

2119 FAILURE TO REPORT CHILD ABUSE — § 48.981(2), (3), and (6)**Statutory Definition of the Crime**

Failure to report child abuse, as defined in § 48.981¹ of the Wisconsin Statutes, is committed by one who is required to report child abuse or neglect, has reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected, and intentionally fails to report as required.

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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was required to report child (abuse) (neglect).

A _____ is required to report child (abuse) (neglect).²

2. The defendant saw (name of child) in the course of professional duties.
3. The defendant had reasonable cause to suspect that (name of child) had been (abused) (neglected).

"Reasonable cause to suspect" means that a reasonable person in the defendant's position would have suspected that the child had been (abused) (neglected).³

["Abused" means physical injury inflicted by other than accidental means.]⁴

["Neglected" means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.]⁵

4. The defendant intentionally failed to report.

"Intentionally," as used here, means that the defendant purposely failed to report. This does not require that the defendant knew that the law required the reporting of suspected (abuse) (neglect).⁶

"Report" requires immediately informing, by telephone or personally, the county department of (social) (human) services, or the sheriff, or the city police department of the facts and circumstances contributing to the reasonable suspicion that (abuse) (neglect) has occurred.⁷

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 four 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 2119 was originally published as Wis JI-Criminal 1221C in 1987. It was renumbered Wis JI-Criminal 2119 and republished without substantive change in 1992. The 2002 revision adopted a new format, made nonsubstantive changes to the text, and updated the Comment. This revision was approved by the Committee in December 2011; it updated the text and the Comment.

The offense defined by the combination of subsections (2), (3), and (6) of § 48.981 (see note 1, below) can be committed in two different situations: where a person has "reasonable cause to suspect" that a child has been abused or neglected; and where a person has "reason to believe" that a child has been threatened with abuse or neglect and that abuse or neglect will occur. Wis JI-Criminal 2119 is drafted for the first situation: reasonable cause to suspect that a child has been abused or neglected.

Section 48.981 was amended by 1987 Wisconsin Act 27 (the Budget Bill) to create an exception to the reporting requirement for "health care providers." The exception apparently excuses health care providers from the reporting requirement with regard to instances of consensual sexual contact and sexual intercourse with persons other than relatives, guardians, etc. The statutory changes are complex; see § 48.981(2m).

Subsection (2r) of § 48.981 recognizes an exception for persons delegated care and custody of a child under § 48.979.

1. The facts necessary to constitute the crime of failure to report child abuse or neglect are derived from subs. (2), (3), and (6) of § 48.981. Subsection (6) is the penalty section, providing that "whoever intentionally violates this section by failure to report as required" may be fined not more than \$1,000 or imprisoned not more than 6 months or both. Those who are required to report are identified in sub. (2). Subsection (2m) provides an exception to the reporting requirement for "health care providers." Subsection (2r) of § 48.981 recognizes an exception for persons delegated care and custody of a child under § 48.979. Subsection (3) describes the nature of the required report.

2. The Committee suggests inserting the title of required reporters from the list provided in § 48.981(2) that allegedly applies to the defendant. For example: "A nurse is required to report child (abuse) (neglect)." It is for the jury to determine whether the defendant is in fact a person required to report.

Note that an exception to the reporting requirement is provided in § 48.981(2m) for "health care providers" in connection with some cases of sexual contact or sexual intercourse.

2011 Wisconsin Act 81 added to the list of required reporters by creating subsec. (2)(a)(16m) to read: "A school employee not otherwise specified in this paragraph."

3. The definition is adapted from the discussion in State v. Hurd, 135 Wis.2d 266, 400 N.W.2d 42 (Ct. App. 1986), where the constitutionality of the standard was upheld. The statute actually phrases the test in two different ways: "reasonable cause to suspect" that a child has been abused or neglected and

"having reason to believe" that a child has been threatened with abuse or neglect and that abuse or neglect will occur. The instruction would have to be modified if the case involved the "threatened with abuse" option.

In Hurd, the court held that "the test becomes whether a prudent person would have had reasonable cause to suspect child abuse if presented with the same totality of circumstances as that acquired and viewed by the defendant. Under this statute, conviction is only permitted when, under the totality of the circumstances presented to the defendant, a prudent person would have had reasonable cause to suspect child abuse." 135 Wis.2d 266, 273.

4. The definition of "abused" is based on the alternative provided in § 48.02(1)(a). Nine other types of harm are also defined as "abuse" by § 48.02(1). "Physical injury" is further defined in § 48.02(14g).

5. The definition of "neglect" is based on the one provided in § 48.02(12g).

6. In State v. Hurd, note 3, supra, the court of appeals interpreted § 48.981 in its previous version when it used the word "wilfully." The court said "wilfully" means the same thing as "intentionally" under § 939.23(3). Section 48.981 was amended by 1985 Wis. Act. 29, sec. 926, to substitute "intentionally" for "wilfully." So it is fair to assume that what the Hurd court said about the "wilfully" version of the statute also applies to the present statute.

The Committee believes that "intentionally" failing to report requires an actual suspicion of child abuse (see element three) and an intentional (that is, purposeful) failure to report (element four). The statute is "intended to hold accountable those persons who reasonably suspect child abuse and intentionally fail to notify the appropriate agencies." State v. Hurd, 135 Wis.2d 266, 278. Knowledge of the statutory duty itself is not required. See § 939.23(3) and (5) and State v. Hurd, 135 Wis.2d 266, 277.

7. The definition of "report" is based on the description of the reporting requirement provided in § 48.981(3)(a)(1), which refers to "the county department." Section 48.02(2g) provides: "'County department' means a county department under s. 46.22 or 46.23, unless the context requires otherwise." Section 46.22 refers to the county department of social services; section 46.23 refers to the county department of human services.