

5000 POSSESSION OF UNTAGGED DEER — § 29.40(2)**Statutory Definition of the Crime**

Possession of untagged deer, as defined in § 29.347(2) of the Wisconsin Statutes, is committed by one who possesses, controls, stores, or transports a deer carcass that is not tagged as required by law.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant possessed a deer carcass.¹

"Possessed" means that the defendant knowingly had actual physical control of a carcass.²

2. The deer carcass was not tagged as required by law.

Wisconsin law requires that any person who kills a deer shall immediately attach to the ear or antler of the deer a current validated deer carcass tag which is authorized for use on the type of deer killed.³

"Validated" means marked with specified information in the manner required by the department.⁴

If you are satisfied beyond a reasonable doubt that both 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 5000 was originally published in 1992. This revision was approved by the Committee in December 2002 and involved adoption of a new format.

Violations of § 29.347 are punished "by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not more than 6 months or both." § 29.971(11). If a fine is imposed, "the court shall impose a natural resources assessment equal to 75% of the amount of the fine. . ." § 29.987(1)(a).

1. Section 29.001(18) provides the following definition of "carcass":

"Carcass" means the dead body of any wild animal, including any part of the wild animal or the eggs of the wild animal.

2. This is the basic definition of "possession" provided in Wis JI-Criminal 920. See that instruction for optional paragraphs for possible use where an item is not in "the actual physical control" of the person or where possession is shared with another.

The statute applies not only to "possesses" but also to "controls, stores, or transports." The instruction does not include the other alternatives because the Committee concluded that they are covered by the more general term.

3. This standard is found in the first sentence of § 29.347(2). Exceptions to the tagging requirement are specifically set forth in the statute: "car kills" under § 29.347(5); and group hunting permits under § 29.324(3) where someone other than the killer of the deer may attach the tag.

4. This is the definition provided in § 29.347(1)(b).