



## 2001 SENATE BILL 352

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.

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.

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### *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):

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.

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3. 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.

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

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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.

4 **SECTION 2.** 938.183 (1) (a) 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 (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. 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) 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. 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

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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.

6 **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.

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

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

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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).

6 **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.

14 **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.

17 (END)