

1808A BRIBERY OF WITNESSES: TRANSFERRING PROPERTY — § 946.61(1)(a)**Statutory Definition of the Crime**

Section 946.61(1)(a) of the Criminal Code of Wisconsin is violated by one who, with the intent to induce another to refrain from (giving evidence) (testifying) in any civil or criminal matter before any court, judge, grand jury, magistrate, court commissioner, referee or administrative agency authorized by statute to determine issues of fact, transfers (to him or her) (on his or her behalf), any property or any pecuniary advantage.

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 transferred [(property) (money)]¹ [(to) (on behalf of)] (name of witness).²
2. The defendant did so with intent to induce (name of witness) to refrain³ from (giving evidence) (testifying) in [specify proceeding, e.g., a criminal trial before a judge]⁴.

“With intent to” means that the defendant had the mental purpose to influence (name of witness).⁵

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 all two 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 1808A was approved in 2021.

This instruction is for violations of § 946.61(1)(a), Bribery of Witness. The offense is a Class H felony. The offense was created as part of the 1956 revision of the Criminal Code. See L.1955, c. 696, § 1.

There are two instructions for violations of § 946.61: Wis JI-Criminal 1808A concerns subsec. (1)(a) and is for offering a bribe with intent to "induce another to refrain from giving evidence or testifying in any civil or criminal matter"; Wis JI-Criminal 1808B concerns subsec. (1)(b) and is for accepting a bribe "knowing that such property or pecuniary advantage was transferred to him or her or on his or her behalf with intent to induce him or her to refrain from giving evidence or testifying in any civil or criminal matter."

1. The instruction refers to "money," deleting the statute's "pecuniary advantage" and would need to be modified if money was not involved. Although "pecuniary" has apparently not been defined in Wisconsin case law, Webster's Third New International Dictionary (Unabridged) defines "pecuniary" as follows: "taking the form of or consisting of money; of or relating to money." Black's Law Dictionary (Fourth Edition) adds: "consisting of money or that which can be valued in money." The Committee believes the meaning should include not only actual money but also "that which can be valued in money" per the Black's Law definition.

2. This section does not apply to a person who is charged with a crime, or any person acting on his or her behalf, who transfers property to which he or she believes the other is legally entitled. § 946.61(2). The Committee concluded that a "does not apply" provision should be handled in the same manner as affirmative defenses under Wisconsin law. The burden of production is on the defendant to introduce or point to "some evidence," tending to show that he or she believed that the witness was legally entitled to

the transfer of property. If that showing is made, the burden is on the State to prove beyond a reasonable doubt that the defendant did not believe that the witness was legally entitled to the transfer of property. As to the general rules in Wisconsin relating to “affirmative defenses,” see Moes v. State, 91 Wis.2d 756, 284 N.W.2d 66 (1979) and State v. Felton, 110 Wis.2d 485, 329 N.W.2d 161 (1983). See also, Wis JI-Criminal 700.

3. This section only prohibits transferring property or money to a person to “refrain” from testifying and does not include influencing testimony. As noted in State v. Manthey, 169 Wis.2d 673, 487 N.W. 2d 44 (1992), “The plain language of the statute makes it a crime to pay or accept inducement to *refrain* from testifying or giving evidence.” Id. at 685. See also, State v. Duda, 60 Wis.2d 431, 210 N.W. 2d 763 (1973).

For matters involving the making of a false material statement under oath, see Wis JI-Criminal 1750 Perjury. § 946.31.

4. § 946.61(1)(b) provides the complete list of proceedings as meaning any civil or criminal matter before any:

- court,
- judge,
- grand jury,
- magistrate,
- court commissioner,
- referee, or
- administrative agency authorized by statute to determine issues of fact.

5. Under the Criminal Code, the phrase “with intent to” means that the defendant either has a purpose to do the thing or cause the result specified or is aware that his or her conduct is practically certain to cause that result. See § 939.23(4) and Wis JI-Criminal 923A and 923B. For a discussion of the sufficiency of the evidence on the “intent to influence” element, see State v. Rosenfeld, 93 Wis.2d 325, 286 N.W.2d 596 (1980).