

## 415 PARTY TO CRIME: SOLICITATION TO COMMIT 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<sup>1</sup> that the defendant was concerned in the commission of the crime of (name crime charged) by soliciting another to commit that crime. If a person solicits another to commit a crime and that crime is committed, then that person is guilty of the crime as well as the person who directly committed it.

### Definition of Solicitation

A person solicits the commission of a crime when that person advises, hires, counsels, or otherwise procures another to commit that crime.<sup>2</sup>

[IF WITHDRAWAL IS AN ISSUE, INSERT WIS JI-CRIMINAL 412.]<sup>3</sup>

### State's Burden of Proof – Party To A Crime

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 solicited another to commit 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>4</sup>

### State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the following \_\_\_\_\_<sup>5</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 INSTRUCTIONS, 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>6</sup>

### Jury's Decision

If you are satisfied beyond a reasonable doubt that (name of principal)<sup>7</sup> committed all \_\_\_\_\_<sup>8</sup> elements of (name crime charged) and that the defendant solicited (name of principal) to commit that crime [and did not withdraw before the crime was committed], you should find the defendant guilty.

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

### COMMENT

Wis JI-Criminal 415 was originally published in 1994. 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.

The originally published version of Wis JI-Criminal 400, 8 1962, provided a single model that included all the alternative theories of party to crime liability in § 939.05. The 1994 revision provided a series of separate instructions, based on the Committee's conclusion that the basis for liability is more clearly set forth where the instruction addresses only the theories supported by the evidence.

This instruction is for the case which is submitted to the jury solely on the theory that the defendant another person to commit the crime.

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. "Solicitation" is used as the general term describing the conduct. It is defined by reference to ways "soliciting" may be accomplished set forth in § 939.05(2)(c).

3. The primary change required in integrating the instruction for the underlying crime is to phrase it in terms of another person committing the crime rather than by using "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 inserted in the blank and used throughout the instruction. If the case presents the unusual situation where the name of the principal is not known, use "another person" in the first blank and "the person" or "that person" in the other blanks.

4. 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.

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

6. 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.

7. 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."

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