

**2003 DRAFTING REQUEST**

**Bill**

Received: **09/24/2002**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Bonnie Ladwig (608) 266-9171**

By/Representing: **Janine**

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  
Children - juvenile justice  
Correctional System - probation  
Correctional System - parole  
Correctional System - ext superv**

Extra Copies: **rpn**

Submit via email: **YES**

Requester's email: **Rep.Ladwig@legis.state.wi.us**

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of DOC

**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	jdyer					S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	09/27/2002	09/30/2002 jdyer 10/01/2002		_____			Crime
/1			jfrantz 10/01/2002	_____	sbasford 10/01/2002	lkunkel 10/03/2002	S&L Crime
/2	mdsida 01/16/2003	jdyer 01/17/2003 jdyer 01/20/2003	pgreensl 01/21/2003	_____	lemery 01/21/2003	lemery 01/21/2003	S&L Crime
/3	mdsida 01/22/2003	jdyer 01/22/2003	rschlue 01/23/2003	_____	sbasford 01/23/2003	sbasford 01/23/2003	

FE Sent For:

*At intro*

<END>

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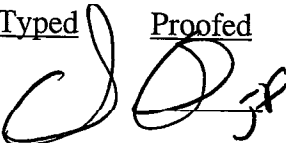
Topic:

Sexual assault of prisoners and detainees

Instructions:

See Attached

Drafting History:

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/?	mdsida 09/27/2002	jdyer 09/30/2002 jdyer 10/01/2002	 1-23-3				S&L Crime
		13 1/2 jld					

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/1			jfrantze 10/01/2002	_____	sbasford 10/01/2002	lkunkel 10/03/2002	S&L Crime
/2	mdsida 01/16/2003	jdyer 01/17/2003 jdyer 01/20/2003	pgreensl 01/21/2003	_____	lemery 01/21/2003	lemery 01/21/2003	

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		jdyer 10/01/2002	<i>[Handwritten initials]</i>	<i>[Handwritten initials]</i>			
		<i>[Handwritten initials]</i>	<i>[Handwritten initials]</i>	<i>[Handwritten initials]</i>			

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**Topic:**

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		jdye 10/01/2002		_____			Crime

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		1 10/1 jld	6/10/1	6/10/1			

FE Sent For:

<END>

**Dsida, Michael**

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**From:** Hale, Janine  
**Sent:** Tuesday, September 24, 2002 2:40 PM  
**To:** Nelson, Robert P.; Dsida, Michael  
**Subject:** Re-draft of 2001 AB 359

Rep. Ladwig would like to request a re-draft of 2001 Assembly Bill 359 relating to sexual activity of prisoners. This was authored by Rep. Walker previously, but now Rep. Ladwig would like to have it drafted. If you have any questions please feel free to contact me.

Janine L. Hale

*Janine L. Hale, Chief of Staff  
State Representative Bonnie Ladwig  
63rd Assembly District  
113 West, State Capitol  
P.O. Box 8952  
Madison, WI 53708  
(608)266-9171  
1-888-534-0063  
janine.hale@legis.state.wi.us*

D-Note

↑  
keep

**2001 ASSEMBLY BILL 359**  
**2003 BILL**

April 30, 2001 - Introduced by Representatives WALKER, BOYLE, AINSWORTH, ALBERS, BERCEAU, BIES, J. FITZGERALD, FREESE, GUNDERSON, GUNDRUM, HUNDERTMARK, JESKEWITZ, KEDZIE, LADWIG, LASSA, J. LEHMAN, M. LEHMAN, LEIBHAM, LIPPERT, MILLER, OLSEN, OWENS, PLALE, POCAN, SERATTI, STONE, SYKORA, TURNER, VRAKAS, WADE, WARD and WASSERMAN, cosponsored by Senators S. FITZGERALD, DARLING, HUELSMAN, PLACHE, ROESSLER 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; **relating to:** sexual assault of and  
3 sexual activity involving a person confined in an adult or juvenile detention or  
4 correctional facility and providing a penalty. ✓

***Analysis by the Legislative Reference Bureau***

any of the following

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

ASSEMBLY BILL 359

an institution. A person who violates this prohibition may be fined not more than \$10,000 or imprisoned for not more than ~~30~~ years or both.

anal: CRIME

FE - S+L

*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 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):

PWF

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.

INS 2/19

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

LRB-0246/1dn

MGD:.....

*date*

*Jld*

Janine:

I have included a delayed effective date provision so that your proposal could not take effect before February 1, 2003, the date on which 2001 Wisconsin Act 109's reclassification of felonies takes effect.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0246/lins  
MCD:.....

1            **INSERT 2/19**

2            **SECTION 1. Effective date.**

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

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

LRB-0246/1dn  
MGD:jld:jf

October 1, 2002

Janine:

I have included a delayed effective date provision so that your proposal could not take effect before February 1, 2003, the date on which 2001 Wisconsin Act 109's reclassification of felonies takes effect.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

**Kunkel, Laura**

---

**From:** Hale, Janine  
**Sent:** Thursday, October 03, 2002 12:20 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB-0246/1 Topic: Sexual assault of prisoners and detainees

It has been requested by <Hale, Janine> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-0246/1 Topic: Sexual assault of prisoners and detainees



Plc from Janine

- Wants to cover ~~of~~ people on probation, parole, ES
  - : Adult boot camps
  - ~~The~~ Sexual activity outside of walls of place of confinement (e.g. Huber)

Don't cover kids at home ~~except for after care~~  
only in secure facilities



2003 BILL

93854

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; relating to: sexual assault of and

3 sexual activity involving a person confined in an adult or juvenile detention or

4 correctional facility, and providing a penalty. the custody of the department of

or under the supervision

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, 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

or boot camps, boot camp supervisors, and probation, parole, and extended supervision agents

**BILL**

in a correctional

is participating in a boot camp program, or is on probation, parole, or extended supervision

institution. 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.

who is serving a sentence, or is placed

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

participating in the challenge incarceration program

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 confined in a correctional institution, ~~or~~ <sup>is</sup> a correctional officer <sup># 1. A</sup> or <sup># 2.</sup> an individual providing services directly to persons confined in a correctional institution.

INS  
2/3

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

INS  
2/4

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

940.225 (5) (ab) "Correctional institution" means 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).

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

16



2003-2004 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0246/2ins  
MGD.....

1

~~analysis~~ INSERT

2

INSERT 2/3

3

~~4~~<sup>NO</sup> under s. 302.045, or is on probation, parole, or extended supervision if the actor

4

is one of the following:

5

INSERT 2/4

6

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

7

8

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

(end ins)



LPS - please  
make LRB-1683/1  
identical to  
LRB-0246/3.  
Thanks! :)  
Joy

**ASSEMBLY BILL**

✓  
Insert 1-2

Keegen

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 assault on persons  
3 in the custody or under the supervision of the Department of Corrections and  
4 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 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 camps or boot camps), boot camp supervisors, and probation, parole, and extended supervision agents from having sexual contact or sexual intercourse with a person

**ASSEMBLY BILL**

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.

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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  
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**ASSEMBLY BILL**

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6 (15m), or a secure detention facility, as defined in s. 938.02 (16).

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8 940.225 (5) (ad) “Correctional officer” means any person employed by the state  
9 or any political subdivision whose duties include supervising, controlling, or  
10 disciplining persons confined in a correctional institution.

11 **SECTION 5. Effective date.**

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

14 (END)



INSERT 1-2

sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or

**Mentkowski, Annie**

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**From:** Mentkowski, Annie

**Sent:** Thursday, January 23, 2003 4:28 PM

**To:** Rep.Ladwig

**Subject:** LRB-0246/3 per your request