



BARBARA DITTRICH

STATE REPRESENTATIVE • 38th ASSEMBLY DISTRICT

June 1, 2023

Rep. Barbara Dittrich Testimony on AB 129 – sexual assault by a health care provider and providing a penalty

Assembly Committee on Criminal Justice and Public Safety

Thank you Chairman Spiros, Vice Chair Schutt, and committee for taking up Assembly Bill 129 in today. I want to express my gratitude to Rep. Subeck as well, who is here testifying with me on this bill. This issue crosses political boundaries and I am grateful we could come together on both sides of the aisle along with the various cosponsors to correct this oversight that has left Wisconsin patients vulnerable.

This bill corrects an unforeseen loophole that exists in current law allowing a sentencing disparity to take place if a health care provider sexually assaults a patient, dependent upon current definition of healthcare provider. Additionally, the location of the assault has played a factor in this loophole with at least one known case. Currently, based on the level of charges, not every circumstance of sexual assault by a healthcare professional would rise to the level of registering with the state. When this law was initially written, certain definitions of healthcare provider were not licensed or foreseen in statute. This bill, and its accompanying substitute amendment, raises every healthcare provider to the same level of criminal culpability should they sexually assault a patient/engage in non-consensual sexual contact or intercourse regardless of the facility where it occurs. Additionally, if convicted under this bill, offenders would have to register as a sex offender.

Sexual assault is not only a physical violation and power imbalance but an emotional and psychological violation as well. Victims should not have to be subjected to additional trauma by seeing their assailant escape justice based on a technical loophole in the law. Healthcare professionals that would engage in these activities should not be allowed to be charged on a lesser statutory penalty than any other rapist, just because of their profession.

I urge the committee to vote in favor of this technical change in state law. It is past time every act of sexual assault be treated with the same repercussions, instead of operating on an outdated statute that allows criminals to not be charged to the fullest degree of their crimes.

Again, thank you to the chair for considering this bill. Rep. Subeck and I are happy to take your questions.



REPRESENTATIVE
Lisa Subeck

To: Criminal Justice & Public Safety Committee
From: Representative Lisa Subeck
Date: June 1, 2023
Subject: Testimony in support of Assembly Bill 129

Chairman Spiros and Members of the Criminal Justice & Public Safety Committee:

Thank you for the opportunity to testify on Assembly Bill 129 (AB 129), which would close a loophole in state statutes relating to sexual assault by a healthcare provider. I began working on this legislation several years ago, first with former Representative Jim Ott, and now with Representative Barb Dittrich, along with the Dane County District Attorney's office, after learning of an unfortunate incident that happened locally.

In 2017, a criminal complaint was filed by a female patient of a Dane County physician for his sexual misconduct toward her at a local clinic. The complaint stated that the physician had sent the patient put his mouth to her breasts, kissed her on the mouth, and made her inappropriately touch him. With each of his advances, she told him, "No, you can't do that." Court documents later revealed that he had also sent her improper photographs of himself.

The doctor was charged with 2nd Degree Sexual Assault by Employee of Child Welfare Agency or Care/Service Residential Facility (§940.225(2)(j)), a Class C Felony, and with 4th Degree Sexual Assault (§940.225(3m)), a Class A Misdemeanor. The felony charge was dropped after the doctor's attorneys argued, with prosecutors agreeing, that this incident did not meet the "entity" definition in §50.065. The "entity" definition is referenced in Sexual Assault by Employee of Child Welfare Agency or Care/Service Residential Facility statute.

In their argument, the doctor's attorneys cited *State v. Powers*, a Wisconsin Court of Appeals case from 2004 from La Crosse County. Ultimately, the court found that due to the definitions outlined in our current statutes, the state erred in charging and should have dismissed the 2nd Degree Sexual Assault charge. The court wrote: "We acknowledge that there is no readily apparent rationale for not criminalizing the same conduct if engaged in by an employee of an inpatient health care facility that is located in Wisconsin but is not licensed by DHFS (or for that matter, for rendering the conduct criminal when engaged in by employees of "state treatment facilities," but not when committed by employees of other publicly or privately operated "treatment facilities". We are to give effect, however, to the plain meaning of the language the legislature enacted, not what its members may have intended to enact."

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While most healthcare professionals in Wisconsin would fall under our current definition, for instance, those who work at most hospitals, nursing homes, or other entities with licensing through the State of Wisconsin, in the cases mentioned above, the Dane County physician was working at a Madison clinic and the La Crosse County case involved a physician's assistant who worked at the VA Hospital in Tomah. Sexual misconduct by a health care professional toward a patient should be treated the same regardless of locale. With the way our statute is written, the employer or the location of the incident can determine whether a healthcare provider has committed a felony or misdemeanor. This inconsistency is incredibly unfair to prosecutors and law enforcement working on these cases and especially cruel to the victims seeking justice.

Healthcare providers hold great power over their patients while simultaneously being granted access to their bodies and personal information, requiring patients to trust these professionals to use their access appropriately. When this trust is violated in such an egregious manner, as with sexual assault, it is our job as legislators to ensure there are consequences for these actions. I hope you will support AB 129 to bring consistency to our statutes for the sake of patients and medical professionals across the state.

Thank you again, Chairman Spiros and Criminal Justice & Public Safety Committee members, for your time and consideration of AB 129. I would be happy to answer any questions.



JOAN BALLWEG

STATE SENATOR · 14TH SENATE DISTRICT

Assembly Bill 129: Sexual Assault by a Health Care Provider
Assembly Committee on Criminal Justice and Public Safety
Testimony of Senator Joan Ballweg
June 1, 2023

Good morning, Chair Spiros and members of the committee. Thank you for hearing this legislation.

As a result of ongoing discussions with stakeholders, we introduced Assembly Substitute Amendment 1, which is what I will base my testimony on. The substitute amendment creates a Class C felony penalty for health care providers that have sexual contact or sexual intercourse with an individual they provide health care services to without their consent. This legislation is different than how current law addresses these situations, because it focuses on whether you hold one of the defined health care provider licenses as opposed to what entity you work for. With this change, health care providers are treated more consistently regardless of the entity they work for.

The case that originally sparked this discussion occurred in 2016 when a UW Health doctor had sexual contact with a patient without her consent, including touching her breasts and crotch, kissing her, and sending inappropriate photos and comments of a sexual nature. He resigned his job and surrendered his license, and he was later found criminally guilty of fourth degree sexual assault, which is a Class A misdemeanor.

Under current law, sexual contact without consent is a Class A misdemeanor, and sexual intercourse without consent is a Class G felony. However, in certain situations where the sexual contact and/or intercourse is committed by someone with a particular license or profession, they are subject to second degree sexual assault, which is a Class C felony. For example, this higher penalty applies to a law enforcement officer that has sexual contact or intercourse with someone who is detained, to employees of a child welfare agency that has sexual contact or intercourse with a client, and to employees of a community-based residential facility that have sexual contact or intercourse with a client, as well as other situations in which a particular relationship exists.

The relationship between a healthcare provider and their patient is based on trust, and it is at the core of medical ethics. It should be protected. We already apply a higher penalty if a health care provider works at an entity like a hospital. But this legislation will ensure that others licensed as health care providers are charged consistently if they violate the law regardless of the entity for which they work.

This bill is supported by the Wisconsin Professional Police Association, Wisconsin Coalition Against Sexual Assault, and the Wisconsin Association for Hospice and Palliative Care.

Thank you for your consideration, and I am happy to answer any questions.