

1779 ASSAULT BY A PRISONER: RESTRAINING OR CONFINING AN OFFICER, EMPLOYEE, VISITOR, OR INMATE — § 946.43(2)**Statutory Definition of the Crime**

Assault by a prisoner, as defined in § 946.43(1) of the Criminal Code of Wisconsin, is committed by one who is a prisoner confined to a [state prison] [(state) (county) (municipal) detention facility] who intentionally confines or restrains (an officer) (an employee) (a visitor) (an inmate) of the institution without the consent of that person.

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 five elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was a prisoner confined to a [state prison] [(state) (county) (municipal) detention facility].

This requires that the defendant was confined in a (prison) (detention facility) as a result of a violation of law.¹

(Name of institution) is a [state prison] [(state) (county) (municipal) detention facility].²

2. (Name of victim) was (an officer) (an employee) (a visitor) (an inmate) of (name of institution).
3. The defendant intentionally confined or restrained (name of victim).

If the defendant deprived (name of victim) of freedom of movement or compelled (him) (her) to remain where (he) (she) did not wish to remain, then (name of victim) was confined or restrained. The use of physical force is not required. One may be confined or restrained by acts or words or both.³

"Intentionally confined or restrained" means that the defendant had the purpose to confine or restrain (name of victim).⁴

4. The defendant confined or restrained (name of victim) without consent.⁵
5. The defendant knew (name of victim) was (an employee) (an officer) (a visitor) (an inmate) of (name prison or institution) and knew that (name of victim) did not consent to the confining or restraining.⁶

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and 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 five 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 1779 was originally published in 1979 and revised in 1982, 1984, and 1990. This revision was approved by the Committee in August 2000 and involved adoption of a new format, nonsubstantive changes to the text, and updating of the comment.

1. The defendant's status as a "prisoner" should rarely be in question, but the Committee concluded there should be some definition of the term in the instruction. The definition in the instruction was adapted from that found in Wis. Stat. § 46.011 and from the decision in State v. Brill, 1 Wis.2d 288, 83 N.W.2d 721 (1957), where the court made the following observations:

So far as we know, the word "prisoner" has not been defined by this court. Black's Law Dictionary (4th ed.), p. 1358, defines the word as follows:

"One who is deprived of his liberty; one who is against his will kept in confinement or custody."

Webster's New International Dictionary (2d ed.) gives the following definition:

"A person under arrest, in custody or in prison; one involuntarily restrained; a captive; as a prisoner of justice, or war or at the bar; to take one prisoner."

State v. Brill, 1 Wis.2d 288, 291.

The Brill definition has been cited with approval in several cases involving § 940.20(1), Battery by prisoner. Because that statute and § 946.43 are worded similarly, the Committee concluded that "prisoner" should have the same definition under each statute. In C.D.M. v. State, 125 Wis.2d 170, 370 N.W.2d 287 (Ct. App. 1985), the court held that a juvenile confined as a delinquent at the Lincoln Hills School was a "prisoner" under § 940.20(1) because he had violated a criminal law and was confined for a correctional objective. 125 Wis.2d 170, 173.

The Committee concluded that "prisoner" includes all persons who are confined to one of the identified institutions as a result of a violation of the law. "Prisoner" is also defined in § 46.011(2) (for purposes of chapters 46 to 51, 55, and 58) and in § 301.01(2) (for purposes of chapters 301 to 304). But the Committee concluded that these definitions are not directly applicable here because they are concerned primarily with defining the authority of state agencies.

A person committed to a state mental health facility (in this case, the Mendota Mental Health Institute) after being found not guilty by reason of mental disease or defect is a "prisoner" for purposes of § 940.20(1), Battery by prisoner. State v. Skampfer, 176 Wis.2d 304, 500 N.W.2d 369 (Ct. App. 1993). The important fact is that the person's liberty was restrained premised on a finding that the person had violated the criminal law.

A probationer who violates a condition of probation and as a result is taken into custody is a prisoner "confined as a result of a violation of the law" as provided in C.D.M., supra, and this instruction. State v. Fitzgerald, 2000 WI App 55, ¶12, 233 Wis.2d 584, 608 N.W.2d 391 [also involving a charge under § 940.20(1)].

2. The institution's status as one of the designated facilities should not be a contested issue in most cases, and the Committee concluded that it is appropriate for the trial court to so instruct the jury.

Before being amended by Chapter 173, Laws of 1977, § 946.43 applied to "any prisoner confined to a state prison or to any other institution by virtue of a transfer from a state prison. . . ." (Wis. Stat. § 946.43 (1975).) As amended, the statute applies to "any prisoner confined to a state prison or other state, county or municipal detention facility. . . ." The Wisconsin Legislative Council staff note to 1977 Senate Bill 14, which was enacted as Chapter 173, Laws of 1977, stated: "This bill expands the application of § 946.43 to cover assaults by prisoners in all detention facilities in the state."

The question of what institutions are covered by the statute is arguably difficult only with regard to "state detention facilities." "County detention facility" most likely refers to a county jail (and possibly to the House of Correction in Milwaukee County); "municipal detention facility" most likely refers to city jails. But it is not clear what institutions are included in the term "state detention facility." The term "state prison" in the former statute included all correctional institutions (§ 53.01), so it could be argued that the revision was intended to include state mental health institutes. The Committee concluded that the statute may be applied to persons confined in mental health institutes provided their confinement is a result of criminal charges. This interpretation would include those committed for determination of competency to stand trial, those committed as not competent to stand trial, and those committed as not guilty by reason of mental disease or defect. This conclusion is consistent with the decision in State v. Skampfer, see note 1, *supra*.

Section 302.01 identifies the institutions which are "state prisons." Also see § 302.02 which defines the "precincts" of the state prisons, that is, those locations that are considered part of the prisons for legal purposes. See note 2, Wis JI-Criminal 1228.

3. For further instruction on this element, see Wis JI-Criminal 1275, False Imprisonment, especially at notes 1-3.

4. Under § 939.23(3), "intentionally" is defined to mean "that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result." The Committee concluded that the "purpose" alternative is most likely to apply to the typical offense under § 946.43. See Wis JI-Criminal 923A and 923B for further discussion.

5. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

6. The question of the defendant's knowledge of the victim's status is usually not contested, but because of the way the statute is drafted, knowledge is an element of the offense. See § 939.23(3): ". . . the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word 'intentionally.'"

The alternative types of victims have been placed in parentheses so that in the usual case, where the victim's status and the defendant's knowledge are not disputed, the applicable type of victim may be selected to simplify the instruction for the jury. However, the Committee concluded that it should not be an obstacle to conviction if, for example, some jurors are convinced that the defendant thought the victim was an officer while other jurors are convinced that the defendant thought the victim was a visitor. In

other words, it would be permissible to instruct the jury that the defendant must have known the victim was "an officer, or an employee, or a visitor, or another inmate."