

OFFICE OF JUDICIAL EDUCATION

2023



January 2023

TO: Consumers of the Wisconsin Jury Instructions - Criminal

FROM: Wisconsin Court System, Office of Judicial Education

Enclosed is Release No. 61 for the 1980 edition of Wis JI-Criminal. The release contains material approved by the Wisconsin Criminal Jury Instructions Committee through January 2023.

The following material is included in Release No. 61:

| <u>New Instructions</u> | | <u>Revised Instructions</u> | | | | |
|-------------------------|-------|-----------------------------|-------|-------|-------|--------|
| 1457 | 1524 | 5 | 140 | 300 | 515 | 600 |
| 1525 | 1526 | 1016 | 1017 | 1072 | 1200G | 1296 |
| 1777B | 2672B | 1296A | 1297 | 1508 | 1605 | 1776 |
| 2674A | 2676B | 1777A | 2160 | 2161 | 2162 | 2163 |
| 2676C | 2677A | 2170 | 2170A | 2171 | 2199 | 2650 |
| 2678A | | 2652 | 2654 | 2663D | 2672 | 2674 |
| | | 2676 | 2676A | 2677 | 2678 | SM-34A |
| | | | | | | SM-35 |

Filing Instructions. The material is preceded by filing instructions which should be followed carefully. It is recommended that the Filing Instructions page be retained in the front of Volume I as a record of the proper filing of this release.

Questions. If you have any questions concerning the publication process, this release, or the criminal jury instructions project in general, please direct them to Bryce Pierson at Bryce.pierson@wicourts.gov.

[This page is intentionally left blank]



Wis JI-Criminal

(Release No. 61 – January 2023)

Filing Instructions

| Remove Old Pages Titled | Insert New Pages Titled |
|---|--|
| <u>Volume I:</u> | |
| Volume I Cover Page (with “Includes Release No. 60” in corner)..... | Volume I Cover Page (with “Release No. 61” in corner) |
| Committee List (2022) | Committee List (1/2023) |
| Summary of Contents (2022) | Summary of Contents (1/2023) |
| (<u>AFTER</u> “CONTENTS All 5 vols.” Divider)..... Table of Contents (2022) | (<u>AFTER</u> “CONTENTS All 5 vols.” Divider) Table of Contents (1/2023) |
| (<u>AFTER</u> “COMP. TABLE STATS. – INSTRS”..... Divider) Comparative Table Statute - Instruction Numbers (2022) | (<u>AFTER</u> “COMP. TABLE STATS. – INSTRS” Divider) Comparative Table Statute - Instruction Numbers (1/2023) |
| Introduction (2022)..... | Introduction (1/2023) |
| 5 (1991)..... | 5 (1/2023) |
| 140 (2019)..... | 140 (1/2023) |
| 300 (2022)..... | 300 (1/2023) |
| 515 (2012)..... | 515 (1/2023) |
| 600 (2011)..... | 600 (1/2023) |
| <u>Volume II:</u> | |
| Volume II Cover Page (with “Includes Release No. 60” in corner)..... | Volume II Cover Page (with “Release No. 61” in corner) |
| (<u>AFTER</u> “CONTENTS Vol II” Divider)..... Table of Contents (2022) | (<u>AFTER</u> “CONTENTS Vol II” Divider) Contents – Vol II (1/2023) |
| 1016 (2015) | 1016 (1/2023) |

| Remove Old Pages Titled | Insert New Pages Titled |
|----------------------------|----------------------------|
| 1017 (2015)..... | 1017 (1/2023) |
| 1072 (2005)..... | 1072 (1/2023) |
| 1200G (2013)..... | 1200G (1/2023) |
| 1296 (2022)..... | 1296 (1/2023) |
| 1296A (2022)..... | 1296A (1/2023) |
| 1297 (2022)..... | 1297 (1/2023) |

Volume IIA:

| | |
|---|---|
| Volume IIA Cover Page (with “Includes Release No. 60” in corner)..... | Volume IIA Cover Page (with “Release No. 61” in corner) |
| (<u>AFTER</u> “CONTENTS Vol. IIA” Divider)..... | (<u>AFTER</u> “CONTENTS Vol. IIA” Divider) |
| Table of Contents (2022) | Contents – Vol IIA (1/2023) |
| ----- | <u>AFTER</u> (JI-1455) 1457 (1/2023) |
| 1508 (2019)..... | 1508 (1/2023) |
| ----- | <u>AFTER</u> (JI-1522) 1524 (1/2023) |
| ----- | <u>AFTER</u> (JI-1524) 1525 (1/2023) |
| ----- | <u>AFTER</u> (JI-1525) 1526 (1/2023) |
| 1605 (2002)..... | 1605 (1/2023) |
| 1776 (2008)..... | 1776 (1/2023) |
| 1777 (2008)..... | 1777A (1/2023) |
| ----- | <u>AFTER</u> (JI-1777A) 1777B (1/2023) |

Volume III:

| | |
|---|---|
| Volume III Cover Page (with “Includes Release No. 60” in corner)..... | Volume III Cover Page (with “Release No. 61” in corner) |
| (<u>AFTER</u> “CONTENTS Vol. III” Divider)..... | (<u>AFTER</u> “CONTENTS Vol. III” Divider) |
| Table of Contents (2022) | Contents – Vol III (1/2023) |
| 2160 (2010) | 2160 (1/2023) |
| 2161 (2010)..... | 2161 (1/2023) |
| 2162 (2010)..... | 2162 (1/2023) |

| Remove Old Pages Titled | Insert New Pages Titled |
|----------------------------|----------------------------|
| 2163 (2010)..... | 2163 (1/2023) |
| 2170 (2011)..... | 2170 (1/2023) |
| 2170A (2011)..... | 2170A (1/2023) |
| 2171 (2011)..... | 2171 (1/2023) |
| 2199 (2022)..... | 2199 (1/2023) |
| 2650 (2010)..... | 2650 (1/2023) |
| 2652 (2010)..... | 2652 (1/2023) |
| 2654 (2018)..... | 2654 (1/2023) |

Volume IV:

| | |
|--|--|
| Volume IV Cover Page (with “Includes Release No. 60” in corner)..... | Volume IV Cover Page (with “Release No. 61” in corner) |
| (<u>AFTER</u> “CONTENTS Vol. IV” Divider) Table of Contents (2022) | (<u>AFTER</u> “CONTENTS Vol. 4” Divider) Contents – Vol. IV (1/2023) |
| 2663D (2011)..... | 2663D (1/2023) |
| 2672 (2010)..... | 2672 (1/2023) |
| ----- | <u>AFTER</u> (JI-2672A) 2672B (1/2023) |
| 2674 (2010)..... | 2674 (1/2023) |
| ----- | <u>AFTER</u> (JI-2674) 2674A (1/2023) |
| 2676 (2010)..... | 2676 (1/2023) |
| 2676A (2010)..... | 2676A (1/2023) |
| ----- | <u>AFTER</u> (JI-2676A) 2676B (1/2023) |
| ----- | <u>AFTER</u> (JI-2676B) 2676C (1/2023) |
| 2677 (2010)..... | 2677 (1/2023) |
| ----- | <u>AFTER</u> (JI-2677) 2677A (1/2023) |
| 2678 (2010)..... | 2678 (1/2023) |
| ----- | <u>AFTER</u> (JI-2678) 2678A (1/2023) |
| SM-34A (2021)..... | SM-34A (1/2023) |

Remove Old
Pages Titled

Insert New
Pages Titled

SM-35 (1998).....SM-35 (1/2023)

(AFTER "INDEX" Divider)(AFTER "INDEX" Divider)
Index (2022) Index (2023)

_____ Release No. 61 (1/2023) filed by _____
Date Initials



WISCONSIN JURY INSTRUCTIONS

CRIMINAL

VOLUME I

**Wisconsin Criminal Jury
Instructions Committee**

[Cite as Wis JI-Criminal]

- Includes 1/2023 Supplement (Release No. 61)

[This page is intentionally left blank]

**WISCONSIN
JURY
INSTRUCTIONS
CRIMINAL**

Prepared for the Wisconsin Judicial Conference by its Criminal Jury Instructions Committee, consisting of Hon. Mitchell Metropulos, chair; Hon. Maureen Boyle; Hon. Jane Carroll; Hon. Scott Horne; Hon. Nicholas McNamara; Hon. Michael Moran; Hon. Thomas Walsh; Hon. Patricia Baker; Hon. Michelle Havas; Hon. Ralph Ramirez; Hon. Laura Crivello with assistance from Assistant Attorney General Christine Remington; Assistant State Public Defender Jefren E. Olsen; University of Wisconsin Law School Professor Emeritus David E. Schultz and Office of Judicial Education Legal Advisor Bryce Pierson.

Reporter:
Bryce Pierson
Office of Judicial Education

Published by
Wisconsin Court System
Office of Judicial Education

[This page is intentionally left blank]

SUMMARY OF CONTENTS

| | |
|--|--|
| INTRODUCTION and DEDICATION | |
| CRIMINAL JURY INSTRUCTIONS COMMITTEE | |
| TABLE OF CONTENTS | |
| COMPARATIVE TABLE: STATUTE-INSTRUCTION NUMBERS | |

VOLUME I

| | Instruction No. |
|---|-----------------|
| GENERAL INSTRUCTIONS | 1-520 |
| Preliminary instructions; general matters..... | 1-99 |
| Opening instructions | 100-128 |
| Burden of proof and presumption of innocence; evidence | 140-276 |
| Witnesses | 300-345 |
| Miscellaneous | 375 |
| Persons and Parties | 400-440 |
| Closing instructions and relation of verdict to offense charged | 460-525 |
| INCHOATE CRIMES | 550-580 |
| DEFENSES AND DEFENSIVE MATTERS | 600-955 |
| PENALTY ENHANCERS | 980-999A |

VOLUME II

| | |
|---|-----------|
| CRIMES AGAINST LIFE AND BODILY SECURITY | 1000-1297 |
| Life | 1000-1195 |
| Sexual Assault | 1200-1219 |
| Bodily security | 1200-1297 |

VOLUME IIA

| | |
|--|------------|
| CRIMES AGAINST PUBLIC HEALTH AND SAFETY | 1300-1375 |
| CRIMES AGAINST REPUTATION AND CIVIL LIBERTIES | 1380-1398B |
| CRIMES AGAINST PROPERTY | 1400-1529 |
| CRIMES AGAINST SEXUAL MORALITY | 1530-1571 |
| CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION | 1600-1799 |

VOLUME III

| | |
|---|------------|
| CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION | 1800-1883 |
| CRIMES AGAINST PUBLIC PEACE, ORDER, AND OTHER INTERESTS | 1900-1961 |
| CRIMES AGAINST ANIMALS..... | 1980-1988 |
| JUVENILE DELINQUENCY..... | 2020-2021 |
| CONTEMPT OF COURT; RESTRAINING ORDER VIOLATIONS | 2031-2044 |
| ORDINANCE VIOLATIONS | 2050-2055 |
| CRIMES AGAINST CHILDREN | 2100-2199 |
| INQUEST | 2300-2302A |
| SEXUALLY VIOLENT PERSONS | 2501-2506 |
| VEHICLE CODE | 2590-2659 |

VOLUME IV

| | |
|----------------------------------|--------------|
| VEHICLE CODE | 2660-2696 |
| SECURITIES FRAUD | 2902-2904 |
| TAX OFFENSES | 5000-5012 |
| ANHYDROUS AMMONIA | 5024 |
| INTOXICATING LIQUORS | 5030-5050 |
| HAZARDOUS WASTE | 5200 |
| ELECTION FRAUD | 5301 |
| CONTROLLED SUBSTANCES | 6000-6110 |
| CRIMINAL SPECIAL MATERIALS | SM-5 – SM-90 |

INDEX

[This page is intentionally left blank]

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME I

| | No. | Year |
|--|------------------------------------|--------|
| OPENING INSTRUCTIONS ON THE PLEADINGS | | |
| Suggested Instructions | 1 | 2016 |
| Comment: Gender Neutral Language | 5 | 1/2023 |
| Preliminary Instruction: Jurors' Conduct; Evidence; Transcripts Not Available; Credibility; Substantive Issues; Opening Statement | 50 | 2022 |
| Notetaking Permitted | 55 | 2000 |
| Notetaking Not Allowed | 56 | 2000 |
| Instruction on Juror Questioning of Witnesses | 57 | 2014 |
| Transcripts Not Available for Deliberations; Reading Back Testimony | 58 | 2022 |
| Police Reports | 59 | 2001 |
| Preliminary Instruction: Use of an Interpreter for a Witness | 60 | 2003 |
| Preliminary Instruction: Use of an Interpreter for a Juror..... | 61 | 2004 |
| Preliminary Instruction: Use of an Interpreter for the Defendant | 62 | 2003 |
| Preliminary Instruction: Defendant Proceeding Pro Se | 70 | 2001 |
| | | |
| Opening Instructions..... | 100 | 2000 |
| Opening Statements | 101 | 2001 |
| Evidence Defined..... | 103 | 2000 |
| | | |
| One Defendant: Single Count: No Included Offense..... | 110 | 2000 |
| One Defendant: Single Count: Lesser Included Offenses..... | 112 | 2000 |
| Lesser Included Offense: Alternative Style | 112A | 2000 |
| Armed Robbery: Robbery (Unarmed) | 112A EXAMPLE | 2000 |
| One Defendant: Two Counts..... | 115 | 2000 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 115 EXAMPLE RENUMBERED 116 EXAMPLE | 2004 |
| Multiple Charges of the Same Offense: Different Victims..... | 116 | 2004 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 116 EXAMPLE | 2004 |
| One Defendant: Two Counts: Conviction for Only One Proper..... | 117 WITHDRAWN | 2000 |
| | | |
| Two Defendants: Single Count: No Included Offense | 120 | 2000 |
| Two Defendants: Single Count: Included Offense | 122 | 2000 |
| Two Defendants: Two Counts | 125 | 2000 |
| Two Defendants: Two Counts: Conviction for Only One Proper..... | 127 WITHDRAWN | 2000 |
| Charges Disposed of During Trial | 128 | 2014 |

WIS JI-CRIMINAL

BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE; EVIDENCE

| | | |
|--|----------------|--------|
| Burden of Proof and Presumption of Innocence..... | 140 | 1/2023 |
| Burden of Proof: Forfeiture Actions..... | 140A | 2011 |
| Where Identification of Defendant is in Issue | 141 | 2021 |
| Information Not Evidence..... | 145 | 2000 |
| Precautionary Statement: Anonymous and “Numbers” Juries..... | 146 | 2003 |
| Improper Questions..... | 147 | 2000 |
| Objections of Counsel; Evidence Received Over Objection | 148 | 2000 |
| | | |
| Stricken Testimony..... | 150 | 2000 |
| View of Scene..... | 152 | 2000 |
| Summary of Evidence..... | 154 | 2012 |
| Exhibits..... | 155 | 2018 |
| Remarks of Counsel..... | 157 | 2000 |
| Recording Played to the Jury | 158 | 2022 |
| | | |
| Closing Arguments of Counsel..... | 160 | 2000 |
| Agreed Testimony..... | 161 | 2000 |
| Agreed Facts | 162 | 2000 |
| Law Note: Stipulations | 162A | 2011 |
| Judicially Noticed Facts..... | 165 | 2003 |
| | | |
| Circumstantial Evidence | 170 | 2000 |
| Circumstantial Evidence: Flight, Escape, Concealment | 172 | 2000 |
| Circumstantial Evidence - Possession of Recently Stolen Property | 173 | 2000 |
| Motive..... | 175 | 2000 |
| | | |
| Statements of Defendant..... | 180 | 2021 |
| Confessions and Admissions: Series of Statements..... | 182 WITHDRAWN | 2000 |
| Confessions and Admissions: Mental Condition of Defendant in Issue..... | 185 WITHDRAWN | 2000 |
| Confessions and Admissions: Evidence That Defendant Did Not Understand Interrogator | 187 WITHDRAWN | 2000 |
| | | |
| Weight of Evidence..... | 190 | 2000 |
| Juror's Knowledge..... | 195 | 2000 |
| | | |
| Expert Opinion Testimony: General..... | 200 | 2019 |
| Expert Testimony: More Than One Expert..... | 200A WITHDRAWN | 2000 |
| Opinion of a Nonexpert Witness..... | 201 | 2012 |
| Polygraph Evidence | 202 WITHDRAWN | 2009 |
| Expert Testimony: Hypothetical Questions | 205 | 2019 |
| Objections of Counsel: Evidence Received Over Objection | 215 | 2000 |
| | | |
| Evidence: Limited Purpose: Statement of Codefendant | 220 WITHDRAWN | 1999 |
| Cautionary Instruction: Interlocking Confessions | 220A WITHDRAWN | 1999 |
| Law Note: Statement of Accomplice Admitted for Nonhearsay Purpose | 220B | 1991 |
| Statement of Codefendant: Statement Does Not Mention Defendant..... | 221 | 2000 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Joint Trial: Evidence Admissible as to One Defendant Only | 222 | 2000 |
| Instructing on a “Presumed Fact” That is an Element of the Crime | 225 | 2000 |
| Prima Facie Effect of a Test Result Showing an Alcohol Concentration of | | |
| 0.08 Grams or More: Offenses Involving “Under the Influence” | 230 | 2006 |
| Evidence of a Test Result Showing an Alcohol Concentration of 0.04 Grams or | | |
| More but Less Than 0.08 Grams: Offenses Involving “Under the Influence” | 232 | 2009 |
| Blood-Alcohol Curve | 234 | 2004 |
| Refusal of Defendant to Furnish Sample for Alcohol Test | 235 | 2021 |
| Alcohol Concentration Chart | 237 | 2000 |
| Testimony of Accomplices | | |
| Testimony of a Witness Granted Immunity or Other Concessions..... | 246 | 2000 |
| Verdict as to Defendant Only..... | 247 | 2000 |
| State Need Not Prove Exact Date of Commission: Specific Date Alleged | | |
| State Need Not Prove Exact Date of Commission: Period of Time Alleged..... | 255A | 2000 |
| Time of Offense: Where State Not Required to Elect..... | 260 WITHDRAWN | 2000 |
| Time of Offense: Where State Has Elected | 265 WITHDRAWN | 2000 |
| Venue | | |
| Law Note: Jurisdiction..... | 268 | 2021 |
| Evidence as to Defendant’s Character | | |
| Cautionary Instruction: Evidence of Other Conduct [Required if Requested] | 275 | 2018 |
| Comment: Other Acts Evidence | 275.1 | 2016 |
| Prior Convictions Admissible to Prove Character | 276 | 2016 |
| WITNESSES | | |
| Credibility of Witnesses..... | | |
| Falsus in Uno | 305 | 2001 |
| Defendant as Witness in Own Behalf | 310 WITHDRAWN | 2001 |
| Prisoner as Witness or Defendant: Prisoner Status an Issue | | |
| Evidence That the Defendant Wore a GPS or Other Monitoring Device | 313 | 2017 |
| Defendant Wearing a Visible Restraining Device in the Presence of Jurors | 314 | 2012 |
| Defendant Elects Not to Testify | 315 | 2001 |
| Witness Exercising Privilege Against Self-Incrimination | 317 | 2001 |
| Impeachment of the Defendant by Prior Inconsistent Statements Which are | | |
| Inadmissible in the State’s Case-in-Chief | 320 | 2001 |
| Law Note: Substantive Use of Prior Inconsistent Statements..... | 320A | 2001 |
| Impeachment of Witness: Prior Conviction or Juvenile Adjudication | 325 | 2018 |
| Impeachment of Defendant as a Witness: Prior Conviction or Juvenile Adjudication..... | 327 | 2018 |
| Impeachment of Witness: Character for Truthfulness | 330 | 2018 |
| Credibility of Child Witness | | |
| Missing Witness..... | 345 | 2001 |

WIS JI-CRIMINAL

MISCELLANEOUS

Negligence Defined375 WITHDRAWN 2001

PERSONS AND PARTIES

| | | |
|--|---------------|------|
| Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided the Crime Charged | 400 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided a Burglary..... | 400 EXAMPLE | 2005 |
| Party to Crime: Defendant Either Intentionally Aided the Crime Charged or Was a Member of a Conspiracy to Commit the Crime Charged..... | 401 | 2005 |
| Party to Crime: Defendant Either Directly Committed, Intentionally Aided, Member of a Conspiracy to Commit the Crime Charged..... | 402 | 2005 |
| Statement of Co-Conspirator | 405 WITHDRAWN | 1994 |
| Party to Crime: Aiding and Abetting: Defendant Intentionally Aided the Crime Charged..... | 405 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Intentionally Aided a Burglary | 405 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 406 | 2005 |
| Example Party to Crime: Aiding and Abetting: First Degree Intentional Homicide as the Natural and Probable Consequence of Armed Robbery..... | 406 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: Multiple Counts | 407 | 2005 |
| Party to Crime: Conspiracy to Commit the Crime Charged | 410 | 2005 |
| Example Party to Crime: Conspiracy to Commit Burglary | 410 EXAMPLE | 2005 |
| Party to Crime: Conspiracy: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 411 | 2005 |
| Party to Crime: Withdrawal from a Conspiracy | 412 | 2008 |
| Statement of Co-Conspirator; Evidence Presented That Conspiracy Terminated by Withdrawal Before Statement Was Made..... | 415 WITHDRAWN | 1994 |
| Party to Crime: Solicitation to Commit the Crime Charged | 415 | 2005 |
| [Note on Instructions Withdrawn] | 418 | 1994 |
| Criminal Liability of a Corporation | 420 | 2005 |
| Corporate Liability: Acts of Employees: Strict Liability | 425 WITHDRAWN | 1995 |
| Corporate Liability: Acts of Lesser Employees | 430 WITHDRAWN | 1995 |
| Liability for the Acts of Another; Authorization or Acquiescence..... | 435 | 1995 |
| Liability for Acts of Another: Acts of Agent or Servant: Strict Liability Cases | 440 WITHDRAWN | 1995 |

WIS JI-CRIMINAL

CLOSING INSTRUCTIONS AND RELATION OF VERDICT TO OFFENSE CHARGED

| | | |
|---|---------------|--------|
| Closing Instruction..... | 460 | 2010 |
| Closing Instruction: Optional Short Form | 465 | 2010 |
| Verdicts Submitted for One Defendant: Single Count..... | 480 | 2000 |
| Verdicts Submitted for One Defendant: Single Count: Lesser Included Offense..... | 482 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Separate Verdict on Each Count Required..... | 484 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Lesser Included Offense on Each Count..... | 485 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Conviction for Only One Proper | 486 WITHDRAWN | 1990 |
| Verdicts Submitted for Multiple Defendants: Single Count | 490 | 2000 |
| Verdicts Submitted for Multiple Defendants: Single Count: Included Offense | 492 | 2000 |
| Verdicts Submitted for Multiple Defendants: Two Counts: Separate Verdict on Each Count Required..... | 494 | 2000 |
| Verdicts Submitted for Two Defendants: Two Counts: Conviction for Only One Proper | 496 WITHDRAWN | 1990 |
| Unanimous Verdict and Selection of Presiding Juror | 515 | 1/2023 |
| Five-Sixths Verdict and Selection of Presiding Juror: Forfeiture Actions..... | 515A | 2001 |
| Jury Agreement: Evidence of More Than One Act Introduced to Prove One Charge | 517 | 2010 |
| Supplemental Instruction on Agreement..... | 520 | 2001 |
| Instruction on Jury Deliberations | 521 WITHDRAWN | 2012 |
| Polling the Jury [Suggested Form]..... | 522 | 2007 |
| Instruction After Verdict Received | 525 | 2001 |
| Instruction after Verdict Received - Alternative Form | 525A | 2010 |

INCHOATE CRIMES

| | | |
|--------------------------------------|-------------|------|
| Solicitation as a Crime | 550 | 2020 |
| Conspiracy as a Crime | 570 | 2008 |
| Attempt | 580 | 2013 |
| Example Attempted Burglary | 581 EXAMPLE | 2002 |
| Example Attempted Armed Robbery..... | 582 EXAMPLE | 2002 |

DEFENSES AND DEFENSIVE MATTERS

| | | |
|---|-----|--------|
| Introductory Comment: Not Guilty by Reason of Mental Disease or Defect: Instructions for the “Bifurcated” Trial and Reexamination..... | 600 | 1/2023 |
| Instruction Prior to Trial upon a Plea of Not Guilty Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect..... | 601 | 2011 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Instruction After Evidence Has Been Received on Issue of Guilt Where a Plea of Not Guilty Has Been Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect | 602 | 2011 |
| Preliminary Instruction After Finding of Guilt and Before Consideration of Whether the Defendant Suffered from a Mental Disease or Defect at the Time of the Offense..... | 603 | 2011 |
| Instruction on the Issue of the Defendant’s Criminal Responsibility - Mental Disease or Defect | 605 | 2011 |
| Instruction on the Issue of the Defendant's Criminal Responsibility (Mental Defect) | 605A WITHDRAWN | 2011 |
| Verdict: Not Responsible by Reason of Mental Disease or Defect | 605B | 2011 |
| Preliminary Instruction upon a Finding of Not Guilty by Reason of Mental Disease or Defect | 606 WITHDRAWN | 2011 |
| Instruction on Commitment Following a Finding of Not Guilty by Reason of Mental Disease or Defect | 607 WITHDRAWN | 2011 |
| Mental Disease or Defect: Expert Opinion Testimony | 640 | 2019 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | 650 | 2011 |
| Effect of Finding of Not Guilty Because of Mental Disease or Defect | 655-CPC WITHDRAWN | 2011 |
| Preliminary Instruction: Reexamination of Person Committed as Not Guilty by Reason of Mental Disease or Defect [§ 971.17(2)]..... | 660 | 2011 |
| Reexamination Under § 971.17(2)..... | 661 | 2011 |
| Verdicts Submitted for Reexamination Under § 971.17(2) | 662 | 2011 |
| Law Note: Theory of Defense Instructions..... | 700 | 2020 |
| Law Note: Jury Nullification | 705 | 1991 |
| Law Note: Right to Recapture | 710 | 1994 |
| Involuntary Intoxication or Drugged Condition | 755 RENUMBERED 755A | 2005 |
| Involuntary Intoxication or Drugged Condition | 755A | 2015 |
| Involuntary Intoxication or Drugged Condition | 755B | 2015 |
| Voluntary Intoxication..... | 765 | 2015 |
| Mistake..... | 770 | 2010 |
| Accident | 772 | 2005 |
| Alibi | 775 | 2005 |
| Entrapment..... | 780 | 2002 |
| Entrapment [Alternate Form]..... | 780A WITHDRAWN | 2003 |
| Coercion..... | 790 | 2005 |
| Necessity..... | 792 | 2005 |

WIS JI-CRIMINAL

PRIVILEGE

| | | |
|--|------|------|
| Law Note: Privilege: Resisting an Unlawful Arrest | 795 | 2003 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm | 800 | 2022 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm: Crimes Involving Recklessness or Negligence | 801 | 2022 |
| Privilege: Self-Defense: Force Intended or Likely to Cause Death or Great Bodily Harm | 805 | 2022 |
| Law Note: Self-defense under § 939.48(1m)..... | 805A | 2022 |
| | | |
| Privilege: Self-Defense: Retreat..... | 810 | 2019 |
| Privilege: Self-Defense: Not Available to One Who Provokes an Attack: Regaining the Privilege | 815 | 2020 |
| | | |
| Privilege: Self-Defense: Injury to Third Party Charged as Reckless or Negligent Crime | 820 | 2022 |
| Privilege: Self-Defense: Unintended Harm to Third Party Charged as Intentional Crime..... | 821 | 2022 |
| Privilege: Defense of Others: Force Less Than That Likely to Cause Death or Great Bodily Harm | 825 | 2005 |
| Privilege: Defense of Others: Force Intended or Likely to Cause Death or Great Bodily Harm | 830 | 2005 |
| Privilege: Defense of Others: Effect of Provocation by Person Defended | 835 | 2005 |
| | | |
| Privilege: Defense of One’s Property | 855 | 2005 |
| | | |
| Privilege: Defense of Another’s Property | 860 | 2005 |
| | | |
| Privilege: Conduct in Good Faith and in an Apparently Authorized and Reasonable Fulfillment of Duties of a Public Office | 870 | 2014 |
| | | |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Nondeadly Force..... | 880 | 2005 |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Deadly Force..... | 885 | 2005 |
| | | |
| Cause..... | 901 | 2022 |
| Liability for Failure to Act - Criminal Omission | 905 | 2015 |
| Dangerous Weapon..... | 910 | 2012 |
| Great Bodily Harm..... | 914 | 2008 |
| Acting in Official Capacity | 915 | 2008 |
| Possession | 920 | 2000 |
| “Intentionally” and “With Intent to”: Mental Purpose..... | 923A | 2010 |
| “Intentionally” and “With Intent to”: “Practically Certain” | 923B | 2001 |
| Criminal Recklessness | 924 | 2015 |
| Aggravated Recklessness: Circumstances Which Show Utter Disregard for Human Life | 924A | 2012 |
| Criminal Negligence | 925 | 2005 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Contributory Negligence..... | 926 | 2005 |
| Sexual Contact [939.22(34)]..... | 934 | 2011 |
| Without Consent | 948 | 2005 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child | 950 | 2014 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child: Cases Involving Recklessness | 951 WITHDRAWN | 2014 |
| Privilege: Discipline by One in the Place of the Parent | 955 WITHDRAWN | 1989 |

PENALTY ENHANCERS

| | | |
|---|-----------------------|------|
| Lifetime Supervision of Serious Sex Offenders | 980 | 2016 |
| Committing a Domestic Abuse Crime Within 72 Hours of Arrest | 983 | 2014 |
| Committing a Domestic Abuse Crime As a Domestic Abuse Repeater | 984 | 2016 |
| Criminal Gang Crimes | 985 | 2003 |
| Using or Possessing a Dangerous Weapon | 990 | 2006 |
| Violent Crime in a School Zone | 992 | 2012 |
| Wearing a Bulletproof Garment..... | 993 | 2003 |
| Concealing Identity..... | 994 | 2003 |
| Selecting the Person Against Whom a Crime is Committed Because of Race, Religion, Etc..... | 996 | 2003 |
| Elder Person Victims | 997 | 2022 |
| Selecting Property Damaged Because of the Race, Religion, Etc., of the Owner..... | 996A RENUMBERED 996.1 | 2003 |
| Violent Crime Against an Elder Person | 998 | 2003 |
| Minor Passenger in the Vehicle | 999 | 2011 |
| Unborn Child in the Vehicle | 999A | 2003 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME II

| | No. | Year |
|--|-------|----------------|
| CRIMES AGAINST LIFE AND BODILY SECURITY | | |
| LIFE | | |
| Introductory Comment: Wisconsin's New Homicide Law..... | 1000 | WITHDRAWN 2006 |
| First Degree Intentional Homicide..... | 1010 | 2000 |
| First Degree Intentional Homicide of an Unborn Child..... | 1011 | 2005 |
| First Degree Intentional Homicide: Adequate Provocation: Second Degree Intentional Homicide..... | 1012 | 2006 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide..... | 1014 | 2021 |
| First Degree Intentional Homicide: Coercion: Second Degree Intentional Homicide..... | 1015 | 2010 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide..... | 1016 | 1/2023 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1017 | 1/2023 |
| First Degree Intentional Homicide: First Degree Reckless Homicide..... | 1018 | 2012 |
| First Degree Reckless Homicide..... | 1020 | 2015 |
| First Degree Reckless Homicide of an Unborn Child..... | 1020A | 2015 |
| First Degree Reckless Homicide..... | 1021 | 2022 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1022 | 2015 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide: Negligent Homicide..... | 1023 | 2019 |
| Felony Murder: Underlying Crime Completed..... | 1030 | 2022 |
| Felony Murder: Underlying Crime Attempted..... | 1031 | 2022 |
| Felony Murder: Death Caused While Committing a Crime as a Party to the Crime: Aiding And Abetting..... | 1032 | 2022 |
| Felony Murder: Death Caused While Committing Armed Burglary as a Party to the Crime: Aiding And Abetting..... | 1032 | EXAMPLE 2003 |
| Second Degree Intentional Homicide..... | 1050 | 2006 |
| Second Degree Intentional Homicide: Self-defense..... | 1052 | 2006 |
| Second Degree Reckless Homicide..... | 1060 | 2015 |
| Second Degree Reckless Homicide by Omission..... | 1060A | 2015 |
| Second Degree Reckless Homicide of an Unborn Child..... | 1061 | 2005 |
| Attempted First Degree Intentional Homicide..... | 1070 | 2001 |
| Attempted First Degree Intentional Homicide: Self-defense: Attempted Second Degree Intentional Homicide..... | 1072 | 1/2023 |
| Homicide Instructions Replaced for Offenses Committed on or After January 1, 1989..... | 1100 | WITHDRAWN 2006 |

WIS JI-CRIMINAL

| | |
|--|------|
| Third Degree Murder: First or Second Degree Murder Not Submitted... 1120 WITHDRAWN | 1982 |
| Third Degree Murder: First or Second Degree Murder Submitted..... 1122 WITHDRAWN | 1982 |
| Abortion [Feticide]..... 1125 | 2006 |
| Homicide by Negligent Operation of a Vehicle..... 1170 | 2002 |
| Homicide of an Unborn Child by Negligent Operation of a Vehicle..... 1171 | 2005 |
| Homicide by Negligent Handling of a Dangerous Weapon..... 1175 | 2011 |
| | |
| Homicide by Operation of Vehicle While Under the Influence 1185 | 2020 |
| Violations of § 940.09 and § 940.25 Involving an Unborn Child 1185A | 2004 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration – 0.08 Grams or More..... 1186 | 2020 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration – 0.02 Grams or More..... 1186A | 2020 |
| Homicide by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.09(1)(am) 1187 | 2021 |
| Homicide by Intoxicated User of Vehicle, Firearm, or Airgun: Affirmative Defense Under § 940.09(2) 1188 WITHDRAWN | 2004 |
| Homicide by Operation of a Vehicle While Under the Influence / Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More 1189 | 2020 |
| Homicide by Operation or Handling of Firearm or Airgun While Under the Influence..... 1190 | 2014 |
| Homicide by Operation or Handling of Firearm or Airgun with an Alcohol Concentration of 0.08 or More 1191 | 2006 |
| Mutilating a Corpse..... 1193 | 2006 |
| Hiding or Burying a Corpse..... 1194 | 2013 |
| Assisting Suicide..... 1195 | 2006 |

SEXUAL ASSAULT

| | |
|--|--------|
| Introductory Comment - Sexual Assault | |
| Instructions..... 1200-1219 WITHDRAWN | 1990 |
| Sexual Contact 1200A | 2007 |
| Sexual Intercourse..... 1200B | 2010 |
| “Without Consent” - Competence to Give Informed Consent in Issue..... 1200C | 2002 |
| “Without Consent” - Complainant Suffering from Mental Illness 1200D | 2002 |
| “Without Consent” - Complainant Unconscious 1200E | 2002 |
| Sexual Assault: Spouse as Victim..... 1200F | 2002 |
| Cautionary Instruction: Evidence of Victim’s Prior Sexual Conduct..... 1200G | 1/2023 |
| | |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent | |
| Causing Great Bodily Harm 1201 | 2002 |
| First Degree Sexual Assault: Sexual Intercourse Without Consent | |
| Causing Pregnancy..... 1201A | 2002 |
| First Degree Sexual Assault: Sexual Contact or Intercourse by Use or Threat of Use of a Dangerous Weapon 1203 | |
| | 2002 |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 | 2022 |
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 EXAMPLE | 2022 |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence While Aided and Abetted | 1205 | 2018 |
| First Degree Sexual Assault: Sexual Intercourse with a Person 12 Years of Age or Younger | 1206 WITHDRAWN | 1997 |
| First Degree Sexual Assault: Sexual Contact with a Person 12 Years of Age or Younger | 1207 WITHDRAWN | 1997 |
| | | |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence..... | 1208 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent Causing Injury, Illness, Disease or Impairment of a Sexual or Reproductive Organ, or Mental Anguish Requiring Psychiatric Care | 1209 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Suffering from Mental Illness | 1211 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Who is Under the Influence of an Intoxicant | 1212 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person the Defendant Knows is Unconscious..... | 1213 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent While Aided and Abetted..... | 1214 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Patient or Resident | 1215 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Correctional Staff Member..... | 1216 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Probation, Parole, or Extended Supervision Agent..... | 1217 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by an Employee of an Entity..... | 1217A | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Law Enforcement Officer With a Person Detained or in Custody | 1217B | 2022 |
| | | |
| Third Degree Sexual Assault: Sexual Intercourse Without Consent | 1218A | 2018 |
| Third Degree Sexual Assault: Sexual Contact Without Consent Involving Ejaculation, etc..... | 1218B | 2018 |
| Fourth Degree Sexual Assault: Sexual Contact Without Consent | 1219 | 2004 |

BODILY SECURITY

| | | |
|---|-----------------------|------|
| Battery and Related Offenses: Introductory Comment..... | 1220-1246 WITHDRAWN | 2009 |
| Battery..... | 1220 | 2015 |
| Battery: Self-Defense in Issue..... | 1220A | 2015 |
| Abuse of Children..... | 1221 WITHDRAWN | 1989 |
| Abuse of Children C Exposing a Child to Cruel Maltreatment..... | 1221A WITHDRAWN | 1989 |
| Failure to Report Child Abuse | 1221C RENUMBERED 2119 | 1992 |
| Substantial Battery with Intent to Cause Bodily Harm..... | 1222 | 2017 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Substantial Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1222A | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm | 1223 WITHDRAWN | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm: | | |
| Self-Defense in Issue..... | 1223A WITHDRAWN | 2017 |
| Aggravated Battery with Intent to Cause Bodily Harm..... | 1224 | 2002 |
| | | |
| Aggravated Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1224A | 2001 |
| | | |
| Aggravated Battery With Intent to Cause Great Bodily Harm | 1225 | 2003 |
| Aggravated Battery with Intent to Cause Great Bodily Harm: | | |
| Self-Defense in Issue..... | 1225A | 2003 |
| Battery with Substantial Risk of Great Bodily Harm..... | 1226 | 2022 |
| Battery to an Unborn Child..... | 1227 | 2017 |
| Battery by Prisoner | 1228 | 2012 |
| Battery by a Person Committed under § 980.065 | 1228A | 2022 |
| Battery by a Person Subject to an Injunction..... | 1229 | 2016 |
| | | |
| Battery to a Law Enforcement Officer or Fire Fighter | 1230 | 2016 |
| Battery to a Probation, Extended Supervision and Parole Agent, Community | | |
| Supervision Agent, or An Aftercare Agent..... | 1231 | 2022 |
| Battery to Juror [Juror Has Assented to Verdict]..... | 1232 | 2005 |
| Battery to Witness [Witness Likely to be Called to Testify] | 1233 WITHDRAWN | 1999 |
| Battery to a Public Officer..... | 1234 | 2008 |
| Battery to a Technical College District or School District Officer or Employee | 1235 | 2008 |
| Battery to a Public Transit Vehicle Operator or Passenger..... | 1236 | 2014 |
| Battery to an Emergency Medical Care Provider | 1237 | 2022 |
| Battery or Threat to a Witness [Witness Has Attended or Testified]..... | 1238 | 2022 |
| Battery or Threat to Witness [Witness Likely to be Called to Testify]..... | 1239 | 2004 |
| Battery or Threat to Judge..... | 1240 WITHDRAWN | 2003 |
| Battery to a Judge..... | 1240A | 2019 |
| Threat to a Judge..... | 1240B | 2020 |
| Battery to a Prosecutor or Law Enforcement Officer | 1240C | 2019 |
| Threat to a Prosecutor or Law Enforcement Officer..... | 1240D | 2019 |
| Battery to Guardian Ad Litem, Corporation Counsel, or Attorney..... | 1241A | 2022 |
| Threat to Guardian Ad Litem, Corporation Counsel, or Attorney | 1241B | 2022 |
| Battery or Threat to a Department of Revenue Employee | 1242 | 2022 |
| Battery to a Nurse | 1243 WITHDRAWN | 2022 |
| Battery or Threat to a Department of Safety and Professional Services or | | |
| Department of Workforce Development Employee..... | 1244 | 2022 |
| Battery to a County, City, Village, or Town Employee..... | 1245 | 2009 |
| Mayhem | 1246 | 2009 |
| Battery or Threat to a Staff Member of a Health Care Facility | 1247A | 2022 |
| Battery or Threat to a Health Care Provider | 1247B | 2022 |
| Sexual Exploitation by Therapist..... | 1248 | 2006 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm..... | 1249A | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Bodily Harm..... | 1249B | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm | | |
| to an Elder Person Under Circumstances or Conditions That are Likely to | | |
| Produce Great Bodily Harm..... | 1249C | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------------|------|
| Physical Abuse of an Elder Person: Reckless Causation of Great Bodily Harm | 1249D | 2022 |
| Physical Abuse of an Elder Person: Reckless Causation of Bodily Harm..... | 1249E | 2022 |
| Physical Abuse of an Elder Person: Reckless Causation of Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm | 1249F | 2022 |
| First Degree Reckless Injury..... | 1250 | 2020 |
| Second Degree Reckless Injury | 1252 | 2015 |
| Strangulation and Suffocation..... | 1255 | 2022 |
| Injury by Negligent Handling of a Dangerous Weapon..... | 1260 | 2011 |
| Injury (Great Bodily Harm) by Negligent Use of a Vehicle | 1261 RENUMBERED 2654 | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle While Under the Influence | 1262 | 2014 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.08 Grams or More..... | 1263 | 2006 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.02 Grams or More..... | 1263A | 2004 |
| Failure to Support | 1264 WITHDRAWN | 1989 |
| Abandonment of a Young Child | 1265 WITHDRAWN | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.25(1)(am) | 1266 | 2021 |
| Abuse of Individuals at Risk..... | 1268 | 2007 |
| Abuse of Individuals at Risk: Recklessly Subjecting an Individual at Risk to Abuse under Circumstances That Cause Great Bodily Harm | 1268 EXAMPLE | 2007 |
| Reckless Abuse of Vulnerable Adults | 1269 WITHDRAWN | 1999 |
| Abuse of Residents of Penal Facilities..... | 1270 | 2006 |
| Abuse of Patients and Residents | 1271 | 2011 |
| Abuse of Patients and Residents: Reckless Physical Abuse Causing Great Bodily Harm to an Individual at Risk..... | 1271 EXAMPLE | 2007 |
| Neglect of Patients and Residents..... | 1272 | 2021 |
| Law Enforcement Officer – Failure to Render Aid | 1273 | 2020 |
| False Imprisonment..... | 1275 | 2014 |
| Human Trafficking | 1276 | 2015 |
| Human Trafficking | 1276 EXAMPLE | 2015 |
| Human Trafficking | 1277 | 2016 |
| Taking a Hostage | 1278 | 2016 |
| Kidnapping..... | 1280 | 2016 |
| Kidnapping..... | 1281 | 2016 |
| Kidnapping..... | 1282 | 2006 |
| Placing a Global Positioning Device | 1283A | 2016 |
| Obtaining Information Generated by a Global Positioning Device | 1283B | 2016 |
| Stalking | 1284 | 2021 |
| Stalking: Penalty Factors | 1284A | 2011 |
| Stalking | 1284B | 2021 |

WIS JI-CRIMINAL

| | | |
|---|-----------------|--------|
| Abduction..... | 1285 WITHDRAWN | 1989 |
| Abduction..... | 1286 WITHDRAWN | 1989 |
| Abduction..... | 1287 WITHDRAWN | 1989 |
| Intimidation of a Witness: Misdemeanor..... | 1290 WITHDRAWN | 2001 |
| Intimidation of a Witness..... | 1292 | 2020 |
| Intimidation of a Witness; Felony: Force Threatened | | |
| Against a Relative of the Witness | 1292A WITHDRAWN | 2001 |
| Intimidation of a Victim: Misdemeanor..... | 1294 WITHDRAWN | 2001 |
| Intimidation of a Victim..... | 1296 | 1/2023 |
| Intimidation of a Person Acting on Behalf of a Victim | 1296A | 1/2023 |
| Intimidation of a Victim..... | 1297 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IIA

| | No. | Year |
|--|----------------------|------|
| CRIMES AGAINST PUBLIC HEALTH AND SAFETY | | |
| Negligent Operation of a Vehicle | 1300 | 2022 |
| Highway Obstruction | 1302 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant..... | 1305 RENUMBERED 1321 | 2021 |
| Negligent Handling of Burning Material | 1310 | 2007 |
| Giving a False Alarm | 1316 | 2007 |
| Interference with a Fire Alarm System | 1317 | 2007 |
| Interference with Fire Fighting | 1318 | 2007 |
| Interference with Fire Fighting Equipment..... | 1319 | 2007 |
| Endangering Safety by Use of a Dangerous Weapon: Negligent Operation or Handling..... | 1320 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant | 1321 | 2019 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at Another | 1322 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at a Law Enforcement Officer, Fire Fighter, Etc..... | 1322A | 2018 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm Within 100 Yards of Building | 1323 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm into a Vehicle or Building..... | 1324 | 2008 |
| Possession of Pistol by Minor: Minor Going Armed with a Pistol..... | 1325 WITHDRAWN | 1989 |
| Sale, Loan, or Gift of Pistol to Minor | 1326 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Discharging a Firearm from a Vehicle | 1327 | 2005 |
| Disarming a Peace Officer | 1328 | 2008 |
| Carrying a Concealed Weapon | 1335 | 2018 |
| Carrying a Concealed Weapon: Unlawful Purpose | 1335A | 2016 |
| Carrying a Concealed Weapon: Evidence of Exception | 1335B | 2012 |
| Carrying a Concealed Knife..... | 1336 | 2022 |
| Carrying a Firearm in a Public Building..... | 1337 | 2019 |
| Carrying a Handgun on Premises Where Alcohol Beverages are Consumed..... | 1338 | 2019 |
| Possession of a Switchblade Knife | 1340 | 2016 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1340A | 2008 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341 | 2007 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1341A | 2010 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341B | 2020 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm to a Peace Officer | 1341C | 2020 |
| Possession of Oleoresin of Capsicum (Pepper Spray) by a Convicted Felon..... | 1341D | 2020 |
| Possession of a Short-Barreled Shotgun or Rifle..... | 1342 | 2007 |
| | | |
| Possession of a Firearm | 1343 | 2021 |
| Possession of a Firearm by a Felon: Privilege | 1343A | 2008 |
| Furnishing a Firearm to a Felon..... | 1343B WITHDRAWN | 2019 |
| Straw Purchasing of a Firearm..... | 1343C | 2019 |
| Possession of a Firearm by a Person Subject to an Injunction..... | 1344 | 2019 |
| Possession of an Electric Weapon | 1344A | 2012 |
| First Degree Recklessly Endangering Safety..... | 1345 | 2020 |
| Second Degree Recklessly Endangering Safety | 1347 | 2015 |
| | | |
| Possession of Explosives for an Unlawful Purpose | 1350 | 2008 |
| Possession of an Improvised Explosive Device..... | 1351A | 2008 |
| Possession of Materials or Components with Intent to Assemble an Improvised Explosive Device | 1351B | 2008 |
| Administering a Dangerous or Stupefying Drug | 1352 | 2008 |
| Placing Foreign Objects in Edibles..... | 1354 | 2008 |
| Obstructing Emergency Medical Personnel..... | 1360 | 2018 |
| Throwing or Expelling a Bodily Substance at a Public Safety Worker or Prosecutor..... | 1365 | 2018 |
| Violating a No Contact Order | 1375 | 2013 |

CRIMES AGAINST REPUTATION AND CIVIL LIBERTIES

| | | |
|--|----------------|------|
| Defamation..... | 1380 | 2008 |
| Denial of Rights: In General | 1390 WITHDRAWN | 1992 |
| Denial of Rights: Written Communication | 1391 WITHDRAWN | 1992 |
| Invasion of Privacy: Use of a Surveillance Device..... | 1392 | 2020 |
| Invasion of Privacy: Looking into a Dwelling Unit..... | 1395 | 2017 |
| Invasion of Privacy: Use of a Device to View Under the Outer Clothing of an Individual | 1395A | 2016 |
| Representations Depicting Nudity | 1396 | 2017 |
| Publishing a Private Representation Depicting Nudity Without Consent..... | 1398A | 2020 |
| Publishing a Depiction That Is Known to Be a Private Representation of Nudity Without Consent..... | 1398B | 2020 |
| Soliciting an Intimate or Private Representation | 1399 | 2018 |

WIS JI-CRIMINAL

CRIMES AGAINST PROPERTY

| | | |
|--|-----------------|------|
| Criminal Damage to Property | 1400 | 2020 |
| Criminal Damage to Property: Vending and Other Machines | 1400A | 2017 |
| Criminal Damage to Property: Energy Provider Property | 1400B | 2020 |
| Damage or Threat to Property of a Witness..... | 1400C | 2020 |
| Criminal Damage to Religious or Cemetery Property | 1401A | 2003 |
| Criminal Damage to Facilities Associated with Designated Groups | 1401B | 2003 |
| Criminal Damage to Personal Property Contained in Religious, Cemetery or Other Property | 1401C | 2003 |
| Criminal Damage or Threat to Property of a Judge | 1402A | 2004 |
| | | |
| Criminal Damage or Threat to Property of a Department of Revenue Employee | 1402B | 2004 |
| Graffiti | 1403 | 2010 |
| Arson of a Building of Another | 1404 | 2008 |
| Arson of a Building with Intent to Defraud an Insurer | 1405 | 2008 |
| Arson of Property Other Than a Building..... | 1408 | 2011 |
| | | |
| Arson (Of Property Other Than a Building) with Intent to Defraud..... | 1410 | 2001 |
| Molotov Cocktails (Firebombs): Possession..... | 1417 | 2008 |
| Molotov Cocktails (Firebombs): Manufacture, Sale, Offer to Sell, Gift or Transfer..... | 1418 | 2008 |
| | | |
| Burglary with Intent to Steal..... | 1421 | 2020 |
| Burglary with Intent to Steal; While Armed with a Dangerous Weapon | 1422 WITHDRAWN | 1997 |
| Burglary with Intent to Commit a Felony | 1424 | 2022 |
| Burglary While Armed | 1425A | 2005 |
| Burglary: Arming Oneself with a Dangerous Weapon While in the Enclosure | 1425B | 2005 |
| Burglary: Committing a Battery While in the Enclosure..... | 1425C | 2005 |
| Burglary: Person Lawfully Present in the Enclosure | 1425E | 2005 |
| Entry into a Locked Vehicle | 1426 | 2008 |
| | | |
| Possession of Burglarious Tools | 1431 | 2008 |
| | | |
| Entry into Locked Coin Box | 1433 | 2004 |
| Criminal Trespass to Dwellings..... | 1437 | 2017 |
| Entry into a Locked Dwelling..... | 1438 | 2008 |
| Criminal Trespass to a Medical Facility | 1439 | 2008 |
| Criminal Trespass to an Energy Provider Property..... | 1440 | 2020 |
| | | |
| Theft..... | 1441 | 2022 |
| Determining Value in Theft Cases..... | 1441A WITHDRAWN | 2002 |
| Theft: Penalty Factors | 1441B | 2020 |
| Theft from Person | 1442 WITHDRAWN | 1999 |
| Theft by Contractor..... | 1443 | 2022 |
| Theft by Contractor: Defendant Is a Corporate Officer | 1443A | 2022 |
| Theft by Employee, Trustee, or Bailee (Embezzlement)..... | 1444 | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Theft by One Having an Undisputed Interest in Property from One Having Superior Right of Possession | 1450 | 2022 |
| Theft by Fraud..... | 1453 WITHDRAWN | 2006 |
| Theft by Fraud: Representations Made to the Owner, Directly or by a Third Person | 1453A | 2022 |
| Theft by Fraud: Representations Made to an Agent | 1453B | 2022 |
| Theft by Fraud: Failure to Disclose as a Representation | 1453C | 2022 |
| Theft by Failure to Return Leased or Rented Property | 1455 | 2022 |
| Mail Theft | 1457 | 1/2023 |
| Unauthorized Use of an Individual's Personal Identifying Information or Documents..... | 1458 | 2019 |
| Unauthorized Use of an Entity's Identifying Information or Documents | 1459 | 2019 |
| Failure to Disclose Manufacturer of Recording..... | 1460 | 2014 |
| Fraud on Hotel or Restaurant Keeper | 1461 | 2010 |
| Absconding Without Paying Rent..... | 1462 | 2010 |
| Absconding Without Paying Rent: Affirmative Defense..... | 1462A | 2008 |
| Taking a Vehicle by Use or Threat of Force..... | 1463 | 2003 |
| Taking a Vehicle by Use or Threat of Force..... | 1463A | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent..... | 1464 | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent: Driving or Operating Without the Owner's Consent as a Lesser Included Offense | 1464A | 2019 |
| Driving or Operating a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent | 1465 | 2019 |
| Operating Without Owner's Consent: Affirmative Defense..... | 1465A | 2019 |
| Intentionally Accompanying a Person Who Operates a Vehicle Without the Owner's Consent | 1466 | 2016 |
| Removing a Major Part of a Vehicle Without the Owner's Consent..... | 1467 | 2001 |
| Issue of a Worthless Check: Misdemeanor..... | 1468 | 2004 |
| Issue of a Worthless Check: Felony: One Check for \$2,500 or More | 1469A | 2004 |
| Issue of a Worthless Check: Felony: Series of Checks Totaling \$2,500 or More | 1469B | 2004 |
| Transfer of Encumbered Personal Property with Intent to Defraud | 1470 | 2008 |
| Loan Sharking (Extortionate Extension of Credit) | 1472A | 2009 |
| Loan Sharking (Advancements for Extortionate Extensions of Credit) | 1472B | 2009 |
| Loan Sharking (Use of Extortionate Means) | 1472C | 2009 |
| Extortion: Accuse or Threaten to Accuse | 1473A | 2004 |
| Extortion: Injure or Threaten to Injure..... | 1473B | 2022 |
| Threats to Communicate Derogatory Information..... | 1474 | 2017 |
| Robbery by the Use of Force | 1475 WITHDRAWN | 2009 |
| Robbery by Threat of Force..... | 1477 WITHDRAWN | 2009 |
| Robbery by the Use or Threat of Force..... | 1479 | 2009 |
| Armed Robbery: By Use or Threat of Use of a Dangerous Weapon..... | 1480 | 2016 |

WIS JI-CRIMINAL

| | | |
|---|-------------------------|--------|
| Armed Robbery: By Use of an Article the Victim Reasonably Believes is a Dangerous Weapon | 1480A | 2016 |
| Receiving Stolen Property | 1481 | 2012 |
| Fraudulent Writings: Falsifying a Corporate Record..... | 1485 | 2004 |
| Fraudulent Writings: Obtaining a Signature by Means of Deceit..... | 1486 | 2001 |
| Possession of Property with Altered Identification Marks | 1488 | 2009 |
| Forgery (by Making or Altering a Check) | 1491 | 2009 |
| Uttering a Forged Writing (Check)..... | 1492 | 2009 |
| | | |
| Possession of a Forged Writing (Check) with Intent to Utter..... | 1493 | 2009 |
| Fraudulent Insurance Claim: Presenting a False or Fraudulent Claim..... | 1494 | 2003 |
| Theft of Telecommunications Service | 1495 | 2014 |
| Theft of a Financial Transaction Card | 1496 | 2009 |
| Fraudulent Use of a Financial Transaction Card | 1497 | 2003 |
| Fraudulent Use of a Financial Transaction Card | 1497A | 2003 |
| Financial Transaction Card Factoring..... | 1497B RENUMBERED 1497.1 | 2003 |
| Retail Theft | 1498 | 2020 |
| Retail Theft: Removing a Theft Detection Device | 1498A | 2020 |
| Retail Theft: Using a Theft Detection Shielding Device | 1498B | 2020 |
| Theft of Services | 1498C | 2020 |
| Criminal Slander of Title | 1499 | 2009 |
| Crimes Against Sexual Morality..... | 1500-1529 WITHDRAWN | 1996 |
| Computer Crime..... | 1504 | 2007 |
| Computer Crime..... | 1505 | 2009 |
| Computer Crime..... | 1506 | 2007 |
| Crimes Against Financial Institutions..... | 1508 | 1/2023 |
| Incest: Sexual Intercourse Between Father and Daughter | 1510 | 2008 |
| Fraud Against a Financial Institution..... | 1512 | 2017 |
| Robbery of a Financial Institution | 1522 | 2017 |
| Money Laundering — § 943.895(2)(a)1 - 2. | 1524 | 1/2023 |
| Money Laundering — § 943.895(2)(a)3. | 1525 | 1/2023 |
| Money Laundering — § 943.895(2)(a)4..... | 1526 | 1/2023 |

CRIMES AGAINST SEXUAL MORALITY

| | | |
|---|----------------|------|
| Enticing Children for Immoral Purposes | 1530 WITHDRAWN | 1989 |
| Incest: Sexual Intercourse Between Blood Relatives..... | 1532 | 2022 |
| Fornication: Sexual Intercourse in Public..... | 1535 | 2016 |
| Fornication: Sexual Intercourse with a Person Younger Than 18 Years | 1536 WITHDRAWN | 1989 |
| Sexual Gratification in Public..... | 1537 | 2021 |
| Sexual Gratification with a Person Younger Than 18 Years | 1538 WITHDRAWN | 1989 |
| Lewd and Lascivious Behavior - Exposing Genitals or Pubic Area | 1544 | 2007 |
| Lewd and Lascivious Behavior by Cohabitation with a Person Not His Spouse..... | 1545 WITHDRAWN | 1996 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Commitment and Continuance of Control Under the Sex Crimes Law | 1550-1553 WITHDRAWN | 1996 |
| Prostitution: Nonmarital Sexual Intercourse..... | 1560 | 2016 |
| Prostitution: Act of Sexual Gratification | 1561 | 2006 |
| Patronizing Prostitutes | 1564 | 2018 |
| Soliciting to Practice Prostitution | 1566 | 2016 |
| Pandering | 1568 | 2015 |
| Pandering | 1568A | 2016 |
| Pandering | 1568B | 2016 |
| Keeping a Place of Prostitution..... | 1570 | 2016 |
| Granting the Use of a Place as a Place of Prostitution..... | 1571 | 2016 |

CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

| | | |
|--|------|--------|
| Commercial Gambling: Operating a Gambling Place for Gain | 1601 | 2002 |
| Commercial Gambling: Receiving a Bet for Gain..... | 1602 | 2002 |
| Commercial Gambling: Collecting the Proceeds of a Gambling Machine | 1605 | 1/2023 |
| Commercial Gambling: Using Wire Communication to Place a Bet..... | 1607 | 2002 |
| Permitting Real Estate to be Used as a Gambling Place..... | 1610 | 2009 |
| Altering a Lottery Ticket | 1650 | 2009 |
| Uttering an Altered Lottery Ticket..... | 1651 | 2009 |
| Possession of an Altered Lottery Ticket with Intent to Defraud..... | 1652 | 2009 |
| Sabotage..... | 1705 | 2009 |
| Bribery – Transferring Property to a Public Employee to Induce Action or Failure to Act..... | 1720 | 2009 |
| Bribery – Transferring Property to a Public Officer to Influence a Decision | 1721 | 2009 |
| Bribery – Accepting a Bribe | 1723 | 2009 |
| Misconduct in Public Office (by Failure or Refusal to Perform Duty)..... | 1730 | 2008 |
| Misconduct in Public Office (by Performance of Unauthorized or Forbidden Act)..... | 1731 | 2008 |
| Misconduct in Public Office (by Exercise of Discretionary Power for a Dishonest Advantage) | 1732 | 2008 |
| Misconduct in Public Office (by False Entry, Return, Certificate, Report, or Statement) | 1733 | 2008 |
| Misconduct in Public Office (by Unlawful Solicitation or Acceptance of Anything of Value)..... | 1734 | 2008 |
| Private Interest in a Public Contract: Entering into a Contract in a Private Capacity and Being Authorized by Law to Participate in the Making of the Contract as a Public Officer | 1740 | 2009 |
| Private Interest in a Public Contract: Participating in the Making of a Contract in Which One Has a Private Pecuniary Interest..... | 1741 | 2009 |
| Private Interest in a Public Contract: Performing a Discretionary Function in Regard to a Contract in Which One Has a Private Pecuniary Interest | 1742 | 2009 |
| Perjury..... | 1750 | 2020 |
| False Swearing: False Statement Under Oath: Felony..... | 1754 | 2004 |
| False Swearing: Inconsistent Statements | 1755 | 2004 |
| False Swearing: False Statement Under Oath: Misdemeanor..... | 1756 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Resisting an Officer | 1765 | 2012 |
| Obstructing an Officer | 1766 | 2010 |
| Obstructing an Officer: Giving False Information..... | 1766A | 2010 |
| Failure to Comply with an Officer's Attempt to Take a Person into Custody | 1768 | 2008 |
| | | |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Forfeiture Offense | 1770 | 2008 |
| Escape from Custody Resulting from Violation of Probation, Parole, or Extended Supervision | 1771 | 2009 |
| Escape from Custody Resulting from Legal Arrest for a Crime..... | 1772 | 2008 |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Crime | 1773 WITHDRAWN | 2008 |
| Escape from Custody: Jail or Prison Escape..... | 1774 | 2008 |
| Escape from Custody: Chapter 980 Custody Order..... | 1775 | 2008 |
| Escape: Individual with Custody Injured..... | 1775A | 2009 |
| Failure to Report to Jail: Periods of Imprisonment..... | 1776 | 1/2023 |
| Failure to Report to Jail: After Stay of Sentence | 1777A | 1/2023 |
| Failure to Report to Jail: Confinement Order | 1777B | 1/2023 |
| | | |
| Assault by a Prisoner: Placing an Officer, Employee, Visitor, or Inmate in Apprehension of an Immediate Battery Likely to Cause Death or Great Bodily Harm | 1778 | 2001 |
| Assault by a Prisoner: Restraining or Confining an Officer, Employee, Visitor, or Inmate | 1779 | 2001 |
| Assault by a Prisoner: Throwing or Expelling a Bodily Substance at an Officer, Employee, Visitor, or Inmate..... | 1779A | 2001 |
| Permitting Escape | 1780 | 2008 |
| Assisting Escape | 1781 | 2008 |
| Assisting Escape by Public Officer or Employee..... | 1782 | 2008 |
| Introducing a Firearm into an Institution | 1783 | 2008 |
| Inmate Possessing an Article With Intent to Retain..... | 1784 | 2021 |
| Delivering an Article to an Inmate..... | 1785 | 2021 |
| Possessing an Article with Intent to Deliver it to an Inmate..... | 1786 | 2021 |
| Receiving an Article From an Inmate to Convey Out of Jail or Prison | 1787 | 2021 |
| Encouraging a Violation of Probation, Extended Supervision or Parole..... | 1788 | 2011 |
| | | |
| Aiding a Felon..... | 1790 | 2015 |
| Aiding a Felon by Destroying, etc., Physical Evidence..... | 1791 | 2015 |
| Bail Jumping | 1795 | 2018 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME III

| | No. | Year |
|---|---------------------|-------------|
| CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION (continued) | | |
| Concealing Identity..... | 1805 RENUMBERED 994 | 1986 |
| Bribery of Witness: Transferring Property | 1808A | 2021 |
| Bribery of Witness: Accepting a Bribe | 1808B | 2021 |
| Concealing Death of Child..... | 1810 WITHDRAWN | 1989 |
| Communicating with a Juror..... | 1812 | 2009 |
| | | |
| Obstructing Justice..... | 1815 | 2009 |
| Simulating Legal Process..... | 1825 | 2009 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel..... | 1830 | 2018 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel with Intent to Commit a Crime..... | 1831 WITHDRAWN | 2018 |
| Interference with Custody of a Child..... | 1832 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1833 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1834 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1835 WITHDRAWN | 1989 |
| Interference with Custody of a Nonmarital Child..... | 1835A WITHDRAWN | 1989 |
| Interference with the Parental Rights of the Other Parent: Concealing a Child | 1838 WITHDRAWN | 1989 |
| | | |
| Unemployment Insurance Fraud: Making a False Statement to Obtain a Benefit Payment | 1848 | 2019 |
| Welfare Fraud: Making False Representations to Secure Public Assistance..... | 1850 | 2015 |
| Public Assistance Fraud: Concealing or Failing to Disclose an Event Affecting Eligibility | 1851 | 2015 |
| Welfare Fraud: Failure to Report Receipt of Income or Assets..... | 1852 WITHDRAWN | 2015 |
| Welfare Fraud: Failure to Notify Authorities of Change of Facts | 1854 WITHDRAWN | 2015 |
| Food Stamp Fraud: Misstating Facts on an Application..... | 1862 | 2015 |
| | | |
| Medical Assistance Fraud: Making a False Statement in an Application for a Benefit or Payment..... | 1870 | 2015 |
| | | |
| Racketeering Activity – Using Proceeds of a Pattern of Racketeering Activity to Establish or Operate an Enterprise..... | 1881 | 2008 |
| Racketeering Activity – Acquiring or Maintaining an Interest in or Control of an Enterprise Through a Pattern of Racketeering Activity | 1882 | 2008 |
| Racketeering Activity – Conducting or Participating in an Enterprise Through a Pattern of Racketeering Activity | 1883 | 2008 |

WIS JI-CRIMINAL

CRIMES AGAINST PUBLIC PEACE, ORDER, AND OTHER INTERESTS

| | | |
|--|-----------------|-------------|
| Disorderly Conduct..... | 1900 | 2022 |
| Disrupting a Funeral or Memorial Service | 1901 | 2007 |
| Disrupting a Funeral or Memorial Service: Impeding Vehicles | 1901A | 2007 |
| Unlawful Use of Telephone | 1902 | 2008 |
| Unlawful Use of Telephone | 1903 | 2008 |
| Unlawful Use of Telephone | 1904 | 2008 |
| Unlawful Use of Telephone | 1905 RENUMBERED | 1907 1993 |
| Unlawful Use of Telephone | 1906 | 2008 |
| Unlawful Use of Telephone | 1907 | 2008 |
| Unlawful Use of a Computerized Communication System: Threat to Inflict Injury | 1908 | 2008 |
| Unlawful Use of a Computerized Communication System: Use of Obscene Language | 1909 | 2008 |
| Harassment: Subjecting Another to Physical Contact | 1910 | 2003 |
| Harassment: Threatening Physical Contact with Another | 1911 RENUMBERED | 1910.1 2003 |
| Harassment: Engaging in a Course of Conduct Which Harasses or Intimidates Another | 1912 | 2003 |
| Swatting | 1919 | 2020 |
| Bomb Scares | 1920 | 2020 |
| Intentional Terrorist Threats | 1925A | 2017 |
| Reckless Terrorist Threats | 1925B | 2017 |
| Failure to Withdraw from an Unlawful Assembly..... | 1930 | 2008 |
| Contributing to Delinquency or Neglect of Children..... | 1960 WITHDRAWN | 1989 |
| Contributing to Delinquency of Children by Parent, Guardian, or Legal Custodian | 1961 WITHDRAWN | 1989 |

CRIMES AGAINST ANIMALS

| | | |
|---|------|------|
| Mistreating an Animal | 1980 | 2013 |
| Harassment of Police or Fire Animals | 1981 | 2005 |
| Failing to Provide an Animal with Sufficient Food and Water | 1982 | 2005 |
| Dognapping and Catnapping..... | 1983 | 2005 |
| Failing to Provide an Animal with Proper Shelter | 1984 | 2005 |
| Instigating Fights Between Animals..... | 1986 | 2009 |
| Keeping an Animal with Intent That it Engage in Fighting..... | 1988 | 2009 |

ABANDONMENT

| | | |
|--|----------------|------|
| Abandonment by Husband or Father | 2000 WITHDRAWN | 1996 |
|--|----------------|------|

PATERNITY

| | | |
|-----------------|----------------|------|
| Paternity | 2010 WITHDRAWN | 1996 |
|-----------------|----------------|------|

JUVENILE DELINQUENCY

| | | |
|--|----------------|------|
| Juvenile Delinquency: Composite Instruction | 2020 WITHDRAWN | 2009 |
| Sample: Delinquency Under Chapter 48: Burglary | 2021 WITHDRAWN | 2009 |
| Contempt of Court: Punitive Sanction..... | 2031 | 2009 |

WIS JI-CRIMINAL

ORDINANCE VIOLATIONS

| | | |
|--|---|------|
| Violating a Temporary Restraining Order or an Injunction..... | 2040 | 2019 |
| Violating a Foreign Protection Order..... | 2042 | 2002 |
| Violating a Domestic Abuse Contact Prohibition – § 968.075(5) | 2044 | 2013 |
| Burden of Proof: Forfeiture Actions and Five-Sixths Verdict: Forfeiture Actions | 2050, 2055 RENUMBERED 140A and 515A, respectively | 1994 |

CRIMES AGAINST CHILDREN

| | | |
|--|--------------|------|
| Sexual Contact | 2101A | 2007 |
| Sexual Intercourse..... | 2101B | 2010 |
| Introductory Comment: § 948.02 Sexual Assault of a Child: As Amended by 2007 Wisconsin Act 80 [Effective Date: March 27, 2008] and 2013 Wisconsin Act 167 [Effective Date: March 29, 2014]..... | 2102 | 2019 |
| First Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 13 Years: Causing Great Bodily Harm..... | 2102A | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 12 Years | 2102B | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence..... | 2102C | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence by a Person Who Has Attained the Age of 18 Years | 2102D | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years | 2102E | 2015 |
| Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years | 2104 | 2020 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Actual Child | 2105A | 2005 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Fictitious Child..... | 2105B | 2005 |
| Sexual Assault of a Child: Failing to Act to Prevent Sexual Intercourse or Sexual Contact | 2106 | 2009 |
| Law Note: “Person Responsible for the Child’s Welfare”..... | 2106A | 2010 |
| Repeated Acts of Sexual Assault of a Child | 2107 | 2019 |
| Repeated Acts of Sexual Assault of a Child | 2107 EXAMPLE | 2009 |
| Physical Abuse of a Child: Intentionally Causing Great Bodily Harm | 2108 | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Great Bodily Harm..... | 2108A | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Reckless Causing of Great Bodily Harm | 2108B | 2015 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm | 2109 | 2009 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm by Conduct Which Creates a High Probability of Great Bodily Harm | 2110 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Great Bodily Harm..... | 2111 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Bodily Harm | 2112 | 2009 |

WIS JI-CRIMINAL

| | | |
|---|----------------|------|
| Physical Abuse of a Child: Recklessly Causing Bodily Harm by Conduct which Creates a High Probability of Great Bodily Harm | 2113 | 2009 |
| Physical Abuse or Sexual Assault of a Child by a Person Responsible for the Welfare of the Child | 2114 | 2003 |
| Repeated Acts of Physical Abuse of a Child | 2114A | 2019 |
| Repeated Acts of Physical Abuse of a Child | 2114A EXAMPLE | 2017 |
| Sexual Assault or Physical Abuse of a Child by a Child Care Provider | 2115 | 2019 |
| Causing Mental Harm to a Child | 2116 | 2009 |
| | | |
| Failure to Report Child Abuse | 2119 | 2012 |
| Sexual Exploitation of a Child | 2120 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2120A | 2020 |
| Sexual Exploitation of a Child | 2121 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2121A | 2020 |
| Sexual Exploitation of a Child | 2122 | 2020 |
| Sexual Exploitation of a Child: By a Person Responsible for the Child's Welfare | 2123 | 2020 |
| Trafficking of a Child | 2124 | 2017 |
| Causing a Child to View or Listen to Sexual Activity | 2125 | 2020 |
| | | |
| Incest with a Child: Sexual Intercourse or Contact | 2130 | 2008 |
| Incest with a Child: Sexual Intercourse or Contact by Stepparent | 2131 | 2008 |
| Child Enticement: Completed Act | 2134 | 2018 |
| Child Enticement: Attempt: Actual Child | 2134A | 2018 |
| Child Enticement: Attempt: Fictitious Child | 2134B | 2018 |
| Use of a Computer to Facilitate a Child Sex Crime | 2135 | 2017 |
| Soliciting a Child for Prostitution | 2136 | 2009 |
| Patronizing a Child | 2136A | 2018 |
| Sexual Assault of a Foster Child | 2137A | 2010 |
| Sexual Assault of a Child Placed in a Substitute Care Facility | 2137B | 2007 |
| Sexual Intercourse with a Child | 2138 | 2018 |
| Underage Sexual Activity | 2138A | 2018 |
| Sexual Assault of a Student by a School Staff Person | 2139 | 2007 |
| Sexual Assault of a Child by a Person Who Works or Volunteers with Children | 2139A | 2007 |
| | | |
| Exposing Genitals or Pubic Area to a Child | 2140 | 2015 |
| Causing a Child to Expose Genitals or Pubic Area | 2141 | 2015 |
| Exposing a Child to Harmful Material | 2142 | 2019 |
| Exposing a Child to Harmful Material: Face-to-Face Contact Affirmative Defense | 2142A | 2009 |
| Exposing a Child to Harmful Material: Verbally Communicating a Harmful Description or Narrative Account | 2143 | 2019 |
| Possession of Child Pornography | 2146 WITHDRAWN | 2003 |
| Child Pornography: Possession of a Recording | 2146A | 2020 |
| Child Pornography: Exhibiting or Playing a Recording | 2146B | 2020 |
| Child Sex Offender Working with Children | 2147 | 2007 |
| Abandonment of a Child | 2148 | 2003 |
| | | |
| Neglecting a Child | 2150 | 2019 |
| Neglecting a Child: Death, Great Bodily Harm, or Bodily Harm as a Consequence | 2150A | 2019 |
| Chronic Neglect of a Child; Repeated Acts of Neglect | 2151 | 2019 |
| Failure to Support | 2152 | 2006 |

WIS JI-CRIMINAL

| | | |
|---|-------|--------|
| Failure to Support: Affirmative Defense | 2152A | 2001 |
| Concealing Death of Child..... | 2154 | 2013 |
| Abduction of Another’s Child: Taking from Home or Custody | 2160 | 1/2023 |
| Abduction of Another’s Child: Detaining Away from Home..... | 2161 | 1/2023 |
| Abduction of Another’s Child: Taking by Force or Threat of Force | 2162 | 1/2023 |
| Abduction of Another’s Child: Detaining by Force or Threat of Force..... | 2163 | 1/2023 |
| Interference with Custody of a Child..... | 2166 | 2015 |
| Interference with Custody of a Child..... | 2167 | 2009 |
| Interference with Custody of a Nonmarital Child..... | 2167A | 2009 |
| Interference with the Custody of a Child by a Parent: Concealing a Child | 2168 | 2009 |
| Interference with the Custody of a Child: Affirmative Defenses..... | 2169 | 2009 |
| Contributing to the Delinquency of a Child..... | 2170 | 1/2023 |
| Contributing to the Delinquency of a Child: Death as a Consequence..... | 2170A | 1/2023 |
| Contributing to the Delinquency of a Child by a Person Responsible for the Child’s Welfare | 2171 | 1/2023 |
| Contributing to Truancy..... | 2173 | 2006 |
| Compulsory School Attendance..... | 2174 | 2006 |
| Child Unattended in a Child Care Vehicle..... | 2175 | 2013 |
| Possession of a Dangerous Weapon by a Child..... | 2176 | 2012 |
| Sale, Loan, or Gift of a Dangerous Weapon to a Child | 2177 | 2012 |
| Sale, Loan, or Gift of a Firearm to a Child: Death Caused..... | 2177A | 2009 |
| Possession of a Firearm on School Grounds..... | 2178A | 2016 |
| Discharge of a Firearm in a School Zone | 2178B | 2016 |
| Dangerous Weapons Other Than Firearms on School Premises | 2179 | 2009 |
| Receiving Stolen Property from a Child | 2180 | 2012 |
| Recklessly Storing a Firearm | 2185 | 2013 |
| Registered Sex Offender and Photographing Minors | 2196 | 2008 |
| Failure to Comply with Sex Offender Registration Requirements | 2198 | 2021 |
| Sex Offender Name Change | 2199 | 1/2023 |

INQUEST

| | | |
|--|-------|------|
| Inquest: Preliminary Instruction..... | 2300 | 2010 |
| Inquest: Final Instructions: Explanation of Verdicts | 2302 | 2010 |
| Inquest: Suggested Verdicts..... | 2302A | 2010 |

SEXUALLY VIOLENT PERSON

| | | |
|---|------|------|
| Suggested Order of Instructions: Commitment as a Sexually Violent Person under Chapter 980, Wis. Stats. | 2500 | 2016 |
| Preliminary Instruction: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2501 | 2011 |
| Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats..... | 2502 | 2021 |
| Verdict: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2503 | 2011 |
| Preliminary Instruction: Hearing on Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2505 | 2014 |

WIS JI-CRIMINAL

Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats..... 2506 2021

VEHICLE CODE

| | | |
|--|-----------------|--------|
| Making a False Statement in an Application for a Certificate of Title | 2590 | 2004 |
| Operating While Intoxicated: Introductory Comment | 2600 | 2011 |
| Premises Other Than Highways..... | 2605 | 2011 |
| Operating a Motor Vehicle Without a Valid Operator's License - Criminal Offense | 2610 | 2013 |
| Operating a Motor Vehicle Without a Valid Operator's License: Causing Great Bodily Harm or Death - Criminal Offense | 2612 | 2013 |
| Operating While Revoked: Criminal Offense: Based on Prior Conviction | 2620 | 2010 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense..... | 2620A | 2018 |
| Operating A Motor Vehicle After Revocation or Suspension - Civil Forfeiture | 2620A WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Notice Mailed | 2620B WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Duty to Exercise Due Care..... | 2620C WITHDRAWN | 2006 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense | 2621 | 2018 |
| Operating While Revoked: Civil Forfeiture..... | 2621A | 2018 |
| Operating While Suspended: Civil Forfeiture | 2622 | 2013 |
| Operating While Revoked or Suspended: Criminal Offense: Causing Great Bodily Harm or Death | 2623 WITHDRAWN | 2013 |
| Operating While Suspended: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623A | 2013 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623B | 2018 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623C | 2018 |
| Operating While Revoked: Criminal Offense: Permanent Revocation | 2626 | 2019 |
| Operating a Motor Vehicle to Flee or in an Attempt to Elude an Officer..... | 2630 | 2019 |
| Resisting a Traffic Officer by Failing to Stop..... | 2632 | 2019 |
| Reckless Driving: Endangering Safety (Criminal Offense)..... | 2650 | 1/2023 |
| Reckless Driving: Causing Bodily Harm..... | 2652 | 1/2023 |
| Reckless Driving: Causing Great Bodily Harm..... | 2654 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IV

| | No. | Year |
|---|---------------------|--------|
| VEHICLE CODE (continued) | | |
| Introductory Comment..... | 2660-2665 WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – 0.08 Grams or More..... | 2660 | 2020 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660A | 2015 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660B WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams | 2660C | 2007 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams – Subject to an Ignition Interlock Order..... | 2660D | 2011 |
| Operating a Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More | 2661 | 2017 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More – § 346.63(2)(a) | 2661A WITHDRAWN | 2004 |
| Operating a Vehicle While Intoxicated and Causing Injury: Affirmative Defense Under § 346.63(2)(b)..... | 2662 WITHDRAWN | 2004 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Criminal Offense..... | 2663 | 1/2023 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture..... | 2663A | 2006 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture – No Alcohol Concentration Test..... | 2663B | 2019 |
| Alcohol Concentration Level..... | 2663C | 2004 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant with a Child under 16 Years of Age in the Motor Vehicle | 2663D | 2011 |
| Operating a Motor Vehicle While Under the Influence of a Controlled Substance – Criminal Offense..... | 2664 | 2020 |
| Operating a Motor Vehicle While Under the Influence of a Combination of an Intoxicant and a Controlled Substance – Civil Forfeiture | 2664A | 2022 |
| Operating a Motor Vehicle with a Detectable Amount of a Restricted Controlled Substance..... | 2664B | 2021 |
| Operating a Vehicle While Under the Influence of an Intoxicant and Causing Injury | 2665 | 2017 |
| Operating a Motor Vehicle While Under the Influence of a Drug – Criminal Offense..... | 2666 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|-------|--------|
| Operating a Motor Vehicle While Under the Influence of any Combination of an Intoxicant and any other Drug to a Degree that Renders Him or Her Incapable of Safely Driving | 2666A | 2022 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant: Hazardous Inhalant..... | 2667 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Civil Forfeiture..... | 2668 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2669 | 2015 |
| Failure to Give Information or Render Aid Following an Accident..... | 2670 | 2018 |
| Speeding: Exceeding a Reasonable and Prudent Speed Under § 346.57(2) or an Ordinance Adopting § 346.57(2)..... | 2672 | 1/2023 |
| Law Note: The “Justification” Defense | 2672A | 2010 |
| Speeding: Exceeding a Reasonable and Prudent Speed Criminal Offense under § 346.57(2); § 346.60 (3m)(a)2 | 2672B | 1/2023 |
| Speeding: Driving Too Fast for Conditions Under § 346.57(3) or an Ordinance Adopting § 346.57(3)..... | 2674 | 1/2023 |
| Speeding: Driving Too Fast for Conditions Criminal Offense under § 346.57(3); § 346.60 (3m)(a)2 | 2674A | 1/2023 |
| Speeding: Exceeding Fixed Limits Under § 346.57(4)(e) or an Ordinance Adopting § 346.57(4)(e)..... | 2676 | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Under § 346.57(4)(gm) or an Ordinance Adopting § 346.57(4)(gm)..... | 2676A | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Criminal Offense under § 346.57(4)(gm); § 346.60 (3m)(a)2 | 2676B | 1/2023 |
| Speeding: Exceeding Fixed Limits Criminal Offense under § 346.57(4)(e); § 346.60 (3m)(a)2..... | 2676C | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Under § 346.57(4)(h) or an Ordinance Adopting § 346.57(4)(h)..... | 2677 | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Criminal Offense under § 346.57(4)(h); § 346.60 (3m)(a)2..... | 2677A | 1/2023 |
| Speeding: Exceeding Posted Limits Under § 346.57(5) or an Ordinance Adopting § 346.57(5)..... | 2678 | 1/2023 |
| Speeding: Exceeding Posted Limits Criminal Offense under § 346.57(5); § 346.60 (3m)(a)2 | 2678A | 1/2023 |
| Radar Speed Measurement | 2679 | 2010 |
| Noncriminal Traffic Violations: Prohibited by State Law or an Ordinance Adopting State Law | 2680 | 2015 |
| Tampering with an Ignition Interlock Device..... | 2682A | 2014 |
| Failing to Install an Ignition Interlock Device | 2682B | 2021 |
| Operating a Commercial Motor Vehicle with an Alcohol Concentration of 0.04 Grams or More but Less Than 0.08 Grams – Criminal Offense | 2690 | 2004 |
| Operating a Motorboat While under the Influence of an Intoxicant: Criminal Offense..... | 2695 | 2013 |
| Operating a Motorboat While under the Influence of an Intoxicant / | | |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| Operating a Motorboat with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2696 | 2013 |
| SECURITIES FRAUD | | |
| Offering or Selling an Unregistered Security | 2902 | 2014 |
| Securities Fraud: Making an Untrue Statement of Material Fact in Connection with the Sale of a Security | 2904 | 2014 |
| Possession of Untagged Deer..... | 5000 | 2003 |
| Failure to File an Individual Income Tax Return..... | 5010 | 2010 |
| Filing a False or Fraudulent Return | 5012 | 2010 |
| Theft of Anhydrous Ammonia..... | 5024 | 2003 |
| INTOXICATING LIQUORS | | |
| Sale of Intoxicating Liquors to a Minor by a Tavern Keeper | 5030 WITHDRAWN | 2010 |
| Selling Fermented Malt Beverage Without a License | 5035 | 2005 |
| Sale to or Procurement for Any Minor of Intoxicating Liquors by any Person..... | 5040 WITHDRAWN | 2010 |
| Causing Injury or Death to an Underage Person by Providing Alcohol Beverages | 5050 | 2007 |
| HAZARDOUS WASTE | | |
| Storing, Treating, Transporting, or Disposing of Hazardous Waste Without a License..... | 5200 | 2010 |
| ELECTION FRAUD | | |
| Election Fraud – Unqualified Elector | 5301 | 2009 |
| Carrying a Weapon by Licensee Where Prohibited..... | 5401 | 2012 |
| CONTROLLED SUBSTANCES | | |
| Note on the Knowledge Requirement in Controlled Substance Cases | 6000 | 2010 |
| Finding the Amount of Controlled Substance..... | 6001 | 2022 |
| Finding the Amount of Controlled Substance in a Methamphetamine Case | 6001A EXAMPLE | 2018 |
| Delivering a Controlled Substance to a Minor..... | 6002 | 2003 |
| Delivering a Controlled Substance to a Prisoner | 6003 | 2003 |
| Delivering a Controlled Substance on or Near Certain Premises | 6004 | 2003 |
| Controlled Substance Analog | 6005 | 2010 |
| Possession of a Controlled Substance Without Tax Stamp | 6009 WITHDRAWN | 2019 |
| Delivery of a Controlled Substance | 6020 | 2018 |

WIS JI-CRIMINAL

| | | |
|--|-----------------------|------|
| Delivery of a Controlled Substance Analog | 6020A | 2018 |
| Manufacture of a Controlled Substance..... | 6021 | 2010 |
| Possession of a Controlled Substance..... | 6030 | 2021 |
| Attempted Possession of a Controlled Substance | 6031 | 2021 |
| Possession of a Controlled Substance with Intent to Deliver with Lesser Included Offense of Possession of a Controlled Substance | 6035 | 2018 |
| Possession of a Controlled Substance with Intent to Manufacture with Lesser Included Offense of Possession of a Controlled Substance | 6036 | 2018 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037 RENUMBERED 6037B | 1994 |
| Keeping or Maintaining a Place Resorted to by Persons Using Controlled Substances in Violation of Chapter 961 for the Purpose of Using Controlled Substances | 6037A | 2008 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037B | 2010 |
| Acquiring Possession of a Controlled Substance by Misrepresentation | 6038 | 2010 |
| Delivery of an Imitation Controlled Substance: Felony | 6040 | 2006 |
| Delivery of an Imitation Controlled Substance: Misdemeanor..... | 6042 | 2006 |
| Possession of Methamphetamine Waste | 6044 | 2009 |
| Using a Child to Deliver a Controlled Substance | 6046 | 2010 |
| Soliciting a Child for the Purpose of Delivering a Controlled Substance..... | 6047 | 2010 |
| Possession of Drug Paraphernalia..... | 6050 | 2021 |
| Possession of Drug Paraphernalia: Methamphetamine..... | 6053 | 2007 |
| Possessing Materials for Manufacturing Methamphetamine | 6065 | 2006 |
| Use or Possession of a Masking Agent..... | 6070 | 2021 |
| Obtaining a Prescription Drug by Fraud | 6100 | 2005 |
| Possession of a Prescription Drug with Intent to Deliver | 6110 | 2006 |
| Possession of a Prescription Drug without a Valid Prescription..... | 6112 | 2013 |

CRIMINAL SPECIAL MATERIALS

| | | |
|---|-------------------|------|
| Suggested Order of Instructions..... | SM-5 RENUMBERED 1 | 1995 |
| Jury Instructions on Lesser Included Offenses | SM-6 | 2014 |
| Juror Questioning of Witnesses | SM-8 | 2014 |
| When a Jury Requests to Hear/See Audio/Visual Evidence During Deliberations | SM-9 | 2022 |
| Grand Jury Proceedings | SM-10 | 2004 |
| John Doe Proceedings..... | SM-12 | 2019 |
| Substitution of Judge..... | SM-15 WITHDRAWN | 1994 |
| Collateral Attack on Prior Convictions..... | SM-16 | 2019 |
| Defendant's Consent to Proceed by Videoconference B Waiver of Right to be Present Under § 971.04 | SM-18 | 2014 |
| Voir Dire | SM-20 | 2017 |
| Waiver of Jury Trial: Acceptance, Withdrawal, and Related Issues..... | SM-21 | 2005 |
| Judge's Duty at Initial Appearance..... | SM-25 WITHDRAWN | 2011 |

WIS JI-CRIMINAL

| | | |
|---|------------------------------------|-------------|
| Inquiry Regarding the Decision Whether to Testify..... | SM-28 | 2012 |
| Waiver and Forfeiture of Counsel; Self-Representation; Standby Counsel; “Hybrid Representation”; Court Appointment of Counsel..... | SM-30 | 2006 |
| Waiver of Preliminary Examination | SM-31 | 2011 |
| Accepting a Plea of Guilty..... | SM-32 | 2021 |
| No Contest and <u>Alford</u> Pleas..... | SM-32A | 2021 |
| Accepting a Plea of Guilty: Use of Written Form..... | SM-32B | 1993 |
| Guilty Plea Acceptance Form | SM-32B APPENDIX WITHDRAWN | 2019 |
| Information on Postconviction Relief..... | SM-33 WITHDRAWN | 2011 |
| Instruction to be Used on Denial of Any Postconviction Motion (Other Than § 974.06) | SM-33A WITHDRAWN | 1991 |
| Instruction to be Used on Denial of a Postconviction Motion Under § 974.06..... | SM-33B WITHDRAWN | 1991 |
| Sentencing Procedure, Standards, and Special Issues..... | SM-34 | 1999 |
| Determining Sentence Credit Under Section 973.155 | SM-34A | 1/2023 |
| Increased Penalty for Habitual Criminality | SM-35 | 1/2023 |
| Special Disposition Under Section 973.015 – Expunction | SM-36 | 2018 |
| Bail After Conviction; Stay of Execution of Sentence | SM-39 WITHDRAWN | 1995 |
| Court’s Instruction to Defendant at Arraignment and Before Acceptance of a Plea of Guilty on Sex Crimes Charge | SM-40 WITHDRAWN | 1991 |
| Sentencing Persons Committed Under the Sex Crimes Law | SM-41 WITHDRAWN | 2011 |
| Inquiry in Conflict of Interest Cases..... | SM-45 | 2000 |
| Competency to Proceed | SM-50 | 2021 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | SM-50A RENUMBERED 650 | 2004 |
| Disclosure of the Identity of an Informer..... | SM-52 | 2005 |
| Inquiry When a Witness Claims the Privilege Against Self-Incrimination | SM-55 | 1994 |
| Procedure to Determine the Admissibility of Statements or Confessions of the Defendant..... | SM-60 WITHDRAWN | 1994 |
| Procedure to Follow When the Admissibility of Identification Evidence is at Issue Prior to or During a Criminal Trial | SM-61 WITHDRAWN | 1994 |
| Admissibility of Evidence Obtained by a Search and Seizure..... | SM-62 WITHDRAWN | 1994 |
| Post-Conviction Procedure Under Section 974.06, Wis. Stats. | SM-70 WITHDRAWN | 1994 |
| Habeas Corpus | SM-80 WITHDRAWN | 1994 |
| Procedure to Follow in Advising a Prisoner of Rights Under the Uniform Detainer Act..... | SM-90 | 1998 |
| INDEX | FOLLOWING SPECIAL MATERIALS | 2022 |

* * *

WIS JI-CRIMINAL

COMPARATIVE TABLE

STATUTE-INSTRUCTION NUMBERS

The jury instruction in the right-hand column in most cases defines the criminal offense proscribed by the statute in the left-hand column. Where the cited statutes do not define a criminal offense, the instruction deals with the statute in a substantive way. This is not a list of all statutes cited in the instructions.

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|--------------------------------------|-----------------------------|---------------------|--|
| 12.13(1)(a) | 5301 | 346.57(4)(gm) | 2676A, 2676B |
| 12.60(1)(a) | 5301 | 346.57(4)(h) | 2677, 2677A |
| 29.40(2) | 5000 | 346.57(5) | 2678, 2678A |
| 30.681(a) | 2695, 2696 | | |
| 48.12, 48.31 | 2020, 2021 | 346.60 (3m)(a)2 | 2672B, 2674A, 2676B, 2676C, 2677A, 2678A |
| 48.981 | 2119 | | |
| 52.05(1) | 2000 | 346.61 | 2605 |
| 71.11(41) | 5010 | 346.62(1) | 2650 |
| 71.11(42) | 5012 | 346.62(2) | 2650, 2652 |
| 101.10(3)(e) | 5024 | 346.62(3) | 2652 |
| 108.24(1)(a) | 1848 | 346.62(4) | 2654 |
| 118.15(1)(2) | 2174 | 346.63(1)(a) | 2663, 2663A-B, 2664, 2664A, 2666, 2666A 2667, 2668, 2669 |
| 125.04(1) | 5035 | | |
| 125.075 | 5050 | | |
| 139.95(2) | 6009 | 346.63(1)(am) | 2664B |
| 144.74(2)(b) | 5200 | 346.63(1)(b) | 2660, 2660A, 2660B, 2660C, 2668, 2669 |
| 175.60(16) | 5401 | | |
| 176.30 | 5030, 5040 | 346.63(2) | 2661, 2665 |
| 289.02(5) | 1443 | 346.63(2)(a) | 2661, 2661A, 2665 |
| | | 346.63(2)(b) | 2662 |
| 301.45 | 2198 | 346.63(5)(a) | 2690 |
| 301.47(2)(a)-(b) | 2199 | 346.64(2j)(d) | 999 |
| 302.095(2) | 1785, 1786 | 346.65(2)(f) | 999 |
| 302.905(2)(a)3 | 1787 | 346.65(2)(g) | 2663C |
| 302.095(2)(b) | 1784 | 346.65(3m) | 999 |
| 342.06 | 2590 | 346.66 | 2605 |
| 343.05(3)(a) | 2610, 2612 | 346.67 | 2670 |
| 343.44 | 2620, 2620A-C | 347.413 | 2682A, 2682B |
| 343.44(1)(a) | 2622, 2623A | 450.11(7) | 6100 |
| 343.44(1)(b) | 2620, 2621, 2621A, 2623B | 450.11(7)(g) | 6110 |
| | | 450.11(7)(h) | 6112 |
| 343.44(1)(b) and (2)(ar)2m | 2626 | 551.21(1) | 2902 |
| | | 551.41(1) | 2904 |
| 343.44(1)(b) and (2)(ar)3. and 4. | 2623C | 551.58(1) | 2902, 2904 |
| 343.44(2)(g) or (h) | 2623 | 565.50(2) | 1650, 1651 |
| 346.04(2t) | 2632 | 565.50(3) | 1652 |
| 346.04(3) | 2630 | 756.10 | SM-10 |
| 346.17(3) | 2630 | 779.02(5) | 1443, 1443A |
| | | 782.01-.46 | SM-80 |
| | | 785.01 | 2031 |
| 346.57(2) | 2672, 2672B | | |
| 346.57(3) | 2674, 2674A | 809.30 | SM-33, (SM-33A INSTRUCTION |
| 346.57(4)(e) | 2676, 2776C | | |

WIS JI-CRIMINAL

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|---------------------|--|---------------------|--|
| | WITHDRAWN) | 939.48(3) | 820 |
| 809.31 | SM-30A, SM-39 | 939.48(4) | 825, 830, 835 |
| 813.12 | 2040 | | |
| 813.122 | 2040 | 939.49(1) | 855 |
| | | 939.49(2) | 860 |
| 813.125 | 2040 | 939.615 | 980 |
| 813.128 | 2042 | 939.62 | SM-35 |
| 885.235(1g)(c) | 230 | 939.621 | 983 |
| 885.235(1g)(b) | 232 | 939.621(1)(b) | 984 |
| 903.03 | 225 | 939.621(2) | 984 |
| 904.04(2) | 275, 276 | 939.623 | 997 |
| 905.10 | SM-52 | 939.625 | 985 |
| 905.13 | 315, 317 | 939.63 | 990 |
| 906.08 | 330 | 939.632 | 992 |
| 906.09 | 312, 325, 327 | 939.635 | 2115 |
| 908.01 | 320, 320A | 939.64 | 993 |
| 908.01(4)(b)5 | 405 (INSTRUCTION WITHDRAWN) | 939.641 | 994 |
| | | 939.645 | 996, 996.1 |
| | | 939.647 | 998 |
| 938.48(3) | 821 | 939.66 | SM-6 |
| 939.03 | 268 | | |
| 939.05 | 400-415, 1032, 1032 EXAMPLE | 940.01 | (1100, 1102, 1105, 1130, 1131 INSTRUCTIONS WITHDRAWN) |
| 939.14 | 926 | | 1010, 1018, 1070 |
| 939.22(10) | 910 | 940.01(1)(a) | 1011 |
| 939.22(14) | 914 | 940.01(1)(b) | 1012 |
| 939.22(48) | 948 | 940.01(2)(a) | 1014, 1016, 1017, 1072 |
| 939.23(3) | 923A, 923B | 940.01(2)(b) | 1015 |
| 939.23(4) | 923A, 923B | 940.01(2)(d) | 1016, 1017, 1018, 1020, 1022, 1023 (1110, 1130, 1132 INSTRUCTIONS WITHDRAWN) |
| 939.24 | 924 | 940.02(1) | 1020A |
| 939.25 | 925 | | |
| 939.30 | 550 | 940.02(1m) | 1021 (1120, 1122 INSTRUCTIONS WITHDRAWN) |
| 939.31 | 570 | | 1030, 1031, 1032, 1032 EXAMPLE |
| 939.32 | 580, 581, 582, 1070, 1072, 2105A, 2105B | 940.02(2) | 1125 |
| 939.42(1) | 755A | | 1012, 1014, 1015, 1016, 1017, 1050, 1052, 1072 (1130, 1131, 1132, 1133, 1135 INSTRUCTIONS WITHDRAWN) |
| 939.42(2) | 755B, 765 | 940.03 | (1140, 1145 INSTRUCTIONS WITHDRAWN) |
| 939.43(1) | 770 | | 1017, 1022, 1060, 1060A (1160 INSTRUCTION WITHDRAWN) |
| 939.45(3) | 870 | 940.04(1) | 1061 |
| 939.45(4) | 880, 885 | 940.05 | 1170, 1175 |
| 939.45(5) | 950, 951 (955 INSTRUCTION WITHDRAWN) | 940.05(1) | 1185, 1189, 1190 |
| 939.46 | 790 | | |
| 939.47 | 792 | 940.05(2) | |
| 939.48 | 800, 801, 805, 1220A, 1222A, 1223A, 1224A, 1225A | 940.06 | |
| 939.48(1) | 1014, 1050, 1052, 1140, 1145 | | |
| 939.48(1) | 805A | 940.06(2) | |
| 939.48(2) | 815 | 940.08 | |
| | | 940.09(1)(a) | |

WIS JI-CRIMINAL

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|---------------------|--|---------------------|---|
| 940.09(1)(am) | 1187 | 940.203 | 1240A, 1240B, (1240 INSTRUCTION WITHDRAWN) |
| 940.09(1)(b) | 1186, 1186A, 1189 | | |
| 940.09(1)(c) | 1185A | | |
| 940.09(1b) | 999, 999A | 940.203(2) | 1240C, 1240D |
| 940.09(1g)(a) | 1190 | 940.203(3) | 1241A, 1241B |
| 940.09(1g)(b) | 1191 | 940.204(2) | 1247A |
| 940.09(2) | 1188, 1191 | 940.204(3) | 1247B |
| | | 940.205 | 1242 |
| 940.10 | 1170 | 940.207 | 1244 |
| 940.10(2) | 1171 | 940.208 | 1245 |
| 940.11(1) | 1193 | 940.21 | 1246 |
| 940.11(2) | 1194 | 940.22 | 1248 |
| 940.12 | 1195 | 940.225(1)(a) | 1201, 1201A |
| 940.19(1) | 1220, 1220A | 940.225(1)(b) | 1203 |
| 940.19(1m) | (1227 INSTRUCTION WITHDRAWN) | 940.225(1)(c) | 1205 |
| | | 940.225(1)(d) | 1204, 1204 EXAMPLE (1206, 1207 INSTRUCTIONS WITHDRAWN) |
| 940.19(2) | 1222, 1222A | | |
| 940.19(3) | 1223, 1223A | 940.225(2)(a) | 1208 |
| 940.19(4) | 1224, 1224A | 940.225(2)(b) | 1209 |
| 940.19(5) | 1225, 1225A | 940.225(2)(c) | 1211 |
| 940.19(6) | 1226 | 940.225(2)(cm) | 1212 |
| 940.195(1)-(5) | 1227 | 940.225(2)(d) | 1213 |
| 940.198(2)(a) | 1249A | 940.225(2)(e) | (1216, 1217 INSTRUCTIONS WITHDRAWN) |
| 940.198(2)(b) | 1249B | | |
| 940.198(2)(c) | 1249C | 940.225(2)(f) | 1214 |
| 940.198(3)(a) | 1249D | 940.225(2)(g) | 1215 |
| 940.198(3)(b) | 1249E | 940.225(2)(h) | 1216 |
| 940.198(3)(c) | 1249F | 940.225(2)(i) | 1217 |
| 940.20(1) | 1228 | 940.225(2)(j) | 1217A |
| 940.20(1g) | 1228A | 940.225(2)(k) | 1217B |
| 940.20(1m) | 1229 | 940.225(3) | 1218A, 1218B |
| 940.20(2) | 1230 | 940.225(3m) | 1219 |
| 940.20(2m) | 1231 | 940.225(4) | 1200C |
| 940.20(2r) | (1243 INSTRUCTION WITHDRAWN) | 940.225(4)(b) | 1200D |
| | | 940.225(4)(c) | 1200E |
| 940.20(3) | 1232 (1224A INSTRUCTION WITHDRAWN), (1233 INSTRUCTION WITHDRAWN) | 940.225(5)(b) | 1200A |
| | | 940.225(5)(c) | 1200B |
| 940.20(4) | 1234 | 940.225(6) | 1200F |
| 940.20(5) | 1235 | 940.23 | 1250 |
| 940.20(6) | 1236 | 940.23(1) | 1250 |
| 940.20(7) | 1237 | 940.23(2) | 1252 |
| 940.201 | 1238, 1239, (1221, 1221A INSTRUCTIONS WITHDRAWN) | 940.235 | 1255 |
| | | 940.24 | 1260 |
| | | 940.245 | 2654 (1261 INSTRUCTION WITHDRAWN) |
| | | 940.25 | 1185A |
| | | 940.25(1)(a) | 1262 |
| | | 940.25(1)(b) | 1263, 1263A |

WIS JI-CRIMINAL

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|---------------------|--|---------------------|---------------------------------|
| 940.25(1b) | 999, 999A | | INSTRUCTIONS |
| 940.27 | (1264 INSTRUCTION WITHDRAWN) | 941.23 | WITHDRAWN) |
| 940.28 | (1265 INSTRUCTION WITHDRAWN) | 941.235 | 1335, 1335A, 1335B |
| 940.285 | 1268 | 941.237 | 1337 |
| 940.285(2)(b)1m | 1268 EXAMPLE | 941.24 | 1338 |
| 940.285(2)(b)3 | (1269 INSTRUCTION WITHDRAWN) | 941.26(1)(a) | 1340 |
| 940.29 | 1270 | 941.26(4)(b) | 1340A, 1341A |
| 940.291 | 1273 | 941.26(4)(d) | 1341, 1341B |
| 940.295 | 1271, 1272 | 941.26(4)(L) | 1341A, 1341C |
| 940.295(3)(b)1m | 1271 EXAMPLE | 941.28 | 1341B, 1341D |
| 940.30 | 1275 | 941.28 | 1342 |
| 940.302 | 1276, 1276 EXAMPLE | 941.29 | 650, 1343, 1344 |
| 940.305 | 1278 | 941.29(1)(f)(g) | 1344 |
| 940.31(1)(a) | 1280 | 941.29(4) | 1343B |
| | | 941.2905 | 1343C |
| 940.31(1)(b) | 1281 | 941.291 | 650 |
| 940.31(1)(c) | 1282 | 941.295 | 1344A |
| 940.32 | 1284, 1284A, 1284B | 941.30(1) | 1345 |
| | | | |
| 940.42 | (1290 INSTRUCTION WITHDRAWN), 1292, 1292A (INSTRUCTION WITHDRAWN) | 941.30(2) | 1347 |
| 940.43 | 1292, (1292A INSTRUCTION WITHDRAWN) | 941.31(1) | 1350 |
| 940.43(3) | (1292A INSTRUCTION WITHDRAWN) | 941.31(2) | 1351A, 1351B |
| 940.44 | (1294 INSTRUCTION WITHDRAWN), 1296, 1296A, 1297 | 941.32 | 1352 |
| 940.45 | 1296, 1296A, 1297 | 941.325 | 1354 |
| | | 941.37(3) | 1360 |
| 941.01 | 1300 | 941.375 | 1365 |
| 941.01(1) | 1300 | 941.39 | 1375 |
| 941.03 | 1302 | 942.01 | 1380 |
| 941.10 | 1310 | 942.04(1) | (1390 INSTRUCTION WITHDRAWN) |
| 941.10(1) | 1310 | 942.04(1)(b) | (1391 INSTRUCTION WITHDRAWN) |
| 941.12(1) | 1310 | 942.04(1)(c) | (1392 INSTRUCTION WITHDRAWN) |
| 941.12(2) | 1319 | 942.08(2)(a) | 1392 |
| 941.13 | 1316 | 942.08(2)(d) | 1395 |
| 941.20(1)(a) | 1320 | 942.09 | 1396 |
| 941.20(1)(b) | 1321 | 942.09(1) | 1398A |
| | | 942.09(2) | 1396 |
| 941.20(1)(c) | 1322 | 942.09(3m) | 1398A, 1398B |
| 941.20(1)(d) | 1323 | 942.09(3m)(a)1 | 1398A |
| 941.20(1m) | 1322A | 942.09(3m)(a)2 | 1398B |
| 941.20(2) | 1324 | 942.09(4) | 1399 |
| 941.20(3) | 1327 | | |
| 941.21 | 1328 | 943.01(1) | 1400 |
| 941.22 | (1325, 1326 | 943.01(2g) | 1400A |
| | | 943.01(2k) | 1400B |
| | | 943.011 | 1400C |
| | | 943.012(1) | 1401, 1401A |
| | | 943.012(2) | 1401A |
| | | 943.012(3) | 1401B |
| | | 943.012(4) | 1401C |
| | | 943.013 | 1402A |
| | | 943.015 | 1402B |

WIS JI-CRIMINAL

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|---------------------|---|---------------------|--|
| 943.017 | 1403 | 943.25 | 1470 |
| 943.02(1)(a) | 1404 | 943.28(2) | 1472A |
| 943.02(1)(b) | 1405 | 943.28(3) | 1472B |
| 943.03 | 1408 | 943.28(4) | 1472C |
| 943.04 | 1410 | 943.30(1) | 1473A, 1473B |
| 943.06 | 1417, 1418 | | |
| 943.10 | 581 EXAMPLE, 1032 EXAMPLE | 943.31 | 1474 |
| | | 943.32 | 582 EXAMPLE |
| 943.10(1) | 1421, 1424, 1425A, 1425B, 1425C, 1425E | 943.32(1)(a) | 1475, 1479 |
| | | 943.32(1)(b) | 1477, 1479 |
| 943.10(2) | (1422 INSTRUCTION WITHDRAWN) | 943.32(2) | 1480, 1480A |
| | | 943.34 | 1481 |
| 943.10(2)(a) | 1425A | 943.37(3) | 1488 |
| 943.10(2)(b) | 1425B | 943.38(1) | 1491 |
| 943.10(2)(d) | 1425C | 943.38(2) | 1492, 1493 |
| 943.10(2)(e) | 1425E | 943.39(1) | 1485 |
| 943.11 | 1426 | 943.39(2) | 1486 |
| | | 943.395(1)(a) | 1494 |
| 943.12 | 1431 | 943.41 | 1496, 1497 |
| 943.125 | 1433 | 943.41(5) | 1497A |
| 943.14 | 1437 | 943.41(6m) | 1497B |
| | | 943.45(1)(a) | 1495 |
| 943.143 | 1440 | 943.45(3)(c) | 1495 |
| 943.145 | 1439 | 943.50(1m)(a)-(e) | 1498 |
| 943.15 | 1438 | 943.50(1m)(f) | 1498A |
| 943.20(1) | 1453, 1453A, 1453B | 943.50(1m)(g) | 1498B |
| 943.20(1)(a) | 1441, (1442 INSTRUCTION WITHDRAWN) | 943.50(1r) | 1498C |
| | | 943.60 | 1499 |
| 943.20(1)(b) | 1443, 1443A, 1444 | 943.70(2) | 1504, 1505 |
| 943.20(1)(c) | 1450 | 943.70(3) | 1506 |
| 943.20(1)(d) | 1453, 1453A, 1453B, 1453C | 943.80-.92 | 1508 |
| | | 943.82(1) | 1512 |
| 943.20(1)(e) | 1455 | 943.84(2) | 1470 |
| 943.20(3)(d) | 1441B | 943.895(2)(a)1 - 2. | 1524 |
| | | 943.895(2)(a)3. | 1525 |
| | | § 943.895(2)(a)4. | 1526 |
| 943.20(3)(d)2 | (1442 INSTRUCTION WITHDRAWN) | 944.06 | 1510, 1532 |
| | | 944.12 | (1530 INSTRUCTION WITHDRAWN) |
| 943.201(2) | 1458 | | |
| 943.203(2) | 1459 | | |
| 943.204 | 1457 | 944.15 | 1535, (1536 INSTRUCTION WITHDRAWN) |
| 943.209 | 1460 | | |
| 943.21 | 1461 | | |
| 943.215(1) | 1462 | 944.17(2)(a) | 1537 |
| 943.213(2)(3) | 1462A | 944.17(2)(b) | (1538 INSTRUCTION WITHDRAWN) |
| 943.23(1g) | 1463 | | |
| 943.23(2) | 1464, 1464A, 1465A | 944.20(1)(b) | 1544 |
| 943.23(3) | 1464A, 1465, 1465A | 944.20(3) | (1545 INSTRUCTION WITHDRAWN) |
| 943.23(3m) | 1465A | | |
| 943.23(4m) | 1466 | | |
| 943.23(5) | 1467 | 944.30(1) | 1560 |
| 943.24 | 1468 | 944.30(2) | 1561 |
| 943.24(2) | 1469A, 1469B | 944.31 | 1564 |

WIS JI-CRIMINAL

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|------------------------|---------------------------------|---------------------|--|
| 944.32 | 1566 | 946.70(1) | 1830 |
| 944.33(1)(b) and (2) | 1568 | 946.70(2) | 1831 |
| 944.34(1) | 1570 | 946.71(1) | (1832 INSTRUCTION WITHDRAWN) |
| 944.34(2) | 1571 | 946.71(2) | (1833 INSTRUCTION WITHDRAWN) |
| 945.03(1) | 1601 | 946.71(3) | (1834 INSTRUCTION WITHDRAWN) |
| 945.03(2) | 1602 | 946.71(4) | (1835, 1835A INSTRUCTIONS WITHDRAWN) |
| 945.03(5) | 1605 | 946.715 | (1838 INSTRUCTION WITHDRAWN) |
| 945.03(7) | 1607 | 946.83(1) | 1881 |
| 945.04(1) | 1610 | 946.83(2) | 1882 |
| 945.47(1)(b) | 1791 | 946.83(3) | 1883 |
| 946.02(1) | 1705 | 946.91(2)(a) | 1870 |
| 946.10(1) | 1720, 1721 | 946.92(2)(a) | 1862 |
| 946.10(2) | 1723 | 946.93 | 1850, 1851, 1852, 1853, 1854 |
| 946.12(1) | 1730 | 946.93(2) | 1850 |
| 946.12(2) | 1731 | 946.93(3)(a) | 1851 |
| 946.12(3) | 1732 | 946.93(3)(b) | (1852 INSTRUCTION WITHDRAWN) |
| 946.12(4) | 1733 | 946.93(3)(c) | (1854 INSTRUCTION WITHDRAWN) |
| 946.12(5) | 1734 | 947.01 | 1900 |
| 946.13(1)(a) | 1740 | 947.011 | 1901, 1901A |
| 946.13(1)(b) | 1741, 1742 | 947.012(1) | 1902 |
| 946.31 | 1750 | 947.012(1)(a) | 1902 |
| 946.32(1)(a) | 1754 | 947.012(1)(b) | 1903 |
| 946.32(1)(b) | 1755 | 947.012(1)(c) | 1904 |
| 946.32(2) | 1756 | 947.012(2) | 1903 |
| 946.41 | 1765, 1766 | 947.012(2)(b) | 1906 |
| 946.41(2)(a) | 1766A | 947.012(2)(c) | 1907 |
| 946.415 | 1768 | 947.012(3) | 1904 |
| 946.42(2) | 1770, 1771 | 947.012(4) | 1907 |
| 946.42(3)(a) | 1772, 1773, 1774 | 947.012(5) | 1906 |
| 946.42(3)(e) | 1770, 1771 | 947.0125(2)(a) | 1908 |
| 946.42(3m) | 1775 | 947.0125(2)(c) | 1909 |
| 946.42(4) | 1775A | 947.013(1r),(1m)(a) | 1910, 1910.1 |
| 946.425(1) | 1776 | 947.013(1r),(1m)(b) | 1912 |
| 946.425(1m) | 1777A | 947.014 | 1919 |
| 946.425(1r)(a) and (b) | 1777B | 947.015 | 1905, 1920 |
| 946.43(1) | 1778 | 947.019(1)(a)-(d) | 1925A |
| 946.43(2) | 1779 | 947.019(1)(e) | 1925B |
| 946.43(2m) | 1779A | 947.06(3) | 1930 |
| 946.44 | 1780, 1781, 1782, 1783 | 947.15(1)(a) | (1960 INSTRUCTION WITHDRAWN) |
| 946.47(1)(a) | 1790 | 947.15(1)(b) | (1961 INSTRUCTION WITHDRAWN) |
| 946.47(1)(b) | 1791 | 948.01(3) | 2106A |
| 946.49(1) | 1795 | | |
| 946.61(1)(a) | 1808A | | |
| 946.61(1)(b) | 1808B | | |
| 946.62 | 994 | | |
| 946.63 | (1810 INSTRUCTION WITHDRAWN) | | |
| 946.64 | 1812 | | |
| 946.65 | 1815 | | |
| 946.68 | 1825 | | |

WIS JI-CRIMINAL

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|---------------------|---|---------------------|----------------------------------|
| 948.01(5) | 2101A | 948.22 | 2152, 2152A |
| 948.01(6) | 2101B | 948.23(1)(a) | 2154 |
| 948.02(1) | 2102, 2102A | 948.30(1)(a) | 2160 |
| 948.02(1)(b) | 2102B | 948.30(1)(b) | 2161 |
| 948.02(1)(c) | 2102C | 948.30(2)(a) | 2162 |
| 948.02(1)(d) | 2102D | 948.30(2)(b) | 2163 |
| 948.02(1)(e) | 2102E | | |
| 948.02(2) | 2104, 2105A, 2105B | 948.31(1)(b) | 2166 |
| 948.02(3) | 2106 | 948.31(2) | 2167, 2167A |
| 948.02(3m) | 2114 | 948.31(3)(a) | 2168 |
| 948.025 | 2107 | 948.31(4) | 2169 |
| 948.025(1)(b) | 2107 EXAMPLE | 948.40(1) | 2170, 2170A |
| 948.025(2m) | 2114 | 948.40(2) | 2171 |
| 948.03(2)(a) | 2108 | 948.45 | 2173 |
| 948.03(2)(b) | 2109 | 948.53(2)(a) | 2175 |
| 948.03(2)(c) | 2110 | 948.55(2) | 2185 |
| | | | |
| 948.03(3)(a) | 2111 | 948.60 | 2176, 2177 |
| 948.03(3)(b) | 2112 | 948.60(2)(c) | 2177A |
| 948.03(3)(c) | 2113 | 948.605(2) | 2178A |
| 948.03(4)(a) | 2108A, 2108B | 948.605(3) | 2178B |
| 948.03(5) | 2114 | 948.61 | 2179 |
| 948.04 | 2116 | 948.62 | 2180 |
| 948.05(1)(b) | 2120, 2120A | | |
| 948.05(1m) | 2122 | 951.02 | 1980 |
| 948.05(2) | 2123 | 951.03 | 1983 |
| 948.05(3) | 2120A | 951.08 | 1986, 1988 |
| 948.051 | 2124 | 951.095 | 1981 |
| 948.055 | 2125 | 951.13 | 1982 |
| 948.06(1) | 2130 | 951.14 | 1984 |
| 948.06(1m) | 2131 | 951.18(1) | 1983 |
| 948.07 | 2134, 2134A, 2134B | 951.18(2m) | 1981 |
| 948.075 | 2135 | | |
| 948.08 | 2136 | 961.01(4m) | 6005, 6020A |
| 948.081 | 2136A | 961.41 | 6031 |
| 948.085 | 2137A, 2137B | 961.41(1) | 6001, 6020, 6020A, 6021 |
| 948.09 | 2138 | 961.41(1m) | 6001, 6035, 6036 |
| 948.093 | 2138A | 961.41(3g) | 6030, 6031 |
| 948.095 | 2139, 2139A | 961.41(4)(am) | 6040 |
| | | 961.41(4)(bm) | 6042 |
| | | 961.42 | 6037, 6037A, 6037B |
| 948.10 | 2140, 2141 | 961.43(1)(a) | 6038 |
| 948.11(2)(a) | 2142, 2142A | 961.437(2)(a) | 6044 |
| 948.11(2)(am) | 2143 | 961.455 | 6046, 6047 |
| 948.11(2)(c) | 2142A | 961.46 | 6002 |
| 948.12(1m) | 2146A, (2146 INSTRUCTION WITHDRAWN) | 961.465 | 6003 |
| | | 961.49 | 6004 |
| 948.12(2m) | 2146B | 961.573(1) | 6050 |
| 948.13 | 2147 | 961.573(3) | 6053 |
| 948.14 | 1984, 2196 | 961.65 | 6065 |
| 948.20 | 2148 | 968.06 | (SM-10 INSTRUCTION WITHDRAWN) |
| 948.21 | 2150, 2150A | 968.075(5) | 2044 |
| 948.215 | 2151 | 968.12.,.13 | (SM-62 INSTRUCTION WITHDRAWN) |

WIS JI-CRIMINAL

| <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> | <u>Wis. Stat. §</u> | <u>Wis JI-Criminal</u> |
|---------------------|--|---------------------|---|
| 968.26 | SM-12 | 972.01 | SM-20 |
| 968.27-.33 | (SM-62 INSTRUCTION WITHDRAWN) | 972.08 | 246, SM-55 |
| 969.01(2) | SM-30A | 972.10(1) | 55, 56, 101, 102, SM-9 |
| 969.01(2)(b) | (SM-39 INSTRUCTION WITHDRAWN) | 972.11(2)(b)2 | 1200G |
| 970.02 | SM-25, SM-30 | 973.01-.17 | SM-34 |
| 970.03 | SM-31 | 973.015 | SM-36 |
| | | 973.15(8) | SM-30A, SM-39 |
| | | 973.155 | SM-34A |
| 971.04 | SM-18 | 974.06 | (SM-70, SM-33B INSTRUCTIONS WITHDRAWN) |
| 971.08 | SM-32 | | (1550-1553, SM-40 INSTRUCTIONS WITHDRAWN) |
| 971.11(2)(b) | 1200G | 975.01, et al. | |
| 971.12(3) | 220, 220A, 220B | | |
| 971.14 | SM-50 | | |
| 971.15-.175 | 600-662 | | |
| 971.17(1) | SM-50A | 975.17 | SM-41 |
| 971.19(1) | 267 | 976.05 | SM-90 |
| 971.20 | (SM-15 INSTRUCTION WITHDRAWN) | Ch. 980 | 2501, 2502, 2503, 2505, 2506 |
| 971.31 | (SM-60, SM-61, SM-62 INSTRUCTIONS WITHDRAWN) | | |

FOREWORD

Since 1959, the Wisconsin Jury Instructions project has produced over one thousand jury instructions to assist judges, lawyers, and, most importantly, jurors in understanding what the jury must decide at the conclusion of a trial. In 2020, the Jury Instructions project was transferred entirely to the Wisconsin Court System after 60 years as a cooperative effort between the Judicial Conference and the University of Wisconsin Law School. Publication and distribution of the Wisconsin Jury Instructions – Criminal is now managed by the Office of Judicial Education with the assistance of the Wisconsin State Law Library. Throughout its sixty-four years of existence, the Wisconsin jury instructions model has proven unique in its longevity, continuity, and orientation toward the trial judge. Despite several structural changes over the last six decades, these distinctive aspects have remained consistent, and the jury instructions model has continued without interruption.

The instructions provided in Wisconsin Jury Instructions – Criminal respond to a need for a comprehensive set of instructions to assist judges, juries, and lawyers in performing their role in criminal cases. All published jury instructions share the same objective to provide a careful blending of the substantive law and the collective wisdom and courtroom experiences of the Committee members.

This set of instructions has been enriched by valuable suggestions from the judges and lawyers who have used the instructions in preparing trials, as well as presenting cases to juries. The Committee hopes this set will continue to receive the same valuable scrutiny from those who use it. We are proud of this publication and hope those who use it find it valuable.

January 2023

**Bryce Pierson
Legal Advisor & Committee Reporter
Office of Judicial Education**

COMMITTEE HISTORY

Foundation of the Wisconsin Criminal Jury Instructions 1959-1962

The origins of the Wisconsin Criminal Jury Instructions Committee and the model it employs to produce jury instructions date back to 1959. In that year, the University of Wisconsin-Extension, Department of Law, in partnership with the Board of Criminal Court Judges, put together the first “institute” on criminal jury instructions. Initially organized as a general traffic court conference, the Board of Criminal Court Judges ultimately revised the subject matter of the institute to focus on jury instruction at the suggestion of Circuit Judge Gerald Boileau of Wausau¹. Judge Boileau’s recommendation stemmed partly from his involvement in creating the new Wisconsin Criminal Code that took effect in 1956.² During the development of the Criminal Code, it became evident to the drafters that reference work did not exist, which could assist Wisconsin judges and attorneys in preparing jury instructions. Concluding that the newly defined crimes required such instructions, the Board of Criminal Court Judges agreed with Judge Boileau. It then directed the institute to focus on drafting formal model instructions so that the bench would not have to rely on instructions informally passed from judge to judge.

The format of the “institute,” which established the committee model still in use today, is credited to University of Wisconsin law professor Frank J. Remington³. In a letter to Judge Boileau concerning his expert advice on the subject, Professor Remington advocated that judges take primary responsibility for the program. Expounding upon his position, Professor Remington explained, “I think this is right because the giving of instructions is uniquely a judicial function and one about which the judiciary has the most knowledge and experience.” The institute’s model, therefore, became oriented around trial judges and their instructional practices and policies.

Once the content and format of the institute were agreed upon, a conference date of June 10 and 11, 1959 was set. The primary objective of the meeting was to develop model instructions that would assist judges and trial attorneys in the submission of criminal cases to juries.⁴ To facilitate this task, the Committee requested that trial judges send in copies of instructions they regularly used.⁵ Additionally, the research staff presented proposed instructions, which the Committee analyzed, debated, and rewrote many times before the members attained unanimous approval. Although many conference attendees may have anticipated that their work would be complete once they addressed the new Criminal Code, this proved not to be the case.

After a second jury instructions conference in February of 1960, the attendees agreed that a regular committee was necessary to draft a complete set of criminal jury instructions. In response, the Board of Criminal Court Judges adopted a resolution that

called for the appointment of a five-member committee⁶ to collaborate with the University of Wisconsin Extension, Department of Law in preparing model jury instructions for criminal cases. The Jury Instructions Committee continued to meet regularly, and its existence was made permanent shortly before it completed the first edition of the model criminal jury instructions in 1962.⁷

Development of the Original Model Instructions

In the summer of 1962, the Committee published its inaugural edition of model jury instructions. The single-volume edition included both an introduction by Judge Boileau⁸ and a Preface by editor John H. Bowers⁹. The advice and expectations for how the instructions should be used provided in the original edition remain accurate today.

Continuity of publication has been a trademark of the criminal jury instructions model since the original edition was published in 1962. In 1966, the Committee produced its first preliminary supplement to the original edition that updated material and added new instructions. The Committee also completed additional supplements to the 1962 edition in 1967, 1971, 1974, and 1976. These supplements expanded the Committee's original work from one to three volumes and completed the development of the first edition. Following the publication of the 1976 supplement, the Committee's production rate briefly declined due to funding difficulties. However, the University of Wisconsin was able to obtain temporary federal funding through the Wisconsin Council on Criminal Justice, which allowed for the hiring of additional staff to assist the Committee in completing its first substantial revision to the criminal jury instructions in 1980. This new edition increased the page size from the original 6 by 9 to 8 1/2 by 11, and became the basis from which all future supplements were added. Supplementation of the 1980 edition has continued frequently, with each new supplement designated as "Release No. _____." In 1986, supplemental Release No. 15 expanded the Committee's work to four volumes. As of July 2020, 58 supplements have been added to the 1980 revised edition.

Court Reorganization and Publication Incorporation into the Wisconsin Court System

In 1978, the Wisconsin court system was reorganized, and the old statutory boards, including the Board of Criminal Court Judges, were abolished. The Criminal Jury Instructions Committee was reconstituted as a standing committee of the Wisconsin Judicial Conference, and membership was increased to eleven judges. In 1986, the University of Wisconsin-Extension, Department of Law, was integrated with the University of Wisconsin Law School as the Office of Continuing Education and Outreach. That office was renamed Continuing Education and External Affairs in 2016. In 2021, the University of Wisconsin transitioned its publication responsibilities to the Wisconsin Court

System's Office of Judicial Education. That same year, in partnership with the Wisconsin State Law Library, the Office of Judicial Education converted the production of supplemental releases from physical copies to an all-digital format. The entire set of Wisconsin Jury Instructions-Criminal is now available at no cost to the user in Word and PDF format at <https://wilawlibrary.gov/jury>

Characteristics of the Wis JI-Criminal Model

Several characteristics of the criminal jury instructions model add significantly to the product's strength and value. First and foremost is the model's orientation toward the trial judge. As the giving of instructions is exclusively a judicial function, a primary focus of the Committee is to assist colleagues on the trial bench who may handle a wide variety of cases. A common point of reference for the Committee when discussing a new or amended instruction is the hypothetical judge faced with a criminal trial issue after rotating from a civil or family law caseload.

Another important aspect of the model's orientation toward the trial judge is the Committee's make-up. The eleven voting members of the Committee are judges¹⁰, and only they can approve proposed instructions or amendments. Additionally, the Committee's ability to approve and publish model instructions is done without any additional endorsement by the Judicial Conference or the Supreme Court. A direct result of this arrangement is that trial judges are allowed to use model instructions as guides instead of directives. When necessary, a trial judge may depart from the exact language of the instruction if it does not fit the facts of the case or when they believe an improvement to the instruction can be made. This is opposed to a model, like that implemented in Missouri, in which instructions are approved by order of the state supreme court and must be given without change.

Finally, another unique aspect of the criminal jury instructions model is its association with the notion of "law in action." This concept examines the role of law, not just as it exists statutorily or in case law, but as it is actually applied in the courtroom. The incorporation of this concept into the jury instructions model can be drawn back to the original partnership with the University of Wisconsin Law School and its pursuit of the Wisconsin Idea¹¹. Utilizing the assistance of experts like Professor Frank J. Remington and Assistant Attorney General William A. Platz, early versions of the Wisconsin jury instructions committees provided an all-inclusive perspective of the law. Over the years, the committees have sought to continue this practice by recruiting member judges from across the state and support from non-voting advisors and law school faculty. Although the University of Wisconsin is no longer part of the jury instructions model, the committees and the Wisconsin Court System still strive to achieve the objectives embodied in the "law in action" concept.

How to Use the Model Jury Instructions¹²

Unlike instructions drafted for the purpose of a particular case, each instruction was, necessarily, drafted to cover the particular rule of law involved without reference to a specific fact situation. While the general instructions may frequently be used without change, instructions on the substantive offenses may often have to be modified to fit the needs of the particular case. The user, therefore, should consider each instruction a model to be examined carefully before use for the purpose of determining what modifications are necessitated by the facts of the particular case. In addition, the effect of the instructions upon each other must be considered.

It is suggested that the comment and the footnotes be read fully and carefully before the instruction is used, in order that the user be informed of any conditions prerequisite to its use, alternative material for particular cases, and of other cautionary information. Words and phrases which are to be used alternatively appear in parenthesis and italics. Words and phrases which are not appropriate for every case, but which should be given in some situations, are in brackets. Editorial directions which alert the user to alternatives or to the need to insert material or other instructions are found in brackets in the body of the instruction or in the comment.

The book itself may be cited as “Wis JI-Criminal” and each instruction by adding the appropriate number . . . It is suggested, however, that these instructions be referred to by their citations only when the user requests that the instruction be given verbatim. If the attorney modifies one of these instructions, it is requested that he or she point out the nature of the change and the reason therefore.

INQUIRIES AND SUGGESTIONS

Inquiries and suggestions from judges and lawyers are among the most important sources of new business for the Committee. It is always informative to receive questions and recommendations from those the Committee is trying to serve. Individuals are encouraged to contact the reporter by phone, mail, or e-mail or consult with any Committee member. Copies of approved but not published material are available from the reporter, as are working drafts.

For information on the status of the Committee's drafting of new or revised instructions, please contact:

Bryce Pierson
Legal Advisor & Reporter – Jury Instructions
Office of Judicial Education
110 E. Main St., Ste. 200
Madison, WI 53703-3328
Phone: (608) 285-2209
Email: Bryce.pierson@wicourts.gov

**The Criminal Jury Instructions Committee
Current Members and Advisors as of 2023**

Judges

| | |
|-------------------------|---------------|
| Mitch Metropulos, Chair | Outagamie Co. |
| Maureen Boyle | Barron Co. |
| Scott Horne | La Crosse Co. |
| Michael Moran | Marathon Co. |
| Jane Carroll | Milwaukee Co. |
| Nicholas McNamara | Dane Co. |
| Thomas Walsh | Brown Co. |
| Patricia Baker | Portage Co. |
| Michelle Havas | Milwaukee Co. |
| Ralph Ramirez | Waukesha Co. |
| Laura Crivello | Milwaukee Co. |

Advisory Members

| | |
|---------------------|--|
| Christine Remington | Wis.Dept. of Justice |
| Jefren Olsen | Wis. State Public Defender |
| David Schultz | Prof. Emeritus, Univ. of Wis. Law School |

Reporter

| | |
|---------------|------------------------------|
| Bryce Pierson | Wis. Office of Judicial Edu. |
|---------------|------------------------------|

**The Criminal Jury Instructions
Committee Members and Advisors**

Judges

| | | |
|-------------------|----------------|-----------------|
| Gerald Boileau | Marathon Co. | 1960-1975 Chair |
| William Gramling | Waukesha Co. | 1960-1976 |
| Milton Meister | Washington Co. | 1960-1978 |
| Herbert Steffes | Milwaukee Co. | 1960-1975 |
| Clarence Whiffen | Racine Co. | 1960-1961 |
| Henry Gergen | Dodge Co. | 1961-1990 Chair |
| Ervin Zastrow | Walworth Co. | 1965-1976 Chair |
| James Levi | Portage Co. | 1965-1984 Chair |
| John Buchen | Sheboygan Co. | 1974-1989 |
| James Seering | Sauk Co. | 1974-1989 |
| Edwin Dahlberg | Rock Co. | 1975-1998 Chair |
| Hugh O'Connell | Milwaukee Co. | 1976-1983 |
| John Bartholomew | St. Croix Co. | 1976-1989 |
| Robert Stoltz | Washington Co. | 1977-1978 |
| Ronald Keberle | Marathon Co. | 1979-1992 |
| Robert Landry | Milwaukee Co. | 1979-1991 |
| Michael Torphy | Dane Co. | 1979-1992 |
| Donald Steinmetz | Milwaukee Co. | 1979-1980 |
| Fred Fink | Wood Co. | 1980-1985 |
| Patrick Madden | Milwaukee Co. | 1983-1994 |
| Richard Becker | Washington Co. | 1984-1994 |
| Fred Fleishauer | Portage Co. | 1986-1996 |
| Raymond Gieringer | Adams Co. | 1988-1991 |
| Mark Gempeler | Waukesha Co. | 1988-1998 |
| Gregory Peterson | Eau Claire Co. | 1990-2002 Chair |
| William Carver | Winnebago Co. | 1990-2000 |
| Victor Manian | Milwaukee Co. | 1991-2003 Chair |
| James Eaton | Barron Co. | 1991-2001 |
| Angela Bartell | Dane Co. | 1992-2002 |
| Michael Fisher | Kenosha Co. | 1992-2002 |

| | | |
|---------------------|----------------|-----------------|
| James Schwalbach | Washington Co. | 1994-1997 |
| Thomas Doherty | Milwaukee Co. | 1994-1998 |
| Edward Zappen | Wood Co. | 1996-2006 Chair |
| John DiMotto | Milwaukee Co. | 1997-2007 Chair |
| Kitty Brennan | Milwaukee Co. | 1998-2008 |
| James Daley | Rock Co. | 1998-2008 Chair |
| Donald Zuidmulder | Brown Co. | 1998-2008 |
| Mark Mangerson | Oneida Co. | 2000-2010 Chair |
| Scott Needham | St. Croix Co. | 2001-2011 Chair |
| Don Hassin | Waukesha Co. | 2002-2012 Chair |
| Steve Ebert | Dane Co. | 2002-2007 |
| Annette Ziegler | Washington Co. | 2002-2007 |
| John Franke | Milwaukee Co. | 2003-2008 |
| Thomas Flugaur | Portage Co. | 2006-2016 Chair |
| Jeffrey Kremers | Milwaukee Co. | 2007-2017 Chair |
| John Damon | Trempeleau Co. | 2007-2016 |
| Mary Ann Sumi | Dane Co. | 2007-2014 |
| Rory Cameron | Chippewa Co. | 2008-2016 |
| Mel Flanagan | Milwaukee Co. | 2008-2016 |
| Rebecca Dallet | Milwaukee Co. | 2008-2018 |
| Andrew Bissonnette | Dodge Co. | 2008-2013 |
| Guy Reynolds | Sauk Co. | 2011-2018 |
| William Hanrahan | Dane Co. | 2015-2020 |
| D. Todd Ehlers | Door Co. | 2010-2020 Chair |
| Thomas Eagon | Portage Co. | 2016-2022 |
| Stephanie Rothstein | Milwaukee Co. | 2016-2022 |
| William Domina | Waukesha Co. | 2012-2022 Chair |
| Frederick Rosa | Milwaukee Co. | 2017-2022 |

Advisory Members

| | Wis. Dept. Of Justice | Wis. State Public Defender | |
|---------------|------------------------------|-----------------------------------|-----------|
| William Platz | 1960-1975 | Richard Martin | 1993-1995 |
| Bill Gansner | 1976-1979 | Randall Paulson | 1996-2001 |
| Edward Marion | 1979-1980 | Charles Vetzner | 2001-2007 |

| | |
|-----------------------------------|-----------|
| Marjorie Moeller | 1980-1981 |
| Kirbie Knutson/ Chris Heikenen | 1981-1986 |
| David Becker | 1987-2010 |
| Barbara Oswald | 2010-2011 |
| Gary Freyberg | 2011-2017 |
| Annie Jay | 2017-2022 |

Univ. of Wis. Law School

| | |
|--------------------|-----------|
| Frank J. Remington | 1960-1996 |
| Walter Dickey | 1995-1997 |

Reporters

| | |
|------------------|------------|
| Arnon Allen | 1960-1961 |
| John Bowers | 1961-1976 |
| Adv. Member | 1976-1994 |
| George Frederick | 1963-1966 |
| Donald Bruns | 1972-1975 |
| David Schultz | 1976- 2019 |

Copy Editors

| | |
|------------------|-----------|
| Barbara Muckler | 1966-1978 |
| Roger Bruesewitz | 1978-2001 |

Comment

This introduction was approved in August 2021. It expanded upon the 2018 introduction and incorporated a new format.

1. When the first edition was published in 1962, it was dedicated to the Committee’s first chair, Circuit Judge Gerald Boileau from Wausau. The dedication reads as follows:

DEDICATION

The following resolution was unanimously passed by the Wisconsin Board of Criminal Court Judges at its annual meeting in June of 1961:

WHEREAS, the Hon. Gerald J. Boileau has been the only Chairman of the Board's Committee on Criminal Jury Instructions, and;

WHEREAS, the monumental work of this Committee, which will ultimately lead to the publication of model instructions for the use of this State, is due largely to the untiring and dynamic leadership of the Hon. Gerald J. Boileau, and;

WHEREAS, the Hon. Gerald J. Boileau has in the past made significant contributions to the advancement of his profession in that he has been Chairman of the Wisconsin Board of Circuit Judges, Chairman of the Wisconsin Board of Criminal Court Judges, a member of the Judicial Council of this State for many years, and Chairman of the Criminal Code Advisory Committee which drafted the new Criminal Code in its final version;

Be it therefore, resolved, that when Wisconsin Jury Instructions – Criminal is

published, it be dedicated to the Hon. Gerald J. Boileau in recognition of his interest, his advice, and his time so freely given to his profession.

2. Several of the original members had strong ties to the development of the 1956 Criminal Code. The original judge members were:

- Hon. Gerald J. Boileau, Wausau, Chairman
- Hon. Herbert J. Steffes, Milwaukee

- Hon. William E. Gramling, Waukesha
- Hon. Milton L. Meister, West Bend
- Hon. Clarence Whiffen, Racine
- Hon. Charles Larson, Port Washington (ex officio)
- Hon. Howard DuRocher (ex officio)
- Hon. Henry Gergen, Beaver Dam [replaced Judge Whiffen in 1961]

Assistant Attorney General Bill Platz and Professor Frank Remington, who served as advisors to the criminal jury instructions effort, also had leading roles in developing the Criminal Code.

3. The original advisory members were two outstanding criminal law experts: Professor Frank J. Remington and Assistant Attorney General William A. Platz. In speaking about them, the 1966 foreword stated: "The Committee could have found no better qualified individuals than William Platz and Frank Remington for technical advisors. Suffice it to say that the aid of these two men has been invaluable."

Frank Remington's efforts were recognized in the foreword to the 1966 supplement:

Frank Remington has such impressive credentials in the field of criminal law that we need not spell them out here. He was one of the principal researchers on the massive revision of the Wisconsin Criminal Code. As a member of the Law School faculty since 1949, he has been specializing in the study of criminal law. He has brought nationwide distinction to the Law School as a center for research and teaching in criminal law and the administration of criminal justice.

William Platz's contributions were further described in an in memoriam tribute published in 1980:

William A. Platz had no peer in the field of criminal law. For nearly four decades, he was counsel to every district attorney and every law enforcement officer in the State of Wisconsin, always available and willing, cheerfully, to give advice. And no more knowledgeable, trustworthy help was available anywhere.

He possessed not just a singular knowledge and devotion to the justice system but a keen wit and fine sense of humor as well. His wit and wisdom forever remain with all who knew this fine outstanding man.

4. The Committee's principal objectives were:

1. To prepare instructions that would accurately and concisely state the law in a way that would be meaningful and helpful to the jury.
2. To make readily available such instructions as a trial judge would likely need in the trial of a criminal case to a jury.
3. To revise instructions that had been in general use prior to the enactment of the Criminal Code of Wisconsin, which became effective July 1, 1956, and to make such changes therein as seemed to be advisable as a result of such enactment; and, generally, to relate the instructions to the new Criminal Code.
4. To make certain that all such instructions were in conformity with the decisions of the Wisconsin Supreme Court.

Introduction To The 1962 Edition – Judge Gerald Boileau, Chairman Committee on Jury Instructions – Criminal

5. Foremost among the judges who supplied copies of instructions regularly used to the institute was Judge Herbery Steffes of Milwaukee. Prior to the formation of the Wisconsin Criminal Jury Instructions Committee, Judge Steffes had served as an informal “instruction bank,” and much of his work product can be found in the instructions today.

6. See Comment 2. Non-voting advisors also included Professor Gordon Baldwin and Professor William B. Smith.

7. The Board unanimously adopted the following resolution on February 15, 1962:

RESOLVED, that the jury instructions in criminal cases, which have been prepared by the committee appointed for that purpose, are hereby approved, but without certification of said instructions’ freedom from error; be it further

RESOLVED, that said committee is hereby made a permanent committee to prepare additional instructions for use in criminal cases and to amend or correct any previously approved instructions whenever such committee deems such action to be appropriate

8. INTRODUCTION TO THE 1962 EDITION:

The Wisconsin Board of Criminal Court Judges, realizing that no ready reference work was available to assist the bench and the bar of the State of Wisconsin in the preparation of jury instructions in criminal cases, authorized and directed our committee, consisting of five trial judges, to study the problem and submit to the Board such suggested instructions as, in the committee’s opinion, would assist judges and trial lawyers in the submission of criminal cases to juries.

Prof. Frank J. Remington, of the University of Wisconsin Law School, and Mr. William Platz, Assistant Attorney General of Wisconsin, graciously accepted our invitation to become unofficial members of the committee and have made substantial contributions to what success we have achieved. The University of Wisconsin Extension Law Department, under the direction of William Bradford Smith, has provided research assistants and has paid all expenses necessarily incurred in the preparation of these instructions.

The committee has met on an average of once a month for the past three years, such meetings lasting from one to three days. All members, both official and unofficial,

have been most regular in their attendance at these meetings. These were the committee's objectives:

1. To prepare instructions that would accurately and concisely state the law in a way that would be meaningful and helpful to the jury.
2. To make readily available such instructions as a trial judge would likely need in the trial of a criminal case to a jury.
3. To revise instructions that had been in general use prior to the enactment of the Criminal Code of Wisconsin, which became effective July 1, 1956, and to make such changes therein as seemed to be advisable as a result of such enactment; and, generally, to relate the instructions to the new Criminal Code.
4. To make certain that all such instructions were in conformity with the decisions of the Wisconsin Supreme Court.

In the progress of our work the research staff presented proposed drafts. These drafts were prepared after a study of all available material. At our meetings, the committee analyzed every instruction minutely, giving thorough consideration to every word and phrase in the prepared draft and to all available authorities and precedents which seemed to be pertinent. Many instructions were corrected and rewritten many times. Finally, each instruction had the unanimous approval of the committee. Certainly, we make no claim that these instructions are free from error. We propose to continue our work as a permanent committee, adding new instructions from time to time, and correcting previously approved instructions when errors are called to our attention. We invite suggestions from the bench and the bar. We hope this work will, to some extent at least, achieve its objectives.

Gerald J. Boileau, Chairman
Committee on Jury Instructions Criminal

9. John H. Bowers was the original editor/reporter for the publication. The Introduction to the 1980 Edition recognized his contributions:

The Committee has been fortunate to have the services of John H. Bowers, Attorney at Law, Madison, and former Deputy Attorney General, State of Wisconsin, as reporter and editor from 1961 through 1976. During that time John was responsible for most of the reporting and drafting chores. His services over the years have been of the greatest importance.

10. The Judicial Conference increased Committee membership to eleven judges to expand and update the Special Materials at a quicker rate.

11. The Wisconsin Idea is often described as being based on the principle that "the boundaries of the University are the boundaries of the State." It also has a second aspect which recognizes that University faculty and staff who participate in activities like the jury instructions projects use the experience to enrich their teaching, research, and service responsibilities.

12. Much of the language provided in the “How to Use” section comes from the Preface to the 1962 edition of Wisconsin Jury Instructions-Criminal authored by Editor John H. Bowers. The advice and expectations for how the instructions should be used provided by Mr. Bowers in the original edition remain accurate today.

5 COMMENT: GENDER NEUTRAL LANGUAGE

This is intended to explain the Committee's approach to the use of gender neutral language in the Wis JI-Criminal and to provide references for users who wish to use gender neutral language in revising or supplementing the published instructions.

Substantive Gender Bias

The Committee attempts to prepare instructions that are free from substantive gender bias. By substantive bias, we mean statements that indicate that one gender is to be treated differently from the other in applying the law as described in the instructions. An example would be indicating that a witness was less likely to be credible because of gender.¹

Pronouns

The instructions, as originally drafted, followed then-accepted rules of grammar and statutory drafting in using the masculine form of pronouns to refer to antecedents of mixed or unknown gender.² In 1991, the Committee agreed that the general use of the masculine form of pronouns was perceived as gender bias and determined that it should be avoided. The Committee began redrafting the instructions to avoid using the masculine form using several different techniques.³

Beginning with Release No. 28 in December 1991, general instructions commonly used in most cases have been reviewed to eliminate the masculine form of pronouns. Instructions published before Release No. 28 have also been reviewed and modified accordingly. The Committee has found that it is necessary to review each instruction individually to ensure that no substantive changes result from changing or eliminating a pronoun.⁴

The Committee's current drafting format requires that all new instructions use gender neutral language.⁵ Where a defendant or victim's name is not appropriate, instructions include reference to "he or she" and "him or her."

References to the Defendant

The instructions, as originally drafted, used masculine pronouns to refer to the criminal defendant. The Committee did not believe that such a formatting style implicated concerns of gender neutrality because it was expected that all such references would be modified when the case involved a female defendant. The Committee has always assumed that the

published instructions will be tailored to the facts of each case. This includes modifying all pronouns to match their antecedents, as failure to do so may confuse the jury. See the dissenting opinion in Betchkal v. Willis, 127 Wis.2d 177, 190, 378 N.W.2d 684 (1985). The Committee's current drafting format provides both "he" and "she" pronouns when referring to the criminal defendant.⁶

Where users encounter an instruction that has not yet been revised in accord with these principles, some of the techniques described in the notes below may help with any revision that may be required.⁷

COMMENT

Wis JI-Criminal 5 was approved by the Committee in December 1991. This revision was approved by the Committee in December 2022; it updated the comment to more accurately reflect the position of scholarly writing and style guides concerning the use of gender neutral language.

The 1991 recommendations for revising the uniform jury instructions were made by the Civil Law Subcommittee of the Wisconsin Equal Justice Task Force. While that subcommittee focused on the Wisconsin Jury Instructions-Civil, one of its recommendations provided as follows:

The Wisconsin Criminal Jury Instructions Committee should review and revise their instructions to remove gendered language and replace it with gender inclusive or gender neutral language and reformat the instructions to allow choices to particularize any instruction for a specific case.

Report of the Wisconsin Equal Justice Task Force, p. 24.

1. No instances of explicit substantive gender bias have been brought to the Committee's attention. To confront the danger of implicit gender bias, the Committee has published Wis JI-Criminal 50 which, in giving the jury general instruction on its duties, includes the following statement:

All people deserve fair treatment in our system of justice, regardless of their race, national origin, religion, age, ability, gender identity, sexual orientation, education, income level, or any other personal characteristic. People make assumptions and form opinions from their own personal backgrounds and experiences. Generally, we are aware of these things, but you should consider the possibility that you have biases of which you may not be aware which can affect how you evaluate information and make decisions.

2. Section 990.001(2) provides: "Words importing one gender extend and may be applied to any gender."

3. Some of the common techniques are:

- rewriting to avoid the problem. Often, the pronoun or the phrase in which it appears can simply be dropped. Or the sentence can easily be rewritten to make the pronoun unnecessary.
- substituting nouns for pronouns. The instructions often suggest using the name or title of a person; repeating the name or title avoids use of a pronoun and adds clarity as well.
- substituting plural pronouns for a singular pronoun. Using “witnesses . . . their” in place of “witness . . . his” usually works well.
- substituting a gender neutral pronoun. Using “one” in place of “his” or “her” is grammatically correct but often increases the complexity of an instruction, making it more difficult to understand.
- using gender neutral terms. The instructions typically use “police officer” instead of “policeman,” “firefighter” instead of “fireman,” etc.

For a summarization of these and other techniques, see Garner, *A Dictionary of Modern Legal Usage*, p. 499 (Oxford, 1987) and Melinkoff, *Legal Writing: Sense and Nonsense*, pp. 48 51 (West, 1982). Several other guides are also available. It has been the Committee’s experience that rewriting can virtually always increase gender neutrality and clarity at the same time.

4. Changes in meaning can result if pronouns are changed without a careful eye on the substantive effect. For example, a criminal statute was revised several years ago to substitute “in personal possession” for “in his possession.” See § 943.12, *Possession of Burglarious Tools*. One could argue that “personal possession” has a specific substantive meaning that changed the statute.

5. The Committee believes it is following the view of most of the commentators on current usage in general and the law in particular. While the rules of grammar on the pronoun issue are described as unsettled, there is consensus that it is best to avoid the problem where it is possible to do so. See, for example, Garner, *A Dictionary of Modern Legal Usage*, p. 499 (Oxford, 1987); Melinkoff, *Legal Writing: Sense and Nonsense*, pp. 48 51 (West, 1982).

6. The use of singular “they.”

The singular “they” is a generic third-person singular pronoun in English. In the past, formal writing and style guides, including the APA Publication Manual, the MLA Handbook, and the AP Stylebook, did not endorse the use of “they” as a singular third-person pronoun. However, most guides now wholly support the use of “they” or accept its use in limited cases as a singular and or gender neutral pronoun. Still, others, like the Chicago Manual of Style, take a stronger stance, deeming it too informal and ungrammatical, and recommend avoiding its use. Nevertheless, such a position is a recommendation, not a prohibition, and allows writers to make the final determination.

The Committee recognizes that such usage continues gaining scholarly acceptance and believes that it is wise to make an effort to determine what is appropriate for a particular situation. Additionally, the Committee believes that it is acceptable to use “they” or “their” instead of “he” or “she” when referring to a single person unless doing so would create undue confusion.

7. See note 3, supra.

140 BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE

In reaching your verdict, examine the evidence with care and caution. Act with judgment, reason, and prudence.

Presumption of Innocence

Defendants are not required to prove their innocence. The law presumes every person charged with the commission of an offense to be innocent. This presumption requires a finding of not guilty unless in your deliberations, you find it is overcome by evidence which satisfies you beyond a reasonable doubt that the defendant is guilty.¹

State's Burden of Proof

The burden of establishing every fact necessary to constitute guilt is upon the State. Before you can return a verdict of guilty, the evidence must satisfy you beyond a reasonable doubt that the defendant is guilty.

Reasonable Hypothesis

If you can reconcile the evidence upon any reasonable hypothesis consistent with the defendant's innocence,² you should do so and return a verdict of not guilty.

Meaning of Reasonable Doubt

The term "reasonable doubt" means a doubt based upon reason and common sense. It is a doubt for which a reason can be given,³ arising from a fair and rational consideration of the evidence or lack of evidence. It means such a doubt as would cause a person of ordinary prudence to pause or hesitate when called upon to act in the most important affairs

of life.⁴

A reasonable doubt is not a doubt which is based on mere guesswork or speculation. A doubt which arises merely from sympathy or from fear to return a verdict of guilt is not a reasonable doubt. A reasonable doubt is not a doubt such as may be used to escape the responsibility of a decision.

While it is your duty to give the defendant the benefit of every reasonable doubt, you are not to search for doubt. You are to search for the truth.⁵

COMMENT

Wis JI-Criminal 140 and comment were originally published in 1962 and revised in 1983, 1986, 1987, 1991, 1994, 2016, and 2019. The instruction was republished without substantive change in 2000. The 2019 revision expanded on footnote 5. This revision was approved by the Committee in August 2022; it added a reference to the decision in State v. Trammell, 2019 WI 59, 387 Wis. 2d 156, 928 N.W.2d 564.

This instruction must be provided to the jury in writing. Section 972.10(5) was amended by order of the Wisconsin Supreme Court dated April 30, 1986, to require that the instruction “providing the burden of proof” be included among those provided to the jury in writing. Compare E. B. v. State, 111 Wis.2d 175, 330 N.W.2d 584 (1983), where the Wisconsin Supreme Court held that Wis JI-Criminal 140 was not one of the “substantive” instructions that were to be provided to the jury in writing under the former version of § 972.10(5).

For early discussions of definitions of “beyond a reasonable doubt,” see Anderson v. State, 41 Wis. 430 (1877); Emery v. State, 92 Wis. 146, 65 N.W. 848 (1896); Emery v. State, 101 Wis. 627, 650 56, 78 N.W. 145, 152 (1899). Also see Hoffman v. State, 97 Wis. 571, 576, 73 N.W. 51 (1897), where, in reference to the instruction on “reasonable doubt,” the court stated: “It needs be a skillful definer who shall make the meaning of the term more clear by the multiplication of words.”

The proper definition of “beyond a reasonable doubt” continues to receive attention from appellate courts and persons concerned with the understandability of jury instructions. So called plain language versions are suggested by the Federal Judicial Center Committee to Study Criminal Jury Instructions in Pattern Criminal Jury Instructions (1982) (available in pamphlet from West Publishing Company) and in Sales, Elwork, and Alfini, Making Jury Instructions Understandable (Michie, 1982). Some appellate courts have concluded that “beyond a reasonable doubt” cannot be helpfully defined and that there should be no instruction attempting to define it. For example, the United States Court of Appeals for the Seventh Circuit has concluded that the phrase is “self explanatory and is its own best definition.” Federal Criminal Jury Instructions of the Seventh Circuit 2.07, p. 18 (1980). Also see United States v. Kramer, 711 F.2d 789, 794 95 (7th Cir. 1983).

The Committee has carefully reviewed Wis JI-Criminal 140 several times in light of the above. Only minor changes have been made in the text as it was originally drafted in 1962. As the notes below indicate, several parts of the instruction have been approved by the Wisconsin appellate courts. Several cases have held it is error not to give certain parts of the instruction upon request. Rather than risk creating appellate issues by significantly changing the instruction, the Committee decided it was better to retain the original version.

The Committee reviewed Wis JI-Criminal 140 in 1994 in light of a decision of the United States Supreme Court that analyzed definitions of “beyond a reasonable doubt.” See Victor v. Nebraska, 511 U.S. 1 (1994). A second case, Sandoval v. California, 511 U.S. 1101 (1994) was addressed in the same decision. The primary issue before the court was the use of “moral certainty” in the definition of “beyond a reasonable doubt.” The instruction in Sandoval read as follows:

Reasonable doubt is defined as follows: It is not a mere possible doubt; because everything relating to human affairs, and depending on **moral evidence**, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a **moral certainty**, of the truth of the charge. [Emphasis added.]

After extensive consideration of what the terms mean today, the court concluded that in the context of all the instructions, the use of “moral evidence” and “moral certainty” was not error.

Wis JI-Criminal 140 has never included the reference to “moral certainty” that is so common in definitions of “beyond a reasonable doubt.” The primary case law source for the Wisconsin instruction was Emery v. State, 101 Wis. 627, 78 N.W. 145 (1899). The instruction reviewed there included “moral certainty,” but it was not a litigated issue. The early Committee clearly relied on Emery but did not adopt the “moral certainty” language.

One other part of the Sandoval instruction was reviewed – the reference that reasonable doubt “is not a mere possible doubt.” The Court rejected the argument, holding the rest of the instruction puts it into proper context. Wis JI-Criminal 140 does not refer to “possible doubt.”

The instruction given in Victor was very similar to the one in Sandoval; it included a reference to “moral certainty.” But Victor raised two other issues. The Victor instruction defined “reasonable doubt” as “an actual and substantial doubt arising from the evidence.” The Court said this was “problematic,” since “substantial” could be taken to mean “a large degree,” which might be more than the “reasonable” doubt required for acquittal. But the court found that the rest of the instructions put this into proper context by distinguishing it from “mere possibility, from bare imagination, or from fanciful conjecture.” Wis JI-Criminal 140 does not refer to “substantial doubt.” The Victor instruction also stated: “You may find an accused guilty upon the strong probabilities of the case.” The Court found no error: “strong probabilities” was immediately defined as “strong enough to exclude any reasonable doubt.”

So, as far as the majority decisions in Victor and Sandoval are concerned, there is nothing that requires or even suggests any change in Wis JI-Criminal 140: none of the challenged language appears in Wis JI-Criminal 140; and the Court found no error in the use of such language.

Three justices found fault with a different aspect of the instruction used in Victor:

‘Reasonable doubt’ is such a doubt as would cause a reasonable and prudent person, in one of the graver and more important transactions of life, to pause and hesitate before taking the represented facts as true and relying acting thereon.

Wis JI-Criminal 140 has a rough equivalent of this statement, which Justice Ginsberg criticized, citing the conclusion of the committee that drafted the Federal Judicial Center instructions. She also commended the definition of reasonable doubt provided in those instructions. The Committee previously reviewed the Federal Judicial Center instruction and did not believe it was a substantial improvement on Wis JI-Criminal 140. And, Wisconsin case law specifically supports including such a statement. See note 4, below.

The Committee carefully reviewed Wis JI-Criminal 140 again after the Wisconsin Supreme Court decision in State v. Trammell, 2019 WI 59, 387 Wis. 2d 156, 928 N.W.2d 564. Trammell considered arguments that four provisions of Wis-JI Criminal 140, when considered together, unconstitutionally reduced the burden on the state to prove guilt beyond a reasonable doubt. The provisions are: 1) the “important affairs of life” analogy (see also note 4, below); 2) the “reasonable hypothesis consistent with the defendant’s innocence” statement (see also note 2, below); 3) the negative definition of reasonable doubt, which specifies that a reasonable doubt is not a doubt based on guesswork or speculation or arising from sympathy or a fear to return a verdict; and 4) the “search for the truth” language (see note 5, below). The supreme court reviewed each of the challenged passages in the context of the instructions as a whole and concluded that Wis JI-Criminal 140 did not lower the burden of proof. Id., 387 Wis. 2d 156, ¶¶29-59.

1. It has been held that an instruction as to the presumption of innocence which correctly told the jury that it attends the accused throughout the trial, but which the trial court qualified by adding, “until such time, if at all, as it is overcome by credible evidence” is erroneous, because the jury may have inferred from this that, at some stage of the trial before its conclusion, sufficient evidence had been adduced to overcome the presumption, thus shifting the burden upon the accused. Roen v. State, 182 Wis. 515, 196 N.W. 825 (1924). See also Riley v. State, 187 Wis. 156, 160, 203 N.W. 767 (1925), and Windahl v. State, 189 Wis. 424, 427, 207 N.W. 694 (1926).

2. Lipscomb v. State, 130 Wis. 238, 244, 109 N.W. 986 (1906), held it was error to refuse a requested instruction: “You are instructed that if you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant’s innocence, you should do so, and in that case acquit the defendant,” where the substance of that instruction had not been covered in the general charge.

The Committee has received inquiries about the “reasonable hypothesis of innocence” provision. The Wisconsin Supreme Court clarified its meaning in State v. Poellinger, 153 Wis.2d 493, 503, 451 N.W.2d 752 (1990):

The rule that the evidence must exclude every reasonable hypothesis of innocence does not mean that if any of the evidence brought forth at trial suggests innocence, the jury cannot find the defendant guilty. The function of the jury is to decide which evidence is credible and which is not and how conflicts in the evidence are to be resolved. The jury can thus, within the bounds of reason, reject evidence and testimony suggestive of innocence. Accordingly, the rule that the evidence must exclude every reasonable hypothesis of innocence refers to the evidence which the jury believes and relies upon to support its verdict.

3. Defining reasonable doubt as one “for which a reason can be given” was first approved in Butler

v. State, 102 Wis. 364, 368 69, 78 N.W. 590, 591 92 (1899). Recent affirmations of this part of the instruction are found in State v. Cooper, 117 Wis.2d 30, 35 36, 344 N.W.2d 194 (Ct. App. 1983), and State v. Bembenek, 111 Wis.2d 617, 641 42, 331 N.W.2d 616 (Ct. App. 1983).

4. The term “the graver transactions of life” was held not to be an equivalent of the approved expression “the most important affairs of life” in McAllister v. State, 112 Wis. 496, 88 N.W. 212 (1901). This case also held that reasonable doubt should be defined as a doubt which should cause a reasonable, prudent person to pause or hesitate in the most important affairs of life rather than as “[a] doubt which would govern and control a prudent man and deter him from acting” in such affairs. 112 Wis. 496, 503, emphasis in original.

5. In 1987, the Committee revised the final sentence of the instruction by deleting the following phrase which had come after the word “truth”: “. . . and give the defendant the benefit of a reasonable doubt.” The phrase was dropped because it seemed to be redundant and because the instruction seemed to read better without it.

In 2016, the Committee received several inquiries about the phrase “you are to search for the truth,” some based on a recent law review article. Cecchini and White, “Truth Or Doubt? An Empirical Test Of Criminal Jury Instructions,” 50 U. Richmond Law Review 1139 (2016). After careful consideration, the Committee decided not to change the text of the instruction. Challenges to including “search for the truth” in the reasonable doubt instruction have been rejected by Wisconsin appellate courts. State v. Avila, 192 Wis.2d 870, 890, 532 N.W.2d 423 (1995) (overruled on other grounds in State v. Gordon, 2003 WI 69, ¶40, 262 Wis.2d 380, 663 N.W.2d 765): “In the context of the entire instruction, we conclude that [JI 140] did not dilute the State’s burden of proving guilt beyond a reasonable doubt.” See also, Manna v. State, 179 Wis. 384, 399 340, 192 N.W. 160 (1923). The Wisconsin Supreme Court affirmed the use of the search for the truth language in State v. Trammell, 2019 WI 59, 387 Wis.2d 156, 928 N.W.2d 564, holding that, when read as a whole, “Wis JI-Criminal JI 140 does not unconstitutionally reduce the State’s burden of proof below the reasonable doubt standard.” Id., ¶¶2, 29-38, 51-59. If an addition to the text is desired, the Committee recommends the following, which is modeled on the 1962 version of Wis JI-Criminal 140:

You are to search for the truth and give the defendant the benefit of any reasonable doubt that remains after carefully considering all the evidence in the case.

[This page is intentionally left blank]

300 CREDIBILITY OF WITNESSES

It is the duty of the jury to scrutinize and to weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony.

In your determination of credibility, you must avoid bias, conscious, or unconscious based on the witness's race, national origin, religion, age, ability, gender identity, sexual orientation, education, income level, or any other personal characteristic.

In determining the credibility of each witness and the weight you give to the testimony of each witness, consider these factors:

- whether the witness has an interest or lack of interest in the result of this trial;
- the witness' conduct, appearance, and demeanor on the witness stand;
- the clearness or lack of clearness of the witness' recollections;
- the opportunity the witness had for observing and for knowing the matters the witness testified about;
- the reasonableness of the witness' testimony;
- the apparent intelligence of the witness;
- bias or prejudice, if any has been shown;
- possible motives for falsifying testimony; and
- all other facts and circumstances during the trial which tend either to support or to

discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive.

[GIVE THE FOLLOWING PARAGRAPH ONLY WHEN THE DEFENDANT TESTIFIES.]¹

[The defendant has testified in this case, and you should not discredit the testimony just because the defendant is charged with a crime. Use the same factors to determine the credibility and weight of the defendant's testimony that you use to evaluate the testimony of any other witness.]

There is no magic way for you to evaluate the testimony; instead, you should use your common sense and experience. In everyday life, you determine for yourselves the reliability of things people say to you. You should do the same thing here.

COMMENT

Wis JI Criminal-300 was originally published in 1962 and revised in 1979, 1989, 1990, 1991, 2000, and 2022. The 2022 revision amended the body of the instruction to mirror Wis JI-Criminal 50. This revision was approved by the Committee in December 2022; it moved language concerning bias from the end of the instruction to the beginning.

The 1999 revision involved a substantial rewriting of the former instruction and was intended to make it more understandable without changing the meaning.

In Wilson v. State, 184 Wis. 636, 200 N.W. 369 (1924), the court approved the general instruction that as to each witness, the jury should take into consideration the appearance and manner of testifying, the apparent interest in the result of the trial, if any, the degree of intelligence of the witness, the reasonableness of the testimony given, and every other circumstance bearing upon credibility and weight.

The supreme court has allowed the trial court considerable latitude in instructions dealing with the

credibility of witnesses. A few cases are illustrative. In Emery v. State, 101 Wis. 627, 78 N.W. 145 (1899), the court approved the following part of the instruction:

You are cautioned, however, that interest in the result of the trial creates no presumption that such witnesses will swear falsely.

The trial court was criticized, on the other hand, in Lee v. State, 74 Wis. 45, 41 N.W. 960 (1889), for instructing that:

When the witnesses appear to be equally credible in every other respect, the one who appears to have the greater interest in the result of the case is to have the less weight of the two.

The court remarked that this “trenches too closely . . . upon the legitimate function of the jury.”

The question has been raised with the Committee whether a special instruction should be given for police officer witnesses. One theory is that the instruction should advise that the testimony of the police officer witness is to be weighed by the same standards applied to other witnesses. In the Committee’s judgment, no separate instruction is necessary; Wis JI-Criminal 300 would apply to all witnesses, including the police officer. A different theory is that an instruction should advise the jury that greater care should be taken in weighing the testimony of a police officer because of the officer’s greater interest in gaining a conviction. The Wisconsin Supreme Court addressed that argument in State v. Melvin, 49 Wis.2d 246, 181 N.W.2d 490 (1970), and concluded that on the facts of that case, the general credibility instruction was sufficient.

1. The Committee recommends that instructing the jury on the credibility of the defendant be included in the general credibility instruction as indicated, rather than dealing with the credibility of the defendant separately.

Wis JI-Criminal 310 formerly dealt with the credibility of the defendant but was withdrawn by the Committee in 1979. However, the use of Wis JI-Criminal 310 was approved by the Wisconsin Supreme Court in Thompson v. State, 83 Wis.2d 134, 265 N.W.2d 467 (1978).

[This page is intentionally left blank]

515 UNANIMOUS VERDICT AND SELECTION OF PRESIDING JUROR

This is a criminal, not a civil, case; therefore, before the jury may return a verdict which may legally be received, the verdict must be reached unanimously. In a criminal case, all 12 jurors must agree in order to arrive at a verdict.

When you retire to the jury room, select one of your members to preside over your deliberations. The presiding juror's vote is entitled to no greater weight than the vote of any other juror.

If you need to communicate with the court while you are deliberating, send a note through the bailiff, signed by the presiding juror. To have a complete record of this trial, it is important that you communicate with the court only by a written note. If you have questions, the court will talk with the attorneys before answering so it may take some time. You should continue your deliberations while you wait for an answer. The court will answer any questions in writing or orally here in open court.¹

When you have agreed upon your verdict, have it signed and dated by the person you have selected to preside.

After you have reached a verdict:

- The presiding juror will notify the bailiff that a verdict has been reached.
- Everyone will return to the courtroom.
- The verdict will be read into the record in open court.
- The court may ask each of you if you agree with the verdict.²

Swear the officer.

COMMENT

Wis JI-Criminal 515 was originally published in 1962 and revised in 1983, 2001 and 2011. The 2011 revision added paragraphs relating to getting assistance from the court and information about returning the verdict. This revision was approved by the Committee in October 2022; it added to the comment.

The material added to the text in 2011 was originally published as part of Wis JI-Criminal 521, which has been withdrawn.

For a supplementary instruction advising of the need to be unanimous with regard to a particular criminal act, see Wis JI-Criminal 517.

The jury unanimity instruction should always be given. However, the failure to do so can be cured by polling the jury, thereby assuring that the verdict was, in fact, unanimous. State v. Kircher, 189 Wis.2d 392, 398-401, 525 N.W.2d 788 (Ct. App. 1994).

1. See State v. Anderson, 2006 WI 77, 291 Wis.2d 673, 717 N.W.2d 74 (overruled in part on other grounds. See State v. Alexander, 2013 WI 70, 349 Wis. 2d 327, 833 N.W.2d 126). The decision reversed a conviction for first degree sexual assault of a child based on several prejudicial errors made by the trial judge in connection with jury deliberations:
 - allowing the jury to play a videotape of a pretrial interview of the victim in the jury room rather than on the record in open court;
 - communicating with the jury during deliberations outside the presence of the defendant and without notice to or consultation with the defendant;
 - communicating with the jury outside the presence of defense counsel and without notice to or consultation with defense counsel;
 - failing to preserve a record of those communications; and,
 - refusing the jury's requests to have portions of the testimony read.291 Wis.2d 673, ¶126.
2. Also see, Wis JI-Criminal 522, Polling The Jury.

600 INTRODUCTORY COMMENT: NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT: INSTRUCTIONS FOR THE “BIFURCATED” TRIAL AND REEXAMINATION

CONTENTS

Scope

- I. First Phase
 - A. Issue To Be Determined
 - B. Burden Of Proof
 - C. Jury Instructions
 - 1. Wis JI-Criminal 601
 - 2. Wis JI-Criminal 602
- II. Second Phase
 - A. Issue To Be Determined
 - B. Burden Of Proof
 - C. Jury Instructions
 - 1. Wis JI-Criminal 603
 - 2. Wis JI-Criminal 605
- III. Abolition Of The Third Phase; Automatic Commitment To The Department
 - A. Overruling Of Kovach
 - B. Commitment To An Institution Or Release On Conditions
 - C. Duration Of The Commitment
 - D. Commitment And A Criminal Sentence
- IV. The Right Of A Committed Person To Refuse Medication
- V. Reexamination; Petition For Conditional Release
 - A. Crimes Committed Before January 1, 1991: Reexamination
 - 1. Issue To Be Determined
 - 2. Burden Of Proof
 - 3. Jury Instructions
 - a. Wis JI-Criminal 660
 - b. Wis JI-Criminal 661
 - c. Wis JI-Criminal 662
 - B. Crimes Committed On Or After January 1, 1991: Petition for Conditional Release

C. Mental Illness And Dangerousness

Scope

Wis JI-Criminal 601-662 provide a series of recommended instructions for use in the “bifurcated” trial which is held when a criminal defendant enters pleas of not guilty and not guilty by reason of mental disease or defect. Section 971.165 requires that the issues of guilt and responsibility be heard separately, “with a sequential order of proof in a continuous trial.”

This Introductory Comment outlines the phases of the trial and reexamination by identifying the issue to be determined and the burden of proof at each phase and by briefly summarizing the suggested instructions. There is a “preliminary” and a “final” instruction for each stage. The “preliminary” instruction is to be read to the jury before evidence is received. The “final” instruction is to be used after the evidence has been received, along with any other general instructions that may be appropriate. This Comment also outlines the court’s authority and responsibility with respect to commitment, conditional release, and termination of the commitment.

I. First Phase

A. Issue To Be Determined

The issue at the first phase is “guilt”: Did the defendant commit all the required elements of the offense charged? Expert opinion testimony on the defendant’s capacity to form a mental element required as an element of the crime (e.g., intent to kill) is not admissible at the first phase of the trial. Steele v. State, 97 Wis.2d 72, 97 98, 294 N.W.2d 2 (1980). Caution should be exercised in trying to apply a flat rule of exclusion to evidence that is offered by a criminal defendant. Cases decided after Steele have made it clear that the rule excluding expert testimony on intent is limited to expert opinion testimony on the capacity to form intent based on mental health history. See State v. Flattum, 122 Wis.2d 282, 361 N.W.2d 705 (1985), and State v. Repp, 122 Wis.2d 246, 362 N.W.2d 415 (1985). For a helpful description of what the current rule is and how it developed, see Haas v. Abrahamson, 910 F.2d 384 (7th Cir. 1990).

A defendant may join a plea of guilty with a plea of not guilty by reason of mental disease or defect, see § 971.06(1)(d). The first phase is not necessary in these cases, but the usual guilty plea acceptance procedures must be followed to establish that the plea is voluntarily entered and that a factual basis for the plea exists. State v. Duychak, 133 Wis.2d 307, 395 N.W.2d 795 (Ct. App. 1986). It is not error to allow a defendant to combine a no

contest plea with a plea of not guilty by reason of mental disease or defect. State v. VanderLinden, 141 Wis.2d 155, 414 N.W.2d 72 (Ct. App. 1987).

B. Burden Of Proof

The burden of proof at the first phase is on the State to prove all elements of the offense beyond a reasonable doubt. The first phase of the “bifurcated” trial is essentially the same as a regular criminal trial held where no special plea is entered.

C. Jury Instructions

1. JI-Criminal 601

JI-601 is the preliminary instruction to be read to the jury before the beginning of the trial where the defendant has entered pleas of not guilty and not guilty by reason of mental disease or defect. It tells the jury that there will be two phases to the trial: the first dealing with “guilt”; the second dealing with “responsibility.”

2. JI-Criminal 602

JI-602 provides a paragraph that is to be added to the general instructions which follow the first phase of the trial. It emphasizes that a second phase of the trial will follow a finding that the defendant is guilty. It should be followed by the standard instruction for the offense charged.

II. Second Phase

A. Issue To Be Determined

The issue at the second phase of the trial is whether the defendant is to be relieved of responsibility for his criminal act because he suffered from mental disease or defect at the time of the offense. The standard is identified in § 971.15(1) as follows:

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he or she lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law.

The instructions split this standard into two questions, one asking if the mental disease or defect was present and the other asking if it had the required effect on the defendant.

A defendant's proffered jury waiver at the second phase is subject to the usual requirement that the jury may only be waived with the consent of the state, per § 972.02(1). State v. Murdock, 2000 WI App 170, 238 Wis.2d 301, 617 N.W.2d 175.

B. Burden Of Proof

The burden of proof is established by § 971.15(3): The defendant must establish the presence of the mental disease or defect "defense" "to a reasonable certainty by the greater weight of the credible evidence."

1987 Wisconsin Act 86 (effective date: November 28, 1987) created § 971.165(2) which provides that a five-sixths verdict applies at the second phase. State v. Koput, 142 Wis.2d 370, 418 N.W.2d 804 (1988), held that a five-sixths verdict applied even before the statute was changed.

C. Jury Instructions

1. JI-Criminal 603

JI-603 is the preliminary instruction to be read to the jury before the second phase of the trial begins. It can be used if the first phase was tried to a jury, or if the first phase was tried to the court, or if the defendant entered a guilty plea and joined it with a plea of not guilty by reason of mental disease or defect. If a guilty plea is entered at the guilt phase, the usual plea acceptance procedures must be followed to assure that the plea was voluntarily entered and to establish that there is a factual basis for it. State v. Duychak, 133 Wis.2d 307, 395 N.W.2d 795 (Ct. App. 1986).

JI-603 explains that the second phase will be concerned with whether the defendant is "responsible" or "not responsible" for his criminal conduct. The Committee determined that phrasing the issue in terms of "responsibility" was preferable to the statutory terms "guilty but not guilty by reason of" The instruction emphasizes that the second phase is concerned with the defendant's mental condition at the time of the offense and informs the jury that if the defendant is found to be "not responsible," he or she will be committed to the custody of the Department of Health Services and will be placed in an appropriate institution unless the court determines that the defendant would not pose a danger to himself or herself or to others if released under conditions ordered by the court.

2. JI-Criminal 605

JI-605 is the final instruction for the second phase of the trial. It is drafted for use where the plea is based on the presence of a mental disease or mental defect. Former Wis JI-Criminal 605A which provided a separate instruction for cases involving “mental defect” was withdrawn in 2003 and combined with this instruction. If a case involves a claim that the combined effect of a “mental disease” and a “mental defect” is involved, the term “mental disease and defect” should be used throughout. State v. Duychak, 133 Wis.2d 307, 395 N.W.2d 795 (Ct. App. 1986), dealt with that situation. The court held that it was not error to phrase the jury instructions in the conjunctive – mental disease and defect – since the theory of defense was that the defendant suffered from both a disease and a defect, the combined effect of which was the lack of substantial capacity to appreciate the wrongfulness of his conduct. The court noted that to use “or” would have frustrated the proffered defense. And to use “and/or” would not have been desirable.

JI-605 divides the responsibility issue into two questions. The first question asks if the defendant had a “mental disease or defect” at the time the offense was committed. “Mental disease or defect” is broadly defined but is limited by the second question which asks if the mental disease or defect had the required effect on the defendant: As a result of the mental disease or defect, did the defendant lack substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law?

In State v. Leach, 124 Wis.2d 648, 370 N.W.2d 240 (1985), reversing (as to this issue) 122 Wis.2d 339, 363 N.W.2d 234 (Ct. App. 1984), the Wisconsin Supreme Court held that the defendant may be held to a burden of producing sufficient evidence on the responsibility issue before it need be submitted to the jury:

The constitution does not require that a defendant be allowed to present the affirmative defense of not guilty by reason of mental disease or defect to the jury when he has failed to produce sufficient evidence to raise a jury question A criminally charged defendant has no entitlement to the luck of a lawless decision maker He has no right to insist that the jury be given a special opportunity to acquit him on the basis of nothing more than speculation, conjecture or compromise concerning a defense to the crime with which he is charged The trial court should be permitted to withhold defense of not guilty by reason of mental disease or defect, like other defenses, from the consideration of the jury when there is no evidence presented or there is insufficient evidence to present a jury question on the defense. It should be permitted to direct a verdict against the defendant if the judge finds there is no credible probative evidence toward meeting the burden of establishing the defense of not guilty by reason of mental disease or

defect by a preponderance of the evidence after giving the evidence the most favorable interpretation in favor of the accused asserting the defense.

124 Wis.2d 648, 662 63.

III. Abolition Of The Third Phase; Automatic Commitment To The Department

A. Overruling Of Kovach

Until 1984, the instructions included a preliminary and a final instruction for the third phase of the so called “trifurcated trial.” The third phase dealt with the present mental condition and the need for institutionalized care of a person who had been found not responsible by reason of mental disease or defect. The third phase was abolished by State v. Field, 118 Wis.2d 269, 347 N.W.2d 365 (1984). Field overruled State ex rel. Kovach v. Schubert, 64 Wis.2d 612, 219 N.W.2d 341 (1974), by holding that automatic commitment following a finding of not guilty by reason of mental disease or defect does not violate constitutional principles of due process or equal protection. The commitment is “to the department of health services for a specified period not exceeding the maximum term of confinement in prison that could be imposed on an offender convicted of the same felony . . .” § 971.17(1)(b).

B. Commitment To An Institution Or Release On Conditions

Chapter 334, Laws of 1989, made further changes in the procedures relating to commitment. For offenses committed after January 1, 1991, commitment to an institution is no longer automatic. Rather, § 971.17(3) provides that the court must determine whether there shall be institutional care or conditional release. Conditional release shall be ordered unless the court “finds by clear and convincing evidence that conditional release of the person would pose a significant risk of bodily harm to himself or herself or to others or of serious property damage.” A series of factors are listed that the court may consider “without limitation because of enumeration”:

- the nature and circumstances of the crime;
- the person’s mental history and present mental condition;
- where the person will live;
- how the person will support himself or herself;
- what arrangements are available to ensure that the person has access to and will take necessary medication; and
- what arrangements are possible for treatment beyond medication.

The meaning of “serious property damage” was discussed in State v. Brown, 2010 WI App 113, 328 Wis.2d 241, 789 N.W.2d 102. Pursuant to a plea agreement, Brown was found not guilty by reason of mental disease or defect on one charge of identity theft. She appealed her commitment for institutional care on the ground that “a significant risk of serious property damage” under § 971.17(3)(a) requires physical harm to an object. The court of appeals disagreed, holding that “property damage” is not limited to physical property damage:

We discern no reason why the statute would seek to protect the public from physical injury or destruction of property, while subjecting it to the risk of the complete loss of goods, cash, or other assets. The injury suffered by a loss of property may be equal to or greater than that incurred from physical property damage, which may not completely devalue an item. ¶15.

The court agreed with the trial court’s conclusion that Brown’s extensive history of property crimes posed a significant risk of serious property damage if she would be conditionally released.

The commitment decision is to be made “pursuant to a hearing held as soon as practicable” after the second phase verdict is received. § 971.17(2)(a). If the court “lacks sufficient information to make the determination,” a presentence report under § 972.15 or a supplementary mental examination, or both, may be ordered. § 971.17 (2)(a). Subsections (b) through (g) of § 971.17(2) outline the procedure for the supplementary mental examination.

If institutional care is ordered, the department places the person in either the Mendota or Winnebago Mental Health Institute.

C. Duration Of The Commitment

Whether the disposition is institutional care or conditional release, the commitment is to the Department of Health Services for “a specified period.” Wis. Stat. § 971,17(1)(a), (b), and (d). The reference to “a specified period,” added by 1989 Wisconsin Act 334 [applicable to offenses committed after January 1, 1991] was a significant change from prior law. It allows the court to set a maximum period for the commitment that is less than the statutory maximum prison sentence for the offense. Further, it allows the court to exercise discretion in the multiple-count case or multiple cases. Under prior law, multiple counts automatically resulted in consecutive commitments for the maximum term authorized for each count. State v. C.A.J., 148 Wis.2d 137, 434 N.W.2d 800 (Ct. App. 1988) (interpreting Wis. Stat. § 971.17 (1987-88)). When specifying the commitment

period under current law, the court may exercise its discretion and impose concurrent or consecutive commitment periods on multiple counts and cases. State v. Yakich, 2022 WI 8, ¶¶17-22, 400 Wis.2d 549, 970 N.W.2d 12. If the crime involved carries a life term, the commitment period may be life, subject to the person's right to petition for release on conditions. Wis. Stat. § 971.17(1)(c).

The maximum commitment period varies depending on the time the offense was committed. For crimes committed before July 30, 2002, the specified period of the commitment shall not exceed 2/3 of the sentence that could have been imposed for the crime committed. § 971.17(1)(a). For crimes committed on or after July 30, 2002, the specified period of the commitment shall not exceed the maximum term of confinement of a bifurcated sentence that could be imposed for the crime committed. § 971.17(1)(b). Both maximum terms are subject to increases under applicable penalty enhancement statutes and reduction for sentence credit under § 973.155.

D. Commitment And Criminal Sentences

What to do when a person committed under § 971.17 is convicted for a new crime was addressed in State v. Szulczewski, 216 Wis.2d 494, 574 N.W. 660 (1998). The supreme court held that the § 971.17 commitment provides "legal cause" for possible stay of execution of sentence under § 973.15(8)(a). The sentencing court may exercise discretion in determining whether to stay execution of the new prison sentence, balancing the purposes of the commitment with the traditional purposes of criminal sentencing: deterrence, rehabilitation, retribution, and segregation.

A criminal sentence for a defendant in this situation cannot be ordered to run consecutively to the Chapter 971 commitment, because the commitment is not a "sentence." State v. Harr, 211 Wis.2d 584, 568 N.W.2d 307 (Ct. App. 1997). Thus, the judge sentencing in the new criminal case apparently has two options: impose sentence that will begin immediately, requiring that the defendant be transferred from the mental hospital to prison; or, stay the execution of the new criminal sentence in the exercise of discretion as suggested in Szulczewski.

IV. The Right Of A Committed Person To Refuse Medication

The Wisconsin Supreme Court has held that all involuntarily committed persons have the right to refuse psychotropic medication. State ex rel. Jones v. Gerhardstein, 141 Wis.2d 710, 416 N.W.2d 883 (1987). This includes persons committed under § 971.17 as not guilty by reason of mental disease or defect. Persons can be compelled to submit to medication if the committing court issues an order which specifically permits it.

1989 Wisconsin Act 31 revised §§ 971.16 and 971.17 to provide for the findings required by the Jones decision. (See sections 2854d, 2854h, and 2856 of 1989 Wisconsin Act 31, effective date: August 9, 1989.) These revisions were reenacted by Chapter 334, Laws of 1989. The other changes require the examiners to include findings regarding the medication issue in their reports, require the court to make a determination on the issue at the time of commitment, and establish a procedure for returning to court after commitment for a determination of competence to refuse medication.

The standard for evaluating competence to refuse medication is set forth in § 971.16(3):

. . . The defendant is not competent to refuse medication or treatment if, because of mental illness, developmental disability, alcoholism or drug dependence, and after the advantages and disadvantage of and alternatives to accepting the particular medication or treatment have been explained to the defendant, one of the following is true:

- (a) The defendant is incapable of expressing an understanding of the advantages and disadvantage of accepting medication or treatment and the alternatives.
- (b) The defendant is substantially incapable of applying an understanding of the advantages, disadvantages and alternative to his or her mental illness, developmental disability, alcoholism or drug dependence in order to make an informed choice as to whether to accept or refuse medication or treatment.

In State v. Wood, 2010 WI 17, 323 Wis.2d 321, 780 N.W.2d 63, the Wisconsin Supreme Court rejected due process based challenges to the involuntary medication statutes:

¶4 We are satisfied that Wis. Stat. § 971.17(3)(c) and AD 11 97 comport with the due process provisions of the Fourteenth Amendment to the United States Constitution and Article I, Section 1 of the Wisconsin Constitution for two reasons. First, we conclude that due process does not require a finding of dangerousness to issue an order compelling involuntary medication of a person committed under Wis. Stat. Ch. 971. Even if due process required such a finding, there would be no violation because the statutory language of Wis. Stat. § 971.17(3)(c), along with AD 11 97, effectively provide for such a finding. Second, we conclude that due process requires periodic review of the compelled

involuntary medication order, and that Wis. Stat. § 971.17(3)(c) and AD 11 97 satisfy that requirement as well.

Findings regarding refusal of medication may be necessary at the time the commitment decision is made (§ 971.17(3)(b)) or upon petition by the department regarding committed persons not subject to an order relating to refusal of medication (§ 971.17(3)(c)).

The effect of imposing involuntary medication in a case where the insanity defense is interposed was discussed in Riggins v. Nevada, 504 U.S. 127 (1992). The Court reversed Riggins' conviction because the state trial court failed to make sufficient findings to support the forced administration of antipsychotic drugs during trial.

The Court held that the involuntary administration of Mellaril denied Riggins "a full and fair trial." The side effects of the drugs could impact Riggins' outward appearance, which is observed by the jury in evaluating the defendant's demeanor. And ". . . it is clearly possible that such side effects impacted . . . the content of his testimony on direct or cross examination, his ability to follow the proceedings, or the substance of his communication with counsel." Further, a defendant has a liberty interest in freedom from unwanted antipsychotic drugs. The Court found the record insufficient to support a finding that these interests were outweighed by the need to accomplish an essential state policy, so the conviction was reversed.

It seems likely that Wisconsin's statute relating to forced medication must be interpreted in light of Riggins to require a specific finding that the need for the ordered medication outweighs the interests of the defendant that Riggins identifies.

V. Reexamination; Petition For Conditional Release

A. Crimes Committed Before January 1, 1991: Reexamination

A person committed as not guilty by reason of mental disease or defect for an offense occurring before January 1, 1991, may petition the committing court for reexamination of his "mental condition," § 971.17(2), 1987 88 Wis. Stats. There is a right to a jury at the reexamination hearing. State ex rel. Gebarski v. Milwaukee County Circuit Court, 80 Wis.2d 489, 256 N.W.2d 531 (1977).

Reexamination hearings held for persons committed as not guilty by reason of mental disease or defect are not to be closed to the public and press without proper findings. Section 51.20(12) does not require such closure upon a simple request; it requires the same exercise of discretion as in other cases where closing the courtroom is an issue. State ex

rel. Wisconsin State Journal v. Circuit Court, 131 Wis.2d 515, 389 N.W.2d 73 (Ct. App. 1986).

Section 971.17(2) was amended by supreme court order to allow the receipt of testimony over the telephone at the reexamination hearing: “Upon consent of all parties and approval by the court for good cause shown, testimony may be received into the record of the hearing by telephone or live audiovisual means.” Order of the Wisconsin Supreme Court dated October 29, 1987. 141 Wis.2d xxi xli. Also see Fullin and Williams, “Teleconferencing Comes To Wisconsin Courts,” Wisconsin Bar Bulletin, January 1988.

1. Issue To Be Determined

The sole issue upon reexamination is the defendant’s dangerousness; mental illness need not be established. State v. Gebarski, 90 Wis.2d 754, 280 N.W.2d 672 (1979).

2. Burden Of Proof

The burden of proof at the reexamination hearing is on the State to prove that the defendant cannot be safely discharged or released. State v. Gebarski, supra. The standard of proof is “to a reasonable certainty by evidence that is clear, satisfactory, and convincing.” State v. Gladney, 120 Wis.2d 486, 355 N.W.2d 547 (Ct. App. 1984).

3. Jury Instructions

a. JI-Criminal 660

JI-660 is the preliminary instruction to be used at the beginning of the reexamination hearing. It advises the jury of the petitioner’s status and identifies the issue the jury will be asked to decide.

b. JI-Criminal 661

JI-661 is the instruction to be used after evidence has been received at the reexamination hearing. It identifies the dangerousness of the petitioner as the sole issue for the jury to decide. The continued validity of dangerousness as the only criterion is discussed in note 2, JI-661. JI-661 identifies the three possible verdicts that may be returned: one providing that the petitioner be recommitted to the department; one providing for release on conditions to be determined by the court; and one providing for discharge. These three questions were identified as the ones to be submitted to the jury in

State ex rel. Gebarski v. Milwaukee County Circuit Court, 80 Wis.2d 489, 502, 256 N.W.2d 531 (1977).

c. **JI-Criminal 662**

JI-662 provides the actual verdict forms for use on reexamination. It assumes that a six person jury will be used and that a five-sixths verdict is acceptable, both by analogy to reexamination procedures in civil commitment cases.

B. Crimes Committed On Or After January 1, 1991: Petition for Conditional Release

For persons found not guilty by reason of mental disease or defect for offenses committed after January 1, 1991, the right to reexamination is replaced by the right to petition for conditional release. Procedures are set forth in § 971.17(4) in great detail. There is no longer a general cross reference to procedures in Chapter 51.

A petition for conditional release may be filed if at least six months have elapsed since the initial commitment order, the denial of the previous conditional release petition, or the revocation of conditional release. However, the director of the institution where the person is placed may file a petition on the person's behalf at any time.

A series of time limits apply once a timely petition is filed: within 20 days, one or more examiners shall be appointed; within 30 days of their appointment, the examiners shall file a written report; and within 30 days of the filing of the report, a hearing on the petition shall be held (unless the person waives the time limits). Testimony may be received at the hearing by telephone or live audio-visual means "upon a showing by the proponent of good cause under s. 807.13(2)(c)." Section 971.17(7)(d), created by Order of the Wisconsin Supreme Court, October 31, 1990.

After the hearing, "the court shall grant the petition unless it finds by clear and convincing evidence that the person would pose a significant risk of bodily harm to himself or herself or others or of serious property damage if conditionally released." § 971.17(4)(d) The same list of factors applicable to the commitment decision are specified for consideration, "without limitation by enumeration," for application to the conditional release decision. In State v. Wenk, 2001 WI App 268, 248 Wis.2d 714, the court of appeals affirmed the denial of conditional release where the trial court found that the individual remained dangerous because he had a significant substance abuse problem which triggered previous bouts of mental illness and criminal conduct and that he had relapsed when previously released.

If the court grants conditional release, § 971.17(4)(e) provides that “the department of health services and the county department under § 51.42 in the county of residence of the person shall prepare a plan that identifies the treatment and services, if any, that the person will receive in the community.” The statute specifies the topics that shall be addressed in the plan.

The statutory changes made by Chapter 334, Laws of 1989, also provided for a petition for termination of the commitment by a person who is on conditional release. The procedures and standards are spelled out in § 971.17(5) and parallel those that apply to the commitment and conditional release decisions. Section 971.17(6) provides for proceeding against the person under Chapter 51 at the expiration of the commitment.

C. Mental Illness And Dangerousness

The sole issue for reexaminations for pre 1991 cases and for petitions for conditional release for post January 1, 1991, cases is the continued dangerousness of the committed person. The viability of this standard was in question following the decision of the United States Supreme Court in Foucha v. Louisiana, 504 U.S. 71 (1992). The uncertainty was resolved in favor of the standard in State v. Randall, 192 Wis.2d 800, 532 N.W.2d 94 (1995).

Foucha was found not guilty by reason of insanity under Louisiana statutes that are the rough equivalent of the procedures in place in Wisconsin. Both are based on the ALI Model Penal Code. He was committed to a mental institution. He could gain release by proving that he was no longer dangerous. In Louisiana, commitment is “indefinite” in the sense that the duration of mental commitment is not limited by the maximum prison sentence the defendant would have faced if convicted. Foucha, however, had been detained for 8 years at the time this litigation began; his maximum prison sentence if convicted would have been 32 years.

Foucha petitioned for release. Doctors indicated that he was not suffering from mental illness, but they could not “certify that he would not constitute a menace to himself or others if released.” Based on this record, the trial court ruled that Foucha was “dangerous” and ordered him returned to the mental institution. The United States Supreme Court held that this statutory scheme was unconstitutional:

In this case, Louisiana does not contend that Foucha was mentally ill at the time of the trial court’s hearing. Thus, the basis for holding Foucha in a psychiatric

facility as an insanity acquittee has disappeared, and the State is no longer entitled to hold him on that basis. 504 U.S. 71, 78.

The Court reaffirmed that automatic commitment continues to be permissible after the finding of not guilty by reason of insanity: “. . . it could be properly inferred that at the time of the verdict, the defendant was still mentally ill and dangerous and hence could be committed.” 504 U.S. 71, 76. But that commitment apparently can continue only “until such time as he has regained his sanity or is no longer a danger to himself or society.” 504 U.S. 71, 78.

Wisconsin’s procedure is the same as Louisiana’s in one respect: automatic commitment with release only if the state fails to prove that the defendant remains dangerous. Lack of mental illness is not grounds for release if dangerousness continues. The latter was established in the Gebarski litigation. But Wisconsin limits the mental commitment to the maximum prison sentence that could have followed conviction, while Louisiana allows indefinite commitment.

In State v. Randall, the Wisconsin Supreme Court addressed the impact of Foucha on Wisconsin’s commitment and release procedures. The court held that allowing the continued confinement of an insanity acquittee who is no longer mentally ill, solely on the grounds that the individual is a danger to himself, herself, or others, does not deny the individual due process:

We hold that it is not a denial of due process for an insanity acquittee who has committed a criminal act to be confined in a state mental health facility for so long as he or she is considered dangerous, provided that the commitment does not exceed the maximum term of imprisonment which could have been imposed for the offense charged. We think the fact that an insanity acquittee has already been shown beyond a reasonable doubt to have committed at least one dangerous act justifies the disposition set forth by the legislature in sec. 971.17(2), Stats. Furthermore, we believe that our decision here is not inconsistent with . . . Foucha v. Louisiana. . . . [W]e read Foucha to permit the continued confinement of dangerous but sane acquittees in a mental health facility, so long as they are treated in a manner consistent with the purposes of their commitment, e.g., there must be a medical justification to continue holding a sane but dangerous insanity acquittee in a mental health facility.

.....

. . . . Under Wisconsin’s statutory scheme, the acquittee, once committed, is subject to treatment programs specifically designed to treat both mental and behavioral disorders. Treatment designed to reduce those behavioral disorders

which render the individual dangerous may continue even after clinical signs of mental illness are no longer apparent. Such treatment is necessary to realize the ultimate goal of safely returning the acquittee into the community. Because this state's mental health facilities provide such comprehensive treatment we cannot conclude that it is punitive to continue an acquittee's confinement based on dangerousness alone. Rather, we conclude that there is a reasonable relationship between the commitment and the purposes for which the individual is committed and, therefore, that insanity acquittees are treated in manner consistent with the purposes of their commitment. 192 Wis.2d 800, 806 808.

Thus, the court emphasized two aspects of the Wisconsin commitment scheme to distinguish it from the system reviewed in Foucha. First, the Wisconsin commitment is limited to the maximum term of criminal punishment that would have resulted if the offender had been convicted. Second, the acquittee continues to receive treatment appropriate to the purpose of the commitment, treatment which must go to the "behavioral disorder" or "behavioral disability" that makes the individual dangerous if the person is no longer clinically mentally ill. Under these circumstances, a single standard for continued commitment – based on dangerousness alone – is permissible.

The result of Wisconsin Supreme Court decision in Randall was a remand to the circuit court where Randall requested another reexamination in light of the standard the court established. He was denied release and appealed. The court of appeals found the jury instructions used on the second reexamination complied with due process. State v. Randall, 222 Wis.2d 53, 586 N.W.2d 318 (Ct. App. 1998).

COMMENT

This Introductory Comment was originally published in 1980 with the number 601-662. It was revised in 1982, 1984, 1988, 1989, 1990, 1992, 1995, 2003, and 2010. This revision was approved by the Committee in August 2022; it amended Section III.C to reflect case law updates.

[This page is intentionally left blank]



WISCONSIN JURY INSTRUCTIONS

CRIMINAL

VOLUME II

**Wisconsin Criminal Jury
Instructions Committee**

[Cite as Wis JI-Criminal]

- Includes 1/2023 Supplement (Release No. 61)

[This page is intentionally left blank]

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME I

| | No. | Year |
|--|------------------------------------|--------|
| OPENING INSTRUCTIONS ON THE PLEADINGS | | |
| Suggested Instructions | 1 | 2016 |
| Comment: Gender Neutral Language | 5 | 1/2023 |
| Preliminary Instruction: Jurors' Conduct; Evidence; Transcripts Not Available; Credibility; Substantive Issues; Opening Statement | 50 | 2022 |
| Notetaking Permitted | 55 | 2000 |
| Notetaking Not Allowed | 56 | 2000 |
| Instruction on Juror Questioning of Witnesses | 57 | 2014 |
| Transcripts Not Available for Deliberations; Reading Back Testimony | 58 | 2022 |
| Police Reports | 59 | 2001 |
| Preliminary Instruction: Use of an Interpreter for a Witness | 60 | 2003 |
| Preliminary Instruction: Use of an Interpreter for a Juror..... | 61 | 2004 |
| Preliminary Instruction: Use of an Interpreter for the Defendant | 62 | 2003 |
| Preliminary Instruction: Defendant Proceeding Pro Se | 70 | 2001 |
| | | |
| Opening Instructions..... | 100 | 2000 |
| Opening Statements | 101 | 2001 |
| Evidence Defined..... | 103 | 2000 |
| | | |
| One Defendant: Single Count: No Included Offense..... | 110 | 2000 |
| One Defendant: Single Count: Lesser Included Offenses..... | 112 | 2000 |
| Lesser Included Offense: Alternative Style | 112A | 2000 |
| Armed Robbery: Robbery (Unarmed) | 112A EXAMPLE | 2000 |
| One Defendant: Two Counts..... | 115 | 2000 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 115 EXAMPLE RENUMBERED 116 EXAMPLE | 2004 |
| Multiple Charges of the Same Offense: Different Victims..... | 116 | 2004 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 116 EXAMPLE | 2004 |
| One Defendant: Two Counts: Conviction for Only One Proper..... | 117 WITHDRAWN | 2000 |
| | | |
| Two Defendants: Single Count: No Included Offense | 120 | 2000 |
| Two Defendants: Single Count: Included Offense | 122 | 2000 |
| Two Defendants: Two Counts | 125 | 2000 |
| Two Defendants: Two Counts: Conviction for Only One Proper..... | 127 WITHDRAWN | 2000 |
| Charges Disposed of During Trial | 128 | 2014 |

WIS JI-CRIMINAL

BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE; EVIDENCE

| | | |
|--|----------------|--------|
| Burden of Proof and Presumption of Innocence..... | 140 | 1/2023 |
| Burden of Proof: Forfeiture Actions..... | 140A | 2011 |
| Where Identification of Defendant is in Issue | 141 | 2021 |
| Information Not Evidence..... | 145 | 2000 |
| Precautionary Statement: Anonymous and “Numbers” Juries..... | 146 | 2003 |
| Improper Questions..... | 147 | 2000 |
| Objections of Counsel; Evidence Received Over Objection | 148 | 2000 |
| Stricken Testimony..... | 150 | 2000 |
| View of Scene..... | 152 | 2000 |
| Summary of Evidence..... | 154 | 2012 |
| Exhibits..... | 155 | 2018 |
| Remarks of Counsel..... | 157 | 2000 |
| Recording Played to the Jury | 158 | 2022 |
| Closing Arguments of Counsel..... | 160 | 2000 |
| Agreed Testimony..... | 161 | 2000 |
| Agreed Facts | 162 | 2000 |
| Law Note: Stipulations | 162A | 2011 |
| Judicially Noticed Facts..... | 165 | 2003 |
| Circumstantial Evidence | 170 | 2000 |
| Circumstantial Evidence: Flight, Escape, Concealment | 172 | 2000 |
| Circumstantial Evidence - Possession of Recently Stolen Property | 173 | 2000 |
| Motive..... | 175 | 2000 |
| Statements of Defendant..... | 180 | 2021 |
| Confessions and Admissions: Series of Statements..... | 182 WITHDRAWN | 2000 |
| Confessions and Admissions: Mental Condition of Defendant in Issue..... | 185 WITHDRAWN | 2000 |
| Confessions and Admissions: Evidence That Defendant Did Not Understand Interrogator | 187 WITHDRAWN | 2000 |
| Weight of Evidence..... | 190 | 2000 |
| Juror's Knowledge..... | 195 | 2000 |
| Expert Opinion Testimony: General..... | 200 | 2019 |
| Expert Testimony: More Than One Expert..... | 200A WITHDRAWN | 2000 |
| Opinion of a Nonexpert Witness..... | 201 | 2012 |
| Polygraph Evidence | 202 WITHDRAWN | 2009 |
| Expert Testimony: Hypothetical Questions | 205 | 2019 |
| Objections of Counsel: Evidence Received Over Objection | 215 | 2000 |
| Evidence: Limited Purpose: Statement of Codefendant | 220 WITHDRAWN | 1999 |
| Cautionary Instruction: Interlocking Confessions | 220A WITHDRAWN | 1999 |
| Law Note: Statement of Accomplice Admitted for Nonhearsay Purpose | 220B | 1991 |
| Statement of Codefendant: Statement Does Not Mention Defendant..... | 221 | 2000 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Joint Trial: Evidence Admissible as to One Defendant Only | 222 | 2000 |
| Instructing on a “Presumed Fact” That is an Element of the Crime | 225 | 2000 |
| Prima Facie Effect of a Test Result Showing an Alcohol Concentration of | | |
| 0.08 Grams or More: Offenses Involving “Under the Influence” | 230 | 2006 |
| Evidence of a Test Result Showing an Alcohol Concentration of 0.04 Grams or | | |
| More but Less Than 0.08 Grams: Offenses Involving “Under the Influence” | 232 | 2009 |
| Blood-Alcohol Curve | 234 | 2004 |
| Refusal of Defendant to Furnish Sample for Alcohol Test | 235 | 2021 |
| Alcohol Concentration Chart | 237 | 2000 |
| Testimony of Accomplices | | |
| Testimony of a Witness Granted Immunity or Other Concessions..... | 246 | 2000 |
| Verdict as to Defendant Only..... | 247 | 2000 |
| State Need Not Prove Exact Date of Commission: Specific Date Alleged | | |
| State Need Not Prove Exact Date of Commission: Period of Time Alleged..... | 255A | 2000 |
| Time of Offense: Where State Not Required to Elect..... | 260 WITHDRAWN | 2000 |
| Time of Offense: Where State Has Elected | 265 WITHDRAWN | 2000 |
| Venue | | |
| Law Note: Jurisdiction..... | 268 | 2021 |
| Evidence as to Defendant’s Character | | |
| Cautionary Instruction: Evidence of Other Conduct [Required if Requested] | 275 | 2018 |
| Comment: Other Acts Evidence | 275.1 | 2016 |
| Prior Convictions Admissible to Prove Character | 276 | 2016 |
| WITNESSES | | |
| Credibility of Witnesses..... | | |
| Falsus in Uno | 305 | 2001 |
| Defendant as Witness in Own Behalf | 310 WITHDRAWN | 2001 |
| Prisoner as Witness or Defendant: Prisoner Status an Issue | | |
| Evidence That the Defendant Wore a GPS or Other Monitoring Device | 313 | 2017 |
| Defendant Wearing a Visible Restraining Device in the Presence of Jurors | 314 | 2012 |
| Defendant Elects Not to Testify | 315 | 2001 |
| Witness Exercising Privilege Against Self-Incrimination | 317 | 2001 |
| Impeachment of the Defendant by Prior Inconsistent Statements Which are | | |
| Inadmissible in the State’s Case-in-Chief | 320 | 2001 |
| Law Note: Substantive Use of Prior Inconsistent Statements..... | 320A | 2001 |
| Impeachment of Witness: Prior Conviction or Juvenile Adjudication | 325 | 2018 |
| Impeachment of Defendant as a Witness: Prior Conviction or Juvenile Adjudication..... | 327 | 2018 |
| Impeachment of Witness: Character for Truthfulness | 330 | 2018 |
| Credibility of Child Witness | | |
| Missing Witness..... | 345 | 2001 |

WIS JI-CRIMINAL

MISCELLANEOUS

Negligence Defined375 WITHDRAWN 2001

PERSONS AND PARTIES

| | | |
|--|---------------|------|
| Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided the Crime Charged | 400 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided a Burglary..... | 400 EXAMPLE | 2005 |
| Party to Crime: Defendant Either Intentionally Aided the Crime Charged or Was a Member of a Conspiracy to Commit the Crime Charged..... | 401 | 2005 |
| Party to Crime: Defendant Either Directly Committed, Intentionally Aided, Member of a Conspiracy to Commit the Crime Charged..... | 402 | 2005 |
| Statement of Co-Conspirator | 405 WITHDRAWN | 1994 |
| Party to Crime: Aiding and Abetting: Defendant Intentionally Aided the Crime Charged..... | 405 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Intentionally Aided a Burglary | 405 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 406 | 2005 |
| Example Party to Crime: Aiding and Abetting: First Degree Intentional Homicide as the Natural and Probable Consequence of Armed Robbery..... | 406 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: Multiple Counts | 407 | 2005 |
| Party to Crime: Conspiracy to Commit the Crime Charged | 410 | 2005 |
| Example Party to Crime: Conspiracy to Commit Burglary | 410 EXAMPLE | 2005 |
| Party to Crime: Conspiracy: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 411 | 2005 |
| Party to Crime: Withdrawal from a Conspiracy | 412 | 2008 |
| Statement of Co-Conspirator; Evidence Presented That Conspiracy Terminated by Withdrawal Before Statement Was Made..... | 415 WITHDRAWN | 1994 |
| Party to Crime: Solicitation to Commit the Crime Charged | 415 | 2005 |
| [Note on Instructions Withdrawn] | 418 | 1994 |
| Criminal Liability of a Corporation | 420 | 2005 |
| Corporate Liability: Acts of Employees: Strict Liability | 425 WITHDRAWN | 1995 |
| Corporate Liability: Acts of Lesser Employees | 430 WITHDRAWN | 1995 |
| Liability for the Acts of Another; Authorization or Acquiescence..... | 435 | 1995 |
| Liability for Acts of Another: Acts of Agent or Servant: Strict Liability Cases | 440 WITHDRAWN | 1995 |

WIS JI-CRIMINAL

CLOSING INSTRUCTIONS AND RELATION OF VERDICT TO OFFENSE CHARGED

| | | |
|---|---------------|--------|
| Closing Instruction..... | 460 | 2010 |
| Closing Instruction: Optional Short Form | 465 | 2010 |
| Verdicts Submitted for One Defendant: Single Count..... | 480 | 2000 |
| Verdicts Submitted for One Defendant: Single Count: Lesser Included Offense..... | 482 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Separate Verdict on Each Count Required..... | 484 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Lesser Included Offense on Each Count..... | 485 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Conviction for Only One Proper | 486 WITHDRAWN | 1990 |
| Verdicts Submitted for Multiple Defendants: Single Count | 490 | 2000 |
| Verdicts Submitted for Multiple Defendants: Single Count: Included Offense | 492 | 2000 |
| Verdicts Submitted for Multiple Defendants: Two Counts: Separate Verdict on Each Count Required..... | 494 | 2000 |
| Verdicts Submitted for Two Defendants: Two Counts: Conviction for Only One Proper | 496 WITHDRAWN | 1990 |
| Unanimous Verdict and Selection of Presiding Juror | 515 | 1/2023 |
| Five-Sixths Verdict and Selection of Presiding Juror: Forfeiture Actions..... | 515A | 2001 |
| Jury Agreement: Evidence of More Than One Act Introduced to Prove One Charge | 517 | 2010 |
| Supplemental Instruction on Agreement..... | 520 | 2001 |
| Instruction on Jury Deliberations | 521 WITHDRAWN | 2012 |
| Polling the Jury [Suggested Form]..... | 522 | 2007 |
| Instruction After Verdict Received | 525 | 2001 |
| Instruction after Verdict Received - Alternative Form | 525A | 2010 |

INCHOATE CRIMES

| | | |
|--------------------------------------|-------------|------|
| Solicitation as a Crime | 550 | 2020 |
| Conspiracy as a Crime | 570 | 2008 |
| Attempt | 580 | 2013 |
| Example Attempted Burglary | 581 EXAMPLE | 2002 |
| Example Attempted Armed Robbery..... | 582 EXAMPLE | 2002 |

DEFENSES AND DEFENSIVE MATTERS

| | | |
|---|-----|--------|
| Introductory Comment: Not Guilty by Reason of Mental Disease or Defect: Instructions for the “Bifurcated” Trial and Reexamination..... | 600 | 1/2023 |
| Instruction Prior to Trial upon a Plea of Not Guilty Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect..... | 601 | 2011 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Instruction After Evidence Has Been Received on Issue of Guilt Where a Plea of Not Guilty Has Been Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect | 602 | 2011 |
| Preliminary Instruction After Finding of Guilt and Before Consideration of Whether the Defendant Suffered from a Mental Disease or Defect at the Time of the Offense..... | 603 | 2011 |
| Instruction on the Issue of the Defendant’s Criminal Responsibility - Mental Disease or Defect | 605 | 2011 |
| Instruction on the Issue of the Defendant's Criminal Responsibility (Mental Defect) | 605A WITHDRAWN | 2011 |
| Verdict: Not Responsible by Reason of Mental Disease or Defect | 605B | 2011 |
| Preliminary Instruction upon a Finding of Not Guilty by Reason of Mental Disease or Defect | 606 WITHDRAWN | 2011 |
| Instruction on Commitment Following a Finding of Not Guilty by Reason of Mental Disease or Defect | 607 WITHDRAWN | 2011 |
| Mental Disease or Defect: Expert Opinion Testimony | 640 | 2019 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | 650 | 2011 |
| Effect of Finding of Not Guilty Because of Mental Disease or Defect | 655-CPC WITHDRAWN | 2011 |
| Preliminary Instruction: Reexamination of Person Committed as Not Guilty by Reason of Mental Disease or Defect [§ 971.17(2)]..... | 660 | 2011 |
| Reexamination Under § 971.17(2)..... | 661 | 2011 |
| Verdicts Submitted for Reexamination Under § 971.17(2) | 662 | 2011 |
| Law Note: Theory of Defense Instructions..... | 700 | 2020 |
| Law Note: Jury Nullification | 705 | 1991 |
| Law Note: Right to Recapture | 710 | 1994 |
| Involuntary Intoxication or Drugged Condition | 755 RENUMBERED 755A | 2005 |
| Involuntary Intoxication or Drugged Condition | 755A | 2015 |
| Involuntary Intoxication or Drugged Condition | 755B | 2015 |
| Voluntary Intoxication..... | 765 | 2015 |
| Mistake..... | 770 | 2010 |
| Accident | 772 | 2005 |
| Alibi | 775 | 2005 |
| Entrapment..... | 780 | 2002 |
| Entrapment [Alternate Form]..... | 780A WITHDRAWN | 2003 |
| Coercion..... | 790 | 2005 |
| Necessity..... | 792 | 2005 |

WIS JI-CRIMINAL

PRIVILEGE

| | | |
|--|------|------|
| Law Note: Privilege: Resisting an Unlawful Arrest | 795 | 2003 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm | 800 | 2022 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm: Crimes Involving Recklessness or Negligence | 801 | 2022 |
| Privilege: Self-Defense: Force Intended or Likely to Cause Death or Great Bodily Harm | 805 | 2022 |
| Law Note: Self-defense under § 939.48(1m)..... | 805A | 2022 |
| | | |
| Privilege: Self-Defense: Retreat..... | 810 | 2019 |
| Privilege: Self-Defense: Not Available to One Who Provokes an Attack: Regaining the Privilege | 815 | 2020 |
| | | |
| Privilege: Self-Defense: Injury to Third Party Charged as Reckless or Negligent Crime | 820 | 2022 |
| Privilege: Self-Defense: Unintended Harm to Third Party Charged as Intentional Crime..... | 821 | 2022 |
| Privilege: Defense of Others: Force Less Than That Likely to Cause Death or Great Bodily Harm | 825 | 2005 |
| Privilege: Defense of Others: Force Intended or Likely to Cause Death or Great Bodily Harm | 830 | 2005 |
| Privilege: Defense of Others: Effect of Provocation by Person Defended | 835 | 2005 |
| | | |
| Privilege: Defense of One’s Property | 855 | 2005 |
| | | |
| Privilege: Defense of Another’s Property | 860 | 2005 |
| | | |
| Privilege: Conduct in Good Faith and in an Apparently Authorized and Reasonable Fulfillment of Duties of a Public Office | 870 | 2014 |
| | | |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Nondeadly Force..... | 880 | 2005 |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Deadly Force..... | 885 | 2005 |
| | | |
| Cause..... | 901 | 2022 |
| Liability for Failure to Act - Criminal Omission | 905 | 2015 |
| Dangerous Weapon..... | 910 | 2012 |
| Great Bodily Harm..... | 914 | 2008 |
| Acting in Official Capacity | 915 | 2008 |
| Possession | 920 | 2000 |
| “Intentionally” and “With Intent to”: Mental Purpose..... | 923A | 2010 |
| “Intentionally” and “With Intent to”: “Practically Certain” | 923B | 2001 |
| Criminal Recklessness | 924 | 2015 |
| Aggravated Recklessness: Circumstances Which Show Utter Disregard for Human Life | 924A | 2012 |
| Criminal Negligence | 925 | 2005 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Contributory Negligence..... | 926 | 2005 |
| Sexual Contact [939.22(34)]..... | 934 | 2011 |
| Without Consent | 948 | 2005 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child | 950 | 2014 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child: Cases Involving Recklessness | 951 WITHDRAWN | 2014 |
| Privilege: Discipline by One in the Place of the Parent | 955 WITHDRAWN | 1989 |

PENALTY ENHANCERS

| | | |
|---|-----------------------|------|
| Lifetime Supervision of Serious Sex Offenders | 980 | 2016 |
| Committing a Domestic Abuse Crime Within 72 Hours of Arrest | 983 | 2014 |
| Committing a Domestic Abuse Crime As a Domestic Abuse Repeater | 984 | 2016 |
| Criminal Gang Crimes | 985 | 2003 |
| Using or Possessing a Dangerous Weapon | 990 | 2006 |
| Violent Crime in a School Zone | 992 | 2012 |
| Wearing a Bulletproof Garment..... | 993 | 2003 |
| Concealing Identity..... | 994 | 2003 |
| Selecting the Person Against Whom a Crime is Committed Because of Race, Religion, Etc..... | 996 | 2003 |
| Elder Person Victims | 997 | 2022 |
| Selecting Property Damaged Because of the Race, Religion, Etc., of the Owner..... | 996A RENUMBERED 996.1 | 2003 |
| Violent Crime Against an Elder Person | 998 | 2003 |
| Minor Passenger in the Vehicle | 999 | 2011 |
| Unborn Child in the Vehicle | 999A | 2003 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME II

| | No. | Year |
|--|-------|----------------|
| CRIMES AGAINST LIFE AND BODILY SECURITY | | |
| LIFE | | |
| Introductory Comment: Wisconsin's New Homicide Law..... | 1000 | WITHDRAWN 2006 |
| First Degree Intentional Homicide..... | 1010 | 2000 |
| First Degree Intentional Homicide of an Unborn Child..... | 1011 | 2005 |
| First Degree Intentional Homicide: Adequate Provocation: Second Degree Intentional Homicide..... | 1012 | 2006 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide..... | 1014 | 2021 |
| First Degree Intentional Homicide: Coercion: Second Degree Intentional Homicide..... | 1015 | 2010 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide..... | 1016 | 1/2023 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1017 | 1/2023 |
| First Degree Intentional Homicide: First Degree Reckless Homicide..... | 1018 | 2012 |
| First Degree Reckless Homicide..... | 1020 | 2015 |
| First Degree Reckless Homicide of an Unborn Child..... | 1020A | 2015 |
| First Degree Reckless Homicide..... | 1021 | 2022 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1022 | 2015 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide: Negligent Homicide..... | 1023 | 2019 |
| Felony Murder: Underlying Crime Completed..... | 1030 | 2022 |
| Felony Murder: Underlying Crime Attempted..... | 1031 | 2022 |
| Felony Murder: Death Caused While Committing a Crime as a Party to the Crime: Aiding And Abetting..... | 1032 | 2022 |
| Felony Murder: Death Caused While Committing Armed Burglary as a Party to the Crime: Aiding And Abetting..... | 1032 | EXAMPLE 2003 |
| Second Degree Intentional Homicide..... | 1050 | 2006 |
| Second Degree Intentional Homicide: Self-defense..... | 1052 | 2006 |
| Second Degree Reckless Homicide..... | 1060 | 2015 |
| Second Degree Reckless Homicide by Omission..... | 1060A | 2015 |
| Second Degree Reckless Homicide of an Unborn Child..... | 1061 | 2005 |
| Attempted First Degree Intentional Homicide..... | 1070 | 2001 |
| Attempted First Degree Intentional Homicide: Self-defense: Attempted Second Degree Intentional Homicide..... | 1072 | 1/2023 |
| Homicide Instructions Replaced for Offenses Committed on or After January 1, 1989..... | 1100 | WITHDRAWN 2006 |

WIS JI-CRIMINAL

| | |
|--|------|
| Third Degree Murder: First or Second Degree Murder Not Submitted... 1120 WITHDRAWN | 1982 |
| Third Degree Murder: First or Second Degree Murder Submitted..... 1122 WITHDRAWN | 1982 |
| Abortion [Feticide]..... 1125 | 2006 |
| Homicide by Negligent Operation of a Vehicle..... 1170 | 2002 |
| Homicide of an Unborn Child by Negligent Operation of a Vehicle..... 1171 | 2005 |
| Homicide by Negligent Handling of a Dangerous Weapon..... 1175 | 2011 |
| | |
| Homicide by Operation of Vehicle While Under the Influence 1185 | 2020 |
| Violations of § 940.09 and § 940.25 Involving an Unborn Child 1185A | 2004 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration – 0.08 Grams or More..... 1186 | 2020 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration – 0.02 Grams or More..... 1186A | 2020 |
| Homicide by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.09(1)(am) 1187 | 2021 |
| Homicide by Intoxicated User of Vehicle, Firearm, or Airgun: Affirmative Defense Under § 940.09(2) 1188 WITHDRAWN | 2004 |
| Homicide by Operation of a Vehicle While Under the Influence / Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More 1189 | 2020 |
| Homicide by Operation or Handling of Firearm or Airgun While Under the Influence..... 1190 | 2014 |
| Homicide by Operation or Handling of Firearm or Airgun with an Alcohol Concentration of 0.08 or More 1191 | 2006 |
| Mutilating a Corpse..... 1193 | 2006 |
| Hiding or Burying a Corpse..... 1194 | 2013 |
| Assisting Suicide..... 1195 | 2006 |

SEXUAL ASSAULT

| | |
|--|--------|
| Introductory Comment - Sexual Assault | |
| Instructions..... 1200-1219 WITHDRAWN | 1990 |
| Sexual Contact 1200A | 2007 |
| Sexual Intercourse..... 1200B | 2010 |
| “Without Consent” - Competence to Give Informed Consent in Issue..... 1200C | 2002 |
| “Without Consent” - Complainant Suffering from Mental Illness 1200D | 2002 |
| “Without Consent” - Complainant Unconscious 1200E | 2002 |
| Sexual Assault: Spouse as Victim..... 1200F | 2002 |
| Cautionary Instruction: Evidence of Victim’s Prior Sexual Conduct..... 1200G | 1/2023 |
| | |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent | |
| Causing Great Bodily Harm 1201 | 2002 |
| First Degree Sexual Assault: Sexual Intercourse Without Consent | |
| Causing Pregnancy..... 1201A | 2002 |
| First Degree Sexual Assault: Sexual Contact or Intercourse by Use or Threat of Use of a Dangerous Weapon 1203 | |
| | 2002 |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 | 2022 |
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 EXAMPLE | 2022 |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence While Aided and Abetted | 1205 | 2018 |
| First Degree Sexual Assault: Sexual Intercourse with a Person 12 Years of Age or Younger | 1206 WITHDRAWN | 1997 |
| First Degree Sexual Assault: Sexual Contact with a Person 12 Years of Age or Younger | 1207 WITHDRAWN | 1997 |
| | | |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence | 1208 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent Causing Injury, Illness, Disease or Impairment of a Sexual or Reproductive Organ, or Mental Anguish Requiring Psychiatric Care | 1209 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Suffering from Mental Illness | 1211 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Who is Under the Influence of an Intoxicant | 1212 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person the Defendant Knows is Unconscious | 1213 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent While Aided and Abetted | 1214 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Patient or Resident | 1215 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Correctional Staff Member | 1216 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Probation, Parole, or Extended Supervision Agent | 1217 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by an Employee of an Entity | 1217A | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Law Enforcement Officer With a Person Detained or in Custody | 1217B | 2022 |
| | | |
| Third Degree Sexual Assault: Sexual Intercourse Without Consent | 1218A | 2018 |
| Third Degree Sexual Assault: Sexual Contact Without Consent Involving Ejaculation, etc | 1218B | 2018 |
| Fourth Degree Sexual Assault: Sexual Contact Without Consent | 1219 | 2004 |

BODILY SECURITY

| | | |
|--|-----------------------|------|
| Battery and Related Offenses: Introductory Comment | 1220-1246 WITHDRAWN | 2009 |
| Battery | 1220 | 2015 |
| Battery: Self-Defense in Issue | 1220A | 2015 |
| Abuse of Children | 1221 WITHDRAWN | 1989 |
| Abuse of Children C Exposing a Child to Cruel Maltreatment | 1221A WITHDRAWN | 1989 |
| Failure to Report Child Abuse | 1221C RENUMBERED 2119 | 1992 |
| Substantial Battery with Intent to Cause Bodily Harm | 1222 | 2017 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Substantial Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1222A | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm | 1223 WITHDRAWN | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm: | | |
| Self-Defense in Issue..... | 1223A WITHDRAWN | 2017 |
| Aggravated Battery with Intent to Cause Bodily Harm..... | 1224 | 2002 |
| | | |
| Aggravated Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1224A | 2001 |
| | | |
| Aggravated Battery With Intent to Cause Great Bodily Harm | 1225 | 2003 |
| Aggravated Battery with Intent to Cause Great Bodily Harm: | | |
| Self-Defense in Issue..... | 1225A | 2003 |
| Battery with Substantial Risk of Great Bodily Harm..... | 1226 | 2022 |
| Battery to an Unborn Child..... | 1227 | 2017 |
| Battery by Prisoner | 1228 | 2012 |
| Battery by a Person Committed under § 980.065 | 1228A | 2022 |
| Battery by a Person Subject to an Injunction..... | 1229 | 2016 |
| | | |
| Battery to a Law Enforcement Officer or Fire Fighter | 1230 | 2016 |
| Battery to a Probation, Extended Supervision and Parole Agent, Community Supervision Agent, or An Aftercare Agent..... | 1231 | 2022 |
| Battery to Juror [Juror Has Assented to Verdict]..... | 1232 | 2005 |
| Battery to Witness [Witness Likely to be Called to Testify] | 1233 WITHDRAWN | 1999 |
| Battery to a Public Officer..... | 1234 | 2008 |
| Battery to a Technical College District or School District Officer or Employee | 1235 | 2008 |
| Battery to a Public Transit Vehicle Operator or Passenger..... | 1236 | 2014 |
| Battery to an Emergency Medical Care Provider | 1237 | 2022 |
| Battery or Threat to a Witness [Witness Has Attended or Testified]..... | 1238 | 2022 |
| Battery or Threat to Witness [Witness Likely to be Called to Testify]..... | 1239 | 2004 |
| Battery or Threat to Judge..... | 1240 WITHDRAWN | 2003 |
| Battery to a Judge..... | 1240A | 2019 |
| Threat to a Judge..... | 1240B | 2020 |
| Battery to a Prosecutor or Law Enforcement Officer | 1240C | 2019 |
| Threat to a Prosecutor or Law Enforcement Officer..... | 1240D | 2019 |
| Battery to Guardian Ad Litem, Corporation Counsel, or Attorney..... | 1241A | 2022 |
| Threat to Guardian Ad Litem, Corporation Counsel, or Attorney | 1241B | 2022 |
| Battery or Threat to a Department of Revenue Employee | 1242 | 2022 |
| Battery to a Nurse | 1243 WITHDRAWN | 2022 |
| Battery or Threat to a Department of Safety and Professional Services or Department of Workforce Development Employee..... | 1244 | 2022 |
| Battery to a County, City, Village, or Town Employee..... | 1245 | 2009 |
| Mayhem | 1246 | 2009 |
| Battery or Threat to a Staff Member of a Health Care Facility | 1247A | 2022 |
| Battery or Threat to a Health Care Provider | 1247B | 2022 |
| Sexual Exploitation by Therapist..... | 1248 | 2006 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm..... | 1249A | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Bodily Harm..... | 1249B | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm..... | 1249C | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------------|------|
| Physical Abuse of an Elder Person: Reckless Causation of Great Bodily Harm | 1249D | 2022 |
| Physical Abuse of an Elder Person: Reckless Causation of Bodily Harm..... | 1249E | 2022 |
| Physical Abuse of an Elder Person: Reckless Causation of Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm | 1249F | 2022 |
| First Degree Reckless Injury..... | 1250 | 2020 |
| Second Degree Reckless Injury | 1252 | 2015 |
| Strangulation and Suffocation..... | 1255 | 2022 |
| Injury by Negligent Handling of a Dangerous Weapon..... | 1260 | 2011 |
| Injury (Great Bodily Harm) by Negligent Use of a Vehicle | 1261 RENUMBERED 2654 | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle While Under the Influence | 1262 | 2014 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.08 Grams or More..... | 1263 | 2006 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.02 Grams or More..... | 1263A | 2004 |
| Failure to Support | 1264 WITHDRAWN | 1989 |
| Abandonment of a Young Child | 1265 WITHDRAWN | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.25(1)(am) | 1266 | 2021 |
| Abuse of Individuals at Risk..... | 1268 | 2007 |
| Abuse of Individuals at Risk: Recklessly Subjecting an Individual at Risk to Abuse under Circumstances That Cause Great Bodily Harm | 1268 EXAMPLE | 2007 |
| Reckless Abuse of Vulnerable Adults | 1269 WITHDRAWN | 1999 |
| Abuse of Residents of Penal Facilities..... | 1270 | 2006 |
| Abuse of Patients and Residents | 1271 | 2011 |
| Abuse of Patients and Residents: Reckless Physical Abuse Causing Great Bodily Harm to an Individual at Risk..... | 1271 EXAMPLE | 2007 |
| Neglect of Patients and Residents..... | 1272 | 2021 |
| Law Enforcement Officer – Failure to Render Aid | 1273 | 2020 |
| False Imprisonment..... | 1275 | 2014 |
| Human Trafficking | 1276 | 2015 |
| Human Trafficking | 1276 EXAMPLE | 2015 |
| Human Trafficking | 1277 | 2016 |
| Taking a Hostage | 1278 | 2016 |
| Kidnapping..... | 1280 | 2016 |
| Kidnapping..... | 1281 | 2016 |
| Kidnapping..... | 1282 | 2006 |
| Placing a Global Positioning Device | 1283A | 2016 |
| Obtaining Information Generated by a Global Positioning Device | 1283B | 2016 |
| Stalking | 1284 | 2021 |
| Stalking: Penalty Factors | 1284A | 2011 |
| Stalking | 1284B | 2021 |

WIS JI-CRIMINAL

| | | |
|---|-----------------|--------|
| Abduction..... | 1285 WITHDRAWN | 1989 |
| Abduction..... | 1286 WITHDRAWN | 1989 |
| Abduction..... | 1287 WITHDRAWN | 1989 |
| Intimidation of a Witness: Misdemeanor..... | 1290 WITHDRAWN | 2001 |
| Intimidation of a Witness..... | 1292 | 2020 |
| Intimidation of a Witness; Felony: Force Threatened | | |
| Against a Relative of the Witness | 1292A WITHDRAWN | 2001 |
| Intimidation of a Victim: Misdemeanor..... | 1294 WITHDRAWN | 2001 |
| Intimidation of a Victim..... | 1296 | 1/2023 |
| Intimidation of a Person Acting on Behalf of a Victim | 1296A | 1/2023 |
| Intimidation of a Victim..... | 1297 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IIA

| | No. | Year |
|--|----------------------|------|
| CRIMES AGAINST PUBLIC HEALTH AND SAFETY | | |
| Negligent Operation of a Vehicle | 1300 | 2022 |
| Highway Obstruction | 1302 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant..... | 1305 RENUMBERED 1321 | 2021 |
| Negligent Handling of Burning Material | 1310 | 2007 |
| Giving a False Alarm | 1316 | 2007 |
| Interference with a Fire Alarm System | 1317 | 2007 |
| Interference with Fire Fighting | 1318 | 2007 |
| Interference with Fire Fighting Equipment..... | 1319 | 2007 |
| Endangering Safety by Use of a Dangerous Weapon: Negligent Operation or Handling..... | 1320 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant | 1321 | 2019 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at Another | 1322 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at a Law Enforcement Officer, Fire Fighter, Etc..... | 1322A | 2018 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm Within 100 Yards of Building | 1323 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm into a Vehicle or Building..... | 1324 | 2008 |
| Possession of Pistol by Minor: Minor Going Armed with a Pistol..... | 1325 WITHDRAWN | 1989 |
| Sale, Loan, or Gift of Pistol to Minor | 1326 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Discharging a Firearm from a Vehicle | 1327 | 2005 |
| Disarming a Peace Officer | 1328 | 2008 |
| Carrying a Concealed Weapon | 1335 | 2018 |
| Carrying a Concealed Weapon: Unlawful Purpose | 1335A | 2016 |
| Carrying a Concealed Weapon: Evidence of Exception | 1335B | 2012 |
| Carrying a Concealed Knife..... | 1336 | 2022 |
| Carrying a Firearm in a Public Building..... | 1337 | 2019 |
| Carrying a Handgun on Premises Where Alcohol Beverages are Consumed..... | 1338 | 2019 |
| Possession of a Switchblade Knife | 1340 | 2016 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1340A | 2008 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341 | 2007 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1341A | 2010 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341B | 2020 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm to a Peace Officer | 1341C | 2020 |
| Possession of Oleoresin of Capsicum (Pepper Spray) by a Convicted Felon..... | 1341D | 2020 |
| Possession of a Short-Barreled Shotgun or Rifle..... | 1342 | 2007 |
| | | |
| Possession of a Firearm | 1343 | 2021 |
| Possession of a Firearm by a Felon: Privilege | 1343A | 2008 |
| Furnishing a Firearm to a Felon..... | 1343B WITHDRAWN | 2019 |
| Straw Purchasing of a Firearm..... | 1343C | 2019 |
| Possession of a Firearm by a Person Subject to an Injunction..... | 1344 | 2019 |
| Possession of an Electric Weapon | 1344A | 2012 |
| First Degree Recklessly Endangering Safety..... | 1345 | 2020 |
| Second Degree Recklessly Endangering Safety | 1347 | 2015 |
| | | |
| Possession of Explosives for an Unlawful Purpose | 1350 | 2008 |
| Possession of an Improvised Explosive Device..... | 1351A | 2008 |
| Possession of Materials or Components with Intent to Assemble an Improvised Explosive Device | 1351B | 2008 |
| Administering a Dangerous or Stupefying Drug | 1352 | 2008 |
| Placing Foreign Objects in Edibles..... | 1354 | 2008 |
| Obstructing Emergency Medical Personnel..... | 1360 | 2018 |
| Throwing or Expelling a Bodily Substance at a Public Safety Worker or Prosecutor..... | 1365 | 2018 |
| Violating a No Contact Order | 1375 | 2013 |

CRIMES AGAINST REPUTATION AND CIVIL LIBERTIES

| | | |
|--|----------------|------|
| Defamation..... | 1380 | 2008 |
| Denial of Rights: In General | 1390 WITHDRAWN | 1992 |
| Denial of Rights: Written Communication | 1391 WITHDRAWN | 1992 |
| Invasion of Privacy: Use of a Surveillance Device..... | 1392 | 2020 |
| Invasion of Privacy: Looking into a Dwelling Unit..... | 1395 | 2017 |
| Invasion of Privacy: Use of a Device to View Under the Outer Clothing of an Individual | 1395A | 2016 |
| Representations Depicting Nudity | 1396 | 2017 |
| Publishing a Private Representation Depicting Nudity Without Consent..... | 1398A | 2020 |
| Publishing a Depiction That Is Known to Be a Private Representation of Nudity Without Consent..... | 1398B | 2020 |
| Soliciting an Intimate or Private Representation | 1399 | 2018 |

WIS JI-CRIMINAL

CRIMES AGAINST PROPERTY

| | | |
|--|-----------------|------|
| Criminal Damage to Property | 1400 | 2020 |
| Criminal Damage to Property: Vending and Other Machines | 1400A | 2017 |
| Criminal Damage to Property: Energy Provider Property | 1400B | 2020 |
| Damage or Threat to Property of a Witness..... | 1400C | 2020 |
| Criminal Damage to Religious or Cemetery Property | 1401A | 2003 |
| Criminal Damage to Facilities Associated with Designated Groups | 1401B | 2003 |
| Criminal Damage to Personal Property Contained in Religious, Cemetery or Other Property | 1401C | 2003 |
| Criminal Damage or Threat to Property of a Judge | 1402A | 2004 |
| Criminal Damage or Threat to Property of a Department of Revenue Employee | 1402B | 2004 |
| Graffiti | 1403 | 2010 |
| Arson of a Building of Another | 1404 | 2008 |
| Arson of a Building with Intent to Defraud an Insurer | 1405 | 2008 |
| Arson of Property Other Than a Building..... | 1408 | 2011 |
| Arson (Of Property Other Than a Building) with Intent to Defraud..... | 1410 | 2001 |
| Molotov Cocktails (Firebombs): Possession..... | 1417 | 2008 |
| Molotov Cocktails (Firebombs): Manufacture, Sale, Offer to Sell, Gift or Transfer..... | 1418 | 2008 |
| Burglary with Intent to Steal..... | 1421 | 2020 |
| Burglary with Intent to Steal; While Armed with a Dangerous Weapon | 1422 WITHDRAWN | 1997 |
| Burglary with Intent to Commit a Felony | 1424 | 2022 |
| Burglary While Armed | 1425A | 2005 |
| Burglary: Arming Oneself with a Dangerous Weapon While in the Enclosure | 1425B | 2005 |
| Burglary: Committing a Battery While in the Enclosure..... | 1425C | 2005 |
| Burglary: Person Lawfully Present in the Enclosure | 1425E | 2005 |
| Entry into a Locked Vehicle | 1426 | 2008 |
| Possession of Burglarious Tools | 1431 | 2008 |
| Entry into Locked Coin Box | 1433 | 2004 |
| Criminal Trespass to Dwellings..... | 1437 | 2017 |
| Entry into a Locked Dwelling..... | 1438 | 2008 |
| Criminal Trespass to a Medical Facility | 1439 | 2008 |
| Criminal Trespass to an Energy Provider Property..... | 1440 | 2020 |
| Theft..... | 1441 | 2022 |
| Determining Value in Theft Cases..... | 1441A WITHDRAWN | 2002 |
| Theft: Penalty Factors | 1441B | 2020 |
| Theft from Person | 1442 WITHDRAWN | 1999 |
| Theft by Contractor..... | 1443 | 2022 |
| Theft by Contractor: Defendant Is a Corporate Officer | 1443A | 2022 |
| Theft by Employee, Trustee, or Bailee (Embezzlement)..... | 1444 | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Theft by One Having an Undisputed Interest in Property from One Having Superior Right of Possession | 1450 | 2022 |
| Theft by Fraud..... | 1453 WITHDRAWN | 2006 |
| Theft by Fraud: Representations Made to the Owner, Directly or by a Third Person | 1453A | 2022 |
| Theft by Fraud: Representations Made to an Agent | 1453B | 2022 |
| Theft by Fraud: Failure to Disclose as a Representation | 1453C | 2022 |
| Theft by Failure to Return Leased or Rented Property | 1455 | 2022 |
| Mail Theft | 1457 | 1/2023 |
| Unauthorized Use of an Individual's Personal Identifying Information or Documents..... | 1458 | 2019 |
| Unauthorized Use of an Entity's Identifying Information or Documents | 1459 | 2019 |
| Failure to Disclose Manufacturer of Recording..... | 1460 | 2014 |
| Fraud on Hotel or Restaurant Keeper | 1461 | 2010 |
| Absconding Without Paying Rent..... | 1462 | 2010 |
| Absconding Without Paying Rent: Affirmative Defense..... | 1462A | 2008 |
| Taking a Vehicle by Use or Threat of Force..... | 1463 | 2003 |
| Taking a Vehicle by Use or Threat of Force..... | 1463A | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent..... | 1464 | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent: Driving or Operating Without the Owner's Consent as a Lesser Included Offense | 1464A | 2019 |
| Driving or Operating a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent | 1465 | 2019 |
| Operating Without Owner's Consent: Affirmative Defense..... | 1465A | 2019 |
| Intentionally Accompanying a Person Who Operates a Vehicle Without the Owner's Consent | 1466 | 2016 |
| Removing a Major Part of a Vehicle Without the Owner's Consent..... | 1467 | 2001 |
| Issue of a Worthless Check: Misdemeanor..... | 1468 | 2004 |
| Issue of a Worthless Check: Felony: One Check for \$2,500 or More | 1469A | 2004 |
| Issue of a Worthless Check: Felony: Series of Checks Totaling \$2,500 or More | 1469B | 2004 |
| Transfer of Encumbered Personal Property with Intent to Defraud | 1470 | 2008 |
| Loan Sharking (Extortionate Extension of Credit) | 1472A | 2009 |
| Loan Sharking (Advancements for Extortionate Extensions of Credit) | 1472B | 2009 |
| Loan Sharking (Use of Extortionate Means) | 1472C | 2009 |
| Extortion: Accuse or Threaten to Accuse | 1473A | 2004 |
| Extortion: Injure or Threaten to Injure..... | 1473B | 2022 |
| Threats to Communicate Derogatory Information..... | 1474 | 2017 |
| Robbery by the Use of Force | 1475 WITHDRAWN | 2009 |
| Robbery by Threat of Force..... | 1477 WITHDRAWN | 2009 |
| Robbery by the Use or Threat of Force..... | 1479 | 2009 |
| Armed Robbery: By Use or Threat of Use of a Dangerous Weapon..... | 1480 | 2016 |

WIS JI-CRIMINAL

| | | |
|---|-------------------------|--------|
| Armed Robbery: By Use of an Article the Victim Reasonably Believes is a Dangerous Weapon | 1480A | 2016 |
| Receiving Stolen Property | 1481 | 2012 |
| Fraudulent Writings: Falsifying a Corporate Record..... | 1485 | 2004 |
| Fraudulent Writings: Obtaining a Signature by Means of Deceit..... | 1486 | 2001 |
| Possession of Property with Altered Identification Marks | 1488 | 2009 |
| Forgery (by Making or Altering a Check) | 1491 | 2009 |
| Uttering a Forged Writing (Check)..... | 1492 | 2009 |
| | | |
| Possession of a Forged Writing (Check) with Intent to Utter..... | 1493 | 2009 |
| Fraudulent Insurance Claim: Presenting a False or Fraudulent Claim..... | 1494 | 2003 |
| Theft of Telecommunications Service | 1495 | 2014 |
| Theft of a Financial Transaction Card | 1496 | 2009 |
| Fraudulent Use of a Financial Transaction Card | 1497 | 2003 |
| Fraudulent Use of a Financial Transaction Card | 1497A | 2003 |
| Financial Transaction Card Factoring..... | 1497B RENUMBERED 1497.1 | 2003 |
| Retail Theft | 1498 | 2020 |
| Retail Theft: Removing a Theft Detection Device | 1498A | 2020 |
| Retail Theft: Using a Theft Detection Shielding Device | 1498B | 2020 |
| Theft of Services | 1498C | 2020 |
| Criminal Slander of Title | 1499 | 2009 |
| Crimes Against Sexual Morality..... | 1500-1529 WITHDRAWN | 1996 |
| Computer Crime..... | 1504 | 2007 |
| Computer Crime..... | 1505 | 2009 |
| Computer Crime..... | 1506 | 2007 |
| Crimes Against Financial Institutions..... | 1508 | 1/2023 |
| Incest: Sexual Intercourse Between Father and Daughter | 1510 | 2008 |
| Fraud Against a Financial Institution..... | 1512 | 2017 |
| Robbery of a Financial Institution | 1522 | 2017 |
| Money Laundering — § 943.895(2)(a)1 - 2. | 1524 | 1/2023 |
| Money Laundering — § 943.895(2)(a)3. | 1525 | 1/2023 |
| Money Laundering — § 943.895(2)(a)4..... | 1526 | 1/2023 |

CRIMES AGAINST SEXUAL MORALITY

| | | |
|---|----------------|------|
| Enticing Children for Immoral Purposes | 1530 WITHDRAWN | 1989 |
| Incest: Sexual Intercourse Between Blood Relatives..... | 1532 | 2022 |
| Fornication: Sexual Intercourse in Public..... | 1535 | 2016 |
| Fornication: Sexual Intercourse with a Person Younger Than 18 Years | 1536 WITHDRAWN | 1989 |
| Sexual Gratification in Public..... | 1537 | 2021 |
| Sexual Gratification with a Person Younger Than 18 Years | 1538 WITHDRAWN | 1989 |
| Lewd and Lascivious Behavior - Exposing Genitals or Pubic Area | 1544 | 2007 |
| Lewd and Lascivious Behavior by Cohabitation with a Person Not His Spouse..... | 1545 WITHDRAWN | 1996 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Commitment and Continuance of Control Under the Sex Crimes Law | 1550-1553 WITHDRAWN | 1996 |
| Prostitution: Nonmarital Sexual Intercourse..... | 1560 | 2016 |
| Prostitution: Act of Sexual Gratification | 1561 | 2006 |
| Patronizing Prostitutes | 1564 | 2018 |
| Soliciting to Practice Prostitution | 1566 | 2016 |
| Pandering | 1568 | 2015 |
| Pandering | 1568A | 2016 |
| Pandering | 1568B | 2016 |
| Keeping a Place of Prostitution..... | 1570 | 2016 |
| Granting the Use of a Place as a Place of Prostitution..... | 1571 | 2016 |

CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

| | | |
|--|------|--------|
| Commercial Gambling: Operating a Gambling Place for Gain | 1601 | 2002 |
| Commercial Gambling: Receiving a Bet for Gain..... | 1602 | 2002 |
| Commercial Gambling: Collecting the Proceeds of a Gambling Machine | 1605 | 1/2023 |
| Commercial Gambling: Using Wire Communication to Place a Bet..... | 1607 | 2002 |
| Permitting Real Estate to be Used as a Gambling Place..... | 1610 | 2009 |
| Altering a Lottery Ticket | 1650 | 2009 |
| Uttering an Altered Lottery Ticket..... | 1651 | 2009 |
| Possession of an Altered Lottery Ticket with Intent to Defraud..... | 1652 | 2009 |
| Sabotage..... | 1705 | 2009 |
| Bribery – Transferring Property to a Public Employee to Induce Action or Failure to Act..... | 1720 | 2009 |
| Bribery – Transferring Property to a Public Officer to Influence a Decision | 1721 | 2009 |
| Bribery – Accepting a Bribe | 1723 | 2009 |
| Misconduct in Public Office (by Failure or Refusal to Perform Duty)..... | 1730 | 2008 |
| Misconduct in Public Office (by Performance of Unauthorized or Forbidden Act)..... | 1731 | 2008 |
| Misconduct in Public Office (by Exercise of Discretionary Power for a Dishonest Advantage) | 1732 | 2008 |
| Misconduct in Public Office (by False Entry, Return, Certificate, Report, or Statement) | 1733 | 2008 |
| Misconduct in Public Office (by Unlawful Solicitation or Acceptance of Anything of Value)..... | 1734 | 2008 |
| Private Interest in a Public Contract: Entering into a Contract in a Private Capacity and Being Authorized by Law to Participate in the Making of the Contract as a Public Officer | 1740 | 2009 |
| Private Interest in a Public Contract: Participating in the Making of a Contract in Which One Has a Private Pecuniary Interest..... | 1741 | 2009 |
| Private Interest in a Public Contract: Performing a Discretionary Function in Regard to a Contract in Which One Has a Private Pecuniary Interest | 1742 | 2009 |
| Perjury..... | 1750 | 2020 |
| False Swearing: False Statement Under Oath: Felony..... | 1754 | 2004 |
| False Swearing: Inconsistent Statements | 1755 | 2004 |
| False Swearing: False Statement Under Oath: Misdemeanor..... | 1756 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Resisting an Officer | 1765 | 2012 |
| Obstructing an Officer | 1766 | 2010 |
| Obstructing an Officer: Giving False Information..... | 1766A | 2010 |
| Failure to Comply with an Officer's Attempt to Take a Person into Custody | 1768 | 2008 |
| | | |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Forfeiture Offense | 1770 | 2008 |
| Escape from Custody Resulting from Violation of Probation, Parole, or Extended Supervision | 1771 | 2009 |
| Escape from Custody Resulting from Legal Arrest for a Crime..... | 1772 | 2008 |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Crime | 1773 WITHDRAWN | 2008 |
| Escape from Custody: Jail or Prison Escape..... | 1774 | 2008 |
| Escape from Custody: Chapter 980 Custody Order..... | 1775 | 2008 |
| Escape: Individual with Custody Injured..... | 1775A | 2009 |
| Failure to Report to Jail: Periods of Imprisonment..... | 1776 | 1/2023 |
| Failure to Report to Jail: After Stay of Sentence | 1777A | 1/2023 |
| Failure to Report to Jail: Confinement Order | 1777B | 1/2023 |
| | | |
| Assault by a Prisoner: Placing an Officer, Employee, Visitor, or Inmate in Apprehension of an Immediate Battery Likely to Cause Death or Great Bodily Harm | 1778 | 2001 |
| Assault by a Prisoner: Restraining or Confining an Officer, Employee, Visitor, or Inmate | 1779 | 2001 |
| Assault by a Prisoner: Throwing or Expelling a Bodily Substance at an Officer, Employee, Visitor, or Inmate..... | 1779A | 2001 |
| Permitting Escape | 1780 | 2008 |
| Assisting Escape | 1781 | 2008 |
| Assisting Escape by Public Officer or Employee..... | 1782 | 2008 |
| Introducing a Firearm into an Institution | 1783 | 2008 |
| Inmate Possessing an Article With Intent to Retain..... | 1784 | 2021 |
| Delivering an Article to an Inmate..... | 1785 | 2021 |
| Possessing an Article with Intent to Deliver it to an Inmate..... | 1786 | 2021 |
| Receiving an Article From an Inmate to Convey Out of Jail or Prison | 1787 | 2021 |
| Encouraging a Violation of Probation, Extended Supervision or Parole..... | 1788 | 2011 |
| | | |
| Aiding a Felon..... | 1790 | 2015 |
| Aiding a Felon by Destroying, etc., Physical Evidence..... | 1791 | 2015 |
| Bail Jumping | 1795 | 2018 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME III

| | No. | Year |
|---|---------------------|-------------|
| CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION (continued) | | |
| Concealing Identity..... | 1805 RENUMBERED 994 | 1986 |
| Bribery of Witness: Transferring Property | 1808A | 2021 |
| Bribery of Witness: Accepting a Bribe | 1808B | 2021 |
| Concealing Death of Child..... | 1810 WITHDRAWN | 1989 |
| Communicating with a Juror..... | 1812 | 2009 |
| | | |
| Obstructing Justice..... | 1815 | 2009 |
| Simulating Legal Process..... | 1825 | 2009 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel..... | 1830 | 2018 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel with Intent to Commit a Crime..... | 1831 WITHDRAWN | 2018 |
| Interference with Custody of a Child..... | 1832 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1833 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1834 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1835 WITHDRAWN | 1989 |
| Interference with Custody of a Nonmarital Child..... | 1835A WITHDRAWN | 1989 |
| Interference with the Parental Rights of the Other Parent: Concealing a Child | 1838 WITHDRAWN | 1989 |
| | | |
| Unemployment Insurance Fraud: Making a False Statement to Obtain a Benefit Payment | 1848 | 2019 |
| Welfare Fraud: Making False Representations to Secure Public Assistance..... | 1850 | 2015 |
| Public Assistance Fraud: Concealing or Failing to Disclose an Event Affecting Eligibility | 1851 | 2015 |
| Welfare Fraud: Failure to Report Receipt of Income or Assets..... | 1852 WITHDRAWN | 2015 |
| Welfare Fraud: Failure to Notify Authorities of Change of Facts | 1854 WITHDRAWN | 2015 |
| Food Stamp Fraud: Misstating Facts on an Application..... | 1862 | 2015 |
| | | |
| Medical Assistance Fraud: Making a False Statement in an Application for a Benefit or Payment..... | 1870 | 2015 |
| | | |
| Racketeering Activity – Using Proceeds of a Pattern of Racketeering Activity to Establish or Operate an Enterprise..... | 1881 | 2008 |
| Racketeering Activity – Acquiring or Maintaining an Interest in or Control of an Enterprise Through a Pattern of Racketeering Activity | 1882 | 2008 |
| Racketeering Activity – Conducting or Participating in an Enterprise Through a Pattern of Racketeering Activity | 1883 | 2008 |

WIS JI-CRIMINAL

CRIMES AGAINST PUBLIC PEACE, ORDER, AND OTHER INTERESTS

| | | |
|---|-----------------|-------------|
| Disorderly Conduct..... | 1900 | 2022 |
| Disrupting a Funeral or Memorial Service | 1901 | 2007 |
| Disrupting a Funeral or Memorial Service: Impeding Vehicles | 1901A | 2007 |
| Unlawful Use of Telephone | 1902 | 2008 |
| Unlawful Use of Telephone | 1903 | 2008 |
| Unlawful Use of Telephone | 1904 | 2008 |
| Unlawful Use of Telephone | 1905 RENUMBERED | 1907 1993 |
| Unlawful Use of Telephone | 1906 | 2008 |
| Unlawful Use of Telephone | 1907 | 2008 |
| Unlawful Use of a Computerized Communication System: | | |
| Threat to Inflict Injury | 1908 | 2008 |
| Unlawful Use of a Computerized Communication System: | | |
| Use of Obscene Language | 1909 | 2008 |
| Harassment: Subjecting Another to Physical Contact | 1910 | 2003 |
| Harassment: Threatening Physical Contact with Another | 1911 RENUMBERED | 1910.1 2003 |
| Harassment: Engaging in a Course of Conduct Which Harasses or | | |
| Intimidates Another | 1912 | 2003 |
| Swatting | 1919 | 2020 |
| Bomb Scares | 1920 | 2020 |
| Intentional Terrorist Threats | 1925A | 2017 |
| Reckless Terrorist Threats | 1925B | 2017 |
| Failure to Withdraw from an Unlawful Assembly..... | 1930 | 2008 |
| Contributing to Delinquency or Neglect of Children..... | 1960 WITHDRAWN | 1989 |
| Contributing to Delinquency of Children by Parent, | | |
| Guardian, or Legal Custodian | 1961 WITHDRAWN | 1989 |

CRIMES AGAINST ANIMALS

| | | |
|---|------|------|
| Mistreating an Animal | 1980 | 2013 |
| Harassment of Police or Fire Animals | 1981 | 2005 |
| Failing to Provide an Animal with Sufficient Food and Water | 1982 | 2005 |
| Dognapping and Catnapping..... | 1983 | 2005 |
| Failing to Provide an Animal with Proper Shelter | 1984 | 2005 |
| Instigating Fights Between Animals..... | 1986 | 2009 |
| Keeping an Animal with Intent That it Engage in Fighting..... | 1988 | 2009 |

ABANDONMENT

| | | |
|--|----------------|------|
| Abandonment by Husband or Father | 2000 WITHDRAWN | 1996 |
|--|----------------|------|

PATERNITY

| | | |
|-----------------|----------------|------|
| Paternity | 2010 WITHDRAWN | 1996 |
|-----------------|----------------|------|

JUVENILE DELINQUENCY

| | | |
|--|----------------|------|
| Juvenile Delinquency: Composite Instruction | 2020 WITHDRAWN | 2009 |
| Sample: Delinquency Under Chapter 48: Burglary | 2021 WITHDRAWN | 2009 |
| Contempt of Court: Punitive Sanction..... | 2031 | 2009 |

WIS JI-CRIMINAL

ORDINANCE VIOLATIONS

| | | |
|--|---|------|
| Violating a Temporary Restraining Order or an Injunction..... | 2040 | 2019 |
| Violating a Foreign Protection Order..... | 2042 | 2002 |
| Violating a Domestic Abuse Contact Prohibition – § 968.075(5) | 2044 | 2013 |
| Burden of Proof: Forfeiture Actions and Five-Sixths Verdict: Forfeiture Actions | 2050, 2055 RENUMBERED 140A and 515A, respectively | 1994 |

CRIMES AGAINST CHILDREN

| | | |
|--|--------------|------|
| Sexual Contact | 2101A | 2007 |
| Sexual Intercourse..... | 2101B | 2010 |
| Introductory Comment: § 948.02 Sexual Assault of a Child: As Amended by 2007 Wisconsin Act 80 [Effective Date: March 27, 2008] and 2013 Wisconsin Act 167 [Effective Date: March 29, 2014]..... | 2102 | 2019 |
| First Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 13 Years: Causing Great Bodily Harm..... | 2102A | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 12 Years | 2102B | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence..... | 2102C | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence by a Person Who Has Attained the Age of 18 Years | 2102D | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years | 2102E | 2015 |
| Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years | 2104 | 2020 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Actual Child | 2105A | 2005 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Fictitious Child..... | 2105B | 2005 |
| Sexual Assault of a Child: Failing to Act to Prevent Sexual Intercourse or Sexual Contact | 2106 | 2009 |
| Law Note: “Person Responsible for the Child’s Welfare”..... | 2106A | 2010 |
| Repeated Acts of Sexual Assault of a Child | 2107 | 2019 |
| Repeated Acts of Sexual Assault of a Child | 2107 EXAMPLE | 2009 |
| Physical Abuse of a Child: Intentionally Causing Great Bodily Harm | 2108 | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Great Bodily Harm..... | 2108A | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Reckless Causing of Great Bodily Harm | 2108B | 2015 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm | 2109 | 2009 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm by Conduct Which Creates a High Probability of Great Bodily Harm | 2110 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Great Bodily Harm..... | 2111 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Bodily Harm | 2112 | 2009 |

WIS JI-CRIMINAL

| | | |
|---|----------------|------|
| Physical Abuse of a Child: Recklessly Causing Bodily Harm by Conduct which Creates a High Probability of Great Bodily Harm | 2113 | 2009 |
| Physical Abuse or Sexual Assault of a Child by a Person Responsible for the Welfare of the Child | 2114 | 2003 |
| Repeated Acts of Physical Abuse of a Child | 2114A | 2019 |
| Repeated Acts of Physical Abuse of a Child | 2114A EXAMPLE | 2017 |
| Sexual Assault or Physical Abuse of a Child by a Child Care Provider | 2115 | 2019 |
| Causing Mental Harm to a Child | 2116 | 2009 |
| | | |
| Failure to Report Child Abuse | 2119 | 2012 |
| Sexual Exploitation of a Child | 2120 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2120A | 2020 |
| Sexual Exploitation of a Child | 2121 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2121A | 2020 |
| Sexual Exploitation of a Child | 2122 | 2020 |
| Sexual Exploitation of a Child: By a Person Responsible for the Child's Welfare | 2123 | 2020 |
| Trafficking of a Child | 2124 | 2017 |
| Causing a Child to View or Listen to Sexual Activity | 2125 | 2020 |
| | | |
| Incest with a Child: Sexual Intercourse or Contact | 2130 | 2008 |
| Incest with a Child: Sexual Intercourse or Contact by Stepparent | 2131 | 2008 |
| Child Enticement: Completed Act | 2134 | 2018 |
| Child Enticement: Attempt: Actual Child | 2134A | 2018 |
| Child Enticement: Attempt: Fictitious Child | 2134B | 2018 |
| Use of a Computer to Facilitate a Child Sex Crime | 2135 | 2017 |
| Soliciting a Child for Prostitution | 2136 | 2009 |
| Patronizing a Child | 2136A | 2018 |
| Sexual Assault of a Foster Child | 2137A | 2010 |
| Sexual Assault of a Child Placed in a Substitute Care Facility | 2137B | 2007 |
| Sexual Intercourse with a Child | 2138 | 2018 |
| Underage Sexual Activity | 2138A | 2018 |
| Sexual Assault of a Student by a School Staff Person | 2139 | 2007 |
| Sexual Assault of a Child by a Person Who Works or Volunteers with Children | 2139A | 2007 |
| | | |
| Exposing Genitals or Pubic Area to a Child | 2140 | 2015 |
| Causing a Child to Expose Genitals or Pubic Area | 2141 | 2015 |
| Exposing a Child to Harmful Material | 2142 | 2019 |
| Exposing a Child to Harmful Material: Face-to-Face Contact Affirmative Defense | 2142A | 2009 |
| Exposing a Child to Harmful Material: Verbally Communicating a Harmful Description or Narrative Account | 2143 | 2019 |
| Possession of Child Pornography | 2146 WITHDRAWN | 2003 |
| Child Pornography: Possession of a Recording | 2146A | 2020 |
| Child Pornography: Exhibiting or Playing a Recording | 2146B | 2020 |
| Child Sex Offender Working with Children | 2147 | 2007 |
| Abandonment of a Child | 2148 | 2003 |
| | | |
| Neglecting a Child | 2150 | 2019 |
| Neglecting a Child: Death, Great Bodily Harm, or Bodily Harm as a Consequence | 2150A | 2019 |
| Chronic Neglect of a Child; Repeated Acts of Neglect | 2151 | 2019 |
| Failure to Support | 2152 | 2006 |

WIS JI-CRIMINAL

| | | |
|---|-------|--------|
| Failure to Support: Affirmative Defense | 2152A | 2001 |
| Concealing Death of Child..... | 2154 | 2013 |
| Abduction of Another’s Child: Taking from Home or Custody | 2160 | 1/2023 |
| Abduction of Another’s Child: Detaining Away from Home..... | 2161 | 1/2023 |
| Abduction of Another’s Child: Taking by Force or Threat of Force | 2162 | 1/2023 |
| Abduction of Another’s Child: Detaining by Force or Threat of Force..... | 2163 | 1/2023 |
| Interference with Custody of a Child..... | 2166 | 2015 |
| Interference with Custody of a Child..... | 2167 | 2009 |
| Interference with Custody of a Nonmarital Child..... | 2167A | 2009 |
| Interference with the Custody of a Child by a Parent: Concealing a Child | 2168 | 2009 |
| Interference with the Custody of a Child: Affirmative Defenses..... | 2169 | 2009 |
| Contributing to the Delinquency of a Child..... | 2170 | 1/2023 |
| Contributing to the Delinquency of a Child: Death as a Consequence..... | 2170A | 1/2023 |
| Contributing to the Delinquency of a Child by a Person Responsible for the Child’s Welfare | 2171 | 1/2023 |
| Contributing to Truancy..... | 2173 | 2006 |
| Compulsory School Attendance..... | 2174 | 2006 |
| Child Unattended in a Child Care Vehicle..... | 2175 | 2013 |
| Possession of a Dangerous Weapon by a Child..... | 2176 | 2012 |
| Sale, Loan, or Gift of a Dangerous Weapon to a Child | 2177 | 2012 |
| Sale, Loan, or Gift of a Firearm to a Child: Death Caused..... | 2177A | 2009 |
| Possession of a Firearm on School Grounds..... | 2178A | 2016 |
| Discharge of a Firearm in a School Zone | 2178B | 2016 |
| Dangerous Weapons Other Than Firearms on School Premises | 2179 | 2009 |
| Receiving Stolen Property from a Child | 2180 | 2012 |
| Recklessly Storing a Firearm | 2185 | 2013 |
| Registered Sex Offender and Photographing Minors | 2196 | 2008 |
| Failure to Comply with Sex Offender Registration Requirements | 2198 | 2021 |
| Sex Offender Name Change | 2199 | 1/2023 |

INQUEST

| | | |
|--|-------|------|
| Inquest: Preliminary Instruction..... | 2300 | 2010 |
| Inquest: Final Instructions: Explanation of Verdicts | 2302 | 2010 |
| Inquest: Suggested Verdicts..... | 2302A | 2010 |

SEXUALLY VIOLENT PERSON

| | | |
|---|------|------|
| Suggested Order of Instructions: Commitment as a Sexually Violent Person under Chapter 980, Wis. Stats. | 2500 | 2016 |
| Preliminary Instruction: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2501 | 2011 |
| Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats..... | 2502 | 2021 |
| Verdict: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2503 | 2011 |
| Preliminary Instruction: Hearing on Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2505 | 2014 |

WIS JI-CRIMINAL

Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats..... 2506 2021

VEHICLE CODE

| | | |
|--|-----------------|--------|
| Making a False Statement in an Application for a Certificate of Title | 2590 | 2004 |
| Operating While Intoxicated: Introductory Comment | 2600 | 2011 |
| Premises Other Than Highways..... | 2605 | 2011 |
| Operating a Motor Vehicle Without a Valid Operator's License - Criminal Offense | 2610 | 2013 |
| Operating a Motor Vehicle Without a Valid Operator's License: Causing Great Bodily Harm or Death - Criminal Offense | 2612 | 2013 |
| Operating While Revoked: Criminal Offense: Based on Prior Conviction | 2620 | 2010 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense..... | 2620A | 2018 |
| Operating A Motor Vehicle After Revocation or Suspension - Civil Forfeiture | 2620A WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Notice Mailed | 2620B WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Duty to Exercise Due Care..... | 2620C WITHDRAWN | 2006 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense | 2621 | 2018 |
| Operating While Revoked: Civil Forfeiture..... | 2621A | 2018 |
| Operating While Suspended: Civil Forfeiture | 2622 | 2013 |
| Operating While Revoked or Suspended: Criminal Offense: Causing Great Bodily Harm or Death | 2623 WITHDRAWN | 2013 |
| Operating While Suspended: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623A | 2013 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623B | 2018 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623C | 2018 |
| Operating While Revoked: Criminal Offense: Permanent Revocation | 2626 | 2019 |
| Operating a Motor Vehicle to Flee or in an Attempt to Elude an Officer..... | 2630 | 2019 |
| Resisting a Traffic Officer by Failing to Stop..... | 2632 | 2019 |
| Reckless Driving: Endangering Safety (Criminal Offense)..... | 2650 | 1/2023 |
| Reckless Driving: Causing Bodily Harm..... | 2652 | 1/2023 |
| Reckless Driving: Causing Great Bodily Harm..... | 2654 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IV

| | No. | Year |
|---|---------------------|--------|
| VEHICLE CODE (continued) | | |
| Introductory Comment..... | 2660-2665 WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – 0.08 Grams or More..... | 2660 | 2020 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660A | 2015 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660B WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams | 2660C | 2007 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams – Subject to an Ignition Interlock Order..... | 2660D | 2011 |
| Operating a Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More | 2661 | 2017 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More – § 346.63(2)(a) | 2661A WITHDRAWN | 2004 |
| Operating a Vehicle While Intoxicated and Causing Injury: Affirmative Defense Under § 346.63(2)(b)..... | 2662 WITHDRAWN | 2004 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Criminal Offense..... | 2663 | 1/2023 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture..... | 2663A | 2006 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture – No Alcohol Concentration Test..... | 2663B | 2019 |
| Alcohol Concentration Level..... | 2663C | 2004 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant with a Child under 16 Years of Age in the Motor Vehicle | 2663D | 2011 |
| Operating a Motor Vehicle While Under the Influence of a Controlled Substance – Criminal Offense..... | 2664 | 2020 |
| Operating a Motor Vehicle While Under the Influence of a Combination of an Intoxicant and a Controlled Substance – Civil Forfeiture | 2664A | 2022 |
| Operating a Motor Vehicle with a Detectable Amount of a Restricted Controlled Substance..... | 2664B | 2021 |
| Operating a Vehicle While Under the Influence of an Intoxicant and Causing Injury | 2665 | 2017 |
| Operating a Motor Vehicle While Under the Influence of a Drug – Criminal Offense..... | 2666 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|-------|--------|
| Operating a Motor Vehicle While Under the Influence of any Combination of an Intoxicant and any other Drug to a Degree that Renders Him or Her Incapable of Safely Driving | 2666A | 2022 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant: Hazardous Inhalant..... | 2667 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Civil Forfeiture..... | 2668 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2669 | 2015 |
| Failure to Give Information or Render Aid Following an Accident..... | 2670 | 2018 |
| Speeding: Exceeding a Reasonable and Prudent Speed Under § 346.57(2) or an Ordinance Adopting § 346.57(2)..... | 2672 | 1/2023 |
| Law Note: The “Justification” Defense | 2672A | 2010 |
| Speeding: Exceeding a Reasonable and Prudent Speed Criminal Offense under § 346.57(2); § 346.60 (3m)(a)2 | 2672B | 1/2023 |
| Speeding: Driving Too Fast for Conditions Under § 346.57(3) or an Ordinance Adopting § 346.57(3)..... | 2674 | 1/2023 |
| Speeding: Driving Too Fast for Conditions Criminal Offense under § 346.57(3); § 346.60 (3m)(a)2 | 2674A | 1/2023 |
| Speeding: Exceeding Fixed Limits Under § 346.57(4)(e) or an Ordinance Adopting § 346.57(4)(e)..... | 2676 | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Under § 346.57(4)(gm) or an Ordinance Adopting § 346.57(4)(gm)..... | 2676A | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Criminal Offense under § 346.57(4)(gm); § 346.60 (3m)(a)2 | 2676B | 1/2023 |
| Speeding: Exceeding Fixed Limits Criminal Offense under § 346.57(4)(e); § 346.60 (3m)(a)2..... | 2676C | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Under § 346.57(4)(h) or an Ordinance Adopting § 346.57(4)(h)..... | 2677 | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Criminal Offense under § 346.57(4)(h); § 346.60 (3m)(a)2..... | 2677A | 1/2023 |
| Speeding: Exceeding Posted Limits Under § 346.57(5) or an Ordinance Adopting § 346.57(5)..... | 2678 | 1/2023 |
| Speeding: Exceeding Posted Limits Criminal Offense under § 346.57(5); § 346.60 (3m)(a)2 | 2678A | 1/2023 |
| Radar Speed Measurement | 2679 | 2010 |
| Noncriminal Traffic Violations: Prohibited by State Law or an Ordinance Adopting State Law | 2680 | 2015 |
| Tampering with an Ignition Interlock Device..... | 2682A | 2014 |
| Failing to Install an Ignition Interlock Device | 2682B | 2021 |
| Operating a Commercial Motor Vehicle with an Alcohol Concentration of 0.04 Grams or More but Less Than 0.08 Grams – Criminal Offense | 2690 | 2004 |
| Operating a Motorboat While under the Influence of an Intoxicant: Criminal Offense..... | 2695 | 2013 |
| Operating a Motorboat While under the Influence of an Intoxicant / | | |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| Operating a Motorboat with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2696 | 2013 |
| SECURITIES FRAUD | | |
| Offering or Selling an Unregistered Security | 2902 | 2014 |
| Securities Fraud: Making an Untrue Statement of Material Fact in Connection with the Sale of a Security | 2904 | 2014 |
| Possession of Untagged Deer..... | 5000 | 2003 |
| Failure to File an Individual Income Tax Return..... | 5010 | 2010 |
| Filing a False or Fraudulent Return | 5012 | 2010 |
| Theft of Anhydrous Ammonia..... | 5024 | 2003 |
| INTOXICATING LIQUORS | | |
| Sale of Intoxicating Liquors to a Minor by a Tavern Keeper | 5030 WITHDRAWN | 2010 |
| Selling Fermented Malt Beverage Without a License | 5035 | 2005 |
| Sale to or Procurement for Any Minor of Intoxicating Liquors by any Person..... | 5040 WITHDRAWN | 2010 |
| Causing Injury or Death to an Underage Person by Providing Alcohol Beverages | 5050 | 2007 |
| HAZARDOUS WASTE | | |
| Storing, Treating, Transporting, or Disposing of Hazardous Waste Without a License..... | 5200 | 2010 |
| ELECTION FRAUD | | |
| Election Fraud – Unqualified Elector | 5301 | 2009 |
| Carrying a Weapon by Licensee Where Prohibited..... | 5401 | 2012 |
| CONTROLLED SUBSTANCES | | |
| Note on the Knowledge Requirement in Controlled Substance Cases | 6000 | 2010 |
| Finding the Amount of Controlled Substance..... | 6001 | 2022 |
| Finding the Amount of Controlled Substance in a Methamphetamine Case | 6001A EXAMPLE | 2018 |
| Delivering a Controlled Substance to a Minor..... | 6002 | 2003 |
| Delivering a Controlled Substance to a Prisoner | 6003 | 2003 |
| Delivering a Controlled Substance on or Near Certain Premises | 6004 | 2003 |
| Controlled Substance Analog | 6005 | 2010 |
| Possession of a Controlled Substance Without Tax Stamp | 6009 WITHDRAWN | 2019 |
| Delivery of a Controlled Substance | 6020 | 2018 |

WIS JI-CRIMINAL

| | | |
|--|-----------------------|------|
| Delivery of a Controlled Substance Analog | 6020A | 2018 |
| Manufacture of a Controlled Substance..... | 6021 | 2010 |
| Possession of a Controlled Substance..... | 6030 | 2021 |
| Attempted Possession of a Controlled Substance | 6031 | 2021 |
| Possession of a Controlled Substance with Intent to Deliver with Lesser Included Offense of Possession of a Controlled Substance | 6035 | 2018 |
| Possession of a Controlled Substance with Intent to Manufacture with Lesser Included Offense of Possession of a Controlled Substance | 6036 | 2018 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037 RENUMBERED 6037B | 1994 |
| Keeping or Maintaining a Place Resorted to by Persons Using Controlled Substances in Violation of Chapter 961 for the Purpose of Using Controlled Substances | 6037A | 2008 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037B | 2010 |
| Acquiring Possession of a Controlled Substance by Misrepresentation | 6038 | 2010 |
| Delivery of an Imitation Controlled Substance: Felony | 6040 | 2006 |
| Delivery of an Imitation Controlled Substance: Misdemeanor..... | 6042 | 2006 |
| Possession of Methamphetamine Waste | 6044 | 2009 |
| Using a Child to Deliver a Controlled Substance | 6046 | 2010 |
| Soliciting a Child for the Purpose of Delivering a Controlled Substance..... | 6047 | 2010 |
| Possession of Drug Paraphernalia..... | 6050 | 2021 |
| Possession of Drug Paraphernalia: Methamphetamine..... | 6053 | 2007 |
| Possessing Materials for Manufacturing Methamphetamine | 6065 | 2006 |
| Use or Possession of a Masking Agent..... | 6070 | 2021 |
| Obtaining a Prescription Drug by Fraud | 6100 | 2005 |
| Possession of a Prescription Drug with Intent to Deliver | 6110 | 2006 |
| Possession of a Prescription Drug without a Valid Prescription..... | 6112 | 2013 |

CRIMINAL SPECIAL MATERIALS

| | | |
|---|-------------------|------|
| Suggested Order of Instructions..... | SM-5 RENUMBERED 1 | 1995 |
| Jury Instructions on Lesser Included Offenses | SM-6 | 2014 |
| Juror Questioning of Witnesses | SM-8 | 2014 |
| When a Jury Requests to Hear/See Audio/Visual Evidence During Deliberations | SM-9 | 2022 |
| Grand Jury Proceedings | SM-10 | 2004 |
| John Doe Proceedings..... | SM-12 | 2019 |
| Substitution of Judge..... | SM-15 WITHDRAWN | 1994 |
| Collateral Attack on Prior Convictions..... | SM-16 | 2019 |
| Defendant's Consent to Proceed by Videoconference B Waiver of Right to be Present Under § 971.04 | SM-18 | 2014 |
| Voir Dire | SM-20 | 2017 |
| Waiver of Jury Trial: Acceptance, Withdrawal, and Related Issues..... | SM-21 | 2005 |
| Judge's Duty at Initial Appearance..... | SM-25 WITHDRAWN | 2011 |

WIS JI-CRIMINAL

| | | |
|---|------------------------------------|-------------|
| Inquiry Regarding the Decision Whether to Testify..... | SM-28 | 2012 |
| Waiver and Forfeiture of Counsel; Self-Representation; Standby Counsel; “Hybrid Representation”; Court Appointment of Counsel..... | SM-30 | 2006 |
| Waiver of Preliminary Examination | SM-31 | 2011 |
| Accepting a Plea of Guilty..... | SM-32 | 2021 |
| No Contest and <u>Alford</u> Pleas..... | SM-32A | 2021 |
| Accepting a Plea of Guilty: Use of Written Form..... | SM-32B | 1993 |
| Guilty Plea Acceptance Form | SM-32B APPENDIX WITHDRAWN | 2019 |
| Information on Postconviction Relief..... | SM-33 WITHDRAWN | 2011 |
| Instruction to be Used on Denial of Any Postconviction Motion (Other Than § 974.06) | SM-33A WITHDRAWN | 1991 |
| Instruction to be Used on Denial of a Postconviction Motion Under § 974.06..... | SM-33B WITHDRAWN | 1991 |
| Sentencing Procedure, Standards, and Special Issues..... | SM-34 | 1999 |
| Determining Sentence Credit Under Section 973.155 | SM-34A | 1/2023 |
| Increased Penalty for Habitual Criminality | SM-35 | 1/2023 |
| Special Disposition Under Section 973.015 – Expunction | SM-36 | 2018 |
| Bail After Conviction; Stay of Execution of Sentence | SM-39 WITHDRAWN | 1995 |
| Court’s Instruction to Defendant at Arraignment and Before Acceptance of a Plea of Guilty on Sex Crimes Charge | SM-40 WITHDRAWN | 1991 |
| Sentencing Persons Committed Under the Sex Crimes Law | SM-41 WITHDRAWN | 2011 |
| Inquiry in Conflict of Interest Cases..... | SM-45 | 2000 |
| Competency to Proceed | SM-50 | 2021 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | SM-50A RENUMBERED 650 | 2004 |
| Disclosure of the Identity of an Informer..... | SM-52 | 2005 |
| Inquiry When a Witness Claims the Privilege Against Self-Incrimination | SM-55 | 1994 |
| Procedure to Determine the Admissibility of Statements or Confessions of the Defendant..... | SM-60 WITHDRAWN | 1994 |
| Procedure to Follow When the Admissibility of Identification Evidence is at Issue Prior to or During a Criminal Trial | SM-61 WITHDRAWN | 1994 |
| Admissibility of Evidence Obtained by a Search and Seizure..... | SM-62 WITHDRAWN | 1994 |
| Post-Conviction Procedure Under Section 974.06, Wis. Stats. | SM-70 WITHDRAWN | 1994 |
| Habeas Corpus | SM-80 WITHDRAWN | 1994 |
| Procedure to Follow in Advising a Prisoner of Rights Under the Uniform Detainer Act..... | SM-90 | 1998 |
| INDEX | FOLLOWING SPECIAL MATERIALS | 2022 |

* * *

1016 FIRST DEGREE INTENTIONAL HOMICIDE: SELF-DEFENSE: SECOND DEGREE INTENTIONAL HOMICIDE: FIRST DEGREE RECKLESS HOMICIDE — § 940.01(2)(b); § 940.05; § 940.02(1)¹

Crimes to Consider

The defendant in this case is charged with first degree intentional homicide, and you must first consider whether the defendant is guilty of that offense. If you are not satisfied that the defendant is guilty of first degree intentional homicide, you must consider whether or not the defendant is guilty of second degree intentional homicide or first degree reckless homicide which are less serious degrees of criminal homicide.

Intentional and Reckless Homicide

The crimes referred to as first and second degree intentional homicide and first degree reckless homicide are different degrees of homicide. Homicide is the taking of the life of another human being. The degree of homicide defined by the law depends on the facts and circumstances of each particular case.

While the law separates homicides into different types and degrees, there are certain elements which are common to each crime. Both intentional and reckless homicide require that the defendant caused the death of the victim. First and second degree intentional homicide require the State to prove the additional fact that the defendant acted with the intent to kill. First degree reckless homicide requires that the defendant acted recklessly, under circumstances which show utter disregard for human life. It will also be important for you to consider the privilege of self-defense in deciding which crime, if any, the

defendant has committed.

Self-Defense

The Criminal Code of Wisconsin provides that a person is privileged to intentionally use force against another for the purpose of preventing or terminating what (he) (she) reasonably believes to be an unlawful interference with (his) (her) person by the other person. However, (he) (she) may intentionally use only such force as (he) (she) reasonably believes is necessary to prevent or terminate the interference. (He) (She) may not intentionally use force which is intended or likely to cause death unless (he) (she) reasonably believes that such force is necessary to prevent imminent death or great bodily harm to (himself) (herself).²

As applied to this case, the effect of the law of self-defense is:

- The defendant is not guilty of any homicide offense if the defendant reasonably believed that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person, and reasonably believed the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).³
- The defendant is guilty of second degree intentional homicide if the defendant caused the death of (name of victim) with the intent to kill and actually believed the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), but the belief or the amount of force used was unreasonable.⁴
- The defendant is guilty of first degree intentional homicide if the defendant caused

the death of (name of victim) with the intent to kill and did not actually believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).⁵

- The defendant is guilty of first degree reckless homicide if the defendant caused the death of (name of victim) by criminally reckless conduct and the circumstances of the conduct showed utter disregard for human life. You will be asked to consider the privilege of self-defense in deciding whether the elements of first degree reckless homicide are present.⁶

Because the law provides that it is the State's burden to prove all the facts necessary to constitute a crime beyond a reasonable doubt, you will not be asked to make a separate finding on whether the defendant acted in self-defense. Instead, you will be asked to determine whether the State has established the necessary facts to justify a finding of guilty for first or second degree intentional homicide or for first degree reckless homicide. If the State does not satisfy you that those facts are established by the evidence, you will be instructed to find the defendant not guilty.

The facts necessary to constitute each crime will now be defined for you in greater detail.

Statutory Definition of First Degree Intentional Homicide

First degree intentional homicide, as defined in § 940.01 of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being with the

intent to kill that person or another. In this case, first degree intentional homicide also requires that the defendant did not actually believe the force used was necessary to prevent imminent death or great bodily harm to himself.⁷

State's Burden of Proof

Before you may find the defendant guilty of first degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of First Degree Intentional Homicide That the State Must Prove

1. The defendant caused the death of (name of victim).

“Cause” means that the defendant’s act was a substantial factor in producing the death.⁸

2. The defendant acted with the intent to kill ((name of victim)) (another human being).⁹
3. The defendant did not actually believe that the force used was necessary to prevent imminent death or great bodily harm to himself.¹⁰

Meaning of “Intent to Kill”

“Intent to kill” means that the defendant had the mental purpose to take the life of another human being or was aware that (his) (her) conduct was practically certain to cause the death of another human being.¹¹

When May Intent Exist?

While the law requires that the defendant acted with intent to kill, it does not require that the intent exist for any particular length of time before the act is committed. The act need not be brooded over, considered, or reflected upon for a week, a day, an hour, or even for a minute. There need not be any appreciable time between the formation of the intent and the act. The intent to kill may be formed at any time before the act, including the instant before the act, and must continue to exist at the time of the act.

Deciding About Intent

You cannot look into a person's mind to find intent. Intent to kill 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.¹²

Intent and Motive

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. "Motive" refers to a person's reason for doing something. While motive may be shown as a circumstance to aid in establishing the guilt of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

Actual Belief That The Force Used Was Necessary

The third element of first degree intentional homicide requires that the defendant did

not actually believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself). This requires the State to prove¹³ either:

- 1) that the defendant did not actually believe (he) (she) was in imminent danger of death or great bodily harm; or
- 2) that the defendant did not actually believe the force used was necessary to prevent imminent danger of death or great bodily harm to (himself) (herself).

When first degree intentional homicide is considered, the reasonableness of the defendant's belief is not an issue. You are to be concerned only with what the defendant actually believed. Whether these beliefs are reasonable is important only if you later consider whether the defendant is guilty of second degree intentional homicide.¹⁴

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) with the intent to kill and that the defendant did not actually believe that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), you should find the defendant guilty of first degree intentional homicide.

If you are not so satisfied, you must not find the defendant guilty of first degree intentional homicide, and you must consider whether the defendant is guilty of second degree intentional homicide, as defined in § 940.05 of the Criminal Code of Wisconsin, which is a lesser included offense of first degree intentional homicide.

Make Every Reasonable Effort to Agree

You should make every reasonable effort to agree unanimously on the charge of first degree intentional homicide before considering the offense of second degree intentional homicide.¹⁵ However, if after full and complete consideration of the evidence, you conclude that further deliberation would not result in unanimous agreement on the charge of first degree intentional homicide, you should consider whether the defendant is guilty of second degree intentional homicide.

Second Degree Intentional Homicide

Before you may find the defendant guilty of second degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of Second Degree Intentional Homicide That the State Must Prove

1. The defendant caused the death of (name of victim).
2. The defendant acted with the intent to kill ((name of victim)) (another human being).
3. The defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).¹⁶

You have already been instructed on the definitions of “causing death” and “with intent

to kill.” The same definitions apply to your consideration of second degree intentional homicide.

Reasonable Belief That the Force Used Was Necessary

The third element of second degree intentional homicide requires that the defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself). This requires that the State prove any one of the following:¹⁷

- 1) that a reasonable person in the circumstances of the defendant would not have believed that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person; or
- 2) that a reasonable person in the circumstances of the defendant would not have believed (he) (she) was in danger of imminent death or great bodily harm; or
- 3) that a reasonable person in the circumstances of the defendant would not have believed that the amount of force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).

Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken.¹⁸ In determining whether the defendant’s beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant’s position under the circumstances that

existed at the time of the alleged offense.¹⁹ The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.

Jury Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) with the intent to kill and did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), you should find the defendant guilty of second degree intentional homicide.

If you are not so satisfied, you must not find the defendant guilty of second degree intentional homicide, and you should consider whether the defendant is guilty of first degree reckless homicide, in violation of § 940.02 of the Criminal Code of Wisconsin, which is also a lesser included offense of first degree intentional homicide.

Make Every Reasonable Effort to Agree

You should make every reasonable effort to agree unanimously on the charge of second degree intentional homicide before considering the offense of first degree reckless homicide.²⁰ However, if after full and complete consideration of the evidence, you conclude that further deliberation would not result in unanimous agreement on the charge of second degree intentional homicide, you should consider whether the defendant is guilty

of first degree reckless homicide.

Statutory Definition of First Degree Reckless Homicide

First degree reckless homicide, as defined in § 940.02(1) of the Criminal Code of Wisconsin, is committed by one who recklessly causes the death of another human being under circumstances that show utter disregard for human life.

State's Burden Of Proof

Before you may find the defendant guilty of first degree reckless homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused the death of (name of victim).

“Cause” means that the defendant’s act was a substantial factor in producing the death.²¹

2. The defendant caused the death by criminally reckless conduct.

“Criminally reckless conduct” means:²²

- the conduct created a risk of death or great bodily harm to another person; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant was aware that (his) (her) conduct created the

unreasonable and substantial risk of death or great bodily harm.²³

You should consider the evidence relating to self-defense in deciding whether the defendant's conduct created an unreasonable risk to another. If the defendant was acting lawfully in self-defense, (his) (her) conduct did not create an unreasonable risk to another. The burden is on the state to prove beyond a reasonable doubt that the defendant did not act lawfully in self-defense. And, you must be satisfied beyond a reasonable doubt from all the evidence in the case that the risk was unreasonable.²⁴

3. The circumstances of the defendant's conduct showed utter disregard²⁵ for human life.

In determining whether the circumstances of the conduct showed utter disregard for human life, consider these factors: what the defendant was doing; why the defendant was engaged in that conduct; how dangerous the conduct was; how obvious the danger was; whether the conduct showed any regard for life;²⁶ and, all other facts and circumstances relating to the conduct. You should consider the evidence relating to self-defense in deciding whether the circumstances of the defendant's conduct showed utter disregard for human life. The burden is on the state to prove beyond a reasonable doubt that the defendant did not act lawfully in self-defense. And, you must be satisfied beyond a reasonable doubt from all the evidence in the case that the circumstances of the defendant's conduct showed

utter disregard for human life.²⁷

ADD THE FOLLOWING IF EVIDENCE OF THE DEFENDANT'S AFTER-THE-FACT CONDUCT HAS BEEN ADMITTED.²⁸

[Consider also the defendant's conduct after the death to the extent that it helps you decide whether or not the circumstances showed utter disregard for human life at the time the death occurred.]

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) by criminally reckless conduct and that the circumstances of the conduct showed utter disregard for human life, you should find the defendant guilty of first degree reckless homicide.

If you are not so satisfied, you must find the defendant not guilty.

You are not, in any event, to find the defendant guilty of more than one of the foregoing offenses.

COMMENT

Wis JI-Criminal 1016 was originally published in March 1991 and revised in 1993, 2003, 2012, 2014, and 2015. The 2003 revision made changes in the treatment of self-defense required by State v. Head, 2002 WI 99, and adopted the new format. The 2012 revision involved adding footnote 26 and the text accompanying it. The 2014 revision added to the text to reflect the decision in State v. Austin, 2013 WI App 96, 349 Wis.2d 744, 836 N.W.2d 833. See footnotes 22 and 25. The 2015 revision amended footnote 21 to reflect 2013 Wisconsin Act 307. This revision was approved by the Committee in December 2022; it amended the language concerning reasonable beliefs to be consistent with the definition provided in § 939.22(32). See footnote 18.

This instruction is for a case where first degree intentional homicide in violation of § 940.01 is charged

and lesser included offenses defined in §§ 940.02 and 940.05 are submitted. The statutes are among those created by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. The statute applies to offenses committed on or after January 1, 1989. For a brief overview of the homicide revision, see the Introductory Comment at Wis JI-Criminal 1000. A comprehensive outline and discussion of the changes can be found in “The Importance of Clarity in the Law of Homicide: The Wisconsin Revision,” by Walter Dickey, David Schultz, and James L. Fullin, Jr., 1989 Wisconsin Law Review 1325.

1. This instruction is for a case where first degree intentional homicide is charged, there is evidence that the defendant acted in self-defense, and the lesser included offenses of second degree intentional homicide and first degree reckless homicide are to be submitted to the jury.

2. These statements are based on the definition of the privilege of self-defense found in § 939.48.

3. The effect of the privilege of self-defense in a case where first degree intentional homicide is charged is as follows:

(a) if the exercise of the privilege was reasonable, both in inception and scope, the defendant is not guilty of any crime;

(b) if the defendant actually believed it was necessary to use force in self defense, but acts unreasonably, the defendant is guilty of second degree intentional homicide. He or she may act unreasonably in either of two ways:

i) the belief that it was necessary to act in self-defense may be unreasonable; or

ii) the amount of force used may be unreasonable

(c) if the defendant did not actually believe it was necessary to use force in self defense, the defendant is guilty of first degree intentional homicide.

4. Section 940.01(2)(b) provides that causing the death by “unnecessary defensive force” mitigates what would otherwise be first degree intentional homicide to second degree intentional homicide: “Death was caused because the actor believed he or she or another was in imminent danger of death or great bodily harm and that the force used was necessary to defend the endangered person, if either belief was unreasonable.”

5. The absence of the mitigating circumstance – no actual belief that the force used was necessary to prevent imminent death or great bodily harm – becomes a fact necessary to constitute the first degree offense. See § 940.01(3) and State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413. Also see the discussion in notes 13 and 14, below.

The Committee considered adding a “subjective threshold” to the definition of the mitigating circumstance. A “subjective threshold” would require that the defendant actually believed that there was an unlawful interference. The Head decision is unclear on this point. One statement in the opinion is consistent with adding this requirement:

... If unnecessary defensive force is been [sic] placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the defendant did not actually believe she was

preventing or terminating an unlawful interference with her person or did not actually believe that the force she used was necessary to prevent imminent death or great bodily harm – even if those beliefs were unreasonable – to sustain a conviction for first-degree intentional homicide. 2002 WI 99, ¶70.

However, in two other paragraphs in the opinion the court stated the requirements for unnecessary defensive force without including the “actual belief in an unlawful interference” element. See 2002 WI 99, ¶¶5 and 90. Because § 940.01(2)(b) does not include this requirement, and because the Head decision placed great emphasis on the plain language of the statutes, the Committee decided that it should not be added to the instruction. As a practical matter, the requirement is probably implicit in the other aspects of the standard. Someone who actually believes that it is necessary to use force to prevent imminent death or great bodily harm almost certainly will believe that the source of that threat is an unlawful interference.

In State v. Peters, 2002 WI App 243, 258 Wis.2d 148, 653 N.W.2d 300, the court of appeals reversed a conviction for first degree intentional homicide because, under the standard set forth in the Head decision, second degree intentional homicide [unnecessary defensive force] and the complete privilege of self defense should have been submitted to the jury. As to unnecessary defensive force, Peters met the obligation set out in Head “to present only ‘some’ evidence that she actually believed that she was in imminent danger of death or great bodily harm and actually believed that the force she used was necessary to defend herself.” 2002 WI App 243 at ¶19.

6. See notes 22 and 25, below.

7. When the issue of self-defense “has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the defense did not exist in order to sustain a finding of guilt” for a violation of § 940.01. § 940.01(3). This statute codifies prior Wisconsin law which had established that when evidence of a defense is in the case, the absence of that defense becomes a fact the state must prove to establish guilt for the crime charged.

A defense is “placed in issue” when “a reasonable view of the evidence could support a jury finding that the state has not borne its burden of disproving beyond a reasonable doubt the facts constituting the defense.” Judicial Council Note to § 940.01, 1987 Senate Bill 191, citing State v. Felton, 110 Wis.2d 485, 508, 329 N.W.2d 161 (1983).

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.

Also see Wis JI-Criminal 901, **CAUSE**.

9. The parenthetical reference to “another human being” is based on § 940.01(1), which addresses the common law doctrine of “transferred intent.” That doctrine has been described as follows:

It is immaterial that the human being killed is not the one the actor intended to kill. If X shoots at and kills a person who he thinks is Y but who is actually Z, X is as guilty as if he had not been

mistaken about the identity of the person killed. The same is true where X shoots at Y intending to kill him, but he misses Y and kills Z. In both of these cases, X has caused “the death of another human being by an act done with intent to kill that person or another.” In other words, the section incorporates the common law doctrine of “transferred intent.” 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 58.

10. See note 5, supra.

11. The phrase “or aware that his conduct is practically certain to cause that result” was added to the definition of “with intent to” found in § 939.23 by the 1988 revision of the homicide statutes. Further, the revision applied the § 939.23 definition to homicide offenses. Under prior law, “with intent to kill” was defined solely in terms of mental purpose for offenses in Chapter 940. See the discussion in Wis JI-Criminal 1000 and 923B.

12. This is the shorter version used to describe the process of finding intent. The Committee has concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A.

13. Section 940.01(2) recognizes four circumstances as affirmative defenses which mitigate first degree intentional homicide to second degree intentional homicide. When the existence of an affirmative defense “has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the defense did not exist in order to sustain a finding of guilt” for a violation of § 940.01. See § 940.01(3). This statute codifies prior Wisconsin law which had established that when evidence of a defense is in the case, the absence of that defense becomes a fact the state must prove to establish guilt for the crime charged. Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979).

A defense is “placed in issue” when “a reasonable view of the evidence could support a jury finding that the state has not borne its burden of disproving beyond a reasonable doubt the facts constituting the defense.” Judicial Council Note to § 940.01, 1987 Senate Bill 191, citing State v. Felton, 110 Wis.2d 485, 508, 329 N.W.2d 161 (1983).

Two beliefs must be held by the defendant in order to mitigate first degree intentional homicide on the basis of “unnecessary defensive force”: a belief that the defendant (or another) was in imminent danger of death or great bodily harm; and a belief that the force used was necessary to defend against that danger. See § 940.01(2)(b). By proving that the defendant did not actually hold either one of these beliefs, the state may meet its burden of proving that “the facts constituting the defense did not exist.” Section 940.01(3).

14. The 2002 revision of the instruction changed this element in response to the decision in State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413. Head modified State v. Camacho, 176 Wis.2d 860, 501 N.W.2d 380 (1993), by holding that there is no “objective threshold” for invoking the mitigating factor of “unnecessary defensive force.” The “objective threshold” refers to a requirement that the defendant reasonably believe that he or she was preventing or terminating an unlawful interference. Head holds that it is sufficient for purposes of “unnecessary defensive force” that a defendant actually believe that the defensive force used was necessary. This is summarized in the following paragraphs of the opinion:

¶103. Based on the plain language of Wis. Stat. § 940.05(2), supported by the legislative history and articulated public policy behind the statute, we conclude that when imperfect self-defense is placed in issue by the trial evidence, the state has the burden to prove that the person had no

actual belief that she was in imminent danger of death or great bodily harm, or no actual belief that the amount of force she used was necessary to prevent or terminate this interference. If the jury concludes that the person had an actual but unreasonable belief that she was in imminent danger of death or great bodily harm, the person is not guilty of first-degree intentional homicide but should be found guilty of second-degree intentional homicide.

¶104. In light of this analysis, we must modify Camacho to the extent that it states that Wis. Stat. § 940.01(2)(b) contains an objective threshold element requiring a defendant to have a reasonable belief that she was preventing or terminating an unlawful interference with her person in order to raise the issue of unnecessary defensive force (imperfect self-defense).

Also see State v. Peters, 2002 WI App 243, note 5 supra.

15. This paragraph builds in part of the transitional material usually used between the charged crime and the lesser included offense. See Wis JI-Criminal 112.

16. The absence of the complete privilege of self-defense is a fact necessary to constitute the offense of second degree intentional homicide, assuming there is evidence of the complete privilege in the case. Since there already has been a finding of “some evidence” of the imperfect privilege, (now called “unnecessary defensive force”), there will almost always be a basis for submitting the existence of the complete privilege to the jury. See State v. Gomaz, 141 Wis.2d 302, 414 N.W.2d 626 (1987).

The 2002 revision of the instruction added the requirement that the “defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference.” This requirement was previously part of the requirements for the mitigating factor of unnecessary defensive force. When State v. Head modified State v. Camacho, see note 14, supra, this “objective threshold” was removed from the mitigating factor determination. However, it remains part of the complete privilege of self defense and must be added here. Head’s holding that the objective threshold does apply to claims of the complete privilege of self defense was stated as follows:

. . . [A] defendant seeking a jury instruction on perfect self-defense to a charge of first-degree intentional homicide must satisfy an objective threshold showing that she reasonably believed that she was preventing or terminating an unlawful interference with her person and reasonably believed that the force she used was necessary to prevent imminent death or great bodily harm. A defendant is entitled to an instruction on perfect self-defense when the trial evidence places self-defense in issue. Perfect self-defense is placed in issue when, under a reasonable view of the trial evidence, a jury could conclude that the state has failed to meet its burden to disprove one of the elements of self-defense beyond a reasonable doubt. (Emphasis in original.) 2002 WI 99, ¶4.

In State v. Peters, 2002 WI App 243, 258 Wis.2d 148, 653 N.W.2d 300, the court of appeals reversed a conviction for first degree intentional homicide because, under the standard set forth in the Head decision, second degree intentional homicide [unnecessary defensive force] and the complete privilege of self defense should have been submitted to the jury. As to the complete privilege, Peters met the obligation set out in Head to present “some evidence” supporting the claim of self defense. “[V]iewing the evidence in the light most favorable to Peters, a jury could conclude the State had not disproved the perfect self-defense theory beyond a reasonable doubt and that Peters reasonably believed she was preventing or terminating an unlawful interference with her person and reasonably believed that the force she used was necessary to

prevent imminent death or great bodily harm.” 2002 WI App 243 at ¶24.

17. The exercise of the privilege may be proved to be unreasonable in any one of three ways: by showing that the defendant’s belief that he or she was preventing or terminating an unlawful interference was unreasonable; or, by showing that the defendant’s belief that he or she was in danger of imminent death or great bodily harm was unreasonable; or, by showing that the amount of force used was unreasonable. See note 16, supra.

18. This paragraph was amended in 2022 to mirror Wis JI-CRIMINAL 805 as suggested by the Wisconsin Court of Appeals in State v. Ochoa, 2022 WI App 35, ¶60, 404 Wis.2d 261 978 N.W.2d 501. The treatment of “reasonably believes” is intended to be consistent with the definition provided in § 939.22(32).

19. The phrase “in the defendant’s position under the circumstances that existed at the time of the alleged offense” is intended to allow consideration of a broad range of circumstances that relate to the defendant’s situation. For example, with children (assuming they are old enough to be criminally charged), the standard relates to a reasonable person of like age, intelligence, and experience. Maichle v. Jonovic, 69 Wis.2d 622, 627 28, 230 N.W.2d 789 (1975).

Another situation where the personal circumstances become important in defining the self defense standard is in a case involving a battered spouse. Wisconsin cases dealing with the subject have tended to use doctrines other than self defense in these cases. In State v. Hoyt, 21 Wis.2d 284, 128 N.W.2d 645 (1964), for example, the theory of defense related to “heat of passion, caused by reasonable and adequate provocation” rather than self defense. Likewise, in State v. Felton, 110 Wis.2d 485, 329 N.W.2d 161 (1983), provocation and not guilty by reason of mental disease were considered to be the relevant doctrines. However, some cases of this type may legitimately be considered under self defense rules: the history of abuse between the spouses may be relevant to evaluating whether the defendant’s belief in the need to use force was reasonable. See, for example, State v. Gomaz, 141 Wis.2d 302, 414 N.W.2d 626 (1987).

20. This paragraph builds in part of the transitional material usually used between the charged crime and the lesser included offense. See Wis JI-Criminal 112.

21. 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 immediately preceding the sentence in the instruction beginning with “before”:

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.

Also see, Wis JI-Criminal 901 Cause.

22. “Criminal recklessness” is defined as follows in § 939.24(1):

... ‘criminal recklessness’ means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk.

The Judicial Council Note to § 939.24, 1987 Senate Bill 191, explains that “[r]ecklessness requires both the creation of an objectively unreasonable and substantial risk of human death or great bodily harm

and the actor's subjective awareness of that risk.”

23. The statutory definition of “recklessness” clarifies that subjective awareness of the risk is required. That raises the possibility that intoxication could, as a factual matter, negate awareness of the risk. For that reason, the original definition of recklessness provided that if voluntary intoxication prevented the actor from being aware of the risk, it was not a defense. This rule was set forth in § 939.24(3):

(3) A voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness if, had the actor not been in that condition, he or she would have been aware of creating an unreasonable and substantial risk of death or great bodily harm to another human being.

The Judicial Council Note to subsection (3) explains it as follows:

Subsection (3) continues the present rule that a voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness. Ameen v. State, 51 Wis.2d 175, 185, 186 N.W.2d 206 (1971). Patterned on s. 2.08 of the model penal code, it premises liability on whether the actor would have been aware if not in such condition of the risk of death or great bodily harm. The commentaries to s. 2.08, model penal code, state the rationale of this rule in extended fashion.

Note to § 939.24(3), 1987 Senate Bill 191.

Section 939.42, the statute codifying both voluntary and involuntary intoxication defenses, was revised by 2013 Wisconsin Act 307 [effective date: April 18, 2014]. Reference to voluntary intoxication was eliminated; as amended, the statute refers only to involuntary intoxication. Act 307 also repealed former sub. (3) of § 939.24, thus getting rid of the special rule excluding voluntary intoxication as a defense to the “aware of the risk” element. For cases arising before the effective date of Act 307, the suggestion included in the previous version of this Comment would still apply: “In a case where there is evidence of intoxication, it may be helpful to advise the jury of the rule provided in subsection (3).” The Committee concluded that simply reading the statute is the best way to provide the necessary information.

24. The Committee has concluded that consideration of the privilege of self-defense is relevant to both the “unreasonable risk” and “utter disregard” components of first degree reckless homicide. Conduct does not create an unreasonable risk of harm to another if the conduct is undertaken as reasonable action in self-defense. Recklessness and reasonable exercise of the privilege cannot coexist. Thus, the Committee concluded that it is best to advise the jury to consider the privilege of self-defense when considering the “unreasonable risk” component of recklessness.

The last two sentences of this paragraph were added in 2014 in response to the decision in State v. Austin, 2013 WI App 96, 349 Wis.2d 744, 836 N.W.2d 833, in which the court of appeals ordered a new trial for a person convicted of 2nd degree recklessly endangering safety. The court held that the jury instructions given in that case – which followed the pattern suggested by Wis JI-Criminal 801 – were deficient because they did not specifically state that the prosecution must prove the absence of self-defense once raised. The first of the added sentences is intended to make that requirement clear. The second added sentence is intended to emphasize that even if the state succeeds in proving the absence of self-defense, the jury still must be satisfied by all the evidence that the defendant's conduct created an unreasonable risk of death or great bodily harm.

25. “Under circumstances which show utter disregard for human life” is the factor that distinguishes this offense from second degree reckless homicide. For a complete discussion of this factor, see Wis JI-Criminal 924A or note 4, Wis JI-Criminal 1020.

26. All the circumstances relating to the defendant’s conduct should be considered in determining whether that conduct shows “utter disregard” for human life. See Wis JI-Criminal 924A or note 5, Wis JI-Criminal 1020.

27. The Committee has concluded that consideration of the privilege of self-defense is relevant to both the “unreasonable risk” and “utter disregard” components of first degree reckless homicide. Conduct does not show utter disregard for human life if it is undertaken on the reasonable exercise of the privilege of self-defense. Thus, the Committee concluded that it is best to advise the jury to consider the privilege of self-defense when considering the “utter disregard” element.

The last two sentences of this paragraph were added in 2014 in response to the decision in State v. Austin, see note 22, supra. Austin was concerned with the “unreasonable risk” element of the offense, but the same concern should apply to the “utter disregard” element of 1st degree reckless offenses. The first of the added sentences is intended to make it clear that the prosecution must prove the absence of self-defense once raised to meet its burden to prove “utter disregard for human life.” The second added sentence is intended to emphasize that even if the state succeeds in proving the absence of self-defense, the jury still must be satisfied by all the evidence that circumstances of the defendant’s conduct showed utter disregard for human life.

28. This material was added in 2011 in response to the decision of the Wisconsin Supreme Court in State v. Burris, 2011 WI 32, 333 Wis.2d 87, 797 N.W.2d 430. For a complete discussion of this issue, see Wis JI-Criminal 924A or note 6, Wis JI-Criminal 1020.

[This page is intentionally left blank]

**1017 FIRST DEGREE INTENTIONAL HOMICIDE: SELF-DEFENSE:
SECOND DEGREE INTENTIONAL HOMICIDE: FIRST DEGREE
RECKLESS HOMICIDE: SECOND DEGREE RECKLESS HOMICIDE —
§ 940.01(2)(b); § 940.05; § 940.02(1); § 940.06¹**

Crimes to Consider

The defendant in this case is charged with first degree intentional homicide, and you must first consider whether the defendant is guilty of that offense. If you are not satisfied that the defendant is guilty of first degree intentional homicide, you must consider whether or not the defendant is guilty of second degree intentional homicide or first degree reckless homicide or second degree reckless homicide which are less serious degrees of criminal homicide.

Intentional and Reckless Homicide

The crimes referred to as first and second degree intentional homicide and first and second degree reckless homicide are different degrees of homicide. Homicide is the taking of the life of another human being. The degree of homicide defined by the law depends on the facts and circumstances of each particular case.

While the law separates homicides into different types and degrees, there are certain elements which are common to each crime. Both intentional and reckless homicide require that the defendant caused the death of the victim. First and second degree intentional homicide require the State to prove the additional fact that the defendant acted with the intent to kill. First and second degree reckless homicide require that the defendant acted

recklessly. First degree reckless homicide requires proof of one additional element: that the circumstances of the defendant's conduct showed utter disregard for human life. It will also be important for you to consider the privilege of self-defense in deciding which crime, if any, the defendant has committed.

Self-Defense

The Criminal Code of Wisconsin provides that a person is privileged to intentionally use force against another for the purpose of preventing or terminating what (he) (she) reasonably believes to be an unlawful interference with (his) (her) person by the other person. However, (he) (she) may intentionally use only such force as (he) (she) reasonably believes is necessary to prevent or terminate the interference. (He) (She) may not intentionally use force which is intended or likely to cause death unless (he) (she) reasonably believes that such force is necessary to prevent imminent death or great bodily harm to (himself) (herself).²

As applied to this case, the effect of the law of self-defense is:

- The defendant is not guilty of any homicide offense if the defendant reasonably believed that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person, and reasonably believed the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).³
- The defendant is guilty of second degree intentional homicide if the defendant caused the death of (name of victim) with the intent to kill and actually

believed the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), but the belief or the amount of force used was unreasonable.⁴

- The defendant is guilty of first degree intentional homicide if the defendant caused the death of (name of victim) with the intent to kill and did not actually believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).⁵
- The defendant is guilty of first degree reckless homicide if the defendant caused the death of (name of victim) by criminally reckless conduct and the circumstances of the conduct showed utter disregard for human life.
- The defendant is guilty of second degree reckless homicide if the defendant caused the death of (name of victim) by criminally reckless conduct.

You will be asked to consider the privilege of self-defense in deciding whether the elements of first and second degree reckless homicide are present.⁶

Because the law provides that it is the State's burden to prove all the facts necessary to constitute a crime beyond a reasonable doubt, you will not be asked to make a separate finding on whether the defendant acted in self-defense. Instead, you will be asked to determine whether the State has established the necessary facts to justify a finding of guilty for first or second degree intentional homicide or for first or second degree reckless homicide. If the State does not satisfy you that those facts are established by the evidence,

you will be instructed to find the defendant not guilty.

The facts necessary to constitute each crime will now be defined for you in greater detail.

Statutory Definition of First Degree Intentional Homicide

First degree intentional homicide, as defined in § 940.01 of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being with the intent to kill that person or another. In this case, first degree intentional homicide also requires that the defendant did not actually believe the force used was necessary to prevent imminent death or great bodily harm to himself.⁷

State's Burden of Proof

Before you may find the defendant guilty of first degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of First Degree Intentional Homicide That the State Must Prove

1. The defendant caused the death of (name of victim).

“Cause” means that the defendant’s act was a substantial factor in producing the death.⁸

2. The defendant acted with the intent to kill ((name of victim)) (another human being).⁹
3. The defendant did not actually believe that the force used was necessary to prevent

imminent death or great bodily harm to himself.¹⁰

Meaning of “Intent to Kill”

“Intent to kill” means that the defendant had the mental purpose to take the life of another human being or was aware that (his) (her) conduct was practically certain to cause the death of another human being.¹¹

When May Intent Exist?

While the law requires that the defendant acted with intent to kill, it does not require that the intent exist for any particular length of time before the act is committed. The act need not be brooded over, considered, or reflected upon for a week, a day, an hour, or even for a minute. There need not be any appreciable time between the formation of the intent and the act. The intent to kill may be formed at any time before the act, including the instant before the act, and must continue to exist at the time of the act.

Deciding About Intent

You cannot look into a person’s mind to find intent. Intent to kill 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.¹²

Intent and Motive

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. “Motive” refers to a person’s reason for doing something. While motive may be shown as a circumstance to aid in establishing the guilt

of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

Actual Belief That the Force Used Was Necessary

The third element of first degree intentional homicide requires that the defendant did not actually believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself). This requires the State to prove¹³ either:

- 1) that the defendant did not actually believe (he) (she) was in imminent danger of death or great bodily harm; or
- 2) that the defendant did not actually believe the force used was necessary to prevent imminent danger of death or great bodily harm to (himself) (herself).

When first degree intentional homicide is considered, the reasonableness of the defendant's belief is not an issue. You are to be concerned only with what the defendant actually believed. Whether these beliefs are reasonable is important only if you later consider whether the defendant is guilty of second degree intentional homicide.¹⁴

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) with the intent to kill and that the defendant did not actually believe that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), you should find the defendant guilty of first degree intentional homicide.

If you are not so satisfied, you must not find the defendant guilty of first degree intentional homicide, and you must consider whether the defendant is guilty of second degree intentional homicide, as defined in § 940.05 of the Criminal Code of Wisconsin, which is a lesser included offense of first degree intentional homicide.

Make Every Reasonable Effort to Agree

You should make every reasonable effort to agree unanimously on the charge of first degree intentional homicide before considering the offense of second degree intentional homicide.¹⁵ However, if after full and complete consideration of the evidence, you conclude that further deliberation would not result in unanimous agreement on the charge of first degree intentional homicide, you should consider whether the defendant is guilty of second degree intentional homicide.

Second Degree Intentional Homicide

Before you may find the defendant guilty of second degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of Second Degree Intentional Homicide That the State Must Prove

1. The defendant caused the death of (name of victim).
2. The defendant acted with the intent to kill ((name of victim)) (another human being).
3. The defendant did not reasonably believe that (he) (she) was preventing or

terminating an unlawful interference with (his) (her) person or did not reasonably believe that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).¹⁶

You have already been instructed on the definitions of “causing death” and “with intent to kill.” The same definitions apply to your consideration of second degree intentional homicide.

Reasonable Belief That the Force Used Was Necessary

The third element of second degree intentional homicide requires that the defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself). This requires that the State prove any one of the following:¹⁷

- 1) that a reasonable person in the circumstances of the defendant would not have believed that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person; or
- 2) that a reasonable person in the circumstances of the defendant would not have believed (he) (she) was in danger of imminent death or great bodily harm; or
- 3) that a reasonable person in the circumstances of the defendant would not have believed that the amount of force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).

Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken.¹⁸ In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense.¹⁹ The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.

Jury Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) with the intent to kill and did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), you should find the defendant guilty of second degree intentional homicide.

If you are not so satisfied, you must not find the defendant guilty of second degree intentional homicide, and you should consider whether the defendant is guilty of first degree reckless homicide, in violation of § 940.02 of the Criminal Code of Wisconsin, which is also a lesser included offense of first degree intentional homicide.

Make Every Reasonable Effort to Agree

You should make every reasonable effort to agree unanimously on the charge of

second degree intentional homicide before considering the offense of first degree reckless homicide.²⁰ However, if after full and complete consideration of the evidence, you conclude that further deliberation would not result in unanimous agreement on the charge of second degree intentional homicide, you should consider whether the defendant is guilty of first degree reckless homicide.

Statutory Definition of First Degree Reckless Homicide

First degree reckless homicide, as defined in § 940.02(1) of the Criminal Code of Wisconsin, is committed by one who recklessly causes the death of another human being under circumstances that show utter disregard for human life.

State's Burden Of Proof

Before you may find the defendant guilty of first degree reckless homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused the death of (name of victim).

“Cause” means that the defendant’s act was a substantial factor in producing the death.²¹

2. The defendant caused the death by criminally reckless conduct.

“Criminally reckless conduct” means:²²

- the conduct created a risk of death or great bodily harm to another

person; and

- the risk of death or great bodily harm was unreasonable and substantial;
- and
- the defendant was aware that (his) (her) conduct created the unreasonable and substantial risk of death or great bodily harm.²³

You should consider the evidence relating to self-defense in deciding whether the defendant's conduct created an unreasonable risk to another. If the defendant was acting lawfully in self-defense, (his) (her) conduct did not create an unreasonable risk to another. The burden is on the state to prove beyond a reasonable doubt that the defendant did not act lawfully in self-defense. And, you must be satisfied beyond a reasonable doubt from all the evidence in the case that the risk was unreasonable.²⁴

3. The circumstances of the defendant's conduct showed utter disregard²⁵ for human life.

In determining whether the circumstances of the conduct showed utter disregard for human life, consider these factors: what the defendant was doing; why the defendant was engaged in that conduct; how dangerous the conduct was; how obvious the danger was; whether the conduct showed any regard for life;²⁶ and, all other facts and circumstances relating to the conduct. You should consider the evidence relating to self-defense in deciding whether the circumstances of the

defendant's conduct showed utter disregard for human life. The burden is on the state to prove beyond a reasonable doubt that the defendant did not act lawfully in self-defense. And, you must be satisfied beyond a reasonable doubt from all the evidence in the case that the circumstances of the defendant's conduct showed utter disregard for human life.²⁷

ADD THE FOLLOWING IF EVIDENCE OF THE DEFENDANT'S AFTER-THE-FACT CONDUCT HAS BEEN ADMITTED.²⁸

[Consider also the defendant's conduct after the death to the extent that it helps you decide whether or not the circumstances showed utter disregard for human life at the time the death occurred.]

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) by criminally reckless conduct and that the circumstances of the conduct showed utter disregard for human life, you should find the defendant guilty of first degree reckless homicide.

If you are not so satisfied, you must not find the defendant guilty of first degree reckless homicide, and you should consider whether the defendant is guilty of second degree reckless homicide, in violation of § 940.06 of the Criminal Code of Wisconsin, which is a lesser included offense of first degree reckless homicide.

Make Every Reasonable Effort to Agree

You should make every reasonable effort to agree unanimously on the charge of first

degree reckless homicide before considering the offense of second degree reckless homicide.²⁹ However, if after full and complete consideration of the evidence, you conclude that further deliberation would not result in unanimous agreement on the charge of first degree reckless homicide, you should consider whether the defendant is guilty of second degree reckless homicide.

Statutory Definition of Second Degree Reckless Homicide

Second degree reckless homicide, as defined in § 940.06 of the Criminal Code of Wisconsin, is committed by one who recklessly causes the death of another human being.

Difference Between First and Second Degree Reckless Homicide

The difference between first and second degree reckless homicide is that the first degree offense requires proof of one additional element: that the circumstances of the defendant's conduct showed utter disregard for human life.³⁰

Jury Decision

If you are satisfied beyond a reasonable doubt that all the elements of first degree reckless homicide were present, except the element requiring that the circumstances of the conduct showed utter disregard for human life, you should find the defendant guilty of second degree reckless homicide.

In other words, if you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) by criminally reckless conduct, you should find the defendant guilty of second degree reckless homicide.

If you are not so satisfied, you must find the defendant not guilty.

You are not, in any event, to find the defendant guilty of more than one of the foregoing offenses.

COMMENT

Wis JI-Criminal 1017 was originally published in March 1991 and revised in 1993, 2003, 2012, 2014, and 2015. The 2003 revision made changes in the treatment of self-defense required by State v. Head, 2002 WI 99, and adopted the new format. The 2012 revision involved adding footnote 26 and the text accompanying it. The 2014 revision added to the text to reflect the decision in State v. Austin, 2013 WI App 96, 349 Wis.2d 744, 836 N.W.2d 833. See footnotes 22 and 25. The 2015 revision; amended footnote 21 to reflect 2013 Wisconsin Act 307. This revision was approved by the Committee in December 2022; it amended the language concerning reasonable beliefs to be consistent with the definition provided in § 939.22(32). See footnote 18.

This instruction is for a case where first degree intentional homicide in violation of § 940.01 is charged and lesser included offenses defined in §§ 940.02, 940.05, and 940.06 are submitted. The statutes are among those created by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. The statute applies to offenses committed on or after January 1, 1989. For a brief overview of the homicide revision, see the Introductory Comment at Wis JI-Criminal 1000. A comprehensive outline and discussion of the changes can be found in “The Importance of Clarity in the Law of Homicide: The Wisconsin Revision,” by Walter Dickey, David Schultz, and James L. Fullin, Jr., 1989 Wisconsin Law Review 1325.

1. This instruction is for a case where first degree intentional homicide is charged, there is evidence that the defendant acted in self-defense, and the lesser included offenses of second degree intentional homicide and first and second degree reckless homicide are to be submitted to the jury.

2. These statements are based on the definition of the privilege of self-defense found in § 939.48.

3. The effect of the privilege of self-defense in a case where first degree intentional homicide is charged is as follows:

(a) if the exercise of the privilege was reasonable, both in inception and scope, the defendant is not guilty of any crime;

(b) if the defendant actually believed it was necessary to use force in self defense, but acts unreasonably, the defendant is guilty of second degree intentional homicide. He or she may act

unreasonably in either of two ways:

- i) the belief that it was necessary to act in self-defense may be unreasonable; or
- ii) the amount of force used may be unreasonable

(c) if the defendant did not actually believe it was necessary to use force in self defense, the defendant is guilty of first degree intentional homicide.

4. Section 940.01(2)(b) provides that causing the death by “unnecessary defensive force” mitigates what would otherwise be first degree intentional homicide to second degree intentional homicide: “Death was caused because the actor believed he or she or another was in imminent danger of death or great bodily harm and that the force used was necessary to defend the endangered person, if either belief was unreasonable.”

5. The absence of the mitigating circumstance – no actual belief that the force used was necessary to prevent imminent death or great bodily harm – becomes a fact necessary to constitute the first degree offense. See § 940.01(3) and State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413. Also see the discussion in notes 13 and 14, below.

The Committee considered adding a “subjective threshold” to the definition of the mitigating circumstance. A “subjective threshold” would require that the defendant actually believed that there was an unlawful interference. The Head decision is unclear on this point. One statement in the opinion is consistent with adding this requirement:

... If unnecessary defensive force is been [sic] placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the defendant did not actually believe she was preventing or terminating an unlawful interference with her person or did not actually believe that the force she used was necessary to prevent imminent death or great bodily harm – even if those beliefs were unreasonable – to sustain a conviction for first-degree intentional homicide.

2002 WI 99, ¶70.

However, in two other paragraphs in the opinion the court stated the requirements for unnecessary defensive force without including the “actual belief in an unlawful interference” element. See 2002 WI 99, ¶¶5 and 90. Because § 940.01(2)(b) does not include this requirement, and because the Head decision placed great emphasis on the plain language of the statutes, the Committee decided that it should not be added to the instruction. As a practical matter, the requirement is probably implicit in the other aspects of the standard. Someone who actually believes that it is necessary to use force to prevent imminent death or great bodily harm almost certainly will believe that the source of that threat is an unlawful interference.

In State v. Peters, 2002 WI App 243, 258 Wis.2d 148, 653 N.W.2d 300, the court of appeals reversed a conviction for first degree intentional homicide because, under the standard set forth in the Head decision, second degree intentional homicide [unnecessary defensive force] and the complete privilege of self defense should have been submitted to the jury. As to unnecessary defensive force, Peters met the obligation set out in Head “to present only ‘some’ evidence that she actually believed that she was in imminent danger of death or great bodily harm and actually believed that the force she used was necessary to defend herself.” 2002 WI App 243 at ¶19.

6. See notes 22 and 25, below.

7. When the issue of self-defense “has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the defense did not exist in order to sustain a finding of guilt” for a violation of § 940.01. § 940.01(3). This statute codifies prior Wisconsin law which had established that when evidence of a defense is in the case, the absence of that defense becomes a fact the state must prove to establish guilt for the crime charged.

A defense is “placed in issue” when “a reasonable view of the evidence could support a jury finding that the state has not borne its burden of disproving beyond a reasonable doubt the facts constituting the defense.” Judicial Council Note to § 940.01, 1987 Senate Bill 191, citing State v. Felton, 110 Wis.2d 485, 508, 329 N.W.2d 161 (1983).

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.

Also see Wis JI-Criminal 901, **CAUSE**.

9. The parenthetical reference to “another human being” is based on § 940.01(1), which addresses the common law doctrine of “transferred intent.” That doctrine has been described as follows:

It is immaterial that the human being killed is not the one the actor intended to kill. If X shoots at and kills a person who he thinks is Y but who is actually Z, X is as guilty as if he had not been mistaken about the identity of the person killed. The same is true where X shoots at Y intending to kill him, but he misses Y and kills Z. In both of these cases, X has caused “the death of another human being by an act done with intent to kill that person or another.” In other words, the section incorporates the common law doctrine of “transferred intent.” 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 58.

10. See note 5, supra.

11. The phrase “or aware that his conduct is practically certain to cause that result” was added to the definition of “with intent to” found in § 939.23 by the 1988 revision of the homicide statutes. Further, the revision applied the § 939.23 definition to homicide offenses. Under prior law, “with intent to kill” was defined solely in terms of mental purpose for offenses in Chapter 940. See the discussion in Wis JI-Criminal 1000 and 923B.

12. This is the shorter version used to describe the process of finding intent. The Committee has concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A.

13. Section 940.01(2) recognizes four circumstances as affirmative defenses which mitigate first degree intentional homicide to second degree intentional homicide. When the existence of an affirmative defense “has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that

the facts constituting the defense did not exist in order to sustain a finding of guilt” for a violation of § 940.01. See § 940.01(3). This statute codifies prior Wisconsin law which had established that when evidence of a defense is in the case, the absence of that defense becomes a fact the state must prove to establish guilt for the crime charged. Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979).

A defense is “placed in issue” when “a reasonable view of the evidence could support a jury finding that the state has not borne its burden of disproving beyond a reasonable doubt the facts constituting the defense.” Judicial Council Note to § 940.01, 1987 Senate Bill 191, citing State v. Felton, 110 Wis.2d 485, 508, 329 N.W.2d 161 (1983).

Two beliefs must be held by the defendant in order to mitigate first degree intentional homicide on the basis of “unnecessary defensive force”: a belief that the defendant (or another) was in imminent danger of death or great bodily harm; and a belief that the force used was necessary to defend against that danger. See § 940.01(2)(b). By proving that the defendant did not actually hold either one of these beliefs, the state may meet its burden of proving that “the facts constituting the defense did not exist.” Section 940.01(3).

14. The 2002 revision of the instruction changed this element in response to the decision in State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413. Head modified State v. Camacho, 176 Wis.2d 860, 501 N.W.2d 380 (1993), by holding that there is no “objective threshold” for invoking the mitigating factor of “unnecessary defensive force.” The “objective threshold” refers to a requirement that the defendant reasonably believe that he or she was preventing or terminating an unlawful interference. Head holds that it is sufficient for purposes of “unnecessary defensive force” that a defendant actually believe that the defensive force used was necessary. This is summarized in the following paragraphs of the opinion:

¶103. Based on the plain language of Wis. Stat. § 940.05(2), supported by the legislative history and articulated public policy behind the statute, we conclude that when imperfect self-defense is placed in issue by the trial evidence, the state has the burden to prove that the person had no actual belief that she was in imminent danger of death or great bodily harm, or no actual belief that the amount of force she used was necessary to prevent or terminate this interference. If the jury concludes that the person had an actual but unreasonable belief that she was in imminent danger of death or great bodily harm, the person is not guilty of first-degree intentional homicide but should be found guilty of second-degree intentional homicide.

¶104. In light of this analysis, we must modify Camacho to the extent that it states that Wis. Stat. § 940.01(2)(b) contains an objective threshold element requiring a defendant to have a reasonable belief that she was preventing or terminating an unlawful interference with her person in order to raise the issue of unnecessary defensive force (imperfect self-defense).

Also see State v. Peters, 2002 WI App 243, note 5, supra.

15. This paragraph builds in part of the transitional material usually used between the charged crime and the lesser included offense. See Wis JI-Criminal 112.

16. The absence of the complete privilege of self-defense is a fact necessary to constitute the offense of second degree intentional homicide, assuming there is evidence of the complete privilege in the case. Since there already has been a finding of “some evidence” of the imperfect privilege, (now called “unnecessary defensive force”), there will almost always be a basis for submitting the existence of the complete privilege to the jury. See State v. Gomaz, 141 Wis.2d 302, 414 N.W.2d 626 (1987).

The 2002 revision of the instruction added the requirement that the “defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference.” This requirement was previously part of the requirements for the mitigating factor of unnecessary defensive force. When State v. Head modified State v. Camacho, see note 14, supra, this “objective threshold” was removed from the mitigating factor determination. However, it remains part of the complete privilege of self defense and must be added here. Head’s holding that the objective threshold does apply to claims of the complete privilege of self defense was stated as follows:

. . . [A] defendant seeking a jury instruction on perfect self-defense to a charge of first-degree intentional homicide must satisfy an objective threshold showing that she reasonably believed that she was preventing or terminating an unlawful interference with her person and reasonably believed that the force she used was necessary to prevent imminent death or great bodily harm. A defendant is entitled to an instruction on perfect self-defense when the trial evidence places self-defense in issue. Perfect self-defense is placed in issue when, under a reasonable view of the trial evidence, a jury could conclude that the state has failed to meet its burden to disprove one of the elements of self-defense beyond a reasonable doubt. (Emphasis in original.) 2002 WI 99, ¶4.

In State v. Peters, 2002 WI App 243, 258 Wis.2d 148, 653 N.W.2d 300, the court of appeals reversed a conviction for first degree intentional homicide because, under the standard set forth in the Head decision, second degree intentional homicide [unnecessary defensive force] and the complete privilege of self defense should have been submitted to the jury. As to the complete privilege, Peters met the obligation set out in Head to present “some evidence” supporting the claim of self defense. “[V]iewing the evidence in the light most favorable to Peters, a jury could conclude the State had not disproved the perfect self-defense theory beyond a reasonable doubt and that Peters reasonably believed she was preventing or terminating an unlawful interference with her person and reasonably believed that the force she used was necessary to prevent imminent death or great bodily harm.” 2002 WI App 243 at ¶24.

17. The exercise of the privilege may be proved to be unreasonable in any one of three ways: by showing that the defendant’s belief that he or she was preventing or terminating an unlawful interference was unreasonable; or, by showing that the defendant’s belief that he or she was in danger of imminent death or great bodily harm was unreasonable; or, by showing that the amount of force used was unreasonable. See note 16, supra.

18. This paragraph was modified in 2022 based on suggested amendments to Wis JI-CRIMINAL 1016 made by the Wisconsin Court of Appeals in State v. Ochoa, 2022 WI App 35, ¶60, 404 Wis.2d 261 978 N.W.2d 501. This treatment of “reasonably believes” is intended to be consistent with the definition provided in § 939.22(32).

19. The phrase “in the defendant’s position under the circumstances that existed at the time of the alleged offense” is intended to allow consideration of a broad range of circumstances that relate to the defendant’s situation. For example, with children (assuming they are old enough to be criminally charged), the standard relates to a reasonable person of like age, intelligence, and experience. Maichle v. Jonovic, 69 Wis.2d 622, 627 28, 230 N.W.2d 789 (1975).

Another situation where the personal circumstances become important in defining the self defense standard is in a case involving a battered spouse. Wisconsin cases dealing with the subject have tended to

use doctrines other than self defense in these cases. In State v. Hoyt, 21 Wis.2d 284, 128 N.W.2d 645 (1964), for example, the theory of defense related to “heat of passion, caused by reasonable and adequate provocation” rather than self defense. Likewise, in State v. Felton, 110 Wis.2d 485, 329 N.W.2d 161 (1983), provocation and not guilty by reason of mental disease were considered to be the relevant doctrines. However, some cases of this type may legitimately be considered under self defense rules: the history of abuse between the spouses may be relevant to evaluating whether the defendant's belief in the need to use force was reasonable. See, for example, State v. Gomaz, 141 Wis.2d 302, 414 N.W.2d 626 (1987).

20. This paragraph builds in part of the transitional material usually used between the charged crime and the lesser included offense. See Wis JI-Criminal 112.

21. 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 immediately preceding the sentence in the instruction beginning with “before”:

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.

Also see, Wis JI-Criminal 901 Cause.

22. “Criminal recklessness” is defined as follows in § 939.24(1):

... ‘criminal recklessness’ means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk.

The Judicial Council Note to § 939.24, 1987 Senate Bill 191, explains that “[r]ecklessness requires both the creation of an objectively unreasonable and substantial risk of human death or great bodily harm and the actor’s subjective awareness of that risk.”

23. The statutory definition of “recklessness” clarifies that subjective awareness of the risk is required. That raises the possibility that intoxication could, as a factual matter, negate awareness of the risk. For that reason, the original definition of recklessness provided that if voluntary intoxication prevented the actor from being aware of the risk, it was not a defense. This rule was set forth in § 939.24(3):

(3) A voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness if, had the actor not been in that condition, he or she would have been aware of creating an unreasonable and substantial risk of death or great bodily harm to another human being.

The Judicial Council Note to subsection (3) explains it as follows:

Subsection (3) continues the present rule that a voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness. Ameen v. State, 51 Wis.2d 175, 185, 186 N.W.2d 206 (1971). Patterned on s. 2.08 of the model penal code, it premises liability on whether the actor would have been aware if not in such condition of the risk of death or great bodily harm. The commentaries to s. 2.08, model penal code, state the rationale of this rule in extended fashion.

Note to § 939.24(3), 1987 Senate Bill 191.

Section 939.42, the statute codifying both voluntary and involuntary intoxication defenses, was revised by 2013 Wisconsin Act 307 [effective date: April 18, 2014]. Reference to voluntary intoxication was eliminated; as amended, the statute refers only to involuntary intoxication. Act 307 also repealed former sub. (3) of § 939.24, thus getting rid of the special rule excluding voluntary intoxication as a defense to the “aware of the risk” element. For cases arising before the effective date of Act 307, the suggestion included in the previous version of this Comment would still apply: “In a case where there is evidence of intoxication, it may be helpful to advise the jury of the rule provided in subsection (3). The Committee concluded that simply reading the statute is the best way to provide the necessary information.”

24. The Committee has concluded that consideration of the privilege of self-defense is relevant to both the “unreasonable risk” and “utter disregard” components of first degree reckless homicide. Conduct does not create an unreasonable risk of harm to another if the conduct is undertaken as reasonable action in self-defense. Recklessness and reasonable exercise of the privilege cannot coexist. Thus, the Committee concluded that it is best to advise the jury to consider the privilege of self-defense when considering the “unreasonable risk” component of recklessness.

The last two sentences of this paragraph were added in 2014 in response to the decision in State v. Austin, 2013 WI App 96, 349 Wis.2d 744, 836 N.W.2d 833, in which the court of appeals ordered a new trial for a person convicted of 2nd degree recklessly endangering safety. The court held that the jury instructions given in that case – which followed the pattern suggested by Wis JI-Criminal 801 – were deficient because they did not specifically state that the prosecution must prove the absence of self-defense once raised. The first of the added sentences is intended to make that requirement clear. The second added sentence is intended to emphasize that even if the state succeeds in proving the absence of self-defense, the jury still must be satisfied by all the evidence that the defendant’s conduct created an unreasonable risk of death or great bodily harm.

25. “Under circumstances which show utter disregard for human life” is the factor that distinguishes this offense from second degree reckless homicide. For a complete discussion of this factor, see Wis JI-Criminal 924A or note 4, Wis JI-Criminal 1020.

26. All the circumstances relating to the defendant’s conduct should be considered in determining whether that conduct shows “utter disregard” for human life. See Wis JI-Criminal 924A and note 5, Wis JI-Criminal 1020.

27. The Committee has concluded that consideration of the privilege of self-defense is relevant to both the “unreasonable risk” and “utter disregard” components of first degree reckless homicide. Conduct does not show utter disregard for human life if it is undertaken on the reasonable exercise of the privilege of self-defense. Thus, the Committee concluded that it is best to advise the jury to consider the privilege of self-defense when considering the “utter disregard” element.

The last two sentences of this paragraph were added in 2014 in response to the decision in State v. Austin, see note 22, supra. Austin was concerned with the “unreasonable risk” element of the offense, but the same concern should apply to the “utter disregard” element of 1st degree reckless offenses. The first of the added sentences is intended to make it clear that the prosecution must prove the absence of self-defense once raised to meet its burden to prove “utter disregard for human life.” The second added sentence is intended to emphasize that even if the state succeeds in proving the absence of self-defense, the jury still

must be satisfied by all the evidence that circumstances of the defendant's conduct showed utter disregard for human life.

28. This material was added in 2011 in response to the decision of the Wisconsin Supreme Court in State v. Burris, 2011 WI 32, 333 Wis.2d 87, 797 N.W.2d 430. For a complete discussion of this issue, see Wis JI-Criminal 924A or note 6, Wis JI-Criminal 1020.

29. This paragraph builds in the part of the transitional material usually used between the charged crime and the lesser included offense. See Wis JI-Criminal 112A.

30. This statement is based on Wis JI-Criminal 112A which is recommended as an alternative style of submitting a lesser included offense. The Committee concluded it should be used here to emphasize the distinction between first and second degree reckless homicide.

[This page is intentionally left blank]

**1072 ATTEMPTED FIRST DEGREE INTENTIONAL HOMICIDE:
SELF-DEFENSE: ATTEMPTED SECOND DEGREE INTENTIONAL
HOMICIDE — § 940.01(2)(b); § 940.05¹; § 939.32**

Crimes to Consider

The defendant in this case is charged with attempted first degree intentional homicide, and you must first consider whether the defendant is guilty of that offense. If you are not satisfied that the defendant is guilty of attempted first degree intentional homicide, you must consider whether or not the defendant is guilty of attempted second degree intentional homicide which is a less serious degree of criminal homicide.

Intentional Homicide

The crimes referred to as attempted first and second degree intentional homicide are different degrees of homicide. Homicide is the taking of the life of another human being. The degree of attempted homicide defined by the law depends on the facts and circumstances of each particular case.

While the law separates attempted intentional homicides into two degrees, there are certain elements which are common to each crime. Both attempted first and second degree intentional homicide require that:

- the defendant intended to kill another person; and
- the defendant did acts toward the commission of that crime which indicate unequivocally, under all the circumstances, that (he) (she) had formed that intent and would have caused the death of (name of victim) except for the intervention

of another person or some other extraneous factor.

It will also be important for you to consider the privilege of self-defense in deciding which crime, if any, the defendant has committed.

Self-Defense

The Criminal Code of Wisconsin provides that a person is privileged to intentionally use force against another under the following circumstances:

- force is used for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with (his) (her) person by the other person; and,
- the person uses only the amount of force that (he) (she) reasonably believes is necessary to prevent or terminate the interference; and,
- the person may not intentionally use force which is intended or likely to cause death unless (he) (she) reasonably believes that such force is necessary to prevent imminent death or great bodily harm to (himself) (herself).²

If you find that the elements of attempted first or second degree intentional homicide have been proved in this case, the effect of the law of self-defense is as follows:

- The defendant is not guilty of either attempted first or second degree intentional homicide if the defendant:
 - (1) reasonably believed that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person, and

(2) reasonably believed the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).³

- The defendant is guilty of attempted second degree intentional homicide if the defendant actually believed the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), but the belief or the amount of force used was unreasonable.⁴
- The defendant is guilty of attempted first degree intentional homicide if the defendant did not actually believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).⁵

Because the law provides that it is the State's burden to prove all the facts necessary to constitute a crime beyond a reasonable doubt, you will not be asked to make a separate finding on whether the defendant acted in self-defense. Instead, you will be asked to determine whether the State has established the necessary facts to justify a finding of guilty for attempted first or second degree intentional homicide. If the State does not satisfy you that those facts are established by the evidence, you will be instructed to find the defendant not guilty.

The elements of each crime will now be defined for you in greater detail.

Attempted First Degree Intentional Homicide

Before you may find the defendant guilty of attempted first degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt

that the following three elements were present.

Elements of Attempted First Degree Intentional Homicide

That the State Must Prove

1. The defendant intended to kill (name of victim).

“Intent to kill” means that the defendant had the mental purpose to take the life of another human being or was aware that (his) (her) conduct was practically certain to cause the death of another human being.⁶

2. The defendant did acts which demonstrate unequivocally, under all the circumstances, that (he)(she) had formed that intent and would have caused the death of (name of victim) except for the intervention of another person or some other extraneous factor.⁷

“Unequivocally” means that no other inference or conclusion can reasonably and fairly be drawn from the defendant’s acts, under the circumstances.

“Another person” means anyone but the defendant and may include the intended victim.

An “extraneous factor” is something outside the knowledge of the defendant or outside the defendant’s control.

3. The defendant did not actually believe that the force used was necessary to prevent imminent death or great bodily harm to himself.⁸

When May Intent Exist?

While the law requires that the defendant acted with intent to kill, it does not require that the intent exist for any particular length of time before the act is committed. The act need not be brooded over, considered, or reflected upon for a week, a day, an hour, or even for a minute. There need not be any appreciable time between the formation of the intent and the act. The intent to kill may be formed at any time before the act, including the instant before the act, and must continue to exist at the time of the act.

Deciding About Intent

You cannot look into a person's mind to find intent. Intent to kill 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.⁹

Intent and Motive

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. "Motive" refers to a person's reason for doing something. While motive may be shown as a circumstance to aid in establishing the guilt of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

Actual Belief That The Force Used Was Necessary

The third element of attempted first degree intentional homicide requires that the defendant did not actually believe the force used was necessary to prevent imminent death

or great bodily harm to (himself) (herself). This requires the State to prove¹⁰ either:

- 1) that the defendant did not actually believe (he) (she) was in imminent danger of death or great bodily harm; or
- 2) that the defendant did not actually believe the force used was necessary to prevent imminent danger of death or great bodily harm to (himself) (herself).

When attempted first degree intentional homicide is considered, the reasonableness of the defendant's belief is not an issue. You are to be concerned only with what the defendant actually believed. Whether these beliefs are reasonable is important only if you later consider whether the defendant is guilty of attempted second degree intentional homicide.¹¹

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant intended to kill (name of victim), and that the defendant's acts demonstrated unequivocally that the defendant intended to kill and would have killed (name of victim) except for the intervention of another person or some other extraneous factor, and that the defendant did not actually believe that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), you should find the defendant guilty of attempted first degree intentional homicide.

If you are not so satisfied, you must not find the defendant guilty¹² of attempted first degree intentional homicide, and you must consider whether the defendant is guilty of

attempted second degree intentional homicide, as defined in § 940.05 of the Criminal Code of Wisconsin, which is a lesser included offense of attempted first degree intentional homicide.

Make Every Reasonable Effort to Agree

You should make every reasonable effort to agree unanimously on the charge of attempted first degree intentional homicide before considering the offense of attempted second degree intentional homicide.¹³ However, if after full and complete consideration of the evidence, you conclude that further deliberation would not result in unanimous agreement on the charge of attempted first degree intentional homicide, you should consider whether the defendant is guilty of attempted second degree intentional homicide.

Attempted Second Degree Intentional Homicide

Before you may find the defendant guilty of attempted second degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of Attempted Second Degree Intentional Homicide

That the State Must Prove

1. The defendant intended to kill (name of victim).
2. The defendant did acts which demonstrate unequivocally, under all the circumstances, that (he)(she) had formed that intent and would have caused the death of (name of victim) except for the intervention of another person or some

other extraneous factor.

3. The defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).¹⁴

You have already been instructed on the definitions of “intent to kill,” “unequivocally,” “another person,” and “extraneous factor.” The same definitions apply to your consideration of attempted second degree intentional homicide.

Reasonable Belief That the Force Used Was Necessary

The third element of attempted second degree intentional homicide requires that the defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself). This requires that the State prove any one of the following:¹⁵

- 1) that a reasonable person in the circumstances of the defendant would not have believed that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person; or
- 2) that a reasonable person in the circumstances of the defendant would not have believed (he) (she) was in danger of imminent death or great bodily harm; or
- 3) that a reasonable person in the circumstances of the defendant would not have

believed that the amount of force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).

Determining Whether Beliefs Were Reasonable

A belief may be reasonable even though mistaken.¹⁶ In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense.¹⁷ The reasonableness of the defendant's beliefs must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant intended to kill (name of victim), and that the defendant's acts demonstrated unequivocally that the defendant intended to kill and would have killed (name of victim) except for the intervention of another person or some other extraneous factor, and that the defendant did not reasonably believe that (he) (she) was preventing or terminating an unlawful interference with (his) (her) person or did not reasonably believe the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself), you should find the defendant guilty of attempted second degree intentional homicide.

If you are not satisfied beyond a reasonable doubt that the defendant is guilty of attempted second degree intentional homicide, you must find the defendant not guilty.

You are not, in any event, to find the defendant guilty of more than one of the foregoing offenses.

COMMENT

Wis JI-Criminal 1072 was approved by the Committee in February 2005. This revision was approved by the Committee in December 2022; it amended the language concerning reasonable beliefs to be consistent with the definition provided in § 939.22(32). See footnote 16.

This instruction combines Wis JI-Criminal 1014 and 1070 to address the following situation:

- attempted first degree intentional homicide under §§ 939.32 and 940.01 is charged;
- attempted second degree intentional homicide based on unnecessary defensive force under §§ 939.32 and 940.05 is submitted as a lesser included offense; and,
- there is evidence of the complete privilege of self-defense in the case.

The Committee concluded that the same substantive standards and procedures apply to attempt cases as apply to cases involving completed crimes. The substantive standards for completed homicides involving claims of self-defense are set forth in State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413, which is discussed extensively in the notes to Wis JI-Criminal 1014.

When there is evidence of the complete privilege of self-defense, there will always be a sufficient evidentiary basis for instructing on “unnecessary defensive force” – what was called “imperfect self-defense” under pre-1989 Wisconsin law. If the jury is instructed on the complete privilege, “an independent analysis of the property of imperfect self-defense as a lesser included offense is not required.” State v. Gomaz, 141 Wis.2d 302, 309, 414 N.W.2d 626 (1987), citing Ross v. State, 61 Wis.2d 160, 211 N.W.2d 827 (1973).

1. This instruction is for a case where attempted first degree intentional homicide is charged, there is evidence that the defendant acted in self-defense, and the lesser included offense of attempted second degree intentional homicide is to be submitted to the jury. The same substantive standards and procedural approach used for the completed crime are used here. Compare Wis JI-Criminal 1014.

2. These statements are based on the definition of the privilege of self-defense found in § 939.48.

3. The effect of the privilege of self-defense in a case where attempted first degree intentional homicide is charged is the same as for the completed crime and is as follows:

- (a) if the exercise of the privilege was reasonable, both in inception and scope, the defendant is

not guilty of any crime;

(b) if the defendant actually believed it was necessary to use force in self defense, but acts unreasonably, the defendant is guilty of attempted second degree intentional homicide. He or she may act unreasonably in either of two ways:

i) the belief that it was necessary to act in self-defense may be unreasonable; or

ii) the amount of force used may be unreasonable

(c) if the defendant did not actually believe it was necessary to use force in self defense, the defendant is guilty of attempted first degree intentional homicide.

4. Section 940.01(2)(b) provides that causing the death by “unnecessary defensive force” mitigates what would otherwise be first degree intentional homicide to second degree intentional homicide: “Death was caused because the actor believed he or she or another was in imminent danger of death or great bodily harm and that the force used was necessary to defend the endangered person, if either belief was unreasonable.” The same standard applies to attempts.

5. As with the completed crime, the absence of the mitigating circumstance “no actual belief that the force used was necessary to prevent imminent death or great bodily harm” becomes a fact necessary to constitute the attempted first degree offense. As to the completed crime, see § 940.01(3) and State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413. See notes 14 and 15, below, and note 5, Wis JI-Criminal 1014.

6. The phrase “or aware that his conduct is practically certain to cause that result” was added to the definition of “with intent to” found in § 939.23 by the 1988 revision of the homicide statutes. Further, the revision applied the § 939.23 definition to homicide offenses. Under prior law, “with intent to kill” was defined solely in terms of mental purpose for offenses in Chapter 940. See the discussion in Wis JI-Criminal 1000 and 923B.

7. The statement of the facts necessary to constitute an “attempt” and the definitions of the relevant terms are based on those used in the standard attempt instruction. See Wis JI-Criminal 580. Also see Wis JI-Criminal 1070, Attempted First Degree Intentional Homicide.

8. See note 5, supra.

9. This is the shorter version used to describe the process of finding intent. The Committee has concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A.

10. Section 940.01(2) recognizes four circumstances as affirmative defenses which mitigate first degree intentional homicide to second degree intentional homicide. The same standards apply to attempt cases. When the existence of an affirmative defense “has been placed in issue by the trial evidence, the state must prove beyond a reasonable doubt that the facts constituting the defense did not exist in order to sustain a finding of guilt” for a violation of § 940.01. See § 940.01(3). This statute codifies prior Wisconsin law which had established that when evidence of a defense is in the case, the absence of that defense becomes a fact the state must prove to establish guilt for the crime charged. Moes v. State, 91 Wis.2d 756,

284 N.W.2d 66 (1979).

A defense is “placed in issue” when “a reasonable view of the evidence could support a jury finding that the state has not borne its burden of disproving beyond a reasonable doubt the facts constituting the defense.” Judicial Council Note to § 940.01, 1987 Senate Bill 191, citing State v. Felton, 110 Wis.2d 485, 508, 329 N.W.2d 161 (1983).

Two beliefs must be held by the defendant in order to mitigate attempted first degree intentional homicide on the basis of “unnecessary defensive force”: a belief that the defendant (or another) was in imminent danger of death or great bodily harm; and a belief that the force used was necessary to defend against that danger. See § 940.01(2)(b). By proving that the defendant did not actually hold either one of these beliefs, the state may meet its burden of proving that “the facts constituting the defense did not exist.” Section 940.01(3).

11. The statement of the alternative ways of satisfying this element is the same as that used in Wis JI-Criminal 1014. The 2002 revision of that instruction changed the element in response to the decision in State v. Head, 2002 WI 99, 255 Wis.2d 194, 648 N.W.2d 413. Head modified State v. Camacho, 176 Wis.2d 860, 501 N.W.2d 380 (1993), by holding that there is no “objective threshold” for invoking the mitigating factor of “unnecessary defensive force.” The “objective threshold” refers to a requirement that the defendant reasonably believe that he or she was preventing or terminating an unlawful interference. Head holds that it is sufficient for purposes of “unnecessary defensive force” that a defendant actually believe that the defensive force used was necessary. See note 13, Wis JI-Criminal 1014.

12. The instruction refers to “you must not find the defendant guilty . . .” rather than the typical “you must find the defendant not guilty . . .” in making the transition to consideration of the lesser included offense. This is to reflect the common practice of giving the jury only one not guilty verdict, along with guilty verdicts for the charged crime and the lesser included crime. Under that practice, the jury would not make a specific finding of “not guilty” on the charged crime – here, attempted first degree intentional homicide.

Thus, the jury would proceed to consider the lesser – here, attempted second degree intentional homicide – under two circumstances: 1) the jury unanimously agrees that the defendant is not guilty of attempted first degree intentional homicide; or, 2) the jury is unable to reach unanimous agreement on that charge. The next paragraph in the instruction addresses the latter situation.

13. This paragraph builds in part of the transitional material usually used between the charged crime and the lesser included offense. See Wis JI-Criminal 112.

14. As with the completed crime, the absence of the complete privilege of self-defense is a fact necessary to constitute the offense of attempted second degree intentional homicide, assuming there is evidence of the complete privilege in the case. Since there already has been a finding of “some evidence” of the imperfect privilege, (now called “unnecessary defensive force”), there will almost always be a basis for submitting the existence of the complete privilege to the jury. As to completed crimes, see State v. Gomaz, 141 Wis.2d 302, 310, 414 N.W.2d 626 (1987), recognizing that the two comparable offenses under prior law “differ only in regard to the factual determination of ‘reasonableness.’” Also see note 15, Wis JI-Criminal 1014.

15. The exercise of the privilege may be proved to be unreasonable in any one of three ways: by

showing that the defendant's belief that he or she was preventing or terminating an unlawful interference was unreasonable; or, by showing that the defendant's belief that he or she was in danger of imminent death or great bodily harm was unreasonable; or, by showing that the amount of force used was unreasonable. See note 14, supra, and note 15, Wis JI-Criminal 1014.

16. This paragraph was modified in 2022 based on suggested amendments to Wis JI-CRIMINAL 1016 made by the Wisconsin Court of Appeals in State v. Ochoa, 2022 WI App 35, ¶60, 404 Wis.2d 261 978 N.W.2d 501. This treatment of "reasonably believes" is intended to be consistent with the definition provided in § 939.22(32).

17. The phrase "in the defendant's position under the circumstances that existed at the time of the alleged offense" is intended to allow consideration of a broad range of circumstances that relate to the defendant's situation. For example, with children (assuming they are old enough to be criminally charged), the standard relates to a reasonable person of like age, intelligence, and experience. Maichle v. Jonovic, 69 Wis.2d 622, 627 28, 230 N.W.2d 789 (1975).

Another situation where the personal circumstances become important in defining the self defense standard is in a case involving a battered spouse. Wisconsin cases dealing with the subject have tended to use doctrines other than self defense in these cases. In State v. Hoyt, 21 Wis.2d 284, 128 N.W.2d 645 (1964), for example, the theory of defense related to "heat of passion, caused by reasonable and adequate provocation" rather than self defense. Likewise, in State v. Felton, 110 Wis.2d 485, 329 N.W.2d 161 (1983), provocation and not guilty by reason of mental disease were considered to be the relevant doctrines. However, some cases of this type may legitimately be considered under self defense rules: the history of abuse between the spouses may be relevant to evaluating whether the defendant's belief in the need to use force was reasonable. See, for example, State v. Gomaz, 141 Wis.2d 302, 414 N.W.2d 626 (1987).

[This page is intentionally left blank]

1200G CAUTIONARY INSTRUCTION: EVIDENCE OF VICTIM'S PRIOR SEXUAL CONDUCT — § 972.11(2)(b)

CHOOSE THE APPROPRIATE BRACKETED ALTERNATIVE[S].

EVIDENCE ADMITTED UNDER § 972.11(2)(b)1¹

[Evidence of prior sexual conduct between (name of victim) and the defendant has been introduced. If you find that this conduct did occur, you should consider it only (describe acceptable purpose).² Do not consider it for any other purpose.]

EVIDENCE ADMITTED UNDER § 972.11(2)(b)2³

[Evidence of prior sexual conduct on the part of (name of victim) has been introduced. If you find that this conduct did occur, you should consider it only in determining the source or origin of (semen) (pregnancy) (disease).⁴ Do not consider it for any other purpose.]

ADD THE FOLLOWING IF “WITHOUT CONSENT” IS AN ELEMENT OF THE CRIME AND THE EVIDENCE RELATES TO CONDUCT WITH A PERSON OTHER THAN THE DEFENDANT.⁵

[In particular, do not consider this evidence in determining whether (name of victim) consented to the alleged sexual (contact) (intercourse).]

EVIDENCE ADMITTED UNDER § 972.11(2)(b)3⁶

[Evidence of prior allegations of sexual assault made by (name of victim) has been introduced. If you find that the allegations were made and were untruthful, consider them only (describe acceptable purpose).⁷ Do not consider this evidence for any other purpose.]

EVIDENCE ADMITTED UNDER THE GENERAL, CONSTITUTIONALLY-REQUIRED EXCEPTION⁸

[Evidence of prior sexual conduct on the part of (name of victim) has been introduced in this case. If you find that this conduct did occur, you should consider it only (describe acceptable purpose).⁹ Do not consider this evidence for any other purpose.]

COMMENT

This instruction was originally published as Wis JI-Criminal 1200F in 1983 and revised in 1984 and 1990. It was revised and renumbered as Wis JI-Criminal 1200G in 1996 and revised in 2002, 2011, and 2012. The 2012 revision noted additions to the applicability of § 972.1(2) made by 2011 Wisconsin Act 271. This revision was approved by the Committee in December 2022; it updated the comment.

This instruction is intended to advise the jury on the proper use of evidence of prior sexual conduct when that evidence is admitted under § 972.11(2)(b). The statute applies only to prosecutions under twelve specified statutes:

- § 940.225, Sexual Assault;
- § 948.02, Sexual Assault of A Child;
- § 948.025, Engaging In Repeated Sexual Assaults of the Same Child;
- § 948.05, Sexual Exploitation of A Child;
- § 948.051, Trafficking of A Child;
- § 948.06, Incest With A Child;
- § 948.07, Child Enticement;
- § 948.08, Soliciting a Child for Prostitution;
- § 948.085, Sexual Assault of A Child Placed in Substitute Care;
- § 948.09, Sexual Intercourse with a Child Age 16 or Older;
- § 948.095, Sexual Assault of a Student by a School Instructional Staff Person; and,
- § 940.302(2), Human Trafficking, [“if the court finds that the crime was sexually motivated, as defined in s. 980.01(5).”]

Sections 948.07, 948.08, and 948.09 were added by 2011 Wisconsin Act 271 [effective date: April 24, 2012].

The 2001 revision modified this instruction by providing an alternative paragraph for each of the three exceptions recognized by § 972.11(2)(b)1.-3. and for the general, constitutionally-required exception recognized by case law.

Analysis of admissibility under § 972.11(2) involves three steps determining whether: the evidence falls within an exception set forth in § 972.11(2)(b)1.-3.; the evidence is material to a fact at issue; and, the evidence is of sufficient probative value to outweigh its inflammatory and prejudicial nature. State v. DeSantis, 155 Wis.2d 774, 456 N.W.2d 600 (1990).

When evidence is admitted for a limited purpose, an instruction limiting the jury's consideration to the proper purpose must be given upon request. § 901.06.

Cases have established the following about § 972.11's prior sexual conduct evidence rule:

- “prior” means prior to trial; it is not limited to prior to the incident on which the criminal charge is based. State v. Gulrud, 140 Wis.2d 721, 421 N.W.2d 739 (Ct. App. 1987).
- “sexual conduct” evidence includes evidence of the lack of sexual activity or experience. State v. Mulhern, 2022 WI 42, 402 Wis.2d 64, 975 N.W.2d 209. See also, State v. Gavigan, 111 Wis.2d 150, 158-59, 330 N.W.2d 571 (1983); State v. Mitchell, 144 Wis.2d 596, 600, 609, 424 N.W.2d 698 (1988); State v. Penigar, 139 Wis.2d 569, 408 N.W.2d 862 (1987); and, State v. Childs, 146 Wis.2d 116, 430 N.W.2d 353 (Ct. App. 1988).
- “sexual conduct” evidence includes written notes relating to sexual activity. State v. Vonesh, 135 Wis.2d 477, 401 N.W.2d 170 (Ct. App. 1987).

After § 972.11 was adopted in 1976, the supreme court held that prior sexual conduct evidence may be admissible even if it does not fit one of the statutory exceptions in § 972.11(2)(b)1.-3. See State v. Gavigan, 111 Wis.2d 150, 157-60. Gavigan involved evidence of the victim's lack of prior sexual experience introduced by the state. The court accepted the state's concession that testimony of the victim's virginity prior to being assaulted was covered by the definition of “sexual conduct” because that phrase includes evidence of the lack of sexual activity or experience. Id., at 158-59. The court held, however, that the evidence was admissible because it was offered “to prove a fact independent of the complainant's prior sexual conduct which is relevant to an issue in the case.”—in Gavigan, lack of consent. Id., at 157-61. The decision also held that a cautionary instruction should be given to “state the limited purpose of the evidence and inform the jury that the evidence may not be considered as indicating the complainant's prior sexual conduct.” Id., at 158.

The legislature responded to Gavigan by enacting 1983 Wisconsin Act 449. Effective May 18, 1984, section 972.11(2)(c) was created to read:

- (c) Notwithstanding § 901.06, the limitation on the admission of evidence of or reference to the prior sexual conduct of the complaining witness in par. (b) applies regardless of the purpose of the admission or reference unless the admission is expressly permitted under par. (b) 1., 2., or 3.

The supreme court has acknowledged that the creation of subsection (2)(c) limited the Gavigan decision, and that doing so was not an unconstitutional invasion of the powers of the judicial branch. Mulhern, 402 Wis.2d 64, ¶¶24-26; State v. Mitchell, 144 Wis.2d 596, 612-19.

In State v. Herndon, 145 Wis.2d 91, 426 N.W.2d 347 (Ct. App. 1988), the court held that § 972.11(2) must be subject to exceptions based on the defendant's 6th amendment right to present evidence and to

confront adverse witnesses:

. . . where the evidence to be admitted is probative of the complainant's bias or prejudice, shows that she has a motive to fabricate, or shows a continuing pattern of conduct, the trial court must balance the probativeness of the evidence against its prejudicial nature. A refusal to allow this evidence in all cases based solely upon an evidentiary rule is a violation of the defendant's sixth amendment rights to confront adverse witnesses and present witnesses on his own behalf.

The court identified a six-part test to be used in conducting the required balancing. The Wisconsin Supreme Court adopted a similar rationale and balancing test in State v. Pulizzano, 155 Wis.2d 633, 456 N.W.2d 325 (1990). See note 8, below.

1. This paragraph is drafted for use where evidence is admitted under sub. (2)(b)1. of § 972.11, which provides an exception to the rape shield rule for "evidence of the complaining witness's past conduct with the defendant."

2. The issue to which the evidence is relevant should be described in this blank.

Determining whether past conduct between the complaining witness and the defendant is admissible for an acceptable purpose is a highly fact-dependent inquiry. Wisconsin case law suggests that past conduct can be relevant to the issue whether the act involved in the case was "without consent," but does not provide clear guidance.

State v. Neumann, 179 Wis.2d 687, 508 N.W.2d 54 (Ct. App. 1993), involved changes of forcible sexual assault – without consent and by use or threat of force – by Neumann against his girlfriend. The trial court allowed evidence of prior consensual sexual activity between them, but then instructed the jury that it could not be considered in determining whether there was consent. The court of appeals found this was error, but harmless because the evidence of prior consensual non-violent sexual conduct has virtually no probative value regarding consent to sexual intercourse by the use or threat of force. In a footnote, the court noted that while Wisconsin had no case directly on point, other jurisdictions have generally concluded that prior consensual activity is relevant to the consent issue. 179 Wis.2d 687, 701-02, footnote 5.

In State v. Jackson, 216 Wis.2d 646, 575 N.W.2d 475 (1998), the court held that while evidence of prior conduct between the complaining witness and the defendant fit the exception under sub. (2)(b)1., the evidence was still not admissible. "[M]erely offering proof of the general type described in a particular exception is not enough to defeat the rape shield statute." 216 Wis.2d 646, 658. The defendant must establish that the evidence is "of sufficient probative value to outweigh its inflammatory and prejudicial nature." See § 971.31(11). In this case, the defendant failed to do that. 216 Wis.2d 646, 663.

3. This paragraph is drafted for use where evidence is admitted under sub. (2)(b)2. of § 972.11, which provides an exception to the rape shield law for "evidence of specific instances of sexual conduct showing the source or origin of semen, pregnancy or disease, for use in determining the degree of sexual assault or the extent of injury suffered."

4. This tracks the language of sub. (b)2. of § 972.11, which goes on to specify the uses to which the evidence may be put: "for use in determining the degree of sexual assault or the extent of injury suffered." The Committee concluded that the latter need not be communicated to the jury; it merely describes the reasons the evidence was admitted. See State v. Dodson, 219 Wis.2d 65, 580 N.W.2d 181 (1998), finding

reversible error in the refusal to admit evidence to show alternative source of physical injury.

Evidence that the hymen of an eight-year-old victim was dilated is not admissible under the “source of . . . disease” exception. In the Interest of Michael R. B., 170 Wis.2d 713, 727-730, 499 N.W.2d 641 (1993). However, it was error to exclude the testimony of a doctor called by the defense who would have testified about the normal dilation of an eight-year-old’s hymen. 170 Wis.2d 713, 733.

Evidence that the complainant did not have sexual intercourse in the week prior to the alleged sexual assault was not admissible to show “the origin of semen, pregnancy or disease” or for the purpose of “determining the degree of sexual assault or the extent of injury suffered.” State v. Mulhern, 2022 WI 42, ¶¶41-42, 402 Wis.2d 64, 975 N.W.2d 209.

5. This optional paragraph is intended for use when the prior sexual conduct evidence relates to the victim’s activity with someone other than the defendant. It is meant to emphasize one of the protections rape shield laws are designed to provide: that it is not to be assumed that a person consented to a sexual act merely because that person has consented to sexual activity in the past. Evidence of prior sexual conduct with the defendant is addressed by sub. (2)(b)1. in the preceding bracketed paragraph.

6. This paragraph is drafted for use where evidence is admitted under sub. (2)(b)3. of § 972.11, which provides an exception to the rape shield law for “evidence of prior untruthful allegations of sexual assault made by the complaining witness.” It is intended to emphasize that the jury must first determine that other allegations of sexual assault were made and that those allegations were false. This is consistent with the 3-step procedure set forth in State v. DeSantis, 155 Wis.2d 774, 456 N.W.2d 600 (1990): the evidence falls within the exception set forth in § 972.11(2)(b)3.; the evidence is material to a fact at issue; and, the evidence is of sufficient probative value to outweigh its inflammatory and prejudicial nature. As to the first step, the evidence must be “sufficient to support a reasonable person’s finding that the complainant made prior untruthful allegations.” DeSantis, *supra*, 155 Wis.2d 774, 788.

In State v. Ringer, 2010 WI 69, 326 Wis.2d 351, 785 N.W.2d 448, the court noted that DeSantis used two different statements in describing the test: whether a jury could reasonably find that there was a prior untruthful allegation and whether it could reasonably infer that there was a prior untruthful allegation. To resolve this perceived inconsistency, the court adopted “could reasonably find” as the proper statement. The court also held that the fact that there was no prosecution in connection with the prior allegations, “in and of itself, does not support a finding that the allegations were untruthful.” Ringer, ¶40.

7. The issue to which the evidence is relevant should be described in this blank. Usually, that issue will be credibility.

8. This paragraph is drafted for use where evidence is admitted under the general, constitutionally-based, exception based on the defendant’s due process right to present relevant evidence. The applicability of the exception is to be determined by using a five-part test, adopted in State v. Pulizzano, 155 Wis.2d 633, 456 N.W.2d 325 (1990):

- (1) that the prior acts clearly occurred;
- (2) that the acts closely resembled those of the present case;
- (3) that the prior act is clearly relevant to a material issue;
- (4) that the evidence is necessary to the defendant’s case; and
- (5) that the probative value of the evidence outweighs its prejudicial effect.

If the defendant's offer of proof meets the five-part test, "the court must determine whether the defendant's rights to present the proffered evidence are nonetheless outweighed by the State's compelling interest to exclude the evidence." State v. Dodson, 219 Wis.2d 65, ¶11, 580 N.W.2d 181 (1998). For a case finding that the prior acts did not closely resemble those of the instant case, see State v. Dunlap, 2002 WI 19, 250 Wis.2d 466, 640 N.W.2d 112.

Pulizzano held that the evidence offered in that case was relevant to show an alternative source of sexual knowledge on the part of the child victim. The court also held that "[l]imiting instructions should be given to restrict the trier of fact's use of the evidence to that purpose." 155 Wis.2d 633, 656. Also see the following, each finding that excluding evidence offered for this purpose was reversible error: State v. Dodson, 219 Wis.2d 65, 580 N.W.2d 181 (1998); State v. Moats, 156 Wis.2d 74, 457 N.W.2d 299 (1990); and, State v. Jagielski, 161 Wis.2d 67, 467 N.W.2d 196 (Ct. App. 1991). In State v. Hammer, 2000 WI 92, 236 Wis.2d 686, 613 N.W.2d 629, the court held evidence of sexual acts between a child victim and others on the day before the crime was not admissible to show bias and a motive to fabricate.

9. The issue to which the evidence is relevant should be described in this blank. For example: ". . . you should consider it only as it relates to an alternative source of sexual knowledge." See, State v. Pulizzano, note 8, supra.

1296 INTIMIDATION OF A VICTIM — §§ 940.44 and 940.45**Statutory Definition of the Crime**

Intimidation of a victim, as defined in § 940.44 of the Criminal Code of Wisconsin, is committed by one who knowingly and maliciously prevents or dissuades (or who attempts to so prevent or dissuade)¹ another person who has been the victim of any crime from making any report of the victimization to any peace officer or law enforcement agency.²

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 three elements were present.

Elements of the Crime That the State Must Prove

1. (Name of victim) was a victim of a crime.

“Victim” means a person against whom a crime has been committed or attempted in this state.³

In this case, it is alleged that (name of victim) was a victim of (name of crime). (Name of crime), as defined in § ____ of the Criminal Code of Wisconsin, is committed by one who (refer to the uniform criminal jury instruction for a definition of the crime).⁴ Before you may find the defendant guilty of intimidation of a victim, you must be satisfied beyond a reasonable doubt that (name of victim) was the victim of (name of crime).

2. The defendant (prevented) (dissuaded)⁵ (attempted to prevent) (attempted to dissuade) (name of victim) from reporting the crime to any law enforcement agency.⁶
3. The defendant acted knowingly and maliciously.⁷

This requires that the defendant knew (name of victim) was a victim of a crime and that the defendant (acted with the intent to injure or annoy another) (or) (acted with an intent to interfere with the orderly administration of justice).

Deciding About Knowledge and Intent

You cannot look into a person's mind to find knowledge and intent. Knowledge and intent 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 knowledge and intent.⁸

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty [and answer the following question "yes" or "no"].⁹

If you are not so satisfied, you must find the defendant not guilty.

ADD ONE OF THE FOLLOWING QUESTIONS IF A FELONY OFFENSE IS CHARGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT A PENALTY FACTOR SET FORTH IN § 940.45 IS ESTABLISHED:¹⁰

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

[FOR CHARGES UNDER SUB. (1)]

[“Was the defendant’s act accompanied by (attempted) force or violence upon [(name of victim)] [(identify relative)¹¹ of (name of victim)]?”]

[FOR CHARGES UNDER SUB. (2)]

[“Was the defendant’s act accompanied by damage to the property of [(name of victim)] [(identify relative)²¹ of (name of victim)]?”]

[FOR CHARGES UNDER SUB. (3)]

[“Was the defendant’s act accompanied by any express or implied threat of (name harm described in sub. (1) or (2) of § 940.45)?”]¹³

[FOR CHARGES UNDER SUB. (4)]

[“Was the defendant’s act in furtherance of any conspiracy?”]¹⁴

[FOR CHARGES UNDER SUB. (5)]

[“Does the defendant have a prior conviction for (a violation under §§ 940.42 to 940.45) (an act which, if committed in this state, would be a violation under §§ 940.42 to 940.45)?”]

[FOR CHARGES UNDER SUB. (6)]

[“Did the defendant commit the act for monetary gain or for any other consideration acting on the request of any other person?”]

[FOR CHARGES UNDER SUB. (7)]¹⁵

[“Was the underlying crime an act of domestic abuse¹⁶ or one subject to a domestic

abuse surcharge?”^{17]}

[CONTINUE WITH THE FOLLOWING IN ALL FELONY CASES:]

If you are satisfied beyond a reasonable doubt that (repeat the question), you should answer the question “yes.”

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

COMMENT

Wis JI-Criminal 1296 was originally published in 1987 and revised in 1991, 1994, 1998, 2001, 2010, and 2020. The 2001 revision involved adoption of a new format, nonsubstantive changes to the text, and updating of the comment. The revised instruction applies to both misdemeanor and felony offenses; it also replaces Wis JI-Criminal 1294. The Committee approved revisions in February 2022 and October 2022. The February 2022 revision corrected an inadvertent error in sub. (7) of § 940.45, which was created by 2019 Wisconsin Act 112. See footnote 15. The October 2022 revision removed a “Reporter’s Note” concerning issues relating to instructing the jury on a domestic abuse surcharge pursuant to s. 973.055(4).

This instruction is drafted for use in both misdemeanor and felony charges under §§ 940.44 and 940.45. A separate instruction is drafted for cases involving intimidation of a person acting on behalf of a victim. See Wis JI-Criminal 1296A.

The definition of the three basic elements is based on § 940.44 and is to be used in both felony and misdemeanor prosecutions; for felony offenses, a question is to be added so that the jury makes a finding whether the fact presented in the question is proved. Each of the facts specified in subs. (1)-(7) increases the penalty to that for a Class G felony.

Sections 940.41 through 940.49, relating to intimidation of victims and witnesses, were created by Chapter 118, Laws of 1981. They were based on a model statute proposed in 1979 by the Committee on Victims, American Bar Association Section of Criminal Justice.

1. Section 940.44 prohibits attempts to “prevent or dissuade” as well as the completed act. The material relating to attempts is drafted in parentheses throughout the instruction and should be included when the facts of the case support the attempt basis of liability.

Section 940.46, also created by Chapter 118, Laws of 1981, further provides that attempts to violate §§ 940.42 to 940.45 may be prosecuted as a completed act. This section is redundant in light of the fact

that the definition of each substantive offense already prohibits both the completed act and an attempt.

If an attempt case is charged, it may be advisable to define “attempt” for the jury. The following is suggested:

Attempt requires that the defendant intended to (prevent) (dissuade) (name of victim) from making a report of the victimization to any peace officer or law enforcement agency and did acts which indicated unequivocally that the defendant had that intent and would have (prevented) (dissuaded) (name of victim) from making a report except for the intervention of another person or some other extraneous factor.

This definition is briefer than the full explanation of “attempt” found in Wis JI-Criminal 580 but is believed sufficient for most cases. See that instruction for a complete discussion of attempt.

2. The concluding phrase of this paragraph, “. . . from making any report of the victimization to any peace officer or law enforcement agency,” is a simplified paraphrasing of subsec. (1) of 940.44. There are two other subsections that are not addressed by the instruction. The three subsections read as follows:

- (1) Making any report of the victimization to any peace officer or state, local or federal law enforcement or prosecuting agency, or to any judge.
- (2) Causing a complaint, indictment or information to be sought and prosecuted and assisting in the prosecution thereof. [See Wis JI-Criminal 1297.]
- (3) Arresting or causing or seeking the arrest of any person in connection with the victimization.

3. The definition of “victim” in the instruction is a simplified version of the definition provided in § 940.41(2):

- (2) “Victim” means any natural person against whom any crime as defined in s. 939.12 or under the laws of the United States is being or has been perpetrated or attempted in this state.

4. The statement in the first paragraph of the uniform instruction should usually be sufficient. It will virtually always be sufficient where the crime is also charged in the instant case. In other situations, it may be good practice to include a more complete definition of the crime, depending on the crime and the nature of the evidence.

In State v. Thomas, 161 Wis.2d 616, 468 N.W.2d 729 (Ct. App. 1991), the court found that it was error to fail to instruct sufficiently on the crime committed against the victim:

The jury instruction should have specified and defined the crime or crimes underlying the alleged victimization. Additionally, the jury should have been told that it could not find the defendant guilty of intimidation of a victim unless the state proved the elements of the underlying crime or crimes beyond a reasonable doubt. The reason is clear: a jury that is not told which crime is the predicate for the intimidation-of-a-victim charge and is not instructed on the elements of that crime may very well conclude that certain conduct constitutes a crime when it does not.

161 Wis.2d 616, 624.

In many cases, it is likely that the defendant will also be charged with committing the underlying crime

against the victim as well as with trying to intimidate that victim. In those situations, Wis JI-Criminal 1294 would be given after the jury had been instructed on the essential facts of the underlying crime and detailed recapitulation of those facts ought not to be necessary in Wis JI-Criminal 1294. If the jury has not been instructed on the underlying crime, a more detailed explanation may be required in order to satisfy the requirements of the Thomas case.

Acquittal on the underlying crime does not prevent conviction on the charge of intimidating the victim of that crime. State v. Thomas, supra.

5. “Dissuade” means “to advise against” or “to turn from by persuasion,” Webster’s New Collegiate Dictionary.

6. This statement substitutes “reporting the crime” for the statute’s “report of the victimization” on the grounds that it means the same thing and will be more understandable. The second element reflects one alternative of several that are possible under the statute. See note 2, supra.

7. Section 940.44 does not use any of the regular criminal code “intent” words, such as “intentionally” but rather contains the phrase “knowingly and maliciously.” The terms “malice” and “maliciously” are not used anywhere else in the Wisconsin Criminal Code. “Maliciously” is defined in § 940.41(1r) as follows:

(1r) “Malice” or “maliciously” means an intent to vex, annoy or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice.

This instruction reduces the mental purpose to that of preventing the witness from testifying because that purpose fits in best with the basic definition of the offense: attempting to prevent the witness from testifying. This kind of purpose is one that shows intent to interfere with the administration of justice.

8. This is the shorter version used to describe the process of finding knowledge and intent. The Committee concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A [formerly JI 923.1].

9. Continue with the bracketed material if the felony offense is charged and add the appropriate question. For misdemeanor offenses, stop with “guilty” and read the next sentence, beginning with “If you are not so satisfied . . .”

10. Section 940.45 specifies seven different facts that increase the penalty for the basic misdemeanor offense to that for a Class G felony. A bracketed question is provided for each statutory option.

11. The penalty increase provided by § 940.45(1) applies to the following specified relatives of the witness: “. . . the spouse, child, stepchild, foster child, parent, sibling or grandchild of the witness or any person sharing a common domicile with the witness.” Reference to “treatment foster child” was deleted by 2009 Wisconsin Act 28.

12. The same relatives are covered as under sub. (1) of the statute. See note 11, supra.

13. This is an abbreviated paraphrasing of the full subsection (3) of § 940.43, which provides: “Where the act is accompanied by any express or implied threat of force, violence, injury or damage

described in sub. (1) or sub. (2).” The references to sub. (1) and (2) serve to broaden the coverage of the subsection to all threats to do personal injury or cause property damage to any witness or any relative of the witness. The appropriate description of the harm and the target of the threat should be inserted in the blank.

Subsection 940.43(3) refers to “any express or implied threat of force. . . .” (Emphasis supplied.) The suggested instruction does not include “express or implied” because the Committee concluded it was unnecessary. There must in fact be a threat, regardless of whether that threat is communicated by an express statement or implied from conduct. If a case clearly involves a threat implied from conduct, it may be appropriate to advise the jury that the statute covers those threats. Care should be taken, however, to assure that it remains clear that the threat, however communicated, must be established by proof which satisfies the jury beyond a reasonable doubt.

14. See Wis JI-Criminal 570 for a definition of the inchoate crime of conspiracy.

15. This option was added to reflect the alternative created by 2019 Wisconsin Act 112. [Effective date: March 1, 2020.] The question is a paraphrase of the statute, which reads as follows: “(7) Where the underlying crime is an act of domestic abuse, as defined in s. 968.075(1)(a), that constitutes the commission of a crime or a crime that, following a conviction, is subject to the surcharge in s. 973.055.”

16. Subsection 968.075(1)(a) defines “domestic abuse” as follows:

“Domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

For an instruction on committing a domestic abuse crime, see Wis JI-Criminal 984.

17. A person is subject to a domestic abuse surcharge if that person is convicted of knowingly violating a domestic abuse temporary restraining order or injunction, or is otherwise convicted of violating certain criminal offenses or municipal ordinances specified under § 973.055(a)1 and the court finds the conduct constituting the violation involved an act by an adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided, or against an adult with whom the adult person has created a child. See § 973.055.

[This page is intentionally left blank]

**1296A INTIMIDATION OF A PERSON ACTING ON BEHALF OF A VICTIM
— §§ 940.44 and 940.45**

Statutory Definition of the Crime

Intimidation of a person acting on behalf of a victim, as defined in § 940.44 of the Criminal Code of Wisconsin, is committed by one who knowingly and maliciously prevents or dissuades (or who attempts to so prevent or dissuade)¹ a person who is acting on the behalf of the victim of any crime from making any report of the victimization to any peace officer or law enforcement agency.²

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. (Name of victim)³ was a victim of a crime.

“Victim” means a person against whom a crime has been committed or attempted in this state.⁴

In this case, it is alleged that (name of crime victim) was a victim of (name of crime). (Name of crime), as defined in § ____ of the Criminal Code of Wisconsin, is committed by one who (refer to the uniform criminal jury instruction for a definition of the crime).⁵ Before you may find the defendant guilty of intimidation

of a person acting on behalf of a victim, you must be satisfied beyond a reasonable doubt that (name of crime victim) was the victim of (name of crime).

2. (Name of person acting on behalf of crime victim)⁶ was acting on behalf of (name of crime victim).
3. The defendant (prevented) (dissuaded)⁷ (attempted to prevent) (attempted to dissuade) (name of person acting on behalf of crime victim) from reporting the crime to any law enforcement agency.⁸
4. The defendant acted knowingly and maliciously.⁹

This requires that the defendant knew (name of crime victim) was a victim of a crime and knew that (name of person acting on behalf of crime victim) was acting on behalf of (name of crime victim). This also requires that the defendant (acted with the intent to injure or annoy another) (or) (acted with an intent to interfere with the orderly administration of justice).

Deciding About Knowledge and Intent

You cannot look into a person's mind to find knowledge and intent. Knowledge and intent 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 knowledge and intent.¹⁰

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 [and answer the following question “yes” or “no”].¹¹

If you are not so satisfied, you must find the defendant not guilty.

ADD ONE OF THE FOLLOWING QUESTIONS IF A FELONY OFFENSE IS CHARGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT A PENALTY FACTOR SET FORTH IN § 940.45 IS ESTABLISHED:¹²

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

[FOR CHARGES UNDER SUB. (1)]

[“Was the defendant’s act accompanied by (attempted) force or violence upon [(name of victim)] [(identify relative)¹³ of (name of victim)]?”]¹⁴

[FOR CHARGES UNDER SUB. (2)]

[“Was the defendant’s act accompanied by damage to the property of [(name of victim)] [(identify relative)¹⁵ of (name of victim)]?”]¹⁶

[FOR CHARGES UNDER SUB. (3)]

[“Was the defendant’s act accompanied by any express or implied threat of (name harm described in sub. (1) or (2) of § 940.45)?”]¹⁷

[FOR CHARGES UNDER SUB. (4)]

[“Was the defendant’s act in furtherance of any conspiracy?”]¹⁸

[FOR CHARGES UNDER SUB. (5)]

[“Does the defendant have a prior conviction for (a violation under §§ 940.42 to 940.45) (an act which, if committed in this state, would be a violation under §§ 940.42 to

940.45)?"']

[FOR CHARGES UNDER SUB. (6)]

["Did the defendant commit the act for monetary gain or for any other consideration acting on the request of any other person?"]

[FOR CHARGES UNDER SUB. (7)]¹⁹

["Was the underlying crime an act of domestic abuse²⁰ or one subject to a domestic abuse surcharge?"²¹]

[CONTINUE WITH THE FOLLOWING IN ALL FELONY CASES]

If you are satisfied beyond a reasonable doubt that (repeat the question), you should answer the question "yes."

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

COMMENT

Wis JI-Criminal 1296A was originally published in 2001 and revised in 2010 and 2020. The Committee approved revisions in February 2022 and October 2022. The February 2022 revision corrected an inadvertent error in sub. (7) of § 940.45, which was created by 2019 Wisconsin Act 112. See footnote 19. The October 2022 revision removed a "Reporter's Note" concerning issues relating to instructing the jury on a domestic abuse surcharge pursuant to s. 973.055(4).

This instruction adapts Wis JI-Criminal 1296 for charges alleging intimidation of a person acting on behalf of a crime victim. It is drafted for use in both misdemeanor and felony charges under §§ 940.44 and 940.45. The definition of the four basic elements is to be used in both situations; for felony offenses, a question is to be added so that the jury makes a finding as to whether the fact embodied in the question is proved. Each of the facts increases the penalty to that for a Class G felony.

See the Comment to Wis JI-Criminal 1296 for general information about §§ 940.41 940.49.

1. Section 940.44 prohibits attempts to “prevent or dissuade” as well as the completed act. The material relating to attempts is drafted in parentheses throughout the instruction and should be included when the facts of the case support the attempt basis of liability.

Section 940.46, also created by Chapter 118, Laws of 1981, further provides that attempts to violate §§ 940.42 to 940.45 may be prosecuted as a completed act. This section is redundant in light of the fact that the definition of each substantive offense already prohibits both the completed act and an attempt.

If an attempt case is charged, it may be advisable to define “attempt” for the jury. The following is suggested:

Attempt requires that the defendant intended to (prevent) (dissuade) (name of victim) from making a report of the victimization to any peace officer or law enforcement agency and did acts which indicated unequivocally that the defendant had that intent and would have (prevented) (dissuaded) (name of victim) from making a report except for the intervention of another person or some other extraneous factor.

This definition is briefer than the full explanation of “attempt” found in Wis JI-Criminal 580 but is believed sufficient for most cases. See that instruction for a complete discussion of attempt.

2. The concluding phrase of this paragraph, “. . . from making any report of the victimization to any peace officer or law enforcement agency,” is a simplified paraphrasing of subsec. (1) of 940.44. There are two other subsections that are not addressed by the instruction. The three subsections read as follows:

- (1) Making any report of the victimization to any peace officer or state, local or federal law enforcement or prosecuting agency, or to any judge.
- (2) Causing a complaint, indictment or information to be sought and prosecuted and assisting in the prosecution thereof. [See Wis JI-Criminal 1297.]
- (3) Arresting or causing or seeking the arrest of any person in connection with the victimization.

3. Where the instruction calls for the “name of crime victim” use the name of the person who is alleged to be the victim of the underlying crime. The victim of the offense defined in this instruction is indicated by blanks labeled “name of person acting on behalf of the crime victim.” See note 4, below.

4. The definition of “victim” in the instruction is a simplified version of the definition provided in § 940.41(2):

(2) “Victim” means any natural person against whom any crime as defined in s. 939.12 or under the laws of the United States is being or has been perpetrated or attempted in this state.

5. The statement in the first paragraph of the uniform instruction should usually be sufficient. It will virtually always be sufficient where the crime is also charged in the instant case. In other situations, it may be good practice to include a more complete definition of the crime, depending on the crime and the nature of the evidence.

In State v. Thomas, 161 Wis.2d 616, 468 N.W.2d 729 (Ct. App. 1991), the court found that it was error to fail to instruct sufficiently on the crime committed against the victim:

The jury instruction should have specified and defined the crime or crimes underlying the alleged victimization. Additionally, the jury should have been told that it could not find the defendant guilty of intimidation of a victim unless the state proved the elements of the underlying crime or crimes beyond a reasonable doubt. The reason is clear: a jury that is not told which crime is the predicate for the intimidation-of-a-victim charge and is not instructed on the elements of that crime may very well conclude that certain conduct constitutes a crime when it does not.

161 Wis.2d 616, 624.

In many cases, it is likely that the defendant will also be charged with committing the underlying crime against the victim as well as with trying to intimidate that victim. In those situations, Wis JI-Criminal 1296A would be given after the jury had been instructed on the essential facts of the underlying crime and detailed recitation of those facts ought not to be necessary in Wis JI-Criminal 1296A. If the jury has not been instructed on the underlying crime, a more detailed explanation may be required in order to satisfy the requirements of the Thomas case.

Acquittal on the underlying crime does not prevent conviction on the charge of intimidating the victim of that crime. State v. Thomas, supra.

6. Where the instruction calls for the “name of person acting on behalf of crime victim” use the name of the person who is alleged to be the victim of the crime defined by this instruction. The victim of the underlying crime is referred to in the instruction as the “crime victim.” See note 3, supra.

7. “Dissuade” means “to advise against” or “to turn from by persuasion,” Webster’s New Collegiate Dictionary.

8. This statement substitutes “reporting the crime” for the statute’s “report of the victimization” on the grounds that it means the same thing and will be more understandable. The second element reflects one alternative of several that are possible under the statute. See note 2, supra.

9. Section 940.44 does not use any of the regular criminal code “intent” words, such as “intentionally” but rather contains the phrase “knowingly and maliciously.” The terms “malice” and “maliciously” are not used anywhere else in the Wisconsin Criminal Code. “Maliciously” is defined in § 940.41(1r) as follows:

(1r) “Malice” or “maliciously” means an intent to vex, annoy or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice.

This instruction reduces the mental purpose to that of preventing the witness from testifying because that purpose fits in best with the basic definition of the offense: attempting to prevent the witness from testifying. This kind of purpose is one that shows intent to interfere with the administration of justice.

10. This is the shorter version used to describe the process of finding knowledge and intent. The Committee concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A [formerly JI 923.1].

11. Continue with the bracketed material if the felony offense is charged and add the appropriate question. For misdemeanor offenses, stop with “guilty” and read the next sentence, beginning with “If you

are not so satisfied . . .”

12. Section 940.45 specifies seven different facts that increase the penalty for the basic misdemeanor offense to that for a Class G felony. A bracketed question is provided for each statutory option.

13. The penalty increase provided by § 940.45(1) applies the following specified relatives of the witness: “. . . the spouse, child, stepchild, foster child, parent, sibling or grandchild of the witness or any person sharing a common domicile with the witness.” Reference to “treatment foster child” was deleted by 2009 Wisconsin Act 28.

14. The Committee concluded that the aggravating factors described in subs. (1), (2), and (3) apply only to acts against the victim of the underlying crime and not to acts against the person acting on behalf of the crime victim.

15. The same relatives are covered as under sub. (1) of the statute. See note 13, supra.

16. The Committee concluded that the aggravating factors described in subs. (1), (2), and (3) apply only to acts against the victim of the underlying crime and not to acts against the person acting on behalf of the crime victim.

17. This is an abbreviated paraphrasing of the full subsection (3) of § 940.43, which provides: “Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or sub. (2).” The references to sub. (1) and (2) serve to broaden the coverage of the subsection to all threats to do personal injury or cause property damage to any witness or any relative of the witness. The appropriate description of the harm and the target of the threat should be inserted in the blank.

Subsection 940.43(3) refers to “any express or implied threat of force. . . .” (Emphasis supplied.) The suggested instruction does not include “express or implied” because the Committee concluded it was unnecessary. There must in fact be a threat, regardless of whether that threat is communicated by an express statement or implied from conduct. If a case clearly involves a threat implied from conduct, it may be appropriate to advise the jury that the statute covers those threats. Care should be taken, however, to assure that it remains clear that the threat, however communicated, must be established by proof which satisfies the jury beyond a reasonable doubt.

The Committee concluded that the aggravating factors described in subs. (1), (2) and (3) apply only to acts against the victim of the underlying crime and not to acts against the person acting on behalf of the crime victim.

18. See Wis JI-Criminal 570 for a definition of the inchoate crime of conspiracy.

19. This option was added to reflect the alternative created by 2019 Wisconsin Act 112. [Effective date: March 1, 2020.] The question is a paraphrase of the statute, which reads as follows: “(7) Where the underlying crime is an act of domestic abuse, as defined in s. 968.075(1)(a), that constitutes the commission of a crime or a crime that, following a conviction, is subject to the surcharge in s. 973.055.”

20. Subsection 968.075(1)(a) defines “domestic abuse” as follows:

“Domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).
4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

For an instruction on committing a domestic abuse crime, see Wis JI-Criminal 984.

21. A person is subject to a domestic abuse surcharge if that person is convicted of knowingly violating a domestic abuse temporary restraining order or injunction, or is otherwise convicted of violating certain criminal offenses or municipal ordinances specified under § 973.055(a)1 and the court finds the conduct constituting the violation involved an act by an adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided, or against an adult with whom the adult person has created a child. See § 973.055.

1297 INTIMIDATION OF A VICTIM — §§ 940.44(2) and 940.45**Statutory Definition of the Crime**

Intimidation of a victim, as defined in § 940.44(2) of the Criminal Code of Wisconsin, is committed by one who knowingly and maliciously prevents or dissuades (or who attempts to so prevent or dissuade)¹ another person who has been the victim of any crime from causing a complaint, indictment, or information to be sought and prosecuted and assisting in the prosecution thereof.

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 three elements were present.

Elements of the Crime That the State Must Prove

1. (Name of victim) was a victim of a crime.

“Victim” means a person against whom a crime has been committed or attempted in this state.²

In this case, it is alleged that (name of victim) was a victim of (name of crime). (Name of crime), as defined in § ____ of the Criminal Code of Wisconsin, is committed by one who (refer to the uniform criminal jury instruction for a definition of the crime).³ Before you may find the defendant guilty of intimidation

of a victim, you must be satisfied beyond a reasonable doubt that (name of victim) was the victim of (name of crime).

2. The defendant (prevented) (dissuaded)⁴ (attempted to prevent) (attempted to dissuade) (name of victim) from [causing a (complaint) (indictment) (information) to be sought] (or) [causing a (complaint) (indictment) (information) to be prosecuted] (or) [assisting in the prosecution of a (complaint) (indictment) (information)].⁵
3. The defendant acted knowingly and maliciously.⁶

This requires that the defendant knew (name of victim) was a victim of a crime and that the defendant (acted with the intent to injure or annoy another) (or) (acted with an intent to interfere with the orderly administration of justice).

Deciding About Knowledge and Intent

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty [and answer the following question "yes" or "no"].⁸

If you are not so satisfied, you must find the defendant not guilty.

ADD ONE OF THE FOLLOWING QUESTIONS IF A FELONY OFFENSE IS CHARGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT A PENALTY FACTOR SET FORTH IN § 940.45 IS ESTABLISHED:⁹

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

[FOR CHARGES UNDER SUB. (1)]

[“Was the defendant’s act accompanied by (attempted) force or violence upon [(name of victim)] [(identify relative)¹⁰ of (name of victim)]?”]

[FOR CHARGES UNDER SUB. (2)]

[“Was the defendant’s act accompanied by damage to the property of [(name of victim)] [(identify relative)¹¹ of (name of victim)]?”]

[FOR CHARGES UNDER SUB. (3)]

[“Was the defendant’s act accompanied by any express or implied threat of (name harm described in sub. (1) or (2) of § 940.45)?”]¹²

[FOR CHARGES UNDER SUB. (4)]

[“Was the defendant’s act in furtherance of any conspiracy?”]¹³

[FOR CHARGES UNDER SUB. (5)]

[“Does the defendant have a prior conviction for (a violation under §§ 940.42 to 940.45) (an act which, if committed in this state, would be a violation under §§ 940.42 to 940.45)?”]

[FOR CHARGES UNDER SUB. (6)]

["Did the defendant commit the act for monetary gain or for any other consideration acting on the request of any other person?"]

[FOR CHARGES UNDER SUB. (7)]¹⁴

["Was the underlying crime an act of domestic abuse¹⁵ or one subject to a domestic abuse surcharge?"¹⁶]

[CONTINUE WITH THE FOLLOWING IN ALL FELONY CASES:]

If you are satisfied beyond a reasonable doubt that (repeat the question), you should answer the question "yes."

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

COMMENT

Wis JI-Criminal 1297 was originally published in 2010 and revised in 2016 and 2020. The Committee approved revisions in February 2022 and October 2022. The February 2022 revision corrected an inadvertent error in sub. (7) of § 940.45, which was created by 2019 Wisconsin Act 112. See footnote 14. The October 2022 revision removed a "Reporter's Note" concerning issues relating to instructing the jury on a domestic abuse surcharge pursuant to s. 973.055(4).

This instruction is drafted for use for both misdemeanor and felony charges under §§ 940.44(2) and 940.45. For violations of § 940.44(1) see Wis JI-Criminal 1296. A separate instruction is drafted for cases involving intimidation of a person acting on behalf of a victim. See Wis JI-Criminal 1296A.

Section 940.44(2) was amended by 2013 Wisconsin Act 14 [effective date: April 10, 2015] to codify the interpretation of the statute in State v. Freer, 2010 WI App 9, 323 Wis.2d 29, 779 N.W.2d 12. The text of the instruction already reflected the Freer interpretation so it was not affected by Act 14. See footnote 5, below.

The definition of the three basic elements is based on § 940.44(2) and is to be used in both felony and misdemeanor prosecutions; for felony offenses, a question is to be added so that the jury makes a finding whether the fact presented in the question is proved. Each of the facts specified in subs. (1)-(6) increases the penalty to that for a Class G felony.

Sections 940.41 through 940.49, relating to intimidation of victims and witnesses, were created by Chapter 118, Laws of 1981. They were based on a model statute proposed in 1979 by the Committee on Victims, American Bar Association Section of Criminal Justice.

1. Section 940.44 prohibits attempts to “prevent or dissuade” as well as the completed act. The material relating to attempts is drafted in parentheses throughout the instruction and should be included when the facts of the case support the attempt basis of liability.

Section 940.46, also created by Chapter 118, Laws of 1981, further provides that attempts to violate §§ 940.42 to 940.45 may be prosecuted as a completed act. This section is redundant in light of the fact that the definition of each substantive offense already prohibits both the completed act and an attempt.

If an attempt case is charged, it may be advisable to define “attempt” for the jury. The following is suggested:

Attempt requires that the defendant intended to (prevent) (dissuade) (name of victim) from making a report of the victimization to any peace officer or law enforcement agency and did acts which indicated unequivocally that the defendant had that intent and would have (prevented) (dissuaded) (name of victim) from making a report except for the intervention of another person or some other extraneous factor.

This definition is briefer than the full explanation of “attempt” found in Wis JI-Criminal 580 but is believed sufficient for most cases. See that instruction for a complete discussion of attempt.

2. The definition of “victim” in the instruction is a simplified version of the definition provided in § 940.41(2):

(2) “Victim” means any natural person against whom any crime as defined in s. 939.12 or under the laws of the United States is being or has been perpetrated or attempted in this state.

3. The statement in the first paragraph of the uniform instruction should usually be sufficient. It will virtually always be sufficient where the crime is also charged in the instant case. In other situations, it may be good practice to include a more complete definition of the crime, depending on the crime and the nature of the evidence.

In *State v. Thomas*, 161 Wis.2d 616, 468 N.W.2d 729 (Ct. App. 1991), the court found that it was error to fail to instruct sufficiently on the crime committed against the victim:

The jury instruction should have specified and defined the crime or crimes underlying the alleged victimization. Additionally, the jury should have been told that it could not find the defendant guilty of intimidation of a victim unless the state proved the elements of the underlying crime or crimes beyond a reasonable doubt. The reason is clear: a jury that is not told which crime is the predicate for the intimidation-of-a-victim charge and is not instructed on the elements of that crime may very well conclude that certain conduct constitutes a crime when it does not.

161 Wis.2d 616, 624.

In many cases, it is likely that the defendant will also be charged with committing the underlying crime against the victim as well as with trying to intimidate that victim. In those situations, Wis JI-Criminal 1294 would be given after the jury had been instructed on the essential facts of the underlying crime and detailed recapitulation of those facts ought not to be necessary in Wis JI-Criminal 1294. If the jury has not been instructed on the underlying crime, a more detailed explanation may be required in order to satisfy the requirements of the Thomas case.

Acquittal on the underlying crime does not prevent conviction on the charge of intimidating the victim of that crime. State v. Thomas, supra.

4. “Dissuade” means “to advise against” or “to turn from by persuasion,” Webster’s New Collegiate Dictionary.

5. Subsection (2) of § 940.44 reads as follows: “Causing a complaint, indictment or information to be sought and prosecuted and assisting in the prosecution thereof.” The instruction provides for three alternatives as set forth in State v. Freer, 2010 WI App 9, 323 Wis.2d 29, 779 N.W.2d 12, which concluded that the statute was ambiguous because “‘and’ in the statutes is not always interpreted as a conjunctive term.” The court relied on an LRB analysis of the bill to interpret the statute as though it read “or” instead of “and”:

In light of the LRB analysis, we conclude that the legislature intended the victim intimidation statute to prohibit any act of intimidation that seeks to prevent or dissuade a crime victim from assisting in the prosecution. Accordingly, we read “and” in the phrase “causing a complaint . . . to be sought and prosecuted and assisting in the prosecution thereof” in the disjunctive, and thereby conclude that Wis. Stat. § 940.44(2) prohibits knowingly or maliciously preventing or dissuading a crime victim from providing any one or more of the following forms of assistance to prosecutors: (1) causing a complaint, indictment or information to be sought; (2) causing a complaint to be prosecuted; or (3) assisting in the prosecution.
2010 WI App 9, ¶24.

Section 940.44(2) was amended by 2013 Wisconsin Act 14 [effective date: April 10, 2015] to codify the interpretation of the statute in Freer. The text of the instruction already reflected the Freer interpretation so it was not affected by Act 14.

6. Section 940.44 does not use any of the regular criminal code “intent” words, such as “intentionally” but rather contains the phrase “knowingly and maliciously.” The terms “malice” and “maliciously” are not used anywhere else in the Wisconsin Criminal Code. “Maliciously” is defined in § 940.41(1r) as follows:

(1r) “Malice” or “maliciously” means an intent to vex, annoy or injure in any way another person or to thwart or interfere in any manner with the orderly administration of justice.

This instruction reduces the mental purpose to that of preventing the witness from testifying because that purpose fits in best with the basic definition of the offense: attempting to prevent the witness from testifying. This kind of purpose is one that shows intent to interfere with the administration of justice.

7. This is the shorter version used to describe the process of finding knowledge and intent. The Committee concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A [formerly Wis JI-Criminal 923.1].

8. Continue with the bracketed material if the felony offense is charged and add the appropriate question. For misdemeanor offenses, stop with “guilty” and read the next sentence, beginning with “If you are not so satisfied . . .”

9. Section 940.45 specifies seven different facts that increase the penalty for the basic misdemeanor offense to that for a Class D felony. A bracketed question is provided for each statutory option.

10. The penalty increase provided by § 940.45(1) applies to the following specified relatives of the witness: “. . . the spouse, child, stepchild, foster child, parent, sibling or grandchild of the witness or any person sharing a common domicile with the witness.” Reference to “treatment foster child” was deleted by 2009 Wisconsin Act 28.

11. The same relatives are covered as under sub. (1) of the statute. See note 10, supra.

12. This is an abbreviated paraphrasing of the full subsection (3) of § 940.43, which provides: “Where the act is accompanied by any express or implied threat of force, violence, injury or damage described in sub. (1) or sub. (2).” The references to sub. (1) and (2) serve to broaden the coverage of the subsection to all threats to do personal injury or cause property damage to any witness or any relative of the witness. The appropriate description of the harm and the target of the threat should be inserted in the blank.

Subsection 940.43(3) refers to “any express or implied threat of force. . . .” (Emphasis supplied.) The suggested instruction does not include “express or implied” because the Committee concluded it was unnecessary. There must in fact be a threat, regardless of whether that threat is communicated by an express statement or implied from conduct. If a case clearly involves a threat implied from conduct, it may be appropriate to advise the jury that the statute covers those threats. Care should be taken, however, to assure that it remains clear that the threat, however communicated, must be established by proof which satisfies the jury beyond a reasonable doubt.

13. See Wis JI-Criminal 570 for a definition of the inchoate crime of conspiracy.

14. This option was added to reflect the alternative created by 2019 Wisconsin Act 112. [Effective date: March 1, 2020.] The question is a paraphrase of the statute, which reads as follows: “(7) Where the underlying crime is an act of domestic abuse, as defined in s. 968.075(1)(a), that constitutes the commission of a crime or a crime that, following a conviction, is subject to the surcharge in s. 973.055.”

15. Subsection 968.075(1)(a) defines “domestic abuse” as follows:

“Domestic abuse” means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. A violation of s. 940.225 (1), (2) or (3).

4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

For an instruction on committing a domestic abuse crime, see Wis JI-Criminal 984.

16. A person is subject to a domestic abuse surcharge if that person is convicted of knowingly violating a domestic abuse temporary restraining order or injunction, or is otherwise convicted of violating certain criminal offenses or municipal ordinances specified under § 973.055(a)1 and the court finds the conduct constituting the violation involved an act by an adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided, or against an adult with whom the adult person has created a child. See § 973.055.



WISCONSIN JURY INSTRUCTIONS

CRIMINAL

VOLUME IIA

**Wisconsin Criminal Jury
Instructions Committee**

[Cite as Wis JI-Criminal]

- Includes 1/2023 Supplement (Release No. 61)

[This page is intentionally left blank]

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME I

| | No. | Year |
|--|------------------------------------|--------|
| OPENING INSTRUCTIONS ON THE PLEADINGS | | |
| Suggested Instructions | 1 | 2016 |
| Comment: Gender Neutral Language | 5 | 1/2023 |
| Preliminary Instruction: Jurors' Conduct; Evidence; Transcripts Not Available; Credibility; Substantive Issues; Opening Statement | 50 | 2022 |
| Notetaking Permitted | 55 | 2000 |
| Notetaking Not Allowed | 56 | 2000 |
| Instruction on Juror Questioning of Witnesses | 57 | 2014 |
| Transcripts Not Available for Deliberations; Reading Back Testimony | 58 | 2022 |
| Police Reports | 59 | 2001 |
| Preliminary Instruction: Use of an Interpreter for a Witness | 60 | 2003 |
| Preliminary Instruction: Use of an Interpreter for a Juror..... | 61 | 2004 |
| Preliminary Instruction: Use of an Interpreter for the Defendant | 62 | 2003 |
| Preliminary Instruction: Defendant Proceeding Pro Se | 70 | 2001 |
| | | |
| Opening Instructions..... | 100 | 2000 |
| Opening Statements | 101 | 2001 |
| Evidence Defined..... | 103 | 2000 |
| | | |
| One Defendant: Single Count: No Included Offense..... | 110 | 2000 |
| One Defendant: Single Count: Lesser Included Offenses..... | 112 | 2000 |
| Lesser Included Offense: Alternative Style | 112A | 2000 |
| Armed Robbery: Robbery (Unarmed) | 112A EXAMPLE | 2000 |
| One Defendant: Two Counts..... | 115 | 2000 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 115 EXAMPLE RENUMBERED 116 EXAMPLE | 2004 |
| Multiple Charges of the Same Offense: Different Victims..... | 116 | 2004 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 116 EXAMPLE | 2004 |
| One Defendant: Two Counts: Conviction for Only One Proper..... | 117 WITHDRAWN | 2000 |
| | | |
| Two Defendants: Single Count: No Included Offense | 120 | 2000 |
| Two Defendants: Single Count: Included Offense | 122 | 2000 |
| Two Defendants: Two Counts | 125 | 2000 |
| Two Defendants: Two Counts: Conviction for Only One Proper..... | 127 WITHDRAWN | 2000 |
| Charges Disposed of During Trial | 128 | 2014 |

WIS JI-CRIMINAL

BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE; EVIDENCE

| | | |
|--|----------------|--------|
| Burden of Proof and Presumption of Innocence | 140 | 1/2023 |
| Burden of Proof: Forfeiture Actions | 140A | 2011 |
| Where Identification of Defendant is in Issue | 141 | 2021 |
| Information Not Evidence..... | 145 | 2000 |
| Precautionary Statement: Anonymous and “Numbers” Juries..... | 146 | 2003 |
| Improper Questions..... | 147 | 2000 |
| Objections of Counsel; Evidence Received Over Objection | 148 | 2000 |
| | | |
| Stricken Testimony | 150 | 2000 |
| View of Scene | 152 | 2000 |
| Summary of Evidence..... | 154 | 2012 |
| Exhibits | 155 | 2018 |
| Remarks of Counsel..... | 157 | 2000 |
| Recording Played to the Jury | 158 | 2022 |
| | | |
| Closing Arguments of Counsel..... | 160 | 2000 |
| Agreed Testimony..... | 161 | 2000 |
| Agreed Facts | 162 | 2000 |
| Law Note: Stipulations | 162A | 2011 |
| Judicially Noticed Facts..... | 165 | 2003 |
| | | |
| Circumstantial Evidence | 170 | 2000 |
| Circumstantial Evidence: Flight, Escape, Concealment | 172 | 2000 |
| Circumstantial Evidence - Possession of Recently Stolen Property | 173 | 2000 |
| Motive..... | 175 | 2000 |
| | | |
| Statements of Defendant | 180 | 2021 |
| Confessions and Admissions: Series of Statements..... | 182 WITHDRAWN | 2000 |
| Confessions and Admissions: Mental Condition of Defendant in Issue..... | 185 WITHDRAWN | 2000 |
| Confessions and Admissions: Evidence That Defendant Did Not Understand Interrogator | 187 WITHDRAWN | 2000 |
| | | |
| Weight of Evidence..... | 190 | 2000 |
| Juror's Knowledge..... | 195 | 2000 |
| | | |
| Expert Opinion Testimony: General | 200 | 2019 |
| Expert Testimony: More Than One Expert..... | 200A WITHDRAWN | 2000 |
| Opinion of a Nonexpert Witness..... | 201 | 2012 |
| Polygraph Evidence | 202 WITHDRAWN | 2009 |
| Expert Testimony: Hypothetical Questions | 205 | 2019 |
| Objections of Counsel: Evidence Received Over Objection | 215 | 2000 |
| | | |
| Evidence: Limited Purpose: Statement of Codefendant | 220 WITHDRAWN | 1999 |
| Cautionary Instruction: Interlocking Confessions | 220A WITHDRAWN | 1999 |
| Law Note: Statement of Accomplice Admitted for Nonhearsay Purpose | 220B | 1991 |
| Statement of Codefendant: Statement Does Not Mention Defendant..... | 221 | 2000 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Joint Trial: Evidence Admissible as to One Defendant Only | 222 | 2000 |
| Instructing on a “Presumed Fact” That is an Element of the Crime | 225 | 2000 |
| Prima Facie Effect of a Test Result Showing an Alcohol Concentration of | | |
| 0.08 Grams or More: Offenses Involving “Under the Influence” | 230 | 2006 |
| Evidence of a Test Result Showing an Alcohol Concentration of 0.04 Grams or | | |
| More but Less Than 0.08 Grams: Offenses Involving “Under the Influence” | 232 | 2009 |
| Blood-Alcohol Curve | 234 | 2004 |
| Refusal of Defendant to Furnish Sample for Alcohol Test | 235 | 2021 |
| Alcohol Concentration Chart | 237 | 2000 |
| Testimony of Accomplices | | |
| Testimony of a Witness Granted Immunity or Other Concessions..... | 246 | 2000 |
| Verdict as to Defendant Only..... | 247 | 2000 |
| State Need Not Prove Exact Date of Commission: Specific Date Alleged | | |
| State Need Not Prove Exact Date of Commission: Period of Time Alleged..... | 255A | 2000 |
| Time of Offense: Where State Not Required to Elect..... | 260 WITHDRAWN | 2000 |
| Time of Offense: Where State Has Elected | 265 WITHDRAWN | 2000 |
| Venue | | |
| Law Note: Jurisdiction..... | 268 | 2021 |
| Evidence as to Defendant’s Character | | |
| Cautionary Instruction: Evidence of Other Conduct [Required if Requested] | 275 | 2018 |
| Comment: Other Acts Evidence | 275.1 | 2016 |
| Prior Convictions Admissible to Prove Character | 276 | 2016 |
| WITNESSES | | |
| Credibility of Witnesses..... | | |
| Falsus in Uno | 305 | 2001 |
| Defendant as Witness in Own Behalf | 310 WITHDRAWN | 2001 |
| Prisoner as Witness or Defendant: Prisoner Status an Issue | | |
| Evidence That the Defendant Wore a GPS or Other Monitoring Device | 313 | 2017 |
| Defendant Wearing a Visible Restraining Device in the Presence of Jurors | 314 | 2012 |
| Defendant Elects Not to Testify | 315 | 2001 |
| Witness Exercising Privilege Against Self-Incrimination | 317 | 2001 |
| Impeachment of the Defendant by Prior Inconsistent Statements Which are | | |
| Inadmissible in the State’s Case-in-Chief | 320 | 2001 |
| Law Note: Substantive Use of Prior Inconsistent Statements..... | 320A | 2001 |
| Impeachment of Witness: Prior Conviction or Juvenile Adjudication | 325 | 2018 |
| Impeachment of Defendant as a Witness: Prior Conviction or Juvenile Adjudication..... | 327 | 2018 |
| Impeachment of Witness: Character for Truthfulness | 330 | 2018 |
| Credibility of Child Witness | | |
| Missing Witness..... | 345 | 2001 |

WIS JI-CRIMINAL

MISCELLANEOUS

Negligence Defined375 WITHDRAWN 2001

PERSONS AND PARTIES

| | | |
|--|---------------|------|
| Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided the Crime Charged | 400 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided a Burglary..... | 400 EXAMPLE | 2005 |
| Party to Crime: Defendant Either Intentionally Aided the Crime Charged or Was a Member of a Conspiracy to Commit the Crime Charged..... | 401 | 2005 |
| Party to Crime: Defendant Either Directly Committed, Intentionally Aided, Member of a Conspiracy to Commit the Crime Charged..... | 402 | 2005 |
| Statement of Co-Conspirator | 405 WITHDRAWN | 1994 |
| Party to Crime: Aiding and Abetting: Defendant Intentionally Aided the Crime Charged..... | 405 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Intentionally Aided a Burglary | 405 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 406 | 2005 |
| Example Party to Crime: Aiding and Abetting: First Degree Intentional Homicide as the Natural and Probable Consequence of Armed Robbery..... | 406 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: Multiple Counts | 407 | 2005 |
| Party to Crime: Conspiracy to Commit the Crime Charged | 410 | 2005 |
| Example Party to Crime: Conspiracy to Commit Burglary | 410 EXAMPLE | 2005 |
| Party to Crime: Conspiracy: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 411 | 2005 |
| Party to Crime: Withdrawal from a Conspiracy | 412 | 2008 |
| Statement of Co-Conspirator; Evidence Presented That Conspiracy Terminated by Withdrawal Before Statement Was Made..... | 415 WITHDRAWN | 1994 |
| Party to Crime: Solicitation to Commit the Crime Charged | 415 | 2005 |
| [Note on Instructions Withdrawn] | 418 | 1994 |
| Criminal Liability of a Corporation | 420 | 2005 |
| Corporate Liability: Acts of Employees: Strict Liability | 425 WITHDRAWN | 1995 |
| Corporate Liability: Acts of Lesser Employees | 430 WITHDRAWN | 1995 |
| Liability for the Acts of Another; Authorization or Acquiescence..... | 435 | 1995 |
| Liability for Acts of Another: Acts of Agent or Servant: Strict Liability Cases | 440 WITHDRAWN | 1995 |

WIS JI-CRIMINAL

CLOSING INSTRUCTIONS AND RELATION OF VERDICT TO OFFENSE CHARGED

| | | |
|---|---------------|--------|
| Closing Instruction..... | 460 | 2010 |
| Closing Instruction: Optional Short Form | 465 | 2010 |
| Verdicts Submitted for One Defendant: Single Count..... | 480 | 2000 |
| Verdicts Submitted for One Defendant: Single Count: Lesser Included Offense..... | 482 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Separate Verdict on Each Count Required..... | 484 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Lesser Included Offense on Each Count..... | 485 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Conviction for Only One Proper | 486 WITHDRAWN | 1990 |
| Verdicts Submitted for Multiple Defendants: Single Count | 490 | 2000 |
| Verdicts Submitted for Multiple Defendants: Single Count: Included Offense | 492 | 2000 |
| Verdicts Submitted for Multiple Defendants: Two Counts: Separate Verdict on Each Count Required..... | 494 | 2000 |
| Verdicts Submitted for Two Defendants: Two Counts: Conviction for Only One Proper | 496 WITHDRAWN | 1990 |
| Unanimous Verdict and Selection of Presiding Juror | 515 | 1/2023 |
| Five-Sixths Verdict and Selection of Presiding Juror: Forfeiture Actions..... | 515A | 2001 |
| Jury Agreement: Evidence of More Than One Act Introduced to Prove One Charge | 517 | 2010 |
| Supplemental Instruction on Agreement..... | 520 | 2001 |
| Instruction on Jury Deliberations | 521 WITHDRAWN | 2012 |
| Polling the Jury [Suggested Form]..... | 522 | 2007 |
| Instruction After Verdict Received | 525 | 2001 |
| Instruction after Verdict Received - Alternative Form | 525A | 2010 |

INCHOATE CRIMES

| | | |
|--------------------------------------|-------------|------|
| Solicitation as a Crime | 550 | 2020 |
| Conspiracy as a Crime | 570 | 2008 |
| Attempt | 580 | 2013 |
| Example Attempted Burglary | 581 EXAMPLE | 2002 |
| Example Attempted Armed Robbery..... | 582 EXAMPLE | 2002 |

DEFENSES AND DEFENSIVE MATTERS

| | | |
|---|-----|--------|
| Introductory Comment: Not Guilty by Reason of Mental Disease or Defect: Instructions for the “Bifurcated” Trial and Reexamination..... | 600 | 1/2023 |
| Instruction Prior to Trial upon a Plea of Not Guilty Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect..... | 601 | 2011 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Instruction After Evidence Has Been Received on Issue of Guilt Where a Plea of Not Guilty Has Been Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect | 602 | 2011 |
| Preliminary Instruction After Finding of Guilt and Before Consideration of Whether the Defendant Suffered from a Mental Disease or Defect at the Time of the Offense..... | 603 | 2011 |
| Instruction on the Issue of the Defendant’s Criminal Responsibility - Mental Disease or Defect | 605 | 2011 |
| Instruction on the Issue of the Defendant's Criminal Responsibility (Mental Defect) | 605A WITHDRAWN | 2011 |
| Verdict: Not Responsible by Reason of Mental Disease or Defect | 605B | 2011 |
| Preliminary Instruction upon a Finding of Not Guilty by Reason of Mental Disease or Defect | 606 WITHDRAWN | 2011 |
| Instruction on Commitment Following a Finding of Not Guilty by Reason of Mental Disease or Defect | 607 WITHDRAWN | 2011 |
| Mental Disease or Defect: Expert Opinion Testimony | 640 | 2019 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | 650 | 2011 |
| Effect of Finding of Not Guilty Because of Mental Disease or Defect | 655-CPC WITHDRAWN | 2011 |
| Preliminary Instruction: Reexamination of Person Committed as Not Guilty by Reason of Mental Disease or Defect [§ 971.17(2)]..... | 660 | 2011 |
| Reexamination Under § 971.17(2)..... | 661 | 2011 |
| Verdicts Submitted for Reexamination Under § 971.17(2) | 662 | 2011 |
| Law Note: Theory of Defense Instructions..... | 700 | 2020 |
| Law Note: Jury Nullification | 705 | 1991 |
| Law Note: Right to Recapture | 710 | 1994 |
| Involuntary Intoxication or Drugged Condition | 755 RENUMBERED 755A | 2005 |
| Involuntary Intoxication or Drugged Condition | 755A | 2015 |
| Involuntary Intoxication or Drugged Condition | 755B | 2015 |
| Voluntary Intoxication..... | 765 | 2015 |
| Mistake..... | 770 | 2010 |
| Accident | 772 | 2005 |
| Alibi | 775 | 2005 |
| Entrapment..... | 780 | 2002 |
| Entrapment [Alternate Form]..... | 780A WITHDRAWN | 2003 |
| Coercion..... | 790 | 2005 |
| Necessity..... | 792 | 2005 |

WIS JI-CRIMINAL

PRIVILEGE

| | | |
|--|------|------|
| Law Note: Privilege: Resisting an Unlawful Arrest | 795 | 2003 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm | 800 | 2022 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm: Crimes Involving Recklessness or Negligence | 801 | 2022 |
| Privilege: Self-Defense: Force Intended or Likely to Cause Death or Great Bodily Harm | 805 | 2022 |
| Law Note: Self-defense under § 939.48(1m)..... | 805A | 2022 |
| | | |
| Privilege: Self-Defense: Retreat..... | 810 | 2019 |
| Privilege: Self-Defense: Not Available to One Who Provokes an Attack: Regaining the Privilege | 815 | 2020 |
| | | |
| Privilege: Self-Defense: Injury to Third Party Charged as Reckless or Negligent Crime | 820 | 2022 |
| Privilege: Self-Defense: Unintended Harm to Third Party Charged as Intentional Crime..... | 821 | 2022 |
| Privilege: Defense of Others: Force Less Than That Likely to Cause Death or Great Bodily Harm | 825 | 2005 |
| Privilege: Defense of Others: Force Intended or Likely to Cause Death or Great Bodily Harm | 830 | 2005 |
| Privilege: Defense of Others: Effect of Provocation by Person Defended | 835 | 2005 |
| | | |
| Privilege: Defense of One’s Property | 855 | 2005 |
| | | |
| Privilege: Defense of Another’s Property | 860 | 2005 |
| | | |
| Privilege: Conduct in Good Faith and in an Apparently Authorized and Reasonable Fulfillment of Duties of a Public Office | 870 | 2014 |
| | | |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Nondeadly Force..... | 880 | 2005 |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Deadly Force..... | 885 | 2005 |
| | | |
| Cause..... | 901 | 2022 |
| Liability for Failure to Act - Criminal Omission | 905 | 2015 |
| Dangerous Weapon..... | 910 | 2012 |
| Great Bodily Harm..... | 914 | 2008 |
| Acting in Official Capacity | 915 | 2008 |
| Possession | 920 | 2000 |
| “Intentionally” and “With Intent to”: Mental Purpose..... | 923A | 2010 |
| “Intentionally” and “With Intent to”: “Practically Certain” | 923B | 2001 |
| Criminal Recklessness | 924 | 2015 |
| Aggravated Recklessness: Circumstances Which Show Utter Disregard for Human Life | 924A | 2012 |
| Criminal Negligence | 925 | 2005 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Contributory Negligence..... | 926 | 2005 |
| Sexual Contact [939.22(34)]..... | 934 | 2011 |
| Without Consent | 948 | 2005 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child | 950 | 2014 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child: Cases Involving Recklessness | 951 WITHDRAWN | 2014 |
| Privilege: Discipline by One in the Place of the Parent | 955 WITHDRAWN | 1989 |

PENALTY ENHANCERS

| | | |
|---|-----------------------|------|
| Lifetime Supervision of Serious Sex Offenders | 980 | 2016 |
| Committing a Domestic Abuse Crime Within 72 Hours of Arrest | 983 | 2014 |
| Committing a Domestic Abuse Crime As a Domestic Abuse Repeater | 984 | 2016 |
| Criminal Gang Crimes | 985 | 2003 |
| Using or Possessing a Dangerous Weapon | 990 | 2006 |
| Violent Crime in a School Zone | 992 | 2012 |
| Wearing a Bulletproof Garment..... | 993 | 2003 |
| Concealing Identity..... | 994 | 2003 |
| Selecting the Person Against Whom a Crime is Committed Because of Race, Religion, Etc..... | 996 | 2003 |
| Elder Person Victims | 997 | 2022 |
| Selecting Property Damaged Because of the Race, Religion, Etc., of the Owner..... | 996A RENUMBERED 996.1 | 2003 |
| Violent Crime Against an Elder Person | 998 | 2003 |
| Minor Passenger in the Vehicle | 999 | 2011 |
| Unborn Child in the Vehicle | 999A | 2003 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME II

| | No. | Year |
|--|-------|----------------|
| CRIMES AGAINST LIFE AND BODILY SECURITY | | |
| LIFE | | |
| Introductory Comment: Wisconsin's New Homicide Law..... | 1000 | WITHDRAWN 2006 |
| First Degree Intentional Homicide..... | 1010 | 2000 |
| First Degree Intentional Homicide of an Unborn Child..... | 1011 | 2005 |
| First Degree Intentional Homicide: Adequate Provocation: Second Degree Intentional Homicide..... | 1012 | 2006 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide..... | 1014 | 2021 |
| First Degree Intentional Homicide: Coercion: Second Degree Intentional Homicide..... | 1015 | 2010 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide..... | 1016 | 1/2023 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1017 | 1/2023 |
| First Degree Intentional Homicide: First Degree Reckless Homicide..... | 1018 | 2012 |
| First Degree Reckless Homicide..... | 1020 | 2015 |
| First Degree Reckless Homicide of an Unborn Child..... | 1020A | 2015 |
| First Degree Reckless Homicide..... | 1021 | 2022 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1022 | 2015 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide: Negligent Homicide..... | 1023 | 2019 |
| Felony Murder: Underlying Crime Completed..... | 1030 | 2022 |
| Felony Murder: Underlying Crime Attempted..... | 1031 | 2022 |
| Felony Murder: Death Caused While Committing a Crime as a Party to the Crime: Aiding And Abetting..... | 1032 | 2022 |
| Felony Murder: Death Caused While Committing Armed Burglary as a Party to the Crime: Aiding And Abetting..... | 1032 | EXAMPLE 2003 |
| Second Degree Intentional Homicide..... | 1050 | 2006 |
| Second Degree Intentional Homicide: Self-defense..... | 1052 | 2006 |
| Second Degree Reckless Homicide..... | 1060 | 2015 |
| Second Degree Reckless Homicide by Omission..... | 1060A | 2015 |
| Second Degree Reckless Homicide of an Unborn Child..... | 1061 | 2005 |
| Attempted First Degree Intentional Homicide..... | 1070 | 2001 |
| Attempted First Degree Intentional Homicide: Self-defense: Attempted Second Degree Intentional Homicide..... | 1072 | 1/2023 |
| Homicide Instructions Replaced for Offenses Committed on or After January 1, 1989..... | 1100 | WITHDRAWN 2006 |

WIS JI-CRIMINAL

| | | |
|---|-----------|----------------|
| Third Degree Murder: First or Second Degree Murder Not Submitted... 1120 | WITHDRAWN | 1982 |
| Third Degree Murder: First or Second Degree Murder Submitted..... 1122 | WITHDRAWN | 1982 |
| Abortion [Feticide]..... 1125 | | 2006 |
| Homicide by Negligent Operation of a Vehicle..... 1170 | | 2002 |
| Homicide of an Unborn Child by Negligent Operation of a Vehicle..... 1171 | | 2005 |
| Homicide by Negligent Handling of a Dangerous Weapon..... 1175 | | 2011 |
| | | |
| Homicide by Operation of Vehicle While Under the Influence | 1185 | 2020 |
| Violations of § 940.09 and § 940.25 Involving an Unborn Child | 1185A | 2004 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol | | |
| Concentration – 0.08 Grams or More..... | 1186 | 2020 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol | | |
| Concentration – 0.02 Grams or More..... | 1186A | 2020 |
| Homicide by Operation of a Vehicle with a Detectable Amount of a | | |
| Restricted Controlled Substance – § 940.09(1)(am) | 1187 | 2021 |
| Homicide by Intoxicated User of Vehicle, Firearm, or Airgun: | | |
| Affirmative Defense Under § 940.09(2) | 1188 | WITHDRAWN 2004 |
| Homicide by Operation of a Vehicle While Under the Influence / | | |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol | | |
| Concentration of 0.08 Grams or More | 1189 | 2020 |
| Homicide by Operation or Handling of Firearm or Airgun While | | |
| Under the Influence..... | 1190 | 2014 |
| Homicide by Operation or Handling of Firearm or Airgun with an | | |
| Alcohol Concentration of 0.08 or More | 1191 | 2006 |
| Mutilating a Corpse..... | 1193 | 2006 |
| Hiding or Burying a Corpse..... | 1194 | 2013 |
| Assisting Suicide..... | 1195 | 2006 |

SEXUAL ASSAULT

| | | |
|--|-----------|----------------|
| Introductory Comment - Sexual Assault | | |
| Instructions..... | 1200-1219 | WITHDRAWN 1990 |
| Sexual Contact | 1200A | 2007 |
| Sexual Intercourse..... | 1200B | 2010 |
| “Without Consent” - Competence to Give Informed Consent in Issue..... | 1200C | 2002 |
| “Without Consent” - Complainant Suffering from Mental Illness | 1200D | 2002 |
| “Without Consent” - Complainant Unconscious | 1200E | 2002 |
| Sexual Assault: Spouse as Victim..... | 1200F | 2002 |
| Cautionary Instruction: Evidence of Victim’s Prior Sexual Conduct..... | 1200G | 1/2023 |
| | | |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent | | |
| Causing Great Bodily Harm | 1201 | 2002 |
| First Degree Sexual Assault: Sexual Intercourse Without Consent | | |
| Causing Pregnancy..... | 1201A | 2002 |
| First Degree Sexual Assault: Sexual Contact or Intercourse by Use or | | |
| Threat of Use of a Dangerous Weapon | 1203 | 2002 |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 | 2022 |
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 EXAMPLE | 2022 |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence While Aided and Abetted | 1205 | 2018 |
| First Degree Sexual Assault: Sexual Intercourse with a Person 12 Years of Age or Younger | 1206 WITHDRAWN | 1997 |
| First Degree Sexual Assault: Sexual Contact with a Person 12 Years of Age or Younger | 1207 WITHDRAWN | 1997 |
| | | |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence | 1208 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent Causing Injury, Illness, Disease or Impairment of a Sexual or Reproductive Organ, or Mental Anguish Requiring Psychiatric Care | 1209 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Suffering from Mental Illness | 1211 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Who is Under the Influence of an Intoxicant | 1212 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person the Defendant Knows is Unconscious | 1213 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent While Aided and Abetted | 1214 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Patient or Resident | 1215 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Correctional Staff Member | 1216 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Probation, Parole, or Extended Supervision Agent | 1217 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by an Employee of an Entity | 1217A | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Law Enforcement Officer With a Person Detained or in Custody | 1217B | 2022 |
| | | |
| Third Degree Sexual Assault: Sexual Intercourse Without Consent | 1218A | 2018 |
| Third Degree Sexual Assault: Sexual Contact Without Consent Involving Ejaculation, etc | 1218B | 2018 |
| Fourth Degree Sexual Assault: Sexual Contact Without Consent | 1219 | 2004 |

BODILY SECURITY

| | | |
|--|-----------------------|------|
| Battery and Related Offenses: Introductory Comment | 1220-1246 WITHDRAWN | 2009 |
| Battery | 1220 | 2015 |
| Battery: Self-Defense in Issue | 1220A | 2015 |
| Abuse of Children | 1221 WITHDRAWN | 1989 |
| Abuse of Children C Exposing a Child to Cruel Maltreatment | 1221A WITHDRAWN | 1989 |
| Failure to Report Child Abuse | 1221C RENUMBERED 2119 | 1992 |
| Substantial Battery with Intent to Cause Bodily Harm | 1222 | 2017 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Substantial Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1222A | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm | 1223 WITHDRAWN | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm: | | |
| Self-Defense in Issue..... | 1223A WITHDRAWN | 2017 |
| Aggravated Battery with Intent to Cause Bodily Harm..... | 1224 | 2002 |
| | | |
| Aggravated Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1224A | 2001 |
| | | |
| Aggravated Battery With Intent to Cause Great Bodily Harm | 1225 | 2003 |
| Aggravated Battery with Intent to Cause Great Bodily Harm: | | |
| Self-Defense in Issue..... | 1225A | 2003 |
| Battery with Substantial Risk of Great Bodily Harm..... | 1226 | 2022 |
| Battery to an Unborn Child..... | 1227 | 2017 |
| Battery by Prisoner | 1228 | 2012 |
| Battery by a Person Committed under § 980.065 | 1228A | 2022 |
| Battery by a Person Subject to an Injunction..... | 1229 | 2016 |
| | | |
| Battery to a Law Enforcement Officer or Fire Fighter | 1230 | 2016 |
| Battery to a Probation, Extended Supervision and Parole Agent, Community Supervision Agent, or An Aftercare Agent..... | 1231 | 2022 |
| Battery to Juror [Juror Has Assented to Verdict]..... | 1232 | 2005 |
| Battery to Witness [Witness Likely to be Called to Testify] | 1233 WITHDRAWN | 1999 |
| Battery to a Public Officer..... | 1234 | 2008 |
| Battery to a Technical College District or School District Officer or Employee | 1235 | 2008 |
| Battery to a Public Transit Vehicle Operator or Passenger..... | 1236 | 2014 |
| Battery to an Emergency Medical Care Provider | 1237 | 2022 |
| Battery or Threat to a Witness [Witness Has Attended or Testified]..... | 1238 | 2022 |
| Battery or Threat to Witness [Witness Likely to be Called to Testify]..... | 1239 | 2004 |
| Battery or Threat to Judge..... | 1240 WITHDRAWN | 2003 |
| Battery to a Judge..... | 1240A | 2019 |
| Threat to a Judge..... | 1240B | 2020 |
| Battery to a Prosecutor or Law Enforcement Officer | 1240C | 2019 |
| Threat to a Prosecutor or Law Enforcement Officer..... | 1240D | 2019 |
| Battery to Guardian Ad Litem, Corporation Counsel, or Attorney..... | 1241A | 2022 |
| Threat to Guardian Ad Litem, Corporation Counsel, or Attorney | 1241B | 2022 |
| Battery or Threat to a Department of Revenue Employee | 1242 | 2022 |
| Battery to a Nurse | 1243 WITHDRAWN | 2022 |
| Battery or Threat to a Department of Safety and Professional Services or Department of Workforce Development Employee..... | 1244 | 2022 |
| Battery to a County, City, Village, or Town Employee..... | 1245 | 2009 |
| Mayhem | 1246 | 2009 |
| Battery or Threat to a Staff Member of a Health Care Facility | 1247A | 2022 |
| Battery or Threat to a Health Care Provider | 1247B | 2022 |
| Sexual Exploitation by Therapist..... | 1248 | 2006 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm..... | 1249A | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Bodily Harm..... | 1249B | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm..... | 1249C | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------------|------|
| Physical Abuse of an Elder Person: Reckless Causation of Great Bodily Harm | 1249D | 2022 |
| Physical Abuse of an Elder Person: Reckless Causation of Bodily Harm..... | 1249E | 2022 |
| Physical Abuse of an Elder Person: Reckless Causation of Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm | 1249F | 2022 |
| First Degree Reckless Injury..... | 1250 | 2020 |
| Second Degree Reckless Injury | 1252 | 2015 |
| Strangulation and Suffocation..... | 1255 | 2022 |
| Injury by Negligent Handling of a Dangerous Weapon..... | 1260 | 2011 |
| Injury (Great Bodily Harm) by Negligent Use of a Vehicle | 1261 RENUMBERED 2654 | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle While Under the Influence | 1262 | 2014 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.08 Grams or More..... | 1263 | 2006 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.02 Grams or More..... | 1263A | 2004 |
| Failure to Support | 1264 WITHDRAWN | 1989 |
| Abandonment of a Young Child | 1265 WITHDRAWN | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.25(1)(am) | 1266 | 2021 |
| Abuse of Individuals at Risk..... | 1268 | 2007 |
| Abuse of Individuals at Risk: Recklessly Subjecting an Individual at Risk to Abuse under Circumstances That Cause Great Bodily Harm | 1268 EXAMPLE | 2007 |
| Reckless Abuse of Vulnerable Adults | 1269 WITHDRAWN | 1999 |
| Abuse of Residents of Penal Facilities..... | 1270 | 2006 |
| Abuse of Patients and Residents | 1271 | 2011 |
| Abuse of Patients and Residents: Reckless Physical Abuse Causing Great Bodily Harm to an Individual at Risk..... | 1271 EXAMPLE | 2007 |
| Neglect of Patients and Residents..... | 1272 | 2021 |
| Law Enforcement Officer – Failure to Render Aid | 1273 | 2020 |
| False Imprisonment..... | 1275 | 2014 |
| Human Trafficking | 1276 | 2015 |
| Human Trafficking | 1276 EXAMPLE | 2015 |
| Human Trafficking | 1277 | 2016 |
| Taking a Hostage | 1278 | 2016 |
| Kidnapping..... | 1280 | 2016 |
| Kidnapping..... | 1281 | 2016 |
| Kidnapping..... | 1282 | 2006 |
| Placing a Global Positioning Device | 1283A | 2016 |
| Obtaining Information Generated by a Global Positioning Device | 1283B | 2016 |
| Stalking | 1284 | 2021 |
| Stalking: Penalty Factors | 1284A | 2011 |
| Stalking | 1284B | 2021 |

WIS JI-CRIMINAL

| | | |
|---|-----------------|--------|
| Abduction..... | 1285 WITHDRAWN | 1989 |
| Abduction..... | 1286 WITHDRAWN | 1989 |
| Abduction..... | 1287 WITHDRAWN | 1989 |
| Intimidation of a Witness: Misdemeanor..... | 1290 WITHDRAWN | 2001 |
| Intimidation of a Witness..... | 1292 | 2020 |
| Intimidation of a Witness; Felony: Force Threatened | | |
| Against a Relative of the Witness | 1292A WITHDRAWN | 2001 |
| Intimidation of a Victim: Misdemeanor..... | 1294 WITHDRAWN | 2001 |
| Intimidation of a Victim..... | 1296 | 1/2023 |
| Intimidation of a Person Acting on Behalf of a Victim | 1296A | 1/2023 |
| Intimidation of a Victim..... | 1297 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IIA

| | No. | Year |
|--|----------------------|------|
| CRIMES AGAINST PUBLIC HEALTH AND SAFETY | | |
| Negligent Operation of a Vehicle | 1300 | 2022 |
| Highway Obstruction | 1302 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant..... | 1305 RENUMBERED 1321 | 2021 |
| Negligent Handling of Burning Material | 1310 | 2007 |
| Giving a False Alarm | 1316 | 2007 |
| Interference with a Fire Alarm System | 1317 | 2007 |
| Interference with Fire Fighting | 1318 | 2007 |
| Interference with Fire Fighting Equipment..... | 1319 | 2007 |
| Endangering Safety by Use of a Dangerous Weapon: Negligent Operation or Handling..... | 1320 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant | 1321 | 2019 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at Another | 1322 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at a Law Enforcement Officer, Fire Fighter, Etc..... | 1322A | 2018 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm Within 100 Yards of Building | 1323 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm into a Vehicle or Building..... | 1324 | 2008 |
| Possession of Pistol by Minor: Minor Going Armed with a Pistol..... | 1325 WITHDRAWN | 1989 |
| Sale, Loan, or Gift of Pistol to Minor | 1326 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Discharging a Firearm from a Vehicle | 1327 | 2005 |
| Disarming a Peace Officer | 1328 | 2008 |
| Carrying a Concealed Weapon | 1335 | 2018 |
| Carrying a Concealed Weapon: Unlawful Purpose | 1335A | 2016 |
| Carrying a Concealed Weapon: Evidence of Exception | 1335B | 2012 |
| Carrying a Concealed Knife..... | 1336 | 2022 |
| Carrying a Firearm in a Public Building..... | 1337 | 2019 |
| Carrying a Handgun on Premises Where Alcohol Beverages are Consumed..... | 1338 | 2019 |
| Possession of a Switchblade Knife | 1340 | 2016 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1340A | 2008 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341 | 2007 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1341A | 2010 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341B | 2020 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm to a Peace Officer | 1341C | 2020 |
| Possession of Oleoresin of Capsicum (Pepper Spray) by a Convicted Felon..... | 1341D | 2020 |
| Possession of a Short-Barreled Shotgun or Rifle..... | 1342 | 2007 |
| | | |
| Possession of a Firearm | 1343 | 2021 |
| Possession of a Firearm by a Felon: Privilege | 1343A | 2008 |
| Furnishing a Firearm to a Felon..... | 1343B WITHDRAWN | 2019 |
| Straw Purchasing of a Firearm..... | 1343C | 2019 |
| Possession of a Firearm by a Person Subject to an Injunction..... | 1344 | 2019 |
| Possession of an Electric Weapon | 1344A | 2012 |
| First Degree Recklessly Endangering Safety..... | 1345 | 2020 |
| Second Degree Recklessly Endangering Safety | 1347 | 2015 |
| | | |
| Possession of Explosives for an Unlawful Purpose | 1350 | 2008 |
| Possession of an Improvised Explosive Device..... | 1351A | 2008 |
| Possession of Materials or Components with Intent to Assemble an Improvised Explosive Device | 1351B | 2008 |
| Administering a Dangerous or Stupefying Drug | 1352 | 2008 |
| Placing Foreign Objects in Edibles..... | 1354 | 2008 |
| Obstructing Emergency Medical Personnel..... | 1360 | 2018 |
| Throwing or Expelling a Bodily Substance at a Public Safety Worker or Prosecutor..... | 1365 | 2018 |
| Violating a No Contact Order | 1375 | 2013 |

CRIMES AGAINST REPUTATION AND CIVIL LIBERTIES

| | | |
|--|----------------|------|
| Defamation..... | 1380 | 2008 |
| Denial of Rights: In General | 1390 WITHDRAWN | 1992 |
| Denial of Rights: Written Communication | 1391 WITHDRAWN | 1992 |
| Invasion of Privacy: Use of a Surveillance Device..... | 1392 | 2020 |
| Invasion of Privacy: Looking into a Dwelling Unit..... | 1395 | 2017 |
| Invasion of Privacy: Use of a Device to View Under the Outer Clothing of an Individual | 1395A | 2016 |
| Representations Depicting Nudity | 1396 | 2017 |
| Publishing a Private Representation Depicting Nudity Without Consent..... | 1398A | 2020 |
| Publishing a Depiction That Is Known to Be a Private Representation of Nudity Without Consent..... | 1398B | 2020 |
| Soliciting an Intimate or Private Representation | 1399 | 2018 |

WIS JI-CRIMINAL

CRIMES AGAINST PROPERTY

| | | |
|--|-----------------|------|
| Criminal Damage to Property | 1400 | 2020 |
| Criminal Damage to Property: Vending and Other Machines | 1400A | 2017 |
| Criminal Damage to Property: Energy Provider Property | 1400B | 2020 |
| Damage or Threat to Property of a Witness..... | 1400C | 2020 |
| Criminal Damage to Religious or Cemetery Property | 1401A | 2003 |
| Criminal Damage to Facilities Associated with Designated Groups | 1401B | 2003 |
| Criminal Damage to Personal Property Contained in Religious, Cemetery or Other Property | 1401C | 2003 |
| Criminal Damage or Threat to Property of a Judge | 1402A | 2004 |
| Criminal Damage or Threat to Property of a Department of Revenue Employee | 1402B | 2004 |
| Graffiti | 1403 | 2010 |
| Arson of a Building of Another | 1404 | 2008 |
| Arson of a Building with Intent to Defraud an Insurer | 1405 | 2008 |
| Arson of Property Other Than a Building..... | 1408 | 2011 |
| Arson (Of Property Other Than a Building) with Intent to Defraud..... | 1410 | 2001 |
| Molotov Cocktails (Firebombs): Possession..... | 1417 | 2008 |
| Molotov Cocktails (Firebombs): Manufacture, Sale, Offer to Sell, Gift or Transfer..... | 1418 | 2008 |
| Burglary with Intent to Steal..... | 1421 | 2020 |
| Burglary with Intent to Steal; While Armed with a Dangerous Weapon | 1422 WITHDRAWN | 1997 |
| Burglary with Intent to Commit a Felony | 1424 | 2022 |
| Burglary While Armed | 1425A | 2005 |
| Burglary: Arming Oneself with a Dangerous Weapon While in the Enclosure | 1425B | 2005 |
| Burglary: Committing a Battery While in the Enclosure..... | 1425C | 2005 |
| Burglary: Person Lawfully Present in the Enclosure | 1425E | 2005 |
| Entry into a Locked Vehicle | 1426 | 2008 |
| Possession of Burglarious Tools | 1431 | 2008 |
| Entry into Locked Coin Box | 1433 | 2004 |
| Criminal Trespass to Dwellings..... | 1437 | 2017 |
| Entry into a Locked Dwelling..... | 1438 | 2008 |
| Criminal Trespass to a Medical Facility | 1439 | 2008 |
| Criminal Trespass to an Energy Provider Property..... | 1440 | 2020 |
| Theft..... | 1441 | 2022 |
| Determining Value in Theft Cases..... | 1441A WITHDRAWN | 2002 |
| Theft: Penalty Factors | 1441B | 2020 |
| Theft from Person | 1442 WITHDRAWN | 1999 |
| Theft by Contractor..... | 1443 | 2022 |
| Theft by Contractor: Defendant Is a Corporate Officer | 1443A | 2022 |
| Theft by Employee, Trustee, or Bailee (Embezzlement)..... | 1444 | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Theft by One Having an Undisputed Interest in Property from One Having Superior Right of Possession | 1450 | 2022 |
| Theft by Fraud..... | 1453 WITHDRAWN | 2006 |
| Theft by Fraud: Representations Made to the Owner, Directly or by a Third Person | 1453A | 2022 |
| Theft by Fraud: Representations Made to an Agent | 1453B | 2022 |
| Theft by Fraud: Failure to Disclose as a Representation | 1453C | 2022 |
| Theft by Failure to Return Leased or Rented Property | 1455 | 2022 |
| Mail Theft | 1457 | 1/2023 |
| Unauthorized Use of an Individual's Personal Identifying Information or Documents..... | 1458 | 2019 |
| Unauthorized Use of an Entity's Identifying Information or Documents | 1459 | 2019 |
| Failure to Disclose Manufacturer of Recording..... | 1460 | 2014 |
| Fraud on Hotel or Restaurant Keeper | 1461 | 2010 |
| Absconding Without Paying Rent..... | 1462 | 2010 |
| Absconding Without Paying Rent: Affirmative Defense..... | 1462A | 2008 |
| Taking a Vehicle by Use or Threat of Force..... | 1463 | 2003 |
| Taking a Vehicle by Use or Threat of Force..... | 1463A | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent..... | 1464 | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent: Driving or Operating Without the Owner's Consent as a Lesser Included Offense | 1464A | 2019 |
| Driving or Operating a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent | 1465 | 2019 |
| Operating Without Owner's Consent: Affirmative Defense..... | 1465A | 2019 |
| Intentionally Accompanying a Person Who Operates a Vehicle Without the Owner's Consent | 1466 | 2016 |
| Removing a Major Part of a Vehicle Without the Owner's Consent..... | 1467 | 2001 |
| Issue of a Worthless Check: Misdemeanor..... | 1468 | 2004 |
| Issue of a Worthless Check: Felony: One Check for \$2,500 or More | 1469A | 2004 |
| Issue of a Worthless Check: Felony: Series of Checks Totaling \$2,500 or More | 1469B | 2004 |
| Transfer of Encumbered Personal Property with Intent to Defraud | 1470 | 2008 |
| Loan Sharking (Extortionate Extension of Credit) | 1472A | 2009 |
| Loan Sharking (Advancements for Extortionate Extensions of Credit) | 1472B | 2009 |
| Loan Sharking (Use of Extortionate Means) | 1472C | 2009 |
| Extortion: Accuse or Threaten to Accuse | 1473A | 2004 |
| Extortion: Injure or Threaten to Injure..... | 1473B | 2022 |
| Threats to Communicate Derogatory Information..... | 1474 | 2017 |
| Robbery by the Use of Force | 1475 WITHDRAWN | 2009 |
| Robbery by Threat of Force..... | 1477 WITHDRAWN | 2009 |
| Robbery by the Use or Threat of Force..... | 1479 | 2009 |
| Armed Robbery: By Use or Threat of Use of a Dangerous Weapon..... | 1480 | 2016 |

WIS JI-CRIMINAL

| | | |
|---|-------------------------|--------|
| Armed Robbery: By Use of an Article the Victim Reasonably Believes is a Dangerous Weapon | 1480A | 2016 |
| Receiving Stolen Property | 1481 | 2012 |
| Fraudulent Writings: Falsifying a Corporate Record..... | 1485 | 2004 |
| Fraudulent Writings: Obtaining a Signature by Means of Deceit..... | 1486 | 2001 |
| Possession of Property with Altered Identification Marks | 1488 | 2009 |
| Forgery (by Making or Altering a Check) | 1491 | 2009 |
| Uttering a Forged Writing (Check)..... | 1492 | 2009 |
| | | |
| Possession of a Forged Writing (Check) with Intent to Utter..... | 1493 | 2009 |
| Fraudulent Insurance Claim: Presenting a False or Fraudulent Claim..... | 1494 | 2003 |
| Theft of Telecommunications Service | 1495 | 2014 |
| Theft of a Financial Transaction Card | 1496 | 2009 |
| Fraudulent Use of a Financial Transaction Card | 1497 | 2003 |
| Fraudulent Use of a Financial Transaction Card | 1497A | 2003 |
| Financial Transaction Card Factoring..... | 1497B RENUMBERED 1497.1 | 2003 |
| Retail Theft | 1498 | 2020 |
| Retail Theft: Removing a Theft Detection Device | 1498A | 2020 |
| Retail Theft: Using a Theft Detection Shielding Device | 1498B | 2020 |
| Theft of Services | 1498C | 2020 |
| Criminal Slander of Title | 1499 | 2009 |
| Crimes Against Sexual Morality..... | 1500-1529 WITHDRAWN | 1996 |
| Computer Crime..... | 1504 | 2007 |
| Computer Crime..... | 1505 | 2009 |
| Computer Crime..... | 1506 | 2007 |
| Crimes Against Financial Institutions..... | 1508 | 1/2023 |
| Incest: Sexual Intercourse Between Father and Daughter | 1510 | 2008 |
| Fraud Against a Financial Institution..... | 1512 | 2017 |
| Robbery of a Financial Institution | 1522 | 2017 |
| Money Laundering — § 943.895(2)(a)1 - 2. | 1524 | 1/2023 |
| Money Laundering — § 943.895(2)(a)3. | 1525 | 1/2023 |
| Money Laundering — § 943.895(2)(a)4..... | 1526 | 1/2023 |

CRIMES AGAINST SEXUAL MORALITY

| | | |
|---|----------------|------|
| Enticing Children for Immoral Purposes | 1530 WITHDRAWN | 1989 |
| Incest: Sexual Intercourse Between Blood Relatives..... | 1532 | 2022 |
| Fornication: Sexual Intercourse in Public..... | 1535 | 2016 |
| Fornication: Sexual Intercourse with a Person Younger Than 18 Years | 1536 WITHDRAWN | 1989 |
| Sexual Gratification in Public..... | 1537 | 2021 |
| Sexual Gratification with a Person Younger Than 18 Years | 1538 WITHDRAWN | 1989 |
| Lewd and Lascivious Behavior - Exposing Genitals or Pubic Area | 1544 | 2007 |
| Lewd and Lascivious Behavior by Cohabitation with a Person Not His Spouse..... | 1545 WITHDRAWN | 1996 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Commitment and Continuance of Control Under the Sex Crimes Law | 1550-1553 WITHDRAWN | 1996 |
| Prostitution: Nonmarital Sexual Intercourse..... | 1560 | 2016 |
| Prostitution: Act of Sexual Gratification | 1561 | 2006 |
| Patronizing Prostitutes | 1564 | 2018 |
| Soliciting to Practice Prostitution | 1566 | 2016 |
| Pandering | 1568 | 2015 |
| Pandering | 1568A | 2016 |
| Pandering | 1568B | 2016 |
| Keeping a Place of Prostitution..... | 1570 | 2016 |
| Granting the Use of a Place as a Place of Prostitution..... | 1571 | 2016 |

CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

| | | |
|--|------|--------|
| Commercial Gambling: Operating a Gambling Place for Gain | 1601 | 2002 |
| Commercial Gambling: Receiving a Bet for Gain..... | 1602 | 2002 |
| Commercial Gambling: Collecting the Proceeds of a Gambling Machine..... | 1605 | 1/2023 |
| Commercial Gambling: Using Wire Communication to Place a Bet..... | 1607 | 2002 |
| Permitting Real Estate to be Used as a Gambling Place..... | 1610 | 2009 |
| Altering a Lottery Ticket | 1650 | 2009 |
| Uttering an Altered Lottery Ticket..... | 1651 | 2009 |
| Possession of an Altered Lottery Ticket with Intent to Defraud..... | 1652 | 2009 |
| Sabotage..... | 1705 | 2009 |
| Bribery – Transferring Property to a Public Employee to Induce Action or Failure to Act..... | 1720 | 2009 |
| Bribery – Transferring Property to a Public Officer to Influence a Decision | 1721 | 2009 |
| Bribery – Accepting a Bribe | 1723 | 2009 |
| Misconduct in Public Office (by Failure or Refusal to Perform Duty)..... | 1730 | 2008 |
| Misconduct in Public Office (by Performance of Unauthorized or Forbidden Act)..... | 1731 | 2008 |
| Misconduct in Public Office (by Exercise of Discretionary Power for a Dishonest Advantage) | 1732 | 2008 |
| Misconduct in Public Office (by False Entry, Return, Certificate, Report, or Statement) | 1733 | 2008 |
| Misconduct in Public Office (by Unlawful Solicitation or Acceptance of Anything of Value)..... | 1734 | 2008 |
| Private Interest in a Public Contract: Entering into a Contract in a Private Capacity and Being Authorized by Law to Participate in the Making of the Contract as a Public Officer | 1740 | 2009 |
| Private Interest in a Public Contract: Participating in the Making of a Contract in Which One Has a Private Pecuniary Interest..... | 1741 | 2009 |
| Private Interest in a Public Contract: Performing a Discretionary Function in Regard to a Contract in Which One Has a Private Pecuniary Interest | 1742 | 2009 |
| Perjury..... | 1750 | 2020 |
| False Swearing: False Statement Under Oath: Felony..... | 1754 | 2004 |
| False Swearing: Inconsistent Statements | 1755 | 2004 |
| False Swearing: False Statement Under Oath: Misdemeanor..... | 1756 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Resisting an Officer | 1765 | 2012 |
| Obstructing an Officer | 1766 | 2010 |
| Obstructing an Officer: Giving False Information..... | 1766A | 2010 |
| Failure to Comply with an Officer's Attempt to Take a Person into Custody | 1768 | 2008 |
| | | |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Forfeiture Offense | 1770 | 2008 |
| Escape from Custody Resulting from Violation of Probation, Parole, or Extended Supervision | 1771 | 2009 |
| Escape from Custody Resulting from Legal Arrest for a Crime..... | 1772 | 2008 |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Crime | 1773 WITHDRAWN | 2008 |
| Escape from Custody: Jail or Prison Escape..... | 1774 | 2008 |
| Escape from Custody: Chapter 980 Custody Order..... | 1775 | 2008 |
| Escape: Individual with Custody Injured..... | 1775A | 2009 |
| Failure to Report to Jail: Periods of Imprisonment..... | 1776 | 1/2023 |
| Failure to Report to Jail: After Stay of Sentence | 1777A | 1/2023 |
| Failure to Report to Jail: Confinement Order | 1777B | 1/2023 |
| | | |
| Assault by a Prisoner: Placing an Officer, Employee, Visitor, or Inmate in Apprehension of an Immediate Battery Likely to Cause Death or Great Bodily Harm | 1778 | 2001 |
| Assault by a Prisoner: Restraining or Confining an Officer, Employee, Visitor, or Inmate | 1779 | 2001 |
| Assault by a Prisoner: Throwing or Expelling a Bodily Substance at an Officer, Employee, Visitor, or Inmate..... | 1779A | 2001 |
| Permitting Escape | 1780 | 2008 |
| Assisting Escape | 1781 | 2008 |
| Assisting Escape by Public Officer or Employee..... | 1782 | 2008 |
| Introducing a Firearm into an Institution | 1783 | 2008 |
| Inmate Possessing an Article With Intent to Retain..... | 1784 | 2021 |
| Delivering an Article to an Inmate..... | 1785 | 2021 |
| Possessing an Article with Intent to Deliver it to an Inmate..... | 1786 | 2021 |
| Receiving an Article From an Inmate to Convey Out of Jail or Prison | 1787 | 2021 |
| Encouraging a Violation of Probation, Extended Supervision or Parole..... | 1788 | 2011 |
| | | |
| Aiding a Felon..... | 1790 | 2015 |
| Aiding a Felon by Destroying, etc., Physical Evidence..... | 1791 | 2015 |
| Bail Jumping | 1795 | 2018 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME III

| | No. | Year |
|---|---------------------|-------------|
| CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION (continued) | | |
| Concealing Identity..... | 1805 RENUMBERED 994 | 1986 |
| Bribery of Witness: Transferring Property | 1808A | 2021 |
| Bribery of Witness: Accepting a Bribe | 1808B | 2021 |
| Concealing Death of Child..... | 1810 WITHDRAWN | 1989 |
| Communicating with a Juror..... | 1812 | 2009 |
| | | |
| Obstructing Justice..... | 1815 | 2009 |
| Simulating Legal Process..... | 1825 | 2009 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel..... | 1830 | 2018 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel with Intent to Commit a Crime..... | 1831 WITHDRAWN | 2018 |
| Interference with Custody of a Child..... | 1832 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1833 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1834 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1835 WITHDRAWN | 1989 |
| Interference with Custody of a Nonmarital Child..... | 1835A WITHDRAWN | 1989 |
| Interference with the Parental Rights of the Other Parent: Concealing a Child | 1838 WITHDRAWN | 1989 |
| | | |
| Unemployment Insurance Fraud: Making a False Statement to Obtain a Benefit Payment | 1848 | 2019 |
| Welfare Fraud: Making False Representations to Secure Public Assistance..... | 1850 | 2015 |
| Public Assistance Fraud: Concealing or Failing to Disclose an Event Affecting Eligibility | 1851 | 2015 |
| Welfare Fraud: Failure to Report Receipt of Income or Assets..... | 1852 WITHDRAWN | 2015 |
| Welfare Fraud: Failure to Notify Authorities of Change of Facts | 1854 WITHDRAWN | 2015 |
| Food Stamp Fraud: Misstating Facts on an Application..... | 1862 | 2015 |
| | | |
| Medical Assistance Fraud: Making a False Statement in an Application for a Benefit or Payment..... | 1870 | 2015 |
| | | |
| Racketeering Activity – Using Proceeds of a Pattern of Racketeering Activity to Establish or Operate an Enterprise..... | 1881 | 2008 |
| Racketeering Activity – Acquiring or Maintaining an Interest in or Control of an Enterprise Through a Pattern of Racketeering Activity | 1882 | 2008 |
| Racketeering Activity – Conducting or Participating in an Enterprise Through a Pattern of Racketeering Activity | 1883 | 2008 |

WIS JI-CRIMINAL

CRIMES AGAINST PUBLIC PEACE, ORDER, AND OTHER INTERESTS

| | | |
|--|-----------------|-------------|
| Disorderly Conduct..... | 1900 | 2022 |
| Disrupting a Funeral or Memorial Service | 1901 | 2007 |
| Disrupting a Funeral or Memorial Service: Impeding Vehicles | 1901A | 2007 |
| Unlawful Use of Telephone | 1902 | 2008 |
| Unlawful Use of Telephone | 1903 | 2008 |
| Unlawful Use of Telephone | 1904 | 2008 |
| Unlawful Use of Telephone | 1905 RENUMBERED | 1907 1993 |
| Unlawful Use of Telephone | 1906 | 2008 |
| Unlawful Use of Telephone | 1907 | 2008 |
| Unlawful Use of a Computerized Communication System: Threat to Inflict Injury | 1908 | 2008 |
| Unlawful Use of a Computerized Communication System: Use of Obscene Language | 1909 | 2008 |
| Harassment: Subjecting Another to Physical Contact | 1910 | 2003 |
| Harassment: Threatening Physical Contact with Another | 1911 RENUMBERED | 1910.1 2003 |
| Harassment: Engaging in a Course of Conduct Which Harasses or Intimidates Another | 1912 | 2003 |
| Swatting | 1919 | 2020 |
| Bomb Scares | 1920 | 2020 |
| Intentional Terrorist Threats | 1925A | 2017 |
| Reckless Terrorist Threats | 1925B | 2017 |
| Failure to Withdraw from an Unlawful Assembly..... | 1930 | 2008 |
| Contributing to Delinquency or Neglect of Children..... | 1960 WITHDRAWN | 1989 |
| Contributing to Delinquency of Children by Parent, Guardian, or Legal Custodian | 1961 WITHDRAWN | 1989 |

CRIMES AGAINST ANIMALS

| | | |
|---|------|------|
| Mistreating an Animal | 1980 | 2013 |
| Harassment of Police or Fire Animals | 1981 | 2005 |
| Failing to Provide an Animal with Sufficient Food and Water | 1982 | 2005 |
| Dognapping and Catnapping..... | 1983 | 2005 |
| Failing to Provide an Animal with Proper Shelter | 1984 | 2005 |
| Instigating Fights Between Animals..... | 1986 | 2009 |
| Keeping an Animal with Intent That it Engage in Fighting..... | 1988 | 2009 |

ABANDONMENT

| | | |
|--|----------------|------|
| Abandonment by Husband or Father | 2000 WITHDRAWN | 1996 |
|--|----------------|------|

PATERNITY

| | | |
|-----------------|----------------|------|
| Paternity | 2010 WITHDRAWN | 1996 |
|-----------------|----------------|------|

JUVENILE DELINQUENCY

| | | |
|--|----------------|------|
| Juvenile Delinquency: Composite Instruction | 2020 WITHDRAWN | 2009 |
| Sample: Delinquency Under Chapter 48: Burglary | 2021 WITHDRAWN | 2009 |
| Contempt of Court: Punitive Sanction..... | 2031 | 2009 |

WIS JI-CRIMINAL

ORDINANCE VIOLATIONS

| | | |
|--|---|------|
| Violating a Temporary Restraining Order or an Injunction..... | 2040 | 2019 |
| Violating a Foreign Protection Order..... | 2042 | 2002 |
| Violating a Domestic Abuse Contact Prohibition – § 968.075(5) | 2044 | 2013 |
| Burden of Proof: Forfeiture Actions and Five-Sixths Verdict: Forfeiture Actions | 2050, 2055 RENUMBERED 140A and 515A, respectively | 1994 |

CRIMES AGAINST CHILDREN

| | | |
|--|--------------|------|
| Sexual Contact | 2101A | 2007 |
| Sexual Intercourse..... | 2101B | 2010 |
| Introductory Comment: § 948.02 Sexual Assault of a Child: As Amended by 2007 Wisconsin Act 80 [Effective Date: March 27, 2008] and 2013 Wisconsin Act 167 [Effective Date: March 29, 2014]..... | 2102 | 2019 |
| First Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 13 Years: Causing Great Bodily Harm..... | 2102A | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 12 Years | 2102B | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence..... | 2102C | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence by a Person Who Has Attained the Age of 18 Years | 2102D | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years | 2102E | 2015 |
| Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years | 2104 | 2020 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Actual Child | 2105A | 2005 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Fictitious Child..... | 2105B | 2005 |
| Sexual Assault of a Child: Failing to Act to Prevent Sexual Intercourse or Sexual Contact | 2106 | 2009 |
| Law Note: “Person Responsible for the Child’s Welfare”..... | 2106A | 2010 |
| Repeated Acts of Sexual Assault of a Child | 2107 | 2019 |
| Repeated Acts of Sexual Assault of a Child | 2107 EXAMPLE | 2009 |
| Physical Abuse of a Child: Intentionally Causing Great Bodily Harm | 2108 | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Great Bodily Harm..... | 2108A | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Reckless Causing of Great Bodily Harm | 2108B | 2015 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm | 2109 | 2009 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm by Conduct Which Creates a High Probability of Great Bodily Harm | 2110 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Great Bodily Harm..... | 2111 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Bodily Harm | 2112 | 2009 |

WIS JI-CRIMINAL

| | | |
|---|----------------|------|
| Physical Abuse of a Child: Recklessly Causing Bodily Harm by Conduct which Creates a High Probability of Great Bodily Harm | 2113 | 2009 |
| Physical Abuse or Sexual Assault of a Child by a Person Responsible for the Welfare of the Child | 2114 | 2003 |
| Repeated Acts of Physical Abuse of a Child | 2114A | 2019 |
| Repeated Acts of Physical Abuse of a Child | 2114A EXAMPLE | 2017 |
| Sexual Assault or Physical Abuse of a Child by a Child Care Provider | 2115 | 2019 |
| Causing Mental Harm to a Child | 2116 | 2009 |
| | | |
| Failure to Report Child Abuse | 2119 | 2012 |
| Sexual Exploitation of a Child | 2120 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2120A | 2020 |
| Sexual Exploitation of a Child | 2121 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2121A | 2020 |
| Sexual Exploitation of a Child | 2122 | 2020 |
| Sexual Exploitation of a Child: By a Person Responsible for the Child's Welfare | 2123 | 2020 |
| Trafficking of a Child | 2124 | 2017 |
| Causing a Child to View or Listen to Sexual Activity | 2125 | 2020 |
| | | |
| Incest with a Child: Sexual Intercourse or Contact | 2130 | 2008 |
| Incest with a Child: Sexual Intercourse or Contact by Stepparent | 2131 | 2008 |
| Child Enticement: Completed Act | 2134 | 2018 |
| Child Enticement: Attempt: Actual Child | 2134A | 2018 |
| Child Enticement: Attempt: Fictitious Child | 2134B | 2018 |
| Use of a Computer to Facilitate a Child Sex Crime | 2135 | 2017 |
| Soliciting a Child for Prostitution | 2136 | 2009 |
| Patronizing a Child | 2136A | 2018 |
| Sexual Assault of a Foster Child | 2137A | 2010 |
| Sexual Assault of a Child Placed in a Substitute Care Facility | 2137B | 2007 |
| Sexual Intercourse with a Child | 2138 | 2018 |
| Underage Sexual Activity | 2138A | 2018 |
| Sexual Assault of a Student by a School Staff Person | 2139 | 2007 |
| Sexual Assault of a Child by a Person Who Works or Volunteers with Children | 2139A | 2007 |
| | | |
| Exposing Genitals or Pubic Area to a Child | 2140 | 2015 |
| Causing a Child to Expose Genitals or Pubic Area | 2141 | 2015 |
| Exposing a Child to Harmful Material | 2142 | 2019 |
| Exposing a Child to Harmful Material: Face-to-Face Contact Affirmative Defense | 2142A | 2009 |
| Exposing a Child to Harmful Material: Verbally Communicating a Harmful Description or Narrative Account | 2143 | 2019 |
| Possession of Child Pornography | 2146 WITHDRAWN | 2003 |
| Child Pornography: Possession of a Recording | 2146A | 2020 |
| Child Pornography: Exhibiting or Playing a Recording | 2146B | 2020 |
| Child Sex Offender Working with Children | 2147 | 2007 |
| Abandonment of a Child | 2148 | 2003 |
| | | |
| Neglecting a Child | 2150 | 2019 |
| Neglecting a Child: Death, Great Bodily Harm, or Bodily Harm as a Consequence | 2150A | 2019 |
| Chronic Neglect of a Child; Repeated Acts of Neglect | 2151 | 2019 |
| Failure to Support | 2152 | 2006 |

WIS JI-CRIMINAL

| | | |
|---|-------|--------|
| Failure to Support: Affirmative Defense | 2152A | 2001 |
| Concealing Death of Child..... | 2154 | 2013 |
| Abduction of Another’s Child: Taking from Home or Custody | 2160 | 1/2023 |
| Abduction of Another’s Child: Detaining Away from Home..... | 2161 | 1/2023 |
| Abduction of Another’s Child: Taking by Force or Threat of Force | 2162 | 1/2023 |
| Abduction of Another’s Child: Detaining by Force or Threat of Force..... | 2163 | 1/2023 |
| Interference with Custody of a Child..... | 2166 | 2015 |
| Interference with Custody of a Child..... | 2167 | 2009 |
| Interference with Custody of a Nonmarital Child..... | 2167A | 2009 |
| Interference with the Custody of a Child by a Parent: Concealing a Child | 2168 | 2009 |
| Interference with the Custody of a Child: Affirmative Defenses..... | 2169 | 2009 |
| Contributing to the Delinquency of a Child..... | 2170 | 1/2023 |
| Contributing to the Delinquency of a Child: Death as a Consequence..... | 2170A | 1/2023 |
| Contributing to the Delinquency of a Child by a Person Responsible for the Child’s Welfare | 2171 | 1/2023 |
| Contributing to Truancy..... | 2173 | 2006 |
| Compulsory School Attendance..... | 2174 | 2006 |
| Child Unattended in a Child Care Vehicle..... | 2175 | 2013 |
| Possession of a Dangerous Weapon by a Child..... | 2176 | 2012 |
| Sale, Loan, or Gift of a Dangerous Weapon to a Child | 2177 | 2012 |
| Sale, Loan, or Gift of a Firearm to a Child: Death Caused..... | 2177A | 2009 |
| Possession of a Firearm on School Grounds..... | 2178A | 2016 |
| Discharge of a Firearm in a School Zone | 2178B | 2016 |
| Dangerous Weapons Other Than Firearms on School Premises | 2179 | 2009 |
| Receiving Stolen Property from a Child | 2180 | 2012 |
| Recklessly Storing a Firearm | 2185 | 2013 |
| Registered Sex Offender and Photographing Minors | 2196 | 2008 |
| Failure to Comply with Sex Offender Registration Requirements | 2198 | 2021 |
| Sex Offender Name Change | 2199 | 1/2023 |

INQUEST

| | | |
|--|-------|------|
| Inquest: Preliminary Instruction..... | 2300 | 2010 |
| Inquest: Final Instructions: Explanation of Verdicts | 2302 | 2010 |
| Inquest: Suggested Verdicts..... | 2302A | 2010 |

SEXUALLY VIOLENT PERSON

| | | |
|---|------|------|
| Suggested Order of Instructions: Commitment as a Sexually Violent Person under Chapter 980, Wis. Stats. | 2500 | 2016 |
| Preliminary Instruction: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2501 | 2011 |
| Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats..... | 2502 | 2021 |
| Verdict: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2503 | 2011 |
| Preliminary Instruction: Hearing on Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2505 | 2014 |

WIS JI-CRIMINAL

Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats..... 2506 2021

VEHICLE CODE

| | | |
|--|-----------------|--------|
| Making a False Statement in an Application for a Certificate of Title | 2590 | 2004 |
| Operating While Intoxicated: Introductory Comment | 2600 | 2011 |
| Premises Other Than Highways..... | 2605 | 2011 |
| Operating a Motor Vehicle Without a Valid Operator's License - Criminal Offense | 2610 | 2013 |
| Operating a Motor Vehicle Without a Valid Operator's License: Causing Great Bodily Harm or Death - Criminal Offense | 2612 | 2013 |
| Operating While Revoked: Criminal Offense: Based on Prior Conviction | 2620 | 2010 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense..... | 2620A | 2018 |
| Operating A Motor Vehicle After Revocation or Suspension - Civil Forfeiture | 2620A WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Notice Mailed | 2620B WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Duty to Exercise Due Care..... | 2620C WITHDRAWN | 2006 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense | 2621 | 2018 |
| Operating While Revoked: Civil Forfeiture..... | 2621A | 2018 |
| Operating While Suspended: Civil Forfeiture | 2622 | 2013 |
| Operating While Revoked or Suspended: Criminal Offense: Causing Great Bodily Harm or Death | 2623 WITHDRAWN | 2013 |
| Operating While Suspended: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623A | 2013 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623B | 2018 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623C | 2018 |
| Operating While Revoked: Criminal Offense: Permanent Revocation | 2626 | 2019 |
| Operating a Motor Vehicle to Flee or in an Attempt to Elude an Officer..... | 2630 | 2019 |
| Resisting a Traffic Officer by Failing to Stop..... | 2632 | 2019 |
| Reckless Driving: Endangering Safety (Criminal Offense)..... | 2650 | 1/2023 |
| Reckless Driving: Causing Bodily Harm..... | 2652 | 1/2023 |
| Reckless Driving: Causing Great Bodily Harm..... | 2654 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IV

| | No. | Year |
|---|---------------------|--------|
| VEHICLE CODE (continued) | | |
| Introductory Comment..... | 2660-2665 WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – 0.08 Grams or More..... | 2660 | 2020 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660A | 2015 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660B WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams | 2660C | 2007 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams – Subject to an Ignition Interlock Order..... | 2660D | 2011 |
| Operating a Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More | 2661 | 2017 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More – § 346.63(2)(a) | 2661A WITHDRAWN | 2004 |
| Operating a Vehicle While Intoxicated and Causing Injury: Affirmative Defense Under § 346.63(2)(b)..... | 2662 WITHDRAWN | 2004 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Criminal Offense..... | 2663 | 1/2023 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture..... | 2663A | 2006 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture – No Alcohol Concentration Test..... | 2663B | 2019 |
| Alcohol Concentration Level..... | 2663C | 2004 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant with a Child under 16 Years of Age in the Motor Vehicle | 2663D | 2011 |
| Operating a Motor Vehicle While Under the Influence of a Controlled Substance – Criminal Offense..... | 2664 | 2020 |
| Operating a Motor Vehicle While Under the Influence of a Combination of an Intoxicant and a Controlled Substance – Civil Forfeiture | 2664A | 2022 |
| Operating a Motor Vehicle with a Detectable Amount of a Restricted Controlled Substance..... | 2664B | 2021 |
| Operating a Vehicle While Under the Influence of an Intoxicant and Causing Injury | 2665 | 2017 |
| Operating a Motor Vehicle While Under the Influence of a Drug – Criminal Offense..... | 2666 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|-------|--------|
| Operating a Motor Vehicle While Under the Influence of any Combination of an Intoxicant and any other Drug to a Degree that Renders Him or Her Incapable of Safely Driving | 2666A | 2022 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant: Hazardous Inhalant..... | 2667 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Civil Forfeiture..... | 2668 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2669 | 2015 |
| Failure to Give Information or Render Aid Following an Accident..... | 2670 | 2018 |
| Speeding: Exceeding a Reasonable and Prudent Speed Under § 346.57(2) or an Ordinance Adopting § 346.57(2)..... | 2672 | 1/2023 |
| Law Note: The “Justification” Defense | 2672A | 2010 |
| Speeding: Exceeding a Reasonable and Prudent Speed Criminal Offense under § 346.57(2); § 346.60 (3m)(a)2 | 2672B | 1/2023 |
| Speeding: Driving Too Fast for Conditions Under § 346.57(3) or an Ordinance Adopting § 346.57(3)..... | 2674 | 1/2023 |
| Speeding: Driving Too Fast for Conditions Criminal Offense under § 346.57(3); § 346.60 (3m)(a)2 | 2674A | 1/2023 |
| Speeding: Exceeding Fixed Limits Under § 346.57(4)(e) or an Ordinance Adopting § 346.57(4)(e)..... | 2676 | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Under § 346.57(4)(gm) or an Ordinance Adopting § 346.57(4)(gm)..... | 2676A | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Criminal Offense under § 346.57(4)(gm); § 346.60 (3m)(a)2 | 2676B | 1/2023 |
| Speeding: Exceeding Fixed Limits Criminal Offense under § 346.57(4)(e); § 346.60 (3m)(a)2..... | 2676C | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Under § 346.57(4)(h) or an Ordinance Adopting § 346.57(4)(h)..... | 2677 | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Criminal Offense under § 346.57(4)(h); § 346.60 (3m)(a)2..... | 2677A | 1/2023 |
| Speeding: Exceeding Posted Limits Under § 346.57(5) or an Ordinance Adopting § 346.57(5)..... | 2678 | 1/2023 |
| Speeding: Exceeding Posted Limits Criminal Offense under § 346.57(5); § 346.60 (3m)(a)2 | 2678A | 1/2023 |
| Radar Speed Measurement | 2679 | 2010 |
| Noncriminal Traffic Violations: Prohibited by State Law or an Ordinance Adopting State Law | 2680 | 2015 |
| Tampering with an Ignition Interlock Device..... | 2682A | 2014 |
| Failing to Install an Ignition Interlock Device | 2682B | 2021 |
| Operating a Commercial Motor Vehicle with an Alcohol Concentration of 0.04 Grams or More but Less Than 0.08 Grams – Criminal Offense | 2690 | 2004 |
| Operating a Motorboat While under the Influence of an Intoxicant: Criminal Offense..... | 2695 | 2013 |
| Operating a Motorboat While under the Influence of an Intoxicant / | | |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| Operating a Motorboat with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2696 | 2013 |
| SECURITIES FRAUD | | |
| Offering or Selling an Unregistered Security | 2902 | 2014 |
| Securities Fraud: Making an Untrue Statement of Material Fact in Connection with the Sale of a Security | 2904 | 2014 |
| Possession of Untagged Deer..... | 5000 | 2003 |
| Failure to File an Individual Income Tax Return..... | 5010 | 2010 |
| Filing a False or Fraudulent Return | 5012 | 2010 |
| Theft of Anhydrous Ammonia..... | 5024 | 2003 |
| INTOXICATING LIQUORS | | |
| Sale of Intoxicating Liquors to a Minor by a Tavern Keeper | 5030 WITHDRAWN | 2010 |
| Selling Fermented Malt Beverage Without a License | 5035 | 2005 |
| Sale to or Procurement for Any Minor of Intoxicating Liquors by any Person..... | 5040 WITHDRAWN | 2010 |
| Causing Injury or Death to an Underage Person by Providing Alcohol Beverages | 5050 | 2007 |
| HAZARDOUS WASTE | | |
| Storing, Treating, Transporting, or Disposing of Hazardous Waste Without a License..... | 5200 | 2010 |
| ELECTION FRAUD | | |
| Election Fraud – Unqualified Elector | 5301 | 2009 |
| Carrying a Weapon by Licensee Where Prohibited..... | 5401 | 2012 |
| CONTROLLED SUBSTANCES | | |
| Note on the Knowledge Requirement in Controlled Substance Cases | 6000 | 2010 |
| Finding the Amount of Controlled Substance..... | 6001 | 2022 |
| Finding the Amount of Controlled Substance in a Methamphetamine Case | 6001A EXAMPLE | 2018 |
| Delivering a Controlled Substance to a Minor..... | 6002 | 2003 |
| Delivering a Controlled Substance to a Prisoner | 6003 | 2003 |
| Delivering a Controlled Substance on or Near Certain Premises | 6004 | 2003 |
| Controlled Substance Analog | 6005 | 2010 |
| Possession of a Controlled Substance Without Tax Stamp | 6009 WITHDRAWN | 2019 |
| Delivery of a Controlled Substance | 6020 | 2018 |

WIS JI-CRIMINAL

| | | |
|--|-----------------------|------|
| Delivery of a Controlled Substance Analog | 6020A | 2018 |
| Manufacture of a Controlled Substance..... | 6021 | 2010 |
| Possession of a Controlled Substance..... | 6030 | 2021 |
| Attempted Possession of a Controlled Substance | 6031 | 2021 |
| Possession of a Controlled Substance with Intent to Deliver with Lesser Included Offense of Possession of a Controlled Substance | 6035 | 2018 |
| Possession of a Controlled Substance with Intent to Manufacture with Lesser Included Offense of Possession of a Controlled Substance | 6036 | 2018 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037 RENUMBERED 6037B | 1994 |
| Keeping or Maintaining a Place Resorted to by Persons Using Controlled Substances in Violation of Chapter 961 for the Purpose of Using Controlled Substances | 6037A | 2008 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037B | 2010 |
| Acquiring Possession of a Controlled Substance by Misrepresentation | 6038 | 2010 |
| Delivery of an Imitation Controlled Substance: Felony | 6040 | 2006 |
| Delivery of an Imitation Controlled Substance: Misdemeanor..... | 6042 | 2006 |
| Possession of Methamphetamine Waste | 6044 | 2009 |
| Using a Child to Deliver a Controlled Substance | 6046 | 2010 |
| Soliciting a Child for the Purpose of Delivering a Controlled Substance..... | 6047 | 2010 |
| Possession of Drug Paraphernalia..... | 6050 | 2021 |
| Possession of Drug Paraphernalia: Methamphetamine..... | 6053 | 2007 |
| Possessing Materials for Manufacturing Methamphetamine | 6065 | 2006 |
| Use or Possession of a Masking Agent..... | 6070 | 2021 |
| Obtaining a Prescription Drug by Fraud | 6100 | 2005 |
| Possession of a Prescription Drug with Intent to Deliver | 6110 | 2006 |
| Possession of a Prescription Drug without a Valid Prescription..... | 6112 | 2013 |

CRIMINAL SPECIAL MATERIALS

| | | |
|---|-------------------|------|
| Suggested Order of Instructions..... | SM-5 RENUMBERED 1 | 1995 |
| Jury Instructions on Lesser Included Offenses | SM-6 | 2014 |
| Juror Questioning of Witnesses | SM-8 | 2014 |
| When a Jury Requests to Hear/See Audio/Visual Evidence During Deliberations | SM-9 | 2022 |
| Grand Jury Proceedings | SM-10 | 2004 |
| John Doe Proceedings..... | SM-12 | 2019 |
| Substitution of Judge..... | SM-15 WITHDRAWN | 1994 |
| Collateral Attack on Prior Convictions..... | SM-16 | 2019 |
| Defendant's Consent to Proceed by Videoconference B Waiver of Right to be Present Under § 971.04 | SM-18 | 2014 |
| Voir Dire | SM-20 | 2017 |
| Waiver of Jury Trial: Acceptance, Withdrawal, and Related Issues..... | SM-21 | 2005 |
| Judge's Duty at Initial Appearance..... | SM-25 WITHDRAWN | 2011 |

WIS JI-CRIMINAL

| | | |
|---|------------------------------------|-------------|
| Inquiry Regarding the Decision Whether to Testify..... | SM-28 | 2012 |
| Waiver and Forfeiture of Counsel; Self-Representation; Standby Counsel; “Hybrid Representation”; Court Appointment of Counsel..... | SM-30 | 2006 |
| Waiver of Preliminary Examination | SM-31 | 2011 |
| Accepting a Plea of Guilty..... | SM-32 | 2021 |
| No Contest and <u>Alford</u> Pleas..... | SM-32A | 2021 |
| Accepting a Plea of Guilty: Use of Written Form..... | SM-32B | 1993 |
| Guilty Plea Acceptance Form | SM-32B APPENDIX WITHDRAWN | 2019 |
| Information on Postconviction Relief..... | SM-33 WITHDRAWN | 2011 |
| Instruction to be Used on Denial of Any Postconviction Motion (Other Than § 974.06) | SM-33A WITHDRAWN | 1991 |
| Instruction to be Used on Denial of a Postconviction Motion Under § 974.06..... | SM-33B WITHDRAWN | 1991 |
| Sentencing Procedure, Standards, and Special Issues..... | SM-34 | 1999 |
| Determining Sentence Credit Under Section 973.155 | SM-34A | 1/2023 |
| Increased Penalty for Habitual Criminality | SM-35 | 1/2023 |
| Special Disposition Under Section 973.015 – Expunction | SM-36 | 2018 |
| Bail After Conviction; Stay of Execution of Sentence | SM-39 WITHDRAWN | 1995 |
| Court’s Instruction to Defendant at Arraignment and Before Acceptance of a Plea of Guilty on Sex Crimes Charge | SM-40 WITHDRAWN | 1991 |
| Sentencing Persons Committed Under the Sex Crimes Law | SM-41 WITHDRAWN | 2011 |
| Inquiry in Conflict of Interest Cases..... | SM-45 | 2000 |
| Competency to Proceed | SM-50 | 2021 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | SM-50A RENUMBERED 650 | 2004 |
| Disclosure of the Identity of an Informer..... | SM-52 | 2005 |
| Inquiry When a Witness Claims the Privilege Against Self-Incrimination | SM-55 | 1994 |
| Procedure to Determine the Admissibility of Statements or Confessions of the Defendant..... | SM-60 WITHDRAWN | 1994 |
| Procedure to Follow When the Admissibility of Identification Evidence is at Issue Prior to or During a Criminal Trial | SM-61 WITHDRAWN | 1994 |
| Admissibility of Evidence Obtained by a Search and Seizure..... | SM-62 WITHDRAWN | 1994 |
| Post-Conviction Procedure Under Section 974.06, Wis. Stats. | SM-70 WITHDRAWN | 1994 |
| Habeas Corpus | SM-80 WITHDRAWN | 1994 |
| Procedure to Follow in Advising a Prisoner of Rights Under the Uniform Detainer Act..... | SM-90 | 1998 |
| INDEX | FOLLOWING SPECIAL MATERIALS | 2022 |

* * *

1457 MAIL THEFT — § 943.204**Statutory Definition of the Crime**

Section 943.204 of the Criminal Code of Wisconsin is violated by one who intentionally takes or receives the mail¹ of another from a residence or other building or the curtilage of a residence or other building without the other's consent and with intent to deprive the other permanently of possession of such mail.

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 are present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally (took) (received) mail intended for (name of victim(s)) from a (residence) (building) (curtilage of a residence) (curtilage of a building).²

The term "intentionally" means that the defendant must have had the mental purpose to take possession of the mail.³

2. (Name of victim(s)) did not consent⁴ to the (taking) (receiving) of the mail.
3. The defendant knew that (name of victim(s)) did not consent.⁵
4. The defendant intended to deprive (name of victim(s)) permanently of the possession of the mail.

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.

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 FELONY MAIL THEFT IS CHARGED, A JURY DETERMINATION OF THE AMOUNT OF MAIL MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE AMOUNT OF MAIL WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.⁶

[Determining Amount of Mail Taken]

[If you find the defendant guilty, you must answer the following questions:

(“Was the amount of mail taken or received from one or more individuals in a course of conduct at least 30 pieces?”

Answer: “yes” or “no”.)

(Was the amount of mail taken or received from one or more individuals in a course of conduct at least 10 pieces?

Answer: “yes” or “no”.)

Before you may answer “yes,” you must be satisfied beyond a reasonable doubt that

the amount of mail taken or received was at least the amount stated in the question.

If you are not so satisfied, you must answer the question “no.”]

ADD THE FOLLOWING FOR FELONY CASES INVOLVING MORE THAN ONE THEFT FROM ONE OR MORE OWNERS “DURING A COURSE OF CONDUCT,” AS PROVIDED IN § 971.36(3)(d).⁷

In determining the amount of mail taken or received, you may consider all thefts that you are satisfied beyond a reasonable doubt were from one or more owners and committed by the defendant during a course of conduct⁸.

IF FELONY MAIL THEFT IS CHARGED, A JURY DETERMINATION OF THE VICTIM STATUS MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VICTIM WAS AN ADULT AT RISK OR AN ELDER ADULT AT RISK.⁹

[Determining Victim Status]

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

(“Was the mail taken or received addressed to an (adult at risk) (elder adult at risk?))¹⁰

Answer: “yes” or “no”.)

Before you may answer “yes,” you must be satisfied beyond a reasonable doubt that the mail taken or received was addressed to an (adult at risk) (elder adult at risk).

If you are not so satisfied, you must answer the question “no.”]

COMMENT

Wis JI-Criminal 1457 was approved by the Committee in August 2022.

This instruction is for violations of § 943.204, created by 2019 Wisconsin Act 144 [effective date: March 5, 2020]. Act 144 also created new provisions relating to charging violations as a single crime if the property was mail and it was stolen from one or more owners during a course of conduct, as defined in § 947.013(1)(a) [new § 971.36(3)(d)].

The basic offense is a Class A misdemeanor. The penalty increases to a felony if the number of pieces of mail taken or received from one or more individuals in a course of conduct exceeds a specific amount. See footnote 5, below. The penalty also increases to a felony if the mail taken or received was addressed to an adult at risk or and elder adult at risk. See footnote 8, below.

1. Mail is defined as follows in § 943.204(d):

“Mail” means a letter, flat, postcard, package, bag, or other sealed article that is delivered by the U.S. postal service, a common carrier, or a delivery service and is not yet received by the addressee or that has been left to be collected for delivery by the U.S. postal service, a common carrier, or a delivery service.

2. Wis. Stat. § 943.204 does not define “curtilage.” Additionally, nothing in the legislative history indicates the intended scope of the term, and Wisconsin law does not sufficiently address this topic. Therefore, the Committee concluded that further definition in the instruction could not be provided with substantial assurance of accuracy.

However, if theft from the curtilage of a residence or a building is alleged, the term may need to be defined for the jury. If requested, the definition of “curtilage” included in similar “theft of mail” statutes from other jurisdictions may provide guidance as to the term’s meaning. For example, in T.C.A. § 39-14-129 “mail theft,” the Tennessee legislature defines “curtilage” as follows:

“Curtilage” means the area surrounding a dwelling that is necessary, convenient and habitually used for family purposes and for those activities associated with the sanctity of a person’s home.

Additionally, trial courts may gain some guidance by reviewing Wisconsin case law decisions that consider what constitutes “curtilage” for Fourth Amendment purposes. The Committee notes, however, that any factors that bear upon this consideration may not be ideally suited for defining the term in the context of criminal liability.

In State v. Dumstrey, 2016 WI 3, ¶32, 366 Wis.2d 64, 873 N.W.2d 502, the Wisconsin Supreme Court reviewed the term “curtilage” as applied for Fourth Amendment purposes. The court noted the four factors set forth by the United States Supreme Court in United States v. Dunn, 480 U.S. 294, 301, 107 S.Ct. 1134, 94 L.Ed.2d 326 (1987) that it previously adopted as relevant to analyzing whether an area constitutes curtilage of a home.

- (1) “the proximity of the area claimed to be curtilage to the home”;
- (2) “whether the area is included within an enclosure surrounding the home”;
- (3) “the nature of the uses to which the area is put [;] and”

(4) “the steps taken by the resident to protect the area from observation by people passing by.”

However, the court noted that it does not “mechanically” apply these factors as part of a “finely tuned formula.” Dumstrey, supra, at ¶32. Instead, these factors “are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration—whether the area in question is so intimately tied to the home itself that it should be placed under the home’s ‘umbrella’ of Fourth Amendment protection.” Id.

3. “Intentionally” also is satisfied if the person “is aware that his or her conduct is practically certain to cause [the] result.” In the context of this offense, it is unlikely that the “practically certain” alternative will apply so it has been left out of the text of the instruction. See Wis JI-Criminal 923B for an instruction that includes that alternative.

4. If the definition of “without consent” is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that “without consent” means “no consent in fact” or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

5. Knowledge that the taking was without consent is required because the definition of this offense begins with the word “intentionally.” Section 939.23(3) provides that the word “intentionally” requires “knowledge of those facts which are necessary to make [the] conduct criminal and which are set forth after the word ‘intentionally’” in the statute.

6. The penalties provided in subs. (3)(a) through (c) are as follows:

- If fewer than 10 pieces of mail are taken or received from one or more individuals in a course of conduct, a Class A misdemeanor.
- If at least 10 but fewer than 30 pieces of mail are taken or received from one or more individuals in a course of conduct, a Class I felony.
- If 30 or more pieces of mail are taken or received from one or more individuals in a course of conduct, a Class H felony.

While the number of pieces of mail taken or received 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 pieces of mail taken or received.

7. Section 971.36 sets forth a number of rules relating to the pleading and prosecution of theft cases. Subsection (3) allows the prosecution of more than one theft as a single crime if one of the following applies:

- (a) The property belonged to the same owner and the thefts were committed pursuant to a single intent and design or in execution of a single deceptive scheme.
- (b) The property belonged to the same owner and was stolen by a person in possession of it.
- (c) The property belonged to more than one owner and was stolen from the same place pursuant to a single intent and design.

(d) If the property is mail, as defined in s. 943.204(1)(d), the property was stolen from one or more owners during a course of conduct, as defined in 947.013(1)(a).

The legislature in § 971.36(3)(a) has explicitly provided prosecutors with discretion to charge multiple thefts as a single crime when “the property belonged to the same owner and the thefts were committed pursuant to a single intent and design or in execution of a single deceptive scheme.” See State v. Jacobsen, 2014 WI App 13, 352 Wis. 2d 409, ¶20, 842 N.W.2d 365, 13-0830.

The material in the instruction addresses the situation defined in subsec. (3)(d): property was stolen from one or more owners during a course of conduct. There is no Wisconsin case law interpreting this aspect of § 971.36.

Reading § 943.20(1)(a), the statute concerning theft of movable property, in conjunction with § 971.36(3)(a) and (4), the court of appeals in State v. Elverman, 2015 WI App 91, 367 Wis. 2d 126, ¶30, 876 N.W.2d 511 saw no other reasonable interpretation but that multiple acts of theft occurring over a period of time may, in certain circumstances, constitute one continuous offense that is not complete until the last act is completed.

The Committee’s research on the issue of whether this need be submitted to the jury can be summarized as follows: (1) there is no case law dealing with § 943.204; (2) an instructive case, State v. Spraggin, dealt with a similar situation in the context of receiving stolen property; and (3) while there may be equally effective ways of dealing with the issue, the Committee concluded that the question of whether all mail was stolen from one or more owners during a course of conduct must be submitted to the jury.

State v. Spraggin, 71 Wis.2d 604, 239 N.W.2d 297 (1976), dealt with the receipt of several articles of stolen property. Spraggin was charged with a felony offense, based on the receipt of multiple stolen articles (valued at more than \$500) at one time. The applicable statute, § 943.34, did not have a provision like § 971.36, so the court held that lumping multiple articles together was proper only if they were received at one time. If there were separate receipts, separate misdemeanor charges would have been required, and a felony charge could not be supported. The case was presented to the jury as a felony, but the jury found the value of the goods received as \$180. The court entered judgment on the basis of the felony conviction, apparently relying on the prosecutor’s contention that a 25 inch color TV was worth more than \$500. The supreme court reversed, holding that, at most, two misdemeanors were committed.

The Spraggin court held that presenting the case to the jury solely as a felony “was in effect a decision on the grade of the offense, which is clearly an issue only for the jury.” (71 Wis.2d 604, 615, citing State v. Heyroth, the case holding that finding value in a theft case is for the jury.) The court went on to point out that there are optional ways of proceeding in a case like this:

Since variances between the allegations and the proof may be beyond the control of the state, see: People v. Smith (1945), 26 Cal.2d 854, 161 Pac.2d 941; State v. Niehuser (Or. App. 1975), 533 Pac.2d 834; People v. Roberts (1960), 182 Cal. App.2d 431, 6 Cal. Rptr. 161, one option is to charge in the alternative. Likewise, the defense could request, or the state on its own, could submit the alternative charges of a single or multiple receptions, when, as in cases of lesser included charges, see: Devroy v. State (1942), 239 Wis. 466, 1 N.W.2d 875; State v. Melvin (1970), 49 Wis.2d 246, 181 N.W.2d 490, a reasonable view of the evidence reveals that there is a reasonable basis for conviction on either. With the alternatives phrased in terms of separate or

joint receptions of multiple stolen items, the jury may decide on the evidence and thereafter grade the offense through the establishment of value.

71 Wis.2d 604, 616 17.

Submitting the issue to the jury seems to be required by the Spraggin case because it goes to “the grade of the offense.” This is consistent with the position the Committee has taken in similar situations in the past: if a fact determines whether a different range of penalties applies (e.g., changes a crime from a misdemeanor to a felony or from one class of felony to another), it is for the jury; if a fact only influences the length of possible sentence within a statutory range, it is for the judge.

The Committee concluded that it would be more effective, or at least more efficient, to leave the multiple pieces of mail decision question alone. The instruction can be used without change for either a misdemeanor or a felony charge. If satisfied that the offense was committed with regard to “any item of mail,” the jury should find the defendant guilty. Then, in determining the number of pieces of mail taken or received, the jury should include “all thefts which you find, beyond a reasonable doubt, were from one or more owners and committed by the defendant during a course of conduct.”

8. “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. See § 947.013(1)(a).

9. The special question addresses the penalty-increasing facts in § 943.204(3)(d). A violation of § 943.204(3)(d) is a Class H felony.

10. § 943.204(3)(d) provides a penalty enhancement if the mail that is taken or received is addressed to an adult at risk or an elder adult at risk. The definitions of “adult at risk” and “elder adult at risk” provided in other statutes. The cross-referenced definitions are as follow:

- “Adult at risk” means any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. See § 55.01(1e).
- “Elder adult at risk” means any person age 60 or older who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation. See § 46.90(1)(br).

[This page is intentionally left blank]

1508 CRIMES AGAINST FINANCIAL INSTITUTIONS: §§ 943.80 - 943.92

Subchapter IV, Chapter 943, comprises statutes defining crimes against financial institutions. It was created by 2005 Wisconsin Act 212. Effective date: April 11, 2006.

There are published instructions for four offenses in this subchapter:

JI 1512 Fraud Against A Financial Institution – § 943.82(1)

JI 1470 Transfer Of Encumbered Property – § 943.84

NOTE: This is former § 943.25, renumbered by 2005 Wisconsin Act 212.

JI 1522 Robbery Of A Financial Institution – § 943.87

JI 1524-26 Money Laundering – § 943.895

Most of the other crimes in the subchapter define conduct directed at financial institutions that is also prohibited by general criminal statutes for which there are published instructions.

The following crimes against financial institutions have counterparts in the referenced general criminal statutes:

| | | |
|-----------|---|---|
| 943.81 | Theft from a financial institution | 943.20(1)(a) Theft Wis JI-Criminal 1441 |
| 943.82(2) | Fraud to obtain another's personal Identifying information | 943.201 "Identity theft" Wis JI-Criminal 1458, 1459 |
| 943.83 | Loan fraud | 943.20(1)(a) Theft by fraud Wis JI-Criminal 1453 A & B |
| 943.85 | Bribery involving a financial institution | 946.10 Bribery of public officers a and employees |

Wis JI-Criminal 1720, 1721, 1723

943.86 Extortion against a financial institution 943.30 Threat to injure or accuse of crime
Wis JI-Criminal 1473B

CAUTION: Before using any of the general instructions referenced above, compare carefully the elements of the general crimes and the elements of the financial institution crimes. There are significant differences in some of the crime definitions. Further, a different penalty structure applies to the financial institution crimes. See § 943.91.

There are three crimes against financial institutions for which instructions have not been drafted that do not have counterparts in the general criminal statutes:

943.88 Organizer of financial crimes

943.895 Money laundering

943.89 Mail fraud

943.90 Wire fraud

COMMENT

Wis JI-Criminal 1508 was originally published in 2008. This revision was approved by the Committee in October 2022. It reflects the addition of § 943.895 “money laundering” as created by 2019 Wisconsin Act 161 [effective date: March 5, 2020].

1524 MONEY LAUNDERING — § 943.895(2)(a)1 - 2.**Statutory Definition of the Crime**

Money laundering, as defined by § 943.895(2)(a) of the Criminal Code of Wisconsin, is committed by one who knowingly [(receives or acquires) (conducts a transaction involving)] [(directs) (plans) (organizes) (initiates) (finances) (manages) (supervises) (facilitates) the transportation or transfer of] proceeds that the person knows are derived from unlawful activity.

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant knowingly [(received or acquired) (conducted a transaction¹ involving)] [(directed) (planned) (organized) (initiated) (financed) (managed) (supervised) (facilitated) the transportation or transfer of] proceeds.

“Proceeds” means property or anything of value acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission.²

2. The proceeds were derived from unlawful activity.³

**ADD THE FOLLOWING IF THE ALLEGED UNLAWFUL
ACTIVITY INVOLVES THE COMMISSION OF A CRIME AND A**

UNIFORM INSTRUCTION FOR THAT UNLAWFUL ACTIVITY EXISTS.

[The State alleges that the proceeds were derived from the unlawful activity of (insert unlawful activity). The State must prove by evidence which satisfies you beyond a reasonable doubt that the proceeds were derived from (insert unlawful activity).

(Insert unlawful activity) is committed by one who

LIST THE ELEMENTS OF THE UNLAWFUL ACTIVITY AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.]⁴

3. The defendant knew that the proceeds were derived from unlawful activity.

Knowledge that the proceeds were derived from unlawful activity does not require knowledge of the specific nature of the unlawful activity involved.⁵

Deciding About Knowledge

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 FELONY MONEY LAUNDERING IS CHARGED, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.⁶

[Determining Value]

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

(“Was the value of the proceeds involved in the transaction more \$100,000?”

Answer: “yes” or “no.”)

(“Was the value of the proceeds involved in the transaction more than \$10,000?”

Answer “yes” or “no.”)

(“Was the value of the proceeds involved in the transaction more than \$5,000?”

Answer “yes” or “no.”)

(“Was the value of the proceeds involved in the transaction more than \$2,500?”

Answer “yes” or “no.”)

Before you may answer “yes,” you must be satisfied beyond a reasonable doubt that the value of the proceeds was more than the amount stated in the question.

If you are not so satisfied, you must answer the question “no.”]

ADD THE FOLLOWING FOR FELONY CASES INVOLVING MORE THAN ONE VIOLATION “PURSUANT TO A SINGLE INTENT AND DESIGN,” AS PROVIDED IN § 943.895(2)(c).⁷

[In determining the value of the total proceeds involved in the transaction, you may consider all violations that you are satisfied beyond a reasonable doubt were committed by the defendant pursuant to a single intent and design.]

COMMENT

Wis JI-Criminal 1524 was approved by the Committee in October 2022.

Section 943.895(2)(a) was created by 2019 Wisconsin Act 161 [effective date: March 5, 2020].

Wis JI-Criminal 1524 was drafted for the offense defined in Sec. 943.895(2)(a)1 -2. For violations of § 943.895(2)(a)3., see Wis JI-Criminal 1525. For a violation of § 943.895(2)(a)4., see Wis JI-Criminal 1526.

The basic offense is a Class A misdemeanor. The penalty increases to a felony if the value of the total proceeds involved in the transaction exceeds specific amounts. See footnote 4, below.

A financial institution that has complied with all applicable money laundering reporting requirements under federal law is not criminally liable under § 943.895(4).

1. Sec. 943.895(1)(a) provides that “‘transaction’ has the meaning given in § 946.79(1)(f).”
2. This is the definition of “proceeds” provided in § 943.895(1)(a).
3. The statute does not define “unlawful activity,” and a review of the legislative history indicates that there was a decision not to do so. If a definition is requested, guidance as to its meaning may be gained from the Black’s Law Dictionary (2nd ed.) definition, which in part defines the term as follows:

“An act that is contrary to or violates a law that exists.”

The Committee concluded that the term clearly includes criminal conduct, and if criminal conduct is alleged as the unlawful activity the crime should be defined for the jury.

4. The Committee recommends that a complete listing of the elements of the “unlawful activity” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)]. In the absence of a uniform instruction, the court must develop and present the elements of the alleged unlawful activity.

5. See § 943.895(2)(b).

6. The jury must make a finding of the value of the proceeds 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 penalties provided in subs. (3)(a) through (e) are as follows:

- if the total value of the proceeds involved in the transaction does not exceed \$2,500, the offense is a Class A misdemeanor;
- if the total value of the proceeds involved in the transaction exceeds \$2,500 but not \$5,000, the

- offense is a Class I felony;
- if the total value of the proceeds involved in the transaction exceeds \$5,000 but not \$10,000, the offense is a Class H felony;
- if the total value of the proceeds involved in the transaction exceeds \$10,000, the offense is a Class G felony; and,
- if the total value of the proceeds involved in the transaction exceeds \$100,000, the offense is a Class F felony.

The questions in the instruction omit the upper limits of the categories for Class I, Class H, and Class G 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.

7. Section 943.895(2)(c) sets forth the rule relating to the pleading and prosecution of money laundering cases. This subsection allows the prosecution of more than one violation as a single crime if “the violations were pursuant to a single intent and design.”

The material in the instruction addresses the situation defined in subsec. (2)(c): more than one violation, pursuant to a single intent and design. There is no Wisconsin case law interpreting this aspect of § 943.895(2)(c). But the Committee’s conclusion that it may be dealt with most effectively as part of the value question is supported by the case law on related issues, as described below.

State v. Spraggin, 71 Wis.2d 604, 239 N.W.2d 297 (1976), dealt with the receipt of several articles of stolen property. Spraggin was charged with a felony offense, based on the receipt of multiple stolen articles (valued at more than \$500) at one time. The applicable statute, § 943.34, did not have a provision like § 943.895(2)(c), so the court held that lumping multiple articles together was proper only if they were received at one time. If there were separate receipts, separate misdemeanor charges would have been required, and a felony charge could not be supported. The case was presented to the jury as a felony, but the jury found the value of the goods received as \$180. The court entered judgment on the basis of the felony conviction, apparently relying on the prosecutor’s contention that a 25-inch color TV was worth more than \$500. The supreme court reversed, holding that, at most, two misdemeanors were committed.

The Spraggin court held that presenting the case to the jury solely as a felony “was in effect a decision on the grade of the offense, which is clearly an issue only for the jury.” (81 Wis.2d 604, 615, citing State v. Heyroth, the case holding that finding value in a theft case is for the jury.) The court went on to point out that there are optional ways of proceeding in a case like this:

Since variances between the allegations and the proof may be beyond the control of the state, see: People v. Smith (1945), 26 Cal.2d 854, 161 Pac.2d 941; State v. Niehuser (Or. App. 1975), 533 Pac.2d 834; People v. Roberts (1960), 182 Cal.App.2d 431, 6 Cal. Rptr. 161, one option is to charge in the alternative. Likewise, the defense could request, or the state on its own, could submit the alternative charges of a single or multiple receptions, when, as in cases of lesser included charges, see: Devroy v. State (1942), 239 Wis. 466, 1 N.W.2d 875; State v. Melvin (1970), 49 Wis.2d 246, 181 N.W.2d 490, a reasonable view of the evidence reveals that there is a reasonable basis for conviction on either. With the alternatives phrased in terms of separate or joint receptions of multiple stolen items, the jury may decide on the evidence and thereafter grade the offense through the establishment of value.

71 Wis.2d 604, 616-17.

Submitting the issue to the jury seems to be required by the Spraggin case because it goes to “the grade of the offense.” This is consistent with the position the Committee has taken in similar situations in the past: if a fact determines whether a different range of penalties applies (e.g., changes a crime from a misdemeanor to a felony or from one class of felony to another), it is for the jury; if a fact only influences the length of possible sentence within a statutory range, it is for the judge.

The Committee concluded that it would be more effective, or at least more efficient, to leave the multiple item decision for the value question alone. The instruction for the offense can be used without change for either a misdemeanor or a felony charge. If satisfied that the offense was committed with regard to “any property,” the jury should find the defendant guilty. Then, in determining value, the jury is instructed to “consider all thefts you are satisfied beyond a reasonable doubt were from the same owner and committed by the defendant pursuant to a single intent and design.”

1525 MONEY LAUNDERING — § 943.895(2)(a)3.**Statutory Definition of the Crime**

Money laundering, as defined by § 943.895(2)(a)3 of the Criminal Code of Wisconsin, is committed by one who knowingly (gives) (sells) (transfers) (trades) (invests) (conceals) (transports) or otherwise makes available proceeds that the person knows are intended to be used for the purpose of committing or furthering the commission of unlawful activity.

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant knowingly (gave) (sold) (transferred) (traded) (invested) (concealed) (transported) or otherwise made proceeds available.

“Proceeds” means property or anything of value acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission.¹

2. The proceeds were derived from unlawful activity.²

ADD THE FOLLOWING IF THE ALLEGED UNLAWFUL ACTIVITY INVOLVES THE COMMISSION OF A CRIME AND A UNIFORM INSTRUCTION FOR THAT UNLAWFUL ACTIVITY EXISTS.

[The State alleges that the proceeds were derived from the unlawful activity of (insert unlawful activity). The State must prove by evidence which satisfies you beyond a reasonable doubt that the proceeds were derived from (insert unlawful activity).

(Insert unlawful activity) is committed by one who

LIST THE ELEMENTS OF THE UNLAWFUL ACTIVITY AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.]³

3. The defendant knew that the proceeds were intended to be used for committing or furthering unlawful activity.

Knowledge that the proceeds are derived from unlawful activity does not require knowledge of the specific nature of the unlawful activity involved.⁴

Deciding About Purpose and Knowledge

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 FELONY MONEY LAUNDERING IS CHARGED, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.⁵

[Determining Value]

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

("Was the value of the proceeds involved in the transaction more \$100,000?")

Answer: "yes" or "no.")

("Was the value of the proceeds involved in the transaction more than \$10,000?")

Answer "yes" or "no.")

("Was the value of the proceeds involved in the transaction more than \$5,000?")

Answer "yes" or "no.")

("Was the value of the proceeds involved in the transaction more than \$2,500?")

Answer "yes" or "no.")

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the value of the proceeds was more than the amount stated in the question.

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

ADD THE FOLLOWING FOR FELONY CASES INVOLVING MORE THAN ONE VIOLATION "PURSUANT TO A SINGLE INTENT AND DESIGN," AS PROVIDED IN § 943.895(2)(c).⁶

[In determining the value of the total proceeds involved in the transaction, you may consider all violations that you are satisfied beyond a reasonable doubt were committed by the defendant pursuant to a single intent and design.]

COMMENT

Wis JI-Criminal 1525 was approved by the Committee in October 2022.

Section 943.895(2)(a) was created by 2019 Wisconsin Act 161 [effective date: March 5, 2020].

Wis JI-Criminal 1525 is drafted for the offense defined in Sec. 943.895(2)(a)3. For violations of § 943.895(2)(a)1-2., see Wis JI-Criminal 1524. For a violation of § 943.895(2)(a)4., see Wis JI-Criminal 1526.

The basic offense is a Class A misdemeanor. The penalty increases to a felony if the value of the total proceeds involved in the transaction exceeds specific amounts. See footnote 2, below.

A financial institution that has complied with all applicable money laundering reporting requirements under federal law is not criminally liable under § 943.895(4).

1. This is the definition of “proceeds” provided in § 943.895(1)(a).
2. The statute does not define “unlawful activity,” and a review of the legislative history indicates that there was a decision not to do so. If a definition is requested, guidance as to its meaning may be gained from the Black’s Law Dictionary (2nd ed.) definition, which in part defines the term as follows:

“An act that is contrary to or violates a law that exists.”

The Committee concluded that the term clearly includes criminal conduct, and if criminal conduct is alleged as the unlawful activity the crime should be defined for the jury.

3. The Committee recommends that a complete listing of the elements of the “unlawful activity” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)]. In the absence of a uniform instruction, the court must develop and present the elements of the alleged unlawful activity.

4. See § 943.895(2)(b).

5. The jury must make a finding of the value of the proceeds 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 penalties provided in subs. (3)(a) through (e) are as follows:

- if the total value of the proceeds involved in the transaction does not exceed \$2,500, the offense is a Class A misdemeanor;
- if the total value of the proceeds involved in the transaction exceeds \$2,500 but not \$5,000, the offense is a Class I felony;
- if the total value of the proceeds involved in the transaction exceeds \$5,000 but not \$10,000, the

- offense is a Class H felony;
- if the total value of the proceeds involved in the transaction exceeds \$10,000, the offense is a Class G felony; and,
- if the total value of the proceeds involved in the transaction exceeds \$100,000, the offense is a Class F felony.

The questions in the instruction omit the upper limits of the categories for Class I, Class H, and Class G 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.

6. Section 943.895(2)(c) sets forth the rule relating to the pleading and prosecution of money laundering cases. This subsection allows the prosecution of more than one violation as a single crime if “the violations were pursuant to a single intent and design.”

The material in the instruction addresses the situation defined in subsec. (2)(c): more than one violation, pursuant to a single intent and design. There is no Wisconsin case law interpreting this aspect of § 943.895(2)(c). But the Committee’s conclusion that it may be dealt with most effectively as part of the value question is supported by the case law on related issues, as described below.

State v. Spraggin, 71 Wis.2d 604, 239 N.W.2d 297 (1976), dealt with the receipt of several articles of stolen property. Spraggin was charged with a felony offense, based on the receipt of multiple stolen articles (valued at more than \$500) at one time. The applicable statute, § 943.34, did not have a provision like § 943.895(2)(c), so the court held that lumping multiple articles together was proper only if they were received at one time. If there were separate receipts, separate misdemeanor charges would have been required, and a felony charge could not be supported. The case was presented to the jury as a felony, but the jury found the value of the goods received as \$180. The court entered judgment on the basis of the felony conviction, apparently relying on the prosecutor’s contention that a 25-inch color TV was worth more than \$500. The supreme court reversed, holding that, at most, two misdemeanors were committed.

The Spraggin court held that presenting the case to the jury solely as a felony “was in effect a decision on the grade of the offense, which is clearly an issue only for the jury.” (81 Wis.2d 604, 615, citing State v. Heyroth, the case holding that finding value in a theft case is for the jury.) The court went on to point out that there are optional ways of proceeding in a case like this:

Since variances between the allegations and the proof may be beyond the control of the state, see: People v. Smith (1945), 26 Cal.2d 854, 161 Pac.2d 941; State v. Niehuser (Or. App. 1975), 533 Pac.2d 834; People v. Roberts (1960), 182 Cal.App.2d 431, 6 Cal. Rptr. 161, one option is to charge in the alternative. Likewise, the defense could request, or the state on its own, could submit the alternative charges of a single or multiple receptions, when, as in cases of lesser included charges, see: Devroy v. State (1942), 239 Wis. 466, 1 N.W.2d 875; State v. Melvin (1970), 49 Wis.2d 246, 181 N.W.2d 490, a reasonable view of the evidence reveals that there is a reasonable basis for conviction on either. With the alternatives phrased in terms of separate or joint receptions of multiple stolen items, the jury may decide on the evidence and thereafter grade the offense through the establishment of value.

71 Wis.2d 604, 616-17.

Submitting the issue to the jury seems to be required by the Spraggin case because it goes to “the grade of the offense.” This is consistent with the position the Committee has taken in similar situations in the past: if a fact determines whether a different range of penalties applies (e.g., changes a crime from a misdemeanor to a felony or from one class of felony to another), it is for the jury; if a fact only influences the length of possible sentence within a statutory range, it is for the judge.

The Committee concluded that it would be more effective, or at least more efficient, to leave the multiple item decision for the value question alone. The instruction for the offense can be used without change for either a misdemeanor or a felony charge. If satisfied that the offense was committed with regard to “any property,” the jury should find the defendant guilty. Then, in determining value, the jury is instructed to “consider all thefts you are satisfied beyond a reasonable doubt were from the same owner and committed by the defendant pursuant to a single intent and design.”

1526 MONEY LAUNDERING — § 943.895(2)(a)4.**Statutory Definition of the Crime**

Money laundering, as defined by § 943.895(2)(a)4 of the Criminal Code of Wisconsin, is committed by one who knowingly conducts a transaction designed in whole or in part to [(conceal) (disguise) the nature, location, source, ownership, or control of proceeds obtained through unlawful activity] [avoid a transaction reporting requirement under federal law], and the person knows the proceeds are derived from unlawful activity.

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 knowingly conducted a transaction¹ involving proceeds.

“Proceeds” means property or anything of value acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission.²

2. The proceeds were derived from unlawful activity.³

ADD THE FOLLOWING IF THE ALLEGED UNLAWFUL ACTIVITY INVOLVES A COMMISSION OF A CRIME AND THE UNIFORM INSTRUCTION FOR THAT UNLAWFUL ACTIVITY EXISTS.

[The State alleges that the proceeds were derived from the unlawful activity of

(insert unlawful activity). The State must prove by evidence which satisfies you beyond a reasonable doubt that the proceeds were derived from (insert unlawful activity).

(Insert unlawful activity) is committed by one who

LIST THE ELEMENTS OF THE UNLAWFUL ACTIVITY AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.]⁴

3. The defendant knew that the proceeds were derived from unlawful activity.

Knowledge that the proceeds were derived from unlawful activity does not require knowledge of the specific nature of the unlawful activity involved.⁵

4. The transaction made by the defendant was designed in whole or in part to [(conceal) (disguise) the nature, location, source, ownership, or control of the proceeds obtained through unlawful activity.] [avoid a transaction reporting requirement under federal law.]

Deciding About Purpose and Knowledge

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

IF FELONY MONEY LAUNDERING IS CHARGED, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.⁶

[Determining Value]

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

(“Was the value of the proceeds involved in the transaction more \$100,000?”

Answer: “yes” or “no.”)

(“Was the value of the proceeds involved in the transaction more than \$10,000?”

Answer “yes” or “no.”)

(“Was the value of the proceeds involved in the transaction more than \$5,000?”

Answer “yes” or “no.”)

(“Was the value of the proceeds involved in the transaction more than \$2,500?”

Answer “yes” or “no.”)

Before you may answer “yes,” you must be satisfied beyond a reasonable doubt that the value of the proceeds was more than the amount stated in the question.

If you are not so satisfied, you must answer the question “no.”]

ADD THE FOLLOWING FOR FELONY CASES INVOLVING MORE THAN ONE VIOLATION “PURSUANT TO A SINGLE INTENT AND DESIGN,” AS PROVIDED IN § 943.895(2)(c).⁷

[In determining the value of the total proceeds involved in the transaction, you may consider all violations that you are satisfied beyond a reasonable doubt were committed by

the defendant pursuant to a single intent and design.]

COMMENT

Wis JI-Criminal 1526 was approved by the Committee in October 2022.

Section 943.895(2)(a) was created by 2019 Wisconsin Act 161 [effective date: March 5, 2020].

Wis JI-Criminal 1526 is drafted for the offense defined in Sec. 943.895(2)(a)4. For violations of § 943.895(2)(a)1-2., see Wis JI-Criminal 1524. For a violation of § 943.895(2)(a)3., see Wis JI-Criminal 1525.

The basic offense is a Class A misdemeanor. The penalty increases to a felony if the value of the total proceeds involved in the transaction exceeds specific amounts. See footnote 4, below.

A financial institution that has complied with all applicable money laundering reporting requirements under federal law is not criminally liable under § 943.895(4).

1. Sec. 943.895(1)(a) provides that “‘transaction’ has the meaning given in § 946.79(1)(f).”
2. This is the definition of “proceeds” provided in § 943.895(1)(a).
3. The statute does not define “unlawful activity,” and a review of the legislative history indicates that there was a decision not to do so. If a definition is requested, guidance as to its meaning may be gained from the Black’s Law Dictionary (2nd ed.) definition, which in part defines the term as follows:

“An act that is contrary to or violates a law that exists.”

The Committee concluded that the term clearly includes criminal conduct, and if criminal conduct is alleged as the unlawful activity the crime should be defined for the jury.

4. The Committee recommends that a complete listing of the elements of the “unlawful activity” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)]. In the absence of a uniform instruction, the court must develop and present the elements of the alleged unlawful activity.

5. See § 943.895(2)(b).
6. The jury must make a finding of the value of the proceeds 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 penalties provided in subs. (3)(a) through (e) are as follows:

- if the total value of the proceeds involved in the transaction does not exceed \$2,500, the offense is a Class A misdemeanor;
- if the total value of the proceeds involved in the transaction exceeds \$2,500 but not \$5,000, the offense is a Class I felony;
- if the total value of the proceeds involved in the transaction exceeds \$5,000 but not \$10,000, the offense is a Class H felony;
- if the total value of the proceeds involved in the transaction exceeds \$10,000, the offense is a Class G felony; and,
- if the total value of the proceeds involved in the transaction exceeds \$100,000, the offense is a Class F felony.

The questions in the instruction omit the upper limits of the categories for Class I, Class H, and Class G 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.

7. Section 943.895(2)(c) sets forth the rule relating to the pleading and prosecution of money laundering cases. This subsection allows the prosecution of more than one violation as a single crime if “the violations were pursuant to a single intent and design.”

The material in the instruction addresses the situation defined in subsec. (2)(c): more than one violation, pursuant to a single intent and design. There is no Wisconsin case law interpreting this aspect of § 943.895(2)(c). But the Committee’s conclusion that it may be dealt with most effectively as part of the value question is supported by the case law on related issues, as described below.

State v. Spraggin, 71 Wis.2d 604, 239 N.W.2d 297 (1976), dealt with the receipt of several articles of stolen property. Spraggin was charged with a felony offense, based on the receipt of multiple stolen articles (valued at more than \$500) at one time. The applicable statute, § 943.34, did not have a provision like § 943.895(2)(c), so the court held that lumping multiple articles together was proper only if they were received at one time. If there were separate receipts, separate misdemeanor charges would have been required, and a felony charge could not be supported. The case was presented to the jury as a felony, but the jury found the value of the goods received as \$180. The court entered judgment on the basis of the felony conviction, apparently relying on the prosecutor’s contention that a 25-inch color TV was worth more than \$500. The supreme court reversed, holding that, at most, two misdemeanors were committed.

The Spraggin court held that presenting the case to the jury solely as a felony “was in effect a decision on the grade of the offense, which is clearly an issue only for the jury.” (81 Wis.2d 604, 615, citing State v. Heyroth, the case holding that finding value in a theft case is for the jury.) The court went on to point out that there are optional ways of proceeding in a case like this:

Since variances between the allegations and the proof may be beyond the control of the state, see:

People v. Smith (1945), 26 Cal.2d 854, 161 Pac.2d 941; State v. Niehuser (Or. App. 1975), 533 Pac.2d 834; People v. Roberts (1960), 182 Cal.App.2d 431, 6 Cal. Rptr. 161, one option is to charge in the alternative. Likewise, the defense could request, or the state on its own, could submit the alternative charges of a single or multiple receptions, when, as in cases of lesser included charges, see: Devroy v. State (1942), 239 Wis. 466, 1 N.W.2d 875; State v. Melvin (1970), 49 Wis.2d 246, 181 N.W.2d 490, a reasonable view of the evidence reveals that there is a reasonable basis for conviction on either. With the alternatives phrased in terms of separate or joint receptions of multiple stolen items, the jury may decide on the evidence and thereafter grade the offense through the establishment of value.

71 Wis.2d 604, 616-17.

Submitting the issue to the jury seems to be required by the Spraggin case because it goes to “the grade of the offense.” This is consistent with the position the Committee has taken in similar situations in the past: if a fact determines whether a different range of penalties applies (e.g., changes a crime from a misdemeanor to a felony or from one class of felony to another), it is for the jury; if a fact only influences the length of possible sentence within a statutory range, it is for the judge.

The Committee concluded that it would be more effective, or at least more efficient, to leave the multiple item decision for the value question alone. The instruction for the offense can be used without change for either a misdemeanor or a felony charge. If satisfied that the offense was committed with regard to “any property,” the jury should find the defendant guilty. Then, in determining value, the jury is instructed to “consider all thefts you are satisfied beyond a reasonable doubt were from the same owner and committed by the defendant pursuant to a single intent and design.”

1605 COMMERCIAL GAMBLING: SETTING UP OR COLLECTING THE PROCEEDS OF A GAMBLING MACHINE — § 945.03(1m)(e)

Statutory Definition of the Crime

Commercial gambling, as defined in § 945.03(1m)(e) of the Criminal Code of Wisconsin, is committed by one who intentionally [sets up a gambling machine for use for the purpose of gambling] [or] [collects the proceeds of a gambling machine].¹

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 [two] [three]² elements are present.

Elements of the Crime That the State Must Prove

1. The machine in question was a gambling machine.

A “gambling machine” is a device which for a consideration³ affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine.⁴

[The phrase “chance, even though accompanied by some skill,” means that chance must predominate over skill in determining the outcome of the game.]⁵

ADD THE FOLLOWING IF SUPPORTED BY THE EVIDENCE.

[“Gambling machine” does not include an amusement device if it rewards the player exclusively with one or more nonredeemable free replays for achieving certain scores and does not change the ratio or record the number of the free replays so awarded.]⁶

2. The defendant intentionally [set up the gambling machine for use for the purpose of gambling] [or] [collected the proceeds of the gambling machine].⁷

This means that the defendant knew that the machine was being used for gambling and knew that the proceeds were derived from gambling.⁸

ADD THE FOLLOWING AS A THIRD ELEMENT IF THE CHARGE INDICATES OR THERE IS EVIDENCE THAT THE ALLEGED VIOLATION OCCURRED ON LICENSED PREMISES.⁹

- [3. The defendant intentionally (set up for the purpose of gambling) (or) (collected the proceeds of) six or more gambling machines.]

Deciding About Knowledge and Intent

You cannot look into a person’s mind to find knowledge and intent. Knowledge and intent 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 knowledge and intent.

Jury’s Decision

If you are satisfied beyond a reasonable doubt that [both] [all three]¹⁰ 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 1605 was originally published in 1996 and revised in 1999, 2000, and 2002. The 2002 revision adapted the instruction to the new format and added the third element for certain types of cases. This revision was approved by the Committee in October 2022; it added to the comment.

This instruction is drafted for violations of § 945.03(1m)(e). It is set up to include either two or three elements, depending on whether the alleged violations took place on a licensed premises. The two element version should be used for offenses on non-licensed premises; setting up or collecting the proceeds of a single machine violates the statute in that situation. The three element version should be used either when the charge identifies the site as a licensed premises or evidence is introduced to that effect. The penalty provisions in § 945.03(2m) punish offenses on Class “B” or “Class B” premises as forfeitures if one to five machines are involved. The criminal penalty applies only if six or more machines are involved.

1. The bracketed alternative supported by the evidence should be selected. If the evidence supports both alternatives, both may be submitted, joined with “or.” The Committee concluded that jury agreement on one alternative or the other is not required; the alternatives are believed to be like the “use or threat of force” required for robbery – see Manson v. State, 101 Wis.2d 413, 304 N.W.2d 729 (1981); Cheers v. State, 102 Wis.2d 367, 306 N.W.2d 676 (1981).

2. The instruction is set up to include either two or three elements, depending on whether the alleged violations took place on a licensed premises. The two element version should be used for offenses on non-licensed premises; setting up or collecting the proceeds of a single machine violates the statute in that situation. The three element version should be used either when the charge identifies the site as a licensed premises or evidence is introduced to that effect. The penalty provisions in § 945.03(2m) punish offenses on Class “B” or “Class B” premises as forfeitures if one to five machines are involved. The criminal penalty applies only if six or more machines are involved.

3. Wis. Stat. § 945.01(3) does not further define the term “consideration.” However, the Wisconsin Supreme Court has applied the definition provided in Black’s Law Dictionary (11th ed. 2019), and concluded that it is consistent with the meaning of consideration in common law. See Quick Charge Kiosk LLC v. Kaul, 2020 WI 54, ¶18, 392 Wis. 2d 35, 944 N.W.2d 598. See also, DOR v. River City Refuse Removal, Inc., 2007 WI 27, ¶¶50-51, 299 Wis. 2d 561, 729 N.W.2d 396, for a discussion on various formulations Wisconsin courts have utilized to define consideration.

4. This is based on the definition provided in § 945.01(3)(a). The Committee concluded that “device” should be substituted for the statutory term “contrivance.” Subsection (3)(b) provides three exceptions. The instruction addresses one of the exceptions – an amusement device rewarding the player exclusively with free replays. See text at note 5.

One of the bases for the defendant’s challenge to the definition of “gambling machine” used in State v. Hahn, 221 Wis.2d 670, 586 N.W.2d 5 (Ct. App. 1998) [Hahn II], was to the word “contrivance,” which

is not used in this instruction. Hahn II held that the portion of the statutory definition referring to “affording an opportunity . . .” and “automatically paid by the machine . . .” is not ambiguous. Relying on the words’ usual meanings, the court held that “this portion of the statute requires that the machine, or contrivance, has a role in providing the opportunity to obtain something of value, but that something of value need not be provided by the machine alone without external influence or control.” 221 Wis.2d 670, 682.

A machine is not exempt from this definition simply because it has uses other than illegal gambling. As the Wisconsin Supreme Court noted in Quick Charge Kiosk LLC, “Wisconsin Stat. § 945.01(3) does not define a gambling machine as a contrivance whose sole use is gambling. It says the opposite, namely, that a ‘gambling machine is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance.’ (emphasis added).” Quick Charge Kiosk LLC, *supra*, at ¶21. Therefore, the fact that a machine has non-gambling features, such as cellphone charging capabilities or limited free use functions, does not negate the fact that the results of its games are determined completely by chance. The same reasoning applies to machines that offer preview features that allow players the ability to determine in advance the outcome of any particular game. See JD Prime Games Kiosk, LLC v. DOR, 2022 WI App 6, ¶¶14-16, 400 Wis.2d 499, 969 N.W.2d 778.

5. The material in brackets is based on the state’s requested instruction in State v. Hahn, 203 Wis.2d 450, 453, fn. 3, 553 N.W.2d 292 (Ct. App. 1996). It was not expressly approved or disapproved by the court in Hahn, but the Committee concluded it was a correct interpretation of the phrase “determined by chance, even though accompanied by some skill.”

In Hahn II, the court explicitly adopted the equivalent of the bracketed material: the phrase means that “chance rather than skill must be the dominant factor controlling the award.” 221 Wis.2d 670, 679. The court relied in part on the interpretation of similar language in the lottery statute, as interpreted in State v. Dahlk, 111 Wis.2d 287, 330 N.W.2d 611 (Ct. App. 1983).

6. This is based on the exception to the definition of “gambling machine” set forth in § 945.01(3)(b)2. It was discussed in State v. Hahn, 203 Wis.2d 450, 553 N.W.2d 292 (Ct. App. 1996). Arcade games, such as pinball machines and Pac Man fall under this exception. See JD Prime Games Kiosk, LLC v. DOR, 2022 WI App 6, ¶15, 400 Wis.2d 499, 969 N.W.2d 778.

7. See note 1, *supra*.

8. This is based on the holding in State v. Hahn, 203 Wis.2d 450, 455, 553 N.W.2d 292 (Ct. App. 1996).

9. The third element should be added for violations that took place on a licensed premises. In some cases, the charge may indicate as much; in others the issue may be raised by the evidence. The penalty provisions in § 945.03(2m) punish offenses on Class “B” or “Class B” premises as forfeitures if one to five machines are involved. The criminal penalty then applies only if six or more machines are involved.

The statute sets this up by providing, in sub. (2m), an exception to the generally applicable criminal penalty. The Committee concluded that this should be handled in the same manner as similar statutory exceptions. For example, the offense of carrying concealed weapon applies to “any person except a peace officer.” § 941.23. The Wisconsin Supreme Court has concluded that whether the defendant is a peace

officer, and thus exempted from the statute, is an issue that must be raised by the defendant as an affirmative defense. See, State v. Williamson, 58 Wis.2d 514, 524, 206 N.W.2d 613 (1973), and the discussion in footnote 1, Wis JI-Criminal 1335.

Factual disputes about the applicability of the exception for licensed premises are likely to be determined by pretrial motion. The Committee concluded that it is not an issue at trial until there is some evidence of the existence of a valid license. Once there is evidence sufficient to raise the issue, the burden is on the state to prove, beyond a reasonable doubt, that the exception is not present. See Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979); State v. Schulz, 102 Wis.2d 423, 307 N.W.2d 151 (1981). This requires, in this situation, proof that six or more machines are involved.

10. See note 2, supra.

[This page is intentionally left blank]

**1776 FAILURE TO REPORT TO JAIL: PERIODS OF IMPRISONMENT —
§ 946.425(1)****Statutory Definition of the Crime**

Section 946.425 of the Wisconsin Statutes is violated by a person who is subject to a series of periods of imprisonment and who intentionally fails to report to the county jail as required under the sentence.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was subject to a series of periods of imprisonment¹ which required that the defendant report to the county jail on (specify date).
2. The defendant intentionally failed to report as required.

“Intentionally,” as used here, means that the defendant knew (he) (she) had to report to jail on (specify date), had the ability to report as required, and purposely failed to do so.²

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.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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 1776 was originally published in 1990 and revised in 1994 and 2008. This revision was approved by the Committee in August 2022; its added to the comment.

This instruction is for a violation of § 946.425(1), created by 1989 Wisconsin Act 85 (effective date: December 19, 1989). Subsection (1) applies only to persons sentenced to a series of periods of imprisonment under § 973.03(5)(b), see note 1, below. Persons who fail to report after receiving a stay of execution of sentence are covered by sub. (1m); see Wis JI-Criminal 1777A. Persons who fail to report who are subject to a confinement order under s. 973.09(4) as a result of a conviction for a misdemeanor or felony are covered by sub. (1r); see Wis JI-Criminal 1777B.

Subsection (2) of § 946.425 formerly provided that a court “shall impose a sentence under this section consecutive to any sentence previously imposed or that may be imposed for any crime or offense for which the person was sentenced under § 973.03(5)(b) (or 973.15(8)(a)).” This provision was repealed by 2001 Wisconsin Act 109.

1. Subsection (1) of 946.425 applies only to periods of imprisonment “under s. 973.03(5)(b).” That sentencing alternative was created by 1989 Wisconsin Act 85 and provides as follows:

In lieu of a continuous sentence, a court may sentence a person to serve a series of periods, not less than 48 hours nor more than 3 days for each period, of imprisonment in a county jail. The person is not subject to confinement between periods of imprisonment.

Subsection (5)(c) of § 973.03 provides this sentencing option does not apply to violations of Chapter 161 (where offenses involving controlled substances are defined) or to a “serious crime.” “Serious crime” has the meaning given in § 969.08(10)(b).

Because § 946.425 is limited to persons sentenced under § 973.03(5)(b), it does not apply, for example, to persons who fail to report on time to begin serving a stayed sentence or prisoners who fail to report back to jail after being released for work or school. Persons who fail to report after receiving a stay

of execution of sentence are covered by sub. (1m); see Wis JI-Criminal 1777.

2. The word “intentionally” is defined to include two aspects: knowledge and purpose. The knowledge requirement is based on § 939.23(3) which provides that when the word “intentionally” is used, it requires that “the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word ‘intentionally.’” The purpose requirement is based on one of the two definitions of intent provided in § 939.23(3). The other, being aware that one’s conduct is practically certain to cause the result, is not likely to apply to this offense. For a discussion of that alternative, see Wis JI-Criminal 923A.

The second element also provides that the defendant must have the ability to report to jail as required. This is based on the general principles for criminal omissions, which include the ability to do the act that is required. See State v. Williquette, 129 Wis.2d 239, 385 N.W.2d 145 (1986).

[This page is intentionally left blank]

**1777A FAILURE TO REPORT TO JAIL: AFTER STAY OF SENTENCE —
§ 946.425(1m)****Statutory Definition of the Crime**

Section 946.425 of the Wisconsin Statutes is violated by a person who receives a stay of execution of a sentence of imprisonment [of 10 days or more]¹ and who intentionally fails to report to the county jail as required under the sentence.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was sentenced to imprisonment [of 10 days or more]² and received a stay of execution which required that the defendant report to the county jail on (specify date).
2. The defendant intentionally failed to report as required.

“Intentionally,” as used here, means that the defendant knew (he) (she) had to report to jail on (specify date), had the ability to report as required, and purposely failed to do so.³

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.

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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

This instruction was originally published as Wis JI-Criminal 1777 in 1994 and revised in 2008. It was revised as Wis JI-Criminal 1777A in 2022. This revision was approved by the Committee in August 2022; it added to the comment.

This instruction is for a violation of § 946.425(1m), created by 1993 Wisconsin Act 273 (effective date: April 27, 1994). Subsection (1) of § 946.425 applies to a person sentenced to a series of periods of imprisonment under § 973.03(5)(b) and who fails to report to jail as required. See Wis JI-Criminal 1776. Persons who fail to report who are subject to a confinement order under s. 973.09(4) as a result of a conviction for a misdemeanor or felony are covered by sub. (1r); see Wis JI-Criminal 1777B.

Subsection (2) of § 946.425 formerly provided that a court “shall impose a sentence under this section consecutive to any sentence previously imposed or that may be imposed for any crime or offense for which the person was sentenced under § 973.03(5)(b) (or 973.15(8)(a)).” This provision was repealed by 2001 Wisconsin Act 109.

The offense is a Class A misdemeanor, unless the stayed sentence is of 10 days or more, which increases the penalty to a Class H felony.

1. The offense is a Class H felony if the stayed sentence was for “10 or more days.” If the felony is charged, the bracketed material should be included.

2. See note 1, supra.

3. The word “intentionally” is defined to include two aspects: knowledge and purpose. The knowledge requirement is based on § 939.23(3) which provides that when the word “intentionally” is used, it requires that “the actor must have knowledge of those facts which are necessary to make

his or her conduct criminal and which are set forth after the word ‘intentionally.’” The purpose requirement is based on one of the two definitions of intent provided in § 939.23(3). The other, being aware that one's conduct is practically certain to cause the result, is not likely to apply to this offense. For a discussion of that alternative, see Wis JI-Criminal 923A

The second element also provides that the defendant must have the ability to report to jail as required. This is based on the general principles for criminal omissions, which include the ability to do the act that is required. See State v. Williquette, 129 Wis.2d 239, 385 N.W.2d 145 (1986).

[This page is intentionally left blank]

**1777B FAILURE TO REPORT TO JAIL: CONFINEMENT ORDER —
§ 946.425(1r)(a) and (b)**

Statutory Definition of the Crime

Section 946.425(1r) of the Wisconsin Statutes is violated by a person who, as a condition of probation, is subject to a confinement order as the result of a conviction for a (misdemeanor) (felony) and who intentionally fails to report to the (county jail) (house of correction) as required under the order.

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was subject to a confinement order under s. 973.09(4) as a result of a conviction for a (misdemeanor) (felony).¹
2. The confinement order required that the defendant report to the (county jail) (house of corrections²) as a condition of probation on (specify date).
3. The defendant intentionally failed to report as required.

“Intentionally,” as used here, means that the defendant knew (he) (she) had to report to the (county jail) (house of corrections) on (specify date), had the ability to report as required, and purposely failed to do so.³

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.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 1777B was approved by the Committee in August 2022.

This instruction is for a violation of § 946.425(1r)(a) and (b), created by 1995 Wisconsin Act 154 [effective date: April 4, 1996]. Subsection (1r)(a) applies to persons subject to a confinement order under s. 973.09(4) as a result of a conviction for a misdemeanor. Subsection (1r)(b) applies to persons subject to a confinement order under s. 973.09(4) as a result of a conviction for a felony. For person sentenced to a series of periods of imprisonment under § 973.03(5)(b) and who fails to report to jail as required; see Wis JI-Criminal 1776. For persons who fail to report after receiving a stay of execution of sentence are covered by sub. (1m); see Wis JI-Criminal 1777A.

The offense is a Class A misdemeanor if the confinement order is the result of a conviction for a misdemeanor. If the confinement order is the result of a conviction for a felony, the offense is a Class H felony.

1. § 973.09(4)(a) – provides:

The court may also require as a condition of probation that the probationer be confined during such period of the term of probation as the court prescribes, but not to exceed one year. The court may grant the privilege of leaving the county jail, Huber facility,

work camp, or tribal jail during the hours or periods of employment or other activity under s. 303.08 (1) while confined under this subsection. The court may specify the necessary and reasonable hours or periods during which the probationer may leave the jail, Huber facility, work camp, or tribal jail or the court may delegate that authority to the sheriff. In those counties without a Huber facility under s. 303.09, a work camp under s. 303.10, or an agreement under s. 302.445, the probationer shall be confined in the county jail. In those counties with a Huber facility under s. 303.09, the sheriff shall determine whether confinement under this subsection is to be in that facility or in the county jail. In those counties with a work camp under s. 303.10, the sheriff shall determine whether confinement is to be in the work camp or the county jail. The sheriff may transfer persons confined under this subsection between a Huber facility or a work camp and the county jail. In those counties with an agreement under s. 302.445, the sheriff shall determine whether a person who is confined under this subsection but who is not subject to an order under par. (b) is to be confined in the tribal jail or the county jail, unless otherwise provided under the agreement. In those counties, the sheriff may transfer persons confined under this subsection between a tribal jail and a county jail, unless otherwise provided under the agreement.

2. § 973.09 (4)(b) provides:

With the consent of the department and when recommended in the presentence investigation, the court may order that a felony offender subject to this subsection be confined in a facility located in the city of Milwaukee under s. 301.13 or 301.16 (1q), for the purpose of allowing the offender to complete an alcohol and other drug abuse treatment program.

3. The word “intentionally” is defined to include two aspects: knowledge and purpose. The knowledge requirement is based on § 939.23(3) which provides that when the word “intentionally” is used, it requires that “the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word ‘intentionally.’” The purpose requirement is based on one of the two definitions of intent provided in § 939.23(3). The other, being aware that one’s conduct is practically certain to cause the result, is not likely to apply to this offense. For a discussion of that alternative, see Wis JI-Criminal 923A.

[This page is intentionally left blank]



WISCONSIN JURY INSTRUCTIONS

CRIMINAL

VOLUME III

**Wisconsin Criminal Jury
Instructions Committee**

[Cite as Wis JI-Criminal]

- Includes 1/2023 Supplement (Release No. 61)

[This page is intentionally left blank]

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME I

| | No. | Year |
|--|------------------------------------|--------|
| OPENING INSTRUCTIONS ON THE PLEADINGS | | |
| Suggested Instructions | 1 | 2016 |
| Comment: Gender Neutral Language | 5 | 1/2023 |
| Preliminary Instruction: Jurors' Conduct; Evidence; Transcripts Not Available; Credibility; Substantive Issues; Opening Statement | 50 | 2022 |
| Notetaking Permitted | 55 | 2000 |
| Notetaking Not Allowed | 56 | 2000 |
| Instruction on Juror Questioning of Witnesses | 57 | 2014 |
| Transcripts Not Available for Deliberations; Reading Back Testimony | 58 | 2022 |
| Police Reports | 59 | 2001 |
| Preliminary Instruction: Use of an Interpreter for a Witness | 60 | 2003 |
| Preliminary Instruction: Use of an Interpreter for a Juror..... | 61 | 2004 |
| Preliminary Instruction: Use of an Interpreter for the Defendant | 62 | 2003 |
| Preliminary Instruction: Defendant Proceeding Pro Se | 70 | 2001 |
| | | |
| Opening Instructions..... | 100 | 2000 |
| Opening Statements | 101 | 2001 |
| Evidence Defined..... | 103 | 2000 |
| | | |
| One Defendant: Single Count: No Included Offense..... | 110 | 2000 |
| One Defendant: Single Count: Lesser Included Offenses..... | 112 | 2000 |
| Lesser Included Offense: Alternative Style | 112A | 2000 |
| Armed Robbery: Robbery (Unarmed) | 112A EXAMPLE | 2000 |
| One Defendant: Two Counts..... | 115 | 2000 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 115 EXAMPLE RENUMBERED 116 EXAMPLE | 2004 |
| Multiple Charges of the Same Offense: Different Victims..... | 116 | 2004 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 116 EXAMPLE | 2004 |
| One Defendant: Two Counts: Conviction for Only One Proper..... | 117 WITHDRAWN | 2000 |
| | | |
| Two Defendants: Single Count: No Included Offense | 120 | 2000 |
| Two Defendants: Single Count: Included Offense | 122 | 2000 |
| Two Defendants: Two Counts | 125 | 2000 |
| Two Defendants: Two Counts: Conviction for Only One Proper..... | 127 WITHDRAWN | 2000 |
| Charges Disposed of During Trial | 128 | 2014 |

WIS JI-CRIMINAL

BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE; EVIDENCE

| | | |
|--|----------------|--------|
| Burden of Proof and Presumption of Innocence..... | 140 | 1/2023 |
| Burden of Proof: Forfeiture Actions..... | 140A | 2011 |
| Where Identification of Defendant is in Issue | 141 | 2021 |
| Information Not Evidence..... | 145 | 2000 |
| Precautionary Statement: Anonymous and “Numbers” Juries..... | 146 | 2003 |
| Improper Questions..... | 147 | 2000 |
| Objections of Counsel; Evidence Received Over Objection | 148 | 2000 |
| Stricken Testimony..... | 150 | 2000 |
| View of Scene..... | 152 | 2000 |
| Summary of Evidence..... | 154 | 2012 |
| Exhibits..... | 155 | 2018 |
| Remarks of Counsel..... | 157 | 2000 |
| Recording Played to the Jury | 158 | 2022 |
| Closing Arguments of Counsel..... | 160 | 2000 |
| Agreed Testimony..... | 161 | 2000 |
| Agreed Facts | 162 | 2000 |
| Law Note: Stipulations | 162A | 2011 |
| Judicially Noticed Facts..... | 165 | 2003 |
| Circumstantial Evidence | 170 | 2000 |
| Circumstantial Evidence: Flight, Escape, Concealment | 172 | 2000 |
| Circumstantial Evidence - Possession of Recently Stolen Property | 173 | 2000 |
| Motive..... | 175 | 2000 |
| Statements of Defendant..... | 180 | 2021 |
| Confessions and Admissions: Series of Statements..... | 182 WITHDRAWN | 2000 |
| Confessions and Admissions: Mental Condition of Defendant in Issue..... | 185 WITHDRAWN | 2000 |
| Confessions and Admissions: Evidence That Defendant Did Not Understand Interrogator | 187 WITHDRAWN | 2000 |
| Weight of Evidence..... | 190 | 2000 |
| Juror's Knowledge..... | 195 | 2000 |
| Expert Opinion Testimony: General..... | 200 | 2019 |
| Expert Testimony: More Than One Expert..... | 200A WITHDRAWN | 2000 |
| Opinion of a Nonexpert Witness..... | 201 | 2012 |
| Polygraph Evidence | 202 WITHDRAWN | 2009 |
| Expert Testimony: Hypothetical Questions | 205 | 2019 |
| Objections of Counsel: Evidence Received Over Objection | 215 | 2000 |
| Evidence: Limited Purpose: Statement of Codefendant | 220 WITHDRAWN | 1999 |
| Cautionary Instruction: Interlocking Confessions | 220A WITHDRAWN | 1999 |
| Law Note: Statement of Accomplice Admitted for Nonhearsay Purpose | 220B | 1991 |
| Statement of Codefendant: Statement Does Not Mention Defendant..... | 221 | 2000 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Joint Trial: Evidence Admissible as to One Defendant Only | 222 | 2000 |
| Instructing on a “Presumed Fact” That is an Element of the Crime | 225 | 2000 |
| Prima Facie Effect of a Test Result Showing an Alcohol Concentration of | | |
| 0.08 Grams or More: Offenses Involving “Under the Influence” | 230 | 2006 |
| Evidence of a Test Result Showing an Alcohol Concentration of 0.04 Grams or | | |
| More but Less Than 0.08 Grams: Offenses Involving “Under the Influence” | 232 | 2009 |
| Blood-Alcohol Curve | 234 | 2004 |
| Refusal of Defendant to Furnish Sample for Alcohol Test | 235 | 2021 |
| Alcohol Concentration Chart | 237 | 2000 |
| Testimony of Accomplices | | |
| Testimony of a Witness Granted Immunity or Other Concessions..... | 246 | 2000 |
| Verdict as to Defendant Only..... | 247 | 2000 |
| State Need Not Prove Exact Date of Commission: Specific Date Alleged | | |
| State Need Not Prove Exact Date of Commission: Period of Time Alleged..... | 255A | 2000 |
| Time of Offense: Where State Not Required to Elect..... | 260 WITHDRAWN | 2000 |
| Time of Offense: Where State Has Elected | 265 WITHDRAWN | 2000 |
| Venue | | |
| Law Note: Jurisdiction..... | 268 | 2021 |
| Evidence as to Defendant’s Character | | |
| Cautionary Instruction: Evidence of Other Conduct [Required if Requested] | 275 | 2018 |
| Comment: Other Acts Evidence | 275.1 | 2016 |
| Prior Convictions Admissible to Prove Character | 276 | 2016 |
| WITNESSES | | |
| Credibility of Witnesses..... | | |
| Falsus in Uno | 305 | 2001 |
| Defendant as Witness in Own Behalf | 310 WITHDRAWN | 2001 |
| Prisoner as Witness or Defendant: Prisoner Status an Issue | | |
| Evidence That the Defendant Wore a GPS or Other Monitoring Device | 313 | 2017 |
| Defendant Wearing a Visible Restraining Device in the Presence of Jurors | 314 | 2012 |
| Defendant Elects Not to Testify | 315 | 2001 |
| Witness Exercising Privilege Against Self-Incrimination | 317 | 2001 |
| Impeachment of the Defendant by Prior Inconsistent Statements Which are | | |
| Inadmissible in the State’s Case-in-Chief | 320 | 2001 |
| Law Note: Substantive Use of Prior Inconsistent Statements..... | 320A | 2001 |
| Impeachment of Witness: Prior Conviction or Juvenile Adjudication | 325 | 2018 |
| Impeachment of Defendant as a Witness: Prior Conviction or Juvenile Adjudication..... | 327 | 2018 |
| Impeachment of Witness: Character for Truthfulness | 330 | 2018 |
| Credibility of Child Witness | | |
| Missing Witness..... | 345 | 2001 |

WIS JI-CRIMINAL

MISCELLANEOUS

Negligence Defined375 WITHDRAWN 2001

PERSONS AND PARTIES

| | | |
|--|---------------|------|
| Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided the Crime Charged | 400 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided a Burglary..... | 400 EXAMPLE | 2005 |
| Party to Crime: Defendant Either Intentionally Aided the Crime Charged or Was a Member of a Conspiracy to Commit the Crime Charged..... | 401 | 2005 |
| Party to Crime: Defendant Either Directly Committed, Intentionally Aided, Member of a Conspiracy to Commit the Crime Charged..... | 402 | 2005 |
| Statement of Co-Conspirator | 405 WITHDRAWN | 1994 |
| Party to Crime: Aiding and Abetting: Defendant Intentionally Aided the Crime Charged..... | 405 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Intentionally Aided a Burglary | 405 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 406 | 2005 |
| Example Party to Crime: Aiding and Abetting: First Degree Intentional Homicide as the Natural and Probable Consequence of Armed Robbery..... | 406 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: Multiple Counts | 407 | 2005 |
| Party to Crime: Conspiracy to Commit the Crime Charged | 410 | 2005 |
| Example Party to Crime: Conspiracy to Commit Burglary | 410 EXAMPLE | 2005 |
| Party to Crime: Conspiracy: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 411 | 2005 |
| Party to Crime: Withdrawal from a Conspiracy | 412 | 2008 |
| Statement of Co-Conspirator; Evidence Presented That Conspiracy Terminated by Withdrawal Before Statement Was Made..... | 415 WITHDRAWN | 1994 |
| Party to Crime: Solicitation to Commit the Crime Charged | 415 | 2005 |
| [Note on Instructions Withdrawn] | 418 | 1994 |
| Criminal Liability of a Corporation | 420 | 2005 |
| Corporate Liability: Acts of Employees: Strict Liability | 425 WITHDRAWN | 1995 |
| Corporate Liability: Acts of Lesser Employees | 430 WITHDRAWN | 1995 |
| Liability for the Acts of Another; Authorization or Acquiescence..... | 435 | 1995 |
| Liability for Acts of Another: Acts of Agent or Servant: Strict Liability Cases | 440 WITHDRAWN | 1995 |

WIS JI-CRIMINAL

CLOSING INSTRUCTIONS AND RELATION OF VERDICT TO OFFENSE CHARGED

| | | |
|---|---------------|--------|
| Closing Instruction..... | 460 | 2010 |
| Closing Instruction: Optional Short Form | 465 | 2010 |
| Verdicts Submitted for One Defendant: Single Count..... | 480 | 2000 |
| Verdicts Submitted for One Defendant: Single Count: Lesser Included Offense..... | 482 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Separate Verdict on Each Count Required..... | 484 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Lesser Included Offense on Each Count..... | 485 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Conviction for Only One Proper | 486 WITHDRAWN | 1990 |
| Verdicts Submitted for Multiple Defendants: Single Count | 490 | 2000 |
| Verdicts Submitted for Multiple Defendants: Single Count: Included Offense | 492 | 2000 |
| Verdicts Submitted for Multiple Defendants: Two Counts: Separate Verdict on Each Count Required..... | 494 | 2000 |
| Verdicts Submitted for Two Defendants: Two Counts: Conviction for Only One Proper | 496 WITHDRAWN | 1990 |
| Unanimous Verdict and Selection of Presiding Juror | 515 | 1/2023 |
| Five-Sixths Verdict and Selection of Presiding Juror: Forfeiture Actions..... | 515A | 2001 |
| Jury Agreement: Evidence of More Than One Act Introduced to Prove One Charge | 517 | 2010 |
| Supplemental Instruction on Agreement..... | 520 | 2001 |
| Instruction on Jury Deliberations | 521 WITHDRAWN | 2012 |
| Polling the Jury [Suggested Form]..... | 522 | 2007 |
| Instruction After Verdict Received | 525 | 2001 |
| Instruction after Verdict Received - Alternative Form | 525A | 2010 |

INCHOATE CRIMES

| | | |
|--------------------------------------|-------------|------|
| Solicitation as a Crime | 550 | 2020 |
| Conspiracy as a Crime | 570 | 2008 |
| Attempt | 580 | 2013 |
| Example Attempted Burglary | 581 EXAMPLE | 2002 |
| Example Attempted Armed Robbery..... | 582 EXAMPLE | 2002 |

DEFENSES AND DEFENSIVE MATTERS

| | | |
|---|-----|--------|
| Introductory Comment: Not Guilty by Reason of Mental Disease or Defect: Instructions for the “Bifurcated” Trial and Reexamination..... | 600 | 1/2023 |
| Instruction Prior to Trial upon a Plea of Not Guilty Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect..... | 601 | 2011 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Instruction After Evidence Has Been Received on Issue of Guilt Where a Plea of Not Guilty Has Been Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect | 602 | 2011 |
| Preliminary Instruction After Finding of Guilt and Before Consideration of Whether the Defendant Suffered from a Mental Disease or Defect at the Time of the Offense..... | 603 | 2011 |
| Instruction on the Issue of the Defendant’s Criminal Responsibility - Mental Disease or Defect | 605 | 2011 |
| Instruction on the Issue of the Defendant's Criminal Responsibility (Mental Defect) | 605A WITHDRAWN | 2011 |
| Verdict: Not Responsible by Reason of Mental Disease or Defect | 605B | 2011 |
| Preliminary Instruction upon a Finding of Not Guilty by Reason of Mental Disease or Defect | 606 WITHDRAWN | 2011 |
| Instruction on Commitment Following a Finding of Not Guilty by Reason of Mental Disease or Defect | 607 WITHDRAWN | 2011 |
| Mental Disease or Defect: Expert Opinion Testimony | 640 | 2019 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | 650 | 2011 |
| Effect of Finding of Not Guilty Because of Mental Disease or Defect | 655-CPC WITHDRAWN | 2011 |
| Preliminary Instruction: Reexamination of Person Committed as Not Guilty by Reason of Mental Disease or Defect [§ 971.17(2)]..... | 660 | 2011 |
| Reexamination Under § 971.17(2)..... | 661 | 2011 |
| Verdicts Submitted for Reexamination Under § 971.17(2) | 662 | 2011 |
| Law Note: Theory of Defense Instructions..... | 700 | 2020 |
| Law Note: Jury Nullification | 705 | 1991 |
| Law Note: Right to Recapture | 710 | 1994 |
| Involuntary Intoxication or Drugged Condition | 755 RENUMBERED 755A | 2005 |
| Involuntary Intoxication or Drugged Condition | 755A | 2015 |
| Involuntary Intoxication or Drugged Condition | 755B | 2015 |
| Voluntary Intoxication..... | 765 | 2015 |
| Mistake..... | 770 | 2010 |
| Accident | 772 | 2005 |
| Alibi | 775 | 2005 |
| Entrapment..... | 780 | 2002 |
| Entrapment [Alternate Form]..... | 780A WITHDRAWN | 2003 |
| Coercion..... | 790 | 2005 |
| Necessity..... | 792 | 2005 |

WIS JI-CRIMINAL

PRIVILEGE

| | | |
|--|------|------|
| Law Note: Privilege: Resisting an Unlawful Arrest | 795 | 2003 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm | 800 | 2022 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm: Crimes Involving Recklessness or Negligence | 801 | 2022 |
| Privilege: Self-Defense: Force Intended or Likely to Cause Death or Great Bodily Harm | 805 | 2022 |
| Law Note: Self-defense under § 939.48(1m)..... | 805A | 2022 |
| | | |
| Privilege: Self-Defense: Retreat..... | 810 | 2019 |
| Privilege: Self-Defense: Not Available to One Who Provokes an Attack: Regaining the Privilege | 815 | 2020 |
| | | |
| Privilege: Self-Defense: Injury to Third Party Charged as Reckless or Negligent Crime | 820 | 2022 |
| Privilege: Self-Defense: Unintended Harm to Third Party Charged as Intentional Crime..... | 821 | 2022 |
| Privilege: Defense of Others: Force Less Than That Likely to Cause Death or Great Bodily Harm | 825 | 2005 |
| Privilege: Defense of Others: Force Intended or Likely to Cause Death or Great Bodily Harm | 830 | 2005 |
| Privilege: Defense of Others: Effect of Provocation by Person Defended | 835 | 2005 |
| | | |
| Privilege: Defense of One’s Property | 855 | 2005 |
| | | |
| Privilege: Defense of Another’s Property | 860 | 2005 |
| | | |
| Privilege: Conduct in Good Faith and in an Apparently Authorized and Reasonable Fulfillment of Duties of a Public Office | 870 | 2014 |
| | | |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Nondeadly Force..... | 880 | 2005 |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Deadly Force..... | 885 | 2005 |
| | | |
| Cause..... | 901 | 2022 |
| Liability for Failure to Act - Criminal Omission | 905 | 2015 |
| Dangerous Weapon..... | 910 | 2012 |
| Great Bodily Harm..... | 914 | 2008 |
| Acting in Official Capacity | 915 | 2008 |
| Possession | 920 | 2000 |
| “Intentionally” and “With Intent to”: Mental Purpose..... | 923A | 2010 |
| “Intentionally” and “With Intent to”: “Practically Certain” | 923B | 2001 |
| Criminal Recklessness | 924 | 2015 |
| Aggravated Recklessness: Circumstances Which Show Utter Disregard for Human Life | 924A | 2012 |
| Criminal Negligence | 925 | 2005 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Contributory Negligence..... | 926 | 2005 |
| Sexual Contact [939.22(34)]..... | 934 | 2011 |
| Without Consent | 948 | 2005 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child | 950 | 2014 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child: Cases Involving Recklessness | 951 WITHDRAWN | 2014 |
| Privilege: Discipline by One in the Place of the Parent | 955 WITHDRAWN | 1989 |

PENALTY ENHANCERS

| | | |
|---|-----------------------|------|
| Lifetime Supervision of Serious Sex Offenders | 980 | 2016 |
| Committing a Domestic Abuse Crime Within 72 Hours of Arrest | 983 | 2014 |
| Committing a Domestic Abuse Crime As a Domestic Abuse Repeater | 984 | 2016 |
| Criminal Gang Crimes | 985 | 2003 |
| Using or Possessing a Dangerous Weapon | 990 | 2006 |
| Violent Crime in a School Zone | 992 | 2012 |
| Wearing a Bulletproof Garment..... | 993 | 2003 |
| Concealing Identity..... | 994 | 2003 |
| Selecting the Person Against Whom a Crime is Committed Because of Race, Religion, Etc..... | 996 | 2003 |
| Elder Person Victims | 997 | 2022 |
| Selecting Property Damaged Because of the Race, Religion, Etc., of the Owner..... | 996A RENUMBERED 996.1 | 2003 |
| Violent Crime Against an Elder Person | 998 | 2003 |
| Minor Passenger in the Vehicle | 999 | 2011 |
| Unborn Child in the Vehicle | 999A | 2003 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME II

| | No. | Year |
|--|-------|----------------|
| CRIMES AGAINST LIFE AND BODILY SECURITY | | |
| LIFE | | |
| Introductory Comment: Wisconsin's New Homicide Law..... | 1000 | WITHDRAWN 2006 |
| First Degree Intentional Homicide..... | 1010 | 2000 |
| First Degree Intentional Homicide of an Unborn Child..... | 1011 | 2005 |
| First Degree Intentional Homicide: Adequate Provocation: Second Degree Intentional Homicide..... | 1012 | 2006 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide..... | 1014 | 2021 |
| First Degree Intentional Homicide: Coercion: Second Degree Intentional Homicide..... | 1015 | 2010 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide..... | 1016 | 1/2023 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1017 | 1/2023 |
| First Degree Intentional Homicide: First Degree Reckless Homicide..... | 1018 | 2012 |
| First Degree Reckless Homicide..... | 1020 | 2015 |
| First Degree Reckless Homicide of an Unborn Child..... | 1020A | 2015 |
| First Degree Reckless Homicide..... | 1021 | 2022 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1022 | 2015 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide: Negligent Homicide..... | 1023 | 2019 |
| Felony Murder: Underlying Crime Completed..... | 1030 | 2022 |
| Felony Murder: Underlying Crime Attempted..... | 1031 | 2022 |
| Felony Murder: Death Caused While Committing a Crime as a Party to the Crime: Aiding And Abetting..... | 1032 | 2022 |
| Felony Murder: Death Caused While Committing Armed Burglary as a Party to the Crime: Aiding And Abetting..... | 1032 | EXAMPLE 2003 |
| Second Degree Intentional Homicide..... | 1050 | 2006 |
| Second Degree Intentional Homicide: Self-defense..... | 1052 | 2006 |
| Second Degree Reckless Homicide..... | 1060 | 2015 |
| Second Degree Reckless Homicide by Omission..... | 1060A | 2015 |
| Second Degree Reckless Homicide of an Unborn Child..... | 1061 | 2005 |
| Attempted First Degree Intentional Homicide..... | 1070 | 2001 |
| Attempted First Degree Intentional Homicide: Self-defense: Attempted Second Degree Intentional Homicide..... | 1072 | 1/2023 |
| Homicide Instructions Replaced for Offenses Committed on or After January 1, 1989..... | 1100 | WITHDRAWN 2006 |

WIS JI-CRIMINAL

| | | |
|--|-----------|------|
| Third Degree Murder: First or Second Degree Murder Not Submitted... 1120 | WITHDRAWN | 1982 |
| Third Degree Murder: First or Second Degree Murder Submitted..... 1122 | WITHDRAWN | 1982 |
| Abortion [Feticide]..... 1125 | | 2006 |
| Homicide by Negligent Operation of a Vehicle..... 1170 | | 2002 |
| Homicide of an Unborn Child by Negligent Operation of a Vehicle..... 1171 | | 2005 |
| Homicide by Negligent Handling of a Dangerous Weapon..... 1175 | | 2011 |
| | | |
| Homicide by Operation of Vehicle While Under the Influence 1185 | | 2020 |
| Violations of § 940.09 and § 940.25 Involving an Unborn Child 1185A | | 2004 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration – 0.08 Grams or More..... 1186 | | 2020 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration – 0.02 Grams or More..... 1186A | | 2020 |
| Homicide by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.09(1)(am) 1187 | | 2021 |
| Homicide by Intoxicated User of Vehicle, Firearm, or Airgun: Affirmative Defense Under § 940.09(2) 1188 | WITHDRAWN | 2004 |
| Homicide by Operation of a Vehicle While Under the Influence / Homicide by Operation of a Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More 1189 | | 2020 |
| Homicide by Operation or Handling of Firearm or Airgun While Under the Influence..... 1190 | | 2014 |
| Homicide by Operation or Handling of Firearm or Airgun with an Alcohol Concentration of 0.08 or More 1191 | | 2006 |
| Mutilating a Corpse..... 1193 | | 2006 |
| Hiding or Burying a Corpse..... 1194 | | 2013 |
| Assisting Suicide..... 1195 | | 2006 |

SEXUAL ASSAULT

| | | |
|--|-----------|--------|
| Introductory Comment - Sexual Assault | | |
| Instructions..... 1200-1219 | WITHDRAWN | 1990 |
| Sexual Contact 1200A | | 2007 |
| Sexual Intercourse..... 1200B | | 2010 |
| “Without Consent” - Competence to Give Informed Consent in Issue..... 1200C | | 2002 |
| “Without Consent” - Complainant Suffering from Mental Illness 1200D | | 2002 |
| “Without Consent” - Complainant Unconscious 1200E | | 2002 |
| Sexual Assault: Spouse as Victim..... 1200F | | 2002 |
| Cautionary Instruction: Evidence of Victim’s Prior Sexual Conduct..... 1200G | | 1/2023 |
| | | |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent | | |
| Causing Great Bodily Harm 1201 | | 2002 |
| First Degree Sexual Assault: Sexual Intercourse Without Consent | | |
| Causing Pregnancy 1201A | | 2002 |
| First Degree Sexual Assault: Sexual Contact or Intercourse by Use or Threat of Use of a Dangerous Weapon 1203 | | |
| | | 2002 |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 | 2022 |
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 EXAMPLE | 2022 |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence While Aided and Abetted | 1205 | 2018 |
| First Degree Sexual Assault: Sexual Intercourse with a Person 12 Years of Age or Younger | 1206 WITHDRAWN | 1997 |
| First Degree Sexual Assault: Sexual Contact with a Person 12 Years of Age or Younger | 1207 WITHDRAWN | 1997 |
| | | |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence | 1208 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent Causing Injury, Illness, Disease or Impairment of a Sexual or Reproductive Organ, or Mental Anguish Requiring Psychiatric Care | 1209 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Suffering from Mental Illness | 1211 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Who is Under the Influence of an Intoxicant | 1212 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person the Defendant Knows is Unconscious | 1213 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent While Aided and Abetted | 1214 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Patient or Resident | 1215 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Correctional Staff Member | 1216 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Probation, Parole, or Extended Supervision Agent | 1217 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by an Employee of an Entity | 1217A | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Law Enforcement Officer With a Person Detained or in Custody | 1217B | 2022 |
| | | |
| Third Degree Sexual Assault: Sexual Intercourse Without Consent | 1218A | 2018 |
| Third Degree Sexual Assault: Sexual Contact Without Consent Involving Ejaculation, etc | 1218B | 2018 |
| Fourth Degree Sexual Assault: Sexual Contact Without Consent | 1219 | 2004 |

BODILY SECURITY

| | | |
|--|-----------------------|------|
| Battery and Related Offenses: Introductory Comment | 1220-1246 WITHDRAWN | 2009 |
| Battery | 1220 | 2015 |
| Battery: Self-Defense in Issue | 1220A | 2015 |
| Abuse of Children | 1221 WITHDRAWN | 1989 |
| Abuse of Children C Exposing a Child to Cruel Maltreatment | 1221A WITHDRAWN | 1989 |
| Failure to Report Child Abuse | 1221C RENUMBERED 2119 | 1992 |
| Substantial Battery with Intent to Cause Bodily Harm | 1222 | 2017 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Substantial Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1222A | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm | 1223 WITHDRAWN | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm: | | |
| Self-Defense in Issue..... | 1223A WITHDRAWN | 2017 |
| Aggravated Battery with Intent to Cause Bodily Harm..... | 1224 | 2002 |
| Aggravated Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1224A | 2001 |
| Aggravated Battery With Intent to Cause Great Bodily Harm | 1225 | 2003 |
| Aggravated Battery with Intent to Cause Great Bodily Harm: | | |
| Self-Defense in Issue..... | 1225A | 2003 |
| Battery with Substantial Risk of Great Bodily Harm..... | 1226 | 2022 |
| Battery to an Unborn Child..... | 1227 | 2017 |
| Battery by Prisoner | 1228 | 2012 |
| Battery by a Person Committed under § 980.065 | 1228A | 2022 |
| Battery by a Person Subject to an Injunction..... | 1229 | 2016 |
| Battery to a Law Enforcement Officer or Fire Fighter | 1230 | 2016 |
| Battery to a Probation, Extended Supervision and Parole Agent, Community Supervision Agent, or An Aftercare Agent..... | 1231 | 2022 |
| Battery to Juror [Juror Has Assented to Verdict]..... | 1232 | 2005 |
| Battery to Witness [Witness Likely to be Called to Testify] | 1233 WITHDRAWN | 1999 |
| Battery to a Public Officer..... | 1234 | 2008 |
| Battery to a Technical College District or School District Officer or Employee | 1235 | 2008 |
| Battery to a Public Transit Vehicle Operator or Passenger..... | 1236 | 2014 |
| Battery to an Emergency Medical Care Provider | 1237 | 2022 |
| Battery or Threat to a Witness [Witness Has Attended or Testified]..... | 1238 | 2022 |
| Battery or Threat to Witness [Witness Likely to be Called to Testify]..... | 1239 | 2004 |
| Battery or Threat to Judge..... | 1240 WITHDRAWN | 2003 |
| Battery to a Judge..... | 1240A | 2019 |
| Threat to a Judge..... | 1240B | 2020 |
| Battery to a Prosecutor or Law Enforcement Officer | 1240C | 2019 |
| Threat to a Prosecutor or Law Enforcement Officer..... | 1240D | 2019 |
| Battery to Guardian Ad Litem, Corporation Counsel, or Attorney..... | 1241A | 2022 |
| Threat to Guardian Ad Litem, Corporation Counsel, or Attorney | 1241B | 2022 |
| Battery or Threat to a Department of Revenue Employee | 1242 | 2022 |
| Battery to a Nurse | 1243 WITHDRAWN | 2022 |
| Battery or Threat to a Department of Safety and Professional Services or Department of Workforce Development Employee..... | 1244 | 2022 |
| Battery to a County, City, Village, or Town Employee..... | 1245 | 2009 |
| Mayhem | 1246 | 2009 |
| Battery or Threat to a Staff Member of a Health Care Facility | 1247A | 2022 |
| Battery or Threat to a Health Care Provider | 1247B | 2022 |
| Sexual Exploitation by Therapist..... | 1248 | 2006 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm..... | 1249A | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Bodily Harm..... | 1249B | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm..... | 1249C | 2022 |

WIS JI-CRIMINAL

| | | |
|---|----------------------|------|
| Physical Abuse of an Elder Person: Reckless Caustion of Great Bodily Harm | 1249D | 2022 |
| Physical Abuse of an Elder Person: Reckless Caustion of Bodily Harm..... | 1249E | 2022 |
| Physical Abuse of an Elder Person: Reckless Caustion of Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm | 1249F | 2022 |
| First Degree Reckless Injury..... | 1250 | 2020 |
| Second Degree Reckless Injury | 1252 | 2015 |
| Strangulation and Suffocation..... | 1255 | 2022 |
| Injury by Negligent Handling of a Dangerous Weapon..... | 1260 | 2011 |
| Injury (Great Bodily Harm) by Negligent Use of a Vehicle | 1261 RENUMBERED 2654 | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle While Under the Influence | 1262 | 2014 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.08 Grams or More..... | 1263 | 2006 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.02 Grams or More..... | 1263A | 2004 |
| Failure to Support | 1264 WITHDRAWN | 1989 |
| Abandonment of a Young Child | 1265 WITHDRAWN | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.25(1)(am) | 1266 | 2021 |
| Abuse of Individuals at Risk..... | 1268 | 2007 |
| Abuse of Individuals at Risk: Recklessly Subjecting an Individual at Risk to Abuse under Circumstances That Cause Great Bodily Harm | 1268 EXAMPLE | 2007 |
| Reckless Abuse of Vulnerable Adults | 1269 WITHDRAWN | 1999 |
| Abuse of Residents of Penal Facilities..... | 1270 | 2006 |
| Abuse of Patients and Residents | 1271 | 2011 |
| Abuse of Patients and Residents: Reckless Physical Abuse Causing Great Bodily Harm to an Individual at Risk..... | 1271 EXAMPLE | 2007 |
| Neglect of Patients and Residents..... | 1272 | 2021 |
| Law Enforcement Officer – Failure to Render Aid | 1273 | 2020 |
| False Imprisonment..... | 1275 | 2014 |
| Human Trafficking | 1276 | 2015 |
| Human Trafficking | 1276 EXAMPLE | 2015 |
| Human Trafficking | 1277 | 2016 |
| Taking a Hostage | 1278 | 2016 |
| Kidnapping..... | 1280 | 2016 |
| Kidnapping..... | 1281 | 2016 |
| Kidnapping..... | 1282 | 2006 |
| Placing a Global Positioning Device | 1283A | 2016 |
| Obtaining Information Generated by a Global Positioning Device | 1283B | 2016 |
| Stalking | 1284 | 2021 |
| Stalking: Penalty Factors | 1284A | 2011 |
| Stalking | 1284B | 2021 |

WIS JI-CRIMINAL

| | | |
|---|-----------------|--------|
| Abduction..... | 1285 WITHDRAWN | 1989 |
| Abduction..... | 1286 WITHDRAWN | 1989 |
| Abduction..... | 1287 WITHDRAWN | 1989 |
| Intimidation of a Witness: Misdemeanor..... | 1290 WITHDRAWN | 2001 |
| Intimidation of a Witness..... | 1292 | 2020 |
| Intimidation of a Witness; Felony: Force Threatened | | |
| Against a Relative of the Witness | 1292A WITHDRAWN | 2001 |
| Intimidation of a Victim: Misdemeanor..... | 1294 WITHDRAWN | 2001 |
| Intimidation of a Victim..... | 1296 | 1/2023 |
| Intimidation of a Person Acting on Behalf of a Victim | 1296A | 1/2023 |
| Intimidation of a Victim..... | 1297 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IIA

| | No. | Year |
|--|----------------------|------|
| CRIMES AGAINST PUBLIC HEALTH AND SAFETY | | |
| Negligent Operation of a Vehicle | 1300 | 2022 |
| Highway Obstruction | 1302 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant..... | 1305 RENUMBERED 1321 | 2021 |
| Negligent Handling of Burning Material | 1310 | 2007 |
| Giving a False Alarm | 1316 | 2007 |
| Interference with a Fire Alarm System | 1317 | 2007 |
| Interference with Fire Fighting | 1318 | 2007 |
| Interference with Fire Fighting Equipment..... | 1319 | 2007 |
| Endangering Safety by Use of a Dangerous Weapon: Negligent Operation or Handling..... | 1320 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant | 1321 | 2019 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at Another | 1322 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at a Law Enforcement Officer, Fire Fighter, Etc..... | 1322A | 2018 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm Within 100 Yards of Building | 1323 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm into a Vehicle or Building..... | 1324 | 2008 |
| Possession of Pistol by Minor: Minor Going Armed with a Pistol..... | 1325 WITHDRAWN | 1989 |
| Sale, Loan, or Gift of Pistol to Minor | 1326 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Discharging a Firearm from a Vehicle | 1327 | 2005 |
| Disarming a Peace Officer | 1328 | 2008 |
| Carrying a Concealed Weapon | 1335 | 2018 |
| Carrying a Concealed Weapon: Unlawful Purpose | 1335A | 2016 |
| Carrying a Concealed Weapon: Evidence of Exception | 1335B | 2012 |
| Carrying a Concealed Knife..... | 1336 | 2022 |
| Carrying a Firearm in a Public Building..... | 1337 | 2019 |
| Carrying a Handgun on Premises Where Alcohol Beverages are Consumed..... | 1338 | 2019 |
| Possession of a Switchblade Knife | 1340 | 2016 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1340A | 2008 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341 | 2007 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1341A | 2010 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341B | 2020 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm to a Peace Officer | 1341C | 2020 |
| Possession of Oleoresin of Capsicum (Pepper Spray) by a Convicted Felon..... | 1341D | 2020 |
| Possession of a Short-Barreled Shotgun or Rifle..... | 1342 | 2007 |
| | | |
| Possession of a Firearm | 1343 | 2021 |
| Possession of a Firearm by a Felon: Privilege | 1343A | 2008 |
| Furnishing a Firearm to a Felon..... | 1343B WITHDRAWN | 2019 |
| Straw Purchasing of a Firearm..... | 1343C | 2019 |
| Possession of a Firearm by a Person Subject to an Injunction..... | 1344 | 2019 |
| Possession of an Electric Weapon | 1344A | 2012 |
| First Degree Recklessly Endangering Safety..... | 1345 | 2020 |
| Second Degree Recklessly Endangering Safety | 1347 | 2015 |
| | | |
| Possession of Explosives for an Unlawful Purpose | 1350 | 2008 |
| Possession of an Improvised Explosive Device..... | 1351A | 2008 |
| Possession of Materials or Components with Intent to Assemble an Improvised Explosive Device | 1351B | 2008 |
| Administering a Dangerous or Stupefying Drug | 1352 | 2008 |
| Placing Foreign Objects in Edibles..... | 1354 | 2008 |
| Obstructing Emergency Medical Personnel..... | 1360 | 2018 |
| Throwing or Expelling a Bodily Substance at a Public Safety Worker or Prosecutor..... | 1365 | 2018 |
| Violating a No Contact Order | 1375 | 2013 |

CRIMES AGAINST REPUTATION AND CIVIL LIBERTIES

| | | |
|--|----------------|------|
| Defamation..... | 1380 | 2008 |
| Denial of Rights: In General | 1390 WITHDRAWN | 1992 |
| Denial of Rights: Written Communication | 1391 WITHDRAWN | 1992 |
| Invasion of Privacy: Use of a Surveillance Device..... | 1392 | 2020 |
| Invasion of Privacy: Looking into a Dwelling Unit..... | 1395 | 2017 |
| Invasion of Privacy: Use of a Device to View Under the Outer Clothing of an Individual | 1395A | 2016 |
| Representations Depicting Nudity | 1396 | 2017 |
| Publishing a Private Representation Depicting Nudity Without Consent..... | 1398A | 2020 |
| Publishing a Depiction That Is Known to Be a Private Representation of Nudity Without Consent..... | 1398B | 2020 |
| Soliciting an Intimate or Private Representation | 1399 | 2018 |

WIS JI-CRIMINAL

CRIMES AGAINST PROPERTY

| | | |
|--|-----------------|------|
| Criminal Damage to Property | 1400 | 2020 |
| Criminal Damage to Property: Vending and Other Machines | 1400A | 2017 |
| Criminal Damage to Property: Energy Provider Property | 1400B | 2020 |
| Damage or Threat to Property of a Witness..... | 1400C | 2020 |
| Criminal Damage to Religious or Cemetery Property | 1401A | 2003 |
| Criminal Damage to Facilities Associated with Designated Groups | 1401B | 2003 |
| Criminal Damage to Personal Property Contained in Religious, Cemetery or Other Property | 1401C | 2003 |
| Criminal Damage or Threat to Property of a Judge | 1402A | 2004 |
| Criminal Damage or Threat to Property of a Department of Revenue Employee | 1402B | 2004 |
| Graffiti | 1403 | 2010 |
| Arson of a Building of Another | 1404 | 2008 |
| Arson of a Building with Intent to Defraud an Insurer | 1405 | 2008 |
| Arson of Property Other Than a Building..... | 1408 | 2011 |
| Arson (Of Property Other Than a Building) with Intent to Defraud..... | 1410 | 2001 |
| Molotov Cocktails (Firebombs): Possession..... | 1417 | 2008 |
| Molotov Cocktails (Firebombs): Manufacture, Sale, Offer to Sell, Gift or Transfer..... | 1418 | 2008 |
| Burglary with Intent to Steal..... | 1421 | 2020 |
| Burglary with Intent to Steal; While Armed with a Dangerous Weapon | 1422 WITHDRAWN | 1997 |
| Burglary with Intent to Commit a Felony | 1424 | 2022 |
| Burglary While Armed | 1425A | 2005 |
| Burglary: Arming Oneself with a Dangerous Weapon While in the Enclosure | 1425B | 2005 |
| Burglary: Committing a Battery While in the Enclosure..... | 1425C | 2005 |
| Burglary: Person Lawfully Present in the Enclosure | 1425E | 2005 |
| Entry into a Locked Vehicle | 1426 | 2008 |
| Possession of Burglarious Tools | 1431 | 2008 |
| Entry into Locked Coin Box | 1433 | 2004 |
| Criminal Trespass to Dwellings..... | 1437 | 2017 |
| Entry into a Locked Dwelling..... | 1438 | 2008 |
| Criminal Trespass to a Medical Facility | 1439 | 2008 |
| Criminal Trespass to an Energy Provider Property..... | 1440 | 2020 |
| Theft..... | 1441 | 2022 |
| Determining Value in Theft Cases..... | 1441A WITHDRAWN | 2002 |
| Theft: Penalty Factors | 1441B | 2020 |
| Theft from Person | 1442 WITHDRAWN | 1999 |
| Theft by Contractor..... | 1443 | 2022 |
| Theft by Contractor: Defendant Is a Corporate Officer | 1443A | 2022 |
| Theft by Employee, Trustee, or Bailee (Embezzlement)..... | 1444 | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Theft by One Having an Undisputed Interest in Property from One Having Superior Right of Possession | 1450 | 2022 |
| Theft by Fraud..... | 1453 WITHDRAWN | 2006 |
| Theft by Fraud: Representations Made to the Owner, Directly or by a Third Person | 1453A | 2022 |
| Theft by Fraud: Representations Made to an Agent | 1453B | 2022 |
| Theft by Fraud: Failure to Disclose as a Representation | 1453C | 2022 |
| Theft by Failure to Return Leased or Rented Property | 1455 | 2022 |
| Mail Theft | 1457 | 1/2023 |
| Unauthorized Use of an Individual's Personal Identifying Information or Documents..... | 1458 | 2019 |
| Unauthorized Use of an Entity's Identifying Information or Documents | 1459 | 2019 |
| Failure to Disclose Manufacturer of Recording..... | 1460 | 2014 |
| Fraud on Hotel or Restaurant Keeper | 1461 | 2010 |
| Absconding Without Paying Rent..... | 1462 | 2010 |
| Absconding Without Paying Rent: Affirmative Defense..... | 1462A | 2008 |
| Taking a Vehicle by Use or Threat of Force..... | 1463 | 2003 |
| Taking a Vehicle by Use or Threat of Force..... | 1463A | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent..... | 1464 | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent: Driving or Operating Without the Owner's Consent as a Lesser Included Offense | 1464A | 2019 |
| Driving or Operating a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent | 1465 | 2019 |
| Operating Without Owner's Consent: Affirmative Defense..... | 1465A | 2019 |
| Intentionally Accompanying a Person Who Operates a Vehicle Without the Owner's Consent | 1466 | 2016 |
| Removing a Major Part of a Vehicle Without the Owner's Consent..... | 1467 | 2001 |
| Issue of a Worthless Check: Misdemeanor..... | 1468 | 2004 |
| Issue of a Worthless Check: Felony: One Check for \$2,500 or More | 1469A | 2004 |
| Issue of a Worthless Check: Felony: Series of Checks Totaling \$2,500 or More | 1469B | 2004 |
| Transfer of Encumbered Personal Property with Intent to Defraud | 1470 | 2008 |
| Loan Sharking (Extortionate Extension of Credit) | 1472A | 2009 |
| Loan Sharking (Advancements for Extortionate Extensions of Credit) | 1472B | 2009 |
| Loan Sharking (Use of Extortionate Means) | 1472C | 2009 |
| Extortion: Accuse or Threaten to Accuse | 1473A | 2004 |
| Extortion: Injure or Threaten to Injure..... | 1473B | 2022 |
| Threats to Communicate Derogatory Information..... | 1474 | 2017 |
| Robbery by the Use of Force | 1475 WITHDRAWN | 2009 |
| Robbery by Threat of Force..... | 1477 WITHDRAWN | 2009 |
| Robbery by the Use or Threat of Force..... | 1479 | 2009 |
| Armed Robbery: By Use or Threat of Use of a Dangerous Weapon..... | 1480 | 2016 |

WIS JI-CRIMINAL

| | | |
|---|-------------------------|--------|
| Armed Robbery: By Use of an Article the Victim Reasonably Believes is a Dangerous Weapon | 1480A | 2016 |
| Receiving Stolen Property | 1481 | 2012 |
| Fraudulent Writings: Falsifying a Corporate Record..... | 1485 | 2004 |
| Fraudulent Writings: Obtaining a Signature by Means of Deceit..... | 1486 | 2001 |
| Possession of Property with Altered Identification Marks | 1488 | 2009 |
| Forgery (by Making or Altering a Check) | 1491 | 2009 |
| Uttering a Forged Writing (Check)..... | 1492 | 2009 |
| | | |
| Possession of a Forged Writing (Check) with Intent to Utter..... | 1493 | 2009 |
| Fraudulent Insurance Claim: Presenting a False or Fraudulent Claim..... | 1494 | 2003 |
| Theft of Telecommunications Service | 1495 | 2014 |
| Theft of a Financial Transaction Card | 1496 | 2009 |
| Fraudulent Use of a Financial Transaction Card | 1497 | 2003 |
| Fraudulent Use of a Financial Transaction Card | 1497A | 2003 |
| Financial Transaction Card Factoring..... | 1497B RENUMBERED 1497.1 | 2003 |
| Retail Theft | 1498 | 2020 |
| Retail Theft: Removing a Theft Detection Device | 1498A | 2020 |
| Retail Theft: Using a Theft Detection Shielding Device | 1498B | 2020 |
| Theft of Services | 1498C | 2020 |
| Criminal Slander of Title | 1499 | 2009 |
| Crimes Against Sexual Morality..... | 1500-1529 WITHDRAWN | 1996 |
| Computer Crime..... | 1504 | 2007 |
| Computer Crime..... | 1505 | 2009 |
| Computer Crime..... | 1506 | 2007 |
| Crimes Against Financial Institutions..... | 1508 | 1/2023 |
| Incest: Sexual Intercourse Between Father and Daughter | 1510 | 2008 |
| Fraud Against a Financial Institution..... | 1512 | 2017 |
| Robbery of a Financial Institution | 1522 | 2017 |
| Money Laundering — § 943.895(2)(a)1 - 2. | 1524 | 1/2023 |
| Money Laundering — § 943.895(2)(a)3. | 1525 | 1/2023 |
| Money Laundering — § 943.895(2)(a)4..... | 1526 | 1/2023 |

CRIMES AGAINST SEXUAL MORALITY

| | | |
|---|----------------|------|
| Enticing Children for Immoral Purposes | 1530 WITHDRAWN | 1989 |
| Incest: Sexual Intercourse Between Blood Relatives..... | 1532 | 2022 |
| Fornication: Sexual Intercourse in Public..... | 1535 | 2016 |
| Fornication: Sexual Intercourse with a Person Younger Than 18 Years | 1536 WITHDRAWN | 1989 |
| Sexual Gratification in Public..... | 1537 | 2021 |
| Sexual Gratification with a Person Younger Than 18 Years | 1538 WITHDRAWN | 1989 |
| Lewd and Lascivious Behavior - Exposing Genitals or Pubic Area | 1544 | 2007 |
| Lewd and Lascivious Behavior by Cohabitation with a Person Not His Spouse..... | 1545 WITHDRAWN | 1996 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Commitment and Continuance of Control Under the Sex Crimes Law | 1550-1553 WITHDRAWN | 1996 |
| Prostitution: Nonmarital Sexual Intercourse..... | 1560 | 2016 |
| Prostitution: Act of Sexual Gratification | 1561 | 2006 |
| Patronizing Prostitutes | 1564 | 2018 |
| Soliciting to Practice Prostitution | 1566 | 2016 |
| Pandering | 1568 | 2015 |
| Pandering | 1568A | 2016 |
| Pandering | 1568B | 2016 |
| Keeping a Place of Prostitution..... | 1570 | 2016 |
| Granting the Use of a Place as a Place of Prostitution..... | 1571 | 2016 |

CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

| | | |
|--|------|--------|
| Commercial Gambling: Operating a Gambling Place for Gain | 1601 | 2002 |
| Commercial Gambling: Receiving a Bet for Gain..... | 1602 | 2002 |
| Commercial Gambling: Collecting the Proceeds of a Gambling Machine..... | 1605 | 1/2023 |
| Commercial Gambling: Using Wire Communication to Place a Bet..... | 1607 | 2002 |
| Permitting Real Estate to be Used as a Gambling Place..... | 1610 | 2009 |
| Altering a Lottery Ticket | 1650 | 2009 |
| Uttering an Altered Lottery Ticket..... | 1651 | 2009 |
| Possession of an Altered Lottery Ticket with Intent to Defraud..... | 1652 | 2009 |
| Sabotage..... | 1705 | 2009 |
| Bribery – Transferring Property to a Public Employee to Induce Action or Failure to Act..... | 1720 | 2009 |
| Bribery – Transferring Property to a Public Officer to Influence a Decision | 1721 | 2009 |
| Bribery – Accepting a Bribe | 1723 | 2009 |
| Misconduct in Public Office (by Failure or Refusal to Perform Duty)..... | 1730 | 2008 |
| Misconduct in Public Office (by Performance of Unauthorized or Forbidden Act)..... | 1731 | 2008 |
| Misconduct in Public Office (by Exercise of Discretionary Power for a Dishonest Advantage) | 1732 | 2008 |
| Misconduct in Public Office (by False Entry, Return, Certificate, Report, or Statement) | 1733 | 2008 |
| Misconduct in Public Office (by Unlawful Solicitation or Acceptance of Anything of Value)..... | 1734 | 2008 |
| Private Interest in a Public Contract: Entering into a Contract in a Private Capacity and Being Authorized by Law to Participate in the Making of the Contract as a Public Officer | 1740 | 2009 |
| Private Interest in a Public Contract: Participating in the Making of a Contract in Which One Has a Private Pecuniary Interest..... | 1741 | 2009 |
| Private Interest in a Public Contract: Performing a Discretionary Function in Regard to a Contract in Which One Has a Private Pecuniary Interest | 1742 | 2009 |
| Perjury..... | 1750 | 2020 |
| False Swearing: False Statement Under Oath: Felony..... | 1754 | 2004 |
| False Swearing: Inconsistent Statements | 1755 | 2004 |
| False Swearing: False Statement Under Oath: Misdemeanor..... | 1756 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Resisting an Officer | 1765 | 2012 |
| Obstructing an Officer | 1766 | 2010 |
| Obstructing an Officer: Giving False Information..... | 1766A | 2010 |
| Failure to Comply with an Officer's Attempt to Take a Person into Custody | 1768 | 2008 |
| | | |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Forfeiture Offense | 1770 | 2008 |
| Escape from Custody Resulting from Violation of Probation, Parole, or Extended Supervision | 1771 | 2009 |
| Escape from Custody Resulting from Legal Arrest for a Crime..... | 1772 | 2008 |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Crime | 1773 WITHDRAWN | 2008 |
| Escape from Custody: Jail or Prison Escape..... | 1774 | 2008 |
| Escape from Custody: Chapter 980 Custody Order..... | 1775 | 2008 |
| Escape: Individual with Custody Injured..... | 1775A | 2009 |
| Failure to Report to Jail: Periods of Imprisonment..... | 1776 | 1/2023 |
| Failure to Report to Jail: After Stay of Sentence | 1777A | 1/2023 |
| Failure to Report to Jail: Confinement Order | 1777B | 1/2023 |
| | | |
| Assault by a Prisoner: Placing an Officer, Employee, Visitor, or Inmate in Apprehension of an Immediate Battery Likely to Cause Death or Great Bodily Harm | 1778 | 2001 |
| Assault by a Prisoner: Restraining or Confining an Officer, Employee, Visitor, or Inmate | 1779 | 2001 |
| Assault by a Prisoner: Throwing or Expelling a Bodily Substance at an Officer, Employee, Visitor, or Inmate..... | 1779A | 2001 |
| Permitting Escape | 1780 | 2008 |
| Assisting Escape | 1781 | 2008 |
| Assisting Escape by Public Officer or Employee..... | 1782 | 2008 |
| Introducing a Firearm into an Institution | 1783 | 2008 |
| Inmate Possessing an Article With Intent to Retain..... | 1784 | 2021 |
| Delivering an Article to an Inmate..... | 1785 | 2021 |
| Possessing an Article with Intent to Deliver it to an Inmate..... | 1786 | 2021 |
| Receiving an Article From an Inmate to Convey Out of Jail or Prison | 1787 | 2021 |
| Encouraging a Violation of Probation, Extended Supervision or Parole..... | 1788 | 2011 |
| | | |
| Aiding a Felon..... | 1790 | 2015 |
| Aiding a Felon by Destroying, etc., Physical Evidence..... | 1791 | 2015 |
| Bail Jumping | 1795 | 2018 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME III

| | No. | Year |
|---|---------------------|-------------|
| CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION (continued) | | |
| Concealing Identity..... | 1805 RENUMBERED 994 | 1986 |
| Bribery of Witness: Transferring Property | 1808A | 2021 |
| Bribery of Witness: Accepting a Bribe | 1808B | 2021 |
| Concealing Death of Child..... | 1810 WITHDRAWN | 1989 |
| Communicating with a Juror..... | 1812 | 2009 |
| | | |
| Obstructing Justice..... | 1815 | 2009 |
| Simulating Legal Process..... | 1825 | 2009 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel..... | 1830 | 2018 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel with Intent to Commit a Crime..... | 1831 WITHDRAWN | 2018 |
| Interference with Custody of a Child..... | 1832 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1833 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1834 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1835 WITHDRAWN | 1989 |
| Interference with Custody of a Nonmarital Child..... | 1835A WITHDRAWN | 1989 |
| Interference with the Parental Rights of the Other Parent: Concealing a Child | 1838 WITHDRAWN | 1989 |
| | | |
| Unemployment Insurance Fraud: Making a False Statement to Obtain a Benefit Payment | 1848 | 2019 |
| Welfare Fraud: Making False Representations to Secure Public Assistance..... | 1850 | 2015 |
| Public Assistance Fraud: Concealing or Failing to Disclose an Event Affecting Eligibility | 1851 | 2015 |
| Welfare Fraud: Failure to Report Receipt of Income or Assets..... | 1852 WITHDRAWN | 2015 |
| Welfare Fraud: Failure to Notify Authorities of Change of Facts | 1854 WITHDRAWN | 2015 |
| Food Stamp Fraud: Misstating Facts on an Application..... | 1862 | 2015 |
| | | |
| Medical Assistance Fraud: Making a False Statement in an Application for a Benefit or Payment..... | 1870 | 2015 |
| | | |
| Racketeering Activity – Using Proceeds of a Pattern of Racketeering Activity to Establish or Operate an Enterprise..... | 1881 | 2008 |
| Racketeering Activity – Acquiring or Maintaining an Interest in or Control of an Enterprise Through a Pattern of Racketeering Activity | 1882 | 2008 |
| Racketeering Activity – Conducting or Participating in an Enterprise Through a Pattern of Racketeering Activity | 1883 | 2008 |

WIS JI-CRIMINAL

CRIMES AGAINST PUBLIC PEACE, ORDER, AND OTHER INTERESTS

| | | |
|--|-----------------|-------------|
| Disorderly Conduct..... | 1900 | 2022 |
| Disrupting a Funeral or Memorial Service | 1901 | 2007 |
| Disrupting a Funeral or Memorial Service: Impeding Vehicles | 1901A | 2007 |
| Unlawful Use of Telephone | 1902 | 2008 |
| Unlawful Use of Telephone | 1903 | 2008 |
| Unlawful Use of Telephone | 1904 | 2008 |
| Unlawful Use of Telephone | 1905 RENUMBERED | 1907 1993 |
| Unlawful Use of Telephone | 1906 | 2008 |
| Unlawful Use of Telephone | 1907 | 2008 |
| Unlawful Use of a Computerized Communication System: Threat to Inflict Injury | 1908 | 2008 |
| Unlawful Use of a Computerized Communication System: Use of Obscene Language | 1909 | 2008 |
| Harassment: Subjecting Another to Physical Contact | 1910 | 2003 |
| Harassment: Threatening Physical Contact with Another | 1911 RENUMBERED | 1910.1 2003 |
| Harassment: Engaging in a Course of Conduct Which Harasses or Intimidates Another | 1912 | 2003 |
| Swatting | 1919 | 2020 |
| Bomb Scares | 1920 | 2020 |
| Intentional Terrorist Threats | 1925A | 2017 |
| Reckless Terrorist Threats | 1925B | 2017 |
| Failure to Withdraw from an Unlawful Assembly..... | 1930 | 2008 |
| Contributing to Delinquency or Neglect of Children..... | 1960 WITHDRAWN | 1989 |
| Contributing to Delinquency of Children by Parent, Guardian, or Legal Custodian | 1961 WITHDRAWN | 1989 |

CRIMES AGAINST ANIMALS

| | | |
|---|------|------|
| Mistreating an Animal | 1980 | 2013 |
| Harassment of Police or Fire Animals | 1981 | 2005 |
| Failing to Provide an Animal with Sufficient Food and Water | 1982 | 2005 |
| Dognapping and Catnapping..... | 1983 | 2005 |
| Failing to Provide an Animal with Proper Shelter | 1984 | 2005 |
| Instigating Fights Between Animals..... | 1986 | 2009 |
| Keeping an Animal with Intent That it Engage in Fighting..... | 1988 | 2009 |

ABANDONMENT

| | | |
|--|----------------|------|
| Abandonment by Husband or Father | 2000 WITHDRAWN | 1996 |
|--|----------------|------|

PATERNITY

| | | |
|-----------------|----------------|------|
| Paternity | 2010 WITHDRAWN | 1996 |
|-----------------|----------------|------|

JUVENILE DELINQUENCY

| | | |
|--|----------------|------|
| Juvenile Delinquency: Composite Instruction | 2020 WITHDRAWN | 2009 |
| Sample: Delinquency Under Chapter 48: Burglary | 2021 WITHDRAWN | 2009 |
| Contempt of Court: Punitive Sanction..... | 2031 | 2009 |

WIS JI-CRIMINAL

ORDINANCE VIOLATIONS

| | | |
|--|---|------|
| Violating a Temporary Restraining Order or an Injunction..... | 2040 | 2019 |
| Violating a Foreign Protection Order..... | 2042 | 2002 |
| Violating a Domestic Abuse Contact Prohibition – § 968.075(5) | 2044 | 2013 |
| Burden of Proof: Forfeiture Actions and Five-Sixths Verdict: Forfeiture Actions | 2050, 2055 RENUMBERED 140A and 515A, respectively | 1994 |

CRIMES AGAINST CHILDREN

| | | |
|--|--------------|------|
| Sexual Contact | 2101A | 2007 |
| Sexual Intercourse..... | 2101B | 2010 |
| Introductory Comment: § 948.02 Sexual Assault of a Child: As Amended by 2007 Wisconsin Act 80 [Effective Date: March 27, 2008] and 2013 Wisconsin Act 167 [Effective Date: March 29, 2014]..... | 2102 | 2019 |
| First Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 13 Years: Causing Great Bodily Harm..... | 2102A | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 12 Years | 2102B | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence..... | 2102C | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence by a Person Who Has Attained the Age of 18 Years | 2102D | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years | 2102E | 2015 |
| Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years | 2104 | 2020 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Actual Child | 2105A | 2005 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Fictitious Child..... | 2105B | 2005 |
| Sexual Assault of a Child: Failing to Act to Prevent Sexual Intercourse or Sexual Contact | 2106 | 2009 |
| Law Note: “Person Responsible for the Child’s Welfare”..... | 2106A | 2010 |
| Repeated Acts of Sexual Assault of a Child | 2107 | 2019 |
| Repeated Acts of Sexual Assault of a Child | 2107 EXAMPLE | 2009 |
| Physical Abuse of a Child: Intentionally Causing Great Bodily Harm | 2108 | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Great Bodily Harm..... | 2108A | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Reckless Causing of Great Bodily Harm | 2108B | 2015 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm | 2109 | 2009 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm by Conduct Which Creates a High Probability of Great Bodily Harm | 2110 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Great Bodily Harm..... | 2111 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Bodily Harm | 2112 | 2009 |

WIS JI-CRIMINAL

| | | |
|---|----------------|------|
| Physical Abuse of a Child: Recklessly Causing Bodily Harm by Conduct which Creates a High Probability of Great Bodily Harm | 2113 | 2009 |
| Physical Abuse or Sexual Assault of a Child by a Person Responsible for the Welfare of the Child | 2114 | 2003 |
| Repeated Acts of Physical Abuse of a Child | 2114A | 2019 |
| Repeated Acts of Physical Abuse of a Child | 2114A EXAMPLE | 2017 |
| Sexual Assault or Physical Abuse of a Child by a Child Care Provider | 2115 | 2019 |
| Causing Mental Harm to a Child | 2116 | 2009 |
| | | |
| Failure to Report Child Abuse | 2119 | 2012 |
| Sexual Exploitation of a Child | 2120 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2120A | 2020 |
| Sexual Exploitation of a Child | 2121 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2121A | 2020 |
| Sexual Exploitation of a Child | 2122 | 2020 |
| Sexual Exploitation of a Child: By a Person Responsible for the Child's Welfare | 2123 | 2020 |
| Trafficking of a Child | 2124 | 2017 |
| Causing a Child to View or Listen to Sexual Activity | 2125 | 2020 |
| | | |
| Incest with a Child: Sexual Intercourse or Contact | 2130 | 2008 |
| Incest with a Child: Sexual Intercourse or Contact by Stepparent | 2131 | 2008 |
| Child Enticement: Completed Act | 2134 | 2018 |
| Child Enticement: Attempt: Actual Child | 2134A | 2018 |
| Child Enticement: Attempt: Fictitious Child | 2134B | 2018 |
| Use of a Computer to Facilitate a Child Sex Crime | 2135 | 2017 |
| Soliciting a Child for Prostitution | 2136 | 2009 |
| Patronizing a Child | 2136A | 2018 |
| Sexual Assault of a Foster Child | 2137A | 2010 |
| Sexual Assault of a Child Placed in a Substitute Care Facility | 2137B | 2007 |
| Sexual Intercourse with a Child | 2138 | 2018 |
| Underage Sexual Activity | 2138A | 2018 |
| Sexual Assault of a Student by a School Staff Person | 2139 | 2007 |
| Sexual Assault of a Child by a Person Who Works or Volunteers with Children | 2139A | 2007 |
| | | |
| Exposing Genitals or Pubic Area to a Child | 2140 | 2015 |
| Causing a Child to Expose Genitals or Pubic Area | 2141 | 2015 |
| Exposing a Child to Harmful Material | 2142 | 2019 |
| Exposing a Child to Harmful Material: Face-to-Face Contact Affirmative Defense | 2142A | 2009 |
| Exposing a Child to Harmful Material: Verbally Communicating a Harmful Description or Narrative Account | 2143 | 2019 |
| Possession of Child Pornography | 2146 WITHDRAWN | 2003 |
| Child Pornography: Possession of a Recording | 2146A | 2020 |
| Child Pornography: Exhibiting or Playing a Recording | 2146B | 2020 |
| Child Sex Offender Working with Children | 2147 | 2007 |
| Abandonment of a Child | 2148 | 2003 |
| | | |
| Neglecting a Child | 2150 | 2019 |
| Neglecting a Child: Death, Great Bodily Harm, or Bodily Harm as a Consequence | 2150A | 2019 |
| Chronic Neglect of a Child; Repeated Acts of Neglect | 2151 | 2019 |
| Failure to Support | 2152 | 2006 |

WIS JI-CRIMINAL

| | | |
|---|-------|--------|
| Failure to Support: Affirmative Defense | 2152A | 2001 |
| Concealing Death of Child..... | 2154 | 2013 |
| Abduction of Another’s Child: Taking from Home or Custody | 2160 | 1/2023 |
| Abduction of Another’s Child: Detaining Away from Home..... | 2161 | 1/2023 |
| Abduction of Another’s Child: Taking by Force or Threat of Force | 2162 | 1/2023 |
| Abduction of Another’s Child: Detaining by Force or Threat of Force..... | 2163 | 1/2023 |
| Interference with Custody of a Child..... | 2166 | 2015 |
| Interference with Custody of a Child..... | 2167 | 2009 |
| Interference with Custody of a Nonmarital Child..... | 2167A | 2009 |
| Interference with the Custody of a Child by a Parent: Concealing a Child | 2168 | 2009 |
| Interference with the Custody of a Child: Affirmative Defenses..... | 2169 | 2009 |
| Contributing to the Delinquency of a Child..... | 2170 | 1/2023 |
| Contributing to the Delinquency of a Child: Death as a Consequence..... | 2170A | 1/2023 |
| Contributing to the Delinquency of a Child by a Person Responsible for the Child’s Welfare | 2171 | 1/2023 |
| Contributing to Truancy..... | 2173 | 2006 |
| Compulsory School Attendance..... | 2174 | 2006 |
| Child Unattended in a Child Care Vehicle..... | 2175 | 2013 |
| Possession of a Dangerous Weapon by a Child..... | 2176 | 2012 |
| Sale, Loan, or Gift of a Dangerous Weapon to a Child | 2177 | 2012 |
| Sale, Loan, or Gift of a Firearm to a Child: Death Caused..... | 2177A | 2009 |
| Possession of a Firearm on School Grounds..... | 2178A | 2016 |
| Discharge of a Firearm in a School Zone | 2178B | 2016 |
| Dangerous Weapons Other Than Firearms on School Premises | 2179 | 2009 |
| Receiving Stolen Property from a Child | 2180 | 2012 |
| Recklessly Storing a Firearm | 2185 | 2013 |
| Registered Sex Offender and Photographing Minors | 2196 | 2008 |
| Failure to Comply with Sex Offender Registration Requirements | 2198 | 2021 |
| Sex Offender Name Change | 2199 | 1/2023 |

INQUEST

| | | |
|--|-------|------|
| Inquest: Preliminary Instruction..... | 2300 | 2010 |
| Inquest: Final Instructions: Explanation of Verdicts | 2302 | 2010 |
| Inquest: Suggested Verdicts..... | 2302A | 2010 |

SEXUALLY VIOLENT PERSON

| | | |
|---|------|------|
| Suggested Order of Instructions: Commitment as a Sexually Violent Person under Chapter 980, Wis. Stats. | 2500 | 2016 |
| Preliminary Instruction: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2501 | 2011 |
| Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats..... | 2502 | 2021 |
| Verdict: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2503 | 2011 |
| Preliminary Instruction: Hearing on Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2505 | 2014 |

WIS JI-CRIMINAL

Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats..... 2506 2021

VEHICLE CODE

| | | |
|--|-----------------|--------|
| Making a False Statement in an Application for a Certificate of Title | 2590 | 2004 |
| Operating While Intoxicated: Introductory Comment | 2600 | 2011 |
| Premises Other Than Highways..... | 2605 | 2011 |
| Operating a Motor Vehicle Without a Valid Operator's License - Criminal Offense | 2610 | 2013 |
| Operating a Motor Vehicle Without a Valid Operator's License: Causing Great Bodily Harm or Death - Criminal Offense | 2612 | 2013 |
| Operating While Revoked: Criminal Offense: Based on Prior Conviction | 2620 | 2010 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense..... | 2620A | 2018 |
| Operating A Motor Vehicle After Revocation or Suspension - Civil Forfeiture | 2620A WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Notice Mailed | 2620B WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Duty to Exercise Due Care..... | 2620C WITHDRAWN | 2006 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense | 2621 | 2018 |
| Operating While Revoked: Civil Forfeiture..... | 2621A | 2018 |
| Operating While Suspended: Civil Forfeiture | 2622 | 2013 |
| Operating While Revoked or Suspended: Criminal Offense: Causing Great Bodily Harm or Death | 2623 WITHDRAWN | 2013 |
| Operating While Suspended: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623A | 2013 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623B | 2018 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623C | 2018 |
| Operating While Revoked: Criminal Offense: Permanent Revocation | 2626 | 2019 |
| Operating a Motor Vehicle to Flee or in an Attempt to Elude an Officer..... | 2630 | 2019 |
| Resisting a Traffic Officer by Failing to Stop..... | 2632 | 2019 |
| Reckless Driving: Endangering Safety (Criminal Offense)..... | 2650 | 1/2023 |
| Reckless Driving: Causing Bodily Harm..... | 2652 | 1/2023 |
| Reckless Driving: Causing Great Bodily Harm..... | 2654 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IV

| | No. | Year |
|---|---------------------|--------|
| VEHICLE CODE (continued) | | |
| Introductory Comment..... | 2660-2665 WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – 0.08 Grams or More..... | 2660 | 2020 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660A | 2015 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660B WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams | 2660C | 2007 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams – Subject to an Ignition Interlock Order..... | 2660D | 2011 |
| Operating a Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More | 2661 | 2017 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More – § 346.63(2)(a) | 2661A WITHDRAWN | 2004 |
| Operating a Vehicle While Intoxicated and Causing Injury: Affirmative Defense Under § 346.63(2)(b)..... | 2662 WITHDRAWN | 2004 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Criminal Offense..... | 2663 | 1/2023 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture..... | 2663A | 2006 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture – No Alcohol Concentration Test..... | 2663B | 2019 |
| Alcohol Concentration Level..... | 2663C | 2004 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant with a Child under 16 Years of Age in the Motor Vehicle | 2663D | 2011 |
| Operating a Motor Vehicle While Under the Influence of a Controlled Substance – Criminal Offense..... | 2664 | 2020 |
| Operating a Motor Vehicle While Under the Influence of a Combination of an Intoxicant and a Controlled Substance – Civil Forfeiture | 2664A | 2022 |
| Operating a Motor Vehicle with a Detectable Amount of a Restricted Controlled Substance..... | 2664B | 2021 |
| Operating a Vehicle While Under the Influence of an Intoxicant and Causing Injury | 2665 | 2017 |
| Operating a Motor Vehicle While Under the Influence of a Drug – Criminal Offense..... | 2666 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|-------|--------|
| Operating a Motor Vehicle While Under the Influence of any Combination of an Intoxicant and any other Drug to a Degree that Renders Him or Her Incapable of Safely Driving | 2666A | 2022 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant: Hazardous Inhalant..... | 2667 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Civil Forfeiture..... | 2668 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2669 | 2015 |
| Failure to Give Information or Render Aid Following an Accident..... | 2670 | 2018 |
| Speeding: Exceeding a Reasonable and Prudent Speed Under § 346.57(2) or an Ordinance Adopting § 346.57(2)..... | 2672 | 1/2023 |
| Law Note: The “Justification” Defense | 2672A | 2010 |
| Speeding: Exceeding a Reasonable and Prudent Speed Criminal Offense under § 346.57(2); § 346.60 (3m)(a)2 | 2672B | 1/2023 |
| Speeding: Driving Too Fast for Conditions Under § 346.57(3) or an Ordinance Adopting § 346.57(3)..... | 2674 | 1/2023 |
| Speeding: Driving Too Fast for Conditions Criminal Offense under § 346.57(3); § 346.60 (3m)(a)2 | 2674A | 1/2023 |
| Speeding: Exceeding Fixed Limits Under § 346.57(4)(e) or an Ordinance Adopting § 346.57(4)(e)..... | 2676 | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Under § 346.57(4)(gm) or an Ordinance Adopting § 346.57(4)(gm)..... | 2676A | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Criminal Offense under § 346.57(4)(gm); § 346.60 (3m)(a)2 | 2676B | 1/2023 |
| Speeding: Exceeding Fixed Limits Criminal Offense under § 346.57(4)(e); § 346.60 (3m)(a)2..... | 2676C | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Under § 346.57(4)(h) or an Ordinance Adopting § 346.57(4)(h)..... | 2677 | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Criminal Offense under § 346.57(4)(h); § 346.60 (3m)(a)2..... | 2677A | 1/2023 |
| Speeding: Exceeding Posted Limits Under § 346.57(5) or an Ordinance Adopting § 346.57(5)..... | 2678 | 1/2023 |
| Speeding: Exceeding Posted Limits Criminal Offense under § 346.57(5); § 346.60 (3m)(a)2 | 2678A | 1/2023 |
| Radar Speed Measurement | 2679 | 2010 |
| Noncriminal Traffic Violations: Prohibited by State Law or an Ordinance Adopting State Law | 2680 | 2015 |
| Tampering with an Ignition Interlock Device..... | 2682A | 2014 |
| Failing to Install an Ignition Interlock Device | 2682B | 2021 |
| Operating a Commercial Motor Vehicle with an Alcohol Concentration of 0.04 Grams or More but Less Than 0.08 Grams – Criminal Offense | 2690 | 2004 |
| Operating a Motorboat While under the Influence of an Intoxicant: Criminal Offense..... | 2695 | 2013 |
| Operating a Motorboat While under the Influence of an Intoxicant / | | |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| Operating a Motorboat with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2696 | 2013 |
| SECURITIES FRAUD | | |
| Offering or Selling an Unregistered Security | 2902 | 2014 |
| Securities Fraud: Making an Untrue Statement of Material Fact in Connection with the Sale of a Security | 2904 | 2014 |
| Possession of Untagged Deer..... | 5000 | 2003 |
| Failure to File an Individual Income Tax Return..... | 5010 | 2010 |
| Filing a False or Fraudulent Return | 5012 | 2010 |
| Theft of Anhydrous Ammonia..... | 5024 | 2003 |
| INTOXICATING LIQUORS | | |
| Sale of Intoxicating Liquors to a Minor by a Tavern Keeper | 5030 WITHDRAWN | 2010 |
| Selling Fermented Malt Beverage Without a License | 5035 | 2005 |
| Sale to or Procurement for Any Minor of Intoxicating Liquors by any Person..... | 5040 WITHDRAWN | 2010 |
| Causing Injury or Death to an Underage Person by Providing Alcohol Beverages | 5050 | 2007 |
| HAZARDOUS WASTE | | |
| Storing, Treating, Transporting, or Disposing of Hazardous Waste Without a License..... | 5200 | 2010 |
| ELECTION FRAUD | | |
| Election Fraud – Unqualified Elector | 5301 | 2009 |
| Carrying a Weapon by Licensee Where Prohibited..... | 5401 | 2012 |
| CONTROLLED SUBSTANCES | | |
| Note on the Knowledge Requirement in Controlled Substance Cases | 6000 | 2010 |
| Finding the Amount of Controlled Substance..... | 6001 | 2022 |
| Finding the Amount of Controlled Substance in a Methamphetamine Case | 6001A EXAMPLE | 2018 |
| Delivering a Controlled Substance to a Minor..... | 6002 | 2003 |
| Delivering a Controlled Substance to a Prisoner | 6003 | 2003 |
| Delivering a Controlled Substance on or Near Certain Premises | 6004 | 2003 |
| Controlled Substance Analog | 6005 | 2010 |
| Possession of a Controlled Substance Without Tax Stamp | 6009 WITHDRAWN | 2019 |
| Delivery of a Controlled Substance | 6020 | 2018 |

WIS JI-CRIMINAL

| | | |
|--|-----------------------|------|
| Delivery of a Controlled Substance Analog | 6020A | 2018 |
| Manufacture of a Controlled Substance..... | 6021 | 2010 |
| Possession of a Controlled Substance..... | 6030 | 2021 |
| Attempted Possession of a Controlled Substance | 6031 | 2021 |
| Possession of a Controlled Substance with Intent to Deliver with Lesser Included Offense of Possession of a Controlled Substance | 6035 | 2018 |
| Possession of a Controlled Substance with Intent to Manufacture with Lesser Included Offense of Possession of a Controlled Substance | 6036 | 2018 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037 RENUMBERED 6037B | 1994 |
| Keeping or Maintaining a Place Resorted to by Persons Using Controlled Substances in Violation of Chapter 961 for the Purpose of Using Controlled Substances | 6037A | 2008 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037B | 2010 |
| Acquiring Possession of a Controlled Substance by Misrepresentation | 6038 | 2010 |
| Delivery of an Imitation Controlled Substance: Felony | 6040 | 2006 |
| Delivery of an Imitation Controlled Substance: Misdemeanor..... | 6042 | 2006 |
| Possession of Methamphetamine Waste | 6044 | 2009 |
| Using a Child to Deliver a Controlled Substance | 6046 | 2010 |
| Soliciting a Child for the Purpose of Delivering a Controlled Substance..... | 6047 | 2010 |
| Possession of Drug Paraphernalia..... | 6050 | 2021 |
| Possession of Drug Paraphernalia: Methamphetamine..... | 6053 | 2007 |
| Possessing Materials for Manufacturing Methamphetamine | 6065 | 2006 |
| Use or Possession of a Masking Agent..... | 6070 | 2021 |
| Obtaining a Prescription Drug by Fraud | 6100 | 2005 |
| Possession of a Prescription Drug with Intent to Deliver | 6110 | 2006 |
| Possession of a Prescription Drug without a Valid Prescription..... | 6112 | 2013 |

CRIMINAL SPECIAL MATERIALS

| | | |
|---|-------------------|------|
| Suggested Order of Instructions..... | SM-5 RENUMBERED 1 | 1995 |
| Jury Instructions on Lesser Included Offenses | SM-6 | 2014 |
| Juror Questioning of Witnesses | SM-8 | 2014 |
| When a Jury Requests to Hear/See Audio/Visual Evidence During Deliberations | SM-9 | 2022 |
| Grand Jury Proceedings | SM-10 | 2004 |
| John Doe Proceedings..... | SM-12 | 2019 |
| Substitution of Judge..... | SM-15 WITHDRAWN | 1994 |
| Collateral Attack on Prior Convictions..... | SM-16 | 2019 |
| Defendant's Consent to Proceed by Videoconference B Waiver of Right to be Present Under § 971.04 | SM-18 | 2014 |
| Voir Dire | SM-20 | 2017 |
| Waiver of Jury Trial: Acceptance, Withdrawal, and Related Issues..... | SM-21 | 2005 |
| Judge's Duty at Initial Appearance..... | SM-25 WITHDRAWN | 2011 |

WIS JI-CRIMINAL

| | | |
|---|------------------------------------|-------------|
| Inquiry Regarding the Decision Whether to Testify..... | SM-28 | 2012 |
| Waiver and Forfeiture of Counsel; Self-Representation; Standby Counsel; “Hybrid Representation”; Court Appointment of Counsel..... | SM-30 | 2006 |
| Waiver of Preliminary Examination | SM-31 | 2011 |
| Accepting a Plea of Guilty..... | SM-32 | 2021 |
| No Contest and <u>Alford</u> Pleas..... | SM-32A | 2021 |
| Accepting a Plea of Guilty: Use of Written Form..... | SM-32B | 1993 |
| Guilty Plea Acceptance Form | SM-32B APPENDIX WITHDRAWN | 2019 |
| Information on Postconviction Relief..... | SM-33 WITHDRAWN | 2011 |
| Instruction to be Used on Denial of Any Postconviction Motion (Other Than § 974.06) | SM-33A WITHDRAWN | 1991 |
| Instruction to be Used on Denial of a Postconviction Motion Under § 974.06..... | SM-33B WITHDRAWN | 1991 |
| Sentencing Procedure, Standards, and Special Issues..... | SM-34 | 1999 |
| Determining Sentence Credit Under Section 973.155 | SM-34A | 1/2023 |
| Increased Penalty for Habitual Criminality | SM-35 | 1/2023 |
| Special Disposition Under Section 973.015 – Expunction | SM-36 | 2018 |
| Bail After Conviction; Stay of Execution of Sentence | SM-39 WITHDRAWN | 1995 |
| Court’s Instruction to Defendant at Arraignment and Before Acceptance of a Plea of Guilty on Sex Crimes Charge | SM-40 WITHDRAWN | 1991 |
| Sentencing Persons Committed Under the Sex Crimes Law | SM-41 WITHDRAWN | 2011 |
| Inquiry in Conflict of Interest Cases..... | SM-45 | 2000 |
| Competency to Proceed | SM-50 | 2021 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | SM-50A RENUMBERED 650 | 2004 |
| Disclosure of the Identity of an Informer..... | SM-52 | 2005 |
| Inquiry When a Witness Claims the Privilege Against Self-Incrimination | SM-55 | 1994 |
| Procedure to Determine the Admissibility of Statements or Confessions of the Defendant..... | SM-60 WITHDRAWN | 1994 |
| Procedure to Follow When the Admissibility of Identification Evidence is at Issue Prior to or During a Criminal Trial | SM-61 WITHDRAWN | 1994 |
| Admissibility of Evidence Obtained by a Search and Seizure..... | SM-62 WITHDRAWN | 1994 |
| Post-Conviction Procedure Under Section 974.06, Wis. Stats. | SM-70 WITHDRAWN | 1994 |
| Habeas Corpus | SM-80 WITHDRAWN | 1994 |
| Procedure to Follow in Advising a Prisoner of Rights Under the Uniform Detainer Act..... | SM-90 | 1998 |
| INDEX | FOLLOWING SPECIAL MATERIALS | 2022 |

* * *

2160 ABDUCTION OF ANOTHER'S CHILD: TAKING FROM HOME OR CUSTODY — § 948.30(1)(a)**Statutory Definition of the Crime**

Abduction of another's child, as defined in § 948.30(1)(a) of the Criminal Code of Wisconsin, is committed by one who for any unlawful purpose takes any child who is not his or her own by birth or adoption [from the child's home] [from the custody of the child's (parent) (guardian) (legal custodian)].

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant took (name of victim) from [(his) (her) home] [the custody of (his) (her) (parent) (guardian) (legal custodian)].

[A child is in custody when the child is in the actual physical custody of (his) (her) (parent) (guardian) (legal custodian), or, if not in the actual physical custody of a (parent) (guardian) (legal custodian), when the (parent) (guardian) (legal custodian) continues to have control of the child.]¹

2. At the time of the alleged taking, (name of victim) was a child under the age of 18 years who was not the defendant's child by birth or adoption.

Knowledge of (name of victim)'s age is not material² and mistake regarding (name of victim)'s age is not a defense.³

3. The defendant took the child for an unlawful purpose.

The defendant need not know that (his) (her) purpose was unlawful; it is sufficient if, in fact, the purpose was an unlawful one.⁴

The State alleges that the defendant's unlawful purpose was to commit the crime of (name of crime). (Name of crime) is committed by one who

LIST THE ELEMENTS OF THE ALLEGED CRIME AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.⁵

Deciding About Purpose

You cannot look into a person's mind to find purpose. Purpose 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 purpose.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 2160 was originally published in 1989 and was revised in 2010. The 2010 revision involved adoption of a new format and changes in how the first and third elements are defined. This revision was approved by the Committee in October 2022; it removed a reporter's note from the comment concerning "embedded crimes."

This instruction is for a violation of § 948.30(1)(a), 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.

Section 948.30 replaced former § 940.32 with a two-level offense applying only to the taking or detaining of the child of another. The more serious offense requires use of threat or force. See Wis JI-Criminal 2162 and 2163. The limitation to the child of another clears up a potential problem under the old statute, which could have been used against a parent. One of the offenses under the former statute – enticing

from the home or custody – was not reenacted.

1. Section 948.30(3) provides:

(3) For purposes of subs. (1)(a) and (2)(a), a child is in the custody of his or her parent, guardian or legal custodian if:

(a) The child is in the actual physical custody of the parent, guardian or legal custodian; or

(b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

2. Section 939.23(6).

3. Section 939.43(2).

4. While the statute does not specifically refer to an intent on the part of the defendant, it does require an unlawful purpose for the act. This is the mental element of the crime and is limited to the requirement that there be an unlawful purpose for the taking.

5. The instruction is drafted for a case where the alleged “unlawful purpose” is a crime. The Committee recommends that a complete listing of the elements of the “embedded crime” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [*State v. Henning*, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [*State v. Thomas*, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)].

If an unlawful purpose is alleged that is not a crime, the instruction would need to be changed, using a statement like the following:

The State alleges that the defendant’s unlawful purpose was to (identify the alleged unlawful purpose).

[This page is intentionally left blank]

2161 ABDUCTION OF ANOTHER'S CHILD: DETAINING AWAY FROM HOME — § 948.30(1)(b)**Statutory Definition of the Crime**

Abduction of another's child, as defined in § 948.30(1)(b) of the Criminal Code of Wisconsin, is committed by one who for any unlawful purpose detains any child who is not his or her own by birth or adoption and who is away [from the child's home] [from the custody of the child's (parent) (guardian) (legal custodian)].

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant detained (name of victim) who was away [from (his) (her) home] [from the actual physical custody¹ of (his) (her) (parent) (guardian) (legal custodian)].
2. At the time of the alleged detaining, (name of victim) was a child under the age of 18 years who was not the defendant's child by birth or adoption.

Knowledge of (name of victim)'s age is not material² and mistake regarding (name of victim)'s age is not a defense.

3. The defendant detained the child for an unlawful purpose.

The defendant need not know that (his) (her) purpose was unlawful; it is sufficient if, in fact, the purpose was an unlawful one.³

The State alleges that the defendant's unlawful purpose was to commit the crime of (name of crime). (Name of crime) is committed by one who

LIST THE ELEMENTS OF THE ALLEGED CRIME AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.⁴

Deciding About Purpose

You cannot look into a person's mind to find purpose. Purpose 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 purpose.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 2161 was originally published in 1989 and was revised in 2010. The 2010 revision involved adoption of a new format and changes in how the first and third elements are defined. This revision was approved by the Committee in October 2022; it removed a reporter's note from the comment concerning "embedded crimes."

This instruction is for a violation of § 948.30(1)(b), 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.

See the Comment to Wis JI-Criminal 2160 for an explanation of how the offenses relates to “abduction” under former § 940.32.

1. In place of a definition of “custody,” the instruction refers to detaining a child who is away from the “actual physical custody” of the parent, guardian, or custodian. The broader definition of “custody” provided in § 948.30(3) applies only “for purposes of subs. (1)(a) and (2)(a).”

2. Section 939.23(6).

3. While the statute does not specifically refer to an intent on the part of the defendant, it does require an unlawful purpose for the act. This is the mental element of the crime and is limited to the requirement that there be an unlawful purpose for the taking.

4. The instruction is drafted for a case where the alleged “unlawful purpose” is a crime. The Committee recommends that a complete listing of the elements of the “embedded crime” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)].

If an unlawful purpose is alleged that is not a crime, the instruction would need to be changed, using a statement like the following:

The State alleges that the defendant’s unlawful purpose was to (identify the alleged unlawful purpose).

[This page is intentionally left blank]

2162 ABDUCTION OF ANOTHER'S CHILD: TAKING BY FORCE OR THREAT OF FORCE — § 948.30(2)(a)**Statutory Definition of the Crime**

Abduction of another's child, as defined in § 948.30(2)(a) of the Criminal Code of Wisconsin, is committed by one who for any unlawful purpose, and by force or threat of imminent force, takes any child who is not his or her own by birth or adoption [from the child's home] [from the custody of the child's (parent) (guardian) (legal custodian)].

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 took (name of victim) from [(his) (her) home] [the custody of (his) (her) (parent) (guardian) (legal custodian)].

[A child is in custody when the child is in the actual physical custody of (his) (her) (parent) (guardian) (legal custodian), or, if not in the actual physical custody of a (parent) (guardian) (legal custodian), when the (parent) (guardian) (legal custodian) continues to have control of the child.]¹

2. At the time of the alleged taking, (name of victim) was a child under the age of 18 years who was not the defendant's child by birth or adoption.

Knowledge of (name of victim)’s age is not material² and mistake regarding (name of victim)’s age is not a defense.³

3. The defendant took the child by force or threat of imminent force.

The term “imminent” means “near at hand” or “on the point of happening.”⁴

4. The defendant took (name of victim) for an unlawful purpose.

The defendant need not know that (his) (her) purpose is unlawful; it is sufficient if, in fact, the purpose is an unlawful one.⁵

The State alleges that the defendant’s unlawful purpose was to commit the crime of (name of crime). (Name of crime) is committed by one who

LIST THE ELEMENTS OF THE ALLEGED CRIME AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.⁶

Deciding About Purpose

You cannot look into a person’s mind to find purpose. Purpose 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 purpose.

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 2162 was originally published in 1989 and was revised in 2010. The 2010 revision involved adoption of a new format and changes in how the first and fourth elements are defined. This revision was approved by the Committee in October 2022; it removed a reporter's note from the comment concerning "embedded crimes."

This instruction is for a violation of § 948.30(2)(a), 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.

Section 948.30 replaces former § 940.32 with a two-level offense applying only to the taking or detaining of the child of another. The more serious offense requires use of threat of force. The limitation to the child of another clears up a potential problem under the old statute, which could have been used against a parent. One of the offenses under the former statute – enticing from the home or custody – is not reenacted. This instruction replaces Wis JI-Criminal 1285 which applied to violations of § 940.32(1) 1985-86 Wis. Stats., a statute repealed by 1987 Wisconsin Act 332.

1. Section 948.30(3) provides:

(3) For purposes of subs. (1)(a) and (2)(a), a child is in the custody of his or her parent, guardian or legal custodian if:

- (a) The child is in the actual physical custody of the parent, guardian or legal custodian; or
- (b) The child is not in the actual physical custody of his or her parent, guardian or legal custodian, but the parent, guardian or legal custodian continues to have control of the child.

The Note to this section in 1987 Senate Bill 203, enacted as 1987 Wisconsin Act 332, indicates that this was intended to codify the definition of "custody" in Wis JI-Criminal 1285 and 1286 (© 1986). The same definition has been used in this instruction.

2. Section 939.23(6).

3. Section 939.43(2).

4. The definition is the one used in the instruction for armed robbery [Wis JI Criminal 1480]; it was originally adapted from the one used in Black's Law Dictionary, p. 884 (4th ed. 1951).

5. While the statute does not specifically refer to an intent on the part of the defendant, it does require an unlawful purpose for the act. This is the mental element of the crime and is limited to the requirement that there be an unlawful purpose for the taking.

6. The instruction is drafted for a case where the alleged "unlawful purpose" is a crime. The Committee recommends that a complete listing of the elements of the "embedded crime" be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App.

1991)].

If an unlawful purpose is alleged that is not a crime, the instruction would need to be changed, using a statement like the following:

The State alleges that the defendant's unlawful purpose was to (identify the alleged unlawful purpose).

2163 ABDUCTION OF ANOTHER'S CHILD: DETAINING BY FORCE OR THREAT OF FORCE — § 948.30(2)(b)**Statutory Definition of the Crime**

Abduction of another's child, as defined in § 948.30(2)(b) of the Criminal Code of Wisconsin, is committed by one who for any unlawful purpose, and by force or threat of imminent force, detains any child who is not his or her own by birth or adoption and who is away [from the child's home] [from the custody of the child's (parent) (guardian) (legal custodian)].

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 detained (name of victim) who was away [from (his) (her) home] [from the actual physical custody¹ of (his) (her) (parent) (guardian) legal custodian)].
2. At the time of the alleged detention, (name of victim) was a child under the age of 18 years who was not the defendant's child by birth or adoption.

Knowledge of (name of victim)'s age is not material² and mistake regarding (name of victim)'s age is not a defense.³

3. The defendant detained (name of victim) by force or threat of imminent force.

The term “imminent” means “near at hand” or “on the point of happening.”⁴

4. The defendant detained (name of victim) for an unlawful purpose.

The defendant need not know that (his) (her) purpose is unlawful; it is sufficient if, in fact, the purpose is an unlawful one.⁵

The State alleges that the defendant’s unlawful purpose was to commit the crime of (name of crime). (Name of crime) is committed by one who

LIST THE ELEMENTS OF THE ALLEGED CRIME AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.⁶

Deciding About Purpose

You cannot look into a person’s mind to find purpose. Purpose 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 purpose.

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 2163 was originally published in 1989 and was revised in 2010. The 2010 revision

involved adoption of a new format and changes in how the first and fourth elements are defined. This revision was approved by the Committee in October 2022; it removed a reporter's note from the comment concerning "embedded crimes."

This instruction is for a violation of § 948.30(2)(b), 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. It replaces Wis JI-Criminal 1287 which applied to violations of § 940.32(3) 1985-86 Wis. Stats., a statute repealed by 1987 Wisconsin Act 332.

See the Comment to Wis JI-Criminal 2162 for an explanation of how this offense relates to "abduction" under former § 940.32.

1. In place of a definition of "custody," the instruction refers to detaining a child who is away from the "actual physical custody" of the parent, guardian, or custodian. The broader definition of "custody" provided in § 948.30(3) applies only "for purposes of subs. (1)(a) and (2)(a)."

2. Section 939.23(6).

3. Section 939.43(2).

4. The definition is the one used in the instruction for armed robbery [Wis JI-Criminal 1480]; it was originally adapted from the one used in Black's Law Dictionary, p. 884 (4th ed. 1951).

5. While the statute does not specifically refer to an intent on the part of the defendant, it does require an unlawful purpose for the act. This is the mental element of the crime and is limited to the requirement that there be an unlawful purpose for the taking.

6. The instruction is drafted for a case where the alleged "unlawful purpose" is a crime. The Committee recommends that a complete listing of the elements of the "embedded crime" be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)].

If an unlawful purpose is alleged that is not a crime, the instruction would need to be changed, using a statement like the following:

The State alleges that the defendant's unlawful purpose was to (identify the alleged unlawful purpose).

[This page is intentionally left blank]

2170 CONTRIBUTING TO THE DELINQUENCY OF A CHILD — § 948.40(1)**Statutory Definition of the Crime**

Contributing to the delinquency of a child, as defined in § 948.40(1) of the Criminal Code of Wisconsin, is committed by any person who intentionally encourages or contributes to the delinquency of 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 two elements were present.

Elements of the Crime That the State Must Prove

1. (Name of child) was under the age of 18 years.¹

Knowledge of (name of child)'s age by the defendant is not required² and mistake regarding (name of child)'s age is not a defense.³

2. The defendant intentionally encouraged or contributed to the delinquency of (name of child).

Meaning of "Intentionally Encourage or Contribute"

The term "intentionally encourages or contributes" means that the defendant either had a purpose to encourage or contribute to delinquency or was aware that (his) (her) conduct was practically certain to cause that result.⁴

Deciding About Intent

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

Meaning of "Delinquency"

Delinquency is any violation of state criminal law by a child.⁵

Committing (name crime) violates state criminal law.

The crime of (name crime) is committed by one who

LIST THE ELEMENTS OF THE INTENDED CRIME AS DEFINED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTIONS AS NECESSARY.⁶

ADD THE FOLLOWING IF SUPPORTED BY THE EVIDENCE.

[It is not required that the child actually commit a delinquent act. A defendant's conduct contributes to the delinquency of a child if the natural and probable consequences of that conduct would be to cause the child to commit a delinquent act.]⁷

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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 2170 was originally published in 1989 and revised in 1997, 2001, 2009, and 2011. This revision was approved by the Committee in October 2022; it removed a reporter's note from the comment concerning "embedded crimes."

This instruction is for a violation of § 948.40, 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, and replaces the delinquency portion of Wis JI-Criminal 1960 which has been withdrawn.

Section 948.40 addresses the delinquency portion of the crime covered by former sec. 947.15, Contributing To The Delinquency Or Neglect Of A Child. The neglect portion is addressed by a separate statute, sec. 948.20.

The basic penalty is that of a Class A misdemeanor. "If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class H felony." Section 948.40(4)(b). If death is a consequence, the penalty is that of a Class D felony. Section 948.40(4)(a). See Wis JI-Criminal 2170A.

This instruction is for an offense under subsection (1) of § 948.40, where the defendant may be any person. Subsection (2) applies where a person responsible for the welfare of a child is alleged to have contributed to the delinquency of a child by disregard of the welfare of the child. See Wis JI Criminal 2171.

1. A seventeen-year-old is a "child" for purposes of this offense, even though a person of that age would not be a juvenile for purposes of prosecuting the child. State v. Patterson, 2010 WI 130, 329 Wis.2d 599, 790 N.W.2d 909, 790 N.W.2d 909, affirming, 2009 WI 161, 321 Wis.2d 752, 776 N.W.2d 602.

2. This is the rule provided in § 939.23(6).

3. This is the rule provided in § 939.43(2).

4. This is the definition of "intentionally" provided in § 939.23. The "aware that his conduct is practically certain to cause that result" alternative was added by the 1987 revision of the homicide statutes. See Wis JI-Criminal 923A and 923B for further discussion of the definition of "intentionally."

5. Section 948.40(1) formerly referred to § 48.02(3m) for the definition of delinquency. That reference was eliminated by 1995 Wisconsin Act 77. "Delinquent" is defined in § 938.02(3m):

938.02(3m) "Delinquent" means a juvenile who is 10 years of age or older who has violated any state or federal criminal law. . .

The instruction is drafted for what is expected to be the most common case: where the basis for delinquency is a violation of Wisconsin criminal law.

Only children over the age of 10 can be considered delinquent if they violate a criminal law. However, it is an offense under § 948.40 if a person intentionally encourages or contributes to an act by a child under the age of 10 if that act would be a delinquent act if committed by a child over the age of 10 (§ 948.40(1)). Therefore, the simple definition of "delinquent" in the instruction should be accurate for purposes of this

offense.

6. The Committee recommends that a complete listing of the elements of the “embedded crime” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)].

The Committee concluded that the jury need not be instructed that they must reach unanimous agreement as to what delinquent act was encouraged, if evidence has been introduced that tends to show more than one. The Wisconsin Court of Appeals reached the same conclusion in a similar situation, holding that unanimity is not required as to which felony was intended in a prosecution for burglary with intent to commit a felony. State v. Hammer, 216 Wis.2d 213, 576 N.W.2d 285 (Ct. App. 1997). See the Comment to Wis JI-Criminal 517, collecting cases addressing jury unanimity.

Violations of § 948.40 are punished as a Class A misdemeanor unless either death results [see Wis JI Criminal 2170A] or the child’s act encouraged or contributed to is punishable as a felony. The Committee concluded that a jury determination on the felony issue is required because that fact increases the maximum sentence for the crime. See, Apprendi v. New Jersey, 530 U.S. 466 (2000). By specifying a crime in the definition of “delinquency,” the instruction assures that a jury verdict of guilty will include a finding that the crime was the felony or misdemeanor specified.

It could be possible that reasonable views of the evidence could differ as to the felony status of the delinquent act. For example, a case could involve a dispute over the value of stolen property; giving the standard theft instruction, including the special question regarding value, would allow the jury to make the required finding. See Wis JI-Criminal 1441.

7. This is the rule stated in subsection (3) of § 948.40, which includes reference to “failure to take action.” The instruction’s reference to “the defendant’s conduct” is intended to cover affirmative acts and failure to act.

2170A CONTRIBUTING TO THE DELINQUENCY OF A CHILD: DEATH AS A CONSEQUENCE — § 948.40(1), (4)(a)**Statutory Definition of the Crime**

Contributing to the delinquency of a child, as defined in § 948.40(1) of the Criminal Code of Wisconsin, is committed by any person who intentionally encourages or contributes to the delinquency of a child where death is a consequence.

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 three elements were present.

Elements of the Crime That the State Must Prove

1. (Name of child) was under the age of 18 years.¹

Knowledge of (name of child)'s age by the defendant is not required² and mistake regarding (name of child)'s age is not a defense.³

2. The defendant intentionally encouraged or contributed to the delinquency of (name of child).
3. Death of (name of child)⁴ was a consequence of intentionally encouraging or contributing to the delinquency of (name of child).

This requires that the defendant's contributing to the delinquency of (name of child) was a substantial factor in producing the death of (name of child).⁵

Deciding About Intent

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

Meaning of "Intentionally Encourage or Contribute"

The term "intentionally encourages or contributes" means that the defendant either had a purpose to encourage or contribute to delinquency or was aware that (his) (her) conduct was practically certain to cause that result.⁶

Meaning of "Delinquency"

Delinquency is any violation of state criminal law by a child.⁷

Committing (name crime) violates state criminal law.

The crime of (name crime) is committed by one who

LIST THE ELEMENTS OF THE INTENDED CRIME AS DEFINED
IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM
THE UNIFORM INSTRUCTIONS AS NECESSARY.⁸

ADD THE FOLLOWING IF SUPPORTED BY THE EVIDENCE.

[It is not required that the child actually commit a delinquent act. A defendant's conduct contributes to the delinquency of a child if the natural and probable consequences of that conduct would be to cause the child to commit a delinquent act.]⁹

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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

This instruction was originally published in 1989 and was revised in 1997, 2001, 2009, 2010, and 2011. This revision was approved by the Committee in October 2022; it removed a reporter's note from the comment concerning "embedded crimes."

This instruction is for a violation of § 948.40, 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, and replaces the delinquency portion of Wis JI-Criminal 1960 which has been withdrawn.

Section 948.40 addresses the delinquency portion of the crime covered by former sec. 947.15, Contributing To The Delinquency Or Neglect Of A Child. The neglect portion is addressed by a separate statute, sec. 948.20.

The basic penalty is that of a Class A misdemeanor. "If the child's act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class H felony." Section 948.40(4)(b). If death is a consequence, the penalty is that of a Class D felony. Section 948.40(4)(a).

This instruction is for an offense based on subsection (1) of § 948.40, where the defendant may be any person. Subsection (2) applies where a person responsible for the welfare of a child is alleged to have contributed to the delinquency of a child by disregard of the welfare of the child. See Wis JI-Criminal 2171.

Charging a defendant with violating § 948.40(4)(a) and with first degree reckless homicide under § 940.02(2) is not multiplicitous. The offenses each require proof of a fact that the other does not and there is no evidence that the legislature did not intend multiple punishments. Further, a violation of § 948.40(4)(a) is not "a less serious type of criminal homicide" under § 939.66(2) and thus is not a lesser included offense of first degree reckless homicide. State v. Patterson, 2010 WI 130, 329 Wis.2d 599, 790 N.W.2d 909.

1. A seventeen-year-old is a "child" for purposes of this offense, even though a person of that age would not be a juvenile for purposes of prosecuting the child. State v. Patterson, 2010 WI 130, 329 Wis.2d 599, 790 N.W.2d 909.

2. This is the rule provided in § 939.23(6).

3. This is the rule provided in § 939.43(2).

4. Section 948.40(4)(a) provides that the penalty for contributing to the delinquency of a child

increases to that of a Class D felony “if death was a consequence.” The same phrase was used in prior law, see § 947.15(1), 1985 86 Wis. Stats. The statutory language does not indicate whether the death must be of the child to whose delinquency the defendant contributes or whether it extends to other persons who are harmed by the child’s conduct.

5. 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 immediately preceding the sentence in the instruction beginning with “before”:

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.

Section 948.40 does not use the word “cause” but rather refers to death being “a consequence.” In this respect, it is like several other criminal statutes using “results in” or “as a result” to establish the causal connection between the actor’s conduct and the prohibited result. The Committee has concluded that “as a result” or “results in” should be interpreted to mean “cause,” traditionally defined in terms of “substantial factor.” This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court held that § 346.17(3) was not unconstitutionally vague because “results in” means “cause” and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant’s conduct was a substantial factor in causing the death. The court noted that more than but for cause is required: “The state must further establish that ‘the harmful result in question be the natural and probable consequence of the accused’s conduct,’ *i.e.*, a substantial factor.” 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

6. This is the definition of “intentionally” provided in § 939.23. The “aware that his conduct is practically certain to cause that result” alternative was added by the 1987 revision of the homicide statutes. See Wis JI-Criminal 923A and 923B for further discussion of the definition of “intentionally.”

7. Section 948.40(1) formerly referred to § 48.02(3m) for the definition of delinquency. That reference was eliminated by 1995 Wisconsin Act 77. “Delinquent” is defined in § 938.02(3m):

938.02(3m) “Delinquent” means a juvenile who is 10 years of age or older who has violated any state or federal criminal law. . .

The instruction is drafted for what is expected to be the most common case: where the basis for delinquency is a violation of Wisconsin criminal law.

Only children over the age of 10 can be considered delinquent if they violate a criminal law. However, it is an offense under § 948.40 if a person intentionally encourages or contributes to an act by a child under the age of 10 if that act would be a delinquent act if committed by a child over the age of 10 (§ 948.40(1)). Therefore, the simple definition of “delinquent” in the instruction should be accurate for purposes of this offense.

8. The Committee recommends that a complete listing of the elements of the “embedded crime” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App.

1991)].

The Committee concluded that the jury need not be instructed that they must reach unanimous agreement as to what delinquent act was encouraged, if evidence has been introduced that tends to show more than one. The Wisconsin Court of Appeals reached the same conclusion in a similar situation, holding that unanimity is not required as to which felony was intended in a prosecution for burglary with intent to commit a felony. State v. Hammer, 216 Wis.2d 213, 576 N.W.2d 285 (Ct. App. 1997). See the Comment to Wis JI-Criminal 517, collecting cases addressing jury unanimity.

9. This is the rule stated in subsection (3) of § 948.40, which includes reference to “failure to take action.” The instruction’s reference to “the defendant’s conduct” is intended to cover affirmative acts and failure to act.

[This page is intentionally left blank]

**2171 CONTRIBUTING TO THE DELINQUENCY OF A CHILD BY A
PERSON RESPONSIBLE FOR THE CHILD’S WELFARE — § 948.40(2)**

Statutory Definition of the Crime

Contributing to the delinquency of a child, as defined in § 948.40(2) of the Criminal Code of Wisconsin, is committed by any person who is responsible for the child’s welfare and who contributes to the delinquency of a child by disregard of the welfare of the 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 three elements were present.

Elements of the Crime That the State Must Prove

1. (Name of child) was under the age of 18 years.¹

Knowledge of (name of child)’s age by the defendant is not required² and mistake regarding (name of child)’s age is not a defense.³

2. The defendant was responsible for the welfare of (name of child).

A “person responsible for the child’s welfare” includes (use the appropriate term from § 948.01(3)).⁴

3. The defendant contributed to the delinquency of (name of child) by disregard of the child’s welfare.

Meaning of “Delinquency”

Delinquency is any violation of state criminal law by a child.⁵

Committing (name crime) violates state criminal law.

The crime of (name crime) is committed by one who

LIST THE ELEMENTS OF THE ALLEGED CRIME AS IDENTIFIED IN THE UNIFORM INSTRUCTION. ADD DEFINITIONS FROM THE UNIFORM INSTRUCTION AS NECESSARY.⁶

ADD THE FOLLOWING IF SUPPORTED BY THE EVIDENCE.

[It is not required that the child actually commit a delinquent act. A defendant’s conduct contributes to the delinquency of a child if the natural and probable consequences of that conduct would be to cause the child to commit a delinquent act.]⁷

Jury’s Decision

If you are satisfied beyond a reasonable doubt that all three 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 2171 was originally published in 1989 and revised in 1997, 2001, 2009, 2010 and 2011. This revision was approved by the Committee in October 2022; it removed a reporter’s note from the comment concerning “embedded crimes.”

This instruction is for a violation of § 948.40, 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, and replaces the delinquency portion of Wis JI-Criminal 1960 which has been withdrawn.

Section 948.40 addresses the delinquency portion of the crime covered by former sec. 947.15, Contributing To The Delinquency Or Neglect Of A Child. The neglect portion is addressed by a separate

statute, sec. 948.20.

The basic penalty is that of a Class A misdemeanor. “If the child’s act which is encouraged or contributed to is a violation of a state or federal criminal law which is punishable as a felony, the person is guilty of a Class H felony.” Section 948.40(4)(b). If death is a consequence, the penalty is that of a Class D felony. Section 948.40(4)(a). See Wis JI-Criminal 2170A.

This instruction is for an offense under subsection (2) of § 948.40, where the defendant must be a person responsible for the welfare of a child. Subsection (1) applies to any person. See Wis JI-Criminal 2170. This instruction replaces Wis JI-Criminal 1961 which has been withdrawn.

1. A seventeen-year-old is a “child” for purposes of this offense, even though a person of that age would not be a juvenile for purposes of prosecuting the child. State v. Patterson, 2010 WI 130, 329 Wis.2d 599, 790 N.W.2d 909.

2. This is the rule provided in § 939.23(6).

3. This is the rule provided in § 939.43(2).

4. The Committee recommends inserting the appropriate term from § 948.01(3), which defines “person responsible for the child’s welfare” to include the following: the child’s parent; stepparent; guardian; foster parent; treatment foster parent; an employee of a public or private residential home, institution or agency; other person legally responsible for the child’s welfare in a residential setting; or a person employed by one legally responsible for the child’s welfare to exercise temporary control or care for the child.

See Wis JI-Criminal 2106A for discussion of authorities relating to “person responsible for the child’s welfare.”

5. Section 948.40(1) formerly referred to § 48.02(3m) for the definition of delinquency. That reference was eliminated by 1995 Wisconsin Act 77. “Delinquent” is defined in § 938.02(3m):

938.02(3m) “Delinquent” means a juvenile who is 10 years of age or older who has violated any state or federal criminal law . . .

Only children over the age of 10 can be considered delinquent if they violate a criminal law. However, it is an offense under § 948.40 if a person intentionally encourages or contributes to an act by a child under the age of 10 if that act would be a delinquent act if committed by a child over the age of 10 (‘ 948.40(1)). Therefore, the simple definition of “delinquent” in the instruction should be accurate for purposes of this offense.

6. The Committee recommends that a complete listing of the elements of the “embedded crime” be provided. Decisions of the Wisconsin Court of Appeals have reached this conclusion with respect to bail jumping under § 946.49 [State v. Henning, 2003 WI App 54, ¶25, 261 Wis.2d 664, 660 N.W.2d 698], and intimidation of a victim under § 940.44 [State v. Thomas, 161 Wis.2d 616, 624, 468 N.W.2d 729 (Ct. App. 1991)].

The Committee concluded that the jury need not be instructed that they must reach unanimous

agreement as to what delinquent act was encouraged, if evidence has been introduced that tends to show more than one. The Wisconsin Court of Appeals reached the same conclusion in a similar situation, holding that unanimity is not required as to which felony was intended in a prosecution for burglary with intent to commit a felony. State v. Hammer, 216 Wis.2d 213, 576 N.W.2d 285 (Ct. App. 1997). See the Comment to Wis JI-Criminal 517, collecting cases addressing jury unanimity. However, the jury must unanimously agree that the child's act was a felony if the felony violation of § 948.40 is charged.

Violations of § 948.40 are punished as a Class A misdemeanor unless either death results [see Wis JI-Criminal 2170A] or the child's act encouraged or contributed to is punishable as a felony. The Committee concluded that a jury determination on the felony issue is required because that fact increases the maximum sentence for the crime. See, Apprendi v. New Jersey, 530 U.S. 466 (2000). By specifying a crime in the definition of "delinquency," the instruction assures that a jury verdict of guilty will include a finding that the crime was the felony or misdemeanor specified.

It could be possible that reasonable views of the evidence could differ as to the felony status of the delinquent act. For example, a case could involve a dispute over the value of stolen property; giving the standard theft instruction, including the special question regarding value, would allow the jury to make the required finding. See Wis JI-Criminal 1441.

7. This is the rule stated in subsection (3) of § 948.40, which includes reference to "failure to take action." The instruction's reference to "the defendant's conduct" is intended to cover affirmative acts and failure to act.

2199 SEX OFFENDER NAME CHANGE — § 301.47(2)(a)-(b)**Statutory Definition of the Crime**

Section 301.47(2)(a) and (b) of the Wisconsin Statutes is violated by one who is subject to the requirements of section 301.45, and who intentionally changes his or her name or identifies by a name not identified with the Wisconsin Department of Corrections.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was a sex offender¹ subject to the reporting requirements of section 301.45.
2. Before being released from the reporting requirements of section 301.45, the defendant intentionally [changed (his) (her) name]² [identified (himself) (herself) by a name other than one by which (he) (she) is identified with the Wisconsin Department of Corrections].

This requires that the defendant acted with the mental purpose to [change (his) (her) name] [identify (himself) (herself) by a name other than one by which (he) (she) is identified with the Wisconsin Department of Corrections].³

[It is not a defense to prosecution under this section that the department failed to (attempt to) notify the defendant of the prohibition (against using a name by which he or she is not identified with the department).]⁴

Deciding About Intent

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all two 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 2199 was approved by the Committee in 2021. This revision was approved by the Committee in October 2022; it updated the comment.

This instruction is for violations of § 301.47(2)(a) and (b), created by 2003 Wisconsin Act 53 [effective date: September 5, 2003]. Section 301.47(3) provides: "Except as provided in par. (b), the person is guilty of a Class H felony."

1. Wis. Stat. § 301.47(1) provides "In this section, 'sex offender' means a person who is subject to s. 301.45 (1g) but does not include a person who, as a result of a proceeding under s. 301.45 (1m), is not required to comply with the reporting requirements of s. 301.45."

2. The Wisconsin Supreme Court has clarified that when read together, Wis. Stat. § 301.47(2)(a) and § 301.47(2)(a)1. do not prohibit a registrant from using an alias, provided the registrant notifies the

Department of Corrections of their intent to do so in advance. State v. C.G., 2022 WI 60, ¶56, 403 Wis.2d 229, 976 N.W.2d 318. Wis. Stat. § 301.47(2)(a) does, however, prohibit a registrant from petitioning the circuit court for a legal name change under § 786.36. Id.

3. “Intentionally” requires either mental purpose to cause the result or awareness that the conduct is practically certain to cause it. § 939.23(3). The Committee concluded that the mental purpose alternative is most likely to apply to this offense. See Wis JI-Criminal 923A and 923B.

4. This instruction should be given when warranted by the evidence. § 301.47(4).

[This page is intentionally left blank]

2650 RECKLESS DRIVING: ENDANGERING SAFETY (CRIMINAL OFFENSE) — § 346.62(2)**Statutory Definition of the Crime**

Reckless driving, as defined in § 346.62(2) of the Wisconsin Statutes, is committed by one who endangers the safety of any person or property by the negligent operation of a vehicle on a highway.¹

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant operated² a vehicle³ on a highway⁴.
2. The defendant operated a vehicle in a manner constituting criminal negligence.⁵

“Criminal negligence” means:⁶

- the defendant's operation of a vehicle created a risk of death or great bodily harm; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant should have been aware that (his) (her) operation of a vehicle created the unreasonable and substantial risk of death or great bodily harm.

IF REFERENCE TO ORDINARY NEGLIGENCE IS BELIEVED TO BE HELPFUL OR NECESSARY SEE WIS JI CRIMINAL 925.⁷

IF EVIDENCE OF VIOLATION OF A SAFETY STATUTE HAS BEEN RECEIVED, ADD THE FOLLOWING:⁸

[Evidence has been received that the defendant violated section _____ of the Wisconsin Statutes, which provides that (summarize the statute). Violating this statute does not necessarily constitute criminal negligence. You may consider this along with all the other evidence in determining whether the defendant's conduct constituted criminal negligence.]

3. The defendant's criminal negligence endangered the safety of any person or property.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 you find the defendant guilty, you must answer the following questions "yes" or "no":⁹

Did the violation result in bodily harm to another?

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.¹⁰

Did the violation occur in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from

traffic?

[“Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]¹¹

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]¹²

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]¹³

COMMENT

Wis JI-Criminal 2650 was originally published in 1967 and revised in 1978, 1985, 1988, 1995, and 2010. This revision was approved by the Committee in August 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

Section 346.62(2) was modified by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. It was affected by the homicide revision because the same definition of “criminal negligence” is used for this offense as for homicide under the revision. The effective date of the change is January 1, 1989, and this instruction is to be used in place of Wis JI-Criminal 2650 (© 1986) for offenses committed on or after that date. The revised statute reads as follows:

- (2) No person may endanger the safety of any person or property by the negligent operation of a vehicle.

The Judicial Council explained the change as follows:

The revisions contained in subs. (2) and (3) are intended as editorial, not substantive, as is the substitution of a cross reference to s. 939.25(2), stats., for the prior definition of a high degree of negligence. New sub. (4) carries forward the crime created by 1985 Wisconsin Act 293.

Judicial Council Note to § 346.62, 1987 Senate Bill 181.

The first offense under § 346.62(2) is punishable only by forfeiture of not less than \$25 nor more than \$200 [see § 346.65(1)(a)]; therefore, the burden of proof is to a reasonable certainty by evidence which is “clear, satisfactory, and convincing,” (see § 345.45). The second and subsequent violations within four years are punishable as crimes: fine of \$50 to \$500 or one year in the county jail or both [see § 346.65(1)(b)]. Therefore, for second and subsequent offenses, the burden of proof must be beyond a reasonable doubt.

The instruction is drafted for the criminal offense. To adapt it for a forfeiture case, substitute “satisfy you to a reasonable certainty by evidence which is clear, satisfactory, and convincing” for “prove by evidence which satisfies you beyond a reasonable doubt.” If the “clear, satisfactory, and convincing” standard of proof applies, an instruction for a 5/6 verdict should also be given. See Wis JI-Criminal 2055, Five Sixths Verdict: Forfeiture Actions.

Section 346.62(5m)(a) provides for doubling the forfeiture or fine for certain violations:

Except as provided in par. (b), if an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m), or (5) for the violation shall be doubled.

Section 346.65 (5m)(b) was created pursuant to 2021 Wisconsin Act 115. This section further increases penalties for violations of § 346.62 (2) to (3) that occur in a highway maintenance or construction area, utility work area, or emergency or roadside response area where workers are at risk from traffic, and bodily harm occurs. Upon conviction, a driver is subject to a fine of up to \$10,000 or imprisonment of up to nine months, or both, an order to perform between 100 and 200 hours of community service work, and an order to attend traffic safety school.

A similar offense is defined in § 941.01, which prohibits “endangering another’s safety by a high

degree of negligence in the operation of a vehicle, not upon a highway.” (Emphasis added.) See Wis JI-Criminal 1300.

1. Section 346.61 provides that § 346.62 applies to “highways” and to “all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.” The instruction is drafted for a case involving operating on a highway. If a case involves operating on “premises held out to the public. . . ,” the instruction must be modified. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. For the purposes of cases involving operating under the influence, § 346.63(3)(b) defines “operate” as follows: “the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.” See Wis JI-Criminal 2600 Introductory Comment, Sec. III.

3. The definition of “vehicle” provided in § 939.22(44), applies to violations of § 346.62. See § 346.62(1)(d). It provides:

“Vehicle” means any self propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water or in the air.

4. If a case involves operating on “premises held out for the public” rather than on a “highway,” see discussion in note 2, above. Also see, Wis JI-Criminal 2600 Introductory Comment, Sec. I. and Wis JI-Criminal 2605.

5. Section 346.62(1) provides: “‘Negligent’ has the meaning designated in s. 939.25(2).” This is a reference to the Criminal Code definition of “criminal negligence.”

6. The definition of “criminal negligence” is the one provided in § 939.25, which applies to this offense. See § 346.62(1)(c).

7. Wis JI-Criminal 925 includes two additional paragraphs: one describing “ordinary negligence” and one explaining how “criminal negligence” differs.

8. The suggested instruction on the effect of violation of a safety statute is intended to comply with the decision of the Wisconsin Supreme Court in State v. Dyess, 124 Wis.2d 525, 370 N.W.2d 222 (1985). See note 6, Wis JI-Criminal 1170.

9. The Committee determined that facts which increase the range of penalties be submitted to the jury in the form of two questions concerning whether the violation resulted in bodily harm to another, and whether the violation occurred in a highway maintenance or construction area, utility work area, or emergency or roadside response area where workers are at risk from traffic.

10. This is the definition of “bodily harm” provided in § 939.22(4).

11. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

12. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies

to this offense.

13. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

2652 RECKLESS DRIVING: CAUSING BODILY HARM — § 346.62(3)**Statutory Definition of the Crime**

Reckless driving, as defined in § 346.62(3) of the Wisconsin Statutes, is committed by one who causes bodily harm to another by the negligent operation of a vehicle on a highway.¹

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant operated² a vehicle³ on a highway.⁴
2. The defendant operated a vehicle in a manner constituting criminal negligence.⁵

“Criminal negligence” means:⁶

- the defendant's operation of a vehicle created a risk of death or great bodily harm; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant should have been aware that (his) (her) operation of a vehicle created the unreasonable and substantial risk of death or great bodily harm.

IF REFERENCE TO ORDINARY NEGLIGENCE IS BELIEVED TO BE HELPFUL OR NECESSARY SEE WIS JI CRIMINAL 925.⁷

IF EVIDENCE OF VIOLATION OF A SAFETY STATUTE HAS BEEN RECEIVED, ADD THE FOLLOWING:⁸

[Evidence has been received that the defendant violated section _____ of the Wisconsin Statutes, which provides that (summarize the statute). Violating this statute does not necessarily constitute criminal negligence. You may consider this along with all the other evidence in determining whether the defendant's conduct constituted criminal negligence.]

3. The defendant's criminal negligence caused bodily harm to (name of victim).

This requires that the defendant's conduct was a substantial factor in producing bodily harm.⁹

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.¹⁰

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 you find the defendant guilty, you must answer the following question "yes" or "no".¹¹

Did the violation occur in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from

traffic?

["Highway maintenance or construction area" means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an "END ROAD WORK" or "END CONSTRUCTION" sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]¹²

["Utility work area" means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an "END UTILITY WORK" sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]¹³

["Emergency or roadside response area" means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]¹⁴

COMMENT

Wis JI-Criminal 2652 was originally published in 1967 and revised in 1978, 1985, 1988, 1995, and 2010. This revision was approved by the Committee in August 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

Section 346.62(3) was modified by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. It was affected by the homicide revision because the same definition of “criminal negligence” is used for this offense as for homicide under the revision. The effective date of the change is January 1, 1989, and this instruction is to be used in place of Wis JI-Criminal 2652 (© 1986) for offenses committed on or after that date. The revised statute reads as follows:

- (2) No person may cause bodily harm to another by the negligent operation of a vehicle.

The Judicial Council explanation of the change is provided in the Comment to Wis JI-Criminal 2650.

A violation of § 346.62(3) is a crime, punishable by a fine of not less than \$300 nor more than \$2,000 or imprisonment of not less than 30 days or more than one year in the county jail. § 346.65(3).

Section 346.62(5m)(a) provides for doubling the forfeiture or fine for certain violations:

Except as provided in par. (b), if an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m), or (5) for the violation shall be doubled.

Section 346.65 (5m)(b) was created pursuant to 2021 Wisconsin Act 115. This section further increases penalties for violations of § 346.62 (2) to (3) that occur in a highway maintenance or construction area, utility work area, or emergency or roadside response area where workers are at risk from traffic, and bodily harm occurs. Upon conviction, a driver is subject to a fine of up to \$10,000 or imprisonment of up to nine months, or both, an order to perform between 100 and 200 hours of community service work, and an order to attend traffic safety school.

1. Section 346.61 provides that § 346.62 applies to “highways” and to “all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.” The instruction is drafted for a case involving operating on a highway. If a case involves operating on “premises held out to the public. . . ,” the instruction must be modified. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. For the purposes of cases involving operating under the influence, § 346.63(3)(b) defines “operate” as follows: “the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.” See Wis JI-Criminal 2600 Introductory Comment, Sec. III.

3. The definition of “vehicle” provided in § 939.22(44), applies to violations of § 346.62. See § 346.62(1)(d). It provides:

“Vehicle” means any self propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water or in the air.

4. If a case involves operating on “premises held out for the public” rather than on a “highway,” see discussion in note 1, above. Also see, Wis JI-Criminal 2600 Introductory Comment, Sec. I. and Wis JI Criminal 2605.

5. Section 346.62(1) provides: “‘Negligent’ has the meaning designated in s. 939.25(2).” This is a reference to the Criminal Code definition of “criminal negligence.”

6. The definition of “criminal negligence” is the one provided in § 939.25, which applies to this offense. See § 346.62(1)(c).

7. Wis JI-Criminal 925 includes two additional paragraphs: one describing “ordinary negligence” and one explaining how “criminal negligence” differs.

8. The suggested instruction on the effect of violation of a safety statute is intended to comply with the decision of the Wisconsin Supreme Court in State v. Dyess, 124 Wis.2d 525, 370 N.W.2d 222 (1985). See note 6, Wis JI-Criminal 1170.

9. The Committee has concluded that the simple “substantial factor” definition of cause should be sufficient in most cases. Where there is evidence of more than one possible cause, something like the following might be added immediately preceding the sentence in the instruction beginning with “before”:

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

See Wis JI-Criminal 910 for a more complete discussion of “cause.”

10. This is the definition of “bodily harm” provided by § 939.22(4), which applies to reckless driving offenses. § 346.62(1)(a).

11. The Committee determined that facts which increase the range of penalties be submitted to the jury in the form of a question concerning whether the violation occurred in a highway maintenance or construction area, utility work area, or emergency or roadside response area where workers are at risk from traffic.

12. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

13. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies to this offense.

14. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

[This page is intentionally left blank]

2654 RECKLESS DRIVING: CAUSING GREAT BODILY HARM — § 346.62(4)**Statutory Definition of the Crime**

Reckless driving, as defined in § 346.62(4) of the Wisconsin Statutes, is committed by one who causes great bodily harm to another by the negligent operation of a vehicle on a highway.¹

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant operated² a vehicle³ on a highway.⁴
2. The defendant operated a vehicle in a manner constituting criminal negligence.⁵

“Criminal negligence” means:⁶

- the defendant's operation of a vehicle created a risk of death or great bodily harm; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant should have been aware that (his) (her) operation of a vehicle created the unreasonable and substantial risk of death or great bodily harm.

IF REFERENCE TO ORDINARY NEGLIGENCE IS BELIEVED TO

BE HELPFUL OR NECESSARY SEE WIS JI CRIMINAL 925.⁷

IF EVIDENCE OF VIOLATION OF A SAFETY STATUTE HAS BEEN RECEIVED, ADD THE FOLLOWING:⁸

[Evidence has been received that the defendant violated section _____ of the Wisconsin Statutes, which provides that (summarize the statute). Violating this statute does not necessarily constitute criminal negligence. You may consider this along with all the other evidence in determining whether the defendant's conduct constituted criminal negligence.]

3. The defendant's criminal negligence caused great bodily harm to (name of victim).

This requires that the defendant's conduct was a substantial factor in producing great bodily harm.⁹

"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.¹⁰

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 2654 was originally published in 1988 and revised in 1995, 2009, and 2018. The 2009 revision involved adoption of a new format and nonsubstantive changes to the text. This revision was approved by the Committee in August 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

Section 346.62(4) was created by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. It is former § 940.25, moved to line up with the closely related offenses defined in § 346.62(2) and (3). The effective date of the change is January 1, 1989, and this instruction is to be used in place of Wis JI Criminal 1261 (© 1986) for offenses committed on or after that date. The revised statute reads as follows:

(4) No person may cause great bodily harm to another by the negligent operation of a vehicle.

The Judicial Council explanation of the change is provided in the Comment to Wis JI-Criminal 2650.

A violation of § 346.62(4) is a Class I felony. § 346.65(5).

Section 346.62(5m)(a) provides for doubling the forfeiture or fine for certain violations:

If an operator of a vehicle violates s. 346.62 (2) to (4) where persons engaged in work in a highway maintenance or construction, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture or fine specified in sub. (1), (3), (4m), or (5) for the violation shall be doubled.

The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

The definition of “Utility work area” is the one provided in § 340.01(73m), which applies to this offense.

The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

The definition of “Sanitation worker” is the one provided in § 340.01(55u), which applies to this offense.

1. Section 346.61 provides that § 346.62 applies to “highways” and to “all premises held out to the public for use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.” The instruction is drafted for a case involving operating on a highway. If a case involves operating on “premises held out to the public. . .,” the instruction must be modified. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. For the purposes of cases involving operating under the influence, § 346.63(3)(b) defines “operate” as follows: “the physical manipulation or activation of any of the controls of a motor vehicle

necessary to put it in motion.” See Wis JI-Criminal 2600 Introductory Comment, Sec. III.

3. The definition of “vehicle” provided in § 939.22(44), applies to violations of § 346.62. See § 346.62(1)(d). It provides:

“Vehicle” means any self propelled device for moving persons or property or pulling implements from one place to another, whether such device is operated on land, rails, water or in the air.

4. If a case involves operating on “premises held out for the public” rather than on a “highway,” see discussion in note 1, above. Also see, Wis JI-Criminal 2600 Introductory Comment, Sec. I. and Wis JI-Criminal 2605.

5. Section 346.62(1) provides: “‘Negligent’ has the meaning designated in s. 939.25(2).” This is a reference to the Criminal Code definition of “criminal negligence.”

6. The definition of “criminal negligence” is the one provided in § 939.25, which applies to this offense. See § 346.62(1)(c).

7. Wis JI-Criminal 925 includes two additional paragraphs: one describing “ordinary negligence” and one explaining how “criminal negligence” differs.

8. The suggested instruction on the effect of violation of a safety statute is intended to comply with the decision of the Wisconsin Supreme Court in State v. Dyess, 124 Wis.2d 525, 370 N.W.2d 222 (1985). See note 6, Wis JI-Criminal 1170.

9. The Committee has concluded that the simple “substantial factor” definition of cause should be sufficient in most cases. Where there is evidence of more than one possible cause, something like the following might be added immediately preceding the sentence in the instruction beginning with “before”:

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

See Wis JI-Criminal 910 for a more complete discussion of “cause.”

10. See § 939.22(14) and 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).

Section 346.62(1)(b) provides: “‘Great bodily harm’ has the meaning designated in s. 93.22(14).”



WISCONSIN JURY INSTRUCTIONS

CRIMINAL

VOLUME IV

**Wisconsin Criminal Jury
Instructions Committee**

[Cite as Wis JI-Criminal]

- Includes 1/2023 Supplement (Release No. 61)

[This page is intentionally left blank]

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME I

| | No. | Year |
|--|------------------------------------|--------|
| OPENING INSTRUCTIONS ON THE PLEADINGS | | |
| Suggested Instructions | 1 | 2016 |
| Comment: Gender Neutral Language | 5 | 1/2023 |
| Preliminary Instruction: Jurors' Conduct; Evidence; Transcripts Not Available; Credibility; Substantive Issues; Opening Statement | 50 | 2022 |
| Notetaking Permitted | 55 | 2000 |
| Notetaking Not Allowed | 56 | 2000 |
| Instruction on Juror Questioning of Witnesses | 57 | 2014 |
| Transcripts Not Available for Deliberations; Reading Back Testimony | 58 | 2022 |
| Police Reports | 59 | 2001 |
| Preliminary Instruction: Use of an Interpreter for a Witness | 60 | 2003 |
| Preliminary Instruction: Use of an Interpreter for a Juror..... | 61 | 2004 |
| Preliminary Instruction: Use of an Interpreter for the Defendant | 62 | 2003 |
| Preliminary Instruction: Defendant Proceeding Pro Se | 70 | 2001 |
| | | |
| Opening Instructions..... | 100 | 2000 |
| Opening Statements | 101 | 2001 |
| Evidence Defined..... | 103 | 2000 |
| | | |
| One Defendant: Single Count: No Included Offense..... | 110 | 2000 |
| One Defendant: Single Count: Lesser Included Offenses..... | 112 | 2000 |
| Lesser Included Offense: Alternative Style | 112A | 2000 |
| Armed Robbery: Robbery (Unarmed) | 112A EXAMPLE | 2000 |
| One Defendant: Two Counts..... | 115 | 2000 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 115 EXAMPLE RENUMBERED 116 EXAMPLE | 2004 |
| Multiple Charges of the Same Offense: Different Victims..... | 116 | 2004 |
| Multiple Charges of First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years: Three Victims | 116 EXAMPLE | 2004 |
| One Defendant: Two Counts: Conviction for Only One Proper..... | 117 WITHDRAWN | 2000 |
| | | |
| Two Defendants: Single Count: No Included Offense | 120 | 2000 |
| Two Defendants: Single Count: Included Offense | 122 | 2000 |
| Two Defendants: Two Counts | 125 | 2000 |
| Two Defendants: Two Counts: Conviction for Only One Proper..... | 127 WITHDRAWN | 2000 |
| Charges Disposed of During Trial | 128 | 2014 |

WIS JI-CRIMINAL

BURDEN OF PROOF AND PRESUMPTION OF INNOCENCE; EVIDENCE

| | | |
|--|----------------|--------|
| Burden of Proof and Presumption of Innocence | 140 | 1/2023 |
| Burden of Proof: Forfeiture Actions | 140A | 2011 |
| Where Identification of Defendant is in Issue | 141 | 2021 |
| Information Not Evidence..... | 145 | 2000 |
| Precautionary Statement: Anonymous and “Numbers” Juries..... | 146 | 2003 |
| Improper Questions..... | 147 | 2000 |
| Objections of Counsel; Evidence Received Over Objection | 148 | 2000 |
| | | |
| Stricken Testimony | 150 | 2000 |
| View of Scene | 152 | 2000 |
| Summary of Evidence..... | 154 | 2012 |
| Exhibits | 155 | 2018 |
| Remarks of Counsel..... | 157 | 2000 |
| Recording Played to the Jury | 158 | 2022 |
| | | |
| Closing Arguments of Counsel..... | 160 | 2000 |
| Agreed Testimony..... | 161 | 2000 |
| Agreed Facts | 162 | 2000 |
| Law Note: Stipulations | 162A | 2011 |
| Judicially Noticed Facts..... | 165 | 2003 |
| | | |
| Circumstantial Evidence | 170 | 2000 |
| Circumstantial Evidence: Flight, Escape, Concealment | 172 | 2000 |
| Circumstantial Evidence - Possession of Recently Stolen Property | 173 | 2000 |
| Motive..... | 175 | 2000 |
| | | |
| Statements of Defendant | 180 | 2021 |
| Confessions and Admissions: Series of Statements..... | 182 WITHDRAWN | 2000 |
| Confessions and Admissions: Mental Condition of Defendant in Issue..... | 185 WITHDRAWN | 2000 |
| Confessions and Admissions: Evidence That Defendant Did Not Understand Interrogator | 187 WITHDRAWN | 2000 |
| | | |
| Weight of Evidence..... | 190 | 2000 |
| Juror's Knowledge..... | 195 | 2000 |
| | | |
| Expert Opinion Testimony: General | 200 | 2019 |
| Expert Testimony: More Than One Expert..... | 200A WITHDRAWN | 2000 |
| Opinion of a Nonexpert Witness..... | 201 | 2012 |
| Polygraph Evidence | 202 WITHDRAWN | 2009 |
| Expert Testimony: Hypothetical Questions | 205 | 2019 |
| Objections of Counsel: Evidence Received Over Objection | 215 | 2000 |
| | | |
| Evidence: Limited Purpose: Statement of Codefendant | 220 WITHDRAWN | 1999 |
| Cautionary Instruction: Interlocking Confessions | 220A WITHDRAWN | 1999 |
| Law Note: Statement of Accomplice Admitted for Nonhearsay Purpose | 220B | 1991 |
| Statement of Codefendant: Statement Does Not Mention Defendant..... | 221 | 2000 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Joint Trial: Evidence Admissible as to One Defendant Only | 222 | 2000 |
| Instructing on a “Presumed Fact” That is an Element of the Crime | 225 | 2000 |
| Prima Facie Effect of a Test Result Showing an Alcohol Concentration of | | |
| 0.08 Grams or More: Offenses Involving “Under the Influence” | 230 | 2006 |
| Evidence of a Test Result Showing an Alcohol Concentration of 0.04 Grams or | | |
| More but Less Than 0.08 Grams: Offenses Involving “Under the Influence” | 232 | 2009 |
| Blood-Alcohol Curve | 234 | 2004 |
| Refusal of Defendant to Furnish Sample for Alcohol Test | 235 | 2021 |
| Alcohol Concentration Chart | 237 | 2000 |
| Testimony of Accomplices | | |
| Testimony of a Witness Granted Immunity or Other Concessions..... | 246 | 2000 |
| Verdict as to Defendant Only..... | 247 | 2000 |
| State Need Not Prove Exact Date of Commission: Specific Date Alleged | | |
| State Need Not Prove Exact Date of Commission: Period of Time Alleged..... | 255A | 2000 |
| Time of Offense: Where State Not Required to Elect..... | 260 WITHDRAWN | 2000 |
| Time of Offense: Where State Has Elected | 265 WITHDRAWN | 2000 |
| Venue | | |
| Law Note: Jurisdiction..... | 268 | 2021 |
| Evidence as to Defendant’s Character | | |
| Cautionary Instruction: Evidence of Other Conduct [Required if Requested] | 275 | 2018 |
| Comment: Other Acts Evidence | 275.1 | 2016 |
| Prior Convictions Admissible to Prove Character | 276 | 2016 |
| WITNESSES | | |
| Credibility of Witnesses..... | | |
| Falsus in Uno | 305 | 2001 |
| Defendant as Witness in Own Behalf | 310 WITHDRAWN | 2001 |
| Prisoner as Witness or Defendant: Prisoner Status an Issue | | |
| Evidence That the Defendant Wore a GPS or Other Monitoring Device | 313 | 2017 |
| Defendant Wearing a Visible Restraining Device in the Presence of Jurors | 314 | 2012 |
| Defendant Elects Not to Testify | 315 | 2001 |
| Witness Exercising Privilege Against Self-Incrimination | 317 | 2001 |
| Impeachment of the Defendant by Prior Inconsistent Statements Which are | | |
| Inadmissible in the State’s Case-in-Chief | 320 | 2001 |
| Law Note: Substantive Use of Prior Inconsistent Statements..... | 320A | 2001 |
| Impeachment of Witness: Prior Conviction or Juvenile Adjudication | 325 | 2018 |
| Impeachment of Defendant as a Witness: Prior Conviction or Juvenile Adjudication..... | 327 | 2018 |
| Impeachment of Witness: Character for Truthfulness | 330 | 2018 |
| Credibility of Child Witness | | |
| Missing Witness..... | 345 | 2001 |

WIS JI-CRIMINAL

MISCELLANEOUS

Negligence Defined375 WITHDRAWN 2001

PERSONS AND PARTIES

| | | |
|--|---------------|------|
| Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided the Crime Charged | 400 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Either Directly Committed or Intentionally Aided a Burglary..... | 400 EXAMPLE | 2005 |
| Party to Crime: Defendant Either Intentionally Aided the Crime Charged or Was a Member of a Conspiracy to Commit the Crime Charged..... | 401 | 2005 |
| Party to Crime: Defendant Either Directly Committed, Intentionally Aided, Member of a Conspiracy to Commit the Crime Charged..... | 402 | 2005 |
| Statement of Co-Conspirator | 405 WITHDRAWN | 1994 |
| Party to Crime: Aiding and Abetting: Defendant Intentionally Aided the Crime Charged..... | 405 | 2005 |
| Example Party to Crime: Aiding and Abetting: Defendant Intentionally Aided a Burglary | 405 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 406 | 2005 |
| Example Party to Crime: Aiding and Abetting: First Degree Intentional Homicide as the Natural and Probable Consequence of Armed Robbery..... | 406 EXAMPLE | 2005 |
| Party to Crime: Aiding and Abetting: Multiple Counts | 407 | 2005 |
| Party to Crime: Conspiracy to Commit the Crime Charged | 410 | 2005 |
| Example Party to Crime: Conspiracy to Commit Burglary | 410 EXAMPLE | 2005 |
| Party to Crime: Conspiracy: The Crime Charged is the Natural and Probable Consequence of the Intended Crime | 411 | 2005 |
| Party to Crime: Withdrawal from a Conspiracy | 412 | 2008 |
| Statement of Co-Conspirator; Evidence Presented That Conspiracy Terminated by Withdrawal Before Statement Was Made..... | 415 WITHDRAWN | 1994 |
| Party to Crime: Solicitation to Commit the Crime Charged | 415 | 2005 |
| [Note on Instructions Withdrawn] | 418 | 1994 |
| Criminal Liability of a Corporation | 420 | 2005 |
| Corporate Liability: Acts of Employees: Strict Liability | 425 WITHDRAWN | 1995 |
| Corporate Liability: Acts of Lesser Employees | 430 WITHDRAWN | 1995 |
| Liability for the Acts of Another; Authorization or Acquiescence..... | 435 | 1995 |
| Liability for Acts of Another: Acts of Agent or Servant: Strict Liability Cases | 440 WITHDRAWN | 1995 |

WIS JI-CRIMINAL

CLOSING INSTRUCTIONS AND RELATION OF VERDICT TO OFFENSE CHARGED

| | | |
|---|---------------|--------|
| Closing Instruction..... | 460 | 2010 |
| Closing Instruction: Optional Short Form | 465 | 2010 |
| Verdicts Submitted for One Defendant: Single Count..... | 480 | 2000 |
| Verdicts Submitted for One Defendant: Single Count: Lesser Included Offense..... | 482 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Separate Verdict on Each Count Required..... | 484 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Lesser Included Offense on Each Count..... | 485 | 2012 |
| Verdicts Submitted for One Defendant: Two Counts: Conviction for Only One Proper | 486 WITHDRAWN | 1990 |
| Verdicts Submitted for Multiple Defendants: Single Count | 490 | 2000 |
| Verdicts Submitted for Multiple Defendants: Single Count: Included Offense | 492 | 2000 |
| Verdicts Submitted for Multiple Defendants: Two Counts: Separate Verdict on Each Count Required..... | 494 | 2000 |
| Verdicts Submitted for Two Defendants: Two Counts: Conviction for Only One Proper | 496 WITHDRAWN | 1990 |
| Unanimous Verdict and Selection of Presiding Juror | 515 | 1/2023 |
| Five-Sixths Verdict and Selection of Presiding Juror: Forfeiture Actions..... | 515A | 2001 |
| Jury Agreement: Evidence of More Than One Act Introduced to Prove One Charge | 517 | 2010 |
| Supplemental Instruction on Agreement..... | 520 | 2001 |
| Instruction on Jury Deliberations | 521 WITHDRAWN | 2012 |
| Polling the Jury [Suggested Form]..... | 522 | 2007 |
| Instruction After Verdict Received | 525 | 2001 |
| Instruction after Verdict Received - Alternative Form | 525A | 2010 |

INCHOATE CRIMES

| | | |
|--------------------------------------|-------------|------|
| Solicitation as a Crime | 550 | 2020 |
| Conspiracy as a Crime | 570 | 2008 |
| Attempt | 580 | 2013 |
| Example Attempted Burglary | 581 EXAMPLE | 2002 |
| Example Attempted Armed Robbery..... | 582 EXAMPLE | 2002 |

DEFENSES AND DEFENSIVE MATTERS

| | | |
|---|-----|--------|
| Introductory Comment: Not Guilty by Reason of Mental Disease or Defect: Instructions for the “Bifurcated” Trial and Reexamination..... | 600 | 1/2023 |
| Instruction Prior to Trial upon a Plea of Not Guilty Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect..... | 601 | 2011 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Instruction After Evidence Has Been Received on Issue of Guilt Where a Plea of Not Guilty Has Been Joined with a Plea of Not Guilty by Reason of Mental Disease or Defect | 602 | 2011 |
| Preliminary Instruction After Finding of Guilt and Before Consideration of Whether the Defendant Suffered from a Mental Disease or Defect at the Time of the Offense..... | 603 | 2011 |
| Instruction on the Issue of the Defendant’s Criminal Responsibility - Mental Disease or Defect | 605 | 2011 |
| Instruction on the Issue of the Defendant's Criminal Responsibility (Mental Defect) | 605A WITHDRAWN | 2011 |
| Verdict: Not Responsible by Reason of Mental Disease or Defect | 605B | 2011 |
| Preliminary Instruction upon a Finding of Not Guilty by Reason of Mental Disease or Defect | 606 WITHDRAWN | 2011 |
| Instruction on Commitment Following a Finding of Not Guilty by Reason of Mental Disease or Defect | 607 WITHDRAWN | 2011 |
| Mental Disease or Defect: Expert Opinion Testimony | 640 | 2019 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | 650 | 2011 |
| Effect of Finding of Not Guilty Because of Mental Disease or Defect | 655-CPC WITHDRAWN | 2011 |
| Preliminary Instruction: Reexamination of Person Committed as Not Guilty by Reason of Mental Disease or Defect [§ 971.17(2)]..... | 660 | 2011 |
| Reexamination Under § 971.17(2)..... | 661 | 2011 |
| Verdicts Submitted for Reexamination Under § 971.17(2) | 662 | 2011 |
| Law Note: Theory of Defense Instructions..... | 700 | 2020 |
| Law Note: Jury Nullification | 705 | 1991 |
| Law Note: Right to Recapture | 710 | 1994 |
| Involuntary Intoxication or Drugged Condition | 755 RENUMBERED 755A | 2005 |
| Involuntary Intoxication or Drugged Condition | 755A | 2015 |
| Involuntary Intoxication or Drugged Condition | 755B | 2015 |
| Voluntary Intoxication..... | 765 | 2015 |
| Mistake..... | 770 | 2010 |
| Accident | 772 | 2005 |
| Alibi | 775 | 2005 |
| Entrapment..... | 780 | 2002 |
| Entrapment [Alternate Form]..... | 780A WITHDRAWN | 2003 |
| Coercion..... | 790 | 2005 |
| Necessity..... | 792 | 2005 |

WIS JI-CRIMINAL

PRIVILEGE

| | | |
|--|------|------|
| Law Note: Privilege: Resisting an Unlawful Arrest | 795 | 2003 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm | 800 | 2022 |
| Privilege: Self-Defense: Force Less Than That Likely to Cause Death or Great Bodily Harm: Crimes Involving Recklessness or Negligence | 801 | 2022 |
| Privilege: Self-Defense: Force Intended or Likely to Cause Death or Great Bodily Harm | 805 | 2022 |
| Law Note: Self-defense under § 939.48(1m)..... | 805A | 2022 |
| | | |
| Privilege: Self-Defense: Retreat..... | 810 | 2019 |
| Privilege: Self-Defense: Not Available to One Who Provokes an Attack: Regaining the Privilege | 815 | 2020 |
| | | |
| Privilege: Self-Defense: Injury to Third Party Charged as Reckless or Negligent Crime | 820 | 2022 |
| Privilege: Self-Defense: Unintended Harm to Third Party Charged as Intentional Crime..... | 821 | 2022 |
| Privilege: Defense of Others: Force Less Than That Likely to Cause Death or Great Bodily Harm | 825 | 2005 |
| Privilege: Defense of Others: Force Intended or Likely to Cause Death or Great Bodily Harm | 830 | 2005 |
| Privilege: Defense of Others: Effect of Provocation by Person Defended | 835 | 2005 |
| | | |
| Privilege: Defense of One’s Property | 855 | 2005 |
| | | |
| Privilege: Defense of Another’s Property | 860 | 2005 |
| | | |
| Privilege: Conduct in Good Faith and in an Apparently Authorized and Reasonable Fulfillment of Duties of a Public Office | 870 | 2014 |
| | | |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Nondeadly Force..... | 880 | 2005 |
| Privilege to Use Force: Reasonable Accomplishment of a Lawful Arrest by a Peace Officer: Deadly Force..... | 885 | 2005 |
| | | |
| Cause..... | 901 | 2022 |
| Liability for Failure to Act - Criminal Omission | 905 | 2015 |
| Dangerous Weapon..... | 910 | 2012 |
| Great Bodily Harm..... | 914 | 2008 |
| Acting in Official Capacity | 915 | 2008 |
| Possession | 920 | 2000 |
| “Intentionally” and “With Intent to”: Mental Purpose..... | 923A | 2010 |
| “Intentionally” and “With Intent to”: “Practically Certain” | 923B | 2001 |
| Criminal Recklessness | 924 | 2015 |
| Aggravated Recklessness: Circumstances Which Show Utter Disregard for Human Life | 924A | 2012 |
| Criminal Negligence | 925 | 2005 |

WIS JI-CRIMINAL

| | | |
|---|---------------|------|
| Contributory Negligence..... | 926 | 2005 |
| Sexual Contact [939.22(34)]..... | 934 | 2011 |
| Without Consent | 948 | 2005 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child | 950 | 2014 |
| Privilege: Discipline by a Person Responsible for the Welfare of a Child: Cases Involving Recklessness | 951 WITHDRAWN | 2014 |
| Privilege: Discipline by One in the Place of the Parent | 955 WITHDRAWN | 1989 |

PENALTY ENHANCERS

| | | |
|---|-----------------------|------|
| Lifetime Supervision of Serious Sex Offenders | 980 | 2016 |
| Committing a Domestic Abuse Crime Within 72 Hours of Arrest | 983 | 2014 |
| Committing a Domestic Abuse Crime As a Domestic Abuse Repeater | 984 | 2016 |
| Criminal Gang Crimes | 985 | 2003 |
| Using or Possessing a Dangerous Weapon | 990 | 2006 |
| Violent Crime in a School Zone | 992 | 2012 |
| Wearing a Bulletproof Garment..... | 993 | 2003 |
| Concealing Identity..... | 994 | 2003 |
| Selecting the Person Against Whom a Crime is Committed Because of Race, Religion, Etc..... | 996 | 2003 |
| Elder Person Victims | 997 | 2022 |
| Selecting Property Damaged Because of the Race, Religion, Etc., of the Owner..... | 996A RENUMBERED 996.1 | 2003 |
| Violent Crime Against an Elder Person | 998 | 2003 |
| Minor Passenger in the Vehicle | 999 | 2011 |
| Unborn Child in the Vehicle | 999A | 2003 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME II

| | No. | Year |
|--|----------------|--------|
| CRIMES AGAINST LIFE AND BODILY SECURITY | | |
| LIFE | | |
| Introductory Comment: Wisconsin's New Homicide Law..... | 1000 WITHDRAWN | 2006 |
| First Degree Intentional Homicide..... | 1010 | 2000 |
| First Degree Intentional Homicide of an Unborn Child..... | 1011 | 2005 |
| First Degree Intentional Homicide: Adequate Provocation: Second Degree Intentional Homicide..... | 1012 | 2006 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide..... | 1014 | 2021 |
| First Degree Intentional Homicide: Coercion: Second Degree Intentional Homicide..... | 1015 | 2010 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide..... | 1016 | 1/2023 |
| First Degree Intentional Homicide: Self-defense: Second Degree Intentional Homicide: First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1017 | 1/2023 |
| First Degree Intentional Homicide: First Degree Reckless Homicide..... | 1018 | 2012 |
| First Degree Reckless Homicide..... | 1020 | 2015 |
| First Degree Reckless Homicide of an Unborn Child..... | 1020A | 2015 |
| First Degree Reckless Homicide..... | 1021 | 2022 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide..... | 1022 | 2015 |
| First Degree Reckless Homicide: Second Degree Reckless Homicide: Negligent Homicide..... | 1023 | 2019 |
| Felony Murder: Underlying Crime Completed..... | 1030 | 2022 |
| Felony Murder: Underlying Crime Attempted..... | 1031 | 2022 |
| Felony Murder: Death Caused While Committing a Crime as a Party to the Crime: Aiding And Abetting..... | 1032 | 2022 |
| Felony Murder: Death Caused While Committing Armed Burglary as a Party to the Crime: Aiding And Abetting..... | 1032 EXAMPLE | 2003 |
| Second Degree Intentional Homicide..... | 1050 | 2006 |
| Second Degree Intentional Homicide: Self-defense..... | 1052 | 2006 |
| Second Degree Reckless Homicide..... | 1060 | 2015 |
| Second Degree Reckless Homicide by Omission..... | 1060A | 2015 |
| Second Degree Reckless Homicide of an Unborn Child..... | 1061 | 2005 |
| Attempted First Degree Intentional Homicide..... | 1070 | 2001 |
| Attempted First Degree Intentional Homicide: Self-defense: Attempted Second Degree Intentional Homicide..... | 1072 | 1/2023 |
| Homicide Instructions Replaced for Offenses Committed on or After January 1, 1989..... | 1100 WITHDRAWN | 2006 |

WIS JI-CRIMINAL

| | | |
|---|-----------|----------------|
| Third Degree Murder: First or Second Degree Murder Not Submitted... 1120 | WITHDRAWN | 1982 |
| Third Degree Murder: First or Second Degree Murder Submitted..... 1122 | WITHDRAWN | 1982 |
| Abortion [Feticide]..... 1125 | | 2006 |
| Homicide by Negligent Operation of a Vehicle..... 1170 | | 2002 |
| Homicide of an Unborn Child by Negligent Operation of a Vehicle..... 1171 | | 2005 |
| Homicide by Negligent Handling of a Dangerous Weapon..... 1175 | | 2011 |
| | | |
| Homicide by Operation of Vehicle While Under the Influence | 1185 | 2020 |
| Violations of § 940.09 and § 940.25 Involving an Unborn Child | 1185A | 2004 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol | | |
| Concentration – 0.08 Grams or More..... | 1186 | 2020 |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol | | |
| Concentration – 0.02 Grams or More..... | 1186A | 2020 |
| Homicide by Operation of a Vehicle with a Detectable Amount of a | | |
| Restricted Controlled Substance – § 940.09(1)(am) | 1187 | 2021 |
| Homicide by Intoxicated User of Vehicle, Firearm, or Airgun: | | |
| Affirmative Defense Under § 940.09(2) | 1188 | WITHDRAWN 2004 |
| Homicide by Operation of a Vehicle While Under the Influence / | | |
| Homicide by Operation of a Vehicle with a Prohibited Alcohol | | |
| Concentration of 0.08 Grams or More | 1189 | 2020 |
| Homicide by Operation or Handling of Firearm or Airgun While | | |
| Under the Influence..... | 1190 | 2014 |
| Homicide by Operation or Handling of Firearm or Airgun with an | | |
| Alcohol Concentration of 0.08 or More | 1191 | 2006 |
| Mutilating a Corpse..... | 1193 | 2006 |
| Hiding or Burying a Corpse..... | 1194 | 2013 |
| Assisting Suicide..... | 1195 | 2006 |

SEXUAL ASSAULT

| | | |
|--|-----------|----------------|
| Introductory Comment - Sexual Assault | | |
| Instructions..... | 1200-1219 | WITHDRAWN 1990 |
| Sexual Contact | 1200A | 2007 |
| Sexual Intercourse..... | 1200B | 2010 |
| “Without Consent” - Competence to Give Informed Consent in Issue..... | 1200C | 2002 |
| “Without Consent” - Complainant Suffering from Mental Illness | 1200D | 2002 |
| “Without Consent” - Complainant Unconscious | 1200E | 2002 |
| Sexual Assault: Spouse as Victim..... | 1200F | 2002 |
| Cautionary Instruction: Evidence of Victim’s Prior Sexual Conduct..... | 1200G | 1/2023 |
| | | |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent | | |
| Causing Great Bodily Harm | 1201 | 2002 |
| First Degree Sexual Assault: Sexual Intercourse Without Consent | | |
| Causing Pregnancy..... | 1201A | 2002 |
| First Degree Sexual Assault: Sexual Contact or Intercourse by Use or | | |
| Threat of Use of a Dangerous Weapon | 1203 | 2002 |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 | 2022 |
| First Degree Sexual Assault: Against an Individual Who is 60 Years of Age or Older | 1204 EXAMPLE | 2022 |
| First Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence While Aided and Abetted | 1205 | 2018 |
| First Degree Sexual Assault: Sexual Intercourse with a Person 12 Years of Age or Younger | 1206 WITHDRAWN | 1997 |
| First Degree Sexual Assault: Sexual Contact with a Person 12 Years of Age or Younger | 1207 WITHDRAWN | 1997 |
| | | |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent by Use or Threat of Force or Violence..... | 1208 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent Causing Injury, Illness, Disease or Impairment of a Sexual or Reproductive Organ, or Mental Anguish Requiring Psychiatric Care | 1209 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Suffering from Mental Illness | 1211 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person Who is Under the Influence of an Intoxicant | 1212 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Person the Defendant Knows is Unconscious..... | 1213 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse Without Consent While Aided and Abetted..... | 1214 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse with a Patient or Resident | 1215 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Correctional Staff Member..... | 1216 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Probation, Parole, or Extended Supervision Agent..... | 1217 | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by an Employee of an Entity..... | 1217A | 2022 |
| Second Degree Sexual Assault: Sexual Contact or Intercourse by a Law Enforcement Officer With a Person Detained or in Custody | 1217B | 2022 |
| | | |
| Third Degree Sexual Assault: Sexual Intercourse Without Consent | 1218A | 2018 |
| Third Degree Sexual Assault: Sexual Contact Without Consent Involving Ejaculation, etc..... | 1218B | 2018 |
| Fourth Degree Sexual Assault: Sexual Contact Without Consent | 1219 | 2004 |

BODILY SECURITY

| | | |
|---|-----------------------|------|
| Battery and Related Offenses: Introductory Comment..... | 1220-1246 WITHDRAWN | 2009 |
| Battery..... | 1220 | 2015 |
| Battery: Self-Defense in Issue..... | 1220A | 2015 |
| Abuse of Children..... | 1221 WITHDRAWN | 1989 |
| Abuse of Children C Exposing a Child to Cruel Maltreatment..... | 1221A WITHDRAWN | 1989 |
| Failure to Report Child Abuse | 1221C RENUMBERED 2119 | 1992 |
| Substantial Battery with Intent to Cause Bodily Harm..... | 1222 | 2017 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Substantial Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1222A | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm | 1223 WITHDRAWN | 2017 |
| Substantial Battery with Intent to Cause Substantial Bodily Harm: | | |
| Self-Defense in Issue..... | 1223A WITHDRAWN | 2017 |
| Aggravated Battery with Intent to Cause Bodily Harm..... | 1224 | 2002 |
| | | |
| Aggravated Battery with Intent to Cause Bodily Harm: Self-Defense in Issue..... | 1224A | 2001 |
| | | |
| Aggravated Battery With Intent to Cause Great Bodily Harm | 1225 | 2003 |
| Aggravated Battery with Intent to Cause Great Bodily Harm: | | |
| Self-Defense in Issue..... | 1225A | 2003 |
| Battery with Substantial Risk of Great Bodily Harm..... | 1226 | 2022 |
| Battery to an Unborn Child..... | 1227 | 2017 |
| Battery by Prisoner | 1228 | 2012 |
| Battery by a Person Committed under § 980.065 | 1228A | 2022 |
| Battery by a Person Subject to an Injunction..... | 1229 | 2016 |
| | | |
| Battery to a Law Enforcement Officer or Fire Fighter | 1230 | 2016 |
| Battery to a Probation, Extended Supervision and Parole Agent, Community Supervision Agent, or An Aftercare Agent..... | 1231 | 2022 |
| Battery to Juror [Juror Has Assented to Verdict]..... | 1232 | 2005 |
| Battery to Witness [Witness Likely to be Called to Testify] | 1233 WITHDRAWN | 1999 |
| Battery to a Public Officer..... | 1234 | 2008 |
| Battery to a Technical College District or School District Officer or Employee | 1235 | 2008 |
| Battery to a Public Transit Vehicle Operator or Passenger..... | 1236 | 2014 |
| Battery to an Emergency Medical Care Provider | 1237 | 2022 |
| Battery or Threat to a Witness [Witness Has Attended or Testified]..... | 1238 | 2022 |
| Battery or Threat to Witness [Witness Likely to be Called to Testify]..... | 1239 | 2004 |
| Battery or Threat to Judge..... | 1240 WITHDRAWN | 2003 |
| Battery to a Judge..... | 1240A | 2019 |
| Threat to a Judge..... | 1240B | 2020 |
| Battery to a Prosecutor or Law Enforcement Officer | 1240C | 2019 |
| Threat to a Prosecutor or Law Enforcement Officer..... | 1240D | 2019 |
| Battery to Guardian Ad Litem, Corporation Counsel, or Attorney..... | 1241A | 2022 |
| Threat to Guardian Ad Litem, Corporation Counsel, or Attorney | 1241B | 2022 |
| Battery or Threat to a Department of Revenue Employee | 1242 | 2022 |
| Battery to a Nurse | 1243 WITHDRAWN | 2022 |
| Battery or Threat to a Department of Safety and Professional Services or Department of Workforce Development Employee..... | 1244 | 2022 |
| Battery to a County, City, Village, or Town Employee..... | 1245 | 2009 |
| Mayhem | 1246 | 2009 |
| Battery or Threat to a Staff Member of a Health Care Facility | 1247A | 2022 |
| Battery or Threat to a Health Care Provider | 1247B | 2022 |
| Sexual Exploitation by Therapist..... | 1248 | 2006 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm..... | 1249A | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Bodily Harm..... | 1249B | 2022 |
| Physical Abuse of an Elder Person: Intentional Causion of Great Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm..... | 1249C | 2022 |

WIS JI-CRIMINAL

| | | |
|---|----------------------|------|
| Physical Abuse of an Elder Person: Reckless Caustion of Great Bodily Harm | 1249D | 2022 |
| Physical Abuse of an Elder Person: Reckless Caustion of Bodily Harm..... | 1249E | 2022 |
| Physical Abuse of an Elder Person: Reckless Caustion of Bodily Harm to an Elder Person Under Circumstances or Conditions That are Likely to Produce Great Bodily Harm | 1249F | 2022 |
| First Degree Reckless Injury..... | 1250 | 2020 |
| Second Degree Reckless Injury | 1252 | 2015 |
| Strangulation and Suffocation..... | 1255 | 2022 |
| Injury by Negligent Handling of a Dangerous Weapon..... | 1260 | 2011 |
| Injury (Great Bodily Harm) by Negligent Use of a Vehicle | 1261 RENUMBERED 2654 | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle While Under the Influence | 1262 | 2014 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.08 Grams or More..... | 1263 | 2006 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Prohibited Alcohol Concentration - 0.02 Grams or More..... | 1263A | 2004 |
| Failure to Support | 1264 WITHDRAWN | 1989 |
| Abandonment of a Young Child | 1265 WITHDRAWN | 1989 |
| Injury (Great Bodily Harm) by Operation of a Vehicle with a Detectable Amount of a Restricted Controlled Substance – § 940.25(1)(am) | 1266 | 2021 |
| Abuse of Individuals at Risk..... | 1268 | 2007 |
| Abuse of Individuals at Risk: Recklessly Subjecting an Individual at Risk to Abuse under Circumstances That Cause Great Bodily Harm | 1268 EXAMPLE | 2007 |
| Reckless Abuse of Vulnerable Adults | 1269 WITHDRAWN | 1999 |
| Abuse of Residents of Penal Facilities..... | 1270 | 2006 |
| Abuse of Patients and Residents | 1271 | 2011 |
| Abuse of Patients and Residents: Reckless Physical Abuse Causing Great Bodily Harm to an Individual at Risk..... | 1271 EXAMPLE | 2007 |
| Neglect of Patients and Residents..... | 1272 | 2021 |
| Law Enforcement Officer – Failure to Render Aid | 1273 | 2020 |
| False Imprisonment..... | 1275 | 2014 |
| Human Trafficking | 1276 | 2015 |
| Human Trafficking | 1276 EXAMPLE | 2015 |
| Human Trafficking | 1277 | 2016 |
| Taking a Hostage | 1278 | 2016 |
| Kidnapping..... | 1280 | 2016 |
| Kidnapping..... | 1281 | 2016 |
| Kidnapping..... | 1282 | 2006 |
| Placing a Global Positioning Device | 1283A | 2016 |
| Obtaining Information Generated by a Global Positioning Device | 1283B | 2016 |
| Stalking | 1284 | 2021 |
| Stalking: Penalty Factors | 1284A | 2011 |
| Stalking | 1284B | 2021 |

WIS JI-CRIMINAL

| | | |
|---|-----------------|--------|
| Abduction..... | 1285 WITHDRAWN | 1989 |
| Abduction..... | 1286 WITHDRAWN | 1989 |
| Abduction..... | 1287 WITHDRAWN | 1989 |
| Intimidation of a Witness: Misdemeanor..... | 1290 WITHDRAWN | 2001 |
| Intimidation of a Witness..... | 1292 | 2020 |
| Intimidation of a Witness; Felony: Force Threatened | | |
| Against a Relative of the Witness | 1292A WITHDRAWN | 2001 |
| Intimidation of a Victim: Misdemeanor..... | 1294 WITHDRAWN | 2001 |
| Intimidation of a Victim..... | 1296 | 1/2023 |
| Intimidation of a Person Acting on Behalf of a Victim | 1296A | 1/2023 |
| Intimidation of a Victim..... | 1297 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IIA

| | No. | Year |
|--|----------------------|------|
| CRIMES AGAINST PUBLIC HEALTH AND SAFETY | | |
| Negligent Operation of a Vehicle | 1300 | 2022 |
| Highway Obstruction | 1302 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant..... | 1305 RENUMBERED 1321 | 2021 |
| Negligent Handling of Burning Material | 1310 | 2007 |
| Giving a False Alarm | 1316 | 2007 |
| Interference with a Fire Alarm System | 1317 | 2007 |
| Interference with Fire Fighting | 1318 | 2007 |
| Interference with Fire Fighting Equipment..... | 1319 | 2007 |
| Endangering Safety by Use of a Dangerous Weapon: Negligent Operation or Handling..... | 1320 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Operating or Going Armed with a Firearm While Under the Influence of an Intoxicant | 1321 | 2019 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at Another | 1322 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Pointing a Firearm at a Law Enforcement Officer, Fire Fighter, Etc..... | 1322A | 2018 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm Within 100 Yards of Building | 1323 | 2005 |
| Endangering Safety by Use of a Dangerous Weapon: Discharging a Firearm into a Vehicle or Building..... | 1324 | 2008 |
| Possession of Pistol by Minor: Minor Going Armed with a Pistol..... | 1325 WITHDRAWN | 1989 |
| Sale, Loan, or Gift of Pistol to Minor | 1326 WITHDRAWN | 1989 |
| Endangering Safety by Use of a Dangerous Weapon: Intentionally Discharging a Firearm from a Vehicle | 1327 | 2005 |
| Disarming a Peace Officer | 1328 | 2008 |
| Carrying a Concealed Weapon | 1335 | 2018 |
| Carrying a Concealed Weapon: Unlawful Purpose | 1335A | 2016 |
| Carrying a Concealed Weapon: Evidence of Exception | 1335B | 2012 |
| Carrying a Concealed Knife..... | 1336 | 2022 |
| Carrying a Firearm in a Public Building..... | 1337 | 2019 |
| Carrying a Handgun on Premises Where Alcohol Beverages are Consumed..... | 1338 | 2019 |
| Possession of a Switchblade Knife | 1340 | 2016 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1340A | 2008 |

WIS JI-CRIMINAL

| | | |
|--|-----------------|------|
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341 | 2007 |
| Possession of a Machine Gun or Other Full Automatic Firearm | 1341A | 2010 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm or Discomfort | 1341B | 2020 |
| Using Oleoresin of Capsicum (Pepper Spray) to Cause Bodily Harm to a Peace Officer | 1341C | 2020 |
| Possession of Oleoresin of Capsicum (Pepper Spray) by a Convicted Felon..... | 1341D | 2020 |
| Possession of a Short-Barreled Shotgun or Rifle..... | 1342 | 2007 |
| | | |
| Possession of a Firearm | 1343 | 2021 |
| Possession of a Firearm by a Felon: Privilege | 1343A | 2008 |
| Furnishing a Firearm to a Felon..... | 1343B WITHDRAWN | 2019 |
| Straw Purchasing of a Firearm..... | 1343C | 2019 |
| Possession of a Firearm by a Person Subject to an Injunction..... | 1344 | 2019 |
| Possession of an Electric Weapon | 1344A | 2012 |
| First Degree Recklessly Endangering Safety..... | 1345 | 2020 |
| Second Degree Recklessly Endangering Safety | 1347 | 2015 |
| | | |
| Possession of Explosives for an Unlawful Purpose | 1350 | 2008 |
| Possession of an Improvised Explosive Device..... | 1351A | 2008 |
| Possession of Materials or Components with Intent to Assemble an Improvised Explosive Device | 1351B | 2008 |
| Administering a Dangerous or Stupefying Drug | 1352 | 2008 |
| Placing Foreign Objects in Edibles..... | 1354 | 2008 |
| Obstructing Emergency Medical Personnel..... | 1360 | 2018 |
| Throwing or Expelling a Bodily Substance at a Public Safety Worker or Prosecutor..... | 1365 | 2018 |
| Violating a No Contact Order | 1375 | 2013 |

CRIMES AGAINST REPUTATION AND CIVIL LIBERTIES

| | | |
|--|----------------|------|
| Defamation..... | 1380 | 2008 |
| Denial of Rights: In General | 1390 WITHDRAWN | 1992 |
| Denial of Rights: Written Communication | 1391 WITHDRAWN | 1992 |
| Invasion of Privacy: Use of a Surveillance Device..... | 1392 | 2020 |
| Invasion of Privacy: Looking into a Dwelling Unit..... | 1395 | 2017 |
| Invasion of Privacy: Use of a Device to View Under the Outer Clothing of an Individual | 1395A | 2016 |
| Representations Depicting Nudity | 1396 | 2017 |
| Publishing a Private Representation Depicting Nudity Without Consent..... | 1398A | 2020 |
| Publishing a Depiction That Is Known to Be a Private Representation of Nudity Without Consent..... | 1398B | 2020 |
| Soliciting an Intimate or Private Representation | 1399 | 2018 |

WIS JI-CRIMINAL

CRIMES AGAINST PROPERTY

| | | |
|--|-----------------|------|
| Criminal Damage to Property | 1400 | 2020 |
| Criminal Damage to Property: Vending and Other Machines | 1400A | 2017 |
| Criminal Damage to Property: Energy Provider Property | 1400B | 2020 |
| Damage or Threat to Property of a Witness..... | 1400C | 2020 |
| Criminal Damage to Religious or Cemetery Property | 1401A | 2003 |
| Criminal Damage to Facilities Associated with Designated Groups | 1401B | 2003 |
| Criminal Damage to Personal Property Contained in Religious, Cemetery or Other Property | 1401C | 2003 |
| Criminal Damage or Threat to Property of a Judge | 1402A | 2004 |
| Criminal Damage or Threat to Property of a Department of Revenue Employee | 1402B | 2004 |
| Graffiti | 1403 | 2010 |
| Arson of a Building of Another | 1404 | 2008 |
| Arson of a Building with Intent to Defraud an Insurer | 1405 | 2008 |
| Arson of Property Other Than a Building..... | 1408 | 2011 |
| Arson (Of Property Other Than a Building) with Intent to Defraud..... | 1410 | 2001 |
| Molotov Cocktails (Firebombs): Possession..... | 1417 | 2008 |
| Molotov Cocktails (Firebombs): Manufacture, Sale, Offer to Sell, Gift or Transfer..... | 1418 | 2008 |
| Burglary with Intent to Steal..... | 1421 | 2020 |
| Burglary with Intent to Steal; While Armed with a Dangerous Weapon | 1422 WITHDRAWN | 1997 |
| Burglary with Intent to Commit a Felony | 1424 | 2022 |
| Burglary While Armed | 1425A | 2005 |
| Burglary: Arming Oneself with a Dangerous Weapon While in the Enclosure | 1425B | 2005 |
| Burglary: Committing a Battery While in the Enclosure..... | 1425C | 2005 |
| Burglary: Person Lawfully Present in the Enclosure | 1425E | 2005 |
| Entry into a Locked Vehicle | 1426 | 2008 |
| Possession of Burglarious Tools | 1431 | 2008 |
| Entry into Locked Coin Box | 1433 | 2004 |
| Criminal Trespass to Dwellings..... | 1437 | 2017 |
| Entry into a Locked Dwelling..... | 1438 | 2008 |
| Criminal Trespass to a Medical Facility | 1439 | 2008 |
| Criminal Trespass to an Energy Provider Property..... | 1440 | 2020 |
| Theft..... | 1441 | 2022 |
| Determining Value in Theft Cases..... | 1441A WITHDRAWN | 2002 |
| Theft: Penalty Factors | 1441B | 2020 |
| Theft from Person | 1442 WITHDRAWN | 1999 |
| Theft by Contractor..... | 1443 | 2022 |
| Theft by Contractor: Defendant Is a Corporate Officer | 1443A | 2022 |
| Theft by Employee, Trustee, or Bailee (Embezzlement)..... | 1444 | 2022 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Theft by One Having an Undisputed Interest in Property from One Having Superior Right of Possession | 1450 | 2022 |
| Theft by Fraud..... | 1453 WITHDRAWN | 2006 |
| Theft by Fraud: Representations Made to the Owner, Directly or by a Third Person | 1453A | 2022 |
| Theft by Fraud: Representations Made to an Agent | 1453B | 2022 |
| Theft by Fraud: Failure to Disclose as a Representation | 1453C | 2022 |
| Theft by Failure to Return Leased or Rented Property | 1455 | 2022 |
| Mail Theft | 1457 | 1/2023 |
| Unauthorized Use of an Individual's Personal Identifying Information or Documents..... | 1458 | 2019 |
| Unauthorized Use of an Entity's Identifying Information or Documents | 1459 | 2019 |
| Failure to Disclose Manufacturer of Recording..... | 1460 | 2014 |
| Fraud on Hotel or Restaurant Keeper | 1461 | 2010 |
| Absconding Without Paying Rent..... | 1462 | 2010 |
| Absconding Without Paying Rent: Affirmative Defense..... | 1462A | 2008 |
| Taking a Vehicle by Use or Threat of Force..... | 1463 | 2003 |
| Taking a Vehicle by Use or Threat of Force..... | 1463A | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent..... | 1464 | 2019 |
| Taking and Driving a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent: Driving or Operating Without the Owner's Consent as a Lesser Included Offense | 1464A | 2019 |
| Driving or Operating a (Vehicle) (Commercial Motor Vehicle) Without the Owner's Consent | 1465 | 2019 |
| Operating Without Owner's Consent: Affirmative Defense..... | 1465A | 2019 |
| Intentionally Accompanying a Person Who Operates a Vehicle Without the Owner's Consent | 1466 | 2016 |
| Removing a Major Part of a Vehicle Without the Owner's Consent..... | 1467 | 2001 |
| Issue of a Worthless Check: Misdemeanor..... | 1468 | 2004 |
| Issue of a Worthless Check: Felony: One Check for \$2,500 or More | 1469A | 2004 |
| Issue of a Worthless Check: Felony: Series of Checks Totaling \$2,500 or More | 1469B | 2004 |
| Transfer of Encumbered Personal Property with Intent to Defraud | 1470 | 2008 |
| Loan Sharking (Extortionate Extension of Credit) | 1472A | 2009 |
| Loan Sharking (Advancements for Extortionate Extensions of Credit) | 1472B | 2009 |
| Loan Sharking (Use of Extortionate Means) | 1472C | 2009 |
| Extortion: Accuse or Threaten to Accuse | 1473A | 2004 |
| Extortion: Injure or Threaten to Injure..... | 1473B | 2022 |
| Threats to Communicate Derogatory Information..... | 1474 | 2017 |
| Robbery by the Use of Force | 1475 WITHDRAWN | 2009 |
| Robbery by Threat of Force..... | 1477 WITHDRAWN | 2009 |
| Robbery by the Use or Threat of Force..... | 1479 | 2009 |
| Armed Robbery: By Use or Threat of Use of a Dangerous Weapon..... | 1480 | 2016 |

WIS JI-CRIMINAL

| | | |
|---|-------------------------|--------|
| Armed Robbery: By Use of an Article the Victim Reasonably Believes is a Dangerous Weapon | 1480A | 2016 |
| Receiving Stolen Property | 1481 | 2012 |
| Fraudulent Writings: Falsifying a Corporate Record..... | 1485 | 2004 |
| Fraudulent Writings: Obtaining a Signature by Means of Deceit..... | 1486 | 2001 |
| Possession of Property with Altered Identification Marks | 1488 | 2009 |
| Forgery (by Making or Altering a Check) | 1491 | 2009 |
| Uttering a Forged Writing (Check)..... | 1492 | 2009 |
| | | |
| Possession of a Forged Writing (Check) with Intent to Utter..... | 1493 | 2009 |
| Fraudulent Insurance Claim: Presenting a False or Fraudulent Claim..... | 1494 | 2003 |
| Theft of Telecommunications Service | 1495 | 2014 |
| Theft of a Financial Transaction Card | 1496 | 2009 |
| Fraudulent Use of a Financial Transaction Card | 1497 | 2003 |
| Fraudulent Use of a Financial Transaction Card | 1497A | 2003 |
| Financial Transaction Card Factoring..... | 1497B RENUMBERED 1497.1 | 2003 |
| Retail Theft | 1498 | 2020 |
| Retail Theft: Removing a Theft Detection Device | 1498A | 2020 |
| Retail Theft: Using a Theft Detection Shielding Device | 1498B | 2020 |
| Theft of Services | 1498C | 2020 |
| Criminal Slander of Title | 1499 | 2009 |
| Crimes Against Sexual Morality..... | 1500-1529 WITHDRAWN | 1996 |
| Computer Crime..... | 1504 | 2007 |
| Computer Crime..... | 1505 | 2009 |
| Computer Crime..... | 1506 | 2007 |
| Crimes Against Financial Institutions..... | 1508 | 1/2023 |
| Incest: Sexual Intercourse Between Father and Daughter | 1510 | 2008 |
| Fraud Against a Financial Institution..... | 1512 | 2017 |
| Robbery of a Financial Institution | 1522 | 2017 |
| Money Laundering — § 943.895(2)(a)1 - 2. | 1524 | 1/2023 |
| Money Laundering — § 943.895(2)(a)3. | 1525 | 1/2023 |
| Money Laundering — § 943.895(2)(a)4..... | 1526 | 1/2023 |

CRIMES AGAINST SEXUAL MORALITY

| | | |
|---|----------------|------|
| Enticing Children for Immoral Purposes | 1530 WITHDRAWN | 1989 |
| Incest: Sexual Intercourse Between Blood Relatives..... | 1532 | 2022 |
| Fornication: Sexual Intercourse in Public..... | 1535 | 2016 |
| Fornication: Sexual Intercourse with a Person Younger Than 18 Years | 1536 WITHDRAWN | 1989 |
| Sexual Gratification in Public..... | 1537 | 2021 |
| Sexual Gratification with a Person Younger Than 18 Years | 1538 WITHDRAWN | 1989 |
| Lewd and Lascivious Behavior - Exposing Genitals or Pubic Area | 1544 | 2007 |
| Lewd and Lascivious Behavior by Cohabitation with a Person Not His Spouse..... | 1545 WITHDRAWN | 1996 |

WIS JI-CRIMINAL

| | | |
|---|---------------------|------|
| Commitment and Continuance of Control Under the Sex Crimes Law | 1550-1553 WITHDRAWN | 1996 |
| Prostitution: Nonmarital Sexual Intercourse..... | 1560 | 2016 |
| Prostitution: Act of Sexual Gratification | 1561 | 2006 |
| Patronizing Prostitutes | 1564 | 2018 |
| Soliciting to Practice Prostitution | 1566 | 2016 |
| Pandering | 1568 | 2015 |
| Pandering | 1568A | 2016 |
| Pandering | 1568B | 2016 |
| Keeping a Place of Prostitution..... | 1570 | 2016 |
| Granting the Use of a Place as a Place of Prostitution..... | 1571 | 2016 |

CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION

| | | |
|--|------|--------|
| Commercial Gambling: Operating a Gambling Place for Gain | 1601 | 2002 |
| Commercial Gambling: Receiving a Bet for Gain..... | 1602 | 2002 |
| Commercial Gambling: Collecting the Proceeds of a Gambling Machine | 1605 | 1/2023 |
| Commercial Gambling: Using Wire Communication to Place a Bet..... | 1607 | 2002 |
| Permitting Real Estate to be Used as a Gambling Place..... | 1610 | 2009 |
| Altering a Lottery Ticket | 1650 | 2009 |
| Uttering an Altered Lottery Ticket..... | 1651 | 2009 |
| Possession of an Altered Lottery Ticket with Intent to Defraud..... | 1652 | 2009 |
| Sabotage..... | 1705 | 2009 |
| Bribery – Transferring Property to a Public Employee to Induce Action or Failure to Act..... | 1720 | 2009 |
| Bribery – Transferring Property to a Public Officer to Influence a Decision | 1721 | 2009 |
| Bribery – Accepting a Bribe | 1723 | 2009 |
| Misconduct in Public Office (by Failure or Refusal to Perform Duty)..... | 1730 | 2008 |
| Misconduct in Public Office (by Performance of Unauthorized or Forbidden Act)..... | 1731 | 2008 |
| Misconduct in Public Office (by Exercise of Discretionary Power for a Dishonest Advantage) | 1732 | 2008 |
| Misconduct in Public Office (by False Entry, Return, Certificate, Report, or Statement) | 1733 | 2008 |
| Misconduct in Public Office (by Unlawful Solicitation or Acceptance of Anything of Value)..... | 1734 | 2008 |
| Private Interest in a Public Contract: Entering into a Contract in a Private Capacity and Being Authorized by Law to Participate in the Making of the Contract as a Public Officer | 1740 | 2009 |
| Private Interest in a Public Contract: Participating in the Making of a Contract in Which One Has a Private Pecuniary Interest..... | 1741 | 2009 |
| Private Interest in a Public Contract: Performing a Discretionary Function in Regard to a Contract in Which One Has a Private Pecuniary Interest | 1742 | 2009 |
| Perjury..... | 1750 | 2020 |
| False Swearing: False Statement Under Oath: Felony..... | 1754 | 2004 |
| False Swearing: Inconsistent Statements | 1755 | 2004 |
| False Swearing: False Statement Under Oath: Misdemeanor..... | 1756 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|----------------|--------|
| Resisting an Officer | 1765 | 2012 |
| Obstructing an Officer | 1766 | 2010 |
| Obstructing an Officer: Giving False Information..... | 1766A | 2010 |
| Failure to Comply with an Officer's Attempt to Take a Person into Custody | 1768 | 2008 |
| | | |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Forfeiture Offense | 1770 | 2008 |
| Escape from Custody Resulting from Violation of Probation, Parole, or Extended Supervision | 1771 | 2009 |
| Escape from Custody Resulting from Legal Arrest for a Crime..... | 1772 | 2008 |
| Escape from the Custody of a Peace Officer After Legal Arrest for a Crime | 1773 WITHDRAWN | 2008 |
| Escape from Custody: Jail or Prison Escape..... | 1774 | 2008 |
| Escape from Custody: Chapter 980 Custody Order..... | 1775 | 2008 |
| Escape: Individual with Custody Injured..... | 1775A | 2009 |
| Failure to Report to Jail: Periods of Imprisonment..... | 1776 | 1/2023 |
| Failure to Report to Jail: After Stay of Sentence | 1777A | 1/2023 |
| Failure to Report to Jail: Confinement Order | 1777B | 1/2023 |
| | | |
| Assault by a Prisoner: Placing an Officer, Employee, Visitor, or Inmate in Apprehension of an Immediate Battery Likely to Cause Death or Great Bodily Harm | 1778 | 2001 |
| Assault by a Prisoner: Restraining or Confining an Officer, Employee, Visitor, or Inmate | 1779 | 2001 |
| Assault by a Prisoner: Throwing or Expelling a Bodily Substance at an Officer, Employee, Visitor, or Inmate..... | 1779A | 2001 |
| Permitting Escape | 1780 | 2008 |
| Assisting Escape | 1781 | 2008 |
| Assisting Escape by Public Officer or Employee..... | 1782 | 2008 |
| Introducing a Firearm into an Institution | 1783 | 2008 |
| Inmate Possessing an Article With Intent to Retain..... | 1784 | 2021 |
| Delivering an Article to an Inmate..... | 1785 | 2021 |
| Possessing an Article with Intent to Deliver it to an Inmate..... | 1786 | 2021 |
| Receiving an Article From an Inmate to Convey Out of Jail or Prison | 1787 | 2021 |
| Encouraging a Violation of Probation, Extended Supervision or Parole..... | 1788 | 2011 |
| | | |
| Aiding a Felon..... | 1790 | 2015 |
| Aiding a Felon by Destroying, etc., Physical Evidence..... | 1791 | 2015 |
| Bail Jumping | 1795 | 2018 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME III

| | No. | Year |
|---|---------------------|-------------|
| CRIMES AGAINST GOVERNMENT AND ITS ADMINISTRATION (continued) | | |
| Concealing Identity..... | 1805 RENUMBERED 994 | 1986 |
| Bribery of Witness: Transferring Property | 1808A | 2021 |
| Bribery of Witness: Accepting a Bribe | 1808B | 2021 |
| Concealing Death of Child..... | 1810 WITHDRAWN | 1989 |
| Communicating with a Juror..... | 1812 | 2009 |
| | | |
| Obstructing Justice..... | 1815 | 2009 |
| Simulating Legal Process..... | 1825 | 2009 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel..... | 1830 | 2018 |
| Impersonating a Peace Officer, Fire Fighter, or other Emergency Personnel with Intent to Commit a Crime..... | 1831 WITHDRAWN | 2018 |
| Interference with Custody of a Child..... | 1832 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1833 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1834 WITHDRAWN | 1989 |
| Interference with Custody of a Child..... | 1835 WITHDRAWN | 1989 |
| Interference with Custody of a Nonmarital Child..... | 1835A WITHDRAWN | 1989 |
| Interference with the Parental Rights of the Other Parent: Concealing a Child | 1838 WITHDRAWN | 1989 |
| | | |
| Unemployment Insurance Fraud: Making a False Statement to Obtain a Benefit Payment | 1848 | 2019 |
| Welfare Fraud: Making False Representations to Secure Public Assistance..... | 1850 | 2015 |
| Public Assistance Fraud: Concealing or Failing to Disclose an Event Affecting Eligibility | 1851 | 2015 |
| Welfare Fraud: Failure to Report Receipt of Income or Assets..... | 1852 WITHDRAWN | 2015 |
| Welfare Fraud: Failure to Notify Authorities of Change of Facts | 1854 WITHDRAWN | 2015 |
| Food Stamp Fraud: Misstating Facts on an Application..... | 1862 | 2015 |
| | | |
| Medical Assistance Fraud: Making a False Statement in an Application for a Benefit or Payment..... | 1870 | 2015 |
| | | |
| Racketeering Activity – Using Proceeds of a Pattern of Racketeering Activity to Establish or Operate an Enterprise..... | 1881 | 2008 |
| Racketeering Activity – Acquiring or Maintaining an Interest in or Control of an Enterprise Through a Pattern of Racketeering Activity | 1882 | 2008 |
| Racketeering Activity – Conducting or Participating in an Enterprise Through a Pattern of Racketeering Activity | 1883 | 2008 |

WIS JI-CRIMINAL

CRIMES AGAINST PUBLIC PEACE, ORDER, AND OTHER INTERESTS

| | | |
|--|-----------------|-------------|
| Disorderly Conduct..... | 1900 | 2022 |
| Disrupting a Funeral or Memorial Service | 1901 | 2007 |
| Disrupting a Funeral or Memorial Service: Impeding Vehicles | 1901A | 2007 |
| Unlawful Use of Telephone | 1902 | 2008 |
| Unlawful Use of Telephone | 1903 | 2008 |
| Unlawful Use of Telephone | 1904 | 2008 |
| Unlawful Use of Telephone | 1905 RENUMBERED | 1907 1993 |
| Unlawful Use of Telephone | 1906 | 2008 |
| Unlawful Use of Telephone | 1907 | 2008 |
| Unlawful Use of a Computerized Communication System: Threat to Inflict Injury | 1908 | 2008 |
| Unlawful Use of a Computerized Communication System: Use of Obscene Language | 1909 | 2008 |
| Harassment: Subjecting Another to Physical Contact | 1910 | 2003 |
| Harassment: Threatening Physical Contact with Another | 1911 RENUMBERED | 1910.1 2003 |
| Harassment: Engaging in a Course of Conduct Which Harasses or Intimidates Another | 1912 | 2003 |
| Swatting | 1919 | 2020 |
| Bomb Scares | 1920 | 2020 |
| Intentional Terrorist Threats | 1925A | 2017 |
| Reckless Terrorist Threats | 1925B | 2017 |
| Failure to Withdraw from an Unlawful Assembly..... | 1930 | 2008 |
| Contributing to Delinquency or Neglect of Children..... | 1960 WITHDRAWN | 1989 |
| Contributing to Delinquency of Children by Parent, Guardian, or Legal Custodian | 1961 WITHDRAWN | 1989 |

CRIMES AGAINST ANIMALS

| | | |
|---|------|------|
| Mistreating an Animal | 1980 | 2013 |
| Harassment of Police or Fire Animals | 1981 | 2005 |
| Failing to Provide an Animal with Sufficient Food and Water | 1982 | 2005 |
| Dognapping and Catnapping..... | 1983 | 2005 |
| Failing to Provide an Animal with Proper Shelter | 1984 | 2005 |
| Instigating Fights Between Animals..... | 1986 | 2009 |
| Keeping an Animal with Intent That it Engage in Fighting..... | 1988 | 2009 |

ABANDONMENT

| | | |
|--|----------------|------|
| Abandonment by Husband or Father | 2000 WITHDRAWN | 1996 |
|--|----------------|------|

PATERNITY

| | | |
|-----------------|----------------|------|
| Paternity | 2010 WITHDRAWN | 1996 |
|-----------------|----------------|------|

JUVENILE DELINQUENCY

| | | |
|--|----------------|------|
| Juvenile Delinquency: Composite Instruction | 2020 WITHDRAWN | 2009 |
| Sample: Delinquency Under Chapter 48: Burglary | 2021 WITHDRAWN | 2009 |
| Contempt of Court: Punitive Sanction..... | 2031 | 2009 |

WIS JI-CRIMINAL

ORDINANCE VIOLATIONS

| | | |
|--|---|------|
| Violating a Temporary Restraining Order or an Injunction..... | 2040 | 2019 |
| Violating a Foreign Protection Order..... | 2042 | 2002 |
| Violating a Domestic Abuse Contact Prohibition – § 968.075(5) | 2044 | 2013 |
| Burden of Proof: Forfeiture Actions and Five-Sixths Verdict: Forfeiture Actions | 2050, 2055 RENUMBERED 140A and 515A, respectively | 1994 |

CRIMES AGAINST CHILDREN

| | | |
|--|--------------|------|
| Sexual Contact | 2101A | 2007 |
| Sexual Intercourse..... | 2101B | 2010 |
| Introductory Comment: § 948.02 Sexual Assault of a Child: As Amended by 2007 Wisconsin Act 80 [Effective Date: March 27, 2008] and 2013 Wisconsin Act 167 [Effective Date: March 29, 2014]..... | 2102 | 2019 |
| First Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 13 Years: Causing Great Bodily Harm..... | 2102A | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 12 Years | 2102B | 2008 |
| First Degree Sexual Assault of a Child: Sexual Intercourse with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence..... | 2102C | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 16 Years by Use or Threat of Force or Violence by a Person Who Has Attained the Age of 18 Years | 2102D | 2008 |
| First Degree Sexual Assault of a Child: Sexual Contact with a Person Who Has Not Attained the Age of 13 Years | 2102E | 2015 |
| Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years | 2104 | 2020 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Actual Child | 2105A | 2005 |
| Attempted Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a Person Who Has Not Attained the Age of 16 Years: Fictitious Child..... | 2105B | 2005 |
| Sexual Assault of a Child: Failing to Act to Prevent Sexual Intercourse or Sexual Contact | 2106 | 2009 |
| Law Note: “Person Responsible for the Child’s Welfare”..... | 2106A | 2010 |
| Repeated Acts of Sexual Assault of a Child | 2107 | 2019 |
| Repeated Acts of Sexual Assault of a Child | 2107 EXAMPLE | 2009 |
| Physical Abuse of a Child: Intentionally Causing Great Bodily Harm | 2108 | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Great Bodily Harm..... | 2108A | 2009 |
| Physical Abuse of a Child: Failing to Act to Prevent Reckless Causing of Great Bodily Harm | 2108B | 2015 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm | 2109 | 2009 |
| Physical Abuse of a Child: Intentionally Causing Bodily Harm by Conduct Which Creates a High Probability of Great Bodily Harm | 2110 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Great Bodily Harm..... | 2111 | 2009 |
| Physical Abuse of a Child: Recklessly Causing Bodily Harm | 2112 | 2009 |

WIS JI-CRIMINAL

| | | |
|---|----------------|------|
| Physical Abuse of a Child: Recklessly Causing Bodily Harm by Conduct which Creates a High Probability of Great Bodily Harm | 2113 | 2009 |
| Physical Abuse or Sexual Assault of a Child by a Person Responsible for the Welfare of the Child | 2114 | 2003 |
| Repeated Acts of Physical Abuse of a Child | 2114A | 2019 |
| Repeated Acts of Physical Abuse of a Child | 2114A EXAMPLE | 2017 |
| Sexual Assault or Physical Abuse of a Child by a Child Care Provider | 2115 | 2019 |
| Causing Mental Harm to a Child | 2116 | 2009 |
| | | |
| Failure to Report Child Abuse | 2119 | 2012 |
| Sexual Exploitation of a Child | 2120 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2120A | 2020 |
| Sexual Exploitation of a Child | 2121 | 2020 |
| Sexual Exploitation of a Child: Affirmative Defense | 2121A | 2020 |
| Sexual Exploitation of a Child | 2122 | 2020 |
| Sexual Exploitation of a Child: By a Person Responsible for the Child's Welfare | 2123 | 2020 |
| Trafficking of a Child | 2124 | 2017 |
| Causing a Child to View or Listen to Sexual Activity | 2125 | 2020 |
| | | |
| Incest with a Child: Sexual Intercourse or Contact | 2130 | 2008 |
| Incest with a Child: Sexual Intercourse or Contact by Stepparent | 2131 | 2008 |
| Child Enticement: Completed Act | 2134 | 2018 |
| Child Enticement: Attempt: Actual Child | 2134A | 2018 |
| Child Enticement: Attempt: Fictitious Child | 2134B | 2018 |
| Use of a Computer to Facilitate a Child Sex Crime | 2135 | 2017 |
| Soliciting a Child for Prostitution | 2136 | 2009 |
| Patronizing a Child | 2136A | 2018 |
| Sexual Assault of a Foster Child | 2137A | 2010 |
| Sexual Assault of a Child Placed in a Substitute Care Facility | 2137B | 2007 |
| Sexual Intercourse with a Child | 2138 | 2018 |
| Underage Sexual Activity | 2138A | 2018 |
| Sexual Assault of a Student by a School Staff Person | 2139 | 2007 |
| Sexual Assault of a Child by a Person Who Works or Volunteers with Children | 2139A | 2007 |
| | | |
| Exposing Genitals or Pubic Area to a Child | 2140 | 2015 |
| Causing a Child to Expose Genitals or Pubic Area | 2141 | 2015 |
| Exposing a Child to Harmful Material | 2142 | 2019 |
| Exposing a Child to Harmful Material: Face-to-Face Contact Affirmative Defense | 2142A | 2009 |
| Exposing a Child to Harmful Material: Verbally Communicating a Harmful Description or Narrative Account | 2143 | 2019 |
| Possession of Child Pornography | 2146 WITHDRAWN | 2003 |
| Child Pornography: Possession of a Recording | 2146A | 2020 |
| Child Pornography: Exhibiting or Playing a Recording | 2146B | 2020 |
| Child Sex Offender Working with Children | 2147 | 2007 |
| Abandonment of a Child | 2148 | 2003 |
| | | |
| Neglecting a Child | 2150 | 2019 |
| Neglecting a Child: Death, Great Bodily Harm, or Bodily Harm as a Consequence | 2150A | 2019 |
| Chronic Neglect of a Child; Repeated Acts of Neglect | 2151 | 2019 |
| Failure to Support | 2152 | 2006 |

WIS JI-CRIMINAL

| | | |
|---|-------|--------|
| Failure to Support: Affirmative Defense | 2152A | 2001 |
| Concealing Death of Child..... | 2154 | 2013 |
| Abduction of Another’s Child: Taking from Home or Custody | 2160 | 1/2023 |
| Abduction of Another’s Child: Detaining Away from Home..... | 2161 | 1/2023 |
| Abduction of Another’s Child: Taking by Force or Threat of Force | 2162 | 1/2023 |
| Abduction of Another’s Child: Detaining by Force or Threat of Force..... | 2163 | 1/2023 |
| Interference with Custody of a Child..... | 2166 | 2015 |
| Interference with Custody of a Child..... | 2167 | 2009 |
| Interference with Custody of a Nonmarital Child..... | 2167A | 2009 |
| Interference with the Custody of a Child by a Parent: Concealing a Child | 2168 | 2009 |
| Interference with the Custody of a Child: Affirmative Defenses..... | 2169 | 2009 |
| Contributing to the Delinquency of a Child..... | 2170 | 1/2023 |
| Contributing to the Delinquency of a Child: Death as a Consequence..... | 2170A | 1/2023 |
| Contributing to the Delinquency of a Child by a Person Responsible for the Child’s Welfare | 2171 | 1/2023 |
| Contributing to Truancy..... | 2173 | 2006 |
| Compulsory School Attendance..... | 2174 | 2006 |
| Child Unattended in a Child Care Vehicle..... | 2175 | 2013 |
| Possession of a Dangerous Weapon by a Child..... | 2176 | 2012 |
| Sale, Loan, or Gift of a Dangerous Weapon to a Child | 2177 | 2012 |
| Sale, Loan, or Gift of a Firearm to a Child: Death Caused..... | 2177A | 2009 |
| Possession of a Firearm on School Grounds..... | 2178A | 2016 |
| Discharge of a Firearm in a School Zone | 2178B | 2016 |
| Dangerous Weapons Other Than Firearms on School Premises | 2179 | 2009 |
| Receiving Stolen Property from a Child | 2180 | 2012 |
| Recklessly Storing a Firearm | 2185 | 2013 |
| Registered Sex Offender and Photographing Minors | 2196 | 2008 |
| Failure to Comply with Sex Offender Registration Requirements | 2198 | 2021 |
| Sex Offender Name Change | 2199 | 1/2023 |

INQUEST

| | | |
|--|-------|------|
| Inquest: Preliminary Instruction..... | 2300 | 2010 |
| Inquest: Final Instructions: Explanation of Verdicts | 2302 | 2010 |
| Inquest: Suggested Verdicts..... | 2302A | 2010 |

SEXUALLY VIOLENT PERSON

| | | |
|---|------|------|
| Suggested Order of Instructions: Commitment as a Sexually Violent Person under Chapter 980, Wis. Stats. | 2500 | 2016 |
| Preliminary Instruction: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2501 | 2011 |
| Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats..... | 2502 | 2021 |
| Verdict: Commitment as a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2503 | 2011 |
| Preliminary Instruction: Hearing on Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats. | 2505 | 2014 |

WIS JI-CRIMINAL

Discharge of a Sexually Violent Person Under Chapter 980, Wis. Stats..... 2506 2021

VEHICLE CODE

| | | |
|--|-----------------|--------|
| Making a False Statement in an Application for a Certificate of Title | 2590 | 2004 |
| Operating While Intoxicated: Introductory Comment | 2600 | 2011 |
| Premises Other Than Highways..... | 2605 | 2011 |
| Operating a Motor Vehicle Without a Valid Operator's License - Criminal Offense | 2610 | 2013 |
| Operating a Motor Vehicle Without a Valid Operator's License: Causing Great Bodily Harm or Death - Criminal Offense | 2612 | 2013 |
| Operating While Revoked: Criminal Offense: Based on Prior Conviction | 2620 | 2010 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense..... | 2620A | 2018 |
| Operating A Motor Vehicle After Revocation or Suspension - Civil Forfeiture | 2620A WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Notice Mailed | 2620B WITHDRAWN | 2006 |
| Reason to Know Privileges Were Revoked: Duty to Exercise Due Care..... | 2620C WITHDRAWN | 2006 |
| Operating While Revoked: Criminal Offense: Revocation Resulted from an OWI-Related Offense | 2621 | 2018 |
| Operating While Revoked: Civil Forfeiture..... | 2621A | 2018 |
| Operating While Suspended: Civil Forfeiture | 2622 | 2013 |
| Operating While Revoked or Suspended: Criminal Offense: Causing Great Bodily Harm or Death | 2623 WITHDRAWN | 2013 |
| Operating While Suspended: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623A | 2013 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623B | 2018 |
| Operating While Revoked: Criminal Offense: Causing Great Bodily Harm or Death..... | 2623C | 2018 |
| Operating While Revoked: Criminal Offense: Permanent Revocation | 2626 | 2019 |
| Operating a Motor Vehicle to Flee or in an Attempt to Elude an Officer..... | 2630 | 2019 |
| Resisting a Traffic Officer by Failing to Stop..... | 2632 | 2019 |
| Reckless Driving: Endangering Safety (Criminal Offense)..... | 2650 | 1/2023 |
| Reckless Driving: Causing Bodily Harm..... | 2652 | 1/2023 |
| Reckless Driving: Causing Great Bodily Harm..... | 2654 | 1/2023 |

* * *

WIS JI-CRIMINAL

TABLE OF CONTENTS

VOLUME IV

| | No. | Year |
|---|---------------------|--------|
| VEHICLE CODE (continued) | | |
| Introductory Comment..... | 2660-2665 WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – 0.08 Grams or More..... | 2660 | 2020 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660A | 2015 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Civil Forfeiture – 0.08 Grams or More..... | 2660B WITHDRAWN | 2004 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams | 2660C | 2007 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration – Criminal Offense – More than 0.02 Grams – Subject to an Ignition Interlock Order..... | 2660D | 2011 |
| Operating a Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More | 2661 | 2017 |
| Operating a Motor Vehicle with a Prohibited Alcohol Concentration and Causing Injury – 0.08 Grams or More – § 346.63(2)(a) | 2661A WITHDRAWN | 2004 |
| Operating a Vehicle While Intoxicated and Causing Injury: Affirmative Defense Under § 346.63(2)(b)..... | 2662 WITHDRAWN | 2004 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Criminal Offense..... | 2663 | 1/2023 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture..... | 2663A | 2006 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant – Civil Forfeiture – No Alcohol Concentration Test..... | 2663B | 2019 |
| Alcohol Concentration Level..... | 2663C | 2004 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant with a Child under 16 Years of Age in the Motor Vehicle | 2663D | 2011 |
| Operating a Motor Vehicle While Under the Influence of a Controlled Substance – Criminal Offense..... | 2664 | 2020 |
| Operating a Motor Vehicle While Under the Influence of a Combination of an Intoxicant and a Controlled Substance – Civil Forfeiture | 2664A | 2022 |
| Operating a Motor Vehicle with a Detectable Amount of a Restricted Controlled Substance..... | 2664B | 2021 |
| Operating a Vehicle While Under the Influence of an Intoxicant and Causing Injury | 2665 | 2017 |
| Operating a Motor Vehicle While Under the Influence of a Drug – Criminal Offense..... | 2666 | 2004 |

WIS JI-CRIMINAL

| | | |
|--|-------|--------|
| Operating a Motor Vehicle While Under the Influence of any Combination of an Intoxicant and any other Drug to a Degree that Renders Him or Her Incapable of Safely Driving | 2666A | 2022 |
| Operating a Motor Vehicle While under the Influence of an Intoxicant: Hazardous Inhalant..... | 2667 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Civil Forfeiture..... | 2668 | 2015 |
| Operating a Motor Vehicle While Under the Influence of an Intoxicant / Operating a Motor Vehicle with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2669 | 2015 |
| Failure to Give Information or Render Aid Following an Accident..... | 2670 | 2018 |
| Speeding: Exceeding a Reasonable and Prudent Speed Under § 346.57(2) or an Ordinance Adopting § 346.57(2)..... | 2672 | 1/2023 |
| Law Note: The “Justification” Defense | 2672A | 2010 |
| Speeding: Exceeding a Reasonable and Prudent Speed Criminal Offense under § 346.57(2); § 346.60 (3m)(a)2 | 2672B | 1/2023 |
| Speeding: Driving Too Fast for Conditions Under § 346.57(3) or an Ordinance Adopting § 346.57(3)..... | 2674 | 1/2023 |
| Speeding: Driving Too Fast for Conditions Criminal Offense under § 346.57(3); § 346.60 (3m)(a)2 | 2674A | 1/2023 |
| Speeding: Exceeding Fixed Limits Under § 346.57(4)(e) or an Ordinance Adopting § 346.57(4)(e)..... | 2676 | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Under § 346.57(4)(gm) or an Ordinance Adopting § 346.57(4)(gm)..... | 2676A | 1/2023 |
| Speeding: Exceeding 65 Miles per Hour Criminal Offense under § 346.57(4)(gm); § 346.60 (3m)(a)2 | 2676B | 1/2023 |
| Speeding: Exceeding Fixed Limits Criminal Offense under § 346.57(4)(e); § 346.60 (3m)(a)2..... | 2676C | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Under § 346.57(4)(h) or an Ordinance Adopting § 346.57(4)(h)..... | 2677 | 1/2023 |
| Speeding: Exceeding 55 Miles per Hour in the Absence of Posted Limits Criminal Offense under § 346.57(4)(h); § 346.60 (3m)(a)2..... | 2677A | 1/2023 |
| Speeding: Exceeding Posted Limits Under § 346.57(5) or an Ordinance Adopting § 346.57(5)..... | 2678 | 1/2023 |
| Speeding: Exceeding Posted Limits Criminal Offense under § 346.57(5); § 346.60 (3m)(a)2 | 2678A | 1/2023 |
| Radar Speed Measurement | 2679 | 2010 |
| Noncriminal Traffic Violations: Prohibited by State Law or an Ordinance Adopting State Law | 2680 | 2015 |
| Tampering with an Ignition Interlock Device..... | 2682A | 2014 |
| Failing to Install an Ignition Interlock Device | 2682B | 2021 |
| Operating a Commercial Motor Vehicle with an Alcohol Concentration of 0.04 Grams or More but Less Than 0.08 Grams – Criminal Offense | 2690 | 2004 |
| Operating a Motorboat While under the Influence of an Intoxicant: Criminal Offense..... | 2695 | 2013 |
| Operating a Motorboat While under the Influence of an Intoxicant / | | |

WIS JI-CRIMINAL

| | | |
|--|----------------|------|
| Operating a Motorboat with a Prohibited Alcohol Concentration of 0.08 Grams or More – Criminal Charge..... | 2696 | 2013 |
| SECURITIES FRAUD | | |
| Offering or Selling an Unregistered Security | 2902 | 2014 |
| Securities Fraud: Making an Untrue Statement of Material Fact in Connection with the Sale of a Security | 2904 | 2014 |
| Possession of Untagged Deer..... | 5000 | 2003 |
| Failure to File an Individual Income Tax Return..... | 5010 | 2010 |
| Filing a False or Fraudulent Return | 5012 | 2010 |
| Theft of Anhydrous Ammonia..... | 5024 | 2003 |
| INTOXICATING LIQUORS | | |
| Sale of Intoxicating Liquors to a Minor by a Tavern Keeper | 5030 WITHDRAWN | 2010 |
| Selling Fermented Malt Beverage Without a License | 5035 | 2005 |
| Sale to or Procurement for Any Minor of Intoxicating Liquors by any Person..... | 5040 WITHDRAWN | 2010 |
| Causing Injury or Death to an Underage Person by Providing Alcohol Beverages | 5050 | 2007 |
| HAZARDOUS WASTE | | |
| Storing, Treating, Transporting, or Disposing of Hazardous Waste Without a License..... | 5200 | 2010 |
| ELECTION FRAUD | | |
| Election Fraud – Unqualified Elector | 5301 | 2009 |
| Carrying a Weapon by Licensee Where Prohibited..... | 5401 | 2012 |
| CONTROLLED SUBSTANCES | | |
| Note on the Knowledge Requirement in Controlled Substance Cases | 6000 | 2010 |
| Finding the Amount of Controlled Substance..... | 6001 | 2022 |
| Finding the Amount of Controlled Substance in a Methamphetamine Case | 6001A EXAMPLE | 2018 |
| Delivering a Controlled Substance to a Minor..... | 6002 | 2003 |
| Delivering a Controlled Substance to a Prisoner | 6003 | 2003 |
| Delivering a Controlled Substance on or Near Certain Premises | 6004 | 2003 |
| Controlled Substance Analog | 6005 | 2010 |
| Possession of a Controlled Substance Without Tax Stamp | 6009 WITHDRAWN | 2019 |
| Delivery of a Controlled Substance | 6020 | 2018 |

WIS JI-CRIMINAL

| | | |
|--|-----------------------|------|
| Delivery of a Controlled Substance Analog | 6020A | 2018 |
| Manufacture of a Controlled Substance..... | 6021 | 2010 |
| Possession of a Controlled Substance..... | 6030 | 2021 |
| Attempted Possession of a Controlled Substance | 6031 | 2021 |
| Possession of a Controlled Substance with Intent to Deliver with Lesser Included Offense of Possession of a Controlled Substance | 6035 | 2018 |
| Possession of a Controlled Substance with Intent to Manufacture with Lesser Included Offense of Possession of a Controlled Substance | 6036 | 2018 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037 RENUMBERED 6037B | 1994 |
| Keeping or Maintaining a Place Resorted to by Persons Using Controlled Substances in Violation of Chapter 961 for the Purpose of Using Controlled Substances | 6037A | 2008 |
| Keeping or Maintaining a Place Used for Manufacturing, Keeping, or Delivering Controlled Substances | 6037B | 2010 |
| Acquiring Possession of a Controlled Substance by Misrepresentation | 6038 | 2010 |
| Delivery of an Imitation Controlled Substance: Felony | 6040 | 2006 |
| Delivery of an Imitation Controlled Substance: Misdemeanor..... | 6042 | 2006 |
| Possession of Methamphetamine Waste | 6044 | 2009 |
| Using a Child to Deliver a Controlled Substance | 6046 | 2010 |
| Soliciting a Child for the Purpose of Delivering a Controlled Substance..... | 6047 | 2010 |
| Possession of Drug Paraphernalia..... | 6050 | 2021 |
| Possession of Drug Paraphernalia: Methamphetamine..... | 6053 | 2007 |
| Possessing Materials for Manufacturing Methamphetamine | 6065 | 2006 |
| Use or Possession of a Masking Agent..... | 6070 | 2021 |
| Obtaining a Prescription Drug by Fraud | 6100 | 2005 |
| Possession of a Prescription Drug with Intent to Deliver | 6110 | 2006 |
| Possession of a Prescription Drug without a Valid Prescription..... | 6112 | 2013 |

CRIMINAL SPECIAL MATERIALS

| | | |
|---|-------------------|------|
| Suggested Order of Instructions..... | SM-5 RENUMBERED 1 | 1995 |
| Jury Instructions on Lesser Included Offenses | SM-6 | 2014 |
| Juror Questioning of Witnesses | SM-8 | 2014 |
| When a Jury Requests to Hear/See Audio/Visual Evidence During Deliberations | SM-9 | 2022 |
| Grand Jury Proceedings | SM-10 | 2004 |
| John Doe Proceedings..... | SM-12 | 2019 |
| Substitution of Judge..... | SM-15 WITHDRAWN | 1994 |
| Collateral Attack on Prior Convictions..... | SM-16 | 2019 |
| Defendant's Consent to Proceed by Videoconference B Waiver of Right to be Present Under § 971.04 | SM-18 | 2014 |
| Voir Dire | SM-20 | 2017 |
| Waiver of Jury Trial: Acceptance, Withdrawal, and Related Issues..... | SM-21 | 2005 |
| Judge's Duty at Initial Appearance..... | SM-25 WITHDRAWN | 2011 |

WIS JI-CRIMINAL

| | | |
|---|------------------------------------|-------------|
| Inquiry Regarding the Decision Whether to Testify..... | SM-28 | 2012 |
| Waiver and Forfeiture of Counsel; Self-Representation; Standby Counsel; “Hybrid Representation”; Court Appointment of Counsel..... | SM-30 | 2006 |
| Waiver of Preliminary Examination | SM-31 | 2011 |
| Accepting a Plea of Guilty..... | SM-32 | 2021 |
| No Contest and <u>Alford</u> Pleas..... | SM-32A | 2021 |
| Accepting a Plea of Guilty: Use of Written Form..... | SM-32B | 1993 |
| Guilty Plea Acceptance Form | SM-32B APPENDIX WITHDRAWN | 2019 |
| Information on Postconviction Relief..... | SM-33 WITHDRAWN | 2011 |
| Instruction to be Used on Denial of Any Postconviction Motion (Other Than § 974.06) | SM-33A WITHDRAWN | 1991 |
| Instruction to be Used on Denial of a Postconviction Motion Under § 974.06..... | SM-33B WITHDRAWN | 1991 |
| Sentencing Procedure, Standards, and Special Issues..... | SM-34 | 1999 |
| Determining Sentence Credit Under Section 973.155 | SM-34A | 1/2023 |
| Increased Penalty for Habitual Criminality | SM-35 | 1/2023 |
| Special Disposition Under Section 973.015 – Expunction | SM-36 | 2018 |
| Bail After Conviction; Stay of Execution of Sentence | SM-39 WITHDRAWN | 1995 |
| Court’s Instruction to Defendant at Arraignment and Before Acceptance of a Plea of Guilty on Sex Crimes Charge | SM-40 WITHDRAWN | 1991 |
| Sentencing Persons Committed Under the Sex Crimes Law | SM-41 WITHDRAWN | 2011 |
| Inquiry in Conflict of Interest Cases..... | SM-45 | 2000 |
| Competency to Proceed | SM-50 | 2021 |
| Advice to a Person Found Not Guilty by Reason of Mental Disease or Defect | SM-50A RENUMBERED 650 | 2004 |
| Disclosure of the Identity of an Informer..... | SM-52 | 2005 |
| Inquiry When a Witness Claims the Privilege Against Self-Incrimination | SM-55 | 1994 |
| Procedure to Determine the Admissibility of Statements or Confessions of the Defendant..... | SM-60 WITHDRAWN | 1994 |
| Procedure to Follow When the Admissibility of Identification Evidence is at Issue Prior to or During a Criminal Trial | SM-61 WITHDRAWN | 1994 |
| Admissibility of Evidence Obtained by a Search and Seizure..... | SM-62 WITHDRAWN | 1994 |
| Post-Conviction Procedure Under Section 974.06, Wis. Stats. | SM-70 WITHDRAWN | 1994 |
| Habeas Corpus | SM-80 WITHDRAWN | 1994 |
| Procedure to Follow in Advising a Prisoner of Rights Under the Uniform Detainer Act..... | SM-90 | 1998 |
| INDEX | FOLLOWING SPECIAL MATERIALS | 2022 |

* * *

2663D OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT WITH A CHILD UNDER 16 YEARS OF AGE IN THE MOTOR VEHICLE — § 346.63(1)(a) and § 346.65(2)(f)1.

Statutory Definition of the Crime

Section 346.63(1)(a) of the Wisconsin Statutes is violated by one who drives or operates a motor vehicle on a highway¹ while under the influence of an intoxicant while there is a minor passenger under 16 years of age in the vehicle.²

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant (drove) (operated) a motor vehicle³ on a highway.⁴

[“Drive” means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.]⁵

[“Operate” means the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion.]⁶

2. The defendant was under the influence of an intoxicant at the time the defendant (drove) (operated) a motor vehicle.

3. There was a minor passenger under 16 years of age in the vehicle.

Knowledge of the passenger's age is not required and mistake regarding the

passenger's age is not a defense.⁷

Definition of "Under the Influence of an Intoxicant"

"Under the influence of an intoxicant" means that the defendant's ability to operate a vehicle was impaired because of consumption of an alcoholic beverage.⁸

Not every person who has consumed alcoholic beverages is "under the influence" as that term is used here. What must be established is that the person has consumed a sufficient amount of alcohol to cause the person to be less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle.

It is not required that impaired ability to operate be demonstrated by particular acts of unsafe driving. What is required is that the person's ability to safely control the vehicle be impaired.

How to Use the Test Result Evidence

The law states that the alcohol concentration in a defendant's (breath) (blood) (urine) sample taken within three hours of (driving) (operating) a motor vehicle is evidence of the defendant's alcohol concentration at the time of the (driving) (operating).⁹

WHERE TEST RESULTS SHOWING MORE THAN 0.04 BUT LESS THAN 0.08 GRAMS HAVE BEEN ADMITTED, THE EVIDENCE IS RELEVANT BUT DOES NOT HAVE PRIMA FACIE EFFECT. SEE WIS JI-CRIMINAL 232.¹⁰

WHERE TEST RESULTS SHOWING 0.08 GRAMS OR MORE HAVE BEEN ADMITTED¹¹ AND THERE IS NO ISSUE RELATING TO THE DEFENDANT'S POSITION ON THE "BLOOD-ALCOHOL CURVE,"¹² THE JURY SHOULD BE INSTRUCTED AS FOLLOWS:

[If you are satisfied beyond a reasonable doubt that there was [.08 grams or more of alcohol in 100 milliliters of the defendant's blood] [.08 grams or more of alcohol in 210 liters of the defendant's breath] at the time the test was taken, you may find from that fact alone that the defendant was under the influence of an intoxicant at the time of the alleged (driving) (operating), but you are not required to do so. You the jury are here to decide this question on the basis of all the evidence in this case, and you should not find that the defendant was under the influence of an intoxicant at the time of the alleged (driving) (operating), unless you are satisfied of that fact beyond a reasonable doubt.]

IF AN APPROVED TESTING DEVICE IS INVOLVED, THE FOLLOWING
MAY BE ADDED:¹³

[The law recognizes that the testing device used in this case uses a scientifically sound method of measuring the alcohol concentration of an individual. The State is not required to prove the underlying scientific reliability of the method used by the testing device. However, the State is required to establish that the testing device was in proper working order and that it was correctly operated by a qualified person.]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 2663D was approved by the Committee in June 2010. This revision was approved by the Committee in December 2022; it updated the comment.

This instruction is drafted for first offense OWI violations that are criminal because there was a minor passenger under 16 years of age in the vehicle. See § 346.65(2)(f)1., created by 2009 Wisconsin Act 100. Because the presence of the minor passenger makes conduct criminal that would otherwise be a forfeiture, the Committee concluded that it becomes an element of the crime. The Wisconsin Court of Appeals agreed in State v. Gahart, --Wis.2d--, --N.W.2d-- (Ct. App. 2022). In that decision, the court cited the Committee's conclusion with approval and observed that "the Legislature explicitly and unambiguously recognized the presence of a minor passenger as an element of operating while intoxicated."

This instruction is based on a violation for operating under the influence. For violations involving a prohibited alcohol concentration, combine Wis JI-Criminal 2660 with this instruction. For violations involving a controlled substance, combine Wis JI-Criminal 2664 with this instruction. For offenses involving drugs, combine Wis JI-Criminal 2666 with this instruction. For offenses involving the combination of alcohol and a controlled substance, combine Wis JI-Criminal 2664A with this instruction. For offenses involving a detectable amount of a restricted controlled substance, combine Wis JI-Criminal 2664B with this instruction.

1. Regarding the "on a highway" requirement, see Wis JI Criminal 2600 Introductory Comment, Sec. I, and Wis JI Criminal 2605.

2. This instruction is drafted for cases involving the influence of an intoxicant. For a model tailored to the influence of a controlled substance, see Wis JI Criminal 2664. For a model tailored to the combined influence of an intoxicant and a controlled substance, see Wis JI Criminal 2664A. For a model tailored to the influence of a drug, see Wis JI Criminal 2666.

3. Regarding the definition of "motor vehicle," see Wis JI Criminal 2600 Introductory Comment, Sec. II.

4. Regarding the "on a highway" requirement, see Wis JI Criminal 2600 Introductory Comment, Sec. I., and Wis JI Criminal 2605.

5. This is the definition of "drive" provided in § 346.63(3)(a).

6. Regarding the definition of "operate," see Wis JI Criminal 2600 Introductory Comment, Sec. III.

7. This statement is typically included in all instructions involving offenses against children; it states the general rules set forth in §§ 939.22(6) and 939.43(2).

8. The instruction is drafted for cases involving the influence of an intoxicant. See note 2, *supra*. For a discussion of issues relating to the definition of "under the influence," see Wis JI Criminal 2600 Introductory Comment, Sec. VIII.

9. This statement is supported by the general rule stated in § 885.235(1g) that the results of properly conducted alcohol tests are admissible. Whether the test result is accorded any additional evidentiary

significance depends on the applicability of other provisions in § 885.235. See Wis JI Criminal 2600 Introductory Comment, Sec. VII.

10. It may be that cases will be charged under § 346.63(1)(a) where a test has shown an alcohol concentration of more than 0.04 grams but less than 0.08 grams. Section 885.235(1)(b) provides that a test result in this range “is relevant evidence on intoxication . . . but is not to be given any prima facie effect.” Wis JI Criminal 232 provides an instruction for this situation.

11. Regarding the evidentiary significance of test results, see Wis JI Criminal 2600 Introductory Comment, Sec. VII.

12. Regarding the “blood alcohol curve,” see Wis JI Criminal JI 2600 Introductory Comment, Sec. VII.

13. Regarding the reliability of the testing device, see Wis JI Criminal 2600 Introductory Comment, Sec. VII.

[This page is intentionally left blank]

2672 SPEEDING: EXCEEDING A REASONABLE AND PRUDENT SPEED UNDER § 346.57(2) OR AN ORDINANCE ADOPTING § 346.57(2)

Statutory Definition of the Crime

[Section 346.57(2)] [Ordinance _____, adopting § 346.57(2)]¹ of the Wisconsin Statutes, is violated by one who drives a vehicle on a highway² at a speed greater than is reasonable and prudent under the circumstances.

Burden of Proof

Before you may find the defendant guilty of this offense, the (identify prosecuting agency)³ must satisfy you to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the following two elements were present.

Elements of the Offense That Must Be Proved

1. The defendant drove a vehicle⁴ on a highway.⁵
2. The defendant drove the vehicle at a speed⁶ greater than was reasonable and prudent under the conditions, taking into consideration the actual and potential hazards then existing.

[This element requires that the speed of the vehicle be controlled as necessary to avoid colliding with any (object) (person) (vehicle) (other conveyance) on or entering the highway in compliance with legal requirements and using due care.]

Jury's Decision

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory,

and convincing that both 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 2672 was originally published in 1980 and revised in 1985, 1987, 1995, and 2010. This revision was approved by the Committee in June 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

This instruction is drafted for violations of § 346.57(2) where the penalty of forfeiture or fine applies. For violations of § 346.57(2) where criminal penalties may apply, see Wis JI-Criminal 2672A.

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

Except as provided in subd. 2., if an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 340.01(22e) provides that “Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(73m) provides that “Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(15pu) provides that “Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).

1. The use of brackets is intended to allow use of this instruction for cases charged either as

violations of the state statutes or as violations of local ordinances in conformity with the statutes. Since ordinances may be adopted by a variety of governmental entities – county, city, town, etc. – the instruction refers only to “ordinance.” Identifying the type of ordinance as, for example, a city ordinance may be helpful to the jury.

If a statutory violation was charged, the instruction would begin: “Section 346.57(2) of the Wisconsin Statutes is violated . . .”

If an ordinance violation was charged, the instruction would begin: “Ordinance _____, adopting section 346.57(2) of the Wisconsin Statutes, is violated . . .”

2. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

3. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.

4. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

5. See note 2, supra.

6. Regarding the measurement and estimation of speed, see note 7, Wis JI-Criminal 2676, and Wis JI-Criminal 2679, Radar Speed Measurement.

[This page is intentionally left blank]

**2672B SPEEDING: EXCEEDING A REASONABLE AND PRUDENT SPEED
– CRIMINAL OFFENSE – § 346.57(2); § 346.60 (3m)(a)2**

Statutory Definition of the Crime

Section 346.60(3m)(a)2 of the Wisconsin Statutes, is violated by one who drives a vehicle on a highway¹ at a speed greater than is reasonable and prudent under the circumstances in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) which results in bodily harm to another.

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 Offense That Must Be Proved

1. The defendant drove a vehicle² on a highway.³
2. The defendant drove the vehicle at a speed⁴ greater than was reasonable and prudent under the conditions, taking into consideration the actual and potential hazards then existing.

[This element requires that the speed of the vehicle be controlled as necessary to avoid colliding with any (object) (person) (vehicle) (other conveyance) on or entering the highway in compliance with legal requirements and using due care.]

3. The defendant drove in (a highway maintenance or construction area) (a utility

work area) (an emergency or roadside response area) where workers are at risk from traffic.

[“Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]⁵

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]⁶

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]⁷

4. The defendant’s driving resulted in bodily harm to another.

This requires that the defendant’s driving was a substantial factor in causing

bodily harm to another.⁸

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.⁹

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 2672B was approved by the Committee in October 2022.

This instruction is drafted for violations of § 346.57(2) where criminal penalties may apply. For violations of § 346.57(2) that concern forfeiture or fine, see Wis JI-Criminal 2672.

§ 346.60(3m)(a)2, created by 2021 Wisconsin Act 115 [effective date: December 8, 2021], which provides the following:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

Section 346.60(3m)(a)2 provides for doubling the forfeiture “If an operator of a vehicle violates s. 346.57 (2) to (5) when children are present in a zone designated by ‘school’ warning signs as provided in s. 118.08 (1).

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

1. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless

otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

3. See note 1, supra.

4. Regarding the measurement and estimation of speed, see note 7, Wis JI-Criminal 2676, and Wis JI-Criminal 2679, Radar Speed Measurement.

5. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

6. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies to this offense.

7. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

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 bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

See Wis JI-Criminal 910 for a more complete discussion of “cause.”

Section 346.60 (3m)(a)2 states the causal requirement differently. It requires that the defendant’s violation of s. 346.57(2) “results in bodily harm.” The statute is one of several criminal statutes using “results in” to establish the causal connection between the actor’s conduct and the prohibited result. The Committee has concluded that “results in” should be interpreted to mean “cause,” traditionally defined in terms of “substantial factor.” This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court construed “results in” as used in § 346.17(3).

The court held that the statute was not unconstitutionally vague because “results in” means “cause” and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant’s conduct was a substantial factor in causing the death. The court noted that more than but-for cause is required: “The state must further establish that ‘the harmful result in question be the natural and probable consequence of the accused’s conduct,’ i.e., a substantial factor.” 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

9. This is the definition of “bodily harm” provided in § 939.22(4).

[This page is intentionally left blank]

2674 SPEEDING: DRIVING TOO FAST FOR CONDITIONS UNDER § 346.57(3) OR AN ORDINANCE ADOPTING § 346.57(3)

Statutory Definition of the Crime

[Section 346.57(3)] [Ordinance _____, adopting § 346.57(3)]¹ of the Wisconsin Statutes, provides that no person shall drive a vehicle on a highway² at a speed greater than is reasonable and prudent under the circumstances and that a person shall drive at an appropriate reduced speed when

[approaching and crossing (an intersection) (a railway grade crossing).]

[approaching and going around a curve.]

[approaching a hillcrest.]

[traveling upon any narrow or winding roadway.]

[passing (school children) (highway construction or maintenance workers) (pedestrians).]

[special hazard exists with regard to other traffic or by reason of highway or weather conditions.]

Burden of Proof

Before you may find the defendant guilty of this offense, the (identify prosecuting agency)³ must satisfy you to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the following three elements were present.

Elements of the Offense That Must Be Proved

1. The defendant drove a vehicle⁴ on a highway.⁵
2. The defendant drove the vehicle at a speed⁶ greater than was reasonable and prudent under the conditions, taking into consideration the actual and potential hazards then existing.

[This element requires that the speed of the vehicle be controlled as necessary to avoid colliding with any (object) (person) (vehicle) (other conveyance) on or entering the highway in compliance with legal requirements and using due care.]

3. The defendant failed to drive at an appropriate reduced speed when
[approaching and crossing (an intersection) (a railway grade crossing).]
[approaching and going around a curve.]
[approaching a hillcrest.]
[traveling upon any narrow or winding roadway.]
[passing (school children) (highway construction or maintenance workers) (pedestrians).]
[special hazard exists with regard to other traffic or by reason of highway or weather conditions.]⁷

Appropriate reduced speed is a relative term and means less than the otherwise lawful speed. An appropriate reduced speed is that speed at which a person of ordinary intelligence and prudence would drive under the same or similar

circumstances.⁸

Jury's Decision

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing that all three 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 2674 was originally published in 1980 and revised in 1985, 1987, 1995, and 2010. This revision was approved by the Committee in June 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

This instruction is drafted for violations of § 346.57(3) where the penalty of forfeiture or fine applies. For violations of § 346.57(3) where criminal penalties may apply, see Wis JI-Criminal 2674A.

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

Except as provided in subd. 2., if an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 340.01(22e) provides that “Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(73m) provides that “Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are

placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(15pu) provides that “Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).

1. The use of brackets is intended to allow use of this instruction for cases charged either as violations of the state statutes or as violations of local ordinances in conformity with the statutes. Since ordinances may be adopted by a variety of governmental entities – county, city, town, etc. – the instruction refers only to “ordinance.” Identifying the type of ordinance as, for example, a city ordinance may be helpful to the jury.

If a statutory violation was charged, the instruction would begin: “Section 346.57(3) of the Wisconsin Statutes is violated . . .”

If an ordinance violation was charged, the instruction would begin: “Ordinance _____, adopting section 346.57(3) of the Wisconsin Statutes, is violated . . .”

2. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

3. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.

4. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

5. See note 2, supra.

6. Regarding the measurement and estimation of speed, see note 7, Wis JI-Criminal 2676, and Wis JI-Criminal 2679, Radar Speed Measurement.

7. See Wis. Stat. § 346.57(3).
8. See Wis JI-Civil 1285.

[This page is intentionally left blank]

**2674A SPEEDING: DRIVING TOO FAST FOR CONDITIONS – CRIMINAL
OFFENSE – § 346.57(3)); § 346.60 (3m)(a)2**

Statutory Definition of the Crime

Section 346.60(3m)(a)2 of the Wisconsin Statutes, provides that no person shall drive a vehicle on a highway¹ at a speed greater than is reasonable and prudent under the circumstances in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) which results in bodily harm to another, and that a person shall drive at an appropriate reduced speed when

[approaching and crossing (an intersection) (a railway grade crossing).]

[approaching and going around a curve.]

[approaching a hillcrest.]

[traveling upon any narrow or winding roadway.]

[passing (school children) (highway construction or maintenance workers) (pedestrians).]

[special hazard exists with regard to other traffic or by reason of highway or weather conditions.]

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 Offense That Must Be Proved

1. The defendant drove a vehicle² on a highway.³
2. The defendant drove the vehicle at a speed⁴ greater than was reasonable and prudent under the conditions, taking into consideration the actual and potential hazards then existing.

[This element requires that the speed of the vehicle be controlled as necessary to avoid colliding with any (object) (person) (vehicle) (other conveyance) on or entering the highway in compliance with legal requirements and using due care.]

3. The defendant failed to drive at an appropriate reduced speed when
[approaching and crossing (an intersection) (a railway grade crossing).]
[approaching and going around a curve.]
[approaching a hillcrest.]
[traveling upon any narrow or winding roadway.]
[passing (school children) (highway construction or maintenance workers) (pedestrians).]
[special hazard exists with regard to other traffic or by reason of highway or weather conditions.]⁵

Appropriate reduced speed is a relative term and means less than the otherwise lawful speed. An appropriate reduced speed is that speed at which a person of ordinary intelligence and prudence would drive under the same or similar

circumstances.⁶

4. The defendant drove in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from traffic.

[“Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]⁷

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]⁸

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]⁹

5. The defendant's driving resulted in bodily harm to another.

This requires that the defendant's driving was a substantial factor in causing bodily harm to another.¹⁰

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.¹¹

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.

COMMENT

Wis JI-Criminal 2672A was approved by the Committee in October 2022.

This instruction is drafted for violations of § 346.57(3) where criminal penalties may apply. For violations of § 346.57(3) that concern forfeiture or fine, see Wis JI-Criminal 2674.

§ 346.60(3m)(a)2, created by 2021 Wisconsin Act 115 [effective date: December 8, 2021], which provides the following:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or

should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 346.60(3m)(a)2 provides for doubling the forfeiture “If an operator of a vehicle violates s. 346.57 (2) to (5) when children are present in a zone designated by ‘school’ warning signs as provided in s. 118.08 (1).

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

1. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

3. See note 1, supra.

4. Regarding the measurement and estimation of speed, see note 7, Wis JI-Criminal 2676, and Wis JI-Criminal 2679, Radar Speed Measurement.

5. See Wis. Stat. § 346.57(3).

6. See Wis JI-Civil 1285.

7. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

8. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies to this offense.

9. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

10. 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 bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

See Wis JI-Criminal 910 for a more complete discussion of “cause.”

Section 346.60 (3m)(a)2 states the causal requirement differently. It requires that the defendant’s violation of s. 346.57(3) “results in bodily harm.” The statute is one of several criminal statutes using “results in” to establish the causal connection between the actor’s conduct and the prohibited result. The Committee has concluded that “results in” should be interpreted to mean “cause,” traditionally defined in terms of “substantial factor.” This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court construed “results in” as used in § 346.17(3).

The court held that the statute was not unconstitutionally vague because “results in” means “cause” and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant’s conduct was a substantial factor in causing the death. The court noted that more than but-for cause is required: “The state must further establish that ‘the harmful result in question be the natural and probable consequence of the accused’s conduct,’ i.e., a substantial factor.” 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

11. This is the definition of “bodily harm” provided in § 939.22(4).

2676 SPEEDING: EXCEEDING FIXED LIMITS UNDER § 346.57(4)(e) OR AN ORDINANCE ADOPTING § 346.57(4)(e)

Statutory Definition of the Crime

[Section 346.57(4)(e)] [_____, adopting § 346.57(4)(e)]¹ of the Wisconsin Statutes, is violated by one who drives a vehicle at a speed in excess of 25 miles per hour on any highway² within the corporate limits of a city or village, provided that no different limit was indicated by an official traffic sign.

Burden of Proof

Before you may find the defendant guilty of this offense, the (identify prosecuting agency)³ must satisfy you to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the following four elements were present.

Elements of the Offense That Must Be Proved

1. The defendant drove a vehicle.⁴
2. The defendant drove the vehicle on a highway⁵ located within the (city) (village) limits of (name city or village).

[This element further requires that the highway was not located in an outlying district of (name city or village). “Outlying district” means the territory contiguous to and including any highway within the corporate limits of a city or village where on each side of the highway within any 1,000 feet along such highway the buildings in use for business, industrial, or residential purposes

fronting thereon average more than 200 feet apart.]⁶

3. The defendant drove a vehicle at a speed in excess of 25 miles per hour.⁷
4. No speed limit different than 25 miles per hour was indicated by an official traffic sign.

Jury's Decision

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing that all four elements of this offense have been proved, you should find the defendant guilty [and you should also find the speed the defendant's vehicle was traveling and insert the same into the verdict.]⁸

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2676 was originally published in 1980 and revised in 1985, 1987, 1988, 1995, and 2010. This revision was approved by the Committee in June 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

This instruction is drafted for violations of § 346.57(4)(e) where the penalty of forfeiture or fine applies. For violations of § 346.57(4)(e) where criminal penalties may apply, see Wis JI-Criminal 2676C.

With respect to the "justification" defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

Except as provided in subd. 2., if an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 340.01(22e) provides that “Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(73m) provides that “Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(15pu) provides that “Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).

1. The use of brackets is intended to allow use of this instruction for cases charged either as violations of the state statutes or as violations of local ordinances in conformity with the statutes. Since ordinances may be adopted by a variety of governmental entities – county, city, town, etc. – the instruction refers only to “ordinance.” Identifying the type of ordinance as, for example, a city ordinance may be helpful to the jury.

If a statutory violation was charged, the instruction would begin: “Section 346.57(4)(e) of the Wisconsin Statutes is violated . . .”

If an ordinance violation was charged, the instruction would begin: “Ordinance _____, adopting section 346.57(4)(e) of the Wisconsin Statutes, is violated . . .”

2. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

3. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.

4. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be

transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

5. See note 2, supra.

6. See § 346.57(1)(ar). The bracketed material need be included only when the location of the highway in an “outlying district” is raised by the evidence.

7. A witness’ personal estimate of vehicle speed is admissible if the witness was in a position to judge the speed and the length of the observation period was not too short. The estimate must be definite and objective (e.g., “in excess of 50 miles per hour”), as opposed to indefinite and subjective (e.g., “too fast”). If there is a reasonable basis for the estimate, the weight it is to be given is up to the jury. See Milwaukee v. Berry, 44 Wis.2d 321, 171 N.W.2d 305 (1969), and cases cited therein.

For discussion of radar speed measurement, see Wis JI-Criminal 2679 and Comment.

8. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See § 343.32(2)(b). Also see note 7, Wis JI-Criminal 2677 for further discussion of the required finding on speed.

2676A SPEEDING: EXCEEDING 65 MILES PER HOUR UNDER § 346.57(4)(gm) OR AN ORDINANCE ADOPTING § 346.57(4)(gm)

Statutory Definition of the Crime

[Section 346.57(4)(gm)] [Ordinance _____, adopting § 346.57(4)(gm)]¹ of the Wisconsin Statutes, is violated by one who drives a vehicle at a speed in excess of 65 miles per hour on any freeway or expressway for which a limit of 65 miles per hour is indicated by an official traffic sign.²

Burden of Proof

Before you may find the defendant guilty of this offense, the (identify prosecuting agency)³ must prove by evidence which satisfies you to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the following three elements were present.

Elements of the Offense That Must Be Proved

1. The defendant drove a vehicle⁴ on a freeway or expressway.⁵
2. The defendant drove the vehicle at a speed in excess of 65 miles per hour.⁶
3. A speed limit of 65 miles per hour was indicated by an official traffic sign.⁷

Jury's Decision

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing that all three elements of this offense have been proved, you should find the defendant guilty [and you should also find the speed the defendant's vehicle was traveling and insert the same into the verdict.]⁸

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2676A was originally published in 1988 and revised in 1995 and 2010. This revision was approved by the Committee in June 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

This instruction is drafted for violations of § 346.57(4)(gm) where the penalty of forfeiture or fine applies. For violations of § 346.57(4)(gm) where criminal penalties may apply, see Wis JI-Criminal 2676B.

Section 346.57(4)(gm), provides for the speed limit of 65 miles per hour “on any freeway or expressway.”

Section 346.57(6)(b) provides:

The limit specified under sub. (4)(gm) is not effective unless official signs giving notice of the limit have been erected by the department.

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

Except as provided in subd. 2., if an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 340.01(22e) provides that “Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(73m) provides that “Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(15pu) provides that “Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).

1. The use of brackets is intended to allow use of this instruction for cases charged either as violations of the state statutes or as violations of local ordinances in conformity with the statutes. Since ordinances may be adopted by a variety of governmental entities C county, city, town, etc. C the instruction refers only to “ordinance.” Identifying the type of ordinance as, for example, a city ordinance may be helpful to the jury.

If a statutory violation was charged, the instruction would begin: “Section 346.57(4)(gm) of the Wisconsin Statutes is violated . . .”

If an ordinance violation was charged, the instruction would begin: “Ordinance _____, adopting section 346.57(4)(gm) of the Wisconsin Statutes, is violated . . .”

2. The phrase “indicated by an official traffic sign” is added to the definition of the offense because § 346.57(6)(b) provides that the 65 miles per hour limit “is not effective” unless official signs give notice. (See text of subsec. (6)(b) preceding note 1, supra. The Committee concluded that while it could be argued that proof of the posting of signs is not a fact the prosecution is required to prove, it was more efficient to add this fact to the instruction in all cases rather than use a more complicated approach that would try to treat it as an “affirmative defense.”

3. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.

4. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

5. “Freeway” is defined in § 346.57(1)(am); “expressway” is defined in § 346.57(1)(ag).

6. A witness’ personal estimate of vehicle speed is admissible if the witness was in a position to judge the speed and the length of the observation period was not too short. The estimate must be definite and objective (e.g., “in excess of 50 miles per hour”), as opposed to indefinite and subjective (e.g., “too fast”). If there is a reasonable basis for the estimate, the weight it is to be given is up to the jury. See Milwaukee v. Berry, 44 Wis.2d 321, 171 N.W.2d 305 (1969), and cases cited therein.

For discussion of radar speed measurement, see Wis JI-Criminal 2679 and comment.

7. See note 2, supra.

8. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See § 343.32(2)(b). Also see note 7, Wis JI-Criminal 2677 for further discussion of the required

finding on speed.

**2676B SPEEDING: EXCEEDING 65 MILES PER HOUR – CRIMINAL
OFFENSE – § 346.57(4)(gm); § 346.60 (3m)(a)2****Statutory Definition of the Crime**

Section 346.60 (3m)(a)2 of the Wisconsin Statutes, is violated by one who drives a vehicle at a speed in excess of 65 miles per hour, on any freeway or expressway for which a limit of 65 miles per hour is indicated by an official traffic sign,¹ in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) which results in bodily harm to another.

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 Offense That Must Be Proved

1. The defendant drove a vehicle² on a freeway or expressway.³
2. The defendant drove the vehicle at a speed in excess of 65 miles per hour.⁴
3. A speed limit of 65 miles per hour was indicated by an official traffic sign.⁵
4. The defendant drove in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from traffic.

[“Highway maintenance or construction area” means the entire section of

roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]⁶

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]⁷

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]⁸

5. The defendant’s driving resulted in bodily harm to another.

This requires that the defendant’s driving was a substantial factor in causing bodily harm to another.⁹

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.¹⁰

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 [and you should also find the speed the defendant's vehicle was traveling and insert the same into the verdict.]¹¹

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2672B was approved by the Committee in October 2022.

This instruction is drafted for violations of § 346.57(4)(gm) where criminal penalties may apply. For violations of § 346.57(4)(m) that concern forfeiture or fine, see Wis JI-Criminal 2676A.

Section 346.57(4)(gm), provides for the speed limit of 65 miles per hour “on any freeway or expressway.”

Section 346.57(6)(b) provides:

The limit specified under sub. (4)(gm) is not effective unless official signs giving notice of the limit have been erected by the department.

§ 346.60(3m)(a)2, created by 2021 Wisconsin Act 115 [effective date: December 8, 2021], which provides the following:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

Section 346.60(3m)(a)2 provides for doubling the forfeiture “If an operator of a vehicle violates s. 346.57 (2) to (5) when children are present in a zone designated by ‘school’ warning signs as provided in s. 118.08 (1).

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d

370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

1. The phrase “indicated by an official traffic sign” is added to the definition of the offense because § 346.57(6)(b) provides that the 65 miles per hour limit “is not effective” unless official signs give notice. (See text of subsec. (6)(b) preceding note 1, supra. The Committee concluded that while it could be argued that proof of the posting of signs is not a fact the prosecution is required to prove, it was more efficient to add this fact to the instruction in all cases rather than use a more complicated approach that would try to treat it as an “affirmative defense.”

2. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

3. “Freeway” is defined in § 346.57(1)(am); “expressway” is defined in § 346.57(1)(ag).

4. A witness’ personal estimate of vehicle speed is admissible if the witness was in a position to judge the speed and the length of the observation period was not too short. The estimate must be definite and objective (e.g., “in excess of 50 miles per hour”), as opposed to indefinite and subjective (e.g., “too fast”). If there is a reasonable basis for the estimate, the weight it is to be given is up to the jury. See Milwaukee v. Berry, 44 Wis.2d 321, 171 N.W.2d 305 (1969), and cases cited therein.

For discussion of radar speed measurement, see Wis JI-Criminal 2679 and comment.

5. See note 1, supra.

6. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

7. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies to this offense.

8. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

9. 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 bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

See Wis JI-Criminal 910 for a more complete discussion of “cause.”

Section 346.60 (3m)(a)2 states the causal requirement differently. It requires that the defendant’s violation of s. 346.57(4)(gm) “results in bodily harm.” The statute is one of several criminal statutes using

“results in” to establish the causal connection between the actor’s conduct and the prohibited result. The Committee has concluded that “results in” should be interpreted to mean “cause,” traditionally defined in terms of “substantial factor.” This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court construed “results in” as used in § 346.17(3).

The court held that the statute was not unconstitutionally vague because “results in” means “cause” and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant’s conduct was a substantial factor in causing the death. The court noted that more than but-for cause is required: “The state must further establish that ‘the harmful result in question be the natural and probable consequence of the accused’s conduct,’ i.e., a substantial factor.” 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

10. This is the definition of “bodily harm” provided in § 939.22(4).

11. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See § 343.32(2)(b). Also see note 7, Wis JI-Criminal 2677 for further discussion of the required finding on speed.

[This page is intentionally left blank]

**2676C SPEEDING: EXCEEDING FIXED LIMITS – CRIMINAL OFFENSE –
§ 346.57(4)(e); § 346.60 (3m)(a)2**

Statutory Definition of the Crime

Section 346.60 (3m)(a)2 of the Wisconsin Statutes, is violated by one who drives a vehicle at a speed in excess of 25 miles per hour on any highway¹ within the corporate limits of a city or village, provided that no different limit was indicated by an official traffic sign, in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) which results in bodily harm to another.

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 six elements were present.

Elements of the Offense That Must Be Proved

1. The defendant drove a vehicle.²
2. The defendant drove the vehicle on a highway³ located within the (city) (village) limits of (name city or village).

[This element further requires that the highway was not located in an outlying district of (name city or village). “Outlying district” means the territory contiguous to and including any highway within the corporate limits of a city or village where on each side of the highway within any 1,000 feet along such

highway the buildings in use for business, industrial, or residential purposes fronting thereon average more than 200 feet apart.]⁴

3. The defendant drove a vehicle at a speed in excess of 25 miles per hour.⁵
4. No speed limit different than 25 miles per hour was indicated by an official traffic sign.
5. The defendant drove in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from traffic.

[“Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]⁶

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic

may return to its normal flow without impeding such work.]⁷

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]⁸

6. The defendant’s driving resulted in bodily harm to another.

This requires that the defendant’s driving was a substantial factor in causing bodily harm to another.⁹

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.¹⁰

Jury’s Decision

If you are satisfied beyond a reasonable doubt that all six elements of this offense have been proved, you should find the defendant guilty [and you should also find the speed the defendant’s vehicle was traveling and insert the same into the verdict.]¹¹

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2672A was approved by the Committee in October 2022.

This instruction is drafted for violations of § 346.57(4)(e) where criminal penalties may apply. For violations of § 346.57(4)(e) that concern forfeiture or fine, see Wis JI-Criminal 2676.

§ 346.60(3m)(a)2, created by 2021 Wisconsin Act 115 [effective date: December 8, 2021], which provides the following:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 346.60(3m)(a)2 provides for doubling the forfeiture “If an operator of a vehicle violates s. 346.57 (2) to (5) when children are present in a zone designated by ‘school’ warning signs as provided in s. 118.08 (1).

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

1. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

3. See note 1, supra.

4. See § 346.57(1)(ar). The bracketed material need be included only when the location of the highway in an “outlying district” is raised by the evidence.

5. A witness' personal estimate of vehicle speed is admissible if the witness was in a position to judge the speed and the length of the observation period was not too short. The estimate must be definite and objective (e.g., "in excess of 50 miles per hour"), as opposed to indefinite and subjective (e.g., "too fast"). If there is a reasonable basis for the estimate, the weight it is to be given is up to the jury. See Milwaukee v. Berry, 44 Wis.2d 321, 171 N.W.2d 305 (1969), and cases cited therein.

For discussion of radar speed measurement, see Wis JI-Criminal 2679 and Comment.

6. The definition of "Highway maintenance or construction area" is the one provided in § 340.01(22e), which applies to this offense.

7. The definition of "Utility work area" is the one provided in § 340.01(73m), which applies to this offense.

8. The definition of "Emergency or roadside response area" is the one provided in § 340.01(15pu), which applies to this offense.

9. 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 bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

See Wis JI-Criminal 910 for a more complete discussion of "cause."

Section 346.60 (3m)(a)2 states the causal requirement differently. It requires that the defendant's violation of s. 346.57(4)(e) "results in bodily harm." The statute is one of several criminal statutes using "results in" to establish the causal connection between the actor's conduct and the prohibited result. The Committee has concluded that "results in" should be interpreted to mean "cause," traditionally defined in terms of "substantial factor." This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court construed "results in" as used in § 346.17(3).

The court held that the statute was not unconstitutionally vague because "results in" means "cause" and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant's conduct was a substantial factor in causing the death. The court noted that more than but-for cause is required: "The state must further establish that 'the harmful result in question be the natural and probable consequence of the accused's conduct,' i.e., a substantial factor." 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

10. This is the definition of "bodily harm" provided in § 939.22(4).

11. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See § 343.32(2)(b). Also see note 7, Wis JI-Criminal 2677 for further discussion of the required finding on speed.

[This page is intentionally left blank]

2677 SPEEDING: EXCEEDING 55 MILES PER HOUR IN THE ABSENCE OF POSTED LIMITS UNDER § 346.57(4)(h) OR AN ORDINANCE ADOPTING § 346.57(4)(h)

Statutory Definition of the Crime

[Section 346.57(4)(h)] [Ordinance _____, adopting § 346.57(4)(h)]¹ of the Wisconsin Statutes, is violated by one who drives a vehicle on a highway² in excess of 55 miles per hour in the absence of any other posted limit.

Burden of Proof

Before you may find the defendant guilty of this offense, the (identify prosecuting agency)³ must prove by evidence which satisfies you to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the following two elements were present.

Elements of the Offense That Must Be Proved

1. The defendant drove a vehicle⁴ on a highway.⁵
2. The defendant drove the vehicle at a speed which exceeded 55 miles per hour.⁶

Jury's Decision

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing that both elements of this offense have been proved, you should find the defendant guilty [and you should also find the speed the defendant's vehicle was traveling and insert the same into the verdict].⁷

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2677 was originally published in 1987 and revised in 1988, 1995, and 2010. This revision was approved by the Committee in June 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

This instruction is drafted for violations of § 346.57(4)(h) where the penalty of forfeiture or fine applies. For violations of § 346.57(4)(h) where criminal penalties may apply, see Wis JI-Criminal 2677A.

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

Except as provided in subd. 2., if an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 340.01(22e) provides that “Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(73m) provides that “Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(15pu) provides that “Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).

1. The use of brackets is intended to allow use of this instruction for cases charged either as violations of the state statutes or as violations of local ordinances in conformity with the statutes. Since ordinances may be adopted by a variety of governmental entities – county, city, town, etc. – the instruction refers only to “ordinance.” Identifying the type of ordinance as, for example, a city ordinance may be helpful to the jury.

If a statutory violation was charged, the instruction would begin: “Section 346.57(4)(h) of the Wisconsin Statutes is violated . . .”

If an ordinance violation was charged, the instruction would begin: “Ordinance _____, adopting section 346.57(4)(h) of the Wisconsin Statutes, is violated . . .”

2. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

3. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.

4. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

5. See note 2, supra.

6. A witness’ personal estimate of vehicle speed is admissible if the witness was in a position to judge the speed and the length of the observation period was not too short. The estimate must be definite and objective (e.g., “in excess of 50 miles per hour”), as opposed to indefinite and subjective (e.g., “too fast”). If there is a reasonable basis for the estimate, the weight it is to be given is up to the jury. See Milwaukee v. Berry, 44 Wis.2d 321, 171 N.W.2d 305 (1969), and cases cited therein.

For discussion of radar speed measurement, see Wis JI-Criminal 2679 and comment.

7. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See § 343.32(2)(b). A jury finding of the actual speed should also be made when suspension of operating privileges is sought under § 343.30(1n), which requires suspension for 15 days when the person has been convicted under § 346.57(4)(h) (as opposed to city or county ordinance adopting § 346.57(4)(h)) for exceeding the posted speed limit by 25 or more miles per hour.

In State v. Zick, 44 Wis.2d 546, 550, 171 N.W.2d 430 (1969), the Wisconsin Supreme Court held:

Under this section [§ 346.57(5)] we hold the state may charge a defendant with speeding and also state the excess rate of speed and such charge maybe sustained by proof of any speed in excess of the maximum permissible speed. Although the exact rate of speed found need not conform to the rate of speed stated in the ticket it is important in determining the punishment and points and must be proved beyond a reasonable doubt.

(Although the Zick case identifies the burden of proof as “beyond a reasonable doubt,” where the penalty for the offense is only a forfeiture, the proper burden is “to a reasonable certainty by evidence which is clear, satisfactory, and convincing.”)

The Zick decision approved the use of a verdict which provided in part:

We, the Jury, find the defendant, ((name of defendant)), guilty of speeding at the time and place charged in the Complaint and find the speed at which he drove was _____ miles per hour.

(Although the approved verdict in the Zick case referred to “the complaint,” the proper reference would usually be to the “citation.”)

2677A SPEEDING: EXCEEDING 55 MILES PER HOUR IN THE ABSENCE OF POSTED LIMITS – CRIMINAL OFFENSE – § 346.57(4)(h); § 346.60 (3m)(a)2

Statutory Definition of the Crime

Section 346.60(3m)(a)2 of the Wisconsin Statutes, is violated by one who drives a vehicle on a highway¹ in excess of 55 miles per hour in the absence of any other posted limit in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) which results in bodily harm to another.

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 Offense That Must Be Proved

1. The defendant drove a vehicle² on a highway.³
2. The defendant drove the vehicle at a speed which exceeded 55 miles per hour.⁴
3. The defendant drove in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from traffic.

[“Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION”

sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]⁵

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]⁶

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]⁷

4. The defendant’s driving resulted in bodily harm to another.

This requires that the defendant’s driving was a substantial factor in causing bodily harm to another.⁸

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.⁹

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 [and you should also find the speed the defendant's vehicle was traveling and insert the same into the verdict].¹⁰

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2677A was approved by the Committee in October 2022.

This instruction is drafted for violations of § 346.57(4)(h) where criminal penalties may apply. For violations of § 346.57(4)(h) that concern forfeiture or fine, see Wis JI-Criminal 2677.

§ 346.60(3m)(a)2, created by 2021 Wisconsin Act 115 [effective date: December 8, 2021], which provides the following:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

Section 346.60(3m)(a)2 provides for doubling the forfeiture “If an operator of a vehicle violates s. 346.57 (2) to (5) when children are present in a zone designated by ‘school’ warning signs as provided in s. 118.08 (1).

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

1. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

3. See note 1, supra.

4. A witness’ personal estimate of vehicle speed is admissible if the witness was in a position to judge the speed and the length of the observation period was not too short. The estimate must be definite and objective (e.g., “in excess of 50 miles per hour”), as opposed to indefinite and subjective (e.g., “too fast”). If there is a reasonable basis for the estimate, the weight it is to be given is up to the jury. See Milwaukee v. Berry, 44 Wis.2d 321, 171 N.W.2d 305 (1969), and cases cited therein.

For discussion of radar speed measurement, see Wis JI-Criminal 2679 and comment.

5. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

6. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies to this offense.

7. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

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 bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

See Wis JI-Criminal 910 for a more complete discussion of “cause.”

Section 346.60 (3m)(a)2 states the causal requirement differently. It requires that the defendant’s violation of s. 346.57(4)(h) “results in bodily harm.” The statute is one of several criminal statutes using “results in” to establish the causal connection between the actor’s conduct and the prohibited result. The Committee has concluded that “results in” should be interpreted to mean “cause,” traditionally defined in terms of “substantial factor.” This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court construed “results in” as used in § 346.17(3).

The court held that the statute was not unconstitutionally vague because “results in” means “cause” and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant’s conduct was a substantial factor in causing the death. The court noted that more than but-for cause is required: “The state must further establish that ‘the harmful result in question be the natural and probable consequence

of the accused's conduct,' i.e., a substantial factor." 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

9. This is the definition of "bodily harm" provided in § 939.22(4).

10. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See § 343.32(2)(b). A jury finding of the actual speed should also be made when suspension of operating privileges is sought under § 343.30(1n), which requires suspension for 15 days when the person has been convicted under § 346.57(4)(h) (as opposed to city or county ordinance adopting § 346.57(4)(h)) for exceeding the posted speed limit by 25 or more miles per hour.

In State v. Zick, 44 Wis.2d 546, 550, 171 N.W.2d 430 (1969), the Wisconsin Supreme Court held:

Under this section [§ 346.57(5)] we hold the state may charge a defendant with speeding and also state the excess rate of speed and such charge maybe sustained by proof of any speed in excess of the maximum permissible speed. Although the exact rate of speed found need not conform to the rate of speed stated in the ticket it is important in determining the punishment and points and must be proved beyond a reasonable doubt.

(Although the Zick case identifies the burden of proof as "beyond a reasonable doubt," where the penalty for the offense is only a forfeiture, the proper burden is "to a reasonable certainty by evidence which is clear, satisfactory, and convincing.")

The Zick decision approved the use of a verdict which provided in part:

We, the Jury, find the defendant, ((name of defendant)), guilty of speeding at the time and place charged in the Complaint and find the speed at which he drove was _____ miles per hour.

(Although the approved verdict in the Zick case referred to "the complaint," the proper reference would usually be to the "citation.")

[This page is intentionally left blank]

2678 SPEEDING: EXCEEDING POSTED LIMITS UNDER § 346.57(5) OR AN ORDINANCE ADOPTING § 346.57(5)**Statutory Definition of the Crime**

[Section 346.57(5)] [Ordinance _____, adopting § 346.57(5)]¹ of the Wisconsin Statutes, is violated by one who drives a vehicle on a highway² in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs.

Burden of Proof

Before you may find the defendant guilty of this offense, the (identify prosecuting agency)³ must prove by evidence which satisfies you to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the following three elements were present.

Elements of the Offense That Must Be Proved

1. The defendant drove a vehicle⁴ on a highway.⁵
2. The defendant drove the vehicle at a speed which exceeded the speed limit established by law.⁶
3. The established speed limit was indicated by official signs.

Jury's Decision

If you are satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing that all three elements of this offense have been proved, you should find the defendant guilty [and you should also find the speed the defendant's vehicle was traveling and insert the same into the verdict].⁷

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2678 was originally published in 1980 and revised in 1985, 1987, 1988, 1995, and 2010. This revision was approved by the Committee in June 2022; it added to the comment to reflect changes made by 2021 Wisconsin Act 115 [effective date: December 8, 2021].

This instruction is drafted for violations of § 346.57(5) where the penalty of forfeiture or fine applies. For violations of § 346.57(5) where criminal penalties may apply, see Wis JI-Criminal 2678A.

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

Section 346.60 (3m) (a) 1. provides for doubling the forfeiture or fine for certain violations:

Except as provided in subd. 2., if an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 340.01(22e) provides that “Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(73m) provides that “Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.

Section 340.01(15pu) provides that “Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).

1. The use of brackets is intended to allow use of this instruction for cases charged either as violations of the state statutes or as violations of local ordinances in conformity with the statutes. Since ordinances may be adopted by a variety of governmental entities – county, city, town, etc. – the instruction refers only to “ordinance.” Identifying the type of ordinance as, for example, a city ordinance may be helpful to the jury.

If a statutory violation was charged, the instruction would begin: “Section 346.57(5) of the Wisconsin Statutes is violated . . .”

If an ordinance violation was charged, the instruction would begin: “Ordinance____, adopting section 346.57(5) of the Wisconsin Statutes, is violated . . .”

2. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

3. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.

4. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

5. See note 2, supra.

6. Regarding the measurement and estimation of speed, see note 7, Wis JI-Criminal 2676, and Wis JI-Criminal 2679, Radar Speed Measurement.

7. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See note 7, Wis JI-Criminal 2677, for further discussion of the required finding of speed and a suggested form of verdict.

[This page is intentionally left blank]

**2678A SPEEDING: EXCEEDING POSTED LIMITS – CRIMINAL OFFENSE –
§ 346.57(5); § 346.60 (3m)(a)2**

Statutory Definition of the Crime

Section § 346.60 (3m)(a)2 of the Wisconsin Statutes, is violated by one who drives a vehicle on a highway¹ in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) which results in bodily harm to another.

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 Offense That Must Be Proved

1. The defendant drove a vehicle² on a highway.³
2. The defendant drove the vehicle at a speed which exceeded the speed limit established by law.⁴
3. The established speed limit was indicated by official signs.
4. The defendant drove in (a highway maintenance or construction area) (a utility work area) (an emergency or roadside response area) where workers are at risk from traffic.

[“Highway maintenance or construction area” means the entire section of roadway between the first advance warning sign of highway maintenance or construction work and an “END ROAD WORK” or “END CONSTRUCTION” sign or, in the case of a moving vehicle engaged in the maintenance or construction work, that section of roadway where traffic may return to its normal flow without impeding such work.]⁵

[“Utility work area” means the entire section of roadway between the first advance warning sign of work on a utility facility, as defined in s. 30.40 (19), or on a high-voltage transmission line, as defined in s. 30.40 (3r), and an “END UTILITY WORK” sign, where the signs are placed according to rules of the department, or, in the case of a moving vehicle engaged in work on such a utility facility or high-voltage transmission line, that section of roadway where traffic may return to its normal flow without impeding such work.]⁶

[“Emergency or roadside response area” means the section of roadway within 500 feet of an authorized emergency vehicle giving a visible signal or a tow truck displaying flashing red lamps, as required by s. 347.26 (6) (b).]⁷

5. The defendant’s driving resulted in bodily harm to another.

This requires that the defendant’s driving was a substantial factor in causing bodily harm to another.⁸

“Bodily harm” means physical pain or injury, illness, or any impairment of

physical condition.⁹

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 [and you should also find the speed the defendant's vehicle was traveling and insert the same into the verdict.]¹⁰

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2672A was approved by the Committee in October 2022.

This instruction is drafted for violations of § 346.57(5) where criminal penalties may apply. For violations of § 346.57(5) that concern forfeiture or fine, see Wis JI-Criminal 2678.

§ 346.60(3m)(a)2, created by 2021 Wisconsin Act 115 [effective date: December 8, 2021], which provides the following:

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic and the violation results in bodily harm, as defined in s. 939.22 (4), to another, the operator may be fined not more than \$10,000 or imprisoned for not more than 9 months, or both. In addition to the penalties specified under this subdivision, a court may also order a person convicted under this subdivision to perform not fewer than 100 nor more than 200 hours of community service work and attend traffic safety school, as provided under s. 345.60.

If an operator of a vehicle violates s. 346.57 (2), (3), (4) (d) to (h), or (5) where persons engaged in work in a highway maintenance or construction area, utility work area, or emergency or roadside response area are at risk from traffic or where sanitation workers are at risk from traffic and the operator knows or should know that sanitation workers are present, any applicable minimum and maximum forfeiture specified in sub. (2) or (3) for the violation shall be doubled.

Section 346.60(3m)(a)2 provides for doubling the forfeiture “If an operator of a vehicle violates s. 346.57 (2) to (5) when children are present in a zone designated by ‘school’ warning signs as provided in s. 118.08 (1).

With respect to the “justification” defense to speeding, see State v. Brown, 107 Wis.2d 44, 318 N.W.2d 370 (1982). Brown is summarized in Wis JI-Criminal 2672A Law Note: Justification Defense.

1. Offenses defined in Chapter 346 apply exclusively to operation upon “highways” unless otherwise expressly provided. § 346.02(1). (An express provision does exist for reckless driving and operating under the influence offenses defined in §§ 346.62 and 346.63; § 346.61 provides that those statutes are applicable to “all premises held out to the public for use of their motor vehicles.”)

The fact that the driving or operating took place on a highway is one that must be established before the defendant may be found guilty of this offense. However, the Committee concluded that in the typical case, it is not necessary to provide for the finding of this fact as a separate element of the crime. Rather, it is sufficient to combine it with the “drove or operated” element. However, in a case where the “highway” issue is contested, it may help clarify the issue for the jury if the instruction is modified to treat that fact as a separate element. Regarding the “on a highway” requirement, see Wis JI-Criminal 2600 Introductory Comment, Sec. I., and Wis JI-Criminal 2605.

2. If definition of “vehicle” is required, see Wis. Stat. § 340.01(74) which provides as follows:

“Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile or electric personal assistive mobility device shall not be considered a vehicle except for purposes specifically applicable by statute.

3. See note 1, supra.

4. Regarding the measurement and estimation of speed, see note 7, Wis JI-Criminal 2676, and Wis JI-Criminal 2679, Radar Speed Measurement.

5. The definition of “Highway maintenance or construction area” is the one provided in § 340.01(22e), which applies to this offense.

6. The definition of “Utility work area” is the one provided in § 340.01(73m), which applies to this offense.

7. The definition of “Emergency or roadside response area” is the one provided in § 340.01(15pu), which applies to this offense.

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 bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

See Wis JI-Criminal 910 for a more complete discussion of “cause.”

Section 346.60 (3m)(a)2 states the causal requirement differently. It requires that the defendant’s violation of s. 346.57(5)) “results in bodily harm.” The statute is one of several criminal statutes using “results in” to establish the causal connection between the actor’s conduct and the prohibited result. The Committee has concluded that “results in” should be interpreted to mean “cause,” traditionally defined in terms of “substantial factor.” This conclusion is supported by State v. Bartlett, 149 Wis.2d 557, 439 N.W.2d 595 (Ct. App. 1989), where the court construed “results in” as used in § 346.17(3).

The court held that the statute was not unconstitutionally vague because “results in” means “cause” and therefore defines the offense with reasonable certainty. The court further held that the evidence was sufficient to support the conviction because it showed that the defendant’s conduct was a substantial factor in causing the death. The court noted that more than but-for cause is required: “The state must further establish that ‘the harmful result in question be the natural and probable consequence of the accused’s conduct,’ i.e., a substantial factor.” 149 Wis.2d 557, 566, citing State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984).

9. This is the definition of “bodily harm” provided in § 939.22(4).

10. The jury should be instructed to find the speed whenever the defendant is charged with exceeding the speed limit by 10 or more miles per hour. Such violations carry an increased penalty in terms of loss of points. See note 7, Wis JI-Criminal 2677, for further discussion of the required finding of speed and a suggested form of verdict.

[This page is intentionally left blank]

SM-34A DETERMINING SENTENCE CREDIT UNDER SECTION 973.155

CONTENTS

| | | |
|------|---|----|
| I. | Introduction | 3 |
| II. | The Basic Rule | 3 |
| III. | Procedure for Making the Finding of Sentence Credit in All Cases..... | 4 |
| | A. Tell the parties to be prepared to address sentence credit at sentencing..... | 4 |
| | B. Make a finding after the proper disposition has been determined | 5 |
| | C. Make a finding in every case | 5 |
| | D. Make the finding in terms of a number of days | 5 |
| | E. If no credit is due, make that finding | 6 |
| | F. Apply the credit to the sentence being served..... | 6 |
| IV. | An Explanation of the Basic Rule | 6 |
| | A. In custody | 6 |
| | 1. “Custody” based on liability under the escape statute | 7 |
| | a. “Custody” as defined in § 946.42(1)(a)1 | 7 |
| | b. “Custody” based on unauthorized departure from certain correctional settings | 8 |
| | 2. Participation in certain AODA programs covered by § 973.155(1m) | 9 |
| | 3. Custody during competency proceeding commitments | 9 |
| | 4. Situations not considered to constitute “custody” | 10 |
| | B. ...In connection with..... | 10 |
| | 1. Determining whether a connection exists..... | 10 |
| | 2. A connection between custody and a charge may be “severed” | 11 |
| | C. ...the course of conduct for which the sentence is being imposed | 12 |

| | | |
|-----|--|----|
| V. | Applying the Basic Rule in Common Situations..... | 13 |
| A. | The credit determination to make at the time of original disposition in all cases | 13 |
| B. | Imposing sentence after probation has been revoked in a sentence withheld case..... | 13 |
| 1. | Determining sentence credit at all time of sentencing after revocation ... | 13 |
| 2. | “Custody” during the period of probation | 14 |
| a. | Jail time as a condition of probation | 14 |
| b. | Time in a treatment facility as a condition of probation..... | 14 |
| C. | Sentence credit in multiple sentence situations..... | 14 |
| 1. | Concurrent sentences | 15 |
| a. | Multiple counts in a single judgement | 16 |
| b. | Sentences on unrelated charges for which different amounts of credit are due..... | 16 |
| c. | A sentence imposed to run concurrently with a sentence imposed earlier | 17 |
| d. | Concurrent sentences imposed after revocation of probation and revocation of a deferred entry of judgement agreement | 20 |
| 2. | Consecutive sentences | 20 |
| a. | Multiple counts in a single judgment..... | 21 |
| b. | Sentence to run consecutively to a sentence imposed by another court | 21 |
| c. | Multiple sentences with differing amounts of credit | 22 |
| d. | Sentence to run consecutively to a sentence imposed following revocation or probation | 22 |
| VI. | Correcting Sentence Credit Errors | 23 |

I. Introduction

Wisconsin Stat. § 973.155(1) establishes the basic rule governing sentence credit: An offender is entitled to sentence credit for time he or she spent in custody in connection with the course of conduct for which sentence is imposed. In addition, § 973.155(2) requires a sentencing court to make a specific finding of the number of days for which sentence credit is to be granted to an offender under § 973.155 and to include that finding in the judgment of conviction. The purpose of this Special Material is to assist the court in making a proper determination of sentence credit.

A sentencing court must give credit accorded by the statute because an offender may not serve more time than that for which he is sentenced.¹ Sentence credit has the effect of reducing the amount of time the offender serves in jail or, for bifurcated sentences, in prison under the term of confinement before reaching the date on which he or she is released to the term of extended supervision. That is because, with one exception,² when credit is granted an offender's sentence is computed as having begun as many days before the date of sentencing as days credit have been granted. For example, an offender sentenced to 10 years of imprisonment, consisting of five years of confinement and five years of extended supervision, and entitled to six months of credit will be released to extended supervision four years, six months from the date of sentencing.

The basic rule for determining credit is easily stated, but its application can be difficult, particularly in situations in which an offender has multiple cases with different periods of pretrial custody and concurrent or consecutive sentences. To help the sentencing court understand and apply the basic rule, this Special Material proceeds as follows. First, it explains the basic rule governing sentence credit. Next, it discusses procedural and technical aspects of making a credit determination. It then provides a detailed explanation of the basic rule used to determine the number of days for which credit is due. After that explanation, it discusses situations that arise with some regularity, and illustrates, with reference to case law, if available, how to determine credit in those situations. Finally, it provides information about correcting a finding of sentence credit.

II. The Basic Rule

The basic rule for determining sentence credit is set forth in § 973.155(1) and (1m), which read as follows:

(1)(a) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct

for which sentence was imposed. As used in this subsection, “actual days spent in custody” includes, without limitation by enumeration, confinement related to an offense for which the offender is ultimately sentenced, or for any other sentence arising out of the same course of conduct, which occurs:

1. While the offender is awaiting trial;
2. While the offender is being tried; and
3. While the offender is awaiting imposition of sentence after trial.

(b) The categories in par. (a) and sub. (1m) include custody of the convicted offender which is in whole or in part the result of a probation, extended supervision or parole hold under s. 302.113 (8m), 302.114 (8m), 304.06 (3), or 973.10 (2) placed upon the person for the same course of conduct as that resulting in the new conviction.

(1m) A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody as part of a substance abuse treatment program that meets the requirements of s. 165.95 (3), as determined by the department of justice under s. 165.95 (9) and (10), for any offense arising out of the course of conduct that led to the person’s placement in that program.

The basic rule, then, is that entitlement to sentence credit depends on the offender having been in custody in connection with the course of conduct for which sentence is imposed.³ A defendant seeking sentence credit has the burden of demonstrating both custody and its connection with the course of conduct for which the sentence was imposed.⁴ Entitlement does not depend on the offender’s inability to post bond.

The focus of this Special Material is the determination of sentence credit for days spent in custody up to the date of sentencing, as identified in the three periods of time listed in § 973.155(1)(a).⁵ It will also address credit when imposing sentence in sentence withheld – probation ordered cases, which may include time the offender spent in custody while on probation.

III. Procedure for Making the Finding of Sentence Credit in All Cases

A. Tell the parties to be prepared to address sentence credit at sentencing

A great saving of judicial time and energy can be realized if an accurate determination of sentence credit is made at the time the judgment of conviction is entered, when the facts

are fresh, records are available, and the defendant and counsel are present to address the issue. Therefore, the court should require the parties to be prepared to address the sentence credit issue at the time of sentencing. Disputes about the number of days for which credit is due should be anticipated and settled before judgment is entered, by stipulation⁶ or, if necessary, further hearing. Accurate information and the informed participation of prosecutor and defense counsel are essential.

B. Make a finding after the proper disposition has been determined

In all cases, the court should first follow its usual procedure to determine the appropriate disposition. After the decision as to type and length of disposition has been made, the finding of the number of days for which sentence credit is due should be made.⁷

C. Make a finding in every case

The finding regarding sentence credit should be made in every case, including those where the disposition is probation or the sentence is to home detention under § 973.03(4).⁸ Although § 973.155 does not explicitly require that the sentence credit determination be made in cases where sentence is withheld and probation ordered, making the finding in probation cases will document the finding of credit due up to the date of disposition and make it available if probation is later revoked. (NOTE: The finding on the original judgment will relate only to the credit due as of the date of that judgment; additional credit may also be appropriate at the time of revocation for custody during the revocation process. The consideration of other periods of time in the sentence withheld – probation ordered and revoked case is discussed below, in Section V.B.)

In a case in which the disposition is probation and the court orders jail time as a condition under § 973.09(4), any sentence credit the court grants does not have to be credited against the condition time, although the court has discretion to do so.⁹

D. Make the finding in terms of a number of days

The defendant is entitled to a day of sentence credit for each calendar day during which he or she spent at least part of the day in custody. State v. Johnson, 2018 WI App 2, 379 Wis.2d 684, 906 N.W.2d 704, 2018 WI App 2, ¶¶8. The only exception to this rule is that the defendant is not entitled to sentence credit for the day on which he or she is sentenced because the Department of Corrections counts that day toward the service of the sentence. State v. Kontny, 2020 WI App 30, ¶¶10-12, 392 Wis. 2d 311, 943 N.W.2d 923. Only the number of days for which credit is due should be determined by the court. That number should be entered on the judgment of conviction. The standard judgment of

conviction form adopted by the Judicial Conference and mandated for use under § 971.025(1) includes a blank for entering a finding of the number of days of credit.

The finding should be in terms of the number of days and should not be expressed as weeks, months, years, or fractions thereof. The sentencing court should not determine the date sentence is to commence. The prison registrar or jail custodian will compute the sentence. As noted in the Introduction, the sentence will be computed as though it had begun as many days before the date of sentencing as days credit have been granted. That is, the sentence of an offender sentenced by the court on May 1, and entitled to 30 days sentence credit, will be computed as though it began on April 1. The date on which the offender is eligible for release will be calculated by the prison registrar or jail custodian as though the sentence had begun April 1.

E. If no credit is due, make that finding

The court should make a specific finding even when it determines that no credit is due. Insert “No” or “0” in the blank provided for the sentence credit finding. This will avoid future questions about whether credit was considered.

F. Apply the credit to the sentence being served

When sentence credit is applied at the time of sentencing, the circuit court should apply sentence credit to the term of incarceration.¹⁰ For instance, if an offender is entitled to credit applicable to charges for which he receives both an imposed sentence and a stayed sentence, the credit must be applied to the imposed sentence.¹¹

IV. An Explanation of the Basic Rule

The basic rule established by § 973.155 is that an offender is entitled to sentence credit if the person was (A) in custody and the custody was (B) in connection with (C) the course of conduct for which sentence is imposed. If one of these requirements is not met, the defendant is not entitled to credit.

A. In custody...

“In custody” is not defined in § 973.155, but the Wisconsin Supreme Court has held that “for purposes of sentence credit an offender’s status constitutes custody whenever the offender is subject to an escape charge for leaving that status.” State v. Magnuson, 2000 WI 19, ¶31, 233 Wis.2d 40, 606 N.W.2d 536.

This means the inquiry into whether an offender was in “custody” begins with the definition of “custody” provided in the escape statute, § 946.42(1)(a)1. In the majority of cases, application of that definition will be sufficient. In some cases, however, the court may also have to consider whether the offender was in a status that subjected him or her to an escape charge for leaving that status.

1. “Custody” based on liability under the escape statute

a. “Custody” as defined in § 946.42(1)(a)1.

Section 946.42(1)(a)1. provides that “custody” includes without limitation the following:

- a. Actual custody of an institution, including a juvenile correctional facility, as defined in s. 938.02 (10p), a secured residential care center for children and youth, as defined in s. 938.02 (15g), a juvenile detention facility, as defined in s. 938.02 (10r), a Type 2 residential care center for children and youth, as defined in s. 938.02 (19r), a facility used for the detention of persons detained under s. 980.04 (1), a facility specified in s. 980.065, or a juvenile portion of a county jail.¹²
- b. Actual custody of a peace officer or institution guard.
- bm. Actual custody or authorized physical control of a correctional officer.
- c. Actual custody or authorized physical control of a probationer, parolee, or person on extended supervision by the department of corrections.
- e. Constructive custody of persons placed on supervised release under ch. 980.
- f. Constructive custody of prisoners and juveniles subject to an order under s. 48.366, 938.183, 938.34 (4d), (4h), or (4m), or 938.357 (4) or (5)(e) temporarily outside the institution whether for the purpose of work, school, medical care, a leave granted under s. 303.068, a temporary leave or furlough granted to a juvenile, or otherwise.

g. Custody of the sheriff of the county to which the prisoner was transferred after conviction.

h. Custody of a person subject to a confinement order under s. 973.09(4).

The following situations are within this definition of custody:

- Detention in the county jail before bail is set or thereafter;
- Detention in the county jail during nonworking hours as a condition of bail release or probation;¹³
- Detention in jail in another state when that detention results at least in part from a Wisconsin warrant;¹⁴
- Time spent in secure juvenile detention pending a waiver to adult court, when jurisdiction is waived and an adult sentence is imposed;¹⁵
- Time spent at an in-house rehabilitation center when “temporarily outside the [jail] for the purpose of medical care”.¹⁶

b. “Custody” based on unauthorized departure from certain correctional settings

Under Magnuson a person who is in a correctional program that does not constitute “custody” under the definition in § 946.42(1)(a) is still entitled to credit if the statute that creates the correctional program allows for an escape charge for unauthorized departure from the program. Magnuson, 233 Wis.2d 40, ¶¶26-30. In most cases this basis for “custody” will not come into play, as the correctional programs covered by the definition are for offenders who have already been sentenced. Nonetheless, such claims may arise in cases where an offender was in custody on more than one case or charge, so the court and counsel should be aware of the programs that are covered. They include:

- The community residential confinement program under § 301.046;
- The intensive sanctions program under § 301.048;

- Jail labor off the institution grounds under § 302.37(4);
- Home detention under § 302.425;
- Prison labor off the institution grounds under § 303.03;
- Work release plans for prison inmates under § 303.065; and
- County work camps under § 303.10;
- Placement of a juvenile offender in a setting specified under §§ 938.357(4)(a), 938.533(3)(a), 938.538(4)(a), and 938.539(1).

2. Participation in certain AODA programs covered by § 973.155(1m)

Under § 973.155(1m), a person is entitled to credit “for all days spent in custody as part of a substance abuse treatment program that meets the requirements of s. 165.95(3), as determined by the Office of Justice Assistance under s. 165.95(9) and (10) for any offense arising out of the course of conduct that led to the person’s placement in that program.” The substance abuse treatment programs referred to are those mandated for participants in a qualified “treatment” court.

The Committee concluded that the standard for determining whether the person’s status constituted “custody” for purposes of sub. (1m) is the same standard that applies under sub. (1): If the offender was subject to an escape charge for leaving the status, sentence credit should be granted for time spent in that status. Further, § 973.155(1m) is clear that credit for the time the offender was in the treatment program may be applied only to the sentence for the offense being handled in the treatment court.

3. Custody during competency proceeding commitments.

Under Wis. Stat. § 971.14(2)(a), a person committed to a mental health facility for an inpatient competency examination is deemed to be in custody under § 973.155 while he or she is in the facility. Under Wis. Stat. § 971.14(5)(a)3., the days a person spends in a commitment for competency treatment, whether inpatient or outpatient, are also considered days spent in custody under § 973.155.

4. Situations not considered to constitute “custody”

Not included within the definitions of “custody” for sentence credit purposes are the following situations:

- Conditions of release on bond that do not involve spending parts of each day in the county jail;¹⁷
- Voluntary participation in drug, alcohol, or other treatment programs even though the offender may not be completely free of all restraint on his liberty during such program,¹⁸ unless the program is covered under § 973.155(1m);
- Home detention under a federal consent decree designed to reduce jail overcrowding;¹⁹
- Time spent on electronic monitoring as a condition of probation.²⁰
- Time spent in the community after the person reports to jail but is turned away due to overcrowding or after the person is released early from a period of confinement, even though the person was turned away or released early through no fault of his or her own.²¹

B. ...in connection with...

1. Determining whether a connection exists

The requirement that custody be “in connection with” the course of conduct means simply that the custody must be, at least in part, the result of a legal status (arrest, bail, Department of Corrections hold, court order, etc.) stemming from the course of conduct for which sentence is being imposed. If the offender was under restraint for reasons related to the course of conduct, credit is required.²²

The connection between the custody and the conduct for which sentence is imposed must be a factual connection, not just a “procedural” or “tangential” one.²³ For example, the fact that an offender is sentenced in multiple cases at the same time does not create a connection between custody and the sentences imposed.²⁴

Where there are multiple charges an offender's custody may be "in connection with" one charge but not another. Thus, the filing of a detainer against someone already in custody on other charges does not result in "custody" on the charges covered by the detainer.²⁵ Similarly, an offender is in general not entitled to sentence credit under § 973.155 for custody that is being served in satisfaction of another unrelated criminal sentence.²⁶

For example, if an offender serving a sentence for theft is charged with battery to another inmate, his custody is connected only to the theft sentence, not to the battery charge, as long as he is serving that theft sentence.²⁷

As another example, assume a person is released on personal recognizance on one charge but later is arrested on a different charge and remains in custody as a result of an inability to post cash bail. When sentenced, the person is entitled to credit only on the sentence for the charge on which he was held in custody. This is true even if the charge on which he was in custody was bail jumping based on a violation of the conditions of the personal recognizance bond in the other case.²⁸

2. A connection between custody and a charge may be "severed"

When an offender has multiple charges, a period of custody may initially be connected to all of the charges, but an event relating to one of the charges may "sever" that connection. Once the connection between custody and a particular charge is severed, the offender no longer earns credit toward that charge.

The most common way for a connection between custody and multiple charges to be severed is by sentencing on one of the charges. For instance, assume a person is arrested and held in custody in two separate cases, A and B. If he is sentenced in Case A before he is sentenced in Case B, the sentencing in Case A severs the connection between the custody and Case B, and he is in custody solely for the conviction in Case A. Thus, the person is not entitled to credit toward Case B for any time in custody after being sentenced in Case A.²⁹

Another common way for the connection between custody and pending charges to be severed is for the offender to commence serving a previously imposed and stayed sentence after revocation of probation or be returned to prison after revocation of extended supervision. In those situations, relevant statutes provide that the offender commences the previously imposed sentence upon entering the prison system.³⁰

C. ...the course of conduct for which sentence is being imposed

The use of “course of conduct” rather than a more limited term, such as “offense” or “crime,” suggests that credit is to extend to periods of custody that may not have been caused by the specific crime for which sentence is ultimately imposed. Credit is required in at least four situations which raise the “course of conduct” issue:

1. Where several crimes were charged as a result of a single course of conduct, but the offender is convicted of only one crime. Thus, an offender held in custody as a result of charges of theft, burglary, and battery, all resulting from a single incident, must receive sentence credit even if he is convicted of only one of the crimes charged;
2. Where offenses for which the person spent time in custody are “read in” for purposes of sentencing in another case, the offender is entitled to credit for the custody on the read-in offenses, regardless of whether the read-in offenses are factually connected to the course of conduct for which sentence was imposed;³¹
3. Where the offender is convicted of a crime which is a lesser included offense of the crime originally charged. Thus, an offender is entitled to credit if he was arrested for and charged with armed robbery even if he is convicted of the lesser included crime of theft; and
4. Where the offender is held in custody on a probation, parole, or extended supervision hold which is issued due to the course of conduct for which sentence is imposed. (See § 973.155(1)(b).) Credit will be due toward both the sentence for the course of conduct and the sentence in the case in which the hold was issued up to the time the defendant begins serving one of the sentences, unless the sentences are consecutive.³²

Note, however, that “course of conduct” does not mean “criminal episode.” In State v. Tuescher, 226 Wis.2d 465, 595 N.W.2d 443 (Ct. App. 1999), the court held “a defendant earns credit toward a future sentence while serving another sentence only when both sentences are imposed for the same specific acts.” Id., 479.³³

V. Applying the Basic Rule in Common Situations**A. The credit determination to make at the time of original disposition in all cases**

The determination to be made at the time of original disposition in all cases is the period of time the offender spent in custody in connection with the course of conduct up to the date of sentencing. The statute identifies three periods of time, namely, those occurring:

- 1) while the offender is awaiting trial;
- 2) while the offender is being tried; and
- 3) while the offender is awaiting imposition of sentence after trial.

B. Imposing sentence after probation has been revoked in a sentence withheld case**1. Determining sentence credit at the time of sentencing after revocation**

The basic procedure outlined above should have been followed when the original disposition was ordered in the sentence withheld – probation ordered case. If probation is revoked and an offender is returned to court for imposition of sentence, another sentence credit determination must be made. Three separate periods of time are relevant to the new sentence credit determination:

- Days in custody prior to original disposition – this finding should be the judgment of conviction entered at the time of original disposition;
- Days in custody after original disposition and through the date of probation revocation (for example, conditional jail time, holds, or sanction time) – this finding should be in the revocation order and warrant issued by the department or in the revocation summary provided by the department; and
- Days in custody after revocation, awaiting imposition of sentence – this finding must be made by the sentencing court.

2. “Custody” during the period of probation

Questions may arise about what constitutes “custody in connection with the course of conduct” in the sentence withheld case. These relate primarily to whether certain restrictive situations constitute “custody.” It is clear that time spent in jail awaiting revocation should be credited. But restrictions on an offender during the probationary period raise questions:

a. Jail time as a condition of probation

Section 973.155 is not explicit about whether sentence credit is required for time spent in the county jail as a condition of probation. However, the definition of “custody” under the escape statute expressly covers time spent in jail as a condition of probation.³⁴ That means the offender was in custody while serving that condition time and is therefore entitled to credit for that time toward a sentence imposed after revocation of probation.

b. Time in a treatment facility as a condition of probation

If a probationer spent time in, for example, a drug treatment facility, he or she will be entitled to credit for that time if one of the following applies:

1. The person’s status was such that he or she was in “custody” under the standard discussed above in Section IV.A 1, because the offender was subject to an escape charge for leaving the status.
2. The treatment program is covered under § 973.155(1m) as discussed in Section IV.A 2.

C. Sentence credit in multiple sentence situations

Proper determination of sentence credit can be complex in cases where several sentences are involved. The possible situations and relationships are endless.

Problems can be minimized if the court informs itself about the credit applicable to any previously imposed sentence and ensures that each judgment for the sentences it imposes has a finding of sentence credit. This can most easily be achieved by requiring the parties to come to court prepared to discuss and settle the sentence credit issue.

In light of the basic rule discussed above, in Section IV, the Committee recommends the following guiding principles in multiple sentence situations:

- When sentence A is to run concurrently with sentence B, the custody credited to sentence A must be factually connected to the course of conduct for which sentence A is imposed.
- When sentence A is to run consecutively to sentence B, the custody factually connected to sentence A is credited to the sentence only if the custody has not already been credited to sentence B. The aim is to credit the total sentence (consisting of all consecutive sentences put together) with one day for each day spent in custody without duplication of credit for time in custody in connection with more than one of the sentences.

1. Concurrent sentences

When concurrent sentences are imposed for offenses arising from the same course of conduct, sentence credit is to be determined as a total number of days and is to be credited against each sentence imposed. Credit against each sentence is required because credit against only one sentence would be negated by the concurrent sentence. Thus, if the credit was not awarded against both sentences, the offender would not receive the credit to which he is entitled.³⁵

However, if concurrent sentences are imposed for offenses that do not arise out of the same course of conduct, the court must determine which sentence any specific period of time in custody should be credited against. As noted above in Section IV.B.2, as a general rule sentencing on one charge severs the connection between the custody and other pending charges. Thus, when custody is in connection with multiple, unrelated charges, credit should be granted on all concurrent sentences imposed for the charges up to the time the defendant begins serving one of the sentences. The amounts may not be equal. Also, the fact that concurrent sentences are imposed at the same time does not serve to transform custody connected to one case into custody connected to another case.³⁶

Examples of concurrent sentence situations follow.

a. Multiple counts in a single judgmentConcurrent Sentence Example 1

Smith was arrested for two burglaries, charged in a two-count information, and convicted of both charges on the same day. He spent one year in jail awaiting disposition. He was sentenced to serve five years of imprisonment on each count, the sentences to run concurrently with one another.

The judgment of conviction should order that credit is due for 365 days pursuant to § 973.155.

When the judgment reaches the prison, the registrar will credit each of the concurrent sentences with 365 days, thus computing the sentences as though they had begun 365 days earlier.

b. Sentences on unrelated charges for which different amounts of credit are dueConcurrent Sentence Example 2

Johnson is arrested and charged with a burglary and remains in custody for 10 days before posting bail. He is later arrested for a new burglary and remains in custody, unable to post bail. 150 days after his second arrest, he is convicted of both charges and given two years of imprisonment on each count, concurrent.

The judgment of conviction on the first burglary should order that credit is due for 10 days, while the judgment for the second conviction should order 150 days of credit.

This illustrates one of those situations where the periods of time for which credit is due on unrelated concurrent sentences will not line up with each other. Some credit will be due on one sentence and a different amount of credit will be due on another.

In these cases, the registrars shall properly compute the credit ordered against each sentence. Taking the above example, if a defendant is entitled to 10 days of credit on one two-year sentence and 150 days of credit on a concurrent two-year sentence, the registrar will compute each sentence separately and the defendant's controlling sentence will be the two-year sentence with the lesser amount of credit.

c. A sentence imposed to run concurrently with a sentence imposed earlier

In this situation, the determinative questions are the existence of a connection between any of the offender's time in custody and the offense for which sentence is being imposed and, if there is a connection, whether it was ever "severed."

Concurrent Sentence Example 3

Sauk County officials suspected Smith of committing an armed robbery in Sauk County and discover that he is serving a sentence in the Wisconsin State Prison on another charge. Sauk County filed a detainer at the prison. Six months later, Smith is convicted on the Sauk County charge and is sentenced to a term of imprisonment of 10 years, to run concurrently to the sentence he was already serving.

The judgment of conviction in Sauk County should indicate that Smith is entitled to no sentence credit under § 973.155. All the time Smith spent in custody after the filing of the Sauk County charge was spent in service of the previously imposed sentence on an unrelated charge. Thus, there was never a connection between the Sauk County case and Smith's custody, so no additional credit is required.³⁷

Concurrent Sentence Example 4

Smith is arrested and charged on the same day in two separate cases, A and B, each arising from a different course of conduct. Unable to post cash bail, he remains in custody. Ninety days after his arrest he is convicted and sentenced in Case A. Sixty days later he is convicted and sentenced in Case B. The sentence is ordered to run concurrently with the sentence in Case A.

The sentencing in Case A severed the connection between Smith's custody and Case B. Thus, his custody after the first 90 days was due solely to the sentence in Case A, and the judgment of conviction in Case B should give credit only for the first 90 days.³⁸

Concurrent Sentence Example 5

Smith was convicted of burglary and sentenced to five years of imprisonment, but execution of the sentence was stayed and he was placed on probation. He committed another burglary while on probation and was taken into custody. A probation hold was imposed, and bail, which he could not post, was set on the

new charge. He was convicted of the new charge and sentenced to five years of imprisonment, to run concurrently with the sentence underlying the probation, as probation had been revoked at the same time. He spent 180 days in custody.

The judgment of conviction on the new charge should order that credit be granted for 180 days spent in custody. The department's revocation order should also reflect that 180 days credit is due on the sentence underlying the revoked probation.

When the judgment and the revocation order reach the prison, the registrar will credit each sentence with 180 days, by computing each sentence as though it had begun 180 days earlier.

(NOTE: This example assumes that no credit was due on the sentence underlying the probation for time spent in custody prior to the original sentencing on that charge. If such credit was due, it should be reflected on the original judgment of conviction and in the revocation order and would be credited by the registrar against only the first sentence.)

Concurrent Sentence Example 6

Smith was convicted of burglary; sentence was withheld and he was placed on probation. He committed another burglary while on probation and was taken into custody. A probation hold was imposed, and bail, which he could not post, was set on the new charge. His probation was revoked and after 180 days in custody he was sentenced after revocation to four years of imprisonment. Ninety days later he was convicted of the new burglary charge and sentenced to four years of imprisonment, to run concurrently with the four-year sentence imposed for the first burglary.

The judgment of conviction on the new burglary charge should order that credit be granted for 180 days spent in custody before being sentenced after revocation for the first burglary. Smith is not entitled to the additional 90 days he was in custody after the sentencing in the first case because that sentencing severed the connection between his custody and the new charge.³⁹

While the credit on each judgment will be equal, the second sentence will control Smith's release date because as of the date of sentencing in the second case, he had served 90 more days of the first sentence.

(NOTE: This example also assumes that no credit was due on the sentence underlying the probation for time spent in custody prior to the original sentencing on that charge. If such credit was due, it should be reflected on the original judgment of conviction and in the revocation order and would be credited by the registrar against only the first sentence.)

Concurrent Sentence Example 7

While Smith is on extended supervision he is arrested for a new offense. He is held in custody on an ES hold and on cash bail on the new offense. Three months after his arrest his ES is revoked, and a month after revocation, he is returned to the prison system to commence reconfinement time. Two months after being returned to prison he is convicted and sentenced for the new offense and given a concurrent sentence.

The offender's custody was connected to both the ES case and the new offense until the time he was returned to prison. The return to prison severed the connection between the offender's custody and the new offense. Because the sentence for the new offense is concurrent, however, the offender is entitled to credit toward that sentence for the time between his arrest and his return to prison.⁴⁰

Whether an offender subject to multiple charges or revocations awaits resolution of pending matters in jail or prison, whether cases are resolved at the same time or at wide intervals, or whether one case or the other is first resolved is often fortuitous. Practices differ from county to county, based on local court calendars, whether the offender will waive revocation or plead guilty, and even whether the local detention facility has available space.⁴¹ These practices may result in disparate results in similar cases or may allow "persons to manipulate the system to their advantage" (as by delaying the revocation of probation, parole, or extended supervision).⁴² Trial courts should be as fully informed as possible about each case so that unfair results can be avoided. If different judges are involved, it will be unlikely that each judge will be aware of the sentence credit situation in the other case when completing his or her own judgment, but the judge imposing the second sentence should try to become informed of the credit awarded against the first sentence.

d. Concurrent sentences imposed after revocation of probation and revocation of a deferred entry of judgment agreement

Concurrent Sentence Example 8

Smith is arrested and charged with a felony and two misdemeanors arising out of the same course of conduct. He is placed on probation for the misdemeanors and is subject to a deferred entry of judgment agreement on the felony, and is free on bond with respect to the felony. He is later taken into custody and placed on a probation hold, and both probation and the deferred entry of judgment agreement are revoked. After being in custody for 75 days on the hold and while awaiting revocation of probation, he is sentenced after revocation on the misdemeanors and sentenced on the felony. The court imposes concurrent sentences on all three counts.

The judgment of conviction should indicate that Smith is entitled to 75 days of credit on all three sentences even though he was not on probation for the felony because the custody was in connection for the course of conduct for which all three sentences were imposed.⁴³

Note that if the felony arose from a course of conduct different from that of the misdemeanors, the custody for any probation hold, or while awaiting probation, revocation would not be connected to the felony unless the bond on the felony was revoked or amended in a way that also kept the person in custody.

2. Consecutive sentences

The objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.⁴⁴ In situations where consecutive sentences are imposed by different judges, there will have to be some communication between the two courts to assure that sentence credit is properly ordered. This can most easily be achieved by requiring the parties to come to the sentencing hearing prepared to identify any sentence credit awarded on any previously imposed sentences.

Examples of common consecutive sentence situations follow.

a. Multiple counts in a single judgmentConsecutive Sentence Example 1

Smith was arrested for two armed robberies, charged in a two-count information, and convicted of both charges on the same day. He spent one year in jail awaiting disposition. He is sentenced to serve 10 years of imprisonment on each count, the sentences to run consecutively to one another. The judgment of conviction should order that 365 days credit be granted.

If an offender with multiple charges is entitled to credit that is applicable to all of the charges and is given an imposed sentence on one charge and a consecutive imposed and stayed sentence on the others, the credit must be awarded against the first imposed sentence.⁴⁵

b. Sentence to run consecutively to a sentence imposed by another courtConsecutive Sentence Example 2

Smith is arrested for an armed robbery in Dane County. An armed robbery charge is already pending in Sauk County, but Smith had been released on bail. He spends one year in Dane County jail awaiting trial and is then convicted and sentenced to 10 years of imprisonment, with sentence credit ordered for the one year he spent in jail. He pleads guilty to the Sauk County charge and is sentenced to 10 years of imprisonment, to run consecutively to the Dane County charge. Sauk County had lodged a detainer against Smith in Dane County.

The Dane County judgment should order that credit be granted for the 365 days spent in Dane County jail. When the sentencing takes place in Sauk County, the judge must be informed of the sentence and sentence credit ordered in the Dane County judgment. This should be done by the parties, who should come to the Sauk County sentencing prepared to address the sentence credit issue, ideally with a copy of the Dane County judgment.

The Sauk County judge would not order credit for the time spent in custody in Dane County, even though that custody may have been due in part to the Sauk County detainer, because the detainer is insufficient to establish a connection between the Dane County custody and the Sauk County case.⁴⁶ When the defendant reaches the institution, his total sentence will be computed as though it had begun 365 days earlier.

(NOTE: There may be other periods of custody allocable solely to the Sauk County case for which credit may be due in the Sauk County judgment.)

c. Multiple sentences with differing amounts of credit

Consecutive Sentence Example 3

Roberts is arrested for a theft and, after remaining in custody for 30 days, is released on bail. He is later arrested for a burglary and remains in custody until he is sentenced in both cases 60 days later. He is sentenced to two years of imprisonment for the theft and six years of imprisonment for the burglary, to run consecutively to the theft sentence.

The judgment of conviction for the theft conviction should include 30 days of sentence credit, while the judgment of conviction for the burglary conviction should order 60 days of sentence credit. Thus, the total consecutive sentences of eight years are reduced by the total of 90 days Roberts spent in custody before sentencing on the two cases.

d. Sentence to run consecutively to a sentence imposed following revocation of probation

Consecutive Sentence Example 4

Smith was convicted of armed robbery in 2010 and placed on probation; sentence was withheld. He was entitled to no sentence credit as a result of that episode. In 2011, he commits another armed robbery. A probation hold is filed against him and he is charged with the new offense. He spends one year in jail awaiting trial and revocation. He is sentenced on the new charge first and receives a 10-year sentence, with credit ordered for the one year. He then comes before the judge who imposed the original probation. A 10-year consecutive sentence is imposed.

The judgment imposed first should order credit for the one year spent in custody. The judge imposing the sentence following revocation of probation must be informed about the sentence and sentence credit ordered in the first judgment and should order no credit for time spent in custody that was awarded as credit on the first judgment.

(NOTE: If Smith had received an imposed and stayed sentence originally, or was on parole or extended supervision, the Department of Corrections would give credit on the stayed sentence or the sentence for which Smith was on parole or extended supervision for all time in custody on the new offense until the person is received at or returned to prison. Thus, in these circumstances, the judge who imposes a consecutive sentence on the new

offense (which was the basis for revoking probation, parole, or extended supervision) should not grant credit for any custody on the new offense.⁴⁷⁾

VI. Correcting Sentence Credit Errors⁴⁸

6. Since the effective date of § 973.155 in 1978, it has been required that the sentence credit determination be made part of the judgment of conviction as a finding by the court. As stressed above in Section III.A., judicial time and energy may be saved if courts require accurate information at the time of sentencing and impress upon the parties the importance of making the credit determination at that time. Even when this is done, however, the credit determination may turn out to be wrong and need correction. Correcting an erroneous credit determination is required even if the defendant stipulated to that determination. State v. Kontny, 2020 WI App 30, 392 Wis.2d 311, ¶¶7-9, 943 N.W.2d 923. See also, State v. Slater, 2021 WI App 88, 400 Wis. 2d 93, 968 N.W.2d 93.

If a determination was not made in the judgment, past practice has been to first petition the Department of Corrections for credit. When a determination has been made part of the judgment, any change in that determination requires an amendment of the judgment. While administrative change of the sentence credit finding might be more convenient, a finding in a judgment simply may not be amended by administrative action.

In cases where court action is required to correct a judgment, the correction process can be simple and efficient. A number of different procedural designations could be applied to the request for correction. Regardless of how the request is categorized, it should follow the general format described below.

1. An application to correct the sentence credit determination should be made in the sentencing court.
2. The application should specify the additional credit that is being requested – e.g., to change the sentence credit determination from 50 to 75 days.
3. The application should specify the nature of each separate period of custody for which credit is being claimed – e.g., 10 days in the Wood County jail after arrest and before transfer to Dodge County; 15 days in a mental health facility while competency to stand trial was being evaluated.
4. The application should identify the reason for each period of custody and must show that it was “connected with the course of conduct for which sentence was imposed.”

5. Attached to the application should be confirmation by the person having custody of the offender for each period which verifies both the duration and the reason for the custody.

6. A copy of the application should be sent to the district attorney.

7. A hearing is not required but may be ordered in the discretion of the court.

8. If the sentence credit determination is corrected, an amended judgment should be prepared which reflects the proper sentence credit. The amended judgment should be promptly sent to the institution having custody of the offender.

It may happen that an error in the initial determination of sentence credit is not discovered and corrected until after an offender has served the custody portion of the sentence and has been released on parole or extended supervision. The judgment of conviction should still be amended because the additional credit reduces the offender's sentence and, therefore, the amount of time remaining on parole or extended supervision. The amended judgment should be sent to the records office of the Department of Corrections' Division of Community Corrections, which is responsible for supervision of offenders on parole or extended supervision.

The judgment should also be amended even if the error is not discovered and corrected until after the offender's parole or extended supervision has been revoked and the offender reincarcerated under § 302.11(7) or reconfined under § 302.113(9). The additional credit must be applied to reduce the length of reincarceration or reconfinement the offender serves as well as the total length of the remaining sentence.⁴⁹

9. If the application to correct the sentence credit determination is denied, an order to that effect should be entered, and a copy sent to the person who filed the application.

Circuit courts are sometimes asked to address sentence credit requests made by offenders who were sentenced in Wisconsin and later transferred to other jurisdictions—for instance, due to a warrant or detainer. The basic rule described above also applies to these cases: To be granted credit, the offender must have been in custody in connection with the course of conduct for which the Wisconsin sentence was imposed.⁵⁰

That the offender was in custody is typically not disputed in these cases. Instead, the issue is whether that custody was in connection with the Wisconsin case. Because the basic rule of § 973.155 applies, whether an offender sentenced in Wisconsin who is made available to another jurisdiction remains in custody in connection with the Wisconsin case will

depend on whether an event in the other jurisdiction severs the connection between custody and the Wisconsin case. The event that will most likely sever the connection will be the imposition of a sentence in the other jurisdiction, though, as in Wisconsin, the nature of the sentence imposed in the other jurisdiction will affect the offender's entitlement to credit.⁵¹

Determining credit in these situations will therefore require obtaining as much information as possible about not only the amount time the offender was in custody, but also the reasons for the offender's transfer to the other jurisdiction, the nature and disposition of the proceedings in that jurisdiction, when any sentence was imposed, whether the sentence was consecutive or concurrent, and whether credit was given in the other jurisdiction.

COMMENT

SM-34A was originally published in 1982 and revised in 1985, 1988, 1991, 1995, 2013, 2016, 2018, 2019, and 2021. This revision was approved by the Committee in August 2022; it involved a review and revision of the text and footnotes.

1. State v. Carter, 2010 WI 77, ¶51, 327 Wis.2d 1, 785 N.W.2d 516 (quoting State v. Ward, 153 Wis.2d 743, 745, 452 N.W.2d 158 (Ct. App. 1989), and State v. Beets, 124 Wis.2d 372, 379, 369 N.W.2d 382 (1985)). Also see, State v. Obriecht, 2015 WI 66, ¶23, 363 Wis.2d 816, 867 N.W.2d 387.

2. The exception is that when a court imposing a life sentence establishes a specific date for parole eligibility under § 973.014(1)(b), time spent in custody prior to sentencing is not credited against that parole eligibility date. State v. Chapman, 175 Wis.2d 231, 499 N.W.2d 222 (Ct. App. 1993). While the court may consider the amount of credit as a factor in setting the eligibility date, the date set by the court governs. State v. Seeley, 212 Wis.2d 75, 83-88, 567 N.W.2d 897 (Ct. App. 1997).

Section 973.014(1)(b) applies only to offenses committed before December 31, 1999, when Truth-in-Sentencing took effect. However, the Truth-in-Sentencing legislation created § 973.014(1g)(a)2., which allows a court imposing a life sentence for an offense committed on or after December 31, 1999, to set a date on which the person is eligible to petition for supervised release under § 302.114(5). No published decision has addressed whether time spent in custody before sentencing should be credited against the extended supervision eligibility date set by a court, but the Committee concludes that under the rationales of Chapman and Seeley the time in custody would not be credited.

3. State v. Obriecht, 2015 WI 66, ¶23, 363 Wis.2d 816, 867 N.W.2d 387.

4. State v. Villalobos, 196 Wis.2d 141, 148, 537 N.W.2d 139 (Ct. App. 1995).

5. Note that the statute qualifies this listing of three periods of time with the phrase “without limitation by enumeration.” Thus, periods of time not listed may be creditable under § 973.155.

6. As noted in Section VI, a defendant’s stipulation to a specific amount of credit does not prevent the defendant from seeking additional credit in a subsequent motion. State v. Kontny, 2020 WI App 30, ¶¶7-9, 392 Wis. 2d 311, 943 N.W.2d 923. See also State v. Slater, 2021 WI App 88, 400 Wis. 2d 93, 968 N.W.2d 740.

7. In State v. Walker, 117 Wis.2d 579, 345 N.W.2d 413 (1984), the Wisconsin Supreme Court identified the procedure that should be followed: The appropriate sentence is to be determined independently of any time previously served; only then should sentence credit be determined. For a more complete discussion see note 15, SM-34, Sentencing Procedure, Standards, And Special Issues (© 1999).

The awarding of sentence credit is a judicial function that requires a court to reach its own conclusion about the amount of sentence credit to be awarded and to explain its findings and reasoning on the record. While the court may seek assistance from its court clerk in collecting information that may be relevant to the credit determination, the awarding or denial of sentence credit is the duty of the court, not the court clerk. State v. Kitt, 2015 WI App 9, 359 Wis.2d 592, 859 N.W.2d 164.

8. Section 973.03(4)(b) expressly provides for sentence credit for periods of home detention.

9. In State v. Avila, 192 Wis.2d 870, 532 N.W.2d 423 (1995), the Wisconsin Supreme Court rejected the claim that principles of equal protection require that a period of jail time ordered as a condition of probation be reduced to reflect time spent in jail prior to trial because of indigency. The court also rejected the defendant’s claim that his condition of probation jail time should be credited for prison time served pursuant to a conviction later reversed. The court held that the applicable statute, § 973.04, applied only to credit against subsequent “sentences” and that jail time as a condition of probation is not a sentence. Avila did not involve a claim that § 973.155 applied, but the same result should follow: that statute also requires credit only against “sentences”; time in jail ordered as a condition of probation is not a “sentence.”

10. State v. Obrieht, 2015 WI 66, ¶24, 363 Wis.2d 816, 867 N.W.2d 387.

11. State v. Wolfe, 2001 WI App 66, 242 Wis. 2d 426, 625 N.W.2d 655. See also § 973.155(3) (computing custody as if it were served time in the institution to which the defendant has been sentenced).

12. State ex rel. Thorson v. Schwarz, 2004 WI 96, ¶¶16-29, 274 Wis.2d 1, 681 N.W.2d 914, held that a person detained or committed under Chapter 980 is not in “custody” for purposes of § 973.155. In 2005 Wis. Act 434, § 45, however, the definition of “custody” under the escape statute was amended to cover detention under Chapter 980. See § 946.42(1)(a)1.a. and 1.e. (referring to facilities under §§ 980.04(1) and 980.065 and to supervised release under Chapter 980). The amendments to § 946.42(1)(a) took effect August 1, 2006. Thus, as of that date, a person detained or committed under Chapter 980 is in “custody” for purposes of § 973.155, effectively superseding Thorson’s holding to the contrary. Note, however, that Thorson also held a person’s custody under Chapter 980 is not “in connection with” the predicate offense for the commitment; that holding is not changed by the amendments to the definition of “custody” in § 946.42. See note 25, below.

13. Credit is to be granted for time spent in jail as a condition of probation based both on the holding in State v. Gilbert, 115 Wis.2d 371, 340 N.W.2d 511 (1983), and on the fact that 1995 Wis. Act 154 amended the definition of “custody” in § 946.42(1)(a) to include custody in jail as a condition of probation.

As to bail release, note that §§ 969.02(3)(d) and 969.03(1)(e) allow a court to set a condition of bail release that requires a defendant to return to custody after specified hours.

14. Credit should be granted when, for example, a Wisconsin offender is arrested in Illinois on a Wisconsin warrant even if the offender is also being held on Illinois charges, unless or until the offender begins serving a sentence on the Illinois charges. State v. Carter, 2010 WI 77, ¶¶31-40, 58-72, 82, 327 Wis.2d 1, 785 N.W.2d 516. Credit should not be granted when a Wisconsin offender, already in custody on Illinois charges, has a Wisconsin “hold” or detainer filed against him. This is consistent with the conclusion that filing a detainer against one already in custody in Wisconsin does not result in “custody” under § 973.155 on the charge which is the subject of the detainer. See note 27, below.

A prior version of SM-34A (© 1995) stated that a person was in “custody” in another state only if his or her custody was based exclusively on a Wisconsin warrant. This conclusion was rejected in State v. Carter, 2007 WI App 255, ¶¶11-25, 306 Wis.2d 450, 743 N.W.2d 700, aff’d, 2010 WI 77, ¶40, 327 Wis.2d 1, 785 N.W.2d 516, and was removed in the 2014 version of SM-34A.

15. State v. Baker, 179 Wis.2d 655, 508 N.W.2d 40 (Ct. App. 1993).

16. State v. Sevelin, 204 Wis.2d 127, 554 N.W.2d 521 (Ct. App. 1996). Credit is not required where jail time as a condition of probation is stayed and the person is hospitalized for treatment. State v. Edwards, 2003 WI App 221, 267 Wis.2d 491, 671 N.W.2d 371.

17. A person required to remain in his home during all nonworking hours as a condition of bail pending appeal, is not entitled to credit for the period of home detention on the sentence imposed after the appeal was decided. State v. Pettis, 149 Wis.2d 207, 441 N.W.2d 247 (Ct. App. 1989).

18. See the discussion of State v. Cobb, 135 Wis.2d 181, 400 N.W.2d 9 (Ct. App. 1986). In Cobb, the court held that credit was properly denied to a probationer who was ordered, as a condition of probation, to spend either one year in jail or go to a drug abuse treatment center. He chose to participate in a drug treatment program and successfully completed it. When his probation was revoked, he sought credit for the time he spent in the program. The court held that credit was not required because there was no evidence of “custody” – defining that term, by reference to the escape statute, as “physical detention by an institution, institution guard or peace officer.” 135 Wis.2d 181, 185. As discussed above in Section IV.A.1 and 2, after Cobb was decided the supreme court clarified that for purposes of sentence credit “custody” is defined not solely by physical detention, but by whether the offender is subject to an escape charge for leaving whatever status or setting he or she was in. Magnuson, 233 Wis.2d 40, ¶31.

19. In State v. Harris, 168 Wis.2d 168, 483 N.W.2d 808 (Ct. App. 1992), the court held that there was no authority to grant credit for time served in a home detention program ordered under the auspices of a federal consent decree.

20. State ex rel. Simpson v. Schwarz, 2002 WI App 7, 250 Wis.2d 214, 640 N.W.2d 527.

21. State v. Friedlander, 2019 WI 22, 385 Wis. 2d 612, 923 N.W.2d 849. Friedlander sought credit for time he spent in the community after he was released from a prison sentence when he should instead have been transferred to a county jail to serve time as a condition of probation in another case. The court of appeals concluded that Friedlander was entitled to credit for the time he was in the community through no fault of his own, citing State v. Riske, 152 Wis. 2d 260, 448 N.W.2d 260 (1989), and State v. Dentici,

2002 WI App 77, 251 Wis. 2d 436, 643 N.W. 2d 180. Riske and Dentici held that a defendant who reported to jail to serve a sentence but was turned away due to overcrowding was entitled to credit for the time he was at liberty. The decisions adopted an equitable doctrine recognized in other jurisdictions that a person erroneously released from custody continues to serve his or her sentence.

The supreme court reversed the court of appeals' grant of credit to Friedlander and overruled Riske and Dentici. The supreme court concluded that Riske and Dentici are inconsistent with the bright-line rule that a person must be subject to an escape charge to be in "custody" for the purposes of § 973.155. Under that rule, it is irrelevant to a sentence credit determination that a person at liberty through no fault of his or her own. Friedlander, 385 Wis. 2d 612, ¶¶24-42.

22. A defendant held "in part" on unsatisfied cash bail on the principal charge and an unrelated charge was in custody in connection with the principal charge up until disposition of the unrelated charge. State v. Harr, 211 Wis.2d 584, 596-97, 568 N.W.2d 307 (Ct. App. 1997). Harr applied State v. Gavigan, 122 Wis.2d 389, 362 N.W.2d 162 (Ct. App. 1984) (citing a prior version of SM-34A) and State v. Beets, 124 Wis.2d 372, 369 N.W.2d 382 (1985) (approving the reasoning in Gavigan).

In some cases a person facing multiple charges arising out of the same course of conduct may be placed on probation for some of the charges and be subject to deferred entry of judgment agreement on other of the charges. If the person is taken into custody on a probation hold, that custody is also considered to be in connection with the charge that is subject to the deferred entry of judgment agreement. State v. Zahurones, 2019 WI App 57, ¶¶13-17, 389 Wis. 2d 69, 934 N.W.2d 905.

See also State v. (Elandis) Johnson, 2009 WI 57, ¶27, 318 Wis.2d 21, 767 N.W.2d 207 (in deciding whether an offender is entitled to credit under § 973.155, the court must determine whether the person was in custody and "whether all or part of the 'custody' for which credit is sought was 'in connection with the course of conduct for which sentence was imposed'"); State v. Hintz, 2007 WI App 113, ¶8, 300 Wis.2d 583, 731 N.W.2d 646 (credit must be awarded under § 973.155(1)(b) for time in custody on an extended supervision hold if the hold was "at least in part" due to the conduct resulting in the new conviction); State v. Thomas, 2021 WI App 59, 399 Wis. 2d 165, 963 N.W.2d 927 (credit must be awarded under Wis. Stat. § 973.155(1)(a) toward a state criminal sentence for time in custody on a federal supervision hold if the hold was due in part to the conduct resulting in the state sentence). Cf. State v. Thompson, 225 Wis.2d 578, 593 N.W.2d 875 (Ct. App. 1999) (offender was in custody in connection with an adult charge while confined under a juvenile commitment because the adult charge led to revocation of juvenile supervision and confinement in juvenile facility).

In State v. (Marcus) Johnson, 2007 WI 107, 304 Wis.2d 318, 735 N.W.2d 505, the defendant argued for a broad interpretation of the "in connection with" language in § 973.155 based in part on the statement in the paragraph to which this note is appended that custody "must be, at least in part, the result of a legal status . . . stemming from the course of conduct for which sentence is being imposed." Id., ¶68. The supreme court rejected Johnson's "expansive interpretation" as contrary to applicable case law, in particular State v. Beets, 124 Wis.2d 372, 369 N.W.2d 382 (1985), where, once the offender began serving a sentence on one charge, it was irrelevant that he was also awaiting trial on another charge. Id., ¶69. Because SM-34A discusses and incorporates the holdings of the applicable case law, including Beets, the Committee concluded the court's rejection of Johnson's argument did not require a revision of the language of SM-34A.

23. State v. Beiersdorf, 208 Wis.2d 492, 498, 561 N.W.2d 749; (Ct. App. 1997); State v. Floyd, 2000

WI 14, ¶¶15-17, 232 Wis.2d 767, 606 N.W.2d 155; State v. (Elandis) Johnson, 2009 WI 57, ¶33, 318 Wis.2d 21, 767 N.W.2d 207; State v. Harrison, 2020 WI 35, ¶¶36-46, 391 Wis. 2d 161, 942 N.W.2d 310 (holding that the sentences the defendant was serving consecutively to previously imposed sentences in other cases were not factually connected to the course of conduct for which the previous sentences were imposed; thus, when the consecutive sentences were vacated, the defendant was not entitled to have the time in custody on the vacated consecutive sentences credited toward the previously imposed sentences); State v. Lira, 2021 WI 81, ¶¶29-32, 399 Wis. 2d 419, 966 N.W.2d 605 (where an offender previously sentenced in Wisconsin is serving a sentence in another state is returned to Wisconsin to address new, unrelated Wisconsin cases or offenses, his custody here was not factually connected with his Wisconsin sentences and was not entitled to credit on his Wisconsin sentences for time in custody back in Wisconsin). See also State ex rel. Thorson v. Schwarz, 2004 WI 96, ¶34, 274 Wis.2d 1, 681 N.W.2d 914, which held that time spent in the Wisconsin Resource Center pending a Chapter 980 commitment trial is not “in connection with” the sentence on a criminal offense that served as one of the predicates for the Chapter 980 petition.

24. State v. (Elandis) Johnson, 2009 WI 57, 318 Wis.2d 21, 767 N.W.2d 207. See also note 36, below.

25. “Custody” as used in § 973.155 must result “from the occurrence of a legal event, process, or authority which occasions, or is related to, confinement on the charge for which the defendant is ultimately sentenced.” State v. Demars, 119 Wis.2d 19, 26, 349 N.W.2d 708 (Ct. App. 1984) (communication of a detainer which carried no custodial mandate was not sufficient to establish connection with the case in which the detainer was filed); State v. Nyborg, 122 Wis.2d 765, 768, 364 N.W.2d 553 (Ct. App. 1985) (same); State v. Villalobos, 196 Wis.2d 141, 147-48, 537 N.W.2d 139 (Ct. App. 1995) (entry in a jail log indicating an outstanding arrest warrant from another county was not “occurrence of a legal event, process, or authority” sufficient to establish connection between basis for custody and charges for which warrant was issued). Cf. State v. Carter, 2007 WI App 255, ¶¶14-18, 306 Wis.2d 450, 743 N.W.2d 700, aff’d as modified as to number of days of credit granted, 2010 WI 77, ¶¶9, 33-34, 81-82, 327 Wis.2d 1, 785 N.W.2d 516 (arrest of defendant in Illinois on Wisconsin warrant established a connection between custody and Wisconsin course of conduct).

26. State v. Gavigan, 122 Wis.2d 389, 393, 362 N.W.2d 162 (Ct. App. 1984) (citing a prior version of SM-34A). The reasoning in Gavigan was approved by the supreme court in State v. Beets, 124 Wis.2d 372, 380-81, 369 N.W.2d 382 (1985). See also State v. Carter, 2010 WI 77, ¶37, 327 Wis.2d 1, 785 N.W.2d 516 (“once a defendant is actually serving the sentence on a charge, the defendant is not entitled to credit for presentence custody toward sentences on unrelated charges, although trial may be pending on the separate charges at the time the defendant is serving the first sentence.”). See also State v. Lira, 2021 WI 81, ¶¶29-32, 399 Wis. 2d 419, 966 N.W.2d 605 (where an offender previously sentenced in Wisconsin is serving a sentence in another state is returned to Wisconsin to address new, unrelated Wisconsin cases or offenses, his custody here was not factually connected with his Wisconsin sentences and was not entitled to credit on his Wisconsin sentences for time in custody back in Wisconsin).

27. An offender’s custody may preclude establishment of a connection with a course of conduct even if the custody is not due to service of a criminal sentence. In State v. Riley, 175 Wis.2d 214, 498 N.W.2d 884 (Ct. App. 1993), the defendant escaped from jail confinement ordered as a condition of probation. He was eventually arrested after committing a new crime during the period of escape. He was returned to jail to continue serving the original condition-of-probation confinement and cash bail was set on the new charge, which Riley did not post. At the completion of the condition of probation confinement, Riley was sentenced on the new charge. The court of appeals held that credit for the time spent in jail as a condition of the original probation was not due against the new sentence because § 973.155 “does not authorize credit

for a term of confinement ordered [as a consequence] for prior criminal activity irrespective of whether that confinement is a condition of probation or as the result of a sentence after revocation of probation.” *Id.*, 220-21, citing *State v. Beets*, 124 Wis.2d 372, 369 N.W.2d 382 (1985). See also *State v. Villalobos*, 196 Wis.2d 141, 144-46, 537 N.W.2d 139 (Ct. App. 1995) (applying *Riley* to similar facts).

Further, a defendant already in custody under a juvenile commitment was not entitled to credit toward an adult battery charge he committed while confined in a juvenile correctional institution based on a previous unrelated delinquency adjudication. *State v. (Marcus) Johnson*, 2007 WI 107, 304 Wis.2d 318, 735 N.W.2d 505. Because Johnson’s juvenile commitment order pre-existed the battery charge, it precluded the creation of a connection between Johnson’s custody and the battery charge. *Id.*, ¶63. Nor was a connection created when Johnson’s commitment was later extended based in part on the conduct giving rise to the battery charge because, the court concluded, the commitment would have been extended even if the battery had not occurred. *Id.*, ¶71. The court distinguished *State v. Thompson*, 225 Wis.2d 578, 593 N.W.2d 875 (Ct. App. 1999), [cited above, in note 22,] on the grounds that Thompson’s custody was both connected to the new charge, which had been a basis for the revocation of juvenile supervision, and was for treatment in the juvenile system, not continuing punishment of the original offense. *Id.*, ¶¶45-55.

Note, however, that custody under a civil commitment for contempt does not preclude a connection between the custody and a pending criminal charge. Unlike a person serving a sentence, as in *Beets*, jail time as a condition of probation, as in *Riley*, or a juvenile commitment, as in *(Marcus) Johnson*, a person confined under a civil contempt commitment would not necessarily be in custody absent the pending criminal charge because the person may obtain release by meeting the contempt commitment’s purge conditions. *State v. Trepanier*, 2014 WI App 105, ¶¶20-21, 357 Wis.2d 662, 855 N.W.2d 465.

28. In *State v. Beiersdorf*, 208 Wis.2d 492, 561 N.W.2d 749 (Ct. App. 1997), the defendant posted a personal recognizance bond on a sexual assault charge and remained on that bond until his sentencing. He was, however, held in custody on cash bond on later charges of bail jumping based on violations of the recognizance bond in the sexual assault case. He was sentenced to prison on the sexual assault charge; his sentence on the bail jumping charge was imposed and stayed and he was placed on probation, to run consecutively to the prison sentence for sexual assault. The court of appeals concluded Beiersdorf was in custody only “in connection with” the course of conduct for which sentence was imposed and stayed. Thus, no credit is due on the prison sentence for sexual assault.

29. *State v. Gavigan*, 122 Wis.2d 389, 362 N.W.2d 162 (Ct. App. 1984) (discussed in detail in note 34, below); *State v. Beets*, 124 Wis.2d 372, 369 N.W.2d 382 (1985) (discussed in detail in note 39, below). While sentencing on one charge may be the most common event that will sever the connection, it is not the only one. In *State v. Harr*, 211 Wis.2d 584, 596, 568 N.W.2d 307 (Ct. App. 1997), the court concluded that the offender’s commitment under § 971.17 after being found not guilty by reason of mental disease or defect severed the connection between his custody and an unrelated pending charge.

Not every event that creates an independent basis for legal custody “severs” the connection between an offender’s custody and a pending criminal case. To sever the connection, the event must have put the offender in a status that would keep the offender in custody even in the absence of the criminal case. For instance, in *State v. Trepanier*, 2014 WI App 105, 357 Wis.2d 662, 855 N.W.2d 465, an offender who was already in custody on cash bail in a criminal case was found in contempt for failing to pay a fine in an unrelated case and ordered to be held in custody under the contempt order unless he met the purge condition. The subsequent contempt order did not sever the connection between the custody and the criminal case because, unlike the offender in *Beets*, who would have been in custody under the sentence imposed even

in the absence of the pending criminal case, Trepanier could have obtained release from the contempt order by satisfying the purge conditions. Id., ¶¶15-21.

In addition, being on bond on a charge that is subject to a deferred entry of judgment agreement does not “sever” the connection between that count and other counts in the case for which the person is placed on probation. State v. Zahurones, 2019 WI App 57, ¶¶18-28, 389 Wis. 2d 69, 934 N.W.2d 905.

30. State v. Slater, 2021 WI App 88, 400 Wis. 2d 93, 698 N.W.2d 740 (citing Wis. Stat. § 973.10(2)(b) governing imposed and stayed sentences); State v. Presley, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713, and State v. Davis, 2017 WI App 55, 377 Wis. 2d 678, 901 N.W.2d 488 (citing Wis. Stat. § 304.072(4) governing persons revoked from parole or extended supervision).

31. State v. Floyd, 2000 WI 14, ¶32, 232 Wis.2d 767, 606 N.W.2d 155. The court in Floyd disclaimed reliance on the “in connection with the course of conduct” language in § 973.155 and instead relied on the phrase “related to an offense for which sentence was imposed,” finding the unique nature of read-in offenses made them “related” to offenses for which a defendant is sentenced for purposes of § 973.155(1).

Floyd limits its holding to offenses that are “read in” for sentencing purposes. 232 Wis.2d 767, ¶30. Thus, Floyd does not require credit to be given for custody related to every offense that a judge “considers” at sentencing. See State v. Piggue, 2016 WI App 13, 366 Wis.2d 605, 875 N.W.2d 663. In Piggue, the defendant was in custody on a sexual assault charge when he tried to persuade the victim not to testify against him. He was acquitted of the sexual assault, but was then charged with and convicted of witness intimidation. The judge considered the sexual assault allegations when sentencing Piggue on the intimidation charge, so Piggue argued that Floyd required the time he spent in custody on the sexual assault charges to be credited toward the intimidation sentence. The court of appeals held that Floyd should not be extended beyond its express limitation to “read-in” offenses. 366 Wis.2d 605, ¶¶12-13.

32. As noted above, in Section IV.B.2 of this Special Material, once a person begins serving one of the sentences, his “custody” is no longer “in connection with” the other pending charge. Credit on the sentence for that pending charge will be due only for the days when both charges were pending, prior to the commencement of the other sentence. State v. Beets, 124 Wis.2d 372, 369 N.W.2d 352 (1985). For cases applying Beets to offenders who are revoked from extended supervision for new charges and given a sentence on the new charges concurrent to the sentence on which supervision was revoked, see State v. Hintz, 2007 WI App 113, 300 Wis.2d 583, 731 N.W.2d 646; State v. Presley, 2006 WI App 82, 292 Wis.2d 734, 715 N.W.2d 713; and State v. Davis, 2017 WI App 55, 377 Wis.2d 678, 901 N.W.2d 488. For a case applying Beets to an offender who was on probation with an imposed and stayed sentence and whose probation was revoked for new charges for which he received a concurrent sentence, see State v. Slater, 2021 WI App 88, 400 Wis. 2d 93, 698 N.W.2d 740. This situation is discussed below, Section V.C.1.c, this Special Material. For a discussion of credit in consecutive sentence situations, see below, Section V.C. (intro.) and 2, this Special Material.

33. The defendant in Tuescher won a new trial on an attempted homicide charge arising out of an incident involving a burglary and shooting. The attempted homicide conviction was reversed, and while it was being relitigated he remained in custody serving the sentences imposed for two other charges arising out of the incident. After he was convicted and sentenced again on the attempted homicide, Tuescher sought credit toward the new sentence for his time in custody between winning the new trial and being resentenced. The defendant was not entitled to the credit because during that time he was serving the sentences imposed on the charges which were not retried. 226 Wis.2d 465, 467.

34. See Wis. Stat. § 946.42(1)(a)1.h., and State v. Gilbert, 115 Wis.2d 371, 340 N.W.2d 511 (1983). The question of credit for time spent in jail as a condition of probation was an open one at the time SM-34A was originally published. That version recommended that credit be granted for such time. The Committee's conclusion was adopted in Gilbert, which held that the plain meaning of § 973.155 required that credit be given: "there is no basis for interpreting the statute as excluding custody as a condition of probation from the statute's coverage." 115 Wis.2d 371, 377.

Because jail time as a condition of probation is not a sentence, any "good time" the circuit court allowed the offender to earn while serving the conditional jail time is not eligible for sentence credit under 973.155(4); that statute provides for sentence credit to include "good time" only for sentences of one year or less. State ex rel Baade v. Hayes, 2015 WI App 71, 365 Wis.2d 174, 870 N.W.2d 478.

35. This principle was cited with approval and applied in State v. Ward, 153 Wis.2d 743, 452 N.W.2d 158 (Ct. App. 1989).

36. State v. (Elandis) Johnson, 2009 WI 57, ¶¶50-60, 318 Wis.2d 21, 767 N.W.2d 207, criticized a prior version of SM-34A (© 1995) that referred to crediting equally all concurrent sentences "imposed at the same time or for offenses arising from the same course of conduct." The court found this formulation "unfortunate" because it was "too broad" and had led to the belief that when concurrent sentences are imposed at the same time, any credit is to be applied against each of the sentences imposed regardless of whether the custody was factually connected to each sentence. Noting that the "unfortunate" passage was more understandable, if still inaccurate, when read in context with the examples in the Special Material, the court made it clear that any custody applied to any given sentence must also be factually connected to that sentence. Id., ¶¶61-68. As applied to Johnson's case, the court held:

¶47 Calculating the correct number of days that need to be credited to each of Johnson's concurrent sentences requires that we examine separately each sentence and the time spent in presentence custody "in connection with" each sentence. We cannot, as Johnson's argument attempts to do, conflate all the concurrent sentences imposed on the same day and make a credit determination as if there were only one overall sentence imposed.

The language criticized in (Elandis) Johnson was removed in the 2014 version of SM-34A.

37. When credit has been granted against an earlier sentence which was completely served before sentencing on a new offense, no credit against the new sentence is required. State v. Morricks, 147 Wis.2d 185, 432 N.W.2d 654 (Ct. App. 1988); State v. Amos, 153 Wis.2d 257, 280, 450 N.W.2d 503 (Ct. App. 1989); State v. Jackson, 2000 WI App 41, ¶19, 233 Wis.2d 231, 607 N.W.2d 338.

See also State v. Rohl, 160 Wis.2d 325, 466 N.W.2d 208 (Ct. App. 1991) (defendant not entitled to credit for time served in California while he was on Wisconsin parole because he had received full credit for the time toward the sentence he completed in California); State v. Martinez, 2007 WI App 225, 305 Wis.2d 753, 741 N.W.2d 280 (reaching the same conclusion with respect to time served in a federal institution); State v. Coles, 208 Wis.2d 328, 559 N.W.2d 599 (Ct. App. 1997) (a defendant who was sentenced on one count to a "time served" sentence that used all his pretrial credit was not entitled to any of that credit toward a sentence on a second count because the sentence on the second count was effectively consecutive).

38. State v. Gavigan, 122 Wis.2d 389, 362 N.W.2d 162 (Ct. App. 1984). Gavigan committed a robbery on September 15, 1982. About 24 hours later, he led police on a high speed chase that resulted in a charge of fleeing an officer. Thirty-nine days after his arrest, he pleaded guilty to the fleeing charge and was sentenced to six months in jail. One hundred and seven days later Gavigan was sentenced on the robbery – a three-year sentence to run concurrently with the six-month sentence on the misdemeanor. The trial judge gave 39 days credit on the three-year sentence.

Gavigan claimed he should also receive credit for the 107 days that followed the misdemeanor sentence but preceded the robbery sentence. The court of appeals affirmed the denial of credit for the 107 days, holding that the custody was not “in connection with” the robbery charge – it was attributable solely to the misdemeanor conviction.

39. See State v. Beets, 124 Wis.2d 372, 369 N.W.2d 352 (1985). Beets was convicted of drug offenses and placed on probation with sentence withheld. He was arrested on a burglary charge and held in custody for that charge. Within a few days, a probation hold was added. The hold was based on the burglary charge.

Seventy-eight days after his arrest, Beets’ probation was revoked and two concurrent three-year sentences were imposed. He received credit for the 78 days and went to prison.

One hundred and ninety-two days after his prison sentence began, Beets was sentenced on the burglary. He received a three-year sentence concurrent with the sentence he was already serving. He received 78 days credit for the time spent in custody before the first sentence was imposed (when both the revocation and the burglary charge were pending).

Beets sought credit for the 192 days that elapsed after his first prison sentence began, while the burglary charge was pending.

The supreme court affirmed the trial court’s denial of credit, holding that confinement after the first sentence was imposed could not be “in connection with” the pending burglary charge. Thus, § 973.155 does not require credit, because the charges resulting in the first sentence and the pending charges were not “related.” The court stated that “unless the acts for which the first and second sentences are imposed are truly related or identical, the sentencing on one charge severs the connection between the custody and the pending charges.” Id., 383.

The rule in Beets that sentencing on a related charge “severs the connection” was applied in State v. Abbott, 207 Wis.2d 624, 558 N.W.2d 927 (Ct. App. 1996). Abbott committed a battery while serving a sentence under the Division of Intensive Sanctions (DIS) program. He received a sanction of 89 days in jail. Later, he pled guilty to the battery and was sentenced. The court of appeals held Abbott was not entitled to credit on the battery sentence for time spent in jail for the DIS sanction. Any connection between the two sentences was severed when Abbott began serving the DIS sanction. See also State v. Hintz, 2007 WI App 113, ¶7 n.3, 300 Wis.2d 583, 731 N.W.2d 646 (applying Beets to offender revoked from extended supervision for new charges and given a sentence on new charges concurrent to sentence on which supervision was revoked).

However, Beets does not mean every sentencing “severs” the connection between custody and charges unrelated to the one on which the sentence is imposed. In State v. Yanick, 2007 WI App 30, 299 Wis.2d 456, 728 N.W.2d 365, the defendant was serving six months of confinement as a condition of

probation for an OWI offense. While serving that condition time he was sentenced in an unrelated case. That sentence began running while he was serving condition time and was longer than the condition time.

When his probation on the OWI was revoked, he was entitled to credit toward the revocation sentence for the condition time despite the fact much of that time was concurrent to the sentence in the unrelated case:

¶22 To the extent the State is suggesting that Beets holds that service of a sentence on crime A always “severs” time in custody owing to crime B for purposes of awarding sentence credit on the sentence for crime B, we disagree. Beets addressed a particular type of status--time in custody serving a sentence and awaiting disposition on a separate crime. Beets does not address service of a sentence and concurrent service of custody time pursuant to a disposition, which is the sort of concurrent custody time at issue here.

Because Yanick was ultimately sentenced for the OWI for which he was confined as a condition of probation, his custody was factually connected to the course of conduct for which sentence was imposed. See also State v. (Elandis) Johnson, 2009 WI 57, ¶¶42-44, 318 Wis.2d 21, 767 N.W.2d 207 (discussing Yanick).

If an offender is in custody on a federal supervision hold based on state criminal charges and later receives a sentence for the state charges that is concurrent to the federal sentence, the offender is entitled to credit toward the state sentence for time spent in custody until the imposition of sentence in the federal case, which severed the connection between custody and the state charges. State v. Thomas, 2021 WI App 59, 399 Wis. 2d 165, 963 N.W.2d 927.

40. State v. Hintz, 2007 WI App 113, 300 Wis.2d 583, 731 N.W.2d 646. Hintz asked only for confinement up to his reconfinement hearing, which for purposes of § 973.155 is essentially a sentencing hearing. See State v. Presley, 2006 WI App 82, 292 Wis.2d 734, 715 N.W.2d 713. Courts no longer determine the amount of reconfinement after revocation of extended supervision, so the reconfinement hearing is not the point at which the offender’s sentence begins running again; instead the sentence resumes running when the person is returned to prison. Wis. Stat. § 304.072(4). State v. Davis, 2017 WI App 55, 377 Wis.2d 678, 901 N.W.2d 488.

41. Depending on the situations, sentences begin to run or resume running at different times.

a) Sentences to confinement commence on the date of imposition. Wis. Stat. § 973.15(1). This provision covers situations in which sentence was originally withheld and probation imposed.

b) Following revocation of probation in the imposed-and-stayed-sentence-probation-imposed case, the sentence commences when the offender arrives at the prison. The revocation date is irrelevant. Wis. Stat. § 973.10(2)(b). See also State v. Slater, 2021 WI App 88, 400 Wis. 2d 93, 968 N.W.2d 740.

c) Sentences of revoked parolees or persons on extended supervision resume running on the date the person is received at the correctional institution. Wis. Stat. § 304.072(4). See also State v. Presley, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713; State v. Davis, 2017 WI App 55, 377 Wis. 2d 678, 901 N.W.2d 488.

42. State v. Beets, 124 Wis.2d 372, 383, 369 N.W.2d 382 (1985).

43. State v. Zahurones, 2019 WI App 57, 389 Wis. 2d 69, 934 N.W.2d 905.

44. The Wisconsin Supreme Court approved of this general principle in State v. Boettcher, 144 Wis.2d 86, 423 N.W.2d 533 (1988), reversing 138 Wis.2d 292, 405 N.W.2d 767 (Ct. App. 1987). The essential dates and facts were as follows:

- | | |
|---------|--|
| 4/12/86 | Boettcher, on probation with a three year stayed sentence, is arrested for a new offense; a probation hold is imposed. |
| 4/22/86 | Initial appearance on new charge; signature bond on new charge; probation hold remains in effect so Boettcher remains in custody. |
| 7/23/86 | Probation is revoked and the three year stayed sentence takes effect – on that sentence, credit for all days in custody from 4/12 through 7/23 (110 days) is awarded; sentence is imposed on new offense – 1 year to run consecutively to the other sentence – and no credit for time in custody is given. |

The court of appeals held that additional credit should have been given on the sentence for the new crime for the 10 days between 4/12 and 4/22 – the time after arrest and before he was “released” on a signature bond for the new offense. (Of course, he was not released; he remained in custody on the probation hold.) The court reasoned that he was “in custody” on the new offense for this period and credit must be given against the eventual sentence on that offense. This is the case even though he received credit for that 10-day period on the other sentence resulting from the revoked probation.

The supreme court reversed the court of appeals, concluding “that dual credit is not permitted – that the time in custody is to be credited to the sentence first imposed – and that, where the sentences are consecutive, the total time to be served is thus reduced by the number of days in custody as defined by sec. 973.155, Stats. Credit is to be given on a day for day basis, which is not to be duplicatively credited to more than one of the sentences imposed to run consecutively.” 144 Wis.2d 86, 87.

This holding is consistent with SM-34A, which the court cited with approval:

We agree with, and endorse, the position of the Wisconsin Criminal Jury Instructions Committee’s language in SM-34A V.B., where, in discussing consecutive sentences, it concludes:

“The objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.” 144 Wis.2d 86, 101.

The Boettcher rule also applies where a sentence has already been served: “The core idea of Boettcher is that ‘dual credit is not permitted’ where a defendant has already received credit against a sentence which has been, or will be, separately served.” State v. Jackson, 2000 WI App 41, ¶19, 233 Wis.2d 231, 607 N.W.2d 338. See also State v. Coles, 208 Wis.2d 328, 334, 559 N.W.2d 599 (Ct. App. 1997) (a defendant who was sentenced on one count to “time served” in an amount equal to his pretrial credit was not entitled to any credit on the prison sentence imposed for a second count; the prison sentence was consecutive to the “time served” sentence because the “time served” sentence was completed upon pronouncement of

sentence); State v. Rohl, 160 Wis.2d 325, 466 N.W.2d 208 (Ct. App. 1991) (applying Boettcher to deny defendant credit for time served in California while he was on Wisconsin parole before his Wisconsin parole was revoked; because his parole was not revoked until after he was released in California and returned to Wisconsin, his post-revocation Wisconsin sentence was consecutive, not concurrent, to the California sentence); State v. Martinez, 2007 WI App 225, 305 Wis.2d 753, 741 N.W.2d 280 (reaching the same conclusion with respect to time served in a federal institution before the person's Wisconsin parole was revoked).

Further, the Boettcher rule applies when one of several concurrent sentences is vacated and, after resentencing, is ordered to run consecutively to the previously imposed sentences with which it was originally running concurrent. State v. Lamar, 2011 WI 50, ¶¶35-37, 334 Wis.2d 536, 799 N.W.2d 758. Lamar was serving two concurrent sentences. He successfully challenged his conviction, but by the time he did so one of the sentences was finished. After he was reconvicted, the court imposed a new sentence, ordered it to run consecutively to any other sentence, and denied Lamar credit for the time he had served on the sentence that discharged before his conviction was vacated. The supreme court affirmed, holding “the time for which Lamar seeks credit was served on a separate, non-concurrent sentence. If Lamar received the sentence credit he seeks, he would receive dual credit from two consecutive sentences [for the same period of time]. As this court held in Boettcher, defendants are not entitled to receive this dual credit on a consecutive sentence.” 334 Wis.2d 536, ¶37 (citing a previous version of this Special Material). The court also concluded that § 973.04 – which requires credit for confinement previously served when a sentence is vacated and a new sentence imposed – was not inconsistent with application of Boettcher and that denial of the credit did not violate the prohibition against double jeopardy. 334 Wis.2d 536, ¶¶35, 43-50.

Finally, the Boettcher rule applies to cases in which an offender is seeking credit against consecutive sentences for a period of pretrial custody in two separate cases. State v. Trepanier, 2014 WI App 105, ¶14, 357 Wis.2d 662, 855 N.W.2d 465. Trepanier was in custody in both a pending criminal case and a civil commitment for contempt. When he was sentenced in the criminal case the judge ordered the sentence to run consecutively to the civil commitment. Boettcher did not preclude awarding credit for the time Trepanier was in both pretrial custody for the criminal case and custody under the civil commitment because the custody for the civil commitment was not pretrial custody. Id., ¶¶12-14.

45. State v. Wolfe, 2001 WI App 66, 242 Wis.2d 426, 625 N.W.2d 655.

46. See note 25, above.

47. Note, however, that if supervision has not yet been revoked, ordering the credit for the new offense may be required. In State v. (Eliseo) Brown, 2010 WI App 43, 324 Wis.2d 236, 781 N.W.2d 244, the defendant was held in custody in connection with a Wisconsin case and an Illinois parole hold. He was sentenced in Wisconsin first, and given a sentence consecutive to any other sentence. The circuit court denied him credit for his custody time on the theory Illinois might grant it to him, and thus give him improper “double credit.” The court of appeals held it must be applied to the Wisconsin sentence, as the question of “double credit” was not ripe because Illinois had not revoked his parole yet, and to deny credit on this sentence might mean he would never get it at all.

48. This section discusses the modification or correction of a sentence to reflect sentence credit where none, or an allegedly inadequate amount, had originally been given. See State v. Amos, 153 Wis.2d 257, 279-82, 450 N.W.2d 503 (Ct. App. 1989), for a case where a sentence was amended to eliminate sentence

credit to which the defendant was not entitled.

49. State v. Obriecht, 2015 WI 66, ¶¶33-36, 42-47, 363 Wis.2d 816, 867 N.W.2d 387. Obriecht addressed the application of credit to an offender reincarcerated under § 302.11(7), which governs parole revocation, but § 302.113(9), which governs extended supervision revocation, is essentially identical to § 302.11(7). Thus, the Committee concludes Obriecht's holding will also apply to offenders who have been reconfined under § 302.113(9).

50. State v. Lira, 2021 WI 81, ¶35, 399 Wis. 2d 419, 966 N.W.2d 605 (when a “convicted offender” is “made available to another jurisdiction,” sentence credit toward the offender’s Wisconsin sentence must conform to “the terms of s. 973.155).

51. For example, if the offender is serving a Wisconsin sentence and the other jurisdiction imposes a concurrent sentence, the Wisconsin sentence would continue to run—just as would be the case if the offender serving a sentence imposed in one county in Wisconsin was given a new, concurrent sentence in another Wisconsin county. If the other jurisdiction imposes a consecutive sentence, that would sever the connection between the offender’s custody and the Wisconsin case until the offender is returned to Wisconsin to complete the sentence imposed here. Cf. Lira, 399 Wis. 2d 419, ¶¶33. It might also be the case that the offender’s custody in the other jurisdiction before being sentenced there should be credited to the Wisconsin sentence because the offender was not given any credit for that time toward the sentence in the other jurisdiction.

[This page is intentionally left blank]

SM-35 INCREASED PENALTY FOR HABITUAL CRIMINALITY — § 939.62

CONTENTS

Scope 2

I. Alleging Repeater Status 2

 A. Before Arraignment or Plea..... 2

 B. Amending a Repeater Allegation 2

 C. Dismissal and Refiling..... 3

II. Methods of Establishing Repeater Status; When it Must be Established..... 3

 A. By the Defendant’s Personal Admission 4

 B. By Copy of the Judgment of Conviction or Other Official Record 5

III. Substantive Issues..... 6

 A. Timing of Offenses and Convictions..... 6

 B. Misdemeanor Convictions..... 7

 C. Periods of Incarceration..... 7

IV. Sentencing..... 8

 A. Correctly Stating a Repeater Sentence 8

 B. Multiple Counts; Consecutive or Concurrent Sentences..... 9

 C. Probation..... 10

 D. Correcting an Improper Repeater Sentence..... 10

V. Application to Specific Crimes..... 10

 A. Attempt – § 939.32 10

 B. Controlled Substance Offenses – § 961.48..... 11

 C. Contempt of Court – Punitive Sanction – § 785.04..... 11

 D. Possession of Firearm by a Felon – § 941.29 11

 E. Use of a Dangerous Weapon – § 939.63 11

Scope

This Special Material addresses issues arising in implementing Wisconsin's "repeater" statute – § 939.62. The formal title for the provision is "increased penalty for habitual criminality," but the commonly used term "repeater" is employed here. This addresses the generally applicable repeater provisions set forth in subsections (1), (2), and (3) of § 939.62.¹ Not addressed is the "persistent repeater" provision in § 939.62(2m)² or the several crime-specific repeater provisions that now exist.³

Issues arise at several stages of the criminal prosecution: when repeater status is alleged in the charging document; when a plea of guilty is accepted; when proof of repeater status is made; when the trial court makes the formal finding of repeater status; and when the repeater-enhanced sentence is imposed. There are also substantive issues concerning the timing of offenses and convictions, how the repeater statute's time periods are affected by periods of incarceration, and how the repeater statute is applied to specific statutory violations.

I. Alleging Repeater Status

A. Before Arraignment or Plea

If the State seeks to establish that a defendant is a repeat offender and thus eligible for an enhanced sentence, it must allege the defendant's prior convictions "in the complaint, indictment or information or amendments so alleging at any time before or at arraignment, and before acceptance of any plea." § 973.12(1).

The Wisconsin Supreme Court has recognized that the time of arraignment or plea acceptance is "the cut-off point after which time a defendant can no longer face exposure to repeater enhancement for the crime" charged. State v. Martin, 162 Wis.2d 883, 900, 470 N.W.2d 900 (1991). This cut-off point is strict and applies regardless of the type of plea entered by the defendant. When a repeater allegation is improperly added after the deadline, it is of no effect and must be vacated. Proof of prejudice is irrelevant. Finally, the portion of § 973.12(1) which allows for time to investigate the defendant's possible prior convictions before a plea is accepted does not extend the period for alleging repeater status beyond the time of arraignment or plea acceptance or entry. Martin, 162 Wis.2d 883, 906.

B. Amending a Repeater Allegation

A charging document may be amended after arraignment or plea acceptance to correct

an error in the portion dealing with repeater status if the amendment does not prejudice the defendant. In State v. Gerard, 189 Wis.2d 505, 509, 525 N.W.2d 718 (1994), the court allowed the correction of the portion of the information which dealt with the extent of the penalty because that portion was not required by § 973.12(1) and because the amendment did not prejudice the defendant. An amendment of this type is not prohibited by § 973.12(1) because the allegation of a defendant's prior convictions will still have been made prior to arraignment and plea acceptance. Therefore, the amendment will be allowed unless there is prejudice to the defendant.

Applying Martin and Gerard, the Wisconsin Court of Appeals has held that "where the information correctly alleges a defendant's repeater status, a post-arraignment amendment to the information does not violate § 973.12 as long as it does not affect the sufficiency of the notice to the defendant concerning his or her repeater status." State v. Campbell, 201 Wis.2d 777, 785, 549 N.W.2d 501 (Ct. App. 1996).

A post-arraignment or post-plea amendment to the charging document alleging a provable prior conviction after the State failed to prove the prior conviction included in the original charging document will not be allowed. An amendment of that sort violates due process because the defendant has not been sufficiently notified of possible punishment at the time of arraignment or plea. State v. Wilks, 165 Wis.2d 102, 110, 477 Wis.2d 632 (Ct. App. 1991).

C. Dismissal and Refiling

When a repeater allegation has not been timely filed, or if there is an error in the allegation, the State may move for dismissal of the complaint without prejudice and, if the motion is granted, issue a new complaint that includes a proper repeater allegation. State v. Larsen, 177 Wis.2d 835, 839-40, 503 N.W.2d 359 (Ct. App. 1993).

II. Methods of Establishing Repeater Status; When it Must be Established

Before sentencing a defendant to the enhanced periods set forth in § 939.62, the prior convictions serving as a basis for the penalty increase must be "admitted by the defendant or proved by the State." Wis. Stat. § 973.12. As elaborated by the case law discussed below, this statute provides that the prior convictions can be established in either of the two ways:

(a) by the defendant's **personal** admission of the priors; or (b) by proof of the priors by reference to an official record, preferably by furnishing the court with copies of the judgment of conviction.

A. By the Defendant's Personal Admission

An admission of the prior convictions by the defendant is the simplest, surest way to establish the existence of the convictions. The admission must be made by the defendant personally, on the record. An admission may not “be inferred nor made by a defendant’s attorney, but rather, must be a direct and specific admission by the defendant.” State v. Koeppen, 195 Wis.2d 117, 127, 536 N.W.2d 386 (Ct. App. 1995) (Koeppen I), citing State v. Farr, 119 Wis.2d 651, 659, 350 N.W.2d 640 (1984). The admission must contain specific reference to the date of the conviction and any period of incarceration, if relevant to application of § 939.62 (see below, Sec. III. A and C). State v. Saunders, 2002 WI 107, ¶22, 255 Wis.2d 589, 649 N.W.2d 263.

In guilty plea cases, it is sufficient to cover this step with a specific question during the plea acceptance colloquy. SM 32, Accepting A Plea Of Guilty, includes the following question:

“Were you convicted of (name of offense) on (date)?”

Adding a question like this was suggested by the court of appeals in State v. Goldstein, 182 Wis.2d 251, 261, 513 N.W.2d 631 (Ct. App. 1994):

One simple and direct question to the defendant from either the prosecutor or the trial judge asking whether the defendant admits to the repeater allegation will, in most cases, resolve the issue. We suggest that trial judges include this question in their colloquy with the defendant at the plea hearing (if there is one) or, otherwise, at the time of sentencing.

The Wisconsin Supreme Court has given similar advice in a case involving sentencing as a repeater after a jury trial:

The trial court may ask the defendant the direct question while observing the defendant’s criminal record before him whether the defendant was convicted on a particular date of a specific crime. . . .

Farr, 119 Wis.2d at 659.

The question in SM-32 is modeled after the one suggested in Farr.

B. By Copy of the Judgment of Conviction or Other Official Record

If the defendant does not provide a direct personal admission of the prior conviction, then the State must prove the existence and date of the conviction beyond a reasonable doubt. Saunders, 255 Wis. 2d 589, ¶¶20, 51.

The best, most direct method of proving prior convictions is to provide a certified copy of the judgment(s) of conviction. Saunders, 255 Wis. 2d 589, ¶¶24, 55. An uncertified copy may also suffice. Id., ¶¶25-31, 34. Other documents may also be used. Section 973.12(1) provides in part as follows:

An official report of the F.B.I. or any other governmental agency of the United States or of this or any other state shall be prima facie evidence of any conviction or sentence therein reported.

Any official report specific enough to identify the defendant, the crimes, and the date of the convictions is sufficient. See Farr, 119 Wis.2d at 660. A presentence report qualifies if the repeater allegation was expressly contemplated by the writer of the report; the date of the relevant prior conviction is included in the report; and the report contains sufficient indications that the writer independently verified the prior conviction from sources other than the complaint. State v. Caldwell, 154 Wis.2d 683, 693–95, 454 N.W.2d 13 (Ct. App. 1990).

Section 939.62(3)(a) excludes motor vehicle offenses under chs. 341 to 349 as qualifying prior convictions for § 939.62 sentencing enhancement. However, if a defendant has previously been convicted of a criminal offense involving a motor vehicle—for instance, under §§ 940.09 and 940.10—that conviction will be listed on the defendant’s Department of Transportation driving transcript. A certified DOT transcript is sufficient to prove prior convictions for purposes of sentence enhancement under the traffic code. State v. Spaeth, 206 Wis.2d 135, 153, 556 N.W.2d 728 (1996). The standard for establishing prior convictions for sentence enhancement in traffic cases is lower than under § 939.62, Saunders, 255 Wis. 2d 589, ¶¶32-33, and there is no case addressing the use of a DOT transcript to prove a prior conviction for purposes of § 939.62. Nonetheless, the Committee concludes that the standards for assessing the sufficiency of a presentence report or other official report under § 973.12 would apply to the use of a DOT transcript if it is offered as proof of a prior conviction for purposes of § 939.62.

By contrast, Consolidated Court Automation Programs (CCAP) reports are not sufficient to establish prima facie proof of a qualifying conviction for purposes of sentencing a defendant as a repeater. State v. Bonds, 2006 WI 83, ¶42, 292 Wis.2d 344,

717 N.W.2d 133 (a CCAP report is neither the official record of a criminal case nor a copy of the actual judgment of conviction).

Note that once a defendant has been found guilty of an alleged qualifying conviction, whether upon entry of a plea or return of verdict, the defendant has been “convicted” for purposes of § 939.62 even if he or she has not yet been sentenced. State v. Wimmer, 152 Wis. 2d 654, 449 N.W.2d 621 (Ct. App. 1989). In the event a judgment of conviction has not yet been entered for the alleged qualifying offense because the defendant has not yet been sentenced, proof of existence of conviction will require some other kind of court record—for instance, a transcript of the plea, a copy of the verdict forms, or minute sheets.

Proof of the prior conviction is not governed by the formal rules of evidence applicable at trial. Saunders, 255 Wis.2d 589, ¶¶36-46; Wis. Stat. § 911.01(4)(c). The state may satisfy the proof requirement by asking the court to take judicial notice of court records in the same county and supplying the necessary information. Wis. Stat. § 902.01(2)(b) and (4); State v. Koeppen, 2000 WI App 121, ¶¶35-37, 237 Wis. 2d 481, 614 N.W.2d 530 (Koeppen II). Regardless of the evidence submitted to prove the qualifying conviction, if the defendant objects to its accuracy or reliability the State may need to submit supplemental proof to establish beyond a reasonable doubt the existence of the conviction. The court must look at and weigh the totality of the evidence to determine if the State has satisfied its burden. Saunders, 255 Wis.2d 589, ¶¶52-53.

Finally, the existence of the prior convictions must be established **before** sentence is actually imposed. If the defendant did not personally admit the convictions at the time of the plea or went to trial, the court may ask for an admission at the sentencing hearing. Koeppen I, 195 Wis.2d at 130; Goldstein, 182 Wis.2d at 261. If the defendant has not admitted the convictions, the State may rely on proof that was submitted as evidence or otherwise entered in the record either before or at sentencing. Saunders, 255 Wis.2d 589, ¶48; State v. Kashney, 2008 WI App 164, 314 Wis.2d 623, 761 N.W.2d 762. However, if the State relies on the use of judicial notice, it must do so prior to sentencing despite § 902.01(6), which provides that judicial notice may ordinarily be taken at any stage of the proceeding. Koeppen I, 195 Wis.2d at 131 (the use of judicial notice at a postconviction proceeding to correct the failure to prove prior convictions at sentencing is not effective because it is too late).

III. Substantive Issues

A. Timing of Offenses and Convictions

A defendant will be eligible for enhanced punishment as a repeat offender “if the actor

was convicted of a felony during the 5 year period immediately preceding the commission of the crime for which the actor presently is being sentenced, or if the actor was convicted of a misdemeanor on 3 separate occasions during that same period, which convictions remain of record and unreversed. . . .” § 939.62(2); State v. Midell, 40 Wis.2d 516, 527, 162 N.W.2d 54 (1968); Goldstein, 182 Wis.2d at 259. The date the judgment or judgments of conviction were entered determine the date for measuring the 5 year period. State v. Mikrut, 212 Wis.2d 859, 569 N.W.2d 765 (Ct. App. 1997).

B. Misdemeanor Convictions

The phrase “convicted of a misdemeanor on three separate occasions,” as used in § 939.62(2), does not require that three misdemeanor convictions occur in three separate court appearances. State v. Wittrock, 119 Wis.2d 664, 674, 350 N.W.2d 647 (1984). The focus is on the quantity of crimes committed and not the date of each conviction. “Whenever a misdemeanant is convicted of a fourth misdemeanor which was committed subsequent to the convictions of three prior misdemeanors, the defendant's sentence may be enhanced by the repeater statute.” Id.

Because the focus is on the quantity of misdemeanors committed, a defendant’s sentence may be enhanced even if the three misdemeanors serving as the basis for repeater status were committed as part of a single incident or transaction. State v. Hopkins, 168 Wis.2d 802, 810, 484 N.W.2d 549 (1992). “[T]hree convictions of misdemeanors during the five-year period satisfies the statute, regardless of when the misdemeanors were committed.” Id.

In the Committee’s judgment, a misdemeanor conviction expunged under § 973.015 cannot be the basis for a repeater finding. Section 939.62(2) requires that “convictions remain of record and unreversed”; an expunged conviction does not “remain of record.”⁴

C. Periods of Incarceration

When a court calculates the 5 year period between the commission of the present offense and the conviction of any prior offenses, “time which the actor spent in actual confinement serving a criminal sentence shall be excluded.” § 939.62(2).

The charging document need not include the period of incarceration served by the defendant even if the period between the commission of the present crime and the defendant’s prior conviction(s) is greater than 5 years. State v. Squires, 211 Wis.2d 873, 879, 565 N.W.2d 309 (Ct. App. 1997).

Where the period between the commission of the present crime and the conviction for any prior crimes exceeds five years and the defendant had been imprisoned during that period, the length of the period of confinement must either be admitted by the defendant or proved by the State. State v. Goldstein, 182 Wis.2d at 260 (the defendant's admission that he spent "10 months, about" in prison was inadequate to satisfy the proof of the element).

The Wisconsin Court of Appeals has suggested the use of the following question to obtain an adequate admission from the defendant: "For what period of time was the defendant incarcerated as a result of the conviction?" Zimmerman, 185 Wis.2d at 559.

If an adequate admission cannot be obtained from the defendant, the State must prove the period of incarceration in the same way it is required to prove the defendant's prior convictions. Goldstein, 182 Wis.2d at 260 61.

IV. Sentencing

Section 939.62 applies only where the court wishes to impose a sentence beyond the statutory maximum for the crime of which the defendant was convicted. So, even if repeater status was properly alleged and proved, the penalty increases come into play only if the sentencing judge imposes a sentence in excess of the regular maximum for the crime. If the court imposes a sentence within the regular statutory range, it is error to attribute any part of that sentence to repeater status under § 939.63. Harris, 119 Wis.2d at 625. Relying on the § 939.62 to enhance a sentence within the statutory maximum is an abuse of discretion and a specific increase imposed for repeater status will be dropped from the sentence. Id. See also State v. Vinson, 183 Wis.2d 297, 313-15, 515 N.W.2d 314 (Ct. App. 1994).

However, a sentencing judge's mistaken reference to a defendant's status as a repeat offender will not automatically constitute an abuse of discretion. If the judge offers specific findings upon which the sentence was based and does not specifically state that the sentence is being enhanced due to the repeat offender statute, an abuse of discretion will not be found even if the judge mistakenly refers to the defendant as a repeat offender or if the judge correctly refers to the defendant as a repeat offender but imposes a sentence below the statutory maximum. Farr, 119 Wis.2d at 661-63.

A. Correctly Stating a Repeater Sentence

The factfinding for proof of prior convictions is to be done by the trial court. Block v. State, 41 Wis.2d 205, 211, 163 N.W.2d 196 (1968). If the court desires to impose a sentence greater than the regular statutory maximum, it must "make a finding that the

defendant is a repeater.” State v. Harris, 119 Wis.2d 612, 619-20, 350 N.W.2d 633 (1984). The findings must specifically articulate the basis for the repeater status on the facts on record. Id.

Section 939.62(1) provides that if a person qualified as a repeater, maximum sentences are increased as follows:

- a maximum of one year or less may be increased to not more than 3 years.
- a maximum of more than one year but not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if the prior conviction was for a felony.
- a maximum of more than ten years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 10 years if the prior conviction was for a felony.

If the defendant’s status as a repeater under § 939.62 has been properly alleged and proved, and if the sentencing court has concluded that a sentence in excess of the regular statutory maximum is appropriate, the sentence should be correctly stated on the record and reflected in the judgment of conviction. The court should state that the defendant’s status as a repeater has been established, identify the increased sentence that § 939.62 allows, and then state the sentence that is being imposed. Again, the term of years imposed must be in excess of that authorized by the statutory maximum for the crime and within the increased penalty allowed by § 939.62. The court should not indicate that any particular portion of the sentence is attributed to the defendant’s repeater status, but a statement to that effect will not constitute reversible error. See § 973.12(2) and State v. Upchurch, 101 Wis.2d 329, 335, 305 N.W.2d 57 (1981), cited in Harris, 119 Wis.2d 612, 625.

B. Multiple Counts; Consecutive or Concurrent Sentences

If a defendant is being sentenced for multiple counts and is a repeat offender, the sentence for all or any of the separate counts may be increased accordingly. Melby v. State, 70 Wis.2d 368, 384, 234 N.W.2d 634 (1975).

The imposition of consecutive sentences is not a condition to the use of an enhanced penalty under § 939.62, Stats. State v. Davis, 165 Wis.2d 78, 83, 477 N.W.2d 307 (Ct. App. 1991). The phrase “maximum term of imprisonment,” as used in § 939.62, refers only to each individual crime and does not contemplate the total sentence for multiple count convictions. Therefore, each count in a multiple count conviction may be enhanced under

§ 939.62, even if the individual sentences are imposed concurrently. Id.

C. Probation

The maximum term of probation is the maximum term of imprisonment for the crime. If the maximum term of imprisonment is increased under § 939.62(1), the maximum term of probation is increased accordingly. State v. Wicks, 168 Wis.2d 703, 706-07, 484 N.W.2d 378 (Ct. App. 1992).

D. Correcting an Improper Repeater Sentence

Section 973.13 provides that if a sentence is wrongly enhanced under § 939.62, (as by a failure to prove repeater status) the excess portion of the sentence will be void and the sentence commuted without further proceedings. This may be done either by an appellate court or by the trial court in a postconviction proceeding. Therjault, 187 Wis.2d at 133; Zimmerman, 185 Wis.2d at 559; State v. Holloway, 202 Wis.2d 694, 551 N.W.2d 841 (Ct. App. 1996).

If a trial court in a postconviction proceeding determines that the defendant's prior convictions were not properly proved, the court may correct the sentence by removing the excess portion and may also amend other portions of the sentence. Holloway, 202 Wis.2d at 698. Therefore, if a sentencing court is forced to correct the sentence under § 973.13, it may resentence the defendant "if the premise and goals of the prior sentence have been frustrated" by the need to commute the sentence. Id. at 700. In Holloway, the trial court reduced a sentence due to a failure to prove the defendant's prior convictions, but then altered the sentences from concurrent to consecutive. The court of appeals affirmed that the sentencing court acted lawfully.

V. Application to Specific Crimes

A. Attempt – § 939.32

The penalty for an attempt (of other than a Class A felony) is half the penalty allowed for the completed crime. § 939.32(1). Because § 939.62 is considered a penalty enhancer and not a crime in itself, it is not subject to the halving provisions of the attempt statute, § 939.32(1). Therefore, if a defendant who qualifies as a repeat offender is convicted of an attempt, the "maximum penalty for the underlying crime is halved and then that penalty may be enhanced under § 939.62." State v. Bush, 185 Wis.2d 716, 725 26, 519 N.W.2d 645 (Ct. App. 1994).

B. Controlled Substance Offenses – § 961.48

Section 961.48 provides for enhanced penalties for second or subsequent offenses under Chapter 961. It fulfills the same legislative purpose as does § 939.62. State v. Ray, 166 Wis.2d 855, 872, 481 N.W.2d 288 (Ct. App. 1992). Therefore, if a defendant is eligible for penalty enhancement under both § 961.48 and § 939.62, the sentence may be enhanced under either section but not under both. Id. at 873.

C. Contempt of Court – Punitive Sanction – § 785.04

Contempt of court for which a punitive sanction is imposed under § 785.04 is not a crime, and therefore, is not subject to the penalty-enhancing provisions of § 939.62. State v. Carpenter, 179 Wis.2d 838, 842-43, 508 N.W.2d 69 (Ct. App. 1993) applying McGee v. Racine County Circuit Court, 150 Wis.2d 178, 441 N.W.2d 308 (Ct. App. 1989).

D. Possession of a Firearm by a Felon – § 941.29

Section 941.29 states that “any person previously convicted of a felony who possesses a firearm is guilty of a Class E felony.” This statute does not create a “penalty enhancer” but rather creates a distinct crime. State v. Jones, 142 Wis.2d 570, 576, 419 N.W.2d 263 (Ct. App. 1987). Therefore, the two year maximum penalty applicable to violations of § 941.29 may be enhanced under § 939.62. Id.

E. Use of a Dangerous Weapon – § 939.63

Section 939.63 states that the maximum term of imprisonment for a crime may be increased if “a person commits a crime while possessing, using or threatening to use a dangerous weapon.” Sections 939.62 and 939.63 may both be used to enhance the maximum term of imprisonment for a single crime. State v. Pernell, 165 Wis.2d 651, 658, 478 N.W.2d 297 (Ct. App. 1991). If the sentencing court wishes to use both § 939.62 and § 939.63 to increase the maximum term of imprisonment for a single crime, § 939.63 must be applied first. The amount of enhancement available under § 939.62 should then be determined (based on the maximum term of imprisonment for the underlying crime plus the amount already enhanced under § 939.63). Id. at 658 59.

COMMENT

SM-35 was approved by the Committee in February 1998. This revision was approved by the

Committee in October 2022; it involved a review and revision of the text and footnotes.

1. The text of subs. (1), (2), and (3) of § 939.62 follow. As to sub. (2m), see note 2, below.

(1) If the actor is a repeater, as that term is defined in sub. (2), and the present conviction is for any crime for which imprisonment may be imposed (except for an escape under s. 946.42 or a failure to report under s. 946.425) the maximum term of imprisonment prescribed by law for that crime may be increased as follows:

(a) A maximum term of one year or less may be increased to not more than 3 years.

(b) A maximum term of more than one year but not more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 6 years if the prior conviction was for a felony.

(c) A maximum term of more than 10 years may be increased by not more than 2 years if the prior convictions were for misdemeanors and by not more than 10 years if the prior conviction was for a felony.

(2) The actor is a repeater if the actor was convicted of a felony during the 5-year period immediately preceding the commission of the crime for which the actor presently is being sentenced, or if the actor was convicted of a misdemeanor on 3 separate occasions during that same period, which convictions remain of record and unreversed. It is immaterial that sentence was stayed, withheld or suspended, or that the actor was pardoned, unless such pardon was granted on the ground of innocence. In computing the preceding 5-year period, time which the actor spent in actual confinement serving a criminal sentence shall be excluded.

[NOTE: Sub. (2m) is not included.]

(3) In this section, “felony” and “misdemeanor” have the following meanings:

(a) In case of crimes committed in this state, the terms do not include motor vehicle offenses under chs. 341 to 349 and offenses handled through proceedings in the court assigned to exercise jurisdiction under chs. 48 and 938, but otherwise have the meanings designated in s. 939.60.

(b) In case of crimes committed in other jurisdictions, the terms do not include those crimes which are equivalent to motor vehicle offenses under chs. 341 to 349 or to offenses handled through proceedings in the court assigned to exercise jurisdiction under chs. 48 and 938. Otherwise, felony means a crime which under the laws of that jurisdiction carries a prescribed maximum penalty of imprisonment in a prison or penitentiary for one year or more. Misdemeanor means a crime which does not carry a prescribed maximum penalty sufficient to constitute it a felony and includes crimes punishable only by a fine.

2. Section 939.62(2m) contains what is commonly referred to as the “three strikes” provision. The formal title is “persistent repeater.”

3. Repeater statutes are proliferating. The following provide increased penalties for repeated

commission of specific crimes and are not addressed in this Special Material.

- § 939.621 Increased Penalty for Certain Domestic Abuse Offenses: provides a penalty increase of up to 2 years for domestic abuse offenses committed within 72 hours of arrest for a domestic abuse offense.

- § 939.626 Increased Penalty; Repeat Child Sex Crimes: provides a 10 year penalty increase for a second violation of §§ 948.02, 948.05, 948.06, 948.07, or 948.08.

Several other statutes refer to an “increased penalty” in their titles, but in fact provide for a minimum sentence, not an increase of the maximum. See, for example, § 939.623 Increased Penalty; Repeat Serious Sex Crimes [five-year minimum sentence]; § 939.624 Increased Penalty; Repeat Serious Violent Crimes [five-year minimum sentence]; § 939.635 Penalties; Assault Or Battery In Secured Juvenile Correctional Facility [five-year minimum sentence].

Finally, there is a series of statutes providing for a penalty increase where a crime is committed under certain circumstances: while armed with a dangerous weapon; while identity is concealed; etc. These have the effect of creating an additional element of the crime and most are addressed by jury instructions presenting the additional fact as a special question for the jury:

- § 939.625 Gang Crime Penalty Enhancer: provides a penalty increase of 5 years for gang-related criminal activity [see Wis JI-Criminal 985].

- § 939.63 Penalties; Use Of A Dangerous Weapon: provides for penalty increases if a person commits a crime while possessing or using a dangerous weapon [see Wis JI-Criminal 990].

- § 939.632 Penalties; Violent Crime in a School Zone: provides a 5-year penalty increase for certain “violent crimes” that are felonies and a 6 month penalty increase for certain “violent crimes” that are misdemeanors (changing their status from a misdemeanor to a felony). There is no jury instruction.

- § 939.64 Penalties; Use of Bulletproof Garment: provides a 5 year penalty increase for felonies committed while wearing a bulletproof garment [see Wis JI-Criminal 993].

- § 939.641 Penalties; Concealing Identity: provides a 5 year penalty increase for felonies committed while identity is concealed; increases the maximum sentence to one year in jail for misdemeanors [see Wis JI-Criminal 994].

- § 939.645 Penalties; Crimes Committed Against Certain People or Property: this is the so-called Hate Crimes Law; it provides a 5 year penalty increase for felonies and increases the maximum sentence to one year in jail for misdemeanors [see Wis JI-Criminal 996, 996.1].

- § 939.648 Penalty; Terrorism: provides a 10 year penalty increase for crimes involving “terrorism.” There is no jury instruction.

- § 939.646 Penalty; Crimes Committed Using Information Obtained From The Sex Offender Registry: provides for a 6 month increase on misdemeanors and a 5 year increase for felonies if the crime was committed using information obtained from the sex offender registry under § 301.46. There is no jury instruction.

- § 939.648 Penalty; Terrorism: provides a 10 year penalty increase for crimes involving “terrorism.”

Also note that Chapter 961 has its own repeater provision for controlled substance offenses [see § 961.48]. See the discussion at sec. V., B., this Special Material.

4. For discussion of misdemeanor expunction under § 973.015, see SM 36, Misdemeanors; Special Disposition Under Section 973.015.

WIS JI-CRIMINAL

INDEX

References are to Instruction Numbers

A

- Abandonment
 - By husband or father, 2000 (WITHDRAWN)
 - See Failure to support, 2152
 - Of child, 2148
- Abduction, 2160, 2161, 2162, 2163
- Abettor, definition, 400
- Abortion, 1125
- Absconding without paying rent, 1462
 - Affirmative defense, 1462A
- Abuse
 - Domestic, within 72 hours, 983
- Abuse of children
 - By a child care provider, 2115
 - Failure to report, 1221C RENUMBERED 2119
 - Mental abuse, 2116
 - Physical abuse, 2108-2114A EXAMPLE
- Abuse of individual at risk, 1268, 1268 EXAMPLE
- Abuse of inmates of institutions, 1270
- Abuse of patients and residents of facilities, 1271, 1271 EXAMPLE, 1272
- Abuse of residents of penal facilities, 1270
- Acceptance of plea of guilty: procedure to be used, SM-32
- Accident
 - Failure to give information or render aid, 2670
 - Generally, 772
- Accomplices
 - See also Conspiracy
 - Statement admitted for nonhearsay purpose, 220B
 - Testimony, effect, 245
- Acting in an official capacity, 915
- Administering dangerous or stupefying drug, 1352
- Admissibility of evidence obtained by a search and seizure, SM-62 (WITHDRAWN)
- Admissions, see Confessions and admissions
- Advice to a person found not guilty by reason of mental disease or defect and committed for institutional care, SM-50A
- Agent
 - Liability of employer for agent's acts, 435 (425, 430, 440 WITHDRAWN)
- Aggravated battery, 1224, 1224A, 1225
- Aggravated recklessness: Circumstances which show utter disregard for human life, 924.1
- Agreed facts, accepted as proved, 162
- Agreed testimony, 161
- Agreement
 - Jurors, supplemental instructions, 520
- Jurors, verdict must be unanimous, 515
- Aiding and abetting, 400, 401, 405, 406, 407
 - Sexual assault while aided, 1205, 1214
- Aiding a felon, 1790
 - By destroying, etc., physical evidence, 1791
- Airgun
 - Homicide by intoxicated user, 1190
 - Homicide by negligent use, 1175
 - Injury by negligent use, 1260
- Alcohol
 - Beverages, providing to underage person, 5050
 - Chemical tests for intoxication, 230-235
 - Concentration level, 2663C
 - Driving under influence, 2660-2669
 - Homicide by intoxicated user, 1185, 1190
 - Intoxication as a defense, 755, 765
 - "Alford" plea, SM-32A
- Alibi, defense, 775
- Alteration of property identification marks, 1488
- Altering a lottery ticket, 1650
- Analog, controlled substance, 6005
- Anhydrous ammonia, theft of, 5024
- Animal mistreatment
 - Failure to provide food and water, 1982
 - Failure to provide shelter, 1984
 - Instigating fights, 1986
 - Keeping animal for fighting, 1988
 - Treating in a cruel manner, 1980
- Anonymous juries, 146
- Appeal, bail pending, (SM-39 WITHDRAWN)
- Appeals rights, advice to defendant
 - Instruction to be given upon conviction and sentence, SM-33
 - Instruction upon denial of a postconviction motion other than § 974.06, SM-33A (WITHDRAWN)
 - Instruction upon denial of a postconviction motion under § 974.06, SM-33B (WITHDRAWN)
- Appointment of counsel, recommended questions and procedure
 - At initial appearance, SM-30
 - For preliminary hearing, SM-31
 - Guilty plea, SM-32
- Arguments, closing, of counsel, 160
- Armed robbery, 1480, 1480A
- Arraignment
 - Requirements of, SM-25
 - Sex crimes charge, SM-40 (WITHDRAWN)
- Arson
 - Defined, 1404, 1405, 1408, 1410
 - Of building of another, 1404

INDEX

WIS JI-CRIMINAL

Of building with intent to defraud insurer, 1405
Of property other than building, 1408
 With intent to defraud, 1410
When committed, 1410
Assault by prisoner, 1778, 1779, 1779A
Assisting or permitting escape, 1780-1783
Assisting suicide, 1195
Attempt
 Example: armed robbery, 582
 Example: burglary, 581
Attempt, generally, 580
Attempted,
 First degree intentional homicide, 1070, 1072
 Murder, felony, underlying felony, 1031
 Possession of a controlled substance, 6031
 Second degree intentional homicide, 1072
 Second degree sexual assault of a child, 2105A
Attendance, school, 2174
Attorney,
 Battery or threat to, 1241A, 1241B
Attorneys
 Arguments, effect, 160
 Improper questions, objections, effect, 147, 215
 Statements or remarks, disregarding, 157
Automobiles, see Vehicles

B

Bail
 After conviction, (SM-39 WITHDRAWN)
 Jumping, 1795
“Baby Luke’s Law,” 1187, 2664B
Bailee, larceny by, 1444
Battery
 Aggravated, 1224, 1224A, 1225
 By a person placed in a facility, 1228A
 By a person subject to an injunction, 1229
 By prisoner, 1228
 Self-defense in issue, 1220A, 1222A, 1223A,
 1224A, 1225A
 Simple battery, 1220
 Substantial with intent to cause bodily harm, 1222,
 1223-1223A (WITHDRAWN)
 To county, city, village, town employee, 1245
 To Department of Commerce or Department of
 Workforce Development employee, 1244
 To Department of Revenue employee, 1242
 To emergency department worker, an emergency
 medical technician, a first responder, or an
 ambulance driver, 1237
 To a health care provider, 1247B

To judge, 1240, 1240A
To law enforcement officer or fire fighter, 1230, 1240C
To nurse, 1243 (WITHDRAWN)
To peace officer, 1230
To probation or parole agent, 1231
To prosecutor, 1240C
To public officer, 1234
To public transit vehicle operator or passenger, 1236
 To technical college district or school district
 officer or employee, 1235
To a staff member of a health care facility, 1247A
To unborn child, 1227
To witness or juror, 1232, 1233, 1238, 1239
Under § 940.19(4), 1224
Under § 940.19(6), 1226
Under § 940.20(1m), 1229
Behavior
 Lewd and lascivious, cohabitation, 1545
 (WITHDRAWN)
 Lewd and lascivious, exposing genitals, 1544
Bet, receiving, 1602
Blood alcohol
 Concentration chart, 237
 Curve, 234
 Tests, 230-235
Bodily harm
 See also Great bodily harm
 Battery, 1220
 Injury by negligent use of weapon, 1260
Bomb scares, 1905, 1920
Bow and arrow
 Homicide by negligent use, 1175
 Injury by negligent use, 1260
Breathalyzer, refusal of, 235
Bribery
 By offer of bribe to influence decision, 1721
 By person promising or transferring a bribe, 1720
 Defined, 1720
 Of public officer or employee, 1720, 1721
 Of witnesses: transferring property, 1808A
 Of witness: accepting a bribe, 1808B
Bulletproof garment
 Wearing of, 993
Burden of proof
 Alibi, 775
 Confession or admission, 180
 mental condition in issue, 185 (WITHDRAWN)
 Forfeiture actions, 2050 RENUMBERED 140A, 515A
 General rule, innocence presumed, 140

Burden of proof (continued)
 Not guilty by reason of mental disease or defect, 600-662
 Paternity cases, 2010 (WITHDRAWN)
 State must prove guilt beyond reasonable doubt, 140

Burden of proof and presumption of innocence, 140

Burglariious tools, possession of, 1431

Burglary
 Arming oneself with a dangerous weapon while in the enclosure, 1425B
 Committing a battery while in the enclosure, 1425C
 Person lawfully present in the enclosure, 1425E
 While armed (1422 WITHDRAWN), 1425A
 With intent to commit felony, 1424
 With intent to steal, 1421

Burning material, negligent handling of, 1310

C

“Carjacking,” 1465

Carrying a firearm
 A handgun on premises where alcohol beverages are consumed, 1338
 In a public building, 1337

Carrying a knife, 1336

Carrying concealed weapon, 1335, 1335A, 1335B, 1336

Carrying weapon where prohibited, 5401

Catnapping, 1983

Cause, 901

Causing a child
 To expose genitals or pubic area, 2141
 To view or listen to sexual activity, 2125

Causing mental harm to a child, 2116

Certificate of title, false statement, 2590

Character and reputation
 Bad reputation of defendant or witness for veracity, 330
 Defendant’s as evidence, 270
 Prior convictions to prove character, 276

Charges, disposed of during trial, 128

Charges, multiple, same offense: three victims, 116
 EXAMPLE

Check
 Definition of, 1491
 Forgery of, 1491
 Possession of a forged check with intent to utter, 1493
 Unattended in a child care vehicle, 2175
 Uttering a forged check, 1492
 Worthless, issue of, 1468
 Over \$500, 1469A, 1469B

Chemical test, intoxication, 230-235

Child
 See Crimes against children
 Abandonment of, 2148
 Abduction of, 2160-2163
 Abuse of, 2108-2116
 Failure to act or prevent, 2106, 2108B
 Failure to report, 1221C RENUMBERED 2119
 Chronic neglect of, 2151
 Concealing death of, 2154
 Contributing to delinquency or neglect of, 2150, 2170-2171
 Credibility as witness, 340
 Custody, interference with, 2166-2169
 Discipline by parent, 950, 951
 Discipline by person in loco parentis, 955 (WITHDRAWN)
 Enticing, 2134, 2134A, 2134B
 Exploitation of, sexual, 2120, 2122
 Affirmative defense for, 2120A
 Sexual assault, 2102-2102E
 Support, failure to provide, 2152
 Unborn, in vehicle, 999A
 Welfare, person responsible for, 2106A

Child pornography,
 Exhibiting or displaying a recording, 2146B
 Possession of, 2146 (WITHDRAWN)
 Possession of a recording, 2146A

Child sex offender working with children, 2147

Chronic neglect,
 Of a child, 2151

Circumstantial evidence, effect, 170
 Flight, 172
 Possession of recently stolen property, 173

Closing instruction, 460, 465
 Optional short form, 465
 Supplemental, on agreement, 520
 Verdicts, see Verdicts

Cocaine, finding amount, 6001, see also Controlled substance

Codefendants
 Judged separately, 120-127
 Statement of, 220 (WITHDRAWN)
 Statement of, statement does not mention defendant, 221
 Verdicts, 490-496

Coercion, as a defense, 790, 1015

Cohabitation, lewd and lascivious behavior, 1545 (WITHDRAWN)

Collateral attach on prior convictions, SM-16

Color of office, defined, 1734

INDEX

WIS JI-CRIMINAL

- Combination,
 - Operating a motor vehicle under the influence of any combination of an intoxicant and any other drug, 2666A
- Comment: Gender Neutral Language, 5
- Commercial gambling
 - Collecting the proceeds of a gambling machine, 1605
 - Operating a gambling place, 1601
 - Receiving a bet, 1602
 - Using wire communications, 1607
- Commitment
 - As a sexually violent person under Chapter 980, Wis. Stats., 2502
 - Not competent to stand trial, SM-50
 - Not guilty by reason of mental disease or defect, SM-50A
 - Under the Sex Crimes Law, 1550, 1551A, 1551B, 1551C (WITHDRAWN)
- Common knowledge, juror may use, 195
- Communicating with a juror, 1812
- Communication, written, denial of rights, 1390
- Competency to proceed, SM-50
 - To plead guilty, SM-32
 - To waive counsel, SM-30
 - To waive preliminary, SM-31
- Complaint, see Pleadings
- Compulsory school attendance, 2174
- Computer crime, 1504, 1505, 1506
- Computer, use of, in child sex crime, 2135
- Concealed weapon, 1335, 1335A, 1335B
- Concealing
 - Death of child, 2154
 - Identity, 1805 RENUMBERED 994
 - Stolen property, 1481
- Conduct
 - Criminal negligence, 925, 1170, 1175
 - Disorderly, 1900
 - Negligent use of weapon, 1260
 - Reckless, 924, 1160, 1250, 1345
- Confessions and admissions
 - Admissibility of, procedure to determine, SM-60 (WITHDRAWN)
 - Evidence that defendant did not understand questions, 187 (WITHDRAWN)
 - How considered, 180
 - Impeachment by inadmissible statement, 320
 - Interlocking, 220A (WITHDRAWN)
 - Mental or physical condition of defendant, 180, 185 (WITHDRAWN)
 - Questions not understood, 187 (WITHDRAWN)
 - Series of statements, 182 (WITHDRAWN)
- Conflict of interest, inquiry into, SM-45
- Consent
 - Entry without, in burglary, 1421, 1424
 - Operating vehicle without, 1466
 - Question in battery case, 1220
 - Sexual assault, 1201-1219
 - To proceed by videoconference, SM-18
 - Without, 948
- Conspiracy
 - Inchoate crime, 570
 - Party to crime, 401, 402, 410, 411
 - Withdrawal, 412
 - Statement of co-conspirator, 418
- Contempt, punitive sanction, 2031
- Contractor, theft by, 1443
- Contributing to the delinquency of a child, 2170, 2171
 - Death as a consequence, 2170A
- Contributing to truancy, 2173
- Contributory negligence, 926
- Controlled substance
 - Acquiring possession by misrepresentation, 6038
 - Analog, 6005
 - Attempted possession of a, 6031
 - Causing death by delivery of, 1021
 - Cocaine, finding amount, 6001
 - Delivery of a, 6020
 - Delivery of an analog, 6020A
 - Delivery of noncontrolled, 6040
 - Delivery of imitation, 6042
 - Detectable amount of, 1187, 2664B
 - Keeping or maintaining a place, 6037
 - Manufacture of, 6021
 - Note on the knowledge requirement in, cases, 6000
 - Operating a motor vehicle while under the influence of a, 2666
 - Possession, 6030
 - Possession as lesser included offense, 6035, 6036
 - Possession of a controlled substance without tax stamp, 6009
 - Possession with intent to deliver, 6035
 - Possession with intent to manufacture, 6036
- Convicted person, required instruction following plea or trial, SM-33
- Conviction
 - Character evidence, 276
 - Circumstantial evidence, when sufficient, 170
 - Motive not essential, 175
 - One count, lesser included offense, 112, 122
 - One count, no included offense, 110, 120
 - Prior, of defendant, effect on testimony, 327
 - Prior, of witness, effect on testimony, 325
 - Single defendant, 110-117

- Two counts, conviction for both proper, 115, 125
- Two counts, conviction for only one proper, 117, 127
- Two defendants, 120-127
- Verdicts, see Verdicts
- Corporal punishment
 - By parent, when privileged, 950, 951
- Corporate liability
 - Acts of agent or employee
 - other than strict liability cases, (430
 - WITHDRAWN) strict liability cases, (425
 - WITHDRAWN)
 - Acts of director, officer, or management executive, 420
 - Scope of employment, (425, 430 WITHDRAWN)
 - Scope of office or employment, 4201
- Corporation Counsel,
 - Battery or threat to, 1241A, 1241B
- Corpse hiding or burying, 1194
- Corpse
 - Hiding or burying of, 1194
 - Mutilating of, 1193
- Counsel
 - Arguments, effect, 160
 - Improper questions, 147, 148
 - Objections overruled, effect, 148
 - Objections sustained, effect, 147
 - Standby, SM-30A
 - Statements or remarks, disregarding, 157
 - Waiver of,
 - generally, SM-30
 - right to conflict-free representation, SM-45
- Court's denial of motion either to withdraw guilty plea or no contest plea or to review sentence, SM-33A (WITHDRAWN)
- Court's denial of motion for new trial, SM-33B (WITHDRAWN)
- Court's instruction to defendant at arraignment and before acceptance of a plea of guilty on sex crimes charge, SM-40 (WITHDRAWN)
- Credibility of witnesses
 - Child witness, 340
 - Generally, 300
 - Impeachment of witnesses, 320-330
 - Prisoner as victim or defendant, prisoner status an issue, 312
- Credit card
 - Fraudulent use of, 1497
 - Theft of, 1496
- Credit for "jail time," SM-34A
- Crime, see Offense
- Crimes against children
 - Causing a child to expose genitals or pubic area, 2141
 - Causing mental harm to a child, 2116
 - Contributing to the delinquency of a child, 2170, 2171
 - Contributing to the delinquency of a child: death as a consequence, 2170A
 - Exposing child to harmful material, 2142
 - Exposing genitals or pubic area to a child, 2140
 - Failure to support, 2152
 - Incest with a child: sexual contact, 2131
 - Incest with a child: sexual intercourse, 2130
 - Interference with the custody of a child: affirmative defenses, 2169
 - Interference with the custody of a child by a parent: concealing a child, 2168
 - Patronizing a child, 2136A
 - Physical abuse of a child: intentionally causing bodily harm, 2109
 - Physical abuse of a child: intentionally causing bodily harm by conduct which creates a high probability of great bodily harm, 2110
 - Physical abuse of a child: intentionally causing great bodily harm, 2108
 - Physical abuse of a child: recklessly causing bodily harm, 2112
 - Physical abuse of a child: recklessly causing bodily harm by conduct which creates a high probability of great bodily harm, 2113
 - Physical abuse of a child: recklessly causing great bodily harm, 2111
 - Possession of child pornography, 2146
 - Second degree sexual assault of a child: sexual contact or intercourse with a person who has not attained the age of 16 years, 2104
 - Sexual assault, 2102-2102E, 2104
 - Sexual intercourse with a child, 2102, 2102A, 2102B, 2102C, 2138
 - Soliciting a child for prostitution, 2136
- Crimes against financial institutions, 1508
- Criminal
 - Gang crimes, 985
 - Negligence, 924
 - Omission, 905
 - Recklessness, 924
- Criminal (continued)
 - Slander of title, 1499
 - Trespass to energy provider property, 1440
 - Trespass to medical facility, 1439
- Criminal contempt, 2031
- Criminal damage or threat to property of a Department of Revenue employee, 1403.2 RENUMBERED 1402B
- Criminal damage or threat to property of a judge, 1403.1 RENUMBERED 1402A
- Criminal damage to property
 - Cemetery, 1401A
 - Energy provider property, 1400B
 - Facilities associated with designated groups, 1401B

INDEX

WIS JI-CRIMINAL

Generally, 1400
Personal property, 1401C
Property of a Department of Revenue employee, 1402B
Property of judge, 1403.1 RENUMBERED 1402A
Religious property, 1402 RENUMBERED 1401, 1401A
Vending and other machines, 1400A
Custody, child, interference with, 2166-2169
Custody order, escape from custody, 1775

D

Damage or threat to property of a witness, 1400A
Damage to property, criminal, 1400, 1402B
Dangerous drugs
Administering, 1325
Dangerous weapon, 910
Endangering safety by use of, 1320-1324
Use of in committing crime, 990
Dangerous Weapons other than Firearms on School
Premises, 2179
Death of child, concealing, 2154
Defamation, 1380
Defendant proceeding pro se, preliminary instruction, 70
Defendants
As witness in own behalf, 310 (WITHDRAWN)
Character and reputation, evidence, effect, 270
Confessions and admissions, 180
Consent to proceed by videoconference, SM-18
Failure to testify, 315
Mental condition when making statement, 185 (WITHDRAWN)
Motive, evidentiary circumstance, 175
One defendant
single count, no included offense, 110
single count, with included offense, 112
two counts, conviction for both proper, 115
two counts, conviction for only one proper, 117 (WITHDRAWN)
Presumed innocent, 140
Prior conviction, evidence, 327
Pro se defendant, SM-30A
Two defendants
single count, no included offense, 120
single count, with included offense, 122
two counts, conviction for both proper, 125
two counts, conviction for only one proper, 127 (WITHDRAWN)
Verdict as to defendant only, 247
Wearing restraining device, 314
With counsel, procedure, SM-30
Without counsel, SM-30, SM-31

Defense of others
Effect of provocation by person defended, 835
Force intended or likely to cause death or great bodily harm, 830
Force less than that likely to cause death or great bodily harm, 825
Defense of property
Another's property, 860
One's own property, 855
Defenses
Alibi, 775
Coercion, 790, 1015
Drugged condition, 755
negating state of mind essential to crime, 765
Entrapment, 780, 780A
Intoxication
involuntary, 755
negating state of mind essential to crime, 765
Justification, 2672A
Mistake, negating state of mind essential to crime, 770
Negating essential element of crime, 765-780
Property, 855, 860
Right to recapture, law note, 710
Self-defense 800-820
of others, 825, 830
unintended harm to third party, 821
Theory of defense, 700
Use of form to arrest, 880, 885
Defenses and defensive matters, 600-955
Definitions
Acting in official capacity, 915
Circumstantial evidence, 170
Complaint, 145
Dangerous weapon, 910
Entrapment, 780, 780A
Definitions (continued)
Evidence, 103
Great bodily harm, 914
Information, 145
Intentionally, 923A, 923B
Involuntary intoxication, 755
Management executive, 420
Mental purpose, 923A
Negligence, 925
Official capacity, 915
Ordinary care, 375
Parties to crime, 400
Person concerned in commission of crime, 400
Plea of not guilty, 110-127
Possession, 920
Reasonable doubt, 140
Recklessness, 924
Sexual contact, 1200A

Sexual intercourse, 1200B
 Solicitor, 400, 550
 Utter disregard, 924.1
 With intent to, 923A, 923B

Delinquency, juvenile
 Contributing to, by parent, guardian, or legal custodian,
 1961 (WITHDRAWN), 2171
 Contributing to child's, 1960 (WITHDRAWN), 2170
 Composite instruction, 2020
 Sample: burglary, 2021

Delivering an article to an inmate, 1785

Delivery of a controlled substance, 6020
 Of controlled substance analog, 6020A
 To a prisoner, 6003

Delivery of imitation controlled substance, 6042

Delivery of noncontrolled substance which is represented
 to be a controlled substance, 6040

Delivery of a prescription drug, 6110

Denial of rights
 Automobile insurance, 1392 (WITHDRAWN)
 In general, 1390 (WITHDRAWN)
 Written communication, 1391 (WITHDRAWN)

Department of Commerce or Department of Workforce
 Development employee, battery or threat to, 1244

Department of Revenue employee, battery or threat to,
 1242
 Damage to property of, 1402B

Depraved mind
 See Reckless homicide

Detainers
 Advising a prisoner of rights under the Uniform
 Detainer Act, SM-90

Detectable amount of restricted controlled substance, 1187,
 2664B

Determining value in theft cases, 1441A

Disarming a peace officer, 1328

Discharge of a firearm in a school zone, 2178B
 From a vehicle, 1327
 Of a sexually violent person under Chapter 980,
 Wis. Stats., 2506

Disclosure of the identity of an informer, SM-52

Disclosure of manufacturer of recording, 1460

Dishonest advantage
 Exercised by a public officer, 1732

Disorderly conduct, 1900

Disposed charges during trial, 128

Distributing a controlled substance to a minor, 6002
 On or near certain premises, 6004

Dognapping, 1983

Domestic abuse
 Committing within 72 hours of arrest, 983
 Repeater, 984
 Violating a no contact prohibition, 2044

"Drive-by shooting," 1327

Driving while intoxicated, 2660, 2660A, 2663, 2663A
 Great bodily harm caused by, 1262, 1263
 Homicide caused by, 1185, 1186
 Injury caused by, 2661, 2665
 Under the influence of drugs, 2666
 Under the influence and 0.08 grams or more combined,
 2668, 2669

Drugged condition
 Involuntary, defined, defense, 755A, 755B
 Negating state of mind essential to crime, 765

Drug paraphernalia, possession of, 6053

Drugs
 Administering dangerous or stupefying, 1352
 Homicide by user, 1185, 1190
 Operating under influence of, 2616
 Operating under the influence of any combination of an
 intoxicant and any other drug, 2666A
 Prescription, 6112
 See also Controlled substances

Drunk driving
 Criminal Code, 1185, 1186, 1262, 1263
 Motor Vehicle Code, 2660-2669

E

Edibles, placing foreign objects in, 1354

Elder person
 Physical abuse: intentional causation of great bodily
 harm, 1249A
 Physical abuse: intentional causation of bodily harm,
 1249B
 Physical abuse: intentional causation of bodily harm
 under circumstances or conditions that are likely to
 produce great bodily harm, 1249C
 Reckless causations of great bodily harm, 1249D
 Reckless causation of bodily harm, 1249E
 Reckless causation of bodily harm under circumstances
 or conditions that are likely to produce great bodily
 harm, 1249F
 Victims, 997
 Violent crime against, 998

Election fraud, 53010

Electric weapon, 1344A

Emergency medical personnel
 Battery to, 1237
 Obstructing, 1360

INDEX

WIS JI-CRIMINAL

- Eluding or fleeing an officer, 2630
- Embezzlement, 1444
- Employer and employee
 - Corporate liability
 - for acts of lesser employee, (425, 430 WITHDRAWN)
 - for acts of management, 420
 - Liability for employee's acts, 420, 435 (425, 430, 440 WITHDRAWN) authorization or acquiescence, (435 WITHDRAWN)
 - Theft by employee, 1444
- Encouraging violation of probation, extended supervision, or parole, 1788
- Encumbered personal property, transfer of, with intent to defraud, 1470
- Endangering safety
 - By intentionally discharging a firearm from a vehicle, 1327
 - By reckless conduct, 1345, 1347
 - By use of dangerous weapon, 1305 RENUMBERED 1321, 1321 RENUMBERED 1320, 1323 RENUMBERED 1322, 1322A, 1322 RENUMBERED 1323, 1324
- Endorsement, false, 1491
- Energy provider property
 - Criminal damage to property 1400B
 - Criminal trespass to, 1440
- Enticing a child, 1530 (WITHDRAWN), 2134
- Entrapment
 - Alternate version, 780A
 - Defense, definition, proof, 780
- Entry
 - Into locked vehicle, 1426
 - Into locked coin box, 1433
 - Into locked dwelling, 1438
 - With intent to commit felony, burglary, 1424
 - With intent to steal, burglary, 1421
- Escape, 1770, 1771, 1772, 1773, 1774, 1775A
 - Assisting or permitting, 1780-1783
 - from custody order, 1775
- Evidence
 - Accomplice's testimony, 245
 - Admissibility of identification evidence at issue prior to or during trial, SM-61 (WITHDRAWN)
 - Admissibility of evidence when obtained by a search and seizure, SM-62
 - Agreed facts, 162
 - Arguments of counsel, effect, 160
 - Bad reputation for veracity, 330
 - Basis for verdict, 100
 - Character and reputation of defendant, 270, 276
 - Child witness, credibility, 340
 - Circumstantial, effect, 170, 172, 173
 - Complaint not evidence, 145
 - Confessions, 180
 - Conspiracy, 412
 - Counsel
 - arguments, effect, 160
 - statements and remarks, disregarded, 157
 - Credibility of child witness, 340
 - Credibility of witnesses, 300
 - Defendant wore a GPS or other monitoring device, 313
 - Defined, 103
 - Exact time of commission need not be proved, 255
 - Exhibits, 155
 - Expert testimony
 - competence, 200
 - hypothetical question, 205
 - sanity in issue, 640
 - Failure of defendant to testify, 315
 - Falsus in uno, falsus in omnibus, 305
 - Flight, escape, concealment, 172
 - Identification, 141
 - Impeachment of witness, 320-330
 - Improper questions, 147-148
 - Inadmissible evidence, 155, 320
 - Information not evidence, 145
 - Intoxication
 - chemical test, 230, 232
 - refusal to furnish sample for test, 235
 - Judicially noticed facts, 165
 - Juror's knowledge or observation, 195
 - Limited purpose: statement of a codefendant, 220 (WITHDRAWN)
 - Motion to suppress, SM-62 (WITHDRAWN)
 - Motive, presence or absence of, 175
 - Negligence defined, 375
 - Objections of counsel, effect, 147
 - Opinion evidence, 200
 - feeble-mindedness, 200
 - hypothetical question, 205
 - sanity, 640
 - Other crimes, 275
 - Polygraph, 202 (WITHDRAWN)
 - Presumptions, 225
 - Prima facie, 225
 - intoxication test, 230
 - Prior conviction of defendant, 276, 327
- Evidence (continued)
 - Prior conviction of witness, 276, 325
 - Prior inconsistent statement, 320A
 - Prior sexual conduct, 1220G
 - Recently stolen property, possession of, 173
 - Refusal to deliver property to person entitled to it, 1444
 - Solicitation as a crime, proof, 550

- Statements against interest, 180
 - Statements or remarks of counsel disregarded, 157
 - Stipulated facts, 162
 - Stricken testimony, 150
 - Time of offense
 - exact, state need not prove, 255
 - where state has elected, 265
 - where state not required to elect, 260
 - View is not evidence, 152
 - Weight, how decided, 190
 - Excuse, see Defenses
 - Exhibits, inadmissible if not received in evidence, 155
 - Expert testimony
 - Hypothetical question, 205
 - More than one expert, 200A
 - Weight considered, 200
 - Where sanity is issue, 640
 - Exploitation, sexual
 - By therapist, 1248
 - Of child, 2120, 2120A, 2122
 - Explosive device, possession of, 1351
 - Explosives, possession for unlawful purposes, 1350
 - Exposing a child to harmful material, 2142, 2143
 - Affirmative defense, 2142A
 - Exposing genitals or pubic area to a child, 2140
 - Exposure, indecent, 1544, 2140
 - Expungement
 - Misdemeanors; special disposition under § 973.015, SM-36
 - Extortion
 - Threat to accuse of a crime, 1473A
 - Threat to injure, 1473B
 - Eyewitness identification, 141
- F**
- Facts
 - Agreed or stipulated, accepted as proved, 162
 - Jurors are sole judges, 100
 - Failure to
 - Act, 905
 - Comply with an officer's attempt to take a person into custody, 1768
 - Disclose manufacturer of recording, 1460
 - File tax return, 5010
 - Give information or render aid following accident, 2670
 - Render aid, law enforcement officer, 1273
 - Report child abuse, 1221C RENUMBERED 2119
 - Report to jail, 1776, 1777A, 1777B
 - Return leased or rented property, 1455
 - Support, 2152
 - Affirmative defense, 2152A
 - Withdraw from an unlawful assembly, 1930
 - False alarm, giving, 1316
 - False entries, misconduct of a public officer or employee, 1733
 - False imprisonment, 1275
 - False swearing
 - Elements of offense, 1755
 - False statement under oath: Felony, 1754
 - False statement under oath: Misdemeanor, 1756
 - Inconsistent statements, 1755
 - Falsus in uno, falsus in omnibus, 305
 - Family, defense of property, 860
 - Felon
 - Aiding a, 1790
 - Furnishing firearm to, 1343B
 - Possession of a gun by, 1343
 - Felony
 - Burglary with intent to commit, 1424
 - Soliciting as a crime, 550
 - Felony murder, 1030 - 1032 Example
 - Death caused while committing a crime as party to a crime, 1032
 - Death caused while committing an armed burglary as party to a crime, 1032 EXAMPLE
 - Underlying crime attempted, 1031
 - Underlying crime completed, 1030
 - Filing a false return, 5012
 - Financial institutions, crimes against, 1508, 1512, 1522
 - Financial transaction card
 - Factoring of, 1497.1
 - Fraudulent use of, 1497, 1497A
 - Theft of, 1486
 - Finding the amount of controlled substance, 6001, 6001A
 - Fire alarm system, interference with, 1317
 - Firearm
 - Discharging into vehicle or building, 1324
 - Discharging within 100 yards of building, 1322
 - From vehicle, 1327
 - Furnishing to felon, 1343B
 - Homicide by intoxicated user, 1190, 1191
 - Homicide by negligent user, 1175
 - Injury by negligent use, 1260
 - Firearm (continued)
 - Intentionally pointing at another, 1323
 - Possession by felon, 1343
 - privilege of, 1343A
 - Recklessly storing, 2185
 - Firebomb (molotov cocktail)
 - Manufacture, sale, offer, gift, transfer, 1418
 - Possession, 1417

INDEX

WIS JI-CRIMINAL

Fire fighter, battery to, 1230
Fire fighting equipment, interference with, 1319
Fire fighting, interference with, 1318
First degree intentional homicide, 1010, 1012, 1014, 1018
 Of unborn child, 1011
 Self-defense: second degree intentional homicide:
 first degree reckless homicide, 1016
 Self-defense: second degree intentional homicide:
 first degree reckless homicide: second degree
 reckless homicide, 1017
First degree murder, see First degree intentional homicide
First degree reckless homicide, 1018, 1020, 1021
 Of unborn child, 1020A
First degree reckless injury, 1250
First degree recklessly endangering safety, 1345
First degree sexual assault, 1200A-1207
 Against an Individual Who is 60 Years of Age or
 Older, 1204, 1204 Example
First degree sexual assault of a child:
 Sexual contact or intercourse, 2102A, 2102-2102E
Five-sixths verdict and selection of presiding juror:
 forfeiture actions, 515A
Flight, concealment, escape, 172
Food, placing foreign objects in, 1354
Food stamp fraud, 1862
Force
 Defense of others, 825-835
 Defense of property, 855-860
 Parental discipline, 950, 951, 955 (WITHDRAWN)
 Robbery by threat of, 1477
 Robbery by use, of, 1475
 Self-defense, 800-820, 821
 Sexual assault, 1201-1206, 1208
Foreign protection order, violating a, 2042
Foreman, selection by jurors, 515
Forfeiture actions
 Burden of proof, 2050 RENUMBERED 140A
 Five-sixths verdict, 2055 RENUMBERED 515A
 Operating motor vehicle, 2664B
 Traffic forfeitures generally, 2680
Forgery
 By making or altering a check, 1491
 By uttering, 1492
 Possession of a forged writing with intent to utter, 1493
Fornication
 Sexual intercourse in public, 1535
 Sexual intercourse with a person younger than 18, 1536

Fourth degree sexual assault: sexual contact without
 consent, 1219
Fraud
 Against financial institution, 1512
 On hotel or restaurant keeper, 1461
 Public assistance fraud, 1850-1854
 Theft by, 1453
 Unemployment insurance fraud, 1848
Fraudulent insurance claim, 1494
Fraudulent use of financial transaction card, 1497
Fraudulent writings: falsifying a corporate record, 1485
Fraudulent writings: obtaining a signature by means of
 deceit, 1486

G

Gambling, commercial, 1601, 1602, 1605, 1607
Gang crimes, criminal, 985
Gender neutral language, 5
General instructions, 100-520
Global positioning device, 313, 1283A, 1283B
Graffiti, 1403
Grand jury proceedings, SM-10
Granting use of place of prostitution, 1571
Gratification, act of, 1561, 1564
Great bodily harm, 914
 Aggravated battery, 1225
 By negligent operation of vehicle, 1261
 In defense of another's property, 860
 In defense of one's property, 855
 In defense of others, 825-835
 Injury by conduct regardless of life, 1250
 Injury by intoxicated use of vehicle, 1262
 In self-defense cases, 800-820, 821
Guardian Ad Litem,
 Battery or threat to, 1241A, 1241B
Guilty plea
 Acceptance of, SM-32
 "Alford" plea, SM-32A
 Court's instruction before plea of guilty on sex
 crimes charge, SM-40 (WITHDRAWN)
Guilty plea (continued)
 Denial of motion to withdraw plea, SM-33A
 (WITHDRAWN)
 No contest plea, SM-32A
 Written form, SM-32B

H

Habeas corpus, SM-80 (WITHDRAWN)

- Habitual criminality
 - Increased penalty for, SM-35
 - Harassment
 - Engaging in a course of conduct which harasses or intimidates another, 1912
 - Injunctions, restraining orders, 2040
 - Of police animals, 1981
 - Subjecting another to physical contact, 1910
 - Telephone, 1902-1906
 - Threatening physical contact with another, 1910.1
 - “Hate crimes” penalty enhancer, 996, 996.1
 - Hazardous inhalant, operating under the influence of, 2667
 - Heat of passion, see Adequate provocation, 1012
 - Hiding or burying a corpse, 1194
 - Highway obstruction, 1302
 - Hit and run, 2670
 - Homicide
 - By delivery of a controlled substance, 1021
 - By intoxicated user of firearm, 1190, 1191
 - By intoxicated user of vehicle, 1185, 1186, 1189
 - By intoxicated user of vehicle, firearm, or airgun: affirmative defense under § 940.09(2), 1188
 - By negligent use of vehicle, 1170
 - By negligent use of weapon, 1175
 - By omission, 1060A
 - By operation of a vehicle with a detectable amount of a restricted controlled substance, 1187
 - By operation of a vehicle with a prohibited alcohol concentration of 0.08 grams or more, 1186A
 - Felony murder, 1030
 - First degree intentional homicide, 1010
 - Of unborn child, 1011
 - First degree intentional homicide; adequate provocation; second degree intentional homicide, 1012
 - First degree intentional homicide: first degree reckless homicide, 1018
 - First degree intentional homicide: coercion: second degree intentional homicide, 1015
 - First degree intentional homicide: self-defense: second degree intentional homicide, 1014
 - First degree reckless homicide, 1020, 1021
 - Of unborn child, 1020A
 - First degree reckless homicide; second degree reckless homicide, 1022, 1023
 - Introductory comment: Wisconsin’s new homicide law, 1000
 - Manslaughter, see Second degree intentional homicide
 - Murder, see First degree intentional homicide
 - Of an unborn child by negligent operation of a vehicle, 1171
 - Second degree intentional homicide, 1050, 1052
 - Second degree reckless homicide, 1060, 1060A
 - Hostage, taking a, 1278
 - Human trafficking, 1276, 1276 Example
 - Of a child, 2124
 - Hung jury, 520
 - Hypothetical questions, expert testimony, 205
- I**
- Identification of defendant, SM-61 (WITHDRAWN), 141
 - Identifying information, unauthorized use of, 1459
 - Identity, concealing, 994
 - Ignition interlock device
 - Failing to install, 2682B
 - Operating vehicle with more than 0.02 while subject to an order, 2660D
 - Tampering with, 2682A
 - Illegitimacy, paternity proceedings, 2010 (WITHDRAWN)
 - Imminent
 - Definition of, 1477
 - Immoral purposes
 - Enticing children for, 1530 (WITHDRAWN), 2134
 - Immunity upon claim of privilege, SM-55, 317
 - Impeachment of witnesses
 - Bad reputation for truth and veracity, 330
 - By inadmissible statement, 320
 - Prior conviction of defendant, 327
 - Prior conviction of witness, 325
 - Prior inconsistent statement, 320A
 - Impersonating a peace officer, 1830
 - With intent to commit a crime, 1831
 - Improper questions, counsel’s objections, effect, 147, 215
 - Improvised explosive device, possession of, 1351
 - Incest,
 - between blood relatives, 1532
 - between father and daughter, 1510
 - stepparent, 2131
 - Incest with a child
 - Sexual contact, 2131
 - Sexual intercourse, 2130
 - Inchoate crimes
 - Attempt, general form, 580
 - Attempt, murder first degree, intentional homicide, 1070
 - Conspiracy as a crime, 570
 - Solicitation as a crime, 550
 - Included offense
 - “Bridging” instructions, 112, 122
 - Instructing the jury, SM-6

INDEX

WIS JI-CRIMINAL

One defendant
 convictions, 112
 verdict, 482
Two defendants, convictions, 122
Income tax fraud
 Failure to file, 5010
 Filing false return, 5012
Incompetency to proceed, SM-50
Inconsistent statements
 Elements of, 1755
 False swearing, 1755
 When statements exist, 1755
Increased penalty for habitual criminality, SM-35
Indecent exposure, 1544, 2140, 2141
Indigent defendant
 Right to counsel, SM-25, SM-30, SM-30A, SM-31
Indirect evidence, effect, 170
Individuals at risk
 Abuse of, 1268, 1268 EXAMPLE, 1271
Inducement to commit offense, proper or improper, 780, 780A
Information, failure to give following accident, 2670
Information, not evidence, 145
Initial appearance,
 Judge's duties, SM-25
Injunction, violating, 2040
Injury, definition, elements
 By reckless conduct, 1250, 1252
 By intoxicated use of vehicle, 1262, 1263
 By negligent use of weapon, 1260
 By operation of a vehicle while intoxicated: affirmative defense under § 346.63(2)(b), 2662 (WITHDRAWN)
Injury (great bodily harm) by operation of a vehicle with a prohibited alcohol concentration of 0.08 grams or more, 1263A
 See Battery
Injury (great bodily harm) by operation of a vehicle with a detectable amount of a restricted controlled substance – § 940.25(1)(a), 1266
Injury (great bodily harm) by operation of a vehicle with a prohibited alcohol concentration of 0.02 grams or more, 1263A
Inmate, delivering an article to, 1785
Inmate possessing an article with intent to retain, 1784
Inmate
 Receiving an article from an inmate to convey out of Jail or prison, 1787
Inmates of institutions, abuse of, 1270

Innocence, presumption of, 140
Inquest
 Final instructions, 2302
 Preliminary instruction, 2300
 Suggested verdicts, 2302A
Inquiry in conflict of interest cases, SM-45
Inquiry regarding decision to testify, SM-28
Inquiry when a witness claims the privilege against self-incrimination, SM-55
Insanity, 600-662
Instruction
 After verdict received, 525, 525A
 On juror questioning of witnesses, 57
 On the issue of the defendant's criminal responsibility (mental defect), 605A
 To be used on denial of any postconviction motion (other than § 974.06), SM-33A (WITHDRAWN)
 To be used on denial of any postconviction motion under § 974.06, SM-33B (WITHDRAWN)
Instructions
 At arraignment and before acceptance of plea of guilty on sex crimes charge, SM-40 (WITHDRAWN)
 Following court's denial of postconviction motion other than § 974.06, SM-33A (WITHDRAWN)
 Following court's denial of postconviction motion under § 974.06, SM-33B (WITHDRAWN)
 On lesser included offenses, 112, 122, SM-6
 Preliminary, 50
 Required for convicted person following plea or trial, SM-33
 Required to be read to person found not guilty by reason of mental disease or defect and committed pursuant to Wis. Stat. § 971.17(1), SM-50A
 Sex crime, before plea of guilty, SM-40
 Suggested order of, SM-5 renumbered JI-1
Intent, 923A, 923B
 Intoxication negating, 765
 Mistake preventing, 770
Intent to defraud
 Arson, 1410
 By transfer of encumbered personal property, 1470
 Insurer, by arson of building, 1405
 Meaning of phrase, 1491
Intentionally accompanying a person who operates a vehicle without the owner's consent, 1466
"Intentionally" and "with intent to," 923A, 923B
Interest in property, when theft from one having right of possession, 1450
Interference
 With fire alarm system, 1317

With custody of a child, 1832-1838
 (WITHDRAWN), 2166, 2167
 With custody of a nonmarital child, 1835A
 (WITHDRAWN), 2167A
 With custody of a child
 affirmative defenses, 2169
 by a parent: concealing a child, 2168
 With fire fighting, 1318
 With fire fighting equipment, 1319
 With parental rights, 1838
 Interpreter
 For defendant, 62
 For juror, 61
 Intimidation of a person acting on behalf of a victim,
 1296A
 Intimidation of victim, 1294 (WITHDRAWN), 1296
 Intimidation of witness, 1290 (WITHDRAWN), 1292,
 1292A (WITHDRAWN), 1297
 Intoxicated use of vehicle
 Homicide by, 1185, 1186
 Injury (great bodily harm) by, 1262, 1263
 Injury by operating under the influence of
 intoxicant, 2660, 2665
 Intoxicating beverages
 Causing injury or death to an underage person by
 providing alcohol beverages, 5050
 Procuring for or selling to minor by any person,
 5040 (WITHDRAWN)
 Sale to minor by tavernkeeper, 5030 (WITHDRAWN)
 Intoxication
 Chemical test
 Percent of alcohol, 230, 232
 Refusal to furnish sample, 235
 Combined instruction – 0.08 grams or more and
 under the influence, 2668, 2669
 Combined instruction – any other drug that renders
 incapable of safely driving, 2666A
 Definition of voluntary and involuntary, 755A,
 755B, 765
 Driving under influence of intoxicant, 2663-2669
 Homicide by intoxicated user of vehicle, 1185,
 1186, 1189
 Homicide by intoxicated user of firearm, 1190,
 1191
 Involuntary, as a defense, 755A, 755B
 Negating state of mind essential to crime, 765
 Operating with 0.08 grams or more, 2660, 2660A
 Prima facie evidence, 230, 232
 Voluntary, as a defense, 765
 Introductory comment:
 Battery and related offenses, 1220-1246

Not guilty by reason of mental disease or defect:
 instructions for the “bifurcated” trial and
 reexamination, 600
 Wisconsin’s new homicide law, 1000
 Invasion of privacy, 1395A
 Issue of worthless check, 1468, 1469A, 1469B

J

John Doe proceedings, SM-12
 Joint trials
 Admissibility of statements, 220-222
 Defendants to be judged separately, 120-127
 Verdicts, 490-496
 Judge
 Battery or threat to, 1240, 1240A, 1240B
 Criminal damage or threat to property of, 1402A
 Demeanor of, ignoring, 100
 Substitution of, SM-10 (WITHDRAWN)
 Judicially noticed facts, accepted as true, 165
 Jurisdiction, law note, 268
 Juror
 Battery to, 1232
 Questioning of witnesses, SM-8
 Jury
 Agreement: one charge, evidence of more than one act,
 517
 Anonymous, 146
 Charge in information or complaint read to, 110-127
 Closing instruction, 460
 optional short form, 465
 Conduct, preliminary instruction, 50
 Deliberations, 521
 Duties, opening instruction, 100
 Evidence and law only consideration, 100
 Foreman, selection, duty, 515
 Ignore impression of judge’s opinion, 100
 Instruction after verdict received, 525
 Knowledge and observation of jurors, 195
 Notetaking, 101, 102
 Nullification, Law Note 705
 Presiding juror, selection, 515
 Questions by, 57, SM-8
 Reasonable doubt rule, general, 140
 Recording played to, 158
 Request to hear/see audio/video evidence during
 deliberations, SM-9
 Sole judge of credibility and weight of evidence, 215
 Jury (continued)
 Supplemental instruction on agreement, 520
 Voir dire, SM-20
 Justification, 2672A
 Juvenile delinquency

INDEX

WIS JI-CRIMINAL

Composite instruction, 2020
Contributing to, 2170, 2170A, 2171
Sample: burglary, 2021

K

Keeping a place of prostitution, 1570
Keeping a place used for controlled substances, 6037
Keeping or maintaining a place resorted to by persons
using controlled substances in violation of chapter 961
for the purpose of using controlled substances, 6037A
Keeping or maintaining a place used for manufacturing,
keeping, or delivering controlled substances, 6037B
Kidnapping, 1280, 1281, 1282
Knew
Definition of, 1755
Knife, carrying a concealed, 1336

L

Larceny, 1441
By bailee, employee, trustee, 1444
Law enforcement officers
Battery to, 1230
Entrapment of suspect by, 780
Failure to render aid, 1273
Using “pepper spray” against, 1341A
Law, principles of, judge to instruct jury, 100
Law note:
Jurisdiction, 268
Jury nullification, 705
Right to recapture, 710
Statement of accomplice admitted for nonhearsay
purpose, 220B
Statements, substantive use of prior inconsistent,
320A
Stipulations, 162A
Theory of defense instructions, 700
Lawyer
Self-representation, SM-30A
Waiver of representation, SM-30
Leased or rented property, theft by failure to return, 1455
Legal process
Simulating of, 1825
Lesser included offense,
“Bridging” instructions, 112, 122
Instructing the jury, SM-6
One defendant
convictions, 112
verdict, 482
Two defendants, convictions, 122

Lewd and lascivious behavior, exposing a sex organ, 1544
Liability for failure to act, 905
Lifetime supervision of serious sex offenders, 980
Loan sharking
Advancement for extension of credit, 1472B
Extortionate extension of credit, 1472A
Use of extortionate means, 1482C

M

Mail Theft, 1457
Making a false statement in an application for a certificate
of title, 2600
Manslaughter (ALL WITHDRAWN)
Death of another in self-defense, murder not submitted,
1145
Death of another in self-defense, murder submitted,
1140
Definition, elements, 1130, 1135
Elements of offense when murder not submitted, 1145
Elements of offense when murder submitted, 1140
Heat of passion
murder counts not charged, 1133, 1135, 1145
murder counts submitted, 1130, 1131, 1132, 1140
See Second degree intentional homicide
Manufacture of a controlled substance, 6021
Marijuana, see Controlled substance
Masking agent, 6070
Material statement, element of perjury, 1750
Mayhem, 1246
Medical assistance fraud: making a false statement in an
application for a benefit or payment, 1870
Medical facility, criminal trespass to, 1439
Mental disease or defect
Advice to person found not guilty by reason of, 650
Effect of finding of not guilty because of, 605, 605A
Expert witnesses, 640-CPC RENUMBERED 640
Generally, introductory comment, 601-662
Instruction required for person found not guilty by
reason of and committed pursuant to Wis. Stat. §
971.17(1), SM-50A
Instructions for the “bifurcated” trial, 600-607
Reexamination, 660-662
Verdict, 605B
Mental purpose, 923A
Merchant, defense of property by employee or agent, 860
Methamphetamine, possession of drug paraphernalia, 6053
Methamphetamine waste, possession of, 6044
Minor
Going armed with pistol, 1325 (WITHDRAWN), 2176

Passenger in vehicle, 999
 Possession of pistol by, 1325 (WITHDRAWN), 2176
 Sale, loan, or gift of pistol, 1326 (WITHDRAWN),
 2177, See Crimes against children
 Misappropriation of personal identifying information or
 personal identification documents, 1458
 Misappropriation, operating vehicle without owner's
 consent, 1466 (WITHDRAWN), Also see Theft
 Misconduct in public office
 By exercise of a discretionary power for a
 dishonest advantage, 1732
 By failure or refusal to perform duty, 1730
 By false entry, return, certificate, report, or
 statement, 1733
 By performance of unauthorized or forbidden act,
 1731
 By unlawful solicitation or acceptance of anything
 of value, 1734
 Generally, 1730-1734
 Private interest in public contract, 1740, 1741A, 1741B
 Misdemeanors; special disposition under § 973.015, SM-36
 Missing witness, 345
 Mistake, when a defense, 770
 Mistreating an animal
 Failure to provide food and water, 1982
 Failure to provide shelter, 1984
 Treating in a cruel manner, 1980
 Molotov cocktails, 1417, 1418
 Money Laundering, 1524, 1525, 1526
 Monitoring device, evidence that defendant wore a, 313
 Motive, 175
 Motor vehicles, see Vehicles
 Motorboat, operating under the influence or with a
 prohibited alcohol concentration, 2695, 2696
 Multiple charges, same offense: three victims, 116
 EXAMPLE
 Multiple representation, SM-45
 Murder (ALL WITHDRAWN)
 First degree
 cause in issue, 1102
 cause not in issue, 1100
 See First degree intentional homicide
 Second degree, definition, elements, 1110
 See First degree reckless homicide
 Third degree, 1120 and 1122 (WITHDRAWN)
 See Felony murder
 Murder, felony, underlying felony attempted, 1031
 Mutilating a corpse, 1193

N

Narcotic drugs, see Controlled substance
 Drugged condition
 involuntary, 755
 negating state of mind essential to crime, 765
 Homicide by user, 1185, 1190
 Necessity, 792
 Neglect,
 Chronic neglect of a child, 2151
 Neglect of children, contributing to, 1960 and 1961
 (WITHDRAWN)
 Neglect of patients and residents of facilities, 1272
 Neglecting a child, 2150, 2150A
 Negligence
 Criminal, defined, 925
 Negligent handling of burning material, 1310
 Negligent operation of a vehicle, homicide of an unborn
 child, 1171
 Negligent operation of vehicle, not upon highway, 1300
 Negligent use of vehicle
 Homicide by, 1170
 Negligent use of weapon
 Homicide by, 1175
 Injury by, 1260
 No contact order, violating, 1375
 Nolo contendere
 Acceptance of plea, SM-32, SM-32A
 "Alford" plea, SM-32A
 Denial of motion to withdraw plea, SM-33A
 (WITHDRAWN)
 Noncontrolled substance, delivery of, 6040
 Noncriminal traffic offenses, 2680
 Nonsupport, 2152
 Not guilty by reason of mental disease or defect, 600-662
 Notetaking not allowed, 56
 Notetaking permitted, 55
 Nudity, depictions of, 1396, 1398A, 1398B, 1399
 "Numbers" juries, 146
 Nurse
 Battery to, 1243 (WITHDRAWN)
 See JI 1247 and 1247B

O

Objections of counsel
 Overruled, effect, 148
 Sustained, effect, 147
 Obstructing an officer, 1766
 Giving false information, 1766A
 Obstructing emergency medical personnel, 1360

INDEX

WIS JI-CRIMINAL

- Obstructing justice, 1815
 - Obtain information generated by global positioning device, 1283B
 - Obtaining prescription drug by fraud, 6100
 - Obtaining telecommunications service by fraud, 1495
 - Offender, sex, 980, 2147, 2198
 - Offense
 - Date of commission, proof, 255-265
 - Elements of, judge to state, 110-127
 - Lesser, included in charge, 112, 122
 - verdict, 482, 492
 - Venue, 267
 - Offer or selling unregistered security, 2902
 - Officer
 - Battery to, 1225
 - Resisting or obstructing, 1765, 1766, 1766A
 - Using “pepper spray” against, 1341A
 - Oleoresin of capsicum, 1341B, 1341C, 1341D
 - Omission, criminal, 905
 - Opening instructions on the pleadings, 100-127
 - Elements of offense charged, 110-127
 - General, 100
 - Opening statements, 101
 - Operating
 - While revoked causing great bodily harm or death, 2623B, 2623C
 - While revoked, permanent revocation, 2626
 - While suspended causing great bodily harm or death, 2623A
 - Without a license causing great bodily harm or death, 2612
 - Operating a commercial motor vehicle with an alcohol concentration of 0.04 grams or more but less than 0.08 grams – criminal offense, 2690
 - Operating a motor vehicle while under the influence of any combination of an intoxicant and any other drug, 2666A
 - Operating a motor vehicle with a prohibited alcohol concentration – civil forfeiture – 0.08 grams or more, 2660B (WITHDRAWN)
 - Operating a motor vehicle with a prohibited alcohol concentration and causing injury – 0.08 grams or more, 2661A (WITHDRAWN)
 - Operating a motorboat while under the influence or with a prohibited alcohol concentration, 2695, 2696
 - Operating vehicle
 - After revocation or suspension, 2620
 - Intentionally accompanying a person who operates a vehicle without the owner’s consent, 1466
 - On premises other than highways, 2605
 - Recklessly, 2650, 2652
 - Speeding, 2672-2678A
 - To elude or flee an officer, 2630
 - While revoked: criminal offense, 2621
 - While revoked: forfeiture, 2621A
 - While suspended: civil forfeiture, 2622
 - While under the influence, 2663, 2663A
 - and causing great bodily harm, 1262
 - and causing injury, 2665, 2667
 - combined instruction - 0.08 grams and under the influence, 2668, 2669
 - no test, 2663B
 - with a child under 16 years in the motor vehicle, 2663D
 - While under the influence of controlled substance, 2664
 - While under the influence of a combination of a controlled substance and an intoxicant, 2664A
 - While under the influence of any combination of an intoxicant and any other drug, 2666A
 - While under the influence of hazardous inhalant, 2667
 - With detectable amount of restricted controlled substance, 1187, 2664B
 - With .08 grams or more, 2660, 2660A
 - and causing great bodily harm, 1263
 - and causing injury, 2661
 - With a prohibited alcohol concentration – civil forfeiture – 0.08 grams or more, 2660A, 2660B (WITHDRAWN)
 - With a prohibited alcohol concentration – criminal offense – 0.02 grams or more, 2660C
 - With a prohibited alcohol concentration and causing injury – 0.08 grams or more, 2661, 2661A (WITHDRAWN)
 - With more than 0.02 – subject to an ignition interlock order, 2660D
 - Without a license, 2610
 - Without owner’s consent, 1465
- Ordinance violations
- Burden of proof in forfeiture actions, 2050
 - Five-sixths verdict in forfeiture actions, 2055
- Ordinary care, (375 WITHDRAWN)
- “Other crimes” evidence, 275, 276
- P**
- Pandering [felony], 1568, 1568A, 1568B
 - Parental discipline
 - By one in loco parentis, when privileged, 955 (WITHDRAWN)
 - By parent, when privileged, 950, 951
 - Parental rights, interference with, 2166-2169

- Parties to crime
 - Aiding and abetting, 400, 405, 406
 - Conspiracy, 402, 410, 411, 412
 - Corporate Liability, (425, 430 WITHDRAWN)
 - Death caused while committing a felony as, 1032
 - Liability for acts of another, (440 WITHDRAWN)
 - Solicitor, 415
- Passenger in vehicle
 - Minor, 999
- Paternity proceedings, 2010 (WITHDRAWN)
- Patients and residents, abuse or neglect, 1271, 1271
EXAMPLE, 1272
- Patronizing a child, 2136A
- Peace Officer
 - Battery to, 1225
 - Personating a, 1830, 1831
 - Privileged use of force to accomplish lawful arrest, 880, 885
 - Use of “pepper gas” against, 1341A
- Penal facilities, abuse of residents of, 1270
- “Pepper Gas,” use of, 1341, 1341A
- Perjury, 1750
- Permitting or assisting escape, 1780-1783
- Permitting real estate to be used as a gambling place, 1610
- Person responsible for child welfare, 2106A
- Personating a peace officer, 1830, 1831
- Persons concerned in commission of crime, see Parties to crime, 400-415
- Photographing by sex offender, 2196
- Physical abuse of a child
 - By a child care provider, 2115
 - By a person responsible for the welfare of the child, 2114
 - Failing to act to prevent great bodily harm, 2108A, 2108B
 - Intentionally causing bodily harm, 2109
 - Intentionally causing bodily harm by conduct which creates a high probability of great bodily harm, 2110
 - Intentionally causing great bodily harm, 2108
 - Recklessly causing bodily harm, 2112
 - Recklessly causing bodily harm by conduct which creates a high probability of great bodily harm, 2113
 - Recklessly causing great bodily harm, 2111
- Physical abuse of an elder person
 - Intentional causation of great bodily harm, 1249A
 - Intentional causation of bodily harm, 1249B
 - Intentional causation of bodily harm under circumstances or conditions that are likely to produce great bodily harm, 1249C
 - Reckless causations of great bodily harm, 1249D
 - Reckless causation of bodily harm, 1249E
 - Reckless causation of bodily harm under circumstances or conditions that are likely to produce great bodily harm, 1249F
- Pistol
 - Minor going armed with, 2176
 - Possession of by minor, 2176
 - Possession by felon, 1343
 - Sale, loan, or gift to minor, 2177
- Placing a global positioning device, 1283A
- Placing foreign objects in edibles, 1354
- Plea
 - Acceptance of plea of guilty or nolo contendere, SM-32
 - “Alford” and no-contest, SM-32A
 - Court’s instruction before plea of not guilty to sex crime, SM-40 (WITHDRAWN)
 - Written form, SM-32B
- Plea of not guilty means denial of every material allegation, 110-127
- Pleadings
 - Complaint or information not evidence, 145
 - One defendant
 - single count, no included offense, 110
 - single count, with included offense, 112
 - two counts, conviction for both proper, 115
 - two counts, conviction for only one proper, 117 (WITHDRAWN)
 - Two defendants
 - single count, no included offense, 120
 - single count, with included offense, 122
 - two counts, conviction for both proper, 125
 - two counts, conviction for only one proper, 127 (WITHDRAWN)
- Police reports, 59
- Polling the jury, 522
- Polygraph evidence, 202 (WITHDRAWN)
- Pornography, child, possession of, 2146
- Possessing an article with intent to deliver it to an inmate, 1786
- Possession, generally, 920
 - Of a controlled substance, 6030
 - as lesser included offense, 6035, 6036
 - with intent to deliver, 6035
 - with intent to manufacture, 6036
 - without tax stamp, 6009
 - Of a dangerous weapon by a child, 2176
- Possession (continued)
 - Of a firearm, 1343
 - by a felon, privilege, 1343A
 - Of a firearm by a person subject to an injunction, 1344
 - Of a firearm in a school zone, 2178A

INDEX

WIS JI-CRIMINAL

- Of a machine gun or other full automatic firearm, 1340A
- Of a short-barrelled shotgun or rifle, 1342
- Of altered lottery ticket with intent to defraud, 1652
- Of burglarious tools, 1431
- Of child pornography, 2146
- Of cocaine, finding amount, 60010
- Of drug paraphernalia, 6050
- Of electric weapon, 1344A
- Of explosives for unlawful purpose, 1350
- Of forged writing with intent to utter, 1493
- Of improvised explosive device, 1351A
- Of masking agent, 6070
- Of materials or components with intent to assemble an improvised explosive device, 1351B
- Of methamphetamine, find amount, 6001A
- Of molotov cocktails (firebombs), 1417
- Of oleoresin of capsicum (pepper spray) by a convicted felon, 1341D
- Of prescription drug, 6112
- Of property with altered identification marks, 1488
- Of recently stolen property, 173
- Of switchblade knife, 1340
- Of untagged deer, 5000
- Postconviction procedure under Wis. Stat. § 974.06, SM-70 (WITHDRAWN)
- “Practically certain,” 923B
- Preliminary examination
 - Waiver of right to, SM-31
- Preliminary instruction
 - Commitment as a sexually violent person under Chapter 980, Wis. Stats., 2501
 - Defendant preceding pro se, 70
 - Hearing on discharge of a sexually violent person under Chapter 980, Wis. Stats., 2505
 - Inquest, 2300
 - Jurors’ conduct, 50
 - Reexamination of person committed as not guilty by reason of mental disease or defect [§ 971.17(2)], 660
 - Use of an interpreter, 60
- Premises other than highways, 2605
- Prescription drug
 - Obtaining by fraud, 6100
 - Possession of, with intent to deliver, 6110
 - Possession of, without a valid prescription, 6112
- Presumptions, generally, 225
 - Innocence, 140
 - None from failure of defendant to testify, 315
 - Prima facie cases, 225
- Prior attack, collateral convictions, SM-16
- Prior convictions to prove character, 276
- Prior sexual conduct, evidence of, 1200G
- Prisoner
 - Advising of rights under Uniform Detainer Act, SM-90
 - As witness, prisoner status in issue, 312
 - Assaults by, 1778, 1779
 - Battery by, 1228
- Private interest in public contract, 1740, 1741A, 1741B
- Privilege, 800-955
 - Against self-incrimination, claimed by witness, 317, SM-55
 - Conduct in fulfillment of duties of a public office, 870
 - Conduct in good faith, 870
 - Defense of another’s property, 860
 - Defense of one’s own property, 855
 - Defense of others
 - Effect of provocation by person defended, 835
 - Force intended or likely to cause death or great bodily harm, 830
 - Force less than that likely to cause death or great bodily harm, 825
 - Parental discipline
 - By one in loco parentis, 955 (WITHDRAWN)
 - By parent, 950, 951
 - Peace officer to use force in accomplishment of lawful arrest, 880, 885
 - Self-defense
 - Force intended or likely to cause death or great bodily harm, 805
 - Force less than that likely to cause death or great bodily harm, 800
 - Privilege: self-defense: not available to one who provokes an attack: regaining the privilege, 815
 - Retreat, 810
 - Where injury to innocent third party, 820
- Probation, extended supervision, or parole, encouraging violation of, 1788
- Probation and parole agent,
 - Battery to, 1231
- Proof
 - Burden of proof, 140
 - Forfeiture actions, 140A
 - Date of commission of offense, 255-265
- Property
 - Criminal damage to, 1400, 1402B
 - Defending another’s property, 860
 - Defending one’s own property, 855
 - Personal, transfer of encumbered with intent to defraud, 1470
 - Receiving stolen property, 1481
 - from a child, 2180
 - Pro se defendant, SM-30A

Prosecutor, Battery or Threat to, 1240C, 1240D
 Prostitution, 1560
 Granting the use of a place of prostitution, 1571
 Keeping a place of, 1570
 Patronizing a child, 2136A
 Patronizing prostitutes, 1564
 Sexual gratification, 1561
 Soliciting a child, 2136
 Soliciting prostitution, 1566
 Providing alcohol beverages to underage person, 5050
 Provocation
 By person defended, effect on privilege, 835
 Effect on privilege of self-defense, 815
 Manslaughter, 1130, 1131, 1132, 1133, 1135 (ALL
 WITHDRAWN)
 Second degree intentional homicide, 1012
 Prudent speed, 2672, 2672A
 Public assistance fraud, 1850-1854
 Public contract, private interest in, 1740, 1741A, 1741B
 Public officers and employees
 Assisting or permitting escape, 1780-1782
 Battery to, 1234
 Bribery of, 1721
 Embezzlement, 1444
 Exercise of discretionary power for a dishonest
 advantage, 1732
 Failure or refusal to perform duty, 1730
 False entry, return, certificate, report, or statement,
 1733
 Fulfillment of duties, privilege, 870
 Performance of unauthorized or forbidden act, 1731
 Unlawful solicitation or acceptance of anything of
 value, 1734
 Public transit vehicle operator or passenger
 Battery to, 1236
 Publishing depiction of nudity, 1398B
 Publishing private representation depicting nudity, 1398A

R

Race, selecting crime victim because of, 996, 996.1
 Racketeering activity
 Acquiring or maintaining an interest in or control of an
 enterprise through a pattern of racketeering activity,
 1882
 Conducting or participating in an enterprise through a
 pattern of racketeering activity, 1883
 Using proceeds of a pattern of racketeering activity to
 establish or operate an enterprise, 1881
 Radar speed measurement, 2679
 Rape, see Sexual assault
 “Rape Shield,” 1200G

Reasonable doubt
 Circumstantial evidence, rules as to, 170
 Defined, 140
 Receiving an article from an inmate to convey out of jail
 or prison, 1787
 Receiving stolen property, 1481
 From a child, 2180
 Recently stolen property, unexplained possession of, 173
 Reckless
 Abuse of individual at risk, 1269
 Conduct, defined, 924
 Driving, 2650, 2652
 Driving: causing great bodily harm, 2654
 Homicide, 1020, 1021, 1022, 1023, 1060
 Injury, 1250, 1252
 Storing a firearm, 2185
 Use of weapons, 1305, 1321, 1322, 1323, 1324
 Recklessly endangering safety, 1345, 1347
 Recording, failure to disclose manufacturer, 1460
 Recording played to jury, 158
 Reexamination
 Of person committed under § 971.17(1), 660-662
 Refusal to take blood alcohol test, 235
 Registered sex offender, photographing by, 2196
 Religious property, criminal damage to, 1402
 Removing a major part of a vehicle without the owner’s
 consent, 1467
 Removing a theft detection device, 1498A
 Rent, absconding without paying, 1462
 Affirmative defense, 1462A
 Repeated acts of neglect,
 Chronic neglect of a child, 2151
 Repeated acts of physical abuse of a child, 2114, 2114
 EXAMPLE
 Repeated sexual assaults, 2107, 2107 EXAMPLE
 Reputation
 Bad reputation of defendant or witness for veracity, 330
 Defendant’s, as evidence, 270
 Threat to communicate derogatory information, 1474
 Resisting
 An officer, 1765
 Arrest, 795
 Traffic officer, 2632
 Restraining device, defendant wearing, 314
 Restraining order, violating, 2040
 Restricted controlled substance, operating a vehicle with a
 detectable amount of, 1187, 1266, 2664B
 Retail theft, 1498
 Removing a theft detection device, 1498A

INDEX

WIS JI-CRIMINAL

Using a theft detection shielding device, 1498B

Retreat
Circumstances considered, 810
Duty, where defendant was aggressor, 815

Right to appeal, requirement that trial court advise convicted persons of, SM-33

Right to counsel
At initial appearance, SM-25
For preliminary hearing, SM-31
Guilty plea, SM-32
Self-Representation, SM-30A
Waiver of, SM-30

Rights, denial of (ALL WITHDRAWN)
Automobile insurance, 1392
In general, 1390
Written communication, 1391

Robbery
Armed, 1480, 1480A
By threat of force, 1477
By use of force, 1475
Of a financial institution, 1522
When force and threat involved, 1479

S

Safety, endangering by reckless conduct, 1345, 1347

Sale to minor
Intoxicating beverage, 5030, 5040 (BOTH WITHDRAWN), 5050
Pistol, 1326 (WITHDRAWN), 2177

Sale, loan, or gift
Of a dangerous weapon to a child, 2177
Of a firearm to a child: death caused, 2177A

School attendance, 2174

School district officer or employee,
Battery to, 1235

Scope of employment
Agent or servant, (440 WITHDRAWN)
Corporation officer or employee, 420-430, (425, 430 WITHDRAWN)

Search and seizure, admissibility of evidence obtained by, SM-62 (WITHDRAWN)

Second degree
Intentional homicide, 1012, 1014, 1050, 1052
Murder, definition, elements, 1110, 1130, 1132
Reckless homicide, 1060
Of an unborn child, 1061
Reckless injury, 1252
Recklessly endangering safety, 1347
Sexual assault, 1208-1217B
Sexual assault of a child, 2104

Securities
Fraud: making an untrue statement of material fact, 2904
Selling an unregistered security, 2902

Security interest, defined, 1470

Selecting property damaged because of the race, religion, etc., of the owner, 996.1

Selecting the person against whom a crime is committed because of race, religion, etc., 996, 996.1

Self-defense, 800-820
Force intended or likely to cause death or great bodily harm, 805
Force less than that likely to cause death or great bodily harm, 800
Injury to innocent third party, 820
Intentional homicide, 1014, 1016, 1017, 1052, 1072
Issue in battery with intent to cause bodily harm, 1222A, 1223-1223A, 1224A, 1225A
Retreat
circumstances considered, 810
duty, where defendant was aggressor, 815
Unintended harm to third party, 821

Self-incrimination, witness exercising privilege against, 317
Inquiry when privilege is claimed, SM-55

Self-representation, inquiry, SM-30A

Selling malt beverage without license, 5035

Sentencing, SM-34
Credit under § 973.155, SM-34A

Serious sex offenders, lifetime supervision of, 980

Servant
See also Employer and employee
Strict liability of employer, (440 WITHDRAWN)

Sex Crimes Law
Advice before accepting guilty plea, SM-40
Commitment and continuance of control, 1550-1553 (WITHDRAWN)
Resentencing under Wis. Stat. § 975.17(1), SM-41

Sex offenders
Failure to comply with registration requirement, 2198
Lifetime supervision of, 980
Name change, 2199
Working with children, 2147

Sexual assault
See also Sexual contact and sexual intercourse
First degree, 1201-1207
Fourth degree, 1219
Of a child, 2101A-2107, 2102-2102E
attempted, 2105A, 2105B
by a child care provider, 2115
repeated acts of, 2107, 2107 EXAMPLE

- Of a student by a school staff person, 2139
- Prior sexual conduct evidence, 1200G
- Second degree, 1208-1217A
- Spouse as victim, 1200F
- Third degree, 1218A, 1218B
- Without consent, 1200C-E
- While aided and abetted, 1214
- Sexual contact, see also Sexual assault
 - By correctional staff member, 1216
 - By employee of an entity, 1217A
 - By probation, parole, or extended supervision agent, 1217
 - By use or threat of dangerous weapon, 1203
 - By use or threat of force or violence, 1208
 - Causing great bodily harm, 1201
 - Causing injury, illness, etc., 1209
 - Definition of, 934, 1200A, 2101A
 - While aided or abetted, 1205, 1214
 - With a patient of a treatment facility, 1215
 - With person suffering from mental illness, 1211
 - With person under age 13, 2102A, 2102E
 - With person under age 16, 2102D, 2104
 - With person who is under influence of an intoxicant, 1212
 - With unconscious person, 1213
 - Without consent, 1219
- Sexual exploitation by therapist, 1248
- Sexual exploitation of a child, 2120, 2121, 2123
 - Affirmative defense, 2120A, 2121A
- Sexual gratification
 - In public, 1537
 - Patronizing prostitutes, 1564
 - Prostitution, 1561
 - With a person younger than 18, 1538 (WITHDRAWN)
- Sexual intercourse, see also Sexual assault
 - By correctional staff member, 1216
 - By probation, parole, or extended supervision agent, 1217
 - By use or threat of dangerous weapon, 1203
 - By use or threat of force or violence, 1208
 - Causing great bodily harm, 1201
 - Causing injury, illness, etc., 1209
 - Causing pregnancy, 1201A
 - Definition of, 1200B
 - While aided or abetted, 1205, 1214
 - With a patient of a treatment facility, 1215
 - With person suffering from mental illness, 1211
 - With person under age 12, 2102B
 - With person under age 13, 2102A
 - With person under age 16, 2102C, 2104
 - With person under age 18, 2138, 2138A
 - With person who is under influence of an intoxicant, 1212
 - With unconscious person, 1213
- Without consent, 1200C
- Sexual predator, 2501-2503, 2505, 2506
- Sexually violent person, 2501-2503, 2505, 2506
- Shoplifting, 1498
- Simulating legal process, 1825
- Solicitation, crime of, 550
- Soliciting a child for prostitution, 2136
- Soliciting a child for the purpose of delivering a controlled substance, 6047
- Soliciting an intimate or private representation, 1399
- Soliciting prostitution, 1566
- Solicitor, party to crime, 415
- Speeding, 2672-2678A
 - Speeding: exceeding 65 miles per hour, 2676A, 2676B
 - Speeding: exceeding fixed limits, 2676C
- Stalking, 1284, 1284A, 1284B
- Standby counsel, SM-30A
- Statement of co-conspirator, 405, 410, 415 (ALL WITHDRAWN)
- Statements of defendant, 180
- Statements, opening, 50, 101
- Stay of execution of sentence, (SM-39 WITHDRAWN)
- Stealing, see Burglary; Theft
- Stipulated facts, accepted as conclusively proved, 162
- Stipulations, Law Note, 162A
- Stolen property, receipt of, 1481
 - From child, 2180
 - Unexplained possession of recently stolen property, 173
- Storing, treating, transporting, or disposing of hazardous waste without a license, 5200
- Strangulation, 1255
- Substantial battery, 1222-1223A
- Substantial bodily harm, 1222-1223A
- Substitution of judge, SM-15 (WITHDRAWN)
- Suffocation, 1255
- Suggested order of instructions, SM-5, renumbered JI-1
- Suggested verdicts: inquest, 2302A
- Suicide, assisting, 1195
- Summary exhibit, 154
- Supplemental instruction, on agreement of jurors, 520
- Swatting, 1919
- Switchblade knife, possession of, 1340

T

Taking a vehicle by use or threat of force, 1463

INDEX

WIS JI-CRIMINAL

- Taking and driving a vehicle without the owner's consent, 1464
- Taking and driving a vehicle without the owner's consent: driving or operating without the owner's consent as a lesser included offense, 1464A
- Tax fraud, income
 - Failure to file, 5010
 - Filing false return, 5012
- Teachers, discipline of pupils, 955
- Telecommunication services, theft of, 1495
- Telephone, unlawful use of, 1902-1906
- Terrorist threats, 1925A, 1925B
- Testimony
 - Accomplices, how weighed, 245
 - Character and reputation of defendant, 270
 - Child witness, credibility, 340
 - Credibility of witnesses, 300
 - Defendant failing to testify, 315
 - Expert, 200, 205
 - False as to one fact, effect, 305
 - Impeachment of witness, 320-330
 - Inquiry regarding, SM-28
 - Stricken, disregarded, 150
 - Witness interested in result, effect, 310 (WITHDRAWN)
- Theft, 1441
 - By contractor, 1443, 1443A
 - By employee, trustee or bailee (embezzlement), 1444
 - By failure to return leased or rented property, 1455
 - By fraud, 1453
 - By one having an interest, 1450
 - By one having an undisputed interest in property from one having superior right of possession, 1450
 - From person, 1442
 - Larceny, 1441
 - Larceny by employee, trustee, or bailee (embezzlement), 1444
 - Mail theft, 1457
 - Misappropriation of personal identifying information or personal identification documents, 1458
 - Of anhydrous ammonia, 5024
 - Of financial transaction card, 1496
 - Of services, 1498C
 - Of telecommunication services, 1495
 - Penalty factors for, 1441B
 - Representations to agent, 1453B
 - Representations to owner, 1453A
 - Retail, 1498
- Theft, determining value, 1441A
- Theory of defense instructions, law note, 700
- Therapist, sexual exploitation by, 1268
- Third degree murder, 1120 and 1122 (WITHDRAWN)
 - See Felony murder, 1030
- Third party
 - Defense of, as affecting privilege, 825-835
 - Innocent, injury to, effect on privilege of self-defense, 820
 - Innocent, unintended harm, effect on privilege of self-defense, 821
 - Property of, defense, 860
- Threats
 - Intentional terrorist, 1925A
 - Reckless terrorist, 1925B
 - Stalking, 1248
 - To communicate defamatory information, 1474
 - To Department of Commerce or Department of Workforce Development employee, 1244
 - To Department of Revenue employee, 1242
 - To a health care provider, 1247B
 - To judge, 1240B
 - To law enforcement officer, 1240D
 - To prosecutor, 1240D
 - To a staff member of a health care facility, 1247A
 - To witness, 1238, 1239
- Time of offense
 - Exact date need not be proved, 255A
 - Exact time need not be proved, 255
 - Where state has elected, 265
 - Where state not required to elect, 260
- Traffic offenses, noncriminal, 2680
- Trafficking, Human, 1276, 1276 Example, 1277
 - Of a child, 2124
- Transcripts not available for deliberations; reading back testimony, 58
- Transfer of encumbered personal property with intent to defraud, 1470
- Trespass
 - Burglary with intent to commit felony, 1424
 - Burglary with intent to steal, 1421
 - Criminal, to dwellings, 1437
 - Criminal, to energy provider property, 1440
 - Criminal, to medical facility, 1439
- Truancy
 - Contributing to, 2173
- Trustee, theft by, 1444
- Truth
 - Bad reputation of defendant or witness for, 330
 - Jury must search for, 140

U

- Unarmed robbery
 - By the use of force, 1475
 - By threat of force, 1477

By use or threat of force, 1479
 Unauthorized use of identifying information or documents, 1459
 Unborn child
 Battery to, 1227
 Defined, 1125
 First degree intentional homicide of, 1011
 First degree reckless homicide of, 1020A
 Homicide of, by negligent operation of a vehicle, 1171
 In the vehicle, 999A
 Second degree reckless homicide of, 1061
 Violations of § 940.09 and § 940.25 involving an unborn child, 1185A
 Underage sexual activity, 2138A
 Unemployment insurance fraud, 1848
 Unexplained possession of recently stolen property, 173
 Unlawful use of a computerized communication system, 1908, 1909
 Threat to inflict injury, 1908
 Use of obscene language, 1909
 Unlawful use of telephone, 1902-1906, 1907
 Unqualified elector, 5301
 Unregistered security
 Offer or selling of, 2902
 Use of device to view under outer clothing, 1395A
 Use of force, by peace officer, 880, 885
 Use of interpreter, 60
 Use of masking agent, 6070
 Using a child to deliver a controlled substance, 6046
 Using a theft detection shielding device, 1498B
 Using oleoresin of capsicum (pepper gas), 1341B, 1341C
 Uttering a forged writing, 1492
 Uttering an altered lottery ticket, 1651

V

Value
 Of damaged property, 1400
 Of stolen property, 1441A
 Vehicles
 Certificate of title to, 2590
 Entry into locked, 1426
 Homicide by intoxicated user, 1185, 1186
 Homicide by negligent use, 1170
 Injury by intoxicated use of, 1262, 1263
 Negligent operation of, not upon highway, 1300
 Operating after revocation or suspension, 2620
 Operating recklessly, 2650, 2652
 Operating to elude or flee an officer, 2630
 Operating while intoxicated, 2660, 2660A, 2660C, 2663, 2663A, 2664B

Operating while intoxicated, causing injury, 2660, 2665
 Operating while revoked, permanent revocation, 2626
 Operating while under the influence of controlled substance, 2664, 2664B
 Operating without a license, 2610
 Operating without owner's consent, 1465
 Reckless driving, 2650, 2652
 Unborn child in, 999A
 Venue, 267
 Verdicts
 Acquittal if reasonable doubt exists, 140
 As to defendant only, 247
 Basis, opening instruction, 100
 Closing instructions, 460, 465
 Codefendants, 490-496
 Commitment as a sexually violent person under Chapter 980, Wis. Stats., 2503
 Five-sixths, forfeiture actions, 2055
 For reexamination under § 971.17(1), 662
 Foreman, jurors to select, duty, 515
 Forms, 480-496
 Instruction after, 525A
 One defendant
 single count, 480
 single count, included offense, 482
 two counts, conviction for both proper, 484
 two counts, conviction for only one proper, 486
 two counts, included offense, 485
 Relation to offenses charged, 460-496
 Reexamination under § 971.17(2), 662
 Special questions for "penalty enhancers," 990-999
 Supplemental instruction on agreement, 520
 Two defendants
 single counts, 490
 single count, included offense, 492
 two counts, conviction for both proper, 494
 two counts, conviction for only one proper, 496 (WITHDRAWN)
 Unanimous, 515

Videoconference, SM-18
 View, purpose, effect, 152
 Violating a domestic abuse contact prohibition, 2044
 Violating a no contact order, 1375
 Violating injunction, restraining order, 2040
 Violent crime against an elder person, 998
 Voir dire, SM-20

W

Waiver of counsel, SM-30
 Waiver of jury trial, SM-21
 Waiver of preliminary examination, SM-31

INDEX

WIS JI-CRIMINAL

- Waiver of right to be present, SM-18
- Weapon
 - Carrying concealed, 1335, 1335A, 1335B
 - Carrying where prohibited, 5401
 - Children, weapons offenses, 2176-2179
 - Electric, 1344A
 - Homicide by intoxicated user, 1190
 - Homicide by negligent use, 1175
 - Injury by negligent use, 1260
 - Possession of by convicted felon, 1343
 - Reckless use of, 1305, 1321, 1322, 1323, 1324
 - Use of dangerous weapon, 990
- Wearing bulletproof garment, 993
- Weight of evidence
 - Accomplices, 245
 - Child witness, 340
 - Credibility of witnesses, 300
 - Expert testimony, 200, 205
 - more than one expert, 200A
 - How decided, 190
 - Jury must judge, 215
 - Motive, presence or absence, 175
 - Statements or confessions, 180
- Welfare fraud
 - Failure to disclose, 1851
 - Failure to notify authorities of change of facts, 1854
 - Failure to report receipt of income, 1852
 - False representations to secure public assistance, 1850
- Whitty evidence, cautionary instruction, 275
- Wisconsin Organized Crime Control Act, 1881-1883
- Withdrawal
 - By conspirator, 412
- Without consent, 948
- Witness, granted immunity, testimony of, 245
 - Procedure, SM-55
- Witnesses, 300, 340
 - See also Evidence
 - Battery to, 1232, 1233, 1238, 1239
 - Bribery of, 1808A, 1808B
 - Child, credibility, 340
 - Credibility consideration, 300
 - Damage or threat to property of, 1400C
 - Exercising privilege against self-incrimination, 317
 - Expert, 200, 205
 - Impeachment, 320-330
 - Intimidation of, 1290 (WITHDRAWN), 1292, 1292A (WITHDRAWN), 1297
 - Jury questioning, 57
 - Missing witness, 345
 - Motives for falsifying considered, 300
 - Opinion of a nonexpert, 201
 - Prisoner status an issue, 312
- Worthless check
 - Issue of, 1468
 - Over \$500, 1469A, 1469B