

**1322 ENDANGERING SAFETY BY USE OF A DANGEROUS WEAPON:
INTENTIONALLY POINTING A FIREARM AT ANOTHER —
§ 941.20(1)(c)**

Statutory Definition of the Crime

Endangering safety by use of a dangerous weapon, as defined in § 941.20(1)(c) of the Criminal Code of Wisconsin, is committed by one who intentionally points a firearm at or toward another.

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 pointed a firearm at or toward another.

The term "firearm" means a weapon that acts by the force of gunpowder.¹ It is not necessary that the firearm was loaded or capable of being fired.²

2. The defendant pointed the firearm at or toward another intentionally.

"Intentionally" means that the defendant was aware that (he) (she) was holding a firearm and was aware that (he) (she) was pointing it at or toward another person.³

Deciding About Intent

You cannot look into a person's mind to find intent. Intent 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.

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

This instruction was originally published as Wis JI-Criminal 1323 in 1979 and revised in 1983 and 1988. It was renumbered Wis JI-Criminal 1322 in 1995. This revision was approved by the Committee in August 2004.

As revised by 2003 Wisconsin Act 190 [effective date: April 22, 2004], § 940.21(1)(c) begins: "Except as provided in sub. (1m) . . ." Subsection (1m) was created by Act 190 and applies to pointing a firearm at a law enforcement officer, firefighter, etc. See Wis JI-Criminal 1322A.

Section 941.20 was amended by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. The title of the statute was changed from "reckless use of weapons" to "endangering safety by use of a dangerous weapon." That is the only change that affected the subsection addressed by the instruction. The effective date of the statutory change was January 1, 1989, and this instruction replaced Wis JI-Criminal 1323 (© 1983) for offenses committed on or after that date.

In State v. Smith, 55 Wis.2d 304, 198 N.W.2d 630 (1972), the Wisconsin Supreme Court held that reckless use of a weapon, pointing a firearm, under § 941.20(1)(c), is not a lesser included offense of armed robbery.

1. The term "firearm" is considered to mean a weapon that acts by the force of gunpowder. See, for example, Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892). This definition excludes air guns.

2. Volume V. 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 83 (February 1953).

3. This is the explanation of the meaning of "intentionally" in the context of this offense provided in the 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 83 (February 1953). For a discussion of the word "intentionally" as defined in § 939.23, see Wis JI-Criminal 923A and 923B.