2013 DRAFTING REQUEST

Bill

Received:	**5/10/2013**	Received By:	**chanaman**
Wanted:	**As time permits**	Same as LRB:	**-1296**
For:	**André Jacque (608) 266-9870**	By/Representing:	**Jamie**
May Contact:		Drafter:	**chanaman**
Subject:	**Agriculture - animals** **Criminal Law - miscellaneous** **Criminal Law - sentencing**	Addl. Drafters:	**btradewe**
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Jacque@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Possession of dogs by certain felons

Instructions:

2011 SB-88, AA1, AA2, AA3

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	chanaman 5/10/2013	kfollett 5/10/2013	jfrantze 5/10/2013	_____ _____	srose 5/10/2013	sbasford 5/13/2013	State S&L Crime

FE Sent For:

At Intro.

<END>

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/1	chanaman	/1 kf 5/10	5/10				State S&L Crime

FE Sent For:

<END>

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-1286/1
CMH&RCT:eev:rs

2013 SENATE BILL 136

April 10, 2013 – Introduced by Senators HANSEN and CARPENTER, cosponsored by Representatives JACQUE, KAHL, A. OTT, OHNSTAD, T. LARSON and BERNIER. Referred to Committee on Transportation, Public Safety, and Veterans and Military Affairs.

AN ACT ***to amend*** 938.396 (2g) (d); and ***to create*** 173.29, 938.3416, 941.292, 971.17 (1i) and 973.0336 of the statutes; **relating to:** possession of dogs by certain felony offenders and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from possessing a firearm if he or she is a felony offender. A person is a felony offender if any of the following applies: 1) he or she has been found guilty of a felony; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult; or 3) he or she has been found not guilty of a felony by reason of mental disease, defect, or illness. If a felony offender violates the prohibition against possessing a firearm, he or she may be fined not more than $25,000 or imprisoned for not more than ten years, or both.

This bill prohibits, for a specified period, certain felony offenders from possessing, controlling, or residing with a vicious dog, as determined by a humane officer or a law enforcement officer using criteria specified in the bill. The prohibition applies to persons whose status as felony offenders is based on the commission of an act that is classified under the bill as a serious felony (serious felony offenders). A serious felony offender who violates the prohibition may be fined up to $10,000 or imprisoned for up to nine months, or both. If a serious felony offender violates the prohibition and a person or an animal suffers great bodily harm or death due to the violation, the serious felony offender may be fined up to $10,000 or imprisoned for up to three years and six months, or both. If a serious felony offender violates the

and a person suffers great bodily harm or death due to the violation and the serious felony offender knowingly allowed the dog to run loose or failed to take steps to control the dog, the serious felony offender may be fined up to $10,000 or imprisoned for up to six years, or both.

Unless the serious felony offender is on extended supervision or another supervised status (extended supervision), the prohibition applies to the serious felony offender for a period of ten years following: 1) any period of incarceration for the serious felony; 2) the conviction for the serious felony if the sentence does not include a period of incarceration; 3) the delinquency adjudication for the serious felony; or 4) the finding of not guilty of the serious felony by reason of insanity or mental disease, defect, or illness. If the serious felony offender is on extended supervision, the prohibition period applies until he or she is no longer on extended supervision.

Under this bill, a serious felony offender may request an exemption from the prohibition if the exemption is reasonably needed to earn a livelihood or as a condition of employment and will not endanger public safety. A serious felony offender seeking an exemption must file a motion in the circuit court for the county in which he or she will possess, control, or reside with the vicious dog. The serious felony offender must provide a copy of the motion to the district attorney for that county, who must in turn make a reasonable attempt to contact local law enforcement agencies to inform them of the request and to solicit any information that may be relevant to whether the request should be granted.

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 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.** 173.29 of the statutes is created to read:

2 **173.29 Vicious dogs. (1)** DEFINITION. In this section, "serious physical injury"
3 means physical injury that creates a substantial risk of death; that causes serious
4 disfigurement, protracted impairment of health, or impairment of a bodily organ; or
5 that necessitates plastic surgery.

6 **(2)** DETERMINATION. If a humane officer or law enforcement officer, after
7 conducting an investigation, determines that a dog satisfies one of the standards

1 under sub. (3), the humane officer or law enforcement officer may issue a written
2 order to the owner or custodian of the dog declaring the dog to be vicious for purposes
3 of s. 941.292. In the written order, the humane officer or law enforcement officer shall
4 notify the owner or custodian of the dog of the incidents that are the basis for the
5 investigation. The written order shall include a description of s. 941.292 and of the
6 right to a hearing under ch. 68.

7 **(3)** STANDARDS. The humane officer or law enforcement officer may determine
8 that a dog is vicious if one of the following applies:

9 (a) The dog, without justification, attacked a person and caused serious
10 physical injury or death.

11 (b) The dog has done any of the following on at least 3 occasions, without
12 justification:

13 1. Bitten a person without causing serious physical injury or death.

14 2. Behaved in a manner that a reasonable person would believe posed a
15 significant, imminent threat of serious physical injury or death to a person.

16 **(4)** JUSTIFICATION. The humane officer or law enforcement officer may not
17 determine that a dog's actions are without justification if any of the following applies:

18 (a) A person threatened, bitten, or attacked by the dog was committing a crime
19 against the owner or custodian of the dog or was committing a willful trespass or
20 other tort upon property owned or occupied by the owner or custodian of the dog.

21 (b) A person threatened, bitten, or attacked by the dog was abusing, assaulting,
22 or physically threatening the dog or its offspring or had previously abused,
23 assaulted, or physically threatened the dog or its offspring.

1 (c) The dog was responding to pain or injury or was protecting itself, its
2 offspring, another dog living on the same property, its owner or custodian, or a person
3 living in the household of its owner or custodian.

4 **SECTION 2.** 938.3416 of the statutes is created to read:

5 **938.3416 Delinquency adjudication; restriction on possessing certain**
6 **dogs.** Whenever a court adjudicates a juvenile delinquent for an act that if
7 committed by an adult in this state would be a serious felony, as defined in s. 941.292
8 (1) (b), the court shall inform the juvenile of the requirements and penalties under
9 s. 941.292.

10 **SECTION 3.** 941.292 of the statutes is created to read:

11 **941.292 Possession of certain dogs. (1)** DEFINITIONS. In this section:

12 (a) "Confinement term" means a period during which a person is incarcerated
13 in prison.

14 (b) "Serious felony" means a felony under s. 940.01, 940.02, 940.03, 940.05,
15 940.19 (2), (4), or (5), 940.225 (1) or (2), 940.31, 943.02, 943.10 (2), 943.23 (1g), 943.32
16 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (3) (a), 948.05,
17 948.08, or 948.30 (2) or a felony violation of ch. 961.

18 (c) "Vicious dog" means a dog that is determined to be vicious under s. 173.29.

19 **(2)** APPLICABILITY. A person is subject to the requirements and penalties of this
20 section if any of the following applies:

21 (a) 1. He or she has been convicted of a serious felony in this state and was
22 serving a confinement term for that conviction within the preceding 10 years.

23 2. He or she has been convicted of a crime elsewhere that would be a serious
24 felony if committed in this state and was serving a confinement term for that
25 conviction within the preceding 10 years.

1 (b) 1. He or she has been convicted of a serious felony in this state within the
2 preceding 10 years.
3 2. Within the preceding 10 years, he or she has been convicted of a crime
4 elsewhere that would be a serious felony if committed in this state.
5 (c) 1. He or she is on extended supervision as part of a sentence following a
6 conviction for a serious felony or is on parole or probation following a conviction for
7 a serious felony.
8 2. He or she is on a supervised status following a conviction for a crime
9 elsewhere that would be a serious felony if committed in this state.
10 (d) He or she has been adjudicated delinquent within the preceding 10 years
11 for an act that if committed by an adult in this state would be a serious felony.
12 (e) He or she has been found not guilty within the preceding 10 years of a
13 serious felony, or of a crime elsewhere that would be a serious felony if committed in
14 this state, by reason of insanity or mental disease, defect, or illness.
15 **(3)** PROHIBITION. A person specified in sub. (2) may not possess, control, or
16 reside with a vicious dog.
17 **(4)** PENALTIES. (a) Except as provided in pars. (b) and (c), whoever violates sub.
18 (3) is guilty of a Class A misdemeanor.
19 (b) Whoever violates sub. (3) is guilty of a Class I felony if an individual or an
20 animal suffers great bodily harm or death as a result of the violation.
21 (c) Whoever violates sub. (3) is guilty of a Class H felony if an individual suffers
22 great bodily harm or death as a result of the violation and the actor knowingly
23 allowed the dog to run loose or failed to take steps to keep the dog in an enclosure or
24 under control.

1 **(5)** APPLICABILITY. (a) This section does not apply to any person specified in sub.
2 (2) who has received a pardon with respect to the serious felony.
3 (b) Subsection (3) does not apply to a person if any of the following applies:
4 1. Not more than 5 days have elapsed since the person received a written order
5 under s. 173.29 declaring the dog vicious.
6 2. A hearing is pending under ch. 68.
7 **(6)** REQUEST FOR EXEMPTION. (a) A person specified in sub. (2) may request an
8 exemption from the prohibition under sub. (3) by filing a written motion in the circuit
9 court for the county in which the person will possess, control, or reside with the
10 vicious dog.
11 (b) A person who files a motion under par. (a) shall send a copy of the motion
12 to the district attorney for the county in which the motion is filed. The district
13 attorney shall make a reasonable attempt to contact the county sheriff and, if
14 applicable, the chief of police of a city, village, or town in the county for the purpose
15 of informing the sheriff and the chief of police that the person has made a request for
16 an exemption and to solicit from the sheriff and chief of police any information that
17 may be relevant to the criteria specified in par. (c) 1. and 2.
18 (c) A court shall grant a request under par. (a) if all of the following apply:
19 1. The person has a reasonable need to possess, control, or reside with a vicious
20 dog to earn a livelihood or as a condition of employment.
21 2. Exempting the person from the prohibition under sub. (3) will not endanger
22 public safety.
23 **(7)** SURRENDER OF VICIOUS DOG. A court that sentences a person who is convicted
24 of violating sub. (3) may order that the vicious dog that is involved in the violation
25 be delivered to the local humane officer or society, to the county or municipal pound,

1 or to a law enforcement officer if the court considers the order to be reasonable and
2 appropriate. The society, pound, or officer shall release the vicious dog to a person
3 other than the person convicted of violating sub. (3) or dispose of the vicious dog in
4 a proper and humane manner. The release or disposal shall be in accordance with
5 s. 173.23 (1m).

6 **SECTION 4.** 971.17 (1i) of the statutes is created to read:

7 971.17 **(1i)** NOTICE OF RESTRICTIONS ON POSSESSION OF A DOG. If the defendant
8 under sub. (1) is found not guilty of a serious felony, as defined in s. 941.292 (1) (b),
9 by reason of mental disease or defect, the court shall inform the defendant of the
10 requirements and penalties under s. 941.292.

11 **SECTION 5.** 973.0336 of the statutes is created to read:

12 **973.0336 Sentencing; restriction on possession of a dog.** Whenever a
13 court imposes a sentence or places a defendant on probation for a conviction for a
14 serious felony, as defined in s. 941.292 (1) (b), the court shall inform the defendant
15 of the requirements and penalties under s. 941.292.

16 **SECTION 6. Initial applicability.**

17 (1) POSSESSION OF A DOG.

18 (a) In this subsection, "serious felony" has the meaning given in section 941.292
19 (1) (b) of the statutes, as created by this act.

20 (b) The treatment of section 941.292 of the statutes first applies to the
21 possession of a dog that occurs on the effective date of this paragraph, but does not
22 preclude the counting of an act that was committed before the effective date of this
23 paragraph for purposes of determining whether any of the following makes a person
24 subject to section 941.292 of the statutes, as created by this act:

25 1. The person has been convicted of a serious felony in this state.

1 2. The person has been convicted of a crime elsewhere that would be a serious
2 felony if committed in this state.
3 3. The person has been adjudicated delinquent for an act that if committed by
4 an adult in this state would be a serious felony.
5 4. The person has been found not guilty of a serious felony in this state by
6 reason of mental disease or defect.
7 5. The person has been found not guilty of or not responsible for a crime
8 elsewhere by reason of insanity or mental disease, defect, or illness if the crime would
9 be a serious felony in this state.
10 (2) INFORMATION AT DISPOSITIONAL HEARINGS. The treatment of section 938.3416
11 of the statutes first applies to dispositional hearings that occur on the effective date
12 of this subsection.
13 (3) INFORMATION AT COMMITMENT HEARINGS. The treatment of section 971.17 (1i)
14 of the statutes first applies to commitment hearings that occur on the effective date
15 of this subsection.
16 (4) INFORMATION AT SENTENCING. The treatment of section 973.0336 of the
17 statutes first applies to sentencing proceedings that occur on the effective date of this
18 subsection.
19 **(END)**

Basford, Sarah

From: Julian, Jamie
Sent: Monday, May 13, 2013 2:30 PM
To: LRB.Legal
Subject: Draft Review: LRB -2355/1 Topic: Possession of dogs by certain felons

Please Jacket LRB -2355/1 for the ASSEMBLY.