

1375 VIOLATING A NO CONTACT ORDER — § 941.39**Statutory Definition of the Crime**

Violating a no contact order, as defined in § 941.39 of the Wisconsin Statutes, is committed by one who intentionally violates a court order issued under § 973.049(2) of the Wisconsin Statutes.

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. A no contact order was issued under § 973.049(2) of the Wisconsin Statutes as a result of a conviction for a (felony) (misdemeanor).

(A felony is a crime punishable by imprisonment in the Wisconsin state prisons.¹

_____ is a felony.)²

(A misdemeanor is a crime punishable by imprisonment in the county jail.³

_____ is a misdemeanor.)⁴

2. The defendant committed an act that violated the no contact order.
3. The defendant intentionally violated the no contact order.

This requires that the defendant knew that the no contact order had been issued and knew that (his) (her) acts violated the order.⁵

Deciding About Knowledge

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

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 1375 was originally published in 2007. This revision was approved by the Committee in July 2012; it reflects changes made by 2011 Wisconsin Act 267.

This instruction is for violations of § 941.39 Victim or co-actor contact, created by 2005 Wisconsin Act 32. Effective date: August 30, 2005.

2011 Wisconsin Act 267 amended § 941.39 to change the penalty [effective date: April 24, 2012]. The penalty is a Class A misdemeanor if the order resulted from a conviction for a misdemeanor; the penalty is a Class H felony if the order resulted from a conviction for a felony. The Committee concluded that because the nature of the conviction on which the order is based determines the penalty range, it is a fact that must be submitted to the jury. The penalty structure is like that for bail jumping under § 946.49; see Wis JI-Criminal 1975.

The offense is defined as violating a no contact order issued under § 973.049(2), which provides that a sentencing court "may" prohibit an individual who is being sentenced or placed on probation "from contacting victims of, or co-actors in, a crime considered at sentencing during any part of the individual's sentence or period of probation if the court determines that the prohibition would be in the interest of public protection."

Subsection (3) of § 973.049, as amended by 2011 Wisconsin Act 267, provides: "If a court issues an order under sub. (2), the court shall inform the individual of the prohibition and include the prohibition in the judgment of conviction for the crime." The Committee concluded that whether or not this requirement was met is not relevant in a prosecution for violating § 941.39.

1. See § 939.60.

2. In the Committee's judgment, the jury may be told that a certain crime is in fact a felony or a misdemeanor. The jury must find that the defendant was actually convicted of that crime.

3. See §§ 939.60 and 939.12. "County jail" includes the Milwaukee County House of Correction.

4. See note 2, supra.

5. The basis for the knowledge requirement in the third element is the provision in § 939.23(3) which states that when the word "intentionally" is used in a criminal statute, it requires "knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally'."