

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 132**

June 12, 2003 – Offered by Senator HANSEN.

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. and 969.08 (10) (b); and *to create* 939.635 of the statutes;
3 **relating to:** a mandatory minimum sentence for a juvenile who is convicted of
4 throwing a bodily substance at or toward a person while placed in a secured
5 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 the violation of throwing a bodily substance, such as blood, semen, urine, or feces, 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, 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). A violation of the prohibition against throwing a bodily substance is a Class I felony, for which a court may sentence a person to a fine not to exceed \$10,000; a term of imprisonment, consisting of a term of

confinement in prison followed by a term of extended supervision that together may not exceed three years and six months; or both a fine and a term of imprisonment. For a Class I felony, the term of confinement in prison portion of the sentence may not exceed 18 months.

This amendment 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 the 18-month maximum term of confinement in prison allowed for a Class I felony, unless the court finds both that imposing a lesser sentence would not depreciate the seriousness of the offense and that a 18-month term of confinement in prison is not necessary to deter the juvenile or others from committing the same violation.

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. of the statutes, as affected by 2001 Wisconsin
2 Act 109, is amended to read:

3 301.048 **(2)** (bm) 1. a. A crime specified in s. 940.19 (3), 1999 stats., s. 940.195
4 (3), 1999 stats., s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 940.01,
5 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (4) or (5), 940.195 (4)
6 or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1.
7 or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2., or 3., 940.31, 940.43 (1) to (3), 940.45 (1)
8 to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013,
9 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.30, 943.32, 946.43 (1m) or (2m),
10 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or
11 948.30.

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

13 938.183 **(1)** (a) A juvenile who has been adjudicated delinquent and who is
14 alleged to have violated s. 940.20 (1) or 946.43 (1m) or (2m) while placed in a secured
15 correctional facility, a secure detention facility, a secured child caring institution or

1 a secured group home or who has been adjudicated delinquent and who is alleged to
2 have committed a violation of s. 940.20 (2m).

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

4 938.183 **(1m)** (c) 1. The court of criminal jurisdiction finds that the juvenile has
5 committed a lesser offense or a joined offense that is not a violation of s. 940.20 (1)
6 or (2m) or 946.43 (1m) or (2m) under the circumstances described in sub. (1) (a), that
7 is not an attempt to violate s. 940.01 under the circumstances described in sub. (1)
8 (am), that is not a violation of s. 940.02 or 940.05 under the circumstances described
9 in sub. (1) (am), and that is not an offense for which the court assigned to exercise
10 jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile
11 under s. 938.18.

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

13 938.183 **(1m)** (c) 2. The court of criminal jurisdiction finds that the juvenile has
14 committed a lesser offense or a joined offense that is a violation of s. 940.20 (1) or (2m)
15 or 946.43 (1m) or (2m) under the circumstances described in sub. (1) (a), that is an
16 attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that
17 is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am),
18 or that is an offense for which the court assigned to exercise jurisdiction under this
19 chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and
20 the court of criminal jurisdiction, after considering the criteria specified in s. 938.18
21 (5), determines that the juvenile has proved by clear and convincing evidence that
22 it would be in the best interests of the juvenile and of the public to adjudge the
23 juvenile to be delinquent and impose a disposition specified in s. 938.34.

24 **SECTION 5.** 939.635 of the statutes is created to read:

1 **939.635 Penalty; assault in secured juvenile facilities. (1)** Except as
2 provided in sub. (2), if a person is convicted of violating s. 946.43 (2m) while placed
3 in a secured correctional facility, as defined in s. 938.02 (15m), a secured detention
4 facility, as defined in s. 938.02 (16), a secured child caring institution, as defined in
5 s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the court shall
6 sentence the person to a term of confinement in prison for one year and 6 months and
7 to a term of extended supervision under s. 973.01 (2) (d).

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

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

15 (b) That imposing the presumptive minimum sentence specified in sub. (1) is
16 not necessary to deter the person or other persons from committing violations of s.
17 946.43 (2m) while placed in a secured correctional facility, as defined in s. 938.02
18 (15m), a secured detention facility, as defined in s. 938.02 (16), a secured child caring
19 institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s.
20 938.02 (15p).

21 **SECTION 6.** 969.08 (10) (b) of the statutes, as affected by 2001 Wisconsin Act
22 109, is amended to read:

23 **969.08 (10) (b)** “Serious crime” means any crime specified in s. 943.23 (1m),
24 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03,
25 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201,

1 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g.,
2 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),
3 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32,
4 946.01, 946.02, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03,
5 948.04, 948.05, 948.06, 948.07 or 948.30.

6 **SECTION 7. Initial applicability.**

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

9 (END)