

2001 DRAFTING REQUEST

Bill

Received: 10/31/2000

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing:

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters: mdsida

Subject: Criminal Law - domestic abuse
Criminal Law - miscellaneous

Extra Copies: rlr

Pre Topic:

No specific pre topic given

Topic:

Defenses to simple battery

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 01/24/2001 nelsorp1 01/24/2001	jdye 01/25/2001		_____			
/1			martykr 01/31/2001	_____	lrb_docadmin 01/31/2001	lrb_docadmin 02/09/2001	

FE Sent For:

<END>

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State of Wisconsin
1999-2000 LEGISLATURE
2001-02

0868/1
LRB-2001P1

DE:gs&km

RFN+
MGD

JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Reger

- 1 AN ACT *to renumber* 940.19 (1); *to amend* 939.632 (1) (e) 3. and 940.225 (5) (b)
2 1.; and *to create* 940.19 (1) (b) of the statutes; **relating to:** a defense to criminal
3 liability for battery in certain circumstances.

Analysis by the Legislative Reference Bureau

Under current law, a person who causes bodily harm[✓] to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of simple battery and may be fined not more than \$10,000 or imprisoned for not more than nine[✓] months or both.

Current law also provides various defenses to a person charged with committing a crime, including the crime of simple battery. The defense that applies most commonly to battery is self-defense[✓] or the defense of another, under which a person may use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person or some other person. A person who was acting in self-defense or defense of another must be acquitted of the crime and thus may not be fined or imprisoned.

This bill provides a new defense to the crime of simple battery. Under the bill, a person charged with simple battery has a defense against the charge if: 1) the victim of the defendant's simple battery had first committed an act of domestic abuse; 2) the defendant is a relative of the person against whom the act of domestic abuse was committed; and 3) the defendant's simple battery was in response to the act of domestic abuse. For purposes of the bill, "domestic abuse" means a simple battery or an act of stalking by an adult person against his or her spouse or against an adult with whom the person resides. The relatives who may raise this defense include a

parent, grandparent, brother, sister, aunt, uncle, and first cousin of a victim of an act of domestic abuse. A person who was acting under the defense created in the bill must be acquitted of the simple battery and thus may not be fined or imprisoned.

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

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SECTION 1. 939.632 (1) (e) 3. of the statutes is amended to read:

939.632 (1) (e) 3. Any misdemeanor under s. 940.19 (1) (a), 940.225 (3m), 940.32 (2), 940.42, 940.44, 941.20 (1), 941.23, 941.235, 941.24 or 941.38 (3).

SECTION 2. 940.19 (1) of the statutes is renumbered 940.19 (1) (a).

SECTION 3. 940.19 (1) (b) of the statutes is created to read:

940.19 (1) (b) 1. In this paragraph:

a. "Act of domestic abuse" means a violation of par. (a) or s. 940.32 by an adult person against his or her spouse or against an adult with whom the person resides.

b. "Relative" means a parent, grandparent, brother, sister, aunt, uncle, or first cousin, whether the relationship is by blood, marriage, or adoption.

2. A defendant who proves all of the following by a preponderance of the evidence has a defense to prosecution under par. (a):

a. That the victim of the defendant's violation of par. (a) committed an act of domestic abuse.

b. That the defendant is a relative of the person against whom the victim committed the act of domestic abuse specified in subd. 2. a.

c. That the defendant's violation of par. (a) was in response to the victim's commission of the act of domestic abuse specified in subd. 2. a.

SECTION 4. 940.225 (5) (b) 1. of the statutes is amended to read:

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940.225 (5) (b) 1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1) (a).

(END)

INSERT 2-1

SECTION # Am; 48.685(2)(bb)

48.685(2) ~~AM~~ (b)

(bb) If information obtained under par. (am) or (b) 1. indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) 1. does not indicate such a charge or conviction, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b) 1., a background information form under sub. (6) (a) or (am) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department, county department, child welfare agency, school board or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

SECTION # Am; 50.065(2)(bb)

50.065(2) ~~AM~~ (b)

(bb) If information obtained under par. (am) or (b) indicates a charge of a serious crime, but does not completely and clearly indicate the final disposition of the charge, the department or entity shall make every reasonable effort to contact the clerk of courts to determine the final disposition of the charge. If a background information form under sub. (6) (a) or (am) indicates a charge or a conviction of a serious crime, but information obtained under par. (am) or (b) does not indicate such a charge or conviction, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and the final disposition of the complaint. If information obtained under par. (am) or (b), a background information form under sub. (6) (a) or (am) or any other information indicates a conviction of a violation of s. 940.19 (1), 940.195, 940.20, 941.30, 942.08, 947.01 or 947.013 obtained not more than 5 years before the date on which that information was obtained, the department or entity shall make every reasonable effort to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that violation.

(end ins)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

January 31, 2001

MEMORANDUM

To: Representative Schneider

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-0868 Defenses to simple battery

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.