
Wisconsin Legislative Council

AMENDMENT MEMO



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2019 Senate Bill 104

**Senate
Amendment 2**

BACKGROUND

Very generally, the statutes prohibit various degrees of sexual assault (first-, second-, third-, and fourth-degree sexual assault). Most of these crimes have as an element of the offense that sexual contact¹ or sexual intercourse² occurs without the consent of the victim. For these offenses, consent to the sexual contact or sexual intercourse is a defense. There are some offenses, however, where the prosecutor does not have to prove that sexual contact or sexual intercourse occurred without consent, and consent is not available as a defense, because consent is not an issue in the alleged violation. For example, it is second-degree sexual assault,³ where consent is not an issue, for a person to have sexual contact or sexual intercourse with either of the following:

- An individual who is confined in a correctional institution if the actor is a **correctional staff member**. This does not apply, however, if the individual with whom the correctional staff member has sexual contact or sexual intercourse is subject to prosecution for the sexual assault.
- An individual who is on probation, parole, or extended supervision (community supervision) if the actor is either: (1) a **community supervision agent** who supervises the individual, either directly or through a subordinate, in his or her capacity as a community supervision agent; or (2) who has influenced or has attempted to influence another community supervision agent's supervision of the individual. This does not apply, however, if the individual with whom the community supervision agent (or person who has influenced or attempted to influence the community supervision agent) has sexual contact or sexual intercourse is subject to prosecution for the sexual assault.

2019 SENATE BILL 104

Under 2019 Senate Bill 104, it is second-degree sexual assault for a law enforcement officer to have sexual contact or sexual intercourse with any person in **his or her custody**. This prohibition applies regardless of whether the custody is lawful or unlawful or whether the custody is actual or constructive. The bill also provides that consent is not an issue in an action under the bill.

SENATE AMENDMENT 2

Senate Amendment 2 amends the bill in two ways. First, the amendment expands the bill to also apply a situation where a person is detained and temporarily questioned, commonly referred to as a "Terry

¹ "Sexual contact" is defined in s. 940.225 (5) (b), Stats.

² "Sexual intercourse" is defined in s. 940.225 (5) (c), Stats.

³ The penalty for second-degree sexual assault is a Class C felony, punishable by a fine not to exceed \$100,000, imprisonment not to exceed 40 years, or both. [ss. 939.50 (3) (c) and 940.225 (2), Stats.]

Stop.”⁴ Second, the amendment deletes the phrase, “his or her,” which would have required a prosecutor to prove that the person with whom the law enforcement officer had sexual contact or sexual intercourse was in the custody of that particular officer.

With these two changes to the bill, the amendment provides that it is second-degree sexual assault for a law enforcement officer to have sexual contact or sexual intercourse with any person who is **detained by any law enforcement officer** or is **in the custody of any law enforcement officer**. This prohibition applies regardless of whether the custody is lawful or unlawful or whether the custody is actual or constructive and consent is not an issue in an action under the bill, as amended.

BILL HISTORY

Senator Taylor offered Senate Amendment 2 on September 24, 2019. On September 25, 2019, the Senate Committee on Judiciary and Public Safety recommended adoption of Senate Amendment 2, and passage of the bill, as amended, on votes of Ayes, 5; Noes, 0.

AO:ty

⁴ Very generally, a law enforcement officer may conduct a Terry Stop to stop a person in a public place, for a reasonable period of time, when the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime, and demand the name and address of the person and an explanation of the person’s conduct. Terry Stop detention and temporary questioning must be conducted in the vicinity where the person was stopped. [s. 968.24, Stats.]