



## WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

**2005 Wisconsin Act 436**  
[2005 Senate Bill 526]

**Sexual Assault of Person Under  
Influence of an Intoxicant**

### Current Law

Under current law, it is a Class C felony (maximum imprisonment, 40 years, maximum fine, \$100,000, or both) if a person 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 appraising his or her conduct and the defendant knows of that condition. Section 940.225 (2) (cm), Stats. “Intoxicant” is defined as any controlled substance, controlled substance analog, or other drug, any combination of a controlled substance, controlled substance analog, or other drug, or any combination of an alcohol beverage and a controlled substance, controlled substance analog, or other drug. Section 940.225 (2) (ai), Stats. However, the term “intoxicant” does not include any alcohol beverage (unless in combination with a controlled substance, controlled substance analog, or other drug). For definitions of “sexual contact” and “sexual intercourse,” see s. 940.225 (5) (b) and (c), Stats.

Consent is not an issue in an alleged violation of the prohibition against having sexual intercourse or contact with a person who is under the influence of an intoxicant. Section 940.225 (4), Stats. “Consent” is defined for purposes of s. 940.225 as “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.” While consent is not a defense to the crime under discussion, the jury is instructed that it may consider any words or actions of the victim indicating consent in determining whether the victim was under the influence of an intoxicant to a degree which rendered the victim incapable of appraising his or her conduct or whether the defendant knew that the victim was under the influence of an intoxicant to such a degree. Wis. JI-Criminal s. 212.

### Act 436

Act 436 amends the definition of “intoxicant” to include an alcohol beverage, regardless of whether it is combined with a controlled substance, a controlled substance analog, or another drug.

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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.state.wi.us/>.

Thus, under the Act, “intoxicant” is defined as “any alcohol beverage, controlled substance, controlled substance analog, or other drug or any combination thereof.”

Act 436 also revises the elements of the crime of sexual assault of a person who is under the influence of an intoxicant. The Act:

1. Revises the element requiring that the victim was under the influence of an intoxicant to a degree which rendered the victim incapable of appraising his or her conduct to require instead that the victim was under the influence of an intoxicant to a degree which rendered the victim incapable of “giving consent.”
2. Revises the element requiring that the defendant knew that the victim was under the influence of an intoxicant to a degree which renders the victim incapable of appraising his or her conduct to require instead that the defendant had “actual knowledge that the...[victim was] incapable of giving consent.”
3. Adds the element that the defendant had the purpose to have sexual contact or sexual intercourse with the victim while the victim was incapable of giving consent.

Thus, as revised by the Act, it is a Class C felony if a person has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant (including an alcohol beverage) 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.

***Effective Date:*** June 6, 2006.

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