



2011 SENATE BILL 88

May 4, 2011 – Introduced by Senators HANSEN and CARPENTER, cosponsored by Representative KAUFERT. Referred to Committee on Labor, Public Safety, and Urban Affairs.

1 **AN ACT to amend** 938.396 (2g) (d); and **to create** 173.29, 938.3416, 941.292,
2 971.17 (1i) and 973.0336 of the statutes; **relating to:** possession of dogs by
3 certain felony offenders and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from possessing a firearm if he or she is a felony offender. A person is a felony offender if any of the following applies: 1) he or she has been found guilty of a felony; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult; or 3) he or she has been found not guilty of a felony by reason of mental disease, defect, or illness. If a felony offender violates the prohibition against possessing a firearm, he or she may be fined not more than \$25,000 or imprisoned for not more than ten years, or both.

This bill prohibits, for a specified period of time, certain felony offenders from possessing, controlling, or residing with a vicious dog, as determined by a humane officer or a law enforcement officer, and from possessing a dog that does not have an identification microchip implanted in it. These prohibitions apply to persons whose status as felony offenders is based on the commission of an act that is classified under the bill as a serious felony (serious felony offenders). A serious felony offender who violates any of the prohibitions may be fined up to \$10,000 or imprisoned for up to nine months, or both. If a serious felony offender violates the prohibition against possessing, controlling, or residing with a vicious dog and a person or an animal suffers great bodily harm or death due to the violation, the serious felony offender

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may be fined up to \$10,000 or imprisoned for up to three years and six months, or both. If a serious felony offender violates the prohibition against possessing, controlling, or residing with a vicious dog and a person suffers great bodily harm or death due to the violation and the person knowingly allowed the dog to run loose or failed to take steps to control the dog, the serious felony offender may be fined up to \$10,000 or imprisoned for up to six years, or both.

Unless the serious felony offender is on extended supervision or another supervised status (extended supervision), these prohibitions apply to the serious felony offender for a period of ten years following: 1) any period of incarceration for the serious felony; 2) the conviction for the serious felony if the sentence does not include a period of incarceration; 3) the delinquency adjudication for the serious felony; or 4) the finding of not guilty of the serious felony by reason of insanity or mental disease, defect, or illness. If the serious felony offender is on extended supervision, the prohibition period applies until he or she is no longer on extended supervision.

Under this bill, a serious felony offender may request an exemption from the prohibitions if the exemption is reasonably needed to earn a livelihood or as a condition of employment and will not endanger public safety. A serious felony offender seeking an exemption must file a motion in the circuit court for the county in which he or she will possess, control, or reside with the vicious dog or possess a dog without an identification microchip. The serious felony offender must provide a copy of the motion to the district attorney for that county, who must in turn make a reasonable attempt to contact local law enforcement agencies to inform them of the request and to solicit any information that may be relevant to whether the request should be granted.

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.** 173.29 of the statutes is created to read:

2 **173.29 Vicious dogs. (1) DEFINITION.** In this section, “serious physical injury”
3 means physical injury that creates a substantial risk of death; that causes serious
4 disfigurement, protracted impairment of health, or impairment of a bodily organ; or
5 that necessitates plastic surgery.

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1 **(2) DETERMINATION.** If a humane officer or law enforcement officer, after
2 conducting an investigation, determines that a dog satisfies one of the standards
3 under sub. (3), the humane officer or law enforcement officer may issue a written
4 order to the owner or custodian of the dog declaring the dog to be vicious for purposes
5 of s. 941.292. In the written order, the humane officer or law enforcement officer shall
6 notify the owner or custodian of the dog of the incidents that are the basis for the
7 investigation. The written order shall include a description of s. 941.292 and of the
8 right to a hearing under ch. 68.

9 **(3) STANDARDS.** The humane officer or law enforcement officer may determine
10 that a dog is vicious if one of the following applies:

11 (a) The dog, without justification, attacked a person and caused serious
12 physical injury or death.

13 (b) The dog has done any of the following on 3 occasions, without justification:

14 1. Bitten a person without causing serious physical injury or death.

15 2. Attacked a cat or dog and caused serious physical injury to, or the death of,
16 the cat or dog.

17 3. Behaved in a manner that a reasonable person would believe posed a
18 significant, imminent threat of serious physical injury or death to a person, cat, or
19 dog.

20 **(4) JUSTIFICATION.** The humane officer or law enforcement officer may not
21 determine that a dog's actions are without justification if any of the following applies:

22 (a) A person threatened, bitten, or attacked by the dog was committing a crime
23 against the owner or custodian of the dog or was committing a willful trespass or
24 other tort upon property owned or occupied by the owner or custodian of the dog.

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1 (b) A person threatened, bitten, or attacked by the dog was abusing, assaulting,
2 or physically threatening the dog or its offspring or had previously abused,
3 assaulted, or physically threatened the dog or its offspring.

4 (c) A cat or dog threatened or attacked by the dog was attacking or threatening
5 to attack the dog or its offspring.

6 (d) The dog was responding to pain or injury or was protecting itself, its
7 offspring, another dog living on the same property, its owner or custodian, or a person
8 living in the household of its owner or custodian.

9 **SECTION 2.** 938.3416 of the statutes is created to read:

10 **938.3416 Delinquency adjudication; restriction on possessing certain**
11 **dogs.** Whenever a court adjudicates a juvenile delinquent for an act that if
12 committed by an adult in this state would be a serious felony, as defined in s. 941.292
13 (1) (d), the court shall inform the juvenile of the requirements and penalties under
14 s. 941.292.

15 **SECTION 3.** 938.396 (2g) (d) of the statutes is amended to read:

16 938.396 (2g) (d) *Bail; impeachment; ~~firearm~~ possession of prohibited items.*
17 Upon request of a court of criminal jurisdiction or a district attorney to review court
18 records for the purpose of setting bail under ch. 969, impeaching a witness under s.
19 906.09, or investigating and determining whether a person has possessed a firearm
20 in violation of s. 941.29 (2) ~~or~~, body armor in violation of s. 941.291 (2), or a dog in
21 violation of s. 941.292, or upon request of a court of civil jurisdiction or the attorney
22 for a party to a proceeding in that court to review court records for the purpose of
23 impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction
24 under this chapter and ch. 48 shall open for inspection by authorized representatives

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1 of the requester the records of the court relating to any juvenile who has been the
2 subject of a proceeding under this chapter.

3 **SECTION 4.** 941.292 of the statutes is created to read:

4 **941.292 Possession of certain dogs. (1) DEFINITIONS.** In this section:

5 (a) “Confinement term” means the period during which a person is incarcerated
6 in prison.

7 (b) “Identifying microchip” means a microchip that is implanted in a dog by a
8 licensed veterinarian and that identifies the owner of the dog.

9 (d) “Serious felony” means a felony under s. 940.01, 940.02, 940.03, 940.05,
10 940.19 (2), (4), or (5), 940.225 (1) or (2), 940.31, 943.02, 943.10 (2), 943.23 (1g), 943.32
11 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (3) (a), 948.05,
12 948.08, or 948.30 (2) or a felony violation of ch. 961.

13 (e) “Vicious dog” means a dog that is determined to be vicious under s. 173.29.

14 **(2) APPLICABILITY.** A person is subject to the requirements and penalties of this
15 section if any of the following applies:

16 (a) 1. He or she has been convicted of a serious felony in this state and was
17 serving a confinement term for that conviction within the preceding 10 years.

18 2. He or she has been convicted of a crime elsewhere that would be a serious
19 felony if committed in this state and was serving a confinement term for that
20 conviction within the preceding 10 years.

21 (b) 1. He or she has been convicted of a serious felony in this state within the
22 preceding 10 years.

23 2. Within the preceding 10 years, he or she has been convicted of a crime
24 elsewhere that would be a serious felony if committed in this state.

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1 (c) 1. He or she is on extended supervision as part of a sentence following a
2 conviction for a serious felony or is on parole or probation following a conviction for
3 a serious felony.

4 2. He or she is on a supervised status following a conviction for a crime
5 elsewhere that would be a serious felony if committed in this state.

6 (d) He or she has been adjudicated delinquent within the preceding 10 years
7 for an act that if committed by an adult in this state would be a serious felony.

8 (e) He or she has been found not guilty within the preceding 10 years of a
9 serious felony, or of a crime elsewhere that would be a serious felony if committed in
10 this state, by reason of insanity or mental disease, defect, or illness.

11 **(3) PROHIBITIONS.** A person specified in sub. (2) may not do any of the following:

12 (a) Possess, control, or reside with a vicious dog.

13 (b) Possess a dog over 12 weeks of age that does not have an identifying
14 microchip.

15 **(4) PENALTIES.** (a) Except as provided in pars. (b) and (c), whoever violates sub.
16 (3) is guilty of a Class A misdemeanor.

17 (b) Whoever violates sub. (3) (a) is guilty of a Class I felony if a person or an
18 animal suffers great bodily harm or death as a result of the violation.

19 (c) Whoever violates sub. (3) (a) is guilty of a Class H felony if an individual
20 suffers great bodily harm or death as a result of the violation and the person
21 knowingly allowed the dog to run loose or failed to take steps to keep the dog in an
22 enclosure or under control.

23 **(5) APPLICABILITY.** (a) This section does not apply to any person specified in sub.
24 (2) who has received a pardon with respect to the serious felony.

25 (b) Subsection (3) (a) does not apply to a person if any of the following applies:

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1 1. Not more than 5 days have elapsed since the person received a written order
2 under s. 173.29 declaring the dog vicious.

3 2. A hearing is pending under ch. 68.

4 **(6) REQUEST FOR EXEMPTION.** (a) A person specified in sub. (2) may request an
5 exemption from a prohibition under sub. (3) by filing a written motion in the circuit
6 court for the county in which the person will possess, control, or reside with the
7 vicious dog or possess a dog without an identifying microchip.

8 (b) A person who files a motion under par. (a) shall send a copy of the motion
9 to the district attorney for the county in which the motion is filed. The district
10 attorney shall make a reasonable attempt to contact the county sheriff and, if
11 applicable, the chief of police of a city, village, or town in the county for the purpose
12 of informing the sheriff and the chief of police that the person has made a request for
13 an exemption and to solicit from the sheriff and chief of police any information that
14 may be relevant to the criteria specified in par. (c) 1. and 2.

15 (c) A court shall grant a request under par. (a) if all of the following apply:

16 1. The person has a reasonable need to possess, control, or reside with a vicious
17 dog, or to possess a dog without an identifying microchip, to earn a livelihood or as
18 a condition of employment.

19 2. Exempting the person from the prohibition under sub. (3) will not endanger
20 public safety.

21 **SECTION 5.** 971.17 (1i) of the statutes is created to read:

22 **971.17 (1i) NOTICE OF RESTRICTIONS ON POSSESSION OF A DOG.** If the defendant
23 under sub. (1) is found not guilty of a serious felony, as defined in s. 941.292 (1) (d),
24 by reason of mental disease or defect, the court shall inform the defendant of the
25 requirements and penalties under s. 941.292.

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1 **SECTION 6.** 973.0336 of the statutes is created to read:

2 **973.0336 Sentencing; restriction on possession of a dog.** Whenever a
3 court imposes a sentence or places a defendant on probation for a conviction for a
4 serious felony, as defined in s. 941.292 (1) (d), the court shall inform the defendant
5 of the requirements and penalties under s. 941.292.

6 **SECTION 7. Initial applicability.**

7 (1) POSSESSION OF A DOG.

8 (a) In this subsection, “serious felony” has the meaning given in section 941.292
9 (1) (d) of the statutes, as created by this act.

10 (b) The treatment of section 941.292 of the statutes first applies to the
11 possession of a dog that occurs on the effective date of this paragraph, but does not
12 preclude the counting of an act that was committed before the effective date of this
13 paragraph for purposes of determining whether any of the following makes a person
14 subject to section 941.292 of the statutes, as created by this act:

15 1. The person has been convicted of a serious felony in this state.

16 2. The person has been convicted of a crime elsewhere that would be a serious
17 felony if committed in this state.

18 3. The person has been adjudicated delinquent for an act that if committed by
19 an adult in this state would be a serious felony.

20 4. The person has been found not guilty of a serious felony in this state by
21 reason of mental disease or defect.

22 5. The person has been found not guilty of or not responsible for a crime
23 elsewhere by reason of insanity or mental disease, defect, or illness if the crime would
24 be a serious felony in this state.

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1 (2) INFORMATION AT DISPOSITIONAL HEARINGS. The treatment of section 938.3416
2 of the statutes first applies to dispositional hearings that occur on the effective date
3 of this subsection.

4 (3) INFORMATION AT COMMITMENT HEARINGS. The treatment of section 971.17 (1i)
5 of the statutes first applies to commitment hearings that occur on the effective date
6 of this subsection.

7 (4) INFORMATION AT SENTENCING. The treatment of section 973.0336 of the
8 statutes first applies to sentencing proceedings that occur on the effective date of this
9 subsection.

10 (END)