

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1828/1dn
JEO:jlj:jf

January 19, 1999

Please note the following when reviewing this draft:

1. The materials supplied to me as part of the drafting request included suggested language for the new crime that you want to create. However, this draft departs from the suggested language. First, the draft does not refer to an "assault" because we do not have a generic crime of "assault" under Wisconsin law and referring to "assault" will not tell anyone what acts the statute is meant to prohibit. Second, the draft does not use the passive construction used in the suggested language (e.g., "an act which is intended . . . and which results in blood, etc., being cast or expelled upon . . .") because passive construction is too often ambiguous and even vague, qualities that are especially problematic in statutes defining crimes. (I realize that the suggested language appeared to be based on an Iowa statute, a copy of which was in the materials provided with the drafting request; however, Iowa *does* have a crime of "assault", and even with the definition of that crime in front of you it is difficult to tell what the statute prohibits.)

Thus, instead of using the suggested language, this draft creates a new prohibition based on the descriptions of prisoner conduct that were contained in other materials supplied with the drafting request. You should review the proposed language carefully to determine whether it prohibits the acts that you intend to prohibit. If it does not, let me know what acts you intend to prohibit and the draft can be changed accordingly.

2. The suggested language referred at one point to persons committed to the custody or supervision of DOC or a county department under s. 46.215, 46.22 or 46.23, stats. However, that language covers a vast array of persons who are not prisoners and thus seemed inconsistent with the rest of the suggested language and the apparent intent of your proposal. Thus, this draft does not cover those persons. If you intend to cover those persons in some way, please let me know and the draft can be changed accordingly.

3. As you requested, the draft provides that a person who violates the prohibition created in the draft is guilty of a Class E felony. The sentence for the offense must be consecutive to any other sentence the person was serving or facing at the time of the offense.

Because the new offense is a Class E felony, the draft excludes it from coverage under ss. 302.11 (1g), stats. (restriction on mandatory release on parole for certain crimes), 939.62 (2m), stats. (the so-called "three strikes, you're out" law) and 973.0135, stats.

(discretionary restriction on parole eligibility for certain crimes). The draft takes this approach because the offenses covered by those statutes are all classified as more serious crimes (Class A, B, BC and C felonies).

Also, the draft excludes the new offense from the sentencing requirements under s. 939.635 (1), stats., because that requires a minimum sentence of imprisonment that is longer than the maximum provided for under a Class E felony.

Finally, like the current offense under s. 946.43, stats., the new offense will be included under ss. 48.366 (1) (b), stats. (extended jurisdiction over certain juveniles), 938.183 (1) (a) and (1m) (c) 1. and 2., stats. (original adult court jurisdiction over certain juveniles) and 969.08 (10) (b), stats. (revoking conditions of release for certain serious offenses).

Please let me know if you have any questions or changes.

Jefren E. Olsen
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