

**1808B BRIBERY OF WITNESS: ACCEPTING A BRIBE — § 946.61(1)(b)****Statutory Definition of the Crime**

Section 946.61(1)(b) of the Criminal Code of Wisconsin is violated by one who accepts any property or any pecuniary advantage, knowing that such property or pecuniary advantage was transferred (to him or her) (on his or her behalf) with intent to induce him or her 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.

**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 accepted (property) (money)<sup>1</sup>.
2. The defendant knew the transfer of [(property) (money)] [(to him or her) (on his or her behalf)] was intended to induce him or her to refrain<sup>2</sup> from (giving evidence) (testifying) in [specify proceeding, e.g., a criminal trial before a judge]<sup>3</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.<sup>4</sup>

### 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 1808B was approved in 2021.

This instruction is for violations of § 946.61(1)(b), 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 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”; 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.”

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 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.

3. § 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.
4. This is the shorter version used to describe the process of finding intent. The Committee concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A.