

2124 TRAFFICKING OF A CHILD — § 948.051(1)**Statutory Definition of the Crime**

Trafficking of a child, as defined in § 948.051 of the Criminal Code of Wisconsin, is committed by one who knowingly [(recruits) (entices) (provides) (obtains) (harbors) (transports) (patronizes) (solicits)] [attempts to (recruit) (entice) (provide) (obtain) (harbor) (transport) (patronize) (solicit)] any child for the purpose of commercial sex acts.

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 knowingly [(recruited) (enticed) (provided) (obtained) (harbored) (transported) (patronized) (solicited)] [attempted to (recruit) (entice) (provide) (obtain) (harbor) (transport) (patronize) (solicit)] (name of child).
2. (Name of child) had not attained the age of 18 years.

[Knowledge of (name of child)'s age is not required and mistake regarding (name of child)'s age is not a defense.]¹

3. The defendant (use the term selected in element 1.) (name of child) for the purpose of commercial sex acts.²

"Commercial sex act" means (sexual contact) (sexual intercourse) (sexually explicit performance) (any conduct done for the purpose of sexual humiliation, degradation, arousal, or gratification) for which anything of value is given to, promised, or received, directly or indirectly, by any person.³

[Meaning of Sexual Contact]

[REFER TO WIS JI-CRIMINAL 2101A FOR DEFINITION OF "SEXUAL CONTACT"]

Deciding About Knowledge and Purpose

You cannot look into a person's mind to find out knowledge and purpose. Knowledge and purpose 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 knowledge and purpose.

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 2124 was originally published in 2011 and was revised in 2015. This revision was approved by the Committee in July 2016; it reflects changes made by 2015 Wisconsin Act 367.

This instruction is drafted for violations of § 948.051, Trafficking of a child, which was created by 2007 Wisconsin Act 116 [effective date: April 3, 2008]. The statute was amended by 2013 Wisconsin Act 362 [effective date April 25, 2014]. See footnotes 2 and 3. 2015 Wisconsin Act 367 amended the statute to add "transport" "patronize" and "solicit" to the list of prohibited acts. [Effective date: May 29, 2017.]

2007 Wisconsin Act 116 also created § 940.302, Human trafficking, – see Wis JI-Criminal 1276.

Subsection (2) of § 948.051 provides: "Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1)." This instruction does not address this means of violating the statute.

2007 Wisconsin Act 116 also created § 939.46(1m) which provides an affirmative defense for any offense committed by a trafficking victim as a direct result of the violation of the trafficking statute.

1. This statement is typically included in all instructions involving offenses against children; it states the general rules set forth in §§ 939.23(6) and 939.43(2).

2. 2013 Wisconsin Act 362 amended § 948.051(1) to eliminate a reference to "sexually explicit performance." The same conduct is now covered by the term "commercial sex act" as specified as prohibited conduct in § 940.302(1)(a), which applies to violations of § 948.051.

3. This is the definition provided in § 940.302(1)(a) as amended by 2013 Wisconsin Act 362 [effective date: April 25, 2014]. Section 948.051(1) specifically refers to this definition. For a definition of "sexual contact" see Wis JI-Criminal 934 and § 939.22(34). The Committee concluded that the definition in § 939.22(34) applies to the offense because § 948.051(1) specifically refers to trafficking "any child for the purpose of commercial sex acts, as defined in s. 940.302(1)(a) . . ." The definition in § 940.302(1)(a) refers to "sexual contact" and, since that statute is not part of § 940.225 or in Chapter 948, the definition of "sexual contact" in § 939.22(34) applies.