

**1224 AGGRAVATED BATTERY WITH INTENT TO CAUSE BODILY HARM  
— § 940.19(4)**

**Statutory Definition of the Crime**

Aggravated battery, as defined in § 940.19(4) of the Criminal Code of Wisconsin, is committed by one who causes great 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 great bodily harm to (name of victim).

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

"Great bodily harm" means serious bodily injury.<sup>2</sup> [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 is great bodily harm.]

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 act causing great 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>

### **Jury's Decision**

If you are satisfied beyond a reasonable doubt that both elements of this offense 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 1224 was originally published in 1994. The revision approved by the Committee in June 2000 involved adoption of a new format, nonsubstantive changes to the text, and updating of the comment. This revision corrected an inadvertent error in the first element.

See Wis JI-Criminal 1224A for an instruction integrating the privilege of self-defense with the elements of this offense.

This offense was originally defined by § 940.19(1m), which was created by Chapter 111, Laws of 1979. The offense requires the causing of great bodily harm with intent to cause bodily harm and was referred to as

"intermediate battery" during the legislative process. (See the Analysis by the Legislative Reference Bureau to 1979 Assembly Bill 169.) 1993 Wisconsin Act 441 renumbered the statute to § 940.19(4) and increased the penalty to a Class D felony. It also eliminated the requirement that the harm be caused "without consent." (Effective date: May 10, 1994.)

1993 Wisconsin Act 441 also amended subsection (2m) of § 939.66 to provide that a "crime which is a less serious or equally serious type of battery than the one charged" is a lesser included offense. (Emphasis added to highlight the 1994 change.) Section 939.66 is intended to resolve the difficulties resulting from the drafting of the battery statutes in terms that did not satisfy the strict "comparison of the 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) and "intermediate battery" under § 940.19(1m) [now § 940.19(4)] were not lesser included offenses of aggravated battery.

Section 939.66(2m) 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 Offense.

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. The Committee concluded that defining great bodily harm as "serious bodily injury" is sufficient in most cases. The material in brackets is the remainder of the definition found in § 939.22(14) and should be used as needed. The definition was changed by 1987 Wisconsin Act 399 to substitute "substantial risk" for "high probability" in the phrase "substantial risk of death." See Wis JI-Criminal 914.

Whether or not an injury suffered amounts to "great bodily harm" is an issue of fact for the jury to resolve. See Flores v. State, 76 Wis.2d 50, 250 N.W.2d 227 720 (1976).

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 [formerly 923.1 and 923.2].

6. The elements of this offense are the causing of great 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 [formerly Wis JI-Criminal 923.1].