

218D CHIPS: ABUSE: EXPOSING OR CAUSING A CHILD TO EXPOSE GENITALS OR PUBIC AREA: VIOLATION OF WIS. STAT. § 948.10 [WIS. STAT. § 48.13(3) and § 48.02(1)(f)]

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 (caused the child to expose genitals or pubic area) (exposed genitals or pubic area to (child)) for the purpose of the person's sexual arousal or sexual gratification.

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

First, that someone [caused (child) to expose (genitals) (pubic area)] [exhibited to view (his) (her) (genitals) (pubic area) to (child)].

Second, the person [caused the exposure by (child)] [exposed (genitals) (pubic area)] for the purpose of sexual arousal or sexual gratification.

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

The 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 218.4 and comment were approved by the Committee in 1997 and revised in 2005 and 2010. The instruction was renumbered JI-Children 218D in the 2005 edition. An editorial change was made to the comment in 2005. The comment was updated in 2008 and 2009. The title was revised in 2009.

This instruction is for use when jurisdiction is alleged under subsections 48.13(3) and 48.02(1)(f), which define "abuse" by reference the crime of exposing or causing a child to expose.

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)(f) defines "abuse" by reference to § 948.10:

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

(f) A violation of s. 948.10.

Wis. Stat. § 948.10 states:

948.10. Exposing genitals or pubic area. (1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply under any of the following circumstances:

- (a) The child is the defendant's spouse.
- (b) A mother's breast-feeding of her child.

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 for a discussion.