

1522 ROBBERY OF A FINANCIAL INSTITUTION — § 943.87**Statutory Definition of the Crime**

Robbery of a financial institution, as defined in section 943.87 of the Criminal Code of Wisconsin, is committed by one who by use of force or threat to use imminent force takes from an individual or in the presence of an individual money or property that is owned by or under the custody or control of a financial institution.

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. (Name financial institution) was a financial institution.

"Financial institution" means a (bank) (savings bank) (savings and loan association) (trust company) (credit union) (mortgage banker) (mortgage broker)¹ chartered under the laws of this state, another state or territory, or under the laws of the United States.²

2. (Name financial institution) was the owner of or had the custody or control of [money] [property].³

"Owner" means a person in possession of property.⁴

3. The defendant took and carried away⁵ [money] [property] from an individual or from the presence⁶ of an individual.
4. The defendant acted forcibly.⁷

"Forcibly" means that the defendant [actually used force against (name) with the intent to overcome or prevent (his) (her) physical resistance or physical power of resistance to the taking or carrying away of the property]⁸ [or] [threatened the imminent use of force against (name) with the intent to compel (name) to submit to the taking or carrying away of the property. "Imminent" means "near at hand" or "on the point of happening"⁹].

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.

COMMENT

Wis JI-Criminal 1522 was approved by the Committee in July 2016.

This instruction is drafted for violations of § 943.87, Robbery of a financial institution. The offense definition is similar to that for unarmed robbery under § 943.32(1), but differs in at least one significant way: "intent to steal" is not required. In addition, a violation of § 943.87 is a Class C felony; a violation of § 943.32(1) is a Class E felony.

1. The options in parentheses are the most common of the alternatives included in the definition of "financial institution" provided in § 943.80(2). The definition also includes "a company that controls, is controlled by, or is under common control" of the specified institutions. The definition includes cross-references to other definitions for some of the specified institutions:

- bank – §214.01(1)(c)
- savings bank – §214.01(1)(t)

- credit union – §186.01(2)
- mortgage banker – §224.71(3)(a)
- mortgage broker – §224.71(4)(a)

2. Proof of chartered status was an issue in State v. Eady, 2016 WI App 12, 366 Wis.2d 711, 875 N.W.2d 139. In Eady, the court of appeals apparently agreed with the defendant's contention that "chartered" status was an element of the crime, but found that it was established by circumstantial evidence.

3. "Property" for the purposes of robbery under § 943.32 is the same as "property" for the purposes of theft; which is defined in § 943.20(2)(a). See Baldwin, "Criminal Misappropriations In Wisconsin – Part II," 44 Marq. L. Rev. 430, 450 (1961). The value of the property is immaterial. The Committee concluded that the definition should be carried over to this offense.

4. "The person who has possession of the property" is the definition of owner provided in § 943.32(3). The Committee concluded that the definition should be carried over to this offense.

In State v. Mosely, 102 Wis.2d 636, 307 N.W.2d 200 (1981), a case dealing with robbery under § 943.32, the court held that a person qualifies as an "owner" if his possession of the property is "actual or constructive," citing § 971.33. In Mosely, all employees of a restaurant were held to be "owners" of the restaurant's money kept in an office desk since each had dominion and control over it. As to jewelry and a purse on an office shelf, only the person to whom they actually belonged was an "owner," since only she had any control over or interest in the property.

5. See Wis JI-Criminal 1480, the instruction for armed robbery under § 943.32, footnote 6, pointing out that case law has established that robbery requires "carrying away" – "asportation" is the term used. The Committee concluded that the requirement should be carried over to this offense.

6. When there is a dispute on the facts as to precisely from where the property was taken – the person or the presence of the one in possession – then add this sentence: "It is immaterial whether the property is taken from the person or the presence of the one in possession." "Presence of the owner" means such a proximity to the owner as will enable the defendant when he takes the property to use or threaten the imminent use of force. See Wis JI-Criminal 1480, footnote 7. In certain cases, property may be taken from both the person and the presence of the one in possession. Then the words "or both" should be added at this point.

In State v. Mosely, 102 Wis.2d 636, 307 N.W.2d 200 (1981), the court held that "from his person or presence" did not require that the victim actually be aware of the taking: ". . . where the victim has been intimidated or placed in fear by use or threat of force . . . and the property is taken from an area sufficiently close and under his control that, but for the robber's intimidation or force he could have prevented the taking, the taking is from his "presence" under § 943.32(1); and this conclusion is not defeated by an unawareness of the taking as it occurs." 102 Wis.2d at 649.

7. This paragraph restates the statutory requirement that the defendant act "by force or threat to use imminent force" by phrasing them as alternative ways of satisfying the core requirement that the defendant act "forcibly." This is how the use/threat of force issue is handled for purposes of robbery under

§ 943.32. The Committee concluded that it carried over to this offense. Footnote 13 to Wis JI-Criminal 1480 provides in part:

The Committee concluded that this properly emphasizes the intent of the statute to require a link between the taking of the property and the defendant's use of force. The Committee concluded that it is not necessary to elect between "use of force" and "threat of imminent force" alternatives, although in the usual case, election would clarify the issue for the jury and should be done where possible. In support of the proposition that election is not necessary, see Manson v. State, and Cheers v. State, cited in note 1, supra. As to jury unanimity generally, also see State v. Baldwin, 101 Wis.2d 441, 304 N.W.2d 742 (1981), and Holland v. State, 91 Wis.2d 134, 280 N.W.2d 288 (1979); compare United States v. Gipson, 553 F.2d 453 (5th Cir. 1977).

8. It is robbery under § 943.32 if force is used to accomplish the "carrying away" of the property as well as the "taking." State v. Grady, 93 Wis.2d 1, 286 N.W.2d 607 (Ct. App. 1979). The Committee concluded the same rule applies here.

9. The definition of "imminent" is adapted from Black's Law Dictionary, p. 884 (4th Edition, 1951).