

1999 DRAFTING REQUEST

Bill

Received: **03/23/99**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **Scott Walker (608) 266-9180**

By/Representing: **Ed**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters: **mdsida**

Subject: **Criminal Law - sexual assault**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Sexual assault of inmates

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	olsenje 04/1/99	ygeller 04/1/99	martykr 04/6/99	_____	lrb_docadmin 04/6/99		
/1	mdsida 04/26/99	ygeller 04/26/99	martykr 04/27/99	_____	lrb_docadmin 04/27/99	lrb_docadmin 04/27/99	

FE Sent For:

Not Needed

<END>

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				<END>			

Jacket "1" for Assembly
JEO

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1?	olsenje	PI 4/ jlg	4/ km1	H/4/ km1			

FE Sent For:

<END>

Submit "P" Drafts

JEO





Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

2580

TO: Interested Parties

FR: Representative Scott Walker

RE: Bill to make sexual contact with inmates by staff a felony

DT: March 18, 1999

1st week April

Cover
jailers too
998.02 double
coverage

Attached is a memo prepared by Shaun Haas of the Legislative Council on the current situation with sexual contact between staff and an inmate within the Wisconsin prison system. Senator Fitzgerald and I are introducing legislation that parallels (page 3 of the attachment to the Haas memo) the current BC felony for an employee of a facility (i.e. adult family home, CBRF, inpatient health care or state treatment facility) who has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

The Department of Corrections does have an aggressive Fraternalization Policy and there are currently laws that prevent sex with a non-consenting adult, but neither of these allows for criminal prosecution against a correctional officer who has sex with a consenting adult inmate. The worst that can happen is that the officer will be fired and may be brought up on other charges - depending on the situation.

On Monday, Bradley W. Kok made an initial appearance in Dodge County Circuit Court on a charge of delivering articles to an inmate. According to the criminal complaint, Kok slipped cigarettes, paper and sexually explicit notes under the cell door of two female inmates while on duty last year. Later, Kok entered the cell and had sexual contact with one of the woman, according to the complaint. Under current law, Kok can **not** be charged for the sexual contact - although he is no longer an employee of the Department of Corrections.

In 1998, there were seven cases of consensual sex reported between guards and inmates, he said. Five involved female correctional officers and male inmates and two involved male officers and female inmates.

Two weeks ago, I began looking into this issue after an Amnesty International report noted that Wisconsin was one of the 13 states without a law against sexual contact with inmates. I plan to have a hearing on this bill at the beginning of April.

Any questions please contact me at 266-9180.

MAR 16 1999



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: March 16, 1999
TO: REPRESENTATIVE SCOTT WALKER
FROM: Shaun Haas, Senior Staff Attorney
SUBJECT: Complaint by Jennifer M. Adams That Wisconsin Has "No Law Prohibiting Sexual Contact Between Inmates and Guards in Our Prisons"

This memorandum, prepared at your request, comments on issues raised by your constituent, Ms. Jennifer Adams, in an e-mail message to you, dated March 11, 1999. In the e-mail, Ms. Adams alleges that Wisconsin has "no law prohibiting sexual contact between inmates and guards in our prisons." Ms. Adams states further that ". . . there is little if any recourse for an inmate who has been sexually assaulted by a guard or other prison official."

It appears that Ms. Adams' concern is based on a report by Amnesty International that lists Wisconsin as one of 13 states that do not have laws ". . . that make it a crime for guards to have sexual contact with female prisoners." A review of the description of this report in an article that appeared in *U.S.A. Today*, dated March 4, 1999, attached, presents a confusing picture of Amnesty International's concern. Clearly, the conduct described in the article involved nonconsensual sex that is prohibited under Wisconsin's general sexual assault statute [s. 940.225, Stats., attached]. Additionally, you should be aware that a specific statute penalizes the abuse of residents of penal facilities. Specifically, under s. 940.29, Stats., attached, an employee of a penal or correctional facility who "abuses, neglects or ill-treats" any person confined in such a facility or who knowingly permits another person to do so is guilty of a Class E felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both).

If Ms. Adams' concern extends to both nonconsensual and consensual sexual contact between an inmate and a prison guard, she should be aware that the Department of Corrections' (DOC) policy governing relations between inmates and guards prohibits both consensual and nonconsensual sexual contact. My understanding is that Bob Margolies, Legislative Liaison, DOC, is providing you a copy of the DOC's policy in this regard.

If you feel that the current criminal statutes should be revised to clearly address consensual sexual contact between prison guards and inmates, I recommend that you consider

creating a specific statute prohibiting sexual contact between an inmate and a guard, whether that contact is consensual or nonconsensual. This draft legislation could be patterned after s. 940.22, Stats., relating to sexual exploitation by a therapist (attached). Note, in particular, that sub. (2) of this statute prohibits intentional sexual contact between a therapist and his or her patient, regardless of consent. Another approach you might consider is to amend the general sexual assault statute to prohibit an employe of a prison facility from having sexual contact with an inmate of such facility, regardless of consent. This approach would be consistent with the criminalization of sexual contact between an employe and patient or resident in various treatment facilities identified in s. 940.295, Stats. This prohibition is currently set forth in s. 940.225 (1) (g), Stats., which is highlighted in the sexual assault statute, attached. Sexual contact between an employe of such a treatment facility and a patient or resident is a Class BC felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 20 years, or both).

If I may be of further assistance regarding this matter, please let me know.

SPH:tlu;wu

Attachments

Sections 940.22, 940.225 and 940.29, Stats.

940.22 Sexual exploitation by therapist; duty to report. (1) DEFINITIONS. In this section:

- (a) "Department" means the department of regulation and licensing.
- (b) "Physician" has the meaning designated in s. 448.01 (5).
- (c) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).
- (d) "Psychotherapy" has the meaning designated in s. 455.01 (6).
- (e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.
- (f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.
- (g) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).
- (h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.
- (i) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) **SEXUAL CONTACT PROHIBITED.** Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class C felony. Consent is not an issue in an action under this subsection.

(3) **REPORTS OF SEXUAL CONTACT.** (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub. (2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par. (a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1. is not applicable.

(c) A report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub. (2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par. (a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars. (a) to (c) is guilty of a Class A misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) All reports and records made from reports under sub. (3) and maintained by the department, examining boards, affiliated credentialing boards, district attorneys and other persons, officials and institutions shall be confidential and are exempt from disclosure under s. 19.35 (1). Information regarding the identity of a victim or alleged victim of sexual contact by a therapist shall not be disclosed by a reporter or by persons who have received or have access to a report or record unless disclosure is consented to in writing by the victim or alleged victim. The report of information under sub. (3) and the disclosure of a report or record under this subsection does not violate any person's responsibility for maintaining the confidentiality of patient health care records, as defined in s. 146.81 (4) and as required under s. 146.82. Reports and records may be disclosed only to appropriate staff of a district attorney or a law enforcement agency within this state for purposes of investigation or prosecution.

(b) 1. The department, a district attorney, an examining board or an affiliated credentialing board within this state may exchange information from a report or record on the same subject.

2. If the department receives 2 or more reports under sub. (3) regarding the same subject, the department shall communicate information from the reports to the appropriate district attorneys and may inform the applicable reporters that another report has been received regarding the same subject.

3. If a district attorney receives 2 or more reports under sub. (3) regarding the same subject, the district attorney may inform the applicable reporters that another report has been received regarding the same subject.

4. After reporters receive the information under subd. 2. or 3., they may inform the applicable patients or clients that another report was received regarding the same subject.

(c) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(d) Whoever intentionally violates this subsection, or permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, is guilty of a Class A misdemeanor.

(5) **IMMUNITY FROM LIABILITY.** Any person or institution participating in good faith in the making of a report or record under this section is immune from any civil or criminal liability that results by reason of the action. For the purpose of any civil or criminal action or proceeding, any person reporting under this section is presumed to be acting in good faith. The immunity provided under this subsection does not apply to liability resulting from sexual contact by a therapist with a patient or client.

940.225 Sexual assault. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony. Whoever has sexual contact in the manner

described in sub. (5) (b) 2. with a person without the consent of that person is guilty of a Class D felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

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

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section:

(ag) "Inpatient facility" has the meaning designated in s. 51.01 (10).

(ai) "Intoxicant" means any controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. "Intoxicant" does not include any alcohol beverage.

(am) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

940.29 Abuse of residents of penal facilities. Any person in 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.

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 "trivial 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 Sowa 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.

gled, and he slammed her into the metal frame of her cot, gashing her head. He ran off, and the next day Lucus filed a complaint. Prison officials told

the guard and her assailant.

Three weeks later, three male inmates visited Lucus' cell. "I was handcuffed, so I knew the officer was involved,"

says Lucus, who was raped repeatedly. "They knew everything in the affidavit. ... They knew I had told."

Last year, the federal govern-

"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, Washington, West 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.

ATTN: Ed Eberk

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 \$300 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.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2580/P1

JEO:.....

By Tues
4/6

D-Note

Jlg

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen cat

- 1 AN ACT ...; relating to: sexual assault of a person confined in an adult or juvenile
- 2 detention or correctional facility and providing 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 ~~which~~ 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 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

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2580/P1dn

JEO: :...

↑
jlg

Ed:

Please review this draft carefully to ensure that it is consistent with your intent. In particular, please note the following:

1. The bill does not cover employes of all facilities or programs to which adults or minors may be committed before or after trial. For example, it does not include reforestation camps for adults or secured child caring institutions for minors. If you would like the bill to cover individuals working at other facilities or programs, we can revise the draft to include them.

2. Under s. 948.02, individuals are prohibited from engaging in sexual intercourse or sexual contact with a person under age 16. Under this bill, if the victim is under 16 and confined in a juvenile detention or correctional center, the defendant could be charged with, convicted of, and sentenced for both offenses. If you prefer, we can revise the draft to prohibit prosecutors from charging a defendant with both offenses in such circumstances.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2580/P1dn
JEO;jlg:km

April 1, 1999

Ed:

Please review this draft carefully to ensure that it is consistent with your intent. In particular, please note the following:

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Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2580/1

JEO:jlg:km

redraft
maker run

Soon

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

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

