

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB355)

Received: 06/7/99

Received By: **olsenje**

Wanted: **Today**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing: **Himself**

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:

Prisoner sexual activity

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

LRBa0475/2dn
JEO:cmh:mrc

June 7, 1999

Rep. Gundrum:

1. Under the amendment, a prisoner generally cannot be prosecuted for engaging in sexual activity if the other person is subject to prosecution for sexually assaulting the prisoner under s. 940.225. This also precludes the prosecution of a prisoner for engaging in sexual contact or sexual intercourse with a correctional officer, since under the bill, the correctional officer would be subject to prosecution under that section. Is that your intent?

2. A person violating the prohibition contained in this amendment could be subject to multiple charges arising out of the same act of sexual contact or sexual intercourse. For example, a prisoner who has sexual contact or sexual intercourse with a person who has not attained the age of 13 would also be subject to prosecution under s. 948.02 (1). If you prefer, we can revise the draft to prohibit prosecutors from charging a defendant with multiple offenses based on the same act of sexual contact or sexual intercourse.

3. The amendment does not criminalize the conduct of the person with whom the prisoner engages in sexual activity, unless the person is also a prisoner who is a voluntary participant. Is this okay?

4. As is the case with the underlying bill, the amendment does not apply to sexual activity outside the walls of the institution in which the prisoner is confined. In other words, it does not prohibit a prisoner with Huber privileges from having sexual contact or sexual intercourse while away from the prison (although the prisoner may be subject to discipline under DOC 303.15). Is this okay?

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

New
Sent to WPPS.

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0481/1

**ASSEMBLY AMENDMENT ,
TO 1999 ASSEMBLY BILL 355**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 2: after "assault of" insert "and sexual activity involving".

3 **2.** Page 2, line 19: after that line insert:

4 "SECTION 4m. 946.435 of the statutes is created to read:

5 **946.435 Prisoner sexual activity.** (1) In this section "prisoner" means a
6 person confined in a jail or correctional facility, as defined in s. 961.01 (12m), a
7 secured correctional facility, as defined in s. 938.02 (15m), or a secure detention
8 facility, as defined in s. 938.02 (16).

9 (2) A prisoner who has sexual contact or sexual intercourse with another
10 person while in the facility or institution in which the prisoner is confined, *the*

11 ~~prisoner~~ is guilty of a Class D felony.

12 (3) This section does not apply to an individual if all of the following apply:

