

## 2001 ASSEMBLY BILL 735

January 16, 2002 – Introduced by Representatives UNDERHEIM, KRAWCZYK, HUNDERTMARK, RYBA, PETROWSKI, VRAKAS, HAHN, LADWIG, MUSSER, J. FITZGERALD, SYKORA and URBAN, cosponsored by Senators GEORGE, ERPENBACH, BRESKE, ROSENZWEIG, BAUMGART, ROESSLER, WIRCH and SHIBILSKI. Referred to Committee on Corrections and the Courts.

1     **AN ACT to renumber and amend** 940.20 (1); **to amend** 940.20 (1) (title), 946.43  
2           (title), 946.43 (1m) and 946.43 (2m) (a); and **to create** 940.20 (1) (a) and (c) and  
3           946.43 (1g) of the statutes; **relating to:** battery or assault by a prisoner or  
4           detainee and providing a penalty.

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### *Analysis by the Legislative Reference Bureau*

Current law criminalizes several types of assaultive behavior by prisoners:

1. It is a crime for a prisoner to cause bodily harm intentionally to an officer, employee, visitor, or another inmate of a prison or other type of detention facility without the person's consent (battery by a prisoner). The maximum penalty for battery by a prisoner is a fine not to exceed \$10,000; a term of confinement in prison followed by a term of extended supervision that together may not exceed ten years; or both.

2. It is a crime for a prisoner to place an officer, employee, visitor, or another inmate of a prison or other type of detention facility in fear of immediate and great bodily harm, or to confine or restrain the officer, employee, visitor, or other inmate. The maximum penalty for these offenses is a fine not to exceed \$10,000; a term of confinement followed by a term of extended supervision that together may not exceed 15 years; or both.

3. It is a crime for a prisoner to throw or expel certain bodily substances at an officer, employee, visitor, or other inmate of a prison or other type of detention facility. The maximum penalty for throwing or expelling bodily substances is a fine not to

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exceed \$10,000, a term of confinement followed by a term of extended supervision that together may not exceed two years, or both.

The term “prisoner” is not defined for any of these assaultive crimes by prisoners. However, courts have held that in the context of the crime of battery by a prisoner, a “prisoner” is a person whose liberty is restrained as a result of a violation of the law or as a means of enforcing the law, and that “prisoner” includes a person who is committed to the department of health and family services upon a finding of not guilty by reason of mental disease or defect, as well as a person who is confined upon revocation of probation. See *In the Interest of C.D.M.*, 125 Wis. 2d 170, at 172–173 (1985); *State v. Skamfer*, 176 Wis. 2d 304 (App. 1993); *State v. Fitzgerald*, 233 Wis. 2d 584 (App. 2000).

This bill applies the prohibitions against assaultive behavior to both prisoners and detainees and defines a “prisoner or detainee” as a person who is arrested or confined because he or she has been accused of committing a crime, alleged delinquent for committing a crime, alleged to be a sexually violent person, convicted or adjudicated delinquent for committing a crime, or committed to the custody of the department of health and family services upon being found not guilty of a crime by reason of mental disease or defect or upon being found to be a sexually violent person.

The bill removes the requirement that the victim of the assaultive crimes be an officer, employee, visitor, or other inmate, and instead criminalizes a prisoner’s or detainee’s assaultive behavior directed at any other person. The bill also clarifies that the crimes prohibiting assaultive behavior by a prisoner apply to acts of a prisoner or detainee that take place while the prisoner or detainee is in the custody of a law enforcement officer, prison guard, or employee of another detention facility or of a state treatment facility, regardless of whether the prisoner or detainee is on the grounds of a prison, other detention facility, or state treatment facility when the prohibited act occurs.

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

1           **SECTION 1.** 940.20 (1) (title) of the statutes is amended to read:

2           940.20 (1) (title) BATTERY BY PRISONERS OR DETAINEES.

3           **SECTION 2.** 940.20 (1) of the statutes is renumbered 940.20 (1) (b) and amended  
4 to read:

5           940.20 (1) (b) Any prisoner ~~confined to a state prison or other state, county or~~  
6 ~~municipal detention facility~~ or detainee who, while in custody, intentionally causes  
7 ~~bodily harm to an officer, employee, visitor or another inmate of such prison or~~

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1 ~~institution~~ a person, without ~~his or her~~ the consent of the person, is guilty of a Class  
2 D felony.

3 **SECTION 3.** 940.20 (1) (a) and (c) of the statutes are created to read:

4 **940.20 (1) (a)** In this subsection:

5 1. “Custody” means actual custody in a state prison, a state treatment facility,  
6 as defined in s. 51.01 (15), a facility for the care of sexually violent persons, as  
7 specified in s. 980.065, or another state, county, or municipal correctional or  
8 detention facility, or actual or constructive custody of a peace officer or a guard or  
9 another employee of a state prison, a state treatment facility, a facility for the care  
10 of sexually violent persons, or another state, county, or municipal correctional or  
11 detention facility.

12 2. “Prisoner or detainee” means a person arrested or confined because he or she  
13 has been accused of committing a crime, alleged delinquent for committing a crime,  
14 alleged to be a sexually violent person, convicted of or adjudicated delinquent for  
15 committing a crime, committed under s. 971.17 after being found not guilty of  
16 committing a crime by reason of mental disease or defect, or committed under s.  
17 980.06 as a sexually violent person.

18 (c) A person may not be convicted under both par. (b) and sub. (2) for the same  
19 act.

20 **SECTION 4.** 946.43 (title) of the statutes is amended to read:

21 **946.43 (title) Assaults by prisoners or detainees.**

22 **SECTION 5.** 946.43 (1g) of the statutes is created to read:

23 **946.43 (1g)** In this section:

24 (a) “Custody” means actual custody in a state prison, a state treatment facility,  
25 as defined in s. 51.01 (15), a facility for the care of sexually violent persons, as

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1 specified in s. 980.065, or another state, county, or municipal correctional or  
2 detention facility, or actual or constructive custody by a peace officer or a guard or  
3 another employee of a state prison, a state treatment facility, a facility for the care  
4 of sexually violent persons, or another state, county, or municipal correctional or  
5 detention facility.

6 (b) “Prisoner or detainee” means a person arrested or confined because he or  
7 she has been accused of committing a crime, alleged delinquent for committing a  
8 crime, alleged to be a sexually violent person, convicted of or adjudicated delinquent  
9 for committing a crime, committed under s. 971.17 after being found not guilty of  
10 committing a crime by reason of mental disease or defect, or committed under s.  
11 980.06 as a sexually violent person.

12 **SECTION 6.** 946.43 (1m) of the statutes is amended to read:

13 946.43 **(1m)** Any prisoner ~~confined to a state prison or other state, county or~~  
14 ~~municipal detention facility~~ or detainee who, while in custody, intentionally does any  
15 of the following is guilty of a Class C felony:

16 (a) ~~Places an officer, employee, visitor or another inmate of such prison or~~  
17 ~~institution~~ a person in apprehension of an immediate battery likely to cause death  
18 or great bodily harm; or

19 (b) ~~Confines or restrains an officer, employee, visitor or another inmate of such~~  
20 ~~prison or institution~~ a person without the person’s consent.

21 **SECTION 7.** 946.43 (2m) (a) of the statutes is amended to read:

22 946.43 **(2m)** (a) Any prisoner ~~confined to a state prison or other state, county~~  
23 ~~or municipal detention facility~~ or detainee who throws or expels blood, semen, vomit,  
24 saliva, urine, feces, or other bodily substance at or toward ~~an officer, employee or~~  
25 ~~visitor of the prison or facility or another prisoner of the prison or facility~~ a person

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1 under all of the following circumstances may be fined not more than \$10,000 or  
2 imprisoned for not more than 2 years or both:

3 1. The prisoner or detainee throws or expels the blood, semen, vomit, saliva,  
4 urine, feces, or other bodily substance with the intent that it come into contact with  
5 the ~~officer, employee, visitor or other prisoner~~ person.

6 2. The prisoner or detainee throws or expels the blood, semen, vomit, saliva,  
7 urine, feces, or other bodily substance with the intent either to cause bodily harm to  
8 the ~~officer, employee, visitor or other prisoner~~ person or to abuse, harass, offend,  
9 intimidate, or frighten the ~~officer, employee, visitor or other prisoner~~ person.

10 3. The ~~officer, employee, visitor or other prisoner~~ person does not consent to the  
11 blood, semen, vomit, saliva, urine, feces, or other bodily substance being thrown or  
12 expelled at or toward him or her.

13 **SECTION 8. Initial applicability.**

14 (1) This act first applies to acts committed on the effective date of this  
15 subsection.

16 (END)