

**1777A FAILURE TO REPORT TO JAIL: AFTER STAY OF SENTENCE —
§ 946.425(1m)****Statutory Definition of the Crime**

Section 946.425 of the Wisconsin Statutes is violated by a person who receives a stay of execution of a sentence of imprisonment [of 10 days or more]¹ 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 sentenced to imprisonment [of 10 days or more]² and received a stay of execution 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.³

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

This instruction was originally published as Wis JI-Criminal 1777 in 1994 and revised in 2008. It was revised as Wis JI-Criminal 1777A in 2022. This revision was approved by the Committee in August 2022; it added to the comment.

This instruction is for a violation of § 946.425(1m), created by 1993 Wisconsin Act 273 (effective date: April 27, 1994). Subsection (1) of § 946.425 applies to a person sentenced to a series of periods of imprisonment under § 973.03(5)(b) and who fails to report to jail as required. See Wis JI-Criminal 1776. Persons who fail to report who are subject to a confinement order under s. 973.09(4) as a result of a conviction for a misdemeanor or felony are covered by sub. (1r); see Wis JI-Criminal 1777B.

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.

The offense is a Class A misdemeanor, unless the stayed sentence is of 10 days or more, which increases the penalty to a Class H felony.

1. The offense is a Class H felony if the stayed sentence was for “10 or more days.” If the felony is charged, the bracketed material should be included.

2. See note 1, supra.

3. 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 923A

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).