



WISCONSIN LEGISLATIVE COUNCIL

AMENDMENT MEMO

2003 Assembly Bill 51	Assembly Substitute Amendment 1, as Amended by Assembly Amendment 1
<i>Memo published:</i> May 1, 2003	<i>Contact:</i> Philip G. Cardis, Staff Attorney

Current law provides that 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 any of the following: (1) a person who is under the influence of drugs or alcohol or who 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 health or mental health treatment facility that employs the other person; or (4) a person under the age of 16. A person convicted of sexual assault under one of those provisions is guilty of a Class C felony, which is punishable by a fine of not more than \$100,000, a term of imprisonment of up to 40 years, or both.

Assembly Bill 51 prohibits correctional officers, individuals providing services to persons confined in correctional institutions, boot camp supervisors, and probation, parole, and extended supervision agents from having sexual contact or sexual intercourse with a person who is serving a sentence or is placed in a correctional institution, is participating in a boot camp program, or is on probation, parole, or extended supervision. A person who violates this prohibition may be fined not more than \$100,000 or imprisoned for not more than 40 years, or both.

Assembly Substitute Amendment 1 is essentially the same as the bill except that the substitute amendment prohibits a probation, parole, or extended supervision agent from having sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if either: (1) the agent supervises the individual, either directly or through a subordinate; or (2) the agent has influenced or has attempted to influence another agent's supervision of the individual. Mainly, the substitute amendment addresses a factual scenario involving a parole agent and parolee where coercion is possible. For example, if the parole agent does **not** have the supervisory oversight or influence over the parolee, then the parole agent is not liable for sexual assault. Under the original bill, the parole agent

would be liable for sexual assault regardless of whether he or she had supervisory oversight or influence over the parolee. Therefore, the substitute amendment narrows the parties that could be affected by the bill.

Also, the substitute amendment defines “correctional staff member” to mean an individual who works at a correctional institution, including a volunteer.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

The amendment provides that liability will not extend to a correctional staff member or a probation, parole, or extended supervision agent if the “individual [i.e., inmate] with whom the actor [i.e., correctional staff member] has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.” In other words, where, for example, a correctional staff member is sexually assaulted by an inmate, the correctional staff member will not be subject to liability for sexual assault of the inmate.

LEGISLATIVE HISTORY

Assembly Substitute Amendment 1 was offered and recommended for adoption and passage of the bill as amended, by the Assembly Committee on Corrections and the Courts by a vote of Ayes, 9, Noes, 0 on March 26, 2003.

Assembly Amendment 1 to Assembly Substitute Amendment 1 was offered by Representatives Pocan and Ladwig, and was adopted on the Assembly floor by a voice vote.

PGC:wu:jal