

1310 NEGLIGENT HANDLING OF BURNING MATERIAL — § 941.10**Statutory Definition of the Crime**

Negligent handling of burning material, as defined in § 941.10 of the Criminal Code of Wisconsin, is committed by one who handles burning material in a highly negligent manner.

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 handled burning material.
2. The defendant did so in a manner constituting criminal negligence.¹

The Meaning of "Criminal Negligence"

"Criminal negligence" means:

- the defendant's handling of burning material created a risk of death or great bodily harm; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant should have been aware that (his) (her) handling of burning material created the unreasonable and substantial risk of death or great bodily harm.

IF REFERENCE TO ORDINARY NEGLIGENCE IS BELIEVED TO BE HELPFUL OR NECESSARY SEE WIS JI-CRIMINAL 925.²

IF EVIDENCE OF VIOLATION OF A SAFETY STATUTE HAS BEEN RECEIVED, ADD THE FOLLOWING:³

[Evidence has been received that the defendant violated section _____ of the Wisconsin Statutes, which provides that (summarize the statute). Violating this statute does not necessarily constitute a criminal negligence. You may consider this along with all the other evidence in determining whether the defendant's conduct constituted criminal negligence.]

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 1310 was originally published in 1974 and revised in 1989 and 1995. This revision was approved by the Committee in December 2006 and involved adoption of a new format and nonsubstantive changes to the text.

Section 941.01 was amended by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. The offense was redefined to require either "criminal negligence" or the creation of a substantial and unreasonable risk of serious damage to property. "Criminal negligence" is defined in new § 939.25 in essentially the same way as "high degree of negligence" was defined under prior law. The only change was the substitution of "substantial" for "high probability of" in the phrase "substantial and unreasonable risk of death or great bodily harm."

1. The instruction defines the offense in terms of "criminal negligence" being the conduct alleged. The statute provides an alternative: "or under circumstances in which the person should realize that a substantial and unreasonable risk of serious damage to another's property is created." If that alternative is used, the second element should be rephrased as follows:

2. The defendant did so under circumstances in which the defendant should have realized that a substantial and unreasonable risk of serious damage to another's property is created.

2. Wis JI-Criminal 925 includes two additional paragraphs: one describing "ordinary negligence" and one explaining how "criminal negligence" differs.

3. The suggested instruction on the effect of violation of a safety statute is intended to comply with the decision of the Wisconsin Supreme Court in State v. Dyess, 124 Wis.2d 525, 370 N.W.2d 222 (1985). See note 6, Wis JI-Criminal 1170.