

1275 FALSE IMPRISONMENT — § 940.30**Statutory Definition of the Crime**

False imprisonment, as defined in § 940.30 of the Criminal Code of Wisconsin, is committed by one who intentionally confines or restrains another without the person's consent and with knowledge that (he) (she) has no lawful authority 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 five elements were present.

Elements of the Crime That the State Must Prove

1. The defendant confined or restrained (name of victim).
2. The defendant confined or restrained (name of victim) intentionally.

This requires that the defendant had the mental purpose to confine or restrain (name of victim).¹

3. (Name of victim) was confined or restrained without (his) (her) consent.²
4. The defendant had no lawful authority to confine or restrain (name of victim).³
5. The defendant knew that (name of victim) did not consent and knew that (he) (she) did not have lawful authority to confine or restrain (name of victim).⁴

Meaning of "Confined" or "Restrained"

Although this requires genuine restraint or confinement, it does not require that it be in a jail or prison. If the defendant deprived (name of victim) of freedom of movement,⁵ or compelled (him) (her) to remain where (he) (she) did not wish to remain, then (name of victim) was confined or restrained. The use of physical force is not required. One may be confined or restrained by acts or words or both.⁶

ADD THE FOLLOWING IF THE ISSUE OF "ESCAPE" IS RAISED BY THE EVIDENCE:⁷

[A person is not confined or restrained if (he) (she) knew (he) (she) could have avoided it by taking reasonable action.]

[A reasonable opportunity to escape does not change confinement or restraint that has occurred.]

ADD THE FOLLOWING IF RAISED BY THE EVIDENCE:⁸

[Meaning of "Without Consent"]

["Without consent" means that there was no consent in fact or that consent was given by (name of victim) because of fear caused by the defendant's use or threat of imminent use of physical violence on ((name of victim)) (on another person in the presence of (name of victim)) (on a member of (name of victim)'s immediate family).]

Deciding About Intent and Knowledge

You cannot look into a person's mind to find out 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 five 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 1275 was originally published in 1971 and revised in 1990 and 2006. This revision was approved by the Committee in April 2014; it added to footnote 8.

In State v. Baldwin, 62 Wis.2d 521, 215 N.W.2d 541 (1974), the Wisconsin Supreme Court declared that false imprisonment is "a crime of a continuous nature and exists so long as the confinement of the person without his consent continues uninterrupted." 62 Wis.2d 521, 526. The court upheld a conviction for false imprisonment in Milwaukee County after a previous conviction for the same offense in Waukesha County based on the same course of conduct. The court stated that it did not "hold that a continuous imprisonment in an automobile by the same actor constitutes a separate crime in each county through which the auto passes. Here, the actor's participation changed [from aider to principal], the cars changed, and the restraint changed." 62 Wis.2d 521, 525.

In Geitner v. State, 59 Wis.2d 128, 207 N.W.2d 837 (1973), the Wisconsin Supreme Court held that false imprisonment was not a lesser included offense of kidnapping under § 940.31 because it requires proof of a fact which that more serious crime does not: that the defendant knew he had no lawful authority for the confinement or restraint.

1. "Intentionally" is defined in § 939.23(3). The definition changed, effective January 1, 1989, though both the old and new version have "mental purpose" as one definition of "with intent to." It is the other alternative that changed from "reasonably believes his act, if successful, will cause that result" to "is aware that his conduct is practically certain to cause that result." See Wis JI-Criminal 923A and 923B. The Committee concluded that the "mental purpose" part of the definition is most likely to apply in the context of this offense.

2. This offense requires that the confining or restraint was without the consent of the person confined or restrained. Compare § 948.31, which applies to interference with the custody of a child where there may be similar restraint of a child but requires lack of consent by the legal custodian. See Wis JI-Criminal 2166-2168.

3. Several statutes recognize privileges that may be relevant to a claim of lawful authority to restrain or to confine another. See, for example, § 939.48, self-defense, and § 939.49, defense of property. Subsections 939.49(2) and § 943.50(3) specifically address the restraint of persons suspected of retail theft. Where there is evidence of a privilege, its absence is something the state must prove. The Committee recommends integrating the absence of the privilege into the instruction on the false imprisonment. See Wis JI-Criminal 1220A for an example combining battery and self-defense.

Other statutes, such as those defining the authority of police, may also be relevant. See, for example, §§ 968.24 and 968.25 defining the authority to "stop and question," and § 968.07, dealing with arrest.

Privileges or authority not specifically recognized in statutes may also be relevant. In State v. Teynor, 141 Wis.2d 187, 414 N.W.2d 76 (Ct. App. 1987), the court held that the false imprisonment statute could be applied to a parent charged with restraint of his children. The court found that

. . . the legislature did not intend that the lawful authority which a parent has to confine or restrain his or her child makes the parent immune from prosecution under the statute for the nonconsensual restraint or confinement of the child. . . . The parental status affords only a privilege which may be asserted as a defense . . . if the conduct is reasonable discipline of a child.

141 Wis.2d 187, 199-200.

The Teynor court concluded that the entry of an order granting temporary custody of the children to his wife deprived Teynor of the lawful authority a parent has to direct the activities of his children, except when exercising lawful visitation.

4. The basis for the knowledge requirement in the fifth element is the provision in § 939.23(3) which states that when the word "intentionally" is used in a criminal statute, it requires "knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally'."

5. The original version of the instruction (8 1971) used "liberty" instead of "freedom of movement." The Committee concluded that the latter term better describes the nature of the offense because it is less abstract. The "essence of false imprisonment" has been referred to as protection of the "interest in freedom from restraint of movement" and "restraint by one person of the physical liberty of another." Herbst v. Wuennenberg, 83 Wis.2d 768, 774, 266 N.W.2d 391 (1978).

6. The reference to "acts or words or both" has been in the instruction since its original publication in 1971, with citation to Am Jur. The current citation is to 32 Am Jur.2d False Imprisonment, § 17 (1982). Also see Hammer and Donohoo, Substantive Criminal Law in Wisconsin, p. 397 (PESI 1988): "mere words could be sufficient if they actually impose a restraint upon the person to whom they are directed." (Citing, R. Perkins and R. Boyce, Criminal Law, 225 (3rd ed. 1982).)

7. One or both of the bracketed paragraphs should be used only when the issue of "escape" is raised by the evidence. They replace a statement in the 1971 version of the instruction to the effect that "if there is some reasonable means of escape, there is no confinement or restraint." The Committee concluded that this statement was potentially confusing if literally applied. The word "escape" implies leaving a situation of confinement or restraint. Yet once there is confinement or restraint, that aspect of the crime of false imprisonment is complete, and a later escape would not affect it. This is the concept expressed in the second

bracketed paragraph.

In the Committee's judgment, the relevance of escape is more accurately expressed in terms of actions that could reasonably have been taken to avoid confinement or restraint. This is the concept expressed in the first bracketed paragraph.

The "reasonable means of escape" issue was discussed in State v. C.V.C., 153 Wis.2d 145, 450 N.W.2d 463 (Ct. App. 1989). The court relied on a standard from the Restatement of Torts to determine whether a victim had a "reasonable means of escape":

Since the actor has intended to imprison the other, the other is not required to run any risk of harm to his person or to his chattels or of subjecting himself to any substantial liability to a third person in order to relieve the actor from a liability to which his intentional misconduct has subjected him. So too, even though there may be a perfectly safe avenue of escape, the other is not required to take it if the circumstances are such as to make it offensive to a reasonable sense of decency or personal dignity.

Restatement (Second) of Torts, sec. 36 comment a. (1978).

The standard had previously been applied in a civil case. Herbst v. Wuennenberg, 83 Wis.2d 768, 778-79, 266 N.W.2d 391 (1978). In C.V.C., the court concluded that "the victim was not required to take steps dangerous to herself or offensive to a reasonable sense of decency or personal dignity to free herself in order for the state to prove restraint or confinement. . . ." 153 Wis.2d 145, 150. Also see the Comment to § 340.25 in Volume V 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 71 (February 1953).

8. "Without consent" is defined in § 939.22(48). The material in brackets reflects the rule stated in § 939.22(48)(a) and has been included because the use of force, often involved in the crime of false imprisonment, may be relevant to the consent issue as well. When the bracketed material is used, additional explanation is recommended, especially where consent was given because of threats to a third person or family member. Subsections (b) through (d) of § 939.22(48) identify other situations where consent in fact is not to be considered as "consent" under the Criminal Code.

In State v. Long, 2009 WI 36, 317 Wis.2d 92, 765 N.W.2d 557, ¶¶31 and 32, the Wisconsin Supreme Court suggested that the definition of "without consent" in § 940.225(4) should be applied to the false imprisonment statute. Because the decision did not acknowledge that "without consent" is defined in § 939.22(48) – a definition that generally applies to Chapters 939 to 948 "unless the context of a specific section manifestly requires a different construction" § 939.22(48) intro. – the Committee concluded that the definition used in the instruction need not be changed.