

1283B OBTAINING INFORMATION GENERATED BY A GLOBAL POSITIONING DEVICE — § 940.315(1)(b)**Statutory Definition of the Crime**

Section 940.315(1)(b) of the Criminal Code of Wisconsin is violated by a person who intentionally obtains information regarding another person's movement or location generated by a global positioning device or a device equipped with global positioning technology that has been placed 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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant obtained information regarding another person's movement or location generated by [a global positioning device¹] [a device equipped with global positioning technology].
2. The device was placed without the person's consent.²
3. The defendant knew that the device was placed without the other person's consent.³
4. The defendant acted intentionally.⁴

This requires that the defendant acted with the purpose to obtain information regarding another person's movement or location generated by [a

global positioning device] [a device equipped with global positioning technology].

Deciding About Purpose and Knowledge

You cannot look into a person's mind to find purpose or knowledge. Purpose 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 purpose 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 1283B was approved by the Committee in October 2015.

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

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.
3. "Intentionally" is defined in § 939.23(3) to require "knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally.'" Here, this requires knowledge that the other person did not consent. Regarding the meaning of "intentionally" see Wis JI-Criminal 923A and B.
4. "Intentionally" is defined in § 939.23(3) to require "a purpose to do the thing or cause the result specified, or is 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 in the context of this offense.