

**1222A SUBSTANTIAL BATTERY WITH INTENT TO CAUSE BODILY HARM:  
SELF-DEFENSE IN ISSUE — § 940.19(2); § 939.48****Statutory Definition of the Crime**

Substantial battery, as defined in § 940.19(2) of the Criminal Code of Wisconsin, is committed by one who causes substantial bodily harm to another by an act done with the intent to cause bodily harm to that person or another.

**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 caused substantial bodily harm to (name of victim).

"Cause" means that the defendant's act was a substantial factor in producing the substantial bodily harm.<sup>1</sup>

"Substantial bodily harm" means bodily injury that causes [a laceration that requires (stitches) (staples) (a tissue adhesive)] [any fracture of a bone] [a broken nose] [a burn] [a petechia] [a temporary loss of consciousness, sight, or hearing] [a concussion] [a loss or fracture of a tooth].<sup>2</sup>

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

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.<sup>4</sup>

"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.<sup>5</sup>

The intent to cause bodily harm must exist at the time of the act causing substantial bodily harm.<sup>6</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.<sup>7</sup>

### **Self-Defense**

Self-defense is an issue in this case. The law of self-defense allows the defendant to threaten or intentionally use force against another only if:<sup>8</sup>

- the defendant believed that there was an actual or imminent unlawful interference with the defendant's person; and
- the defendant believed that the amount of force the defendant used or threatened to use was necessary to prevent or terminate the interference; and
- the defendant's beliefs were reasonable.

### **Determining Whether Beliefs Were Reasonable**

A belief may be reasonable even though mistaken.<sup>9</sup> In determining whether the defendant's beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant's position under the circumstances that existed at the time of the alleged offense.<sup>10</sup> The reasonableness of the defendant's beliefs

must be determined from the standpoint of the defendant at the time of the defendant's acts and not from the viewpoint of the jury now.

[IF RETREAT IS AN ISSUE, ADD APPROPRIATE INSTRUCTION HERE – SEE WIS JI-CRIMINAL 810.]

[IF THERE IS EVIDENCE THAT THE DEFENDANT PROVOKED THE ATTACK, ADD APPROPRIATE INSTRUCTION HERE – SEE WIS JI-CRIMINAL 815.]

### **State's Burden of Proof**

The State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant did not act lawfully in self-defense.

### **Jury's Decision**

If you are satisfied beyond a reasonable doubt that both elements of this offense have been proved and that the defendant did not act lawfully in self-defense, you should find the defendant guilty.

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

### **COMMENT**

Wis JI-Criminal 1222A was originally published in 2001 and revised 2005. This revision was approved by the Committee in June 2017; it updated the definition of "substantial bodily harm" and added to footnote 2.

This instruction combines the uniform instruction for substantial battery with intent to cause bodily harm (1222) with the instruction on the privilege of self-defense (Wis JI-Criminal 800). The Committee concluded that integrating the elements and the privilege provides a clearer statement of all the facts necessary to constitute guilt in a case where self-defense is an issue. This kind of approach was suggested in State v. Staples, 99 Wis.2d 364, 299 N.W.2d 270 (Ct. App. 1980).

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 "substantial bodily harm" provided in § 939.22(38). It was revised by 2003 Wisconsin Act 223 [effective date: April 27, 2004] to include reference to a laceration requiring "staples or a tissue adhesive" and "a broken nose." Note that the definition provides only a list of harms that constitute "substantial bodily harm." Compare this with the definitions of "bodily harm" [§ 939.22(4)] and "great bodily harm" [§ 939.22(14)] which contain a general category in addition to a list of specific harms: in § 939.22(4) – "any impairment of physical condition," in § 939.22(14) – "other serious bodily injury."

2007 Wisconsin Act 127 [effective date: April 4, 2008] amended the definition of "substantial bodily harm" to include "a petechia" and created sec. 939.22(23) defining the term as ". . . a minute colored spot that appears on the skin, eyes, eyelid, or mucous membrane of a person as a result of a localized hemorrhage or rupture to a blood vessel or capillary."

In a decision addressing "great bodily harm," the Wisconsin Court of Appeals concluded: "Just because all fractures meet the definition of substantial bodily harm, that does not imply that a particular fracture . . . cannot be serious enough to qualify as an "other serious bodily injury for purposes of being great bodily harm." State v. Davis, 2016 WI App 73, 371 Wis.2d 737, 885 N.W.2d 807, ¶21.

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

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

6. The elements of this offense are the causing of substantial bodily harm by an act done with intent to cause bodily harm. Therefore, it differs from simple battery primarily with respect to the degree of harm caused. The Committee concluded that this instruction makes the distinction clear but also that it would be appropriate to emphasize that distinction to the jury in a separate paragraph (where, for example, battery is submitted as a lesser included offense).

7. 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.

8. The instruction on self-defense is adapted from Wis JI-Criminal 800.
9. This treatment of "reasonably believes" is intended to be consistent with the definition provided in § 939.22(32).
10. The phrase "in the defendant's position under the circumstances that existed at the time of the alleged offense" is intended to allow consideration of a broad range of circumstances that relate to the defendant's situation. For example, with children (assuming they are old enough to be criminally charged), the standard relates to a reasonable person of like age, intelligence, and experience. Maichle v. Jonovic, 69 Wis.2d 622, 627-28, 230 N.W.2d 789 (1975).