

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_ab0000

03hr_sb0032

Misc.

03hr_SC–JCP_Misc_pt00

Record of Committee Proceedings

03hr_SC–JCP_RCP_pt00



STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

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

February 12, 2003

Senator Fitzgerald and Representative Albers
Joint Review committee on Criminal Penalties
3 North
State Capitol
Madison, WI

Dear Representative Albers:

Pursuant to section 13.525 (5), Wisconsin Statutes, the Co-Chairs of the Joint review committee on Criminal Penalties shall prepare and submit a report in writing setting forth an opinion under the above statute on 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.

Sincerely,

Senator Dave Zien
Chair
Committee on Judiciary, Corrections and Privacy

cc: Senate Chief Clerk





STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

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Sincerely,

Senator Dave Zien
Chair
Committee on Judiciary, Corrections and Privacy

cc: Senate Chief Clerk



3.4.03

Dear Mrs. Pauses,

Thank you for writing to me. That made my day - I appreciate the prayers & support. I'm hoping that changes for the better happen up on TCI, as it stands - right now - there is a lot of bad things happening up there. A lot more than what happened with Jackie (Noyes) and with myself. I'm grateful that there were people to help me - although I'm still angry that TCI kept this Sgt. Kulibert on for 37 days - after I came forward. Hopefully, though - things will get better, for the other women who are in TCI.

What exactly is the "Demeter Foundation"? What services does it offer? I'm looking into going to college to advocate for women in prison - I try not to let what happened keep me down - I want to help other women in prison. I think that even if the state of Wis. does pass the law punishing guards (holding them responsible) for sexual harassment & contact - ~~at~~ they'll still try to find a way to continue to do that

to women.

I ~~do~~ appreciate your letter, though.
Once again thank-you !!!

Sincerely,
Amber Bell

Dear Mrs. Fauser,

Thank you for the information on the Semeter Foundation. I passed it to a few women who seem to be serious about making changes for the better in their lives.

I would like it very much if you'd read my letter to the Joint Assembly Committee. I've retained 2 civil rights/women's rights lawyers - who are very excited about getting all this out to the public - it's important that this law is passed. If it's against the law for doctors, psychologists/psychiatrists, to sexually assault their patients - then it needs to be the same for guards.

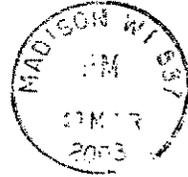
I've received a card from Amnesty International - so I'm hoping that they will also help get this issue out in the public's eye.

I have ~~for~~ a 7 yr. sentence (21 months in) and about 1-1 1/2 yrs. to go - then I should be out. I may be looking at an early release, though. But - I'll be O.K. if I'm involved in A.S.H.A. - A women's support group here - that helps!

I hope you are doing well and
once again - I appreciate your prayers,
thoughts & support! ☺

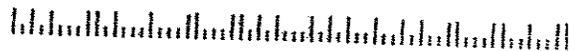
Thank you,
Amber

Amber Bell 242173
900 S. Madison St
Waupun Wis
53963



MRS. Alice Pauser
2933 Dellvue Dr.
Fitchburg, WI
53711

53711+5242



Hogan, John

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 assualt 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 dicussing 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 attachements 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 redden 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
P.O. Box 8952
Madison, WI 53708
(608)266-9171
1-888-534-0063
janine.hale@legis.state.wi.us*



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.

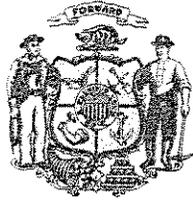
Sexual misconduct in jails and prison must be criminalized so prosecutors have the tools they need to protect the vulnerable.

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

Angie Hougas



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

STATE CAPITOL

P.O. Box 7882 • ROOM 106 SOUTH • MADISON, WISCONSIN 53707-7882
TELEPHONE: (608) 266-5660 • FAX: (608) 267-6795

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.

Vote Record

Committee on Judiciary, Corrections and Privacy

Date: 5-20-03

Moved by: Fitz

Seconded by: Stapp

AB SB 32 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 Nonconcurrency

Table with 5 columns: Committee Member, Aye, No, Absent, Not Voting. Rows include Senator David Zien, Senator Scott Fitzgerald, Senator Cathy Stepp, Senator Gary George, and Senator Tim Carpenter.

Totals: 5 0 0 0

Vote Record

Committee on Judiciary, Corrections and Privacy

Date: 5-20-03

Moved by: Gov. F. H.

Seconded by: Carpenter

AB _____ 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~~ LRB 50078 to SB 32
 A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for: 50078

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 <i>open</i>	<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 <i>Polling</i>	<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"/>
Totals:	<u>4</u>	<u>0</u>	_____	<u>0</u>
	<u>5</u>			



STATE SENATOR DAVE ZIEN

ASSISTANT MAJORITY LEADER

CHAIRPERSON

COMMITTEE ON JUDICIARY, CORRECTIONS AND PRIVACY

VICE CHAIRPERSON

COMMITTEE ON HOMELAND SECURITY, VETERANS AND MILITARY AFFAIRS AND GOVERNMENT REFORM

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COMMITTEE ON LABOR, SMALL BUSINESS DEVELOPMENT AND CONSUMER AFFAIRS

SENTENCING COMMISSION

COUNCIL ON TOURISM

JUDICIAL COUNCIL

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

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 _____

[Handwritten Signature]
Senator Gary George

Sen Zien

Alabama, Oregon, Vermont + Wisconsin
are the 4 states that do not
have statutes covering sexual
contact between correctional
staff + inmates. I also have a
copy of the language of the
other states if you are
interested

Lisa Macaulay



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.