

1328 DISARMING A PEACE OFFICER — § 941.21**Statutory Definition of the Crime**

Disarming a peace officer, as defined in § 941.21 of the Criminal Code of Wisconsin, is committed by one who intentionally disarms a peace officer who is acting in an official capacity by taking a dangerous weapon¹ from the officer without 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 five elements were present.

Elements of the Crime That the State Must Prove

1. (Name of victim) was a peace officer.

[A (insert title, e.g., – "sheriff ") is a peace officer.]²

2. (Name of victim) was acting in an official capacity.

(Insert title, e.g., – "sheriffs")³ act in an official capacity when they perform duties that they are employed to perform.⁴ [The duties of a (insert title, e.g., – "sheriff") include: _____.]⁵

3. The defendant disarmed (name of victim) by taking a dangerous weapon from (him) (her).

(This applies to any dangerous weapon that the officer was carrying or that was in an area within the officer's immediate presence.)⁶

4. (Name of victim) did not consent to the taking of the dangerous weapon.
5. The defendant committed the acts intentionally.

"Intentionally" requires that the defendant acted with the mental purpose of taking the dangerous weapon from a peace officer.⁷ It further requires that the defendant knew that (name of victim) was a peace officer acting in an official capacity and knew that (name of victim) did not consent to the taking of the dangerous weapon.⁸

Meaning of "Dangerous Weapon"

"Dangerous weapon" means⁹

[any firearm, whether loaded or unloaded. A firearm is a weapon that acts by force of gunpowder.]

[any device designed as a weapon and capable of producing death or great bodily harm.

"Great bodily harm" means serious bodily injury.¹⁰]

[any device or instrumentality which, in the manner it is used or intended to be used, is likely to produce death or great bodily harm. "Great bodily harm" means serious bodily injury.¹¹]¹²

[any electric weapon. An electric weapon is a device designed or used to immobilize or incapacitate a person by the use of electric current.]

Deciding About Intent and Knowledge

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all five 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 1328 was originally published in 1988 and revised in 1994, 1996, and 2007. This revision was approved by the Committee in February 2008; it revised the definition of "official capacity."

1. Section 941.21 was amended by 1995 Wisconsin Act 339 (effective date: June 1, 1996) to refer not only to any dangerous weapon but also to "any device or container described under s. 941.26(1)(b) or (4)(a)." The reference to § 941.26(1)(b) is to containers of tear gas. The reference to § 941.26(4)(a) is to containers of oleoresin of capsicum, commonly referred to as "pepper spray." If either of these options is presented, the instruction must be modified. The Committee suggests simply substituting "tear gas container" or "container of oleoresin of capsicum" for "dangerous weapon" and not defining the term further. This is the approach used in the instructions for "pepper spray" offenses defined by § 941.26(4); see Wis JI-Criminal 1341, 1341A, and 1341B.

2. "Peace officer" is defined in § 939.22(22) as follows:

'Peace officer' means any person vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

In the Committee's judgment, the jury may be told, for example, that a sheriff is a peace officer. It is still for the jury to be satisfied that, in the particular case, the victim was a sheriff.

3. Use the plural form in the blank, e.g., "sheriffs," "police officers," etc.

4. The definition of "official capacity" is taken from Wis JI-Criminal 915. See the Comment to that instruction for further discussion.

5. The duties, powers, or responsibilities of some peace officers are set forth in the Wisconsin Statutes. When that is the case, the Committee suggests using the sentence in brackets and describing the duties in the blank. The Committee has concluded that the jury may be informed of the law that declares what a person's official duties are without running the risk of directing a verdict on an element of the crime. It is still for the jury to determine whether the person was performing the duty in the particular case. But see, State v. Jensen, 2007 WI App 256, ___ Wis.2d ___, 743 N.W.2d 468; and, State v. Schultz, 2007 WI App 257, ___ Wis.2d ___, 743 N.W.2d 823.

6. The statement "that the officer was carrying or that was in an area within the officer's immediate presence" is taken verbatim from § 941.21.

7. "Intentionally" is defined in § 939.23(3) as having the mental purpose to cause the result or being "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 to this offense. Also see Wis JI-Criminal 923A and 923B.

8. When "intentionally" is used in a criminal statute, it requires knowledge of all facts necessary to make the conduct criminal and which follow the word "intentionally" in the statute. § 939.23(3).

9. Choose the alternative supported by the evidence. They are based on the definition of "dangerous weapon" provided in s. 939.22(10). See Wis JI-Criminal 910 for footnotes discussing each alternative.

10. The Committee has concluded that defining great bodily harm as "serious bodily injury" is sufficient in most cases. See Wis JI-Criminal 914 for a complete discussion of that term, as defined in § 939.22(14).

11. The Committee has concluded that defining great bodily harm as "serious bodily injury" is sufficient in most cases. See Wis JI-Criminal 914 for a complete discussion of that term, as defined in § 939.22(14).

12. A potential problem in instructing on this part of the definition of "dangerous weapon" is illustrated by State v. Tomlinson, 2002 WI 91, 254 Wis.2d 502, 648 N.W.2d 367. The supreme court found that the trial court erred in instructing that "Dangerous weapon means a baseball bat." A baseball bat may be a dangerous weapon, if used in a manner likely to produce death or great bodily harm. See the discussion in note 5, Wis JI-Criminal 910.