

116 EXAMPLE MULTIPLE CHARGES OF FIRST DEGREE SEXUAL ASSAULT OF A CHILD: SEXUAL CONTACT WITH A PERSON WHO HAS NOT ATTAINED THE AGE OF 13 YEARS: THREE VICTIMS

The defendant is charged with three separate counts of first degree sexual assault of a child.

The first count of the information in this case charges that:

[READ THE CHARGE IN THE FIRST COUNT.]

The second count of the information in this case charges that:

[READ THE CHARGE IN THE SECOND COUNT.]

The third count of the information in this case charges that:

[READ THE CHARGE IN THE THIRD COUNT.]

The defendant has entered a plea of not guilty to each of these charges which means the State must prove every element of each offense charged beyond a reasonable doubt.

Statutory Definition of the Crime

First degree sexual assault of a child, as defined in § 948.02(1) of the Criminal Code of Wisconsin, is committed by one who has sexual contact with a person who has not attained the age of 13 years.

State's Burden of Proof

Before you may find the defendant guilty of any count of first degree sexual assault of a child, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present with respect to that count.

Elements of the Crime That the State Must Prove

1. As to each count, the defendant had sexual contact with the person named in that count.
2. As to each count, the person named in that count had not attained the age of 13 years.

Meaning of Sexual Contact

REFER TO WIS JI-CRIMINAL 2101A FOR DEFINITION OF "SEXUAL CONTACT" AND INSERT THE APPROPRIATE DEFINITION HERE.

Jury's Decision

[THE COMMITTEE RECOMMENDS SEPARATE CLOSING PARAGRAPHS FOR EACH COUNT.]¹

If you are satisfied beyond a reasonable doubt that both elements of first degree sexual assault of a child have been proved as to Count One, you should find the defendant guilty of first degree sexual assault of a child as charged in Count One.

If you are not so satisfied, you must find the defendant not guilty as to Count One.

If you are satisfied beyond a reasonable doubt that both elements of first degree sexual assault of a child have been proved as to Count Two, you should find the defendant guilty of first degree sexual assault of a child as charged in Count Two.

If you are not so satisfied, you must find the defendant not guilty as to Count Two.

If you are satisfied beyond a reasonable doubt that both elements of first degree sexual assault of a child have been proved as to Count Three, you should find the defendant guilty of first degree sexual assault of a child as charged in Count Three.

If you are not so satisfied, you must find the defendant not guilty as to Count Three.

COMMENT

This instruction was originally published as Wis JI-Criminal 115 EXAMPLE in 1987 and revised in 1990 and 2000. This revision renumbered it Wis JI-Criminal 116 EXAMPLE and was approved by the Committee in August 2003.

The 1990 change substituted "which means the state must prove every element of the offense charged beyond a reasonable doubt" for "which means a denial of every material allegation in the (information) (complaint)." No change in substance is intended. The Committee concluded that the previous version could be misleading in cases where the defense is directed at a specific element rather than being a general denial of every material allegation.

This instruction is intended to illustrate how Wis JI-Criminal 116 might be modified for a case involving three charges of the same offense against one defendant. It also illustrates the changes that are necessary in the instruction for the underlying offense (in this example, Wis JI-Criminal 2102, **FIRST DEGREE SEXUAL ASSAULT OF A CHILD: SEXUAL CONTACT OR INTERCOURSE WITH A PERSON WHO HAS NOT ATTAINED THE AGE OF 13 YEARS — § 948.02(1)**).

It had come to the Committee's attention that there had been problems in developing clear and accurate instructions for the multiple count case. While no single approach is absolutely required or clearly preferable, certain constructions, such as using "either-or," "and-or," "either or both," etc., should, in the Committee's judgment, be avoided. Wis JI-Criminal 116 EXAMPLE is, therefore, offered as an illustration of one way to modify and combine the standard instructions for a multiple count case. The objective is to avoid unnecessary repetition while clearly setting forth the facts necessary to constitute each crime charged.

1. The Committee recommends that separate closing paragraphs be used for each count, as indicated in the instruction. This will assure that the jury is accurately informed of the facts necessary to constitute guilt for each charge.

As an alternative, it may be possible to provide a single closing paragraph to cover all counts. Something like the following would be required:

If you are satisfied beyond a reasonable doubt that both elements of first degree sexual assault have been proved as to any count, you should find the defendant guilty of first degree sexual assault of a child as to that count.

If you are not so satisfied as to any count, you must find the defendant not guilty as to that count.