

2102E FIRST DEGREE SEXUAL ASSAULT OF A CHILD: SEXUAL CONTACT OR INTERCOURSE WITH A PERSON WHO HAS NOT ATTAINED THE AGE OF 13 YEARS — § 948.02(1)(e)

Statutory Definition of the Crime

First degree sexual assault of a child, as defined in § 948.02(1)(e) of the Criminal Code of Wisconsin, is committed by one who has sexual [contact] [intercourse] with a person who has not attained the age of 13 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 [contact] [intercourse] with (name of victim).
2. (Name of victim) was under the age of 13 years at the time of the alleged sexual [contact] [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 [contact] [intercourse] is not a defense.³

Meaning of [Sexual Contact] [Sexual Intercourse]

REFER TO WIS JI-CRIMINAL 2101A FOR DEFINITION OF "SEXUAL CONTACT" AND 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 2102E was originally published in 2008. This revision was approved by the Committee in June 2014; it reflects changes made in § 948.02 by 2013 Wisconsin Act 167.

This instruction is drafted for violations of § 948.02(1)(e) as created by 2008 Wisconsin Act 80 [effective date: March 27, 2008] and as amended by 2013 Wisconsin Act 167 [effective date: March 29, 2013].

2013 Wisconsin Act 167 amended § 948.02(1)(e) to add "sexual intercourse." Before that amendment, sub. (1)(e) applied only to "sexual contact."

NOTE: The age limit for this offense is that the victim "has not attained the age of 13 years." Section 948.02(1)(b) prohibits "sexual intercourse with a person who has not attained the age of 12 years."

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.