

**2003 DRAFTING REQUEST**

**Bill**

Received: **01/16/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **Lisa Ellinger**

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

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sentencing  
Children - juvenile justice**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Hansen@legis.state.wi.us**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

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

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**Instructions:**

See Attache--redraft 2001 SB 352.

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**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>
/?	gmalaise 01/17/2003	jdye 02/20/2003		_____			S&L Crime
/1			jfrantze 02/20/2003	_____	lemery 02/20/2003	sbasford 03/18/2003 sbasford 03/18/2003	

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

*At Intro.  
Rush for  
floor session*

<END>

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Addl. Drafters: *[Signature]*

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/?	gmalaise	<i>1/20 jld</i>	<i>7/2/26</i>	<i>7/6/26</i>			

FE Sent For:

**<END>**

**Malaise, Gordon**

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-1542

**From:** Ellinger, Lisa  
**Sent:** Thursday, January 16, 2003 9:54 AM  
**To:** Malaise, Gordon  
**Subject:** bill drafts

Gordon:

Sen. Hansen would like 2001-02 ~~bill 2001-02 SB352~~ SB352 re-drafted for introduction this session.

Thank you.

**Lisa Ellinger**  
**Office of State Senator Dave Hansen**  
**State Capitol - Room 319 South**  
**PO Box 7882**  
**Madison WI 53707**  
**608-266-5670**  
**608-267-6791 FAX**

-1542/1

Thurs.  
2/27

3  
2001 SENATE BILL 352

stays

December 19, 2001 - Introduced by Senators HANSEN, DARLING, WELCH, MOEN and BURKE, cosponsored by Representatives MUSSER, AINSWORTH, GUNDRUM, BIES, RYBA, FREESE, LADWIG, ALBERS, NASS, TOWNSEND, VRAKAS, OWENS, OTT, KRAWCZYK, PETTIS, STONE and HINES. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

the violation of throwing a bodily substance, such as blood, semen, urine, or feces, at or toward another person while

Regenerate

1 AN ACT to amend 301.048 (2) (bm) 1. a., 938.183 (1) (a), 938.183 (1m) (c) 1.,  
2 938.183 (1m) (c) 2., 939.635 (1), 939.635 (2) (b) and 969.08 (10) (b) of the  
3 statutes; relating to: a mandatory minimum sentence for a juvenile who is  
4 convicted of throwing a bodily substance at or toward a person while placed in  
5 a secured correctional facility, a secure detention facility, a secured child caring  
6 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) in (c)

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.

SENATE BILL 352

~~31 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 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 (consisting of a term of confinement and a term of extended supervision) 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.

no

Three years and Six months

that violation

CRIME

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

SECTION 1. 301.048 (2) (bm) 1. a. of the statutes is amended to read:

~~301.048 (2) (bm) 1. a. A crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (3), (4) or (5), 940.195 (3), (4) or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1. or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04,~~

SENATE BILL 352

SECTION 1

1 ~~943.06, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.43 (1m) or (2m),~~  
 2 ~~947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or~~  
 3 ~~948.30.~~

Insert  
3-3

4 SECTION 2. 938.183 (1) (a) <sup>X</sup> of the statutes is amended to read:

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

10 SECTION 3. 938.183 (1m) (c) 1. <sup>X</sup> of the statutes is amended to read:

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

19 SECTION 4. 938.183 (1m) (c) 2. <sup>X</sup> of the statutes is amended to read:

20 938.183 (1m) (c) 2. The court of criminal jurisdiction finds that the juvenile has  
 21 committed a lesser offense or a joined offense that is a violation of s. 940.20 (1) or (2m)  
 22 or 946.43 (1m) or (2m) under the circumstances described in sub. (1) (a), that is an  
 23 attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that  
 24 is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am),  
 25 or that is an offense for which the court assigned to exercise jurisdiction under this

PWF

SENATE BILL 352

PWF

1 chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and  
 2 the court of criminal jurisdiction, after considering the criteria specified in s. 938.18  
 3 (5), determines that the juvenile has proved by clear and convincing evidence that  
 4 it would be in the best interests of the juvenile and of the public to adjudge the  
 5 juvenile to be delinquent and impose a disposition specified in s. 938.34.

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

7 939.635 (1) Except as provided in sub. (2), if a person who has been adjudicated  
 8 ~~delinquent~~ is convicted of violating s. 940.20 (1) while placed in a secured correctional  
 9 facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s.  
 10 938.02 (16), a secured child caring institution, as defined in s. 938.02 (15g), or a  
 11 secured group home, as defined in s. 938.02 (15p), or is convicted of violating s. 940.20  
 12 (2m), the court shall sentence the person to not less than 3 years of imprisonment.  
 13 Except as provided in sub. (2), if a person is convicted of violating s. 946.43 (1m) while  
 14 placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure  
 15 detention facility, as defined in s. 938.02 (16), a secured child caring institution, as  
 16 defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the  
 17 court shall sentence the person to not less than 5 years of imprisonment. Except as  
 18 provided in sub. (2), if a person is convicted of violating s. 946.43 (2m) while placed  
 19 in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention  
 20 facility, as defined in s. 938.02 (16), a secured child caring institution, as defined in  
 21 s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the court shall  
 22 sentence the person to 2 years of imprisonment.

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

23 939.635 (2) (b) That imposing the applicable presumptive minimum sentence  
 24 ~~specified in sub. (1) is not necessary to deter the person or other persons from~~

**SENATE BILL 352**

1 committing violations of s. 940.20 (1) or 946.43 (1m) or (2m) or other similar offenses  
 2 while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure  
 3 detention facility, as defined in s. 938.02 (16), or a secured child caring institution,  
 4 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),  
 5 or from committing violations of s. 940.20 (2m).

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

7 969.08 (10) (b) "Serious crime" means any crime specified in s. 346.62 (4),  
 8 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195  
 9 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25,  
 10 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30,  
 11 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10,  
 12 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43 (1m) or (2m), 947.015,  
 13 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, or 948.30.

✓  
 Insert  
 5-13

**SECTION 8. Initial applicability.**

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

(END)

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1542/lins  
GMM.....

(INSERT 3-3)

SECTION 1. 301.048 (2) (bm) 1. a. of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

301.048 (2) (bm) 1. a. A crime specified in s. 940.19 (3), 1999 stats., s. 940.195 (3), 1999 stats., s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (4) or (5), 940.195 (4) or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1. or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2., or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.30, 943.32, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

NOTE: NOTE: Subd. 1. a. is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads: NOTE:

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

History: 1991 a. 39; 1993 a. 79, 97, 227, 437, 479; 1995 a. 27; 1997 a. 27, 133, 181, 283; 1999 a. 9; 2001 a. 109.

(END OF INSERT)

(INSERT 5-13)

SECTION 2. 939.635 of the statutes is created to read:

**939.635 Penalty; assault in secured juvenile facilities.** (1) Except as provided in sub. (2), if a person is convicted of violating s. 946.43 (2m) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secured detention facility, as defined in s. 938.02 (16), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the court shall sentence the person to not less than 2 years of imprisonment.

\*

↓

(2) Notwithstanding sub. (1), a court may place a person who is subject to sub. (1) on probation or impose on that person a sentence that is less than the presumptive minimum sentence specified in sub. (1) only if the court makes all of the following findings of fact and places on the record its reasons for imposing probation or that lesser sentence:

(a) That placing the person on probation or imposing a lesser sentence would not depreciate the seriousness of the offense.

(b) That imposing the presumptive minimum sentence specified in sub. (1) is not necessary to deter the person or other persons from committing violations of s. 946.43 (2m) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secured detention facility, as defined in s. 938.02 (16), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p).

SECTION 3. 969.08 (10) (b) of the statutes, as affected by 2001 Wisconsin Act 109, is amended to read:

969.08 (10) (b) "Serious crime" means any crime specified in s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32, 946.01, 946.02, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

NOTE: NOTE: Par. (b) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:NOTE  
(b) "Serious crime" means any crime specified in s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),

~~943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (lg), (lm) or (lr), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 949.30.~~

~~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; 2001 a. 109.~~

(END OF INSERT)

*(END)*

**Basford, Sarah**

---

**From:** Wadd, Jay  
**Sent:** Tuesday, March 18, 2003 9:44 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 03-1542/1 Topic: Mandatory inimum sentence for juvenile who throws bodily substance in juvenile facility

It has been requested by <Wadd, Jay> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-1542/1 Topic: Mandatory inimum sentence for juvenile who throws bodily substance in juvenile facility