

1651 UTTERING AN ALTERED LOTTERY TICKET — § 565.50(2)**Statutory Definition of the Crime**

Section 565.50(2) of the Wisconsin Statutes is violated by one intentionally utters or transfers an altered¹ 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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant (uttered) (transferred) a lottery ticket.²

("Utter" means to present for payment.)³

("Transfer" means to give possession to another person.)⁴

2. The lottery ticket was altered.⁵

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

3. The defendant intentionally (uttered) (transferred) an altered lottery ticket.

This requires that the defendant knew that the lottery ticket was altered and acted with the purpose to (present it for payment) (transfer possession to another person).⁶

Deciding About Intent and Knowledge

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

COMMENT

Wis JI-Criminal 1651 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 altering or forging a lottery ticket, see Wis JI Criminal 1651. Violations of § 565.50 (3) are addressed by Wis JI Criminal 1652.

1. The statute refers to an "altered or forged" 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. "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.

3. This is based on the definition of "utter" used for forgery offenses under § 943.38(2). See Wis JI-Criminal 1492 at note 4. Also see State v. Tolliver, 149 Wis.2d 166, 440 N.W.2d 571 (Ct. App. 1989): a forged check is uttered when it is introduced into the stream of commerce.

4. The Committee believes this definition explains the plain and ordinary meaning of "transfer."

5. See note 1, supra.

6. "Intentionally" is divided into two parts: purpose and knowledge. Having the mental purpose to cause the result is one of the two definitions of "intentionally" provided in § 939.23(3) and is believed to be most likely to apply in the context of this offense. The other alternative is being "aware that his or her conduct is practically certain to cause the result." See the discussion in Wis JI-Criminal 923A and 923B.

The knowledge requirement is based on § 939.23(3), which provides that when the word "intentionally" is used, it requires knowledge of all the facts which make the conduct criminal and which appear after the word "intentionally" in the statute.