

BILL HISTORY FOR SENATE BILL 110 (LRB -0109)

An Act to renumber 946.43; to amend 146.81 (4), 252.11 (5m), 252.11 (7), 252.15 (2) (a) 6., 252.15 (5) (a) 17., 302.11 (1g) (a) 2., 901.05 (2) (intro.), 901.05 (3), 938.296 (3) (intro.), 938.296 (6), 938.299 (4) (b), 938.373 (1), 939.62 (2m) (a) 2m. b., 939.635 (1), 939.635 (2) (b), 950.04 (1v) (d), 968.38 (3) (intro.), 971.13 (4) and 973.0135 (1) (b) 2.; and to create 938.296 (2m), 938.296 (5), 938.346 (1) (ec), 946.43 (2m), 968.38 (2m) and 968.38 (5) of the statutes; relating to: prisoners throwing or expelling certain bodily substances at or toward others, testing for the presence of communicable diseases in certain criminal defendants and juveniles alleged to be delinquent or in need of protection or services and providing a penalty. (FE)

1999

04-07. S. Introduced by Senators Moen, Drzewiecki, Breske, Farrow, Erpenbach, Rude, Baumgart, Huelsman, Schultz and Roessler; cosponsored by Representatives Musser, Huebsch, Plale, Pettis, Seratti, Ryba, Sykora, Gronemus, Ziegelbauer, Ainsworth, Ladwig, F. Lasee and Albers, by request of Local 219, Jackson Correctional Institution Officers.

- 04-07. S. Read first time and referred to committee on Judiciary and Consumer Affairs 114
- 04-19. S. Fiscal estimate received.
- 04-19. S. Fiscal estimate received.
- 04-22. S. Fiscal estimate received.
- 04 22. S. Fiscal estimate received.
- 04-22. S. Fiscal estimate received.
- 04-29. S. Fiscal estimate received.

2000

- 01-25. S. Public hearing held.
- 01-28. S. Fiscal estimate received.
- 03-01. S. Executive action taken.
- 03-03. S. Report introduction and adoption of Senate amendment 1 recommended by committee on Judiciary and Consumer Affairs, Ayes 5, Noes 0 (LRB a1180) 462
- 03-03. S. Report introduction and adoption of Senate amendment 2 recommended by committee on Judiciary and Consumer Affairs, Ayes 4, Noes 1 (LRB a1298) 462
- 03-03. S. Report passage as amended recommended by committee on Judiciary and Consumer Affairs, Ayes 5, Noes 0 462
- 03-03. S. Available for scheduling.
- 03-07. S. Read a second time 469
- 03-07. S. Senate amendment 1 adopted 469
- 03-07. S. Senate amendment 2 adopted 469
- 03-07. S. Senate amendment 3 offered by Senator Moore (LRB a1668) 469
- 03-07. S. Senate amcnment 3 rejected, Ayes 25, Noes 8 469
- 03-07. S. Ordered to a third reading 469
- 03-07. S. Rules suspended 469
- 03-07. S. Read a third time and passed 469
- 03-07. S. Ordered immediately messaged 474
- 03-09. A. Received from Senate 727
- 03-09. A. Read first time and referred to committee on Rules 727
- 03-22. A. Rules suspended to withdraw from committee on Rules and take up 802
- 03-22. A. Read a second time 802
- 03-22. A. Ordered to a third reading 802
- 03-22. A. Rules suspended 802
- 03-22. A. Read a third time and concurred in 802
- 03-22. A. Ordered immediately messaged 802

**1999
ENROLLED BILL**

99en SB-110

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

99 -0109 2

Amendments to above (if none, write "NONE"): SA1, SA2

Corrections - show date (if none, write "NONE"): none

Topic Prisoners throwing or expelling

~~or~~ bodily substances and

fasting for communicable diseases in
certain criminal defendants and juveniles

3/27/00

Date

Reba / Dy / Kim

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1999 SENATE BILL 110

April 7, 1999 – Introduced by Senators MOEN, DRZEWIECKI, BRESKE, FARROW, ERPENBACH, RUDE, BAUMGART, HUELSMAN, SCHULTZ and ROESSLER, cosponsored by Representatives MUSSER, HUEBSCH, PLALE, PETTIS, SERATTI, RYBA, SYKORA, GRONEMUS, ZIEGELBAUER, AINSWORTH, LADWIG, F. LASEE and ALBERS, by request of Local 219, Jackson Correctional Institution Officers. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT** to renumber 946.43; to amend 146.81 (4), 252.11 (5m), 252.11 (7), 252.15
 2 (2) (a) 6., 252.15 (5) (a) 17., 302.11 (1g) (a) 2., 901.05 (2) (intro.), 901.05 (3),
 3 938.296 (3) (intro.), 938.296 (6), 938.299 (4) (b), 938.373 (1), 939.62 (2m) (a) 2m.
 4 b., 939.635 (1), 939.635 (2) (b), 950.04 (1v) (d), 968.38 (3) (intro.), 971.13 (4) and
 5 973.0135 (1) (b) 2.; and to create 938.296 (2m), 938.296 (5), 938.346 (1) (ec),
 6 946.43 (2m), 968.38 (2m) and 968.38 (5) of the statutes; relating to: prisoners
 7 throwing or expelling certain ~~in~~^{SA} bodily substances at or toward others, testing for
 8 the presence of communicable diseases in certain criminal defendants and
 9 juveniles alleged to be delinquent or in need of protection or services and
 10 providing a penalty.

Analysis by the Legislative Reference Bureau

Assault by prisoners

Current law prohibits prisoners of a state prison or other state, county or municipal detention facility from assaulting another prisoner or an officer, employe or visitor of the prison or facility. A prisoner commits an assault in violation of this prohibition if he or she does any of the following: 1) places the officer, employe, visitor

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or prisoner in apprehension of an immediate battery that is likely to cause death or great bodily harm; or 2) confines or restrains the officer, employe, visitor or prisoner without the person's consent. A prisoner convicted of violating this prohibition may be fined not more than \$10,000 or imprisoned for not more than ten 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 15 years or both, if the offense occurs on or after December 31, 1999.

Current law also prohibits a prisoner confined to a state prison or other state, county or municipal detention facility from intentionally causing bodily harm to another prisoner or to an officer, employe or visitor of the prison or facility without the consent of the person harmed. A prisoner convicted of violating this prohibition may be fined not more than \$10,000 or imprisoned for not more than five 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 ten years or both, if the offense occurs on or after December 31, 1999.

This bill creates a new prohibition relating to assaults by a prisoner against another prisoner or an officer, employe or visitor of the prison or facility. Under the bill, a prisoner is prohibited from throwing or expelling blood, semen, urine or feces at or toward an officer, employe, visitor or another prisoner without the person's consent if the prisoner throws or expels the blood, semen, urine or feces with the intent that it come into contact with the officer, employe, visitor or other prisoner and with the intent either to cause bodily harm to the officer, employe, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employe, visitor or other prisoner.

A prisoner who violates the prohibition created in the bill 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. If a judge imposes a sentence of imprisonment on a prisoner convicted of violating the prohibition created in the bill, the judge must provide that the sentence be served consecutively to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation.

Testing for the presence of communicable diseases

Under current law, a person may be required to undergo testing to detect the presence of human immunodeficiency virus (HIV) and sexually transmitted diseases if the person is: 1) an adult charged with or convicted of certain sex offenses; or 2) a child alleged to be delinquent or in need of protection or services because he or she is alleged to have committed certain sex offenses. The sex offenses covered by this requirement are sexual assault of an adult, sexual assault of a child, repeated acts of sexual assault of the same child, sexual exploitation of a child or incest with a child.

Before a person may be required to undergo testing to detect the presence of HIV or a sexually transmitted disease, the prosecutor must apply for an order to have the person tested. A prosecutor must apply for an order if: 1) the victim or, if the victim is a minor, the victim's parent or guardian requests the prosecutor to apply

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to a court for an order requiring the testing; and 2) the prosecutor has probable cause to believe that the person has significantly exposed the victim to the transmission of HIV or a sexually transmitted disease, except that such probable cause is not required if the person has been convicted or adjudicated delinquent or found in need of protection or services. The court must then hold a hearing to determine whether there is probable cause to believe that the person has significantly exposed the victim to the transmission of HIV or a sexually transmitted disease. The results of any required tests must be disclosed to the following: 1) the person tested; 2) the parent, guardian or legal custodian of the person tested, if the person tested is a minor; 3) the victim or, if the victim is a minor, to the victim's parent or guardian; 4) the health care professional who provides care to the victim, if requested by the victim or the victim's parent or guardian; and 5) the health care provider of the person tested, if the person tested is a minor and disclosure is requested by the minor's parent or guardian.

This bill allows a court to order a person to undergo tests for the presence of communicable diseases if the person is a prisoner who has been charged with, convicted of or found not guilty by reason of mental disease or defect of assaulting another prisoner or an officer, employe or visitor of the prison or facility by throwing or expelling blood, semen, urine or feces at or toward the other prisoner or the officer, employe or visitor. Under the bill, a prosecutor must apply for an order requiring testing of a prisoner charged with this type of assault if: 1) the prosecutor is requested to do so by the victim or, if the victim is a minor, by the victim's parent or guardian; and 2) the prosecutor has probable cause to believe that the assault involved the prisoner's blood, semen, urine or feces and that the assault carried a potential for transmitting a communicable disease to the victim. The court must then hold a hearing to determine whether there is probable cause to believe that the assault involved the prisoner's blood, semen, urine or feces and that the assault carried a potential for transmitting a communicable disease to the victim. If the court finds probable cause, it must then order the prisoner to submit to a test or series of tests to detect the presence of any communicable disease that was potentially transmitted by the assault.

The results of any required tests for communicable diseases must be disclosed to the following: 1) the prisoner who is tested; 2) the parent, guardian or legal custodian of the prisoner, if the prisoner is a minor; 3) the victim or, if the victim is a minor, to the victim's parent or guardian; 4) the health care professional who provides care to the victim, if requested by the victim or the victim's parent or guardian; and 4) the health care provider of the prisoner who is tested, if the prisoner tested is a minor and disclosure is requested by the prisoner's parent or guardian. The communicable diseases for which tests may be ordered under the bill include HIV, sexually transmitted diseases, hepatitis B and hepatitis C.

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

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

1 **SECTION 1.** 146.81 (4) of the statutes is amended to read:

2 146.81 (4) "Patient health care records" means all records related to the health
3 of a patient prepared by or under the supervision of a health care provider, including
4 the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject
5 to s. 51.30, reports collected under s. 69.186, records of tests administered under s.
6 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings,
7 as defined under s. 146.817 (1), or a pupil's physical health records maintained by
8 a school under s. 118.125.

9 **SECTION 2.** 252.11 (5m) of the statutes is amended to read:

10 252.11 (5m) A health care professional, as defined in s. 968.38 (1) (a), acting
11 under an order of a court under s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without
12 first obtaining informed consent to the testing, subject an individual to a test or a
13 series of tests to ascertain whether that individual is infected with a sexually
14 transmitted disease. No sample used for performance of a test under this subsection
15 may disclose the name of the test subject.

16 **SECTION 3.** 252.11 (7) of the statutes is amended to read:

17 252.11 (7) Reports, examinations and inspections and all records concerning
18 sexually transmitted diseases are confidential and not open to public inspection, and
19 shall not be divulged except as may be necessary for the preservation of the public
20 health, in the course of commitment proceedings under sub. (5) or as provided under
21 s. 938.296 (4) or (5) or 968.38 (4) or (5). If a physician has reported a case of sexually

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1 transmitted disease to the department under sub. (4), information regarding the
2 presence of the disease and treatment is not privileged when the patient or physician
3 is called upon to testify to the facts before any court of record.

4 **SECTION 4.** 252.15 (2) (a) 6. of the statutes is amended to read:

5 252.15 (2) (a) 6. A health care professional acting under an order of the court
6 under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining
7 consent to the testing, subject an individual to a test or a series of tests to detect the
8 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. No
9 sample used for laboratory test purposes under this subdivision may disclose the
10 name of the test subject, and, notwithstanding sub. (4) (c), the test results may not
11 be made part of the individual's permanent medical record.

12 **SECTION 5.** 252.15 (5) (a) 17. of the statutes is amended to read:

13 252.15 (5) (a) 17. To an alleged victim or victim, to a health care professional,
14 upon request as specified in s. 938.296 (4) (e) or (5) (e) or 968.38 (4) (c) or (5) (c), who
15 provides care to the alleged victim or victim and, if the alleged victim or victim is a
16 minor, to the parent or guardian of the alleged victim or victim, under s. 938.296 (4)
17 or (5) or 968.38 (4) or (5).

18 **SECTION 6.** 302.11 (1g) (a) 2. of the statutes is amended to read:

19 302.11 (1g) (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19
20 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02,
21 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025,
22 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or
23 948.36.

24 **SECTION 7.** 901.05 (2) (intro.) of the statutes is amended to read:

SENATE BILL 110**SECTION 7**

1 901.05 (2) (intro.) Except as provided in sub. (3), the results of a test or tests
2 for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to
3 HIV and the fact that a person has been ordered or required to submit to such a test
4 or tests under s. 938.296 (4) or 968.38 (4) are not admissible during the course of a
5 civil or criminal action or proceeding or an administrative proceeding, as evidence
6 of a person's character or a trait of his or her character for the purpose of proving that
7 he or she acted in conformity with that character on a particular occasion unless the
8 evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless the following
9 procedures are used:

10 **SECTION 8.** 901.05 (3) of the statutes is amended to read:

11 901.05 (3) The results of a test or tests under s. 938.296 (4) or (5) or 968.38 (4)
12 or (5) and the fact that a person has been ordered to submit to such a test or tests
13 under s. 938.296 (4) or (5) or 968.38 (4) or (5) are not admissible during the course
14 of a civil or criminal action or proceeding or an administrative proceeding.

15 **SECTION 9.** 938.296 (2m) of the statutes is created to read:

16 938.296 (2m) In a proceeding under s. 938.12 or 938.13 (12) in which the
17 juvenile is alleged to have violated s. 946.43 (2m), the district attorney or corporation
18 counsel shall apply to the court for an order requiring the juvenile to submit to a test
19 or a series of tests administered by a health care professional to detect the presence
20 of communicable diseases and to disclose the results of the test or tests as specified
21 in sub. (5) (a) to (e), if all of the following apply:

22 (a) The victim or alleged victim, if an adult, or the parent, guardian or legal
23 custodian of the victim or alleged victim, if the victim or alleged victim is a child,
24 requests the district attorney or corporation counsel to apply for the order.

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1 (b) The district attorney or corporation counsel has probable cause to believe
2 that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m)
3 carried a potential for transmitting a communicable disease to the victim or alleged
4 victim and involved the juvenile's blood, semen, ~~urine or feces.~~

5 SECTION 10. 938.296 (3) (intro.) of the statutes is amended to read:

6 938.296 (3) (intro.) The district attorney or corporation counsel may apply for
7 an order under sub. (2) or (2m) at any of the following times:

8 SECTION 11. 938.296 (5) of the statutes is created to read:

9 938.296 (5) On receipt of an application for an order under sub. (2m), the court
10 shall set a time for a hearing on the application. If the juvenile has been found not
11 competent to proceed under s. 938.30 (5), the court may hold a hearing under this
12 subsection only if the court first determines that the probable cause finding can be
13 fairly made without the personal participation of the juvenile. If, after hearing, the
14 court finds probable cause to believe that the act or alleged act of the juvenile that
15 constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a
16 communicable disease to the victim or alleged victim and involved the juvenile's
17 blood, semen, ~~urine or feces~~, the court shall order the juvenile to submit to a test or
18 a series of tests administered by a health care professional to detect the presence of
19 any communicable disease that was potentially transmitted by the act or alleged act
20 of the juvenile. The court shall require the health care professional who performs
21 the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), if applicable,
22 from making the test results part of the juvenile's permanent medical record and to
23 disclose the results of the test to any of the following:

24 (a) The parent, guardian or legal custodian of the juvenile.

25 (b) The victim or alleged victim, if the victim or alleged victim is an adult.

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SENATE BILL 110**SECTION 11**

1 (c) The parent, guardian or legal custodian of the victim or alleged victim, if the
2 victim or alleged victim is a child.

3 (d) The health care professional that provides care for the juvenile, upon
4 request by the parent, guardian or legal custodian of the juvenile.

5 (e) The health care professional that provides care for the victim or alleged
6 victim, upon request by the victim or alleged victim or, if the victim or alleged victim
7 is a child, upon request by the parent, guardian or legal custodian of the victim or
8 alleged victim.

9 **SECTION 12.** 938.296 (6) of the statutes is amended to read:

10 938.296 (6) The court may order the county to pay for the cost of a test or series
11 of tests ordered under sub. (4) or (5). This subsection does not prevent recovery of
12 reasonable contribution toward the cost of that test or series of tests from the parent
13 or guardian of the juvenile as the court may order based on the ability of the parent
14 or guardian to pay. This subsection is subject to s. 301.03 (18).

15 **SECTION 13.** 938.299 (4) (b) of the statutes is amended to read:

16 938.299 (4) (b) Except as provided in s. 901.05, neither common law nor
17 statutory rules of evidence are binding at a waiver hearing under s. 938.18, a hearing
18 for a juvenile held in custody under s. 938.21, a hearing under s. 938.296 (4) for a
19 juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06,
20 a hearing under s. 938.296 (5) for a juvenile who is alleged to have violated s. 946.43
21 (2m), a dispositional hearing, or any postdispositional hearing under this chapter.
22 At those hearings, the court shall admit all testimony having reasonable probative
23 value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or
24 evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted
25 if it has demonstrable circumstantial guarantees of trustworthiness. The court shall

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1 give effect to the rules of privilege recognized by law. The court shall apply the basic
2 principles of relevancy, materiality and probative value to proof of all questions of
3 fact. Objections to evidentiary offers and offers of proof of evidence not admitted may
4 be made and shall be noted in the record.

5 SECTION 14. 938.346 (1) (ec) of the statutes is created to read:

6 938.346 (1) (ec) The procedure under s. 938.296 under which the victim, if an
7 adult, or the parent, guardian or legal custodian of the victim, if the victim is a child,
8 may request an order requiring a juvenile who is alleged to have violated s. 946.43
9 (2m) to submit to a test or a series of tests to detect the presence of communicable
10 diseases and to have the results of that test or series of tests disclosed as provided
11 in s. 938.296 (5) (a) to (e).

12 SECTION 15. 938.373 (1) of the statutes is amended to read:

13 938.373 (1) The court assigned to exercise jurisdiction under this chapter and
14 ch. 48 may authorize medical services including surgical procedures when needed if
15 the court assigned to exercise jurisdiction under this chapter and ch. 48 determines
16 that reasonable cause exists for the services and that the juvenile is within the
17 jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch.
18 48 and, except as provided in s. 938.296 (4) and (5), consents.

19 SECTION 16. 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

20 939.62 (2m) (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05,
21 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
22 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43 (1m),
23 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30
24 (2), 948.35 (1) (b) or (c) or 948.36.

25 SECTION 17. 939.635 (1) of the statutes is amended to read:

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SECTION 17

1 939.635 (1) Except as provided in sub. (2), if a person who has been adjudicated
 2 delinquent is convicted of violating s. 940.20 (1) while placed in a secured correctional
 3 facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s.
 4 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), or is
 5 convicted of violating s. 940.20 (2m), the court shall sentence the person to not less
 6 than 3 years of imprisonment. Except as provided in sub. (2), if a person is convicted
 7 of violating s. 946.43 (1m) while placed in a secured correctional facility, as defined
 8 in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured
 9 child caring institution, as defined in s. 938.02 (15g), the court shall sentence the
 10 person to not less than 5 years of imprisonment.

11 **SECTION 18.** 939.635 (2) (b) of the statutes is amended to read:

12 939.635 (2) (b) That imposing the applicable presumptive minimum sentence
 13 specified in sub. (1) is not necessary to deter the person or other persons from
 14 committing violations of s. 940.20 (1) or 946.43 (1m) or other similar offenses while
 15 placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure
 16 detention facility, as defined in s. 938.02 (16), or a secured child caring institution,
 17 as defined in s. 938.02 (15g); or from committing violations of s. 940.20 (2m).

18 **SECTION 19.** 946.43 of the statutes is renumbered 946.43 (1m).

19 **SECTION 20.** 946.43 (2m) of the statutes is created to read:

20 946.43 (2m) (a) Any prisoner confined to a state prison or other state, county
 21 or municipal detention facility who throws or expels blood, semen, ~~urine or feces~~
 22 or toward an officer, employe or visitor of the prison or facility or another prisoner
 23 of the prison or facility under all of the following circumstances is guilty of a Class

24 E felony:

10-21 (SA1)

10-23 (SA2)

SAI

11-1

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11-3

1 1. The prisoner throws or expels the blood, semen, ~~urine or feces~~ with the intent
2 that it come into contact with the officer, employe, visitor or other prisoner.

3 2. The prisoner throws or expels the blood, semen, ~~urine or feces~~ with the intent
4 either to cause bodily harm to the officer, employe, visitor or other prisoner or to
5 abuse, harass, offend, intimidate or frighten the officer, employe, visitor or other
6 prisoner.

7 3. The officer, employe, visitor or other prisoner does not consent to the blood,
8 semen, ~~urine or feces~~ being thrown or expelled at or toward him or her.

9 (b) A court shall impose a sentence for a violation of par. (a) consecutive to any
10 sentence previously imposed or which may be imposed for any crime or offense for
11 which the person was in custody when he or she committed the violation of par. (a).

12 SECTION 21. 950.04 (1v) (d) of the statutes is amended to read:

13 950.04 (1v) (d) To request an order for, and to be given the results of, testing
14 to determine the presence of a ~~sexually transmitted disease or of any strain of human~~
15 ~~immunodeficiency virus, of antigen or nonantigen products of any strain of human~~
16 ~~immunodeficiency virus, or of an antibody of any strain of human immunodeficiency~~
17 ~~virus communicable disease~~, as provided under ss. 938.296 or 968.38.

18 SECTION 22. 968.38 (2m) of the statutes is created to read:

19 968.38 (2m) In a criminal action under s. 946.43 (2m), the district attorney
20 shall apply to the circuit court for his or her county for an order requiring the
21 defendant to submit to a test or a series of tests administered by a health care
22 professional to detect the presence of communicable diseases and to disclose the
23 results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

24 (a) The district attorney has probable cause to believe that the act or alleged
25 act of the defendant that constitutes a violation of s. 946.43 (2m) carried a potential

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SECTION 22

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1 for transmitting a communicable disease to the victim or alleged victim and involved
2 the defendant's blood, semen, ~~urine or feces.~~

3 (b) The alleged victim or victim who is not a minor or the parent or guardian
4 of the alleged victim or victim who is a minor requests the district attorney to apply
5 for an order.

6 SECTION 23. 968.38 (3) (intro.) of the statutes is amended to read:

7 968.38 (3) (intro.) The district attorney may apply under sub. (2) or (2m) for an
8 order at any of the following times, and, within those times, shall do so as soon as
9 possible so as to enable the court to provide timely notice:

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10 SECTION 24. 968.38 (5) of the statutes is created to read:

11 968.38 (5) The court shall set a time for a hearing on the matter under sub. (2m)
12 during the preliminary examination, if sub. (3) (a) applies; after the defendant is
13 bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after
14 conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3)
15 (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is
16 not competent, if sub. (3) (d) applies. The court shall give the district attorney and
17 the defendant notice of the hearing at least 72 hours prior to the hearing. The
18 defendant may have counsel at the hearing, and counsel may examine and
19 cross-examine witnesses. If the court finds probable cause to believe that the act or
20 alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried a
21 potential for transmitting a communicable disease to the victim or alleged victim and
22 involved the defendant's blood, semen, ~~urine or feces.~~ the court shall order the
23 defendant to submit to a test or a series of tests administered by a health care
24 professional to detect the presence of any communicable disease that was potentially
25 transmitted by the act or alleged act of the defendant. The court shall require the

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1 health care professional who performs the test to disclose the test results to the
2 defendant. The court shall require the health care professional who performs the
3 test to refrain, notwithstanding s. 252.15 (4) (c), if applicable, from making the test
4 results part of the defendant's permanent medical record and to disclose the results
5 of the test to any of the following:

6 (a) The alleged victim or victim, if the alleged victim or victim is not a minor.

7 (b) The parent or guardian of the alleged victim or victim, if the alleged victim
8 or victim is a minor.

9 (c) The health care professional who provides care to the alleged victim or
10 victim, upon request by the alleged victim or victim or, if the alleged victim or victim
11 is a minor, by the parent or guardian of the alleged victim or victim.

12 **SECTION 25.** 971.13 (4) of the statutes is amended to read:

13 971.13 (4) The fact that a defendant is not competent to proceed does not
14 preclude a hearing under s. 968.38 (4) or (5) unless the probable cause finding
15 required ~~under s. 968.38 (4) to be made at the hearing~~ cannot be fairly made without
16 the personal participation of the defendant.

17 **SECTION 26.** 973.0135 (1) (b) 2. of the statutes is amended to read:

18 973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09
19 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31,
20 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43 (1m),
21 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30
22 (2), 948.35 (1) (b) or (c) or 948.36.

23 **SECTION 27. Initial applicability.**

**SENATE AMENDMENT 1,
TO 1999 SENATE BILL 110**

March 3, 2000 - Offered by COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS.

1 At the locations indicated, amend the bill as follows:

2 ✓1. Page 1, line 7: delete "certain".

3 ✓2. Page 7, line 4: delete "urine or feces." and substitute "vomit, saliva, urine
7-4^x or feces or other bodily substance of the juvenile."

5 ✓3. Page 7, line 17: delete "urine or feces," and substitute "vomit, saliva, urine
7-17^x or feces or other bodily substance of the juvenile."

7 ✓4. Page 10, line 21: delete "urine or feces" and substitute "vomit, saliva, urine,
✓10-21 feces or other bodily substance."

9 ✓5. Page 11, line 1: delete "urine or feces" and substitute "vomit, saliva, urine,
✓11-1 feces or other bodily substance."

11 ✓6. Page 11, line 3: delete "urine or feces" and substitute "vomit, saliva, urine,
✓11-3 feces or other bodily substance."

12 feces or other bodily substance"

1 ✓ 7. Page 11, line 8: delete "urine or feces" and substitute "vomit, saliva, urine,
2 feces or other bodily substance."

3 ✓ 8. Page 12, line 2: delete "urine or feces." and substitute "vomit, saliva, urine
4 or feces or other bodily substance of the defendant."

5 ✓ 9. Page 12, line 22: delete "urine or feces," and substitute "vomit, saliva, urine
6 or feces or other bodily substance of the defendant."

7
(END)

**SENATE AMENDMENT 2,
TO 1999 SENATE BILL 110**

March 3, 2000 - Offered by COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 9, line 18: after that line insert:

3 SECTION 15t. 939.50 (1) (intro.) of the statutes is amended to read:

4 ✓ 9-18 939.50 (1) (intro.) Except as provided in ss. 946.43 (2m) (a), 946.83 and 946.85,
5 felonies in chs. 939 to 951 are classified as follows:

6 ✓ 2. Page 10, line 23: delete lines 23 and 24 and substitute of the prison or

7 facility under all of the following circumstances may be fined not more than \$10,000

8 ✓ 10⁹-23 or imprisoned for not more than 2 years or both.

(END)