

1343C STRAW PURCHASING OF A FIREARM — § 941.2905**Statutory Definition of the Crime**

Section 941.2905 of the Criminal Code of Wisconsin is violated by a person who intentionally furnishes, purchases, or possesses a firearm for another person, knowing that the other person has been convicted of a felony.¹

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 intentionally [furnished]² [purchased] [possessed] a firearm for (name of felon).

“Firearm” means a weapon which acts by the force of gunpowder.³ [It is not necessary that the firearm was loaded or capable of being fired.]⁴

[“Possessed” means that the defendant knowingly had actual physical control of the firearm.]⁵

2. (Name of felon) had been convicted of a felony before (date of offense).⁶

[(Name of felony) is a felony in Wisconsin.]⁷

3. The defendant knew that the object was a firearm and knew that (name of felon) had been convicted of a felony.⁸

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 1343C was approved by the Committee in October 2018.

This instruction is for violations of § 941.2905 which provides: “Whoever intentionally furnishes, purchases or possesses a firearm for a person, knowing that the person is prohibited from possessing a firearm under s. 941.29(1m), is guilty of a Class G felony.” Section 941.2905 was created by 2017 Wisconsin Act 145 [effective date: March 30, 2018].

The instruction is drafted for intentionally furnishing, purchasing, or possessing a firearm for a person convicted of a felony, the most common type of individual prohibited from possessing a firearm under s. 941.29(1m). The full list follows:

- (a) The person has been convicted of a felony in this state.
- (b) The person has been convicted of a crime elsewhere that would be a felony if committed in this state.
- (bm) The person has been adjudicated delinquent for an act committed on or after April 21, 1994, that if committed by an adult in this state would be a felony.
- (c) The person has been found not guilty of a felony in this state by reason of mental disease or defect.
- (d) The person has been found not guilty of or not responsible for a crime elsewhere that would be a felony in this state by reason of insanity or mental disease, defect or illness.
- (e) The person has been committed for treatment under s. 51.20 (13) (a) and is subject to an order not to possess a firearm under s. 51.20 (13) (cv) 1., 2007 stats.
- (em) The person is subject to an order not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a).
- (f) The person is subject to an injunction issued under s. 813.12 or 813.122 or under a tribal injunction, as defined in s. 813.12 (1)(e), issued by a court established by any federally recognized Wisconsin Indian tribe or band, except the Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he or she is subject to the requirements and penalties under this section and that has been filed under s. 813.128 (3g).
- (g) The person is subject to an order not to possess a firearm under s. 813.123 (5m) or 813.125 (4m).

Exceptions to the application of § 941.2905 are set forth in sub.(2)(a) through (f). In the Committee's judgment, evidence of exceptions is best addressed as follows. The question whether an

exception applies is not an issue in the case until there is some evidence of that fact. Once there is evidence sufficient to raise the issue, the burden is on the state to prove beyond a reasonable doubt that the exception does not apply. See Wis JI-Criminal 1335B for a more complete discussion of this issue; JI 1335B provides a model for integrating the absence of a statutory exception in the instruction for carrying a concealed weapon in violation of § 941.23.

1. The instruction is drafted for cases involving furnishing, purchasing, or possessing a firearm to a person convicted of a felony. However, the statute also applies to other categories of individuals. See §941.29(1m)(a) through (g). This instruction is suitable for use in cases involving subs. (1m)(a) and (b). (See discussion in note 7.) For cases involving subs. (1m)(c) through (g), the instruction must be modified.

2. “Furnish” does not have a statutory definition and therefore should be given its plain and ordinary meaning. A typical definition is: “To equip with what is needed; to supply, give.” The American Heritage Dictionary of the English Language, Third Edition.

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).

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

Possession of a disassembled and inoperable firearm is a violation of § 941.29. The “term ‘firearm’ is appropriately defined as a weapon that acts by force of gunpowder to fire a projectile irrespective of whether it is inoperable due to disassembly.” State v. Rardon, 185 Wis.2d 701, 706, 518 N.W.2d 330 (Ct. App. 1994), citing Wis JI-Criminal 1343 with approval. Also see State v. Johnson, 171 Wis.2d 175, 491 N.W.2d 110 (Ct. App. 1992), reaching a similar conclusion with respect to the definition of “shotgun” under § 941.28.

5. Inherent in the legal definition of “possession” is the concept of knowing or conscious possession. See Schwartz v. State, 192 Wis. 414, 418, 212 N.W. 664 (1927), Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927). The definition of “possess” is that found in Wis JI-Criminal 920 and requires “actual physical control.” That instruction also contains the following optional paragraphs for use where the object is not in the physical possession of the defendant or where possession is shared with another:

[An item is (also) in a person’s possession if it is in an area over which the person has control and the person intends to exercise control over the item.]

[It is not required that a person own an item in order to possess it. What is required is that the person exercise control over the item.]

[Possession may be shared with another person. If a person exercises control over an item, that item is in his possession, even though another person may also have similar control.]

See the Comment to Wis JI-Criminal 920 for a discussion of various issues relating to “possession” in criminal cases, including so-called constructive possession.

6. The date of the offense should be inserted in this blank.

7. The statute applies to persons convicted of a felony in Wisconsin and also to persons convicted of crimes in other states that would be felonies in Wisconsin. In the Committee's judgment, the way the second element is phrased should be suitable for handling either alternative. Where the crime committed in another state has a name not used in Wisconsin, it may be helpful to add a sentence to the effect that the offense would have been a felony if committed in this state. The Committee concluded that the statutory elements of the crime of which the person was convicted in the other state should be compared with the statutory elements of the comparable Wisconsin offense. One must be able to say that those elements "would be a felony if committed in this state."

8. Subsection (1) of § 941.2905 defines this offense as applying to one who "intentionally furnishes . . . a firearm for a person, knowing that the person is prohibited from possessing a firearm under s. 941.29(1m)." As applied to this instruction, this requires that the defendant knew the person was a felon. Further, the Committee concluded that the defendant must know the item was a firearm, because the offense definition begins with the word "intentionally." See § 939.23(3).