

2001 DRAFTING REQUEST

Bill

Received: 09/25/2001

Received By: malaigm

Wanted: Soon

Identical to LRB:

For: Terry Musser (608) 266-7461

By/Representing: Marlene

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact: Dennis Boyer, AFSCME
836-6666

Addl. Drafters: rryan

Subject: Criminal Law - sentencing
Children - juvenile justice

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Mandatory minimum sentence for juvenile who throws bodily substance in juvenile facility

Instructions:

Provide for a two-year mandatory minimum sentence for a juvenile who is convicted of throwing a bodily substance under s. 946.43 (2m) while placed in a juvenile facility.

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>
/?	rryan 09/26/2001	wjackson 10/01/2001		_____			S&L
/1			jfrantze 10/01/2001	_____	lrb_docadmin 10/01/2001	lrb_docadmin 11/02/2001	

FE Sent For:

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1/?	rryan	1/1 WJ 10/1	<i>[Signature]</i>	<i>[Signature]</i>			

FE Sent For:

<END>



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3869A
RLR&GMM.../.....
Wlj

§ 2001

DNOTES

GEN

1 AN ACT ...; relating to: a mandatory minimum sentence for a juvenile who is
2 convicted of throwing a bodily substance at or toward a person while placed in
3 a secured correctional facility, a secure detention facility, a secured child caring
4 institution, or a secured group home and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, a juvenile who is alleged to have violated a criminal law is subject to the exclusive original jurisdiction of the court assigned to exercise jurisdiction under the juvenile justice code (juvenile court). For certain violations, however, including any of the following committed while a juvenile is placed in a secured correctional facility, a secure detention facility, a secured child caring institution, or a secured group home, the juvenile who is alleged to have committed the violation is subject to the exclusive original jurisdiction of a court of criminal jurisdiction (adult court):

1. Assault, that is, placing another person in apprehension of an immediate battery that is likely to cause death or great bodily harm or confining or restraining another person without that person's consent.
2. Battery, that is, intentionally causing bodily harm to another person without that person's consent.
3. Throwing a bodily substance such as blood, semen, urine, or feces at or toward a person without the person's consent, with intent that the substance come into contact with the person, and with intent to cause bodily harm to the person or to abuse, harass, offend, intimidate, or frighten the person.

If, at the juvenile's preliminary examination, the adult court finds probable cause to believe that the juvenile has committed the alleged violation, the adult court

(consisting of a term of confinement and a term of extended supervision)

must retain jurisdiction over the juvenile, rather than transfer jurisdiction to the juvenile court, unless the juvenile proves that, if convicted, the juvenile could not receive adequate treatment in the criminal justice system, that transferring jurisdiction would not depreciate the seriousness of the offense, and that retaining jurisdiction is not necessary as a deterrent. If the adult court convicts the juvenile of committing assault or battery while placed in a secured correctional facility, a secure detention facility, a secured child caring institution, or a secured group home, the adult court must sentence the juvenile to a mandatory minimum period of imprisonment of not less than five years in the case of assault and of not less than three years in the case of battery, unless the adult court finds that a lesser sentence would not depreciate the seriousness of the offense and is not necessary as a deterrent. Current law permits an adult court to sentence a juvenile to a period of imprisonment of not more than two years for throwing a bodily substance at or toward another person while placed in a secured correctional facility, a secure detention facility, a secured child caring institution, or a secured group home, but does not provide for a mandatory minimum period of imprisonment for that violation.

This bill requires an adult court that convicts a juvenile of throwing a bodily substance at or toward another person while placed in a secured correctional facility, a secure detention facility, a secured child caring institution, or a secured group home to sentence the juvenile to a mandatory minimum period of imprisonment of two years.

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:

- 1 SECTION 1. 301.048 (2) (bm) 1. a. ^J of the statutes is amended to read:
- 2 301.048 (2) (bm) 1. a. A crime specified in s. 940.01, 940.02, 940.03, 940.05,
- 3 940.06, 940.08, 940.09, 940.10, 940.19 (3), (4) or (5), 940.195 (3), (4) or (5), 940.20,
- 4 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1. or 2., 940.29,
- 5 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20
- 6 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04,
- 7 943.06, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.43 (1m) or (2m),
- 8 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or
- 9 948.30.

1 **SECTION 2.** 938.183 (1) (a) of the statutes is amended to read:

2 938.183 (1) (a) A juvenile who has been adjudicated delinquent and who is
3 alleged to have violated s. 940.20 (1) or 946.43 (1m) or (2m) while placed in a secured
4 correctional facility, a secure detention facility, a secured child caring institution or
5 a secured group home or who has been adjudicated delinquent and who is alleged to
6 have committed a violation of s. 940.20 (2m).

7 History: 1995 a. 77, 216, 352; 1997 a. 27, 35, 205, 252, 283; 1999 a. 9, 32. ✓

7 **SECTION 3.** 938.183 (1m) (c) 1. of the statutes is amended to read:

8 938.183 (1m) (c) 1. The court of criminal jurisdiction finds that the juvenile has
9 committed a lesser offense or a joined offense that is not a violation of s. 940.20 (1)
10 or (2m) or 946.43 (1m) or (2m) under the circumstances described in sub. (1) (a), that
11 is not an attempt to violate s. 940.01 under the circumstances described in sub. (1)
12 (am), that is not a violation of s. 940.02 or 940.05 under the circumstances described
13 in sub. (1) (am), and that is not an offense for which the court assigned to exercise
14 jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile
15 under s. 938.18.

16 History: 1995 a. 77, 216, 352; 1997 a. 27, 35, 205, 252, 283; 1999 a. 9, 32. ✓

16 **SECTION 4.** 938.183 (1m) (c) 2. of the statutes is amended to read:

17 938.183 (1m) (c) 2. The court of criminal jurisdiction finds that the juvenile has
18 committed a lesser offense or a joined offense that is a violation of s. 940.20 (1) or (2m)
19 or 946.43 (1m) or (2m) under the circumstances described in sub. (1) (a), that is an
20 attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that
21 is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am),
22 or that is an offense for which the court assigned to exercise jurisdiction under this
23 chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and
24 the court of criminal jurisdiction, after considering the criteria specified in s. 938.18

1 (5), determines that the juvenile has proved by clear and convincing evidence that
2 it would be in the best interests of the juvenile and of the public to adjudge the
3 juvenile to be delinquent and impose a disposition specified in s. 938.34.

History: 1995 a. 77, 216, 352; 1997 a. 27, 35, 205, 252, 283; 1999 a. 9, 32.

4 **SECTION 5.** 939.635 (1) of the statutes is amended to read:

5 939.635 (1) Except as provided in sub. (2), if a person who has been adjudicated
6 delinquent is convicted of violating s. 940.20 (1) while placed in a secured correctional
7 facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s.
8 938.02 (16), a secured child caring institution, as defined in s. 938.02 (15g), or a
9 secured group home, as defined in s. 938.02 (15p), or is convicted of violating s. 940.20
10 (2m), the court shall sentence the person to not less than 3 years of imprisonment.

11 Except as provided in sub. (2), if a person is convicted of violating s. 946.43 (1m) while
12 placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure
13 detention facility, as defined in s. 938.02 (16), a secured child caring institution, as
14 defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the
15 court shall sentence the person to not less than 5 years of imprisonment. Except as

16 provided in sub. (2), if a person is convicted of violating s. 946.43 (2m) while placed
17 in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention
18 facility, as defined in s. 938.02 (16), a secured child caring institution, as defined in
19 s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the court shall
20 sentence the person to 2 years of imprisonment.

History: 1993 a. 98; 1995 a. 77, 216; 1999 a. 9, 186, 188.

21 **SECTION 6.** 939.635 (2) (b) of the statutes is amended to read:

22 939.635 (2) (b) That imposing the applicable presumptive minimum sentence
23 specified in sub. (1) is not necessary to deter the person or other persons from
24 committing violations of s. 940.20 (1) or 946.43 (1m) or (2m) or other similar offenses

1 while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure
2 detention facility, as defined in s. 938.02 (16), or a secured child caring institution,
3 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),
4 or from committing violations of s. 940.20 (2m).

5 History: 1993 a. 98; 1995 a. 77, 216; 1999 a. 9, 186, 188.

5 **SECTION 7. 969.08 (10) (b)** of the statutes is amended to read:

6 969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4),
7 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195
8 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25,
9 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30,
10 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10,
11 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43 (1m) or (2m), 947.015,
12 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, or 948.30.

13 History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403; 1991 a. 153, 269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a.
143, 180, 295; 1999 a. 32.

13 **SECTION 8. Initial applicability.**

14 (1) THROWING OF BODILY SUBSTANCES IN JUVENILE FACILITY. This act first applies
15 to offenses committed on the effective date of this subsection.

16

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3869/1dn
GMM...../.....
WLj

Representative Musser:

As I discussed with Dennis Boyer, this draft, in addition to amending s. 939.635 (1) and (2) (b) to provide for a mandatory minimum sentence of two years of imprisonment for a juvenile who throws a bodily substance while placed in a juvenile correctional facility, also amends various cross references to s. 946.43 to clarify that the cross reference refers not only to assault by a prisoner but also to throwing a bodily substance by a prisoner. Those cross reference clarifications, although helpful, are not absolutely necessary to effect the intent of the draft, therefore you might want to have them deleted on redraft.

If you have any questions about the draft, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3869/rldn
RLR:.....

Representative Musser:

Terms of "imprisonment" referred to in the bill consist of a term of confinement and a term of extended supervision. For an unclassified felony, such as throwing bodily substances, the period of confinement may not exceed 75 percent of the term of imprisonment. Hence the two-year minimum term of imprisonment may consist of up to 18 months of confinement, and the remainder of the two-year time frame is extended supervision. If a juvenile is placed in an adult prison, the minimum confinement must be at least one year. If you would like, the bill could specify what the minimum period of confinement must be (within the parameters of 12 to 18 months) in addition to specifying that the total imprisonment be at least two years.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3869/ldn
GMM&RLR:wlj:jf

October 1, 2001

Representative Musser:

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E-mail: gordon.malaise@legis.state.wi.us

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Gretschmann, Karen

From: Rep.Musser
Sent: Friday, November 02, 2001 11:44 AM
To: Gretschmann, Karen
Subject: Please jacket LRB-3869/1 for Assembly



01-3869/1