

1466 INTENTIONALLY ACCOMPANYING A PERSON WHO OPERATES A VEHICLE WITHOUT THE OWNER'S CONSENT — § 943.23(4m)**Statutory Definition of the Crime**

Subsection 943.23(4m) of the Criminal Code of Wisconsin is violated by one who knows that the owner does not consent to the driving or operation a vehicle and intentionally accompanies, as a passenger in the vehicle, another person who intentionally drives or operates 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. (Name of person)¹ intentionally (drove) (operated) a vehicle² without the consent³ of the owner.⁴

This requires that (name of person) acted with the purpose to (drive) (operate) a vehicle and knew that the owner did not consent to the (driving) (operation).⁵

["Drive" means to exercise physical control over the speed and direction of a vehicle while it is in motion.]⁶

["Operate" means the physical manipulation or activation of any of the controls of a vehicle necessary to put it into motion.]⁷

[A person (drives) (operates) without consent even though the owner consented to the original taking if the person (drives) (operates) the vehicle in a manner that goes beyond the scope of the use authorized or permitted by the owner.]⁸

2. The defendant intentionally accompanied (name of person) as a passenger in the vehicle.
3. The defendant knew that the owner did not consent to the (driving) (operating) of the vehicle.⁹

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.¹⁰

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

This instruction was originally published as Wis JI-Criminal 1467.4 in 1994. It was revised in 2001 to renumber it as Wis JI-Criminal 1466 and to adopt a new format, make nonsubstantive changes to the text, and update the comment. This revision was approved by the Committee in February 2016; it added to the text of element 1 at footnote 8.

This offense, a Class A misdemeanor, is one of the so-called carjacking crimes created by 1993 Wisconsin Act 92 (effective date: Dec. 25, 1993). It applies to one who accompanies a person who violates sub. (1g), (1m), (1r), (2), or (3) of § 943.23. The first three of those subsections are "carjacking" crimes; the other two are the previously existing "operating without the owner's consent" offenses. The instruction uses a violation of sub. (3) as the underlying offense: "intentionally drives or operates any vehicle without the consent of the owner. . ." That violation was selected because it was the simplest and required importing the fewest factual issues into the definition of this offense. Conduct that violates the other subsections will always violate sub. (3).

1. This blank, and those that follow, call for the name of the person who drove the vehicle and whom the defendant is charged with accompanying.

2. For definition of "vehicle," see § 939.22(44).

3. 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.

4. The first element contains the elements for the direct violation of § 943.23(3), "intentionally driving or operating a vehicle without the consent of the owner." This is the simplest of the several different offenses that may serve as predicates for violations of § 943.23(4m). See the discussion preceding note 1, supra.

5. 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 driving or operating was without consent. In the context of this offense, the person actually driving or operating the vehicle must be shown to have had the required purpose and knowledge.

6. This is the definition of "drive" provided in § 943.23(1)(a).

7. This is the definition of "operate" provided by § 943.23(1)(c).

8. The sentence in brackets may be helpful if there is a question whether a person who had consent to the original taking of the vehicle may be guilty of this offense. The Committee concluded that a person "drives or operates a vehicle without the owner's consent" where that person may have been lawfully in possession of a vehicle but operates it in a manner that goes beyond the scope of the use authorized or permitted by the owner. A complete explanation of this conclusion is provided in Wis JI-Criminal 1464, footnote 1.

9. 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 driving or operating was without consent. In the context of this element, the defendant — who is charged with accompanying the driver or operator of the vehicle — must be shown to have had the required knowledge.

10. 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 Wis JI-Criminal 923.1].