

**1324 ENDANGERING SAFETY BY USE OF A DANGEROUS WEAPON:
DISCHARGING A FIREARM INTO A VEHICLE OR BUILDING —
§ 941.20(2)(a)**

Statutory Definition of the Crime

Endangering safety by use of a dangerous weapon, as defined in § 941.20(2)(a) of the Criminal Code of Wisconsin, is committed by one who intentionally discharges a firearm into a vehicle or building under circumstances in which (he) (she) should realize there might be a human being present therein.

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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant discharged a firearm into¹ a (building)² (vehicle).

The term "firearm" means a weapon that acts by the force of gunpowder.³ To "discharge a firearm" simply means to shoot a gun.

2. The defendant did so intentionally.

"Intentionally" means that the defendant acted with the purpose to shoot the gun and to shoot it into the (building) (vehicle).⁴

3. Under the circumstances, the defendant should have realized that there might be a human being present in the (building) (vehicle).

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 1324 was originally published in 1983 and revised in 1988, 1995, and 2005. This revision made non-substantive editorial corrections.

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 1322 (© 1983) for offenses committed on or after that date.

1. In State v. Grady, 175 Wis.2d 553, 558, 499 N.W.2d 285 (Ct. App. 1993), the court approved the following trial court instruction on the meaning of "into":

"Into" means from the outside to the inside of, advancing or continuing forward.

A shooting into a house occurs when a bullet penetrates the outside of the house or building, however slight the penetration. It does not require that there be any set distance of penetration.

Grady's conviction was affirmed where the evidence showed that bullets he fired were embedded in the house's outside wall.

2. Section 941.20(1)(d), which defines an offense very much like this one, includes the following: "'Building' as used in this paragraph includes any house trailer or mobile home, but does not include any tent, bus, truck, vehicle or similar portable unit."

3. 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.

4. Under the Criminal Code, the word "intentionally" means that the defendant either has 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. See § 939.23(3) and Wis JI-Criminal 923A and 923B.