
Wisconsin Legislative Council

ACT MEMO



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2021 Wisconsin Act 188
[2021 Senate Bill 199]

**Sexual Contact by a Law
Enforcement Officer**

BACKGROUND

Very generally, state law prohibits various degrees of sexual assault (first-, second-, third-, and fourth-degree sexual assault). Most of these crimes have as an element of the offense that sexual contact or sexual intercourse occur without the consent of the victim.¹ For certain offenses, however, the victim's lack of consent to the sexual contact or intercourse is not an element of the offense. For these offenses, it is unnecessary for a prosecutor to prove that the sexual contact or intercourse occurred without consent because consent is not an issue in the alleged violation.

For example, it is second-degree sexual assault,² and consent is not an issue, for a correctional staff member to have sexual contact or sexual intercourse with an individual who is confined in a correctional institution.³ It is also second-degree sexual assault, and consent is not an issue, for a person to have sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision (collectively, community supervision) if the actor is a community supervision agent who either: (1) supervises the individual, either directly or through a subordinate, in his or her capacity as a community supervision agent; or (2) has influenced or has attempted to influence another community supervision agent's supervision of the individual.⁴

2021 WISCONSIN ACT 188

Wisconsin Act 188 provides that it is second-degree sexual assault for a law enforcement officer to have sexual contact or sexual intercourse with any person who is detained by any police officer during what is commonly known as a "Terry Stop"⁵ or is in the custody of any law enforcement officer. This prohibition applies regardless of whether the custody is lawful or unlawful and whether the detainment or custody is actual or constructive. The act also provides that consent is not an issue in an action under the act.

Effective date: March 19, 2022

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¹ "Sexual contact" is defined in s. 940.225 (5) (b), Stats., and "sexual intercourse" is defined in s. 940.225 (5) (c), Stats.

² Second-degree sexual assault is a Class C felony, punishable by a fine not to exceed \$100,000, imprisonment not to exceed 40 years, or both. [ss. 939.50 (3) (c) and 940.225 (2), Stats.]

³ This does not apply if the individual with whom the correctional staff member has sexual contact or sexual intercourse is subject to prosecution for the sexual assault.

⁴ This does not apply if the individual with whom the community supervision agent has sexual contact or sexual intercourse is subject to prosecution for the sexual assault.

⁵ A law enforcement officer may conduct a Terry Stop to stop a person in a public place, for a reasonable period of time, when the officer reasonably suspects that the person is committing, is about to commit, or has committed a crime, and demand the name and address of the person and an explanation of the person's conduct. Terry Stop detention and temporary questioning must be conducted in the vicinity where the person was stopped. [s. 968.24, Stats.]