

1217A SECOND DEGREE SEXUAL ASSAULT: SEXUAL CONTACT OR INTERCOURSE BY AN EMPLOYEE OF AN ENTITY — § 940.225(2)(j)**Statutory Definition of the Crime**

Second degree sexual assault, as defined in § 940.225(2)(j) of the Criminal Code of Wisconsin, is committed by a licensee, employee, or nonclient resident of an entity who has sexual (contact) (intercourse) with a client of the entity.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was a (licensee) (employee) (nonclient resident)¹ of an entity.
2. The defendant had sexual (contact) (intercourse) with (name of victim).

Consent to sexual (contact) (intercourse) is not a defense.²

3. (Name of victim) was a client of the entity.

“Client” means an individual who receives direct care or treatment services from an entity.³

Meaning of “Entity”

“Entity” means _____.⁴

Meaning of [“Sexual Contact”] [“Sexual Intercourse”]

REFER TO WIS JI-CRIMINAL 1200A FOR DEFINITION OF “SEXUAL CONTACT” AND WIS JI-CRIMINAL 1200B FOR DEFINITION OF “SEXUAL INTERCOURSE” AND INSERT THE APPROPRIATE DEFINITION HERE.

Jury’s Decision

If you are satisfied beyond a reasonable doubt that all three elements of second degree sexual assault have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 1217A was approved by the Committee in August 2006. This revision was approved by the Committee in December 2021; it added to the comment.

Section 940.225(2)(j) was created by 1997 Wisconsin Act 388 (effective date: Dec. 1, 2006).

The instruction provides for inserting definitions of “sexual contact” and “sexual intercourse” provided in Wis JI-Criminal 1200A and 1200B. That definitional material was formerly included in the text of each offense instruction. When a new alternative was added to the statutory definition of sexual contact by 1995 Wisconsin Act 69, the Committee decided to modify its original approach by providing separate instructions for the definitions. The Committee believes that this will be more convenient to the users of the instructions, making it easier to prepare an instruction that is tailored to the facts of the case.

2021 Wisconsin Act 76 [effective date: August 8, 2021] created Wis. Stat. sec. 940.225(1)(d), which makes it a first degree sexual assault to commit what would otherwise be a second degree sexual assault “against an individual who is 60 years of age or older.” Wis JI-Criminal 1204 provides a model for integrating the instruction for the second degree offense into instruction for a violation of § 940.225(1)(d).

1. Section 940.225(5)(ak), created by 2005 Wisconsin Act 388, defines “nonclient resident” as follows: “. . . an individual who resides, or is expected to reside, at an entity, who is not a client of the entity, and who has, or is expected to have, regular, direct contact with the clients of the entity.”

2. “Without consent” is not an element of this offense because it is not included in the offense definition. The Committee concluded that it may be helpful to advise the jury of this fact.

3. This is the definition provided in s. 940.225(5)(abm), which was created by 2005 Wisconsin Act 388.

4. Section 940.225(2)(j) refers to “an entity,” as defined in s. 48.685(1)(b) or 50.065(1)(c). The Committee recommends choosing the applicable part of applicable definition and inserting it in the blank.