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# Wisconsin Legislative Council

## COMMITTEE RECOMMENDATION

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### STUDY COMMITTEE ON RECODIFICATION OF BATTERY STATUTES

February 13, 2025

CR-2025-03

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The Wisconsin Legislative Council is a nonpartisan legislative service agency. Among other services provided to the Wisconsin Legislature, staff of the Wisconsin Legislative Council conduct study committees under the direction of the Joint Legislative Council.

Established in 1947, the Joint Legislative Council directs study committees to study and recommend legislation regarding major policy questions facing the state. Study committee members are selected by the Joint Legislative Council and include both legislators and citizen members who are knowledgeable about a study committee's topic.

This document summarizes committee activity and presents study committee recommendations to the Joint Legislative Council.

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## PART I | EXECUTIVE SUMMARY

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### BACKGROUND

In Wisconsin, the crimes of battery, substantial battery, and aggravated battery are all codified together in one statute, s. [940.19](#), Stats. This statute sets forth both the elements required for each of these various batteries, as well as the penalties that are applicable for them. Each of these batteries apply generally, without regard to who the actor or victim is. The penalty for simple battery is a Class A misdemeanor.<sup>1</sup> The penalty for substantial battery is a Class I felony.<sup>2</sup> The penalty for aggravated battery is either a Class H or Class E felony, depending upon the severity of bodily harm done to the victim and the severity of harm the actor intends to cause.<sup>3</sup>

In addition, ss. 940.195 to 940.208, Stats., criminalize batteries that are committed under special circumstances (special circumstance batteries). The elements of special circumstance batteries generally focus on who the victim is, who the actor is, or both. The penalties for special circumstance batteries are also higher, ranging from a Class I felony to a Class C Felony.<sup>4</sup>

The Study Committee on Recodification of Battery Statutes, chaired by Senator Van Wanggaard, was directed to conduct a recodification of ss. 940.19 to 940.208, Stats., relating to the crime of battery, to include reorganizing the sections in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, making other necessary organizational changes, and making minor substantive changes. The study committee completed its assignment in December 2024 and recommended one bill for introduction in the 2025-26 legislative session.

### STUDY COMMITTEE'S MEETINGS AND RECOMMENDATIONS

The study committee met four times from September to December 2024, to discuss various ways of recodifying the battery statutes. The committee discussed two different structural options for recodifying the battery statutes. The first option was based upon the type of bodily harm caused to a person. The second option was based upon who the victim or the actor was.

After reviewing drafts to recodify the battery statutes in the two different options described above, the committee decided to recommend a draft that recodified the battery statutes based upon who the victim or the actor was. The study committee unanimously recommended following draft for introduction by the Joint Legislative Council (JLC):

- LRB-0418/1, relating to recodification of battery statutes and providing a penalty.

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<sup>1</sup> The penalty for a Class A misdemeanor is a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. [s. [939.51 \(3\) \(a\)](#), Stats.]

<sup>2</sup> The penalty for a Class I felony is a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. [s. [939.50 \(3\) \(i\)](#), Stats.]

<sup>3</sup> For a Class E felony, the penalty is a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both. The penalty for a Class H felony is a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both. [s. [939.50 \(3\) \(e\) and \(h\)](#), Stats.]

<sup>4</sup> The penalty for a Class C felony is a fine not to exceed \$100,000, imprisonment not to exceed 40 years, or both. [s. [939.50 \(3\) \(c\)](#), Stats.]



## PART II | COMMITTEE ACTIVITY

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### ASSIGNMENT

The JLC established the Study Committee on Recodification of Battery Statutes and appointed the chairperson by a mail ballot dated April 19, 2024. The study committee was directed to conduct a recodification of ss. 940.19 to 940.208, Stats., relating to the crime of battery, to include reorganizing the sections in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, making other necessary organizational changes, and making minor substantive changes.

To assist in completing this charge, the JLC appointed the study committee's membership by mail ballot dated June 25, 2024. The final committee membership consisted of two senators, two representatives, and four public members. **Appendix 1** lists the committee members.

### SUMMARY OF MEETINGS

The committee held four meetings at the State Capitol in Madison on the following dates:

- September 3, 2024.
- October 1, 2024.
- October 30, 2024.
- December 19, 2024.

#### September 3, 2024 Meeting

Melissa Schmidt, Principal Attorney, and Peggy Hurley, Senior Staff Attorney, explained the material contained Memo No. 1, [\*Introduction to the Recodification of Battery Statutes, Sections 940.19 to 940.208, Stats.\*](#) (August 27, 2024).

Ms. Hurley began the explanation with a brief overview of the battery statutes discussed in the Memo, including s. 940.19, Stats., and batteries committed under special circumstances, ss. 940.195 to 940.208, Stats. She explained that most special circumstance batteries increase the penalty for simple battery based upon who the victim is and others increase the penalty based upon who the actor is; in some cases, the special circumstance batteries focus on both. She explained that there are two battery offenses under ss. 940.195 and 940.198, Stats., battery to an unborn child and physical abuse of an elder person that have slightly different elements than the other special circumstance batteries.

Ms. Schmidt briefly explained the study committee recodification process and listed the general scope of questions for the study committee to consider in the recodification process. The committee reviewed various ways to reorganize the battery statutes.

Committee members discussed whether to amend or eliminate various terms used in the battery statutes. Members discussed how some terms, including “aggravated” and “detention facility,” are undefined and confusing. Members also discussed how to make it easier to find the definitions of terms used.

Regarding the reorganization of the battery statutes, committee members discussed placing them in a separate subchapter within ch. 940, Stats. Members discussed combining all of the special circumstance batteries into one umbrella statute. The members also discussed: (a)

grouping the batteries by the status of the person harmed and the status of the actor; (b) grouping the batteries by the type of bodily harm caused; and (c) separating out threats to cause bodily harm into its own statute.

After discussion, Chair Wanggaard directed Legislative Council staff to prepare drafts incorporating the various suggestions raised by committee members.

Chair Wanggaard also directed Legislative Council staff to prepare a separate draft that increases the penalty for causing bodily harm to a citizen who is aiding a law enforcement officer; this increased penalty was suggested by Public Member Schmidt.

Public Member Grotelueschen stated that she had data to share with the committee related to the frequency of state public defender appointments for individuals facing battery charges between 2019 and 2023. She suggested that based upon the numbers, it might be possible to eliminate some of the battery statutes. Chair Wanggaard also said that he had charging statistics from the Wisconsin Circuit Court Access website to share with the committee.

After the committee meeting, Public Member Repischak submitted to the Legislative Council staff four general comments in response to the committee's discussion. First, he agreed that an umbrella organization of the battery statutes may be helpful in "structuring the battery offenses, by level of injury, by type of actor, by type of victim, etc." Second, he also agreed that there was a need for better and more definitive definitions for the battery statutes that describe "what makes battery 'aggravated,' and what makes a battery 'substantial,' etc.," within each of the battery statutes. Third, he agreed that with respect to the threat of batteries, this type of offense more akin to disorderly conduct: "Threats (true threats) are not injuries and, arguably, may be more suited to the realm of actions covered under disorderly conduct, rather than battery, which requires injury at some level." And lastly, with respect to increasing the penalty for a battery to an aider of law enforcement, Judge Repischak said that the draft should require that the actor "know or reasonably be certain that (1) an officer requested assistance, and (2) the civilian has knowingly engaged in the assistance of the officer, for the purpose of assisting the officer." He agreed that this may be better addressed as a separate bill.

## **October 1, 2024 Meeting**

Legislative Council staff provided an overview of LRB-0010/P2, relating to recodification of battery statutes and providing a penalty; LRB-0011/P2, relating to recodification of battery statutes and providing a penalty; LRB-0012/P2, relating to battery of a person who comes to the aid of a law enforcement officer and providing a penalty; and [Memo No. 2, Representations of LRB-0010/P2 and LRB-0011/P2, Both Relating to Recodification of Battery Statutes and Providing a Penalty](#) (September 24, 2024).

The first draft considered by the committee, LRB-0010/P2, reorganized the various crimes of battery by the type of harm caused by another person. Chair Wanggaard asked what committee members thought about the organization of this draft and noted there was consensus among the members to not move forward with LRB-0010/P2.

The second draft, LRB-0011/P2, reorganized the various crimes of battery by who the actor is and who the person harmed is. After discussion, there was consensus among the members to move forward with the reorganizational structure of LRB-0011/P2.

Chair Wanggaard then led committee members through a discussion of items that they might want to change in LRB-0011/P2. Members discussed adding the term "battery" back into the titles of the various battery crimes. Members also discussed moving definitions in the battery statutes to the general definitions section for the Criminal Code in ch. 939, Stats., and including



some type of reference to help alert law enforcement as to where the definitions are placed. Public Member Schmidt requested that the term “jail” be expressly included in the draft where other types of detention facilities are listed.

Committee members requested that LRB-0011/P2 combine the various batteries as much as possible. The chair found that there was consensus to consolidate the various special circumstance batteries to improve clarity.

Regarding the treatment of threats to commit a battery, committee members requested this crime be moved to ch. 947, Stats., where other types of threats are criminalized. Committee members also requested more information from Legislative Council staff on how to treat threats to commit a battery.

Committee members discussed the treatment of bodily harm to an unborn child. There was consensus to maintain current law for the crime of bodily harm to an unborn child and not consolidate it with the other crimes of battery.

Committee members also discussed the definition of family member. The chair identified there was consensus to add “grandparent” and “legal guardian” to this definition. Members also discussed adding language to include an unmarried romantic partner (e.g., boyfriend, girlfriend, significant other) to the term of family member. The chair did not find clear consensus to include a boyfriend or girlfriend in the definition of family member.

Lastly, committee members discussed the two changes made to s. 940.198, Stats., physical abuse of an elder person. Legislative Council staff explained that the only two changes made to this crime were: (a) its renumbering; and (b) the term physical abuse was changed to “bodily harm.” Public Member Yaskal mentioned that she liked the terminology change to be consistent with the other battery crimes.

The committee then discussed LRB-0012/P2, which was prepared in response to Public Member Schmidt’s request to create a special circumstance battery for a person who intentionally batters an “aider” of a law enforcement officer. Legislative Council staff explained that the special circumstance battery created by this draft was patterned after battery or threat to commit a battery of a law enforcement officer. After committee discussion, the chair noted there was not consensus to move forward with this draft as a committee recommendation. However, Vice-Chair Tusler and Chair Wanggaard both stated they supported this draft and are willing to author it as separate legislation in the regular legislative session.

## **October 30, 2024 Meeting**

Legislative Council staff provided an overview of materials prepared for the committee’s review: LRB-0418/P2, relating to recodification of battery statutes and providing a penalty; LRB-0449/P2, relating to causing bodily harm to a person who is pregnant and providing a penalty; [Memo No. 3, Treatment and Options for Criminal Threats to Cause Bodily Harm \(October 22, 2024\)](#); and [Memo No. 4, Representations of LRB-0418/P2, Relating to Recodification of Battery Statutes and Providing a Penalty \(October 22, 2024\)](#).

Legislative Council staff explained that Memo No. 3 describes current threats to commit bodily harm and options for how to treat threats in its recodification draft. Legislative Council staff explained that Memo No. 4. provides a comparison of LRB-0011/P2, discussed at the previous committee meeting, and LRB-0418/P2, distributed for the first time at this meeting.

## **LRB-0418/P2, relating to recodification of battery statutes and providing a penalty**

Chair Wanggaard started the discussion on LRB-0418/P2, noting that this draft reflects the changes requested by the committee to LRB-0011/P2.

Public Member Grotelueschen requested that all of the definitions be moved back from ch. 939, Stats., to the newly created subchapter in ch. 940, Stats. She expressed concern that moving definitions created specifically for battery to ch. 939, Stats., may have unintended consequences, as the definitions in ch. 939, Stats., apply to the entire Criminal Code. Other members expressed agreement and also concluded that retaining the relevant definitions in the newly created subchapter in ch. 940 made sense. Chair Wanggaard noted there was consensus to retain the definitions in the newly created subchapter, as represented in LRB-0011/P2.

Ms. Grotelueschen suggested that the terms “battery, substantial battery, and aggravated battery” remain in the statutes because they are common terms that are well known and frequently used. She stated that the change in terminology for example, from “batterers” to “abusers” in the family law context, may cause confusion among family law practitioners.

After committee discussion, Chair Wanggaard found there was consensus to redraft LRB-0418/P2 to retain references throughout the statutes to “battery,” “substantial battery,” and “aggravated battery.” Additionally, Chair Wanggaard found there was consensus to redraft LRB-0418/P2 to retain the terms “battery,” “substantial battery,” and “aggravated battery” in the titles in the new subchapter where appropriate, and use them to create subtitles where appropriate.

Ms. Grotelueschen discussed the note on the top of LRB-0418/P2, page 17, regarding the definition of a “person sharing a common domicile.” She explained that, as defined in LRB-0418/P2, the phrase “person sharing a common domicile” is broader than the definition of a “family member” under current law. Thus, as drafted, the crime of causing bodily harm to a witness under LRB-0418/P2 could include a victim who is the family member of a person sharing a common domicile with a witness, not just someone physically domiciled with the witness. After further discussion, Chair Wanggaard found there was consensus to amend LRB-0418/P2 by: (a) deleting the reference to sharing a common domicile; and (b) only using the term family member as amended by the bill.

Public Members Repischak and Grotelueschen noted that LRB-0418/P2 combined s. 940.20 (4), battery to public officers, and s. 940.208, Stats., battery to certain employees of counties, cities, villages, or towns. Ms. Grotelueschen noted that in doing so, LRB-0418/P2 eliminated one of the elements of the crime under s. 940.208, Stats., that the public employee must be acting to enforce a municipal code when that employee is battered. After committee discussion, Chair Wanggaard found there was consensus to keep the separate offenses of battery to officers and battery to public employees as under current law.

The committee also discussed the crime of battery to an elder person. After committee discussion on this item, Chair Wanggaard found that there was consensus to move the definition of “recklessness” from the bottom of that statute to the beginning of that statute in order to maintain consistency of statutory structure.

Chair Wanggaard then asked the committee to discuss changing the penalty of all special circumstance batteries to either a Class H or a Class I felony. Under current law, some are Class I felonies, but most are Class H felonies. Upon further discussion, the chair found there was consensus that this recommendation was beyond the scope of the committee.

The committee discussed Memo No. 3, which set forth options for the committee’s consideration regarding how to treat threats to cause bodily harm throughout the various criminal offenses

under current law. After discussion of each item described in Memo No. 3, Chair Wanggaard found there was consensus to maintain current law with respect to making a threat to cause bodily harm in all cases except as follows: (a) where the statute mandated DNA testing upon arrest for making a threat to causing bodily harm; and (b) where the statutes give original jurisdiction to the adult court over a juvenile and certain disposition for cases of juveniles charged with making a threat to cause bodily harm.

### **LRB-0449/P2, relating to causing bodily harm to a person who is pregnant and providing a penalty**

After a brief discussion, Senator Roys stated that she did not want to pursue including this draft in the committee's proposed legislation. Chair Wanggaard found that there was unanimous consent among the committee to not recommend this legislation.

## **December 19, 2024 Meeting**

Legislative Council staff provided an overview of LRB-0418/P4, relating to recodification of battery statutes and providing a penalty, and [Memo No. 5, Representations of LRB-0418/P2, Relating to Battery Statutes and Providing a Penalty \(December 10, 2024\).](#)

The committee reviewed LRB-0418/P4, which incorporated changes requested by the committee at its last meeting. Additionally, the committee reviewed Memo No. 5, which contained a representation of the battery statutes as recodified in LRB-0418/P4.

Chair Wanggaard opened discussion of LRB-0418/P4. He asked the committee members for additional questions or points of discussion. Public Member Grotelueschen stated that she would prefer to entitle the subchapter created in the draft: "Battery." The committee noted that the title of the new subchapter appeared to be a holdover from an earlier version of the draft, when the committee considered replacing the term "battery" with "bodily harm." Public Member Grotelueschen noted that LRB-0418/P4 reinstated the terms "battery," "substantial battery," and "aggravated battery," as requested by the committee, and thought it was appropriate to entitle subchapter III of ch. 940 "Battery." After a brief discussion, Public Member Grotelueschen moved to amend LRB-0418/P4 in that manner; Vice Chair Tusler seconded, and the motion passed unanimously.

Public Member Grotelueschen then requested that the subsection titles be removed from s. 940.62, Stats., as renumbered in LRB-0418/P4. She noted that penalties are not typically identified in statutory titles. After additional discussion, the committee decided not to remove or modify the subsection titles as drafted in LRBO418/P4.

Public Member Schmidt moved to approve LRB-0418/p4, amended to entitle subchapter III in chapter 940 "Battery" and to leave subchapter II of chapter 940 unamended. Chair Wanggaard seconded. The motion to approve LRB-0418/P4, as amended, passed unanimously.



## PART III | RECOMMENDATIONS

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This Part of the report provides background information on, and a description of, the bill draft as recommended by the Study Committee on Recodification of Battery Statutes.

### LRB-0418/1

#### Background

Under current law, the crimes of battery, substantial battery, and aggravated battery are codified together in one statute, s. [940.19](#), Stats. Each of these batteries apply generally, without regard to who the actor or victim is. The penalty for simple battery is a Class A misdemeanor; the penalty for substantial battery is a Class I felony; and the penalty for aggravated battery is either a Class H or Class E felony, depending upon the severity of bodily harm done to the victim and the severity of harm the actor intended to cause.

Under current law, a person who causes bodily harm, substantial bodily harm, or great bodily harm to an unborn child is subject to the same penalties as under s. 940.19, stats. The intent of the actor may be to cause harm to the unborn child, the mother of the unborn child, or another. A person who intentionally or recklessly causes bodily harm to an elder person is subject to penalties ranging from a Class I felony to a Class C felony, depending on the degree of harm to the elder person and the intent of the actor.

Current law establishes greater penalties, either a Class H or Class I felony if the battery is committed by a particular class of persons or committed against a particular class of persons. These batteries, called “special circumstance” batteries, are codified in ss. 940.20 to 940.208, Stats. Current law does not establish a higher penalty for substantial battery or aggravated battery based on a special circumstance.

Under current law, for certain special circumstance batteries, it is unlawful to threaten to batter the person; the penalty for doing so is the same as committing a battery against the person.

#### Description

This bill draft recodifies the battery statutes found in ss. 940.19 to 940.208, Stats., by moving the crimes of battery, substantial battery, aggravated battery, physical abuse of an elder person, and special circumstance battery into a newly created subchapter III, entitled “Bodily security; battery,” in ch. 940, Stats. The bill draft does not change the penalty for any crime within the battery statutes, but does combine, recategorize, and reorganize the special circumstance battery statutes.

Additionally, the bill draft recodifies and harmonizes definitions used in the special circumstance battery statutes and separates the crime of threatening to batter under a special circumstance to a different statutory chapter.

The bill draft generally reorganizes the various crimes of special circumstance battery by (a) who the actor is; and (b) who the person harmed is. The bill draft does all of the following:

- Moves the definitions that are used in the battery statutes to the beginning of the new subchapter and ensures the definitions are consistent throughout the subchapter. The bill draft expands the definition of “family member” to also include a “grandparent” or “legal guardian.”

- Renumbers the special circumstance batteries to two separate statutes:
  - The first statute codifies special circumstance batteries on the basis of the identity of the actor. For example, this first statute includes battery caused by persons subject to certain injunctions and battery by prisoners or certain detained or committed persons.
  - The second statute codifies special circumstance batteries on the basis of the identity of the victim. For example, this second statute includes battery to certain individuals involved with a court or legal system.
- Retains the Class H or Class I penalty for each special circumstance battery as under current law.
- Combines the various threats to commit a battery into one crime, entitled “Threatening to cause bodily harm,” and moves it to ch. 947, Stats., relating to crimes against public peace, order, and other interests.
- Changes the titles of the crimes of “battery, substantial battery, and aggravated battery to an unborn child” and “physical abuse of an elder person,” but otherwise retains the structure of these crimes in their own separate statutes.
- Contains a table of each statute that cross-references one or more battery statutes and is affected by the bill. The table lists both the cross-references to the old battery statutes and the new provision recreated in the bill.

## PART IV | STUDY COMMITTEE VOTES

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At the December 19, 2024 meeting, the Study Committee on Recodification of Battery Statutes voted unanimously to recommend the following bill draft for introduction by the JLC in the 2025-26 legislative session:

- LRB-0418/1, relating to recodification of battery statutes and providing a penalty.





## APPENDIX 1 | LIST OF COMMITTEE MEMBERS

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### Legislative Council Study Committee on Recodification of Battery Statutes

**Chair Van Wanggaard**, Senator  
Racine, WI 53405

**Vice Chair Ron Tusler**, Representative  
Harrison, WI 54952

**Kathilynne Grotelueschen**, Asst. State Public  
Defender  
State Public Defender  
Madison, WI 53703

**Robert Repischak**, Judge  
Racine County Circuit Court  
Racine, WI 53403

**Daniel Riemer**, Representative  
Milwaukee, WI 53215

**Kelda Roys**, Senator  
Madison, WI 53711

**Dale Schmidt**, Sheriff/Association President  
Dodge County Sheriff's Office/Badger State  
Sheriff's  
Association  
Juneau, WI 53039

**Brenda Yaskal**, District Attorney  
Columbia County District Attorney's Office  
Portage, WI 53901

**STUDY ASSIGNMENT:** The study committee is directed to conduct a recodification of ss. 940.19 to 940.208, Stats., relating to the crime of battery, to include reorganizing the sections in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, making other necessary organizational changes, and making minor substantive changes.

**8 MEMBERS:** 2 Representatives; 2 Senators; and 4 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Melissa Schmidt, Principal Attorney, Peggy Hurley, Senior Staff Attorney, and Kelly Mautz, Administrative Staff.



## APPENDIX 2 | LIST OF COMMITTEE MATERIALS

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### **September 3, 2024**

- Handout, State Public Defender Appointments for Charges of Battery, ss. 940.19 to 940.108, Stats., Fiscal Years 2019 to 2024, submitted by Adam Plotkin, Director of Government & Public Affairs, Office of the State Public Defender (September 5, 2024).
- Handout, Criminal Charges of Battery Statutes, ss. 940.19 to 940.108, Stats., Filed for Years 2018-2023, submitted by Senator Wanggaard (September 5, 2024).
- Memo No. 1, Introduction to the Recodification of Battery Statutes, Sections 940.19 to 940.208, Stats. (August 22, 2024).
- Minutes of the September 3, 2024 meeting.

### **October 1, 2024**

- LRB-0010/P2, relating to recodification of battery statutes and providing a penalty.
- LRB-0011/P2, relating to recodification of battery statutes and providing a penalty.
- LRB-0012/P2, relating to battery of a person who comes to the aid of a law enforcement officer and providing a penalty.
- Memo No. 2, Representations of LRB-0010/P2 and LRB-0011/P2, Both Relating to Recodification of Battery Statutes and Providing a Penalty (September 24, 2024).
- Handout, submitted by Senator Van Wanggaard, Chair (September 24, 2024).
- Minutes of the October 1, 2024 meeting.

### **October 30, 2024**

- LRB-0418/P2, relating to recodification of battery statutes and providing a penalty.
- LRB-0449/P2, relating to causing bodily harm to a person who is pregnant and providing a penalty.
- Memo No. 3, Treatment of and Options for Criminal Threats to Cause Bodily Harm (October 22, 2024).
- Memo No. 4, Representations of LRB-0418/P2, Relating to Recodification of Battery Statutes and Providing a Penalty (October 22, 2024).
- Minutes of the October 30, 2024 meeting.

### **December 19, 2024**

- LRB-0418/P4, relating to recodification of battery statutes and providing a penalty.
- Memo No. 5, Representations of LRB-0418/P4, Relating to Battery Statutes and Providing a Penalty (December 10, 2024).
- Minutes of the December 19, 2024 meeting.