

1999 SENATE BILL 16

January 26, 1999 – Introduced by Senators ZIEN, BRESKE, FITZGERALD, WELCH, DRZEWIECKI, HUELSMAN, ROESSLER, DARLING, RUDE, PANZER, SCHULTZ, FARROW and A. LASEE, cosponsored by Representatives PETTIS, SUDER, PETROWSKI, MONTGOMERY, TOWNSEND, JENSEN, SYKORA, ZIEGELBAUER, BRANDEMUEHL, OWENS, RYBA, HOVEN, KREIBICH, GUNDERSON, ALBERS, FREESE, LADWIG, F. LASEE, AINSWORTH, HAHN, URBAN, GOETSCH, KEDZIE, HANDRICK, VRAKAS, JOHNSRUD, MUSSER, KREUSER, SERATTI, GARD, HUEBSCH, KELSO, KAUFERT and MEYERHOFER. Referred to Committee on Judiciary and Consumer Affairs.

1 **AN ACT** *to renumber and amend* 939.645 (4); *to amend* 895.75 (title), 938.34
 2 (14d) (title), 938.34 (14d) (d), 939.645 (2) (a), 939.645 (2) (b), 939.645 (2) (c) and
 3 939.645 (3); and *to create* 938.34 (14d) (e), 939.645 (1m), 939.645 (4) (b),
 4 943.012 (5) and 947.07 of the statutes; **relating to:** crimes affecting certain
 5 flags and providing penalties.

Analysis by the Legislative Reference Bureau

This bill creates penalties relating to crimes involving the damaging or destruction of a U.S. flag, a flag of the state of Wisconsin (state flag) or a picture, copy or representation of one of these flags. Specifically, the bill does the following:

Damaging or destroying a flag with intent to cause violence or a breach of the peace

Current law prohibits a person from intentionally and publicly mutilating, defiling or casting contempt upon the flag, which is defined to include the U.S. flag, the U.S. shield, the U.S. coat of arms, the Wisconsin state flag or a copy, picture or representation of any of these things. However, this law was held to be unconstitutional by the Wisconsin Supreme Court in *State v. Janssen*, 218 Wis. 2d 362 (1998).

This bill prohibits a person from destroying, damaging or mutilating a U.S. or state flag, or urinating, defecating or expectorating upon a U.S. or state flag, with the intent to cause imminent violence or a breach of the peace in circumstances in

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which the actor knows that his or her conduct is likely to cause violence or a breach of the peace. A person who violates this prohibition before December 31, 1999, may be fined not more than \$10,000 or imprisoned for not more than two years or both. If a person violates the prohibition on or after December 31, 1999, he or she may be fined not more than \$10,000 or imprisoned for not more than five years or both.

Criminal damage to or placing graffiti on a flag

Current law generally prohibits a person from intentionally destroying or damaging the property of another person without that other person's consent. Current law also provides a specific penalty for intentionally damaging, marking, drawing or writing on or etching into property such as a church, synagogue or other structure or place used for religious worship or another religious purpose, a cemetery, mortuary or other place used for burial or memorializing the dead, or an educational facility or community center associated with a group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry or by an institution of any such group. The penalty for damaging, marking, drawing or writing on or etching into such property is a fine of not more than \$10,000 or imprisonment for not more than two years or both, if the offense occurs before December 31, 1999, or a fine of not more than \$10,000 or imprisonment for not more than five years or both, if the offense occurs on or after December 31, 1999.

This bill prohibits a person from intentionally damaging, marking, drawing or writing on or etching into a U.S. or state flag that belongs to another person without the owner's consent and with knowledge of the character of the property. A person who violates this prohibition before December 31, 1999, may be fined not more than \$10,000 or imprisoned for not more than two years or both. If a person violates the prohibition on or after December 31, 1999, he or she may be fined not more than \$10,000 or imprisoned for not more than five years or both.

Penalty enhancer for crimes involving damage to or destruction of a flag

Current law provides for enhanced penalties for "hate crimes". A person may be subject to the "hate crimes" penalty enhancer if the person commits a crime and intentionally selects the person against whom the crime is committed or selects the property that is damaged or otherwise affected by the crime in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of the victim of the crime. Under the "hate crimes" penalty enhancer, the penalties for the crime committed by the person are increased as follows:

1. If the person committed a misdemeanor punishable by a maximum fine of \$1,000 or less and a maximum term of imprisonment of 90 or fewer days, the maximum fine is increased to \$10,000 and the maximum term of imprisonment is increased to one year.
2. If the person committed a misdemeanor punishable by a maximum fine of \$10,000 and a maximum term of imprisonment of nine months, the maximum fine remains the same, the maximum term of imprisonment is increased to two years and the status of the crime is changed to a felony.

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3. If the person committed a felony, the maximum fine is increased by not more than \$5,000 and the maximum term of imprisonment is increased by not more than five years.

This bill creates a penalty enhancer that may be applied to a person who, while committing a crime, intentionally destroys, damages or mutilates a U.S. or state flag or intentionally urinates, defecates or expectorates upon a U.S. or state flag. The penalty increases for the crime are the same as those provided under the “hate crimes” penalty enhancer.

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

1 **SECTION 1.** 895.75 (title) of the statutes is amended to read:

2 **895.75 (title) Physical injury, emotional distress, loss or damage**
3 **suffered by members of certain groups or owners of certain property.**

4 **SECTION 2.** 938.34 (14d) (title) of the statutes is amended to read:

5 **938.34 (14d) (title) HATE VIOLATIONS; VIOLATIONS INVOLVING A U.S. OR STATE FLAG.**

6 **SECTION 3.** 938.34 (14d) (d) of the statutes is amended to read:

7 **938.34 (14d) (d) That the juvenile participate in an educational program under**
8 **sub. (7n) that includes sensitivity training or training in diversity, if the violation**
9 **was committed under circumstances specified in s. 939.645 (1) (b).**

10 **SECTION 4.** 938.34 (14d) (e) of the statutes is created to read:

11 **938.34 (14d) (e) That the juvenile participate in an educational program that**
12 **teaches the history of the U.S. flag and the Wisconsin state flag and the significance**
13 **of those flags to the nation and the state, if the violation was committed under**
14 **circumstances specified in s. 939.645 (1m) (b) 2.**

15 **SECTION 5.** 939.645 (1m) of the statutes is created to read:

16 **939.645 (1m) (a) In this subsection, “flag” has the meaning given in s. 947.07**
17 **(1).**

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1 (b) If a person does all of the following, the penalties for the underlying crime
2 are increased as provided in sub. (2):

3 1. Commits a crime under chs. 939 to 948.

4 2. While committing the crime under subd. 1., intentionally destroys, damages
5 or mutilates a flag or intentionally urinates, defecates or expectorates upon a flag.

6 **SECTION 6.** 939.645 (2) (a) of the statutes is amended to read:

7 939.645 (2) (a) If the crime committed under sub. (1) or (1m) is ordinarily a
8 misdemeanor other than a Class A misdemeanor, the revised maximum fine is
9 \$10,000 and the revised maximum period of imprisonment is one year in the county
10 jail.

11 **SECTION 7.** 939.645 (2) (b) of the statutes is amended to read:

12 939.645 (2) (b) If the crime committed under sub. (1) or (1m) is ordinarily a
13 Class A misdemeanor, the penalty increase under this section changes the status of
14 the crime to a felony and the revised maximum fine is \$10,000 and the revised
15 maximum period of imprisonment is 2 years.

16 **SECTION 8.** 939.645 (2) (c) of the statutes is amended to read:

17 939.645 (2) (c) If the crime committed under sub. (1) or (1m) is a felony, the
18 maximum fine prescribed by law for the crime may be increased by not more than
19 \$5,000 and the maximum period of imprisonment prescribed by law for the crime
20 may be increased by not more than 5 years.

21 **SECTION 9.** 939.645 (3) of the statutes is amended to read:

22 939.645 (3) This section provides for the enhancement of the penalties
23 applicable for the underlying crime. The court shall direct that the trier of fact find
24 a special verdict as to all of the issues specified in sub. (1) or (1m), whichever is
25 applicable.

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1 **SECTION 10.** 939.645 (4) of the statutes is renumbered 939.645 (4) (a) and
2 amended to read:

3 939.645 (4) (a) ~~This section~~ Subsection (1) does not apply to any crime if proof
4 of race, religion, color, disability, sexual orientation, national origin or ancestry or
5 proof of any person's perception or belief regarding another's race, religion, color,
6 disability, sexual orientation, national origin or ancestry is required for a conviction
7 for that crime.

8 **SECTION 11.** 939.645 (4) (b) of the statutes is created to read:

9 939.645 (4) (b) Subsection (1m) does not apply to any crime if proof of
10 destruction or mutilation of a flag, damage to a flag or urination, defecation or
11 expectoration upon a flag is required for a conviction for that crime.

12 **SECTION 12.** 943.012 (5) of the statutes is created to read:

13 943.012 (5) A flag, as defined in s. 947.07 (1).

14 **SECTION 13.** 947.07 of the statutes is created to read:

15 **947.07 Causing violence or breach of the peace by damaging or**
16 **destroying certain flags. (1)** In this section, "flag" means any of the following:

17 (a) A flag of the United States consisting of horizontal stripes, alternately
18 colored red and white, and a union of any number of white stars on a blue field.

19 (b) A Wisconsin state flag under s. 1.08 (1) or any flag that may be used as a
20 state flag under s. 1.08 (2).

21 (c) Any copy, picture or representation of a flag specified in par. (a) or (b).

22 **(2)** Whoever destroys, damages or mutilates a flag, or urinates, defecates or
23 expectorates upon a flag, with the intent to cause imminent violence or a breach of
24 the peace under circumstances in which the actor knows that his or her conduct is
25 likely to cause violence or a breach of the peace is guilty of a Class E felony.

