

2108 PHYSICAL ABUSE OF A CHILD: INTENTIONALLY CAUSING GREAT BODILY HARM — § 948.03(2)(a)**Statutory Definition of the Crime**

Physical abuse of a child, as defined in § 948.03(2)(a) of the Criminal Code of Wisconsin, is committed by one who intentionally causes great bodily harm to a child.

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 caused great bodily harm to (name of victim).

"Great bodily harm" means injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.¹

2. The defendant intentionally² caused great bodily harm.

This requires that the defendant had the mental purpose to cause great bodily harm to (name of victim) or was aware that (his) (her) conduct was practically certain to cause that result.

3. (Name of victim) had not attained the age of 18 years at the time of the alleged offense.

Knowledge of (name of victim)'s age by the defendant is not required³ and mistake regarding (name of victim)'s age is not a defense.⁴

Deciding About Intent

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

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 2108 was originally published in 1989. This revision was approved by the Committee in December 2008 and involved adoption of a new format and nonsubstantive changes to the text.

Section 948.03 defines crimes relating to the physical abuse of children. Subsection (2) identifies three types of intentional physical abuse. Subsection (3) identifies three types of reckless physical abuse.

This instruction is for a violation of § 948.03(2)(a), created by 1987 Wisconsin Act 332 as part of the revision of the criminal statutes relating to crimes against children. It applies to offenses committed on or after July 1, 1989.

The privilege of parental discipline as defined in § 939.45(5) is not available as a defense to a charge under § 948.03(2)(a). As amended by the same legislation that created § 948.03, § 939.45(5)(b) provides that "it is never reasonable discipline to use force which is intended to cause great bodily harm. . . ." Thus, by proving that the defendant intentionally caused great bodily harm, the state will also prove that the privilege does not apply. If evidence was received that might raise the issue of parental discipline, it might be helpful to the jury to instruct in the words quoted above that the privilege does not apply to the intentional causing of great bodily harm. If the lesser included offense of intentionally causing bodily harm is submitted, the privilege could apply to that offense. See Wis JI-Criminal 950.

1. See § 939.22(14) and Wis JI-Criminal 914. The reference to "other serious bodily injury" at the end of the statutory definition is intended to broaden the scope of the statute rather than to limit it by application of an "ejusdem generis" rationale. LaBarge v. State, 74 Wis.2d 327, 246 N.W.2d 794 (1976).
2. "Intentionally" is defined in § 939.23(3). See Wis JI-Criminal 923A and 923B.
3. Section 939.23(6).
4. Section 939.43(2).