

2001 DRAFTING REQUEST

Bill

Received: **03/07/2001**

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 69280**

By/Representing: **Mark Patronsky**

This file may be shown to any legislator: **NO**

Drafter: **gibsom**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - fish and game**
Nat. Res. - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Law enforcement authority for wardens

Instructions:

See Attached

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>
/?	gibsom 03/07/2001	wjackson 03/09/2001		_____			S&L
/1			martykr 03/13/2001	_____	lrb_docadmin 03/13/2001	lrb_docadmin 03/26/2001	

FE Sent For:

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Instructions:

See Attached Same as 99 LRB 3061

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1/1	gibsom	1/1 3/19	3/13	3/13			

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State of Wisconsin
1999 - 2000 LEGISLATURE

-2765/1
LRB-3082/D RM
MGG:wlj:ktj not
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2001

1999 ASSEMBLY BILL 491

LPS: Please check auto-refs.
As it is a redraft from last
session, the auto-refs may be
in place.

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

REGEN

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

enforcement
of

ASSEMBLY BILL 491

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, employer, 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

ASSEMBLY BILL 491

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.

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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 ~~bill~~ bill

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

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 [∫] ^{plain y e} 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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SECTION 6

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.

of the statutes
) Stats.,

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). ✓

A.R. (A) 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.

Stats.,

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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 A.R. (A) 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:

ASSEMBLY BILL 491

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. A.R. (A)

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:

ASSEMBLY BILL 491

1 (1) The treatment of sections 173.01 (2) and (4) of the statutes and the repeal
2 and recreation of section 951.01 (4) of the statutes take effect on December 1, ²⁰⁰¹ 1999,
3 or on the day after publication, whichever is later.

NOTE: This bill will take effect on the day after publication except that SECTIONS 6,
7 and 9 take effect on December 1, 1999, or on the day after publication, whichever is later,
to recognize the effective date of 1997 Wisconsin Act 192.

4 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2765/?ins

.....

Insert 3-4

SECTION ~~23~~[#] 23.50 (1)[✓] of the statutes is amended to read:

23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable environmental assessments, applicable wild animal protection assessments, applicable natural resources assessments, applicable fishing shelter removal assessments, applicable snowmobile registration ~~restitution payments~~[✓] and applicable natural resources restitution payments for violations of ss. 77.09, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81[✓] and 299.64 (2)[✓] ~~and~~^{STET} of s. 951.09 when a wild animal as defined in s. 29.001 (90)[✓] is involved, subch. VI of ch. 77, this chapter and chs. 26 to 31[✓] and of ch. 350, and any administrative rules promulgated thereunder, violations specified under s. 285.86, violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k)[✓] or violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 79, 284, 335, 359; 1991 a. 30, 97; 1993 a. 16, 243, 344, 349, 401; 1995 a. 27, 216, 227, 290; 1997 a. 35; 1999 a. 9.

Insert 6-7

SECTION ~~95~~[#] 951.01 (4)[✓] of the statutes is amended to read:

951.01 (4) "Law enforcement officer" has the meaning ~~assigned under given in~~ s. 967.02 (5) but does not include a conservation warden appointed under s. 23.10 except when, for purposes of enforcing s. 951.09[✓], a wild animal is involved.

History: 1973 c. 314; 1983 a. 189; 1987 a. 248; 1987 a. 332 s. 54; Stats. 1987 s. 951.01; 1989 a. 223; 1997 a. 27, 192; 1999 a. 83.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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March 13, 2001

MEMORANDUM

Introduced by Leg Council

contact M. Patrowski

To: Legislative Council - JLC

From: Mary Gibson-Glass, Senior Legislative Attorney

Re: LRB-2765 Law enforcement authority for wardens

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-3215 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.