

2031 CONTEMPT OF COURT: PUNITIVE SANCTION — § 785.01)**Statutory Definition of the Crime**

Contempt of court, as defined in § 785.01(1)(b) of the Wisconsin Statutes, is committed by one who intentionally disobeys an order of a court.¹

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. A court ordered the defendant to (describe terms of order).²
2. The defendant had the ability to comply with that order.³
3. The defendant intentionally disobeyed that court order.

"Intentionally" means that the defendant knew the court order had been issued and acted with the purpose to disobey it.⁴

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 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 2031 was originally published in 1990 and revised in 1995. This revision was approved by the Committee in February 2009 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is for "criminal contempt," more precisely termed "punitive sanction for contempt of court." The "punitive sanction" is set forth in § 785.04(2)(a) which provides that a fine of not more than \$5,000 or imprisonment in the county jail for not more than one year or both may be imposed "after a finding of contempt of court in a nonsummary procedure." Nonsummary procedures for punitive sanctions are described in § 785.03(1)(b) which provides, inter alia, that the "complaint shall be processed under chs. 967-973." The Committee has concluded that regular criminal procedure is to be followed, including the giving of regular criminal jury instructions.

The court of appeals has ruled that punitive contempt is not a crime, and thus its penalty cannot be enhanced by reference to the general repeater statute, § 939.62. State v. Carpenter, 179 Wis.2d 838, 842, 508 N.W.2d 69 (Ct. App. 1993), quoting from McGee v. Racine County Circuit Court, 150 Wis.2d 178, 441 N.W.2d 308 (Ct. App. 1989): "Contempt proceedings are sui generis and are neither civil actions nor criminal prosecutions within the ordinary meaning of those terms."

The dismissal of a criminal complaint charging punitive contempt was reversed in State v. Chinavare, 185 Wis.2d 528, 518 N.W.2d 772 (Ct. App. 1994), the court holding that it is proper to charge someone with violating a court order as a party to the crime: "One directly violates a court order by having others do the things prohibited by the order even if those others are not bound by the order." 185 Wis.2d 528, 535.

Section 785.01(1)(bm) provides that contempt includes intentional "Violation of any provision of s. 767.117(1)," which prohibit certain conduct during the pendency of an action affecting the family.

Procedures relating to the contempt power of the court are addressed in CR-29, Wisconsin Judicial Benchbooks, Volume I.

1. This instruction is for one type of offense defined in subsection (1)(b) of § 785.01: "Disobedience, resistance or obstruction of the authority, process, or order of a court." The instruction is drafted in terms of disobeying an order of the court because the Committee concluded that in most contempt cases, a court order is issued and the contempt charge is based on the defendant's disobeying that order.

It apparently is not appropriate to challenge the validity of the order in the context of the criminal prosecution based on failure to obey that order. In State v. Orethun, 84 Wis.2d 487, 267 N.W.2d 318 (1978), the Wisconsin Supreme Court affirmed a conviction for operating after revocation. The defendant had claimed that his revocation should have been deemed not to have occurred because a speeding conviction on which the revocation was based had been vacated. The court held that legal channels were available to challenge the speeding conviction and the revocation. Those are the remedies that must be pursued – a driver has to comply with the revocation until it is set aside through one of the proper channels.

The court in Orethun analogized the case to "that of the person who fails to comply with an injunction but then argues that he should not be held in contempt because the injunction was erroneously granted." 84 Wis.2d 487, 480. Getka v. Lader, 71 Wis.2d 237, 238 N.W.2d 87 (1976), was quoted:

Setting aside the trial court injunction against the defendants does not, ipso facto, erase the contempt finding. . . . Where a court has jurisdiction over the subject matter and the parties, the fact that an order or judgment is erroneously or improvidently rendered does not justify a person in failing to abide by its terms. The subsequent appeal and reversal of the injunction here does not alter the obligation of the defendants in this case to initially comply with such injunction until it was stayed or set aside. [Footnote omitted.]

2. The Committee recommends describing the order that is the basis for the contempt charge.

3. The essence of this offense is an omission – the failure to obey a court order. Criminal liability for an omission generally requires the ability to perform the required acts. See State v. Williquette, 129 Wis.2d 239, 251, 385 N.W.2d 145 (1986), citing LaFave and Scott, Criminal Law, sec. 26 at 182. This general rule can be changed by the statutory definition of a particular offense. See, for example, § 948.22, Failure To Support, discussed in notes 5 and 10, Wis JI-Criminal 2152. The Wisconsin Supreme Court has held that ". . . it is essential in contempt cases that the thing ordered to be done be within the power of the person." In re Adam's Rib, Inc. (Kaminsky), 39 Wis.2d 741, 746, 159 N.W.2d 643 (1968).

4. "Intentionally" is defined in § 939.23(3) as either having the mental purpose to cause the result specified or being "aware that his conduct is practically certain to cause that result." Having the "mental purpose" is believed to be the most likely alternative for this offense. For definition of the other alternative, see Wis JI-Criminal 923B.

The meaning of "intentional" as used in § 785.01 was discussed in Shepard v. Outagamie County Circuit Court, 189 Wis.2d 279, 535 N.W.2d 764 (Ct. App. 1994). The court fell short of explicitly adopting the definition from § 939.23, but its decision is consistent with that definition of the term "intentionally."