

Rep. Subeck: Testimony on bill to close loophole on sexual assault by a health care provider

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MADISON – Today, Representative Lisa Subeck testified to the Assembly Committee on Criminal Justice and Public Safety in support of AB 129, which would close a loophole in state law relating to sexual assault by a health care provider. Also testifying in support were Dane County Sheriff Calvin Barrett and Madison Police Detective Denise Armstrong. The text of Rep. Subeck’s testimony is below:

“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."

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.”

Rep. Subeck has represented the 78th Assembly District since 2015 and serves as Chair of the Assembly Democratic Caucus.