

**1982 FAILING TO PROVIDE AN ANIMAL WITH SUFFICIENT FOOD AND WATER — §§ 951.13 and 951.18(1)****Statutory Definition of the Crime**

Failing to provide an animal with sufficient food and water, as defined in §§ 951.13 and 951.18 of the Criminal Code of Wisconsin, is committed by one who owns or is responsible for confining or impounding an animal and (intentionally) (negligently)<sup>1</sup> fails to supply the animal with a sufficient supply of food and water.

**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 (owned) (was responsible for confining) an animal.<sup>2</sup>
2. The defendant failed to supply the animal with a sufficient supply of food and water.
3. The defendant (intentionally) (negligently) failed to supply the animal with a sufficient supply of food and water.

["Intentionally" requires that the defendant acted with the mental purpose to fail to supply the animal with a sufficient supply of food and water or was aware that the conduct was practically certain to cause that result.]<sup>3</sup>

["Negligently" requires that the defendant's conduct amounted to "criminal negligence."<sup>4</sup> "Criminal negligence" means:

- the conduct created a risk of death or great bodily harm; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant should have been aware that (his) (her) conduct created the unreasonable and substantial risk of death or great bodily harm.]

### **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 1982 was originally published in 1984 and revised in 1989 and 1995. This revision was approved by the Committee in June 2004 and involved adoption of a new format and a change in the definition of "negligently."

1987 Wisconsin Act 332 renumbered the chapter containing crimes against animals from Chapter 948 to Chapter 951. The effective date of the change was July 1, 1989.

Simple violations of the statutes relating to cruelty to animals are punished as Class C forfeitures. When a person "intentionally or negligently violates" the statutes, the punishment is that of a Class A misdemeanor. See § 951.18(1). Section 951.18(1) further provides for a felony penalty in certain circumstances that do not apply to violations of § 951.13, the statute addressed by this instruction.

1. "Intentionally" or "negligently" violating the statutes relating to cruelty to animals makes the conduct criminal (see Comment, supra). The instruction is drafted on the premise that one of the alternatives will be selected.

2. The following definition is provided in § 951.01(1):

- (1) "Animal" includes every living:
- (a) Warm-blooded creature, except a human being;
  - (b) Reptile; or

(c) Amphibian.

"The definition of 'animal' is based on § 346.20, Minn. Stats. Anno. (1971). The term includes not only animals strictly so-called but birds and other living warm-blooded creatures except people." Legislative Council Note to 1973 Senate Bill 16.

3. See § 939.23(3) and Wis JI-Criminal 923A and 923B.

4. The Committee concluded that "criminal negligence" applies to this offense because § 939.25(2) states: "If criminal negligence is an element of a crime in chs. 939 to 951 . . . the negligence is indicated by the term "negligent" or "negligently." This offense is defined in §§ 951.02 and 951.18 and the latter uses the term "negligently."

If reference to ordinary negligence is believed to be helpful in defining "criminal negligence," see Wis JI-Criminal 925.