

407 PARTY TO CRIME: AIDING AND ABETTING: MULTIPLE COUNTS**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 contends¹ that the defendant was concerned in the commission of the following crimes by intentionally aiding and abetting the person who directly committed them: (name each crime charged).

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:

X assists the person who commits the crime; or

X 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.²

[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 of any of the crimes charged, the State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant intentionally aided and abetted the commission of that crime.

The crime charged in Count One is (name crime charged).

Statutory Definition of (Name Crime Charged)

(Name crime charged in Count One), as defined in § _____ of the Criminal Code of Wisconsin, is committed by one who (state the elements of the crime).³

State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the following _____⁴ elements of (name crime charged in count One) were present.

Elements of (Name Crime Charged) That the State Must Prove

DEFINE THE ELEMENTS OF THE CRIME CHARGED IN COUNT ONE. 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."⁵

Jury's Decision – Party to the Crime of (Name Crime Charged in Count One)

If you are satisfied beyond a reasonable doubt that the defendant intentionally aided and abetted the commission of (name crime charged in Count One), you should find the defendant guilty.

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

The crime charged in Count Two is (name crime charged).

Statutory Definition of (Name Crime Charged)

(Name crime charged in Count Two), as defined in § _____ of the Criminal Code of Wisconsin, is committed by one who (state the elements of the crime).⁶

State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the following _____⁷ elements of (name crime charged in Count Two) were present.

Elements of (Name Crime Charged) That the State Must Prove

DEFINE THE ELEMENTS OF THE CRIME CHARGED IN COUNT TWO. 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."⁸

Jury's Decision – Party to the Crime of (Name Crime Charged in Count Two)

If you are satisfied beyond a reasonable doubt that the defendant intentionally aided and abetted the commission of (name crime charged in Count Two), you should find the defendant guilty.

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

REPEAT THE ABOVE FOR EACH ADDITIONAL COUNT.

COMMENT

Wis JI-Criminal 407 was originally published in 1995. This revision was approved by the Committee in April 2005, and involved adoption of a new format, nonsubstantive changes to the text, and updating of the Comment.

This instruction adapts the standard instruction for aiding and abetting for use in multiple count cases. The assumption is that two or more counts are charged, each based on the defendant being concerned in the commission of the crime by aiding and abetting the person who directly committed it. The Committee concluded that it will avoid repetition and aid clarity to read the aiding and abetting definition once and then relate that definition to each count. If the counts charge additional violation of the same criminal statute, further consolidation is possible by not repeating the elements of the crime. See Wis JI-Criminal 116 and 116 EXAMPLE.

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; "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. 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.

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

8. 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; "the defendant" is the person whose liability depends on being a party to that crime.

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