

948 WITHOUT CONSENT — § 939.22(48)

"Without consent" means that there was no consent in fact or that consent was given because

[the defendant put (name of victim) in fear by the use or threat of imminent use of physical violence on (a person in the presence of) (a member of the immediate family of) (name of victim).]

[the defendant purported to be acting under legal authority.]

[(name of victim) did not understand the nature of the thing to which (he) (she) consents, by reason of (ignorance) (mistake of fact)¹ (mistake of law other than criminal law) (youth) (defective mental condition, whether permanent or temporary).]

COMMENT

Wis JI-Criminal 948 was originally published in 1999. This revision adopted a new format and was approved by the Committee in February 2005.

This presents the definition of "without consent" provided in § 939.22(48). In most cases, definition is not likely to be necessary, since the plain and ordinary meaning of the term will be sufficient for the jury. Definition will be appropriate in the case where the victim did in fact give consent, but the consent will not be legally effective because one of the circumstances recognized is present. For example, a person may have consented to the taking of his or her property by the defendant because the defendant threatened a member of the person's family.

NOTE: This definition applies generally to offenses defined in the Criminal Code. Sexual assaults under § 940.225 use a different definition of "without consent" that applies only to violations of § 940.225.

1. For a case relying on the "ignorance" or "mistake of fact" exception, see State v. Inglin, 224 Wis.2d 764, 592 N.W.2d 666 (Ct. App. 1999).