

1999 DRAFTING REQUEST

Bill

Received: **12/7/98**

Received By: **olsenje**

Wanted: **As time permits**

Identical to LRB:

For: **Suzanne Jeskewitz (608) 266-3796**

By/Representing: **Rebecca**

This file may be shown to any legislator: NO

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - crimes agnst kids
Criminal Law - guns and weapons**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Providing a dangerous weapon to a minor

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	olsenje 01/25/99	ptellez 01/27/99	martykr 01/27/99	_____	lrb-docadmin 01/27/99	lrb-docadmin 02/12/99	
				_____		lrb-docadmin 02/12/99	

Not Needed

FE Sent For:

<END>

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LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

Legal Section, 5th Floor, 100 N. Hamilton St.
(608) 266-3567

1140

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill. Use this form only for BILL drafts. Attach more pages if necessary.

Date of request: <i>12/3/98</i>	Legislator or agency requesting this draft: <i>REPRESENTATIVE JESKEWITZ</i>
Name/phone number of person submitting request: <i>- REBECCA CARSON / 266-3796</i>	
Persons to contact for questions about this draft (names and phone numbers please): <i>(608) REBECCA CARSON 266-3796, CIRCUIT COURT JUDGE MAC DAVIS (414) 548-7449</i>	
Describe the problem, including any helpful examples. How do you want to solve the problem? <i>Judges are having to dismiss juveniles on the charge of sale of a dangerous weapon when dealing with switchblades or any knife because they are not defined as "dangerous weapons" in section 948.60. I would like to include switchblades or any knife in this definition, making juveniles subject to the same laws when handling knives, as when they are handling other "dangerous weapons." I have attached a complaint from Judge Mac Davis, a circuit court judge in Waukesha.</i>	
If you know of any statute sections that might be affected, please list them or provide a marked (not retyped) copy. <i>948.60, 939.22 (10)</i>	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

SEE ATTACHED

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

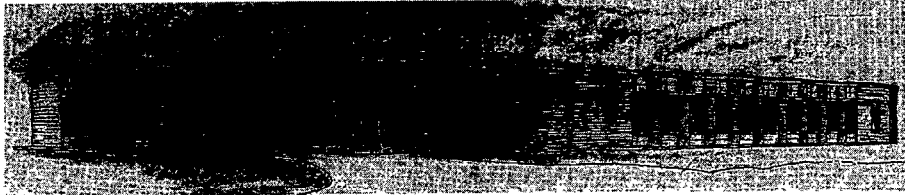
Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

YES NO If yes, please sign your name here:



COUNTY OF WAUKESHA



MAC DAVIS
Circuit Court Judge

GAIL VILLWOCK
Court Reporter

LINDA M. MARTINEZ
Clerk-Juvenile Division

JACQUELINE L. ROLLER
Deputy Clerk

NANCY V. MONOSSO
Deputy Clerk

CIRCUIT COURT - JUVENILE BRANCH 7
521 W. Riverview - Room JC 103
Waukesha, WI 53188-3838
Phone: (414) 548-7449 • Fax (414) 548-7459

914-548-7502

November 4, 1998

Honorable Sue Jeskewitz
State Capitol
P.O. Box 8952
Madison, WI 53708

Dear Sue,

I am writing to ask you to consider initiating a change in state criminal law. I recently heard a trial in which a juvenile was charged with selling a dangerous weapon to a minor in violation of section 948.60(2)(b), a class E felony. The juvenile had admitted to the police that he sold a switchblade knife to a school mate.

While I did find the juvenile delinquent for having possessed a switchblade, I had to dismiss the charge of sale of a dangerous weapon because of an inadequacy in state law. Section 948.60(1) defines "dangerous weapon" for purposes of that section. The definition does not include switchblades nor does it include a catchall phrase which might encompass such a weapon.

Please consider introducing a bill, or an amendment to other legislation, which corrects this problem. One way to accomplish this would be to delete section 948.60(1) completely. Chapter 941 has several crimes involving "dangerous weapons" which are not defined there, but are understood and defined in the law.

I would be happy to discuss this with you or legislative staff. Please let me hear your thoughts. Thank you so much for your consideration.

Sincerely yours,

Mac Davis

Sue - please
let me know what
you think
yes - see talk
to me - my
Wed AM - Room
The



939.22(10)

(10) “Dangerous weapon” means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in s. 941.295 (4); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

940.08

940.08 Homicide by negligent handling of dangerous weapon, explosives or fire.

940.08(1)

(1) Whoever causes the death of another human being by the negligent operation or handling of a **dangerous weapon**, explosives or fire is guilty of a Class D felony.

940.08(2)

(2) Whoever causes the death of an unborn child by the negligent operation or handling of a **dangerous weapon**, explosives or fire is guilty of a Class D felony.

940.225(1)(b)

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a **dangerous weapon** or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a **dangerous weapon**.

940.24

940.24 Injury by negligent handling of dangerous weapon, explosives or fire.

940.24(1)

(1) Whoever causes bodily harm to another by the negligent operation or handling of a **dangerous weapon**, explosives or fire is guilty of a Class E felony.

940.24(2)

(2) Whoever causes bodily harm to an unborn child by the negligent operation or handling of a **dangerous weapon**, explosives or fire is guilty of a Class E felony.

941.20

941.20 Endangering safety by use of dangerous weapon.

941.20(1)(a)

(a) Endangers another’s safety by the negligent operation or handling of a **dangerous weapon**;
or

941.21

941.21 Disarming a peace officer. Whoever intentionally disarms a peace officer who is acting in his or her official capacity by taking a **dangerous weapon** or a device or container described under s. 941.26 (1) (b) or (4) (a) from the officer without his or her consent is guilty of a Class E felony. This section applies to any **dangerous weapon** or any device or container described under s. 941.26 (1) (b) or (4) (a) that the officer is carrying or that is in an area within the officer’s immediate presence.

941.23

941.23 Carrying concealed weapon. Any person except a peace officer who goes armed with a concealed and **dangerous weapon** is guilty of a Class A misdemeanor.

943.10(2)(a)

(a) While armed with a **dangerous weapon** or a device or container described under s. 94 1.26 (4) (a); or

943.10(2)(b)

(b) While unarmed, but arms himself with a **dangerous weapon** or a device or container described under s. 941.26 (4) (a) while still in the burglarized enclosure; or

943.23(1g)

(1g) Whoever, while possessing a **dangerous weapon** and by the use of, or the threat of the use of, force or the weapon against another, intentionally takes any vehicle without the consent of the owner is guilty of a Class B felony.

943.32(2)

(2) Whoever violates sub. (1) by use or threat of use of a **dangerous weapon**, a device or container described under s. 941.26 (4) (a) or any article used or fashioned in a manner to lead the victim reasonably to believe that it is a **dangerous weapon** or such a device or container is guilty of a Class B felony.

946.4 1 5(2)(c)

(c) While acting under pars. (a) and (b), remains or becomes armed with a **dangerous weapon** or threatens to use a **dangerous weapon** regardless of whether he or she has a **dangerous weapon**.

948.60

948.60 Possession of a dangerous weapon by a person under 18.

948.60(1)

(1) In this section, "**dangerous weapon**" means any firearm, loaded or unloaded; any electric weapon, as defined in s. 941.295 (4); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star-like object intended to injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

948.60(2)(a)

(a) Any person under 18 years of age who possesses or goes armed with a **dangerous weapon** is guilty of a Class A misdemeanor.

948.60(2)(b)

(b) Except as provided in par. (c), any person who intentionally sells, loans or gives a **dangerous weapon** to a person under 18 years of age is guilty of a Class E felony.

94%60(3)(a)

(a) This section does not apply to a person under 18 years of age who possesses or is armed with a **dangerous weapon** when the **dangerous weapon** is being used in target practice under the supervision of an adult or in a course of instruction in the traditional and proper use of the **dangerous weapon** under the supervision of an adult. This section does not apply to an adult who transfers a **dangerous weapon** to a person under 18 years of age for use only in target practice under the adult's supervision or in a course of instruction in the traditional and proper use of the **dangerous weapon** under the adult's supervision.

948.60(3)(b)

(b) This section does not apply to a person under 18 years of age who is a member of the armed forces or national guard and who possesses or is armed with a **dangerous weapon** in the line of duty. This section does not apply to an adult who is a member of the armed forces or national guard and who transfers a **dangerous weapon** to a person under 18 years of age in the line of duty.

948.61(1)(a)

(a) "**Dangerous weapon**" has the meaning specified in s. 939.22 (10), except "**dangerous weapon**" does not include any firearm and does include any beebie or pellet-firing gun that expels a projectile through the force of air pressure or any starter pistol.

948.61(2)

(2) (intro.) Any person who knowingly possesses or goes armed with a **dangerous weapon** on school premises is guilty of:

948.61(3)(e)

(e) Drives a motor vehicle in which a **dangerous weapon** is located onto school premises for school-sanctioned purposes or for the purpose of delivering or picking up passengers or property. The weapon may not be removed from the vehicle or be used in any manner.

948.61 - ANNOT.

*A pellet gun or BB gun is a **dangerous weapon** under this section. Interest of Michelle A.D. 181 W (2d) 917,512 NW (2d) 248 (Ct. App. 1994).*



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-1140/1

JEO: pgt.

+

JLg

1999 BILL

1 AN ACT ^{gen. cat.} relating to: possession of a dangerous weapon by a minor and
2 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law provides penalties for various kinds of conduct involving a dangerous weapon, such as endangering safety by the use of a dangerous weapon, carrying a concealed dangerous weapon and committing other crimes while possessing, using or threatening to use a dangerous weapon. For purposes of these penalty provisions, "dangerous weapon" is usually defined to include all of the following: 1) a firearm, whether loaded or unloaded; 2) an electric weapon; 3) a device designed as a weapon and capable of producing death or great bodily harm; and 4) any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

However, the current law relating to possession of a dangerous weapon by a minor (a person under 18 years of age) uses a different, narrower definition of "dangerous weapon". Under this law, no minor may possess or go armed with a dangerous weapon and no person may intentionally sell, loan or give a dangerous weapon to a minor, except that a minor may possess or be given a dangerous weapon for purposes of using the weapon to hunt, to engage in target practice under the supervision of an adult or to participate in a course of instruction in the traditional and proper use of the weapon under the supervision of an adult. For purposes of this law, "dangerous weapon" means any of the following: 1) a firearm, whether loaded or unloaded; 2) an electric weapon; 3) metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic

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knuckles; or 4) a nunchaku, cestus, shuriken or manrikigusari or any device similar in design or use to one of these martial arts weapons.'

A minor who violates the prohibition against possessing a dangerous weapon may be subject to delinquency proceedings in the court authorized to exercise jurisdiction under the juvenile justice code (juvenile court) or, if the juvenile court waives jurisdiction, may be fined not more than \$10,000 or imprisoned for not more than nine months or both. A person who intentionally sells, loans or gives a dangerous weapon to a minor may be fined not more than \$10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999.

This bill eliminates the narrower definition of "dangerous weapon" used in current law prohibitions relating to possession of a dangerous weapon by a minor. By eliminating the definition, the bill provides that the definition that usually applies to penalty provisions involving dangerous weapons will also apply to current law prohibitions relating to possession of a dangerous weapon by a minor. Thus, under the bill, current law prohibitions relating to possession of a dangerous weapon by a minor will now apply to other weapons in addition to those covered under the current narrower definition.

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

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SECTION 1. 948.60 (1) of the statutes is repealed.

SECTION 2. Initial applicability.

(1) This act first applies to offenses committed on the effective date of this subsection.

(END)

2/12

Per Rebecca

Enacted for Assembly

JEO