

1776 FAILURE TO REPORT TO JAIL: PERIODS OF IMPRISONMENT — § 946.425(1)**Statutory Definition of the Crime**

Section 946.425 of the Wisconsin Statutes is violated by a person who is subject to a series of periods of imprisonment and who intentionally fails to report to the county jail as required under the sentence.

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 was subject to a series of periods of imprisonment¹ which required that the defendant report to the county jail on (specify date).
2. The defendant intentionally failed to report as required.

"Intentionally," as used here, means that the defendant knew (he) (she) had to report to jail on (specify date), had the ability to report as required, and purposely failed to do so.²

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 both 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 1776 was originally published in 1990 and revised in 1994. 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 a violation of § 946.425(1), created by 1989 Wisconsin Act 85 (effective date: December 19, 1989). Subsection (1) applies only to persons sentenced to a series of periods of imprisonment under § 973.03(5)(b), see note 1, below. Persons who fail to report after receiving a stay of execution of sentence are covered by sub. (1m); see Wis JI Criminal 1777.

Subsection (2) of § 946.425 formerly provided that a court "shall impose a sentence under this section consecutive to any sentence previously imposed or that may be imposed for any crime or offense for which the person was sentenced under § 973.03(5)(b) (or 973.15(8)(a))." This provision was repealed by 2001 Wisconsin Act 109.

1. Subsection (1) of 946.425 applies only to periods of imprisonment "under s. 973.03(5)(b)." That sentencing alternative was created by 1989 Wisconsin Act 85 and provides as follows:

In lieu of a continuous sentence, a court may sentence a person to serve a series of periods, not less than 48 hours nor more than 3 days for each period, of imprisonment in a county jail. The person is not subject to confinement between periods of imprisonment.

Subsection (5)(c) of § 973.03 provides this sentencing option does not apply to violations of Chapter 161 (where offenses involving controlled substances are defined) or to a "serious crime." "Serious crime" has the meaning given in § 969.08(10)(b).

Because § 946.425 is limited to persons sentenced under § 973.03(5)(b), it does not apply, for example, to persons who fail to report on time to begin serving a stayed sentence or prisoners who fail to report back to jail after being released for work or school. Persons who fail to report after receiving a stay of execution of sentence are covered by sub. (1m); see Wis JI-Criminal 1777.

2. The word "intentionally" is defined to include two aspects: knowledge and purpose. The knowledge requirement is based on § 939.23(3) which provides that when the word "intentionally" is used, it requires that "the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally.'" The purpose requirement is based on one of the two definitions of intent provided in § 939.23(3). The other, being aware that one's conduct is practically certain to cause the result, is not likely to apply to this offense. For a discussion of that alternative, see Wis JI-Criminal 923.2.

The second element also provides that the defendant must have the ability to report to jail as required. This is based on the general principles for criminal omissions, which include the ability to do the act that is required. See State v. Williquette, 129 Wis.2d 239, 385 N.W.2d 145 (1986).