

2007 SENATE BILL 247

July 25, 2007 – Introduced by Senators SCHULTZ, ROESSLER, KEDZIE, OLSEN and PLALE, cosponsored by Representatives MUSSER, GRONEMUS, JESKEWITZ, ALBERS and LEMAHIEU. Referred to Committee on Judiciary and Corrections.

1 **AN ACT** *to amend* 940.225 (4) (intro.) and 940.225 (7); and *to create* 940.225 (3r)
2 and 943.0125 of the statutes; **relating to:** sexual contact with a corpse and
3 disturbing a burial site.

Analysis by the Legislative Reference Bureau

Current sexual assault law prohibits a person from having sexual contact or sexual intercourse with another person without the consent of that person. The severity of penalties relating to sexual assault depends upon several factors, including the amount of force used, whether a weapon was employed, and the degree of injury or harm suffered by the victim. Under current law, a sexual assault may occur whether the victim is alive or dead at the time of the sexual contact or sexual intercourse.

This bill makes it a crime to have sexual contact or sexual intercourse with a corpse. The bill defines a “corpse” as the body of a human being that has been declared dead by a physician, coroner, or medical examiner. Under the bill, having sexual contact or sexual intercourse with a corpse is a Class G felony, which is punishable by a fine not to exceed \$10,000, imprisonment not to exceed six years, or both.

Current law prohibits a person from disturbing a burial site or land contiguous to a burial site. A person who does so is subject to a forfeiture of not less than \$500 nor more than \$2,000 if the burial site is not on land that is platted specifically as a cemetery, or to a forfeiture of not less than \$1,000 nor more than \$10,000 if the burial site is on land that is platted specifically as a cemetery.

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The bill also prohibits any person from intentionally disturbing, opening, or exposing a burial site or a buried human corpse. Anyone who does so is guilty of a Class I felony, which is punishable by a fine not to exceed \$10,000, imprisonment not to exceed three years and six months, 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.

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

1 **SECTION 1.** 940.225 (3r) of the statutes is created to read:

2 940.225 (3r) SEXUAL ASSAULT OF A CORPSE. Whoever has sexual contact or sexual
3 intercourse with a corpse is guilty of a Class G felony. For the purpose of this
4 subsection, a “corpse” is the body of a human being who, at the time of the sexual
5 intercourse or sexual contact, had been declared dead by a physician, coroner, or
6 medical examiner.

7 **SECTION 2.** 940.225 (4) (intro.) of the statutes is amended to read:

8 940.225 (4) CONSENT. (intro.) “Consent”, as used in this section, means words
9 or overt actions by a person who is competent to give informed consent indicating a
10 freely given agreement to have sexual intercourse or sexual contact. Consent is not
11 an issue in alleged violations of sub. (2) (c), (cm), (d), (g), (h), and (i) or (3r). The
12 following persons are presumed incapable of consent but the presumption may be
13 rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

14 **SECTION 3.** 940.225 (7) of the statutes is amended to read:

15 940.225 (7) DEATH OF VICTIM. ~~This section applies~~ Subsections (1), (2), (3), and
16 (3m) apply whether a victim is dead or alive at the time of the sexual contact or sexual
17 intercourse.

