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## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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<b>2017 Wisconsin Act 174</b> [2017 Assembly Bill 414]	<b>Underage Sexual Activity</b>
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2017 Wisconsin Act 174 makes various changes to the penalties and sex offender registration requirements applicable to certain sexual activity between a person who has not attained the age of 19 years and a child<sup>1</sup> between the ages of 15 and 17 years.

### CRIMES RELATED TO SEXUAL ACTIVITY BETWEEN A PERSON WHO HAS NOT ATTAINED THE AGE OF 19 YEARS AND A CHILD AGE 15 TO 17 YEARS

#### Background

Under prior law, it was a violation of the crime of **second-degree sexual assault of a child**, a Class C felony,<sup>2</sup> for any person, regardless of age, to have sexual contact or sexual intercourse with a child under the age of 16 years. Also, under prior law, it was a violation of the crime of **sexual intercourse with a child 16 years or older**, a Class A misdemeanor,<sup>3</sup> for any person, regardless of age, to have sexual intercourse with a child who was not the defendant's spouse, and the child had attained the age of 16.

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<sup>1</sup> For purposes of this memo, a "child" means a person who has not attained the age of 18 years. [s. 948.01 (1), Stats.]

<sup>2</sup> The penalty for a Class C felony is a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both. [s. 939.50 (3) (c), Stats.]

<sup>3</sup> The penalty for a Class A misdemeanor is a fine not to exceed \$10,000, imprisonment not to exceed nine months, or both. [ss. 939.51 (3) (a) and 948.09, Stats.]

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This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

## The Act

The Act makes various changes to the criminal code related to sexual activity between a person under the age of 19 years (i.e., age 18 years or younger) and a child between the ages of 15 and 17 years. Specifically, the Act makes the following changes to the criminal code:

- Creates the new crime of **underage sexual activity**, punishable by a Class A misdemeanor, which prohibits a person who was age 18 years or younger at the time of the violation, from having sexual contact or sexual intercourse with a child who was age 15, 16, or 17 years at the time of the violation. The Act also provides an exception to this crime if the actor is the child's spouse.
- Amends the crime of **second-degree sexual assault of a child**, a Class C felony, to not apply to situations where a person committed the new crime of underage sexual activity. Under the Act, a person who was age 18 years or younger at the time of the violation, may be charged and convicted of the new misdemeanor crime of underage sexual activity, and not the felony crime of second-degree sexual assault of a child, for having sexual contact or sexual intercourse with a child who was 15 years old at the time of the violation.
- Amends the crime of **sexual intercourse with a child age 16 or older**, a Class A misdemeanor, to not apply to situations where a person committed the new crime of underage sexual activity. Under the Act, a person who was age 18 years or younger at the time of the violation, may be charged and convicted of the new crime of underage sexual activity, and not the crime of sexual intercourse with a child age 16 or older, for having sexual intercourse with a child who was 16 or 17 years old at the time of the violation.

## EXCEPTION TO SEX OFFENDER REGISTRY REQUIREMENTS FOR CERTAIN YOUNG OFFENDERS

### Background

Very generally, state law requires a person to register as a sex offender if the person was convicted of a "sex offense,"<sup>4</sup> or if the person is subject to a court order requiring registration because the court found that the crime was sexually motivated and that registration is in the best interest of public safety. For purposes of the sex offender registry requirements, "sex offense" includes the crimes of third-degree sexual assault, first-degree sexual assault of a child, and second-degree sexual assault of a child. [ss. 301.45 (1d) (b) and (1g) and 973.048 (1m) (a), Stats.]

State law provides an exception to the sex offender registry requirements for certain young offenders who are close in age with their victims. Under this exception, a court may exempt a person from registration if all of the following apply:

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<sup>4</sup> The crimes considered a "sex offense" for purposes of the sex offender registry requirements are listed in s. 301.45 (1d) (b), Stats.

- The offense was a violation of one of the following: (1) first-degree sexual assault of a child; (2) second-degree sexual assault of a child; (3) repeated acts of sexual assault of a child; or (4) sexual assault of a child placed in substitute care.
- The offense did not involve either of the following: (1) force or violence; or (2) a victim that was less than 12 years old.
- The person was under the age of 19 at the time of the offense.
- The victim is no more than four years younger or older than the offender.
- The court finds that it is not necessary, in the interest of public protection, to require the person to comply with the sex offender reporting requirements.

### **The Act**

The Act creates another exception to the sex offender registry requirement for certain young offenders if all of the following apply:

- The offense involved having sexual intercourse without the consent of the person in violation of third-degree sexual assault.<sup>5</sup> The Act also specifies that certain types of sexual contact related to sexual degradation, which are also in violation of third-degree sexual assault, are not eligible for this new exception to the sex offender registry requirement.
- The person was under the age of 19 at the time of the offense.
- The victim had attained the age of 15 years at the time of the offense.
- The court finds that it is not necessary, in the interest of public protection, to require the person to comply with the sex offender reporting requirements.

The Act also does not include the new crime of underage sexual activity, described in the previous section, in the definition of a “sex offense” for which a person must register as a sex offender. However, under the Act, a court may still require a person to register as a sex offender if the court finds that the crime was sexually motivated and that registration is in the best interest of public safety.

*Effective date:* March 30, 2018

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<sup>5</sup> The penalty for violating third-degree sexual assault is a Class G felony, punishable by a fine not to exceed \$25,000, imprisonment not to exceed 10 years, or both. [s. 939.50 (3) (g), Stats.]