

**835 PRIVILEGE: DEFENSE OF OTHERS: EFFECT OF PROVOCATION
BY PERSON DEFENDED — § 939.48(4)**

ADD THE FOLLOWING TO WIS JI-CRIMINAL 825 OR 830 WHEN SUPPORTED BY THE EVIDENCE.

Provocation

You should consider whether (name of person defended) provoked the attack. A person who engages in unlawful conduct of a type likely to provoke others to attack, and who does provoke an attack, is not allowed to use or threaten force in self-defense against that attack.

[USE ANY OF THE FOLLOWING PARAGRAPHS THAT ARE SUPPORTED BY THE EVIDENCE.]

[However, if the attack which follows causes the person reasonably to believe that he¹ is in imminent danger of death or great bodily harm, he may lawfully act in self-defense. But the person may not use or threaten force intended or likely to cause death or great bodily harm unless he reasonably believes he has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm.]

[A person who provokes an attack may regain the right to use or threaten force if the person in good faith withdraws from the fight and gives adequate notice of the withdrawal to his assailant.]

[A person who provokes an attack whether by lawful or unlawful conduct with intent to use such an attack as an excuse to cause death or great bodily harm to another person is not entitled to use or threaten force in self-defense.]

However, even if (name of person defended) had provoked the attack, the defendant would still be allowed to act in defense of (name of person defended) if the defendant actually and reasonably believed that (name of person defended) was entitled to act in his or her own defense.

COMMENT

Wis JI-Criminal 835 was originally published in 1962 and revised in 1994. This revision was approved by the Committee in April 2005.

This instruction is intended for use with Wis JI-Criminal 825 or 830, if applicable.

1. This instruction uses "he" to refer to the "person" serving as the general standard against which the defendant's conduct is being measured. The Committee attempts to avoid using the masculine form of the pronoun in these situations. See Wis JI-Criminal 5, Comment: Gender Neutral Language. In this case, attempts to rewrite the instruction to avoid use of the pronoun were unsuccessful; they made an already complicated statement too difficult to understand. If the case involves a female defendant, the Committee recommends changing the pronoun in this paragraph to "she."