

1498C THEFT OF SERVICES — § 943.50(1r)**Statutory Definition of the Crime**

Theft of services, as defined in § 943.50(1r) of the Criminal Code of Wisconsin, is committed by one who, having obtained a service from a service provider, absconds and intentionally fails or refuses to pay for the service and does so without the service provider's consent and with intent to deprive the service provider permanently of the full price of the service.¹

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 obtained a service from a service provider.

“Service provider” means a merchant who provides a service to retail customers without a written contract with the expectation that the service will be paid for by the customer upon completion of the service.²

2. The defendant intentionally absconded without paying for the service.

“Intentionally absconded” means that the defendant left with the mental purpose to avoid paying for the service.³

3. The service provider did not consent to the defendant leaving without paying for the service.

4. The defendant intended to deprive the service provider permanently of the full price of the service.

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 FELONY THEFT OF SERVICES IS CHARGED, A JURY DETERMINATION OF VALUE MUST BE MADE. ADD THE FOLLOWING IF THE EVIDENCE WOULD SUPPORT A FINDING THAT THE VALUE OF THE SERVICE WAS MORE THAN THE AMOUNT STATED IN THE QUESTION.⁴

Determining Value

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

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

Answer: "yes" or "no.")

("Was the value of the service more than \$5,000?")

Answer: "yes" or "no.")

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

Answer: "yes" or "no.")

["Value" means the price that the service provider stated for the service before the service was provided.]⁵

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

COMMENT

Wis JI-Criminal 1498C was originally published by the Committee in 2012 and revised in 2019. This revision was approved in December 2019; it adds to the comment.

The crime of “theft of services” was created by 2011 Wisconsin Act 110 [effective date: December 21, 2011]. Act 110 added subsection (1r) to § 943.50, which is now titled: “Retail theft; theft of services.”

As with other retail theft violations, the basic offense is a Class A misdemeanor. The penalty increases to a felony if the value of the stolen property exceeds specified amounts. The instruction provides for a jury finding of the amount for felony cases. See footnote 4 and the accompanying text. The amount distinguishing misdemeanors from felonies was reduced from \$1,500 to \$500 by 2011 Wisconsin Act 174.

Act 174 also created ss. 943.50(4m) which provides that “[W]hoever violates sub. (1m) (a), (b), (c), (d), (e), or (f) is guilty of a Class I felony if all of the following apply:

- (a) The value of the merchandise does not exceed \$500.
- (b) The person agree or combines with another to commit the violation.
- (c) The person intends to sell the merchandise by means of the Internet.”

In State v. Lopez, 2019 WI 101, 389 Wis.2d 156, 936 N.W.2d 125, the Wisconsin Supreme Court affirmed the court of appeals decision in State v. Lopez, 2019 WI App 2, 385 Wis.2d 482, 922 N.W.2d 855, which held that the State may charge multiple acts of retail theft as one continuous offense pursuant to § 971.36(3)(a). Nothing in § 971.36(3)(a) indicates that the legislature intended to limit the provision to a specific type or types of theft, therefore the statute is applicable to various types of theft, including retail theft under § 943.50(1m)(a) (e).

1. This statement reorders the statutory language to make it more understandable for the jury; no change in meaning is intended.

2. This is the definition provided in § 943.50(1)(am).

3. The definition of “abscond” is adapted from the one used in Wis JI-Criminal 1461, Fraud on Hotel or Restaurant Keeper. See footnote 5, Wis JI-Criminal 1461. For definition of “intentionally,” see Wis JI-Criminal 923A and 923B.

4. The jury must make a finding of the value of the stolen property [or services] if the felony offense is charged and if the evidence supports a finding that the required amount is involved. Heyroth v. State, 275 Wis. 104, 81 N.W.2d 56 (1957). While value may not, strictly speaking, be an element of the crime, it determines the range of permissible penalties and should be established “beyond a reasonable doubt.” The Committee concluded that if the misdemeanor offense is charged, the jury need not make a finding as to value.

The amounts determining the penalty are set forth in § 943.50(4):

- if the value of the service does not exceed \$500, the offense is a Class A misdemeanor;

- if the value of the service exceeds \$500 but not \$5,000, the offense is a Class I felony;
- if the value of the service exceeds \$5,000 but not \$10,000, the offense is a Class H felony; and,
- if the value of the service exceeds \$10,000, the offense is a Class G felony.

The above reflects changes made by 2011 Wisconsin Act 174. Only the threshold for the Class I felony was changed – it was reduced to \$500 from \$2,500.

The questions in the instruction omit the upper limits of the categories for the felony penalties; it is no defense that the value was actually greater than the amount alleged. More than one question may be presented to the jury, however. If the evidence would allow a reasonable jury to find, for example, that the value did not exceed \$10,000 but did exceed \$5,000, the two relevant questions could be submitted.

5. This is the definition provided in § 943.50(1)(b)3.