

**1225 AGGRAVATED BATTERY WITH INTENT TO CAUSE GREAT BODILY HARM — § 940.19(5)****Statutory Definition of the Crime**

Aggravated battery, as defined in § 940.19(5) 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 great 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 great bodily harm to [ (name of victim) ] [another person].<sup>3</sup>

"Intent to cause great bodily harm" means that the defendant had the mental purpose to cause great bodily harm to another human being or was aware that (his) (her) conduct was practically certain to cause great bodily harm to another human being.<sup>4</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>5</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 1225 was originally published in 1994 and revised in 2001. This revision was approved by the Committee in February 2003. It reflects changes made in the statute by 2001 Wisconsin Act 109.

See Wis JI-Criminal 1225A for an instruction integrating the privilege of self-defense with the elements of this offense.

Subsection (5) of § 940.19 was amended by 2001 Wisconsin Act 109 (effective date: February 1, 2003) to delete intent to cause "substantial bodily harm." The subsection now prohibits causing great bodily harm with intent to cause great bodily harm.

1993 Wisconsin Act 441 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.) As a Class E felony, aggravated battery is the most serious type of battery. Thus, all other types of battery are lesser included offenses.

Subsection 939.66(2m) 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) were not lesser included offenses of aggravated battery.

Subsection 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 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. 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. See § 939.23(4) and Wis JI-Criminal 923A and 923B [formerly 923.1 and 923.2].

5. 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].