

**1788 ENCOURAGING A VIOLATION OF PROBATION, EXTENDED SUPERVISION OR PAROLE — § 946.46****Statutory Definition of the Crime**

Encouraging a violation of (probation) (extended supervision) (parole) as defined in Section 946.46 of the Wisconsin Statutes is committed by one who intentionally aids or encourages a person on (probation) (extended supervision) (parole)<sup>1</sup> to abscond or to violate a term or condition of (probation) (extended supervision) (parole).

**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. (Name of person) was on (probation supervision) (extended supervision) (parole supervision).
2. The defendant intentionally aided or encouraged (name of person) [to abscond.] [to violate a term or condition of supervision.]

["To abscond" means to fail to make oneself available as directed by the person supervising (name of person).]<sup>2</sup>

This element requires that the defendant acted with the purpose to aid or encourage the violation or was aware that (his) (her) conduct was practically certain to cause that result.

3. The defendant knew<sup>3</sup> that (name of person) was on supervision and knew [that (name of person) was required to make (himself) (herself) available as directed] [that \_\_\_\_\_ was a condition of supervision].

### **Deciding About Intent and Knowledge**

You cannot look into a person's mind to find intent or 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 1788 was approved by the Committee in July 2010.

This instruction is drafted for violations of § 946.46.

1. Section 946.46 also applies to aiding or encouraging "any person committed to the custody or supervision of the department of corrections or a county department under s. 46.215, 46.22 or 46.23 by reason of crime or delinquency." [Section 46.215 addresses the Milwaukee County social services department; § 46.22 addresses all other county departments; § 46.23 addresses county social services departments generally.] The phrase in quotes above apparently creates two additional options not addressed by the instruction: (1) a person committed to the custody or supervision of the department of corrections but not on probation, parole, or extended supervision; and, (2) a person committed to the custody or supervision of a county social services department.

2. The definition of "abscond" is based on the definition of "absconding" provided in DOC 328.03(1), Wisconsin Administrative Code: "Absconding means the failure of a client to make himself or herself available as directed by the agent."

3. Including the separate knowledge requirement is based on the conclusion that the use of "intentionally" in the statute requires "knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally.'" § 939.23(3).