



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRBs0104/P2  
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P3

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**SENATE SUBSTITUTE AMENDMENT ,**  
**TO SENATE BILL 179**

D - vote today

Repeal ↓

1 AN ACT *to repeal* 704.28 (4) (d), 799.45 (3) (am) 1., 799.45 (3) (am) 2., 799.45 (3)  
2 (am) 3., 799.45 (3) (am) 4., 799.45 (3) (am) 5., 799.45 (3) (am) 6. and 799.45 (3)  
3 (am) 7.; *to renumber and amend* 66.0104 (3), 349.13 (3m), 704.16 (3) (a) and  
4 799.45 (3) (am) (intro.); *to amend* 349.13 (5) (b) 2., 349.13 (5) (c), 704.05 (5) (a)  
5 1., 704.05 (5) (b) 2. (intro.), 704.05 (5) (bf), 704.07 (3) (a), 704.08, 704.16 (3) (b)  
6 1., 704.28 (2), 704.28 (4) (b), 704.28 (4) (c), 704.44 (9), 704.95, 799.05 (3) (b),  
7 799.06 (2), 799.12 (2), 799.12 (3), 799.20 (4), 799.206 (3), 799.40 (1), 799.40 (1m),  
8 799.42, 799.44 (1), 799.44 (2), 799.45 (title), 799.45 (1), 799.45 (2) (b), 799.45 (2)  
9 (bg), 799.45 (2) (c), 799.45 (3) (title), 799.45 (3) (a), 799.45 (3) (b), 799.45 (3) (c)  
10 and 799.45 (4); and *to create* 66.0104 (2) (c), 66.0104 (2) (d), 66.0104 (3) (b),  
11 349.13 (3m) (a), (c), (d), (dg), (dm), (dr) and (e), 704.14, 704.16 (3) (a) 1., 704.16  
12 (3) (a) 2., 704.16 (3) (a) 3., 704.28 (5), 704.44 (10), 710.15 (5t) and 895.489 of the

1 statutes; **relating to:** miscellaneous provisions related to rental and vehicle  
2 towing practices and eviction proceedings, prohibitions on enacting ordinances  
3 that place certain limitations or requirements on landlords, terminating the  
4 tenancy of an offending tenant in a manufactured or mobile home community,  
5 providing an exemption from emergency rule procedures, granting  
6 rule-making authority.

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

7 **SECTION 1.** 66.0104 (2) (c) of the statutes is created to read:

8 66.0104 (2) (c) No city, village, town, or county may enact an ordinance that  
9 limits a residential tenant's responsibility, or a residential landlord's right to recover,  
10 for any damage or waste to, or neglect of, the premises that occurs during the tenant's  
11 occupancy of the premises, or for any other costs, expenses, fees, payments, or  
12 damages for which the tenant is responsible under the rental agreement or  
13 applicable law.

14 **SECTION 2.** 66.0104 (2) (d) of the statutes is created to read:

15 66.0104 (2) (d) 1. No city, village, town, or county may enact an ordinance that  
16 requires a landlord to communicate to tenants any information that is not required  
17 to be communicated to tenants under federal or state law.

18 2. No city, village, town, or county may enact an ordinance that requires a  
19 landlord to communicate to the city, village, town, or county any information  
20 concerning the landlord, unless any of the following applies:

21 a. The information is required under federal or state law.

22 b. The information is required of all residential real property owners.

1 c. The information is solely information that will enable a person to contact the  
2 owner or, at the option of the owner, an agent of the owner.

3 **SECTION 3.** 66.0104 (3) of the statutes is renumbered 66.0104 (3) (a) and  
4 amended to read:

5 66.0104 (3) (a) If a city, village, town, or county has in effect on December 21,  
6 2011, an ordinance that is inconsistent with sub. (2) (a) or (b), the ordinance does not  
7 apply and may not be enforced.

8 **SECTION 4.** 66.0104 (3) (b) of the statutes is created to read:

9 66.0104 (3) (b) If a city, village, town, or county has in effect on the effective date  
10 of this paragraph .... [LRB inserts date], an ordinance that is inconsistent with sub.  
11 (2) (c) or (d), the ordinance does not apply and may not be enforced.

12 **SECTION 5.** 349.13 (3m) of the statutes is renumbered 349.13 (3m) (b) and  
13 amended to read:

14 349.13 (3m) (b) ~~No Subject to par. (dr) 1., if private property is not properly~~  
15 ~~posted and a vehicle involved in trespass parking on a is parked on the private~~  
16 ~~parking lot or facility shall be removed property and is not authorized to be parked~~  
17 ~~there, the vehicle may be removed immediately, at the vehicle owner's expense,~~  
18 without the permission of the vehicle owner, ~~except~~ upon the issuance of a  
19 repossession judgment or upon ~~formal complaint and~~ the issuance of a citation for  
20 illegal parking issued by a ~~traffic or police officer.~~

21 **SECTION 6.** 349.13 (3m) (a), (c), (d), (dg), (dm), (dr) and (e) of the statutes are  
22 created to read:

23 349.13 (3m) (a) In this subsection:

24 1. "Parking enforcer" has the meaning given in s. 341.65 (1) (ar).

1           2. “Properly posted” means there is clearly visible notice that an area is private  
2 property and that vehicles that are not authorized to park in this area may be  
3 immediately removed.

4           (c) Subject to par. (dr) 1., if private property is properly posted and a vehicle is  
5 parked on the private property and is not authorized to be parked there, the vehicle  
6 may be removed immediately, at the vehicle owner’s expense, without the permission  
7 of the vehicle owner, regardless of whether a citation is issued for illegal parking.

8           (d) 1. Subject to par. (dr), a vehicle may be removed from private property under  
9 par. (b) or (c) only by a towing service at the request of the property owner or property  
10 owner’s agent, a traffic officer, or a parking enforcer.

11           2. Before any vehicle is removed under par. (b) or (c) by a towing service, the  
12 towing service shall notify a local law enforcement agency of the make, model, vehicle  
13 identification number, and registration plate number of the vehicle and the location  
14 to which the vehicle will be removed.

15           3. Subject to par. (dr) 2., if a vehicle is removed under par. (b) or (c) by a towing  
16 service, the vehicle owner shall pay the reasonable charges for removal and, if  
17 applicable, storage of the vehicle, as well as any service fee imposed under par. (dm).  
18 Subject to par. (dr) 2., if the vehicle was removed at the request of the property owner  
19 or property owner’s agent, these reasonable charges shall be paid directly to the  
20 towing service, and the towing service may impound the vehicle until these charges  
21 are paid. If these charges have not been paid in full within 30 days of the vehicle’s  
22 removal and the vehicle owner has not entered into a written agreement with the  
23 towing service to pay these reasonable charges in installment payments, the vehicle  
24 shall be deemed abandoned and may be disposed of as are other abandoned vehicles.

1 (dg) Every law enforcement agency shall maintain a record of each notice  
2 received under par. (d) 2., as well as identification of the towing service removing the  
3 vehicle.

4 (dm) If requested by the municipality in which the removed vehicle was  
5 illegally parked, the towing service shall charge the vehicle owner a service fee not  
6 exceeding \$35 and shall remit this service fee to the municipality. All service fees  
7 collected by a towing service under this paragraph may be aggregated and forwarded  
8 together, on a monthly basis, to each applicable municipality.

9 (dr) 1. A towing service may not remove a vehicle under this subsection if the  
10 vehicle has been reported to a law enforcement agency as stolen.

11 2. A towing service may not collect any charges for the removal or storage of  
12 an illegally parked vehicle under this subsection if the towing service has not  
13 complied with par. (d) 2. with respect to the vehicle.

14 (e) The department shall promulgate rules establishing all of the following:

15 1. Reasonable charges for removal and storage of vehicles under this  
16 subsection.

17 2. The form and manner of display of notice necessary to qualify as “properly  
18 posted” under par. (a) 2.

19 3. Guidelines for towing services to notify law enforcement under par. (d) upon  
20 removal of a vehicle.

21 **SECTION 7.** 349.13 (5) (b) 2. of the statutes is amended to read:

22 349.13 (5) (b) 2. A person who has custody of a vehicle removed or stored under  
23 subs. (3) to (4) or otherwise at the request of a law enforcement officer, traffic officer,  
24 parking enforcer, property owner, or property owner’s agent shall release the

1 personal property within the vehicle to the owner of the vehicle during regular office  
2 hours upon presentation by the owner of proper identification.

3 SECTION 8. 349.13 (5) (c) of the statutes is amended to read:

4 349.13 (5) (c) A traffic or police officer or parking enforcer who requests removal  
5 of a vehicle under subs. (3) to (4) by a towing service shall, within 24 hours of  
6 requesting the removal, notify the towing service of the name and last-known  
7 address of the registered owner and all lienholders of record of the vehicle if the  
8 vehicle is to be removed to any location other than a public highway within one mile  
9 from the location from which the vehicle is to be removed and if the officer or parking  
10 enforcer is not employed by a municipality or county that has entered into a towing  
11 services agreement which requires the municipality or county to provide notice to  
12 such owner and lienholders of the towing.

13 SECTION 9. 704.05 (5) (a) 1. of the statutes is amended to read:

14 704.05 (5) (a) 1. If a tenant removes from or is evicted from the premises and  
15 leaves personal property, the landlord may presume, in the absence of a written  
16 agreement between the landlord and the tenant to the contrary, that the tenant has  
17 abandoned the personal property and may, subject to par. (am) and s. 799.45 (3m),  
18 dispose of the abandoned personal property in any manner that the landlord, in its  
19 sole discretion, determines is appropriate.

20 SECTION 10. 704.05 (5) (b) 2. (intro.) of the statutes is amended to read:

21 704.05 (5) (b) 2. (intro.) If the ~~abandoned~~ tenant removes from the premises and  
22 leaves behind personal property that is a manufactured home, mobile home, or titled  
23 vehicle, before disposing of the abandoned property the landlord shall give notice of  
24 the landlord's intent to dispose of the property by sale or other appropriate means  
25 to all of the following:

*or is evicted from*

or if the tenant is written from

1 SECTION 11. 704.05 (5) (bf) of the statutes is amended to read:

2 704.05 (5) (bf) *Notice that landlord will not store property.* If the landlord does

3 not intend to store personal property left behind by a tenant who removes from the

4 premises, <sup>keep comma</sup> except as provided in par. (am), the landlord shall provide written notice

5 to a tenant, when the tenant enters into, ~~and when the tenant or renews,~~ a rental

6 agreement, that the landlord will not store any items of personal property that the

7 tenant leaves behind when the tenant removes from the premises, except as provided

8 in par. (am). Notwithstanding pars. (a), (am), and (b), if the landlord ~~does not provide~~

9 has not provided to a tenant the notice required under this paragraph, the landlord

10 shall comply with s. 704.05, 2009 stats., with respect to any personal property left

11 behind by the tenant when the tenant removes from the premises. Insert 7-11

12 SECTION 12. 704.07 (3) (a) of the statutes is amended to read:

13 704.07 (3) (a) If the premises are damaged by ~~the negligence or improper use~~

14 of the premises by, including by an infestation of insects or other pests, due to the acts

15 or inaction of the tenant, the landlord may elect to allow the tenant must to

16 remediate or repair the damage and restore the appearance of the premises by

17 redecorating. However, the landlord may elect to undertake the remediation, repair,

18 or redecoration, and in such case the tenant must reimburse the landlord for the

19 reasonable cost thereof; the cost to the landlord is presumed reasonable unless

20 proved otherwise by the tenant.

21 SECTION 13. 704.08 of the statutes is amended to read:

22 **704.08 Information check-in Check-in sheet.** A landlord shall provide to

23 a new residential tenant when the tenant commences his or her occupancy of the

24 premises a ~~standardized information~~ check-in sheet that contains an itemized

25 description of the tenant may use to make comments, if any, about the condition of

1 the premises ~~at the time of check-in~~. The tenant shall be given 7 days from the date  
2 the tenant commences his or her occupancy to complete the check-in sheet and  
3 return it to the landlord. The landlord is not required to provide the ~~information~~  
4 check-in sheet to a tenant upon renewal of a rental agreement. This section does not  
5 apply to the rental of a plot of ground on which a manufactured home, as defined in  
6 s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05 (5) (b) 1. b., may be  
7 located.

8 **SECTION 14.** 704.14 of the statutes is created to read:

9 **704.14 Notice of domestic abuse protections.** A residential rental  
10 agreement shall include the following notice in the agreement or in an addendum to  
11 the agreement:

12 **NOTICE OF DOMESTIC ABUSE PROTECTIONS**

13 (1) As provided in section 106.50 (5m) (dm) of the Wisconsin statutes, a tenant  
14 may be able to stop an eviction action if the tenant can prove that the landlord knew,  
15 or should have known, the tenant is a victim of domestic abuse, sexual assault, or  
16 stalking and that the eviction action is based on conduct related to domestic abuse,  
17 sexual assault, or stalking committed by either of the following:

18 (a) A person who was not the tenant's invited guest.

19 (b) A person who was the tenant's invited guest, but the tenant has done either  
20 of the following:

21 1. Sought an injunction barring the person from the premises.

22 2. Provided a written statement to the landlord stating that the person will no  
23 longer be an invited guest of the tenant and the tenant has not subsequently invited  
24 the person to be the tenant's guest.



1           (2) A tenant who is a victim of domestic abuse, sexual assault, or stalking may  
2 have the right to terminate the rental agreement in certain limited situations, as  
3 provided in section 704.16 of the Wisconsin statutes. If the tenant has safety  
4 concerns, the tenant should contact a local victim service provider or law  
5 enforcement agency.

6           (3) A tenant is advised that this notice is only a summary of the tenant's rights  
7 and the specific language of the statutes governs in all instances.

8           **SECTION 15.** 704.16 (3) (a) of the statutes is renumbered 704.16 (3) (a) (intro.)  
9 and amended to read:

10           704.16 (3) (a) (intro.) In this subsection, “offending:

11           4. “Offending tenant” is a tenant whose tenancy is being terminated under this  
12 subsection.

13           **SECTION 16.** 704.16 (3) (a) 1. of the statutes is created to read:

14           704.16 (3) (a) 1. “Community” has the meaning given in s. 710.15 (1) (ad).

15           **SECTION 17.** 704.16 (3) (a) 2. of the statutes is created to read:

16           704.16 (3) (a) 2. “Manufactured home” has the meaning given in s. 101.91 (2).

17           **SECTION 18.** 704.16 (3) (a) 3. of the statutes is created to read:

18           704.16 (3) (a) 3. “Mobile home” has the meaning given in s. 710.15 (1) (b).

19           **SECTION 19.** 704.16 (3) (b) 1. of the statutes is amended to read:

20           704.16 (3) (b) 1. The offending tenant commits one or more acts, including  
21 verbal threats, that cause another tenant, or a child of that other tenant, who  
22 occupies a dwelling unit in the same single-family rental unit, multiunit dwelling,  
23 or apartment complex, or a manufactured home or mobile home in the same  
24 community, as the offending tenant to face an imminent threat of serious physical  
25 harm from the offending tenant if the offending tenant remains on the premises.

1           **SECTION 20.** 704.28 (2) of the statutes is amended to read:

2           704.28 (2) NONSTANDARD RENTAL PROVISIONS. Except as provided in sub. (3), a  
3 rental agreement may include one or more nonstandard rental provisions that  
4 authorize the landlord to withhold amounts from the tenant's security deposit for  
5 reasons not specified in sub. (1) (a) to (e). Any such nonstandard rental provisions  
6 shall be provided to the tenant in a separate written document entitled  
7 "NONSTANDARD RENTAL PROVISIONS." The landlord shall specifically identify  
8 ~~and discuss~~ each nonstandard rental provision with the tenant before the tenant  
9 enters into a rental agreement with the landlord. If the tenant signs his or her name,  
10 or writes his or her initials, by a nonstandard rental provision, it is rebuttably  
11 presumed that the landlord has specifically identified ~~and discussed~~ the  
12 nonstandard rental provision with the tenant and that the tenant has agreed to it.

13           **SECTION 21.** 704.28 (4) (b) of the statutes is amended to read:

14           704.28 (4) (b) If the tenant vacates the premises or is evicted before the  
15 termination date of the rental agreement, the date on which the tenant's rental  
16 agreement terminates or, if the landlord rerents the premises before the tenant's  
17 rental agreement terminates, the date on which the new tenant's tenancy begins.

18           **SECTION 22.** 704.28 (4) (c) of the statutes is amended to read:

19           704.28 (4) (c) If the tenant vacates the premises or is evicted after the  
20 termination date of the rental agreement, the date on which the landlord learns that  
21 the tenant has vacated the premises or has been removed from the premises under  
22 s. 799.45 (2).

23           **SECTION 23.** 704.28 (4) (d) of the statutes is repealed.

24           **SECTION 24.** 704.28 (5) of the statutes is created to read:

1           704.28 (5) APPLICATION TO RESIDENTIAL TENANCIES. This section applies to  
2 residential tenancies only.

3           **SECTION 25.** 704.44 (9) of the statutes is amended to read:

4           704.44 (9) Allows the landlord to terminate the tenancy of a tenant if a crime  
5 is based solely on criminal activity committed in or on the rental property, even if the  
6 tenant could not reasonably have prevented the crime that is directed against the  
7 tenant and that is not committed by the tenant.

*Insert 11-7*

*Insert 11-5*

8           **SECTION 26.** 704.44 (10) of the statutes is created to read:

9           704.44 (10) Allows the landlord to terminate the tenancy of a tenant for  
10 criminal activity in relation to the rental property and the rental agreement does not  
11 include the notice required under s. 704.14.

*a crime committed*

12           **SECTION 27.** 704.95 of the statutes is amended to read:

13           **704.95 Practices regulated by the department of agriculture, trade**  
14 **and consumer protection.** Practices in violation of this chapter s. 704.28 or 704.44  
15 may also constitute unfair methods of competition or unfair trade practices under s.  
16 100.20. However, the department of agriculture, trade and consumer protection may  
17 not issue an order or promulgate a rule under s. 100.20 that changes any right or duty  
18 arising under this chapter.

19           **SECTION 28.** 710.15 (5t) of the statutes is created to read:

20           710.15 (5t) **TERMINATION OF TENANCY FOR THREAT OF SERIOUS HARM.**  
21 Notwithstanding sub. (5m), nothing in this section prevents termination of a tenancy  
22 because of an imminent threat of serious physical harm, as provided in s. 704.16.

23           **SECTION 29.** 799.05 (3) (b) of the statutes is amended to read:

24           799.05 (3) (b) Except in eviction actions, the return date for a summons served  
25 upon a resident of this state shall be not less than 8 days nor more than 30 days from

1 the issue date, and service shall be made not less than 8 days prior to the return date.  
2 In eviction actions, the return date for a summons served upon a resident of this state  
3 shall be not less than 5 days nor more than ~~30~~ 25 days from the issue date, and service  
4 shall be made not less than 5 days prior to the return date.

5 **SECTION 30.** 799.06 (2) of the statutes is amended to read:

6 799.06 (2) A person may commence and prosecute or defend an action or  
7 proceeding under this chapter and may appear in his, her, or its own proper person  
8 or by an attorney regularly authorized to practice in the courts of this state. Under  
9 this subsection, a person is considered to be acting in his, her, or its own proper  
10 person if the appearance is by a ~~full-time member~~, as defined in s. 183.0102 (15),  
11 agent, or authorized employee of the person, or by an agent of the member or an  
12 authorized employee of the agent. An assignee of any cause of action under this  
13 chapter shall not appear by a full-time authorized employee, unless the employee  
14 is an attorney regularly authorized to practice in the courts of this state.

15 **SECTION 31.** 799.12 (2) of the statutes is amended to read:

16 799.12 (2) Any circuit court may by rule authorize the service of summons in  
17 some or all actions under this chapter, ~~except eviction actions~~, by mail under sub. (3)  
18 in lieu of personal or substituted service under s. 801.11.

19 **SECTION 32.** 799.12 (3) of the statutes is amended to read:

20 799.12 (3) If authorized by court rule under sub. (2), service may be made by  
21 mail by leaving the original and necessary copies of the summons with the clerk of  
22 court, together with the fee prescribed in s. 814.62 (4). The court ~~may by rule~~ shall  
23 require the use of certified mail with return receipt requested, in which event for all  
24 eviction cases for which service by mail is authorized under sub. (2), and for all other  
25 cases may by rule require the use of certified mail with return receipt requested.

1 Whenever the use of certified mail is required, the additional fee prescribed in s.  
2 814.62 (4) shall be paid for each defendant. The clerk shall mail a copy to each  
3 defendant at the last-known address as specified in the summons. Service of the  
4 summons is considered completed when it is mailed, unless the envelope enclosing  
5 the summons has been returned unopened to the clerk prior to the return date. All  
6 mailing of summonses shall be done in envelopes upon which the clerk's return  
7 address appears, with a request to return to that address. Service by mail to obtain  
8 a personal judgment shall be limited to the county where the action is commenced.

9 **SECTION 33.** 799.20 (4) of the statutes is amended to read:

10 799.20 (4) INQUIRY OF DEFENDANT WHO APPEARS ON RETURN DATE. If the defendant  
11 appears on the return date of the summons or any adjourned date thereof, the court  
12 or circuit court commissioner shall make sufficient inquiry of the defendant to  
13 determine whether the defendant claims a defense to the action. If it appears to the  
14 court or circuit court commissioner that the defendant claims a defense to the action,  
15 the court or circuit court commissioner shall schedule a trial of all the issues involved  
16 in the action, unless the parties stipulate otherwise or the action is subject to  
17 immediate dismissal. In a residential eviction action, the court or circuit court  
18 commissioner shall hold and complete a court or jury trial of the issue of possession  
19 of the premises involved in the action within 30 days of the return date of the  
20 summons or any adjourned date thereof, unless the parties stipulate otherwise or the  
21 action is subject to immediate dismissal.

22 **SECTION 34.** 799.206 (3) of the statutes is amended to read:

23 799.206 (3) When all parties appear in person or by their attorneys on the  
24 return date in an eviction, garnishment, or replevin action and any party claims that  
25 a contest exists, the matter shall be forthwith scheduled for a hearing, to be held as

1  
2  
30  
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plain space

soon as possible before a judge and in the case of an eviction action, not more than  
20 days after the return date.

**SECTION 35.** 799.40 (1) of the statutes is amended to read:

799.40 (1) **WHEN COMMENCED.** A civil action of eviction may be commenced by a person entitled to the possession of real property, or by that person's agent authorized in writing, to remove therefrom any person who is not entitled to either the possession or occupancy of such real property.

**SECTION 36.** 799.40 (1m) of the statutes is amended to read:

799.40 (1m) **ACCEPTANCE OF RENT OR OTHER PAYMENT.** If a landlord commences an action under this section against a tenant whose tenancy has been terminated for failure to pay rent or for any other reason, the action under this section may not be dismissed solely because the landlord accepts past due rent or any other payment from the tenant after the termination of the tenant's tenancy serving notice of default or after commencing the action.

**SECTION 37.** 799.42 of the statutes is amended to read:

**799.42 Service and filing in eviction actions.** The complaint shall be served with the summons when ~~personal or substituted~~ service is had under s. 799.12 (1), (2), or (3).

**SECTION 38.** 799.44 (1) of the statutes is amended to read:

799.44 (1) **ORDER FOR JUDGMENT.** In an eviction action, if the court finds that the plaintiff is entitled to possession, the court shall immediately enter an order for judgment shall be for the restitution of the premises to the plaintiff and, if If an additional cause of action is joined under s. 799.40 (2) and plaintiff prevails thereon, the court shall enter judgment for such other relief as the court orders. Judgment shall be entered accordingly as provided in s. 799.24.

1           **SECTION 39.** 799.44 (2) of the statutes is amended to read:

2           799.44 (2) WRIT OF RESTITUTION. At the time of ordering judgment for the  
3           restitution of premises, the court shall immediately order that a writ of restitution  
4           be issued, and the writ may be delivered to the sheriff for execution in accordance  
5           with s. 799.45. No writ shall be executed if received by the sheriff more than 30 days  
6           after its issuance.

7           **SECTION 40.** 799.45 (title) of the statutes is amended to read:

8           **799.45 (title) Execution of writ of restitution; disposal of personal**  
9           **property.**

10          **SECTION 41.** 799.45 (1) of the statutes is amended to read:

11          799.45 (1) WHEN EXECUTED. Upon delivery of a writ of restitution to the sheriff,  
12          and after payment to the sheriff of the fee required by s. 814.70 (8), the sheriff shall  
13          execute the writ. If the plaintiff, or the plaintiff's attorney or agent, does not notify  
14          the sheriff under sub. (3)-(am) (3m) that the plaintiff or his or her agent will remove  
15          and store or dispose of the property, the sheriff may require that prior to the  
16          execution of any writ of restitution the plaintiff deposit a reasonable sum  
17          representing the probable cost of removing the defendant's property chargeable to  
18          the plaintiff under s. 814.70 (8) and (10) and of the services of deputies under s.  
19          814.70 (8). In case of dispute as to the amount of the required deposit, the amount  
20          of that deposit shall be determined by the court under s. 814.70 (10).

21          **SECTION 42.** 799.45 (2) (b) of the statutes is amended to read:

22          799.45 (2) (b) Remove If the plaintiff or his or her agent does not notify the  
23          sheriff under sub. (3m) that the plaintiff or his or her agent will remove and store or  
24          dispose of the personal property, remove or supervise removal from the premises

1 described in the writ, using such reasonable force as may be necessary, all personal  
2 property found in the premises not the property of the plaintiff.

3 **SECTION 43.** 799.45 (2) (bg) of the statutes is amended to read:

4 799.45 (2) (bg) Assist If requested by the plaintiff or his or her agent, assist the  
5 plaintiff or his or her agent in the removal, under sub. (3) ~~(am)~~ (3m), of all personal  
6 property found in the premises described in the writ, not the property of the plaintiff,  
7 using such reasonable force as may be necessary.

8 **SECTION 44.** 799.45 (2) (c) of the statutes is amended to read:

9 799.45 (2) (c) Exercise ordinary care in the removal or supervision of removal  
10 of all persons and property from the premises and, in the removal or supervision of  
11 removal of personal property under par. (b), and in the handling and storage of all  
12 property removed from the premises under par. (b).

13 **SECTION 45.** 799.45 (3) (title) of the statutes is amended to read:

14 799.45 (3) (title) MANNER OF REMOVAL AND DISPOSITION OF REMOVED GOODS BY  
15 SHERIFF

16 **SECTION 46.** 799.45 (3) (a) of the statutes is amended to read:

17 799.45 (3) (a) In accomplishing the removal of property from the premises  
18 described in the writ, the sheriff is authorized to engage the services of a mover or  
19 trucker unless the plaintiff notifies the sheriff under ~~par. (am)~~ sub. (3m) that the  
20 plaintiff will remove and store or dispose of the property.

21 **SECTION 47.** 799.45 (3) (am) (intro.) of the statutes is renumbered 799.45 (3m)  
22 and amended to read:

23 799.45 (3m) ALTERNATIVE DISPOSITION OF PROPERTY BY PLAINTIFF. When  
24 delivering a writ of restitution to the sheriff ~~in counties other than counties with a~~  
25 population of 500,000 or more, as a complete alternative to the procedure for



1 disposition of the property under sub. (3), the plaintiff or his or her attorney or agent  
2 may notify the sheriff that the plaintiff or the plaintiff's agent will be responsible for  
3 the removal and storage, provided that the plaintiff has provided the notice under  
4 s. 704.05 (5) (bf), or disposal of the property that is found in the premises described  
5 in the writ and that does not belong to the plaintiff. ~~When notifying the sheriff that~~  
6 ~~the plaintiff or the plaintiff's agent will remove the property, the plaintiff or his or~~  
7 ~~her attorney or agent shall file the bond or insurance policy required under subd. 5.~~  
8 ~~with the clerk of court that issued the writ of restitution in accordance with s. 704.05~~  
9 ~~(5) (a), (am), (b), (c), and (cm).~~ If the sheriff is notified that the plaintiff or the  
10 plaintiff's agent will be responsible for the removal and storage or disposal of the  
11 property under this paragraph subsection, the sheriff shall, ~~in executing the writ of~~  
12 ~~restitution if requested by the plaintiff or his or her agent~~, supervise the removal and  
13 handling of the property by the plaintiff or the plaintiff's agent. ~~The sheriff may~~  
14 ~~prevent the plaintiff or the plaintiff's agent from removing property under this~~  
15 ~~paragraph if the plaintiff or the plaintiff's agent fails to comply with subd. 1., 2., 5.~~  
16 ~~or 6. or if the plaintiff or the plaintiff's agent fails to exercise ordinary care in the~~  
17 ~~removal and handling of the property as required under subd. 3. If the plaintiff or~~  
18 ~~the plaintiff's agent remove and store the property under this paragraph, the~~  
19 ~~plaintiff or the plaintiff's agent shall do all of the following:~~

20 SECTION 48. 799.45 (3) (am) 1. of the statutes is repealed.

21 SECTION 49. 799.45 (3) (am) 2. of the statutes is repealed.

22 SECTION 50. 799.45 (3) (am) 3. of the statutes is repealed.

23 SECTION 51. 799.45 (3) (am) 4. of the statutes is repealed.

24 SECTION 52. 799.45 (3) (am) 5. of the statutes is repealed.

25 SECTION 53. 799.45 (3) (am) 6. of the statutes is repealed.

1           **SECTION 54.** 799.45 (3) (am) 7. of the statutes is repealed.

2           **SECTION 55.** 799.45 (3) (b) of the statutes is amended to read:

3           799.45 (3) (b) Except as provided in ~~pars. (am) and par.~~ (c), the property  
4 removed from such premises under this subsection shall be taken to some place of  
5 safekeeping within the county selected by the sheriff. Within 3 days of the removal  
6 of the goods, the sheriff shall mail a notice to the defendant as specified in sub. (4)  
7 stating the place where the goods are kept and, ~~if the plaintiff had not removed the~~  
8 ~~property under par. (am),~~ shall deliver to the defendant any receipt or other  
9 document required to obtain possession of the goods. Warehouse or other similar  
10 receipts issued with respect to goods stored by the sheriff under this subsection shall  
11 be taken in the name of the defendant. All expenses incurred for storage and other  
12 like charges after delivery by the sheriff ~~or by the plaintiff~~ to a place of safekeeping  
13 shall be the responsibility of the defendant. Any person accepting goods from the  
14 sheriff ~~or the plaintiff~~ for storage under this subsection, ~~or the plaintiff, if he or she~~  
15 ~~stores the property in his or her premises,~~ shall have all of the rights and remedies  
16 accorded by law against the defendant personally and against the property stored for  
17 the collection of such charges, including the lien of a warehouse under s. 407.209.  
18 Risk of damages to or loss of such property shall be borne by the defendant after  
19 delivery by the sheriff to the place of safekeeping.

20           **SECTION 56.** 799.45 (3) (c) of the statutes is amended to read:

21           799.45 (3) (c) When, in the exercise of ordinary care, the sheriff determines that  
22 property to be removed from premises described in the writ is without monetary  
23 value, the sheriff ~~or the plaintiff, if he or she has agreed to remove the property under~~  
24 ~~par. (am),~~ may deliver or cause the same to be delivered to some appropriate place  
25 established for the collection, storage, and disposal of refuse. In such case the sheriff

1 shall notify the defendant as specified in sub. (4) of the place to which the goods have  
2 been delivered within 3 days of the removal of the goods. The exercise of ordinary  
3 care by the sheriff under this subsection does not include searching apparently  
4 valueless property for hidden or secreted articles of value.

5 **SECTION 57.** 799.45 (4) of the statutes is amended to read:

6 799.45 (4) MANNER OF GIVING NOTICE TO DEFENDANT. All notices required by sub.  
7 (3) to be given to the defendant by the sheriff ~~or by the plaintiff~~ shall be in writing  
8 and shall be personally served upon the defendant or mailed to the defendant at the  
9 last-known address, even if such address be the premises which are the subject of  
10 the eviction action.

11 **SECTION 58.** 895.489 of the statutes is created to read:

12 **895.489 Civil liability exemption; tenancy references. (1)** In this section:

13 (a) “Reference” means a written or oral statement about the rental performance  
14 of an applicant for tenancy and may include statements about the applicant’s  
15 payment history, conformance to rental agreement requirements, or conformance to  
16 local and state laws; factual statements regarding any rental agreement  
17 enforcement actions, including notices given under s. 704.17, 704.19, or 710.15 (5r);  
18 and factual statements about any dispute settlement between the landlord and  
19 applicant in accordance with any agreement between the landlord and applicant  
20 relating to termination of the applicant’s tenancy.

21 (b) “Tenant” means a residential tenant, regardless of the type of tenancy or  
22 rental period.

23 (2) A landlord who, on the request of a prospective landlord of an applicant for  
24 tenancy or on the request of the applicant for tenancy, provides a reference to the  
25 prospective landlord is presumed to be acting in good faith and, unless lack of good

1 faith is shown by clear and convincing evidence, is immune from all civil liability that  
2 may result from providing that reference. The presumption of good faith under this  
3 subsection may be rebutted only upon a showing by clear and convincing evidence  
4 that the landlord knowingly provided false information in the reference or made the  
5 reference maliciously.

6 **SECTION 59. Nonstatutory provisions.**

7 (1) PROPOSED PERMANENT RULES. The department of transportation shall  
8 present the statement of scope of the rules required under section 349.13 (3m) (e) of  
9 the statutes, as created by this act, to the governor for approval under section  
10 227.135 (2) of the statutes no later than the 60th day after the effective date of this  
11 subsection.

12 (2) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,  
13 the department of transportation shall promulgate the rules required under section  
14 349.13 (3m) (e) of the statutes, as created by this act, for the period before the  
15 effective date of the permanent rules promulgated under section 349.13 (3m) (e) of  
16 the statutes, as created by this act, but not to exceed the period authorized under  
17 section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of  
18 the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes,  
19 the department is not required to provide evidence that promulgating a rule under  
20 this subsection as an emergency rule is necessary for the preservation of public  
21 peace, health, safety, or welfare and is not required to provide a finding of an  
22 emergency for a rule promulgated under this subsection. Notwithstanding section  
23 227.24 (1) (e) 1d. and 1g. of the statutes, the department is not required to prepare  
24 a statement of the scope of the rules promulgated under this subsection or present  
25 the rules to the governor for approval. The department of transportation shall

1 promulgate the rules under this subsection no later than the first day of the 7th  
2 month beginning after the effective date of this subsection.

3 **SECTION 60. Initial applicability.**

4 (1) INSECT INFESTATIONS. The treatment of section 704.07 (3) (a) of the statutes  
5 first applies to tenancies that are in effect on the effective date of this subsection.

6 (2) NOTICE REGARDING NONSTORAGE OF PROPERTY. The treatment of section 704.05  
7 (5) (bf) of the statutes first applies to personal property left behind by a tenant under  
8 a rental agreement that is renewed on the effective date of this subsection.

9 (3) RETURN OF SECURITY DEPOSIT AFTER EVICTION. The treatment of section 704.28  
10 (4) (b), (c), and (d) of the statutes first applies to eviction actions that are commenced  
11 on the effective date of this subsection.

12 (4) APPLICABILITY OF SECURITY DEPOSIT PROVISIONS. The treatment of sections  
13 704.28 (5) of the statutes first applies to tenancies that are in effect on the effective  
14 date of this subsection.

15 (5) VOID RENTAL AGREEMENT. The treatment of section 704.44 (9) <sup>and (10)</sup> of the statutes  
16 first applies to rental agreements that are entered into or renewed on the effective  
17 date of this subsection.

18 (6) VIOLATIONS THAT CONSTITUTE UNFAIR TRADE PRACTICES. The treatment of  
19 section 704.95 of the statutes first applies to violations that occur on the effective  
20 date of this subsection.

21 (7) TERMINATION OF TENANCY IN MANUFACTURED OR MOBILE HOME COMMUNITY. The  
22 treatment of sections 704.16 (3) (b) 1. and 710.15 (5t) of the statutes, the renumbering  
23 and amendment of section 704.16 (3) (a) of the statutes, and the creation of section  
24 704.16 (3) (a) 1., 2., and 3. of the statutes first apply to acts causing an imminent  
25 threat of serious physical harm committed on the effective date of this subsection.

1 (8) EVICTION ACTIONS. The treatment of sections 704.05 (5) (a) 1., 799.05 (3) (b),  
2 799.06 (2), 799.12 (2), 799.20 (4), 799.206 (3), 799.40 (1) and (1m), 799.42, and 799.44  
3 (2), and 799.45 (title), (1), (2) (b), (bg), and (c), (3) (title), (a), (am) (intro.), 1., 2., 3.,  
4 4., 5., 6., and 7., (b), and (c), and (4) of the statutes first applies to eviction actions that  
5 are filed on the effective date of this subsection.

6 (9) REFERENCES PROVIDED BY LANDLORDS. The treatment of section 895.489 of the  
7 statutes first applies to references provided on the effective date of this subsection.

8 (10) NOTICE OF PROTECTIONS IN RENTAL AGREEMENTS. The treatment of section  
9 704.14 of the statutes first applies to rental agreements that are entered into or  
10 renewed on the effective date of this subsection.

11 **SECTION 61. Effective dates.** This act takes effect on the first day of the 3rd  
12 month beginning after publication, except as follows:

13 (1) The treatment of section 349.13 (5) (b) 2. and (c) of the statutes, the  
14 renumbering and amendment of section 349.13 (3m) of the statutes, and the creation  
15 of section 349.13 (3m) (a), (c), (d), (dg), (dm), (dr), and (e) of the statutes take effect  
16 on the the first day of the 7th month beginning after publication.

17 (2) SECTION 59 (1) and (2) of this act takes effect on the day after publication.

18 (END)

A handwritten signature, possibly 'D. [unclear]', followed by the initials 'vfe' written in a cursive style.

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0104/P3ins  
PJK:.....

INSERT 7-11

1 *will* , or if the tenant is evicted from the premises and the landlord notifies the  
2 sheriff under s. 799.45 (3m)

(END OF INSERT 7-11)

INSERT 11-7

3 **SECTION 1.** 704.44 (9) of the statutes <sup>✓</sup>is amended to read:

4 704.44 (9) Allows the landlord to terminate the tenancy of a tenant ~~if a crime~~  
5 ~~is committed~~ based solely on the commission of a crime in or on the rental property,  
6 ~~even if the tenant could not reasonably have prevented the~~ if the tenant, or someone  
7 who lawfully resides with the tenant, is the victim, as defined in s. 950.02, <sup>✓</sup>of that  
8 crime.

History: 2007 a. 184; 2011 a. 143.

(END OF INSERT 11-7)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0104/P3dn

PJK: *gf*

*Date*

*✓ m3 run*

Just a few thoughts about new s. 704.44 (9):

1. If you are concerned about the cross-reference to the definition of "victim" becoming obsolete and causing a problem for leases that include the cross-reference, another sentence could be added that, as suggested, says "for purposes of this subsection, "victim" has the meaning given in s. 905.02." The question is whether leases would then contain that language and cross-reference. (I'm not sure it's a problem, though, because if the definition cross-reference changes, that change should have an initial applicability to leases entered into or renewed on the effective date.)
2. Although "crime" is defined in s. 939.12, that definition does not apply in ch. 704. If we added to s. 704.44 (9) "for purposes of this subsection, "crime" has the meaning given in s. 939.12," that same sentence should be added to s. 704.44 (10).
3. I think your concern, Rob, about finding a lease void and unenforceable if it allows for the eviction of a perpetrator of domestic abuse against a fellow tenant is a valid one. The new language for s. 704.44 (9) also seems contrary to s. 704.16, which authorizes a landlord to terminate the tenancy of just such a tenant.

Turning the language around, a lease is void and unenforceable if it allows the landlord to evict a tenant for a crime committed against the tenant *or someone who lawfully resides with the tenant*. In your scenario, a tenant (who is the perpetrator of the crime) may be evicted based solely on a crime committed in or on the rental property and someone who lawfully resides with the tenant was the victim of that crime. It doesn't matter that by definition the "victim" cannot be the person who commits the crime. In this scenario, the "victim" is not the tenant who commits the crime but the person who lawfully resides with the tenant.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0104/P3dn  
PJK:kjf:rs

September 4, 2013

Just a few thoughts about new s. 704.44 (9):

1. If you are concerned about the cross-reference to the definition of “victim” becoming obsolete and causing a problem for leases that include the cross-reference, another sentence could be added that, as suggested, says “for purposes of this subsection, “victim” has the meaning given in s. 905.02.” The question is whether leases would then contain that language and cross-reference. (I’m not sure it’s a problem, though, because if the definition cross-reference changes, that change should have an initial applicability to leases entered into or renewed on the effective date.)
2. Although “crime” is defined in s. 939.12, that definition does not apply in ch. 704. If we added to s. 704.44 (9) “for purposes of this subsection, “crime” has the meaning given in s. 939.12,” that same sentence should be added to s. 704.44 (10).
3. I think your concern, Rob, about a court finding a lease void and unenforceable if it allows for the eviction of a perpetrator of domestic abuse against a fellow tenant is a valid one. The new language for s. 704.44 (9) also seems contrary to s. 704.16, which authorizes a landlord to terminate the tenancy of just such a tenant.

Turning the language around, a lease is void and unenforceable if it allows the landlord to evict a tenant for a crime committed against the tenant *or someone who lawfully resides with the tenant*. In your scenario, a tenant (who is the perpetrator of the crime) may be evicted based solely on a crime committed in or on the rental property and someone who lawfully resides with the tenant was the victim of that crime. It doesn’t matter that by definition the “victim” cannot be the person who commits the crime. In this scenario, the “victim” is not the tenant who commits the crime but the person who lawfully resides with the tenant.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

50104

**Kahler, Pam**

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**From:** Kovach, Robert  
**Sent:** Thursday, September 05, 2013 9:58 AM  
**To:** Kahler, Pam; Larson, Brian  
**Subject:** FW: Victims protections SB179

Pam,

Can you please add this to the drafting file?

**Rob Kovach**

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

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**From:** Rinehart, Mark W. [mailto:RinehartMW@DOJ.STATE.WI.US]  
**Sent:** Thursday, September 05, 2013 9:51 AM  
**To:** Kovach, Robert  
**Subject:** RE: Victims protections SB179

Hi Rob,

Below is the initial reaction to your latest email from one of our Office of Crime Victim Services employees who has been following and commenting on all of these proposed changes:

704.16(1) , cited by Rob, allows a tenant to vacate the lease with limited rent liability if staying poses an imminent threat of physical harm. It explicitly allows the tenant to end the lease if he/she produces certain proof (ex. injunction). It is not an eviction action against the tenant so the conflict with the proposed language is less apparent to me. Maybe I'm not correctly tracking his point.

I appreciate all of these scenarios—I've come up with a few myself. Still, overall, I think we have hit on language that provides good guidance for property owners who will need to craft a lease that expresses the intent to evict perpetrators, rather than having over broad language that leaves the impression eviction could result from crime against an innocent tenant-victim. That is the central point—to have language that does not create a disincentive for a victim to get help.

Admittedly, there will be many cases when a victim resides with a perpetrator and may not report because of fear that the perpetrator will be evicted. This is a multi-faceted issue, however, and not something the lease language can cure. It goes to the heart of the dynamics of family violence and we cannot legislate that problem away.

My thoughts on Rob's scenarios in red.

The hypothetical is this:

Lease states: "the landlord will evict tenants for crime and other nuisances on or about the rental property except when the tenant or lawful resident is the victim, per s 950.02, of the crime."

Then the tenant—a parent is caught by child protective services repeatedly causing serious bodily harm on their child—a person who is a victim under 950.02 AND lawfully residing with the tenant. Though it sounds crazy, the child isn't actually a victim under 950.02. According to that statute, if the person against whom the crime is committed is a child, the "victim" is a parent, guardian or legal custodian of the child. In this scenario,

the offending legal guardian who is alleged to have committed the crime cannot be a "victim" either because "victim" does not include the person charged with or alleged to have committed the crime". see 950.02(4)5.(b) If CPS takes custody of the child, or there is non-offending parent in the home, the protection from eviction in this case transfers to them. Because we are working on how a legal agreement is executed, and the child isn't a party to that, I think this is appropriate even though it may sound strange at first to view the child as not having any independent interests.

Does the "solely" provision save us here since in 704.16 requires both the imminent threat AND one of the conditions under 704.16(1)b? "Solely" protects landlords who need to evict a tenant who happens to be a victim and who is also engaged in prohibited conduct. An eviction action cannot be based on the factors directly related to the incident in which the tenant was victimized (i.e., damage to the unit resulting from a break in and assault). However, if eviction is based on something unrelated to that incident, (let's say he is dealing drugs in the laundry room) "solely" ensures the tenant's victim-status from the break-in will not shield him from an eviction action that is based on the drug dealing.

I'm sorry for being an over-analytical layman, but I REALLY don't want to create an unworkable provision in 704.44(9) that makes me have to do this again someday.

How can any landlord evict the perpetrator of crime against other lawful residents residing with the tenant-violent or otherwise?

DV and Sexual Assault cases are more straightforward, even when perpetrators reside with victims, because of 704.16 (3).

A landlord may terminate the tenancy of an offending tenant if all of the following apply:

1. The offending tenant commits one or more acts, including verbal threats, that cause another tenant, or a child of that other tenant, who occupies a dwelling unit in the same single-family rental unit, multiunit dwelling, or apartment complex as the offending tenant to face an imminent threat of serious physical harm from the offending tenant if the offending tenant remains on the premises.
2. The offending tenant is the named offender in [certain DV/sexual assault/child protection orders, criminal complaints or no-contact orders].

If a tenant steals a roommate's plasma TV, the roommate is the victim. The landlord uses the theft as the sole reason to evict the tenant, but they cannot because 704.44(9) says no lease can contain a provision that allows for eviction solely for crime when the victim is a lawful resident. Under the proposed language, the perpetrator is never the protected party. Only the "victim" is protected from eviction actions based on a crime against him or her. By 950.02(4)(a), "victim" is the person against whom the crime was committed. By 950.02(4)5.(b), "victim does not include the person charged with or alleged to have committed the crime". If both parties are on the lease, the perpetrator could be evicted under the language but the roommate whose TV was stolen cannot be evicted for that reason alone.

What is more problematic, is if we make it difficult for the landlords to write the contract in a way that doesn't violate 704.44(9), they will not create leases that allow for evictions for crime. That just creates more victims. That's bad. Agreed-landlords will need to be careful with their language but I think there are ways to write this into a lease. If it were my rental property, I would phrase it in a way to avoid some of the scenarios described here-- "the landlord may evict tenants who commit crimes and other nuisances on or about the rental property." This proposal only speaks to what cannot be in a lease. For example, the lease cannot say "tenants will be evicted if a crime is committed in or on the rental property." I think a landlord could find the right language to express this balance.

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**From:** Kovach, Robert [<mailto:Robert.Kovach@legis.wisconsin.gov>]  
**Sent:** Wednesday, September 04, 2013 5:50 PM  
**To:** Rinehart, Mark W.  
**Cc:** Kahler, Pam  
**Subject:** FW: Victims protections SB179

Dear Mark,

It looks like everyone is now on board with the language except for me.

As the DOJ language was drafted the amendment reads:

[a lease is void an unenforceable if it]

704.44(9) Allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property if the tenant, or someone who lawfully resides with the tenant, is the victim, as defined in s. 950.02(4), of that crime.

The problem is that a rental agreement that allows for eviction for crime must have the disclosure regarding 704.16 that directs a landlord to do just that—terminate a tenancy solely for committing domestic violence against a lawful resident who is residing with the tenant, we create a situation where it isn't possible to create a provision that allows for evictions for perpetrators of crime while still protecting the victims.

**704.16 Termination of tenancy for imminent threat of serious physical harm; changing locks.**

704.16(1)(1) TERMINATING TENANCY BY TENANT. A residential tenant may terminate his or her tenancy and remove from the premises if both of the following apply:

704.16(1)(a)(a) The tenant or a child of the tenant faces an imminent threat of serious physical harm from another person if the tenant remains on the premises.

704.16(1)(b)(b) The tenant provides the landlord with notice in the manner provided under s. 704.21 and with a certified copy of any of the following:

704.16(1)(b)1.1. An injunction order under s. 813.12 (4) protecting the tenant from the person.

704.16(1)(b)2.2. An injunction order under s. 813.122 protecting a child of the tenant from the person.

704.16(1)(b)3.3. An injunction order under s. 813.125 (4) protecting the tenant or a child of the tenant from the person, based on the person's engaging in an act that would constitute sexual assault under s. 940.225, 948.02, or 948.025, or stalking under s. 940.32, or attempting or threatening to do the same.

704.16(1)(b)4.4. A condition of release under ch. 969 ordering the person not to contact the tenant.

704.16(1)(b)5.5. A criminal complaint alleging that the person sexually assaulted the tenant or a child of the tenant under s. 940.225, 948.02, or 948.025.

704.16(1)(b)6.6. A criminal complaint alleging that the person stalked the tenant or a child of the tenant under s. 940.32.

704.16(1)(b)7.7. A criminal complaint that was filed against the person as a result of the person being arrested for committing a domestic abuse offense against the tenant under s. 968.075.

The hypothetical is this:

Lease states: "the landlord will evict tenants for crime and other nuisances on or about the rental property except when the tenant or lawful resident is the victim, per s 950.02, of the crime."

Then the tenant—a parent is caught by child protective services repeatedly causing serious bodily harm on their child—a person who is a victim under 950.02 AND lawfully residing with the tenant.

Does the “solely” provision save us here since in 704.16 requires both the imminent threat AND one of the conditions under 704.16(1)b?

I’m sorry for being an over-analytical layman, but I REALLY don’t want to create an unworkable provision in 704.44(9) that makes me have to do this again someday.

How can any landlord evict the perpetrator of crime against other lawful residents residing with the tenant—violent or otherwise?

If a tenant steals a roommate’s plasma TV, the roommate is the victim. The landlord uses the theft as the sole reason to evict the tenant, but they cannot because 704.44(9) says no lease can contain a provision that allows for eviction solely for crime when the victim is a lawful resident.

What is more problematic, is if we make it difficult for the landlords to write the contract in a way that doesn’t violate 704.44(9), they will not create leases that allow for evictions for crime. That just creates more victims. That’s bad.

It’s our intent for victims to not be evicted when they are victims of crime, but we want to create language that will allow evictions of perpetrators of crime—even if the perpetrators only commit one crime.

Let’s talk about this tomorrow as soon as you have time available.

Thanks!

## **Rob Kovach**

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

---

**From:** Pettack, Dee  
**Sent:** Wednesday, September 04, 2013 4:41 PM  
**To:** Kovach, Robert  
**Subject:** RE: Victims protections SB179

Language looks good.

Thanks,

Dee

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**From:** Kovach, Robert  
**Sent:** Wednesday, September 04, 2013 11:07 AM  
**To:** Pettack, Dee; Harriman, Amy  
**Cc:** Jenkins, Kevin  
**Subject:** FW: Victims protections SB179

Dear Dee and Amy,

Below is the email string and updated language from DOJ regarding the victim’s protections in 704.44(9).

There is also some back and forth about the new structure of the language for you to see.

I am satisfied with the latest language and answers to my concerns. Can you look it over today and let me know if your office has any concerns?

Thanks,

## **Rob Kovach**

Policy Advisor/Committee Clerk  
Office of Senator Frank Lasee  
(608) 266-3512

---

**From:** Rinehart, Mark W. [<mailto:RinehartMW@DOJ.STATE.WI.US>]

**Sent:** Wednesday, September 04, 2013 10:00 AM

**To:** Kovach, Robert

**Subject:** RE: Victims protections SB179

Hi Rob,

A few thoughts from our folks on your comments:

*704.44 (9) Allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property, if the tenant or someone who lawfully resides with the tenant, is the victim of that crime, as defined in s. 950.02.*

- We prefer "crime" over "criminal activity" - the definition of "crime" exists already and is based on conduct, not law enforcement referral or any criminal justice system disposition, so it allows for more flexibility.
- "Criminal activity" exists in several other chapters undefined. It is probably more complicated/risky to introduce a new definition for that term than to loop back to the existing 950 definition.
- The 950.02 cross reference ensures that someone who commits (or is alleged to have committed) the conduct which is the basis for the eviction is not protected from eviction. He/She would not be considered a "victim" of the crime under 950.02. It's really the same as having the "and did not commit the crime" language. Furthermore, the phrase "is the victim of that crime" closes the loop even tighter because everything refers back to the specific (crime) conduct being used as the basis for an eviction action.
- You may be right that changes to 950 could affect leases if the section cross-references 950.02. You could just pull the 950.02 language and put it in as "for the purpose of this chapter, "victim" means..." and not reference 950.02.

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**From:** Kovach, Robert [<mailto:Robert.Kovach@legis.wisconsin.gov>]

**Sent:** Tuesday, September 03, 2013 5:16 PM

**To:** Rinehart, Mark W.

**Subject:** RE: Victims protections SB179

I'm not a lawyer but it looks like if the tenant perpetrates the crime against someone who is a lawful resident with the tenant, then the landlord cannot have such a provision that allows for eviction based

on that crime. If we bring back the provision about “and did not commit the crime.” I think it addresses this issue.

I worry that a judge won't agree with your first bullet point, and if a Man—the tenant, batters his lawfully residing girlfriend AND kids, the landlords action to evict the batterer violates 704.44(9). The eviction of the MAN is based solely on the domestic violence, even if the landlord isn't evicting the girlfriend and her kids. I'm afraid judge is going to say the lease is void and unenforceable against that tenant. We need to say “and did not commit the crime”. I think that even under 905.02 (4)5 (b)

Also the 950.02 cross reference is touchy—If 950.02 is amended in the future, will it make hundreds of thousands of leases void and unenforceable because a definition of victim changes? Since victim is defined already in statute, do we really need to cross reference?

## **Rob Kovach**

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**From:** Rinehart, Mark W. [<mailto:RinehartMW@DOJ.STATE.WI.US>]  
**Sent:** Tuesday, September 03, 2013 4:36 PM  
**To:** Kovach, Robert  
**Subject:**

Hi Rob,

Sorry for the delay in getting back to you. I've been in and out of the office all day with meetings.

We think it may be a more straightforward approach to use the word "crime" instead of working through the “criminal activity” language. We also like a reference to ch. 950.

1. Here is a suggestion:

[A rental agreement is void and unenforceable if it]

704.44 (9) Allows the landlord to terminate the tenancy of a tenant if based solely on the commission of a crime is committed in or on the rental property, even if the tenant could not reasonably have prevented the crime if the tenant or someone who lawfully resides with the tenant, is the victim of that crime, as defined in s. 950.02.

*704.44 (9) Allows the landlord to terminate the tenancy of a tenant based solely on the commission of a crime in or on the rental property, if the tenant or someone who lawfully resides with the tenant, is the victim of that crime, as defined in s. 950.02.*

- Under this language, it is clear that landlords can evict a tenant if he or she is the perpetrator because “victim” per 950.02 does not include the person “charged with or alleged to have committed the crime”. Note: This will allow for eviction if a tenant commits crimes against his or her children. The child's status as a victim cannot protect the perpetrator-tenant

from eviction. [This aligns with the treatment of child victims in ch. 950 and elsewhere— children do not have independent rights.]

- The language offers protection for non-offending tenants whose dependents are victimized (both minor or adult dependents) by including all who reside with the tenant.
  - It appropriately narrows the tenancy protection to those who have a legal agreement with the landlord (“lawfully resides with the tenant”). This may be the next phrase we need to define.
  - It prohibits eviction based “solely” on the crime of which the tenant is the victim. Status as a “crime victim” in general will not protect a tenant from other [unrelated] eviction actions.
2. Note also the new section which offers additional incentive for landlords to include the proposed Notice of Domestic Abuse Protections (the notice starts on page 8 of the latest draft sent to us).

**SECTION 26.** 704.44 (10) of the statutes is created to read:

[A rental agreement is void and unenforceable if it]

704.44 **(10)** Allows the landlord to terminate the tenancy of a tenant for a crime committed in relation to the rental property and the rental agreement does not include the notice required under s. 704.14.