

1459 UNAUTHORIZED USE OF AN ENTITY’S IDENTIFYING INFORMATION OR DOCUMENTS — § 943.203(2)

Statutory Definition of the Crime

Section 943.203(2) of the Criminal Code of Wisconsin is violated by one who intentionally uses, attempts to use, or possesses with intent to use any identifying information or identification document of an entity [to obtain credit, money, goods, services, or anything else of value or benefit] [to harm the reputation or property of the entity] without the authorization or consent of the entity and by representing that [he or she is the entity] [he or she is acting with the authorization or consent of the entity].

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 are present.

Elements of the Crime That The State Must Prove

1. The defendant intentionally [(used) (attempted to use) (possessed with intent to use)]¹ [(identifying information) (an identification document)]² of an entity. (A corporation) (A partnership) (An association) (A body politic) is an entity.³

CHOOSE ONE OF THE FOLLOWING.

[(Insert term from § 943.203(1)(c) 1. through 8.) is “identifying information.”]⁴

[“Identification document” means:

(a document containing identifying information.)

(an entity's card or plate that can be used to obtain money, goods, services, or any other thing of value or benefit⁵ or to initiate a transfer of funds.)

(any device that is unique to, assigned to, or belongs to an entity and is intended to be used to access services, funds, or benefits of any kind to which the entity is entitled.)]⁶

2. The defendant intentionally [(used) (attempted to use) (possessed with intent to use)] [(identifying information) (an identification document)] of the entity [to obtain credit, money, goods, services, or anything else of value or benefit] [to harm the reputation or property of the entity].
3. The defendant acted without the authorization or consent of the entity and knew that the entity did not give authorization or consent.⁷
4. The defendant intentionally represented⁸ that [(he) (she) was the entity] [(he) (she) was acting with the authorization or consent of the entity)].⁹

“Intentionally” requires that the defendant had the mental purpose¹⁰ to obtain credit, money, goods, services, or anything else of value or benefit by using (identifying information) (an identification document) of the entity without the entity's consent or authorization.

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 1459 was originally published in 2006. This revision was approved by the Committee in October 2018; it added to the Comment and footnotes.

This instruction is for violations of § 943.203(2), created by 2003 Wisconsin Act 36 (effective date: August 8, 2003).

Wis JI-Criminal 1458 provides a model for the related offense of “identity theft” from an individual, defined in § 943.201.

Act 36 also created § 946.79 False statements to financial institutions. There is no uniform instruction for this offense.

Act 36 also created new provisions relating to jurisdiction [new § 939.03(1)(e)], venue [new § 971.19(11)], and charging violations as a single crime if committed pursuant to a single intent and design [new § 971.366].

Section 943.203(2)(a) was interpreted in State v. Stewart, 2018 WI App 41, 383 Wis 2d 546, 916 N.W.2d 188, in the context of finding that there was a factual basis for a guilty plea. The charges were based on Stewart’s presenting forged documents to the writer of a presentence report in a previous criminal proceeding – purported diplomas and a letter from the VA. First, the court found that the facts showed that Stewart represented that the use of the documents was authorized. “The statute does not require an express or verbal representation from the offeror that the document is authorized.” ¶22. “...[B]y the act of presenting the documents to show the PSI writer his personal history and character, Stewart was implicitly saying they were real and he had consent to use them.” ¶23. Second, he acted with the purpose to receive something of value or benefit – a more favorable sentencing result. The statute is not limited to things of commercial or financial value. ¶26.

Section 940.203(3) provides:

It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

In State v. Ramirez, 2001 WI App 158, ¶17, 246 Wis.2d 802, 633 N.W.2d 656, the court of appeals held that the related offense under § 943.201 defines a “continuing offense” in the sense that the statute is violated when something of value is obtained even if the personal information was put to an unauthorized use at an earlier date.

1. Choose one of the alternatives: “used,” “attempted to use,” or “possessed with intent to use.”
2. Choose one of the alternatives: “identifying information” or “identification document.”

3. This statement is derived from the statutory definitions of “entity” and “person.” Section 943.203(1)(a) provides: “‘Entity’ means a person other than an individual.” Section 990.01(26) provides: “‘Person’ includes all partnerships, associations, and bodies politic and corporate.”

4. The Committee recommends inserting the appropriate term. For example: “An entity’s name is ‘identifying information.’” The full list of possible terms is found in § 943.203(1)(c)1. through 8.

5. “Anything of value or benefit” is not limited to things of commercial or financial value. State v. Stewart, 2018 WI App 41, ¶26, 383 Wis 2d 546, 916 N.W.2d 188 [Citing State v. Peters, 2003 WI App 88, 263 Wis 2d , ¶¶16-17, 665 N.W.2d 171.] [Stewart is discussed above in the Comment preceding footnote 1.]

6. The alternatives in parentheses are based on § 943.203(1)(b)1.-3.

7. Section 939.23(3) provides that when the word “intentionally” is used in a criminal statute, it requires “that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. In addition, . . . the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word ‘intentionally.’” Based on the latter requirement, the instruction includes the requirement that the defendant must know the victim did not consent to or authorize the use of the information or document.

8. “The statute does not require an express or verbal representation from the offeror that the document is authorized. Rather, it requires that the user ‘represent’ that the user is ‘acting with the authorization or consent of the entity.’ See Wis. Stat. 943.203(2).” State v. Stewart, 2018 WI App 41, ¶22, 383 Wis 2d 546, 916 N.W.2d 188 [Stewart is discussed above in the Comment preceding footnote 1.] Stewart relied on State v. Mason, 2018 WI App 57, ¶26, 384 Wis.2d 111, 918 N.W.2d 78, which concluded that using a stolen debit/credit card is sufficient to satisfy the “representing” requirement under § 943.201, the companion statute addressing theft of identifying information from an individual.

9. Choose one of the alternatives: “(he) (she) was the entity,” or “(he) (she) was acting with the authorization or consent of the entity.”

10. The Committee concluded that the “mental purpose” alternative for intent is most likely to apply to this offense. For further discussion of the full definition of “intentionally,” see Wis JI-Criminal 923A and 923B.