

2102F FIRST-DEGREE SEXUAL ASSAULT OF A CHILD: SEXUAL INTERCOURSE WITH A PERSON WHO HAS NOT ATTAINED THE AGE OF 13 YEARS: CAUSING GREAT BODILY HARM — § 948.02(1)(am)

Statutory Definition of the Crime

First-degree sexual assault of a child, as defined in § 948.02(1)(am) of the Criminal Code of Wisconsin, is committed by one who has sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to that person.

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).

“Sexual intercourse” is defined as (insert the applicable definition set forth in Wis JI–Criminal 2101B).¹

2. (Name of victim) was under the age of 13 years at the time of the alleged sexual intercourse.

Knowledge of (name of victim)’s age is not required² and mistake regarding (name of victim)’s age is not a defense.³

Consent to sexual intercourse is not a defense.⁴

3. The defendant caused great bodily harm to (name of victim).

“Great bodily harm” means injury which creates a substantial risk of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.⁵

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

Wis JI–Criminal 2102F was approved by the Committee in October 2025. Previously, this material appeared in an earlier version of Wis JI–Criminal 2102A, which addressed both “sexual contact” and “sexual intercourse” in a single instruction. In October 2025, the Committee bifurcated Wis JI–Criminal 2102A 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consistent with the Wisconsin Court of Appeals’ recommendation in State v. Goth, 2024 WI App 74, 15 N.W.3d 518 (unpublished).

This instruction is drafted for violations of § 948.02(1)(am) as created by 2008 Wisconsin Act 80 [effective date: March 27, 2008]. A violation of this subsection is a Class A felony.

For an instruction addressing violations of Wis. Stat. § 948.02(1)(am) involving “sexual contact,” see Wis JI–Criminal 2102A.

As revised by Act 80, the statute defines the crime in the same manner as § 940.225(1)(a): “Has sexual contact or sexual intercourse . . . and causes . . . great bodily harm.” Under § 940.225(1)(a), the act itself need not cause the great bodily harm. See Wis JI–Criminal 1201, footnote 1, and State v. Schambow, 176 Wis.2d 286, 298-99, 500 N.W.2d 362 (Ct. App. 1993). The Wisconsin Legislative Council Act Memo for 2007 Wisconsin Act 80 states that the revision “clarifies that harm to the victim caused by the offender at the time of a first-degree sexual assault of a child, and not necessarily caused by the sexual intercourse or contact, would satisfy the great bodily harm element . . .”

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. The appropriate definition of “sexual intercourse” should be selected from the alternatives provided in Wis JI–Criminal 2101B, based on the specific facts of the case.

2. See § 939.23(6).

3. See § 939.43(2).

4. “Without consent” is not an element of this offense, and the Committee concluded it may be helpful to advise the jury of that fact.

5. See § 939.22(14) and Wis JI–Criminal 914. The reference to “other serious bodily injury” at the end of the statutory definition is intended to broaden the scope of the statute rather than to limit it by application of an “ejusdem generis” rationale. LaBarge v. State, 74 Wis.2d 327, 246 N.W.2d 794 (1976).