

Sex Crimes: Definitions and Penalties

Wisconsin

Last Updated: March 2020

Sexual Assault in the First Degree

Question	Answer
How is it defined?	<p>Whoever:</p> <ul style="list-style-type: none">• Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person, or• 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, or• 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.
What are the punishments for this crime?	<p>Class B felony:</p> <ul style="list-style-type: none">• Imprisonment not to exceed 60 years.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none">• Sexual contact: Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or 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):<ul style="list-style-type: none">• Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts; or• Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person; or• Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person 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 gratifying the defendant; or• 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.

	<ul style="list-style-type: none"> • Sexual intercourse: 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 defendants instruction. The emission of semen is not required. • Consent: 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 subsections (2)(c), (cm), (d), (g), (h), and (i). A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct and a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act are presumed incapable of consent. • Marriage is not a bar to prosecution. • This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(1)

Sexual Assault in the Second Degree

Question	Answer
How is it defined?	<p>Whoever:</p> <ul style="list-style-type: none"> • (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 persons conduct, and the defendant knows of such condition. • (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 the defendant 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.

	<ul style="list-style-type: none"> • (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 an adult family home, community-based residential facility, inpatient health care facility, or state treatment facility and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program. • (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 who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agents 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. • (j) Is a licensee, employee, or non-client resident of a child welfare agency, a hospital, a home health agency, a temporary employment agency that provides caregivers to another entity, or the board on aging and long-term care, and has sexual contact or sexual intercourse with a client of the entity.
What are the punishments for this crime?	<p>Class C felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years, • Fine not to exceed \$ 100,000 • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(2)

Sexual Assault in the Third Degree

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> • Sexual intercourse with a person without the consent of that person. • Sexual contact in the manner described below with a person without the consent of that person: <ul style="list-style-type: none"> • Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person 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 gratifying the defendant. • 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.
What are the punishments for this crime?	<p>Class G felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 10 years; • Fine not to exceed \$25,000; • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(3)

Sexual Assault in the Fourth Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Except as provided in Sexual Assault in the Third Degree, having sexual contact with a person without the consent of that person.
What are the punishments for this crime?	<p>Class A misdemeanor:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 9 months; • Fine not to exceed \$10,000; • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.225(3m)

Sexual Assault of a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none">• First degree:<ul style="list-style-type: none">• Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to the person is guilty of a Class A felony and subject to a 25 year mandatory minimum;• Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony and subject to a 25 year mandatory minimum;• Whoever has sexual intercourse with a person who has not attained the age of 16 years by use of threat of force or violence is guilty of a Class B felony and subject to a 25 year mandatory minimum;• Whoever has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony if the actor is at least 18 years of age when the sexual contact occurs and is subject to a 5 year mandatory minimum; or• Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.• Second degree:<ul style="list-style-type: none">• Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.<ul style="list-style-type: none">• Whoever has sexual contact with a child who has attained the age of 15 years but has not attained the age of 16 years, or whoever has sexual intercourse with a child who has attained the age of 15 years, is guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when the violation occurs. This section does not apply if the actor is the child's spouse.• Failure to act:<ul style="list-style-type: none">• A person responsible for the welfare of a child under 16 is guilty of a Class F felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • Class A felony: <ul style="list-style-type: none"> • Life imprisonment. • Class B felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 60 years. • Class C felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years; • Fine not to exceed \$100,000; • Or both. • Class F felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 12 years 6 months; • fine not to exceed \$25,000; • Or both. • Subject to mandatory minimum sentences for child sex offenses (see above). • Additional penalties for engaging in repeated acts of sexual assault of the same child under Wis. Stat. § 948.025.
<p>Anything else I should know?</p>	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • Sexual conduct: Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexual degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant: Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts. Intentional touching by the complainant, by the use of any body part or object, of the defendants intimate parts or, if done upon the defendant's instructions, the intimate parts of another person. Or, Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person 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 gratifying the defendant. Or, 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. • Sexual intercourse: 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 defendants instruction. The emission of semen is not required. • Marriage is not a bar to prosecution. • This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.
<p>Statutory citation(s):</p>	<ul style="list-style-type: none"> • Wis. Stat. § 948.02; and Wis. Stat. Ann. § 948.093

Sexual Exploitation of a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child: <ul style="list-style-type: none"> • Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct; or • Records or displays in any way a child engaged in sexually explicit conduct. • Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years. • A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class C felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years • Fine not to exceed \$100,000 • Or both. • Class F Felony in certain circumstances if the person is under 18 years of age when the offense occurs: <ul style="list-style-type: none"> • Imprisonment not to exceed 12 years and 6 months • Fine not to exceed \$25,000 • Or both. • If the defendant has reasonable cause to believe that the child has attained 18 years of age, it is an affirmative defense. Defendant has the burden of proof.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.05

Sexual Exploitation of a Therapist

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class F felony. <ul style="list-style-type: none"> • Consent is not relevant under this subsection.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class F felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 12 years and 6 months • Fine not to exceed \$25,000 • Or both.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • See definitions under Sexual Assault in the First Degree, above. • Therapist means: A physician, psychologist, social worker, marriage, family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy, or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 940.22

Sexual Assault of a Child Placed in Substitute Care

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Whoever does any of the following is guilty of a Class C felony: <ul style="list-style-type: none"> • Has sexual contact or sexual intercourse with a child for whom the actor is a foster parent; or • Has sexual contact or sexual intercourse with a child who is placed in any of the following facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it: <ul style="list-style-type: none"> • A shelter care facility; • A group home; or

	<ul style="list-style-type: none"> • A residential care center for children and youth operated by a child welfare agency.
What are the punishments for this crime?	<p>Class C felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 40 years; • Fine not to exceed \$ 100,000; • Or both.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • See definitions under Sexual Assault of a Child, above. • Child: A person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, “child” does not include a person who has attained the age of 17.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.085

Sexual Assault of a Child by a School Staff Person or Person Who Works or Volunteers with Children

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply: <ul style="list-style-type: none"> • The child is enrolled as a student in a school or a school district, and • The defendant is a member of the school staff of the school or school district in which the child is enrolled. • A person who has attained the age of 21 and engages in an occupation or participates in a volunteer position that requires him to work or interact directly with children (including, teaching, child care, coaching, counselor, youth organization, parks or playground recreation, or school bus driving) may not have sexual contact or sexual intercourse with a child who has attained the age of 16, who is not the person's spouse and with whom the person works or interacts through that occupation or volunteer position.
What are the punishments for this crime?	<p>Class H felony:</p> <ul style="list-style-type: none"> • Imprisonment not to exceed 6 years; • Fine not to exceed \$ 10,000;

	<ul style="list-style-type: none"> • Or both.
Anything else I should know?	<ul style="list-style-type: none"> • School means: <ul style="list-style-type: none"> • A public or private elementary or secondary school, or a tribal school. • School staff means: <ul style="list-style-type: none"> • Any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract. • See definitions under Sexual Assault in the First Degree, above.
Statutory Citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.095

Statutory Rape

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • “Statutory rape” is commonly used to refer to sexual penetration that is illegal because it involves a youth. • Wisconsin has no specific statutory rape statute, but this concept is captured under “Sexual Intercourse with a Child Age 16 or Older”: <ul style="list-style-type: none"> • Whoever has sexual intercourse with a child who is not the defendant’s spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor if the defendant has attained the age of 19 years when the violation occurs. • Child: <ul style="list-style-type: none"> • A person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, “child” does not include a person who has attained the age of 17. • Also, see “Sexual Assault of a Child”: <ul style="list-style-type: none"> • Whoever has <u>sexual intercourse</u> with a person who has not attained the age of 12 years is guilty of a Class B felony. • Also, see “Underage sexual activity”: <ul style="list-style-type: none"> • Whoever has sexual contact with a child who has attained the age of 15 years but has not attained the age of 16 years, or whoever has sexual intercourse with a child who has attained the age of 15 years, is guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when the violation occurs. This section does not apply if the actor is the child’s spouse.

What are the punishments for this crime?	<ul style="list-style-type: none"> • Class A misdemeanor: <ul style="list-style-type: none"> • Imprisonment not to exceed 9 months; • Fine not to exceed \$10,000; • Or both. • Class B felony: <ul style="list-style-type: none"> • Imprisonment not to exceed 60 years.
Anything else I should know?	<ul style="list-style-type: none"> • See definitions under Sexual Assault of a Child, above.
Statutory citation(s):	<ul style="list-style-type: none"> • Wis. Stat. § 948.09

Sodomy

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Wisconsin does not have an anti-sodomy law on the books. • Any state laws that outright prohibit sodomy are unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003).
What are the punishments for this crime?	<ul style="list-style-type: none"> • N/A
What are the punishments for this crime?	<ul style="list-style-type: none"> • N/A
Anything else I should know?	<ul style="list-style-type: none"> • N/A
Statutory Citation(s):	<ul style="list-style-type: none"> • N/A