

**914 GREAT BODILY HARM — § 939.22(14)**

Great bodily harm means injury which creates a substantial risk<sup>1</sup> of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.<sup>2</sup>

**COMMENT**

Wis JI-Criminal 914 was originally published in 1989 and revised in 2005. This revision was approved by the Committee in April 2008.

Section 939.22(14), defining "great bodily harm," was amended by 1987 Wisconsin Act 399 to read as follows:

"Great bodily harm" means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury. (Emphasis added.)

The underlined words were added to replace "high probability" which was deleted. The change was part of the revision of the homicide statutes, originally introduced as 1987 Senate Bill 191, and passed as part of the budget bill, 1987 Wisconsin Act 399. The effective date for the change is January 1, 1989.

The change from "high probability" to "substantial risk" is discussed in note 1, below.

1. "Substantial risk" was substituted for "high probability" by a legislative change effective January 1, 1989, enacted as part of the revision of the state's homicide statutes. The change in the definition of "great bodily harm" was part of the original homicide revision bill, 1987 Senate Bill 191. The Note to the bill states: "The words 'substantial risk' are substituted for 'high probability' to avoid any inference that a statistical likelihood greater than 50% was ever intended." 1987 Senate Bill 191, NOTE to Section 42.

2. The interpretation of the phrase "other serious bodily injury" has undergone a change in decisions of the Wisconsin Supreme Court.

In State v. Bronston, 7 Wis.2d 627, 97 N.W.2d 504 (1959), the court concluded that the injuries suffered in the case did not constitute great bodily harm as a matter of law. It reached that conclusion by invoking two commonly accepted rules of statutory construction: First, that penal statutes are to be interpreted strictly against the state and in favor of the accused; second, that the canon of statutory interpretation, ejusdem generis, was applicable. The court applied those rules of construction to interpret "other serious bodily injury" in light of the other types of injury described by the more specific language of the statute. This interpretation of the statute has been reversed by more recent decisions of the court.

In LaBarge v. State, 74 Wis.2d 327, 246 N.W.2d 794 (1976), the court reexamined the legislative history of the great bodily harm definition and concluded that "other serious bodily injury" was a phrase of distinct meaning, intended to broaden the scope of the statute rather than to limit it. The court found that adding that phrase to the statute in 1955 was intended to include serious bodily injury of a kind not encompassed in the specific language of the original statute. Accordingly, the court overruled the ejusdem generis rationale of Bronston. The court found that under the facts of the LaBarge case, it was for the jury to decide whether or not the injury suffered constituted "serious bodily injury." Also see, Cheatham v. State, 85 Wis.2d 112, 270 N.W.2d 194 (1978) and State v. Wellington, 2005 WI App 243, 288 Wis.2d 264, 707 N.W.2d 907.