

1999 ASSEMBLY BILL 491

September 28, 1999 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Natural Resources.

1 AN ACT *to amend* 23.50 (1), 29.921 (1), 29.921 (5), 29.931 (2) (a), 173.01 (2), 951.01
2 (4), 951.015 and 951.18 (1); *to repeal and recreate* 951.01 (4); and *to create*
3 29.921 (1m), 173.01 (4) and 951.01 (5) of the statutes; **relating to:** authorizing
4 conservation wardens to enforce the trespass law and prohibitions on shooting
5 at caged or staked wild animals and to make arrests under warrants issued for
6 felonies or misdemeanors.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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:

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on conservation laws enforcement. It expands the authority of conservation wardens in three areas: enforcement of trespass law, prohibitions on shooting caged or staked wild animals and arrests under misdemeanor warrants.

1. *Trespass.* Currently, conservation wardens are not authorized to enforce violations of s. 943.13, stats., the trespass law. This bill authorizes wardens to do so

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subject to the limitation that they may do so only if the warden determines, while carrying out his or her statutory duties, that a violation has been committed. The authority to issue processes and to arrest for violations is discretionary. The primary duty to respond to trespass complaints remains with sheriff and police departments.

2. *Shooting at caged or staked wild animals.* Currently, s. 951.09, stats., provides: “No person may instigate, promote, aid or abet as a principal, agent, employe, participant or spectator, or participate in the earnings from, or intentionally maintain or allow any place to be used for the shooting, killing or wounding with a firearm or any deadly weapon, any animal that is tied, staked out, caged or otherwise intentionally confined in a man-made enclosure, regardless of size. Nothing in this section prohibits the shooting of any wild game in its wild state or the shooting of game birds and waterfowl at licensed game farms or licensed shooting preserves”.

This law does not apply to the shooting of wild game in its wild state or the shooting of game birds or waterfowl at licensed game farms or licensed shooting preserves. However, shooting any other animal that is staked out, caged or otherwise intentionally confined in a man-made enclosure, regardless of size, is illegal. This is penalized as a Class C forfeiture. However, any person who intentionally or negligently violates any of this law, is guilty of a Class A misdemeanor. A Class C forfeiture is penalized by a forfeiture not to exceed \$500. A Class A misdemeanor is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both.

This bill allows a conservation warden to enforce s. 951.09, stats., when the animal involved is any animal of a wild nature endowed with sensation and the power of voluntary motion”. The effect of the change will be to permit conservation wardens to issue citations for shooting at caged or staked wild animals where the operation is not pursuant to a game farm or shooting preserve license issued by the department of natural resources (DNR) or the shooting is not of the wild game in its wild state.

3. *Misdemeanor warrants.* Currently, a conservation warden who has completed an approved law enforcement training program, been certified as qualified to be a law enforcement officer and complied with applicable requirements is authorized to arrest a person pursuant to an arrest warrant for a felony or arrest a person who has committed a crime in the presence of a warden. However, the conservation warden may not arrest a person who is the subject of an arrest warrant for a misdemeanor.

1 **SECTION 1.** 23.50 (1) of the statutes is amended to read:

2 **23.50 (1)** The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
3 court to recover forfeitures, penalty assessments, jail assessments, applicable
4 weapons assessments, applicable environmental assessments, applicable wild
5 animal protection assessments, applicable natural resources assessments,
6 applicable fishing shelter removal assessments, applicable snowmobile registration
7 restitution payments and applicable natural resources restitution payments for
8 violations of ss. 77.09, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57
9 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2) and of s. 951.09
10 when a wild animal as defined in s. 29.001 (90) is involved, subch. VI of ch. 77, this

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1 chapter and chs. 26 to 31 and of ch. 350, and any administrative rules promulgated
2 thereunder, violations of rules of the Kickapoo reserve management board under s.
3 41.41 (7) (k) or violations of local ordinances enacted by any local authority in
4 accordance with s. 23.33 (11) (am) or 30.77.

NOTE: This provision authorizes the DNR to utilize its citation procedures specified
in ss. 23.50 to 23.85 for enforcement by conservation wardens of prohibitions on shooting
caged or staked animals if a wild animal is involved.

5 **SECTION 2.** 29.921 (1) of the statutes is amended to read:

6 29.921 (1) **GENERALLY.** The department and its wardens may execute and serve
7 warrants and processes issued under any law enumerated in ss. 23.50 (1), 167.31,
8 346.19, 940.24, 941.20, 948.60, 948.605 and 948.61 and, subject to sub. (1m), s.
9 943.13 in the same manner as any constable may serve and execute the process; and
10 may arrest, with or without a warrant, any person detected in the actual violation,
11 or whom the officer has probable cause to believe is guilty of a violation of any of the
12 laws cited in this subsection, whether the violation is punishable by criminal
13 penalties or by forfeiture, and may take the person before any court in the county
14 where the offense was committed and make a proper complaint. For the purpose of
15 enforcing any of the laws cited in this subsection, any officer may stop and board any
16 boat and stop any vehicle, if the officer reasonably suspects there is a violation of
17 those sections.

NOTE: This provision gives the DNR and its conservation wardens the authority
to enforce the trespass law, subject to limitations created by s. 29.921 (1m), as created by
this draft.

18 **SECTION 3.** 29.921 (1m) of the statutes is created to read:

19 29.921 (1m) **TRESPASS.** The department and its wardens may act as provided
20 in sub. (1) with respect to violations of s. 943.13 only if in the course of the warden's

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1 duties under s. 23.50 (1) and this section a person is determined to have committed
2 a violation.

NOTE: This provision provides that conservation wardens, during the course of their duties and in the exercise of their discretion, as their work load permits, may enforce the trespass law. Other law enforcement agencies will remain the primary enforcers of the trespass law.

3 **SECTION 4.** 29.921 (5) of the statutes is amended to read:

4 29.921 (5) ADDITIONAL ARREST POWERS. In addition to the arrest powers under
5 sub. (1), a warden who has completed a program of law enforcement training
6 approved by the law enforcement standards board, has been certified as qualified to
7 be a law enforcement officer under s. 165.85 (4) (b) 1. and has complied with any
8 applicable requirements under s. 165.85 (4) (bn) 1. while on duty and in uniform or
9 on duty and upon display of proper credentials may assist another law enforcement
10 agency as defined under s. 165.83 (1) (b) including making an arrest at the request
11 of the agency, may arrest a person pursuant to an arrest warrant concerning the
12 commission of a ~~felony~~ crime, as defined in s. 939.12, or may arrest a person who has
13 committed a crime in the presence of the warden. If the warden makes an arrest
14 without the presence of another law enforcement agency, the warden shall cause the
15 person arrested to be delivered to the chief of police or sheriff in the jurisdiction
16 where the arrest is made, along with the documents and reports pertaining to the
17 arrest. The warden shall be available as a witness for the state. A warden may not
18 conduct investigations for violations of state law except as authorized in ss. 23.11 (4),
19 29.924 (1) and 41.41 (12). A warden acting under the authority of this subsection is
20 considered an employe of the department and is subject to its direction, benefits and
21 legal protection. The authority granted in this section does not apply to county
22 conservation wardens or special conservation wardens.

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NOTE: This provision authorizes a conservation warden who has completed a training program approved by the law enforcement standards board to arrest a person pursuant to an arrest warrant for a misdemeanor, as well as for a felony, by allowing arrests under any arrest warrant concerning the commission of a “crime” as defined by s. 939.12, stats.: “A crime is conduct which is prohibited by state law and punishable by a fine or imprisonment, or both. Conduct punishable only by a forfeiture is not a crime.

1 **SECTION 5.** 29.931 (2) (a) of the statutes is amended to read:

2 29.931 **(2)** (a) The department and its wardens shall seize and hold, subject to
3 the order of the court for the county in which the alleged offense was committed, any
4 vehicle, boat or object declared by this chapter to be a public nuisance, or which they
5 have probable cause to believe is being used in violation of this chapter or s. 167.31,
6 287.81, 940.24, 941.20, 948.60, 948.605 or 948.61, or is being used in a violation of
7 s. 951.09 involving a wild animal or is being used in the commission of a crime
8 relating to a submerged cultural resource in violation of s. 44.47. If it is proven that
9 the vehicle, boat or object is a public nuisance or that within 6 months previous to
10 the seizure the vehicle, boat or object was used in violation of this chapter or s. 167.31,
11 287.81, 940.24, 941.20, 948.60, 948.605 or 948.61, or was used in a violation of s.
12 951.09 involving a wild animal or was used in the commission of a crime relating to
13 a submerged cultural resource in violation of s. 44.47, it shall be confiscated if the
14 court directs in its order for judgment.

NOTE: This provision permits the department of natural resources and its wardens to seize and hold, subject to a circuit court order, any vehicle, boat or object that is being used in a violation of s. 951.09, stats., that involves a wild animal. If it is proven that the vehicle, boat or object was used in a violation of s. 951.09, stats., involving a wild animal, it shall be confiscated if so ordered by the court.

15 **SECTION 6.** 173.01 (2) of the statutes, as created by 1997 Wisconsin Act 192, is
16 amended to read:

17 173.01 **(2)** “Law enforcement officer” has the meaning given in s. 165.85 (2) (c)
18 but does not include a conservation warden appointed under s. 23.10 except for
19 purposes of enforcing s. 951.09 when a wild animal is involved.

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NOTE: This provision provides that the term “law enforcement officer” does not include a conservation warden, except for purposes of enforcing s. 951.09, stats., when a wild animal is involved. This provision will grant conservation wardens authority given to other law enforcement officers under ch. 173 of the statutes relating to treatment of animals with respect to wild animals.

1 **SECTION 7.** 173.01 (4) of the statutes is created to read:

2 173.01 (4) “Wild animal” has the meaning given in s. 951.01 (5).

NOTE: This provision cross-references the definition of “wild animal” created by SECTION 10 of the bill.

3 **SECTION 8.** 951.01 (4) of the statutes is amended to read:

4 951.01 (4) “Law enforcement officer” has the meaning ~~assigned under~~ given in
5 s. 967.02 (5) and includes a humane officer under s. 58.07 but does not include a
6 conservation warden appointed under s. 23.10 except when, for purposes of enforcing
7 s. 951.09, a wild animal is involved.

NOTE: This provision gives a conservation warden the powers of other law enforcement officers under ch. 951, relating to crimes against animals but only when a wild animal is involved.

8 **SECTION 9.** 951.01 (4) of the statutes, as affected by 1997 Wisconsin Act 192 and
9 1999 Wisconsin Act (this act), is repealed and recreated to read:

10 951.01 (4) “Law enforcement officer” has the meaning given in s. 967.02 (5) but
11 does not include a conservation warden appointed under s. 23.10 except when, for
12 purposes of enforcing s. 951.09, a wild animal is involved.

NOTE: This provision is necessary since 1997 Wisconsin Act 192 repeals and recreates s. 951.01 (4), stats., effective December 1, 1999.

13 **SECTION 10.** 951.01 (5) of the statutes is created to read:

14 951.01 (5) “Wild animal” means an animal of a wild nature endowed with
15 sensation and the power of voluntary motion.

NOTE: This provision creates a definition of “wild animal” for purposes of allowing conservation wardens to enforce s. 951.09, stats., when a wild animal is involved.

16 **SECTION 11.** 951.015 of the statutes is amended to read:

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1 **951.015 Construction and application.** This chapter may not be
2 interpreted as controverting any law regulating the taking of a wild animal as
3 ~~defined in s. 29.001 (90)~~, the trapping of animals, the use of live animals in dog trials
4 or in the training of hunting dogs or the slaughter of animals by persons acting under
5 state or federal law.

NOTE: Current s. 951.09, stats., provides that ch. 951 of the statutes does not affect any law regulating the taking of wild animals. The provision refers to the definition of “wild animal” in s. 29.001 (90), stats. That reference is deleted since “wild animal” is defined by s. 951.01 (5), as created by SECTION 10.

6 **SECTION 12.** 951.18 (1) of the statutes, as affected by 1997 Wisconsin Act 192,
7 is amended to read:

8 **951.18 (1)** Any person violating s. 951.02, 951.025, 951.03, 951.04, 951.05,
9 951.06, 951.07, 951.09, 951.10, 951.11, 951.13, 951.14 or 951.15 is subject to a
10 Class C forfeiture. Any person who violates any of these provisions within 3 years
11 after a humane officer or law enforcement officer issues an abatement order under
12 s. 173.11 prohibiting the violation of that provision is subject to a Class A forfeiture.
13 Any person who intentionally or negligently violates any of those sections is guilty
14 of a Class A misdemeanor. Any person who intentionally violates s. 951.02, resulting
15 in the mutilation, disfigurement or death of an animal, is guilty of a Class E felony.
16 Any person who intentionally violates s. 951.02 or 951.06, knowing that the animal
17 that is the victim is used by a law enforcement agency to perform agency functions
18 or duties and causing injury to the animal, is guilty of a Class E felony.

NOTE: This provision amends s. 951.18 (1), stats., relating to penalties for violations of ch. 951, stats. It adds the term “law enforcement officer” to recognize that a law enforcement officer as defined under s. 951.01 (4), stats., can issue an abatement order under s. 173.11, stats., to prohibit violations of laws against causing injury to animals.

19 **SECTION 13. Effective dates.** This bill takes effect on the day after
20 publication, except as follows:

