

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

LRB-2305/P1dn  
JEO:wlj:mrc

April 28, 1999

This preliminary draft is based on instructions from Susan Goodwin at DOJ. You should have her review the draft (along with this drafter's note) to make sure that it is accomplishing what you intend to accomplish. When reviewing the draft, note the following:

1. The definition of "domestic abuse" in proposed s. 948.045 (1) is virtually identical to the one contained in s. 968.075 (1) (a), stats. This has the following consequences:

a) The language refers to acts engaged in by an *adult* against *another adult*; thus, the definition will not cover acts committed by someone who is under the age of 17, nor will it cover acts committed by an adult against, say, a 17-year-old girlfriend. Is that your intent? Note that if we eliminate the requirement that the victim be another adult, that will open up the possibility that a minor victim could also be the child in whose presence the act is committed; if it is not your intent to allow such a scenario, we might have to include additional language to require that the victim and the child be different persons. (Compare to s. 944.15 (1), stats., which requires the presence of persons "other than the person with whom [the defendant] is having sexual intercourse.")

b) Proposed s. 948.045 (1) (c) refers to a violation of s. 940.225 (1), (2) or (3), stats. This language causes the sexual assault offenses to be included offenses of proposed s. 948.045 under s. 939.66 (1), stats. This means that a person could be convicted of a violation of proposed s. 948.045 or of a violation of s. 940.225 (1), (2) or (3), stats., but not both. Given the higher penalties for violations of s. 940.225 (1), (2) or (3), stats., would it make sense to eliminate proposed s. 948.045 (1) (c) and instead provide a penalty enhancer for domestic abuse-related sexual assaults committed in the presence of a child? (I don't think that any battery offense under s. 940.19, stats., will be considered an included offense of proposed s. 948.045 because proposed s. 948.045 (1) (a) and (b) require proof of only bodily harm, as opposed to substantial or great bodily harm, and do not require proof of lack of consent by the victim.)

c) Like s. 968.075 (1) (a) 4., stats., proposed s. 948.045 (1) (d) refers to an act causing the other person to fear imminent engagement in any of the other conduct described. Given the different context in which this language is being used, should proposed s. 948.045 (1) (d) refer instead to an attempt to commit the other conduct described?

2. Proposed s. 948.045 (2) is adapted from s. 944.15, stats. However, this draft explicitly provides that the act of domestic abuse must actually be observed by a child

or be committed in the presence of a child *and* that the defendant must have known or had reason to know that the conduct was being observed by a child or committed in the presence of a child. Is that your intent? (These two separate elements are only implicit in s. 944.15, stats.; see Wis. JI-Criminal 1535 n. 2.)

3. Like s. 944.15 (1), stats., proposed s. 948.045 (2) refers to acts committed in a child's presence or that are "observable" by a child. Should the draft also cover acts that are audible to a child? Compare Utah Code Section 76-5-109.1 (1) (b) (ii) (defining "in the presence of a child" to include "having knowledge that a child is present and may see *or hear* an act of domestic violence").

4. The current crime that is most analogous to proposed s. 948.045 appears to be s. 948.04, stats. (causing mental harm to a child). This crime is subject to a longer statute of limitations (see s. 939.74 (2) (cm), stats.), is a basis for compensation under ch. 949 (see s. 949.03 (1) (b), stats.) and is a "serious crime" that may allow for revocation of conditions of release under ch. 969 (see s. 969.08 (10) (b), stats.). Do you want similar treatment of proposed s. 948.045?

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

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