

1999 ASSEMBLY BILL 355

May 24, 1999 – Introduced by Representatives WALKER, BOYLE, STONE, LA FAVE, AINSWORTH, MILLER, LADWIG, BOCK, HUEBSCH, POWERS, TURNER, MUSSER, RHOADES, KEDZIE, LASSA, NASS, YOUNG, ALBERS, KELSO, SERATTI, PLOUFF, POCAN, GOETSCH, KAUFERT, SUDER, WASSERMAN, FREESE, OWENS, VRAKAS, BLACK, GROTHMAN, GUNDERSON, KREIBICH, BERCEAU and COGGS, cosponsored by Senators FITZGERALD, MOORE, DARLING, ERPENBACH, FARROW, LAZICH and ROSENZWEIG. Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to amend* 940.225 (4) (intro.); and *to create* 940.225 (2) (h), 940.225 (5)
 2 (ab) and 940.225 (5) (ad) of the statutes; **relating to:** sexual assault of a person
 3 confined in an adult or juvenile detention or correctional facility and providing
 4 a penalty.

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 health 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 institutions and individuals providing services to persons confined in them from having sexual contact or 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

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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.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 940.225 (2) (h) of the statutes is created to read:

2 940.225 (2) (h) Has sexual contact or sexual intercourse with an individual
3 confined in a correctional institution and is a correctional officer or an individual
4 providing services directly to persons confined in the correctional institution.

5 **SECTION 2.** 940.225 (4) (intro.) of the statutes is amended to read:

6 940.225 (4) CONSENT. (intro.) “Consent”, as used in this section, means words
7 or overt actions by a person who is competent to give informed consent indicating a
8 freely given agreement to have sexual intercourse or sexual contact. Consent is not
9 an issue in alleged violations of sub. (2) (c), (cm), (d) and, (g) and (h). The following
10 persons are presumed incapable of consent but the presumption may be rebutted by
11 competent evidence, subject to the provisions of s. 972.11 (2):

12 **SECTION 3.** 940.225 (5) (ab) of the statutes is created to read:

13 940.225 (5) (ab) “Correctional institution” means a jail or correctional facility,
14 as defined in s. 961.01 (12m), a secured correctional facility, as defined in s. 938.02
15 (15m), or a secure detention facility, as defined in s. 938.02 (16).

16 **SECTION 4.** 940.225 (5) (ad) of the statutes is created to read:

17 940.225 (5) (ad) “Correctional officer” means any person employed by the state
18 or any political subdivision whose duties include supervising, controlling or
19 disciplining persons confined in a correctional institution.

20

(END)