

**2001 DRAFTING REQUEST**

**Bill**

Received: 12/06/2000

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Bonnie Ladwig (608) 266-9171

By/Representing: Judi

This file may be shown to any legislator: NO

Drafter: nelsorp1

May Contact:

Alt. Drafters: mdsida

Subject: Criminal Law - miscellaneous

Extra Copies: rlr

**Pre Topic:**

No specific pre topic given

**Topic:**

Burglary

**Instructions:**

Redraft 1999 AB 37 (LRB 1142)

**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 01/25/2001	jdyer 01/25/2001		_____			
/1	mdsida 02/27/2001	jdyer 02/27/2001	martykr 01/31/2001	_____	lrb_docadmin 01/31/2001		
/2			pgreensl 02/27/2001	_____	lrb_docadmin 02/27/2001	lrb_docadmin 03/14/2001	

FE Sent For:

**<END>**

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/?	mdsida 01/24/2001 nelsorp1 01/25/2001	jdye 01/25/2001 <i>1/2 3/4 at jld</i>		<i>0/27</i>			
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FE Sent For:

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/?	mdsida			_____			
				_____			

FE Sent For:

<END>

B37

**ASSEMBLY BILL 37**

An Act to create 939.626 of the statutes; relating to: burglary and providing a penalty.

1999

- 01-19-99. A. Introduced by Representatives Ladwig, Ziegelbauer, Gronemus, Gunderson, Huebsch, F. Lasee, Musser, Nass, Owens, Porter, Pettis, Ryba, Spillner, Stone, Suder and Turner; cosponsored by Senators Fitzgerald, Huelsman and A. Lasee.
- 01-19-99. A. Read first time and referred to committee on Criminal Justice ..... **27**
- 03-11-99. A. Public hearing held.
- 09-14-99. A. Assembly substitute amendment **1** offered by Representative Goetsch ... **313**
- 09-15-99. A. Executive action taken.
- 09-21-99. A. Report Assembly substitute amendment **1** adoption recommended by committee on Criminal Justice, Ayes 9, Noes 4 ..... **327**
- 09-21-99. A. Report passage as amended recommended by committee on Criminal Justice, Ayes 7, Noes 6 ..... **327**
- 09-21-99. A. Referred to committee on Rules ..... **327**
- 09-21-99. A. Placed on calendar 9-23-1999 by committee on Rules.
- 09-23-99. A. Read a second time ..... **340**
- 09-23-99. A. Assembly substitute amendment **1 adopted** ..... **340**
- 09-23-99. A. Ordered to a third reading ..... **340**
- 09-23-99. A. Rules suspended ..... **340**
- 09-23-99. A. Read a third time and **passed** ..... **340**
- 09-23-99. A. Ordered immediately messaged ..... **340**
- 09-28-99. S. Received from Assembly ..... **274**
- 09-28-99. S. Read first time and referred to committee on Judiciary and Consumer Affairs **274**

2000

- 04-06-00. S. Failed to concur in pursuant to Senate Joint Resolution 1 ..... **583**



ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 1999 ASSEMBLY BILL 37

1 **AN ACT to renumber and amend 939.626; and to create 939.626 of the statutes;**  
2 **relating to: burglary and providing a penalty.**

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

3 **SECTION 1.** 939.626 of the statutes is created to read:

4 **939.626 Increased penalty; burglary of an occupied dwelling.** If a  
5 person is convicted of violating s. 943.10, the maximum term of imprisonment for the  
6 crime may be increased by not more than 5 years if all of the following apply:

7 (1) The burglarized enclosure is a dwelling.

8 (2) Another person was lawfully present in the dwelling at the time of the  
9 violation.

10 **SECTION 2.** 939.626 of the statutes, as created by 1999 Wisconsin Act .... (this  
11 act), is renumbered 973.017 (4m), and 973.017 (4m) (title), (intro.) and (a), as  
12 renumbered, are amended to read:



1           973.017 (4m) (title) ~~INCREASED PENALTY~~ AGGRAVATING FACTORS; BURGLARY OF AN  
2 OCCUPIED DWELLING. (intro.) If When making a sentencing decision concerning a  
3 person is convicted of violating s. 943.10, the maximum term of imprisonment for the  
4 crime may be increased by not more than 5 years if all of the following apply court  
5 shall consider as an aggravating factor the fact that the violation was committed  
6 under all of the following circumstances:

7           (a) The burglarized enclosure is was a dwelling.

8           **SECTION 3. Nonstatutory provisions.**

9           (1) RECONCILIATION PROVISION. The renumbering and amendment of section  
10 939.626 of the statutes, as created by this act, and SECTION 4 (1), (2) and (3) of this  
11 act are void unless 1999 Assembly Bill 465 is enacted into law before July 1, 2000,  
12 and unless 1999 Assembly Bill 465 creates section 973.017 of the statutes in exactly  
13 the same form as it appears in section 757 of 1999 Assembly Bill 465.

14           **SECTION 4. Effective dates.** This act takes effect on the day after publication,  
15 except as follows:

16           (1) If 1999 Assembly Bill 465 has been enacted on or before the day after  
17 publication of this act and the day after publication of this act is on or before  
18 December 31, 1999, the renumbering and amendment of section 939.626 of the  
19 statutes, as created by this act, takes effect on December 31, 1999.

20           (2) If 1999 Assembly Bill 465 has been enacted on or before the day after  
21 publication of this act and the day after publication of this act is after December 31,  
22 1999, the renumbering and amendment of section 939.626 of the statutes, as created  
23 by this act, takes effect on the day after publication of this act.

24           (3) If 1999 Assembly Bill 465 is enacted after the day after publication of this  
25 act but before July 1, 2000, the renumbering and amendment of section 939.626 of

1 the statutes, as created by this act, takes effect on December 31, 1999, or on the date  
2 that the creation of section 973.017 of the statutes by 1999 Assembly Bill 465 takes  
3 effect, whichever is later.

4

(END)

2001

1999 ASSEMBLY BILL 37

January 19, 1999 - Introduced by Representatives LADWIG, ZIEGELBAUER, GRONEMUS, GUNDERSON, HUEBSCH, F. LASEE, MUSSER, NASS, OWENS, PORTER, PETTIS, RYBA, SPILLNER, STONE, SUDER and TURNER, cosponsored by Senators FITZGERALD, HUELSMAN and A. LASEE. Referred to Committee on Criminal Justice.

Regen

1 AN ACT to create 939.626 of the statutes; relating to: burglary and providing  
2 a penalty.

*Analysis by the Legislative Reference Bureau*

Under current law, a person is guilty of burglary if he or she intentionally enters a building, dwelling, or certain other places without the consent of the person in lawful possession of the building, dwelling, or other place and with intent to steal or commit a felony in the building, dwelling, or other place. A person convicted of a burglary committed before December 31, 1999, may be fined not more than \$10,000 or imprisoned for not more than ten years or both, except that the person may be imprisoned for not more than 40 years if he or she commits the burglary while armed, commits a battery during the burglary on a person lawfully inside the building, dwelling or other place, or uses explosives to open a depository in the building, dwelling or other place. A person convicted of a burglary committed on or after December 31, 1999, may be fined not more than \$10,000 or imprisoned for not more than 15 years or both, except that the person may be imprisoned for not more than 60 years if he or she commits the burglary while armed, commits a battery during the burglary on a person lawfully inside the building, dwelling, or other place, or uses explosives to open a depository in the building, dwelling, or other place.

**ASSEMBLY BILL 37**

This bill provides that the maximum prison term for burglary may be increased by not more than five years if the place that is burglarized <sup>was</sup> is a dwelling and if another person was lawfully present in the dwelling at the time of the burglary.

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

1 SECTION 1. 939.626<sup>X</sup> of the statutes is created to read:

2 **939.626 Increased penalty; burglary of an occupied dwelling.** If a  
3 person is convicted of violating s. 943.10<sup>✓</sup>, the maximum term of imprisonment for the  
4 crime may be increased by not more than 5 years if all of the following apply:

5 (1) The burglarized enclosure <sup>was</sup> is a dwelling.

6 (2) Another person was lawfully present in the dwelling at the time of the  
7 violation.

8 **SECTION 2. Initial applicability.**

9 (1) This act applies to offenses committed on or after the effective date of this  
10 subsection.

11 (END)<sup>✓</sup>

Jodi Will ✓ to  
see how  
to handle 5943.11

Campers  
mobile home  
Sleeping boats  
Not trucks  
Not hotel rooms

# 1<sup>st</sup> DRAFT OF BURGLARY ENHANCER STATUTE

Bob Flancher, Racine County District Attorney, 262-636-3172

## 939.626 Increased penalty: burglary of an occupied dwelling.

- (1) If a person commits a burglary as defined in 943.10, the maximum term of imprisonment may be increased by not more than 5 years if the two following conditions exist:
  - (a) The burglarized enclosure was a dwelling as defined in this section.
  - (b) Another person was lawfully present in the dwelling at the time of the violation or lawfully entered the dwelling while the offender was present within the dwelling.
- (2) The term "dwelling" for this section means any building, structure, ship, vessel, motor home, motorized type of home, trailer home or other motor vehicle, or a room or enclosed area within any of these places, which is used or intended to be used as a home, residence or sleeping place by a person to the exclusion of others.
- (3) It is not required that the offender knew or should have known that another person was lawfully present in the dwelling, or that there was any contact with the other person or knowledge that the other person was present in the dwelling at the time of the violation.

**Purpose:** To distinguish residential burglaries from business burglaries and to increase penalties for the intrusion to a person's home or living area where a victim expects a greater degree of protection from personal confrontations and harm. This further acknowledges that there appears to be a trend of increasing confrontations between burglars and innocent victims sometimes resulting in personal harm to the victims and always resulting in long lasting feelings of fear and insecurity for the victim.

The proposed statute is meant to include these following situations:

- 1 The common house burglary where a person is in the residence, whether or not the burglar is aware of the other person's presence or does not even become aware of the other's presence during the course of the burglary. This would include a person who might sleep right through the burglary or a person who hides or flees during the course of the burglary and never sees the perpetrator.
- 2 Boats or other water vessels with designed sleeping areas where the owner or other persons sleep on the boat or vessel if only for one night during which the burglary occurs.
- 3 Motor homes and trailer homes.
- 4 The tractor part of a tractor-trailer where a part of the tractor is designed as a sleeping area for the driver.
- 5 Temporary structures or sleeping areas such as motels, hotels, camping facilities, cabins, tents used for sleeping.

This statute is not intended to include a situation such as a sleep-over party at a house where one of the invitees enters an unoccupied room within the residence without permission (such as a bedroom) and with intent to steal or commit a felony. However, if the sleep-over person enters an occupied bedroom with intent to steal or commit a felony, the enhancer statute could be applicable. The theory is that the offender in the first instance would be guilty of a simple burglary because he had permission to be present in the house but did not have permission to enter the unoccupied bedroom. The enhancer could be applicable if the unlawfully entered bedroom was occupied by the sleeping parents thereby causing an opportunity for a confrontation between the burglar and the victims.

The definition of "dwelling" came partially from Sec. 101.61.

Perhaps the definition of "dwelling" should be inserted in Sec. 939.22 (Words and phrases defined). Then this definition would apply to other statutes such as Criminal Trespass to a Dwelling

L:\Flancher\@@@DRAFT burglary.doc



2

2001 BILL

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*Analysis by the Legislative Reference Bureau*

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This bill provides that the maximum prison term for burglary may be increased by not more than five years if the place that is burglarized was a dwelling and if another person was lawfully present in the dwelling at the time of the burglary.

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

3 SECTION 1. 939.626 of the statutes is created to read:

✓ ~~INSY~~ Anal  
✓ ~~INS X~~ Anal

**BILL**

**SECTION 1**

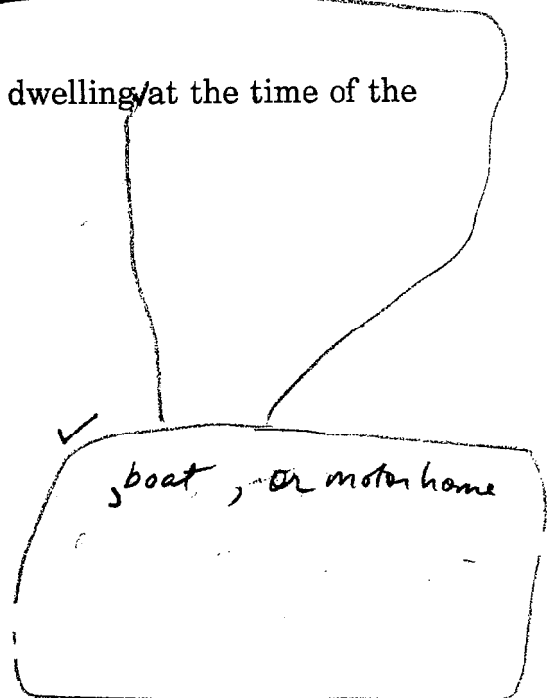
(B), boat, or motor home

1           **939.626 Increased penalty; burglary of an occupied dwelling** If a  
2 person is convicted of violating s. 943.10, the maximum term of imprisonment for the  
3 crime may be increased by not more than 5 years if all of the following apply:

(B)  
(2)  
INS 2/1

4           (a) ~~(1)~~ The burglarized enclosure was a dwelling.

5           (b) ~~(2)~~ Another person was lawfully present in the dwelling at the time of the  
6 violation.



, boat, or motor home

(END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1349/2ins  
MCD:.....

1

analysis INSERT X

2

, a non<sup>e</sup>commercial boat with sleeping quarters, or a motor home  
analysis INSERT Y

3

, boat, or motor home<sup>✓</sup>  
INSERT 2/1

4

~~¶~~<sup>20</sup> (1) In this<sup>✓</sup> section:

5

(a) "Boat" means any ship or vessel, other than a commercial vessel as defined

6

<sup>✓</sup> in s. 299.64 (1) (a), that has sleeping quarters.

7

(b) "Motor home" has the meaning given in s. 340.01 (33m).<sup>✓</sup>





STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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

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

February 27, 2001

### MEMORANDUM

To: Representative Ladwig

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-1349 Burglary

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.