

2001 DRAFTING REQUEST

Bill

Received: **02/08/2001**

Received By: **mdsida**

Wantcd: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Curt Pawlisch**

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

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Correctional System - misc
Mental Health - detent/commit**

Extra Copies: **MGD**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Battery by persons detained or committed

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>
/?	mdsida 04/18/2001			_____			
/1	rryan 05/02/2001	hhagen 05/07/2001	pgreensl 05/08/2001	_____	lrb_docadmin 05/08/2001		
/2	rryan 10/12/2001	hhagen 10/16/2001	pgreensl 10/16/2001	_____	lrb_docadmin 10/16/2001	lrb_docadmin 10/26/2001	
/3	rryan	hhagen	jfrantze	_____	lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	12/10/2001	12/10/2001	12/10/2001	_____	12/10/2001	12/10/2001	

FE Sent For:

None needed

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*13 hnh
12/10/01*

Jb 12/10

[Signature] 12/10

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Requester's email:

Pre Topic:

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/1	rryan 05/02/2001	hhagen 05/07/2001 12 hnh 10/16/01	pgreensl 05/08/2001 10/16 pg	10/16 pg/15	lrb_docadmin 05/08/2001		

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1?	mdsida 04/18/2001 rryan		5/1	5/8			
		<i>RR Ryan</i>	<i>PG.</i>	<i>PS/KK</i>			

FE Sent For:

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Shana R. Lewis

MEMORANDUM

TO: Members of the Legislative Working Group
on Crime Legislation

Of Counsel:
Cheryl Rosen Weston

FROM: Curt Pawlisch

RE: Felony Battery by Prisoners Held in Custody

DATE: March 24, 2000

On behalf of District 1199W/United Professionals for Quality Health Care, I write to request that you include the attached legislation in the truth-in-sentencing bill under consideration by your working group. The proposal clarifies existing law as it relates to penalties for persons who commit, or threaten to commit, battery while held in custody. Last year, a defendant held at Mendota Mental Health Institute for purposes of a competency determination attacked a member of the staff there. A subsequent review of current law suggests that existing statutes do not adequately address such attacks.

Presently, sec. 940.20(1), Stats., makes it a felony for a prisoner to commit a battery against officers, employees, visitors or other inmates at a state correctional facility or state, county or local detention facility. Our proposed amendment to this section is attached.

The changes are intended to address ambiguities in the existing statute. First, the term "prisoner" is defined to include all prisoners confined to a state prison or other state, county or municipal detention facility, and persons whose liberty has been restricted as a result of being accused of committing a crime. This proposed change would address situations such as occurred at the Mendota Mental Health facility this year. Wisconsin courts have interpreted sec. 940.20(1) to apply to a person who has been committed to Mendota after being determined guilty by reason of mental disease or defect. *State v. Skamfer*, 176 Wis.2d 304, 500 N.W.2d 369 (Ct. App. 1993). However, the courts have not addressed whether the statute applies to a defendant at Mendota awaiting a competency determination. While the Wisconsin Jury Instructions suggest that the statute would apply in such an instance (WIS JI-

CRIMINAL 1228), the Skamfer decision suggests that defendants are not "prisoners" within the meaning of the statute (a restraint of liberty must be "premised upon a prior finding that he had violated the criminal law.") Skamfer, 176 Wis. 2d at 309.

A second gap in the present form of sec. 940.20(1) also exists with respect to inmates who receive medical treatment outside of their correctional facility. In State v. Cummings, a prisoner who had attempted to commit suicide at Waupun was transferred to UW Hospital. 153 Wis. 2d 603, 451 N.W.2d 463 (Ct. App. 1989). At the hospital, he injured one of the state's correctional officers. In holding that sec. 940.20(1) applied, the court ruled that the prisoner was at a detention facility in that the hospital had become a "precinct" of Waupun in this instance. Had the prisoner committed a battery upon a UW employee, however, sec. 940.20(1) may not have applied because the employee would not be an employee of Waupun but of the UW Hospital. The draft addresses this problem by providing that sec. 940.20(1) applies if a battery occurs to any person regardless of whether they are an employee of a correctional institution.

~~Additionally, the proposed draft broadens sec. 940.20(1) to cover threats of battery made by persons held in custody. This expansion is consistent with the treatment of threats as provided in secs. 940.201, 940.203, 940.205 and 940.207, Stats. In the context of the delivery of medical treatment, which is the perspective brought by District 1199W/UPQHC to this issue, such threats cannot and should not be tolerated.~~

Finally, because language similar to 940.20(1) exists in sec. 946.43(2m), we are proposing to make similar changes to the latter statute.

Your consideration and support of our proposal would be much appreciated.

Mendota patients ambush 2 employees in hostage try

By Jason Shepard

The Capital Times

A union representative for employees at Mendota Mental Health Institute said today that all employees dealing with maximum security patients should be equipped with body alarms.

United Professionals for Quality Health Care/District 1100 rep. Leonore Wilson said Tuesday's attack of two female employees by two men should signal that employees are in danger when they are dealing with maximum security patients.

"I don't believe the public should be led to believe that there were few if any injuries involved," Wilson said, adding that she spoke with a nurse who was choked to the point of unconsciousness by one of the two men involved in the attack.

Union calls for body alarms

The two patients who attacked the employees failed in their plan to take the women hostage and barricade themselves in a secure room.

"To say the least, this was a very traumatic experience," Wilson said. "I also believe that this is another example of the need to get body alarms for these people."

"This is a high security unit, and if these patients are going to be walking around freely within this unit, then by all means, I think the employees need body alarms for their own safety," Wilson said.

At least one of the men involved in the

attack is facing first-degree murder charges in Douglas County, and was at Mendota to be evaluated for his competency before his trial.

Madison police Capt. Luis Yudice confirmed Wednesday that a nurse was choked during the fight, which occurred in the doorway of a break room.

Had the two inmates been successful in getting all the way into the break room, they would have been able to lock themselves in the room and take the two employees hostage.

The two women screamed to attract the attention of other employees, heading off the hostage attempt, Yudice said.

"Apparently (the patients) were attempting to hold them as hostages to negotiate their release," Yudice said.

Greg Van Rybroek, deputy director at Mendota, said the incident was over in a matter of minutes and no one was seriously injured.

Madison police immediately arrested the two men.

Alejandro Rivera, 22, of Spencer was booked into the Dane County Jail Tuesday afternoon on charges of false imprisonment.

Devan J. Melton, 32, of Oshkosh was allegedly the man who choked the nurse. He is tentatively charged with false imprisonment and battery.

Rivera was charged with first-degree intentional homicide on July 6 in Douglas County Circuit Court. It is unknown what criminal charges Melton is facing.

Both men were at Mendota being assessed for their competency before standing trial in their respective counties. A competency assessment for both men will

now take place at the Dane County Jail, Van Rybroek said.

He said the public at large was never in danger because the incident was contained within the maximum security forensic unit.

Van Rybroek said dangerous incidents rarely occur, but are an "unfortunate" reality when dealing with some of the state's most dangerous criminals.

"It's very frightening, obviously," Van Rybroek said. Mendota officials have launched their own investigation into the matter to see if the institute's policies were followed before, during and after the incident.

Van Rybroek also said trauma counselors are available for staff members at the center.

Sandy

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 1999 SENATE BILL 237**

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 92, line 25: delete that line.

3 2. Page 93, line 1: delete lines 1 to 4 and substitute:

4 "SECTION 299g. 940.20 (1) of the statutes is renumbered 940.20 (1) (b) and
5 amended to read:

6 940.20 (1) (b) Any prisoner confined to a state prison or other state, county or
7 municipal detention facility who, while in custody, intentionally causes bodily harm
8 ~~or threatens to cause bodily harm~~ to an officer, employe, visitor or another inmate
9 of such prison or institution person, without his or her the consent of the person
10 harmed or threatened, is guilty of a Class D H felony.

11 SECTION 299h. 940.20 (1) (a) of the statutes is created to read:

12 940.20 (1) (a) In this subsection:

1 1. "Custody" means actual custody in a state prison, a state treatment center,
2 as defined in s. 51.01 (15), or other state, county or municipal correctional or
3 detention facility, or actual or constructive custody by a peace officer or a guard or
4 other employe of a state prison, a state treatment center, as defined in s. 51.01 (15),
5 or other state, county or municipal correctional or detention facility.

6 2. "Prisoner" means a person arrested or confined because he or she has been
7 accused of committing a crime, alleged to be delinquent for committing a crime,
8 convicted of or adjudicated delinquent for committing a crime, or committed under
9 s. 971.17 after being found not guilty of committing a crime by reason of mental
10 disease or defect."

11 3. Page 127, line 23: delete that line.

12 4. Page 128, line 1: delete lines 1 to 3 and substitute:

13 "SECTION 511j. 946.43 of the statutes is renumbered 946.43 (2m) and amended
14 to read:

15 946.43 (2m) ~~Any prisoner confined to a state prison or other state, county or~~
16 ~~municipal detention facility who, while in custody,~~ intentionally does any of the
17 following is guilty of a Class C F felony:

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

21 (b) ~~Confines or restrains an officer, employe, visitor or another inmate of such~~
22 ~~prison or institution person~~ without the person's consent.

23 SECTION 511k. 946.43 (1m) of the statutes is created to read:

24 946.43 (1m) In this section:

1 (a) "Custody" means actual custody in a state prison, a state treatment center,
2 as defined in s. 51.01 (15), or other state, county or municipal correctional or
3 detention facility, or actual or constructive custody by a peace officer or a guard or
4 other employe of a state prison, a state treatment center, as defined in s. 51.01 (15),
5 or other state, county or municipal correctional or detention facility.

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

11 5. Page 188, line 25: delete "943.20 (3) (d) 2.," and substitute "940.20 (1),
12 943.20 (3) (d) 2., 946.43,".

13 6. Page 190, line 9: delete "940.20 (1)."

14 7. Page 191, line 19: delete "946.43 (intro)."

15 8. Page 193, line 4: after "940.09 (1c)," insert "940.20 (1) (a)."

16 9. Page 193, line 5: after "943.50 (4) (bm)," insert "946.43 (1m)."

17 10. Page 194, line 1: delete "943.20 (3) (d) 2.," and substitute "940.20 (1),
18 943.20 (3) (d) 2., 946.43,".

19 11. Page 195, line 13: delete "940.20 (1)."

20 12. Page 196, line 23: delete "946.43 (intro)."

21 13. Page 198, line 9: after "940.09 (1c)," insert "940.20 (1) (a)."

22 14. Page 198, line 10: after "943.50 (4) (bm)," insert "946.43 (1m)."

23

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2463/1
RLR:hmk

In 5/2/01

2001 BILL

D-Note

Gen. Cat.

1 AN ACT ¹ relating to: battery or assault by a prisoner or detainee and providing
2 a penalty.

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 substances is a fine not to exceed \$10,000; a term of confinement followed by a term of extended supervision that together may not exceed two years, or both. ^{bodily}

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

BILL

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, 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.

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 a state treatment center or another detention facility, regardless of whether the prisoner or detainee is on the grounds of the prison, treatment center, or another detention facility when the prohibited act occurs.

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 DETAINEEES.

History: 1977 c. 173; 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4); 1989 a. 336; 1993 a. 54, 164, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 145, 225, 343; 1997 a. 35, 143, 283; 1999 a. 85.

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~~

BILL

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

History: 1977 c. 173; 1979 c. 30, 113, 221; 1981 c. 118 s. 9; 1983 a. 189 s. 329 (4); 1989 a. 336; 1993 a. 54, 164, 491; 1995 a. 27 s. 9126 (19); 1995 a. 77, 145, 225, 343; 1997 a. 35, 143, 283; 1999 a. 85.

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

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

5 1. "Custody" means actual custody in a state prison, a state treatment center,
6 as defined in s. 51.01 (15), or another state, county, or municipal correctional or
7 detention facility, or actual or constructive custody of a peace officer or a guard or
8 another employee of a state prison, a state treatment center, as defined in s. 51.01
9 (15), or another state, county, or municipal correctional or detention facility.

10 2. "Prisoner or detainee" means a person arrested or confined because he or she
11 has been accused of committing a crime, alleged delinquent for committing a crime,
12 convicted of or adjudicated delinquent for committing a crime, or committed under
13 s. 971.17 after being found not guilty of committing a crime by reason of mental
14 disease or defect.

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

16 **946.43** (title) **Assaults by prisoners or detainees.**

History: 1977 c. 173, 273; 1999 a. 188.

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

18 946.43 (1g) In this section:

19 (a) "Custody" means actual custody in a state prison, a state treatment center,
20 as defined in s. 51.01 (15), or another state, county, or municipal correctional or
21 detention facility, or actual or constructive custody by a peace officer or a guard or
22 another employee of a state prison, a state treatment center, as defined in s. 51.01
23 (15), or another state, county, or municipal correctional or detention facility.

BILL

SECTION 5

1 (b) "Prisoner or detainee" means a person arrested or confined because he or
 2 she has been accused of committing a crime, alleged delinquent for committing a
 3 crime, convicted of or adjudicated delinquent for committing a crime, or committed
 4 under s. 971.17 after being found not guilty of committing a crime by reason of mental
 5 discase or dcfct.

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

7 946.43 (1m) Any prisoner ~~confined to a state prison or other state, county, or~~
 8 ~~municipal detention facility~~ or detainee who, while in custody, intentionally does any
 9 of the following is guilty of a Class C felony:

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

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

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

16 946.43 (2m) (a) Any prisoner or detainee ~~confined to a state prison or other~~
 17 ~~state, county, or municipal detention facility~~ who throws or expels blood, semen,
 18 vomit, saliva, urine, feces, or other bodily substance at or toward ~~an officer, employee,~~
 19 ~~or visitor of the prison or facility or another prisoner of the prison or facility~~ a person
 20 under all of the following circumstances may be fined not more than \$10,000 or
 21 imprisoned for not more than 2 years or both:

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

non underlying

BILL

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

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

History: 1977 c. 173, 273; 1999 a. 188.

(END)

Section # Initial applicability.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2463/1dn

RLR:jrm:h

Date

Representative Underheim:

1. Please note that a person who is committed to the department of health and family services as a sexually violent person is not a prisoner or detainee for purposes of the crimes covered by this bill, because the person is confined under a civil commitment process rather than for the commission of an offense. Please let me know if you would like the crimes to apply to a person committed under chapter 980 as well.

2. The criminal provision that prohibits a prisoner from throwing bodily substances, s. 946.43 (2m), stats., was enacted in May 2000, after the date on Curt Pawlisch's memo requesting changes to ss. 940.20(1) and 946.43, stats. In drafting the bill I assumed that you wanted this bill to apply the same changes concerning the definition of who constitutes a "prisoner" to the new crime under s. 946.43 (2m), stats., as are applied to the crime of threatening or restraining an employee of a prison or institution under s. 943.43, 1999 stats., now s. 946.43(1m), stats.

Please contact me with any questions or requests for changes to the bill.

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-2463/1dn
RLR:hmh:pg

May 7, 2001

Representative Underheim:

1. Please note that a person who is committed to the department of health and family services as a sexually violent person is not a prisoner or detainee for purposes of the crimes covered by this bill, because the person is confined under a civil commitment process rather than for the commission of an offense. Please let me know if you would like the crimes to apply to a person committed under chapter 980 as well.
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Please contact me with any questions or requests for changes to the bill.

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

Ryan, Robin

From: Lonergan, Sandra
Sent: September 21, 2001 3:59 PM
To: Ryan, Robin
Subject: LRB 2463/1

Hi Robin,

You drafted a bill for Gregg Underheim, LRB 2463/1. In the drafter's notes, you had two comments/questions. Here are Gregg's responses:

#1 - yes

#2 - ok

Then I believe it's a go.

Thank you,
Sandy
(Underheim's office)

OTHERS

These 3 requests are related

- ① LRB-2463/2
- ② LRB-3986/1 - should be the same as LRB-2463/2
- ③ LRB-20183/2 - redraft makes same changes as redraft of LRB-2463/1 to 2

In 10/12/06

In 10/12/01

RMR

2001 BILL

Regenerate

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 946.43
3 (1g) of the statutes; **relating to:** battery or assault by a prisoner or detainee and
4 providing a penalty.

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).

alleged to be a sexually violent person

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, 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 ~~a state treatment center~~ or another detention facility, regardless of whether the prisoner or detainee is on the grounds of ~~the~~ prison, ~~treatment center,~~ or another detention facility when the prohibited act occurs.
or of a state treatment facility or state treatment facility

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) of the statutes is created to read:

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

*a facility for the care of sexually
violent persons, as specified in
s. 980.065,*

5 1. "Custody" means actual custody in a state prison, a state treatment center, facility

6 as defined in s. 51.01 (15), or another state, county, or municipal correctional or
7 detention facility, or actual or constructive custody of a peace officer or a guard or
8 another employee of a state prison, a state treatment center, facility, as defined in s. 51.01
9 (15), or another state, county, or municipal correctional or detention facility.

10 2. "Prisoner or detainee" means a person arrested or confined because he or she

11 has been accused of committing a crime, alleged delinquent for committing a crime,
12 convicted of or adjudicated delinquent for committing a crime, or committed under
13 s. 971.17 after being found not guilty of committing a crime by reason of mental
14 disease or defect, or committed under s. 980.06 as a sexually violent person.

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

16 946.43 (title) **Assaults by prisoners or detainees.**

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

18 946.43 (1g) In this section:

19 (a) "Custody" means actual custody in a state prison, a state treatment center, facility

20 as defined in s. 51.01 (15), or another state, county, or municipal correctional or
21 detention facility, or actual or constructive custody by a peace officer or a guard or
22 another employee of a state prison, a state treatment center, facility, as defined in s. 51.01
23 (15), or another state, county, or municipal correctional or detention facility.
a facility for the care of sexually violent persons,

24 (b) "Prisoner or detainee" means a person arrested or confined because he or

25 she has been accused of committing a crime, alleged delinquent for committing a
*a facility for the care of sexually violent persons, as
specified in s. 980.065,*

a facility for the care of sexually violent persons,

alleged to be a sexually violent person,

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alleged to be a sexually violent person,

1 crime, *or* convicted of or adjudicated delinquent for committing a crime, *or* committed
2 under s. 971.17 after being found not guilty of committing a crime by reason of mental
3 disease or defect, *or committed under s. 980.06 as a sexually violent person*

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

5 946.43 (1m) Any prisoner ~~confined to a state prison or other state, county or~~
6 ~~municipal detention facility or detainee~~ who, while in custody, intentionally does any
7 of the following is guilty of a Class C felony:

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

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

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

14 946.43 (2m) (a) Any prisoner ~~confined to a state prison or other state, county~~
15 ~~or municipal detention facility or detainee~~ who throws or expels blood, semen, vomit,
16 saliva, urine, feces, or other bodily substance at or toward ~~an officer, employee or~~
17 ~~visitor of the prison or facility or another prisoner of the prison or facility~~ a person
18 under all of the following circumstances may be fined not more than \$10,000 or
19 imprisoned for not more than 2 years or both:

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

23 2. The prisoner or detainee throws or expels the blood, semen, vomit, saliva,
24 urine, feces, or other bodily substance with the intent either to cause bodily harm to

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1 the ~~officer, employee, visitor or other prisoner~~ person or to abuse, harass, offend,
2 intimidate, or frighten the ~~officer, employee, visitor or other prisoner~~ person.

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

6 **SECTION 8. Initial applicability.**

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

9 (END)



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

STEPHEN R. MILLER
CHIEF

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

October 16, 2001

MEMORANDUM

To: Representative Underheim

From: Robin L. Ryan, Legislative Attorney

Re: LRB-2463/2 Battery by persons detained or committed

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) 261-6927 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.

11/21/01

Curt Pawlisch

251-0101

LRB 2463/2

Ron Sklansky (Leg. Council) concerned
that too broad b/c covers people
after just an arrest

Could do to

(1) Eliminate arrest from def. of "custody"
so just applies to those who
are confined

(2) Since is already a Class D felony
to batter police officers acting
in official capacity - could
just specify that can't be
convicted under both 940.20(1) & (2)

wait for further instructions

11/30/01

Go with 2nd option - can be charged w/
both, but can't be convicted of both

Sklansky
(Perhaps use lang. from drunk driving
re duplicate charging of crim. conviction)

Ryan, Robin

From: Lonergan, Sandra
Sent: November 30, 2001 4:24 PM
To: 'Curt Pawlisch'; Ryan, Robin
Cc: Rossmiller, Dan; daniel.rossmiller@legis.state.wi.us
Subject: RE: Battery by prisoners

Robin,
Yes, please make the changes. Any questions, please call.
Thank you,
Sandy
(Underheim's office)

-----Original Message-----

From: Curt Pawlisch [mailto:pawlisch@cwpb.com]
Sent: Friday, November 30, 2001 3:56 PM
To: Robin.ryan@legis.state.wi.us
Cc: Dan.Rossmiller@legis.state.wi.us;
daniel.rossmiller@legis.state.wi.us; Sandra.Lonergan@legis.state.wi.us
Subject: Battery by prisoners

Robin,

As we discussed, LRB ^{246B}~~2653~~ needs to be redrafted to incorporate the suggestion of Senator George that we clarify that persons may not be sentenced under both s. 940.20(1), (as amended by the bill) and 940.20(2) (battery to police officers). With this change, Senator George will be the main Senate author of the bill.

The draft is under Rep. Underheim's name. By copy of this e-mail, I am asking Sandy of his staff to confirm with you that you should incorporate the instruction above.

Thank you.

--Curt

Curt F. Pawlisch
Cullen Weston Pines & Bach LLP
122 West Washington Ave., Suite 900
Madison, WI 53703
E-Mail- pawlisch@cwpb.com
Office- (608) 251-0101
Fax- (608) 251-2883
www.cwpb.com

"This is a transmission from the law firm of Cullen Weston Pines & Bach LLP and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (608) 251-0101."

In 12/10/01

RMR

2001 BILL

Regenerate

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

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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.

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

BILL

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) of the statutes ^{and (c)} ~~is~~ ^{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 **SECTION 4.** 946.43 (title) of the statutes ^X is amended to read:

19 **946.43 (title) Assaults by prisoners or detainees.**

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

21 946.43 (1g) In this section:

22 (a) "Custody" means actual custody in a state prison, a state treatment facility,
23 as defined in s. 51.01 (15), a facility for the care of sexually violent persons, as
24 specified in s. 980.065, or another state, county, or municipal correctional or
25 detention facility, or actual or constructive custody by a peace officer or a guard or

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

BILL

1 another employee of a state prison, a state treatment facility, a facility for the care
2 of sexually violent persons, or another state, county, or municipal correctional or
3 detention facility.

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

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

11 946.43 (1m) Any prisoner ~~confined to a state prison or other state, county or~~
12 ~~municipal detention facility or detainee~~ who, while in custody, intentionally does any
13 of the following is guilty of a Class C felony:

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

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

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

20 946.43 (2m) (a) Any prisoner ~~confined to a state prison or other state, county~~
21 ~~or municipal detention facility or detainee~~ who throws or expels blood, semen, vomit,
22 saliva, urine, feces, or other bodily substance at or toward ~~an officer, employee or~~
23 ~~visitor of the prison or facility or another prisoner of the prison or facility~~ a person
24 under all of the following circumstances may be fined not more than \$10,000 or
25 imprisoned for not more than 2 years or both:

