

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB32)

Received: **05/09/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Fitzgerald (608) 266-5660**

By/Representing: **Judi**

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

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - sex offenses
Correctional System - jails
Correctional System - prisons
Correctional System - probation
Correctional System - ext superv
Correctional System - parole**

Extra Copies: **rlr
rpn**

Submit via email: **YES**

Requester's email: **Sen.Fitzgerald@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Sexual activity involving someone working at a prison and an inmate; sexual activity involving a probation, parole, or extended supervision agent and a person on probation, parole, or ES

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 05/12/2003	wjackson 05/12/2003		_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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rschluet _____
05/12/2003 _____

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05/12/2003

sbasford
05/12/2003

FE Sent For:

<END>

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Handwritten signature and number 5-12-3

FE Sent For:

<END>

Plc from Judy - Sen Fitz

AB51 - Wants ASA as a sub^{to} SB32

to Zien

6-5660

stripes to Zien?

As amended

?

SSA

~~ASSEMBLY SUBSTITUTE AMENDMENT 1,~~

~~TO 2003 ASSEMBLY BILL 51~~

SB 32

Now

March 26, 2003 - Offered by 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 (2)

2 (i), 940.225 (5) (ab) and 940.225 (5) (ad) of the statutes; **relating to:** sexual

3 activity involving a person working at a jail or prison or a community

4 corrections staff member and an inmate or a person otherwise in the custody

5 or under the supervision of the Department of Corrections and providing a

6 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 any of the following: 1) a person who is under the influence of drugs or drugs and alcohol or who 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. A person convicted of sexual assault under one of those provisions is guilty of a Class C felony, which is punishable by a fine of not more than \$100,000, a term of imprisonment (consisting of a term of confinement in state prison followed by a term of extended supervision) of up to 40 years, or both.

This bill prohibits a person who works at a correctional institution (which, under the bill, means a juvenile detention facility, a juvenile correctional facility, a state prison, a county or municipal jail or house of corrections, a Huber facility, a lockup facility, or a county work camp) from having sexual contact or sexual intercourse with a person who is confined in a correctional institution. The bill also prohibits a probation, parole, or extended supervision agent from having sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if either: 1) the agent supervises the individual, either directly or through a subordinate; or 2) the agent has influenced or has attempted to influence another agent's supervision of the individual. A person who violates this prohibition is guilty of a Class C felony.

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

SECTION 1. 940.225 (2) (h) of the statutes is created to read:

940.225 (2) (h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member.

INS
213

SECTION 2. 940.225 (2) (i) of the statutes is created to read:

940.225 (2) (i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual.

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SECTION 3. 940.225 (4) (intro.) of the statutes is amended to read:

940.225 (4) CONSENT. (intro.) "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a

1 freely given agreement to have sexual intercourse or sexual contact. Consent is not
2 an issue in alleged violations of sub. (2) (c), (cm), (d) and, (g), (h), and (i). The following
3 persons are presumed incapable of consent but the presumption may be rebutted by
4 competent evidence, subject to the provisions of s. 972.11 (2):

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

6 940.225 (5) (ab) “Correctional institution” means a jail or correctional facility,
7 as defined in s. 961.01 (12m), a secured correctional facility, as defined in s. 938.02
8 (15m), or a secure detention facility, as defined in s. 938.02 (16).

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

10 940.225 (5) (ad) “Correctional staff member” means an individual who works
11 at a correctional institution, including a volunteer.

12 (END)

**ASSEMBLY AMENDMENT 1,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 51**

April 29, 2003 - Offered by Representatives POCAN and LADWIG.

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** ~~Page 2, line 3: after "member." insert~~ ^(Not) This paragraph does not apply if the
3 individual with whom the actor has sexual contact or sexual intercourse is subject
4 to prosecution for the sexual contact or sexual intercourse under this section. ^{2/3}

5 **2.** ~~Page 2, line 10: after "individual" insert~~ ^(Not) This paragraph does not apply if
6 the individual with whom the actor has sexual contact or sexual intercourse is
7 subject to prosecution for the sexual contact or sexual intercourse under this
8 section. ^{2/10}

(END)