

1851 PUBLIC ASSISTANCE FRAUD: CONCEALING OR FAILING TO DISCLOSE AN EVENT AFFECTING ELIGIBILITY — § 946.93(3)(a)

Statutory Definition of the Crime

Public assistance fraud, as defined in § 946.93(3)(a) of the Wisconsin Statutes, is committed by a person who, having knowledge of an event affecting the initial or continued eligibility for public assistance, conceals or fails to disclose that event with an intent to fraudulently secure 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 had knowledge of an event affecting the initial or continued eligibility for public assistance.

The event alleged to have occurred in this case is: (specify the alleged event).

"Public assistance" means any aid, benefit, or services provided under Chapter 49 of the Wisconsin Statutes.¹

2. The defendant (concealed) (failed to disclose) that event.
3. The defendant (concealed) (failed to disclose) that event with an intent to fraudulently secure public assistance.

This requires that the defendant acted with the purpose to obtain public assistance to which (he) (she) was not entitled.

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.

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.

If you find the defendant guilty, you must also determine beyond a reasonable doubt the value of the public assistance for which the defendant was not eligible and insert that amount in the verdict.²

COMMENT

Wis JI-Criminal 1851 was approved by the Committee in February 2015.

This instruction is for criminal violations of § 946.93(3)(a), as created by 2013 Wisconsin Act 226 [effective date: April 10, 2014]. Offenses now defined in § 946.93 were formerly found in § 49.95; there does not appear to be an equivalent of sub. (3)(a) in former § 49.95.

This instruction is for criminal violations of § 946.93(3), which involve payments or benefits of more than \$300. There are five ranges of criminal penalties, depending on the value of the payments or benefits. This is addressed by adding a special question at the end of the instruction. See footnote 2, below.

1. Section 946.93(1).

2. The penalties for violations of § 946.93(3) depend on the value of the payment or benefit. The jury should be asked to determine that value. (See, by analogy, Wis JI-Criminal 1441 Theft, footnote 8.) The applicable penalty is capped by the crime charged in the complaint or information. The penalties are specified in sub. (3)(e) as follows:

<u>Value of payment or benefit</u>	<u>Penalty</u>
less than \$300	Class B forfeiture
more than \$300 but does not exceed \$1000	Class B misdemeanor
more than \$1000 but does not exceed \$2000	Class A misdemeanor
more than \$2000 but does not exceed \$5000	Class I felony
more than \$5000 but does not exceed \$10,000	Class H felony
more than \$10,000	Class G felony