

2001 DRAFTING REQUEST

Bill

Received: **01/13/2001**

Received By: **mdsida**

Wanted: **Soon**

Identical to LRB:

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

By/Representing: **Missy**

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

Drafter: **nelsorp1**

May Contact:

Addl. Drafters: **mdsida**

Subject: **Criminal Law - sexual assault
Correctional System - jails
Correctional System - prisons
Children - juvenile justice**

Extra Copies: **rlr
gmm**

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Sexual assault of prisoners and detainees

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>
/?	mdsida 01/24/2001	jdyer 02/02/2001		_____			
	nelsorp1 01/24/2001			_____			
	mdsida			_____			

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	01/24/2001 nelsorp1						
	01/25/2001						
/1			rschluet		lrb_docadmin		
			02/06/2001		02/06/2001		
/2	nelsorp1	jdyer	jfrantze		lrb_docadmin		
	03/23/2001	03/23/2001	03/26/2001		03/26/2001		
/3	nelsorp1	jdyer	martykr		lrb_docadmin	lrb_docadmin	
	03/27/2001	03/27/2001	03/28/2001		03/28/2001	04/24/2001	

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	mdsida 01/24/2001						
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/?	mdsida			_____			

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Mikes?

- 2580

AB355

ASSEMBLY BILL 355

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

1999

- 05-24-99. A. 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.
- 05-24-99. A. Read first time and referred to committee on Corrections and the Courts . **206**
- 06-02-99. A. Public hearing held.
- 06-08-99. A. Executive action taken.
- 06-08-99. A. Assembly amendment **1** offered by committee on Corrections and the Courts **224**
- 06-15-99. A. Report Assembly amendment **1** adoption recommended by committee on Corrections and the Courts, Ayes 6, Nocs 3 **228**
- 06-15-99. A. Report passage as amended recommended by committee on Corrections and the Courts, Ayes 9, Noes 0 **228**
- 06-15-99. A. Referred to committee on Rules **228**
- 06-21-99. A. Placed on calendar 6-23-1999 by committee on Rules.
- 06-23-99. A. Read a second time **238**
- 06-23-99. A. Assembly amendment **1 adopted** **238** *a.o.p.!*
- 06-23-99. A. Ordered to a third reading **238**
- 06-23-99. A. Rules suspended **239**
- 06-23-99. A. Read a third time and **passed** **239**
- 06-23-99. A. Ordered immediately messaged **239**
- 06-24-99. S. Received from Assembly **187**
- 06-24-99. S. Read first time and referred to committee on Judiciary and Consumer Affairs **188**
- 10-11-99. S. Public hearing held.

2000

- 04-06-00. S. Failed to concur in pursuant to Senate Joint Resolution 1 **583**

Nelson, Robert P.

From: Gilbert, Melissa
Sent: Friday, January 12, 2001 1:41 PM
To: Nelson, Robert P.
Subject: bill redrafts

Hi Bob,

Scott would like ~~_____~~ AB 355 redrafted from last session

Thanks much!

Melissa Gilbert
Research Assistant
Office of Rep. Scott Walker

2001
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.

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; ^{and sexual activity involving} relating to: sexual assault of a person
3 confined in an adult or juvenile detention or correctional facility and providing
4 a penalty.

*correctional officer
or individual
providing services*

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. ^(which, under the bill, includes)

This bill prohibits ~~employees of~~ employees 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

correctional officers

move to next page

Ⓝ

The bill also prohibits prisoners from ~~the~~ having sexual contact or sexual intercourse with another person while in a institution. a correctional

ASSEMBLY BILL 355

insert from prev. page ✓

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.

A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than ^{ten} years or both

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

1 SECTION 1. 940.225 (2) (h) ^x 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.) ^x 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):

Pw/f

12 SECTION 3. 940.225 (5) (ab) ^x 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) ^x 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)

insert 2-19 ✓

insert 2-19

**ASSEMBLY AMENDMENT 1,
TO 1999 ASSEMBLY BILL 355**

June 8, 1999 - Offered by COMMITTEE ON CORRECTIONS AND THE COURTS.

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 is guilty
11 of a Class D felony.

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



insert
2-19

Insert 2-19 cont.

1 (a) Each other person engaging in the sexual contact or sexual intercourse is
2 subject to prosecution for the sexual contact or sexual intercourse under s. 940.225

3 (1), (2) or (3).

4 (b) The individual is not subject to prosecution under s. 940.225. ✓

5 **SECTION 5m.** 973.047 (1) (b) of the statutes is amended to read:

6 973.047 (1) (b) Except as provided in par. (a), if a court imposes a sentence or
7 places a person on probation for any violation under ch. 940, 944 or 948 or, ss. 943.01
8 to 943.15 or s. 946.435, the court may require the person to provide a biological
9 specimen to the state crime laboratories for deoxyribonucleic acid analysis.”

10 (END)

Nelson, Robert P.

From: Gilbert, Melissa
Sent: Thursday, March 22, 2001 4:57 PM
To: Nelson, Robert P.
Subject: changes to LRB 2041/1 (sexual assault of inmates)

Bob,

In reviewing LRB 2041/1, I noticed we need to make a few changes.

1. We would like to remove Section 5 (starting on page 2, line 20). ✓
2. We would like to change Section 1 (page 2, line 4) to read "a correctional institution" instead of "the correctional institution." This stems from an incident in which an inmate on work release was seduced by her supervising correctional officer at another institution. ✓

Let me know if you have any questions or concerns about altering the bill.

Thanks,
Missy
Melissa Gilbert
Research Assistant
Office of Rep. Scott Walker



2001 BILL

regen.

1 AN ACT to amend 940.225 (4) (intro.), and to create 940.225 (2) (h), 940.225 (5)
2 (ab), 940.225 (5) (ad) and 946.435 of the statutes; relating to: sexual assault
3 of and sexual activity involving a person confined in an adult or juvenile
4 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 employs the other person; or 4) a person under the age of 16.

This bill prohibits correctional officers and individuals providing services to persons confined in correctional institutions (which, under the bill, include juvenile detention facilities, juvenile correctional facilities, state prisons, county or municipal jails and houses of corrections, Huber facilities, lockup facilities, and county work camps) from having sexual contact or sexual intercourse with a person confined in the institution where they work. A person who violates this prohibition may be fined

BILL

not more than \$10,000 or imprisoned for not more than 30 years or both. The bill also prohibits prisoners from having sexual contact or sexual intercourse with another person while in a correctional institution. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than ten years or both.

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~~ ^a 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 **SECTION 5.** 946.435 of the statutes is created to read:

BILL

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

5 (2) A prisoner who has sexual contact or sexual intercourse with another
6 person while in the facility or institution in which the prisoner is confined is guilty
7 of a Class D felony.

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

9 (a) Each other person engaging in the sexual contact or sexual intercourse is
10 subject to prosecution for the sexual contact or sexual intercourse under s. 940.225
11 (1), (2), or (3).

12 (b) The individual is not subject to prosecution under s. 940.225.

13

(END)



soon (3/22)

2001 BILL

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AN ACT *to amend* 940.225 (4) (intro.); and *to create* 940.225 (2) (h), 940.225 (5)
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This bill prohibits correctional officers and individuals providing services to persons confined in correctional institutions (which, under the bill, include juvenile detention facilities, juvenile correctional facilities, state prisons, county or municipal jails and houses of corrections, Huber facilities, lockup facilities, and county work camps) from having sexual contact or sexual intercourse with a person confined in



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

March 28, 2001

MEMORANDUM

To: Representative Walker

From: Robert P. Nelson, Senior Legislative Attorney

Re: LRB-2041 Sexual assault of prisoners and detainees

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-7511 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.