



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2005 Senate Bill 526

**Assembly Substitute
Amendment 1**

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Current Law

Under current law, it is a Class C felony (maximum imprisonment, 40 years, maximum fine, \$100,000, or both) if a person has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising his or her conduct and the defendant knows of that condition. Section 940.225 (2) (cm), Stats. “Intoxicant” is defined as any controlled substance, controlled substance analog, or other drug, any combination of a controlled substance, controlled substance analog, or other drug, or any combination of an alcohol beverage and a controlled substance, controlled substance analog, or other drug. Section 940.225 (2) (ai), Stats. However, the term “intoxicant” does not include any alcohol beverage (unless in combination with a controlled substance, controlled substance analog, or other drug). For definitions of “sexual contact” and “sexual intercourse,” see s. 940.225 (5) (b) and (c), Stats.

Consent is not an issue in an alleged violation of the prohibition against having sexual intercourse or contact with a person who is under the influence of an intoxicant. Section 940.225 (4), Stats. “Consent” is defined for purposes of s. 940.225 as “words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.” While consent is not a defense to the crime under discussion, the jury is instructed that it may consider any words or actions of the victim indicating consent in determining whether the victim was under the influence of an intoxicant to a degree which rendered the victim incapable of appraising his or her conduct or whether the defendant knew that the victim was under the influence of an intoxicant to such a degree. Wis. JI-Criminal s. 212.

Senate Bill 526

Senate Bill 526 amends the definition of “intoxicant” to include an alcohol beverage, regardless of whether it is combined with a controlled substance, a controlled substance analog, or another drug.

Thus, under the bill, “intoxicant” is defined as “any alcohol beverage, controlled substance, controlled substance analog, or other drug or any combination thereof.”

Assembly Substitute Amendment 1

Assembly Substitute Amendment 1 retains the revised definition of “intoxicant” that is included in the original bill and also revises the elements of the crime of sexual assault of a person who is under the influence of an intoxicant. The substitute amendment:

1. Revises the element requiring that the victim was under the influence of an intoxicant to a degree which rendered the victim incapable of appraising his or her conduct to require instead that the victim was under the influence of an intoxicant to a degree which rendered the victim incapable of “giving consent.”
2. Revises the element requiring that the defendant knew that the victim was under the influence of an intoxicant to a degree which renders the victim incapable of appraising his or her conduct to require instead that the defendant had “actual knowledge that the...[victim was] incapable of giving consent.”
3. Adds the element that the defendant had the purpose to have sexual contact or sexual intercourse with the victim while the victim was incapable of giving consent.

Thus, under the substitute amendment, it is a Class C felony if a person has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant (including an alcohol beverage) to a degree which renders that person incapable of giving consent, if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.

Legislative History

Assembly Substitute Amendment 1, introduced by Representative Strachota, was recommended for adoption by the Assembly Committee on Judiciary by a vote of Ayes, 7; Noes, 0. The committee recommended concurrence in the proposal, as amended, by the same vote.

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