

2005 ASSEMBLY BILL 717

October 3, 2005 – Introduced by Representatives NERISON, GUNDRUM, AINSWORTH, HAHN, HINES, MUSSER and SHERIDAN, cosponsored by Senators KAPANKE, ZIEN, DARLING, GROTHMAN, A. LASEE and LEIBHAM. Referred to Committee on Judiciary.

1 **AN ACT** *to renumber and amend* 940.03; *to amend* 48.355 (2d) (b) 2., 48.415
2 (9m) (b) 1., 48.415 (9m) (b) 2., 48.417 (1) (c), 938.355 (2d) (b) 2., 941.291 (1) (b)
3 and 949.03 (1) (b); and *to create* 48.355 (2d) (b) 2m., 48.417 (1) (cm), 938.355
4 (2d) (b) 2m. and 940.03 (1) of the statutes; **relating to:** felony murder and
5 amending cross-references to felony murder for the purpose of correcting errors
6 and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, if a person commits, or attempts to commit, one of six specified felonies and the commission of, or the attempt to commit, one of the specified felonies causes the death of another person, the person may be charged with felony murder. The six specified felonies are first-degree sexual assault, second-degree sexual assault by use or threat of force or violence, arson, armed burglary, armed robbery, and carjacking. Felony murder allows the sentence of imprisonment to be extended not more than 15 years over the maximum term of imprisonment for the felony or attempt.

This bill expands the list of felonies that are subject to the felony murder sentence extension to include the following felonies, among others: first-degree and second-degree reckless homicide, battery, mayhem, false imprisonment, and kidnapping. If a person commits, or attempts to commit, one of the listed felonies and the commission of, or the attempt to commit, the felony causes the death of another person, the person may be charged with felony murder.

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This bill also corrects cross-references to the felony murder statute that imply intent is an element of felony murder. Intent, which is required for attempted crimes, solicitation, or conspiracy, would subject the person to prosecution for intentional homicide rather than felony murder.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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:

1 **SECTION 1.** 48.355 (2d) (b) 2. of the statutes is amended to read:

2 48.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
3 commission of, or has solicited, conspired, or attempted to commit, a violation of s.
4 940.01, 940.02, ~~940.03~~, or 940.05 or a violation of the law of any other state or federal
5 law, if that violation would be a violation of s. 940.01, 940.02, ~~940.03~~, or 940.05 if
6 committed in this state, as evidenced by a final judgment of conviction, and that the
7 victim of that violation is a child of the parent.

8 **SECTION 2.** 48.355 (2d) (b) 2m. of the statutes is created to read:

9 48.355 **(2d)** (b) 2m. That the parent has committed a violation of s. 940.03 or
10 a violation of the law of any other state or federal law, if that violation would be a
11 violation of s. 940.03 if committed in this state, as evidenced by a final judgment of
12 conviction, and that the victim of that violation is a child of the parent.

13 **SECTION 3.** 48.415 (9m) (b) 1. of the statutes is amended to read:

14 48.415 **(9m)** (b) 1. The commission of, the aiding or abetting of, or the
15 solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, ~~940.03~~
16 or 940.05 or a violation of the law of any other state or federal law, if that violation
17 would be a violation of s. 940.01, 940.02, ~~940.03~~ or 940.05 if committed in this state.

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1 **SECTION 4.** 48.415 (9m) (b) 2. of the statutes is amended to read:

2 48.415 **(9m)** (b) 2. The commission of a violation of s. 940.19 (3), 1999 stats.,
3 a violation of s. 940.03, 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2),
4 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 or a violation of the law of
5 any other state or federal law, if that violation would be a violation of s. 940.03, 940.19
6 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a),
7 948.05, 948.06 or 948.08 if committed in this state.

8 **SECTION 5.** 48.417 (1) (c) of the statutes is amended to read:

9 48.417 **(1)** (c) A court of competent jurisdiction has found that the parent has
10 committed, has aided or abetted the commission of, or has solicited, conspired, or
11 attempted to commit, a violation of s. 940.01, 940.02, ~~940.03~~, or 940.05 or a violation
12 of the law of any other state or federal law, if that violation would be a violation of
13 s. 940.01, 940.02, ~~940.03~~, or 940.05 if committed in this state, and that the victim of
14 that violation is a child of the parent. If the circumstances specified in this paragraph
15 apply, the petition shall be filed or joined in within 60 days after the date on which
16 the court assigned to exercise jurisdiction under this chapter determines, based on
17 a finding that a circumstance specified in this paragraph applies, that reasonable
18 efforts to make it possible for the child to return safely to his or her home are not
19 required.

20 **SECTION 6.** 48.417 (1) (cm) of the statutes is created to read:

21 48.417 **(1)** (cm) A court of competent jurisdiction has found that the parent has
22 committed a violation of s. 940.03 or a violation of the law of any other state or federal
23 law, if that violation would be a violation of s. 940.03 if committed in this state, and
24 that the victim of that violation is a child of the parent. If the circumstances specified
25 in this paragraph apply, the petition shall be filed or joined in within 60 days after

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1 the date on which the court assigned to exercise jurisdiction under this chapter
2 determines, based on a finding that a circumstance specified in this paragraph
3 applies, that reasonable efforts to make it possible for the child to return safely to his
4 or her home are not required.

5 **SECTION 7.** 938.355 (2d) (b) 2. of the statutes is amended to read:

6 938.355 **(2d)** (b) 2. That the parent has committed, has aided or abetted the
7 commission of, or has solicited, conspired, or attempted to commit, a violation of s.
8 940.01, 940.02, ~~940.03~~, or 940.05 or a violation of the law of any other state or federal
9 law, if that violation would be a violation of s. 940.01, 940.02, ~~940.03~~, or 940.05 if
10 committed in this state, as evidenced by a final judgment of conviction, and that the
11 victim of that violation is a child of the parent.

12 **SECTION 8.** 938.355 (2d) (b) 2m. of the statutes is created to read:

13 938.355 **(2d)** (b) 2m. That the parent has committed a violation of s. 940.03 or
14 a violation of the law of any other state or federal law, if that violation would be a
15 violation of s. 940.03 if committed in this state, as evidenced by a final judgment of
16 conviction, and that the victim of that violation is a child of the parent.

17 **SECTION 9.** 940.03 of the statutes is renumbered 940.03 (2) and amended to
18 read:

19 940.03 **(2)** Whoever causes the death of another human being while committing
20 or attempting to commit a ~~crime specified in s. 940.225 (1) or (2) (a), 943.02, 943.10~~
21 ~~(2), 943.23 (1g), or 943.32 (2) violent felony~~ may be imprisoned for not more than 15
22 years in excess of the maximum term of imprisonment provided by law for that crime
23 or attempt.

24 **SECTION 10.** 940.03 (1) of the statutes is created to read:

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1 **940.03 (1)** In this section, “violent felony” means any felony, or the solicitation,
2 conspiracy, or attempt to commit any felony, under s. 940.02, 940.06, 940.19, 940.195,
3 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3),
4 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28,
5 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06,
6 943.10 (2), 943.23 (1g), 943.32, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03,
7 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

8 **SECTION 11.** 941.291 (1) (b) of the statutes is amended to read:

9 **941.291 (1) (b)** “Violent felony” means a felony under s. 940.03 or any felony,
10 or the solicitation, conspiracy, or attempt to commit any felony, under s. 943.23 (1m)
11 or (1r), 1999 stats., or s. 940.01, 940.02, ~~940.03~~, 940.05, 940.06, 940.08, 940.09,
12 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285
13 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3),
14 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013,
15 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 946.43, 947.015, 948.02 (1) or
16 (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

17 **SECTION 12.** 949.03 (1) (b) of the statutes is amended to read:

18 **949.03 (1) (b)** The commission of a felony under s. 940.03 or the commission of
19 or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01,
20 940.02, ~~940.03~~, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20,
21 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24, 940.25, 940.285, 940.29, 940.30,
22 940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g),
23 943.32, 948.02, 948.025, 948.03, 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

24

(END)