

**1228A BATTERY BY A PERSON COMMITTED UNDER § 980.04 or § 980.065 —  
§ 940.20(1g)****Statutory Definition of the Crime**

Section 940.20(1g) of the Criminal Code of Wisconsin is violated by a person who is placed in facility under (§ 980.04) (§ 980.065) and who intentionally causes bodily harm to an officer, employee, agent, visitor, or other resident of the facility without (his) (her) consent.

**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 placed in a facility under (§ 980.04) (§ 980.065).<sup>1</sup>

(Name of institution) is a facility under (§ 980.04) (§ 980.065).<sup>2</sup>

2. The defendant caused bodily harm to (name of victim).

“Cause” means that the defendant’s conduct was a substantial factor in producing bodily harm.<sup>3</sup>

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

3. (Name of victim) was (an officer) (an employee) (an agent) (a visitor) (a resident) of the facility.
4. The defendant caused bodily harm to (name of victim) without the consent<sup>5</sup> of (name of victim).
5. The defendant acted intentionally. This requires that the defendant acted with the mental purpose to cause bodily harm to (name of victim) and knew that (name of victim) did not consent.<sup>6</sup>

### **Deciding About Intent and Knowledge**

You cannot look into a person's mind to find intent or 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 1228A was approved by the Committee in June 2014. This revision was approved by the Committee in October; it reflects changes made by 2021 Wisconsin Act 13.

This instruction is drafted for violations of § 940.20(1g) which applies to batteries committed by one committed as a “sexually violent person” under Chapter 980. The statute was created by 2005 Wisconsin Act 434 [effective date: August 1, 2006].

2021 Wisconsin Act 13 [effective date: March 28, 2021] amended § 940.20 (1g) to include persons who are not yet formally committed pursuant to § 980.065 and § 980.06 but who are detained in a facility while awaiting a Chapter 980 trial.

1. The offense definition refers to “Any person who is placed in a facility under s. 980.04 or 980.065.” Section 980.04 designates the place of placement for a person who has had a finding of probable cause against them that they are “eligible for commitment under s. 980.05 (5),” but who has yet to be adjudicated under § 980.06. A detention order under § 980.04 “remains in effect until the petition is dismissed after a hearing under sub. (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order under s. 980.06, whichever is applicable.” Section 980.065 designates the place of placement for “a person committed under s. 980.06.” A commitment under § 980.06 is the final commitment of a person who has been found to be a sexually violent person.

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 placed in mental health institutes provided their confinement is a result of criminal charges.

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. The act of one person alone might produce it, or the acts of two more persons might jointly produce it.

Also see Wis JI-Criminal 901, Cause.

4. This is the definition provided in § 939.22(4).

5. 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.

6. “Intentionally” requires either mental purpose to cause the result or awareness that the conduct is practically certain to cause it. § 939.23(3). The Committee concluded that the mental purpose alternative is most likely to apply to this offense. See Wis JI-Criminal 923A and 923B.

“Intentionally” also generally requires knowledge of all facts necessary to make the conduct criminal which follow the word “intentionally” in the statute. § 939.23(3). Thus, the defendant must know that the victim did not consent to the causing of bodily harm.