

**2005 DRAFTING REQUEST**

**Bill**

Received: **07/12/2005**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Lee Nerison (608) 266-3534**

By/Representing: **Scott Loomans**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact: **Sen. Kapanke**

Addl. Drafters:

Subject: **Criminal Law - homicide  
Criminal Law - sentencing**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Nerison@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Felony murder statute expansion to include all 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>
/?	chanaman 07/29/2005	lkunkel 08/26/2005		_____			S&L Crime
/1			jfrantze 08/26/2005	_____	lemery 08/26/2005	Inorthro 09/27/2005	

FE Sent For:

<END>

*At intro.*

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/?	chanaman	/1/mk 8/26		_____			
				_____			

FE Sent For:

<END>



**LEE NERISON**  
**96<sup>TH</sup> ASSEMBLY DISTRICT**

**DATE: June 21, 2005**  
**TO: Legislative Reference Bureau, Bill Drafting  
Interdepartmental Mail, 1 E. Main, Suite 200**  
**FROM: Rep. Lee Nerison**  
**SUBJECT: Bill Drafting Request**

*just will not  
felonies?  
e-mailed  
on  
7/21  
Gaskell*

**Persons submitting request**

Scott Loomans, Office of Rep. Nerison, 6-3534  
Timothy Gaskell, Vernon County District Attorney, 608-637-5357

**Capitol:**

Post Office Box 8953

Madison, WI 53708-8953

(608) 266-3534

Toll-Free: (888) 534-0096

Fax: (608) 282-3696

Rep.Nerison@legis.state.wi.us

**District:**

S3035 CTH B

Westby, WI 54667

(608) 634-4562

**Persons to contact for questions about this draft**

Gaskell and Loomans.

**Description of the problem, including any helpful examples**

Under current law it is only possible in limited circumstances (such as a carjacking) to charge with murder an individual who kills another person in a premeditated violent act if the ultimate goal of the attack was not to cause death. Even if a violent attack could reasonably be expected to cause death, a murder charge may still not be possible.

The public may not perceive that justice has been fully served if a sentence for manslaughter, which is more moderate than the penalty for murder, is handed out in certain situations. It is also possible that current law does not serve as a significant deterrent from the commission of violent acts because the aggressor does not anticipate that such an act could lead to severe penalties for murder.

**The Solution**

Would like to amend the Felony Murder statute, 940.03, to read as follows:

Whoever causes the death of another human being while committing or attempting to commit a felony may be imprisoned for not more than 15 years in excess of the maximum term of imprisonment provided by law for that crime or attempt.

**Statute sections that are affected**

S. 940.03

Please keep this request confidential while Reference Bureau is working with the authors.

## Hanaman, Cathlene

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**From:** Loomans, Scott  
**Sent:** Thursday, July 28, 2005 9:14 AM  
**To:** Hanaman, Cathlene  
**Subject:** FW: Felony murder draft

My boss and the Vernon Co. DA like your suggestion to use the list of violent felonies.

Thanks,  
Scott

---

**From:** Tim Gaskell [mailto:tgaskell@vernonda.com]  
**Sent:** Friday, July 22, 2005 9:35 AM  
**To:** Loomans, Scott  
**Subject:** RE: Felony murder draft

Scott:

I would wholly support limiting the felony murder statute to violent felonies listed under 941.291(1)(b). That would include numerous felonies that do not currently fit into the felony murder statute (940.03).

Tim

---

**From:** Loomans, Scott [mailto:Scott.Loomans@legis.state.wi.us]  
**Sent:** Friday, July 22, 2005 9:04 AM  
**To:** Tim Gaskell  
**Subject:** FW: Felony murder draft

Tim,

Cathlene Hanaman at the Legislative Reference Bureau is the attorney who is drafting the bill for you and Lee. What do you think of the question she has about violent felonies versus any felonies? I guess I wasn't thinking about non-violent felonies when I was writing the memo, but I'm sure it could happen and we might want to address that in advance. On the other hand, if we go beyond the type of situation that we have experience with, your ability to illustrate the need for the bill is weakened. There is a lot to be said for being focused and not over reaching when you have to convince a hundred other legislators to vote for your bill.

Here is a copy of the drafting request memo:

<<GaskellDraftingRequest.doc>>

I'll try to talk to Lee about this today, but he has meetings in three towns this morning so I probably won't get him until later. I wouldn't be surprised if he stops at the courthouse around noon.

Scott Loomans  
Office of Representative Nerison  
888-534-0096

---

**From:** Hanaman, Cathlene  
**Sent:** Thursday, July 21, 2005 4:46 PM  
**To:** Loomans, Scott  
**Subject:** Felony murder draft

07/29/2005

Scott:

You requested that any person who commits or attempts to commit a felony and causes the death of another person to be subject to prosecution for felony murder. Your memo, however, refers to violent acts--you write "current law does not serve as a significant deterrent from the commission of violent acts..." But some felonies are nonviolent. Do you intend that a felony murder charge be a possible result of any violent felony not just any felony? We could use the list of violent felonies in s. 941.291 (1) (b) for instance (with any additions or subtractions as you intend).

Thanks,  
Cathlene Hanaman  
LRB

07/29/2005



State of Wisconsin  
2005 - 2006 LEGISLATURE

8/29

LRB-3347/2

CMH:.....

lmk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 AN ACT <sup>sexual</sup>...; relating to: felony murder and amending cross-references to felony  
2 murder for the purpose of correcting errors 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, ✓ kidnapping, and ~~arson~~. ✓ 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. ✓

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.

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***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.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292; 1999 a. 9, 103, 149, 186; 2001 a. 2, 16, 109.

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.

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109.

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



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

**History:** 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275;  
1997 a. 35, 80, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109.

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

8           48.417 (1) (c) A court of competent jurisdiction has found that the parent has  
9 committed, has aided or abetted the commission of, or has solicited, conspired, or  
10 attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation  
11 of the law of any other state or federal law, if that violation would be a violation of  
12 s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, and that the victim of  
13 that violation is a child of the parent. If the circumstances specified in this paragraph  
14 apply, the petition shall be filed or joined in within 60 days after the date on which  
15 the court assigned to exercise jurisdiction under this chapter determines, based on  
16 a finding that a circumstance specified in this paragraph applies, that reasonable  
17 efforts to make it possible for the child to return safely to his or her home are not  
18 required.

**History:** 1997 a. 237; 2001 a. 109.

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

20           48.417 (1) (cm) A court of competent jurisdiction has found that the parent has  
21 committed a violation of s. 940.03 or a violation of the law of any other state or federal  
22 law, if that violation would be a violation of s. 940.03 if committed in this state, and  
23 that the victim of that violation is a child of the parent. If the circumstances specified  
24 in this paragraph apply, the petition shall be filed or joined in within 60 days after

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 **History:** 1995 a. 77, 352; 1997 a. 27, 35, 205, 237, 239, 252; 1999 a. 9, 32, 103; 2001 a. 16, 69, 109; 2003 a. 50.

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 **History:** 1987 a. 399; 2001 a. 109.

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

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           History: 2001 a. 95; 2003 a. 321.

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

19           949.03 (1) (b) The commission of a felony under s. 940.03 or the commission of  
 20           or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01,  
 21           940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20,  
 22           940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24, 940.25, 940.285, 940.29, 940.30,  
 23           940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g),  
 24           943.32, 948.02, 948.025, 948.03, 948.04, 948.07, 948.095, 948.20, 948.30 or 948.51.

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399, 403; 1989 a. 105, 140, 359; 1993 a. 92, 227; 1995 a. 153, 374, 456; 1997 a. 35, 143, 258; 2001 a. 109.

## Emery, Lynn

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**From:** Hanaman, Cathlene  
**Sent:** Tuesday, September 27, 2005 1:54 PM  
**To:** Northrop, Lori; Emery, Lynn; Barman, Mike; Basford, Sarah  
**Subject:** Could you jacket?

Could you jacket -3347 for Nerison?