

1785 DELIVERING AN ARTICLE TO AN INMATE — § 302.095(2)**Statutory Definition of the Crime**

Section 302.095(2) of the Wisconsin Statutes is violated by a person who delivers any article to an inmate confined in a [jail] [prison] with intent that any inmate confined in the jail or prison shall obtain or receive the same, contrary to the rules or regulations and without the knowledge or permission of the [sheriff or 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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant delivered an article to an inmate confined in a [jail]¹ [prison].
2. The defendant intended that an inmate receive the article contrary to the rules or regulations and without the knowledge or permission of the [sheriff or keeper of the jail] [warden or superintendent of the prison].

This requires that the defendant knew that receipt of the article would be contrary to the rules or regulations and would be without the knowledge or permission of the [sheriff or keeper of the jail] [warden or superintendent of the prison].²

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 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 1785 was originally published in 1996. 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 one type of violation of § 302.095(2). For offenses involving possession of an article with intent to deliver it to an inmate, see Wis JI Criminal 1786. The statute also prohibits depositing or concealing an article in or about a jail or prison or in a vehicle going into jail or prison premises and receiving an article from an inmate in violation of the rules and regulations of the jail or prison. The statute was amended by 1995 Wisconsin Act 437 to apply to jails as well as to prisons.

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."

2. The Committee concluded that this knowledge requirement is established by the words of the statute. The Committee reads the statute to require that the defendant deliver an article to an inmate "with intent that any inmate . . . shall obtain or receive the same . . . contrary to the rules or regulations and without the knowledge or permission of the sheriff or other keeper of the jail . . ." For there to be "intent that an inmate receive the article contrary to the rules", the defendant must know that the receipt would be contrary to the rules.