

2137A SEXUAL ASSAULT OF A FOSTER CHILD — § 948.085(1)**Statutory Definition of the Crime**

Sexual assault of a child, as defined in § 948.085(1) of the Criminal Code of Wisconsin, is committed by a person who has sexual [contact] [intercourse] with a child for whom the person is a foster parent.

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 [contact] [intercourse] with (name of victim).

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.]

2. (Name of victim) was under the age of 18 years¹ at the time of the alleged sexual [contact] [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 [contact] [intercourse] is not a defense.⁴

3. The defendant was a foster parent to (name of victim).

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 2137A was originally published in 2007. This revision was approved by the Committee in July 2009.

This instruction is for violations of § 948.085(1), which was created by 2005 Wisconsin Act 277 (effective date: April 20, 2006). For violations of § 948.085(2), see Wis JI-Criminal 2137B.

The 2010 revision deleted reference to "treatment foster parent" which was removed from § 948.085 by 2009 Wisconsin Act 28 (Section 3353).

The instruction provides for inserting definitions of "sexual contact" and "sexual intercourse" provided in Wis JI-Criminal 2101A and 2101B. That definitional material was formerly included in the text of each instruction for sexual assault offenses. When a new alternative was added to the statutory definition of sexual contact by 1995 Wisconsin Act 69, the Committee decided to modify its original approach by providing separate instructions for the definitions. The Committee believes that this will be more convenient to the users of the instructions, making it easier to prepare an instruction that is tailored to the facts of the case.

1. "Child" is defined in § 948.01(1) as "a person who has not attained the age of 18 years."
2. Section 939.23(6).
3. Section 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.