

**1783 INTRODUCING A FIREARM INTO AN INSTITUTION — § 946.44(1m)****Statutory Definition of the Crime**

Assisting escape, as defined in § 946.44(1m) of the Criminal Code of Wisconsin, is committed by a person who intentionally introduces a firearm,<sup>1</sup> loaded or unloaded, into an institution where prisoners are detained.

**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 introduced a firearm into an institution where prisoners<sup>2</sup> are detained. A firearm is a weapon that acts by force of gunpowder.<sup>3</sup>
2. The defendant acted intentionally. This requires that the defendant knew the item was a firearm.<sup>4</sup>

**Deciding About Knowledge**

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

Wis JI-Criminal 1783 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.

This instruction is for a violation of § 946.44(1m). For violations of § 946.44(1)(a) and (b), see Wis JI Criminal 1780 1782.

1. The statute applies not only to firearms but also to "any article used or fashioned in a manner to lead another person to believe it is a firearm." The instruction refers to "firearm" throughout and would have to be changed if the "any article" alternative is used. Similar language is used in § 940.225(1)(b), see Wis JI-Criminal 1202, and § 943.32(2), see Wis JI-Criminal 1480A. (Note that both those statutes refer to leading a person "reasonably to believe"; "reasonably" is missing from § 946.44(1m).)

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 term "firearm" is considered to mean a weapon that acts by the force of gunpowder. See, for example, Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892). This definition excludes air guns. The statute applies to "any firearm, whether loaded or unloaded." Sec. 946.44(1m). Also see note 1, supra.

4. "Intentionally," as defined in § 939.23(3), requires knowledge of those facts necessary to make the conduct criminal and which appear after the word "intentionally" in the statute. Also see Wis JI-Criminal 923A and 923B regarding definition of the word "intentionally." In the context of this offense, the essence of the intent element appeared to the Committee to be knowledge that the item introduced was a firearm.