

**1225A AGGRAVATED BATTERY WITH INTENT TO CAUSE GREAT BODILY HARM: SELF-DEFENSE IN ISSUE — § § 940.19(5); 939.48**

**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>

### **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>6</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.

[ADD THE FOLLOWING IF THERE IS EVIDENCE THAT THE FORCE USED WAS INTENDED OR LIKELY TO CAUSE DEATH OR GREAT BODILY HARM.]

[The defendant may intentionally use force which is intended or likely to cause death or great bodily harm only if the defendant reasonably believed that the force used was necessary to prevent imminent death or great bodily harm to (himself) (herself).]<sup>7</sup>

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

A belief may be reasonable even though mistaken.<sup>8</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>9</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 1225A was originally published in 2001. This revision was approved by the Committee in February 2003. It reflects changes made in the statute by 2001 Wisconsin Act 109.

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.

This instruction combines the uniform instruction for aggravated battery with intent to cause substantial or great bodily harm (Wis JI-Criminal 1225) 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).

This instruction assumes the simplest case in that references to instructions on, for example, retreat and provocation are not included. The complete version of Wis JI-Criminal 1225 and Wis JI-Criminal 800, and footnotes, should be reviewed before using this instruction.

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].

6. The instruction on self-defense is adapted from Wis JI-Criminal 800.

7. See § 939.48(1).

8. This treatment of "reasonably believes" is intended to be consistent with the definition provided in § 939.22(32).

9. 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).