

1983 DOGNAPPING AND CATNAPPING — §§ 951.03 and 951.18(1)**Statutory Definition of the Crime**

(Dognapping) (Catnapping) as defined in §§ 951.03 and 951.18 of the Criminal Code of Wisconsin, is committed by one who intentionally¹ takes the (dog) (cat) of another from one place to another without the owner's consent.²

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 took the (dog) (cat) of another from one place to another.
2. The owner of the (dog) (cat) did not consent to the taking.
3. The defendant acted intentionally.

This requires that the defendant acted with the mental purpose to take the (dog) (cat) of another and knew that the (dog) (cat) belonged to another and knew that the owner did not consent to the taking.³

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent or 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.

COMMENT

Wis JI-Criminal 1983 was originally published in 1996. This revision was approved by the Committee in June 2004 and involved adoption of a new format.

This instruction is for one type of violation of § 951.03, Dognapping and Catnapping: taking a dog or cat from one place to another without the owner's consent. The violation is punished as a Class A misdemeanor if committed "negligently or intentionally." § 951.18(1).

The statute" does not apply to law enforcement officers or humane society agents engaged in the exercise of their official duties." The Committee concluded that exceptions like this are usually resolved at the pretrial motion stage. It does not become an issue at trial until there is some evidence that the exception may apply. Once there is evidence sufficient to raise the issue, the burden is on the state to prove, beyond a reasonable doubt, that "the defendant was not a (law enforcement officer) (humane society agent) engaged in the exercise of official duties." Appropriate additions should be made to the instruction.

1. Violations of § 951.03 become Class A misdemeanors if committed "intentionally or negligently." See § 951.18(1). The instruction uses the term "intentionally," the Committee having concluded that negligent dognappings or catnappings are unlikely to be criminally charged.

2. Section 951.03 also prohibits "caus[ing] such a dog or cat to be confined or carried out of this state or held for any purpose without the owner's consent." These options are not addressed in the instruction, which is drafted for violations involving a taking of the animal. For the other options,

reference to the uniform instructions for kidnapping offenses might be helpful. See Wis JI-Criminal 1280 - 1282.

3. The definition of "intentionally" uses the mental purpose alternative, which the Committee believes is most likely to apply to this offense. "Intentionally" also applies to one who is "aware that his or her conduct is practically certain to cause that result." See § 939.23(3) and Wis JI-Criminal 923A and 923B. Section 939.23(3) also provides that "intentionally" requires that the "actor have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word 'intentionally'." With this offense, "intentionally" becomes applicable because it is set forth in the penalty section, § 951.18. See note 1, supra.