

2007 DRAFTING REQUEST

Bill

Received: 12/14/2006

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: John Wagnitz

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Addl. Drafters:

Subject: Children - juvenile justice
Criminal Law - sentencing

Extra Copies: RLR, CMH, PJH

Submit via email: YES

Requester's email: Sen.Hansen@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Mandatory minimum sentence for juveniles who throw bodily substance in juvenile facility

Instructions:

See Attached--redraft 05-1334

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>
/?	gmalaise 12/14/2006	jdyer 01/09/2007					Crime
/1			sherritz 01/09/2007		sbasford 01/09/2007	sbasford 04/23/2007	

FE Sent For:

No

<END>

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/?	gmalaise	1/9 jld	sh 1/8	sh/mrn 1/9			

FE Sent For:

<END>

Malaise, Gordon

From: Wagnitz, John
Sent: Wednesday, December 13, 2006 4:20 PM
To: Malaise, Gordon
Subject: redraft

Gordon,

Could you please redraft 2005 LRB 1334 (was 2003 SB 132 as amended by SSA 1), relating to: a mandatory minimum sentence for a juvenile who is convicted of throwing a bodily substance at or toward a person while placed in a secured correctional facility, a secure detention facility, a secured child caring institution, or a secured group home and providing a penalty.

Thank you,

John Wagnitz
Office of State Senator Dave Hansen
319 South, State Capitol
phone: (608) 266-5670

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: GMM) (Date: 12 / 14 / 06)



Please transfer the drafting file for
2005 LRB -1334 to the drafting file
for 2007 LRB -1148

The final version of the 2005 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

---OR---

Please copy the drafting file for
2007 LRB / _____ (include the version) and place it in the
drafting file for 2007 LRB _____

For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then be returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.

1148/1
JKd

2005 BILL

DN-E

LPS-PWF
please

residential care center for
children and
youth

1 **AN ACT to amend** 301.048 (2) (bm) 1. a., 938.183 (1) (a), 938.183 (1m) (c) 1.,
 2 938.183 (1m) (c) 2., 941.291 (1) (b) and 969.08 (10) (b); and **to create** 939.635
 3 of the statutes; **relating to:** a mandatory minimum sentence for a juvenile who
 4 is convicted of throwing a bodily substance at or toward a person while placed
 5 in a ~~secured~~ ^{juvenile} correctional facility, a ~~secure~~ ^{juvenile} detention facility, ^{or} a secured child
 6 ~~care~~ ^{residential care center for children and youth} institution, or a secured group home and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, a juvenile who is alleged to have violated a criminal law is subject to the exclusive original jurisdiction of the court assigned to exercise jurisdiction under the Juvenile Justice Code (juvenile court). For certain violations, however, including the violation of throwing a bodily substance, such as blood, semen, urine, or feces, at or toward another person while placed in a ~~secured~~ correctional facility, a ~~secure~~ detention facility, a secured child ~~care~~ ^{residential care center for children and youth} institution, or a secured group home, the juvenile who is alleged to have committed the violation is subject to the exclusive original jurisdiction of a court of criminal jurisdiction (adult court). A violation of the prohibition against throwing a bodily substance is a Class I felony, for which a court may sentence a person to a fine not to exceed \$10,000; a term of imprisonment, consisting of a term of confinement in prison followed by a term of extended supervision that together may not exceed three years and six months; or both a fine and a term of imprisonment.

residential care center for
children and youth

BILL

residential care center for children and youth

juvenile

juvenile

For a Class I felony, the term of confinement in prison portion of the sentence may not exceed 18 months.

This bill requires an adult court that convicts a juvenile of throwing a bodily substance at or toward another person while placed in a secured correctional facility, a secure detention facility, a secured child-caring institution, or a secured group home, to sentence the juvenile to the 18-month maximum term of confinement in prison allowed for a Class I felony, unless the court finds both that imposing a lesser sentence would not depreciate the seriousness of the offense and that a 18-month term of confinement in prison is not necessary to deter the juvenile or others from committing the same violation.

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.

For further information see the *state* 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. 301.048 (2) (bm) 1. a. of the statutes is amended to read:

2 301.048 (2) (bm) 1. a. A crime specified in s. 940.19 (3), 1999 stats., s. 940.195
3 (3), 1999 stats., s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 940.01,
4 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (4) or (5), 940.195 (4)
5 or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1.
6 or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2., or 3., 940.31, 940.43 (1) to (3), 940.45 (1)
7 to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013,
8 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.30, 943.32, 946.43 (1m) or (2m),
9 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or
10 948.30.

948.085,
plain

juvenile
juvenile

11 SECTION 2. 938.183 (1) (a) of the statutes is amended to read:

12 938.183 (1) (a) A juvenile who has been adjudicated delinquent and who is
13 alleged to have violated s. 940.20 (1) or 946.43 (1m) or (2m) while placed in a secured

residential care center for children and youth

BILL

- 3 -

juvenile

plain

or

plain

1 correctional facility, a ~~secure~~ detention facility, a secured child caring institution, or
2 a secured group home or who has been adjudicated delinquent and who is alleged to
3 have committed a violation of s. 940.20 (2m). *Except as provided in sub. 3, the*

plain

(use twice)

4 SECTION 3. 938.183 (1m) (c) 1. *x* of the statutes is amended to read:

5 938.183 (1m) (c) 1. *del* The court of criminal jurisdiction finds that the juvenile has
6 committed a lesser offense or a joined offense that is not a violation of s. 940.20 (1)
7 or (2m) or 946.43 (1m) or (2m) *✓* under the circumstances described in sub. (1) (a), that
8 is not an attempt to violate s. 940.01 under the circumstances described in sub. (1)
9 (am), that is not a violation of s. 940.02 or 940.05 under the circumstances described
10 in sub. (1) (am) *plain* and that is not an offense for which the court assigned to exercise
11 jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile
12 under s. 938.18.

13 SECTION 4. 938.183 (1m) (c) 2. *x* of the statutes is amended to read:

14 938.183 (1m) (c) 2. The court of criminal jurisdiction finds that the juvenile has
15 committed a lesser offense or a joined offense that is a violation of s. 940.20 (1) or (2m)
16 or 946.43 (1m) or (2m) *✓* under the circumstances described in sub. (1) (a), that is an
17 attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that
18 is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am) *plain*
19 or that is an offense for which the court assigned to exercise jurisdiction under this
20 chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and
21 the court of criminal jurisdiction, after considering the criteria specified in s. 938.18
22 (5), determines that the juvenile has proved by clear and convincing evidence that
23 it would be in the best interests of the juvenile and of the public to adjudge the
24 juvenile to be delinquent and impose a disposition specified in s. 938.34.

25 SECTION 5. 939.635 *x* of the statutes is created to read:

residential care center for children and youth

BILL

Juvenile

(10r), or

(10p)

Juvenile

1

939.635 Penalty; assault in ~~secured~~ juvenile facilities. (1) Except as

2

provided in sub. (2), if a person is convicted of violating s. 946.43 (2m) while placed

3

in a ~~secured~~ correctional facility, as defined in s. 938.02 (10p), a ~~secured~~ detention

4

facility, as defined in s. 938.02 (10r), a ~~secured~~ child caring institution, as defined in

15g (15g)

5

s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the court shall

6

sentence the person to a term of confinement in prison for one year and 6 months and

7

to a term of extended supervision under s. 973.01 (2) (d).

8

(2) Notwithstanding sub. (1), a court may place a person who is subject to sub.

9

(1) on probation or impose on that person a sentence that is less than the presumptive

10

minimum sentence specified in sub. (1) only if the court makes all of the following

11

findings of fact and places on the record its reasons for imposing probation or that

12

lesser sentence:

13

(a) That placing the person on probation or imposing a lesser sentence would

14

not depreciate the seriousness of the offense.

Juvenile

(10r), or

15

(b) That imposing the presumptive minimum sentence specified in sub. (1) is

16

not necessary to deter the person or other persons from committing violations of s.

17

946.43 (2m) while placed in a secured correctional facility, as defined in s. 938.02

(10p)

Juvenile

(10r)

18

(10p), a secured detention facility, as defined in s. 938.02 (10r), a secured

19

institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s.

20

938.02 (15g)

residential care center for children and youth

21

SECTION 6. 941.291 (1) (b) of the statutes is amended to read:

22

941.291 (1) (b) "Violent felony" means any felony, or the solicitation, conspiracy,

23

or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01,

24

940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20,

25

940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30,

BILL

5 - (plan)
948.085

1 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29,
2 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2),
3 943.23 (1g), 943.32, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03
4 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

✓
INSERT
5-4
6

SECTION 7. 969.08 (10) (b) of the statutes is amended to read:

7 969.08 (10) (b) "Serious crime" means any crime specified in s. 943.23 (1m),
8 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03,
9 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201,
10 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g.,
11 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),
12 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32,
13 946.01, 946.02, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03,
14 948.04, 948.05, 948.06, 948.07, or 948.30. , 948.085, (plan)

✓
INSERT
5-14
15
16

SECTION 8. Initial applicability.

(1) THROWING OF BODILY SUBSTANCES IN JUVENILE FACILITY. This act first applies to offenses committed on the effective date of this subsection. ✓

NOTE

Senator Hansen:
Wisconsin
2005 Act 344 eliminated secured group homes ✓ and
changed the terms "secured correctional facility," "secure
detention facility," and "secured child caring institution" to
"juvenile correctional facility," "juvenile detention facility," and
"secured residential care center for children and youth." ✓
GMM

INSERT 5.4

(1m) or (2m)

941.291(1)(b)

(b) "Violent felony" means any felony, or the solicitation, conspiracy, or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, 948.085, or 948.30; or, if the victim is a financial institution, as defined in s. 943.80 (2), a felony, or the solicitation, conspiracy, or attempt to commit a felony under s. 943.84 (1) or (2).

(end insert)

INSERT 5-14

969.08(10)(b)

(b) "Serious crime" means any crime specified in s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.085, or 948.30 or, if the victim is a financial institution, as defined in s. 943.80 (2), a crime under s. 943.84 (1) or (2).

(1m) or (2m)

(end ins 5-14)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1148/1dn
GMM:jld:sh

January 9, 2007

Senator Hansen:

2005 Wisconsin Act 344 eliminated secured group homes and changed the terms "secured correctional facility," "secure detention facility," and "secured child caring institution" to "juvenile correctional facility," "juvenile detention facility," and "secured residential care center for children and youth."

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

Duerst, Christina

From: Wagnitz, John
Sent: Monday, April 23, 2007 2:51 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-1148/1 Topic: Mandatory minimum sentence for juveniles who throw bodily substance in juvenile facility

Please Jacket LRB 07-1148/1 for the SENATE.