

2147 CHILD SEX OFFENDER WORKING WITH CHILDREN — § 948.13

[IF THE UNDERLYING CONVICTION IS FOR VIOLATING § 948.02(2) OR § 948.025, EXCEPTIONS MAY APPLY – SEE § 948.13(2)(b) AND (c)]

Statutory Definition of the Crime

Section 948.13 of the Criminal Code of Wisconsin is violated by a person who has been convicted of a serious child sex offense and who subsequently engages in an occupation or participates in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age.

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 had been convicted of a serious child sex offense. [Identify the serious child sex offense listed in § 948.13(1)(a)]¹ is a serious child sex offense.
2. After being convicted of a serious child sex offense, the defendant [engaged in an occupation] [participated in a volunteer position] that required the defendant (to work) (to interact) primarily and directly with children under 16 years of age.²

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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 2147 was originally published in 1996 and the Comment was revised in 1999 and 2003. This revision was approved by the Committee in October 2006 and involved updating footnote 1 to reflect changes made by 2005 Wisconsin Act 277.

This instruction is for a violation of § 948.13, which was created by 1995 Wisconsin Act 265. Act 265 provides that "[t]his act first applies to offenses committed on the effective date of this subsection", which is May 6, 1996. It further provides that this "does not preclude the counting of other offenses as prior serious child sex offenses for determining whether a person is subject to section 948.13(2) . . ."

2001 Wisconsin Act 97 [effective date: May 3, 2002] amended § 948.13 so that (2)(a) begins as follows: "Except as provided in pars. (b) and (c) . . ." The referenced exceptions relate to defendants who were convicted under § 948.02(2) before the effective date of Act 97 [sub. (b)] or § 948.025 [sub. (c)]. In both situations, the defendant must have been under age 19 at the time of the offense and other criteria specified in sub. (2m) must be satisfied. The Committee concluded that the existence of the exceptions are likely to be determined before trial and are not likely to become issues for a jury to determine.

1999 Wisconsin Act 265 also created § 973.034 which requires that when a person is sentenced for an offense that qualifies as a "serious child sex offense" under § 948.13(1)(a), "the court shall inform the defendant of the requirements and penalties under s. 948.13." The Committee concluded that failure to so inform the defendant would not affect the validity of a criminal charge for violating § 948.13. [See, State v. Phillips, 172 Wis.2d 391, 451 N.W.2d 238 (Ct. App. 1989), reaching the same conclusion with respect to a similar requirement for informing a convicted felon that the felon may not possess a firearm.].

1. Section 948.13(1)(a) lists specific statutes that are "serious child sex offenses" for the purposes of § 948.13. The instruction provides for the insertion of the name of these specifically identified offenses, which are:

- sexual exploitation by therapist under § 940.22, if the victim was under the age of 18;
- second degree sexual assault under § 940.225(2)(c) (victim suffers from a mental illness or deficiency), if the victim was under the age of 18;
- first degree sexual assault of a child under § 948.02(1) (victim has not attained the age of 13 years);
- second degree sexual assault of a child under § 948.02(2) (victim has not attained the age of 16 years);
- repeated acts of sexual assault of the same child under § 948.025(1);
- sexual exploitation of a child under § 948.05(1);
- incest under § 948.06;
- child enticement under subsections (1), (2), (3), and (4) of § 948.07. (Note: subsection (5) and (6) of § 948.07 are not included.);
- use of a computer to facilitate a child sex crime under § 948.075; and,

- sexual assault of a child placed in substitute care under § 948.085.

Note: Reference to sexual assault of a child placed in substitute care under § 948.085 was added to § 948.13(1)(a) by 2005 Wisconsin Act 277.

In addition to these specifically identified offenses, § 948.13(1)(b) also provides that "[a] crime under federal law or the law of any other state or, prior to the effective date of this paragraph, under the law of this state that is comparable to a crime specified in par. (a)" is a "serious child sex offense." The instruction must be modified if one of these alternatives is used.

2. Subsection (3) of § 948.13 provides as follows:

Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact primarily and directly with children under 16 years of age: teaching children, child care, youth counseling, youth organization, coaching children, parks or playground recreation or school bus driving.

If it is believed to be helpful or necessary to instruct on this prima facie evidence provision, see Wis JI-Criminal 225, which provides a model for instructing the jury on "presumed facts" and "prima facie cases."