

1785 DELIVERING AN ARTICLE TO AN INMATE — § 302.095(2)(a)1**Statutory Definition of the Crime**

Section 302.095(2)(a)1 of the Wisconsin Statutes is violated by a person who (delivers) (procures to be delivered) 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 three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant (delivered) (procured to be delivered) an article to an inmate confined in a (jail)¹ (prison).
2. The defendant intended that an inmate receive or obtain the article.
3. The (delivery) (procuring to be delivered) of the article was 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).²

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 1785 was originally published in 1996 and revised in 2007. This revision was approved by the committee in October 2020; it reflects changes made by 2019 Wisconsin Act 111[effective date: March 1, 2020].

This instruction is for the type of violation of § 302.095(2)(a)1 concerning delivery of an article to an inmate. The offense is a Class I felony. 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 the receipt of an article from an inmate for conveyance out of the jail, see Wis JI-Criminal 1787. For violations concerning an inmate possessing an article with intent to retain, see Wis JI-Criminal 1784. The statute was amended by 1995 Wisconsin Act 437 to apply to jails as well as to prisons.

§ 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.”

2. Previous versions of this instruction required that the defendant have knowledge that the delivery of an article to an inmate was contrary to the rules or regulations and without the knowledge or permission of the sheriff or other keeper of the jail. The Committee concluded 2019 Wisconsin Act 111 amended § 302.095(2)(a)(1) so that the statute no longer includes the knowledge requirement for this element.