

Sexual Assault Statutory Language

940.225(1) FIRST DEGREE SEXUAL ASSAULT

Whoever does any of the following is guilty of a Class B felony:

- (a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.
- (b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.
- (c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

For a Class B felony, the total sentence may not exceed 60 years, with a maximum 40 year term of confinement and 20 years extended supervision. Wis. Stat. sec. 939.50(3)(b), 973.01(2)(b)(1).

940.225(2) SECOND DEGREE SEXUAL ASSAULT

Whoever does any of the following is guilty of a Class C felony:

- (a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.
 - (b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.
 - (c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition. (Consent is not an issue.)
 - (cm) 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 giving consent if the defendant has actual knowledge that the person is incapable of giving consent and has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.
 - (d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious. (Consent is not an issue.)
 - (f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.
 - (g) Is an employee of a facility or program under s. 940.295(2)(b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.
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(h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

For a Class C felony, a fine may not exceed \$100,000, the total sentence may not to exceed 40 years, with a maximum 25 year term of confinement and extended supervision may not exceed 15 years. Wis. Stat. sec. 939.50(3)(c), 973.01(2)(b)(2).

940.225(3) THIRD DEGREE SEXUAL ASSAULT

(a) Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony.

(b) Whoever has sexual contact in the manner described in sub. (5)(b) 2 or 3 with a person without the consent of that person is guilty of a Class G felony.

For a Class G felony, a fine may not exceed \$25,000, the total sentence may not exceed 10 years, with a maximum 5 year term of confinement and 5 years extended supervision. Wis. Stat. sec. 939.50(3)(g), 973.01(2)(b)(7).

940.225(3m) FOURTH DEGREE SEXUAL ASSAULT

Except for sexual contact as described under sub. (3)(c) or (d), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

Penalties for a Class A misdemeanor are a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both. Wis. Stat. sec. 939.51(3)(a).

4) Consent

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. Consent is not an issue in alleged violations of sub. (2)(c), (cm), (d), (g), (h) and (i). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence:

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

5) Definitions

In this section:

(acm) "Correctional institution" means a jail or correctional facility, a juvenile correctional facility, or a juvenile detention facility.

(ad) "Correctional Staff Member" means an individual who works at a correctional institution, including a volunteer.

(ai) "Intoxicant" means any alcohol beverage, hazardous inhalant, controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination thereof.

(b) "Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under 940.19 (1).
2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or sexually gratifying the defendant.
3. For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

(c) "Sexual Intercourse" includes [vulvar penetration] as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

940.225(6) MARRIAGE NOT A BAR TO PROSECUTION

A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

WCASA is a membership agency comprised of organizations and individuals working to end sexual violence in Wisconsin. Among these are the 60 sexual assault service provider (SASP) agencies throughout the state that offer support, advocacy and information to victims of sexual assault and their families. For information sheets on other topics and for more information about sexual assault, please visit our website. This sheet may be reproduced in its original format only. **This information does not constitute legal advice.**

Please note that this is an abridged information sheet; the statutes have not been printed in their entirety due to space restrictions.