1999 DRAFTING REQUEST

Assembly Amendment (AA-AB355)

Received: 06/7/99					Received By: olsenje Identical to LRB: By/Representing: Himself Drafter: olsenje				
Wanted: Today									
For: Mark Gundrum (608) 267-5158 This file may be shown to any legislator: NO									
Subject: Criminal Law - sexual assault				Extra Copies: MGD					
Pre Top	ic:						Office Control of the		
No speci	fic pre topic	given							
Topic:									
Prisoner	sexual activi	ty							
Instruct	ions:			(N.S.)					
See Attac	ched								
Drafting	g History:			. ,,,,					
Vers.	<u>Drafted</u>	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	Required		
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FE Sent 1	For:			<end></end>					

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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

FE Sent For:

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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>

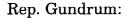
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olsenje

<END>

DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU

June 7, 1999



- 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 procludes 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

1999 - 2000 LEGISLATURE

Now Sent to

JEO:cmh:mrc

ASSEMBLY AMENDMENT,

TO 1999 ASSEMBLY BILL 355

1	At the	locations	indicated,	amend	the b	ill as	follows:

- 1. Page 1, line 2: after "assault of" insert "and sexual activity involving".
- 3 **2.** Page 2, line 19: after that line insert:

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- 4 "Section 4m. 946.435 of the statutes is created to read:
 - 946.435 Prisoner sexual activity. (1) In this section "prisoner" means a person confined in a jail or correctional facility, as defined in s. 961.01 (12m), a secured correctional facility, as defined in s. 938.02 (15m), or a secure detention facility, as defined in s. 938.02 (16).
 - (2) A prisoner who has sexual contact or sexual intercourse with another person while in the facility or institution in which the prisoner is confined the prisoner is guilty of a Class D felony.
 - (3) This section does not apply to an individual if all of the following apply:

(END)
specimen to the state crime laboratories for deoxyribonucleic acid analysis.".
to 943.15 or s. 946.435, the court may require the person to provide a biological
places a person on probation for any violation under ch. 940, 944 or 948 or, ss. 943.01
973.047 (1) (b) Except as provided in par. (a), if a court imposes a sentence or
SECTION 5m. 973.047 (1) (b) of the statutes is amended to read:
(b) The individual is not subject to prosecution under s. 940.225.
(1), (2) or (3).
subject to prosecution for the sexual contact or sexual intercourse under s. 940.225
(a) Each other person engaging in the sexual contact or sexual intercourse is

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