

**Committee Name:**  
**Senate Committee –**  
**Judiciary, Corrections and Privacy**  
**(SC–JCP)**

**Appointments**

03hr\_SC–JCP\_Appt\_pt00

**Committee Hearings**

03hr\_SC–JCP\_CH\_pt00

**Committee Reports**

03hr\_SC–JCP\_CR\_pt00

**Clearinghouse Rules**

03hr\_SC–JCP\_CRule\_03–

**Executive Sessions**

03hr\_SC–JCP\_ES\_pt00

# Hearing Records

## 03hr\_ab0051b

03hr\_sb0000

**Misc.**

03hr\_SC–JCP\_Misc\_pt00

**Record of Committee Proceedings**

03hr\_SC–JCP\_RCP\_pt00



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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: SENATOR GARY R. GEORGE  
FROM: Ronald Sklansky, Senior Staff Attorney  
RE: Consent in a Sexual Assault Case  
DATE: January 28, 2003

AB-51  
?

This memorandum, prepared at your request, responds to a question you have raised regarding the issue of consent in a sexual assault case. Specifically, you have asked whether, in a case in which it is alleged that a correctional officer has committed a sexual assault against an inmate, it can be argued that the act was performed on a nonconsensual basis merely because of the unequal status between the correctional officer and the inmate.

Section 940.225, Stats., prohibits various degrees of sexual assault. Most of these crimes have as an element of the offense that sexual contact or sexual intercourse occurs without the consent of the victim. [See s. 940.225 (1), (2) (a), (b), (c), and (f), (3), and (3m), Stats.]

Clearly, a correctional officer is prohibited from committing a sexual assault against an inmate under s. 940.225, Stats. The issue of whether the status of a correctional officer negates any possible consent on the part of an inmate has not been addressed in published Wisconsin case law. However, the Supreme Court of Washington has considered whether the presence of a firearm on the person of a uniformed and armed police officer while committing rape against a prisoner, without additional evidence of a threat to use the firearm, is sufficient to satisfy the "uses or threatens to use a deadly weapon" element of first-degree rape under Washington law. The court stated:

An examination of all the facts in this case--including Respondent's authority as a policy officer, the presence of weapons on his person and in his patrol car, his greater size, his use of physical force, and his deliberate choice of a remote location for the sex acts--demonstrates sufficient evidence of an implied threat by Respondent....

Ms. L. testified he committed forcible rape, threatening her with his authority as a police officer.... [See *Washington v. Bright*, 129 Wn.2d 257, 270-273, 916 P.2d 922 (1996); emphasis added.]

While the *Bright* case did not focus on the status of the police officer with respect to the issue of the victim's consent, the court clearly recognized the status of the police officer as it affected the perceptions of the victim. A similar argument could be made in a case involving a sexual assault by a correctional officer against an inmate under s. 940.225, Stats. That is, the state could argue that it is impossible for an inmate to give consent to a sexual contact by a correctional officer by virtue of the correctional officer's superior position in a correctional institution.

[Given that sexual contact between a correctional officer and an inmate probably will take place in a correctional institution, it is possible that a consensual act nevertheless could be prosecuted under s. 944.15 or 944.20, Stats. Under s. 944.15, Stats., whoever has sexual intercourse in public is guilty of a Class A misdemeanor. The term "in public" is defined to mean a place where, or in a manner such that, the person knows or has reason to know that the conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual intercourse. Section 944.20 (1), Stats., provides that a person is guilty of a Class A misdemeanor if a person commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others. A Class A misdemeanor is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both.]

If I can be of any further assistance in this matter, please feel free to contact me.

RS:jal;ksm



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER  
ATTORNEY GENERAL

Daniel P. Bach  
Deputy Attorney General

114 East, State Capitol  
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608/266-1221  
TTY 1-800-947-3529

February 26, 2003

Representative Garey Bies, Chairman  
Representative Sheryl Albers, Co-Chairperson  
Assembly Committee on Corrections and the Courts

Dear Representative Bies and Representative Albers and Members of the Committee:

I am sorry I cannot be present today to give you my testimony in person. I am in the process of hiring a legislative liaison and hope to have our legislative efforts fully coordinated with you and your legislative colleagues very soon. I am grateful for the opportunity to share with you my concerns about Assembly Bill 51 in this letter.

I strongly support the aims of AB 51.

However, it is my belief that the bill as drafted would make a crime any incident in which a correctional officer is a victim of a sexual assault.

To correct this unintentional aspect of the bill as drafted, I recommend an amendment be drafted and adopted incorporating into the language the requirement that in order to be considered a criminal action, the sexual contact must be knowing and voluntary on the part of the correctional officer.

Thank you for your consideration of this modification, which I believe corrects an error with potentially critical consequences.

Sincerely,

Peggy A. Lautenschlager  
Attorney General  
State of Wisconsin

PAL:br



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER  
CHIEF

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REFERENCE SECTION: (608) 266-0341  
REFERENCE FAX: (608) 266-5648

March 25, 2003

### MEMORANDUM

**To:** Members of the Assembly Committee on Corrections and the Courts

**From:** Michael Dsida *md*  
Legislative Attorney

**Subject:** Minor Error in Analysis of AB 51

I am writing to you to inform you of a minor error in the Legislative Reference Bureau Analysis of 2003 Assembly Bill 51, which relates to sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections. The analysis correctly describes the changes that the bill would make to current law, but it incorrectly describes one set of circumstances under which a person is guilty of second-degree sexual assault under current law. The material beginning with "1)" on the seventh line of the first paragraph should have read: "1) a person who is under the influence of drugs or *drugs and* alcohol...." Under current law, consent is not an issue in cases in which the victim is under the influence of drugs or drugs and alcohol. It *is* an issue in cases in which a victim is under the influence of alcohol alone, regardless of the extent of the victim's intoxication. The mistake in the analysis, however, has little or no bearing on the substance of the bill.

I apologize for this error. If you have any questions about this matter, please let me know.

cc. Honorable Bonnie Ladwig  
Philip Cardis

# **Assembly Republican Majority**

## **Bill Summary**

### **AB 51: Prisoner Sexual Assault**

Relating to: sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections and providing a penalty. Introduced 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, Pope-Roberts, Seratti, Shilling, Stone, Suder, Towns, Van Roy, Vrakas, J. Wood, A. Williams and Gottlieb; cosponsored by Senators S. Fitzgerald, Roessler, Brown, Kanavas, Kedzie, Lazich, Leibham, Reynolds, Risser, Robson and Zien.

**Date:** April 29, 2003

### **BACKGROUND**

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.

### **SUMMARY OF AB 51 (AS AMENDED BY COMMITTEE)**

Assembly Bill 51 prohibits a person who works at a correctional institution from having sexual contact or sexual intercourse with a person who is confined in a correctional institution. The Substitute Amendment 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 may be fined not more than \$100,000 or imprisoned for not more than 40 years or both.

### **AMENDMENTS**

**Assembly Substitute Amendment 1** to Assembly Bill 51 amended the bill to apply only to a situation where coercion is possible. Under the substitute amendment, a parole agent is guilty of sexual assault if the agent supervises the individual, either directly or through a subordinate; or the agent has influenced or has attempted to influence another agent's supervision of the individual. If the parole agent does not have the supervisory oversight over the parolee, then the parole agent is not liable for sexual assault. Under the original bill, the parole agent would be liable for sexual assault regardless of whether he or she had supervisory oversight over the parolee [adopted 9-0-1 (Rep. Suder absent)].

## FISCAL EFFECT

A fiscal estimate prepared by the Department of Corrections indicates an indeterminate fiscal effect. Increased costs would arise at the local level as a result of the involvement with the investigation of a new criminal offense. State costs could increase as a result of prisoner transportation, housing/supervision requirements for individuals found guilty of this new criminal provision.

## PROS

1. Assembly Bill 51 makes it explicitly illegal for a correctional officer to have sexual contact with an individual under their direct supervision as an agent for the Department of Corrections.
2. This bill is necessary because Wisconsin is one of only 4 states that currently do not explicitly forbid sexual contact between correctional guard and inmate.
3. Individuals under the supervision of the Department of Corrections deserve the same protections as a resident in an adult family home, CBRF or mental health facility.
4. According to the National Institute of Corrections, there can be no consensual sex between an offender and a staff member. When staff are in positions of control, sexual conduct cannot be deemed consensual.

## CONS

1. There is concern that the Class C felony designation is too severe for this offense.
2. The legislation penalizes correctional officers even if they do not initiate the contact.

## SUPPORTERS

Rep. Bonnie Ladwig, author; Sen. Scott Fitzgerald, lead co-sponsor; Rep. John Townsend; Nancy Bothne, Amnesty International; Wisconsin Department of Corrections; Todd Winstrom, WI Coalition for Advocacy; Barbara Rowe, Task Force on Money, Education & Prisons; Jon Reddin, Milwaukee County; Paul Tiffen, Milwaukee County; Ron Malone, Milwaukee County; Charles TiPauser, The Demeter Foundation; Alice Pauser, The Demeter Foundation; Lisa Macaulay, WCASA; Maria Ochs, MUM/MEP; Angela Rose, NOW/PAVE; Sen. Carol Roessler; Sen. Tom Reynolds; Margaret Thurs and Faye Tuszke.

## OPPOSITION

Martin Beil, Wisconsin State Employees Union.

## HISTORY

Assembly Bill 51 was introduced on February 13, 2003, and referred to the Assembly Committee on Corrections and the Courts. A public hearing was held on February 26, 2003. On March 26, 2003, the Committee voted 9-0-1 [Rep. Suder absent] to recommend passage of AB 51 as amended.

**CONTACT:** Andrew Nowlan, Office of Rep. Garey Bies



WISCONSIN LEGISLATIVE COUNCIL  
AMENDMENT MEMO

<b>2003 Assembly Bill 51</b>	<b>Assembly Substitute Amendment 1, as Amended by Assembly Amendment 1</b>
<i>Memo published: May 1, 2003</i>	<i>Contact: Philip G. Cardis, Staff Attorney</i>

*Current law* provides that 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 of up to 40 years, or both.

*Assembly Bill 51* prohibits correctional officers, individuals providing services to persons confined in correctional institutions, 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.

*Assembly Substitute Amendment 1* is essentially the same as the bill except that the substitute amendment 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. Mainly, the substitute amendment addresses a factual scenario involving a parole agent and parolee where coercion is possible. For example, if the parole agent does **not** have the supervisory oversight or influence over the parolee, then the parole agent is not liable for sexual assault. Under the original bill, the parole agent would be liable for sexual assault regardless of whether he or she had supervisory oversight or influence

over the parolee. Therefore, the substitute amendment narrows the parties that could be affected by the bill.

Also, the substitute amendment defines "correctional staff member" to mean an individual who works at a correctional institution, including a volunteer.

**ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1**

The amendment provides that liability will not extend to a correctional staff member or a probation, parole, or extended supervision agent if the "individual [i.e., inmate] with whom the actor [i.e., correctional staff member] has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section." In other words, where, for example, a correctional staff member is sexually assaulted by an inmate, the correctional staff member will not be subject to liability for sexual assault of the inmate.

**LEGISLATIVE HISTORY**

Assembly Substitute Amendment 1 was offered and recommended for adoption and passage of the bill as amended, by the Assembly Committee on Corrections and the Courts by a vote of Ayes, 9, Noes, 0 on March 26, 2003.

Assembly Amendment 1 to Assembly Substitute Amendment 1 was offered by Representatives Pocan and Ladwig, and was adopted on the Assembly floor by a voice vote.

PGC:wu:jal

## Hogan, John

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**From:** Rhodes-Engels, Judi  
**Sent:** Friday, May 09, 2003 3:47 PM  
**To:** Hogan, John  
**Subject:** FW: SB 32 and AB 51

-----Original Message-----

**From:** Hale, Janine  
**Sent:** Thursday, May 08, 2003 1:17 PM  
**To:** Rhodes-Engels, Judi  
**Subject:** SB 32 and AB 51

Hi Judi,

I know you're extremely busy with JFC today so I thought I'd put this information together in an e-mail that you could review with Scott sometime before next Tuesday.

**The Assembly Corrections and the Courts Committee passed ASA 1 to AB 51 which does the following:**

- Imposes the Class C felony provision on a parole agent only if the agent supervises the individual, either directly or through a subordinate; or if the agent has influenced or has attempted to influence another agent's supervision of that individual (i.e. "the dating provision")
- Clarifies that "correctional staff member" means an individual who works at a correctional institution, including a volunteer (page 3, line 10). This language was requested by DOC who was having a hard time deciphering who was included under the original language of the bill. This language is all encompassing so that even if an individual is a contractor, but still working at a correctional institution, he/she is covered by the legislation. This eliminates all possible loopholes as to who could be found guilty of sexual assault under the bill.
- When Mike Dsida was drafting the legislation, he realized there was an error in the analysis. When an individual is under the influence of alcohol alone, consent is an issue. His analysis did not reflect this. Below is a memo explaining this error. Coalition Against Sexual Assault is very concerned about this typo. They are persuing separate legislation to address this issue. The correction to the ananalysis was made in the sub.



LRB memo  
explaining error in t.

When AB 51 reached the floor, Mark Pocan and Bonnie introduced AA 1 to ASA 1 to AB 51. This addresses a concern brought forward by A.G. Lautenschlager. Basically she was concerned about a correctional staff member being charged with sexual assault when the act was forced upon them by an inmate. See the letter below:



lautenschlager  
letter.pdf

A member of Amnesty International contacted Gary George about this bill and received a response saying it wasn't necessary. He quoted a Legislative Council memo discussing consent in sexual assault cases. This correspondence was forwarded to Jon Reddin who is a Milwaukee County District Attorney. As you can see from his response, the Sen. George issue is void because the bill address non-consent issues, not consent issues as outlined in the Legislative Council memo. See the attachments below. Since Sen. George serves on the committee, I thought Scott should be prepared for this potential inquiry.



Sen George's office  
stand.txt



ron skalansky  
memo.doc



jon reddin reply to  
skalansky ...

Finally, I've attached the bill summary for AB 51 which you may find useful. AFCME did not speak or register against the bill at the public hearing, but did submit a written statement expressing their opposition. See below.



Bill Summary.doc



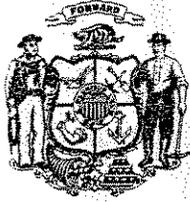
AFSCME letter.pdf

I'm off tomorrow, but I'll touch base with you about this Monday. Please let me know if you have any questions.

P.S. I know this whole e-mail reflects my anal nature, but really it is to help you. :)

Janine

*Janine L. Hale, Chief of Staff  
State Representative Bonnie Ladwig  
63rd Assembly District  
113 West, State Capitol  
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# SCOTT FITZGERALD

WISCONSIN STATE SENATOR

**Testimony from Senator Scott Fitzgerald on  
Assembly Bill 51/Senate Bill 32  
Prisoner Sexual Assault**  
Senate Committee on Judiciary, Corrections and Privacy  
Tuesday May 13, 2003

Chairman Zien and Members of the Committee:

Thank you for your consideration of Assembly Bill 51 and Senate Bill 32, which makes it a felony for any correctional officer to have sexual contact with any person under their supervision. Violation of this bill will be a class C felony punishable by a fine of not more than \$100,000 or imprisonment of not more than 40 years, or both.

Under current law, sexual contact with people under the influence of drugs, those who are mentally ill, and those in care treatment facilities is prohibited. In correctional facilities, guards hold a complete position of power over inmates and therefore sexual contact cannot be consensual. This bill will place inmates under the same category and protect them from sexual assault.

Wisconsin is one of only four states that does not have a law forbidding sexual contact between a guard and inmate. The overwhelming majority of prison guards take their jobs seriously and do not abuse their position, however, it is clear with the recent case of sexual misconduct in Taycheedah that such a law is necessary to protect inmates from guards that continue to misuse their power. The state must pass a law criminalizing these acts and punish all the guilty parties involved, not just the inmate.

This bill was amended in the Assembly to specify that a parole agent is guilty of this crime only if they were in a position of supervising the parolee. The concern was that if a parole agent is dating a person who is under the

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supervision of the Department of Corrections (DOC) and the agent has no idea that the person is under DOC's supervision, the agent would still be guilty of a crime. Also the Attorney General was concerned that if a guard was sexually assaulted by an inmate, the guard could be found guilty of a felony. The bills have been amended to address both of these concerns.

This is the third time that I have introduced this legislation. In both previous sessions it passed the Assembly on a voice vote, but never received a vote in the Senate. I urge you to vote yes on this bill and make this conduct a crime.

I thank you for your time and if you have any questions I would be glad to answer them.



Testimony  
Senate Judiciary, Corrections & Privacy Committee  
13 May 2003

Good Morning Senators

I am Angie Hougas, with the human rights organization Amnesty International.

The organization supported AB 51 and we support SB 32. On behalf of the organization, I urge you to also support this needed legislation.

Here is why--

Human Rights are a fundamental component of each of our humanity. They acknowledge and protect us. When we respect human rights, we have laid the foundation by which our communities and societies guard the humanity of all of its members.

Human rights are not conditional; meaning they apply to all regardless of gender, race, economic status, religion or nationality.

Under currently recognized international laws forms of sexual abuse are clear violations in the form of cruel, inhuman or degrading treatment.

There are roughly 1300 women in Wisconsin prisons. None of these women relinquished their humanity or their human rights at the cell house door. Those who commit crimes may be held accountable for their violations of the law; just as the state of Wisconsin is accountable for respecting and protecting the human rights of those it takes into custody.

It is the **basic human rights of women in custody** to have

**\*\*the right to *be free of sexual misconduct*** from their custodians.

They have the right to be free from rape, sexual assault, sexual suggestiveness, and ogling while undressing or going to the bathrooms.

**\*\*the right to *complain of sexual assault and misconduct***

AND to expect their reports to be investigated independently, promptly and thoroughly.

**\*\*the right to *seek protection without fear of retaliation***.

They must be able to make complaints and be secure they will not be punished for doing so. There MUST be a complaint procedure system that protects them from retaliation on the part of their custodians.

**\*\*the right to *health***, which includes medical or mental health.

A system that overly relies on solitary confinement has serious consequences on those it its custody.

**\*\*the right to *know what their rights are***.

Reports of sexual misconduct have come from Waukesha, Racine and Milwaukee County jails as well as Taycheedah and Dodge Correctional Institutes.

Women who made these reports have been subjected to retaliation and punishment, which includes solitary confinement.

Perpetrators of these acts of sexual misconduct in Wisconsin Correctional Institutions must not be allowed to simply move on to other jails and prisons only to engage in the same misconduct.

Due to the **power dynamics in Correctional Systems**, Amnesty International takes the position there is **no such thing as consent** to sexual acts in these institutions.

Current Wisconsin Statutes such as 940.225 use phrases like, "without consent of that person." Again, due to the power dynamics, Amnesty International takes the position that in the Correctional System there is no such thing as consent.

Also, Amnesty believes other statutes are not specifically worded to include abuse of the sexual nature.

We take the stand that it is unacceptable Wisconsin does not legally prevent its Correctional custodians from engaging in any sexual conduct with those entrusted to their care.

Sexual misconduct in jails and prison must be criminalized so prosecutors have the tools they need to protect the vulnerable.

For these reasons, and more, Amnesty International supports this legislation.

I urge this committee to vote immediately to support this legislation and send it to the full Senate for vote before the summer recess.

Thank you,  
Angie Hougas  
Area Coordinator for Wisconsin  
Field Organizer  
Amnesty International

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*Angie Hougas*

**Vote Record**

**Committee on Judiciary, Corrections and Privacy**

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Date: 5-20-03

Moved by: Fitz

Seconded by: Step

AB 51 SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_

AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_

AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

- Passage     Adoption     Confirmation     Concurrence     Indefinite Postponement  
 Introduction     Rejection     Tabling     Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator David Zien	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Scott Fitzgerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cathy Stepp	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Gary George	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Tim Carpenter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>5</u>	<u>0</u>	_____	<u>0</u>



# STATE SENATOR DAVE ZIEN

**CHAIRPERSON**  
COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY  
**VICE CHAIRPERSON**  
COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM  
**MEMBER**  
COMMITTEE ON SENATE ORGANIZATION  
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES  
COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS  
SENTENCING COMMISSION  
COUNCIL ON TOURISM  
JUDICIAL COUNCIL

**ASSISTANT MAJORITY LEADER**

## MEMORANDUM

**TO:** Senator Gary George, Member, Senate Committee on Judiciary, Corrections & Privacy  
**FR:** Senator Dave Zien, Chair, Senate Committee on Judiciary, Corrections & Privacy  
**DT:** May 20, 2003  
**RE:** Paper Ballot for May 20, 2003 Executive Session

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Please consider the following bills and vote on the motions below. **Return this ballot to Senator Dave Zien no later than 10:00am, Wednesday, May 21.** Committee members' ballots not received by the deadline will be marked as not voting.

### Senate Bill 32

Relating to: sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections and providing a penalty.

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.

### Assembly Bill 51

Relating to: sexual activity involving jail, prison, or community corrections staff or contractors and jail inmates or persons in the custody or under the supervision of the Department of Corrections and providing a penalty.

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, Pope-Roberts, Seratti, Shilling, Stone, Suder, Towns, Van Roy, Vrakas, J. Wood, A. Williams, Gottlieb, Hebl and Coggs; cosponsored by Senators S. Fitzgerald, Roessler, Brown, Kanavas, Kedzie, Lazich, Leibham, Reynolds, Risser, Robson and Zien.



**Senate Bill 58**

Relating to: permitting an educational agency to refuse to employ or to terminate from employment an unpardoned felon.

By Senators Darling, Kanavas, Harsdorf, S. Fitzgerald, Kedzie and Roessler; cosponsored by Representatives Petrowski, Nass, Ziegelbauer, Montgomery, Pettis, Ladwig, Stone, Suder, Musser, Albers, Nischke, Hundertmark, Freese, J. Fitzgerald, Olsen, Van Roy, Gielow, LeMahieu, Huebsch, M. Lehman, Hahn, Owens, D. Meyer, Loeffelholz, Kestell, Kreibich, M. Williams, Townsend, Kerkman, Grothman, Gunderson, F. Lasee, Weber, Vukmir, J. Wood and McCormick.

**Assembly Bill 41**

Relating to: permitting an educational agency to refuse to employ or to terminate from employment an unpardoned felon.

By Representatives Petrowski, Nischke, Nass, Ziegelbauer, Montgomery, Pettis, Ladwig, Stone, Suder, Musser, Albers, Hundertmark, Freese, J. Fitzgerald, Olsen, Van Roy, Gielow, LeMahieu, Huebsch, M. Lehman, Hahn, Owens, D. Meyer, Loeffelholz, Kestell, Kreibich, M. Williams, Townsend, Kerkman, Grothman, Gunderson, F. Lasee, Weber, Vukmir, J. Wood, Hines, Vrakas and McCormick; cosponsored by Senators Darling, Kanavas, Harsdorf, S. Fitzgerald, Kedzie, Stepp, Lazich, Leibham and Roessler.

**Please consider the following motions:**

- Moved by Senator Fitzgerald, seconded by Senator Carpenter, INTRODUCTION & ADOPTION of LRB s0078:

SSAI to SB32

Aye  \_\_\_\_\_ No  \_\_\_\_\_

- Moved by Senator Fitzgerald, seconded by Senator Stepp, PASSAGE of Senate Bill 32 as amended:

Aye  \_\_\_\_\_ No  \_\_\_\_\_

- Moved by Senator Fitzgerald, seconded by Senator Stepp, CONCURRENCE of Assembly Bill 51:

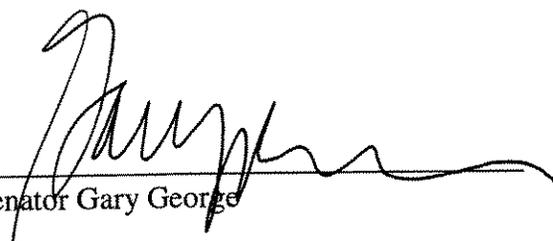
Aye  \_\_\_\_\_ No  \_\_\_\_\_

- Moved by Senator Stepp, seconded by Senator Fitzgerald, PASSAGE of Senate Bill 58:

Aye \_\_\_\_\_ No  \_\_\_\_\_

- Moved by Senator Fitzgerald, seconded by Senator Stepp, CONCURRENCE of Assembly Bill 41:

Aye \_\_\_\_\_ No  \_\_\_\_\_

Signature   
Senator Gary George



**Wisconsin Coalition Against Sexual Assault, Inc.**  
600 Williamson Street, Ste. N-2  
Madison, WI 53703

Thank you Chairman Zien and members of the Committee on Judiciary, Corrections and Privacy for giving me the opportunity to speak today in favor of Senate Bill 32 and Assembly Bill 51, which would criminalize sexual activity between corrections staff and inmates. My name is Lisa Macaulay and I am the Policy Specialist for the Wisconsin Coalition Against Sexual Assault, Inc.

Wisconsin is currently one of only four states that does not address this serious issue. Those sexually assaulted in prison are often left unprotected, subjected to additional assaults and often unable to access the medical and psychological treatment they need. In reality, few people outside prison walls know what is going on or care if they do. Sadly even less do something to address this issue, because of that WCASA supports Sen. Fitzgerald and Rep. Ladwig for their work on this legislation.

We have addressed the issue of sexual abuse in community-based residential facilities, foster homes, group homes, state treatment

facilities and residential care centers for children and youth operated by licensed child welfare agencies among others. Those who work in these facilities are entrusted to care for the day-to-day needs of residents. We place a high level of trust and power on these individuals, because we recognize the need to protect the residents from the possibility of coercion by their caretakers. Correctional staff are also entrusted with the day-to-day supervision of inmates in very intimate detail, yet our state law does not recognize the same level of potential abuse of power for them as we do for other positions.

Claiming the defense of consent in relationships between guards and inmates flies completely in the face of logic. Guards and inmates are not on an equal status. In other parts of the law, we already recognize this. Students cannot give consent to a sexual relationship with a teacher; neither can patients in community based residential facilities or clients with their therapists. Each of these situations involve an authority figure who we do not allow to twist the situation to be one of consent, neither should we allow correctional staff to use that as an excuse to justify their inappropriate behavior. The use of force by correctional employees to attain sexual contact from a prisoner often is through the offer of privileges or goods. Prisoners are completely dependent on officers for the most basic of necessities, that offer or, by implication, threat to withhold privileges or goods is a very powerful inducement.

Inmates must follow the orders guards give or face disciplinary action. Inmates must account for their time and behavior at all times to correctional staff. Correctional staff have access to inmates' records and are often part of the disciplinary process. This gives correctional staff power over portions of inmates' lives that are not a part of a normal consensual relationship.

Sexual assault is one of the least reported crimes outside prison walls. There is a greater risk to report a sexual assault within prison walls. Wisconsin needs this legislation to protect all who reside within our state's borders. Sentences handed down within the criminal justice system do not include sexual abuse by those put in charge of one's safety and every day activities.

We ask that you support this legislation and vote in favor of this bill. WCASA applauds Sen. Fitzgerald and Rep. Ladwig for their work on this very sensitive issue.

JUN 21 1999



# Wisconsin State Employees Union Council #24

**AFL-CIO**

Bill Fandel, President  
Martin Bell, Executive Director

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**TO:** All State Senators  
All State Representatives

**FROM:** Martin Bell, Executive Director  
Wisconsin State Employees Union

**RE:** AB 355

**DATE:** June 17, 1999

with  
AB-51  
(2003)

During the week of 6/7/99, AB 355 was amended in committee and "exec'ed out" for assembly floor action. While I know this bill is considered "politically correct", and difficult to oppose from a public policy perspective, I feel it is imperative that the union registers strong opposition.

First, I want to make it clear that the union does not condone sexual activity between correctional officers or any other direct care or security staff, and those people confined in facilities. In fact in the Department of Corrections, if there is "just cause" to believe that an employee has participated in this kind of activity, they are terminated from the state service. Termination from state service is the equivalent of economic capital punishment. What is of concern to us is the singling out of one profession, correctional officers, and sending a message that is demoralizing, accusatory and basically a slap in the face of folks who work very hard under incredible stress and duress in worksites that not one of you would think of working in. If the argument is power and control, then why weren't police officers, university professors, doctors, priests, legislators, CEO's of corporations, governors, and presidents included? I am sure that there has been at least one instance of sexual activity between the above listed and someone under their span of control. Why should this kind of activity be a felony charge for correctional officers and not even necessarily a violation of the law for the other professions? I guess we would not care as much if you paid correctional officers as much as some of the others listed.

Lastly, I understand that this bill was amended in committee so that two inmates having sexual contact (not sexual assault), consensual if you will, will be charged with a Class D felony. I am sure that the sponsors of this bill did not intend to put correctional officers and inmates on the same level of expectations and behaviors. Maybe some would think that this Bill is intended to keep our burgeoning populations still burgeoning.

On behalf the 6,000+ members we represent in both DOC and DHFS institutions, we would urge you to Vote No on AB 355. Your state correctional and institutional staff deserve a lot more from you than this poke in the eye.

If you wish to discuss this issue further, please contact me.

MB:lm

