

2175 CHILD UNATTENDED IN A CHILD CARE VEHICLE — § 948.53**Statutory Definition of the Crime**

Section 948.53 of the Criminal Code of Wisconsin is violated by a person responsible for a child's welfare while the child is being transported in a child care vehicle who leaves the child unattended at any time from the time the child is placed in the care of that person to the time the child is placed in the care of another person responsible for the child's welfare.

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 five elements were present.

Elements of the Crime That the State Must Prove

1. (Name of child) was placed in the care of the defendant.
2. (Name of child) was being transported in a child care vehicle.

"Child care vehicle" means a vehicle that is owned or leased by a child care provider or a contractor of the child care provider and that is used to transport children to and from the child care provider.¹

"Child care provider" means [a child care center that is licensed under section 48.65(1)] [a child care provider that is certified under section 48.651] [a

child care program that is established or contracted for under section 120.13(14)].²

3. The defendant was a person responsible for (name of child)'s welfare³ while (name of child) was being transported in a child care vehicle.
4. The defendant left (name of child) unattended before (name of child) was placed in the care of another person responsible for the child's welfare.
5. (Name of child) had not attained the age of 18 years.

[Knowledge of (name of child)'s age is not required and mistake regarding (name of child)'s age is not a defense.⁴]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all five 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.

ADD THE FOLLOWING IF THE DEFENDANT IS CHARGED WITH A FELONY OFFENSE.⁵

If you find the defendant guilty, you must consider the following question:

"Was (bodily harm) (great bodily harm) (death) a consequence of leaving (name of child) unattended?"

["Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.⁶]

["Great bodily harm" means injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.^{7]}

Before you may answer this question "yes," you must be satisfied beyond a reasonable doubt that (bodily harm) (great bodily harm) (death) was a consequence of leaving (name of child) unattended?

If you are not so satisfied, you must answer the question "no."

COMMENT

Wis JI-Criminal 2175 was approved by the Committee in July 2012.

This instruction is for violations of § 948.53. A simple violation is a Class A misdemeanor. The penalty increases to a Class I felony if bodily harm is a consequence; to a Class H felony if great bodily harm is a consequence; and to a Class G felony if death is a consequence. § 948.53(2)(b). If a felony violation is charged, the Committee recommends adding a special question if the evidence would support a finding that the penalty-increasing fact is established.

1. This is the definition provided in § 948.53(1)(b).
2. This is the definition provided in § 948.53(1)(a).
3. The term "person responsible for the child's welfare" is defined in § 948.01(3). It lists categories of persons that the term "includes," the last of which may be most likely to apply to this offense: "a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the child."
4. See §§ 939.23(6) and 939.43(2).
5. A simple violation of § 948.53 is a Class A misdemeanor. The penalty increases to a Class I felony if bodily harm is a consequence; to a Class H felony if great bodily harm is a consequence; and to a Class G felony if death is a consequence. § 948.53(2)(b). If a felony violation is charged, the Committee recommends adding a special question if the evidence would support a finding that the penalty-increasing fact is established. The following form is suggested for the verdict:

We, the jury, find the defendant guilty of leaving a child unattended in a child care vehicle under Wis. Stat. § _____, at the time and place charged in the information.

We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

"Was (bodily harm) (great bodily harm) (death) a consequence of leaving (name of child) unattended in a child care vehicle?"

6. This is the definition provided in § 939.22(4).

7. This is the definition provided in § 939.22(14). Also see Wis JI-Criminal 914. The reference to "other serious bodily injury" at the end of the statutory definition is intended to broaden the scope of the statute rather than to limit it by application of an "ejusdem generis" rationale. LaBarge v. State, 74 Wis.2d 327, 246 N.W.2d 794 (1976).