

**1217D SECOND-DEGREE SEXUAL ASSAULT: SEXUAL 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 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)<sup>1</sup> of an entity.
2. The defendant had sexual intercourse with (name of victim).

“Sexual intercourse” is defined as (insert the applicable definition set forth in Wis JI-Criminal 1200B).<sup>2</sup>

Consent to sexual intercourse is not a defense.<sup>3</sup>

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

“Client” means an individual who receives direct care or treatment services from an entity.<sup>4</sup>

**Meaning of “Entity”**

“Entity” means \_\_\_\_\_.<sup>5</sup>

**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 1217D was approved by the Committee in October 2025. Previously, this material appeared in an earlier version of Wis JI–Criminal 1217A, which addressed both “sexual contact” and “sexual intercourse” in a single instruction. In October 2025, the Committee bifurcated Wis JI–Criminal 1217A to separate those topics and provide greater clarity regarding the essential elements, consistent with the Wisconsin Court of Appeals’ recommendation in State v. Goth, 2024 WI App 74, 15 N.W.3d 518 (unpublished).

Section 940.225(2)(j) was created by 2005 Wisconsin Act 388 (effective date: Dec. 1, 2006).

This instruction is for the type of second-degree sexual assault defined by § 940.225(2)(j): sexual intercourse by an employee of an entity. Wis JI–Criminal 1217A is drafted for sexual contact by an employee of an entity.

2021 Wisconsin Act 76 [effective date: August 8, 2021] created Wis. Stat. § 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. The appropriate definition of “sexual intercourse” should be selected from the alternatives provided in Wis JI–Criminal 1200B, based on the specific facts of the case.

3. “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.

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

5. Section 940.225(2)(j) refers to “an entity,” as defined in § 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.