

**1504 COMPUTER CRIME — § 943.70(2)(a)1. - 5.****Statutory Definition of the Crime**

Computer crime, as defined by § 943.70(2)(a) of the Criminal Code of Wisconsin, is committed by one who willfully, knowingly, and without authorization (modifies) (destroys) (accesses) (takes possession of) (copies) computer data or programs.

**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 (modified) (destroyed) (accessed) (took possession of) (copied) computer data or programs.
2. The defendant had no authorization to (modify) (destroy) (access) (take possession of) (copy) computer data or programs.
3. The defendant acted intentionally.<sup>1</sup>

This requires that the defendant acted with the purpose of (modifying) (destroying) (accessing) (taking possession of) (copying) computer data or programs. It further requires that the defendant knew that (he) (she) did not have authorization.

**[Meaning of "Computer Program"]**

["Computer program"<sup>2</sup> means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.]

**[Meaning of "Computer Data"]**

["Computer data"<sup>3</sup> means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, is being processed, or is intended to be processed in a computer system<sup>4</sup> or computer network.<sup>5</sup> Data may be in any form, including computer printouts, magnetic storage media, punched cards, and as stored in the memory of the computer.]

**[Meaning of "Computer"]**

["Computer"<sup>6</sup> means an electronic device that performs logical, arithmetic, and memory functions by manipulating electronic or magnetic impulses and includes all input, output, processing, storage, computer software,<sup>7</sup> and communications facilities that are connected or related to a computer in a computer system or computer network.]

**Deciding About Purpose and Knowledge**

You cannot look into a person's mind to find purpose and knowledge. Purpose 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 purpose and knowledge.

### 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.

ADD ONE OF THE FOLLOWING IF A FACT INCREASING THE PENALTY AS SET FORTH IN § 943.70(2)(b)2., 3g., 3r., or 4. IS ALLEGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT IT IS PRESENT:<sup>8</sup>

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

["Was the offense committed (to defraud) (to obtain property<sup>9</sup>)?"]<sup>10</sup>

["Did the offense result in damage valued at more than \$2,500?"]<sup>11</sup>

["Did the offense cause an interruption or impairment of (governmental operations) (public communication) (transportation) (a supply of water, gas, or other public service)?"]<sup>12</sup>

["Did the offense create a situation of unreasonable risk and high probability of death or great bodily harm to another?"]<sup>13</sup>

Before you may answer this question "yes," the State must prove by evidence which satisfies you beyond a reasonable doubt that the answer to the question is "yes."

If you are not so satisfied, you must answer the question "no."]

### COMMENT

Wis JI-Criminal 1504 was originally published in 1987 and revised in 1995. This revision was approved by the Committee in October 2006 and involved adoption of a new format and nonsubstantive changes to the text.

Wis JI Criminal 1504 is drafted for any of the offenses defined in Sec. 943.70(2)(a)1.-5. Those offenses are all the same except for the verb used. The instruction places the alternative verbs in parentheses. For a violation of § 943.70(2)(a)6., which defines a different type of act – disclosing restricted access codes or other restricted access information to unauthorized persons – see Wis JI Criminal 1505. For violations of § 943.70(3)(a)2., see Wis JI Criminal 1506.

Wisconsin's computer crime statute is apparently based on proposed legislation drafted by the National Association for State Information Systems Standing Committee on Security, Privacy, and Confidentiality (per Drafting File for 1981 Assembly Bill 744, Legislative Reference Bureau). For a general discussion of the statute, see Levy, "Criminal Liability for Computer Offenses and the New Wisconsin Computer Crimes Act," Wisconsin Bar Bulletin, March 1983.

In State v. Corcoran, 186 Wis.2d 616, 522 N.W.2d 226 (Ct. App. 1994), the court rejected constitutional challenges to § 943.70 based on claims of impairment of contract, involuntary servitude, vagueness, and overbreadth. Because it found that the defendant did not have the protected copyright interest he claimed, the court found it unnecessary to decide whether the federal Copyrights Act preempts the enforcement of § 943.70. 186 Wis.2d 616, 628.

1. The instruction substitutes the word "intentionally," which is well defined in the Wisconsin Criminal Code, for the statute's "willfully, knowingly." The meaning of "intentionally," which requires purpose and knowledge, ought to adequately cover the intended meaning of "willfully, knowingly." This is consistent with the approach taken in several cases where Wisconsin appellate courts have interpreted "willfully" as having the same meaning as "intentionally." See, for example, State v. Hurd, 135 Wis.2d 266, 400 N.W.2d 42 (Ct. App. 1986), and State v. Cissell, 127 Wis.2d 205, 378 N.W.2d 691 (1985).

2. This definition is the one provided in § 943.70(1)(c). Use when the case involves a "computer program."

3. This definition is the one provided in § 943.70(1)(f). Use when the case involves "computer data."

4. "Computer system" is defined in § 943.70(1)(e) as "a set of related computer equipment, hardware or software."

5. "Computer network" is defined in § 943.70(1)(b) as "the interconnection of communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers."

6. This is the definition provided in § 943.70(1)(a).

7. "Computer software" is defined in § 943.70(1)(d) as "a set of computer programs, procedures or associated documentation used in the operation of a computer system."

8. The basic penalty for a violation of § 943.70(2) is that of a Class A misdemeanor. But the penalty increases in seriousness if facts identified in § 943.70(2)(b)2.-4. are present. A violation is a Class I felony if the offense is committed to defraud or to obtain property B sub. (2)(b)2. A violation is a Class F felony if the damage is greater than \$2,500 B sub. (2)(b)3g. B or if it causes an interruption or impairment of governmental operations or public communication, of transportation, or of a supply of

water, gas, or other public service B sub. (2)(b)3r. B or if the offense creates a situation of unreasonable risk and high probability of death or great bodily harm to another B sub. (2)(b)4.

The instruction suggests handling these penalty-increasing facts by submitting special questions to the jury.

9. "Property," as it applies to this offense, is defined as follows in § 943.70(1)(h):

"Property" means anything of value, including but not limited to financial instruments, information, electronically produced data, computer software and computer programs.

10. See sub. (2)(b)2.

11. See sub. (2)(b)3g.

12. See sub. (2)(b)3r.

13. See sub. (2)(b)4.