

**2137C SEXUAL ASSAULT OF A FOSTER CHILD: SEXUAL INTERCOURSE —  
§ 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 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 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 18 years<sup>2</sup> at the time of the alleged sexual intercourse.

Knowledge of (name of victim)’s age is not required<sup>3</sup> and mistake regarding (name of victim)’s age is not a defense.<sup>4</sup>

Consent to sexual intercourse is not a defense.<sup>5</sup>

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 2137C was approved by the Committee in October 2025. Previously, this material appeared in an earlier version of Wis JI-Criminal 2137A, which addressed both “sexual contact” and “sexual intercourse” in a single instruction. In October 2025, the Committee bifurcated Wis JI-Criminal 2137A 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consistent with the Wisconsin Court of Appeals’ recommendation in *State v. Goth*, 2024 WI App 74, 15 N.W.3d 518 (unpublished).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 addresses violations of § 948.085(1) involving “sexual intercourse” only. For violations involving “sexual contact,” see Wis JI-Criminal 2137A.

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 and Wis JI Criminal 2137D.

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

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. “Child” is defined in § 948.01(1) 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.