

**2131 INCEST WITH A CHILD: SEXUAL INTERCOURSE OR CONTACT
BY STEPPARENT — § 948.06(1m)**

Statutory Definition of the Crime

Incest with a child, as defined in § 948.06(1m) of the Criminal Code of Wisconsin, is committed by one who has sexual [intercourse] [contact] with a child and who is the child's stepparent.

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] [contact] with (name of victim).
2. The defendant was the stepparent of (name of victim).

USE THE FOLLOWING IF IT IS BELIEVED TO BE NECESSARY
TO DEFINE "STEPPARENT"

"Stepparent" means a person who was married to the biological or adoptive parent of (name of child) at the time of the alleged offense.¹

3. (Name of victim) was under the age of 18 years at the time of the alleged offense.²

Knowledge of (name of victim)'s age is not required³ and mistake regarding (name of victim)'s age is not a defense.⁴

Consent to sexual [contact] [intercourse] is not a defense.⁵

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 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 2131 was approved by the Committee in March 2007.

An instruction formerly published as Wis JI-Criminal 2131 [incest involving sexual contact] was combined with Wis JI-Criminal 2130 in 2007.

This instruction is for a violation of § 948.06(1m), created by 2005 Wisconsin Act 277 [effective date: April 20, 2006].

See Wis JI-Criminal 2130 for violations of § 948.06(1). Subsection (2) of 948.06 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. That offense is not addressed by uniform instructions.

1. There is no statutory definition of "stepparent." The definition suggested in the text was developed by the Committee.

2. Section 948.01(1) defines "child" as "a person who has not attained the age of 18 years."

3. Section 939.23(6).

4. Section 939.43(2).

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