

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB132)

Received: **05/19/2003**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **John**

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

Drafter: **rryan**

May Contact:

Addl. Drafters: **gmalaise**

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

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:

Minimum sentence for juvenile who throws bodily fluids

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>
/?							
/1	rryan 06/10/2003	jdyer 06/10/2003	jfrantze 06/10/2003	_____	sbasford 06/10/2003	sbasford 06/10/2003	
		jdyer 06/10/2003		_____			

FE Sent For:

<END>

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1?	rryan	1/10 jld	6/10	J/cph 6/10			

FE Sent For:

<END>

SB 132

Phone call from Bob Margolis (DOC):
what does min. sentence mean?
mean term of confinement or
minimum sentence (confinement & 85)

Phone call to John in Hansen's office:
clarify min. by specifying it is
a minimum term of confinement
- use 18 mos. - the max for
a class I felony
substitute amendment

50088/1

LRB 415427

eur & GMM

In 6/10/03

Stays
RMP

2003 SENATE BILL 132

D-Note

May 5, 2003 - Introduced by Senators HANSEN and ROESSLER, cosponsored by Representatives AINSWORTH and HINES. Referred to Committee on Judiciary, Corrections and Privacy.

Regen

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). Current law permits an adult court to sentence a juvenile to a period of imprisonment of not more than three years and six months for that violation, but does not provide for a mandatory minimum period of imprisonment for that violation. (INS 1 ✓)

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,

amendment

SENATE BILL 132

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~~ **INS 2** ✓

~~Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.~~

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

11 938.183 (1m) (c) 2. The court of criminal jurisdiction finds that the juvenile has
12 committed a lesser offense or a joined offense that is a violation of s. 940.20 (1) or (2m)
13 or 946.43 (1m) or (2m) under the circumstances described in sub. (1) (a), that is an
14 attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that
15 is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am),
16 or that is an offense for which the court assigned to exercise jurisdiction under this
17 chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and
18 the court of criminal jurisdiction, after considering the criteria specified in s. 938.18
19 (5), determines that the juvenile has proved by clear and convincing evidence that
20 it would be in the best interests of the juvenile and of the public to adjudge the
21 juvenile to be delinquent and impose a disposition specified in s. 938.34.

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

23 **939.635 Penalty; assault in secured juvenile facilities.** (1) Except as
24 provided in sub. (2), if a person is convicted of violating s. 946.43 (2m) while placed
25 in a secured correctional facility, as defined in s. 938.02 (15m), a secured detention

SENATE BILL 132

INS 4-3

1 facility, as defined in s. 938.02 (16), a secured child caring institution, as defined in
2 s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), the court shall
3 sentence the person to ~~not less than 2 years of imprisonment.~~

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

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

11 (b) That imposing the presumptive minimum sentence specified in sub. (1) is
12 not necessary to deter the person or other persons from committing violations of s.
13 946.43 (2m) while placed in a secured correctional facility, as defined in s. 938.02
14 (15m), a secured detention facility, as defined in s. 938.02 (16), a secured child caring
15 institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s.
16 938.02 (15p).

17 SECTION 6. 969.08 (10) (b) of the statutes, as affected by 2001 Wisconsin Act
18 109, is amended to read:

19 969.08 (10) (b) "Serious crime" means any crime specified in s. 943.23 (1m),
20 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03,
21 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201,
22 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g.,
23 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),
24 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32,

SENATE BILL 132

1 946.01, 946.02, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03,
2 948.04, 948.05, 948.06, 948.07 or 948.30.

3 **SECTION 7. Initial applicability.**

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

6 (END)

d-note
↓

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0088/lins
RLR:.....

1 **Ins 1:**

2 *not* A violation of the prohibition against throwing a bodily substance is a Class I
3 felony, for which a court may sentence a person to a fine not to exceed \$10,000; a term
4 of imprisonment, consisting of a term of confinement in prison followed by a term of
5 extended supervision that together may not exceed *three* years and six months; or both
6 a fine and a term of imprisonment. For a Class I felony, the term of confinement in
7 prison portion of the sentence may not exceed 18 months.

8
9 **Ins 2:**

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

15
16 **Ins 4-3:**

17 *not* a term of confinement in prison for *one* year and *6* months and to a term of
18 extended supervision under s. 973.01 (2) (d).

analysis text

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0088/1dn

RLR:.....

Jun 10, 2003

Jld

John:

Senate Bill 132 requires a presumptive minimum sentence of two years "imprisonment" for a juvenile who is convicted in adult court for violating the prohibition against throwing a bodily substance while placed in a secured facility. A term of imprisonment consists of both a term of confinement in prison and a term of extended supervision. Instead of requiring a presumptive term of "imprisonment," this substitute amendment requires a presumptive 18-month term of confinement in prison, the maximum term of confinement in prison permitted for a violation of the prohibition against throwing bodily substances.

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Legislative Attorney
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**DRAFTER'S NOTE
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LRBs0088/1dn
RLR:jld:jf

June 10, 2003

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