

## 2003 SENATE BILL 32

February 12, 2003 – Introduced by Senators S. FITZGERALD, ROESSLER, BROWN, KANAVAS, LAZICH, LEIBHAM, KEDZIE, REYNOLDS, RISSER, ROBSON and ZIEN, cosponsored by Representatives LADWIG, TOWNSEND, WASSERMAN, AINSWORTH, ALBERS, BALOW, BIES, CULLEN, J. FITZGERALD, FREESE, GIELOW, GUNDRUM, HAHN, HINES, HUNDERTMARK, JESKEWITZ, KESTELL, KRAWCZYK, LASSA, J. LEHMAN, M. LEHMAN, LEMAHIEU, LOEFFELHOLZ, LOTHIAN, MCCORMICK, MONTGOMERY, NASS, NISCHKE, OTT, OWENS, PETROWSKI, PLALE, PLOUFF, POCAN, SERATTI, SHILLING, STONE, SUDER, TOWNS, VAN ROY, VRAKAS, J. WOOD and POPE-ROBERTS. Referred to Committee on Judiciary, Corrections and Privacy.

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 activity involving  
 3           jail, prison, or community corrections staff or contractors and jail inmates or  
 4           persons in the custody or under the supervision of the Department of  
 5           Corrections and providing a penalty.

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### ***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 any of the following: 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, 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

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camps or boot camps), boot camp supervisors, and probation, parole, and extended supervision agents from having sexual contact or sexual intercourse with a person who is serving a sentence or is placed in a correctional institution, is participating in a boot camp program, or is on probation, parole, or extended supervision. A person who violates this prohibition may be fined not more than \$100,000 or imprisoned for not more than 40 years or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***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 in  
3 who is serving a sentence or is placed in a correctional institution, is participating  
4 in the challenge incarceration program under s. 302.045, or is on probation, parole,  
5 or extended supervision if the actor is one of the following:

6           1. A correctional officer.

7           2. An individual providing services directly to persons confined in a  
8 correctional institution.

9           3. A person providing services directly to or supervising individuals who  
10 participate in the challenge incarceration program.

11           4. A probation, parole, or extended supervision agent.

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

13           940.225 (4) CONSENT. (intro.) “Consent”, as used in this section, means words  
14 or overt actions by a person who is competent to give informed consent indicating a  
15 freely given agreement to have sexual intercourse or sexual contact. Consent is not

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1 an issue in alleged violations of sub. (2) (c), (cm), (d) ~~and~~, (g), and (h). The following  
2 persons are presumed incapable of consent but the presumption may be rebutted by  
3 competent evidence, subject to the provisions of s. 972.11 (2):

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

5 940.225 (5) (ab) “Correctional institution” means a jail or correctional facility,  
6 as defined in s. 961.01 (12m), a secured correctional facility, as defined in s. 938.02  
7 (15m), or a secure detention facility, as defined in s. 938.02 (16).

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

9 940.225 (5) (ad) “Correctional officer” means any person employed by the state  
10 or any political subdivision whose duties include supervising, controlling, or  
11 disciplining persons confined in a correctional institution.

12 **SECTION 5. Effective date.**

13 (1) This act takes effect on February 1, 2003, or on the day after publication,  
14 whichever is later.

15 (END)