

**1862 FOOD STAMP FRAUD: MISSTATING FACTS ON AN APPLICATION  
— § 946.92(2)(a)**

**Statutory Definition of the Crime**

Food stamp fraud, as defined in § 946.92(2)(a) of the Wisconsin Statutes, is committed by a person who misstates or conceals facts in a food stamp program application or report of income, assets, or household circumstances with the intent to secure or continue to receive food stamp program benefits.

**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 (misstated) (concealed) facts in a food stamp program [application] [report of income, assets, or household circumstances].

The facts claimed to have been (misstated) (concealed) in this case are:  
(specify the alleged facts).

2. The defendant (misstated) (concealed) facts with the intent to [secure] [continue to receive] food stamp program benefits.

"With intent to"<sup>1</sup> requires that the defendant had the mental purpose to obtain food stamp program benefits by (misstating) (concealing) facts in the application.

**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 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 DEFENDANT IS CHARGED WITH FRAUDULENTLY SECURING MORE THAN \$100 AND THE EVIDENCE WOULD SUPPORT THAT FINDING<sup>2</sup>**

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

### **COMMENT**

Wis JI-Criminal 1862 was originally published in 1988 and revised in 1995, 2003, and 2007. This revision was approved by the Committee in December 2014; it reflects the renumbering of § 49.795 as § 946.92.

This instruction is for violations of subsection (2) of § 946.92, Food Stamp Offenses. The statute prohibits two different kinds of conduct: misstating or concealing facts in an application with intent to secure food stamp program benefits; and, misstating or concealing facts in a report of income, assets, or household circumstances with intent to continue to receive benefits.

This offense was previously defined in § 49.127; that statute was renumbered § 49.795 by 2001 Wisconsin Act 16. That statute was renumbered 946.92 by 2013 Wisconsin Act 226, effective date: April 10, 2014. The offense definition in current § 946.92(2)(a) is the same as that formerly found in § 49.795(2).

There are three ranges of criminal penalties, depending on the value of the benefits obtained. This is addressed by adding a special question at the end of the instruction. See footnote 2, below.

1. "With intent to" requires either the mental purpose to cause the result specified or being aware that conduct is practically certain to cause the result. See § 939.22(24) and Wis JI-Criminal 923B. The Committee concluded that the "mental purpose" alternative is most likely to apply to this offense.

2. The penalties for violations of § 946.92(2)(a) are determined by reference to "the value of the food stamp program benefits." 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 for this offense are specified in § 946.92(3)(a) as follows:

<u>Value of benefits secured</u>	<u>Penalty</u>
less than \$100	Class B misdemeanor
more than \$100 but less than \$5000	Class I felony
	Class H felony if the defendant has a prior conviction under this section
more than \$5000	Class G felony

The Committee concluded that if the securing of less than \$100 is charged, the jury need not make a finding as to value.