

1328A DISARMING A CORRECTIONAL OFFICER — § 941.21(3)**Statutory Definition of the Crime**

Disarming a correctional officer, as defined in § 941.21(3) of the Criminal Code of Wisconsin, is committed by one who intentionally disarms a correctional officer who is acting in an official capacity by taking a dangerous weapon¹, a device or container, or equipment from the correctional 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 correctional officer.

A correctional officer is a person employed by the state or a political subdivision of the state as a guard or officer whose duties are the supervision and discipline of inmates². [The term “correctional officer” also includes a juvenile correctional officer.]³

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

Correctional officers act in an official capacity when they perform duties that they are employed to perform.⁴ [The duties of a correctional officer include: _____.]⁵

3. The defendant disarmed (name of victim) by taking (a dangerous weapon) (a device or container, specifically, (describe item under § 941.26(1g)(b) or (4)(a))) (equipment) from (him) (her).

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

[“Equipment” means an item issued to or used by a correctional officer for the correctional officer's duties that is designed, or intended to be used, to cause bodily harm, restraint, or incapacitation, or that could be used by the correctional officer to communicate with other employees, seek assistance, or enter locked areas.]⁷

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

“Intentionally” requires that the defendant acted with the mental purpose of taking the (dangerous weapon) (device or container) (equipment) from a correctional officer.⁸ It further requires that the defendant knew that (name of victim) was a correctional officer acting in an official capacity and knew that (name of victim) did not consent to the taking of the (dangerous weapon) (device or container) (equipment).⁹

Meaning of “Dangerous Weapon”

“Dangerous weapon” means¹⁰

[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.]

[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.]

[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 1328A was approved by the Committee in June 2026.

This instruction was drafted in response to 2025 Wisconsin Act 244 [effective date: April 11, 2026], which created § 941.21(3) and added related definitions of “correctional officer” and “equipment” in § 941.21(1).

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(1g)(b) or (4)(a).” The reference to § 941.26(1g)(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. This is the definition of “correctional officer” provided in § 941.21(1)(a).

3. Section 941.21(1)(a)2. additionally defines “correctional officer” to include “a juvenile correctional officer, as defined under s. 48.981(1)(cu).” That definition provides the following:

“Juvenile correctional officer” means a person employed by the state, a political subdivision of the state, a child welfare agency that is licensed under s. 48.66 (1) (b), or a private entity contracting under s. 938.222 whose principal duty is the supervision of juveniles held in a juvenile detention facility, a juvenile correctional facility, or a secured residential care center for children and youth.

4. The definition of “official capacity” is taken from Wis JI–Criminal 915 and Wis JI–Criminal 1328. See the Comment to those instructions for further discussion.

5. The duties, powers, or responsibilities of some correctional 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. See *State v. Jensen*, 2007 WI App 256, 306 Wis. 2d 572, 743 N.W.2d 468 and, *State v. Schultz*, 2007 WI App 257, 306 Wis. 2d 598, 743 N.W.2d 823.

6. The “carrying or ... immediate presence” language is taken verbatim from § 941.21(3), which applies “to any item that the correctional officer is carrying or that is in an area within the correctional officer’s immediate presence.”

7. This is the definition of “equipment” provided in § 941.21(1)(b).

8. “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. See Wis JI–Criminal 923A and 923B.

9. 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).

10. Choose the alternative supported by the evidence. They are based on the definition of “dangerous weapon” provided in § 939.22(10). See Wis JI–Criminal 910 for footnotes discussing each alternative, and see Wis JI–Criminal 1328, note 12, regarding the caution in State v. Tomlinson, 2002 WI 91, 254 Wis. 2d 502, 648 N.W.2d 367, against instructing that a particular object is, as a matter of law, a dangerous weapon.