

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on  
Agriculture and  
Insurance  
(SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr\_AC-Ed\_RCP\_pt01a
- > 05hr\_AC-Ed\_RCP\_pt01b
- > 05hr\_AC-Ed\_RCP\_pt02

COMMITTEE NOTICES ...

> Committee Hearings ... CH (Public Hearing Announcements)

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> Committee Reports ... CR

> \*\*

> Executive Sessions ... ES

> \*\*

> Record of Comm. Proceedings ... RCP

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INFORMATION COLLECTED BY COMMITTEE  
CLERK FOR AND AGAINST PROPOSAL

> Appointments ... Appt

> \*\*

Name:

> Clearinghouse Rules ... CRule

> \*\*

> Hearing Records ... HR (bills and resolutions)

> **05hr\_ab0717\_SC-AI\_pt01**

> Miscellaneous ... Misc

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**Perlich, John H.**

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**From:** David E. Schultz [deschult@wisc.edu]  
**Sent:** Friday, January 13, 2006 4:34 PM  
**To:** Perlich, John H.  
**Subject:** Re: AB 717

Mr. Perlich,

Sorry for the delay.

I continue to believe that additions to §940.03, the felony murder statute, are not necessary. I believe this primarily because all deaths caused during or by the commission of a dangerous felony can be adequately prosecuted under the regular homicide statutes – primarily as reckless homicides if intent to kill cannot be proved. And, if prosecuted in that way, a longer maximum potential penalty than the one provided by §940.03 would virtually always result. However, I understand that a response like that may not be convincing to those concerned about a particular incident where a homicide was not charged.

I assume the primary, if not the only, reason for AB 717 was the Vernon County incident. If that is true, I suggest that a wise and conservative approach would be to make minimal changes in current law that would address the perceived loophole involved in that case. Doing that would respect the compromise that was worked out when the current statute was revised by the legislature in 1989 and would limit the unintended consequences that the more extensive revision would involve.

If responding to the Vernon County case is the objective, adding aggravated battery in violation of §940.19(5) may be appropriate. This is the crime to which the Vernon County defendant pleaded guilty. That offense involves causing great bodily harm with intent to cause great bodily harm. If an unintended death results from that conduct, application of the felony murder statute would be possible if §940.19(5) was added to the list of predicate felonies. The other crime involved in the Vernon County case was intimidation of a witness in violation of §940.43. Subsection (1) of that statute involves an act accompanied by force or violence. If an unintended death results from that conduct, application of the felony murder statute would be possible if §940.43(1) was added to the list of predicate felonies.

It does not appear to me that any other offenses in the extensive list in current AB 717 directly relate to the Vernon County case. Adding many of them is, in my judgment, clearly ill-advised for the reasons referred to in my statement to the committee. If there is strong interest in or an established need for adding more offenses as predicate felonies under §940.03, there are a few that are arguably consistent with the 1989 revision of the felony murder statute: §940.305, Taking Hostages; §940.31, Kidnapping; §943.04, Arson With Intent to Defraud; and, §948.02, Sexual Assault of a Child.

I appreciate the opportunity to offer my suggestions on this matter. I would be happy to provide a more detailed explanation of my views or to try to respond to any questions Senator Kapanke or other legislators may have.

Dave Schultz

At 12:55 PM 1/12/2006 -0600, you wrote:

>Prof. Schultz,  
>I've reviewed your testimony to Senator Zien's committee yesterday and  
>am curious as to what "small number of carefully targeted offenses  
>should be added" I would greatly appreciate your input. Thank you.  
>  
>Sincerely,