

1470 TRANSFER OF ENCUMBERED PERSONAL PROPERTY WITH INTENT TO DEFRAUD — § 943.84(2)**Statutory Definition of the Crime**

Fraudulent transfer of encumbered personal property, as defined in § 943.84(2)(a) of the Criminal Code of Wisconsin, is committed by one who, with intent to defraud, (conceals) (removes) (transfers) any personal property in which he knows another has a security interest.

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 (removed) (transferred) (concealed) personal property.

[To "remove" means to change the location of property permanently.]¹

[To "transfer" means to change possession or title of any property.]²

[To "conceal" means to hide the property or to do something else which prevents or makes more difficult the discovery of the property.]³

2. Another party held a security interest in the property.

A security interest is an interest in property which secures payment or other performance of an obligation.⁴

3. The defendant knew⁵ that another held a security interest in the property.

4. The defendant (transferred) (removed) (concealed) the property with intent to defraud.

This requires that when the defendant (transferred) (removed) (concealed) the property, (he) (she) had a purpose to cause someone pecuniary loss⁶ or was aware that (his) (her) conduct was practically certain to cause that result.⁷

WHEN EVIDENCE WARRANTS AND WHERE THE HOLDER OF SECURITY INTEREST IS ALLEGED TO HAVE BEEN DEFRAUDED, GIVE THE FOLLOWING INSTRUCTION.⁸

[Evidence has been received that the defendant knew that a security interest existed and (removed) (sold) the property without (the consent of the secured party) (authorization by the security agreement). Evidence has also been received that the defendant failed to return the property within 72 hours of written demand (or, if return of the property is not possible, failed to make full disclosure to the secured party of all information concerning the disposition, location, and possession of the property). If you are satisfied beyond a reasonable doubt that all these facts are established, you may find from this evidence alone that the defendant (transferred) (removed) (concealed) the property with intent to defraud. But you are not required to do so, and you must not so find unless you are satisfied beyond a reasonable doubt from all the evidence in the case that the defendant acted with the intent to defraud.]

Deciding About Intent and Knowledge

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

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.

IF A FELONY OFFENSE IS CHARGED, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.⁹

[Determining Value]

[If you find the defendant guilty, answer the following question:

("Was the value of property stolen more than \$100,000?")

Answer: "yes" or "no.")

("Was the value of property stolen more than \$10,000?")

Answer: "yes" or "no.")

("Was the value of property stolen more than \$500?")

Answer: "yes" or "no.")

"Value" means the market value of the property at the time of the theft or the replacement cost, whichever is less.¹⁰

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the value of the property was more than the amount stated in the question.]

COMMENT

Wis JI-Criminal 1740 was originally published in 1969 and revised in 1991. This revision was approved by the Committee in August 2007 and involved adoption of a new format, reflection of the renumbering of the statutes, and nonsubstantive changes to the text.

This instruction is drafted for violations of § 943.84(2). The offense was formerly defined in § 943.25, which was renumbered by 2005 Wisconsin Act 212 and moved to the subchapter dealing with crimes against financial institutions.

1. In Jameson v. State, 74 Wis.2d 176, 181, 246 N.W.2d 501 (1976), the court held that "remove" as used in § 943.25(2) [now § 943.84(2)] means more than moving from place to place; it requires "some permanent change in situs."

2. This is based on § 939.22(40) which defines "transfer" as follows: ". . . any transaction involving a change in possession of any property, or a change of right, title or interest to or in any property."

3. See Wis JI-Criminal 1481, Receiving Stolen Property, text at note 5.

4. Section 943.84(4) defines "security interest" as ". . . an interest in property which secures payment or other performance of an obligation." Also see Wis. Uniform Commercial Code 401.201(37). The perfection of the security interest "is not necessary to the creation of a security interest valid between the original parties." State v. Tew, 54 Wis.2d 361, 365, 195 N.W.2d 615 (1972).

In 26 Op. Att'y Gen. 105, 107 (1937), it is stated that the security interest must be an enforceable one.

5. Section 939.23(2) states that "'know' requires only that the actor believes that the specified fact exists."

6. The 1953 Report on the Criminal Code points out that the meaning of "intent to defraud" varies with the context in which it is used and states that for this offense, "it is used in the sense of intent to cause pecuniary loss either to the person whose security interest is endangered or defeated or to the innocent purchaser who has only constructive notice of the security interest." 1953 Report, page 120.

This view was adopted for purposes of subsection (1) of § 943.25 [now § 943.84] in State v. Alles, 106 Wis.2d 368, 382, 316 N.W.2d 378 (1982).

7. Section 939.23(3). See discussion of the two alternative meanings of "intent" in Wis JI-Criminal 923A and 923B.

8. Subsection (3) of § 943.84 sets forth a lengthy set of facts that is to provide "prima facie" evidence of intent to defraud. Providing an understandable instruction on this "prima facie evidence"

provision is difficult. The paragraph in brackets is based on the Committee's standard approach to instructing on "prima facie cases," described at Wis JI-Criminal 225.

The prima facie evidence provision was discussed in Jameson v. State, cited in note 1, supra, 74 Wis.2d 176, 183.

9. The penalty for this offense depends on the value of the property involved, see § 943.91:

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| • value does not exceed \$500 | Class A misdemeanor |
| • value does not exceed \$500 and defendant
has prior theft-type conviction | Class I felony |
| • value exceeds \$500 but does not exceed \$10,000 | Class H felony |
| • value exceeds \$10,000 but does not exceed \$100,000 | Class G felony |
| • value exceeds \$100,000 | Class E felony |

The questions in the instruction adopt the approach used in theft cases. See Wis JI-Criminal 1441.

10. This is the definition of value used for theft cases. See § 943.20(2)(d) and Wis JI-Criminal 1441, footnote 9.