

2154 CONCEALING THE DEATH OF CHILD — § 948.23(1)(a)**Statutory Definition of the Crime**

Concealing the death of a child, as defined in § 948.23(1)(a) of the Criminal Code of Wisconsin, is committed by any person who conceals the corpse of any issue of a woman's body with intent to prevent a determination of whether it was born dead or alive.

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 concealed the corpse of any issue of a woman's body.
2. The defendant concealed the corpse with intent to prevent a determination of whether it was born dead or alive.

"With intent to" means that the defendant had the purpose to prevent a determination of whether the corpse was born dead or alive or was aware that (his) (her) conduct was practically certain to cause that result.¹

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 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 2154 was originally published in 1989 and revised in 2008. This revision was approved by the Committee in July 2012; the comment was updated to reflect 2011 Wisconsin Act 268.

Section 948.23 was amended by 2011 Wisconsin Act 268 [effective date: April 24, 2012]. The offense addressed by this instruction is now found in § 948.23(1)(a). The statute was expanded to cover three new types of conduct: failing to report the death of a child – § 948.23(1)(b); hiding or burying the corpse of a child without authorization – § 948.23(2); and, failure by a parent or guardian to report a child as missing – § 948.23(3). Uniform instructions have not been drafted for these offenses.

Section 948.23 was 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. This instruction replaced Wis JI-Criminal 1810 which applied to what was essentially the same offense under § 946.63, 1985-6 Wis. Stats., a statute repealed by 1987 Wisconsin Act 332. The revision made one substantive change in what is now sub. (1)(a): it is no longer limited to a woman who conceals the corpse of any issue of her own body. The statute now applies to any person who conceals the corpse of any issue of any woman's body.

1. "With intent to" is defined in § 939.23(3). The definition changed, effective January 1, 1989, though both the old and new version had "mental purpose" as one definition of "with intent to." It is the other alternative that changed from "reasonably believes his act, if successful, will cause that result" to "is aware that his conduct is practically certain to cause that result." See Wis JI-Criminal 923A and 923B.