

**1782 ASSISTING ESCAPE: PUBLIC OFFICER OR EMPLOYEE — §
946.44(1)(b) and (1g)**

Statutory Definition of the Crime

Assisting escape, as defined in § 946.44(1)(b) of the Criminal Code of Wisconsin, is committed by a public (officer) (employee) who, with intent to aid any prisoner to escape from custody, introduces into the institution¹ where the prisoner is detained anything adapted for or useful in making an 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 elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was a public (officer) (employee).²

[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.]

2. The defendant introduced into the institution, where (name of prisoner) was detained, something adapted for or useful in making an escape.
3. The defendant acted with the intent to aid a prisoner³ to escape from custody.

This requires that the defendant had the mental purpose to help (name of prisoner) escape from custody.⁴ "Escape" means to leave custody without lawful permission or authority.⁵

Deciding About Intent

You cannot look into a person's mind to find intent. Intent 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.

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 1782 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.

1. This instruction does not address the other type of conduct prohibited by § 946.44(1)(b): "transfer to the prisoner" anything adapted or useful in making an escape. In a case involving a "transfer to a prisoner," those words must be substituted for "introduce into the institution where the person is detained" throughout the instruction.

2. The definitions of "public officer" and "public employee" are those provided in § 939.22(30).

3. "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).

4. "With intent to" 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 "with intent to." 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.

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).