

1425E BURGLARY: PERSON LAWFULLY PRESENT IN THE ENCLOSURE
— § 943.10(1), (2)(e)

[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 enclosure was a (dwelling) (boat) (motor home) and another person was lawfully present in the enclosure.

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

"Was the enclosure a (dwelling) (boat)¹ (motor home)² and was another person lawfully present in the enclosure?"

If you are satisfied beyond a reasonable doubt that the defendant committed the crime of burglary and that the enclosure was a (dwelling) (boat) (motor home) and another person 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 1425E was approved by the Committee in June 2004.

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); while in the enclosure, the person commits a battery upon a person lawfully therein see Wis JI-Criminal 1425C); and, where the enclosure is a

dwelling, boat, or motor home and another person was lawfully present in the enclosure (covered by this instruction).

The penalty-increasing fact addressed by this instruction is set forth in § 943.10(2)(e), created by 2003 Wisconsin Act 189. Effective date: April 22, 2004.

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, Wis JI-Criminal 1425B, or Wis JI-Criminal 1425C 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, you must answer the following question "yes" or "no":

"Was the enclosure a (dwelling) (boat) (motor home) and was another person lawfully present in the enclosure?"

1. "Boat" is defined in § 943.10(1g) (a) as "any ship or vessel that has sleeping quarters."
2. Subsection 943.10(1g)(b) provides that "'motor home' has the meaning given in s. 340.01(33m)." That definition provides:

"Motor home" means a motor vehicle designed to be operated upon a highway for use as a temporary or recreational dwelling and having the same internal characteristics and equipment as a mobile home."