



2011 ASSEMBLY BILL 199

July 14, 2011 - Introduced by Representatives BERCEAU, SINICKI, SPANBAUER and POCAN, cosponsored by Senators S. COGGS, RISSER and TAYLOR. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT** *to amend* 814.04 (intro.), 939.645 (1) (b) and 939.645 (4); and *to create*
2 893.583 and 895.437 of the statutes; **relating to:** creating a civil cause of action
3 for acts of violence motivated by gender, making crimes based on gender of
4 victim subject to a penalty enhancer, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law provides an enhanced penalty for certain crimes if the person committing the crime intentionally selects the victim based on his or her belief or perception of the victim's race, religion, color, disability, sexual orientation, national origin, or ancestry. This bill provides an enhanced penalty for certain crimes if the person committing the crime intentionally selects the victim based on his or her belief or perception of the victim's gender. The penalty enhancer revises the maximum fine and the maximum term of imprisonment for the crime, and the revision is based on the classification of the underlying crime. If the underlying crime is a Class B or Class C misdemeanor, the revised maximum fine is \$10,000 and the revised maximum term of imprisonment is one year in the county jail. If the underlying crime is a Class A misdemeanor, the penalty enhancer changes the status of the crime to a felony and the revised maximum fine is \$10,000 and the revised maximum term of imprisonment is two years. If the underlying crime is a felony, the maximum fine may be increased by not more than \$5,000 and the maximum term of imprisonment may be increased by not more than five years.

The bill also creates a civil cause of action for a person who suffers physical, emotional, or economic harm as a result of a gender-based act. Under the bill, a

ASSEMBLY BILL 199

gender-based act is a physical act of violence that is committed, at least in part, on the basis of the victim's gender or sexual intercourse or contact that the actor commits under coercive conditions. Under the bill, if the actor has previously committed either of these acts against the victim, a threat to commit either of those acts is also a gender-based act.

Under the bill, a victim must commence a civil action against the actor within seven years after the gender-based act occurs or, if the victim is under the age of 18, within seven years after the victim's 18th birthday. A victim who prevails in a civil action for a gender-based act may recover damages for emotional distress, punitive damages, and investigation or litigation costs, including attorney fees. The bill specifies that a cause of action exists only against the individual who committed the gender-based act.

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.

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.** 814.04 (intro.) of the statutes, as affected by 2011 Wisconsin Act 2,
2 is amended to read:

3 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.195 (5m)
4 (b), 100.30 (5m), 106.50 (6) (i) and (6m) (a), 111.397 (2) (a), 115.80 (9), 281.36 (2) (b)
5 1., 767.553 (4) (d), 769.313, 802.05, 814.245, 895.035 (4), 895.044, 895.437 (4),
6 895.443 (3), 895.444 (2), 895.445 (3), 895.446 (3), 895.506, 943.212 (2) (b), 943.245 (2)
7 (d), 943.51 (2) (b), and 995.10 (3), when allowed costs shall be as follows:

8 **SECTION 2.** 893.583 of the statutes is created to read:

9 **893.583 Gender-based harm.** Notwithstanding ss. 893.16, 893.54, and
10 893.57, an action under s. 895.437 shall be commenced within 7 years after the cause
11 of action accrues or, if the victim is under the age of 18 at the time the cause of action
12 accrues, within 7 years of the victim's 18th birthday, or be barred.

ASSEMBLY BILL 199

1 **SECTION 3.** 895.437 of the statutes is created to read:

2 **895.437 Gender-based harm; action for. (1)** In this section:

3 (a) “Gender-based act” means any of the following:

4 1. A physical act of violence that satisfies the elements of s. 940.19 (1) that an
5 individual commits against the victim, at least in part, on the basis of the victim’s
6 gender.

7 2. Sexual contact as defined in s. 940.225 (5) (b) or sexual intercourse as defined
8 in s. 940.225 (5) (c) that an individual commits under coercive conditions or without
9 consent as defined in s. 940.225 (4).

10 3. If an individual has previously committed a physical act of violence that
11 satisfies the elements of s. 940.19 (1) against the victim or an act described in subd.
12 2., a threat to commit an act described in subd. 1. or 2.

13 (b) “Victim” means a person against whom a gender-based act has been
14 committed.

15 **(2)** A victim has a cause of action for injunctive relief and for damages, as
16 provided in sub. (4), against the individual who commits a gender-based act that
17 results in a physical injury, emotional distress, or damage to or loss of property to the
18 victim.

19 **(3)** The burden of proof in a civil action under sub. (2) rests with the victim to
20 prove that the defendant committed a gender-based act and that the victim suffered
21 harm as a result of the act by a preponderance of the credible evidence.

22 **(4)** If the plaintiff prevails in a civil action under sub. (2), he or she may recover
23 special and general damages, including damages for emotional distress; punitive
24 damages; and costs, including all reasonable attorney fees and other costs of the
25 investigation and litigation that were reasonably incurred.

ASSEMBLY BILL 199**SECTION 3**

1 **(5)** A person may bring a civil action under sub. (2) regardless of whether there
2 has been a criminal action related to the gender-based act and regardless of the
3 outcome of any such criminal action. If there is a final judgment or decree rendered
4 in favor of the state in any criminal proceeding against the defendant, a defendant
5 may not deny the essential allegations of the criminal offense in any action under this
6 section.

7 **(6)** A gender-based act under this section shall be deemed for all purposes to
8 be an intentional act.

9 **(7)** This section does not limit the right of a person to recover from any parent
10 or parents under s. 895.035.

11 **(8)** This section does not create a cause of action against any person except the
12 individual who commits a gender-based act.

13 **SECTION 4.** 939.645 (1) (b) of the statutes is amended to read:

14 939.645 **(1)** (b) Intentionally selects the person against whom the crime under
15 par. (a) is committed or selects the property that is damaged or otherwise affected by
16 the crime under par. (a) in whole or in part because of the actor's belief or perception
17 regarding the race, religion, color, disability, gender, sexual orientation, national
18 origin or ancestry of that person or the owner or occupant of that property, whether
19 or not the actor's belief or perception was correct.

20 **SECTION 5.** 939.645 (4) of the statutes is amended to read:

21 939.645 **(4)** This section does not apply to any crime if proof of race, religion,
22 color, disability, gender, sexual orientation, national origin or ancestry or proof of any
23 person's perception or belief regarding another's race, religion, color, disability,
24 gender, sexual orientation, national origin or ancestry is required for a conviction for
25 that crime.

