

2128 GROOMING A CHILD FOR SEXUAL ACTIVITY — § 948.072**Statutory Definition of the Crime**

Section 948.072 is violated by a person who engages in a course of conduct, pattern of behavior, or series of acts with the intention to condition, seduce, solicit, lure, or entice a child (for the purpose of engaging in sexual intercourse or sexual contact) (for the purpose of producing, distributing, or possessing depictions of the child engaged in sexually explicit conduct).

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 engaged in a course of conduct¹, pattern of behavior, or series of acts.²

A “course of conduct, pattern of behavior, or series of acts” may include, but is not limited to, (insert any of the appropriate forms of conduct included in § 948.072(2)(a)–(f) that are supported by the evidence).³

2. The defendant committed the course of conduct, pattern of behavior, or series of acts with the intention to condition, seduce, solicit, lure, or entice a child.

“Child” means a person who has not attained the age of 18 years.⁴

3. The defendant engaged in the course of conduct, pattern of behavior, or series of acts for the purpose of (engaging in sexual intercourse or sexual contact with a child) (producing, distributing, or possessing depictions of the child engaged in sexually explicit conduct).

[REFER TO WIS JI-CRIMINAL 2101A FOR DEFINITION OF “SEXUAL CONTACT” AND WIS JI-CRIMINAL 2101B FOR DEFINITION OF “SEXUAL INTERCOURSE” AND INSERT THE APPROPRIATE DEFINITION HERE.]

“Sexually explicit conduct” means actual or simulated sexual intercourse, bestiality, masturbation, sexual sadism or sexual masochistic abuse, or lewd exhibition of intimate parts.⁵

Consent

Consent is not an issue or a defense in an alleged violation. You should not consider whether the child consented to any of the defendant’s conduct.⁶

Knowledge of or Mistake as to Child’s Age

Knowledge of (name of victim)’s age is not required,⁷ and mistake regarding (name of victim)’s age is not a defense.⁸

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 on 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 [and answer the following question “yes” or “no”].⁹

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

ADD ONE OF THE FOLLOWING QUESTIONS IF AN AGGRAVATED FELONY OFFENSE UNDER § 948.072(3)(b), (c), OR (d) IS CHARGED¹⁰

If you find the defendant guilty, you must answer the following question¹¹:

[FOR CHARGES UNDER SUB. (3)(b)]

[Was the defendant in a position of trust or authority over (name of victim)?

A “position of trust or authority over the child” means a relationship between a person and a child in which the person has regular and direct contact with the child and power or control over the child’s welfare, education, or other factors important to the child.¹²

If you are satisfied beyond a reasonable doubt that the defendant was in a position of trust or authority over the child, you should answer this question Yes.

If you are not so satisfied, you must answer this question No.]

[FOR CHARGES UNDER SUB. (3)(c)]

[Did (name of victim) have a developmental, cognitive, or physical disability that was known, or should have been known, by the defendant?

If you are satisfied beyond a reasonable doubt that the child had a developmental, cognitive, or physical disability that was known, or should have been known, by the defendant, you should answer this question Yes.

If you are not so satisfied, you must answer this question No.]

[FOR CHARGES UNDER SUB. (3)(d)]

[Did the violation involve two or more children?

If you are satisfied beyond a reasonable doubt that the violation involved two or more children, you should answer this question Yes.

If you are not so satisfied, you must answer this question No.]

COMMENT

Wis JI-Criminal 2128 was approved by the Committee in June 2026.

The instruction was drafted to address the crime of grooming a child for sexual activity under § 948.072, Stats., as created by 2025 Wisconsin Act 88 [effective date: March 8, 2026].

Exception to the criminal penalty. Per sub. (4), the felony penalties in sub. (3) do not apply if the following three conditions are met: (1) the defendant has not attained the age of 19; (2) the child is not more than 4 years younger than the defendant (unless the violation involves force); and (3) the conduct did not involve coercion, or abuse of a position of trust or authority over the child.

Because this exception encompasses every felony classification under the statute, a defendant who qualifies under sub. (4) is not subject to criminal liability under § 948.072. In effect, this “Romeo and Juliet” provision completely bars prosecution of close-in-age defendants, so long as the conduct was not coercive and did not involve an abuse of trust.

The jury instructions typically treat these exceptions like an affirmative defense: the State need not anticipate them in the charging document and they are not issues in the case until supported by “some evidence.” If so supported, the state must prove the inapplicability of the exception beyond a reasonable

doubt. See Wis JI-Criminal 700. As to the general rules in Wisconsin relating to “affirmative defenses,” see Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979) and State v. Felton, 110 Wis.2d 485, 329 N.W.2d 161 (1983).

Prior to 2025 Wisconsin Act 88, conduct now covered by § 948.072 could result in only limited criminal exposure if it fell short of the overt acts required for child enticement under § 948.07 or use of a computer to facilitate a child sex crime under § 948.075.

The act of grooming is not confined to schools or any single setting. Therefore, courts may need to instruct juries accordingly that the statutory examples are illustrative of the types of conduct that may constitute grooming across any setting.

Violations of § 948.072 are treated similarly to other child sex offenses in numerous contexts, including: classifying it as a “sex offense” triggering sex offender registration under § 301.45; allowing the extended statute of limitations under § 939.74(2)(c) (prosecution must begin before the victim turns 45); classifying it as a “sexually violent offense” for purposes of a civil commitment petition under ch. 980; and requiring mandatory reporting of suspected violations by specified professionals under ch. 48. Conduct that violates § 948.072 may also constitute child enticement under § 948.07, use of a computer to facilitate a child sex crime under § 948.075 (Wis JI-Criminal 2135), or sexual misconduct by a school staff member or volunteer under § 948.098 (Wis JI-Criminal 2139B).

1. A course of conduct, pattern of behavior, or series of acts may include, among other activities: verbal comments, suggestions, or conversations of a sexual nature directed toward a child; inappropriate or sexualized physical contact or attempts to initiate such contact; written, electronic, or digital communications to seduce, solicit, lure, or entice a child; provision or promise of gifts, favors, privileges, attention, or other items of value to lower a child’s inhibitions, gain trust, or create emotional dependence; acts intending to isolate a child from family, peers, or guardians; or use of a computer or electronic device to contact a child or a child’s guardian.

The list of examples in § 948.072(2)(a)–(f) is non-exhaustive. The statute specifies that a course of conduct “may include, among other activities,” the listed behaviors. Courts should instruct juries accordingly that the examples are illustrative, not exhaustive.

2. The statute requires a “course of conduct, pattern of behavior, or series of acts,” implying repeated or connected conduct rather than an isolated incident. No appellate court has yet interpreted the scope of this requirement under § 948.072. The legislative record reflects that the statute was designed to reach conduct that unfolds over an extended period — weeks, months, or even years — through incremental trust-building, digital communications, gift-giving, and similar preparatory behaviors.

Section 948.072 does not define “course of conduct.” Two other statutes that use related terminology may, however, be helpful in understanding the term. Wis JI-Criminal 1284, which addresses the offense of stalking under § 940.32(2), defines “course of conduct” as “a series of two or more acts carried out over time, however short or long, that show a continuity of purpose.” Wis JI-Criminal 1912, which addresses the offense of engaging in a course of conduct that harasses or intimidates another under § 947.013, incorporates the definition of “course of conduct” set out in § 947.013(1)(a): “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.” Neither definition applies of its own force to § 948.072, but both reflect the Legislature’s general

understanding that a course of conduct requires more than a single act and involves a continuity of purpose, and both may be helpful in guiding the court and jury as to the meaning of the term in the grooming context.

3. § 948.072(2) provides that “For purposes of this section, a course of conduct, pattern of behavior, or series of acts may include, among other activities, any of the following:

- (a) Verbal comments, suggestions, or conversations of a sexual nature directed toward a child.
- (b) Inappropriate or sexualized physical contact or attempts to initiate such contact.
- (c) Written, electronic, or digital communications, including using text messages, emails, social media, or online platforms, to seduce, solicit, lure, or entice a child.
- (d) Provision or promise of gifts, favors, privileges, attention, or other items of value with the intent to lower a child's inhibitions, gain trust, or create emotional dependence.
- (e) An act intending to isolate a child, or to encourage a child to separate from family, peers, or guardians.
- (f) Use of a computer, online service, Internet service, local bulletin board service, or any device capable of electronic data storage or transmission to contact a child, a child's guardian, or any person believed by the actor to be a child or a child's guardian.”

4. Wis. Stat. § 948.01(1) defines “child” as “a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, “child” does not include a person who has attained the age of 17 years.”

5. This is the definition of “sexually explicit conduct” provided in § 948.01(7).

6. Section 948.072(5) expressly states: “Consent is not an issue or a defense in alleged violations of sub. (3).”

7. See Wis. Stat. § 939.23(6).

8. See Wis. Stat. § 939.43(2).

9. Continue with the bracketed material if a Class F, Class E, or Class D felony offense is charged, and add the appropriate questions. For Class G felony offenses, stop with “guilty” and read the next sentence, beginning with “If you are not so satisfied . . .”

10. Wis. Stat. § 948.072(3) identifies three circumstances that increase the penalty for the underlying Class G felony to a Class F, Class E, or Class D felony. A bracketed question is included for each of those statutory alternatives.

11. The aggravating circumstances in § 948.072(3)(b), (c), and (d) increase the class of the felony and therefore the maximum penalty to which the defendant is exposed. Under Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), and its progeny, any fact other than a prior conviction that increases the maximum penalty must be submitted to the jury and proved beyond a reasonable doubt. Accordingly, the State bears the burden of proving each charged aggravating circumstance beyond a reasonable doubt.

12. “Position of trust or authority over the child” is defined in § 948.072(1).

The legislative record identifies teachers, coaches, childcare providers, healthcare professionals, and clergy as examples of adults who may occupy such positions. The list is not exhaustive; the key statutory inquiry is whether the person had regular and direct contact with the child and power or control over the child's welfare, education, or other important factors.

A conviction for the aggravated Class F felony requires the State to prove both the basic grooming elements and that the defendant was in such a position at the time of the conduct.