

1283A PLACING A GLOBAL POSITIONING DEVICE — § 940.315(1)(a)**Statutory Definition of the Crime**

Section 940.315(1)(a) of the Criminal Code of Wisconsin is violated by a person who places a global positioning device or a device equipped with global positioning technology on a vehicle owned or leased by another person without that person's consent.

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 placed [a global positioning device¹] [a device equipped with global positioning technology] on a vehicle owned or leased by another person.
2. The defendant placed that device without the person's consent.²

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 1283A was approved by the Committee in October 2015.

Wis JI-Criminal 1283A is drafted for a violation of § 940.315(1)(a) – a Class A misdemeanor. For violations of § 940.315(1)(b) see Wis JI-Criminal 1283B.

Section 940.315 was created by 2015 Wisconsin Act 45 [effective date: July 3, 2015].

Subsection (2) of § 940.315 sets forth several situations where the prohibition of sub. (1) does not apply: installation of a device by a manufacturer, by law enforcement officers acting in an official capacity, parents tracking the location or movement of a minor child, etc. The general rule in Wisconsin is that an exception which appears in a separate section of the statute is a matter of defense which the prosecution need not anticipate in the pleadings. State v. Harrison, 260 Wis. 89,92, 250 N.W.2d 38 (1951). Kreutzer v. Westfahl, 187 Wis. 463, 477, 204 N.W. 595(1925).

These situations are best handled, in the Committee's judgment, in the same manner as "affirmative defenses." That is, they are not issues in the case until there is some evidence of their existence. Once there is evidence sufficient to raise the issue, the burden is on the state to prove, beyond a reasonable doubt, that the defense, or the exception, is not present. See Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979); State v. Schultz, 102 Wis.2d 423, 307 N.W.2d 151 (1981).

1. Section 940.315 does not define "global positioning device." A definition of "global positioning system tracking" is provided at sub.(1)(b) of §§ 301.48 and 301.49.
2. For a definition of "without consent" see § 939.22(48) and Wis JI-Criminal 948.