

**1439 CRIMINAL TRESPASS TO A MEDICAL FACILITY — § 943.145****Statutory Definition of the Crime**

Criminal trespass to a medical facility, as defined in § 943.145 of the Criminal Code of Wisconsin, is committed by one who intentionally enters a medical facility without the consent of some person lawfully upon the premises, under circumstances tending to create or provoke a breach of the peace.

**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 four elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant intentionally entered a medical facility.

"Medical facility" means a hospital or a clinic or office that is used by a licensed physician.<sup>1</sup>

"Intentionally" requires that the defendant had the purpose of entering a medical facility.<sup>2</sup>

2. The defendant entered a medical facility without the consent of someone lawfully upon the premises.

The phrase "without consent" means that there was no consent in fact.<sup>3</sup>

**ADD THE FOLLOWING IF SUPPORTED BY THE EVIDENCE**

[The general consent given to the public to enter a business premise is not for all things and all purposes but is conditioned by the purpose of doing business in the area set aside for that purpose.]<sup>4</sup>

3. The defendant entered a medical facility under circumstances tending to create or provoke a breach of the peace.

It is not necessary that an actual breach of the peace occurred as a result of defendant's conduct. The term "breach of the peace" includes all violations of peace and order. It may consist of an act of violence or an act likely to produce violence. It may consist of profane and abusive language by one toward another. To constitute criminal trespass to a medical facility, the entry must be done under circumstances tending to create or provoke a breach of the peace.<sup>5</sup>

4. The defendant knew that the entry into a medical facility was made without consent and under circumstances likely to provoke a breach of the peace.<sup>6</sup>

### **Deciding About Purpose and Knowledge**

You cannot look into a person's mind to find purpose and knowledge. Purpose 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 purpose and knowledge.

### Jury's Decision

If you are satisfied beyond a reasonable doubt that all four 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

Wis JI-Criminal 1439 was originally published in 1988 and revised in 1995. This revision was approved by the Committee in December 2007 and involved adoption of a new format and nonsubstantive changes to the text.

Section 943.145 was created by 1985 Wisconsin Act 56, the "Abortion Prevention and Family Responsibility Act of 1985." The constitutionality of § 943.145 was upheld in State v. Migliorino, 150 Wis.2d 513, 525-35, 442 N.W.2d 36 (1989).

State v. Horn, 139 Wis.2d 473, 407 N.W.2d 854 (1987), involved a protest at a facility providing abortions and other medical services that took place before the enactment of § 943.145. Horn and others were charged with criminal trespass to land under § 943.13 for their conduct protesting the performance of abortions at the Fox Valley Reproductive Health Care Center. The supreme court held that the trial court correctly refused to instruct the jury on or allow evidence in support of a "free speech" defense. Neither the First Amendment nor the Wisconsin Constitution protects free speech on private property (see Jacobs v. Major, 139 Wis.2d 492, 407 N.W.2d 832 (1987)), so there was no legal basis for the defense.

1. The suggested definition is based on the one provided in § 943.145(1), see below, which includes cross-references to the definition of "hospital" under § 50.33(2), also below. The § 943.145(1) definition also includes cross-references to the licensing requirements for physicians found in Chapter 448 and the rules of the medical examining board which apply to clinics and offices.

Regarding the cross-reference to "rules of the medical examining board," see State v. Migliorino, 150 Wis.2d 513, 522-24, 442 N.W.2d 36 (1989).

2. Section 939.23(3).

3. Section 939.22(48). Also see Wis JI-Criminal 948.

4. In State v. Migliorino, 170 Wis.2d 576, 592, 489 N.W.2d 678 (Ct. App. 1992), the court approved an addition to the definition of "without consent" like the one provided in brackets. The court held that the rule reflected in the instruction, based on the rule applicable in burglary cases, also applies to § 943.145. 150 Wis.2d 513, 535-37 (citing Levesque v. State, 63 Wis.2d 412, 217 N.W.2d 317 (1974), a case involving "entry without consent" under the burglary statute). See the discussion in note 4, Wis JI-Criminal 1421.

5. This description of "tending to create or provoke a breach of the peace" is based on the one used in Wis JI-Criminal 1437, Criminal Trespass to Dwellings. For more detail, see Wis JI-Criminal 1900, Disorderly Conduct, and the Comment to that instruction.

The focus of this element is on the circumstances at the time of the entry and requires a case-by-case analysis. State v. Migliorino, 170 Wis.2d 576, 592, 489 N.W.2d 678 (Ct. App. 1992) (citing with approval the elements set forth in this instruction and also concluding that the standards applicable to disorderly conduct offenses apply to this offense as well).

Also see State v. Givens, 28 Wis.2d 109, 135 N.W.2d 780 (1965), upholding the constitutionality of Wisconsin's disorderly conduct statute and discussing the type of conduct required to constitute conduct engaged in under circumstances which "tends to provoke or cause a disturbance."

6. When "intentionally" is used in a criminal statute, it requires a purpose to achieve the result specified and knowledge of all facts necessary to make the conduct criminal and which follow the word "intentionally" in the statute. Section 939.23(3).