

**2151 CHRONIC NEGLECT OF A CHILD; REPEATED ACTS OF NEGLECT
— § 948.215**

Statutory Definition of the Crime

Section 948.215 of the Criminal Code of Wisconsin is violated by one who commits three or more violations of Section 948.21(2) within a specified period of time involving the same child.

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 committed three or more violations of Section 948.21(2) involving the same child.

Section 948.21(2) of the Criminal Code of Wisconsin is violated 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

SPECIFY THE ELEMENTS OF THREE VIOLATIONS OF § 948.21(2) – SEE WIS JI-CRIMINAL 2150. ADD DEFINITIONS AS NECESSARY.

2. At least three violations of Section 948.21(2) involving the same child took place within a specified period of time. The specified period of time is from (beginning date of specified period) through (ending date of specified period).²

GIVE THE FOLLOWING ONLY IF MORE THAN THREE ACTS HAVE BEEN ALLEGED.

[More Than Three Acts Alleged]

[Before you may find the defendant guilty you must unanimously agree that at least three violations of Section 948.21 involving the same child occurred between (beginning date of specified period) and (ending date of specified period), but you need not agree on which acts constitute the required three.]³

3. [(Name of child)
 (suffered death as a consequence).⁴
 (suffered great bodily harm as a consequence).⁵
 (became a victim of a child sex offense as a consequence).⁶
 (suffered emotional damage as a consequence).⁷
 (suffered bodily harm as a consequence).]⁸

[The natural and probable consequences of the neglect would be ((identify a harm specified in § 948.215(2)(a), (b), (c), or (d))) although the harm did not actually occur).⁹]

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 2151 was approved by the Committee in December 2018.

This instruction is drafted for violations of § 948.215, created by 2017 Wisconsin Act 283 [effective date: April 18, 2018]. The statute provides penalties for six types of violations – ranging from Class B to Class H felonies. The instruction attempts to deal with them by including all options in element 3.

In requiring repeated criminal acts as the basis for a violation, this offense is similar to those defined in § 948.025, Repeated acts of sexual assault of a child, and § 948.03(5), Repeated acts of physical abuse of a child. See Wis JI-Criminal 2107 and 2114A, respectively.

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 of Wis JI-Criminal 2150 illustrates how the alternatives may be broken down.

2. Here identify the beginning and ending dates of the period specified by the prosecution. For example: “The specified period of time is from June 1, 2018 through September 16, 2018.” NOTE: “Specified period of time” also appears in § 948.025, Repeated Acts Of Sexual Assault Of A Child. See note 5, Wis JI-Criminal 2107.

3. This statement is based on § 948.215(3).

4. This makes the offense a Class B felony; see § 948.215(2)(a).

5. This makes the offense a Class D felony; see § 948.215(2)(b)1.

6. This makes the offense a Class D felony; see § 948.215(2)(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.

7. This makes the offense a Class F felony; see § 948.215(2)(c). § 948.21(1)(b) provides: “‘Emotional damage’ has the meaning given in § 48.02(5j).”

8. This makes the offense a Class F felony; see § 948.215(2)(d).

9. This makes the offense a Class H felony; see § 948.215(2)(e).