

1733 MISCONDUCT IN PUBLIC OFFICE (BY FALSE ENTRY, RETURN, CERTIFICATE, REPORT, OR STATEMENT) — § 946.12(4)**Statutory Definition of the Crime**

Misconduct in public office, as defined in § 946.12(4) of the Criminal Code of Wisconsin, is committed by one who is a (public officer) (public employee) and who, in (his) (her) capacity as an (officer) (employee), makes an entry in (an account or record book) (a return) (a certificate) (a report) (a statement) which (he) (she) intentionally falsifies in a material respect.

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. At the time of the alleged offense, the defendant was a (public officer) (public employee). A (position) is a (public officer) (public employee).¹
2. The defendant, in (his) (her) capacity as a public (officer) (employee) made an entry in (an account or record book) (a return) (a certificate) (a report) (a statement).
3. The entry was false in a material respect.²
4. The defendant intentionally falsified the entry in a material respect.

"Intentionally" means that the defendant had the mental purpose³ to falsify the entry in (an account or record book) (a return) (a certificate) (a report) (a statement) in a material respect and knew that the entry was false when (he) (she) made it.

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 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 1733 was originally published in 1966 and revised in 1990. This revision was approved by the Committee in February 2008 and involved adoption of a new format and nonsubstantive changes to the text.

1. The Committee believes that it is clearer to the members of the jury if they are simply instructed that, for example, "A member of the county board is a public officer."

"Public officer" and "public employee" are defined as follows in § 939.22(30):

"Public officer" means any person appointed or elected according to law to discharge a public duty for the state or one of its subordinate governmental units.

"Public employee" means any person, not an officer, who performs any official function on behalf of the state or one of its subordinate governmental units and who is paid from the public treasury of the state or subordinate governmental unit.

2. If it is believed to be necessary to define "material," the original version of this instruction suggested that a material false entry may be defined as "an entry which causes the instrument to speak differently in legal effect than it spoke originally." Wis JI-Criminal 1733 8 1966. Black's Law Dictionary (7th ed. 1999) defines "Material alteration" as follows: "A significant change in something; esp., a change in a legal instrument sufficient to alter the instrument's legal meaning or effect."

3. "Intentionally" is defined in § 939.23(3) to include not only "mental purpose," but also "is aware that his conduct is practically certain to cause that result." See Wis JI-Criminal 923A and 923B. The Committee concluded that the "mental purpose" part of the definition is most likely to apply in the context of this offense.