

**2168 INTERFERENCE WITH THE CUSTODY OF A CHILD BY A PARENT OR PERSON ACTING PURSUANT TO THE DIRECTION OF A PARENT: CONCEALING A CHILD<sup>1</sup> — § 948.31(3)(a)**

**Statutory Definition of the Crime**

Interference with the custody of a child by a parent, as defined in § 948.31(3)(a) of the Criminal Code of Wisconsin, is committed by (a parent) (any person acting pursuant to directions from a parent) who intentionally conceals a child from the child's other parent.

**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. On (date of alleged offense), (name of child) had not attained the age of 18 years.<sup>2</sup>
2. (Name of defendant) was (a parent)<sup>3</sup> (acting pursuant to directions from a parent) of (name of child).
3. (Name of defendant) concealed (name of child) from the other parent.

"Conceal" means to hide the child or do something else which prevents or makes more difficult the discovery of the child by the other parent.<sup>4</sup>

4. The defendant intentionally concealed (name of child).

This requires that the defendant acted with the purpose<sup>5</sup> to conceal (name of child) from the other parent and to interfere with that parent's custody rights.<sup>6</sup>

### **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 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 2168 was originally published in 1989. This revision was approved by the Committee in April 2009; it involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for a violation of § 948.31(3), 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 replaces Wis JI-Criminal 1838 which applied to what was essentially the same offense under § 946.715, 1985-86 Wis. Stats., a statute repealed by 1987 Wisconsin Act 332.

Affirmative defenses are recognized by subsection (4) of § 948.31. The burden of persuasion is placed on the defendant to establish them by a preponderance of the evidence. See the discussion of the affirmative defense provision in Wis JI-Criminal 2169.

The prior version of this statute, § 946.715, 1985-86 Wis. Stats., is discussed in State v. McCoy, 143 Wis.2d 274, 420 N.W.2d 107 (1988), affirming 139 Wis.2d 291, 407 N.W.2d 319 (Ct. App. 1987).

1. This instruction is drafted for offenses under subsection (3)(a) of § 948.31 whereby one parent intentionally conceals a minor child from the child's other parent. Additional offenses are defined by subsections (3)(b) and (c), for which there are no suggested uniform instructions.

2. See § 948.01(1).

3. The only statutory definition of "parent" is found in § 48.02(13), which reads:

"Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, "parent" includes a person acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

4. The definition of "conceal" is adapted from the one used in Wis JI-Criminal 1481, Receiving or Concealing Stolen Property.

5. "Intentionally" is defined in § 939.23(3). The definition changed, effective January 1, 1989, though both the old and new version have "mental purpose" as one part of the definition. It is the other alternative that changes 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. The Committee concluded that the "mental purpose" part of the definition is most likely to apply in the context of this offense.

6. The Committee concluded that the essence of this offense, as indicated by the title of the statute, is concealing a child with the purpose of interfering with the custody rights of the other parent – specifically, the right to be with the child and know where the child is.