

**1403 GRAFFITI — § 943.017(1)****Statutory Definition of the Crime**

Section 943.017(1) of the Criminal Code of Wisconsin is violated by one who intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into the physical property of another without the other 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 (marked) (drew) (wrote) with paint, ink or another substance on physical property.<sup>1</sup>
2. The physical property belonged to another person.<sup>2</sup> [\_\_\_\_\_ is a person for purposes of this element.]<sup>3</sup>
3. The defendant (marked) (drew) (wrote) on the property without the consent of (name of owner, agent, etc.).
4. The defendant acted intentionally. The term "intentionally" means that the defendant must have had the mental purpose to (mark) (draw) (write) on the property.<sup>4</sup>
5. The defendant knew the property belonged to another person and knew that the other person did not consent to (marking) (drawing) (writing) on the property.<sup>5</sup>

### **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.

ADD THE FOLLOWING IF THE FELONY OFFENSE IS CHARGED, AND THE EVIDENCE WOULD SUPPORT A FINDING THAT THE PROPERTY WAS REDUCED IN VALUE BY MORE THAN \$2,500.<sup>6</sup>

#### **[Finding the Reduction in the Value of the Property]**

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

"Was the property reduced in value by more than \$2,500?"

"Reduced in value" means what it would cost to repair or replace the property, or to remove the (marking) (drawing) (writing), whichever is less.<sup>7</sup> Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the property was reduced in value by more than \$2,500.]

ADD THE FOLLOWING FOR FELONY CASES INVOLVING DAMAGE TO MORE THAN ONE ITEM OF PROPERTY "PURSUANT TO A SINGLE INTENT AND DESIGN," AS PROVIDED IN § 943.017(3).<sup>8</sup>

[In determining the amount by which the value of the property was reduced, you may consider all damage that you are satisfied beyond a reasonable doubt was caused by acts of the defendant pursuant to a single intent and design.]

#### COMMENT

Wis JI-Criminal 1403 was originally published in 1995 and revised in 1998 and 2001. This revision was approved by the Committee in October 2009 and involved updating to reflect the renumbering of the statute's subsections.

This instruction is for violations of § 943.017(1), Graffiti, created by 1995 Wisconsin Act 24 [effective date: July 20, 1995]. The basic offense is a Class A misdemeanor. The penalty increases to a Class I felony in five situations specified in sub. (2), one of which is addressed by this instruction: where the value of the property is reduced by more than \$2,500. See sub. (2)(d). This amount was increased to \$2,500 by 2001 Wisconsin Act 16, effective date: September 1, 2001.

The offense is also a Class I felony where the property damaged:

- is a vehicle or highway and the damage is of a kind which is likely to cause injury to a person or further property damage [sub. (2)(a)]
- belongs to a public utility or common carrier and the damage is of a kind which is likely to impair the services of the public utility or common carrier [sub. (2)(b)]
- belongs to a person who is or was a witness or a grand or petit juror and the damage was caused by reason of the owner's having attended or testified as a witness or by reason of any verdict or indictment assented to by the owner [sub. (2)(c)]
- is on state-owned land and is listed on the registry under § 943.01 [sub. (2)(e)].

If one of the above is alleged, the Committee recommends handling it with a special question, in the same manner that the value question is handled in this instruction.

1995 Wisconsin Act 24 also amended § 943.012, Criminal damage to religious and other property, to include damage caused by "graffiti." See Wis JI-Criminal 1402.

Subsection (2m) of § 947.017 defines offenses against property of witnesses and family members of witnesses. There is no uniform instruction for those offenses.

1. The statute applies to one who "intentionally marks, draws or writes with paint, ink or another substance on or intentionally etches into the physical property of another." The instruction uses the alternative terms, "marks," "draws," or "writes." In a case that involves "etching into," the phrase "etched into physical property" should be substituted throughout the instruction.

2. Section 939.22(28) 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."

3. In many cases, the property is likely to belong to a government unit, a business or similar entity. In those cases, it would be helpful to the jury to state that, for example, "The City of Milwaukee is a person for purposes of this element." See § 990.01(26): "Person" includes all partnership, associations and bodies politic or corporate."

4. The Committee concluded that the "mental purpose" definition of "intentionally" is most likely to apply to this offense. "Intentionally" also includes being "practically certain that his or her conduct will cause that result." See § 939.23(3) and Wis JI-Criminal 923A.

5. See Wis. Stat. § 939.23(3).

6. A misdemeanor charge requires no finding as to reduction in value. This instruction and the verdict question need be given only if a felony is charged and the evidence would support a finding of damage exceeding \$2,500. The value level was increased to \$2,500 by 2001 Wisconsin Act 2001, effective date: September 1, 2001.

7. § 943.017(2)(d).

8. See § 947.013(4). This states the same rule as that applicable to criminal damage to property under § 943.01. See note 8, Wis JI-Criminal 1400.