

1353A POSSESSION OF A HAZARDOUS SUBSTANCE WITH INTENT TO ABUSE — § 941.316(2)(a)**Statutory Definition of the Crime**

Possession of a hazardous substance with intent to abuse, as defined in § 941.316(2)(a) of the Criminal Code of Wisconsin, is committed by one who possesses¹ any hazardous substance² with the intent to abuse³ the hazardous substance.

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 possessed a hazardous substance.

“Possessed” means that the defendant knowingly⁴ had actual physical control of the hazardous substance.⁵

ADD THE FOLLOWING PARAGRAPHS THAT ARE SUPPORTED BY THE EVIDENCE.

[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) (her) possession, even though another person may also have similar control.]

The term “hazardous substance” means (insert the applicable statutory definition or characteristic under § 100.37(1)(c), if relied on). [“Hazardous substance” also includes any substance or mixture of substances that has the capacity to produce personal injury or illness to a person who abuses the substance and includes any household product⁶, or any mixture of household products.]

2. The defendant possessed the hazardous substance with the intent⁷ to abuse it.

“Abuse” means to ingest, inhale, or otherwise introduce into the human body a hazardous substance in a manner that does not comply with any cautionary labeling required for the hazardous substance under § 100.37 or under federal law, or in a manner not intended by the manufacturer of the hazardous substance, and that is intended to induce intoxication or elation, to stupefy the central nervous system, or to change the human audio, visual, or mental processes.⁸

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 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

Wis JI–Criminal 1353A was approved by the Committee in June 2026.

This instruction is for violations of § 941.316(2)(a), which is punishable as a Class A misdemeanor. Wis JI–Criminal 1353B is drafted for the offense of intentional abuse under § 941.316(2)(b). Wis JI–Criminal 1353C is drafted for the felony distribution offense under § 941.316(3). Both subsections (2)(a) and (2)(b) may be charged in the alternative.

1. The instruction is drafted for the “possession” alternative. The defense under § 941.316(4) provides that sub. (2) does not apply to a person who possesses or uses the hazardous substance if the substance is obtained from, or pursuant to a valid prescription or order of, a practitioner, as defined in § 961.01(19), while acting in the course of professional practice.

2. The term “hazardous substance” is defined in § 941.316(1)(c) by reference to § 100.37(1)(c) and by the extended definition in § 941.316(1)(c) itself. Under § 100.37(1)(c)1., “hazardous substance” means any substance or any mixture of substances — including a toy or other article intended for use by children — which is toxic, corrosive, an irritant, a strong sensitizer, flammable or combustible, or generates pressure through decomposition, heat, or other means, if such substance may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

The term also includes any substance or any mixture of substances having the capacity to produce personal injury or illness to a person who abuses the substance, and includes any household product as defined in § 941.327(1)(e). Section 941.327(1)(e) defines “household product” as any food, drug, device, or cosmetic, or any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies for consumption by individuals or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of that use.

If neither the identity nor the qualifying character of the substance is disputed, no definition need be given. If the nature of the substance is contested, the court should instruct the jury on the applicable definition.

3. Section 941.316(1)(a) defines “abuse” as follows:

“Abuse” means to ingest, inhale, or otherwise introduce into the human body a hazardous substance in a manner that does not comply with any cautionary labeling that is required for the hazardous substance under s. 100.37 or under federal law, or in a manner that is not intended by the manufacturer of the hazardous substance, and that is intended to induce intoxication or elation, to stupefy the central nervous system, or to change the human audio, visual, or mental processes.

4. 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).

5. The definition of “possession” is based on the one provided in Wis JI–Criminal 920. That instruction also includes optional explanations for cases where an object is arguably under the defendant’s control but not in his or her physical possession. 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. Section 941.327(1)(e) defines “household product” as follows:

“Household product” means any food, drug, device or cosmetic or any article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of that consumption or use.

7. See Wis JI–Criminal 923A for a discussion of various issues relating to the definition of “with intent to.”

8. The statutory definition of “abuse” provided in § 941.316(1)(a) contains two components: (1) conduct — introduction of the substance into the body in a manner that does not comply with cautionary labeling or with the manufacturer’s intended use; and (2) purpose — the intent to induce intoxication or elation, stupefy the central nervous system, or alter audio, visual, or mental processes. Both components must be established.