

**1883 RACKETEERING ACTIVITY — CONDUCTING OR PARTICIPATING IN AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY — § 946.83(3)**

**Statutory Definition of the Crime**

Engaging in racketeering activity, as defined by § 946.83(3) of the Criminal Code of Wisconsin, is committed by one who is employed by or associated with an enterprise and who, directly or indirectly, conducts or participates in the enterprise through a pattern of racketeering activity.

**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. (Name of the alleged enterprise)<sup>1</sup> was an enterprise.

"Enterprise" means any [(sole proprietorship) (partnership) (corporation) (business trust) (union) organized under the laws of this state] [(legal entity) (union) not organized under the laws of this state] [association or group of individuals associated in fact although not a legal entity].<sup>2</sup>

2. The defendant was (employed by) (associated with)<sup>3</sup> (name of the alleged enterprise).

3. The defendant, directly or indirectly, (conducted) (participated in) (name of the alleged enterprise) through a pattern of racketeering activity.

"Pattern of racketeering activity" means that at least three interrelated felonies occurred within a seven-year period and that these felonies amounted to, or posed a threat of, continued criminal activity.<sup>4</sup>

Felonies are "interrelated" if they have the same or similar intents, results, accomplices, victims or methods of commission, or share other distinguishing characteristics.<sup>5</sup>

Felonies amount to or show a threat of continued criminal activity if they have been or will be part of a regular way of doing business.<sup>6</sup>

In this case, it is alleged that the defendant (conducted) (participated in) an enterprise through the following three felonies: (name the felonies - at least three - they must be listed in sec. 946.82(4)).

[DEFINE THE ELEMENTS OF EACH CRIME.]<sup>7</sup>

Before you may return a verdict of guilty, all 12 jurors must be satisfied beyond a reasonable doubt that the defendant committed at least three predicate felonies as charged in the information. All 12 jurors must also be satisfied beyond a reasonable doubt that the defendant committed the same three predicate felonies.<sup>8</sup>

### **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 1883 was originally published in 1990. This revision was approved by the Committee in October 2007 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for a charge under § 946.83(3). Subsections (1) and (2) are addressed by Wis JI Criminal 1881 and 1882, respectively. These are the primary criminal provisions of the Wisconsin Organized Crime Control Act, which is modeled after the federal Racketeer Influenced and Corrupt Organizations Act. See the Comment to Wis JI Criminal 1881 for discussion of these provisions.

Violations of § 946.83 do not involve a mental element beyond any that may be required for the underlying predicate offenses. State v. Mueller, 201 Wis.2d 121, 145 (Ct. App. 1996). The court found that the absence of a separate intent element in this instruction "buttressed" that conclusion.

1. The instruction is drafted on the assumption that the "enterprise" will be a legitimate or regular business and therefore will have a name that can be used to identify it. If that is not the case, substitute a description of the enterprise for the name.

2. The definition of "enterprise" is taken from the statutory definition found in § 946.82(2). Parentheses are added on the assumption that only the alternatives supported by the evidence will be presented to the jury. In State v. Judd, 147 Wis.2d 398, 433 N.W.2d 260 (Ct. App. 1988), the court of appeals held that a one-man corporation could be an "enterprise," at least for purposes of a charge under subsec. (3) of § 946.83. While the "person" who conducts the pattern of racketeering activity through the enterprise must be separate from the enterprise, that test is met where the "one-man band" has incorporated. The act of incorporation forms the enterprise. Also see, State v. O'Connell, 179 Wis.2d 598, 508 N.W.2d 23 (Ct. App. 1993).

3. Choose the alternative supported by the evidence.

4. The approach to defining the "pattern" requirement is described in detail in note 2, Wis JI-Criminal 1881.

5. This is based on § 946.82(3), see note 2, Wis JI-Criminal 1881.

6. This is based on the decision in H. J., Inc. v. Northwestern Bell, 492 U.S. 229 (1989), discussed at length in note 2, Wis JI-Criminal 1881.

7. The Committee assumes that all the elements of the crimes alleged to be the three interrelated felonies must be proved. There are suggested uniform instructions for most of the felonies listed in § 946.82(4).

8. This addition is based on Richardson v. United States, 526 U.S. 813 (1999). Richardson held that unanimous agreement on the predicate acts was required in prosecutions under a "continuing criminal enterprise" statute which is separate from, but similar to, the RICO statute. Adding it here is by analogy to that situation. The 7th Circuit uniform jury instructions require unanimity under the federal RICO statute. See, <http://www.ca7.uscourts.gov/Rules/pjury.pdf>.