

1780 PERMITTING ESCAPE — § 946.44(1)(a) and (1g)**Statutory Definition of the Crime**

Permitting escape, as defined in § 946.44(1)(a) of the Criminal Code of Wisconsin, is committed by an officer or an employee of an institution where prisoners are detained who intentionally permits a prisoner in his custody to escape.

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) (four)¹ elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was an (officer) (employee) of an institution where prisoners² are detained.

(Name of institution) is an institution where prisoners are detained.³

2. The defendant permitted a prisoner⁴ in his custody to escape.

"Escape" means to leave custody in any manner without lawful permission or authority.⁵

3. The defendant intentionally permitted a prisoner in his custody⁶ to escape.

"Intentionally" means that the defendant acted with the mental purpose of permitting a prisoner to escape.⁷ It also requires that the defendant knew that

(name of prisoner) was a prisoner and knew that (name of prisoner) was leaving custody without lawful permission or authority.⁸

ADD THE FOLLOWING IF THE CLASS F FELONY UNDER SUBSEC. (1g) IS CHARGED:

[4. The defendant is a public (officer) (employee).⁹]

[A "public officer" is any person appointed or elected according to law to discharge a public duty for the state or one of its subordinate governmental units.]

[A "public employee" is any person, not an officer, who performs any official function on behalf of the state or one of its subordinate governmental units and who is paid from the public treasury of the state or subordinate governmental unit.]

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) (four) 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 1780 was originally published in 1989 and revised in 1991. This revision was approved by the Committee in October 2007 and involved adoption of a new format and nonsubstantive changes to the text.

The basic offense is defined by § 946.44(1)(a) and is punished as a Class H felony. The penalty is increased to a Class F felony if "any public officer or public employee" violates the statute – see § 946.44(1g). It appears that any "officer or employee of an institution where prisoners are detained" under subsec. (1)(a) would also be a "public officer or employee" under subsec. (1g) (but see note 9, below). But since the statutes call for the different penalties, the instruction is drafted with an optional fourth element, for use when the Class F felony is charged.

1. Use four elements if the Class F felony offense is charged. See Comment.
2. "Prisoner" is defined in Wis JI-Criminal 1778 as "one who is confined in a prison or detention facility as a result of a violation of law." It was adapted from the definition in § 46.011 and from the discussion in State v. Brill, 1 Wis.2d 288, 83 N.W.2d 721 (1957).
3. The Committee has concluded that the jury may be told that, for example, "The _____ county jail is an institution where prisoners are detained." The jury must be satisfied that the defendant was an officer or employee of that type of institution.
4. See note 2, supra.
5. This is the definition of "escape" provided in § 946.42(1)(b), which applies to violations of § 946.44. See § 946.44(2)(b).
6. "Custody" is defined in § 946.42(1)(a) and that definition applies to § 946.44. See § 946.44(2)(a).
7. "Intentionally" is defined in § 939.23(3). The definition changed effective January 1, 1989, though both the old and new version have "mental purpose" as one definition of "intentionally." It is the other alternative that changes from "reasonably believes his act, if successful, will cause that result" to "is aware that his conduct is practically certain to cause that result." See Wis JI-Criminal 923A and 923B.
8. "Intentionally," as defined in § 939.23(3), also requires knowledge of those facts necessary to make the conduct criminal and which appear after the word "intentionally" in the statute. See Wis JI-Criminal 923A and 923B.
9. See Comment preceding note 1. The definitions of "public officer" and "public employee" are those provided in § 939.22(30).