



2017 ASSEMBLY BILL 414

June 29, 2017 - Introduced by Representatives KLEEFISCH, KESSLER, DUCHOW, FELZKOWSKI, BALLWEG, BERCEAU, BERNIER, BORN, BOWEN, BRANDTJEN, BROSTOFF, CROWLEY, EDMING, GOYKE, HEBL, HINTZ, HORLACHER, HUTTON, JAGLER, JARCHOW, KNODL, KOOYENGA, KRUG, KUGLITSCH, MILROY, NEYLON, NOVAK, OHNSTAD, PETERSEN, POPE, QUINN, SINICKI, SNYDER, SWEARINGEN, TAUCHEN, TITTL, TRANEL, VORPAGEL, WEATHERSTON and ZEPNICK, cosponsored by Senators WANGGAARD, L. TAYLOR, JOHNSON, HARSDORF and PETROWSKI. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT to renumber** 301.45 (1m) (a) 1., 1g., 2. and 3.; **to renumber and amend**
2 940.225 (3); **to amend** 301.45 (1m) (a) (intro.), 301.45 (1m) (e) (intro.), 948.02
3 (2) and 948.09; and **to create** 301.45 (1m) (a) 1m. (intro.), 301.45 (1m) (a) 2m.
4 and 948.093 of the statutes; **relating to:** underage sexual activity and
5 providing a criminal penalty.

Analysis by the Legislative Reference Bureau

This bill creates the offense of underage sexual activity. Under current law, a person who has sexual intercourse or sexual contact with a child who is at least 13 but under 16 is guilty of a Class C felony. Under this bill, a person who has sexual intercourse with a child who is between 15 and 18, or sexual contact with a child who is 15, is guilty of a Class A misdemeanor if the person is less than 19 years old. Under current law, a person may be required to register as a sex offender for certain crimes that are sexually motivated if the judge determines that it would be in the interest of public protection to have the person register. Under this bill, the new offense of underage sexual activity would be subject to this provision. This bill does not affect crimes involving sexual contact or intercourse by use or threat of force or violence.

Current law provides exceptions to the requirement to register as a sex offender if the offender commits sexual assault of a child, repeated sexual assault of a child, or sexual assault of a child in substitute care and the court makes certain findings (commonly known as the Romeo and Juliet exceptions). For instance, the court must find that the person had not attained the age of 19 years and was within four years

ASSEMBLY BILL 414

of the age of the victim. This bill adds specific acts of third-degree sexual assault to the list of offenses eligible for the exception if the actor is under the age of 19 and the victim is at least 15.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 301.45 (1m) (a) (intro.) of the statutes is amended to read:

2 301.45 **(1m)** (a) (intro.) A person is not required to comply with the reporting
3 requirements under this section if ~~all~~ any of the following ~~apply~~ applies:

4 **SECTION 2.** 301.45 (1m) (a) 1., 1g., 2. and 3. of the statutes are renumbered
5 301.45 (1m) (a) 1m. a., b., c. and d.

6 **SECTION 3.** 301.45 (1m) (a) 1m. (intro.) of the statutes is created to read:

7 301.45 **(1m)** (a) 1m. (intro.) All of the following apply:

8 **SECTION 4.** 301.45 (1m) (a) 2m. of the statutes is created to read:

9 301.45 **(1m)** (a) 2m. All of the following apply:

10 a. The person meets the criteria under sub. (1g) (a) based on a violation, or on
11 the solicitation, conspiracy or attempt to commit a violation, of s. 940.225 (3) (a).

12 b. At the time of the violation, or of the solicitation, conspiracy or attempt to
13 commit the violation, of s. 940.225 (3) (a), the person had not attained the age of 19
14 years and the victim had attained the age of 15 years.

15 c. It is not necessary, in the interest of public protection, to require the person
16 to comply with the reporting requirements under this section.

17 **SECTION 5.** 301.45 (1m) (e) (intro.) of the statutes is amended to read:

18 301.45 **(1m)** (e) (intro.) At the hearing held under par. (bm), the person who
19 filed the motion under par. (b) or s. 51.20 (13) (ct) 2m., 938.34 (15m) (bm), 971.17 (1m)

ASSEMBLY BILL 414

1 (b) 2m. or 973.048 (2m) has the burden of proving by clear and convincing evidence
2 that he or she satisfies the criteria specified in par. (a). In deciding whether the
3 person has satisfied the criterion specified in par. (a) ~~3. 1m. d. or 2m. c.~~, the court may
4 consider any of the following:

5 **SECTION 6.** 940.225 (3) of the statutes is renumbered 940.225 (3) (a) and
6 amended to read:

7 940.225 (3) (a) Whoever has sexual intercourse with a person without the
8 consent of that person is guilty of a Class G felony.

9 (b) Whoever has sexual contact in the manner described in sub. (5) (b) 2. or 3.
10 with a person without the consent of that person is guilty of a Class G felony.

11 **SECTION 7.** 948.02 (2) of the statutes is amended to read:

12 948.02 (2) SECOND DEGREE SEXUAL ASSAULT. Whoever has sexual contact or
13 sexual intercourse with a person who has not attained the age of 16 years is guilty
14 of a Class C felony. This subsection does not apply if s. 948.093 applies.

15 **SECTION 8.** 948.09 of the statutes is amended to read:

16 **948.09 Sexual intercourse with a child age 16 or older.** Whoever has
17 sexual intercourse with a child who is not the defendant's spouse and who has
18 attained the age of 16 years is guilty of a Class A misdemeanor if the defendant has
19 attained the age of 19 years when the violation occurs.

20 **SECTION 9.** 948.093 of the statutes is created to read:

21 **948.093 Underage sexual activity.** Whoever has sexual contact with a child
22 who has attained the age of 15 years but has not attained the age of 16 years, or
23 whoever has sexual intercourse with a child who has attained the age of 15 years, is
24 guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when
25 the violation occurs. This section does not apply if the actor is the child's spouse.

