

5024 THEFT OF ANHYDROUS AMMONIA — § 101.10(3)(e)**Statutory Definition of the Crime**

Section 101.10(3)(e) of the Wisconsin Statutes is violated by one who intentionally (takes) (carries away) (uses) (conceals) (retains possession of)¹ anhydrous ammonia or anhydrous ammonia equipment belonging to another, without consent and with intent to deprive the owner permanently of possession of the anhydrous ammonia or anhydrous ammonia equipment.

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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally took (anhydrous ammonia) (anhydrous ammonia equipment) belonging to another.

The term "intentionally" requires that the defendant had the mental purpose to take property.²

["Anhydrous ammonia equipment" means any equipment that is used in the application of anhydrous ammonia for an agricultural purpose or that is used to store, hold, transport or transfer anhydrous ammonia.]³

2. The owner of the (anhydrous ammonia) (anhydrous ammonia equipment) did not consent⁴ to the taking.
3. The defendant knew that the owner did not consent.⁵
4. The defendant intended to deprive the owner permanently of the possession of the (anhydrous ammonia) (anhydrous ammonia equipment).

Deciding About Intent and Knowledge

You cannot look into a person's mind to find knowledge and intent. Knowledge and intent 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 knowledge and intent.⁶

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four 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 5024 was approved by the Committee in October 2002.

This instruction is for violations of § 101.10(3)(e), which was created by 2001 Wisconsin Act 3, effective date: April 18, 2001.

1. One of the five alternatives in parentheses should be selected. The rest of the instruction is drafted for a case where the act is alleged to be "takes," which, in the Committee's judgment, is the most commonly charged alternative. Note that unlike theft under § 943.20, this statute establishes separate alternatives for "takes" and "carries." Theft has "takes and carries away" as one alternative.

Selection of an alternative is based on State v. Genova, 77 Wis.2d 141, 252 N.W.2d 380 (1977), where the Wisconsin Supreme Court approved a similar construction of the theft statute. A theft charge

under § 943.20 had been dismissed on the basis that the complaint charged only that the defendant had transferred property and not that he had taken the property and transferred it. The supreme court held that the complaint had been sufficient in charging only "transfer." The statute should be read as though the following "ors" appeared in it: takes and carries away, or uses, or transfers, or conceals, or retains. A violation of the statute need not include a taking from the owner.

2. "Intentionally" also is satisfied if the person "is aware that his or her conduct is practically certain to cause [the] result." In the context of this offense, it is unlikely that the "practically certain" alternative will apply so it has been left out of the text of the instruction. See Wis JI-Criminal 923B for an instruction that includes that alternative.

3. This is the definition provided in § 101.10(1)(b). "Agricultural activity" is defined in § 101.10(1)(a).

4. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

5. Knowledge that the taking was without consent is required because the definition of this offense begins with the word "intentionally." Section 939.23(3) provides that the word "intentionally" requires "knowledge of those facts which are necessary to make [the] conduct criminal and which are set forth after the word 'intentionally'" in the statute.

6. This instruction on finding intent is a shorter version of a longer statement commonly used in the standard instructions. The Committee concluded that this shorter version is appropriate for most cases. The complete, traditional statement is found at Wis JI-Criminal 923A.