



## 2007 SENATE BILL 38

February 14, 2007 - Introduced by Senator HANSEN, cosponsored by Representatives SUDER, ALBERS, SHERIDAN, GUNDERSON, A. OTT and MUSSER. Referred to Committee on Judiciary and Corrections.

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.

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### *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. Current law also provides that a felony offender may have the right to possess a firearm restored under certain circumstances. For instance, if a person found guilty of a felony is pardoned he or she may again possess a firearm if authorized. A person adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult may possess a firearm if a court determines that the person is not likely to act in a manner dangerous to public safety. Finally, a person who has been found not guilty of a felony by reason of insanity or mental disease, defect, or illness may again possess a firearm if a court determines that the person is no longer insane or no longer has a mental disease, defect, or illness and that the person is not likely to act in a manner dangerous to public safety.

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This bill prohibits, for a specified period of time, certain felony offenders from possessing, controlling, or residing with a vicious dog, as determined by the Department of Agriculture, Trade and Consumer Protection, or a dog that has not been spayed or neutered (intact dog) or from possessing a dog that does not have an identification microchip implanted in it. The felony offenders to whom these prohibitions apply are those whose status as felony offenders is based on the commission of an act that is classified under the bill as a serious felony and who have not been pardoned for that offense (serious felony offenders). A serious felony offender who violates any of the prohibitions may be fined up to \$10,000, 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 or an intact dog and a person or an animal suffers great bodily harm or death due to the violation, the serious felony offender may be fined up to \$10,000, 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 or an intact 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, 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 is extended until he or she is no longer on extended supervision.

This bill allows a serious felony offender to request a court for 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 or intact 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 that the serious felony offender has made a request for an exemption and to solicit from the agencies any information that may be relevant to whether the exemption should be granted. An exemption to the prohibition granted by a court is valid only in the county in which that court is located; if a serious felony offender is seeking an exemption in more than one county, he or she must file a motion for an exemption in each applicable county.

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.

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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.** 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.

6           **(2) REQUEST FOR DETERMINATION.** If a humane officer or law enforcement officer,  
7 after conducting an investigation, determines that a dog satisfies one of the  
8 standards under sub. (3), the humane officer or law enforcement officer may request  
9 the department to determine that the dog is vicious for the purposes of s. 941.292.  
10 Before completing the investigation, the humane officer or law enforcement officer  
11 shall notify the owner or custodian of the dog of the incidents that are the basis for  
12 the investigation.

13           **(3) STANDARDS.** The department may determine that a dog is vicious if one of  
14 the following applies:

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

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

18           1. Bit a person without causing serious physical injury or death.

19           2. While off of the property of its owner or custodian, attacked a cat or dog and  
20 caused serious physical injury to, or the death of, the cat or dog.

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1           3. While off of the property of its owner or custodian, behaved in a manner that  
2 a reasonable person would believe posed a significant, imminent threat of serious  
3 physical injury or death to a person, cat, or dog.

4           **(4) JUSTIFICATION.** The department may not determine that a dog's actions are  
5 without justification if any of the following applies:

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

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

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

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

17           **(5) NOTICE.** The department shall notify the owner or custodian of a dog if the  
18 department determines that the dog is vicious. In the notice, the department shall  
19 include a description of s. 949.292 and of the right to a hearing under s. 227.42.

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

21           **938.3416 Delinquency adjudication; restriction on possessing certain**  
22 **dogs.** Whenever a court adjudicates a juvenile delinquent for an act that if  
23 committed by an adult in this state would be a serious felony, as defined in s. 941.292  
24 (1) (d), the court shall inform the juvenile of the requirements and penalties under  
25 s. 941.292.

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

2           938.396 **(2g)** (d) *Bail; impeachment; ~~firearm~~ possession of prohibited items.*

3           Upon request of a court of criminal jurisdiction or a district attorney to review court  
4           records for the purpose of setting bail under ch. 969, impeaching a witness under s.  
5           906.09, or investigating and determining whether a person has possessed a firearm  
6           in violation of s. 941.29 (2) ~~or~~, body armor in violation of s. 941.291 (2), or a dog in  
7           violation of s. 941.292, or upon request of a court of civil jurisdiction or the attorney  
8           for a party to a proceeding in that court to review court records for the purpose of  
9           impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction  
10          under this chapter and ch. 48 shall open for inspection by authorized representatives  
11          of the requester the records of the court relating to any juvenile who has been the  
12          subject of a proceeding under this chapter.

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

14          **941.292 Possession of certain dogs. (1) DEFINITIONS.** In this section:

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

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

19          (c) “Intact dog” means a dog that is over 12 weeks old and that has not been  
20          spayed or neutered.

21          (d) “Serious felony” means a felony under s. 940.01, 940.02, 940.03, 940.05,  
22          940.19 (2), (4), or (5), 940.225 (1) or (2), 940.31, 943.02, 943.10 (2), 943.23 (1g), 943.32  
23          (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (3) (a), 948.05,  
24          948.08, or 948.30 (2) or a felony violation of ch. 961.

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

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

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

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

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

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

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

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

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

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

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

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

24           (b) Possess, control, or reside with an intact dog.

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1 (c) Possess a dog over 12 weeks of age that does not have an identifying  
2 microchip.

3 **(4) PENALTIES.** (a) Whoever violates sub. (3) is guilty of a Class A misdemeanor.

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

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

10 **(5) EXEMPTION.** This section does not apply to any person specified in sub. (1)  
11 who has received a pardon with respect to the serious felony.

12 **(6) REQUEST FOR EXEMPTION.** (a) A person specified in sub. (1) may request an  
13 exemption from a prohibition under sub. (3) if all of the following apply:

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

17 2. Exempting the person from a prohibition under sub. (3) will not endanger  
18 public safety.

19 (b) A person seeking an exemption under this subsection from the prohibition  
20 under sub. (3) shall request the exemption by filing a written motion in the circuit  
21 court for the county in which the person will possess, control, or reside with the  
22 vicious or intact dog or possess a dog without an identifying microchip. A person who  
23 files a motion under this paragraph shall send a copy of the motion to the district  
24 attorney for the county in which the motion is filed. The district attorney shall make  
25 a reasonable attempt to contact the county sheriff and, if applicable, the chief of

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1 police of a city, village, or town in the county for the purpose of informing the sheriff  
2 and the chief of police that the person has made a request for an exemption and to  
3 solicit from the sheriff and chief of police any information that may be relevant to the  
4 criteria specified in par. (a) 1. and 2.

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

6 **971.17 (1i) NOTICE OF RESTRICTIONS ON POSSESSION OF A DOG.** If the defendant  
7 under sub. (1) is found not guilty of a serious felony, as defined in s. 941.292 (1) (d),  
8 by reason of mental disease or defect, the court shall inform the defendant of the  
9 requirements and penalties under s. 941.292.

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

11 **973.0336 Sentencing; restriction on possession of a dog.** Whenever a  
12 court imposes a sentence or places a defendant on probation for a conviction for a  
13 serious felony, as defined in s. 941.292 (1) (d), the court shall inform the defendant  
14 of the requirements and penalties under s. 941.292.

15 **SECTION 7. Initial applicability.**

16 (1) POSSESSION OF A DOG.

17 (a) In this subsection, “serious felony” has the meaning given in section 941.292  
18 (1) (d) of the statutes.

19 (b) The treatment of section 941.292 of the statutes first applies to the  
20 possession of a dog that occurs on the effective date of this subsection, but does not  
21 preclude the counting of an act that was committed before the effective date of this  
22 paragraph for purposes of determining whether any of the following makes a person  
23 subject to section 941.292 of the statutes:

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



