

1193 MUTILATING A CORPSE — § 940.11(1)**Statutory Definition of the Crime**

Section 940.11(1) of the Criminal Code of Wisconsin is violated by one who mutilates, disfigures, or dismembers a corpse with intent to conceal a crime or avoid apprehension, prosecution, or conviction for a crime.

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 (mutilated) (disfigured) (dismembered) a corpse.¹
2. The defendant (mutilated) (disfigured) (dismembered) a corpse with the intent to [conceal a crime] [avoid apprehension, prosecution, or conviction² for a crime].

This requires that the defendant acted with the purpose to [conceal a crime] [avoid apprehension, prosecution, or conviction for a crime].³

Deciding About Intent

You cannot look into a person's mind to find out 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 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 1193 was originally published in 1998. This revision was approved by the Committee in April 2006 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for violations of sub. (1) of § 940.11. For violations of sub. (2) of the same statute, see Wis JI-Criminal 1194.

Subsection (3) of § 940.11 provides as follows: "A person may not be subject to prosecution under both this section and §946.47 for his or her acts regarding the same corpse." Section 946.47 defines the offense of Harboring Or Aiding Felons.

1. "Corpse" means the dead body of a human being. American Heritage Dictionary of the English Language, 3rd Edition, 1992.

2. If the charging document specifies one of the alternatives (apprehension, prosecution, or conviction), or the evidence supports only one, only that alternative should be used in the instruction. If more than one alternative is supported by the evidence and included in the instruction, the Committee concluded that the jury need not be unanimous as to which applies because the alternatives do not state "conceptually distinct" categories. For a discussion of the same problem arising in connection with burglary with intent to commit a felony, see State v. Hammer, 216 Wis.2d 213, 576 N.W.2d 285 (Ct. App. 1997).

3. "With intent to" is defined in § 939.23(4) as having the mental purpose to cause the result or being "aware that his or her conduct is practically certain to cause that result." The Committee believes that the mental purpose alternative is most likely to apply to this offense. Also see Wis JI-Criminal 923A and 923B.