

**1930    FAILURE TO WITHDRAW FROM AN UNLAWFUL ASSEMBLY —  
§ 947.06(3)**

**Statutory Definition of the Crime**

Section 947.06(3) of the Criminal Code of Wisconsin is violated by any person who intentionally fails or refuses to withdraw from an unlawful assembly which the person knows has been ordered to disperse.

**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 five elements were present.

**Elements of the Crime That the State Must Prove**

1. An unlawful assembly existed.

CHOOSE THE ALTERNATIVE SUPPORTED BY THE EVIDENCE.<sup>1</sup>

[An assembly consists of three or more persons. An assembly is unlawful when it causes a disturbance of public order such that it is reasonable to believe<sup>2</sup> that the assembly will cause injury to persons or damage to property unless it is immediately dispersed.]<sup>3</sup>

[An assembly consists of three or more<sup>4</sup> persons. An assembly is unlawful when those persons assemble for the purpose of blocking or obstructing the lawful use by any other person of any property and the assembly does in fact block or obstruct the lawful use of such property.]<sup>5</sup>

2. The defendant was part of that assembly.<sup>6</sup>
3. The assembly was ordered to disperse by a police officer.<sup>7</sup>
4. The defendant knew that the assembly had been ordered to disperse.<sup>8</sup>
5. The defendant intentionally failed or refused to withdraw from the unlawful assembly.<sup>9</sup>

"Intentionally" means that the defendant must have had the mental purpose to fail or refuse to withdraw.<sup>10</sup>

### **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 five 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 1930 was originally published in 1992. This revision was approved by the Committee in February 2008 and involved adoption of a new format and nonsubstantive changes to the text.

This offense was described as follows in the 1953 Legislative Council Report on the Criminal Code:

Making assemblies which are likely to result in disorder unlawful is essentially a crime prevention device. An unlawful assembly is basically an assembly which is so dominated by mob psychology that its members are very likely to do acts of violence which as individuals they would not do. One type of unlawful assembly is bent on doing some particular unlawful act. The lynch mob is an example. Another type is best illustrated by the college homecoming riot type of situation. There, the assembly is not bent on any particular unlawful act, but in the process of "letting off steam," the loss of a sense of individual responsibility which results from large numbers acting together is apt to culminate in injury to person or property. The crux of the matter is that most of the people in an unlawful assembly are peaceful citizens who would never commit a violent crime if it were not for the fact that mob psychology dominates their thinking. Therefore, it follows that if the assembly can be dispersed and mob spirit dissipated before violence results, a real step toward preventing crime has been taken.

(Report, p. 215)

The constitutionality of § 947.06 was upheld by a three-judge district court panel in Cassidy v. Ceci, 320 F. Supp. 223 (E.D. Wis. 1970). The court held that the statute is not "vague or indefinite, but fairly apprises those required to comply with what 'it commands or forbids.' Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939)." 320 F. Supp. 223, 226. The court also rejected the claim that the statute delegated too much discretion to police: ". . . the enactment with reasonable clarity delimits the officers' discretion in that it authorizes an arrest only where 'it is reasonable to believe' that the disturbance will cause injury. This is akin to the 'probable cause' standard. . . ." 320 F. Supp. 223, 226.

The court also held that the statute does not apply where the disturbance or damage is caused by hostile onlookers, not by the participants in the assembly: ". . . this statute adequately evidences a design to penalize the members of assemblies only when it is their own conduct which causes a disturbance or damage, as distinguished from a disturbance or damage that is caused by militant onlookers." 320 F. Supp. 223, 226. The court cited legislative history for the current version of the statute, indicating that the legislature intended to restate the rule found in Shields v. State, 187 Wis. 448, 204 N.W. 486 (1925).

The Shields decision affirmed the conviction of a man who assaulted a participant in a Ku Klux Klan parade in Boscobel in 1924. In reviewing the case, the court found it "appropriate to consider the legal status of the parade. . . ." The court found that as long as the people in the parade were conducting themselves peacefully, they were not engaged in an unlawful assembly, defined as assembling in such a manner "that the persons so assembled will disturb the peace tumultuously." The fact that the beliefs and tenets of those in the assembly might be expected to "excite resentment" in observers does not make the assembly unlawful. Thus, the defendant had no right to interfere with the parade and his conviction for assault was allowed to stand.

1. The two definitions of "unlawful assembly" deal with different kinds of conduct. The first involves an assembly that creates a risk of injury or damage. The second involves obstruction of the lawful use of property.

2. "Reasonable to believe" has been likened to the standard of probable cause. See Cassidy v. Ceci, 330 F. Supp. 223 (E.D. Wis. 1970).

3. This is adapted from the last sentence of § 947.06(1). Note that there are three parts to this definition of an unlawful assembly: (1) it must consist of three or more persons; (2) it must be causing a

disturbance of public order; and (3) it must be reasonable to believe that the assembly will cause personal injury or property damage unless it is immediately dispersed.

4. Including the requirement that there be three or more persons in this second definition is based on the reference in § 947.06(2) that an unlawful assembly "includes" an assembly as described in that subsection. The Committee interpreted this as a reference to incorporating the "three or more" requirement from the definition of unlawful assembly in subsection (1). While common law definitions of unlawful assembly vary, it was common that they required three or more persons. 1953 Report on the Criminal Code, p. 217. Also see Black's Law Dictionary (7th Edition), referring to unlawful assembly at common law as the meeting together of three or more persons.

5. This is adapted from the alternative definition of "unlawful assembly" provided in § 947.06(2).

6. This element is implicit in the definition of the crime, which penalizes refusal to withdraw from an unlawful assembly.

7. Section 947.06(1) provides that an order to disperse may be given by "sheriffs, their undersheriffs, and deputies, constables, marshals, and police officers." If other than a police officer is involved, the proper title should be substituted.

8. The definition of the crime refers to an assembly "which the person knows has been ordered to disperse." § 947.06(3). The knowledge requirement also results from the use of "intentionally" at the beginning of that section. See § 939.23(3).

9. The essence of this offense is the refusal to disperse when ordered to do so.

While no crime has been committed under this section until there has been a refusal to comply with a lawful order to disperse, this section does not confer immunity on persons who commit some other crime while members of an unlawful assembly. Individual members of the assembly may be guilty of disorderly conduct, of conspiracies or attempts, or even of criminal damage to property or of homicide if the assembly has progressed to that stage. In this section, however, the emphasis is on the preventive police measures and obstruction to those measures.

1953 Report on the Criminal Code p. 216.

10. The Committee concluded that the "mental purpose" definition of intent is most likely to apply in the context of this offense. See § 939.23(3) and Wis JI-Criminal 923A and 923B.