

**791 EXAMPLE [COERCION:] TRAFFICKING: DEFENSE FOR A VICTIM OF
§ 940.302(2) or 948.051 — § 939.46(1m)**

THE FOLLOWING ILLUSTRATES HOW WIS JI-CRIMINAL 791 WOULD BE ADAPTED FOR THE OFFENSE OF BATTERY IF THE AFFIRMATIVE DEFENSE OF A VICTIM OF HUMAN TRAFFICKING IS AN ISSUE IN THE CASE.

Statutory Definition of the Crime

Battery, as defined in § 940.19(1) of the Criminal Code of Wisconsin, is committed by one who causes bodily harm to another by an act done with the intent to cause bodily harm to that person or another without the consent of the person so harmed.

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 caused bodily harm to (name of victim).

“Cause” means that the defendant’s act was a substantial factor in producing the bodily harm.

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.

2. The defendant intended to cause bodily harm to [(name of victim)] [another person].

“Intent to cause bodily harm” means that the defendant had the mental purpose to cause bodily harm to another human being or was aware that (his) (her) conduct was practically certain to cause bodily harm to another human being.

3. The defendant caused bodily harm without the consent of (name of victim).
4. The defendant knew that (name of victim) did not consent.

Defense for a victim of human trafficking or trafficking of a child

The defense for a victim of human trafficking is an issue in this case. This defense allows a person to engage in conduct that would otherwise be criminal under certain circumstances.

The State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant was not acting lawfully under this defense.

The law allows the defendant to act under this defense if the defendant was a victim of human trafficking and the offense of battery was committed as a direct result of human trafficking.

Human trafficking, as defined in section 940.302 of the Criminal Code of Wisconsin, is committed by one who knowingly recruits an individual for the purpose of a commercial sex act and does so by use of force.¹

“Commercial sex act” means sexual intercourse for which anything of value is given to, promised, or received, directly or indirectly, by any person.

This defense applies to any offense committed as a direct result of human trafficking

without regard to whether anyone was prosecuted or convicted for human trafficking.

Direct Result

An offense is committed as a direct result of human trafficking if there is a logical, causal connection between the offense and the trafficking such that the offense is not the result, in significant part, of other events, circumstances, or considerations apart from the trafficking. The offense need not be a foreseeable result of the trafficking and need not proceed relatively immediately from the trafficking.

Deciding About Intent and Knowledge

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, and that the defendant did not act lawfully under the defense of being a victim of human trafficking, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 791 EXAMPLE was approved by the Committee in April 2023.

This instruction illustrates how the general model provided in Wis JI-Criminal 791 would be adapted

for a violation based on § 940.19(1) Battery if the defendant asserted the affirmative defense of being a victim of human trafficking.

Modification of the language used in this example may be necessary depending on the offense being prosecuted or the type of trafficking being alleged.

1. Here, insert at least one of the following ways in which the trafficking was done:

- Causing or threatening to cause bodily harm to any individual.
- Causing or threatening to cause financial harm to any individual.
- Restraining or threatening to restrain any individual.
- Violating or threatening to violate a law.
- Destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual.
- Extortion.
- Fraud or deception.
- Debt bondage.
- Controlling or threatening to control any individual's access to an addictive controlled substance.
- Using any scheme or pattern or other means to directly or indirectly coerce, threaten, or intimidate any individual.
- Using or threatening to use force or violence on any individual.
- Causing or threatening to cause any individual to do any act against the individual's will or without the individual's consent.

§ 940.302(2)(a)2.a.-L. (See Wis JI-Criminal 1276).