

**1532 INCEST: SEXUAL INTERCOURSE BETWEEN BLOOD RELATIVES
— § 944.06)**

Statutory Definition of the Crime

Incest, as defined in § 944.06 of the Criminal Code of Wisconsin, is committed by one who has nonmarital sexual intercourse with a person (he) (she) knows is a blood relative and such relative is in fact related in a degree within which the marriage of the parties is prohibited by the law of this state.

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 had sexual intercourse with (name of victim).

REFER TO WIS JI-CRIMINAL 2101B FOR DEFINITION OF "SEXUAL INTERCOURSE" AND INSERT THE APPROPRIATE DEFINITION HERE.¹

2. The defendant knew that (name of victim) was related to (him) (her) by blood.²

3. (Name of victim) was related to the defendant in a degree of kinship closer than second cousin.³

Deciding About Knowledge

You cannot look into a person's mind to find out knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and

circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

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

COMMENT

This instruction was originally published as Wis JI-Criminal 1510 in 1983 and was revised in 1989. It was renumbered Wis JI-Criminal 1532 and revised in 2007. It was revised again in 2008, 2010, and 2021. The 2010 revision changed the definition of “sexual intercourse” as described in footnote 1. The 2021 revision added the table showing degrees of kinship found at s. 990.001(16) of the Wisconsin Statutes to the comment. This revision was approved by the Committee in December 2023; it added the paragraph “Deciding About Knowledge” to the main text of the instruction.

Wis JI-Criminal 1510 was originally drafted to apply to incest offenses involving father and daughter. The 2007 revision revised it to apply generally to all “blood relatives” as provided by the statute.

Incest offenses involving children as victims are covered by a separate statute – see § 948.06, Incest With A Child, and Wis JI-Criminal 2130 and 2131.

1. 2009 Wisconsin Act 13 amended § 944.06 to provide that “sexual intercourse” has the meaning provided in § 948.01(6). Wis JI-Criminal 2101B provides definitions for the alternatives presented by the statutory definition.

2. The knowledge requirement is included in the statutory definition of the offense. Note that the knowledge required is that the defendant and the victim are “related.” The statute further requires that they be related “in a degree closer than second cousin,” but the knowledge requirement apparently does not extend to the degree of relation.

3. This restates the requirement of the statutory definition that refers to “related in a degree within which the marriage of the parties is prohibited by the law of this state.” Section 765.03 provides that “[n]o marriage shall be contracted . . . between persons who are nearer of kin than second cousins . . .” “Second cousin” is defined in Black’s Law Dictionary (7th Edition) as follows: “A person related to another by descending from the same great-grandfather or great-grandmother.” For a chart showing the degrees of kinship see § 990.001(16) and the Comment of Wis JI-Criminal 2130.

Degree of Kinship

The following chart is based on the table showing degrees of kinship found at s. 990.001(16) of the

Wisconsin Statutes. The column at the far right has been added to show how the various degrees of kinship compare to second cousins. The added column is based on the chart appearing at page 48, Decedents' Estates and Trusts, by Ritchie, Alford, and Effland, 4th Edition, © 1971, Foundation Press. Note that the degree of kinship of second cousins is indicated by the number "6." Thus, all those degrees indicated by the number "5" or less are "related in a degree closer than second cousin" and fall within the prohibition of s. 948.096(1).

