

**923A "INTENTIONALLY" AND "WITH INTENT TO": MENTAL PURPOSE
— § 939.23(3) and (4)¹**

("Intentionally") (With intent to") means that the defendant must have had the purpose to _____.²

["Intentionally" also requires that the defendant must have acted with knowledge that _____.]³

Deciding About Intent⁴

You cannot look into a person's mind to find intent.⁵ Intent to _____⁶ 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.

[OPTIONAL LONG FORM]

[Deciding About Intent]

[You cannot look into a person's mind to find intent. You may determine intent directly or indirectly from all the facts in evidence concerning this offense. You may consider any statements or conduct of the defendant which indicate state of mind. You may find intent to _____⁷ from statements or conduct, but you are not required to do so. You are sole judges of the facts, and you must not find the defendant guilty unless you are satisfied beyond a reasonable doubt that the defendant intended to _____.]⁸

When May Intent Exist?⁹

While the law requires that the defendant acted with intent to _____, it does not require that the intent exist for any particular length of time before the act is committed. The

act need not be brooded over, considered, or reflected upon for a week, a day, an hour, or even for a minute. There need not be any appreciable time between the formation of the intent and the act. The intent to _____ may be formed at any time before the act, including the instant before the act and must continue to exist at the time of the act.

Intent and Motive¹⁰

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. "Motive" refers to a person's reason for doing something.

While motive may be shown as a circumstance to aid in establishing the guilt of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

COMMENT

This instruction replaced Wis JI-Criminal 923.1 which was originally published in 1989. It was revised in 2001. This revision was approved by the Committee in June 2009; it added the second paragraph below to the comment.

This instruction is intended as a reference for the various issues relating to the definition of "intentionally" and "with intent to" as those terms are used in the Wisconsin Criminal Code. Seldom, if ever, would all the parts of this instruction be given in a single case but putting them all in one place allows more complete discussion of the substantive issues and is intended to provide for convenient cross-reference in the instructions for individual offenses.

Most of the uniform offense instructions contain the "Deciding About Intent" paragraph above, but not the "When May Intent Exist" or "Intent and Motive" paragraphs. When either or both of those issues are important in a particular case the relevant paragraph(s) should be added.

The definitions of these terms in § 939.23(3) and (4) were modified by 1987 Wisconsin Act 399, effective January 1, 1989. See note 1, below.

1. 1987 Wisconsin Act 399 amended § 939.23(3) and (4) as follows:

(3) "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. In addition, except as provided in sub. (6), the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word "intentionally." (Emphasis added.)

(4) "With intent to" or "with intent that" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. (Emphasis added.)

The addition of the material underlined above was part of the revision of the homicide statutes originally introduced as 1987 Senate Bill 191 and passed as part of the budget bill, 1987 Wisconsin Act 399. The effective date for the change is January 1, 1989. It applies to homicide cases as well as all other Criminal Code offenses, the more limited definition of "intent to kill" in § 940.01 having been repealed by the same legislation.

This instruction deals only with the mental purpose and knowledge aspects of the definition, which have not been changed. The new alternative – "practically certain to cause that result" – is discussed in Wis JI-Criminal 923B.

2. Here identify the result specified by the statute defining the criminal offense, for example: "take the life of another," or "cause great bodily harm to another."

3. Here identify those facts "which are necessary to make the conduct criminal and which are set forth after the word 'intentionally,'" in the statute defining the crime. § 939.23(3). For example, with a charge of burglary under § 943.10, the defendant must know that the owner has not consented to the entry: "without the consent of the person in lawful possession" is a fact necessary to make the conduct criminal, and it is set forth in the statute after the word "intentionally."

4. This is the shorter version used to describe the process of finding intent. The Committee concluded that it is suitable for use in most cases. Instructions formerly used a longer description of the intent-finding process, which is provided in brackets in the instruction for use where the court believes it will be helpful to the jury.

5. Where knowledge of facts is also required (see note 3, supra), modify this paragraph to read "intent and knowledge" throughout.

6. Here identify the result specified by the statute defining the criminal offense, for example: "take the life of another," or "cause great bodily harm to another."

7. Here identify the result specified by the statute defining the criminal offense, for example: "take the life of another," or "cause great bodily harm to another."

8. This paragraph was developed by the Committee in 1977 to replace the formerly used language: "The law presumes that a reasonable person intends all of the natural, probable, and usual consequences of his

deliberate acts." This paragraph was considered preferable because it avoids two problems of constitutional dimensions: the potential for relieving the prosecution of its burden of establishing all elements of the crime beyond a reasonable doubt; and the danger of shifting the burden of proof to the defendant on an element of the crime. The paragraph also meets the requirements of Wis. Stat. § 903.03(3), which applies to instructing the jury on presumptions in criminal cases. After the change was approved by the Committee, two decisions of the United States Supreme Court held instructions unconstitutional which used variations of "the law presumes. . . ." See United States v. United States Gypsum, 438 U.S. 422 (1978), and Sandstrom v. Montana, 442 U.S. 510 (1979).

With the passage of time, the connection with "the law presumes" version has become more attenuated and the Committee concluded that the longer paragraph no longer serves a need that cannot be met equally well by the shorter one. The long form is preserved here in the event that there may be a need for it. In no circumstances should an instruction on intent include the "the law presumes . . ." language.

9. This paragraph is incorporated into several of the standard instructions where the timing of formation of intent can be an important issue. See, for example, Wis JI-Criminal 1010, First Degree Intentional Homicide, and Wis JI-Criminal 1421, Burglary With Intent To Steal.

This paragraph is adapted from the one used for many years in the instruction for first degree murder. See Wis JI-Criminal 1100, © 1980. It addresses the issue referred to as "premeditation" in the common law of homicide and used in the Wisconsin Statutes that predated the 1956 revision of the Criminal Code. This paragraph has traditionally been used primarily in homicide cases. However, occasionally a "premeditation" type of issue may arise in other cases where attention is focussed on the timing of the formation of intent. This could logically happen in battery cases with respect to the intent to cause bodily harm or in burglary cases with respect to the intent to steal or commit a felony. In those situations, this paragraph may be useful as a model for an addition to the standard instruction.

10. This paragraph is based on Wis JI-Criminal 175, Motive. It is incorporated into several of the standard instructions where evidence of motive is believed to be likely. See, for example, Wis JI-Criminal 1010, First Degree Intentional Homicide. It is not necessarily appropriate for use in every instruction where intent is an element, but may, depending on the facts, be worth adding to standard instructions that do not already incorporate it.