

**1850 PUBLIC ASSISTANCE FRAUD: MAKING A FALSE STATEMENT IN AN APPLICATION FOR PUBLIC ASSISTANCE — § 946.93(2)****Statutory Definition of the Crime**

Public assistance fraud, as defined in § 946.93(2) of the Wisconsin Statutes, is committed by a person who intentionally makes or causes to be made any false statement or representation of material fact in any application for or receipt of public assistance.

**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 intentionally (made) (caused to be made) a (statement) (representation) of material fact in an application for or receipt of public assistance.

The [statement] [representation] claimed to have been made in this case is: (specify the alleged statement or representation).

A material fact is one that affects eligibility for or the amount of public assistance.<sup>1</sup>

"Public assistance" means any aid, benefit, or services provided under Chapter 49 of the Wisconsin Statutes.<sup>2</sup>

2. The (statement) (representation) of material fact was false when made.

3. The defendant knew the (statement) (representation) of material fact was false when made.<sup>3</sup>

### **Deciding About Knowledge**

You cannot look into a person's mind to find knowledge. 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 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 1850 was originally published in 1980 and revised in 1988 and 1995. This revision was approved by the Committee in October 2014; it reflects the repeal and recreation of former § 49.95 as § 946.93.

This offense was originally defined in § 49.12; that statute was renumbered § 49.95 by 1995 Wisconsin Act 27. 2013 Wisconsin Act 226 [effective date: April 10, 2014] repealed § 49.95 and recreated it as § 946.93. The offense definition in current § 946.93(2) is the rough equivalent of the one provided in former § 49.95(1).

This instruction is for criminal violations of § 946.93(2), which are Class A misdemeanors. The penalty for this offense no longer depends on the value of the assistance received.

1. The definition of "material" is consistent with the discussion of that term in State v. Williams, 179 Wis.2d 80, 87-88, 505 N.W.2d 468 (Ct. App. 1993), a case dealing with the related offense of medical assistance fraud:

If the false statements did not affect the amount of benefits or payments made, an issue of materiality is raised. If the statements had no legal effect, the court could determine as a matter of law that the false statements were not material. At the very least, the jury should be given the opportunity to determine whether the false statements were material based upon the evidence concerning the legal effect of the statements.

2. Section 946.93(1).

3. The recreation of former § 49.95 as § 946.93 substituted "intentionally" for "willfully," clarifying the mental element required. When used in the Criminal Code, "intentionally" requires that the actor have the purpose to cause the result specified and "have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally.'" Section 939.23(3). As applied to this offense, that requires that the defendant knew the statement or representation in the application was false.