

**1825 SIMULATING LEGAL PROCESS — § 946.68****Statutory Definition of the Crime**

Simulating legal process, as defined in § 946.68 of the Criminal Code of Wisconsin, is committed by one who sends or delivers to another person any document which simulates legal process.

**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 sent or delivered a document to another person.
2. The document simulated legal process.

"Simulate" means to imitate or have the appearance of without being genuine.<sup>1</sup>

"Legal process" includes a subpoena, summons, complaint, warrant, injunction, writ, notice, pleading, order, or other document that directs a person to perform or refrain from performing a specified act and compliance with which is enforceable by a court or governmental agency.<sup>2</sup>

**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.

ADD THE FOLLOWING IF THE CLASS D FELONY DEFINED IN SUB. (1r)(b) IS CHARGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT THE DOCUMENT WAS SENT OR DELIVERED WITH INTENT TO INDUCE PAYMENT OF A CLAIM:<sup>3</sup>

[If you find the defendant guilty, you must answer the following question "yes" or "no":

Did the defendant send or deliver the document with intent to induce payment of a claim?

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the defendant sent or delivered the document with intent to induce payment of a claim.]

ADD THE FOLLOWING IF THE CLASS D FELONY DEFINED IN SUB. (1r)(c) IS CHARGED AND THE EVIDENCE WOULD SUPPORT A FINDING THAT THE DOCUMENT SIMULATED CRIMINAL PROCESS:<sup>4</sup>

[If you find the defendant guilty, you must answer the following question "yes" or "no":

Did the document simulate criminal process?

Before you may answer "yes," you must be satisfied beyond a reasonable doubt that the document simulated criminal process.]

#### COMMENT

Wis JI-Criminal 1825 was originally published in 1997. This revision was approved by the Committee in December 2008 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for violations of § 946.68. The basic offense is a Class I felony. It increases to a Class H felony in two situations: where the document is sent or delivered with intent to induce payment of a claim [see sub. (1r)(b)]; and where the document simulates any criminal process [see sub. (1r)(c)]. The Committee recommends handling the Class H felonies by adding a special question to the instruction for the basic offense that asks the jury to determine if the aggravating factor is established.

1. The definition of "simulate" is based on the one provided in The American Heritage Dictionary of the English Language, with the addition of "without being genuine."

2. This is the definition provided in sub. (1g) of § 946.68.

3. As with similar provisions that increase the maximum penalty for a criminal offense, the Committee concluded that the facts that increase the penalty for this offense to a Class H felony should be submitted to the jury as a special question. The following form is suggested for the verdict:

We, the jury, find the defendant guilty of simulating legal process under § 946.68 of the Wisconsin Statutes at the time and place charged in the information.

We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the defendant send or deliver the document with intent to induce payment of a claim?"

4. As with similar provisions that increase the maximum penalty for a criminal offense, the Committee concluded that the facts that increase the penalty for this offense to a Class H felony should be submitted to the jury as a special question. The following form is suggested for the verdict:

We, the jury, find the defendant guilty of simulating legal process under § 946.68 of the Wisconsin Statutes at the time and place charged in the information.

We, the jury, find the defendant not guilty.

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the document simulate criminal process?"