

State of Wisconsin



1999 Senate Bill 110

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1999 WISCONSIN ACT 188

AN ACT *to renumber* 946.43; *to amend* 146.81 (4), 252.11 (5m), 252.11 (7), 252.15 (2) (a) 6., 252.15 (5) (a) 17., 302.11 (1g) (a) 2., 901.05 (2) (intro.), 901.05 (3), 938.296 (3) (intro.), 938.296 (6), 938.299 (4) (b), 938.373 (1), 939.50 (1) (intro.), 939.62 (2m) (a) 2m. b., 939.635 (1), 939.635 (2) (b), 950.04 (1v) (d), 968.38 (3) (intro.), 971.13 (4) and 973.0135 (1) (b) 2.; and *to create* 938.296 (2m), 938.296 (5), 938.346 (1) (ec), 946.43 (2m), 968.38 (2m) and 968.38 (5) of the statutes; **relating to:** prisoners throwing or expelling bodily substances at or toward others, testing for the presence of communicable diseases in certain criminal defendants and juveniles alleged to be delinquent or in need of protection or services and providing a penalty.

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

SECTION 1. 146.81 (4) of the statutes is amended to read:

146.81 (4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125.

SECTION 2. 252.11 (5m) of the statutes is amended to read:

252.11 (5m) A health care professional, as defined in s. 968.38 (1) (a), acting under an order of a court under s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining informed consent to the testing, subject an individual to a test or a series of tests to ascertain whether that individual is infected with a sexually transmitted disease.

No sample used for performance of a test under this subsection may disclose the name of the test subject.

SECTION 3. 252.11 (7) of the statutes is amended to read:

252.11 (7) Reports, examinations and inspections and all records concerning sexually transmitted diseases are confidential and not open to public inspection, and shall not be divulged except as may be necessary for the preservation of the public health, in the course of commitment proceedings under sub. (5) or as provided under s. 938.296 (4) or (5) or 968.38 (4) or (5). If a physician has reported a case of sexually transmitted disease to the department under sub. (4), information regarding the presence of the disease and treatment is not privileged when the patient or physician is called upon to testify to the facts before any court of record.

SECTION 4. 252.15 (2) (a) 6. of the statutes is amended to read:

252.15 (2) (a) 6. A health care professional acting under an order of the court under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

nonantigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding sub. (4) (c), the test results may not be made part of the individual's permanent medical record.

SECTION 5. 252.15 (5) (a) 17. of the statutes is amended to read:

252.15 (5) (a) 17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 938.296 (4) (e) or (5) (e) or 968.38 (4) (c) or (5) (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or guardian of the alleged victim or victim, under s. 938.296 (4) or (5) or 968.38 (4) or (5).

SECTION 6. 302.11 (1g) (a) 2. of the statutes is amended to read:

302.11 (1g) (a) 2. Any felony under s. 940.02, 940.03, 940.05, 940.09 (1), 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305 (2), 940.31 (1) or (2) (b), 943.02, 943.10 (2), 943.23 (1g) or (1m), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 7. 901.05 (2) (intro.) of the statutes is amended to read:

901.05 (2) (intro.) Except as provided in sub. (3), the results of a test or tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV ~~and the fact that a person has been ordered or required to submit to such a test or tests under s. 938.296 (4) or 968.38 (4)~~ are not admissible during the course of a civil or criminal action or proceeding or an administrative proceeding, as evidence of a person's character or a trait of his or her character for the purpose of proving that he or she acted in conformity with that character on a particular occasion unless the evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless the following procedures are used:

SECTION 8. 901.05 (3) of the statutes is amended to read:

901.05 (3) The results of a test or tests under s. 938.296 (4) or (5) or 968.38 (4) or (5) and the fact that a person has been ordered to submit to such a test or tests under s. 938.296 (4) or (5) or 968.38 (4) or (5) are not admissible during the course of a civil or criminal action or proceeding or an administrative proceeding.

SECTION 9. 938.296 (2m) of the statutes is created to read:

938.296 (2m) In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 946.43 (2m), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the

test or tests as specified in sub. (5) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for the order.

(b) The district attorney or corporation counsel has probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine or feces or other bodily substance of the juvenile.

SECTION 10. 938.296 (3) (intro.) of the statutes is amended to read:

938.296 (3) (intro.) The district attorney or corporation counsel may apply for an order under sub. (2) or (2m) at any of the following times:

SECTION 11. 938.296 (5) of the statutes is created to read:

938.296 (5) On receipt of an application for an order under sub. (2m), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine or feces or other bodily substance of the juvenile, the court shall order the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the juvenile. The court shall require the health care professional who performs the test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), if applicable, from making the test results part of the juvenile's permanent medical record and to disclose the results of the test to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.

(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the juvenile.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

SECTION 12. 938.296 (6) of the statutes is amended to read:

938.296 (6) The court may order the county to pay for the cost of a test or series of tests ordered under sub. (4) or (5). This subsection does not prevent recovery of reasonable contribution toward the cost of that test or series of tests from the parent or guardian of the juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 301.03 (18).

SECTION 13. 938.299 (4) (b) of the statutes is amended to read:

938.299 (4) (b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a waiver hearing under s. 938.18, a hearing for a juvenile held in custody under s. 938.21, a hearing under s. 938.296 (4) for a juvenile who is alleged to have violated s. 940.225, 948.02, 948.025, 948.05 or 948.06, a hearing under s. 938.296 (5) for a juvenile who is alleged to have violated s. 946.43 (2m), a dispositional hearing, or any postdispositional hearing under this chapter. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

SECTION 14. 938.346 (1) (ec) of the statutes is created to read:

938.346 (1) (ec) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 946.43 (2m) to submit to a test or a series of tests to detect the presence of communicable diseases and to have the results of that test or series of tests disclosed as provided in s. 938.296 (5) (a) to (e).

SECTION 15. 938.373 (1) of the statutes is amended to read:

938.373 (1) The court assigned to exercise jurisdiction under this chapter and ch. 48 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that reasonable cause exists for the services and that the juvenile is within the

jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 48 and, except as provided in s. 938.296 (4) and (5), consents.

SECTION 15t. 939.50 (1) (intro.) of the statutes is amended to read:

939.50 (1) (intro.) Except as provided in ss. 946.43 (2m) (a), 946.83 and 946.85, felonies in chs. 939 to 951 are classified as follows:

SECTION 16. 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

939.62 (2m) (a) 2m. b. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 17. 939.635 (1) of the statutes is amended to read:

939.635 (1) Except as provided in sub. (2), if a person who has been adjudicated delinquent is convicted of violating s. 940.20 (1) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), or is convicted of violating s. 940.20 (2m), the court shall sentence the person to not less than 3 years of imprisonment. Except as provided in sub. (2), if a person is convicted of violating s. 946.43 (1m) while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), the court shall sentence the person to not less than 5 years of imprisonment.

SECTION 18. 939.635 (2) (b) of the statutes is amended to read:

939.635 (2) (b) That imposing the applicable presumptive minimum sentence specified in sub. (1) is not necessary to deter the person or other persons from committing violations of s. 940.20 (1) or 946.43 (1m) or other similar offenses while placed in a secured correctional facility, as defined in s. 938.02 (15m), a secure detention facility, as defined in s. 938.02 (16), or a secured child caring institution, as defined in s. 938.02 (15g), or from committing violations of s. 940.20 (2m).

SECTION 19. 946.43 of the statutes is renumbered 946.43 (1m).

SECTION 20. 946.43 (2m) of the statutes is created to read:

946.43 (2m) (a) Any prisoner confined to a state prison or other state, county or municipal detention facility who throws or expels blood, semen, vomit, saliva, urine, feces or other bodily substance at or toward an officer, employe or visitor of the prison or facility or another prisoner of the prison or facility under all of the following

circumstances may be fined not more than \$10,000 or imprisoned for not more than 2 years or both:

1. The prisoner throws or expels the blood, semen, vomit, saliva, urine, feces or other bodily substance with the intent that it come into contact with the officer, employe, visitor or other prisoner.

2. The prisoner throws or expels the blood, semen, vomit, saliva, urine, feces or other bodily substance with the intent either to cause bodily harm to the officer, employe, visitor or other prisoner or to abuse, harass, offend, intimidate or frighten the officer, employe, visitor or other prisoner.

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

(b) A court shall impose a sentence for a violation of par. (a) consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when he or she committed the violation of par. (a).

SECTION 21. 950.04 (1v) (d) of the statutes is amended to read:

950.04 (1v) (d) To request an order for, and to be given the results of, testing to determine the presence of a ~~sexually transmitted disease or of any strain of human immunodeficiency virus, of antigen or nonantigen products of any strain of human immunodeficiency virus, or of an antibody of any strain of human immunodeficiency virus~~ communicable disease, as provided under ss. 938.296 or 968.38.

SECTION 22. 968.38 (2m) of the statutes is created to read:

968.38 (2m) In a criminal action under s. 946.43 (2m), the district attorney shall apply to the circuit court for his or her county for an order requiring the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (c), if all of the following apply:

(a) The district attorney has probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant.

(b) The alleged victim or victim who is not a minor or the parent or guardian of the alleged victim or victim who is a minor requests the district attorney to apply for an order.

SECTION 23. 968.38 (3) (intro.) of the statutes is amended to read:

968.38 (3) (intro.) The district attorney may apply under sub. (2) or (2m) for an order at any of the following

times, and, within those times, shall do so as soon as possible so as to enable the court to provide timely notice:

SECTION 24. 968.38 (5) of the statutes is created to read:

968.38 (5) The court shall set a time for a hearing on the matter under sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; after conviction or a finding of not guilty by reason of mental disease or defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that the defendant is not competent, if sub. (3) (d) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or feces or other bodily substance of the defendant, the court shall order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the defendant. The court shall require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test to refrain, notwithstanding s. 252.15 (4) (c), if applicable, from making the test results part of the defendant's permanent medical record and to disclose the results of the test to any of the following:

(a) The alleged victim or victim, if the alleged victim or victim is not a minor.

(b) The parent or guardian of the alleged victim or victim, if the alleged victim or victim is a minor.

(c) The health care professional who provides care to the alleged victim or victim, upon request by the alleged victim or victim or, if the alleged victim or victim is a minor, by the parent or guardian of the alleged victim or victim.

SECTION 25. 971.13 (4) of the statutes is amended to read:

971.13 (4) The fact that a defendant is not competent to proceed does not preclude a hearing under s. 968.38 (4) or (5) unless the probable cause finding required ~~under s. 968.38 (4)~~ to be made at the hearing cannot be fairly made without the personal participation of the defendant.

SECTION 26. 973.0135 (1) (b) 2. of the statutes is amended to read:

973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.195 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m)

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or (1r), 943.32 (2), 946.43 (1m), 948.02 (1) or (2),
948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07,
948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

SECTION 27. Initial applicability.

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