

2017 DRAFTING REQUEST

Assembly Amendment (AA-AB524)

For: **Evan Goyke (608) 266-0645**

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Date: **11/28/2017**

May Contact:

Same as LRB:

Submit via email: **YES**

Requester's email: **Rep.Goyke@legis.wisconsin.gov**

Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Add to use of a weapon penalty enhancer

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 11/28/2017	wjackson 11/28/2017			
/1			dwalker 11/28/2017	dwalker 11/28/2017	

FE Sent For:

<END>



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBa16177/1
CMH:...
Wij

*today
thanks*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 524

At the locations indicated, amend the bill as follows:

- ✓ **1.** Page 2, line 3: delete "939.6195" and substitute "939.63 (1m)".
- ✓ **2.** Page 5, line 4: delete lines 4 to 23 and substitute:

"SECTION 12d. 939.63 (1m) of the statutes is created to read:

939.63 (1m) If a person commits a crime while possessing, using, or threatening to use a dangerous weapon, and the person is a repeater, as defined in s. 939.62 (2),[✓] the court shall impose a bifurcated sentence under s. 973.01. Notwithstanding s. 973.01 (2) (b), the term of confinement in prison portion of the bifurcated sentence shall be at least 4 years, but otherwise the penalties for the crime apply, subject to any applicable penalty enhancement.

SECTION 12g. 939.63 (2) of the statutes is amended to read:

939.63 (2) The increased penalty provided in this section ~~sub. (1)~~ does not apply if possessing, using, or threatening to use a dangerous weapon is an essential element of the crime charged.” ✓

History: 1979 c. 114; 1981 c. 212; 1987 a. 332 s. 64; 1995 a. 448; 2001 a. 109.

The fact that the maximum term for a misdemeanor may exceed one year under sub. (1) (a) does not upgrade the crime to felony status. *State v. Denter*, 121 Wis. 2d 118, 357 N.W.2d 555 (1984).

Possession encompasses both actual and constructive possession. To prove a violation of this section, the state must prove that the defendant possessed the weapon to facilitate the predicate offense. *State v. Peete*, 185 Wis. 2d 255, 517 N.W.2d 149 (1994). See also *State v. Howard*, 211 Wis. 2d 269, 564 N.W.2d 753 (1997), 95-0770.

An automobile may constitute a dangerous weapon under s. 939.22 (10). *State v. Bidwell*, 200 Wis. 2d 200, 546 N.W.2d 507 (Ct. App. 1996).

Under *Peete*, there is sufficient evidence of possession if the evidence allows a reasonable jury to find beyond a reasonable doubt that the defendant possessed a dangerous weapon in order to use it or threaten to use it, even if the defendant did not use or threaten to use it in the commission of the crime. *State v. Page*, 2000 WI App 267, 240 Wis. 2d 276, 622 N.W.2d 285, 99-2015.

When two penalty enhancers are applicable to the same crime, the length of the second penalty enhancer is based on the maximum term for the base crime as extended by the first penalty enhancer. *State v. Quiroz*, 2002 WI App 52, 251 Wis. 2d 245, 641 N.W.2d 715, 01-1549.

✓ **3.** Page 7, line 11: on lines 11 and 17, delete “939.6195” and substitute “939.63 (1m)”. ✓

✓ **4.** Page 8, line 3: on lines 3 and 10, delete “939.6195” and substitute “939.63 (1m)”.

✓ **5.** Page 8, line 19: delete “939.6195” and substitute “939.63 (1m)”.

(END)