

**2044 VIOLATING A DOMESTIC ABUSE CONTACT PROHIBITION —
§ 968.075(5)**

Statutory Definition of the Crime

Section 968.075(5) of the Criminal Code of Wisconsin is violated by one who, within 72 hours of an arrest for a domestic abuse incident, intentionally does not avoid [the residence of the alleged victim of the domestic abuse incident] [any premises temporarily occupied by the alleged victim] [contacting or causing any person to contact the alleged victim].

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 was arrested for a domestic abuse incident.

"Domestic abuse" means (identify the type of conduct specified in § 968.075(1)(a))¹ engaged in by an adult person against [his or her (spouse) (former spouse)] [an adult with whom the person (resides) (formerly resided)] [an adult with whom the person has a child in common].

2. The defendant was advised orally and in writing² that (he) (she) avoid [the residence of the alleged victim of the domestic abuse incident] [any premises

temporarily occupied by the alleged victim] [contacting or causing any person to contact the alleged victim].

3. The defendant intentionally did not avoid [the residence of the alleged victim of the domestic abuse incident] [any premises temporarily occupied by the alleged victim] [contacting or causing any person to contact the alleged victim] within 72 hours of the arrest for a domestic abuse incident.

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 2044 was approved by the Committee in July 2012.

Violating the contact prohibition under § 968.075(5) was changed from a forfeiture to a crime punishable by a fine of not more than \$10,000 or imprisonment for not more than 9 months or both by 2011 Wisconsin Act 267 [effective date: April 24, 2012].

The contact prohibition is set forth in § 968.075(5)(a). It applies "unless there is a waiver under par. (c)." The Committee concluded that the existence of a waiver should be treated as an affirmative defense: it is not an issue in the case until there is some evidence of its existence; then, the state must prove the absence of the waiver beyond a reasonable doubt to support a finding of guilt.

1. Section 968.075(1)(a)1. - 4. identify the following conduct that may constitute "domestic abuse":
 1. Intentional infliction of physical pain, physical injury or illness.
 2. Intentional impairment of physical condition.
 3. A violation of s. 940.225 (1), (2) or (3).
 4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

Violations of s. 940.225 (1), (2) or (3) refer to first, second, or third degree sexual assault. If that option is used, the crimes should be defined. See Wis JI-Criminal 1201 - 1218B.

2. Subsection (5)(b)1. of § 968.075 requires that a law enforcement officer "shall inform the arrested person orally and in writing" of the contact prohibition. Section § 968.075(b)3. provides that a failure to comply with the notice requirement "bars a prosecution under par. (a)."