

**2177A SALE, LOAN, OR GIFT OF A FIREARM TO A CHILD: DEATH
CAUSED — § 948.60(2)(c)****Statutory Definition of the Crime**

Section 948.60(2)(c) of the Criminal Code of Wisconsin is violated by any person who intentionally sells, loans, or gives a firearm¹ to a child if the child discharges the firearm and causes death to that child or another.

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) a loaded or unloaded firearm to (name of child).

"Intentionally" means that the defendant had the purpose to (sell) (loan) (give) a firearm to (name of child).²

The term "firearm" means a weapon that acts by force of gunpowder.³

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

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

3. (Name of child) discharged the firearm and had not attained the age of 18 years at the time.

To "discharge a firearm" simply means to shoot a gun.⁷

4. The discharge of the firearm caused the death of [(name of child)] [another person].

"Cause" means that the discharging of the firearm was a substantial factor in producing the death.⁸

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 2177A was originally published in 1992. This revision was approved by the Committee in February 2009 and involved adoption of a new format and nonsubstantive changes to the text.

Section 948.60 was amended by 1991 Wisconsin Acts 18 and 139. The latter change created a new felony offense which is addressed by this instruction and applies to offenses committed on or after April 16, 1992. Subsections (2)(b) and (c) provide the penalties:

(2)(b) Except as provided in par. (c), any person who intentionally sells, loans or gives a dangerous weapon to a child is guilty of a Class I felony.

(c) Whoever violates par. (b) is guilty of a Class H felony if the child under par. (b) discharges the firearm and the discharge causes death to himself, herself or another.

See Wis JI-Criminal 2177 for an instruction for the Class I felony offense under (2)(b).

1. "Dangerous weapon" is specially defined for purposes of violations of § 948.60. See § 948.60(1). But because violations of sub. (2)(c) require discharge of a firearm, none of the other alternatives provided in sub. (1) could apply. Thus, the instruction simply refers to "firearm" throughout.

2. "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. Implicit in this element's requirement of purpose is knowledge that the object was a firearm. 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.

3. The term "firearm" is considered to mean a weapon that acts by the force of gunpowder. See, for example, Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892). This definition excludes air guns.

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

5. Section 939.23(6).

6. Section 939.43(2).

7. This definition is used in instructions for other offenses requiring "discharge" of a firearm. See, for example, Wis JI-Criminal 1322.

8. The Committee has concluded that the simple "substantial factor" definition of cause should be sufficient for most cases. Where there is evidence of more than one possible cause, something like the following might be added:

There may be more than one cause of death. The act of one person alone might produce it or the acts of two or more persons might jointly produce it.