

1010 FIRST DEGREE INTENTIONAL HOMICIDE — § 940.01(1)(a)¹**Statutory Definition of the Crime**

First degree intentional homicide, as defined in § 940.01 of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being with the intent to kill that person or another.

State's Burden of Proof

Before you may find the defendant guilty of first degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused the death of (name of victim).

"Cause" means that the defendant's act was a substantial factor in producing the death.²

2. The defendant acted with the intent to kill ((name of victim)) (another human being).³

"Intent to kill" means that the defendant had the mental purpose to take the life of another human being or was aware that (his) (her) conduct was practically certain to cause the death of another human being.⁴

When May Intent Exist?

While the law requires that the defendant acted with intent to kill, 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 kill 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.

Deciding About Intent

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

Intent and Motive

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.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant caused the death of (name of victim) with the intent to kill, you should find the defendant guilty of first degree intentional homicide.

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

COMMENT

Wis JI-Criminal 1010 was originally published in 1989. This revision was approved by the Committee in November 1999 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for a violation of § 940.01, created by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. The statute applies to offenses committed on or after January 1, 1989. For a discussion of the homicide revision generally and of the offense covered by this instruction, see the Introductory Comment at Wis JI-Criminal 1000.

This offense, first degree intentional homicide, is essentially the same as first degree murder under prior law. The penalty is that of a Class A felony: life imprisonment.

1. This instruction is for a case where there is no evidence of any privilege or mitigating circumstance. Separate instructions are drafted for cases where, for example, evidence of adequate provocation or self-defense is in the case. See Wis JI-Criminal 1012, 1014.

2. The Committee has concluded that the simple "substantial factor" definition of cause should be sufficient for most cases. Where there is evidence of more than one possible cause, something like the following might be added immediately preceding the sentence in the instruction beginning with "before":

There may be more than one cause of death. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

Also see Wis JI-Criminal 901, **CAUSE**.

3. The parenthetical reference to "another human being" is to be used in a case involving the common law doctrine of "transferred intent," which has been described as follows:

It is immaterial that the human being killed is not the one the actor intended to kill. If X shoots at and kills a person who he thinks is Y but who is actually Z, X is as guilty as if he had not been mistaken about the identity of the person killed. The same is true where X shoots at Y intending to kill him, but he misses Y and kills Z. In both of these cases, X has caused "the death of another human being by an act done with intent to kill that person or another." In other words, the section

incorporates the common law doctrine of "transferred intent." 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 58.

4. The phrase "or aware that his conduct is practically certain to cause that result" was added to the definition of "with intent to" found in § 939.23 by the 1988 revision of the homicide statutes. Further, the revision applied the § 939.23 definition to homicide offenses. Under prior law, "with intent to kill" was defined solely in terms of mental purpose for offenses in Chapter 940. See the discussion in Wis JI-Criminal 1000 and 923.2.

5. This is the shorter version used to describe the process of finding intent. The Committee has concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A [formerly Wis JI-Criminal 923.1].