

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

March 26, 2003 – Offered by COMMITTEE ON CORRECTIONS AND THE COURTS.

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:

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 who
3 is confined in a correctional institution if the actor is a correctional staff member.

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

5 940.225 **(2)** (i) Has sexual contact or sexual intercourse with an individual who
6 is on probation, parole, or extended supervision if the actor is a probation, parole, or
7 extended supervision agent who supervises the individual, either directly or through
8 a subordinate, in his or her capacity as a probation, parole, or extended supervision
9 agent or who has influenced or has attempted to influence another probation, parole,
10 or extended supervision agent's supervision of the individual.

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

12 940.225 **(4)** CONSENT. (intro.) "Consent", as used in this section, means words
13 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)