

218C CHIPS: ABUSE BY CAUSING A CHILD TO VIEW OR LISTEN TO SEXUAL ACTIVITY: VIOLATION OF WIS. STAT. § 948.055 [WIS. STAT. § 48.13(3) and § 48.02(1)(e)]

The petition in this case alleges that (child) has been the victim of abuse. Your role as jurors will be to answer the following question in the special verdict:

1. Was (child) the victim of abuse?

The burden is on (petitioner) to convince you by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that the question should be answered "yes."

In this case, (child) has been abused if someone has intentionally caused the child to view or listen to sexually explicit conduct if the viewing or listening was for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

The burden is on (petitioner) to establish that the following four elements were present:

First, that someone caused (child) to view or listen to sexually explicit conduct.

Second, that this person intentionally caused (child) to view or listen to sexually explicit conduct.

Third, that the person acted with the purpose of sexually arousing or gratifying (himself) (herself) or humiliating or degrading (child).

Fourth, that (child) had not attained the age of 18 years.¹

"Sexually explicit conduct" means actual or simulated (sexual intercourse) (bestiality) (masturbation) (sexual sadism or sexual masochistic abuse) (lewd exhibition of intimate parts). [Emission of semen is not required.]

(Petitioner) is not required to prove that an alleged abuser had knowledge of (child)'s age, and any mistake regarding (child)'s age is not a defense. Similarly, consent is not an issue, and any consent by (child) is not a defense.

While the burden is on (petitioner) to establish that abuse occurred, (petitioner) need not prove who caused the abuse.

If you are convinced by evidence that is clear, satisfactory, and convincing, to a reasonable certainty, that (child) was the victim of abuse, you should answer the question in the special verdict "yes." If you are not so convinced, you must answer the question "no."

SPECIAL VERDICT

1. Was (child) the victim of abuse?

Answer: _____
Yes or No

COMMENT

Wis JI-Children 218.3 and comment were approved by the Committee in 1997. The instruction was renumbered JI-Children 218C in the 2005 edition and revised in 2009 and 2010. An editorial change was made to the comment in 2005. A statutory citation in the comment was updated in 2008 and 2009.

This instruction is for use when jurisdiction is alleged under subsections 48.13(3) and 48.02(1)(e), which define "abuse" by reference to the crime of causing a child to view or listen to sexual activity. Wis. Stat. § 948.055.

The sexual abuse jurisdictional basis was substantially revised by 1995 Wisconsin Act 275. Wis. Stat. § 48.13(3) provides as follows:

48.13 Jurisdiction over children alleged to be in need of protection or services.

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (3) Who has been the victim of abuse, as defined in s. 48.02(1)(a), (b), (c), (d), (e), (f), or (g), including injury that is self-inflicted or inflicted by another

Wis. Stat. § 48.02(1)(e) defines "abuse" by reference to § 948.055:

(1) "Abuse," other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(e) A violation of § 948.055.

Wis. Stat. § 948.055 states:

948.055 Causing a child to view or listen to sexual activity. (1) Whoever intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct may be penalized as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

(2) Whoever violates sub. (1) is guilty of:

(a) A Class F felony if the child has not attained the age of 13 years.

(b) A Class H felony if the child has attained the age of 13 years but has not attained the age of 18 years.

NOTES

1. While it might be appropriate to "direct a verdict" on the element of age, some finding needs to be made by the court or jury as to this element. See Special Materials, SM-2, at the end of this publication.