

2162 ABDUCTION OF ANOTHER'S CHILD: TAKING BY FORCE OR THREAT OF FORCE — § 948.30(2)(a)**Statutory Definition of the Crime**

Abduction of another's child, as defined in § 948.30(2)(a) of the Criminal Code of Wisconsin, is committed by one who for any unlawful purpose, and by force or threat of imminent force, takes any child who is not his or her own by birth or adoption [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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant took (name of victim) from [(his) (her) home] [the custody of (his) (her) (parent) (guardian) (legal custodian)].

[A child is in custody when the child is in the actual physical custody of (his) (her) (parent) (guardian) (legal custodian), or, if not in the actual physical custody of a (parent) (guardian) (legal custodian), when the (parent) (guardian) (legal custodian) continues to have control of the child.]¹

2. At the time of the alleged taking, (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

3. The defendant took the child by force or threat of imminent force.

The term "imminent" means "near at hand" or "on the point of happening."⁴

4. The defendant took (name of victim) for an unlawful purpose.

The defendant need not know that (his) (her) purpose is unlawful; it is sufficient if, in fact, the purpose is an unlawful one.⁵

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.⁶

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 four 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 2162 was originally published in 1989. This revision was approved by the Committee in April 2009; it involved adoption of a new format and changes in how the first and fourth elements are defined.

This instruction is for a violation of § 948.30(2)(a), 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 948.30 replaces former § 940.32 with a two-level offense applying only to the taking or detaining of the child of another. The more serious offense requires use of threat of force. The limitation to the child of another clears up a potential problem under the old statute, which could have been used against a parent. One of the offenses under the former statute – enticing from the home or custody – is not reenacted. This instruction replaces Wis JI-Criminal 1285 which applied to violations of § 940.32(1) 1985-86 Wis. Stats., a statute repealed by 1987 Wisconsin Act 332.

1. Section 948.30(3) provides:

(3) For purposes of subs. (1)(a) and (2)(a), a child is in the custody of his or her parent, guardian or legal custodian if:

- (a) The child is in the actual physical custody of the parent, guardian or legal custodian; or
- (b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

The Note to this section in 1987 Senate Bill 203, enacted as 1987 Wisconsin Act 332, indicates that this was intended to codify the definition of "custody" in Wis JI-Criminal 1285 and 1286 (8 1986). The same definition has been used in this instruction.

2. Section 939.23(6).

3. Section 939.43(2).

4. The definition is the one used in the instruction for armed robbery [Wis JI-Criminal 1480]; it was originally adapted from the one used in Black's Law Dictionary, p. 884 (4th ed. 1951).

5. 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.

6. 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).