

1981 Senate Bill 569

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**CHAPTER 308 , Laws of 1981**

AN ACT to repeal 940.225 (4) (a); and to amend 940.225 (2) (e) and (4) (intro.) of the statutes, relating to determination of consent under the sexual assault law.

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

**PREFATORY NOTE:** Presently, the sexual assault law prohibits sexual intercourse or sexual contact without consent. Under that law, a person under the age of 15 is incapable of consent as a matter of law. Persons who are 15 to 17 years of age are presumed to be incapable of consent, but that presumption may

be rebutted by competent evidence showing that the person was capable of consent. Under s. 940.225 (2) (e), sexual intercourse or sexual contact with a person who is over age 12 and under age 18, without the consent of the person, is penalized as second degree sexual assault.

SECTION 1 amends s. 940.225 (2) (e) to change age 18 to age 16 and to delete references to consent. SECTIONS 2 and 3 of the bill repeal the provisions relating to presumptions of consent based on age.

The effect of these changes is to raise from age 15 to age 16 the age limit below which a minor's "consent" to the act will not be an issue. Sexual intercourse with a person who is 16 or 17 will be treated as a sexual assault if the person did not consent. "Consent" for 16 or 17 year olds will be determined in the same manner as it is for adults.

In addition, SECTION 2 of the bill clarifies the present law by specifying that consent is not an issue in alleged violations of certain other provisions of the sexual assault law; namely, sexual contact or sexual intercourse with a person 12 years of age or younger, or with a person who suffers from a mental illness or deficiency or who is unconscious if the defendant knows of the condition.

SECTION 1. 940.225 (2) (e) of the statutes is amended to read:

940.225 (2) (e) Has sexual contact or sexual intercourse with a person who is over the age of 12 years and under the age of 16 years ~~without consent of that person, as consent is defined in sub. (4).~~

SECTION 2. 940.225 (4) (intro.) of the statutes is amended to read:

940.225 (4) CONSENT. (intro.) "Consent", as used in this section, means 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. ~~A person under 15 years of age is incapable of consent as a matter of law. Consent is not an issue in alleged violations of subs. (1) (d) and (2) (c), (d) and (e).~~ The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

SECTION 3. 940.225 (4) (a) of the statutes is repealed.