

2001 DRAFTING REQUEST

Bill

Received: 01/26/2001

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Terese Berceau (608) 266-3784

By/Representing: herself

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - sexual assault

Extra Copies: rlr

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Sexual assault

Instructions:

Define "intoxicant" under s. 940.225 (5) (ai) to include alcohol for purposes of sub. (2) (cm)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 02/22/2001	jdye 02/23/2001					
/1	mdsida 05/21/2001	jdye 05/21/2001	pgreensl 02/27/2001		lrb_docadmin 02/27/2001	lrb_docadmin 03/05/2001	
/2			pgreensl 05/22/2001		lrb_docadmin 05/22/2001	lrb_docadmin 05/22/2001	

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

<END>

→ Not  
Needed

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1?	mdsida	1/23 jld	2/27 pg	2/27 self			

FE Sent For:

<END>



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-2288(2)

MGD: A:....

JLD (1)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT <sup>gen</sup> relating to: sexual assault and providing a penalty. ✓

*Analysis by the Legislative Reference Bureau*

Under current law, a person is guilty of second <sup>✓</sup> degree sexual assault if, among other things: 1) he or she has sexual contact or sexual intercourse with an individual \* (~~the~~ victim) who is under the influence of an intoxicant; 2) as a result of the intoxicant's effects, the victim is incapable of appraising the person's conduct; and 3) the person knows of the victim's condition. In this context, current law defines "intoxicant" to exclude an alcohol beverage, unless it has been combined with a controlled substance, a controlled substance analog, or another drug. A person who commits second degree sexual assault may be fined up to \$10,000 <sup>✓</sup> or imprisoned for up to 30 years or both.

This bill amends the definition of "intoxicant" so that it includes an alcohol <sup>\*</sup> beverage, without regard for whether it is combined with a controlled substance, a controlled substance analog, or another drug.

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

2 SECTION 1. 940.225 (5) (ai) <sup>X</sup> of the statutes is amended to read:

3 940.225 (5) (ai) "Intoxicant" means any alcohol beverage, <sup>✓</sup> controlled substance,

(4) controlled substance analog, <sub>2</sub> or other drug <sup>keep</sup> or any combination of a controlled

1 ~~substance, controlled substance analog or other drug or any combination of an~~  
2 ~~alcohol beverage and a controlled substance, controlled substance analog or other~~  
3 ~~drug. "Intoxicant" does not include any alcohol beverage thereof.~~ ✓

History: 1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134; 1987 a. 245, 332, 352; 1987 a. 403 ss. 235, 236, 256; 1993 a. 445; 1995 a. 69; 1997 a. 220.

4

(END)



STEPHEN R. MILLER  
CHIEF

# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

February 27, 2001

### MEMORANDUM

To: Representative Berceau

From: Michael Dsida, Legislative Attorney

Re: LRB-2288 Sexual assault

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9867 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.



Tom Powell -

Shd exemption from mens. extend to other substances?

No - Just alcohol

Shd apply to other ° of sexual assault?

Yes

Broaden exemption to cover witnesses.

---

Prohibit competition of academic / non-acad discipline

**Dsida, Michael**

---

**From:** Powell, Thomas  
**Sent:** Wednesday, May 16, 2001 12:32 PM  
**To:** Dsida, Michael  
**Subject:** RE: lrb-2288

That sounds very good.

Thanks!

When can I get a copy?

-----Original Message-----

**From:** Dsida, Michael  
**Sent:** Wednesday, May 16, 2001 11:26 AM  
**To:** Powell, Thomas  
**Subject:** lrb-2288

The bill will create an exemption from prosecution for underage drinking offenses and for possession or use of a fake ID, but at this point, I was not planning on creating an exemption for other drinking-related offenses (such as drinking in a public place or on school grounds -- s. 125.09). Is that okay?



# 2001 BILL

soon

Act  
on  
the  
legislat

Regen

1 AN ACT *to amend* 940.225 (5) (ai) of the statutes; **relating to:** sexual assault and  
2 providing a penalty. ✓

### *Analysis by the Legislative Reference Bureau*

Under current law, a person is guilty of second degree sexual assault if, among other things: 1) he or she has sexual contact or sexual intercourse with an individual (victim) who is under the influence of an intoxicant; 2) as a result of the intoxicant's effects, the victim is incapable of appraising the person's conduct; and 3) the person knows of the victim's condition. In this context, current law defines "intoxicant" to exclude an alcohol beverage, unless it has been combined with a controlled substance, a controlled substance analog, or another drug. A person who commits second degree sexual assault may be fined up to \$10,000 or imprisoned for up to 30 years or both.

✓ analysis insert  
This bill amends the definition of "intoxicant" so that it includes an alcohol beverage, without regard for whether it is combined with a controlled substance, a controlled substance analog, or another drug.

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

✓ insert 1/3  
3 SECTION 1. 940.225 (5) (ai) ✓ of the statutes is amended to read:  
4 940.225 (5) (ai) "Intoxicant" means any alcohol beverage, controlled substance,  
5 controlled substance analog, or other drug, or any combination of a ~~controlled~~

**BILL**

1 ~~substance, controlled substance analog or other drug or any combination of an~~  
2 ~~alcohol beverage and a controlled substance, controlled substance analog or other~~  
3 ~~drug. "Intoxicant" does not include any alcohol beverage thereof.~~

4 (END)

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2288/2ins  
MGD.....

1

analysis INSERT

years of age

Current law also contains a number of prohibitions relating to alcohol beverages that apply to persons who are under 21 years of age (underage persons). In particular, an underage person who is not accompanied by a parent, guardian, or spouse who is 21 or older may not: 1) possess or consume alcohol beverages; or 2) with certain exceptions, enter the premises of a licensed retail seller of alcohol beverages. In addition, an underage person may not make, alter, duplicate, carry, or use an official identification ~~card~~ that purports to show that the underage person has attained the legal drinking age. A person who violates one of these prohibitions is subject to a forfeiture (with the amount depending on the prohibition involved and whether the person has had any previous violations) may have his or her driver's license suspended may be required to perform community service work or may be subject to any combination of these penalties.

card

Under this bill, these prohibitions do not apply if the underage person was the victim of or a witness to a sexual assault while he or she was engaged in conduct that would otherwise be prohibited. Thus, for example, an underage person who was the victim of a sexual assault while he or she was under the influence of alcohol beverages would not be subject to the prohibition against underage consumption of alcohol beverages. In addition, under the bill, if such a person is enrolled as a student in the University of Wisconsin system or at a technical college, he or she may not be subject to academic or nonacademic discipline based on that conduct.

2

INSERT 1/3

3

SECTION 1. 36.11 (1) (a) of the statutes is renumbered 36.11 (1) (a) 1. and

4

amended to read:

5

36.11 (1) (a) 1. The Subject to subd. 2., the board may promulgate rules under

6

ch. 227 to protect the lives, health and safety of persons on property under its

7

jurisdiction and to protect such property and to prevent obstruction of the functions

8

of the system. Any person who violates any rule promulgated under this paragraph

9

subsection may be fined not more than \$500 or imprisoned not more than 90 days or

10

both.

History: 1973 c. 335; 1975 c. 39, 41, 224, 400; 1977 c. 29, 418; 1979 c. 32 s. 92 (8); 1979 c. 221; 1981 c. 20; 1983 a. 27, 366; 1983 a. 435 s. 7; 1983 a. 484; 1985 a. 62, 120; 1985 a. 332 ss. 47, 49, 50; 1985 a. 332 s. 251 (1); 1987 a. 27, 287; 1989 a. 31, 56, 121, 177, 359; 1991 a. 39, 203, 250, 269, 285, 315; 1993 a. 16, 213, 227, 399; 1995 a. 27 ss. 1757 to 1762, 9130 (4); 1995 a. 201, 404, 448; 1997 a. 3, 27, 128, 257; 1999 a. 9, 29; 1999 a. 150 ss. 7, 351.

11

SECTION 2. 36.11 (1) (a) 2. of the statutes is created to read:



INS 1-3 cont

1 36.11 (1) (a) 2. No student may be subject to academic or nonacademic  
2 discipline based on conduct described in s. 125.07 (3) (a) (intro.) ~~125.07~~<sup>or</sup> (4) (a) or (b) ~~or~~  
3 or 125.085 (3) (b) if s. 125.07 (3) (a) 13. ~~125.07~~<sup>or</sup> (4) (f) ~~or~~ 125.085 (3) (bx) <sup>✓</sup> applies.

4 SECTION 3. 36.35 (1) <sup>✓</sup> of the statutes is amended to read:

5 36.35 (1) POWER TO SUSPEND; RULES. The board may delegate the power to  
6 suspend or expel students for misconduct or other cause prescribed by the board. The  
7 Subject to s. 36.11 (1) (a) 2. <sup>✓</sup> the board shall promulgate rules under ch. 227 governing  
8 student conduct and procedures for the administration of violations.

History: 1973 c. 335; 1985 a. 332 s. 251 (1); 1991 a. <sup>✓</sup> 6.

9 SECTION 4. 38.235 of the statutes is created to read:

10 38.235 Limit on disciplining students. No student may be subject to  
11 academic or nonacademic discipline based on conduct described in s. 125.07 (3) (a)  
12 (intro.) ~~125.07~~<sup>or</sup> (4) (a) or (b) ~~or~~ 125.085 (3) (b) if s. 125.07 (3) (a) 13. ~~125.07~~<sup>or</sup> (4) (f) ~~or~~  
13 125.085 (3) (bx) applies.

14 SECTION 5. 125.07 (3) (a) 13. <sup>✓</sup> of the statutes is created to read:

15 125.07 (3) (a) 13. An underage person if any of the following <sup>applies</sup> ~~apply~~:

16 a. The underage person has made a bona fide report to law enforcement  
17 authorities that, while engaging in any conduct described under par. (a) (intro.), he  
18 or she was the victim of a sexual assault under s. 940.225 or 948.02. <sup>✓</sup>

19 b. While engaging in any conduct described under par. (a) (intro.), the underage  
20 person witnessed a sexual assault under s. 940.225 or 948.02 <sup>✓</sup> that has been reported  
21 to law enforcement authorities.

22 SECTION 6. 125.07 (4) (a) (intro.) <sup>✓</sup> of the statutes is amended to read:



INS 1-3  
cont

1            125.07 (4) (a) (intro.) Any Subject to par. (f), any underage person who does any  
2 of the following is guilty of a violation:

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109.

3            **SECTION 7.** 125.07 (4) (b) of the statutes is amended to read:

4            125.07 (4) (b) Except as provided in par. (bm) and subject to par. (f), any  
5 underage person not accompanied by his or her parent, guardian or spouse who has  
6 attained the legal drinking age who knowingly possesses or consumes alcohol  
7 beverages is guilty of a violation.

History: 1981 c. 79, 202, 391; 1983 a. 74, 472, 538; 1985 a. 28, 29, 47, 120, 176, 221, 317, 337; 1987 a. 51, 354; 1989 a. 31, 121, 135, 253, 336, 359; 1991 a. 28, 39, 171, 269; 1993 a. 112, 472; 1995 a. 77, 334; 1997 a. 35, 84, 98, 100, 205, 337; 1999 a. 109.

8            **SECTION 8.** 125.07 (4) (f) of the statutes is created to read:

9            125.07 (4) (f) Neither par. (a) nor par. (b) applies to an underage person if any  
10 of the following applies:

11            1. ~~(a)~~ The underage person has made a bona fide report to law enforcement  
12 authorities that, while engaging in any conduct described under par. (a) 1. to 4. or  
13 (b) or while under the influence of alcohol beverages, he or she was the victim of a  
14 sexual assault under s. 940.225 or 948.02.

15            2. ~~(b)~~ While engaging in any conduct described under par. (a) 1. to 4. or (b) or while  
16 under the influence of alcohol beverages, the underage person witnessed a sexual  
17 assault under s. 940.225 or 948.02 that has been reported to law enforcement  
18 authorities.

19            **SECTION 9.** 125.085 (3) (b) (intro.) of the statutes is amended to read:

20            125.085 (3) (b) (intro.) Any Subject to par. (bx), any underage person who does  
21 any of the following is guilty of a violation:

History: 1989 a. 31, 253, 336; 1991 a. 39; 1995 a. 77; 1997 a. 27, 35, 205, 283.

22            **SECTION 10.** 125.085 (3) (bx) of the statutes is created to read:



1           125.085 (3) (bx) Neither the prohibition in par. (a), in the case of an underage  
2 person making, altering, or duplicating an official identification card for his or her  
3 own use, nor par. (b) applies to an underage person if any of the following applies:

4           1. The underage person has made a bona fide report to law enforcement  
5 authorities that, while engaging in any conduct described under par. (b) 1. or 4., he  
6 or she was the victim of a sexual assault under s. 940.225 or 948.02.

7           2. While engaging in any conduct described under par. (b) 1. or 4., the underage  
8 person witnessed a sexual assault under s. 940.225 or 948.02 that has been reported  
9 to law enforcement authorities.

10           SECTION 11. 125.085 (3) (c) of the statutes is amended to read:

11           125.085 (3) (c) A law enforcement officer investigating an ~~alleged violation of~~  
12 allegation that an underage person has engaged in conduct described under par. (b)  
13 shall confiscate any official identification card or other documentation that  
14 constitutes evidence of the ~~violation~~ conduct.

History: 1989 a. 31, 253, 336; 1991 a. 39; 1995 a. 77; 1997 a. 27, 35, 205, 283.

(end insert 1-3)