

2139B SEXUAL MISCONDUCT AGAINST A PUPIL BY A SCHOOL STAFF MEMBER OR VOLUNTEER – § 948.098**Statutory Definition of the Crime**

Section 948.098 of the Criminal Code of Wisconsin is violated by a person who, as a school staff member or volunteer commits an act of sexual misconduct against a pupil enrolled in the school.

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. On (insert date of offense), the defendant was a (school staff member)¹ (volunteer)² at (insert name of school)³.
2. On (insert date of offense), (name of victim) was enrolled at (insert name of school) as a pupil.
3. The defendant committed an act of sexual misconduct against (name of victim).

“Sexual misconduct” means verbal conduct of a sexual nature or physical contact of a sexual nature. Sexual misconduct includes conduct directed by a person at another person of the same or opposite gender.⁴

[“Physical contact of a sexual nature”⁵ means any of the following types of

intentional touching, whether direct or through clothing:

- Intentional touching by the actor⁶ or, upon the actor's instruction, by another person, by the use of any body part or object, if the purpose of the intentional touching is (insert the applicable statutory purpose).⁷
- Intentional touching by the pupil, by the use of any body part or object, of the actor or, if done upon the actor's instructions, another person, if the purpose of the intentionally touching is (insert the applicable statutory purpose).⁸

["Verbal conduct of a sexual nature" means communications made intentionally for the purpose of (insert the applicable statutory purpose).⁹

4. The defendant acted intentionally.

"Intentionally" means that the defendant acted with the mental purpose to [sexually degrade or sexually humiliate (name of victim)] [sexually degrade or sexually humiliate defendant] [sexually arouse or sexually gratify the (name of victim)] [sexually arouse or sexually gratify the defendant] or was aware that (his) (her) conduct was practically certain to cause that result.¹⁰

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 2139B was approved by the Committee in August 2024.

This instruction is for a violation of sub. (2) of § 948.098, which was created by 2023 Wisconsin Act 200 [effective date: March 24, 2024]. The offense is a Class I felony.

1. "School staff member" is defined as follows in § 948.098(1)(f):

"School staff member" means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract. "School staff member" includes a bus driver.

2. "Volunteer" is defined as follows in § 948.098(1)(e):

"Volunteer" means a person, other than a school staff member, who provides services to a school without compensation.

3. "School" is defined as follows in § 948.098(1)(b):

"School" means a public or private elementary or secondary school, or a tribal school, as defined in s. 115.001 (15m).

4. For further definition of "intentionally," including the alternative referring to being "aware that his or her conduct is practically certain to cause the result," see Wis JI-Criminal 923A and 923B.

The requirement that the defendant knows there is no consent is based on the definition of "intentionally" in § 939.23(3): ". . . the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word intentionally."

5. This is the definition of "Physical contact of a sexual nature" provided § 948.098(1)(a).

6. The term "actor" is used in Wis. Stat. §§ 948.098(1)(a)1 and 2. The Committee concluded that "actor" exclusively refers to the defendant. To align with the statutory language, the Committee decided to

retain the term “actor” in the instruction rather than substituting it with “defendant.” In the context of this statutory subsection, the two terms are synonymous.

7. The purposes listed under §§ 948.098(1)(a)1.a through d. are as follow:
 - a. To sexually degrade or sexually humiliate the pupil.
 - b. To sexually degrade or sexually humiliate the actor.
 - c. To sexually arouse or sexually gratify the pupil.
 - d. To sexually arouse or sexually gratify the actor.

8. The purposes listed under §§ 948.098(1)(a)2.a through d. are as follow:
 - a. To sexually degrade or sexually humiliate the pupil.
 - b. To sexually degrade or sexually humiliate the actor.
 - c. To sexually arouse or sexually gratify the pupil.
 - d. To sexually arouse or sexually gratify the actor.

9. The purposes listed under §§ 948.098(1)(e)1 through 4 are as follow:
 1. Sexually degrading or sexually humiliating the pupil
 2. Sexually degrading or sexually humiliating the actor.
 3. Sexually arousing or sexually gratifying the pupil.
 3. Sexually arousing or sexually gratifying the actor.

10. This is the definition of “sexual misconduct” provided § 948.098(1)(d).