

**2001 DRAFTING REQUEST**

**Bill**

Received: 08/29/2001

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Steven Foti (608) 266-2401

By/Representing: Michael Heiffitz

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Addl. Drafters:

Subject: Discrimination - employment

Extra Copies:

Submit via email: NO

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Employment based on conviction record; exceptin for certain felonies

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**Instructions:**

See Attached

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**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>
/?	malaigm 09/05/2001	jdye 09/07/2001					S&L
/1			rschluet 09/07/2001		lrb_docadmin 09/07/2001		S&L
/2	malaigm 09/13/2001	jdye 09/14/2001	rschluet 09/14/2001		lrb_docadmin 09/14/2001	lrb_docadmin 09/25/2001	

FE Sent For:

↪ At Intro

<END>

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1?	malaigm 09/05/2001	jdyer 09/07/2001					S&L
1/1		1/2 9/14 JLD	rschluet 09/07/2001		lrb_docadmin 09/07/2001		

FE Sent For:

Handwritten signatures and initials: a circle, a circle with 'JP', and '9-14-1'.

<END>

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/?	malaigm	11/9/7 jld					

FE Sent For:

9-7-1

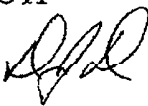
<END>



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**WISCONSIN LEGISLATIVE COUNCIL  
STAFF MEMORANDUM**

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**TO:** REPRESENTATIVE STEVEN FOTI  
**FROM:** Don Dyke, Senior Staff Attorney   
**RE:** Proposed Definition of "Felony" for Purposes of Budget Items DWD 14 and PI 65  
**DATE:** July 11, 2001

This is in response to your request for identification of felony crimes included in a proposed definition of "felony" under consideration for purposes of budget items Workforce Development-14 (DWD 14) and Public Instruction-65 (PI 65), as so designated in the Legislative Fiscal Bureau's Comparative Summary of Budget Provisions of the Senate and Assembly, dated July 2, 2001 (the Bureau's summaries of these items are attached).

For purposes of *both* DWD 14 and PI 65, "felony" would be defined to include:

1. First-degree intentional homicide. [s. 940.01, Stats.]
2. First-degree reckless homicide. [s. 940.02, Stats.]
3. Felony murder. [s. 940.03, Stats.]
4. Second-degree intentional homicide. [s. 940.05, Stats.]
5. Homicide by intoxicated use of a vehicle. [s. 940.09 (1), Stats.]
6. Partial-birth abortion. [s. 940.16, Stats.]
7. Causing great bodily harm to an unborn child. [s. 940.195 (5), Stats.]
8. Mayhem. [s. 940.21, Stats.]
9. First- or second-degree sexual assault. [s. 940.225 (1) or (2), Stats.]
10. Taking hostages. [s. 940.305, Stats.]

11. Kidnapping. [s. 940.31, Stats.]
12. Causing death by tampering with household products. [s. 941.327 (2) (b) 4., Stats.]
13. Arson of buildings; damage of property by explosives. [s. 943.02, Stats.]
14. Assault by prisoners. [s. 946.43 (1m), Stats.]
15. First- or second-degree sexual assault of a child. [s. 948.02 (1) or (2), Stats.]
16. Engaging in repeated acts of sexual assault of the same child. [s. 948.025, Stats.]
17. Intentionally causing great bodily harm to a child. [s. 948.03 (2) (a) or (c), Stats.]
18. Sexual exploitation of a child. [s. 948.05, Stats.]
19. Incest with a child. [s. 948.06, Stats.]
20. Child enticement. [s. 948.07, Stats.]
21. Soliciting a child for prostitution. [s. 948.08, Stats.]
22. Abduction of another's child by force or threat of force. [s. 948.30 (2), Stats.]
23. A crime at any time under federal law or the law of any other state ~~or, prior to April 28, 1994, under the law of this state~~, that is comparable to any crime specified above.

For purposes of PI 65 *only* (i.e., as applied to employers who are "educational agencies", as defined in PI 65), in addition to the above crimes, "felony" would be defined to also include:

1. The solicitation, conspiracy or attempt to commit a Class A felony. [ss. 939.30, 939.31 or 939.32, Stats.]
2. Causing a child under 13 years of age to view or listen to sexual activity. [s. 948.055 (2) (a), Stats.]
3. Sexual assault of a student by a school instructional staff person. [s. 948.095, Stats.]
4. Soliciting a child to commit a Class A felony or a Class B felony. [s. 948.35 (1) (b) or (c), Stats.]
5. Use of a child to commit a Class A felony. [s. 948.36, Stats.]

If you need additional information, please contact me directly at the Legislative Council Staff offices.

DD:jal:ksm;tlu

## **PI 65. REFUSAL TO EMPLOY UNPARDONED FELONS**

**Senate:** No change to Joint Finance.

**Assembly:** Specify that it would not be employment discrimination because of conviction record for an educational agency to refuse to employ or to bar or terminate from employment an individual who has been convicted of a felony and who has not been pardoned for that felony. Specify that for the purposes of this provision, the definition of an educational agency would include a school board, CESA, CCDEB, state correctional institution, juvenile secured correctional facility, secured child caring institution, the Wisconsin School for the Blind and Visually Impaired, the Wisconsin School for the Deaf, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, a state center for the developmentally disabled, a private school, a charter school, an agency under contract with the school board to provide a program for children at risk, or a nonsectarian private school or agency under contract with the Board of Directors of MPS to provide educational programs for children enrolled in the school district.

## **DWD 14. FAIR EMPLOYMENT LAWS--CONVICTION RECORD**

**Senate:** No change to Joint Finance.

**Assembly:** Provide that it would not be employment discrimination to refuse to employ or terminate from employment an individual who has been convicted of a felony and who has not been pardoned for the felony, whether or not the circumstances of the felony substantially relate to the circumstances of the job. Under current law, the exception from discrimination applies to cases where the individual has committed a felony, has not been pardoned and the felony substantially relates to the job.



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-3685/3

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AN ACT ...; relating to: permitting employers to refuse to employ, or to bar or terminate from employment, individuals who have been convicted of certain serious felonies, as defined in the bill, and who have not been pardoned; and permitting educational agencies to refuse to employ, or to bar or terminate from employment, individuals who have been convicted of those certain serious felonies or of certain other serious violations and who have not been pardoned.

**Analysis by the Legislative Reference Bureau**

Current law, subject to certain exceptions, prohibits discrimination in employment based on conviction record. Current law specifies, however, that it is not employment discrimination because of conviction record to refuse to employ, or to bar or terminate from employment, any individual who has been convicted of any felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job. This bill specifies that it is not employment discrimination because of conviction record to refuse to employ, or to bar or terminate from employment, an individual who has been convicted of a serious felony, as defined in the bill, and who has not been pardoned for that felony, whether or not the circumstances of the serious felony substantially relate to the circumstances of the particular job.

Under the bill, a "serious felony" is defined as <sup>✓</sup>first-degree intentional or reckless homicide, felony murder, second-degree intentional homicide, homicide by



intoxicated use of a vehicle, performing a partial-birth abortion, causing great bodily harm to an unborn child with intent to cause either substantial or great bodily harm, mayhem, first-degree or second-degree sexual assault, taking hostages, kidnapping, causing death by tampering with household products, arson of a building, assault by a prisoner, first-degree or second-degree sexual assault of a child, repeated sexual assault of a child, intentionally causing great bodily harm to a child, sexual exploitation of a child, incest with a child, child enticement, soliciting a child for prostitution, abduction of another person's child by force or threat of force, or any crime under federal law or the law of any other state that is comparable to any of those crimes.

The bill also specifies that it is not employment discrimination because of conviction record for an educational agency, as defined in the bill, to refuse to employ, or to bar or terminate from employment, an individual who has been convicted of a serious felony, as defined in the bill, or of certain other violations and who has not been pardoned for that serious felony or other violation, whether or not the circumstances of the serious felony or other violation substantially relate to the circumstances of the particular job. Those other violations are causing a child under 13 to view or listen to sexual activity, sexual assault of a student by a school instructional staff person, solicitation of a child to commit a Class A or B felony, using a child to commit a Class A felony, or solicitation, conspiracy, or attempt to commit a Class A felony.

*the age of*

Under the bill, an "educational agency" is defined as a school district, a cooperative educational service agency, a county children with disabilities education board, a state correctional institution, a juvenile secured correctional facility, a secured child caring institution, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin School for the Deaf, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, a state center for the developmentally disabled, a private school, a charter school, an agency under contract with a school board to provide a program for children at risk, or a nonsectarian private school or agency under contract with the Milwaukee Public Schools board to provide educational programs for children enrolled in the school district.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

**SECTION 1.** 111.335 (1) (cd) of the statutes is created to read:

111.335 (1) (cd) 1. In this paragraph, "serious felony" means any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (4) (b), 943.02, 946.43 (1m), 948.02 (1) or (2), 948.025,

4.

948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, or 948.30 (2), or any crime under federal law or the law of any other state that is comparable to a crime specified in this subdivision.

2. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ, or to bar or terminate from employment, any individual who has been convicted of a serious felony and who has not pardoned for that serious felony.

**SECTION 2.** 111.335 (1) (d) of the statutes is created to read:

111.335 (1) (d) 1. In this paragraph, "educational agency" means a school district, a cooperative educational service agency, a county children with disabilities education board, a state correctional institution under s. 302.01, a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin School for the Deaf, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, a state center for the developmentally disabled, a private school, a charter school, a private, nonprofit, nonsectarian agency under contract with a school board under s. 118.153 (3) (c), or a nonsectarian private school or agency under contract with the board of school directors in a 1st class city under s. 119.235 (1).

2. Notwithstanding s. 111.322, it is not employment discrimination because of conviction record for an educational agency to refuse to employ, or to bar or terminate from employment, an individual who has been convicted of a serious felony, as defined in par. (cd) 1., a violation of s. 948.055 (2) (a), 948.095, 948.35 (1) (b) or (c), or 948.36, the solicitation, conspiracy, or attempt under s. 939.30, 939.31, or 939.32 to commit a Class A felony, or any crime under federal law or the law of any other

state that is comparable to a crime specified in this subdivision,<sup>✓</sup> and who has not been pardoned.

**(END)**

## Malaise, Gordon

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**From:** Heifetz, Michael  
**Sent:** Thursday, September 13, 2001 2:26 PM  
**To:** Malaise, Gordon  
**Cc:** Marschman, Kathy  
**Subject:** LRB 3685/1

Gordon:

Please amend this draft to include the offenses listed under chapter 961.

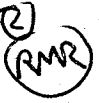
Thanks. Let us know if you have any questions.



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-3685/12

GMM:jld:rs



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2001 BILL

Regen

1 AN ACT *to create* 111.335 (1) (cd) and 111.335 (1) (d) of the statutes; **relating to:**  
2 permitting employers to refuse to employ, or to bar or terminate from  
3 employment, individuals who have been convicted of certain serious felonies,  
4 as defined in the bill, and who have not been pardoned; and permitting  
5 educational agencies to refuse to employ, or to bar or terminate from  
6 employment, individuals who have been convicted of those certain serious  
7 felonies or of certain other serious violations and who have not been pardoned.  
8

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***Analysis by the Legislative Reference Bureau***

Current law, subject to certain exceptions, prohibits discrimination in employment based on conviction record. Current law specifies, however, that it is not employment discrimination because of conviction record to refuse to employ, or to bar or terminate from employment, any individual who has been convicted of any felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job. This bill specifies that it is not employment discrimination because of conviction record to refuse to employ, or to bar or terminate from employment, an individual who has been convicted of a serious felony, as defined in the bill, and who has not been pardoned for that felony, whether or not the

**BILL**

circumstances of the serious felony substantially relate to the circumstances of the particular job.

Under the bill, a "serious felony" is defined as first-degree intentional or reckless homicide, felony murder, second-degree intentional homicide, homicide by intoxicated use of a vehicle, performing a partial-birth abortion, causing great bodily harm to an unborn child with intent to cause either substantial or great bodily harm, mayhem, first-degree or second-degree sexual assault, taking hostages, kidnapping, causing death by tampering with household products, arson of a building, assault by a prisoner, first-degree or second-degree sexual assault of a child, repeated sexual assault of a child, intentionally causing great bodily harm to a child, sexual exploitation of a child, incest with a child, child enticement, soliciting a child for prostitution, <sup>and</sup> abduction of another person's child by force or threat of force, or any crime under federal law or the law of any other state that is comparable to any of those crimes.

\*

The bill also specifies that it is not employment discrimination because of conviction record for an educational agency, as defined in the bill, to refuse to employ, or to bar or terminate from employment, an individual who has been convicted of a serious felony, as defined in the bill, or of certain other violations and who has not been pardoned for that serious felony or other violation, whether or not the circumstances of the serious felony or other violation substantially relate to the circumstances of the particular job. Those other violations are causing a child under the age of 13 to view or listen to sexual activity, sexual assault of a student by a school instructional staff person, solicitation of a child to commit a Class A or B felony, using a child to commit a Class A felony, or solicitation, conspiracy, or attempt to commit a Class A felony.

Under the bill, an "educational agency" is defined as a school district, a cooperative educational service agency, a county children with disabilities education board, a state correctional institution, a juvenile secured correctional facility, a secured child caring institution, the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin School for the Deaf, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, a state center for the developmentally disabled, a private school, a charter school, an agency under contract with a school board to provide a program for children at risk, or a nonsectarian private school or agency under contract with the Milwaukee Public Schools board to provide educational programs for children enrolled in the school district.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

Manufacturing, distribution, or delivering, possession, with intent to manufacture, distribute, or deliver, or conspiring to so possess, manufacture, distribute, or deliver, or controlled substance or a controlled substance analog, if the crime is punishable

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

by a maximum prison term of 30 years or more.

1 SECTION 1. 111.335 (1) (cd) of the statutes is created to read:

**BILL** punishable by a maximum prison term of 30 years or more, any felony under s. 961.41 (1), (1m), or (1x) that is

1           111.335 (1) (cd) 1. In this paragraph, "serious felony" means any felony under  
2           s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.195 (5), 940.21, 940.225 (1)  
3           or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 946.43 (1m), 948.02 (1) or (2),  
4           948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, or 948.30 (2), or any  
5           crime under federal law or the law of any other state that is comparable to a crime  
6           specified in this subdivision.

7           2. Notwithstanding s. 111.322, it is not employment discrimination because of  
8           conviction record to refuse to employ, or to bar or terminate from employment, any  
9           individual who has been convicted of a serious felony and who has not pardoned for  
10          that serious felony.

11          **SECTION 2.** 111.335 (1) (d) of the statutes is created to read:

12          111.335 (1) (d) 1. In this paragraph, "educational agency" means a school  
13          district, a cooperative educational service agency, a county children with disabilities  
14          education board, a state correctional institution under s. 302.01, a secured  
15          correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,  
16          as defined in s. 938.02 (15g), the Wisconsin Center for the Blind and Visually  
17          Impaired, the Wisconsin School for the Deaf, the Mendota Mental Health Institute,  
18          the Winnebago Mental Health Institute, a state center for the developmentally  
19          disabled, a private school, a charter school, a private, nonprofit, nonsectarian agency  
20          under contract with a school board under s. 118.153 (3) (c), or a nonsectarian private  
21          school or agency under contract with the board of school directors in a 1st class city  
22          under s. 119.235 (1).

23          2. Notwithstanding s. 111.322, it is not employment discrimination because of  
24          conviction record for an educational agency to refuse to employ, or to bar or terminate  
25          from employment, an individual who has been convicted of a serious felony, as

**BILL**

1 defined in par. (cd) 1., a violation of s. 948.055 (2) (a), 948.095, 948.35 (1) (b) or (c),  
2 or 948.36, the solicitation, conspiracy, or attempt under s. 939.30, 939.31, or 939.32  
3 to commit a Class A felony, or any crime under federal law or the law of any other  
4 state that is comparable to a crime specified in this subdivision, and who has not been  
5 pardoned.

6 (END)





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

September 14, 2001

### MEMORANDUM

To: Representative Foti

From: Gordon M. Malaise, Senior Legislative Attorney

Re: LRB-3685/2 Employment based on conviction record; exceptin for certain felonies

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) 266-9738 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.