

2148 ABANDONMENT OF A CHILD — § 948.20)**Statutory Definition of the Crime**

Abandonment of a child, as defined in § 948.20 of the Criminal Code of Wisconsin, is committed by any person who, with intent to abandon the child, leaves any child in a place where the child may suffer because of neglect.

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. (Name of child) was under the age of 18 years.¹

Knowledge of (name of child)'s age by the defendant is not required² and mistake regarding (name of child)'s age is not a defense.³

2. The defendant left (name of child) in a place where the child may have suffered because of neglect.

"Neglect" means to seriously endanger the health or safety of a child by failing to provide necessary care, food, clothing, medical or dental care, or shelter.⁴

This does not require that (name of child) actually suffered because of neglect, but it requires only that (name of child) was left in a place where the child may have suffered because of neglect.

3. The defendant left (name of child) with intent to abandon (name of child).

Meaning of "With Intent To Abandon"

The term "with intent to abandon" requires that the defendant had the purpose to abandon or was aware that (his) (her) conduct was practically certain to cause that result.⁵

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 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 2148 was originally published in 1989. This revision was approved by the Committee in April 2003, and involved adoption of a new format, nonsubstantive changes to the text, and updating of the Comment.

This instruction is for a violation of § 948.20, created by 1987 Wisconsin Act 332 as part of the revision of the criminal statutes relating to crimes against children. It applies to offenses committed on or after July 1, 1989.

Section 948.20 replaced § 940.28, 1985-86 Wis. Stats. The only substantive change was to make the statute applicable to all children (persons under the age of 18). Section 940.28 had applied only to children under age 6.

Section 48.195(4) provides "immunity from prosecution under s. 948.20 for abandonment of a child" where a parent relinquishes custody of a child under § 48.195(1). The instruction does not address this provision.

1. Under prior law, the offense of abandoning a child applied only to children under the age of 6 years. See § 940.28, 1985-86 Wis. Stats. That statute was described as covering "a very special type of conduct – the abandonment of children who are so young that they are unable to care for themselves. It covers cases such as the abandonment of a baby on a doorstep." Comment to § 340.23, 1953 Legislative Council Report on the Criminal Code. The note to new § 948.20 indicates a different conclusion: "The special committee determined that there is no substantial reason for distinguishing between children under the age of 6 and other children for purposes of this offense. Legislative Council note to § 948.20, 1987 Senate Bill 203.

While there may be no reason to make such age distinctions, applying the statute to older children may give more importance to the "intent to abandon" element.

2. This is the rule provided in § 939.23(6).

3. This is the rule provided in § 939.43(2).

4. "Neglect" is not defined in Chapter 948 or elsewhere in the Criminal Code. In the Children's Code, the term "neglected child" has been replaced with a broad category of "children alleged to be in need of protection or services" set forth in § 48.13. That section lists twelve different situations which indicate that a child is in need of protection or services. The definition used in the instruction was adapted from the type of neglect described in § 48.13(10).

5. See § 939.23(3) and Wis JI-Criminal 932A and 923B.