

**2130 INCEST WITH A CHILD: SEXUAL INTERCOURSE OR CONTACT —  
§ 948.06(1)****Statutory Definition of the Crime**

Incest with a child, as defined in § 948.06(1) of the Criminal Code of Wisconsin, is committed by one who has sexual [intercourse] [contact] with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than second cousin.

**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 four elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant had sexual [intercourse] [contact] with (name of victim).
2. The defendant knew that (name of victim) was related to (him) (her) by blood or adoption.<sup>1</sup>
3. (Name of victim) was related to the defendant in a degree of kinship closer than second cousin.<sup>2</sup>
4. (Name of victim) was under the age of 18 years at the time of the alleged offense.<sup>3</sup>

Knowledge of (name of victim)'s age is not required<sup>4</sup> and mistake regarding (name of victim)'s age is not a defense.<sup>5</sup>

Consent to sexual [contact] [intercourse] is not a defense.<sup>6</sup>

### **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 all four 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 2130 was originally published in 1974 and revised in 1980, 1991, 1994, and 1996. This revision was approved by the Committee in March 2007 and involved adoption of a new format and nonsubstantive changes to the text. This revision also combined the instructions formerly published as Wis JI-Criminal 2130 [incest involving sexual intercourse] and Wis JI-Criminal 2131 [incest involving sexual contact].

This instruction is for a violation of § 948.06(1), created by 1987 Wisconsin Act 332 as part of the revision of the criminal statutes relating to crimes against children. It applies to offenses committed on or after July 1, 1989. Note that § 944.06 also defines a crime of incest which is not limited to child victims. See Wis JI-Criminal 1510.

Section 948.06(1) also applies to one who marries a child. And sub. (2) imposes liability on a person responsible for a child's welfare whose failure to act exposes the child to a risk that incest may occur or facilitates incest. Neither of those offenses are addressed by uniform instructions.

Section 948.06 was amended by 2005 Wisconsin Act 277 to create sub. (1m) which prohibits sexual contact or intercourse by a child's stepparent. See Wis JI-Criminal 2131.

1. 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.

2. "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." The table

following footnote 6 shows the degree of relationship of second cousins.

3. Section 948.01(1) defines "child" as "a person who has not attained the age of 18 years."
4. Section 939.23(6).
5. Section 939.43(2).
6. "Without consent" is not an element of this offense, and the Committee concluded it may be helpful to advise the jury of that fact.

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### **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, 4<sup>th</sup> 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).

