

**1777B FAILURE TO REPORT TO JAIL: CONFINEMENT ORDER —  
§ 946.425(1r)(a) and (b)**

**Statutory Definition of the Crime**

Section 946.425(1r) of the Wisconsin Statutes is violated by a person who, as a condition of probation, is subject to a confinement order as the result of a conviction for a (misdemeanor) (felony) and who intentionally fails to report to the (county jail) (house of correction) as required under the order.

**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 was subject to a confinement order under s. 973.09(4) as a result of a conviction for a (misdemeanor) (felony).<sup>1</sup>
2. The confinement order required that the defendant report to the (county jail) (house of corrections<sup>2</sup>) as a condition of probation on (specify date).
3. The defendant intentionally failed to report as required.

“Intentionally,” as used here, means that the defendant knew (he) (she) had to report to the (county jail) (house of corrections) on (specify date), had the ability to report as required, and purposely failed to do so.<sup>3</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 1777B was approved by the Committee in August 2022.

This instruction is for a violation of § 946.425(1r)(a) and (b), created by 1995 Wisconsin Act 154 [effective date: April 4, 1996]. Subsection (1r)(a) applies to persons subject to a confinement order under s. 973.09(4) as a result of a conviction for a misdemeanor. Subsection (1r)(b) applies to persons subject to a confinement order under s. 973.09(4) as a result of a conviction for a felony. For 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. For persons who fail to report after receiving a stay of execution of sentence are covered by sub. (1m); see Wis JI-Criminal 1777A.

The offense is a Class A misdemeanor if the confinement order is the result of a conviction for a misdemeanor. If the confinement order is the result of a conviction for a felony, the offense is a Class H felony.

1. § 973.09(4)(a) – provides:

The court may also require as a condition of probation that the probationer be confined during such period of the term of probation as the court prescribes, but not to exceed one year. The court may grant the privilege of leaving the county jail, Huber facility,

work camp, or tribal jail during the hours or periods of employment or other activity under s. 303.08 (1) while confined under this subsection. The court may specify the necessary and reasonable hours or periods during which the probationer may leave the jail, Huber facility, work camp, or tribal jail or the court may delegate that authority to the sheriff. In those counties without a Huber facility under s. 303.09, a work camp under s. 303.10, or an agreement under s. 302.445, the probationer shall be confined in the county jail. In those counties with a Huber facility under s. 303.09, the sheriff shall determine whether confinement under this subsection is to be in that facility or in the county jail. In those counties with a work camp under s. 303.10, the sheriff shall determine whether confinement is to be in the work camp or the county jail. The sheriff may transfer persons confined under this subsection between a Huber facility or a work camp and the county jail. In those counties with an agreement under s. 302.445, the sheriff shall determine whether a person who is confined under this subsection but who is not subject to an order under par. (b) is to be confined in the tribal jail or the county jail, unless otherwise provided under the agreement. In those counties, the sheriff may transfer persons confined under this subsection between a tribal jail and a county jail, unless otherwise provided under the agreement.

2. § 973.09 (4)(b) provides:

With the consent of the department and when recommended in the presentence investigation, the court may order that a felony offender subject to this subsection be confined in a facility located in the city of Milwaukee under s. 301.13 or 301.16 (1q), for the purpose of allowing the offender to complete an alcohol and other drug abuse treatment program.

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.