

1228 BATTERY BY PRISONER — § 940.20(1)**Statutory Definition of the Crime**

Battery by prisoner, as defined in § 940.20(1) of the Criminal Code of Wisconsin, is committed by one who is confined to a [state prison] [(state) (county) (municipal) detention facility] and who intentionally causes bodily harm or a soft tissue injury to (an officer) (an employee) (a visitor) (another inmate) of the (prison) (detention facility) without the consent of that person.

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 five elements were present.

Elements of the Crime That the State Must Prove

1. The defendant was a prisoner confined to a [state prison] [(state) (county) (municipal) detention facility].

This requires that the defendant was confined to a (prison) (detention facility) as a result of a violation of law.¹

(Name of institution) is a [state prison] [(state) (county) (municipal) detention facility].²

2. The defendant intentionally caused (bodily harm) (a soft tissue injury) to (name of victim).

"Cause" means that the defendant's act was a substantial factor in producing (bodily harm) (a soft tissue injury).³

"Intentionally" means that the defendant had the mental purpose to cause (bodily harm) (a soft tissue injury) to another human being or was aware that (his) (her) conduct was practically certain to cause (bodily harm) (a soft tissue injury) to another human being.⁴

["Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.⁵]

["Soft tissue injury" means an injury that requires medical attention to a tissue that connects, supports, or surrounds other structures and organs of the body and includes tendons, ligaments, fascia, skin, fibrous tissues, fat, synovial membranes, muscles, nerves, and blood vessels.⁶]

3. (Name of victim) was (an officer) (an employee) (a visitor) (another inmate) of (name of institution).
4. The defendant caused (bodily harm) (a soft tissue injury) without the consent of (name of victim).⁷
5. The defendant knew (name of victim) was (an officer) (an employee) (a visitor) (another inmate) of (name of institution) and knew that (name of victim) did not consent to the causing of (bodily harm) (a soft tissue injury).⁸

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.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all five 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 1228 was originally published in 1994 and revised in 2001. This revision was approved by the Committee in December 2011; it revised the instruction to reflect changes made by 2011 Wisconsin Act 74.

2011 Wisconsin Act 74 amended § 940.20(1) to add reference to causing "a soft tissue injury" as defined in § 946.41(2)(c). See footnote 6, below. The effective date of Act 74 is December 2, 2011.

1. The defendant's status as a "prisoner" should rarely be in question, but the Committee concluded there should be some definition of the term in the instruction. The definition in the instruction was adapted from that found in Wis. Stat. § 46.011 and from the decision in State v. Brill, 1 Wis.2d 288, 83 N.W.2d 721 (1957), where the court made the following observations:

So far as we know, the word "prisoner" has not been defined by this court. Black's Law Dictionary (4th ed.), p. 1358, defines the word as follows:

"One who is deprived of his liberty; one who is against his will kept in confinement or custody."

Webster's New International Dictionary (2d ed.) gives the following definition:

"A person under arrest, in custody or in prison; one involuntarily restrained; a captive; as a prisoner of justice, or war or at the bar; to take one prisoner."

State v. Brill, 1 Wis.2d 288, 291.

The Brill definition has been cited with approval in several cases involving § 940.20(1). In C.D.M. v. State, 125 Wis.2d 170, 370 N.W.2d 287 (Ct. App. 1985), the court held that a juvenile confined as a delinquent at the Lincoln Hills School was a "prisoner" under § 940.20(1) because he had violated a criminal law and was confined for a correctional objective. 125 Wis.2d 170, 173.

The Committee concluded that "prisoner" includes all persons who are confined to one of the identified institutions as a result of a violation of the law. "Prisoner" is also defined in § 46.011(2) (for purposes of Chapter 46 to 51, 55, and 58) and in § 301.01(2) (for purposes of Chapters 301 to 304). But the Committee concluded that these definitions are not directly applicable here because they are concerned primarily with defining the authority of state agencies.

A person committed to a state mental health facility (in this case, the Mendota Mental Health Institute) after being found not guilty by reason of mental disease or defect, is a "prisoner" for purposes of § 940.20(1), Battery by prisoners. State v. Skampfer, 176 Wis.2d 304, 500 N.W.2d 369 (Ct. App. 1993). The important fact is that the person's liberty was restrained premised on a finding that the person had violated the criminal law.

A probationer who violates a condition of probation and as a result is taken into custody is a prisoner "confined as a result of a violation of the law" as provided in C.D.M., supra, and this instruction. State v. Fitzgerald, 2000 WI App 55, ¶12, 233 Wis.2d 584, 608 N.W.2d 391 [also involving a charge under § 940.20(1).]

2. The institution's status as one of the designated facilities should not be a contested issue in most cases, and the Committee concluded that it is appropriate for the trial court to so instruct the jury.

The question of what institutions are covered by the statute is arguably difficult only with regard to "state detention facilities." "County detention facility" most likely refers to a county jail (and possibly to the House of Correction in Milwaukee County); "municipal detention facility" most likely refers to city jails. But it is not clear what institutions are included in the term "state detention facility." The Committee concluded that the statute may be applied to persons confined in mental health institutes provided their confinement is a result of criminal charges. This interpretation would include those committed for determination of competency to stand trial, those committed as not competent to stand trial, and those committed as not guilty by reason of mental disease or defect. This conclusion is consistent with the decision in State v. Skampfer, see note 1, supra.

Section 302.01 identifies the institutions which are "state prisons." Also see § 302.02 which defines the "precincts" of the state prisons, that is, those locations that are considered part of the prisons for legal purposes.

3. 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) (a soft tissue injury). The act of one person alone might produce it, or the acts of two or more persons might jointly produce it.

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

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

6. 2011 Wisconsin Act 74 amended § 940.20(1) to add as an alternative harm the causing of "a soft tissue injury" as defined in § 946.41(2)(c). The definition in the instruction is the one provided in § 946.41(2)(c).

7. 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.

8. The knowledge element is based on the definition of "intentionally" in § 939.23(3): ". . . the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word intentionally."