abuse of a child (recklessly causing great bodily harm or recklessly causing bodily harm to a child by conduct which creates a high probability of great bodily harm). Section 948.03 (3) (a) and (c), stats.

~~73~~ Failing to act to prevent bodily harm to a child. Section 948.03 (4) (b), stats.

~~74~~ Causing a child between the ages of 13 and 17 to view or listen to sexual activity. Section 948.055 (2) (b), stats.

~~75~~ Sexual assault of a student by a school instructional staff person. Section 948.095 (2), stats.

~~76~~ Abandonment of a child. Section 948.20, stats.

~~77~~ Unauthorized placement for adoption. Section 948.24 (1), stats. (as affected by 1997 Wisconsin Act 104).

~~78~~ Solicitation of a child to commit a Class C felony. Section 948.35 (1) (d), stats.

~~79~~ Contributing to the delinquency of a child (if the child's act which is contributed to is a violation of a criminal law punishable as a felony). Section 948.40 (4) (b), stats.

~~80~~ Selling or giving a dangerous weapon to a person under 18 (if the person under 18 years of age ~~under par. (b)~~ discharges the firearm and the discharge causes death of any person). Section 948.60 (2) (c), stats.

& Discharging or attempting to discharge a firearm in a school zone. Section 948.605 (3) (a), stats.

~~82~~ Receiving stolen property from a child (if the value of the property exceeds \$500 but does not exceed \$2,500). Section 948.62 (1) (b), stats.

~~83~~ Instigating fights between animals (2nd or subsequent violation). Section 951.18 (2), stats.

~~84~~ Harassment of police or fire department animals (causing death to the animal). Section 951.18 (2m), stats. (as affected by 1997 Wisconsin Act 27).

encouraged

Class E Felonies

A Class E felony committed before December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 2 years or both. A Class E felony committed on or after December 31, 1999, is punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years or both. Section 939.50 (3) (e), stats. (as affected by 1997 Wisconsin Act 283). The following crimes are Class E felonies:

~~1~~ 1. Solicitation to commit a Class E felony. Section 939.30 (2), stats.

2. Violation of conditions of lifetime supervision (if the violation also constitutes a felony). Section 939.615 (7) (b) 2., stats. (as created by 1997 Wisconsin Act 275).

~~3~~ 3. Homicide by negligent operation of vehicle. Section 940.10, stats. (as affected by 1997 Wisconsin Act 295).

, & Abortion (various prohibitions). *Section 940.15 (2), (5) and (6), stats.*

5. Aggravated battery (causing substantial bodily harm to another by an act done with intent to cause bodily harm). *Section 940.19 (2), stats.*

6. Aggravated battery to an unborn child (causing substantial bodily harm to an unborn child by an act done with intent to cause bodily harm). *Section 940.195 (2), stats. (as created by 1997 Wisconsin Act 295).*

7. Battery by a person subject to certain injunctions. *Section 940.20 (1m) (a) and (b), stats.*

8. Battery to public officers. *940.20 (4), stats.*

9. Battery to technical college district or school district officer or employe. *Section 940.20 (5) (b), stats.*

10. Battery to public transit vehicle operator or passenger. *Section 940.20 (6) (b), stats.*

11. Injury by negligent handling of dangerous weapon, explosives or fire. *Section 940.24, stats. (as affected by 1997 Wisconsin Act 295).*

12. Intentional abuse of vulnerable adults under circumstances that cause or are likely to cause bodily harm. *Section 940.285 (2) (b) 2., stats.*

13. Reckless or negligent abuse of a vulnerable adult under circumstances that are likely to cause great bodily harm. *Section 940.285 (2) (b) 3., stats. (as affected by 1997 Wisconsin Act 180).*

14. Abuse of residents of penal facilities. *Section 940.29, stats.*

15. Intentionally abusing or neglecting patients or residents of certain facilities under circumstances that cause or are likely to cause bodily harm. *Section 940.295 (3) (b) 2., stats.*

16. Recklessly or negligently abusing or neglecting a patient or resident of certain facilities under circumstances that cause or are likely to cause great bodily harm: *Section 940.295 (3) (b) 3., stats. (as affected by 1997 Wisconsin Act 180).*

17. False imprisonment. *Section 940.30, stats.*

18. Stalking (if victim suffers bodily harm or defendant has prior conviction against same victim). *Section 940.32 (3), stats.*

19. Interfering with fire fighters or a fire alarm system. *Section 941.12 (1), stats.*

20. Endangering safety (by discharging firearm into a vehicle or building or setting a spring gun). *Section 941.20 (2), stats.*

21. Disarming a peace officer. *Section 941.21, stats.*

22. Selling, possessing, using or transporting a machine gun. *Section 941.26 (2) (a), stats.*

23. Sale or commercial transportation of a tear gas device. *Section 941.26 (2) (e), stats.*

24. Using or threatening to use a tear gas or pepper spray device during commission of a crime to cause bodily harm or bodily discomfort to another. *Section 941.26 (2) (g) and (4) (e), stats.*

25. Selling, transporting or possessing a short-barreled shotgun or rifle. *Section 941.28 (3), stats.*

26. Possession of firearm by certain persons. *Section 941.29 (2), stats.*

27. Selling, manufacturing or possessing an electric weapon. *Section 941.295 (1), stats.*

28. Using or possessing a handgun with armor piercing bullets during the commission of certain crimes. *Section 941.296 (2), stats.*

29. Selling, delivering or possessing a firearm silencer. *Section 941.298 (2), stats.*

30. Second-degree recklessly endangering safety. *Section 941.30 (2), stats.*

31. Making, transferring, possessing or using an improvised explosive device or possessing materials or components with intent to assemble an improvised explosive device. *Section 941.31 (2) (b), stats.*

32. Placing foreign objects in edibles. *Section 941.325, stats.*

33. Tampering with household products. *Section 941.327 (2) (b) 1., stats.*

34. False information concerning an act that constitutes tampering with household products. *Section 941.327 (3), stats.*

&Obstructing emergency or medical personnel with reasonable grounds to believe that the interference may endanger another's safety. *Section 941.37 (3), stats.*

&Soliciting a child to participate in criminal gang activity. *Section 941.38 (2), stats.*

37. Criminal damage to certain coin-operated or card-operated machines with intent to commit theft. *Section 943.01 (2g), stats.*

38. Criminal damage to or graffiti on religious and other property. *Section 943.012, stats.*

39. Arson of property other than building. *Section 943.03, stats.*

40. Possession, manufacture or transfer of a fire bomb. *Section 943.06 (2), stats.*

41. Possession of burglarious tools. *Section 943.12, stats.*

42. Theft (if value of the property exceeds \$1,000 but not \$2,500). *Section 943.20 (3) (b), stats.*

*Theft of trade secrets. *Section 943.205 (3), stats.*

44. Fraud on hotel or restaurant keeper or taxicab operator (if the value of the service exceeds \$1,000). *Section 943.21 (3) (b), stats.*

45. Operating vehicle without owner's consent. *Section 943.23 (3), stats.*

46. Removing a major part of a vehicle without owner's consent. *Section 943.23 (5), stats.*

47. Issuing worthless checks for more than \$ 1,000. *Section 943.24 (2), stats.*

48. Transfer of encumbered property. *Section 943.25 (1) and (2), stats.*

~~49.~~ Removing or damaging encumbered real property (if the security is impaired by more than \$1,000). *Section 943.26 (2), stats.*

~~50.~~ Possession of records of certain usurious loans. *Section 943.27, stats.*

~~51.~~ Threats to communicate derogatory information. *Section 943.31, stats.*

~~52.~~ Receiving stolen property (if the value of the property exceeds \$1,000 but not more than \$2,500). *Section 943.34 (1) (b), stats.*

~~53.~~ Fraudulent insurance or employe benefit claim (if the value of the claim or benefit exceeds \$1,000). *Section 943.395 (2) (b), stats.*

~~54.~~ Certain financial transaction card crimes. *Section 943.41 (8) (b) and (c), stats.*

~~55.~~ Theft of communications service (for direct or indirect commercial advantage or private financial gain). *Section 943.45 (3) (c), stats.*

~~56.~~ Theft of commercial mobile service (for direct or indirect commercial advantage or private financial gain). *Section 943.455 (4) (c), stats. (as affected by 1997 Wisconsin Act 218).*

~~57.~~ Theft of cable television service (for direct or indirect commercial advantage or private financial gain). *Section 943.46 (4) (c), stats.*

~~58.~~ Theft of satellite cable programming (for direct or indirect commercial advantage or private financial gain). *Section 943.47 (3) (c), stats.*

~~59.~~ Retail theft (if the value of the merchandise exceeds \$1,000 but not \$2,500). *Section 943.50 (4) (b), stats. (as affected by 1997 Wisconsin Act 262).*

~~60.~~ Theft of library material (if the value of the library materials exceeds \$1,000 but not \$2,500). *Section 943.61 (5) (b), stats.*

~~61.~~ Unlawful receipt of payments to obtain loan for another (if the value of the payment exceeds \$500 but does not exceed \$2,500). *Section 943.62 (4) (b), stats.*

~~62.~~ Computer crime (if the offense is committed to defraud or to obtain property). *Section 943.70 (2) (b) 2. and (3) (b) 2., stats.*

~~63.~~ Unauthorized release of animals (3rd or subsequent violation). *Section 943.75 (2), stats.*

~~64.~~ Bigamy. *Section 944.05 (1), stats.*

~~65.~~ Adultery. *Section 944.16, stats.*

~~66.~~ Unlawful visual representations of nudity. *Section 944.205 (2), stats.*

~~67.~~ Commercial gambling. *Section 945.03, stats.*

~~68.~~ Dealing in gambling devices. *Section 945.05 (1), stats.*

~~69.~~ Permitting seditious assembly. *Section 946.03 (2), stats.*

~~70.~~ Flag desecration. *Section 946.05 (1), stats. (held to be unconstitutional by the Wisconsin supreme court in State v. Janssen, __ Wis. 2d __ (June 25, 1998)).*

~~71.~~ Special privileges from public utilities. *Section 946.11 (1), stats.*

~~72.~~ Misconduct in public office. *Section 946.12, stats.*

~~73.~~ Private interest in public contracts. *Section 946.13 (1), stats.*

~~74.~~ Purchasing claims at less than full value. *Section 946.14, stats.*

4-f- ~~75.~~ Public construction contracts at less than full rate. *Section 946.15 (1) and (3), stats.*

~~76.~~ Failure to comply with officer's attempt to take person into custody. *Section 946.415 (2), stats.*

~~77.~~ Harboring or aiding felons. *Section 946.47 (1), stats.*

~~78.~~ Bail jumping by a witness. *Section 946.49 (2), stats.*

79. Absconding after being adjudicated delinquent for a Class E felony. *Section 946.50 (5), stats.*

~~80.~~ Destruction of documents subject to subpoena. *Section 946.60 (1) and (2), stats.*

~~81.~~ Communicating with jurors. *Section 946.64, stats.*

~~82.~~ Obstructing justice. *Section 946.65 (1), stats.*

~~83.~~ Simulating legal process. *Section 946.68 (1r) (a), stats. (as affected by 1997 Wisconsin Act 27).*

~~84.~~ Falsely assuming to act as a public officer or employe. *Section 946.69 (2), stats. (as affected by 1997 Wisconsin Act 27).*

~~85.~~ Premature disclosure of search warrant. *Section 946.76, stats.*

~~86.~~ Harassment (if the person had a prior conviction for harassing the same victim that occurred within the last 7 years). *Section 947.013 (1t), stats.*

~~87.~~ Bomb scares. *Section 947.015, stats.*

~~88.~~ Physical abuse of a child (recklessly causing bodily harm). *Section 948.03 (3) (b), stats.*

~~89.~~ Exposing a child to harmful material. *Section 948.11 (2) (a), stats.*

~~90.~~ Exposing a child to harmful narratives or descriptions. *Section 948.11 (2) (am), stats. (as created by 1997 Wisconsin Act 82).*

~~91.~~ Possession of child pornography. *Section 948.12, stats.*

~~92.~~ Failure to support (for 120 or more consecutive days). *Section 948.22 (2), stats.*

~~93.~~ Concealing death of child. *Section 948.23, stats.*

~~94.~~ Interference with custody of a child. *Section 948.31 (2), stats. (as affected by 1997 Wisconsin Act 290).*

~~95.~~ Hazing (if the act results in great bodily harm or death to another). *Section 948.51 (3) (b), stats.*

~~96.~~ Giving a dangerous weapon to a person under 18 years of age. *Section 948.60 (2) (b), stats.*

~~97.~~ Possession of a dangerous weapon on school premises (2nd or subsequent conviction). *Section 948.61 (2) (b), stats.*

~~98.~~ Receiving stolen property from a child (if the value does not exceed \$500). *Section 948.62 (1) (a), stats.*

& Mistreating an animal (if mistreatment results in the mutilation, disfigurement or death of the animal or if the animal is a police or fire department animal and the animal is injured). *Section 951.18 (1), stats.*

~~100.~~ Exposing a domestic animal to poisonous or controlled substances (if the animal is a police or fire department animal and the animal is injured). *Section 915.18 (1), stats.*

~~101.~~ Instigating fights between animals (1st offense). *Section 951.18 (2), stats.*

~~102.~~ Harassment of police or fire department animal and causing injury to the animal. *Section 951.18 (2m), stats. (as affected by 1997 Wisconsin Act 27).*

Unclassified Felonies

There are a few crimes in the criminal code that are not given a Class A, B, BC, C, D or E classification. Thus, the penalty for each such crime is specified without reference to an existing classification. The following crimes are unclassified felonies:

~~1.~~ Abortion ("feticide") by a person other than the pregnant woman. Punishable by a fine of not more than \$5,000 or imprisonment of not more than 3 years or both. *Section 904.04 (1), stats.*

~~2.~~ Abortion ("feticide") of an unborn quick child by a person other than the pregnant woman; causing the death of the mother by an act done to destroy her unborn child. Punishable by imprisonment of not more than 15 years. *Section 904.04 (2), stats.*

~~3.~~ Abortion by a pregnant woman. Punishable by imprisonment of not more than 2 years. *Section 904.04 (4), stats.*

~~4.~~ Engaging in a continuing criminal enterprise. If committed before December 31, 1999, punishable by imprisonment of not less than 10 years nor more than 20 years and a fine of either: a) not more than \$10,000; or b) 2 times the gross value gained or 2 times the gross loss caused by the enterprise. If committed on or after December 31, 1999, punishable by imprisonment of not less than 10 years nor more than 30 years and a fine of either: a) not more than \$10,000; or b) 2 times the gross value gained or 2 times the gross loss caused by the enterprise. *Section 946.85 (1), stats. (as affected by 1997 Wisconsin Act 283).*

Olsen, Jefren

From: Olsen, Jefren
Sent: Monday, October 12, 1998 2:32 PM
To: 'hammert@vms.csd.mu.edu'
cc: 'mike.brennanQdoa.state.wi.us'
Subject: Penalty enhancers in the criminal code and ch. 961

Tom,

Here is a list of penalty enhancers contained in the criminal code and ch. 961. I still have not hit on a satisfactory way to search for enhancers outside of the code. Given that your subcommittee meeting is tomorrow (and that I am already getting this to you later than I intended), I decided to send along this list for now.

1. Increased penalty for habitual criminality. Section 939.62 (7) and (2), stats.
2. Minimum penalty of life imprisonment for persistent repeaters. Section 939.62 (2m), stats.
3. Increased penalty for certain domestic abuse offenses. Section 939.627, stats.
4. Increased penalty for committing a serious sex crime while infected with AIDS, HIV or an STD. Section 939.622, stats.
5. Minimum penalty for repeat serious sex crimes. Section 939.623, stats.
6. Minimum penalty for repeat serious violent crimes. Section 939.624, stats.
7. Increased penalty for criminal gang crimes. Section 939.625, stats.
8. Increased and minimum penalties for use of a dangerous weapon during commission of a crime. Section 939.63, stats.
9. Increased penalty for violent crime committed in a school zone. Section 939.632, stats.
10. Minimum penalty for assault or battery in a secured correctional facility or to an aftercare agent. Section 939.635, stats.
11. Increased penalty for committing a crime using a bulletproof vest. Section 939.64, stats.
12. Increased penalty for committing a crime while concealing identity. Section 939.647, stats.
13. Increased penalty for "hate" crimes. Section 939.645, stats.
14. Increased penalty for committing a crime using information from the sex offender registry. Section 939.646, stats.
15. Increased penalty for violent crimes committed against an elder person. Section 939.647, stats.
16. Increased penalty for acts of terrorism. Section 939.648, stats.
17. Increased penalty for child sexual assault by person responsible for the welfare of the child. Section 948.02 (3m), stats.
18. Increased penalty for repeat child sexual assault by person responsible for the welfare of the child. Section 948.025 (2m), stats.
19. Increased penalty for physical abuse of a child by person responsible for the welfare of the child. Section 948.03 (5), stats.
20. Increased penalty for distribution of controlled substance to person under age 18. Section 967.46, stats.
21. Increased penalty for distribution of controlled substance to prisoners. Section 967.465, stats.
22. Increased penalty for 2nd and subsequent controlled substance offense. Section 967.48, stats.
23. Increased and minimum penalties for distribution of controlled substance on or near certain places. Sections 967.49 and 967.492, stats.

Note that s. 939.622, stats., was created by 1997 Wisconsin Act 276 and s. 939.647, stats., was created by 1997 Wisconsin Act 266. Also, s. 939.626, stats., was repealed by 1997 Wisconsin Act 326, which created the "2 strikes, you're out" provision for child sex offenders.

Let me know if you have any questions.

Attorney Jefren E. Olsen
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
Tel: (608) 266-8906
Fax: (608) 264-8522
Email: jefren.olsen@legis.state.wi.us

Hammer + @ vms.csl.mu.edu

939.645(2)(b)

(b) If the crime committed under sub. (1) is ordinarily a Class A misdemeanor, the **penalty increase** under this section changes the status of the crime to a felony and the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is 2 years.

939.646

939.646 (intro.) **Penalty; crimes committed using information obtained from the sex offender registry.** If a person commits a crime using information that was disclosed to him or her under s. 301.46, the **penalties** may be **increased** as follows:

939.647

939.647 **Increased penalty; violent felony committed against elder person.**

939.648(2)

(2) (intro.) If a person does all of the following, the **penalties** for the underlying felony are **increased** as provided in sub. (3):

- .648

940.05 - ANNOT.

Judicial Council Note, 1988: *Second-degree intentional homicide is analogous to the prior offense of manslaughter. The **penalty** is **increased** and the elements clarified in order to encourage charging under this section in appropriate cases.*

948.02(3m)

(3m) Penalty enhancement; sexual assault by certain persons. If a person violates sub. (1) or (2) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be **increased** by not more than 5 years.

948.025 (2m)

948.03(5)

(5) Penalty enhancement; abuse by certain persons. If a person violates sub. (2) or (3) and the person is responsible for the welfare of the child who is the victim of the violation, the maximum term of imprisonment may be **increased** by not more than 5 years.

961.46

961.465(2m)

(2m) A person may be subject to **increased penalties** under both this section and s. 961.49 regarding the same unlawful act.

961.48

961.49(3)

(3) A person who violates sub. (1) may be subject to **increased penalties** under both subs. (1) and (2) regarding the same unlawful act.

961.492

- 939.62 **Increased penalty** for habitual criminality.
- 939.621 **Increased penalty** for certain domestic abuse offenses.
- 939.623 **Increased penalty**; repeat serious sex crimes.
- 939.624 **Increased penalty**; repeat serious violent crimes.
- 939.625 **Increased penalty** for criminal gang crimes.
- 939.647 **Increased penalty**; violent felony committed against elder person.

939.62

939.62 **Increased penalty for habitual criminality.**

939.621

939.621 Increased penalty for certain domestic abuse offenses. t s a n a c t o f 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 changes the status of a misdemeanor to a felony.

939.622

939.623

939.623 **Increased penalty**; repeat serious sex crimes.

939.624

939.624 **Increased penalty**; repeat serious violent crimes.

939.625

939.625 **Increased penalty for criminal gang crimes.**

939.625(1)(a)

(a) If a person is convicted of a crime under chs. 939 to 948 or 961 committed for the benefit of, at the direction of or in association with any criminal gang, with the specific intent to promote, further or assist in any criminal conduct by criminal gang members, the **penalties** for the underlying crime are **increased** as provided in par. (b).

939.63(1)(b)

(b) The **increased penalty** provided in this subsection does not apply if possessing, using or threatening to use a dangerous weapon is an essential element of the crime charged.

939.632 / 939.64

939.641

939.641 (intro.) **Penalty; concealing identity.** If a person commits a crime while his or her usual appearance has been concealed, disguised or altered, with intent to make it less likely that he or she will be identified with the crime, the **penalties** may be **increased** as follows:

939.645(1)

(1) (intro.) If a person does all of the following, the **penalties** for the underlying crime are **increased** as provided in sub. (2):

Olsen, Jefren

From: Brennan, Mike [mike.brennan@doj.state.wi.us]
Sent: Wednesday, October 14, 1998 9:26 AM
To: Olsen, Jefren
cc: 'tom hammer'
Subject: CPSC -- Code Reclassification Subcommittee

Importance: High

Jefren --

The above-referenced subcommittee met for the first time yesterday, here in Milwaukee in Judge Sykes' chambers, from 9 a.m. until noon. Per Tom Hammer's request, I distributed a copy of your e-mail re: penalty enhancers inside the criminal code and Ch. 961. You should be gratified to know that your 7/3/98 felony and misdemeanor lists have become the working documents for this subcommittee!

The subcommittee debated formalized criteria in going about its reclassification of crimes, and discussed the proper classification for each of the 9 class A felonies listed on p. 2 of the 7/3/98 memo re: felonies.

Conclusions of which you should be aware:

1. The subcommittee decided to retain the current letter classification system.
2. Keep (1) first-degree intentional homicide, and (7) treason, in class A.
3. Leave (2) partial-birth abortion where it is now in class A, subject to the committee as a whole discussing this "hot" political topic.
4. Drop (5) causing death to another by tampering with household products, 941.327(2)(b)4. to a Class B felony, and excise the word "kill," in 941.327(2)(a); it was determined that this portion of this statute was duplicative of the first-degree intentional homicide statute.
5. Re: (6) (Causing death during carjacking) and (9) (use of child to commit a class A felony), it was tentatively concluded to eliminate them as duplicative if the number of prosecutions under these statutes is as few as expected; I am checking into that with DOC. Same rationale as in 4. for excising the word kill.
6. (3) (taking hostages) and (4) (kidnapping) are still being discussed substantively.

Hope this is of some help in the very first steps in drafting. I'll see you on Friday --

Mike

Olsen, Jefren

From: Brennan, Mike [mike.brennanQdoa.state.wi.us]
Sent: Sunday, October 25 1998 9:15 AM
To: Olsen, Jefren
cc: 'tom hammer'; **Sen.Huelsman**; 'matt frank -- state ag's office'; 'steve hurley'
Subject: 2nd CPSC-Code Reclassification Subcommittee

importance: High

Jefren --

The following tentative conclusions were reached at the 2nd meeting of the Code Reclassification Subcommittee of the Criminal Penalties Study Committee:

Class A felonies:

1. Recommend deletion of 943.23(1r), carjacking, as duplicative of felony murder:

✓ Recommend deletion of 943.23(1g) as duplicative of armed robbery, on the condition the armed robbery statute is amended as follows:

2. 943.32(l) would be revised to read:

"Whoever intentionally takes or carries away the property of another without consent by either of the following means:

- (a) By using force against the person with intent thereby [etc.]
- (b) By threatening the imminent use of force against the person or of another who is present with intent thereby [etc.] "

The reasoning is to have (1) be consistent with (a) and (b) as to the "take or carry away" language, and to update the language.

[Note that this proposed revision to the robbery statute will be reviewed by appellate attorneys in the AG's office, per Matt Frank. Thus, the revision is subject to final approval.]

3. 943.23(1 m) (carjacking mandatory minimum) would be eliminated as unnecessary given the recommended deletion of 943.23(1 g).

4. Taking hostages under 940.305(1), kidnapping at 940.31(2)(1), and absconding under 946.50(1), each remain Class A felonies.

5. Use of a child to commit a Class A felony under 948.36 was recommended to be deleted because it had never been used and was duplicative of the "party to a crime" statute.

6. A consensus was reached to term Class A felonies "Most Serious Offenses Against Person and State"

Class B felonies:

Using the list in your July 3, 1998 memo, the following Class B felonies remain in Class B; I've listed them by # :

J939.31 (conspiracy to commit crime for which penalty is life imprisonment);
&9.32(l)(a) (attempt to commit crime for which penalty is

life imprisonment);

- ✓940.02 (1 st degree reckless homicide);
- ✓940.05 (second degree intentional homicide);
- ✓940.21 (mayhem);
- ✓940.225(1) (1st degree sexual assault);
- ✓940.305(2) (taking hostages with release);
- ✓940.31(1) and (2)(b) (kidnapping);
- ✓943.02(1) (arson)
- ✓943.32(2) (armed robbery)
- ✓946.50(2) (absconding after being adjudicated delinquent for Class B felony)
- ✓948.02(1) (1st degree sexual assault of child)

The following 2 Class B felonies were recommended to be deleted:

- ✓943.23(1 g) and (1 m) (carjacking) [per reasoning above]
- ✓948.35(l)(b) (solicitation of a child to commit a Class A felony) [per reasoning above; duplicative under party to a crime statute]

On your 7/3/98 list of felonies, we did not come to a recommendation on B felonies #'s 5, 8, 9, 13, 18, and 19.

On another note, after you have added these proposed recommendations to the proposed changes and drafting notes which you showed Tom Hammer and me at the 10/16 CPSC meeting, could you please forward them to me, so that I may distribute them to the code reclass. subcommittee before the next code reclass. subcommittee meeting (Tue. 11/10/98 at 9 a.m. in Judge Sykes's chambers in Milwaukee, Rm. 414 Milw. Cty. Ct.house)

It is quite important to subcommittee members to see those as they go along, for the longer they would wait to update/revise/add to/delete rationales, the more memories fade. The rationales for some of these deletions could be quite important for ultimate passage of any legislation we propose.

The Extended Supervision Revocation Subcommittee also met last Friday, but did not reach any conclusions. It will continue to educate itself and I will keep you updated.

Thanks Jefren. Please e-mail me or call me at (414) 227-5102 with any questions.

Mike Brennan

Olsen, Jefren

From: (Frank, Matt J. [frankmj@DOJ.STATE.WI.US])
Sent: Monday, October 26, 1998 10:26 AM
To: 'Brennan, Mike'; Olsen, Jefren
Cc: 'tom hammer'; Sen.Huelsman; Frank, Matt J.; 'steve hurley'
Subject: RE: 2nd CPSC-Code Reclassification Subcommittee

Thanks Mike, we'll review the armed robbery revisions and get back to you. Matt

> -----Original Message-----

> From: Brennan, Mike [SMTP:mike.brennanQdoa.state.wi.us]
> Sent: Sunday, October 25, 1998 9:15 AM
> To: 'jefren e. olsen -- legislative attorney'
> cc: 'tom hammer'; 'senator joann huelsman'; 'matt frank -- state
> ag's office'; 'steve hurley'
> Subject: 2nd CPSC-Code Reclassification Subcommittee
> Importance: High
>
> Jefren --
>
> The following tentative conclusions were reached at the 2nd meeting of
> the
> Code Reclassification Subcommittee of the Criminal Penalties Study
> Committee:
>
> Class A felonies:
>
> 1. Recommend deletion of 943.23(1r), carjacking, as duplicative of
> felony
> murder.
> Recommend deletion of 943.23(1 g) as duplicative of armed robbery,
> on
> the condition the armed robbery statute is amended as follows:
>
> 2. 943.32(1) would be revised to read:
>
> "Whoever intentionally takes or carries away the property of another
> without
> consent by either of the following means:
>
> (a) By using force against the person with intent thereby
> [etc.]
> (b) By threatening the imminent use of force against the person or of
> another who is present with intent thereby [etc.] "
>
> The reasoning is to have (1) be consistent with (a) and (b) as to the
> "take
> or carry away" language,
> and to update the language.
>
> [Note that this proposed revision to the robbery statute will be
> reviewed by
> appellate attorneys in the AG's office, per Matt Frank. Thus, the
> revision
> is subject to final approval.]
>
> 3. 943.23(1m) (carjacking mandatory minimum) would be eliminated as
> unnecessary given the recommended deletion of 943.23(1g).

>

> 4. Taking hostages under **940.305(1)**, kidnapping at **940.31(2)(1)**, and
 > absconding under **946.50(1)**, each remain Class A felonies.

>

> 5. Use of a child to commit a Class A felony under 948.36 was
 > recommended
 > to be deleted because it had never been used and was duplicative of
 > the
 > "party to a crime" statute.

>

> 6. A consensus was reached to term Class A felonies "Most Serious
 > Offenses Against Person and State"

>

> Class B felonies:

>

> Using the list in your July 3, 1998 memo, the following Class B
 > felonies
 > remain in Class B; I've listed them by # :

> 939.31 (conspiracy to commit crime for which penalty is
 > life imprisonment);
 > 939.32(1)(a) (attempt to commit crime for which penalty
 > is
 > life imprisonment);
 > 940.02 (1st degree reckless homicide);
 > 940.05 (second degree intentional homicide);
 > 940.21 (mayhem);
 > **940.225(1)** (1st degree sexual assault);
 > **940.305(2)** (taking hostages with release);
 > **940.31(1)** and (2)(b) (kidnapping);
 > **943.02(1)** (arson)
 > **943.32(2)** (armed robbery)
 > **946.50(2)** (absconding after being adjudicated
 > delinquent
 > for Class B felony)
 > **948.02(1)** (1 st degree sexual assault of child)

>

> The following 2 Class B felonies were recommended to be deleted:
 >

> **943.23(1 g)** and (1 m) (carjacking) [per reasoning above]
 > **948.35(l)(b)** (solicitation of a child to commit a Class
 > A
 > felony) [per reasoning above; duplicative under party to a crime
 > statute]

>

> On your **7/3/98** list of felonies, we did not come to a recommendation
 > on B
 > felonies #'s 5, 8, 9, 13, 18, and 19.

>

> On another note, after you have added these proposed recommendations
 > to the
 > proposed changes and drafting notes which you showed Tom Hammer and me
 > at
 > the **10/16** CPSC meeting, could you please forward them to me, so that I
 > may
 > distribute them to the code reclass. subcommittee before the next code
 > reclass. subcommittee meeting (Tue. 1 **1/10/98** at 9 a.m. in Judge
 > Sykes's
 > chambers in Milwaukee, Rm. 414 Milw. Cty. Ct.house)

>

> It is quite important to subcommittee members to see those as they go
 > along,
 > for the longer they would wait to update/revise/add to/delete
 > rationales,
 > the more memories fade. The rationales for some of these deletions

> could be
> quite important for ultimate passage of any legislation we propose.
>
> The Extended Supervision Revocation Subcommittee also met last Friday,
> but
> did not reach any conclusions. It will continue to educate itself and
> I
> will keep you updated.
>
> Thanks Jefren. Please e-mail me or call me at (414) 227-5102 with any
> questions.
>
> Mike Brennan



JEO: King

Munday 11/2
p.m.

D-Nak

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1

Ken Cat.
AN ACT; relating to: classification and elements of certain felony offenses and providing penalties.

2

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

3

SECTION 1. 48.685 (5) (bm) 3. of the statutes is amended to read:

4

48.685 (5) (bm) 3. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06,

5

940.21, 940.225 (l), (2) or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21,

6

943.10 (2), ~~943.23 (1g), (1m) or (1r)~~ or 943.32 (2).

History: 1997 a 27, 237, 281; s. 13 93 (2) (c).

7

SECTION 2. 301.26 (4) (cm) 1. of the statutes is amended to read:

8

301.26 (4) (cm) 1. Notwithstanding pars. (a), (b) and (bm), the department shall

9

transfer funds from the appropriation under s. 20.410 (3) (cg) to the appropriations

1 under s. 20.410 (3) (hm), (ho) and (hr) for the purpose of reimbursing juvenile
 2 correctional institutions, secured child caring institutions, as defined in s. 938.02
 3 (15g), alternate care providers, aftercare supervision providers and corrective
 4 sanctions supervision providers for costs incurred beginning on July 1, 1996, for the
 5 care of any juvenile 14 years of age or over who has been placed in a juvenile
 6 correctional facility based on a delinquent act that is a violation of s. 939.31, 939.32
 7 (1) (a), 940.03, 940.21, 940.225 (l), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10
 8 (2), ~~943.23 (1g), (1m) or (1r)~~[✓], 943.32 (2), 948.02 (l), 948.025, or 948.30 (2), ~~948.35 (1)~~[✓]
 9 ~~(b) or 948.36~~[✓] and for the care of any juvenile 10 years of age or over who has been
 10 placed in a juvenile correctional institution or a secured child caring institution for
 11 attempting or committing a violation of s. 940.01 or for committing a violation of s.
 12 940.02 or 940.05.

History: 1995 a. 27 ss. 636p, 9126 (19), 1995 77, 352, 416, 417; 1997 a. 27, 35, 237, 252; s. 13.93 (2) (c).

****NOTE: This provisions to s. 941.327 (2) (b) 4., stats., even though the
 draft changes the offense from a Class A to a Class B felony and modifies the elements
 of the offense. I assume that you want the reference to remain because of the nature of
 the offense. Is that assumption correct?

13 **SECTION 3.** 302.11 (lg) (a) 2. of the statutes is amended to read:

14 302.11 (lg) (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (l), 940.19
 15 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02,
 16 943.10 (2), ~~943.23 (1g) or (1m)~~[✓], 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03
 17 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2) or 948.35 (1) ~~(b) or (c) or~~[✓]
 18 ~~948.36~~[✓].

History: 1977 c. 266,353; 1979 c. 221; 1981 c. 266; 1983 a. 66,528; 1985 a. 27; 1985 a. 332 s. 251 (1); 1987 a. 27, 412; 1989 a. 31 ss. 1629, 1630; Stats. s. 302.11; 1989
 a. 107; 1991 a. 39; 1993 a. 79, 97, 194, 289, 483; 1995 a 77,448; 1997 a. 133, 275, 283, 284, 295, 326.

19 **SECTION 4.** 753.061 (2m) of the statutes is amended to read:

20 753.061 (2m) The chief judge of the 1st judicial administrative district is
 21 authorized to designate 4 circuit court, branches to primarily handle violent- crime
 22 cases that involve a violation of s. 939.63, if a felony is committed while armed, and

1 of ss. 940.01 to 940.03, 940.05, 940.06, 940.225, ~~943.23 (1g), (1m) and (1r)~~[✓] and 943.32
 2 (2). If the circuit court branches are designated under this subsection, 2 shall begin
 3 to primarily handle violent crime cases on September 1, 1991, and 2 shall begin to
 4 primarily handle violent crime cases on August 1, 1992.

History: 1977 c. 449; 1979 c. 175; 1989 a. 121, 122; 1991 a. 39; 1993 a. 92; 1995 a. 27,448.

5 **SECTION 5. 938.208 (1) (a)** of the statutes is amended to read:

6 938.208 (1) (a) Probable cause exists to believe that the juvenile has committed
 7 a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05,
 8 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), ~~943.23 (1g), (1m)~~
 9 ~~or (1r)~~[✓], 943.32 (2), 947.013 (It), (1v) or (lx), 948.02 (1) or (2), 948.025 or 948.03 if
 10 committed by an adult.

History: 1995 a. 77,352.

11 **SECTION 6. 938.34 (4h) (a)** of the statutes is amended to read:

12 938.34 (4h) (a) The juvenile is 14 years of age or over and has been adjudicated
 13 delinquent for committing a violation of s. 939.31, 939.32 (1) (a), 940.03, 940.21,
 14 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), ~~943.23 (1g), (1m)~~
 15 ~~or (1r)~~[✓], 943.32 (2), 948.02 (l), 948.025, or 948.30 (2), ~~948.35 (1) (b) or 948.36~~[✓] or the
 16 juvenile is 10 years of age or over and has been adjudicated delinquent for attempting
 17 or committing a violation of s. 940.01 or for committing a violation of 940.02 or
 18 940.05.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27.35, 36, 84, 130, 164, 183, 205; s. 13.93 (2) (c).

****NOTE: This provision still refers to s. 941.327 (2) (b) 4., stats., even though the draft changes the offense from a Class A to a Class B felony and modifies the elements of the offense. I assume that you want the reference to remain because of the nature of the offense. Is that assumption correct?

19 **SECTION 7. 938.34 (4m) (b) 1.** of the statutes is amended to read:

20 938.34 (4m) (b) 1. The juvenile has committed a delinquent act that would be
 21 a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (l),

1 940.31, 941.20 (3), 943.02 (1), ~~943.23 (1g), (1m) or (1r)~~, 943.32 (2), 947.013 (1t), (1v)
2 or (lx), 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; s. 13.93 (2) (c).

3 **SECTION 8. 938.78 (3) of the statutes is amended to read:**

4 938.78 (3) If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s.
5 938.12 or found to be in need of protection or services under s. 48.13 (12), 1993 stats.,
6 or s. 48.13 (14), 1993 stats., or s. 938.13 (12) or (14) on the basis of a violation of s.
7 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28,
8 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2)
9 (a), ~~943.23 (1g), (1m) or (1r)~~, 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055,
10 948.60, 948.605 or 948.61 or any crime specified in ch. 940 has escaped from a secured
11 correctional facility, child caring institution, inpatient facility, as defined in s. 51.01
12 (10), secure detention facility or juvenile portion of a county jail, or from the custody
13 of a peace officer or a guard of such a facility, institution or jail, or has been allowed
14 to leave a secured correctional facility, child caring institution, inpatient facility,
15 secure detention facility or juvenile portion of a county jail for a specified time period
16 and is absent from the facility, institution or jail for more than 12 hours after the
17 expiration of the specified period, the department or county department having
18 supervision over the juvenile may release the juvenile's name and any information
19 about the juvenile that is necessary for the protection of the public or to secure the
20 juvenile's return to the facility, institution or jail. The department of corrections
21 shall promulgate rules establishing guidelines for the release of the juvenile's name
22 or information about the juvenile to the public.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283

23 **SECTION 9. 939.62 (2m) (a) 2m. b. of the statutes is amended to read:**

1 939.62 (2m) (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05,
 2 940.09 (l), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
 3 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43,
 4 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30
 5 (2), or 948.35 (1) (b) or (c) or 948.36.

~~NOTE: NOTE: Subpar. b. is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).~~NOTE:
 History: 1977 c. 449; 1989 a. 85; 1993 a. 289, 483, 486, 1995 a 77,448; 1997 a. 219, 283, 295, 326, s 13.93 (2) (c).

****NOTE: This provision still refers to s. 941.327 (2) (b) 4., stats., even though the draft changes the offense from a Class A to a Class B felony and modifies the elements of the offense. I assume that you want the reference to remain because of the nature of the offense. Is that assumption correct?

6 **SECTION 10.** 939.632 (1) (e) 1. of the statutes is amended to read:

7 939.632 (1) (e) 1. Anyfelonyunder s. 940.01, 940.02, 940.03, 940.05, 940.09 (1),
 8 940.19 (2), (3), (4) or (5), 940.21, 940.225 (l), (2) or (3), 940.305, 940.31, 941.20,
 9 941.21, 943.02, 943.06, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02 (1) or
 10 (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.055, 948.07, 948.08, 948.30(2), or 948.35
 11 (1) (b) or (c) or 948.36.

History: 1995 a. 22.

12 **SECTION 11.** 939.72 (1) of the statutes is amended to read:

13 939.72 (1) Section 939.30, or 948.35 or 948.36 for solicitation and s. 939.05 as
 14 a party to a crime which is the objective of the solicitation; or

History: 1991 a 153.

15 **SECTION 12.** 941.327 (2) (a) (intro.) of the statutes is amended to read:

16 941.327 (2) (a) (intro.) Whoever, with intent to ~~kill~~, injure or otherwise
 17 endanger the health or safety of any person or to cause significant injury or damage
 18 to the business of any person or entity, does either of the following may be punished
 19 under par. (b):

History: 1987 a. 90.

****NOTE: The word "kill" is eliminated because it makes the offense duplicative of first degree intentional homicide.

20 **SECTION 13.** 941.327 (2) (b) 4. of the statutes is amended to read:

1 (b) By threatening the imminent use of force against ~~the person of~~ the owner
 2 or ~~of~~ another who is present with intent thereby to compel the owner to acquiesce in
 3 the taking or carrying away of the property.

History: 1977 c. 173; 1979 c. 114; 1993 a. 486; 1995 a. 288.

****NOTE: Please review these changes very carefully. I struck the reference to the
 "person" of the owner in s. 943.32 (1), stats., instead of the reference to the "owner"
 because "owner" is a defined term (s. 943.32 (3), stats.) and because it seems to me that
 referring to the "owner" is clearer. What do you think of this approach? Also, is the
 reference to the "person or presence of the owner" in s. 943.32 (1) (intro.), stats., being
 eliminated because that is implied in the methods of robbery described in pars. (a) and (b)?
 If so, is that implication clear enough? **[These changes subject to final approval after
 review by appellate lawyers in the Attorney General's office.]**

4 SECTION 19. 946.82 (4) of the statutes is amended to read:

5 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
 6 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission
 7 of any of the felonies specified in: chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (l),
 8 180.0129, 181.0129, 185.825, 200.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
 9 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
 10 940.19 (3) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
 11 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 943.01 (2) or (2g), 943.011,
 12 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (b) to (d),
 13 943.201, 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30,
 14 943.32, 943.34 (1) (b) and(c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4)
 15 (b) and (c), 943.60, 943.70, 944.205, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34,
 16 945.03, 945.04, 945.05, 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (l),
 17 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 947.015, 948.05, 948.08,
 18 948.12 and 948.30.

History: 1981 c. 280; 1983 a. 438; 1985 a. 104; 1985 a 236 s. 15; 1987 a. 266 s. 5; 1987 a. 332, 348, 349, 403; 1989 a. 121,303; 1991 a. 32, 39, 189; 1993 a. 50, 92, 94, 112, 280, 441, 491; 1995 a. 133, 249, 336, 448; 1997 a 35, 79, 101, 140, 143,252

19 SECTION 20. 948.35 (1) (a) of the statutes is amended to read:

1 948.35 (1) (a) Except as provided in pars. ~~(b) to~~ [✓] (c) and (d) or s. 961.455, any
 2 person who has attained the age of 17 years and who, with the intent that a felony
 3 be committed and under circumstances that indicate unequivocally that he or she
 4 has the intent, knowingly solicits, advises, hires, directs or counsels a person 17
 5 years of age or under to commit that felony may be fined or imprisoned or both, not
 6 to exceed the maximum penalty for the felony.

History: 1991 a. 153. 1995 a. 27,448.

7 **SECTION 21.** 948.35 (1) (b) of the statutes is repealed.

CS

****NOTE: The offense of soliciting a child to ~~commit~~ a Class A felony is repealed because it is duplicative of the statute imposing criminal liability for being party to a crime (s. 939.05, stats.). **NB:** Should this ^(note) refer to the solicitation statute instead of the party to a crime statute? Section 948.35, stats., essentially sets up different rules for solicitation of children to commit a crime. See s. 939.30 (l), stats. Also, by repealing s. 948.35 (1) (b), stats., a person who solicits a child to commit a Class A felony will now apparently be subject to life imprisonment under s. 948.35 (1) (a), stats. Is that your intent? If so, the cross-references to s. 948.35 (1) (b), stats., that are stricken in this draft may need instead to be changed to refer to life imprisonment cases under s. 948.35 (1) (a), stats. If not, perhaps s. 948.35, stats., should be looked at in *toto* to consider what should happen in cases of solicitation of a child to commit a crime.

8 **SECTION 22.** 948.36 of the statutes is repealed.

****NOTE: The offense of using a child to commit a Class A felony is repealed because it is duplicative of the statute imposing criminal liability for being party to a crime (s. 939.05, stats.) and because it has never been prosecuted.

9 **SECTION 23.** 949.03 (1) (b) of the statutes is amended to read:

10 949.03 (1) (b) The commission or the attempt to commit any crime specified in
 11 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
 12 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,
 13 940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03,
 14 943.04, 943.10, 943.20, an3 ~~(1g), (1m) or (1r)~~, [✓] 943.32, 948.02, 948.025, 948.03,
 15 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

403;14089 a. 1975 d.402359: 1452a al 97522734499577 453, 374, 456;799911a83398332799, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399,

16 **SECTION 24.** 969.08 (10) (b) of the statutes is amended to read:

1 969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4),
 2 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195
 3 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25,
 4 940.29, 940.295 (3) (b) lg., lm., lr., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30,
 5 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10,
 6 ~~943.23 (1g), (1m) or (1r)~~, 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1)
 7 or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

~~NOTE: NOTE: Par. (b) is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:~~

History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403, 1991 a. 153, 269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a. 143, 180, 295, s. 13.93 (2) (c).

8 **SECTION 25.** 973.0135 (1) (b) 2. of the statutes is amended to read:

9 973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
 10 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
 11 941.327 (2) (b) 4., 943.02, 943.10 (2), ~~943.23 (1g), (1m) or (1r)~~, 943.32 (2), 946.43,
 12 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30
 13 (2), [✓] or 948.35 (1) [✓] (b) or (c) or ~~948.36~~.

~~NOTE: NOTE: Subd. 2. is shown as affected by two acts of the 1997 legislature and as merged by the revisor under ss. 13.93 (2) (c). NOTE:~~

History: 1993 a. 194, 483; 1995 a. 448; 1997 a. 219, 283, 295.

****NOTE: This provision still refers to s. 941.327 (2) (b) 4., stats., even though the draft changes the offense from a Class A to a Class B felony and modifies the elements of the offense. I assume that you want the reference to remain because of the nature of the offense. Is that assumption correct?

14 **SECTION 26.** 978.13 (1) (c) of the statutes is amended to read:

15 978.13 (1) (c) In counties having a population of 500,000 or more, the salary and
 16 fringe benefit costs of clerk positions in the district attorney's office necessary for the
 17 prosecution of violent crime cases primarily involving felony violations under s.
 18 939.63, if a felony is committed while armed, and under ss. 940.01 to 940.03, 940.05,
 19 940.06, 940.225, ~~943.23 (1g), (1m) and (1r)~~ and 943.32 (2). The state treasurer shall
 20 pay the amount authorized under this paragraph to the county treasurer pursuant
 21 to a voucher submitted by the district attorney to the secretary of administration

1 from the appropriation under s. 20.475 (1) (i). The amount paid under this paragraph
2 may not exceed \$88,500 in the 1997-98 fiscal year and \$91,600 in the 1998-99 fiscal
3 year.

4 History: 1989 a. 31, 117, 122, 336; 1991 a. 39; 1993 a. 16, 92; 1995 a. 27, 448; 1997 a. 27.

SECTION 27. Initial applicability.

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

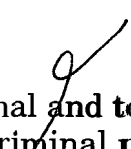
7 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0590/P1dn

JEO:.....
KMG

Mike Brennan:

This draft incorporates the decisions, both final and tentative, reached thus far by the code reclassification subcommittee of the criminal penalties study committee. I have inserted a number of 4-star notes (***NOTE: ) in the body of the draft. These notes either: a) specify the subcommittee's rationale for a particular decision; or b) make comments or raise questions that the subcommittee may want to consider when reviewing the draft. The latter notes will be deleted from the draft as they are dealt with.

Also, your e-mail message of 10/25/98 said that the subcommittee had decided to term Class A felonies as the "Most Serious Offenses Against Person and State". I assume that this decision is for the benefit of the sentencing guidelines subcommittee and is not meant to be incorporated in some way into the criminal code.

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

Jefren E. Olsen
Legislative Attorney
26643906

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0590/P1dn
JEO:kmg:lp

November 2, 1998

Mike Brennan:

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

Jefren E. Olsen
Legislative Attorney
26643906

Olsen, Jefren

From: Brennan, Mike [mike.brennan@doa.state.wi.us]
Sent: Thursday, November 12, 1998 1:53 PM
To: Olsen, Jefren
cc: 'tom hammer'; 'steve hurley'; Sen.Huelsman; 'matt frank -- state ag's office'; 'judge barland'; 'nick chiarkis -- state public defender'
Subject: 1 /I 2/98 Code Reclass. Subcommittee Meeting

Jefren-

The following conclusions were reached at today's code reclassification subcommittee meeting:

The members spent quite a bit of time with your preliminary draft. Responses to the 4 star notes were as follows:

As for the note on p. 2, repeated on pgs. 4, 5, and 9, the assumption is correct.

On p. 6, the rationale for reducing sec. 941.327 from Class A to Class B is that the word "kill" has been eliminated, so a Class B classification was thought proper so as to reserve Class A felonies for the most serious crimes against persons and state. Because, after the amendment, sec. 941.327 no longer punishes death, classification in Class B was deemed to provide sufficient punishment.

The subcommittee reversed its earlier decision, and wishes the carjacking statute at sec. 943.23(1r) to be reinstated as currently found in the statutes.

Reinstate all of carjacking: (g), (1m) & (1r)

Further, the subcommittee reversed its earlier decision to modify or amend the armed robbery statute, and sec. 943.32 should remain as currently found in the statutes.

The subcommittee chose to repeal all of sec. 948.35 (not just (1)(b)) under the following rationale: The offense of soliciting a child to commit a Class A felony is duplicative of the statute imposing criminal liability for being party to a crime. It was decided that the sentencing guidelines the committee ultimately proposes should consider an enhancement for the age of the person solicited as a substantial aggravating factor, or the repeal of this statute would be revisited.

Then the subcommittee moved to other Class B felonies:

Repeated sexual assault of a child, sec. 948.025, remains a Class B felony, but subsection (1) of that statute should be revised to provide that whoever commits 3 or more violations under 948.02(2) within a specified period of time involving the same child is guilty of a Class BC felony.

NB: 948.13 - unchanged.

Rationale: This sets up a parallel structure with sec. 948.02(2). It was concluded that sec. 948.025 provides an alternative method of proof to sec. 948.02, and that if that crime punishes second degree sexual assault as a Class BC felony, sec. 948.025 should handle sec. 948.02(2) crimes in the same manner.

etc Abduction of another's child by force or threat of force, sec. 948.30(2), remains a Class B felony.

Please update the preliminary draft, and call me with any questions. You may e-mail it to me. This subcommittee has not yet set a next meeting date.

The committee of the whole meets again next Friday, 1 1/20, in the GAR room,
at 9:30 a.m.

Thanks Jefren --

Mike



D-Note

R.M.R.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Due Thurs. 11/19

regenerate

1 **AN ACT to repeal** 943.23 (lg), 943.23 (lm), 943.23 (1r), 948.35 (1) (b) and 948.36;
 2 and **to amend 48.685 (5)** (bm) 3., 301.26 (4) (cm) 1., 302.11 (lg) (a) 2., 753.061
 3 (2m), 938.208 (1) (a), 938.34 (4h) (a), 938.34 (4m) (b) 1., 938.78 (3), 939.62 (2m)
 4 (a) 2m. b., 939.632 (1) (e) 1., 939.72 (l), 941.327 (2) (a) (intro.), 941.327 (2) (b)
 5 4., 943.23(4m), 943.32 (l), 946.82 (4), 948.35 (1) (a), 949.03 (1) (b), 969.08 (10)
 6 (b), 973.0135 (1) (b) 2. and 978.13 (1) (c) of the statutes; **relating to:**
 7 classification and elements of certain felony offenses and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

8 SECTION 1. 48.685 (5) (bm) 3. of the statutes is amended to read:

1 ~~48.685 (5) (bm) 3. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06,~~
 2 ~~940.21, 940.225 (1), (2) or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21,~~
 3 ~~943.10 (2), 943.23 (1g), (1m) or (1r) or 943.32 (2).~~

4 SECTION 2. 301.26 (4) (cm) 1. of the statutes is amended to read:
 5 301.26 (4) (cm) 1. Notwithstanding pars. (a), (b) and (bm), the department shall
 6 transfer funds from the appropriation under s. 20.410 (3) (cg) to the appropriations
 7 under s. 20.410 (3) (hm), (ho) and (hr) for the purpose of reimbursing juvenile
 8 correctional institutions, secured child caring institutions, as defined in s. 938.02
 9 (15g), alternate care providers, aftercare supervision providers and corrective
 10 sanctions supervision providers for costs incurred beginning on July 1, 1996, for the
 11 care of any juvenile 14 years of age or over who has been placed in a juvenile
 12 correctional facility based on a delinquent act that is a violation of s. 939.31, 939.32
 13 (1) (a), 940.03, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10
 14 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02 (1), 948.025, or 948.30 (2), 948.35 (1) ✓
 15 ~~(b) or 948.36~~ and for the care of any juvenile 10 years of age or over who has been
 16 placed in a juvenile correctional institution or a secured child caring institution for
 17 attempting or committing a violation of s. 940.01 or for committing a violation of s.
 18 940.02 or 940.05.

→ **NOTE:** This provision still refers to s. 941.327 (2) (b) 4., state even though the draft changes the offense from a Class A to a Class B felony and modifies the elements of the offense. I assume that you want the reference to remain because of the nature of the offense. Is that assumption correct?

19 SECTION 3. 302.11 (lg) (a) 2. of the statutes is amended to read:
 20 302.11 (lg) (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09(1), 940.19
 21 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02,
 22 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03
 plain text

1 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, ^{or} 948.30 (2), ~~948.35 (1) (b) or (c)~~ or
 2 948.36.

3 **SECTION 4.** 753.061 (2m) of the statutes is amended to read:
 4 753.061 (2m) The chief judge of the 1st judicial administrative district is
 5 authorized to designate 4 circuit court branches to primarily handle violent crime
 6 cases that involve a violation of s. 939.63, if a felony is committed while armed, and
 7 of ss. 940.01 to 940.03, 940.05, 940.06, 940.225, 943.23 (1g), (1m) and (1r) and 943.32
 8 (2). If the circuit court branches are designated under this subsection, 2 shall begin
 9 to primarily handle violent crime cases on September 1, 1991, and 2 shall begin to
 10 primarily handle violent crime cases on August 1, 1992.

11 **SECTION 5.** 938.208 (1) (a) of the statutes is amended to read:
 12 938.208 (1) (a) Probable cause exists to believe that the juvenile has committed
 13 a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05,
 14 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), (1m)
 15 or (1r), 943.32 (2), 947.013 (1t), (1v) or (1x), 948.02 (1) or (2), 948.025 or 948.03 if
 16 committed by an adult.

17 **SECTION 6.** 938.34 (4h) (a) of the statutes is amended to read:
 18 938.34 (4h) (a) The juvenile is 14 years of age or over and has been adjudicated
 19 delinquent for committing a violation of s. 939.31, 939.32 (1) (a), 940.03, 940.21,
 20 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m)
 21 ^{plain text} or (1r), ^{plain text} 943.32 (2), 948.02 (l), 948.025, or 948.30 (2), 948.35 (1) (b) or 948.36 or the
 22 juvenile is 10 years of age or over and has been adjudicated delinquent for attempting
 23 or committing a violation of s. 940.01 or for committing a violation of 940.02 or
 24 940.05.

****NOTE: This provision still refers to s. 941.327 (2) (b) 4., stats. even though the draft changes the offense from a Class A to a Class B felony and modifies the elements of the offense. Assume that you want the reference to remain because of the nature of the offense. Is that assumption correct?

SECTION 7. 938.34 (4m) (b) 1. of the statutes is amended to read:

938.34 (4m) (b) 1. The juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), ~~943.23 (1g), (1m) or (1r)~~, 943.32 (2), 947.013 (1t), (1v) or (1x), 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

SECTION 8. 938.78 (3) of the statutes is amended to read:

938.78 (3) If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need of protection or services under s. 48.13 (12), 1993 stats., or s. 48.13 (14), 1993 stats., or s. ~~938.13 (12) or (14)~~ on the basis of a violation of s. 941.10, 941.11, 941.20, 941.21, ~~941.23,~~ 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), ~~943.23 (1g), (1m) or (1r)~~, 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.60, 948.605 or 948.61 or any crime specified in ch. 940 has escaped from a secured correctional facility, child caring institution, inpatient facility, as defined in s. 51.01 (10), secure detention facility or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, institution or jail, or has been allowed to leave a secured correctional facility, child caring institution, inpatient facility, secure detention facility or juvenile portion of a county jail for a specified time period and is absent from the facility, institution or jail for more than 12 hours after the expiration of the specified period, the department or county department having supervision over the juvenile may release the juvenile's name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile's return to the facility, institution or jail. The department of corrections

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1 shall promulgate rules establishing guidelines for the release of the juvenile's name
2 or information about the juvenile to the public.

3 SECTION 9. 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

4 939.62 (2m) (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05,

5 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,

6 941.327 (2) (b) 4., 943.02, 943.10 (2), ~~943.23 (1g), (1m) or (1r)~~, 943.32 (2), 946.43,

7 948.02 (1) or (2), 948.025, 948.03(2) (a) or (c), 948.05, 948.06, 948.07, 948.08, ~~948.30~~

8 (2), ~~948.35 (1) (b) or (c) or 948.36~~

***NOTE: This provision still refers to s. 941.327 (2) (b) 4., stats., even though the draft changes the offense from a Class A to a Class B felony and modifies the elements of the offense. I assume that you want the reference to remain because of the nature of the offense. Is that assumption correct?

9 SECTION 10. 939.632 (1) (e) 1. of the statutes is amended to read:

10 939.632 (1) (e) 1. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1),

11 940.19 (2), (3), (4) or (5), 940.21, 940.225 (1), (2) or (3), 940.305, 940.31, 941.20,

12 941.21, 943.02, 943.06, 943.10 (2), ~~3(1g), (1m) or (1r)~~ 943.32 (2), 948.02 (1) or

13 (2), 948.025, 948.03(2) (a) or (c), 948.05, 948.055, 948.07, 948.08, ~~948.30 (2), 948.35~~

14 (1) (b) or (c) or 948.36.

15 SECTION 11. 939.72 (1) of the statutes is amended to read:

16 939.72 (1) Section 939.30, ~~948.35~~ or 948.36 is for solicitation and s. 939.05 as

17 a party to a crime which is the objective of the solicitation; or

18 SECTION 12. 941.327 (2) (a) (intro.) of the statutes is amended to read:

19 941.327 (2) (a) (intro.) Whoever, with intent to kill, injure or otherwise

20 endanger the health or safety of any person or to cause significant injury or damage

21 to the business of any person or entity, does either of the following may be punished

22 under par. (b):

***NOTE: The word "kill" is eliminated because it makes the offense duplicative of first degree intentional homicide.

1 SECTION 13. 941.327 (2) (b) 4. of the statutes is amended to read:

2 941.327 (2) (b) 4. If the act under par. (a) causes death to another, a person is
3 guilty of a Class ~~A~~ B felony.

~~***NOTE: Do you want to specify your rationale for reducing this offense to a Class B felony?~~

4 SECTION 14. 943.23 (1g) of the statutes is repealed.

***NOTE: The offense of carjacking is repealed because it is duplicative of armed robbery (s. 943.32, stats., as amended by this draft). *[Subject to final approval after review by appellate lawyers in the Attorney General's office.]*

5 SECTION 15. 943.23 (1m) of the statutes is repealed.

***NOTE: The penalty enhancer for causing great bodily harm during a carjacking is repealed because the underlying offense of carjacking (s. 943.23 (1g) stats.) is repealed. *[Subject to final approval after review by appellate lawyers in the Attorney General's office.]*

6 SECTION 16. 943.23 (1r) of the statutes is repealed.

***NOTE: The offense of causing death to another during a carjacking is repealed because it is duplicative of felony murder (s. 940.03, stats.).

7 SECTION 17. 943.23 (4m) of the statutes is amended to read:

8 943.23 (4m) Whoever knows that the owner does not consent to the driving or
9 operation of a vehicle and intentionally accompanies, as a passenger in the vehicle,
10 a person while he or she violates sub. (1g), (1m), (1r), (2) or (3) is guilty of a Class A
11 misdemeanor.

12 SECTION 18. 943.32 (1) of the statutes is amended to read:

13 943.32 (1) Whoever, ~~with intent to steal,~~ intentionally takes or carries away
14 property from the person or presence of the owner without the consent of the owner
15 by either of the following means is guilty of a Class C felony:

16 (a) By using force against ~~the person~~ of the owner with intent thereby to
17 overcome his or her physical resistance or physical power of resistance to the taking
18 or carrying away of the property; or

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1 (b) By threatening the imminent use of force against the person of the owner
 2 or of another who is present with intent thereby to compel the owner to acquiesce in
 3 the taking or carrying away of the property.

****NOTE: Please review these changes very carefully. I struck the reference to the "person" of the owner in s. 943.32 (1), stats., instead of the reference to the "owner" because "owner" is a defined term (s. 943.32 (3), stats.) and because it seems to me that referring to the "owner" is clearer. What do you think of this approach? Also, is the reference to the "person or presence of the owner" in s. 943.32 (1) (intro.), stats., being eliminated because that is implied in the methods of robbery described in pars. (a) and (b)? If so, is that implication clear enough? [These **changes are subject to final approval after review by appellate lawyers in the Attorney General's office.**]

4 **SECTION 19.** 946.82 (4) of the statutes is amended to read:

5 946.82 (4) "Racketeering activity" means any activity specified in 18 USC 1961
 6 (1) in effect as of April 27, 1982 or the attempt, conspiracy to commit, or commission
 7 of any of the felonies specified in chs. 945 and 961 and ss. 49.49, 134.05, 139.44 (l),
 8 180.0129, 181.0129, 185.825, 200.09 (2), 215.12, 221.0625, 221.0636, 221.0637,
 9 221.1004, 551.41, 551.42, 551.43, 551.44, 553.41 (3) and (4), 553.52 (2), 940.01,
 0 940.19 (3) to (6), 940.20, 940.201, 940.203, 940.21, 940.30, 940.305, 940.31, 941.20
 11 (2) and (3), 941.26, 941.28, 941.298, 941.31, 941.32, 943.01 (2) or (2g), 943.011,
 12 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (b) to (d),
 13 943.201, 943.23 (1g), (1m), (1r), (2) and (3), 943.24 (2), 943.25, 943.27, 943.28, 943.30,
 14 943.32, 943.34 (1) (b) and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4)
 15 (b) and (c), 943.60, 943.70, 944.205, 944.21 (5) (c) and (e), 944.32, 944.33 (2), 944.34,
 16 945.03, 945.04, 945.05, 945.08, 946.10, 946.11, 946.12, 946.13, 946.31, 946.32 (l),
 17 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76, 947.015, 948.05, 948.08,
 18 948.12 and 948.30.

19 **SECTION 20.** 948.35 (1) (a) of the statutes is amended to read:

20 948.35 (1) (a) Except as provided in pars. (b) to (c) and (d) or s. 4 55, any
 21 person who has attained the age of 17 years and who, with the intent that a felony

1 ~~be committed and under circumstances that indicate unequivocally that he or she~~
 2 ~~has the intent, knowingly solicits, advises, hires, directs or counsels a person 17~~
 3 ~~years of age or under to commit that felony may be fined or imprisoned or both, not~~
 4 ~~to exceed the maximum penalty for the felony.~~

5

SECTION 21. 948.35 ~~XXXX~~ of the statutes is repealed.

****NOTE: The offense of soliciting a child to commit a Class A felony is repealed because it is duplicative of the statute imposing criminal liability for being party to a crime (s. 939.05, stats.). NB: Should this NOTE refer to the solicitation statute instead of the party to a crime statute? Section 948.35, stats., essentially sets up different rules for solicitation of children to commit a crime. See s. 939.30 (1), stats. ~~Also, by repealing s. 948.35 (1) (b), stats., a person who solicits a child to commit a Class A felony will now apparently be subject to life imprisonment under s. 948.35 (1) (a), stats. Is that your intent? If so, the cross-references to s. 948.35 (1) (b), stats., that are stricken in this draft may need instead to be changed to refer to life imprisonment cases under s. 948.35 (1) (a), stats. If not, perhaps s. 948.35, stats., should be looked at in toto to consider what should happen in cases of solicitation of a child to commit a crime.~~

6

SECTION 22. 948.36 of the statutes is repealed.

****NOTE: The offense of using a child to commit a Class A felony is repealed because it is duplicative of the statute imposing criminal liability for being party to a crime (s. 939.05, stats.) and because it has never been prosecuted.

SECTION 23. 949.03 (1) (b) of the statutes is amended to read:

8 ~~949.03 (1) (b) The commission or the attempt to commit any crime specified in~~
 9 ~~s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,~~
 10 ~~940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24,~~
 11 ~~940.25, 940.285, 940.29, 940.30, 940.305, 940.31, 940.32, 941.327, 943.02, 943.03,~~
 12 ~~943.04, 943.10, 943.20, 943.22 (1g), (1m) or (1r), 943.32, 948.02, 948.025, 948.03,~~
 13 ~~948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.~~

14 **SECTION 24. 969.08 (10) (b)** of the statutes is amended to read:

15 969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4),
 16 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195
 17 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25,
 18 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30,

1 ~~941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10,~~
 2 ~~943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1)~~
 3 ~~or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.~~

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9-4

4 **SECTION 25.** 973.0135 (1) (b) 2. of the statutes is amended to read:

5 973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
 6 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
 7 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43,
 8 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, ^{or} 948.30
 9 (2), ~~948.35 (1) (b) or (c) or 948.36.~~

***NOTE: This provision still refers to s. 941.327 (2) (b) 4., stats., even though the draft changes the offense from a Class A to a Class B felony and modifies the elements of the offense. I assume that you want the reference to remain because of the nature of the offense. Is that assumption correct?

10 **SECTION 26.** 978.13 (1) (c) of the statutes is amended to read:
 11 978.13 (1) (c) In counties having a population of 500,000 or more, the salary and
 12 fringe benefit costs of clerk positions in the district attorney's office necessary for the
 13 prosecution of violent crime cases primarily involving felony violations under s.
 14 939.63, if a felony is committed while armed, and under ss. 940.01 to 940.03, 940.05,
 15 940.06, 940.225, 943.23 (1g), (1m) and (1r) and 943.32 (2). The state treasurer shall
 16 pay the amount authorized under this paragraph to the county treasurer pursuant
 17 to a voucher submitted by the district attorney to the secretary of administration
 18 from the appropriation under s. 20.475 (1) (i). The amount paid under this paragraph
 19 may not exceed \$88,500 in the 1997-98 fiscal year and \$91,600 in the 1998-99 fiscal
 20 year.

21 **SECTION 27. Initial applicability.**

1 **INSERT 5-3:** ✓

2 SECTION 1. 939.30 (1) of the statutes is amended to read:

3 939.30 (1) Except as provided in sub. (2) and ~~ss. 948.35~~ and s. 961.455, whoever,
4 with intent that a felony be committed, advises another to commit that crime under
5 circumstances that indicate unequivocally that he or she has the intent is guilty of
6 a Class D felony.

7 History: 1977 c. 173; 1989 a. 121; 1991 a. 139; 1995 a. 448.

INSERT 6-3: ✓

****NOTE: Because the word "kill" is eliminated from the language specifying the elements of this crime, the committee thinks it proper to reduce the penalty for the crime to a Class B felony so as to reserve Class A felonies for the most serious crimes against persons and state. Because, after the amendment to the elements of the crime, the statute no longer punishes death, classification as a Class B felony provides sufficient punishment. NB: I have slightly rephrased the language provided by Mike Brennan for this proposed NOTE in order to give a slightly fuller explanation of the elimination of the word "kill". Also, the last sentence is not quite correct because s. 941.327 (2) (b) 4., stats., does punish causing the death of another; maybe the NOTE should say that the statute no longer punishes acts undertaken with the intent to kill, as that is the upshot of eliminating "kill" in s. 941.327 (2) (a) (intro.), stats.

8 SECTION 2. 948.025 (1) of the statutes is renumbered 948.025 (1) (a) and
9 amended to read:

10 948.025 (1) (a) Whoever commits 3 or more violations under s. 948.02 (1) ~~or (2)~~
11 within a specified period of time involving the same child is guilty of a Class B felony.

12 History: 1993 a. 221; 1995 a. 14.

SECTION 3. 948.025 (1) (b) of the statutes is created to read:

13 948.025 (1) (b) Whoever commits 3 or more violations under s. 948.02 (2) within
14 a specified period of time involving the same child is guilty of a Class BC felony.

****NOTE: Because s. 948.025, stats., provides an alternative method of proving violations of s. 948.02 (1) and (2), stats. (first and second degree sexual assault of a child), acts of second degree sexual assault of a child prosecuted under s. 948.025 should be treated as a Class BC felony, which is the classification given to second degree sexual assault of a child under s. 948.02 (2), stats.

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INSERT 9-4:

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SECTION 4. 961.455 (3) of the statutes is amended to read:

961.455 (3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30 ~~or 948.35~~.

History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283.

SECTION 5. 969.08 (10) (a) of the statutes is amended to read:

969.08 (10) (a) "Commission of a serious crime" includes a solicitation, conspiracy or attempt, under s. 939.30, 939.31, or 939.32 ~~or 948.35~~, to commit a serious crime.

History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403, 1991 a. 153,269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a. 143, 180.295; s. 13.93 (2) (c).

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0590/P2dn

JEO: *Kmitz*

Mike Brennan:

This redraft incorporates the decisions taken by the code reclassification subcommittee at its November 12, 1998, meeting. It eliminates the repeal of the carjacking crimes (s. 943.23 (1g), (1m) and (1r), stats.) and the amendments to the robbery statute (s. 943.32, stats.). It also repeals s. 948.35, stats., in its entirety instead of only sub. (1) (b) of that statute.

With respect to s. 948.025 (1), stats., this draft splits the provision into two paragraphs to avoid having to change numerous existing cross-references to that specific subsection. Please review the ~~****NOTE~~ following the treatment of s. 948.025, stats., to make sure it accurately reflects the rationale for the subcommittee's decision.

Also, note that the vast majority of references to s. 948.025 or 948.025 (1), stats., occur in statutes that also reference either s. 948.02 or 948.02 (1) and (2), stats. However, in four statutes the reference to s. 948.025, stats., is joined with a reference to first degree sexual assault only (s. 948.02 (1), stats.). See ss. 301.26 (4) (cm) l., 938.34 (4h) (a), 948.13 (1) (a) and 973.034, stats. Do you want to narrow the reference to s. 948.025, stats., in any of these statutes to cover only proposed s. 948.025 (1) (a), the counterpart of s. 948.02 (1), stats.?

Please let me know if you have any questions.

Jefren E. Olsen
Legislative Attorney
26643906

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0590/P2dn

JEO:kmg:jf

November 18, 1998

Mike Brennan:

This redraft incorporates the decisions taken by the code reclassification subcommittee at its November 12, 1998, meeting. It eliminates the repeal of the carjacking crimes (s. 943.23 (lg), (lm) and (lr), stats.) and the amendments to the robbery statute (s. 943.32, stats.). It also repeals s. 948.35, stats., in its entirety instead of only sub. (1) (b) of that statute.

With respect to s. 948.025 (1), stats., this draft splits the provision into two paragraphs to avoid having to change numerous existing cross-references to that specific subsection. Please review the *****NOTE** following the treatment of s. 948.025, stats., to make sure that it accurately reflects the rationale for the subcommittee's decision.

Also, note that the vast majority of references to s. 948.025 or to s. 948.025 (l), stats., occur in statutes that also either reference s. 948.02 or reference s. 948.02 (1) and (2), stats. However, in four statutes the reference to s. 948.025, stats., is joined with a reference to first degree sexual assault only (s. 948.02 (1), stats.). See ss. 301.26 (4) (cm) l., 938.34 (4h) (a), 948.13 (1) (a) and 973.034, stats. Do you want to narrow the reference to s. 948.025, stats., in any of these statutes to cover only proposed s. 948.025 (1) (a), the counterpart of s. 948.02 (l), stats.?

Please let me know if you have any questions.

Jefren E. Olsen
Legislative Attorney
266-8906

Olsen, Jefren

From: Brennan, Mike [mike.brennan@doa.state.wi.us]
Sent: Thursday, November 19, 1998 10:08 AM
To: Olsen, Jefren
Subject: 1 1/18 Drafter's Note and Preliminary Draft

Jefren-

The above look very good. In response to the notes:

✓ ~~P. 4, w/~~ regard to sec. 941.327: I like your proposed slight rephrasing of the rationale. I agree that the Note should say that the statute no longer punishes acts undertaken "with the intent to kill." Please change the Note accordingly. The N.B. phrase may be deleted.

✓ ~~P. 4, w/~~ regard to sec. 948.025(1)(b): The Note accurately reflects the subcommittee's rationale.

✓ ~~Drafter's Note, final paragraph:~~ With regard to the 4 references to 948.025 which are joined with a reference to 1st degree sexual assault only, it would seem proper to narrow the reference in those instances to proposed 948.025(1)(a). Do you agree? If so, please do so. If not, let's discuss.

✓ ~~P. 4, repeal of 948.35:~~ This note may be expanded if the sentencing guidelines ultimately proposed do not consider, as an aggravating factor, the age of the person solicited. For now, the note accurately reflects the subcommittee's rationale. It was decided not to refer to the solicitation statute considering this assumption about the putative guidelines.

Please send me an updated version of the preliminary draft when finished. Thanks for this great work.

Mike Brennan
(414) 2275102

*Net meeting
12/1*

by Mon
11/30 a.m.

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

regenerate

0 **A N A C T** to repeal 948.35 and **948.36**; to renumber and amend **948.025** (1); to
 2 **amend** 301.26 (4) (cm) l., 302.11 (lg) (a) 2., 938.34 (4h) (a), 939.30 (1), 939.62
 3 (2m) (a) 2m. b., 939.632 (1) (e) l., 939.72 (1), 941.327 (2) (a) (intro.), 941.327 (2)
 4 (b) 4., 961.455 (3), 969.08 (10) (a) and 973.0135 (1) (b) 2.; and **to create 948.025**
 5 (1) (b) of the statutes; **relating to:** classification and elements of certain felony
 6 offenses and providing penalties.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version of the draft.

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

7 **SECTION 1.** 301.26 (4) (cm) 1. of the statutes is amended to read:
 8 301.26 (4) (cm) 1. Notwithstanding pars. (a), (b) and (bm), the department shall
 9 transfer funds from the appropriation under s. 20.410 (3) (cg) to the appropriations

1 under s. 20.410 (3) (hm), (ho) and (hr) for the purpose of reimbursing juvenile
 2 correctional institutions, secured child caring institutions, as defined in s. 938.02
 3 (15g), alternate care providers, aftercare supervision providers and corrective
 4 sanctions supervision providers for costs incurred beginning on July 1, 1996, for the
 5 care of any juvenile 14 years of age or over who has been placed in a juvenile
 6 correctional facility based on a delinquent act that is a violation of s. 939.31, 939.32
 7 (1) (a), 940.03, 940.21, 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10
 8 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 948.02 (1), 948.025, ^{(1) (a)} or 948.30 (2), ~~948.35 (1)~~
 9 ~~(b) or 948.36~~ and for the care of any juvenile 10 years of age or over who has been
 10 placed in a juvenile correctional institution or a secured child caring institution for
 11 attempting or committing a violation of s. 940.01 or for committing a violation of s.
 12 940.02 or 940.05.

13 **SECTION 2.** 302.11 (1g) (a) 2. of the statutes is amended to read:

14 302.11 (1g) (a) 2. Anyfelonyunder s. 940.02, 940.03, 940.05, 940.09 (l), 940.19
 15 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02,
 16 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03
 17 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, or 948.30 (2), ~~948.35 (1) (b) or (c) or~~
 18 Q A .

19 **SECTION 3.** 938.34 (4h) (a) of the statutes is amended to read:

20 938.34 (4h) (a) The juvenile is 14 years of age or over and has been adjudicated
 21 delinquent for committing a violation of s. 939.31, 939.32 (1) (a), 940.03, 940.21,
 22 940.225 (1), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (lg), (lm)
 23 or (lr), 943.32 (2), 948.02 (1), 948.025, ^{(1) (a)} or 948.30 (2), ~~948.35 (1) (b) or 948.36~~ or the
 24 juvenile is 10 years of age or over and has been adjudicated delinquent for attempting

1 or committing a violation of s. 940.01 or for committing a violation of 940.02 or
2 940.05.

3 **SECTION 4.** 939.30 (1) of the statutes is amended to read:

4 939.30 (1) Except as provided in sub. (2) and ~~ss. 948.35 and s.~~ 961.455, whoever,
5 with intent that a felony be committed, advises another to commit that crime under
6 circumstances that indicate unequivocally that he or she has the intent is guilty of
7 a Class D felony.

8 **SECTION 5.** 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

9 939.62 (2m) (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05,
10 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
11 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (lg), (lm) or (lr), 943.32 (2), 946.43,
12 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, or
13 948.30 (2), ~~948.35 (1) (b) or (c) or 948.36.~~

14 **SECTION 6.** 939.632 (1) (e) 1. of the statutes is amended to read:

15 939.632 (1) (e) 1. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1),
16 940.19 (2), (3), (4) or (5), 940.21, 940.225 (l), (2) or (3), 940.305, 940.31, 941.20,
17 941.21, 943.02, 943.06, 943.10 (2), 943.23 (lg), (lm) or (lr), 943.32 (2), 948.02 (1) or
18 (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.055, 948.07, 948.08, or 948.30 (2), ~~948.35~~
19 ~~(1) (b) or (c) or 948.36.~~

20 **SECTION 7.** 939.72 (1) of the statutes is amended to read:

21 939.72 (1) Section ~~939.30, 948.35 or 948.36~~ for solicitation and s. 939.05 as a
22 party to a crime which is the objective of the solicitation; or

23 **SECTION 8.** 941.327 (2) (a) (intro.) of the statutes is amended to read:

24 941.327 (2) (a) (intro.) Whoever, with intent to ~~kill~~, injure or otherwise
25 endanger the health or safety of any person or to cause significant injury or damage

1 to the business of any person or entity, does either of the following may be punished
2 under par. (b):

****NOTE: The word "kill" is eliminated because it makes the offense duplicative of first degree intentional homicide.

3 SECTION 9. 941.327 (2) (b) 4. of the statutes is amended to read:

4 941.327 (2) (b) 4. If the act under par. (a) causes death to another, a person is
5 guilty of a Class -A- B felony.

****NOTE: Because the word "kill" is eliminated from the language specifying the elements of this crime, the committee thinks it proper to reduce the penalty for the crime to a Class B felony so as to reserve Class A felonies for the most serious crimes against persons and state. Because, after the amendment to the elements of the crime, the statute no longer punishes ~~death~~, classification as a Class B felony provides sufficient punishment. ~~NB: I have slightly rephrased the language provided by Mike Brennan for this proposed NOTE in order to give a slightly fuller explanation of the elimination of the word "kill". Also, the last sentence is not quite correct because s. 941.327 (2) (b) 4., stats. does punish causing the death of another; maybe the NOTE should say that the statute no longer punishes acts undertaken with the intent to kill, as that is the upshot of eliminating "kill" in s. 941.327 (2) (a) (intro.), stats.~~

acts under
taken with
the intent
to kill



6 SECTION 10. 948.025 (1) of the statutes is renumbered 948.025 (1) (a) and
7 amended to read:

8 948.025 (1) (a) Whoever commits 3 or more violations under s. 948.02 (1) ~~or (2)~~
9 within a specified period of time involving the same child is guilty of a Class B felony.

10 SECTION 11. 948.025 (1) (b) of the statutes is created to read:

11 948.025 (1) (b) Whoever commits 3 or more violations under s. 948.02 (2) within
12 a specified period of time involving the same child is guilty of a Class BC felony

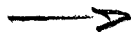
****NOTE: Because s. 948.025, stats., provides an alternative method of proving violations of s. 948.02 (1) and (2), stats. (first and second degree sexual assault of a child), acts of second degree sexual assault of a child prosecuted under s. 948.025 should be treated as a Class BC felony, which is the classification given to second degree sexual assault of a child under s. 948.02 (2), stats.

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SECTION 12. 948.35 of the statutes is repealed.

****NOTE: The offense of soliciting a child to commit a Class A felony is repealed because it is duplicative of the statute imposing criminal liability for being party to a crime (s. 939.05, stats.). ~~NB: Should this NOTE refer to the solicitation statute instead of the party to a crime statute? Section 948.35, stats., essentially sets up different rules for solicitation of children to commit a crime. See s. 939.30 (1), stats.~~



1 **INSERT 4-13:** ✓

2 **SECTION 1.** 948.13 (1) (a) of the statutes is amended to read:

3 948.13 **(1)** (a) A crime under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim
4 is under 18 years of age at the time of the offense, or a crime under s. 948.02 (l),
5 948.025 (1) (a), 948.05 (1), 948.06 or 948.07 **(1)**, **(2)**, **(3)** or **(4)**.

6 History: 1995 a. 265; 1997 a. 130,220.

SECTION 2. 948.13 (2m) (a) (intro.) of the statutes is amended to read:

7 948.13 **(2m)** (a) (intro.) A person who has been convicted of a crime under s.
8 948.025 (1), 1997 stats., may petition the court in which he or she was convicted to
9 order that the person be exempt from sub. (2) and permitted to engage in an
10 occupation or participate in a volunteer position that requires the person to work or
11 interact primarily and directly with children under 16 years of age. The court may
12 grant a petition filed under this paragraph if the court finds that all of the following
13 apply:

14 History: 1995 a. 265; 1997 a. 130,220.

SECTION 3. 948.13 (2m) (a) 1. of the statutes is amended to read:

15 948.13 **(2m)** (a) 1. At the time of the commission of the crime under s. 948.025
16 **(1)**, 1997 stats., the person had not attained the age of 19 years and was not more than
17 4 years older or not more than 4 years younger than the child with whom the person
18 had sexual contact or sexual intercourse.

History: 1995 a. 265; 1997 a. 130,220.

****NOTE: Amending s. 948.13 (1) (a), stats., to cover only repeated sexual assaults of a child who has not attained the age of 13 years will make the exemption under s. 948.13 (2m), stats., inapplicable in the future because the criterion under s. 948.13 (2m) (a) 1., stats., will never be met. However, instead of simply repealing s. 948.13 (2m), stats., this draft amends the exemption language to refer to the current version of s. 948.025 (l), stats., in order to preserve any exemptions already granted and to keep the exemption available for persons convicted under the current version of s. 948.025 (l), stats. Okay?

INSERT 5-15: ✓

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SECTION 4. 973.034 of the statutes is amended to read:

973.034 Sentencing; restriction on child sex offender working with children. Whenever a court imposes a sentence or places a defendant on probation regarding a conviction under s. 940.22 (2) or 940.225 (2) (c) or (cm), if the victim is under 18 years of age at the time of the offense, or a conviction under s. 948.02 (l), 948.025 (1) (a), 948.05 (1), 948.06 or 948.07 (1), (2), (3) or (4), the court shall inform the defendant of the requirements and penalties under s. 948.13.

History: 1995 a. 265; 1997 a. 220.

D-Note

UKB-0590/P3 & n

JEO: kmq :

Mike Brennan:

This redraft incorporates the changes requested in your November 19, 1998, e-mail message.

JEO

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0590/P3dn
JEO:kmg:ijs

November 24, 1998

Mike Brennan:

This redraft incorporates the changes requested in your November 19, 1998, e-mail message.

Jefren E. Olsen
Legislative Attorney
26643906