

1458 UNAUTHORIZED USE OF AN INDIVIDUAL'S PERSONAL IDENTIFYING INFORMATION OR DOCUMENTS — § 943.201(2)

Statutory Definition of the Crime

Section 943.201(2) of the Criminal Code of Wisconsin is violated by one who intentionally uses, attempts to use, or possesses with intent to use any personal identifying information or personal identification document of an individual, including a deceased individual, [to obtain credit, money, goods, services, employment or anything else of value or benefit] [to avoid civil or criminal process or penalty] [to harm the reputation, property, person, or estate of the individual] without the authorization or consent of the individual and by representing that [he or she is the individual] [he or she is acting with the authorization or consent of the individual] [that the information or document belongs to him or her].

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 are present.

Elements of the Crime That The State Must Prove

1. The defendant intentionally [(used) (attempted to use) (possessed with intent to use)]¹ [(personal identifying information) (a personal identification document)]² of (name of individual).³

CHOOSE ONE OF THE FOLLOWING.

[(Insert term from § 943.201(1)(b) 1. through 15.) is “personal identifying information.”]⁴

[“Personal identification document” means:

(a document containing personal identifying information.)

(an individual’s card or plate that can be used to obtain money, goods, services, or any other thing of value or benefit or to initiate a transfer of funds.)

(any device that is unique to, assigned to, or belongs to an individual and is intended to be used to access services, funds, or benefits of any kind to which the individual is entitled.)]⁵

2. The defendant intentionally [(used) (attempted to use) (possessed with intent to use)] [(personal identifying information) (a personal identification document)] of (name of individual) [to obtain credit, money, goods, services, employment or anything else of value or benefit] [to avoid civil or criminal process or penalty] [to harm the reputation, property, person, or estate of the individual].⁶
3. The defendant acted without the authorization or consent of (name of individual) and knew that (name of individual) did not give authorization or consent.⁷

4. The defendant intentionally represented⁸ that [(he) (she) was (name of individual)] [(he) (she) was acting with the authorization or consent of (name of individual))] [the information or document belonged to him or her].⁹

“Intentionally” requires that the defendant had the mental purpose¹⁰ to obtain credit, money, goods, services, employment or anything else of value or benefit by using (personal identifying information) (a personal identification document) of (name of individual) without (name of individual)’s consent or authorization.

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 1458 was originally published in 1999 and revised in 2000 and 2004. This revision was approved by the Committee in October 2018; it added to the Comment and footnotes.

This instruction is for violations of § 943.201(2), created by 1997 Wisconsin Act 101 (effective date: April 27, 1998). Significant changes were made by 2003 Wisconsin Act 36 (effective date: August 8, 2003). Among the changes made by Act 36 are the following:

- changed the title to refer to “unauthorized use” rather than “misappropriation” and to “an individual’s” personal identifying information;
- added to the list of material and information that is covered;
- added “possesses with intent to use” as a prohibited act;
- extended coverage to information of a deceased person;
- added two prohibited purposes – to avoid civil or criminal process or penalty and to harm the reputation, property, person or estate of an individual; and,
- added an affirmative defense that the defendant was authorized by law to engage in the conduct. [See sub. (3) of § 943.201.]

In addition to amending § 940.201, Act 36 created two new criminal statutes:

- § 943.203 Unauthorized use of an entity's identifying information or documents;
- § 946.79 False statements to financial institutions.

See Wis JI-Criminal 1459 for violations of § 943.203.

There is no uniform instruction for violations of § 946.79.

Act 36 also created new provisions relating to jurisdiction [new § 939.03(1)(e)], venue [new § 971.19(11)], and charging violations as a single crime if committed pursuant to a single intent and design [new § 971.366].

Section 943.203(2)(a), the companion statute addressing identity theft from an entity, was interpreted in State v. Stewart, 2018 WI App 41, 383 Wis.2d 546, 916 N.W.2d 188, in the context of finding that there was a factual basis for a guilty plea. The charges were based on Stewart's presenting forged documents to the writer of a presentence report in a previous criminal proceeding – purported diplomas and a letter from the VA. First, the court found that the facts showed that Stewart represented that the use of the documents was authorized. “The statute does not require an express or verbal representation from the offeror that the document is authorized.” ¶22. “[B]y the act of presenting the documents to show the PSI writer his personal history and character, Stewart was implicitly saying they were real and he had consent to use them.” ¶23. Second, he acted with the purpose to receive something of value or benefit – a more favorable sentencing result. The statute is not limited to things of commercial or financial value. ¶26.

Section 940.201(3) provides:

It is an affirmative defense to a prosecution under this section that the defendant was authorized by law to engage in the conduct that is the subject of the prosecution. A defendant who raises this affirmative defense has the burden of proving the defense by a preponderance of the evidence.

In State v. Ramirez, 2001 WI App 158, ¶17, 246 Wis.2d 802, 633 N.W.2d 656, the court of appeals held that § 943.201 defines a “continuing offense” in the sense that the statute is violated when something of value is obtained even if the personal information was put to an unauthorized use at an earlier date.

1. Choose one of the alternatives: “used,” “attempted to use,” or “possessed with intent to use.”
2. Choose one of the alternatives: “personal identifying information” or “personal identification document.”
3. An “individual” includes a deceased individual. See sub. (2) of § 943.201 as amended by 2003 Wisconsin Act 36.
4. The Committee recommends inserting the appropriate term. For example: “An individual’s social security number is ‘personal identifying information.’” The full list of possible terms is found in § 943.201(2)(b), which was extended to a list of 15 items by 2003 Wisconsin Act 36.
5. This list is based on § 943.201(1)(a)1.-3., as amended by 2003 Wisconsin Act 36.
6. 2003 Wisconsin Act 36 added “employment” as one of the items that could be obtained and added “or benefit” to the phrase “anything else of value.”

Interpreting § 943.201 before the revisions of Act 36, the Wisconsin Supreme Court held: “A defendant who misappropriates another’s identity and uses it during an arrest and in bail proceedings to obtain lower bail has stolen that identity to obtain credit or money, or both, within the meaning of the identify theft statute.” State v. Peters, 2003 WI 88, ¶2, 263 Wis.2d 475, 665 N.W.2d 171.

Use of another’s social security number to get a job allowed the defendant to obtain compensation and other economic benefits that resulted from employment and amounted to obtaining something of value under § 943.201. State v. Ramirez, 2001 WI App 158, ¶7, 246 Wis.2d 802, 633 N.W.2d 656. Obtaining employment is specifically covered by the statute as amended by 2003 Wisconsin Act 36.

In interpreting § 943.203, the companion statute addressing identity theft from an entity, the court of appeals held: “Anything of value or benefit” is not limited to things of commercial or financial value. State v. Stewart, 2018 WI App 41, ¶26, 383 Wis.2d 546, 916 N.W.2d 188 [Citing State v. Peters, *supra*. Stewart is discussed above in the Comment preceding footnote 1.].

7. Section 939.23(3) provides that when the word “intentionally” is used in a criminal statute, it requires “that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. In addition, . . . the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word ‘intentionally.’” Based on the latter requirement, the instruction includes the requirement that the defendant must know the victim did not consent to or authorize the use of the information or document.

8. State v. Mason, 2018 WI App 57, ¶26, 384 Wis.2d 111, 918 N.W.2d 78, concluded that using a stolen debit/credit card is sufficient to satisfy the “representing” requirement.

In interpreting § 943.203, the companion statute addressing identity theft from an entity, the court of appeals held: “The statute does not require an express or verbal representation from the offeror that the document is authorized. Rather, it requires that the user ‘represent’ that the user is ‘acting with the authorization or consent of the entity.’ See Wis. Stat. 943.203(2).” State v. Stewart, 2018 WI App 41, ¶22, 383 Wis.2d 546, 916 N.W.2d 188 [Stewart is discussed above in the Comment preceding footnote 1.].

9. Choose one of the alternatives: “(he) (she) was (name of victim),” “(he) (she) was acting with the authorization or consent of (name of victim),” or, “that the information or documents to (him) (her).” The latter was added to the statute by 2003 Wisconsin Act 36.

10. The Committee concluded that the “mental purpose” alternative for intent is most likely to apply to this offense. For further discussion of the full definition of “intentionally,” see Wis JI-Criminal 923A and 923B.