

1194 HIDING OR BURYING A CORPSE — § 940.11(2)**Statutory Definition of the Crime**

Section 940.11(2)¹ of the Criminal Code of Wisconsin is violated by one who hides or buries a corpse [with intent to conceal a crime or avoid apprehension, prosecution, or conviction for a crime] [with intent to collect benefits under section (49.141) (49.49) (49.795)].²

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 elements were present.

Elements of the Crime That the State Must Prove

1. The defendant (hid)³ (buried) a corpse.⁴
2. The defendant (hid) (buried) a corpse with intent to [conceal a crime] [avoid apprehension, prosecution, or conviction⁵ for a crime] [to collect benefits under section (49.141) (49.49) (49.795)].

This requires that the defendant acted with the purpose to [conceal a crime] [avoid apprehension, prosecution, or conviction for a crime] [to collect benefits under section (49.141) (49.49) (49.795)].⁶

Deciding About Intent

You cannot look into a person's mind to find out 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 both elements of this offense 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 1194 was originally published in 1994 and revised in 1998, 2006, and 2013. The 2013 revision modified the instruction to reflect changes made by 2011 Wisconsin Act 268. This revision was approved by the Committee in August 2023; it added to the comment.

This instruction is for violations of sub. (2) of § 940.11. For violations of sub. (1) of the same statute, see Wis JI-Criminal 1193.

Section 940.11 was amended by 2011 Wisconsin Act 268 [effective date: April 24, 2012] to add an alternative intent element: intent to collect benefits under sections 49.141 Wisconsin works, 49.49 Medical assistance or 49.795 Food stamps.

Subsection (3) of § 940.11 provides as follows: "A person may not be subject to prosecution under both this section and § 946.47 or under both this section and § 948.23 for his or her acts regarding the same corpse." Section 946.47 defines the offense of Harboring Or Aiding Felons. Section 948.23 defines the offense of Concealing or Not Reporting the Death of a Child.

Per the provisions of Wis. Stat. § 939.66: "Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included crime, but not both." Further, subsection (7) of the statute clarifies that an included crime could be "the crime specified in s. 940.11(2) when the crime charged is specified in s. 940.11(1)." Therefore, a guilty verdict can be rendered for both a count of mutilating a corpse and a count of hiding or burying a corpse, but only one judgment of conviction can be entered for each corpse.

1. This alternative intent element was added to § 940.11(2) by 2011 Wisconsin Act 268 [effective date: April 24, 2012]. Section 49.141 refers to benefits under Wisconsin Works, 49.49 refers to medical assistance, and 49.795 refers to food stamps.

The material added to the statute by Act 268 reads: “. . . or notwithstanding s. 49.141(7), 49.49(1), or 49.795 with intent to collect benefits under one of those sections. . .” The statutes listed after “notwithstanding” are those that define criminal violations – what are typically referred to as “welfare fraud” or “food stamp fraud.” The Committee interpreted this reference to mean that regardless of the other criminal penalties that may apply, an individual may be prosecuted under § 940.11 if the statute is violated with an intent to obtain benefits under those sections.

2. The evidence was found to be sufficient to establish that the defendant “hid” a corpse in State v. Badker, 2001 WI App 27, 240 Wis.2d 460, 623 N.W.2d 142. The court referred with apparent approval to the dictionary definition of “hide” as “to put or keep out of sight.” 2001 WI App 27, ¶25, citing Webster’s II New College Dictionary (1999).

3. “Corpse” means the dead body of a human being. American Heritage Dictionary of the English Language, 3rd Edition, 1992.

4. If the charging document specifies one of the alternatives (apprehension, prosecution, or conviction), or the evidence supports only one, only that alternative should be used in the instruction. If more than one alternative is supported by the evidence and included in the instruction, the Committee concluded that the jury need not be unanimous as to which applies because the alternatives do not state “conceptually distinct” categories. For a discussion of the same problem arising in connection with burglary with intent to commit a felony, see State v. Hammer, 216 Wis.2d 213, 576 N.W.2d 285 (Ct. App. 1997).

5. “With intent to” is defined in § 939.23(4) as having the mental purpose to cause the result or being “aware that his or her conduct is practically certain to cause that result.” The Committee believes that the mental purpose alternative is most likely to apply to this offense. Also see Wis JI-Criminal 923A and 923B.