

**1400A CRIMINAL DAMAGE TO PROPERTY: VENDING AND OTHER MACHINES — § 943.01(2g)**

THE FOLLOWING INSTRUCTION SHOULD BE GIVEN IMMEDIATELY AFTER WIS JI-CRIMINAL 1400, CRIMINAL DAMAGE TO PROPERTY.<sup>1</sup>

**Determining Damage to Coin- or Card- Operated Machines**

If you find the defendant guilty, you must answer the following question:

"Did the defendant commit the crime of criminal damage to property under all of the following circumstances:

- 1) the property damaged was a machine operated by the insertion of coins, currency, debit cards or credit cards; and,
- 2) the defendant acted with the intent to commit a theft from the machine; and,
- 3) the property was reduced in value by more than \$500 but not more than \$2,500."

"Intent to commit theft" requires that the defendant acted with the purpose to take and carry away property of another without consent and with the intent to deprive the owner permanently of possession of that property.<sup>2</sup>

Property is "reduced in value" by the amount that it would cost to repair or replace it, whichever is less, plus other monetary losses associated with the damage.<sup>3</sup>

If you are satisfied beyond a reasonable doubt that the defendant committed the crime of criminal damage to property under all these circumstances, you should answer the question "yes."

If you are not so satisfied, you must answer the question "no."

**COMMENT**

Wis JI-Criminal 1400A was originally published in 1997 and revised in 2002. This revision was approved by the Committee in April 2016; it updated the Comment.

The instruction was revised in 2001 to reflect the change in the value level that determines the penalty: it was increased to \$2,500 by 2001 Wisconsin Act 16, effective September 1, 2001.

This instruction addresses subsection (2g) of § 943.01, created by 1995 Wisconsin Act 133. [Effective date: January 6, 1996]. Committing criminal damage to property under the circumstances specified in subsection (2g) increases the penalty to a Class I felony. As with similar provisions, the Committee recommends submitting this issue as a special question, to be considered by the jury if it reaches a guilty verdict on the criminal damage to property charge. The instruction assumes a case involving conduct which falls into the special niche created by § 943.01(2g): damage to a vending or other machine amounting to more than \$500 but less than \$2,500. See note 1, below.

The following form is suggested for the guilty verdict:

We, the jury, find the defendant guilty of criminal damage to property, under Wis. Stat. § 943.01, at the time and place charged in the information.

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the defendant commit the crime of criminal damage to property under all of the following circumstances:

- 1) the property damaged was a machine operated by the insertion of coins, currency, debit cards or credit cards; and,
- 2) the defendant acted with the intent to commit a theft from the machine; and,
- 3) the property was reduced in value by more than \$500 but not more than \$2,500."

1. This instruction should be given after the basic instruction on criminal damage to property, Wis JI-Criminal 1400, in place of the value question that is provided at the end of that instruction. This assumes that the case is charged as one falling into the special niche created by § 943.01(2g): damage to a vending or other machine amounting to more than \$500 but less than \$2,500. Damage to a vending machine that exceeded \$2,500 could, of course, be charged under the regular penalty provisions and would also be a Class I felony. In that case, the value question at the end of Wis JI-Criminal 1400 should be used.

2. The statute uses the term "intent to commit theft." The definition provided here is what has been used to define "intent to steal." See, for example, Wis JI-Criminal 1421, Burglary With Intent To Steal. For a complete definition of the crime of theft as defined in § 943.20(1)(a), see Wis JI-Criminal 1441.

3. This is the definition of "reduced in value" provided in § 943.01(2g)(c). Note that it differs from the standard for determining value provided in § 943.01(2)(d) in that it allows consideration of "other monetary

losses associated with the damage."