

1467 REMOVING A MAJOR PART OF A VEHICLE WITHOUT THE OWNER'S CONSENT — § 943.23(5)¹**Statutory Definition of the Crime**

Subsection 943.23(5) of the Criminal Code of Wisconsin is violated by one who intentionally removes a major part of a 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 removed a major part of a vehicle.²

This requires that the defendant acted with the purpose to remove a (name of part).

CHOOSE ONE OF THE FOLLOWING:³

[A (name of part) is a major part of a vehicle.]

[A major part is a part that has a value⁴ of more than \$500.]

2. The defendant removed the (name of part) without the consent of the owner⁵ of the vehicle.
3. The defendant knew that the owner did not consent to the removal.⁶

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.⁷

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 1467.5 in 1994. This revision, which renumbered the instruction as Wis JI-Criminal 1467, was approved by the Committee in June 2000 and involved adoption of a new format, nonsubstantive changes to the text, and updating of the comment.

1. This instruction is for the Class E felony offense defined in § 943.23(5): intentionally removing a major part of a vehicle without the owner's consent. That subsection also defines a Class A misdemeanor offense which applies to intentionally removing "any other part or component of a vehicle" without the consent of the owner. This instruction can easily be modified for the misdemeanor charge by substituting "any part or component of a vehicle" for "major part of a vehicle" and by inserting the same phrase where the instruction calls for naming the major part.

Section 943.23(5) was created by 1987 Wisconsin Act 349. There are no reported appellate decisions interpreting the statute.

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

3. Subsection (1)(b) of § 943.23 provides that "major part" means any one of eleven listed parts of a vehicle: the engine; the transmission; each door of the passenger compartment; the hood; the grille; each bumper; each front fender; the deck lid, tailgate or hatchback; each rear quarter panel; the trunk floor pan; and, the frame, or the supporting structure which serves as the frame in the case of unitized body. The Committee recommends simply inserting the name of the "major part" involved in the case. Whether a particular part is a "major part" under the statute is a legal conclusion. Whether in fact such a part was involved in the case is for the jury to determine.

Subsection (1)(b)12. of § 943.23(5) provides that the following is also a "major part": "any part not listed under subs. 1 to 11 which has a value exceeding \$500." If this option is charged, the second bracketed sentence should be used.

4. "Value" is not specially defined for purposes of § 943.23(5). If a definition is needed, the Committee concluded that the definition provided in § 943.20(2)(d) should be usable.

5. 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.

6. 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 owner did not consent.

7. 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].