



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4368/1
CMH:skw

2021 ASSEMBLY BILL 540

September 10, 2021 - Introduced by Representatives SPIROS, BRANDTJEN, CALLAHAN, KUGLITSCH, SUBECK and TUSLER, cosponsored by Senator JACQUE. Referred to Committee on Judiciary.

1 **AN ACT to create** 173.29, 938.3416, 941.293, 971.17 (1i) and 973.0336 of the
2 statutes; **relating to:** possession of dogs by certain felony offenders and
3 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law imposes certain restrictions on felony offenders. 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.

This bill prohibits certain felony offenders from possessing, controlling, or residing with a vicious dog, as determined by a humane officer or a law enforcement officer using criteria specified in the bill. The prohibition applies to persons whose status as felony offenders is due to committing an act that is classified under the bill as a serious felony, which includes homicide, felony battery, sexual assault, and felonies involving controlled substances. A person who violates the prohibition may be fined up to \$10,000 or imprisoned for up to nine months, or both. If a person violates the prohibition and a person or an animal suffers great bodily harm or death as a result, the person may be fined up to \$10,000 or imprisoned for up to three years and six months, or both. If a person violates the prohibition and a person suffers great bodily harm or death as a result and the offender knowingly allowed the dog to run loose or failed to take steps to control the dog, the person may be fined up to \$10,000 or imprisoned for up to six years, or both.

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The prohibition applies to a person for as long as the person is on extended supervision, parole, or probation for committing the serious felony or for ten years following any of the following: 1) any period of incarceration imposed 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.

This bill allows a person to request an exemption from the prohibition if the exemption is reasonably needed to earn a livelihood or as a condition of employment and will not endanger public safety. A person 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. The person 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.

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.

6 **(2) DETERMINATION.** If a humane officer or law enforcement officer, after
7 conducting an investigation, determines that a dog satisfies one of the standards
8 under sub. (3), the humane officer or law enforcement officer may issue a written
9 order to the owner or custodian of the dog declaring the dog to be vicious for purposes
10 of s. 941.293. In the written order, the humane officer or law enforcement officer shall
11 notify the owner or custodian of the dog of the incidents that are the basis for the

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1 investigation. The written order shall include a description of s. 941.293 and of the
2 right to an appeal under ch. 68.

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

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

7 (b) The dog has done any of the following on at least 2 occasions, without
8 justification:

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

10 2. Behaved in a manner that a reasonable person would believe posed a
11 significant, imminent threat of serious physical injury or death to a person.

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

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

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

20 (c) The dog was responding to pain or injury or was protecting itself, its
21 offspring, another dog living on the same property, its owner or custodian, or a person
22 living in the household of its owner or custodian.

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

24 **938.3416 Delinquency adjudication; restriction on possessing certain**
25 **dogs.** Whenever a court adjudicates a juvenile delinquent for an act that if

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1 committed by an adult in this state would be a serious felony, as defined in s. 941.293
2 (1) (b), the court shall inform the juvenile of the requirements and penalties under
3 s. 941.293.

4 **SECTION 3.** 941.293 of the statutes is created to read:

5 **941.293 Possession of certain dogs. (1) DEFINITIONS.** In this section:

6 (a) "Confinement term" means a period during which a person is incarcerated
7 in prison.

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

12 (c) "Vicious dog" means a dog that is determined to be vicious under s. 173.29.

13 **(2) PROHIBITION.** A person may not possess, control, or reside with a vicious dog
14 if any of the following applies:

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

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

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

22 2. Within the preceding 10 years, he or she has been convicted of a crime
23 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) PENALTIES.** (a) Except as provided in pars. (b) and (c), whoever violates sub.
12 (2) is guilty of a Class A misdemeanor.

13 (b) Whoever violates sub. (2) is guilty of a Class I felony if an individual or an
14 animal suffers great bodily harm or death as a result of the violation.

15 (c) Whoever violates sub. (2) is guilty of a Class H felony if an individual suffers
16 great bodily harm or death as a result of the violation and the actor knowingly
17 allowed the dog to run loose or failed to take steps to keep the dog in an enclosure or
18 under control.

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

21 (b) Subsection (2) does not apply to a person if any of the following applies:

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

24 2. An appeal is pending under ch. 68.

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1 **(5) REQUEST FOR EXEMPTION.** (a) A person may request an exemption from the
2 prohibition under sub. (2) by filing a written motion in the circuit court for the county
3 in which the person will possess, control, or reside with the vicious dog.

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

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

12 1. The person has a reasonable need to possess, control, or reside with a vicious
13 dog to earn a livelihood or as a condition of employment.

14 2. Exempting the person from the prohibition under sub. (2) will not endanger
15 public safety.

16 **(6) SURRENDER OF VICIOUS DOG.** A court that sentences a person who is convicted
17 of violating sub. (2) may order that the vicious dog that is involved in the violation
18 be delivered to the local humane officer or society, to the county or municipal pound,
19 or to a law enforcement officer if the court considers the order to be reasonable and
20 appropriate. The society, pound, or officer shall, in accordance with s. 173.23 (1m),
21 release the vicious dog to a person other than a person under sub. (2) or dispose of
22 the vicious dog in a proper and humane manner.

23 **SECTION 4.** 971.17 (1i) of the statutes is created to read:

24 **971.17 (1i) NOTICE OF RESTRICTIONS ON POSSESSION OF A DOG.** If the defendant
25 under sub. (1) is found not guilty of a serious felony, as defined in s. 941.293 (1) (b),

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1 by reason of mental disease or defect, the court shall inform the defendant of the
2 requirements and penalties under s. 941.293.

3 **SECTION 5.** 973.0336 of the statutes is created to read:

4 **973.0336 Sentencing; restriction on possession of a dog.** Whenever a
5 court imposes a sentence or places a defendant on probation for a conviction for a
6 serious felony, as defined in s. 941.293 (1) (b), the court shall inform the defendant
7 of the requirements and penalties under s. 941.293.

8 **SECTION 6. Initial applicability.**

9 (1) POSSESSION OF A DOG.

10 (a) In this subsection, "serious felony" has the meaning given in s. 941.293 (1)

11 (b).

12 (b) The treatment of s. 941.293 first applies to the possession of a dog that
13 occurs on the effective date of this paragraph, but does not preclude the counting of
14 an act that was committed before the effective date of this paragraph for purposes
15 of determining whether any of the following makes a person subject to s. 941.293:

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

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

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

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

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

