



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 414

Assembly Amendment 2

Memo published: November 21, 2017

Contact: Melissa Schmidt, Senior Staff Attorney

BACKGROUND

Under current law, it is a violation of the **crime of third degree sexual assault** to either have sexual intercourse with a person without the consent of the person or have certain types of sexual contact with a person without the consent of that person. The penalty for violating the crime of third degree sexual assault is a Class G felony, which is punishable by a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.

The **crime of second degree sexual assault of a child**¹ prohibits a person from having sexual contact or intercourse with a person who has not attained the age of 16 years. The penalty for violating the crime of second degree sexual assault of a child is a Class C felony, which is punishable by a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both.

The **crime of sexual intercourse with a child age 16 years or older** prohibits a person from having sexual intercourse with a child who is not the defendant's spouse and the child has attained the age of 16 years. The penalty for doing so is a Class A misdemeanor, which is punishable by a fine not to exceed \$10,000, imprisonment not to exceed nine months, or both.

Also, Wisconsin's **sex offender registry requirements** generally require a person to register as a sex offender if he or she was convicted of a "sex offense," or if he or she is subject to a court order requiring registration. For purposes of the sex offender registry requirements, the term "sex offense" includes third degree sexual assault and second degree sexual assault of a child, but not the crime of sexual intercourse with a child age 16 years or older. However, a person must register as a sex offender for committing the crime of sexual intercourse with a child age 16 years or older if the court finds that the person's conduct was sexually motivated,

¹ A "child" means "a person who has not attained the age of 18 years." [s. 948.01 (1), Stats.]

meaning that the conduct was done for the person's sexual arousal or gratification and it would be in the interest of public protection to have the person register as a sex offender.

The statutes also provide an exception to the sex offender registry requirements for certain young offenders who are close in age with their victims. A court may exempt a person from registration for a violation of first or second degree sexual assault of a child, repeated acts of sexual assault of a child, or sexual assault of a child placed in substitute care if all of the following apply: (1) the person was 18 years old or younger at the time of the crime; (2) the victim is no more than four years younger or older than the offender; and (3) it is not necessary, in the interest of public protection, to require the person to comply with the sex offender reporting requirements. This exemption does not apply to crimes that involved force or violence or whose victim was less than 12 years old.

2017 ASSEMBLY BILL 414

2017 Assembly Bill 414 (the bill) makes the following changes to current law:

- Creates the **crime of underage sexual activity**, a Class A misdemeanor, which prohibits a person 18 years old or younger from doing either of the following:
 - Having sexual contact with a child who has attained the age of 15 years but has not attained the age of 16 years (i.e., 15 years old).
 - Having sexual intercourse with a child who has attained the age of 15 years. The crime of underage sexual activity does not apply if the actor is the child's spouse.
- Amends the **crime of second degree sexual assault of a child** to not apply to instances where the crime of underage sexual activity applies.
- Amends the **crime of sexual intercourse with a child age 16 years or older** to apply only to persons who are 19 years old or older.
- Creates a new exception to the **sex offender registry requirements** applicable to certain young offenders having (or soliciting, conspiring, or attempting to have) sexual intercourse in violation of the crime of third degree sexual assault if all of the following apply:
 - The person was 18 years old or younger at the time of the crime.
 - The victim had attained the age of 15 years at the time of the crime.
 - It is not necessary in the interest of public protection to require the person to comply with the sex offender registry requirements.

ASSEMBLY AMENDMENT 2

Assembly Amendment 2 (AA 2) makes the following changes to the bill:

- Deletes the provisions of the bill that amend the crime of second degree sexual assault of a child.
- Amends the crime of underage sexual activity such that a person may be found guilty of committing the crime if the person who is 18 years old or younger has sexual contact with a child who is 14 or 15 years old.

BILL HISTORY

Representatives Kleefisch and Kessler introduced AA 2 on November 9, 2017. That same day the Assembly voted to adopt AA 2, and passed the bill, as amended, on voice votes.

MS:jal