

2161 ABDUCTION OF ANOTHER'S CHILD: DETAINING AWAY FROM HOME — § 948.30(1)(b)**Statutory Definition of the Crime**

Abduction of another's child, as defined in § 948.30(1)(b) of the Criminal Code of Wisconsin, is committed by one who for any unlawful purpose detains any child who is not his or her own by birth or adoption and who is away [from the child's home] [from the custody of the child's (parent) (guardian) (legal custodian)].

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 detained (name of victim) who was away [from (his) (her) home] [from the actual physical custody¹ of (his) (her) (parent) (guardian) (legal custodian)].
2. At the time of the alleged detaining, (name of victim) was a child under the age of 18 years who was not the defendant's child by birth or adoption.

Knowledge of (name of victim)'s age is not material² and mistake regarding (name of victim)'s age is not a defense.

3. The defendant detained the child for an unlawful purpose.

The defendant need not know that (his) (her) purpose was unlawful; it is sufficient if, in fact, the purpose was an unlawful one.³

The State alleges that the defendant's unlawful purpose was to commit the crime of (name of crime). (Name of crime) is committed by one who

LIST THE ELEMENTS OF THE ALLEGED CRIME AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.⁴

Deciding About Purpose

You cannot look into a person's mind to find purpose. Purpose 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 purpose.

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 2161 was originally published in 1989. This revision was approved by the Committee in June 2009; it involved adoption of a new format and changes in how the first and third elements are defined.

This instruction is for a violation of § 948.30(1)(b), 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.

See the Comment to Wis JI-Criminal 2160 for an explanation of how the offenses relates to "abduction" under former § 940.32.

1. In place of a definition of "custody," the instruction refers to detaining a child who is away from the "actual physical custody" of the parent, guardian, or custodian. The broader definition of "custody" provided in § 948.30(3) applies only "for purposes of subs. (1)(a) and (2)(a)."

2. Section 939.23(6).

3. While the statute does not specifically refer to an intent on the part of the defendant, it does require an unlawful purpose for the act. This is the mental element of the crime and is limited to the requirement that there be an unlawful purpose for the taking.

4. The instruction is drafted for a case where the alleged "unlawful purpose" is a crime. The Committee recommends that a complete listing of the elements of the "embedded crime" be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [*State v. Henning*, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [*State v. Thomas*, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)]. [**Reporter's Note:** Issues relating to instructing the jury on "embedded crimes" will be discussed in a Law Note that will be published in the future.]

If an unlawful purpose is alleged that is not a crime, the instruction would need to be changed, using a statement like the following:

The State alleges that the defendant's unlawful purpose was to (identify the alleged unlawful purpose).