

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

LRBf88/1dn  
GMM:kmg:rs

March 12, 2002

There are several problems with the attached floor amendment that should be corrected by a senate amendment before the bill is enacted into law. Specifically:

1. The floor amendment is arguably unnecessary. In *State v. Cummings*, 153 Wis. 2d 603 (Ct. App. 1989), the Court of Appeals held that s. 940.20 (1), which prohibits battery by a prisoner confined to a state prison, applied to a prisoner who bit a guard while receiving medical treatment at the UW Hospital. The court so held because the prisoner, although outside the prison, was under guard at the hospital and, therefore, remained under the jurisdiction of the prison. In other words, the hospital became a part of the prison for purposes of s. 940.20 (1). By analogy, a court could also hold that a prisoner who is being transported in a police or department of corrections (DOC) vehicle remains under the jurisdiction of the institution in which the prisoner is confined for purposes of the prohibitions under ss. 940.20 (1) and 946.43 (1m) and (2m) against assault, battery, or throwing bodily substances by a prisoner.

2. The floor amendment does not accomplish the intent of providing for a two-year mandatory minimum term of imprisonment for a juvenile who has been adjudicated delinquent and who throws a bodily substance while placed in a police or DOC vehicle. To accomplish that intent, a reference to placement in a police or DOC vehicle must be added to the language added by the bill to s. 939.65 (1) providing for that mandatory minimum and to the language added by Assembly Amendment 1 providing that the mandatory minimum sentence be served consecutively to the underlying dispositional order. Section 946.43 (2m) (a), which creates the underlying crime of throwing a bodily substance, must also be amended to add a reference to confinement in a police or DOC vehicle.

3. Enactment of the floor amendment will result in an inconsistent body of law unless the prohibitions against assault and battery by a prisoner under ss. 940.20 (1) and 946.43 (1m) are similarly amended to include assault or battery while confined in a police or DOC vehicle. If the bill is enacted as is, there will be a mandatory minimum sentence for throwing a bodily substance in a police or DOC vehicle, but not for assaulting another prisoner while confined in the vehicle.

4. In addition, because "facility," appears 2 times on page 3, line 7, the amendment item instruction is unclear.

If you would like me to draft a senate amendment to fix these problems, please advise. If you have any questions about the issues raised in this drafter's note, please do not hesitate to contact me at the phone number or e-mail address listed below.

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