



## 2009 SENATE BILL 248

July 30, 2009 – Introduced by Senators HARSDORF, HANSEN, DARLING and A. LASEE, cosponsored by Representatives MURTHA, RIPP, HRAYCHUCK, GUNDERSON, KAUFERT, A. OTT, SPANBAUER, STRACHOTA, SUDER and TOWNSEND. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1     **AN ACT** *to renumber and amend* 939.621; *to amend* 968.075 (5) (b) 1., 968.075  
2           (5) (b) 2., 968.075 (5) (b) 3. and 973.01 (2) (c) 2. a.; and *to create* 939.621 (1) and  
3           939.621 (3) of the statutes; **relating to:** penalty enhancers for committing  
4           domestic abuse in the presence of a child and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a person who commits a crime under specified circumstances may be subject to penalty enhancers, or penalties that are more severe than those that ordinarily apply to the crime. This bill creates a penalty enhancer for a person who commits an act of domestic abuse, as defined in current law, that is a crime while in the presence of a child. Under this bill, if the crime is a Class B misdemeanor, the maximum sentence may be increased by not more than nine months, if the crime is a Class A misdemeanor, the maximum sentence may be increased by not more than 13 months, if the crime is a Class I felony, the maximum sentence may be increased by not more than three years, and if the crime is a Class A to H felony, the maximum sentence may be increased by not more than five years.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 939.621 of the statutes is renumbered 939.621 (2) and amended to  
2 read:

3           939.621 (2) If a person commits an act of domestic abuse, ~~as defined in s.~~  
4 ~~968.075 (1) (a)~~ and the act constitutes the commission of a crime, the maximum term  
5 of imprisonment for that crime may be increased by not more than 2 years if the crime  
6 is committed during the 72 hours immediately following an arrest for a domestic  
7 abuse incident, as set forth in s. 968.075 (5). The 72-hour period applies whether or  
8 not there has been a waiver by the victim under s. 968.075 (5) (c). The victim of the  
9 domestic abuse crime does not have to be the same as the victim of the domestic abuse  
10 incident that resulted in the arrest. The penalty increase under this ~~section~~  
11 subsection changes the status of a misdemeanor to a felony.

12           **SECTION 2.** 939.621 (1) of the statutes is created to read:

13           939.621 (1) In this section:

14           (a) “Child” means a person who has not attained the age of 18 years.

15           (b) “Domestic abuse” has the meaning given in s. 968.075 (1) (a).

16           **SECTION 3.** 939.621 (3) of the statutes is created to read:

17           939.621 (3) If a person commits an act of domestic abuse and the act constitutes  
18 the commission of a crime, and if the act is committed in a place or a manner in which  
19 the act is observable by or audible to a child or is in the presence of a child and the  
20 actor knows or has reason to know that the act is observable by or audible to a child

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1 or is in the presence of a child, the maximum term of imprisonment prescribed by law  
2 for the crime may be increased as follows:

3 (a) If the crime is a Class B misdemeanor, the maximum term of imprisonment  
4 may be increased by not more than 9 months.

5 (b) If the crime is a Class A misdemeanor, the maximum term of imprisonment  
6 may be increased by not more than 13 months.

7 (c) If the crime is a Class I felony or a felony that is not specified in this  
8 paragraph or in par. (d), the maximum term of imprisonment may be increased by  
9 not more than 3 years.

10 (d) If the crime is a Class A, B, C, D, E, F, G, or H felony, the maximum term  
11 of imprisonment may be increased by not more than 5 years.

12 **SECTION 4.** 968.075 (5) (b) 1. of the statutes is amended to read:

13 968.075 (5) (b) 1. Unless there is a waiver under par. (c), a law enforcement  
14 officer or other person who releases a person arrested for a domestic abuse incident  
15 from custody less than 72 hours after the arrest shall inform the arrested person  
16 orally and in writing of the requirements under par. (a), the consequences of violating  
17 the requirements and the provisions of s. 939.621 (2). The arrested person shall sign  
18 an acknowledgment on the written notice that he or she has received notice of, and  
19 understands the requirements, the consequences of violating the requirements and  
20 the provisions of s. 939.621 (2). If the arrested person refuses to sign the notice, he  
21 or she may not be released from custody.

22 **SECTION 5.** 968.075 (5) (b) 2. of the statutes is amended to read:

23 968.075 (5) (b) 2. If there is a waiver under par. (c) and the person is released  
24 under subd. 1., the law enforcement officer or other person who releases the arrested

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1 person shall inform the arrested person orally and in writing of the waiver and the  
2 provisions of s. 939.621 (2).

3 **SECTION 6.** 968.075 (5) (b) 3. of the statutes is amended to read:

4 968.075 (5) (b) 3. Failure to comply with the notice requirement under subd.  
5 1. regarding a person who is lawfully released from custody bars a prosecution under  
6 par. (a), but does not affect the application of s. 939.621 (2) in any criminal  
7 prosecution.

8 **SECTION 7.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

9 973.01 (2) (c) 2. a. Sections 939.621 (2) and (3), 939.632, 939.645, 946.42 (4),  
10 961.46, and 961.49.

11 **SECTION 8. Initial applicability.**

12 (1) The treatment of section 939.621 (3) first applies to persons sentenced on  
13 the effective date of this subsection.

14 (END)