

**997 ELDER PERSON VICTIMS — § 939.623**

THE FOLLOWING INSTRUCTION SHOULD BE GIVEN IMMEDIATELY AFTER THE INSTRUCTION ON THE OFFENSE CHARGED.

The (information) (complaint) alleges not only that the defendant committed the crime of (specify crime for which imprisonment may be imposed) but also that the defendant committed that crime against an elder person.

[“Elder person” means any individual who is 60 years of age or older.]<sup>1</sup>

If you find the defendant guilty of (specify crime for which imprisonment may be imposed), you must answer the following question:

“Did the defendant commit the crime of (specify crime for which imprisonment may be imposed) against a person who was 60 years of age or older?”<sup>2</sup>

Knowledge of the victim’s age is not required and mistake about the victim’s age is not a defense.<sup>3</sup>

If you are satisfied beyond a reasonable doubt that the defendant committed the crime of (specify crime for which imprisonment may be imposed) against a person who was 60 years of age or older, you should answer the question “yes.”

If you are not so satisfied, you must answer the question “no.”

**COMMENT**

Wis JI-Criminal 997 was approved by the Committee in December 2021.

Section 939.623 was created by 2021 Wisconsin Act 76 [effective date: August 8, 2021]. § 939.623 allows a sentencing court to increase the maximum term of imprisonment prescribed by law if the defendant is convicted of a crime for which imprisonment may be imposed, and the crime victim is an elder person.

For “violent felony” offenses committed against an individual 62 years of age or older before February 1, 2003, see Wis JI-Criminal 998.

The maximum term of imprisonment for any crime for which imprisonment may be imposed may be increased as follows if the victim is an elder person:

- (a) A maximum term of imprisonment of one year or less may be increased to not more than 2 years.
- (b) A maximum term of imprisonment of more than one year but not more than 10 years may be increased by not more than 4 years.
- (c) A maximum term of imprisonment of more than 10 years may be increased by not more than 6 years.

1. This definition of “elder person” is the one provided in § 939.623.

2. Strictly following the statutory format would mean first stating the term “elder person” and then providing the definition: one who is 60 years of age or older. The Committee concluded that it was more direct simply to ask: Was the victim 60 years of age or older?

3. This is the standard statement that is used in other instructions where the victim’s age is an element and is based on the complementary rules stated in §§ 939.23(6) and 939.43(2). Although both of those statutes refer to “the age of a minor,” sub. (3) of § 939.623 provides a similar rule for this offense: “This section applies irrespective of whether the defendant had actual knowledge of the crime victim’s age. A mistake regarding the crime victim’s age is not a defense to an increased penalty under this section.” The Committee concluded that the standard statement is clearer; no change in meaning is intended.