

2150 NEGLECTING A CHILD — § 948.21(2)**Statutory Definition of the Crime**

Neglecting a child, as defined in Section 948.21(2) of the Criminal Code of Wisconsin is committed by any person who is responsible for a child's welfare who, through his or her action or failure to take action, for reasons other than poverty, negligently fails to provide any of the following, so as to seriously endanger the physical, mental, or emotional health of the child: necessary care, necessary food, necessary clothing, necessary medical care, necessary shelter, education in compliance with section 118.15, protection from exposure to the distribution or manufacture of controlled substances, as defined in section 961.01(4), or controlled substance analogs, as defined in section 961.01(4m), or to drug abuse, as defined in section 46.973(1)(b).¹

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 six elements were present.

Elements of the Crime That the State Must Prove

1. (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.]²

2. The defendant was a person responsible for the welfare of (name of child).

A “person responsible for the welfare of a child” includes (use the appropriate term from § 948.01(3)).³

3. The defendant, through action or failure to take action, and for reasons other than poverty, failed to provide⁴

[necessary (care)⁵ (food) (clothing) (medical care) (shelter).]

[education in compliance with section 118.15.]

[protection from exposure (to the distribution or manufacture of controlled substances, as defined in section 961.01(4), or controlled substance analogs, as defined in section 961.01(4m)) (or) (to drug abuse, as defined in section 46.973(1)(b))].⁶

4. The failure to provide seriously endangered the physical, mental, or emotional health of the child.

To “seriously endanger” means to create a serious risk of harm or injury.⁷

5. The failure to provide was negligent.

“Negligent” means acting, or failing to act, in such a way that a reasonable person would know or should know seriously endangers the physical, mental, or emotional health of a child.⁸

6. [(Name of child)

(suffered death as a consequence).⁹

(suffered great bodily harm as a consequence).¹⁰

(became a victim of a child sex offense as a consequence).¹¹

(suffered emotional damage as a consequence).¹²

(suffered bodily harm as a consequence).¹³

(had not attained the age of 6 years and the natural and probable consequences of the neglect would be identify a harm specified in § 948.21(3)(a), (b), (c) or (d) although the harm did not actually occur).¹⁴

(had a physical, cognitive, or developmental disability that was known or should have been known by the defendant and the natural and probable consequences of the neglect would be identify a harm specified in § 948.21(3)(a), (b), (c) or (d) although the harm did not actually occur).¹⁵]

[The natural and probable consequences of the neglect would be identify a harm specified in § 948.21(3)(a), (b), (c) or (d) although the harm did not actually occur.¹⁶]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all six 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 2150 was originally published in 1989 and revised in 1995, 2001, and 2009. This revision was approved by the Committee in December 2018.

This is a complete rewrite of the former instruction to reflect the repeal and recreation of § 948.21 by 2017 Wisconsin Act 283 [effective date: April 18, 2018]. The new statute provides penalties for eight

types of violations – seven felonies and one misdemeanor. The instruction attempts to deal with them by including all options in element 6. Some of the penalties bear a lesser included offense-like relationship to one another. See Wis JI-Criminal 2150A which illustrates how multiple penalties might be addressed.

1. This paragraph is the offense definition provided in § 948.21(2) without change. The Committee recommends striking parts of the definition that do not apply. Element 3 illustrates how the alternatives may be broken down.

2. 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).

3. The Committee recommends inserting the appropriate term from § 948.01(3), which defines “person responsible for the child’s welfare” to include the following: the child’s parent; stepparent; guardian; foster parent; treatment foster parent; an employee of a public or private residential home, institution or agency; other person legally responsible for the child’s welfare in a residential setting; or a person employed by one legally responsible for the child’s welfare to exercise temporary control or care for the child.

See Wis JI-Criminal 2106A for discussion of authority relating to “person responsible for the welfare of a child.”

4. The Committee recommends submitting only the alternatives supported by the evidence; more than one alternative may be submitted.

5. Section § 948.21(1)(c) defines “necessary care” as follows: “care that is vital to the needs of a child’s physical, emotional, or mental health based on all of the facts and circumstances bearing on the child’s need for care, including the child’s age; the child’s physical, mental, or emotional condition; and any special needs of the child.”

6. Reference to other uniform instructions may be helpful in further defining this element. Distribution of a controlled substance is addressed by Wis JI-Criminal 6020 Delivery Of A Controlled Substance; see Wis JI-Criminal 6020A for delivery of a controlled substance analog. Manufacture of a controlled substance is addressed by Wis JI-Criminal 6021 Manufacture Of A Controlled Substance. Section 46.973(1)(b) defines “drug abuse” as “the use of a drug in such a manner as to endanger the public health, safety or welfare.”

7. The definition of “seriously endanger” is adapted from Wis JI-Children 250.

8. This is based on the definition of “negligently” provided in § 948.21(1)(d). The definition of “criminal negligence” in § 939.25, which ordinarily applies when the word “negligently” is used in the Criminal Code, does not apply here. See § 939.25(3).

9. This makes the offense a Class D felony; see § 948.21(3)(a).

10. This makes the offense a Class F felony; see § 948.21(3)(b)1.

11. This makes the offense a Class F felony; see § 948.21(3)(b)2. “Child sex offenses” are specified in § 948.21(1)(a): an offense under s. 948.02, 948.025, 948.05, 948.051, 948.055, 948.06,

948.07, 948.08, 948.10, 948.11, or 948.12. Refer to the uniform instructions for the elements and definitions applicable to any “child sex offense” that is alleged.

12. This makes the offense a Class G felony; see § 948.21(3)(c). § 948.21(1)(b) provides: “‘Emotional damage’ has the meaning given in § 48.02(5j).”

13. This makes the offense a Class H felony; see § 948.21(3)(d).

14. This makes the offense a Class I felony; see § 948.21(3)(e)1.

15. This makes the offense a Class I felony; see § 948.21(3)(e)2.

16. This makes the offense a Class A misdemeanor; see § 948.21(3)(f).