

**1768 FAILURE TO COMPLY WITH AN OFFICER'S ATTEMPT TO TAKE A PERSON INTO CUSTODY — § 946.415****Statutory Definition of the Crime**

Section 946.415 of the Criminal Code of Wisconsin is violated by a person who intentionally does all of the following:

- refuses to comply with an officer's lawful attempt to take the person into custody;
- retreats or remains in a building or place and, through action or threat, attempts to prevent the officer from taking the person into custody; and,
- remains or becomes armed with a dangerous weapon or threatens to use a dangerous weapon, regardless of whether the person has a dangerous weapon.

**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 intentionally refused to comply with an officer's<sup>1</sup> lawful attempt to take the defendant into custody.

"Intentionally" requires that the defendant knew that an officer was lawfully attempting to take the defendant into custody.<sup>2</sup>

2. The defendant intentionally retreated or remained in a building or place and, through action or threat, intentionally attempted to prevent the officer from taking the defendant into custody.
3. While committing elements 1. and 2.,<sup>3</sup> the defendant intentionally [(remained) (became) armed with a dangerous weapon] [threatened to use a dangerous weapon regardless of whether the defendant had a dangerous weapon].<sup>4</sup>

IF DEFINITION OF "ARMED" IS NEEDED, ADD THE FOLLOWING:

["Armed" means that a dangerous weapon must have been either on the defendant's person or within the defendant's reach.]<sup>5</sup>

### **Deciding About Intent and Knowledge**

You cannot look into a person's mind to find intent or 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 1768 was originally published in 1997. This revision was approved by the Committee in October 2007 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for violations of § 946.415, which was created by 1995 Wisconsin Act 93, effective date: December 16, 1995.

In State v. Koeppen, 2000 WI App 121, 237 Wis. 2d 418k, 614 N.W.2d 530, the court held that § 946.415 "delineates one crime that can be committed in several ways. . . . [T]he offense has a refusal component, a physical manifestation of the refusal with threat component and a dangerous weapon component." ¶21. The jury is required to agree that each component was committed but not as to the way the component is committed. 2000 WI App 121, ¶24.

1. The definition of "officer" provided in § 946.41(2)(b) is adopted by § 946.415(1) and reads as follows:

"Officer" means a peace officer or other public officer or public employee having the authority by virtue of the officer's or employee's office or employment to take another into custody.

2. Section 939.23(3) provides that when the word "intentionally" is used in a statute it requires that the defendant have knowledge of those facts set forth after the word and which are necessary to make the conduct criminal. The Committee concluded that with this offense, this rule means that the defendant must know that the officer was lawfully attempting to take the defendant into custody.

3. The phrase "while committing elements 1. and 2." was added to the instruction to track the statute as closely as possible. Subsection (2)(c) requires that "[w]hile acting under pars. (a) and (b)," the actor must remain or become armed, etc. Elements 1. and 2. address the requirements of "pars. (a) and (b)"; element 3. addresses subsection (2)(c).

4. If definition of "dangerous weapon" is needed, see Wis JI-Criminal 910.

5. This is based on the definition of "went armed" used in the uniform instruction for carrying a concealed weapon. See Wis JI-Criminal 1335; cases discussing the phrase are collected in footnote 3 of that instruction.