

**2177 SALE, LOAN, OR GIFT OF A DANGEROUS WEAPON TO A CHILD —
§ 948.60(2)(b)****Statutory Definition of the Crime**

Section 948.60(2)(b) of the Criminal Code of Wisconsin is violated by any person who intentionally sells, loans, or gives a dangerous weapon to a child.

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 intentionally (sold) (loaned) (gave) an object to (name of child).

"Intentionally" means that the defendant had the purpose to (sell) (loan) (give) an object to (name of child).¹

2. The object was a dangerous weapon.

A _____ is a dangerous weapon.²

3. The defendant knew that the object was a dangerous weapon.³

4. (Name of child) had not attained the age of 18 years⁴ at the time the defendant allegedly (sold) (loaned) (gave) (him) (her) a dangerous weapon.

Knowledge of (name of child)'s age is not required⁵ and mistake regarding age is not a defense.⁶

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 2177 was originally published in 1989 and revised in 1991, 1992 and 2009. This revision was approved by the Committee in October 2011; it corrected a statutory cross-reference in footnote 2 to reflect a change made by 2011 Wisconsin Act 35.

This instruction is for a violation of § 948.60(2)(b). Section 948.60 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 replaces Wis JI-Criminal 1326 which applied to what was essentially the same offense under § 941.22, 1985-86 Wis. Stats., a statute repealed by 1987 Wisconsin Act 332.

Section 948.60 was amended by 1991 Wisconsin Act 18 (see note 2, below) and by 1991 Wisconsin Act 139. The latter divided what was formerly sub. (2) into sub. (2)(a) and (2)(b). For violations of § 948.60(2)(a), involving possession of a dangerous weapon by a child, see Wis JI-Criminal 2176.

1991 Wisconsin Act 139 also created sub. (2)(c), which provides that violations of sub. (2)(b) become Class H felonies "if the child under par. (b) discharges the firearm and the discharge causes death to himself, herself, or another." See Wis JI-Criminal 2177A for a suggested instruction for the Class H felony offense.

The statute provides several exceptions. See § 948.60(3) and the discussion preceding note 1, Wis JI-Criminal 2176.

1. "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 definition of "intentionally." It is the other alternative that changed from "reasonably believes his act, if successful, will cause that result" to "is aware that his or her 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.

2. "Dangerous weapon" is specially defined for purposes of this offense; the definition in § 939.22(10) does not apply. Section 948.60(1) provides:

In this section, "dangerous weapon" means any firearm loaded or unloaded; any electric weapon, as defined in s. 941.295(1c)(a); metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles; a nunchaku or any similar weapon consisting of 2 sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather; a cestus or similar material weighted with metal or other substance and worn on the hand; a shuriken or any similar pointed star-like object intended to

injure a person when thrown; or a manrikigusari or similar length of chain having weighted ends.

This definition is essentially a list of seven objects that constitute a dangerous weapon for purposes of this offense. The Committee recommends inserting the name of the object into the instruction rather than reading the complete statutory definition. Note that many items that would qualify as dangerous weapons under § 939.22(10) do not fall within this definition.

The definition was amended by 1991 Wisconsin Act 18 (effective date: June 8, 1991), to substitute "loaded or unloaded" for "having a barrel less than 12 inches long" immediately after the word "firearm" in the first line of the definition.

3. Section 939.23(3) provides that "intentionally" requires knowledge of all facts necessary to make the conduct criminal and appearing after the word "intentionally" in the statute.

4. "Child" is defined this way in § 948.01(1).

5. Section 939.23(6).

6. Section 939.43(2).