

**550 SOLICITATION AS A CRIME — § 939.30****Statutory Definition of the Crime**

The crime of solicitation, as defined in § 939.30 of the Criminal Code of Wisconsin, is committed by one who, with intent that a felony be committed, advises another to commit that crime under circumstances that indicate unequivocally that he or she has that intent.

The defendant in this case is charged with advising that the crime of (name of felony) be committed. (Name of felony) is a felony.

**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 intended that the crime of (name of felony) be committed.

The crime of (name of felony) is committed by one who

[DEFINE THE CRIME INVOLVED, REFERRING TO THE ELEMENTS AND DEFINITIONS IN THE UNIFORM INSTRUCTION FOR THAT OFFENSE]<sup>1</sup>

2. The defendant advised another person, by the use of words or other expressions, to commit the crime of (name of felony) and did so under circumstances that indicate, unequivocally, that the defendant intended that (name of felony) be committed.

“Unequivocally” means that no other inference or conclusion can reasonably and fairly be drawn from the defendant’s acts.<sup>2</sup>

### **Deciding About Intent**

You cannot look into a person’s mind to find intent. 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 intent.

### **Jury’s Decision**

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 550 was originally published in 1962 and revised in 1994 and 2000. The 2000 revision involved adoption of a new format, nonsubstantive changes to the text, and updating of the comment. The Comment was revised in April 2019. A “Reporter’s Note” was removed in 2020.

This instruction is for the inchoate crime of solicitation, as defined in § 939.30. Liability as a party to crime under § 939.05, based on “soliciting” another to commit a crime, is addressed by Wis JI Criminal 415.

Solicitation under § 939.30 is a Class D felony, with two exceptions: solicitation to commit a crime punishable by life imprisonment is a Class C felony; solicitation to commit a Class E felony is punished as a Class E felony. See § 939.30(2).

In State v. Yee, 160 Wis.2d 15, 465 N.W.2d 260 (Ct. App., 1990), Yee asked Dino Corti to find someone who would break the arms and legs of Mr. Li and later kill him. Corti informed the police and Yee was arrested. The court of appeals reversed the trial court’s dismissal of solicitation charges, holding: “if A, with intent that a felony be committed, advises B to procure C to commit the felony under circumstances which indicate unequivocally that A has such intent, A is guilty of the crime of solicitation, contrary to sec. 939.30. . . .” 160 Wis.2d 15, 16.

In State v. Manthey, 169 Wis.2d 673, 487 N.W.2d 44 (Ct. App. 1992), Manthey, a potential witness in a malpractice action, indicated to the plaintiff’s husband that she would testify favorably only if paid by the plaintiff. The court of appeals applied the Yee rationale to this case, which did not involve a “C”:

“... Manthey advised Otis to engage in the commission of the crime of perjury when she offered to commit perjury if he paid her. The Yee rationale, therefore, does not require the existence of ‘C.’” The court referred to this type of case as one involving a “double inchoate crime.” 169 Wis.2d 673, 687.

In State v. Boehm, 127 Wis.2d 351, 379 N.W.2d 874 (Ct. App. 1985), Boehm solicited Larry Poor to murder Ron Hitchler. Before anything was done, she told Poor that she was “done with” the killing and called the whole thing off. The court of appeals held that a defense of renunciation or withdrawal does not apply to the crime of solicitation under § 939.30:

Renunciation or withdrawal cannot undo that which has been done and therefore has no effect on the elements of solicitation, once completed. Renunciation or withdrawal therefore cannot be a defense to the completed crime of solicitation, in the absence of statute.

In State v. Kloss, 2019 WI App 13, 386 Wis.2d 314, 925 N.W.2d 563, Kloss solicited his wife to shoot a gun through the front door if any police officers returned to their house. The State charged Kloss with one count of solicitation of first-degree reckless injury, Wis. Stat. § 940.23(1)(a). Kloss was convicted and appealed, arguing in part that it is not possible for a person to intend that another person succeed in causing great bodily harm by reckless conduct because whether harm will result from the other person’s reckless conduct is entirely unpredictable. The court of appeals held that a solicitor can intend at the time of the solicitation, that great bodily harm result from the solicitee’s reckless conduct. While the uncertainty of whether an injury will in fact result from the solicitee’s conduct at the time of the solicitation is “inescapable in an inchoate crime such as solicitation,” no level of certainty is required to form a purpose to cause a particular result. Kloss, 386 Wis.2d 314, 322 (2019).

1. If the instruction on the intended crime involves considerable elaboration, it may aid jury understanding to move this description to the end of the instruction, immediately preceding the “Jury’s Decision” paragraphs.

2. This is the definition of “unequivocally” used in Wis JI-Criminal 580, Attempt.