

2180 RECEIVING STOLEN PROPERTY FROM A CHILD — § 948.62**Statutory Definition of the Crime**

Receiving stolen property from a child, as defined in § 948.62 of the Criminal Code of Wisconsin, is committed by one who intentionally receives stolen property from a person who has not attained the age of 18 years.

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 received (describe property) from (name of child).

"Intentionally" requires that the defendant had the mental purpose to receive the property.¹

"To receive" means to acquire possession or control over the property.

2. (Name of child) was under the age of 18 years at the time the property was received.

Knowledge of (name of victim)'s age is not required² and mistake regarding (name of victim)'s age is not a defense.³

3. The (describe property) was stolen property.⁴

Property is stolen property when it has intentionally been taken from the owner without consent and with the intent to deprive the owner of its possession permanently.⁵

4. When the property was received, the defendant knew that it was stolen property.⁶

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or knowledge. Intent and knowledge 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 and knowledge.⁷

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.

IF A FELONY OFFENSE IS CHARGED BASED ON THE PROPERTY BEING A FIREARM, ADD THE FOLLOWING.⁸

[If you find the defendant guilty, answer the following question:

"Was the property a firearm?"

A firearm is a weapon that acts by force of gunpowder.⁹

Answer: "yes" or "no."]

IF A FELONY OFFENSE IS CHARGED, BASED ON THE VALUE OF THE PROPERTY, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A

FINDING THAT THE VALUE OF THE PROPERTY WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.¹⁰

[Determining Value]

[If you find the defendant guilty, answer the following question:

("Was the value of the property more than \$5,000?")

Answer: "yes" or "no.")

("Was the value of the property more than \$2,500?")

Answer: "yes" or "no.")

("Was the value of the property more than \$500?")

Answer: "yes" or "no.")

"Value" means the market value of the property or the replacement cost, whichever is less.¹¹ Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the value of the property was more than the amount stated in the question.].

COMMENT

Wis JI-Criminal 2180 was originally published in 1989 and revised in 2003. The 2003 revision adopted a new format and reflected changes in the penalties made by 2001 Wisconsin Act 109. This revision was approved by the Committee in February 2012; it reflects changes made by 2011 Wisconsin Act 99 [effective date: December 21, 2011].

Section 948.62 ostensibly prohibits two different kinds of conduct: receiving stolen property from a child and concealing stolen property received from a child. This instruction addresses only the receiving offense but should be sufficient to cover all situations. Because the concealing offense requires that the property has been received from a child, proof of the same basic facts (plus concealing) would seem to be required.

2011 Wisconsin Act 99 [effective date: December 21, 2011] amended § 948.62(1)(bm) to apply the Class H felony penalty to receiving a stolen firearm as well as to property whose value exceeds \$2,500.

1. "Intentionally" is defined in § 939.23(3). It includes not only "mental purpose" but also being

"aware that his conduct is practically certain to cause that result." See Wis JI-Criminal 923A. The Committee concluded that the "mental purpose" part of the definition is most likely to apply in the context of this offense.

2. Section 939.23(6).

3. Section 939.43(2).

4. The instruction for receiving stolen property in violation of § 943.34 explains this requirement as follows:

A prior theft or other misappropriation in violation of the Criminal Code is an essential element of the crime. Accordingly, the state must prove beyond a reasonable doubt that the property was stolen property. State v. Godsey, 272 Wis. 406, 75 N.W.2d 572 (1956). The term "stolen" is not defined in the Criminal Code. Necessarily, the term includes all forms of theft covered by § 943.20(1) of the Criminal Code.

Wis JI-Criminal 1481, n. 6.

5. The definition of "stolen property" provided in the instruction is appropriate for the usual case where the property was obtained by theft under § 943.20(1)(a). The standard instruction must be modified if the property was obtained by fraudulent representation or other type of criminal misappropriation.

6. Section 939.23(3) provides that when the word "intentionally" is used in a statute, it requires "knowledge of those facts which are necessary to make the conduct criminal and which are set forth after the word 'intentionally'." Also see, State v. Godsey, 272 Wis. 406, 75 N.W.2d 572 (1956); Oosterwyk v. State, 242 Wis. 398, 8 N.W.2d 346 (1943); Heyroth v. State, 275 Wis. 104, 81 N.W.2d 56 (1956); Meath v. State, 174 Wis. 80, 82, 83, 182 N.W. 334 (1921).

7. Evidence that the defendant was in "unexplained possession of recently stolen property" will often be offered as evidence tending to prove knowledge that the property was stolen. Caution should be exercised in instructing the jury on this issue, see Wis JI-Criminal 173, Circumstantial Evidence – Unexplained Possession of Recently Stolen Property, and the Comment to that instruction.

8. 2011 Wisconsin Act 99 [effective date December 21, 2011] amended § 948.62(1)(bm) to provide that a violation of the statute is a Class H felony "if the property is a firearm." Formerly, the Class H felony penalty applied only if the value of the property exceeded \$2,500. The Committee has concluded that addressing these penalty-increasing facts by submitting a special question is the most efficient approach.

9. Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892).

10. The jury must make a finding of the value of the stolen property if the felony offense is charged and if the evidence supports a finding that the required amount is involved. Heyroth v. State, 275 Wis. 104, 81 N.W.2d 56 (1957). While value may not, strictly speaking, be an element of the crime, it

determines the range of permissible penalties and should be established "beyond a reasonable doubt." The Committee concluded that if the misdemeanor offense is charged, the jury need not make a finding as to value.

The amounts determining the penalty were changed by 2001 Wisconsin Act 109 [effective date: February 1, 2003]. The revised penalties are as follows:

- if the value of the property does not exceed \$500, the offense is a Class A misdemeanor;
- if the value of the property exceeds \$500 but not \$2,500, the offense is a Class I felony;
- if the value of the property exceeds \$2,500 but not \$5,000, the offense is a Class H felony; and,
- if the value of the property exceeds \$5,000, the offense is a Class G felony.

The questions in the instruction omit the upper limits of the categories for Class I and Class H felonies; it is no defense that the value was actually greater than the amount alleged. More than one question may be presented to the jury, however. If the evidence would allow a reasonable jury to find, for example, that the value did not exceed \$10,000 but did exceed \$5,000, the two relevant questions could be submitted.

11. This is based on the definition provided in § 943.20(2)(d). See note 9, Wis JI-Criminal 1441.