

1705 SABOTAGE — § 946.02(1)(a)**Statutory Definition of the Crime**

Sabotage, as defined in § 946.02(1)(a) of the Criminal Code of Wisconsin, is committed by one who intentionally damages, interferes with, or tampers with any property with reasonable grounds to believe that his act will hinder, delay, or interfere with (the prosecution of war or other military action) (the preparation for defense) by the United States.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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally damaged property.²

"Intentionally" means that the defendant acted with the mental purpose to damage property or was aware that (his) (her) conduct was practically certain to cause that result.³

2. The defendant had reasonable grounds to believe that (his) (her) act would hinder, delay, or interfere with the preparation for defense by the United States.

"Reasonable grounds to believe" means that a reasonable person in the defendant's position would have believed that (his) (her) act would hinder, delay or interfere with the preparation for defense by the United States.⁴

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 sabotage 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 1705 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 subsec. (1)(a) of § 946.02. Subsection (1)(b) of the statute defines a different type of offense: intentionally making a defective article that is to be used in national defense. Subsection (2) explains that nothing in the statute should be construed to impair the rights of employees to engage in lawful collective bargaining or other labor activities.

The only reported Wisconsin decision dealing with the sabotage statute is State v. Ostenson, cited in note 4, below. Ostenson involved damage to the United States Navy ELF (extremely low frequency) communication facility in Ashland County.

1. The rest of the instruction refers only to the "preparation for defense" alternative on the assumption that it would be the most commonly used.

2. The instruction refers to "damage to property" throughout, although two other alternatives are also prohibited by the statute: interfering with property or tampering with property.

3. "Intentionally" is defined in § 939.23(3). For more extensive definition of the term, see Wis JI-Criminal 923A and 923B.

4. The definition of "reasonable grounds to believe" is based on the decision in State v. Ostenson, 150 Wis.2d 656, 442 N.W.2d 501 (Ct. App. 1989), where the court held that "the statute does not require proof of the actor's subjective intent to interfere. Rather, it requires merely that a reasonable person, acting with the defendant's knowledge, has grounds to believe it will." 150 Wis.2d 656, 661. Also see State v. Hurd, 135 Wis.2d 266, 400 N.W.2d 42 (Ct. App. 1986), which discusses the related phrase, "reasonable cause to suspect" as used in § 48.981, the statute requiring the reporting of suspected child abuse. Hurd is discussed in footnote 3 to Wis JI-Criminal 2119.