

**2114A EXAMPLE REPEATED ACTS OF PHYSICAL ABUSE OF A CHILD — §
948.03(5)****Statutory Definition of the Crime**

Section 948.03(5) of the Criminal Code of Wisconsin is violated by one who, within a specified period of time, commits three or more acts of physical abuse of the same 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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant committed at least three acts of physical abuse of (name of victim).

In this case, the defendant is alleged to have committed physical abuse of a child by violating Section 948.03(2)(a).

Section 948.03(2)(a) requires the State to prove that:

§ 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.

§ The defendant intentionally 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.

§ (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 required and mistake regarding (name of victim)'s age is not a defense.

2. At least three acts of physical abuse took place within a specified period of time.

The specified period of time is from (beginning date of specified period) through (ending date of specified period).

GIVE THE FOLLOWING ONLY IF MORE THAN THREE ACTS HAVE BEEN ALLEGED.

[More Than Three Acts Alleged]

[Before you may find the defendant guilty you must unanimously agree that at least three acts of physical abuse occurred between (beginning date of specified period) and (ending date of specified period), but you need not agree on which acts constitute the required three.]

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant committed three violations of Section 948.03(2)(a) within the specified period of time, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

SEE WIS JI-CRIMINAL 2114A IF SPECIAL QUESTIONS ON PENALTY-INCREASING FACTS ARE NECESSARY.¹

COMMENT

Wis JI-Criminal 2114A EXAMPLE was approved by the Committee in August 2017.

This instruction is for a violation of § 948.03(5), which was created by 2015 Wisconsin Act 366 [effective date: April 21, 2016].

The instruction is drafted as an example of how Wis JI-Criminal 2114A would read when applied to a case where all the predicate offenses for the charge under § 948.03(5) are violations of § 948.03(2)(a) – intentionally causing great bodily harm to a child.

1. The instruction assumes that the case is charged as a Class B felony under § 948.03(5)(a)2.: "at least 2 violations were violations of sub. (2)(a)." If only three predicate offenses were alleged, a special question on penalty is not necessary – the jury returning a guilty verdict will have agreed that the same three acts in violation of § 948.03(2)(a) were proved. If more than three predicate acts were alleged, the jury will have been told that agreement is not required on which acts constituted the required three. However, for purposes of the penalty, the jurors must all agree that the same two acts "were violations of sub. (2)(a)." Wis JI-Criminal 2114A provides special questions for the penalty-increasing facts.