

1463A CARJACKING [TAKING A VEHICLE BY USE OR THREAT OF FORCE]¹ — § 943.231(2)**Statutory Definition of the Crime**

Subsection § 943.231(2) of the Criminal Code of Wisconsin is violated by one who by the use of, or threat of the use of, force 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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally took a vehicle² without the consent³ of (name of owner).
2. The defendant knew that (name of owner) did not consent to the taking of the vehicle.⁴
3. The defendant took the vehicle by the (use) (threat of the use) of force against another.

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.⁵

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 1463A was approved by the Committee in December 2018. This revision was approved by the Committee in August 2023, it reflects changes made by 2023 Wisconsin Act 10 [effective date: May 12, 2023].

This instruction is for violations of § 943.231(2) that provides: “Whoever, by use of force against another or by the threat of the use of force against another, intentionally takes any vehicle without the consent of the owner is guilty of a Class E felony.” Section 943.23(1r) was created by 2017 Wisconsin Act 311 [effective date: April 18, 2018]. 2023 Wisconsin Act 10 [effective date: May 12, 2023] renumbered section 943.23(1r) as section 943.231(2). It also reorganized the offenses commonly referred to as “carjacking” into a new statutory section titled “carjacking.”

1. A trial judge has the authority to determine whether to include, exclude, or modify the title of an instruction when submitting it to the jury. Prior to May 2023, this instruction was titled “Taking a Vehicle by Use or Threat of Force.” However, with the enactment of 2023 Wisconsin Act 10, this offense was restructured and now falls under a new statutory section called “carjacking.” Therefore, the accurate statutory title is “carjacking,” but it might be helpful to include the bracketed language to distinguish this specific offense from other carjacking offenses.

2. For a definition of “vehicle,” see § 939.22(44).

3. 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.

4. 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.

5. 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 a longer description of the intent-finding process, see Wis JI-Criminal 923A.