

**1425C BURGLARY: COMMITTING A BATTERY WHILE IN THE ENCLOSURE — § 943.10(1), (2)(d)**

[THE FOLLOWING INSTRUCTION SHOULD BE GIVEN IMMEDIATELY AFTER WIS JI-CRIMINAL 1421 or 1424.]

The information alleges not only that the defendant committed the crime of burglary but also that the defendant committed a battery upon a person who was lawfully present in the enclosure.

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

"Did the defendant commit a battery upon a person who was lawfully present in the enclosure?"

"Battery" is committed by one who causes bodily harm to another person, with intent to cause bodily harm and without the consent of the other person, and who knows that the person does not consent to the bodily harm.<sup>1</sup>

"Enclosure" means the building or room where the burglary was committed.<sup>2</sup>

If you are satisfied beyond a reasonable doubt that the defendant committed the crime of burglary and that the defendant committed a battery upon a person who was lawfully present in the enclosure, you should answer the question "yes."

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

**COMMENT**

Wis JI-Criminal 1425C was originally published in 1996 and revised in 2001. This revision was approved by the Committee in June 2004 and involved nonsubstantive editorial corrections.

Burglary, as defined in § 943.10(1), is punished as a Class C felony. The penalty increases to a Class B felony if a burglary is committed under any of the circumstances defined in subsec. (2): while armed (see Wis JI-Criminal 1425A); while unarmed, but the person arms himself or herself while in the enclosure (see Wis JI-Criminal 1425B); while in the enclosure, the person uses explosives to open a depository (there is no instruction for this alternative); and, while in the enclosure, the person commits a battery upon a person lawfully therein (covered by this instruction).

The Committee recommends handling these penalty-increasing factors by submitting an additional question after the basic burglary instruction is given. Thus, this instruction, or Wis JI-Criminal 1425A or Wis JI-Criminal 1425B, would be added to Wis JI-Criminal 1421, Burglary With Intent To Steal, or to Wis JI-Criminal 1424, Burglary With Intent To Commit A Felony.

The following form is suggested for the guilty verdict:

We, the jury, find the defendant guilty of burglary, as defined in § 943.10, Wis. Stats., 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 a battery upon a person who was lawfully present in the enclosure?

1. The definition of "battery" is based on the one provided in § 940.19(1). If additional instruction on the elements of simple battery is believed to be necessary, see Wis JI-Criminal 1220.

2. The definition assumes the burglary took place in a building or dwelling. Other alternatives are possible, such as enclosed railroad cars, enclosed portions of a ship or vessel, etc. See § 943.10(1)(b) - (e) and note 2, Wis JI-Criminal 1421. If other than a building is involved, this definition should be eliminated or modified.