



2007 SENATE BILL 339

November 28, 2007 - Introduced by Senators HANSEN, ROESSLER and PLALE, cosponsored by Representative MUSSER. Referred to Committee on Judiciary, Corrections, and Housing.

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., 941.291 (1) (b) and 969.08 (10) (b); and **to create** 939.635
3 of the statutes; **relating to:** a mandatory minimum sentence for a juvenile who
4 is convicted of throwing a bodily substance at or toward a person while placed
5 in a juvenile correctional facility, a juvenile detention facility, or a secured
6 residential care center for children and youth 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 juvenile correctional facility, a juvenile detention facility, or a secured residential care center for children and youth, 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.

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For a Class I felony, the term of confinement in prison portion of the sentence may not exceed 18 months.

This bill requires an adult court that convicts a juvenile of throwing a bodily substance at or toward another person while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center for children and youth 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.

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.

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. 940.19 (3), 1999 stats., s. 940.195
3 (3), 1999 stats., s. 943.23 (1m), 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 940.01,
4 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (4) or (5), 940.195 (4)
5 or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1.
6 or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2., or 3., 940.31, 940.43 (1) to (3), 940.45 (1)
7 to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013,
8 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), 943.30, 943.32, 946.43 (1m) or (2m),
9 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08,
10 948.085, or 948.30.

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

12 938.183 (1) (a) A juvenile who has been adjudicated delinquent and who is
13 alleged to have violated s. 940.20 (1) or 946.43 (1m) or (2m) while placed in a juvenile
14 correctional facility, a juvenile detention facility, or a secured residential care center

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1 for children and youth or who has been adjudicated delinquent and who is alleged
2 to 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. Except as provided in subd. 3., the court of criminal
5 jurisdiction finds that the juvenile has committed a lesser offense or a joined offense
6 that is not a violation of s. 940.20 (1) or (2m) or 946.43 (1m) or (2m) under the
7 circumstances described in sub. (1) (a), that is not an attempt to violate s. 940.01
8 under the circumstances described in sub. (1) (am), that is not a violation of s. 940.02
9 or 940.05 under the circumstances described in sub. (1) (am), and that is not an
10 offense for which the court assigned to exercise jurisdiction under this chapter and
11 ch. 48 may waive its jurisdiction over the juvenile 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. Except as provided in subd. 3., the court of criminal
14 jurisdiction finds that the juvenile has committed a lesser offense or a joined offense
15 that is a violation of s. 940.20 (1) or (2m) or 946.43 (1m) or (2m) under the
16 circumstances described in sub. (1) (a), that is an attempt to violate s. 940.01 under
17 the circumstances described in sub. (1) (am), that is a violation of s. 940.02 or 940.05
18 under the circumstances described in sub. (1) (am), or that is an offense for which the
19 court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its
20 jurisdiction over the juvenile under s. 938.18 and the court of criminal jurisdiction,
21 after considering the criteria specified in s. 938.18 (5), determines that the juvenile
22 has proved by clear and convincing evidence that it would be in the best interests of
23 the juvenile and of the public to adjudge the juvenile to be delinquent and impose a
24 disposition specified in s. 938.34.

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

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1 **939.635 Penalty; assault in juvenile facilities.** (1) Except as provided in
2 sub. (2), if a person is convicted of violating s. 946.43 (2m) while placed in a juvenile
3 correctional facility, as defined in s. 938.02 (10p), a juvenile detention facility, as
4 defined in s. 938.02 (10r), or a secured residential care center for children and youth,
5 as defined in s. 938.02 (15g), the court shall sentence the person to a term of
6 confinement in prison for one year and 6 months and to a term of extended
7 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 juvenile correctional facility, as defined in s. 938.02
18 (10p), a juvenile detention facility, as defined in s. 938.02 (10r), or a secured
19 residential care center for children and youth, as defined in s. 938.02 (15g).

20 **SECTION 6.** 941.291 (1) (b) of the statutes is amended to read:

21 941.291 (1) (b) "Violent felony" means any felony, or the solicitation, conspiracy,
22 or attempt to commit any felony, under s. 943.23 (1m) or (1r), 1999 stats., or s. 940.01,
23 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20,
24 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30,
25 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29,

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1 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2),
2 943.23 (1g), 943.32, 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89,
3 943.90, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04,
4 948.05, 948.06, 948.07, 948.08, 948.085, or 948.30; or, if the victim is a financial
5 institution, as defined in s. 943.80 (2), a felony, or the solicitation, conspiracy, or
6 attempt to commit a felony under s. 943.84 (1) or (2).

7 **SECTION 7.** 969.08 (10) (b) of the statutes is amended to read:

8 969.08 (10) (b) "Serious crime" means any crime specified in s. 943.23 (1m),
9 1999 stats., or s. 943.23 (1r), 1999 stats., or s. 346.62 (4), 940.01, 940.02, 940.03,
10 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201,
11 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g.,
12 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c),
13 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), 943.30, 943.32,
14 943.81, 943.82, 943.83, 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 946.01,
15 946.02, 946.43 (1m) or (2m), 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04,
16 948.05, 948.06, 948.07, 948.085, or 948.30 or, if the victim is a financial institution,
17 as defined in s. 943.80 (2), a crime under s. 943.84 (1) or (2).

18 **SECTION 8. Initial applicability.**

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

21 (END)