1270 ABUSE OF RESIDENTS OF PENAL FACILITIES — § 940.29

Statutory Definition of the Crime

Abuse of residents of penal facilities, as defined in § 940.29 of the Criminal Code of Wisconsin, is committed by one in charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects, or ill-treats a person confined in or a resident of that institution or place, or who knowingly permits another person to do so.

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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was (in charge of) (employed in) a facility.

2. (Name of victim) was (a resident of) (confined in) a facility.

3. The facility was a [(penal) (correctional) institution] [place of confinement].

   IF A STATUTE IDENTIFIES THE NATURE OF THE FACILITY, ADD THE FOLLOWING.[1]

   [(Name of facility) is a (penal) (correctional) institution.]

4. The defendant (did knowingly) (knowingly permitted[2] another person to) abuse, neglect, or ill-treat (name of victim) .

   The phrase "abuse, neglect, or ill-treat"[3] means any act or failure to act which causes unreasonable[4] suffering, misery, or physical harm to a resident.

[Reasonable conduct necessary for treatment or maintenance of order and discipline in the facility and deprivation incidental to confinement reasonably required by a sentence or commitment are not abuse, neglect, or ill treatment.][5]

Deciding About Knowledge

You cannot look into a person's mind to find out knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, ands statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four 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 1270 was originally published in 1974 and revised in 1980, 1991, and 1994. This revision was approved by the Committee in April 2006 and involved adoption of a new format and nonsubstantive changes to the text.

Section 940.29 was amended by 1993 Wisconsin Act 445 (effective date: May 12, 1994) to apply only to "a penal or correctional institution or other place of confinement." The statute had applied to a long list of institutions and facilities. Those places are now covered by § 940.295, created by Act 445. See Wis JI-Criminal 1271, 1271 EXAMPLE, and 1272.

1. The Committee has concluded that the sentence in brackets is permissible as long as there is a statute providing that, for example, a county jail is a penal or correctional institution. See, for example, sec. 801.02(7)(a): ". . . A correctional institution includes a Type 1 prison, . . . , a Type 2 prison, . . ., a county jail and a house of correction." Thus, the element would read: "The Jones County Jail is a correctional institution."

2. A case involving the pre-1984 version of this statute was State v. Serebin, 119 Wis.2d 837, 350 N.W.2d 65 (1984). Serebin was charged under the "knowingly permitted" alternative. There was evidence in that case that staff members of a nursing home had advised the defendant of the various deficiencies in staffing

and food that were causing harm to the patients. The court found a sufficient causal connection between the failure to remedy the staff shortages and the harm to the patients to sustain the administrator's conviction.

3. The phrase "abuse, neglect, or ill-treat" is, in the Committee's judgment, intended to refer to a single concept involving the causing of unjustified harm to another rather than to state three different ways of committing the offense.

The definition of "abuse, neglect, or ill-treat" is adapted from the one found in the earlier version of Wis JI-Criminal 1270 (8 1974) which was used by the Wisconsin Supreme Court in State v. Serebin, supra, note 2, though not expressly approved. Serebin reviewed the sufficiency of the evidence in a case where the administrator of a nursing home was charged with knowingly permitting the abuse of nursing home residents. The court found that bedsores (which could have been prevented) constituted physical harm and weight loss caused by inadequate diet constituted suffering.

Also see s. 940.295(1)(k), which defines Aneglect@ for purposes of a related offense.

4. Some discomfort is likely to be unavoidable in any situation where a person is confined in one of the institutions covered by § 940.29. What is prohibited is the causing of harm that is unreasonable under the circumstances.

5. This paragraph is to be used when the evidence provides a basis for it. It is intended to give some explanation of the word "unreasonable" used in the preceding paragraph. It explains that some deprivation may be inherent in confinement in the facilities covered by the statute and that what is prohibited is the causing of suffering or physical harm that goes beyond that level.

