

**405 PARTY TO CRIME: AIDING AND ABETTING: DEFENDANT  
INTENTIONALLY AIDED THE CRIME CHARGED****Party to a Crime**

Section 939.05 of the Criminal Code of Wisconsin provides that whoever is concerned in the commission of a crime is a party to that crime and may be convicted of that crime although that person did not directly commit it.

The State contends that<sup>1</sup> the defendant was concerned in the commission of the crime of (name crime charged) by intentionally aiding and abetting the person who directly committed it. If a person intentionally aids and abets the commission of a crime, then that person is guilty of the crime as well as the person who directly committed it.

**Definition of Aiding and Abetting**

A person intentionally aids and abets the commission of a crime when, acting with knowledge or belief that another person is committing or intends to commit a crime, (he) (she) knowingly either:

- assists the person who commits the crime; or
- is ready and willing to assist and the person who commits the crime knows of the willingness to assist.

To intentionally aid and abet (name crime charged), the defendant must know that another person is committing or intends to commit the crime of (name crime charged) and have the purpose to assist the commission of that crime.<sup>2</sup>

USE THE FOLLOWING IF SUPPORTED BY THE EVIDENCE.

[However, a person does not aid and abet if (he) (she) is only a bystander or spectator and does nothing to assist the commission of a crime.]

### State's Burden of Proof

Before you may find the defendant guilty, the State must prove by evidence which satisfies you beyond a reasonable doubt that the crime of (name crime charged) was committed and that the defendant intentionally aided and abetted the commission of that crime.

### Statutory Definition of the Crime

(Name crime charged), as defined in § \_\_\_\_\_ of the Criminal Code of Wisconsin, is committed by one who (state the elements of the crime).<sup>3</sup>

### State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the following \_\_\_\_\_<sup>4</sup> elements of (name crime charged) were present.

### Elements of the Crime That the State Must Prove

DEFINE THE ELEMENTS OF THE CHARGED CRIME; USE THE APPROPRIATE UNIFORM INSTRUCTION, OMITTING THE LAST TWO PARAGRAPHS. USE THE NAME OF THE PERSON WHO DIRECTLY COMMITTED THE CRIME IN PLACE OF "THE DEFENDANT" THAT IS TYPICALLY USED IN THE UNIFORM INSTRUCTION. IF THE NAME IS NOT KNOWN, USE "THE PERSON" OR "THE OTHER PERSON."<sup>5</sup>

### Jury's Decision

If you are satisfied beyond a reasonable doubt that (name of principal)<sup>6</sup> committed all \_\_\_\_\_ elements of (name crime charged) and that the defendant intentionally aided and abetted the commission of that crime, you should find the defendant guilty.

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

### COMMENT

Wis JI-Criminal 405 was originally published in 1994. The 2001 revision involved adoption of a new format, nonsubstantive changes to the text, and updating of the Comment. This revision was approved by the Committee in April 2005 and involved nonsubstantive editorial changes.

[An instruction previously identified as Wis JI-Criminal 405 (c. 1992) has been withdrawn. See Wis JI-Criminal 418.]

The substance of this instruction was formerly contained in Wis JI-Criminal 400 (c. 1962). The 1994 revision of Wis JI-Criminal 400 provided separate instructions for the different bases of party to crime liability. See the Comment to Wis JI-Criminal 400.

This instruction is for the case which is submitted to the jury solely on the theory that the defendant aided and abetted the person who directly committed the crime. For an illustration of how the model would be applied in a burglary case, see Wis JI-Criminal 405 EXAMPLE.

For a case involving the "natural and probable consequences" variety of aiding and abetting, see Wis JI-Criminal 406.

1. It is recommended, but not required, that the state indicate in the charging document that a party to crime theory of liability will be relied upon. LaVigne v. State, 32 Wis.2d 190, 194, 145 N.W.2d 175 (1966). The statement "the State contends that . . ." is used because it is broad enough to cover cases where the party to crime theory is charged and those where it was not charged but develops based on the evidence presented at trial.

2. The definition of "intentionally" deals with the clear-cut case where the defendant acted with the purpose to assist the commission of the crime charged. "Intentionally" is also defined to include one who is aware that his or her conduct is practically certain to cause the result specified. See § 939.23(3) and Wis JI-Criminal 923A. For a case involving the "natural and probable consequences" variation of aiding and abetting, see Wis JI-Criminal 406.

3. Here summarize the definition of the underlying crime. This can usually be done by using the statement found in the first paragraph of the uniform instruction.

4. Insert the appropriate number of elements from the uniform instruction for the crime charged.

5. The primary change required in integrating the instruction for the underlying crime is to phrase it in terms of another person directly committing the crime rather than to use only "the defendant." In the party to crime case, it is the other person who directly commits the crime; At the defendant@ is the person whose liability depends on being a party to that crime.

If the name of the principal is known, it should be used throughout the instruction. If the case presents the unusual situation where the name of the principal is not known, use "another person" the first time reference is made and "the person" or "that person" for the other references.

6. If the name of the principal is known, it should be inserted in the blank. If the case presents the unusual situation where the name of the principal is not known, use "another person."