

**1786 POSSESSING AN ARTICLE WITH INTENT TO DELIVER IT 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 possesses any article<sup>1</sup> with intent to deliver it to an inmate confined in a [jail] [prison] 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 possessed an article.

["Possessed" means that the defendant knowingly<sup>2</sup> had actual physical control of an article.]<sup>3</sup>

2. The defendant intended to deliver the article to an inmate confined in a [jail]<sup>4</sup> [prison].
3. The defendant intended to deliver 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].<sup>5</sup>

### **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 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 1786 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 delivery of an article to an inmate, see Wis JI Criminal 1785. 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. The statement of the offense omits the following language from the statute: "with intent that any inmate confined in the jail or prison shall obtain or receive the same. . ." The Committee concluded that it is redundant to say "possess an article with intent to deliver it and with intent that an inmate receive it." The intent to deliver covers both concepts.

2. Inherent in the legal definition of "possession" is the concept of knowing or conscious possession. See Schwartz v. State, 192 Wis. 414, 418, 212 N.W. 664 (1927), Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927).

3. The definition of "possess" is that found in Wis JI-Criminal 920 and requires "actual physical control." That instruction also contains the following optional paragraphs for use where the object is not in the physical possession of the defendant or where possession is shared with another:

[An item is (also) in a person's possession if it is in an area over which the person has control and the person intends to exercise control over the item.]

[It is not required that a person own an item in order to possess it. What is required is that the person exercise control over the item.]

[Possession may be shared with another person. If a person exercises control over an item, that item is in his possession, even though another person may also have similar control.]

See the Comment to Wis JI-Criminal 920 for a discussion of various issues relating to "possession" in criminal cases, including so-called constructive possession.

4. 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."

5. 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 possessed an article with intent to deliver it 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.