

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

LRB-1073/1dn  
JEO:cmh&ksh:ijs

February 10, 1999

This is a redraft of 1997 LRB-1671, which was in turn based on 1995 Assembly Bill 352. The draft provides that a penalty of death may be imposed if the defendant has a prior conviction for an intentional homicide.

Please review proposed s. 940.01 (1m) *very carefully* to make sure that it does what you want it to do. When reviewing that provision, note the following:

1. The draft counts all of the following as prior convictions: prior convictions under s. 940.01 (1), stats.; convictions under Wisconsin law prior to 1/1/89 (the effective date of the revised homicide code) if the crime was comparable to s. 940.01 (1), stats.; convictions under federal law or the law of another state if the crime was comparable to s. 940.01 (1), stats. To count a conviction under any law other than s. 940.01 (1), stats., as a prior conviction, the judge must be satisfied beyond a reasonable doubt that the other law is comparable. (Compare s. 939.62 (2m) (b), stats., on which the language of proposed s. 940.01 (1m) (bm) is based.)

Is it your intent to count convictions under laws other than s. 940.01 (1), stats.? If not, let me know so that the draft can be changed to do what you want it to do.

2. Proposed s. 940.01 (1m) (bm) counts convictions of persons under 17 if the criminal court had jurisdiction over the case. If only adult convictions were counted, a juvenile who was convicted of violating s. 940.01 (1), stats., before he or she turned 17 would have a clean slate for purposes of proposed s. 940.01 (1m). If you want to take that approach to the treatment of juvenile offenses, please let me know so that the draft can be changed to do so.

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