1220 BATTERY — § 940.60(1)

Statutory Definition of the Crime

Battery, as defined in § 940.60(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.[1]

   "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.[2]

2. The defendant intended to cause bodily harm to [(name of victim)] [another person].[3]

   "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.[4]

3. The defendant caused bodily harm without the consent[5] of (name of victim).

4. The defendant knew that (name of victim) did not consent.

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.[6]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of battery 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 1220 was originally published in 1966 and revised in 1979, 1980, 1986, 1992, 1994, 2001, and 2015. This revision was approved by the Committee in October 2025. It amended the instruction to incorporate the recodification and reorganization of the battery statutes enacted by 2025 Wisconsin Act 24 (effective date: August 10, 2025.)

This instruction is for "simple battery," as defined in § 940.60(1). For an instruction integrating the privilege of self-defense with simple battery, see Wis JI-Criminal 1220A.

Subsection (2m) of § 939.66 provides that a "crime which is a less serious or equally serious type of battery than the one charged" is a lesser included offense. "Or equally serious" was added by 1993 Wisconsin Act 441, effective date: May 10, 1994. This change clarified the confusion resulting from the drafting of the battery statutes in terms that did not satisfy the strict "comparison of the statutory elements" test that the Wisconsin Supreme Court has adopted for lesser included offenses. See State v. Richards, 123 Wis.2d 1, 365 N.W.2d 7 (1985), where the court held that simple battery under § 940.19(1) [now § 940.60(1)] and "intermediate battery" under § 940.19(1m) [now § 940.60(3)(a)] are not lesser included

offenses of aggravated battery.

The amendment to § 939.66 affects only the legal possibility of submitting the lesser offense; the evidentiary standard for submitting the lesser crime must also be satisfied. See SM-6, Jury Instructions on Lesser Included Offenses.

1. The Committee concluded that the simple "substantial factor" definition of cause should be sufficient for most cases. Where there is evidence of more than one possible cause, something like the following might be added:

> There may be more than one cause of bodily harm. The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

2. This is the definition of "bodily harm" provided in § 939.22(4).

3. In most cases, the defendant will be charged with intending to harm the actual victim and the name of the victim should be used in instructing the jury. However, the defendant is also guilty of battery if he intends to harm one person but actually harms another. This is the common law doctrine of transferred intent which has been described as follows in connection with first degree murder:

> It is immaterial that the human being killed is not the one the actor intended to kill. If X shoots at and kills a person who he thinks is Y but who is actually Z, X is as guilty as if he had not been mistaken about the identity of the person killed. The same is true where X shoots at Y intending to kill him, but he misses Y and kills Z. In both of these cases, X has caused "the death of another human being by an act done with intent to kill that person or another." In other words, the section incorporates the common law doctrine of "transferred intent."

1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 58.

4. See § 939.23(4) and Wis JI-Criminal 923A and 923B.

5. If definition of "without consent" is believed to be necessary, see Wis JI-Criminal 948 which provides an instruction based on the definition provided in § 939.22(48). That definition provides that "without consent" means "no consent in fact" or that consent was given because of fear, a claim of legal authority by the defendant, or misunderstanding.

6. This is the shorter version used to describe the process of finding intent. The Committee concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A.