

2110 PHYSICAL ABUSE OF A CHILD: INTENTIONALLY CAUSING BODILY HARM BY CONDUCT WHICH CREATES A HIGH PROBABILITY OF GREAT BODILY HARM — § 948.03(2)(c)

Statutory Definition of the Crime

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

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 five 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. The defendant's conduct created a high probability of great bodily harm.

"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.³

4. The defendant knew that (his) (her) conduct created a high probability of great bodily harm.⁴
5. (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 required⁵ and mistake regarding (name of victim)'s age is not a defense.⁶

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 five 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 2110 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)(c), 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 regarding the applicability of the privilege of parental discipline to this offense.

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. 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).
4. Section 948.03(2)(c) applies to those who "intentionally cause bodily harm by conduct which creates a high probability of great bodily harm." Section 939.23(3) provides that when "intentionally" is used in a criminal statute, it requires that the actor "have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word 'intentionally'." The Committee concluded that this requires that the defendant charged under § 948.03(2)(c) must have known that his conduct created a high probability of great bodily harm.
5. Section 939.23(6).
6. Section 939.43(2).