

1463 TAKING A VEHICLE BY USE OR THREAT OF FORCE — § 943.23(1g)**Statutory Definition of the Crime**

Subsection 943.23(1g) of the Criminal Code of Wisconsin is violated by one who, while possessing a dangerous weapon and by the use of, or threat of the use of, force or the weapon against another, intentionally takes any vehicle without the consent of the owner.

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 took a vehicle¹ without the consent² of the owner.
2. The defendant knew that the owner did not consent to the taking.³
3. The defendant took the vehicle while possessing a dangerous weapon.
4. The defendant took the vehicle by the [(use) (threat of the use)]⁴ of [(force) (a dangerous weapon)] against another.

Meaning of Dangerous Weapon

A dangerous weapon is (any firearm, whether loaded or not) (any device designed as a weapon and capable of producing death or great bodily harm) (any device or instrumentality which in the manner it is used or intended to be used is calculated or likely to produce death or great bodily harm).⁵

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and 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.⁶

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

This instruction was originally published as Wis JI-Criminal 1465 in 1994 and revised and renumbered as Wis JI-Criminal 1463 in June 2000. This revision reflected changes made by 2001 Wisconsin Act 109 and was approved by the Committee in April 2003.

This instruction is for violations of § 943.23(1g), commonly referred to as “carjacking.” The 2003 revision deleted text presenting a special question asking whether death or great bodily harm was caused. 2001 Wisconsin Act 109 repealed sub. (1m) which provided for an increased penalty in those situations, while adding violations of § 943.23(1g) as possible predicate felony for felony murder under § 940.03. Effective date: February 1, 2003.

1. For definition of "vehicle" see § 939.22(44).
2. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.
3. When "intentionally" is used in a criminal statute, it requires, in addition to a mental purpose to cause the result specified, that "the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word 'intentionally.'" § 939.23(3). Thus, the instruction requires knowledge that the taking was without consent.

4. While the instruction recommends selecting the applicable alternative, the Committee did not conclude that the alternatives are so distinct that election of one or other, or jury agreement on which alternative applies, should be required. This is similar to the result under the robbery statute, which this offense closely resembles. See Wis JI-Criminal 1479, footnote 1.

5. The definition of "dangerous weapon" is based on the one provided in § 939.22(10). The applicable alternative should be selected. See Wis JI-Criminal 910 for suggested instructions for all the statutory alternatives and a discussion of some of the substantive issues relating to the definition of "dangerous weapon."

6. This is the shorter version used to describe the process of finding intent. The Committee concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A [formerly JI 923.1].