

**1756 FALSE SWEARING: FALSE STATEMENT UNDER OATH:
MISDEMEANOR — § 946.32(2)**

Statutory Definition of the Crime

False swearing, as defined in § 946.32(2) of the Criminal Code of Wisconsin, is committed by one who under (oath) (affirmation) makes or subscribes a false statement which (he) (she) does not believe is true.

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 (made) (subscribed)¹ a false statement.
2. The defendant did not believe the statement to be true² when (made) (subscribed).
3. The statement was (made) (subscribed) under (oath) (affirmation).³

[USE THE FOLLOWING IF WRITTEN STATEMENTS ARE INVOLVED.]⁴

[The meaning of being under (oath) (affirmation) is usually well understood, as when the witnesses in this case were put under oath before you. A written statement is under (oath) (affirmation) when it is subscribed or signed by a

person, who swears that it is the truth, before some person authorized⁵ to administer an (oath) (affirmation).]

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 1756 was originally published in 1994. This revision was approved by the Committee in June 2003 and involved adoption of a new format.

This instruction is for the misdemeanor offense defined in § 946.32(2). The felony offenses defined in sub. (1) are addressed by Wis JI Criminal 1754 and 1755.

1. The meanings of "make" and "subscribe" were discussed in *State v. Devitt*, 82 Wis.2d 262, 262 N.W.2d 73 (1978). Both parties and, apparently, the Wisconsin Supreme Court, agreed that "subscribes" refers to signing a written document. The defendant argued that "makes" is limited to preparing or drawing up a writing. The court rejected this narrow definition, favoring a more general concept that includes making an oral statement in a judicial proceeding. 82 Wis.2d 262, 271-75.

2. As with perjury, if the defendant does not know whether the statement is true or false, it is false swearing if the statement turns out to be false, *i.e.*, the statute does not require that the defendant know the statement to be false.

3. "Oath" is defined to include "affirmation" in § 990.01(24). The form of the testimonial oath is described in §§ 906.03(2) and 990.01(24). Section 887.01 identifies those who may administer oaths.

Section 906.03(3) provides for taking a statement under affirmation where a person has conscientious scruples against taking an oath and sets forth the form.

If further elaboration in the oath or affirmation requirement is desired, see the text at note 5, Wis JI-Criminal 1755.

4. The bracketed material is provided for possible use where one or more written statements is involved. Jurors are familiar with testimony made under oath but may be less clear about how written statements are sworn to or affirmed.

5. Section 887.01 identifies those who may administer oaths.