

2137B SEXUAL ASSAULT OF A CHILD PLACED IN A SUBSTITUTE CARE FACILITY¹ — § 948.085(2)**Statutory Definition of the Crime**

Sexual assault of a child, as defined in § 948.085(2) of the Criminal Code of Wisconsin, is committed by a person who has sexual [contact] [intercourse] with a child who was placed in a substitute care facility, where the person (works or volunteers at the facility) (is responsible² for managing the facility).

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 [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 years³ at the time of the alleged sexual [contact] [intercourse].

Knowledge of (name of victim)'s age is not required⁴ and mistake regarding (name of victim)'s age is not a defense.⁵

Consent to sexual [contact] [intercourse] is not a defense.⁶

3. (Name of victim) was placed in a substitute care facility.

"Substitute care facility" means

[a shelter care facility licensed under s. 48.66(1)(a).]⁷

[a group home licensed under s. 48.625 or 48.66(1).]⁸

[a facility described in s. 940.295(2)(m).]⁹

4. The defendant (worked or volunteered at the facility) (was responsible¹⁰ for managing the facility).

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 2137B was approved by the Committee in August 2006.

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

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. The instruction uses the term "substitute care facility," borrowing it from the title of the statute. The offense definition refers to "any of the following facilities" and then lists three types of facilities that are defined primarily by cross references to other statutes. See notes 7, 8, and 9, below.

2. The statute refers to a person who "is directly or indirectly responsible" for managing the facility. The Committee concluded that it was not necessary to include the full statement in most cases. If the case is expected to focus on the defendant being "indirectly" responsible for managing the facility it may be helpful to add "directly or indirectly" to the fourth element. See note 10, below.

3. "Child" is defined in § 948.01(1) 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.

7. Section 48.66(1)(a) refers to licensing shelter care facilities but does not provide a definition of the term.

8. Section 48.625 requires a license to operate a group home but does not provide a definition of the term. Section 48.66(1) lists a variety of institutions and agencies.

9. Section 940.295(2)(m) refers to: "A residential care center for children and youth operated by a child welfare agency licensed under s. 48.60 or an institution operated by a public agency for the care of neglected, dependent, or delinquent children."

Sec. 48.60 does not include a definition or list of agencies to which it applies. Sub. (2) lists many types of institutions to which it does not apply.

10. The statute refers to a person who "is directly or indirectly responsible" for managing the facility. The Committee concluded that it was not necessary to include the full statement in most cases. If the case is expected to focus on the defendant being "indirectly" responsible for managing the facility it may be helpful to add "directly or indirectly" to the fourth element.