

1496 THEFT OF A FINANCIAL TRANSACTION CARD — § 943.41(3)(a)**Statutory Definition of the Crime**

Theft of a financial transaction card, as defined in § 943.41(3)(a)¹ of the Criminal Code of Wisconsin, is committed by one who acquires a financial transaction card from the person, possession, custody, or control of another without the cardholder's consent and with intent to (use it) (sell it) (transfer it to a person other than the issuer).²

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 acquired³ a financial transaction card from the person, possession, custody, or control of another.

A financial transaction card is an instrument or device issued by a business organization or financial institution for the use of the cardholder in (obtaining anything on credit) (certifying or guaranteeing the availability of funds sufficient to honor a draft or check) (gaining access to an account).⁴

2. The defendant acquired the card without the consent of the cardholder.⁵

"Without consent" means that there was no consent in fact.⁶

3. The defendant acquired the card with intent to (use it) (sell it) (transfer it to a person other than the issuer).⁷

Deciding About Intent

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of theft of a financial transaction card 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 1496 was originally published in 1989 and revised in 1991. This revision was approved by the Committee in October 2008 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is drafted for violations of § 943.41(3)(a), which are Class A misdemeanors. For offenses involving fraudulent use of a card under sub. (5) see Wis JI Criminal 1497, 1497A, and 1497B.

1. This instruction is drafted for one type of offense defined in § 943.41(3)(a), which provides:

(3) Theft by taking card. (a) No person shall acquire a financial transaction card from the person, possession, custody or control of another without the cardholder's consent or, with knowledge that it has been so acquired, receive the financial transaction card with intent to use it or sell it to or transfer it to a person other than the issuer. Acquiring a financial transaction card without consent includes obtaining it by conduct defined as statutory theft. . . .

2. One of the alternatives in parentheses should be selected. The alternatives appear at the end of the first sentence of § 943.41(3)(a). Although the statute is not explicit in this regard, the Committee has interpreted it as providing that the "with intent to use it or sell it . . ." phrase modifies both prohibited acts: acquiring a card without the cardholder's consent; or receiving a card acquired without the cardholder's consent.

3. Section 943.41(3)(a) provides that "[a]cquiring a financial transaction card without consent includes obtaining it by conduct defined as statutory theft." Wisconsin's theft statute identifies the following means of obtaining property: takes and carries away, uses, transfers, conceals, retains possession of property without consent and with intent to deprive the owner permanently of possession. See § 943.20(1)(a).

The last sentence of § 943.41(3)(a) provides:

If a person has in his or her possession or under his or her control financial cards issued in the names of two or more other persons it is prima facie evidence that the person acquired them in violation of this subsection.

See Wis JI-Criminal 225 for a pattern instruction for implementing a statutory "prima facie evidence" provision.

4. This definition is adapted from the one provided in § 943.41(1)(em).

5. "Cardholder" is defined in § 943.41(1)(b) as "the person to whom or for whose benefit a financial transaction card is issued." In most cases, the cardholder is likely to be the owner of the card.

6. See § 939.22(48) for further definition of "without consent" appropriate where consent is given but is not legally effective because it resulted from coercion, purported legal authority, or lack of understanding.

7. See note 2, *supra*. "Issuer" is defined in § 943.41(1)(f) as "the business organization or financial institution which issues a financial transaction card or its duly authorized agent."