

**2196 REGISTERED SEX OFFENDER AND PHOTOGRAPHING MINORS —
§ 948.14****Statutory Definition of the Crime**

Section 948.14 is violated by a person who is required to register under section 301.45 who intentionally captures a representation of any minor without the written consent of the minor's parent, legal custodian, or guardian.

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 was a person who was required to register under § 301.45.

A person who (describe the applicable criterion set forth in subs. (1g) of § 301.45¹ is required to register.

2. The defendant captured a representation² of a minor.

A minor is an individual who is under 17 years of age.³

"Captures a representation" means takes a photograph, makes a motion picture, videotape, or other visual representation, or records or stores in any medium data that represents a visual image.⁴

3. The defendant captured the representation of the minor without the written consent of the minor's (parent) (legal custodian) (guardian).

[The written consent must state the person seeking consent is required to register under § 301.45.]⁵

4. The defendant captured the representation intentionally.

This requires that the defendant acted with the purpose to capture the representation of the minor and knew that the minor's parent did not provide written consent.⁶

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and 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.

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 2196 was approved by the Committee in August 2007.

This instruction is for violations of § 948.14, created by 2005 Wisconsin Act 432. [Effective date: June 6, 2006.]

1. Specify the subsection of § 301.45(1g) that allegedly required the defendant to register as a sex offender.

2. Section 948.14(1)(c) provides that "'representation' has the meaning given in s. 942.09(1)(c)." That definition states: "'Representation' means a photograph, exposed film, motion picture, videotape, other visual representation, or data that represents a visual image." "Representation" is not separately defined here; the Committee concluded that it is adequately covered by the definition of "captures a representation" in element 2.

3. See § 948.14(1)(b).

4. This is the definition provided in § 942.09(1)(a), without change. Section 948.14(1)(a) provides that it applies to this offense.

5. Include the sentence in brackets if the case involved evidence of a written consent.

6. The use of "intentionally" requires "a purpose to do the thing or cause the result specified . . . [and] knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally'" in the statute. See § 939.23(3). In this statute, that appears to require purpose to capture the representation – as distinguished, for example, from accidentally having a minor in the background of a photo intended to be of something or someone else. And it requires knowledge of "without parent's consent," a fact necessary to make the conduct criminal.