

**2102G FIRST-DEGREE SEXUAL ASSAULT OF A CHILD: SEXUAL 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 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 intercourse with (name of victim).

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

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 required<sup>2</sup> and mistake regarding (name of victim)’s age is not a defense.<sup>3</sup>

Consent to sexual intercourse is not a defense.<sup>4</sup>

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consistent with the Wisconsin Court of Appeals’ recommendation in State v. Goth, 2024 WI App 74, 15 N.W.3d 518 (unpublished).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

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

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. 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.