

**1401A CRIMINAL DAMAGE TO RELIGIOUS OR CEMETERY PROPERTY —
§ 943.012(1) & (2)****Statutory Definition of the Crime**

Criminal damage to property, as defined in [§ 943.012(1)] [§ 943.012(2)] of the Criminal Code of Wisconsin, is committed by one who intentionally causes damage¹ to [religious] [cemetery] property² of another person without the person's consent.

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 five elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused damage to property of another.³

The word "damage" includes anything from mere defacement to total destruction.⁴

2. The defendant intentionally caused the damage.

The term "intentionally" requires that the defendant had the mental purpose to damage the property or was aware that the conduct was practically certain to cause that result.⁵

3. The defendant caused the damage without the consent⁶ of (name of owner, agent, etc.).

4. The property was [religious] [cemetery] property.

["Religious property" means any church, synagogue, or other building, structure, or place primarily used for religious worship or another religious purpose.]⁷

["Cemetery property" means any cemetery, mortuary, other facility used for burial or memorializing the dead.]⁸

5. The defendant knew the property was [religious] [cemetery] property, knew the property belonged to another person, and knew that the other person did not consent to the damage.⁹

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or 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 all five 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

This instruction was originally published as Wis JI-Criminal 1402 in 1989. It was renumbered Wis JI-Criminal 1402 in 1995. This revision renumbered the instruction as Wis JI-Criminal 1401A, was approved by the Committee in December 2002 and involved adoption of a new format.

This instruction is for violations of subs. (1) and (2) § 943.012, a statute created by 1987 Wisconsin Act 348. That Act also created § 939.645, which provides an increased penalty for crimes committed against certain persons or property. See Wis JI-Criminal 996 and 996.1.

Subsection (1) of § 943.012 prohibits damage to "religious property;" subsection (2) prohibits damage to "any cemetery, mortuary or other facility used for burial or memorializing the dead." The latter is referred to as "cemetery property" in the instruction. For violations of subsec. (3) – damage to schools and other facilities associated with religious and other groups – see Wis JI-Criminal 1401B. For violations of sub. (4) – damage to personal property contained in property covered by subs. (1) through (3) – see Wis JI-Criminal 1401C.

1. The instruction refers only to "damage," but the statute also applies to one who "intentionally marks, draws or writes with ink or another substance on or intentionally etches into" any physical property. If a case involves conduct prohibited by the statute that is not covered by the general term "damage," the instruction must be modified.

2. This instruction is for violations of subs. (1) and (2) of § 943.012, which prohibit damage to "any church, synagogue or other building, structure or place primarily used for religious worship or another religious purpose" and to "any cemetery, mortuary or other facility used for burial or memorializing the dead." The instruction refers to the former as "religious property" and to the latter as "cemetery property." Definitions are provided in element 4.

3. Section 939.22(38) provides the following definition of "property of another": "Property of another" means property in which a person other than the defendant has a legal or equitable interest which the defendant has no right to defeat or impair, even though the defendant may also have a legal or equitable interest in the property." Also see, State v. Sevelin, 204 Wis.2d 127, 131, 554 N.W.2d 521 (Ct. App. 1996), regarding damage to marital property, discussed in note 3, Wis JI-Criminal 1400.

4. The definition of "damage" is based on the one used in Wis JI-Criminal 1400, Criminal Damage To Property. See Vol. V 1953 Judiciary Report on the Criminal Code, Wisconsin Legislative Council, page 97 (February 1953).

5. See § 939.23(3) and Wis JI-Criminal 923B.

6. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

7. "Religious property" is a shorthand reference to the category of property covered by sub. (1) of § 943.012. See note 2, supra. The definition of the term is based on the full description of that category of property.

8. "Cemetery property" is a shorthand reference to the category of property covered by sub. (2) of § 943.012. See note 2, supra. The definition of the term is based on the full description of that category of property.

9. The three aspects of the knowledge requirement come from applying § 939.23(3): "intentionally" requires knowledge of all facts necessary to make the conduct criminal and appearing after the "intentionally" in the statute. Further, § 943.012 specifically requires "knowledge of the character of the property."