

2109 PHYSICAL ABUSE OF A CHILD: INTENTIONALLY CAUSING BODILY HARM — § 948.03(2)(b)**Statutory Definition of the Crime**

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

Bodily harm means physical pain or injury, illness, or any impairment of physical condition.¹

2. The defendant intentionally² caused bodily harm.

This requires that the defendant had the mental purpose to cause 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 2109 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)(b), 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.

See Wis JI-Criminal 950 for an instruction on the privilege of parental discipline.

1. This is the definition of "bodily harm" provided in § 939.22(4).
2. "Intentionally" is defined in § 939.23(3). The definition changed, effective January 1, 1989, though both the old and new version have "mental purpose" as one definition of "intentionally." It is the other alternative that changes from "reasonably believes his act, if successful, will cause that result" to "is aware that his conduct is practically certain to cause that result." See Wis JI-Criminal 923A and B.
3. Section 939.23(6).
4. Section 939.43(2).