

---

# Wisconsin Legislative Council

## AMENDMENT MEMO

---



**Memo published:** September 8, 2023

**Contact:** Tom Koss, Staff Attorney

**2023 Assembly Bill 129**

**Assembly  
Amendment 1 to Assembly  
Substitute Amendment 1**

### BACKGROUND

Very generally, current law prohibits various degrees (first-, second-, third-, and fourth-degree) of sexual assault, depending on the circumstances, such as the specific sexual contact or sexual intercourse involved, the level of harm caused to the victim, and certain attributes of the victim. Many of these crimes require, as an element of the offense, that sexual contact or sexual intercourse occur without the victim’s consent. For certain offenses, however, a victim’s lack of consent to the sexual contact or intercourse is not an element of the offense, and, thus, consent of the victim is not a defense to the crime.

As relevant to the bill, a second-degree sexual assault occurs under current law when a person who is a licensee, employee, or nonclient resident of an entity<sup>1</sup> has sexual contact or sexual intercourse with any client, defined as an individual who receives direct care or treatment services from that entity. Like the other relationship-based grounds for second-degree sexual assault, consent is not a defense to this offense.

### 2023 ASSEMBLY BILL 129

The bill creates a new ground under the crime of second-degree sexual assault relating to acts by health care providers. Under the bill, it is a Class C felony for a person who is a health care provider to have sexual contact or sexual intercourse with a client. This expands current law to address sexual acts by health care providers based on professional licensure status, and not based on the employer’s or licensor’s status as an “entity.”

Under the bill, a “health care provider” means any of the following professionals:

- A licensed nurse.
- A licensed chiropractor.
- A licensed dentist.
- A licensed physician or perfusionist, or a certified respiratory care practitioner.

---

<sup>1</sup> For this purpose, “entity” is defined to include certain licensees, facilities, and organizations contemplated under ch. 48, Stats., known as the Children’s Code, as well as facilities approved as a hospital or certain facilities, organizations, or services that are licensed or registered with the Department of Health Services, among others. [ss. 48.685 (1) (b), 50.065 (1) (c), and 940.225 (2) (j), Stats.]

- A licensed naturopathic doctor or limited-scope naturopathic doctor.
- A physical therapist or physical therapist assistant who is licensed or who holds a compact privilege.
- A licensed podiatrist.
- A certified dietitian.
- A licensed athletic trainer.
- An occupational therapist or occupational therapy assistant who is licensed or who holds a compact privilege.
- A licensed genetic counselor (as of May 1, 2023).
- A licensed physician assistant.
- A licensed optometrist.
- A licensed pharmacist or registered pharmacy technician.
- An acupuncturist certified under ch. 451, Stats.
- A psychologist who is licensed, exercising the temporary authorization to practice in this state, or practicing under the authority to practice interjurisdictional telepsychology.
- A social worker, marriage and family therapist, or professional counselor who is certified or licensed.
- A licensed speech-language pathologist or audiologist or a speech and language pathologist licensed by the Department of Public Instruction.
- A licensed massage therapist or bodywork therapist.

Similar to current law, the bill defines “client” as an individual who receives direct care or treatment services from the health care provider. Also, consent is not a defense to the crime created by the bill, similar to the current law crime involving sexual acts with an entity’s client by that entity’s employee, licensee, or nonclient resident.

## **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Under Assembly Substitute Amendment 1, it is a second-degree sexual assault for a health care provider, as defined under the bill, to have sexual contact or sexual intercourse with an individual to whom the health care provider is providing health care services if that individual does not consent to the sexual contact or sexual intercourse.

The substitute amendment differs from the bill, in that it does all of the following:

- Requires, as an element of the crime, that the individual with whom the health care provider has sexual contact or sexual intercourse does not consent to such acts.
- Replaces the term “client” with the phrase “individual to whom the health care provider is providing health care services.”

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

Assembly Amendment 1 to Assembly Substitute Amendment 1 makes the following changes to the substitute amendment:

- Expands the definition of health care provider to also include ambulance service providers, emergency medical services practitioners, and emergency medical responders, as those terms are defined under current law.
- Replaces the term “individual” with the term “patient,” as defined under current law to mean “a person who receives health care services from a health care provider.”
- Removes the requirement that lack of consent be proven as an element of the crime.
- Requires that the sexual contact or sexual intercourse occur during any treatment, consultation, interview, or examination.

Thus, the amendment to the substitute amendment establishes a Class C felony for a health care provider to have sexual contact or sexual intercourse with a patient to whom the health care provider is providing health care services during any treatment, consultation, interview, or examination.

### **BILL HISTORY**

Representative Dittrich introduced Assembly Substitute Amendment 1 on May 30, 2023, and Assembly Amendment 1 to Assembly Substitute Amendment 1 on June 30, 2023. On September 7, 2023, the Assembly Committee on Criminal Justice and Public Safety voted to recommend adoption of the amendments and passage of the bill, as amended, on votes of Ayes, 14; Noes, 0.

For a full history of the bill, visit the Legislature’s [bill history page](#).

TK:ksm