

2001 DRAFTING REQUEST

Bill

Received: 12/06/2000

Received By: **mdsida**

Wanted: As time permits

Identical to LRB:

For: **Mark Pettis (608) 267-2365**

By/Representing: **himself**

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

Drafter: **mdsida**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **rlr**

Pre Topic:

No specific pre topic given

Topic:

Damaging or destroying a flag

Instructions:

Redraft 1999 AB 79

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>
/?	mdsida 01/10/2001	jdyer 01/11/2001		_____			
/1	mdsida 02/15/2001	jdyer 02/15/2001	pgreensl 01/12/2001	_____	lrb_docadmin 01/12/2001	lrb_docadmin 01/17/2001	
/2			martykr 02/19/2001	_____	lrb_docadmin 02/19/2001	lrb_docadmin 02/19/2001	

FE Sent For:

<END>

→ Not Needed

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/?	mdsida 01/10/2001	jdye 01/11/2001					
/1		12/2/16 jld	pgreensl 01/12/2001		lrb_docadmin 01/12/2001	lrb_docadmin 01/17/2001	

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Kim 2/19
PC Kim 2/19

<END>

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/?	mdsida 01/10/2001	jdyer 01/11/2001		_____			
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1?	mdsida	11/11 jcd	1/12 pg	1/12 km/pg			

FE Sent For:

<END>



State of Wisconsin
1999 - 2000 LEGISLATURE

1347
LRB-15561

mgl 10/10/99 km

~~PPS~~ jld

2001

1999 ASSEMBLY BILL 79

by 1/16
5:00

February 2, 1999 - Introduced by Representatives PETTIS, SUDER, PETROWSKI, TOWNSEND, MONTGOMERY, JENSEN, FREESE, SYKORA, HUEBSCH, LADWIG, F. LASEE, AINSWORTH, HAHN, URBAN, GOETSCH, KEDZIE, HANDRICK, VRAKAS, HOVEN, JOHNSRUD, MUSSER, KREUSER, SERATTI, ALBERS, GARD, ZIEGELBAUER, BRANDEMUEHL, OWENS, RYBA, KREIBICH, GUNDERSON, KELSO, KAUFERT and MEYERHOFER, cosponsored by Senators ZIEN, BRESKE, FITZGERALD, WELCH, DRZEWIECKI, HUELSMAN, ROESSLER, DARLING, RUDE, PANZER, SCHULTZ, FARROW and A. LASEE. Referred to Committee on Judiciary and Personal Privacy.

Regen

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

ASSEMBLY BILL 79

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, synagogues 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.

ASSEMBLY BILL 79

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:

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

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

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

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

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

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

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

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

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

939.645 (1m) (a) In this subsection, "flag" has the meaning given in s. 947.07 (1).

ASSEMBLY BILL 79

SECTION 5

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.

Handwritten notes: A vertical line on the left margin with a bracket spanning lines 4-5, and the letters 'W.F.' written vertically next to it.

ASSEMBLY BILL 79

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

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

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

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

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

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

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

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

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

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

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

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

ASSEMBLY BILL 79

1 **SECTION 14. Initial applicability.**

2 (1) This act first applies to offenses occurring on the effective date of this
3 subsection. ✓

4 **(END)**



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

January 12, 2001

MEMORANDUM

To: Representative Pettis

From: Michael Dsida, Legislative Attorney

Re: LRB-1347 Damaging or destroying a flag

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) 266-9867 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.



2

2001 BILL

Regen

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 ~~the~~
 5 ^{the U.S.} flags and providing penalties. ^a (Y)

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.

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. state flag, or ~~urinating, defecating, or expectorating upon~~ ^{causing} a U.S. ~~or state~~ flag, with the intent to cause imminent violence or a breach of the peace in circumstances in

to come into contact with urine, feces, or excretion

BILL

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 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 five years or both.

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 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.
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

BILL

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:

Insert ✓
A

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).

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

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

BILL

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

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

4 939.645 (2) (a) If the crime committed under sub. (1) or (1m) is ordinarily a
5 misdemeanor other than a Class A misdemeanor, the revised maximum fine is
6 \$10,000 and the revised maximum period of imprisonment is one year in the county
7 jail.

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

9 939.645 (2) (b) If the crime committed under sub. (1) or (1m) is ordinarily a
10 Class A misdemeanor, the penalty increase under this section changes the status of
11 the crime to a felony and the revised maximum fine is \$10,000 and the revised
12 maximum period of imprisonment is 2 years.

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

14 939.645 (2) (c) If the crime committed under sub. (1) or (1m) is a felony, the
15 maximum fine prescribed by law for the crime may be increased by not more than
16 \$5,000 and the maximum period of imprisonment prescribed by law for the crime
17 may be increased by not more than 5 years.

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

19 939.645 (3) This section provides for the enhancement of the penalties
20 applicable for the underlying crime. The court shall direct that the trier of fact find
21 a special verdict as to all of the issues specified in sub. (1) or (1m), whichever is
22 applicable.

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

BILL

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

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

7 939.645 (4) (b) Subsection (1m) does not apply to any crime if proof of
8 destruction or mutilation of a flag, damage to a flag, or urination, defecation, or
9 expectoration upon a flag is required for a conviction for that crime.

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

11 ~~943.012 (5)~~ A flag, as defined in s. 947.07 (1).

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

13 **947.07 Causing violence or breach of the peace by damaging or**

14 ~~destroying certain flags.~~ ^{③ a U.S.} (1) In this section, "flag" means any of the following:

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

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

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

20 (2) Whoever destroys, damages, or mutilates a flag, or ~~urines, defecates, or~~
21 causes expectoration upon a flag, with the intent to cause imminent violence or a breach of
22 the peace under circumstances in which the actor knows that his or her conduct is
23 likely to cause violence or a breach of the peace is guilty of a Class ~~B~~ felony.

24 **SECTION 14. Initial applicability.**

to come into contact with urine,
feces, or expectoration

A misdemeanor

BILL

1 (1) This act first applies to offenses occurring on the effective date of this
2 subsection.

3 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBa0082/1
JEO:jlgrjf

ASSEMBLY AMENDMENT,
TO 1999 ASSEMBLY BILL 79

mistake of the?

Insert A

*1) ...
2) cem / print
3) ...
w/ public group*

1 ~~At the locations indicated, amend the bill as follows:~~

2 ~~1. Page 3, line 1: delete lines 1 to 3 and substitute:~~

3 ~~SECTION 895.75 (1) of the statutes is amended to read:~~

PWF

4 895.75 (1) Any if a person who suffers physical injury to his or her person or
5 emotional distress or damage to or loss of his or her property by reason of conduct
6 which that is prohibited under s. 943.012 and that causes damage to any property
7 specified in s. 943.012 (1) to (4) or which by reason of conduct that is grounds for a
8 penalty increase under s. 939.645 (1), the person has a civil cause of action against
9 the person who caused the physical injury, emotional distress, damage or loss.

10

(END)

(end ins A)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8948
REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

September 18, 2001

MEMORANDUM

To: Members of the Assembly Committee on Criminal Justice

From: Mike Dsida
Legislative Attorney

Subject: Error in Analysis of 2001 Assembly Bill 477

I am writing to you to inform you of an error contained in the Legislative Reference Bureau analysis accompanying 2001 Assembly Bill 477. This bill would create a new crime by prohibiting destroying, damaging, or mutilating a U.S. flag or causing it to come into contact with certain bodily substances with the intent to cause imminent violence or a breach of the peace. A person violating this prohibition would be guilty of a Class A misdemeanor. The analysis correctly states what the maximum fine would be for a person convicted of this offense; namely, \$10,000. The analysis, however, misstates what the maximum term of imprisonment would be. It should state that the maximum term of imprisonment would be nine months.

I apologize for this error. I would be more than willing to come to the committee's hearing on this bill on Wednesday if you would like me to address this error more fully. In addition, if you have any questions regarding this bill, please let me know.

cc. Shaun Haas
Anne Sappenfield