

**1200F SEXUAL ASSAULT: SPOUSE AS VICTIM — § 940.225(6)**

CAUTION: THIS INSTRUCTION APPLIES ONLY TO SEXUAL ASSAULT OFFENSES UNDER SECTION 940.225.

**Effect of Marriage on Consent**

At the time of the alleged act of sexual (contact) (intercourse), (name of victim) was married to the defendant.

The fact that (name of victim) was married to the defendant does not mean that (name of victim) consented to sexual (contact) (intercourse). [The fact of marriage may be considered along with all the evidence in the case in determining whether there was consent.]<sup>1</sup>

**COMMENT**

This instruction was originally published as Wis JI-Criminal 1200E in 1983 and revised in 1990. It was revised and renumbered as Wis JI-Criminal 1200F in 1996. This revision adopted a new format and was approved by the Committee in May 2001.

This instruction is to implement § 940.225(6), as repealed and recreated by Chapter 310, Laws of 1981. The revised statute applies to offenses committed on or after May 1, 1982, and reads as follows:

(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.

The Prefatory Note to Chapter 310 provided: "This proposal repeals the spousal exception to the sexual assault law and creates a provision intended to negate any presumption that a person is incapable of committing sexual assault because of marriage to the victim."

1. The sentence in brackets should be included only for offenses which do not involve the use of weapons or force or the causing of great bodily harm. However, for charges of third and fourth degree sexual assault, for example, the sentence in brackets is appropriate because the fact of marriage is relevant to determining whether there was consent in those less aggravated instances.