

**1353B INTENTIONAL ABUSE OF A HAZARDOUS SUBSTANCE — § 941.316(2)(b)****Statutory Definition of the Crime**

Intentional abuse of a hazardous substance, as defined in § 941.316(2)(b) of the Criminal Code of Wisconsin, is committed by one who intentionally<sup>1</sup> abuses<sup>2</sup> a hazardous substance.<sup>3</sup>

**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 abused a hazardous substance.

“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.<sup>4</sup>

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 product<sup>5</sup>, or any mixture of household products.]<sup>6</sup>

2. The defendant acted intentionally.

“Intentionally” means that the defendant had the mental purpose to ingest, inhale, or otherwise introduce the hazardous substance into the human body in the manner described above, with the further intent to induce intoxication or elation, stupefy the central nervous system, or change the human audio, visual, or mental processes.<sup>7</sup>

### **Deciding About Intent**

You cannot look into a person’s mind to find intent. Intent 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.

### **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 1353B was approved by the Committee in June 2026.

This instruction is for violations of § 941.316(2)(b), which is punishable as a Class A misdemeanor. Wis JI–Criminal 1353A is drafted for the possession-with-intent offense under § 941.316(2)(a). Wis JI–Criminal 1353C is drafted for the felony distribution offense under § 941.316(3). The defense under § 941.316(4) — that the substance was obtained from, or pursuant to a valid prescription or order of, a practitioner acting in the course of professional practice — applies to both sub. (2) offenses and should be addressed in a separate instruction if supported by the evidence.

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1. The statute requires intentional conduct. “Intentionally” and “with intent to” are defined in § 939.23(3) and (4). See Wis JI–Criminal 923A and 923B.

2. The definition of “abuse” is provided by § 941.316(1)(a). Both the conduct and the purpose components must be proved. See note 4, below.

3. The term “hazardous substance” is defined in § 941.316(1)(c) by reference to § 100.37(1)(c) and by the extended statutory definition. See note 6, below.

4. This is the definition of “abuse” provided in § 941.316(1)(a). The definition has two components: (1) introduction of the substance into the human body in a manner that violates cautionary labeling or the manufacturer’s intended use; and (2) an intent to induce intoxication or elation, stupefy the central nervous system, or alter audio, visual, or mental processes. Both must be established. The conduct element differs from the intent element: the conduct need only violate labeling or manufacturer intent, but the abuse must be aimed at one of the listed cognitive or sensory effects.

5. 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.

6. 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 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 or mixture of substances 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 mixture of substances having the capacity to produce personal injury or illness to a person who abuses the substance, and includes any household product or any mixture of household products, as defined in § 941.327(1)(e). Section 941.327(1)(e) defines “household product”

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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 the identity or character of the substance is not in dispute, no definition need be given. If the nature of the substance is contested, the court should instruct the jury on the applicable definition.

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