



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2005 Assembly Bill 784**

**Senate Substitute  
Amendment 2**

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*Current law* prohibits sexual assault of a child. A person who has sexual contact or intercourse with a child who is less than 13 years old is guilty of first-degree sexual assault of a child. First-degree sexual assault of a child is a Class B felony and is punishable by a maximum term of confinement in prison of 40 years and a maximum term of extended supervision of 20 years. Having sexual contact or intercourse with a child who is less than 16 years old is classified as second-degree sexual assault. Second-degree sexual assault of a child is a Class C felony and is punishable by a maximum term of confinement in prison of 25 years and a maximum term of extended supervision of 15 years. There is no mandatory minimum term of confinement for a conviction of sexual assault of a child except for certain repeat offenses.

*Assembly Bill 784* provides that if a person is convicted of first-degree sexual assault of a child, the person *must* be confined in prison for *at least 25 years*. The bill also provides that having sexual contact or intercourse, through a threat or use of force or violence, with a person who is less than 16 years of age is first-degree sexual assault of a child and subject to the mandatory minimum term of confinement in prison.

The bill provides that the minimum term of confinement does not apply if the court finds all of the following by clear and convincing evidence:

- The violation did not involve sexual intercourse by use or threat of use of force or violence.
- The violation did not involve sexual intercourse with a victim who was less than 12 years of age.
- At the time of the offense, the defendant was less than 19 years old and no more than five years older than the victim.

- It is not necessary, in the interest of public protection, for the court to impose the mandatory minimum term of confinement.

The bill also changes the maximum term of imprisonment for first-degree sexual assault and repeated acts of sexual assault of the same child so that the court may sentence the person to a maximum term of imprisonment of any length, including life imprisonment.

**Senate Substitute Amendment 2** creates a new definition of “sexual intercourse” for purposes of the offense of sexual assault of a child. Under the substitute amendment, “sexual intercourse” means vulvar penetration as well as cunnilingus, fellatio, or anal intercourse between persons or any intrusion of an inanimate object into the genital or anal opening either by the defendant or upon the defendant’s instruction. The emission of semen is not required. Under current law, “sexual intercourse” also includes the intrusion, however slight, of any part of a person’s body into the genital or anal opening either by the defendant or upon the defendant’s instruction.

Under the substitute amendment, the offense of sexual assault of a child is as follows:

- Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a **Class B felony** and is subject to a **mandatory minimum term of confinement in prison of 25 years**.
- Whoever has sexual intercourse with a person who has not attained the age of 16 years by the use or threat of force or violence is guilty of a **Class B felony** and is subject to a **mandatory minimum term of confinement in prison of 25 years**.
- Whoever has sexual contact with a person who has not attained the age of 16 years by the use or threat of force or violence if the actor is at least 18 years of age when the sexual contact occurs is guilty of a **Class B felony** and is subject to a **mandatory minimum term of confinement in prison of five years**.
- Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a **Class B felony**.
- Whoever has sexual intercourse or sexual contact with a person who has not attained the age of 16 years is guilty of a **Class C felony**.

The substitute amendment also clarifies that less serious charges of sexual assault of a child are included when a person is charged with a more serious charge of sexual assault of a child. Under current law, upon prosecution for a crime, the actor may be convicted of either the crime charged or an included crime, but not both. The substitute amendment provides that an included offense may be a crime that is a less serious or equally serious type of violation under s. 948.02, Stats. (sexual assault of a child) than the one charged.

**Legislative History**

Senate Substitute Amendment 2 was offered by Senators Darling and Grothman. On March 8, 2006, the Senate adopted Senate Substitute Amendment 2 on a vote of Ayes, 33; Noes, 0, and passed the bill, as amended, on a vote of Ayes, 31; Noes, 2.

AS:jal:ksm