

**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\_sb0490

**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

JUDICIAL COUNCIL

February 27, 2004

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

Dear Senator Fitzgerald:

Based on the February 27, 2004 opinion by the Senate Chief Clerk regarding reports requested of the Joint review committee on Criminal Penalties, I am rescinding my February 24, 2004 request for such a report on Senate Bill 490, relating to sexual assault of a child and providing a penalty.

The above noted opinion is attached for your review.

Sincerely,

Senator Dave Zien  
Chair  
Committee on Judiciary, Corrections and Privacy

cc: Senate Chief Clerk





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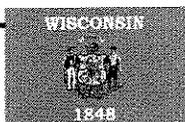
Dear Senator Fitzgerald:

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 490, relating to sexual assault of a child and providing a penalty.

Sincerely,

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Chair  
Committee on Judiciary, Corrections and Privacy

cc: Senate Chief Clerk





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Senator Dave Zien  
Chair  
Committee on Judiciary, Corrections and Privacy

cc: Senate Chief Clerk





**Robert J. Marchant**  
Senate Chief Clerk  
Director of Legislative Operations  
Wisconsin State Senate

SB 490  
?

Senator Dave Zien  
State Capitol  
Madison, WI

February 27, 2004

Re: Joint Review Committee on Criminal Penalties

Dear Senator Zien:

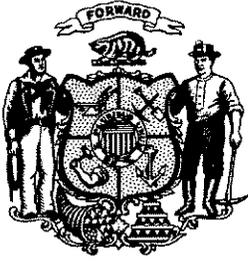
Your staff has asked whether the Joint Review Committee on Criminal Penalties (committee) must be given the opportunity to review legislation that creates a crime or revises a criminal penalty. Section 13.525 of the statutes is somewhat ambiguous in this regard. In the past the Senate has interpreted the statute strictly to require the committee to be given an opportunity to undertake such a review. The Assembly has followed a different interpretation.

It is my opinion that the statute does not require the committee to be given an opportunity to undertake such a review. Section 13.525 (5) (a) of the statutes states that the chairperson of the appropriate standing committee "may request" the committee to undertake such a review. In my opinion, this language is permissive, not mandatory. Thus, if the chairperson does not make such a request, the relevant legislation may move through the legislative process in the same manner as other bills.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Robert J. Marchant  
Chief Clerk and Director of Legislative Operations  
Wisconsin State Senate



## *Wisconsin Legislature*

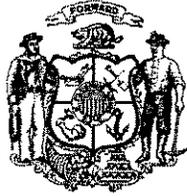
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Pursuant to section 13.525 (5), Wisconsin Statutes, prior to executive action on this bill, the Committee Chair must request that the Co-Chairs of the Joint review committee on Criminal Penalties prepare a report. If the Joint Committee has not acted within 30 days of the request, your committee may take action. Please let me know when the request is made so that the proper entry may be made on the bill history.

Thanks,

A handwritten signature in cursive script, appearing to read "Donna".

Donna Doyle  
Assistant Chief Clerk  
Wisconsin Senate



# Mary Lazich

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**Wisconsin State Senator**  
Senate District 28

Senate Committee on Judiciary, Corrections and Privacy  
Testimony on Senate Bill 490  
March 1, 2004

Good morning, Committee Chair Zien and committee members. Thank you for the opportunity to provide testimony to the Senate Committee on Judiciary, Corrections and Privacy on Senate Bill 490.

Senate Bill 490 proposes changing the criminal penalty for Sexual Assault of a Child in the First Degree be changed from a Class B felony to a Class A felony. A Class B felony carries a maximum penalty of 60 years and a minimum penalty of probation. A Class A felony carries a maximum penalty of life imprisonment and requires that the convicted felon be incarcerated for a minimum of twenty years before petitioning the court for release to extended supervision.

I am seeking this change in the law at the request of many of my constituents who have been faced with the potential of having the most serious of sex offenders placed in their community. I have been asked over and over again, why are these people ever released into any community given the crimes they have been convicted of and the enormous harm they have done to our children. This led me to question whether Wisconsin is doing everything possible to protect children in this area.

The Wisconsin Coalition Against Sexual Assault has compiled a wide range of statistics, both nationwide and statewide, that begin to define the problem of sexual assault.

- 67% of all victims of sexual assault reported to law enforcement were juveniles under the age of 18 and more than half of those children were under the age of twelve. In Wisconsin, juveniles accounted for 77.9% of sexual assault victims.



- 82% of all juvenile victims are female, and of those girls, 69% were under the age of 6.
- Equally disturbing, 23% of the offenders, almost one quarter, were under the age of 18, and 40% of those juvenile offenders were assaulting children under the age of 6.
- According to the U.S. Department of Justice, in 1997 there were 134,300 convicted child molesters living in neighborhoods across America, and one out of thirteen convicted sex offenders are arrested for a new sexual assault within three years of their release.

Please allow me to describe the backgrounds of some of the felons in Wisconsin who are or who will be eligible for release into Wisconsin communities.

- Billy Lee Morford, 56 years old, and has spent a significant part of his adult years in prison or treatment centers for nine different counts of sexual assault against male children dating back to 1966. The offenses range from oral sex to sexual contact. Mr. Morford has completed his criminal sentence, been committed as a sexually violent offender under Chapter 980 and a judge has ordered him placed in the community as soon as a suitable residence is located.
- Robert Carney, 74 years old was charged with two counts of first-degree sexual assault for indecent behavior with two girls. His assaults included using force against the children. His sentencing and commitment record indicate that he has a 50-year history of sexual offenses against children. He has refused treatment. A prosecutor familiar with his case said that he does not believe that what he has done is wrong. A judge ordered him placed in the community in a suitable residence, but DHFS has since indicated it did not believe a placement could be found.
- James Walker, 26 years of age was convicted of repeatedly sexually assaulting a three year old and seven year while he was the age of 16. He was committed as a sexually violent offender in 1995. However, two Sand Ridge psychologists have notified the courts that he no longer meets the criteria for sexual predator designation and should no longer be committed. If the judge agrees, Mr. Walker will be placed in the community.
- Shawn Schulpius, also convicted of sexual assault of a child, and identified as a sexually violent offender under Chapter 980, has repeatedly sought placement in the community. Mr.

Schulpius at the age of 17 was convicted of assaulting a four-year-old boy he was baby-sitting. However, he began molesting his stepsister when she was six years old and he was fourteen. He received treatment as a juvenile and was released. He again assaulted his stepsister and also had sexual contact with his one-year old half brother. He petitioned for release under Chapter 980 and a judge ordered him placed in the community, DHFS was not able to find an appropriate placement, and the judge at a later hearing changed his mind and found Mr. Schulpius likely to re-offend.

Wisconsin has made substantial progress in strengthening our laws that deal directly or indirectly with sexual assault of children. We have truth-in-sentencing, we have the Sex Offender registry, we have Chapter 980 civil commitment of sexually violent offenders, we have the possibility of lifetime supervision, and we have a two-times-and-you're-out law for crimes involving some form of sexual abuse of a child. Wisconsin's Department of Corrections applies strict standards for supervision for felons who are in the community. Wisconsin's Department of Health and Family Services directs significant resources towards trying to locate Chapter 980 placements in the community that do not endanger community members. Nevertheless, citizens and I believe current law does not do enough to protect them and their children from these offenders.

You will hear a number of concerns about the bill that I would like to address briefly.

- **First**, the bill may have an unintended impact on juveniles engaged in sexual assault. I would ask committee members to remember that this crime involves victims 12 years old or younger, not teenage victims. Also the bill would only affect adjudicated delinquent juveniles who sexual assault crimes are so severe that they are placed in the Serious Juvenile Offender Program or are waived to adult court. And I would ask you to remember more than half of all juveniles who are sexually assaulted are under the age of twelve.
- I would also ask you to remember that almost a quarter of those committing sexual assault are under 18. Whatever they have done, it is serious enough to be charged with a crime. If the short list of felons outlined above is any indication, many

of the worst offenders started harming children while they were teenagers.

- Attached to my testimony is a memorandum from Legislative Council addressing the impact SB 490 would have on juvenile offenders.
- **Second**, the bill does not take into account that in certain cases, especially those involving incest and sexual contact, there is a good possibility of rehabilitation of the felon, and the potential to reunite the family at some level. Wisconsin has a law against incest with a child, Wis. Stat. 948.06, which is a Class C felony. If a District Attorney believed that the facts of the case indicated a lesser level of assaultive conduct and a good chance for rehabilitation of the perpetrator, the District Attorney would likely charge accordingly.
- **Third**, the bill runs counter to the recent revision of the criminal code, which removed minimum mandatory sentences for most crimes. This is true, however, we retained a minimum mandatory for adult sexual assault under Wis. Stat. 939.623 that applies to second time offenders. I am proposing in this bill that we add a minimum mandatory for those who sexually assault children and that we do not give them an opportunity to do it again.
- **Fourth**, that the bill removes discretion from judges who will know the facts of a particular case and can fashion a more appropriate sentence. I agree that judges should be granted some discretion. However, that does not mean that the Legislature as a lawmaking body abdicates its responsibility to create laws that protect Wisconsin citizens.

Citizens are demanding that individuals who are charged with first degree sexual assault of a child be incarcerated for an extended period of time, and if necessary, forever. This bill provides that protection.

Again, thank you for the opportunity to provide testimony on SB 490. I strongly encourage you to support passage of the bill.



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## WISCONSIN LEGISLATIVE COUNCIL

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

TO: SENATOR MARY LAZICH  
FROM: Anne Sappenfield, Senior Staff Attorney  
RE: Effect of 2003 Senate Bill 490, Relating to Sexual Assault of a Child, on Juvenile Offenders  
DATE: February 27, 2004

This memorandum, prepared at your request, discusses the possible impact of 2003 Senate Bill 490, relating to sexual assault of a child, on juveniles who are alleged to have committed first-degree sexual assault of a child.

### **BACKGROUND**

Under current law, a person who has sexual contact or sexual intercourse with a child who is under the age of 13 is guilty of first-degree sexual assault of a child. This offense is a Class B felony, which is punishable by a term of confinement in state prison followed by a term of extended supervision of up to 60 years.

Senate Bill 490 increases the penalty for first-degree sexual assault of a child to a Class A felony. A Class A felony is punishable by a term of life imprisonment. If a person is convicted of a Class A felony, the court must order one of the following: (a) that the person is eligible to petition the court for release to extended supervision on a specified date, which must be at least 20 years after the start of the sentence; or (b) that the person may not be released on extended supervision.

### **JUVENILE OFFENDERS**

You have asked what the effect of such a penalty change may be on juveniles who are alleged to have committed first-degree sexual assault of a child. At the outset, it should be noted that a juvenile, for purposes of criminal prosecution, is a person who has not attained the age of 17.

### **Delinquency Proceedings**

Under current law, a juvenile who commits a criminal offense is generally under the jurisdiction of the juvenile court and may be adjudicated delinquent for the offense. A juvenile who is adjudicated

delinquent is subject to a variety of dispositions, some of which are tailored to address more serious offenders. In determining what the disposition for a particular juvenile should be, the court must consider the seriousness of the act for which the juvenile is adjudicated delinquent. Arguably, if the penalty for first-degree sexual assault is increased to a Class A felony, juveniles who are adjudicated delinquent for the offense will receive harsher dispositions. However, the only clear effect the bill will have on juveniles who are adjudicated delinquent is the effect that it will have on juveniles who are placed in the Serious Juvenile Offender Program, as described below.

### ***Secure Placement***

For certain serious offenses, the court must consider secure placement for a juvenile. First-degree sexual assault of a child is one of these specified offenses under current law. Specifically, the juvenile court may place a juvenile in a secure juvenile facility if both of the following apply:

1. The juvenile has been found to be delinquent for the commission of an act, which if committed by an adult, would be punishable by a sentence of six months or more.
2. The juvenile has been found to be a danger to the public and to be in need of restrictive custodial placement. This criterion is presumed to be met if the juvenile has committed first-degree sexual assault of a child, among other serious offenses.

### ***Serious Juvenile Offender Program***

Under current law, a juvenile who is 14 years of age or older may be placed in the Serious Juvenile Offender Program if he or she is found to be delinquent for the commission of a specified serious offense, including first-degree sexual assault of a child, and the judge finds that the only other disposition that would be appropriate for the juvenile would be placement in a secure juvenile correctional facility. Under current law, the Serious Juvenile Offender Program has component phases that include secure placement, intensive supervision, treatment programs, restitution, and transitional services. Under this program, generally, a juvenile may be placed in a secure juvenile correctional facility for a period of not more than three years. However, if the juvenile has been adjudicated delinquent for committing a Class A felony, he or she may be placed in a secure juvenile correctional facility until he or she reaches age 25, with a mandatory minimum confinement of not less than one year. Therefore, under Senate Bill 490, a juvenile who is adjudicated delinquent for first-degree sexual assault of a child and placed in the Serious Juvenile Offender Program could be subject to a substantially longer placement in a secure facility.

### ***Proceedings in Adult Court***

Under current law, a juvenile who is 14 years old or older may be waived into adult court if he or she is alleged to have committed one of several specified offenses. First-degree sexual assault of a child is one of these specified offenses. Therefore, Senate Bill 490 does not affect whether a juvenile who is alleged to have committed first-degree sexual assault may be waived into adult court, but the bill will affect the sentence the juvenile may receive.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:wu