

**1273 LAW ENFORCEMENT OFFICER<sup>1</sup> — FAILURE TO RENDER AID —  
§ 940.291****Statutory Definition of the Crime**

Failure to render aid by a law enforcement officer, as defined in § 940.291 of the Criminal Code of Wisconsin, is committed by a peace officer<sup>2</sup> who, while acting in the course of employment or under the authority of employment, [intentionally fails to render or make arrangements for any necessary first aid<sup>3</sup>] [knowingly permits another person to intentionally fail to render or make arrangements for any necessary first aid] for any person in his or her actual custody if bodily harm results from the failure.

**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 a peace officer acting (in the course of) (under the authority of) employment.
2. The defendant had (name of victim) in his or her actual custody.<sup>4</sup>

“Custody” means that a person’s freedom of movement is restricted either by the use of physical force by a peace officer or by the assertion of authority by a peace officer to which the person has submitted.<sup>5</sup>

3. The defendant [intentionally failed to (render) (make arrangements for) any necessary first aid] [knowingly permitted another person to intentionally fail to (render) (make arrangements for) any necessary first aid] to (name of victim).<sup>6</sup>

The term “intentionally” means that the defendant knew (name of victim) had a need for first aid and purposely failed to (render) (make arrangements for) the necessary first aid.<sup>7</sup>

IF FAILURE TO RENDER AID IS ALLEGED, USE THE FOLLOWING:

[“Intentionally failed to render aid” requires that the defendant had the knowledge and the ability to render the first aid that was necessary.]

4. The failure to render or make arrangements for first aid resulted in bodily harm to (name of victim).

“Bodily harm” means physical pain or injury, illness, or any impairment or physical condition.<sup>8</sup>

### **Deciding About Intent and Knowledge**

You cannot look into a person’s mind to find intent or knowledge. Intent and knowledge 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 and 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 1273 was approved by the Committee in February 2020.

Section 940.291 was created by 1983 Wisconsin Act 27 (effective date: July 13, 1983).

1. Although the title of the statute uses the term “law enforcement officer,” the Committee concluded that the term “peace officer” more accurately reflects the intent of the legislature as it is the term utilized within the actual text of the statute. Section 990.001(6) provides: “The titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes.”

2. “Peace officer” is defined in Wis. Stat. § 939.22(22) as follows:

“‘Peace officer’ means any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.”

3. “A violation for intentionally failing to render first aid under this subsection applies only to first aid which the officer has the knowledge and ability to render.” Wis. Stat. § 940.291(1).

4. “This subsection applies whether the custody is lawful or unlawful and whether the custody is actual or constructive.” Wis. Stat. § 940.291(1).

5. The definition of “custody” is adapted from decisions of the Wisconsin Supreme Court and Court of Appeals. These decisions held that the proper definition of custody was broader than being in the “physical control” of a police officer or institution guard. Rather, it is enough if freedom of movement has been restricted. State v. Adams, 152 Wis.2d 68, 447 N.W.2d 90 (Ct. App. 1989); State v. Hoffman, 163 Wis.2d 752, 472 N.W.2d 558 (Ct. App. 1991); State v. Swanson, 164 Wis.2d 437, 475 N.W.2d 437 (1991). See footnote 4, Wis JI-Criminal 1772 for complete discussion of these cases.

6. This offense is essentially based on a failure to act, i.e., an omission. The offense definition incorporates the equivalents of the common law requirements for omission liability: a legal duty, knowledge of facts giving rise to the duty, ability to act, and failure to act as the duty requires. For a full discussion, see Wis JI-Criminal 905.

7. The word “intentionally” is defined to include two aspects: knowledge and purpose. The knowledge requirement is based on § 939.23(3) which provides that when the word “intentionally” is used, it requires that the actor must have knowledge of those facts which apply to make his or her conduct criminal and which are set forth after the word “intentionally.” The purpose requirement is based on one of the two definitions of intent provided in § 939.23(3). The first is mental purpose to cause the result. The other is being aware that one’s conduct is practically certain to cause the result. See Wis Criminal JI 923A.

The Committee concluded that the mental purpose alternative is most likely to apply in situations consisting of purposeful dereliction of duty. However, there may be scenarios that require the practically certain to cause the result alternative. See Wis JI-Criminal 923A and 923B.

8. This is the definition of “bodily harm” provided in § 939.22(4).