

581 EXAMPLE ATTEMPTED BURGLARY — § 939.32 and 943.10

The defendant is charged with attempted burglary.

Statutory Definition of the Crime

The crime of attempted burglary, as defined in § 939.32 and § 943.10 of the Criminal Code of Wisconsin, is committed by one who, with intent to commit burglary, does acts toward the commission of that crime which demonstrate unequivocally, under all of the circumstances, that he or she had formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor.

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 elements¹ were present.

Elements of the Crime That the State Must Prove

1. The first element of attempted burglary requires that the defendant intended² to commit the crime of burglary.

The crime of burglary is committed by one who³

- intentionally enters a building; and
- enters a building without the consent of the person in lawful possession; and
- knows that the entry was without consent; and
- enters the building with intent to steal.

"Intent to steal" requires the mental purpose to take and carry away movable property of another without consent and the intent to deprive the owner permanently of possession of the property.

ADD OTHER DEFINITIONS FROM WIS JI-CRIMINAL 1421
AS NECESSARY⁴

The crime charged against the defendant in this case, however, is not burglary as defined, but an attempt to commit the crime of burglary.

2. The second element of attempted burglary requires that the defendant did acts toward the commission of the crime of burglary which demonstrate unequivocally, under all of the circumstances, that the defendant intended to and would have committed the crime of burglary except for the intervention of another person or some other extraneous factor.⁵

Meaning of "Unequivocally"

"Unequivocally" means that no other inference or conclusion can reasonably and fairly be drawn from the defendant's acts, under the circumstances.⁶

Meaning of "Another Person"

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

Meaning of "Extraneous Factor"

An "extraneous factor"⁷ is something outside the knowledge of the defendant or outside the defendant's control.⁸

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 the elements of attempted burglary 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 581 EXAMPLE was approved by the Committee in March 2002.

This instruction uses burglary as an example to illustrate how the elements of the crime attempted would be integrated with the general pattern instruction for attempts. The elements of the crime of burglary are listed under the first element of attempt. Definition of one key term, "intent to steal," is included.

1. See note 2, Wis JI-Criminal 580.
2. See note 3, Wis JI-Criminal 580.
3. These are the elements set forth in Wis JI-Criminal 1421, Burglary With Intent To Steal. In that instruction, each element begins with "the defendant." Those words were removed when the elements were integrated into the general attempt model because the defendant charged with attempt will not have completed the crime and therefore will not have directly committed each of the elements. However, the defendant charged with attempt must have intended that all elements of the crime be completed and must have acted with the intent and knowledge required for the completed crime.
4. Two definitional paragraphs of Wis JI-Criminal 1421 are not included in this example: one dealing with "when must intent exist" and one dealing with "deciding about intent and knowledge." Upon request, or when the evidence has focused on either or both of those issues, the Committee recommends that those paragraphs be included in the attempt instruction.
5. See note 5, Wis JI-Criminal 580.

6. See note 6, Wis JI-Criminal 580.
7. See note 5, Wis JI-Criminal 580.
8. See note 8, Wis JI-Criminal 580.