

**1650 ALTERING A LOTTERY TICKET — § 565.50(2)****Statutory Definition of the Crime**

Section 565.50(2) of the Wisconsin Statutes is violated by one who alters<sup>1</sup> a lottery ticket

**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 two elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant altered<sup>2</sup> a lottery ticket.<sup>3</sup>

A lottery ticket is altered when it has been changed from the form in which it was originally issued by the State of Wisconsin.

2. The defendant altered a lottery ticket with intent to defraud.<sup>4</sup>

This requires that the defendant altered the lottery ticket with the purpose to use it to obtain money (he) (she) was not entitled to receive.<sup>5</sup>

**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 both 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 1650 was originally published in 1990. 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 for a violation of subsection (2) of § 565.50 which provides as follows:

(2) Any person who alters or forges a lottery ticket or share or intentionally utters or transfers an altered or forged lottery ticket or share is guilty of a Class I felony.

For violations of sub. (2) involving intentionally uttering or transferring an altered or forged lottery ticket, see Wis JI Criminal 1651. Violations of § 565.50 (3) are addressed by Wis JI Criminal 1652.

1. The statute refers to "alters or forges" a lottery ticket or share. The instruction uses the term "alter" throughout. If there is an intended difference between the two terms, the term "alter" appears to be the broader one.

2. See note 1, supra.

3. "Lottery ticket" is not defined in the statutes relating to the state lottery. It is defined in the Wisconsin Administrative Code at Chapter Tax 61, § Tax 61.02(3), but that definition is not easily adaptable for use in a standard instruction.

4. The Committee concluded that this offense requires "intent to defraud" even though the statute does not expressly provide for it. Subsection (2) of § 565.50 defines this offense without referring to "intent to defraud" and provides that a violation is a Class I felony. Subsection (3) of the same statute prohibits possessing an altered or forged lottery ticket with intent to defraud and provides for a maximum penalty of a \$10,000 fine or 9 months imprisonment or both. The Committee concluded that the offense with the more severe penalty should also include a culpable mental element.

Further, the use of the word "forges" carries with it the connotation of an intent to defraud. "The knowledge of the falsity of the instrument and the intent to defraud are of the very essence of the crime of forgery." 37 C.J.S. Forgery § 4. Also see Wells v. State, 195 Wis. 551, 218 N.W. 811 (1929).

Several Wisconsin cases have interpreted criminal statutes to include criminal intent where it was not expressly required. In State v. Alfonsi, 33 Wis.2d 469, 147 N.W.2d 550 (1967), the court noted that "the element of scienter is the rule rather than the exception in our criminal jurisprudence." (Also see United States v. U.S. Gypsum, 438 U.S. 422, 436 (1978): "the existence of mens rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.") The Alfonsi court found

that the crime of bribery, as defined in § 946.10, required "corrupt intent" even though not explicitly included in the statutory definition of the offense. The court relied on the general rule noted above, as well as on the fact that the crime of bribery "by its inherent nature has traditionally required a corrupt motivation." One of the cases relied on in Alfonsi was State v. Croy, 32 Wis.2d 118, 145 N.W.2d 118 (1966). In Croy, the court found that "intent to defraud" remained an element of defrauding an innkeeper under § 943.21 despite the fact that the statute had been revised to eliminate "intent to defraud" from the definition of the crime. The Wisconsin Supreme Court applied the Alfonsi rationale to an offense defined outside the Criminal Code in State v. Collova, 79 Wis.2d 473, 255 N.W.2d 581 (1977). The court held that the legislature did not intend operating after revocation to be a strict liability offense because of the "severe consequences attached to a violation." An "objective standard of care" was added to the statutory definition of the offense: the defendant must have cause to believe his license might be revoked or suspended.

There are also decisions declining to read a mental element into a statute that does not expressly require one. See, for example, State v. Stoehr, 134 Wis.2d 66, 396 N.W.2d 177 (Ct. App. 1986), and State v. Temby, 108 Wis.2d 521, 322 N.W.2d 522 (Ct. App. 1982).

5. Lottery prizes are generally in the form of payment of money, though the prize may be a trip or some other type of noncash award. If the prize is for other than money, this definition of "intent to defraud" must be changed to refer, for example, to "something of value." In any event, it is the purpose to obtain something the person is not entitled to receive that the Committee concluded is the essence of "intent to defraud" in the context of this offense.