

**1784 INMATE POSSESSING AN ARTICLE WITH INTENT TO RETAIN—
§ 302.095(2)(b)**

Statutory Definition of the Crime

Section 302.095(2)(b) of the Wisconsin Statutes is violated by a person who has in (his) (her) possession any (article) (thing whatever) with intent to retain for (himself) (herself), contrary to the rules or regulations and without the knowledge or permission of the (sheriff or other keeper of the jail) (warden or superintendent of the prison).

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 possessed an article.
2. The defendant intended to retain the article for (himself) (herself).
3. The possession of the article was contrary to the rules or regulations and without the knowledge or permission of the (sheriff or other keeper of the jail¹) (warden or superintendent of the prison).

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 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 1784 was approved by the Committee in October, 2020.

Section 302.095(2)(b) was created by 2019 Wisconsin Act 111 [effective date: March 1, 2019] for violations concerning an inmate possessing an article with intent to retain. The offense is a Class I felony. For violations of § 302.095(2)(a)1 concerning delivery of an article to an inmate, see Wis JI-Criminal 1785. For violations of § 302.095(2)(a)1 concerning possession of an article with intent to deliver it to an inmate, see Wis JI-Criminal 1786. For violations of § 302.095(2)(a)3 concerning receiving an article from an inmate to convey out of jail or prison, see Wis JI-Criminal 1787.

§ 302.095(2)(a)2 prohibits depositing or concealing an article in or about a jail or prison or in a vehicle going into jail or prison premises. There is not a uniform instruction for violation of sub (2)(a)2.

1. Section 302.095(1) provides that “‘jail’ means any of the following:
 - (a) A jail, as defined in s. 302.30.
 - (b) A house of correction.
 - (c) A Huber facility under s. 303.09.
 - (d) A lockup facility, as defined in s. 302.30.”