

2102B FIRST DEGREE SEXUAL ASSAULT OF A CHILD: SEXUAL INTERCOURSE WITH A PERSON WHO HAS NOT ATTAINED THE AGE OF 12 YEARS — § 948.02(1)(b)

Statutory Definition of the Crime

First degree sexual assault of a child, as defined in § 948.02(1)(b) of the Criminal Code of Wisconsin, is committed by one who has sexual intercourse with a person who has not attained the age of 12 years.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant had sexual intercourse with (name of victim).
2. (Name of victim) was under the age of 12 years at the time of the alleged sexual intercourse.

Knowledge of (name of victim)'s age is not required¹ and mistake regarding (name of victim)'s age is not a defense.²

Consent to sexual intercourse is not a defense.³

Meaning of Sexual Intercourse

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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

Wis JI-Criminal 2102B was approved by the Committee in April 2008; it reflects changes made by 2007 Wisconsin Act 80.

This instruction is drafted for violations of § 948.02(1)(b) as created by 2008 Wisconsin Act 80 [effective date: March 27, 2008.] The offense is a Class B felony.

NOTE: The age limit for this offense is that the victim "has not attained the age of 12 years." The similar offense involving sexual contact applies to a victim who "has not attained the age of 13 years." See § 948.02(1)(e).

Section 939.66(2p), created by 2005 Wisconsin Act 430, provides that a "crime which is a less serious or equally serious type of violation under s. 948.02 than the one charged" is a lesser included crime.

1. See § 939.23(6).
2. See § 939.43(2).
3. "Without consent" is not an element of this offense, and the Committee concluded it may be helpful to advise the jury of that fact.