

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
New York	N.Y. Penal Law § 130.05 (McKinney 1996)	§ 130.05. Sex offenses	§ 130.05: Whether or not specifically stated, it is an element of every offense defined in this article ... that the sexual act was committed without consent of the victim: (3) A person is deemed incapable of consent when he or she is: (c) committed to the care and custody of the state department of correctional services or a hospital; or (f) committed to the care and custody of a local correctional facility.	NOTE: An exception is made for the offense of consensual sodomy.	Violation of this section is either a class E felony or a class A misdemeanor, depending on the nature and severity of the assault. § 70.00(2)(e): For a class E felony, the term shall be fixed by the court, and shall not exceed four years. § 70.15(1): A sentence of imprisonment for a class A misdemeanor shall ... be fixed by the court, and shall not exceed one year.	Consent is not a defense. Marriage is a defense.

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
North Carolina	N.C. Gen. Stat. § 14-27.7 (1993)	§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense	§ 14-27.7: Intercourse and sexual offenses with certain victims; consent no defense:...if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.	CASE NOTE: Custodial sexual offense does not require act by force against the will of another person. It requires that the perpetrator or the perpetrator's principal or employer, have custody of the victim. <i>State v. Raines</i> , 319 N.C. 358, 354 S.E. 2d 486 (1987).	§ 14-27.7 A violation of this section is a class E felony § 15A-1340.17: The penalty for a class E felony shall be a fine at the discretion of the court and imprisonment for a term between 20 and 59 years depending on the amount and kind of prior offenses.	§ 14-27.7: Consent is not a defense to a charge under this section.

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
North Dakota	N.D. Cent. Code § 12.1-20-06 (1985) N.D. Cent. Code § 12.1-20-07 (1985)	§ 12.1-20-06. Sexual abuse of wards § 12.1-20-07. Sexual assault	<p>§ 12.1-20-06: A person who engages in a sexual act with another person or any person who causes another to engage in a sexual act is guilty of a class A misdemeanor if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.</p> <p>§ 12.1-20-07.1: A person who knowingly has sexual contact with another, or who causes such other person to have sexual contact with him, is guilty of an offense if: (d) The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over him or her.</p>		<p>§ 12.1-20-06: Sexual abuse of wards is a class A misdemeanor.</p> <p>§ 12.1-20-07(2): Sexual assault is a class B misdemeanor.</p> <p>§ 12.1-32-01.5: The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year and/or a fine of \$1,000.</p> <p>§ 12.1-32-01.6: The penalty for a class B misdemeanor shall be imprisonment for a term not to exceed 30 days and/or a fine not to exceed \$500.</p>	
Ohio	Ohio Rev. Code Ann. § 2907.03 (Page 1993)	§ 2907.03. Sexual battery	<p>§ 2907.03: Sexual battery: (A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: (6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.</p>		<p>§ 2907.03(B): Sexual battery is a felony of the third degree.</p> <p>§ 2929.14(A)(3): The penalty for a felony of the third degree shall be imprisonment for a term of between 1 and 5 years.</p>	<p>Marriage is a defense.</p>

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Oklahoma	Okla. Stat. Ann. tit. 21, § 1111 (West 1983 & Supp. 1996) Okla. Stat. Ann. tit. 21, § 1114 (West 1983 & Supp. 1996) Okla. Stat. Ann. tit. 21, § 1116 (West 1983 & Supp. 1996)	§ 1111. Rape Defined § 1114. Rape in the first degree- second degree	<p>§ 1111: Rape defined: A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:</p> <p>7. Where the victim is under the legal custody of a state agency and engages in sexual intercourse with a state employee or employee of a contractor of the state that exercises authority over the victim.</p>		<p>§ 1114.B: Violation of this section is rape in the second degree.</p> <p>§ 1116: The penalty for rape in the second degree shall be imprisonment in the penitentiary for a term ranging between 1-15 years.</p>	Marriage is a defense.
Oregon	No Legislation ¹					

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Pennsylvania	<p>Pa. Stat. Ann. tit. 18, § 3126 (1983 Supp. 1996)</p> <p>By 1995 amendment, the legislature amended the statute and deleted "in custody of law" language.</p> <p>Legislation has been introduced to add that language back to the statute.</p>		<p>HOW SECTION READ BEFORE THE AMENDMENT</p> <p>§ 3126 [before the 1995 amendment]: (a) Offense defined:--A person who has indecent contact with another not his spouse, or causes such other to have indecent contact with him, is guilty of indecent assault if: (5) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.</p>			

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Rhode Island	R.I. Gen. Laws § 11-25-24 (1994 & Supp. 1995)	§ 11-25-24. Correctional employees -- sexual relations with inmates -- felony	§ 11-25-24: Correctional employees -- sexual relations with inmates -- felony. Every employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution who engages in sexual penetration as defined in § 11-37-1 in chapter 37 of this title entitled "Sexual Assault" with an inmate confined therein or who is otherwise under the direct custodial supervision and control of said employee shall be guilty of a felony.	§ 11-37-1.(8): "Sexual penetration" - sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genitalia or anal openings of another person's body, but emission of semen is not required.	§ 11-25-24: Violation of this section is a felony the penalty for which shall be imprisonment for a term not to exceed 5 years and/or a fine not to exceed \$10,000.	
South Carolina	No Legislation ¹					
South Dakota	S.D. Codified Laws Ann. § 24-1-26.1 (1988 & Supp. 1996)	§ 24-1-26.1. Sexual acts prohibited between prison employees and prisoners	§ 24-1-26.1: Sexual acts prohibited between prison employees and prisoners. Any person, employed by the state, or employed within any state prison or other detention facility, who knowingly engages in an act of sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony.		§ 24-1-26.1: The violation of this section is a Class 6 felony. § 22-6-1: The penalty for a Class 6 felony shall be imprisonment in the state penitentiary for a term of 2 years and/or a fine of \$2,000.	

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Tennessee	No Legislation ¹					

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Texas	Tex. Penal Code Ann. § 22.011 (Vernon 1994)	§ 22.011. Sexual Assault	<p>§ 22.011: Sexual Assault: (a) A person commits an offense if the person: (1) intentionally or knowingly: (A) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent; (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.</p> <p>(b): A sexual assault under Subsection (a)(1) is without the consent of the other person if: (8) the actor is a public servant who coerces the other person to submit or participate.</p>	<p>§ 1.07(a)(41): Public servant means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties: (a) an officer, employee, or agent of government . . . (f) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.</p>	<p>§ 22.011(f): An offense under this section is a felony in the second degree.</p> <p>§ 12.33(a-b): The penalty for a felony in the second degree shall be imprisonment for a term not to exceed 20 years and/or a fine not to exceed \$10,000.</p>	<p>Consent is a defense to a violation of the statute. However consent is not effective if the actor is a public servant who coerces the other person to submit or participate. §22.011 (b)(8). Coercion means a threat, however communicated: (A) to commit an offense; (B) to inflict bodily injury in the future on the person threatened or another; (C) to accuse a person of any offense; (D) to expose a person to hatred, contempt or ridicule; (E) to the harm the credit or business repute of any person; or (F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action. § 1.07 (9).</p>

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
United States ²	<p>18 U.S.C. § 2241 (1994)</p> <p>18 U.S.C. § 2242 (1994)</p> <p>18 U.S.C. § 2243 (1994)</p> <p>18 U.S.C. § 2244 (1994)</p> <p>18 U.S.C. § 2246 (1994)</p>	<p>§ 2241. Aggravated sexual abuse</p> <p>§ 2242. Sexual abuse</p> <p>§ 2243. Sexual abuse of a minor or ward</p> <p>§ 2244. Abusive sexual contact</p> <p>§ 2246. Definitions for chapter</p>	<p>Specifically covers conduct in federal prisons.</p> <p>§ 2241: "Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison," knowingly causes another person to engage in a sexual act by using force, threats, rendering the other unconscious, or administering drugs. § 2242 covers engaging in a sexual act in federal prison with someone who is incapable of appraising the nature of the conduct or is physically incapable of declining participation.</p> <p>§ 2243: Sexual abuse of a minor or ward. (b) Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is— (1) in official detention; and (2) under the custodial, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.</p>		<p>For offenders with 0 to 1 prior offenses:</p> <p>U.S.S.G. § 2A3.1(b)(1): The base penalty for aggravated sexual abuse shall be imprisonment for a term of 108-135 months.</p> <p>U.S.S.G. § 2A3.1(a): The base penalty for sexual abuse shall be imprisonment for a term of 70-87 months.</p> <p>U.S.S.G. § 2A3.2(a): The base penalty for sexual abuse of a minor shall be imprisonment for a term of 18-24 months.</p> <p>U.S.S.G. § 2A3.3(a): The base penalty for sexual abuse of a ward shall be imprisonment for a term of 4-10 months.</p> <p>U.S.S.G. § 2A3.4(a)(3): The base penalty for abusive sexual contact shall be imprisonment for a term of 6-12 months.</p>	<p>§ 2243: Sexual abuse of a minor or ward. (c)(2): In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.</p>

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Utah	No Legislation ¹					
Vermont	No Legislation ¹					
Virginia	1996 Senate Bill 24 Last action on 3/4/96: indefinitely postponed					
Washington	No Legislation ¹					
West Virginia	No Legislation ¹					
Wisconsin	Wis. Stat. Ann. § 940.29 (West 1996)	§ 940.29. Abuse of residents of penal facilities	§ 940.29: Any person is charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects or ill-treats any person confined in or a resident of any such institution or place or who knowingly permits another person to do so is guilty of a Class E felony.		§ 940.29: The Abuse of residents of penal facilities is a Class E felony. § 939.50(3)(c): The penalty for a Class E felony shall be imprisonment for a term not to exceed 2 years and/or a fine not to exceed \$10,000.	

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Wyoming	Wyo. Stat. § 6-2-303 (1988) Wyo. Stat. § 6-2-306 (1988)	§ 6-2-303. Sexual assault in the second degree	§ 6-2-303: Sexual Assault in the second degree. (a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting assault in the first degree: (vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit.	§ 6-2-301(a)(iv): "Position of authority means that position occupied by a parent, guardian, relative, household member, teacher, employers custodian or any other person who, by reason of his position, is able to exercise significant influence over a person. In <u>Schwader v. Wyoming</u> , 732 P.2d 136 (1987) the Wyoming Supreme Court stated that "a jailer .. [has] power over his prisoner, and therefore, the jailer is in a position of authority over the prisoner." <i>Id</i> at 1042.	§6-2-306(a)(ii): The penalty for sexual assault in the second degree shall be imprisonment for a term not to exceed 20 years.	

NATIONAL WOMEN'S LAW CENTER

The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families, including education, health and reproductive rights, employment, income security, and family support -- with special attention given to the concerns of low-income women. As a legal arm of the women's movement, the Center has litigated groundbreaking cases and filed briefs in landmark Supreme Court decisions; advocated before state and federal policy makers to shape legislation and policies affecting women's lives; and educated the public about issues important to women. The Center's legal expertise makes it an important contributor to women's progress at work, at home, and in almost every aspect of women's lives.

In 1990, the Center launched the Women in Prison Project to address the serious problems confronting women prisoners. The Project provides legal, counseling, and advocacy services to women incarcerated by the District of Columbia Department of Corrections. Today, the Project serves approximately 1000 women incarcerated at the Lorton Minimum Security Annex, the Correctional Treatment Facility, the District of Columbia Central Detention Facility and halfway houses, along with women released to the community. In addition to its local activities on behalf of women prisoners, the Center works on a national level conducting public education, providing technical assistance to policymakers and advocates, and disseminating information on issues affecting women prisoners. The Center also hosted the Seventh National Roundtable for Women in Prison in 1993. The Roundtable brought together over 450 advocates, policymakers and former prisoners to discuss crucial issues affecting women prisoners and their families, and to develop strategies for decreasing and preventing the incarceration of women.

In October 1993, the Center's work with women prisoners prompted it to engage in class action litigation on behalf of all women incarcerated by the District of Columbia. On December 13, 1994, Judge June Green, of the U.S. District Court for the District of Columbia, found that women prisoners were subjected to sexual harassment and provided with programs and opportunities inferior to those provided to male prisoners. The Court cited violations of the Fifth and Eighth Amendments to the U.S. Constitution, 42 U.S.C. § 1983, Title IX of the Education Amendments of 1972, and local District of Columbia code. The Court ordered broad remedial relief in the areas of sexual misconduct, obstetrical and gynecological care, education and vocational programs, and environmental safety. *Women Prisoners of the District of Columbia Department of Corrections v. District of Columbia*, No. 93-2052, slip op. 877 F. Supp. 634 (D.D.C. 1994). Portions of this order related to the remedy for the sexual harassment and claims regarding inequality of programs for women were reversed and remanded to the District Court. *Women Prisoners v. D.C.* 93 F.3d 910 (D.C. Cir. 1996). The Center will continue to litigate these matters in the coming months.

Brenda V. Smith is Senior Counsel and Director of the Women in Prison Project at the Center. She received her J.D. from Georgetown University Law Center in 1984 and her B.A. from Spelman College in 1980.

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

Notes and Comments

1. In states that have no specific legislation criminalizing the sexual abuse of prisoners, correctional employees may be prosecuted under the state's existing sexual assault and rape statutes. Under these laws, consent is a defense to criminal liability. However, many experts believe that the inherent disparity in power between prisoners and correctional employees renders valid consent impossible in the prison context. Also, from both a management and public policy perspective, sanctioning consensual sex between correctional employees and prisoners severely compromises legitimate correctional goals such as prison security, inmate management, and rehabilitation.
2. The United States Code is included in this 50-state survey because of the increasing impact of federal criminal legislation on criminal defendants, particularly with regard to drug offenses. With the federalization of many drug offenses, criminal defendants are being sentenced to federal prisons in increasing numbers. Between 1985 and 1995, the federal prison population increased approximately 156% (from 53,645 to 83,663).

TO: Amy Rinard
Milwaukee Journal Sentinel
414/650-0275

FR: Rep. Scott Walker
608/266-9180

DT: January 19, 2000

RE: Bill to make sex with inmates illegal

Per my phone message, here is some information on Assembly Bill 355. The measure passed through the Assembly in June, had a public hearing with no opposition in October, but is now stuck in committee.

The attached memo from AFSCME came out at the last minute when we took the vote in June. We believe that this is reason for the lack of action on a bill that has the support of people like Rep. Frank Boyle and Sen. Gwen Moore.

The Senate Judiciary and Consumer Affairs Committee has a public hearing next Wednesday, (January 26th) at 8:00 a.m. in the Capitol. We have formally asked Sen. Gary George to add AB 355 to the notice for a vote, but his office has yet to respond to our request.

JUN 21 1999



Wisconsin State Employees Union

Council #24

AFL-CIO

Bill Fendel, President
Martin Beil, Executive Director

8033 Excelsior Drive, Suite C
Madison, WI 53717
Phone 608/836-0024
Fax 608/836-0222
Website <http://wseu-24.org>

TO: All State Senators
All State Representatives

FROM: Martin Beil, Executive Director
Wisconsin State Employees Union

RE: AB 355

DATE: June 17, 1999

During the week of 6/7/99, AB 355 was amended in committee and "exec'ed out" for assembly floor action. While I know this bill is considered "politically correct", and difficult to oppose from a public policy perspective, I feel it is imperative that the union registers strong opposition.

First, I want to make it clear that the union does not condone sexual activity between correctional officers or any other direct care or security staff, and those people confined in facilities. In fact in the Department of Corrections, if there is "just cause" to believe that an employee has participated in this kind of activity, they are terminated from the state service. Termination from state service is the equivalent of economic capital punishment. What is of concern to us is the singling out of one profession, correctional officers, and sending a message that is demoralizing, accusatory and basically a slap in the face of folks who work very hard under incredible stress and duress in worksites that not one of you would think of working in. If the argument is power and control, then why weren't police officers, university professors, doctors, priests, legislators, CEO's of corporations, governors, and presidents included? I am sure that there has been at least one instance of sexual activity between the above listed and someone under their span of control. Why should this kind of activity be a felony charge for correctional officers and not even necessarily a violation of the law for the other professions? I guess we would not care as much if you paid correctional officers as much as some of the others listed.

Lastly, I understand that this bill was amended in committee so that two inmates having sexual contact (not sexual assault), consensual if you will, will be charged with a Class D felony. I am sure that the sponsors of this bill did not intend to put correctional officers and inmates on the same level of expectations and behaviors. Maybe some would think that this Bill is intended to keep our burgeoning populations still burgeoning.

On behalf the 6,000+ members we represent in both DOC and DHFS institutions, we would urge you to Vote No on AB 355. Your state correctional and institutional staff deserve a lot more from you than this poke in the eye.

If you wish to discuss this issue further, please contact me.

MB:lm



SEP 14 1999

State of Wisconsin



GARY R. GEORGE
SENATOR

September 8, 1999

The Honorable Scott Walker
State Representative
Wisconsin Assembly
Room 308 North, State Capitol
Madison, WI

Dear Representative Walker:

Thank you for contacting our office to request that Assembly Bill 355, relating to sexual assault of a person confined in an adult or juvenile detention facility and providing a penalty, be acted upon swiftly by the Senate Committee on Judiciary and Consumer Affairs.

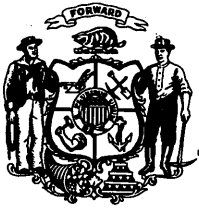
I agree with you that this bill deserves prompt legislative consideration. Our office will be in touch with you regarding scheduling of this bill.

Please feel free to contact our office if you have any suggestions or questions regarding this legislation.

Most sincerely,

A handwritten signature in cursive script that reads "Gary".

GARY R. GEORGE
State Senator
Sixth Senate District



Wisconsin State Legislature

FOR IMMEDIATE RELEASE – MAY 14, 1999

LAWMAKERS PUSH FOR PRISONER PROTECTION *Bipartisan Trio Condemn Sexual Contact With Inmates*

(Madison) Sexual contact between prison guards and inmates isn't just unethical – it's criminal, according to three state lawmakers. Calling the measure long overdue, state Reps. Scott Walker (R-Wauwatosa) and Frank Boyle (D-Superior) and state Sen. Scott Fitzgerald (R-Juneau) introduced legislation Friday that would make such an offense a felony.

"There is no such thing as consensual sex between a person in a position of power and a person in a position of vulnerability," Walker said. "It's time to close this loophole in state law."

Wisconsin is currently one of only 12 states that fail to recognize consensual sexual contact between correctional employees and inmates as a crime. Under the proposed legislation, jail and prison staff at municipal, county and state facilities who engage in such conduct could be sentenced to up to 30 years behind bars themselves.

"State law forbids sexual contact with various vulnerable individuals, from the mentally ill to those under the influence of drugs or alcohol," Fitzgerald said. "Prisoners because of their unique position belong in that same category."

The Department of Corrections' normal policy is to fire personnel who violate the no-sexual contact policy. Earlier this year, a guard at the Dodge Correctional Institution resigned after an inmate alleged she had sex with him in exchange for cigarettes and writing paper.

"We were shocked to learn that sexual contact between a guard and an inmate is not a criminal act in our state," Boyle said. "The current law allows guards and other correctional personnel to take advantage of people who are obviously at a low point in their lives."

Walker, who chairs the Assembly Committee on Corrections and the Courts, said he hopes to quickly steer the bill through his committee. The measure has 42 cosponsors in both the Assembly and Senate and from both political parties.

"If conservative Republicans and liberal Democrats can agree so heartily on this measure, I cannot foresee any substantial roadblocks," he said.

For more information, contact:
Scott Walker – 414-771-1938
Frank Boyle – 608-266-0640

Scott Fitzgerald – 608-266-5660



Wisconsin State Legislature

FOR IMMEDIATE RELEASE – JUNE 9, 1999

COMMITTEE PASSES PRISONER PROTECTION *Bipartisan Measure Prohibits Sexual Contact With Inmates*

(Madison) A measure that would ban all sexual contact between prison personnel and inmates received quick approval Tuesday by the Assembly Committee on Corrections and the Courts. The legislation, authored by state Reps. Scott Walker (R-Wauwatosa) and Frank Boyle (D-Superior) and state Sen. Scott Fitzgerald (R-Juneau), was passed 9-0 following a brief discussion.

Walker, who chairs the corrections committee, said the bill closes a loophole in state law. The bipartisan measure criminalizes conduct that currently results in employment termination.

“Assembly Bill 355 recognizes sexual relationships between prisoners and corrections personnel as criminal conduct and thus allows for the prosecution of that behavior,” he explained.

Wisconsin is currently one of only 12 states that fail to recognize consensual sexual contact between correctional employees and inmates as a crime. Under the proposed legislation, jail and prison staff at municipal, county and state facilities who engage in such conduct could be sentenced to up to 20 years behind bars themselves.

“There is no such thing as consensual sex between a person in a position of power and a person in a position of vulnerability,” Walker said. “Such a relationship by nature constitutes sexual assault.”

The Department of Corrections’ normal policy is to fire personnel who violate the no-sexual contact policy. Earlier this year, a guard at the Dodge Correctional Institution resigned after an inmate alleged she had sex with him in exchange for cigarettes and writing paper.

Walker said he expects the full Assembly to take action on the bill later this month. Forty-two legislators in both the Assembly and Senate and from both political parties have signed onto the measure as cosponsors.

“If conservative Republicans and liberal Democrats can agree so heartily on this measure, I cannot foresee any substantial roadblocks,” he said.

-30-

For more information, contact:
Scott Walker – 414-771-1938 or 608-266-9180



Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

TO: All Assembly Legislators

FROM: Rep. Scott Walker

DATE: 6/23/99

RE: AB 355

Attached are two articles that pinpoint the need for passage of Assembly Bill 355, which criminalizes sexual contact between correctional staff and inmates.

Wisconsin State Journal, Wednesday, March 17, 1999

Guard faces charges of giving gifts to female prison inmates

By Carrie Loranger
For the State Journal

WAUPUN — A former Dodge Correctional Institution guard, who authorities said had sexual contact with a female inmate, faces criminal charges alleging he provided cigarettes and writing paper to two female prisoners.

Bradley W. Kok, 35, of Beaver Dam, made an initial appearance Monday in Dodge County Circuit Court on a charge of delivering articles to an inmate, which carries a fine of up to \$500 and two years in prison.

According to the criminal complaint, Kok slipped cigarettes, paper and sexually explicit notes under the cell door of two female inmates while on duty the night of Aug. 13, 1998. Later the same night, Kok entered the cell and had sexual contact with one of the women, according to the complaint. The episode was discovered when another guard intercepted a note from one of the inmates on Aug. 28 and reported

the incident to prison officials.

Kok, who resigned from his prison job on Oct. 23, will not face any charges in the alleged sexual incident.

While sexual contact with inmates may result in termination by the state Department of Corrections, Dodge County District Attorney Patricia Ramirez said there is no law against consensual sex between an inmate and a prison guard.

"Having sexual contact on a consensual basis with an inmate is not illegal. There are twelve states that do have that law, but we don't," Ramirez said.

Kok was released on a \$2,500 signature bond and a preliminary hearing is scheduled for April 22.

Dodge Correctional Institution houses 1,365 inmates, including 72 women. The maximum security facility serves as a reception center for the state prison system. Anyone sentenced to a state prison undergoes a six-week evaluation at the facility, said Bill Clausius, Department of Corrections spokesman.

THE NATION

Report: Women in prison victims of violent abuse

Male inmates and guards are responsible for rapes

By Richard Willing and Charisse Jones
USA TODAY

Women in U.S. prisons are subject to a "shocking array" of abuses, including rape, by guards and male inmates, says a study to be released today by Amnesty International.

Working from public records and its own investigation, Amnesty International documented at least 96 instances since 1992 in which guards were criminally convicted, fired or otherwise disciplined for rape, sexual harassment and trading prison privileges for sex.

The report is the most comprehensive study of the problem in the 50 states, Amnesty International says.

The offenses, which included two pregnancies attributed to rapes by guards, occurred in 14 states and in a federal prison camp. "This is not a question of one or two states or just one part of the country having a problem," said William Schulz, director of Amnesty International USA.

"This is a pervasive problem of human-rights violations from one end of the country to

the other against those who are most vulnerable."

Amnesty International is a research and lobbying group that studies police and prison practices around the world.

A representative of a prison industry professional group called Amnesty International's findings "overstated" and "trial by anecdote."

"There is no epidemic," said Jim Turpin, legislative specialist for the American Correctional Association in Lanham, Md. "When this does occur, it is aggressively dealt with and prosecuted."

One case cited by Amnesty International occurred in a federal prison camp in Dublin, Calif., where inmate Robin Lucus was serving a 33-month sentence for conspiracy to commit bank fraud.

In August 1995, Lucus was moved into isolation after an altercation with another inmate at the low-security camp.

Officers allowed male inmates to come by the women's cells, soliciting sex in exchange for favors. Lucus refused, and one night an inmate paid a guard to let him into her cell.

Lucus and the man strug-



By Leo Saw for USA TODAY
Settled case: Robin Lucus and two other female inmates settled a suit with the government after being attacked in prison. Lucus, now released, speaks with female offenders about prison conditions.

"I've always said I'm not the first woman who's been subjected to this cruelty, and I'll probably not be the last."

— Robin Lucus

ment settled a suit brought by Lucus and two other female inmates for \$500,000. The government also established a training program to identify potential sexual-abuse problems among male guards.

"I've always said I'm not the first woman who's been subjected to this cruelty, and I'll probably not be the last," says Lucus, 33, who, since her release, often speaks to female inmates and juvenile offenders. "I still don't know who raped me. All I know is the officer had the key, he had the way in and he had the handcuffs. So the issues that Amnesty is raising are very important."

The Amnesty report makes several suggestions for improving the lives of incarcerated women.

It urges more states to pass laws that make it a crime for guards to have sexual contact

with female prisoners. Such laws, Amnesty International's Schulz says, make it difficult for guards to argue that sex was consensual.

Thirteen states do not have such laws, he said. These are Alabama, Kentucky, Massachusetts, Minnesota, Montana, Nebraska, Oregon, Utah, Vermont, Virginia and Wisconsin.

The Amnesty International report also calls for more attention to the health needs of female prisoners, especially those who give birth while imprisoned. Amnesty International estimates that more than 1,000 children were born to incarcerated women last year. "This is an issue with wide impact far beyond the families involved," Schulz says. "These are children who are going to grow up with problems that impact the rest of society."

The number of women behind bars in the United States has increased each year of the past decade. In 1990, 78,000 women were in state and federal prisons or county jails, according to the federal Bureau of Justice Statistics.

By 1997 the number had reached 138,000, including 78,000 serving sentences of a year or longer in state and federal prisons and 60,000 serving shorter sentences or awaiting trial in county jails.

| [Share this story with a friend](#) | [Join the discussion in Feedback](#) |

detnews
com
▶ **HOME PAGE**

Monday, October 11, 1999
Metro

The Detroit News
◀ **INDEX** ▶

Essentials

[Search](#)
[Highlights](#)
[CyberSurveys](#)
▶ [News Talk](#)
▶ [Sports Talk](#)
▶ [Wings Talk](#)
▶ [Gear Talk](#)
[Horoscope](#)
[Lottery](#)
[Weather](#)
[Staff](#)

News

[Autos](#)
▶ [Joyrides](#)
[Business](#)
[Careers](#)
[Editorials](#)
[Metro/State](#)
▶ [Macomb](#)
▶ [Oakland](#)
▶ [Wayne](#)
▶ [On Detroit](#)
[Nation/World](#)
[Obituaries](#)
▶ [Death Notices](#)
[Schools](#)
[Technology](#)
[Voices](#)

Sports

[Sports Front](#)
▶ [Lions](#)
▶ [Pistons](#)
▶ [Shock](#)
▶ [Tigers](#)
▶ [Red Wings](#)
[College Sports](#)
▶ [U-M](#)
▶ [MSU](#)
▶ [State Colleges](#)
[High Schools](#)
[Motor Sports](#)
[Golf](#)
[Scoreboards](#)

Features

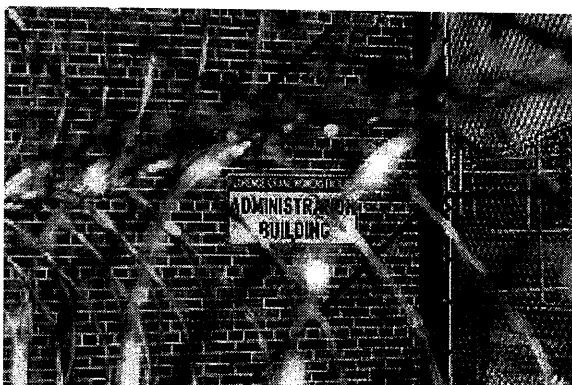
[Features Front](#)
[Entertainment](#)
▶ [Casino Guide](#)
▶ [Movie Finder](#)
▶ [TV Listings](#)
[Detroit History](#)
[Food](#)
[Health](#)
[Homestyle](#)
[Next!](#)
[Religion](#)
[Wine Report](#)

Advertising

[Cars.com](#)
[Classifieds](#)
[Personals](#)

Prison sex could draw prison term

Lawmakers debate bills making it a felony for guards to have sexual contact with inmates



John M. Galloway

Incidents involving guards and female prisoners prompted the Legislature to consider tougher laws. The Crane's Women's Facility in Coldwater is one of three women's prisons.

By Gary Heinlein / The Detroit News

LANSING -- With allegations of shameful behavior by state prison employees as a backdrop, Michigan lawmakers are considering tough new penalties against Corrections Department workers who have sexual relations with inmates.

Proposals now in both chambers of the state Legislature would make it a 15-year felony for a Corrections employee to have "sexual contact" with a prisoner -- including consensual sex.

Under current Michigan law, it is a misdemeanor, punishable by no more than two years' imprisonment.

The bills haven't yet come up for debate in committees -- the first step in the legislative process. But it will be hard for lawmakers to ignore the embarrassing publicity the state already has received about treatment of women prisoners.

"Women in Michigan prisons have been raped, forced to perform oral sex, subjected to unwanted sexual touching and retaliated against for reporting these acts," Ann Arbor attorneys Deborah LaBelle and

[JobHunter](#)
[Homes/Apts.](#)
[Place an ad](#)
[Home delivery](#)

Molly Reno charged in a recent statement about state and federal lawsuits filed in 1995.

LaBelle and Reno have a class action suit on behalf of women prisoners that began in Washtenaw County Circuit Court and is now on appeal to the Michigan Supreme Court and a lawsuit involving 31 women prisoners in federal district court in Detroit.

Some of their clients were prominently featured in a recent report by national TV journalist Geraldo Rivera about sexual abuse in women's prisons around the country. The telecast was cited several times last week during a House debate about other prison-related legislation.

Proponents of harsher penalties for sexual misconduct by prison workers say the change is overdue and will protect the integrity of the state's prison system. The theory is that even consensual sex is wrong, because a prison worker holds authority over an inmate.

"It will help reinforce the message that prison guards are not above the law," said Rep. Jennifer Faunce, R-Warren, chief sponsor of the House bill.

Republican Sen. Shirley Johnson of Royal Oak is sponsoring a similar bill.

Northville resident Katie Haines isn't sure how she feels about the proposed legislation, but said more of an effort to rehabilitate prisoners could reduce the number of incidents.

"I think it's wrong to have any type of relationship like that between a man and a woman who aren't married, whether or not it's in prison," said Haines. "You have to have morals. You need that teaching. You need to reach people when they're put in prison, not just let them sit there."

The state has three women's prisons: Florence Crane Correctional Facility and Camp Branch in Coldwater; and Robert Scott Correctional Facility in Plymouth.

State Corrections Director Bill Martin supports the proposed increase in penalties, even while defending his department and staff against allegations that he says are lurid and overblown. Michigan prison workers are well-trained and professional, but sexual misconduct by a few will not be tolerated, said Martin, who took over the Corrections system last January.

Martin pointed out that the penalties would apply equally to female Corrections officers working in men's prisons, where there is a vastly greater potential for improper sexual relations. Of the 46,000 inmates in Michigan prisons, 1,880 are women.

"There is no such thing as consensual sex in prison, period," said Martin, a former lawmaker from Battle Creek. "I've always believed it's a felony. It's a huge breach of the public trust. It's also a breach of security. The officers might be subject to blackmail. All sorts of things could happen."

The correctional officers union, however, argues that the new law would require harsher punishment for prison staff than for other workers guilty of the same type of misconduct. The Michigan Corrections Organization also says corrections officers are unfairly

being branded as untrustworthy.

Attorney LaBelle said the legislation is a step in the right direction but the state should do more to protect women prisoners. The state should go back to a policy in which, prior to 1985, only women officers guarded women prisoners, she said.

"I'm preventive-oriented, rather than punishment-oriented," LaBelle said.

Martin said he'd like to return to the old policy, but his department has been advised that would violate labor laws requiring equal opportunity for officers of both genders in all of the facilities.

About one-third of the state's 17,000 Corrections employees are female. Of nearly 9,000 Corrections officers, about 2,000 are female.

"I think most male officers would tell you they feel more comfortable supervising male prisoners," said Martin. "But at the same time, it is possible for them to conduct themselves professionally and never abuse their authority in a women's facility."

Copyright 1999, The Detroit News

The Detroit News

[Comments?](#)

◀ INDEX ▶

Gilbert, Melissa

From: Reiman, Greg
Sent: Friday, October 08, 1999 2:26 PM
To: Walker, Scott
Cc: Gilbert, Melissa
Subject: Senate Judiciary Hearing, Mon 10/11

Scott: Cheryl Dubill of the WI Coalition Against Sexual Assault will be at the hearing next Monday to testify in support of AB 355. She wanted to thank you for offering this bill and let you know that she would be at the hearing.

Greg Reiman
Office of Rep. Scott Walker
608 266-9180

Gilbert, Melissa

From: Walker, Scott
Sent: Thursday, April 29, 1999 11:04 AM
To: 'Laurel Mahoney'
Cc: Gilbert, Melissa
Subject: RE: Custodial sexual misconduct

Thanks. We are sending a co-sponsorship memo out today on that very piece of legislation. The LRB # is 2580 and our due date for co-sponsors is next Thursday, May 6. The bill will go the Assembly Committee on Corrections and the Courts (which I chair). I hope to take action on the bill in May.

Thanks for your help.

Scott Walker

-----Original Message-----

From: Laurel Mahoney [mailto:seldomcn@famvid.com]
Sent: Thursday, April 29, 1999 6:20 AM
To: Rep. Walker
Subject: Fw: Custodial sexual misconduct

-----Original Message-----

From: Laurel Mahoney <seldomcn@famvid.com>
To: rep.walker@legis.state.wi.us <rep.walker@legis.state.wi.us>
Date: Friday, April 23, 1999 11:17 AM
Subject: Custodial sexual misconduct

Dear Honorable Representative,

I recently pulled an article off the web which described the Peter Agerholm incident in Waukesha County. It detailed the efforts which you and your colleague Senator Fitzgerald have made to introduce legislation which would criminalize custodial sexual misconduct. Could you please update me as to the status of that Bill. Was it introduced? Tabled?

I facilitate a chapter, as yet unchartered, of Amnesty International here in the Fox Valley. We would like to help out in any way we could. As you may or may not be aware, Amnesty is in the middle of its USA Campaign. One of the core issues the campaign addresses is the reform of laws regulating and ensuring the proper treatment of female inmates and introducing stiff penalties for transgressing them. We have accepted this issue as our primary focus and would welcome the opportunity to bolster your (inclusive) efforts on the floor.

Thank you.

all is quiet . . . Alex Schultz

-----Original Message-----

From: Laurel Mahoney <seldomcn@famvid.com>
To: sen.fitzgerald@legis.state.wi.us <sen.fitzgerald@legis.state.wi.us>
Date: Wednesday, April 07, 1999 10:08 PM
Subject: Custodial sexual misconduct

Dear Honorable Senator,

I am writing to request whatever information you or your office may have concerning the issue of defining the act of custodial sexual misconduct in our states' correctional, juvenile, and penitentiary institutions. Two recent incidents in Wisconsin correctional facilities have shed some much needed light on the need for instituting a legal means with which to prosecute and sentence criminal acts of misconduct perpetrated by our prison officials and officers. I am aware that a Bill has been introduced on the Federal level but am not aware of any pending legislation on the state level. Will you please forward any information you have to seldomcn@famvid.com or mail to Alex Schultz, 537 1/2 N. Batemen St. Appleton, WI 54911.

When you take a look at the numbers; the staggering rate of arrest for non-violent offenders, the disproportionate incarceration of minorities, and the ever growing juvenile population, it becomes very clear that we must institute some level of protection for the prisoners who, while they might deserve to serve time, do not deserve to serve the whim of an abusive officer.

Thank You
Concerned - Alex Schultz

Wisconsin State Legislature

TO: All Legislators

FROM: Rep. Scott Walker and Sen. Scott Fitzgerald

DATE: April 29, 1999

RE: Co-sponsorship of LRB 2580/1; **relating to:** sexual assault of a person confined in an adult or juvenile detention or correctional facility and providing a penalty.

Current state law forbids any person to engage in sexual contact or sexual intercourse with certain other vulnerable persons (anyone unconscious, mentally ill, under the age of 16, etc.). Along those lines, this bill prohibits employees and service providers in any correctional institution from engaging in such conduct with an inmate. Wisconsin is currently one of only 12 states that fail to consider consensual sexual contact or intercourse between correctional staff and inmates a crime. The news article included below highlights two recent examples of guards taking advantage of female inmates by trading "perks" for sexual favors.

This bill was redrafted to make the prohibition applicable at county and municipal jails and correctional facilities, as well as at state prisons and correctional facilities.

If you wish to sign on as a co-sponsor to LRB 2580/1, please contact Missy in Rep. Walker's office at 6-9181 by May 6th.

Analysis by the Legislative Reference Bureau

Under current law a person who has sexual contact or sexual intercourse with another person without the other person's consent commits the crime of sexual assault. In addition, current law prohibits a person from having sexual contact or sexual intercourse with another person under certain circumstances regardless of whether the other person has consented. Under those provisions a person commits the crime of sexual assault when he or she has sexual contact or sexual intercourse with: 1) a person who is under the influence of drugs or alcohol or suffers from a mental illness, so as to preclude him or her from effectively consenting; 2) a person who is unconscious; 3) a patient or resident in an adult family home, a community-based residential facility, or a helath or mental health treatment facility that employs the other person; or 4) a person under the age of 16.

This bill prohibits employes of correctional insitutions and individuals providing services to persons confined in them from having sexual contact of sexual intercourse with a person confined in the institution where they work. This prohibition applies to

juvenile detention facilities, juvenile correctional facilities, state prisons, county or municipal jails and houses of corrections, Huber facilities, lockup facilities, and county work camps. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than 20 years or both, if the offense occurs before December 31, 1999, or may be fined not more than \$10,000 or imprisoned for not more than 30 years or both, if the offense occurs on or after December 31, 1999.

Legislation would make sex with inmates illegal

**By Amy Rinard
of the Journal Sentinel staff
March 22, 1999**

Madison -- Legislation that would criminalize all sexual contact between inmates and prison staff has been proposed by two lawmakers who say it is appalling that Wisconsin is one of only 12 states to have no such law.

The proposal is an attempt to address situations such as the case last year in Waukesha County in which a county jailer was charged with having sex with a female inmate.

The jailer, Peter Agerholm of Racine, was fired. Under a plea agreement, he was convicted of misdemeanor charges of disorderly conduct and fornicating in a public place.

Five felony charges of misconduct in office were dismissed under the plea agreement. The inmate said Agerholm had offered her food and other jail favors in exchange for sex.

Last week, Bradley W. Kok of Beaver Dam, a guard at the Dodge Correctional Institution, was charged with delivering articles to an inmate after an inmate alleged she had sex with him in exchange for the cigarettes and writing paper he gave her. Kok resigned.

Under the legislation proposed by Rep. Scott Walker (R-Wauwatosa) and Sen. Scott Fitzgerald (R-Juneau), both guards could have been charged with the crime of sexual contact with an inmate regardless of consent, which would be a felony punishable by up to 20 years in prison.

Currently, consensual sex between inmates and prison or jail staff is not, in itself, a crime in Wisconsin.

Walker noted that current state law makes it illegal for anyone working at a variety of treatment facilities, including community-based residential and inpatient health care facilities, to have sexual contact with a resident.

He said the proposed legislation would parallel that law.

"Now, if you're a prison guard, the worst thing that can happen to you is that you lose your job," Walker said of guards alleged to have had consensual sex with inmates.

The state Department of Corrections has a strict policy of terminating the employment of any guard found to have had sex with an inmate, said Walker, who is chairman of the Assembly Corrections Committee.

But, he said, there should be criminal penalties for committing such an act. Making sexual contact with an inmate a felony would provide a greater deterrent, Walker said.

"It's a terrible abuse of power," Walker said.

6/16/99

Cheri Dubiel

WCASA

608-257-1516

- called to express support for AB 355

6/22/99 Corrections Public Hearing

AB 355

Goetsch

- need to add workhouse to list of correctional facilities?

Hahn

- why two diff. sentences?

Walker: to reflect implementation of TIS

Cindy O'Donnell - deputy to Citsikar

- Favos AB 355

+ similar instances documented nationwide

* no such thing as consensual sex between staff & inmate

* compromises safety

+ may want to check w/ CISC in sentencing

- believe workhouse would be included

- under bill's language

- contact between visitors & inmate

* result in year of segregation for inmates, suspending of visiting rights for visitor