1230 BATTERY TO A FIREFIGHTER OR COMMISSION WARDEN — § 940.62(2)(d)

Statutory Definition of the Crime

Section 940.62(2)(d) of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to a (firefighter) (commission warden) where at the time of the act the defendant knows or has reason to know that the victim is a (firefighter) (commission warden) acting in an official capacity and there is no consent by the victim.

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 six elements were present.

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

   "Cause" means that the defendant's conduct was a substantial factor in producing bodily harm.[1]

   "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.[2]

2. (Name of victim) was a (firefighter)[3] (commission warden).[4]

3. (Name of victim) was acting in an official capacity.

   (Firefighters) (Commission wardens) act in an official capacity when they perform duties that they are employed[5] to perform.[6] [The duties of a (firefighter)

(commission warden) include: _____.][7]

4. The defendant knew or had reason to know that (name of victim) was a (firefighter) (commission warden) acting in an official capacity.[8]

5. The defendant caused bodily harm to (name of victim) without the consent[9] of (name of victim).

6. 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.[10]

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 six 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 1230 was originally published as Wis JI-Criminal 1225 in 1974 and renumbered Wis JI-Criminal 1230 in 1994. It was revised in 2005, 2008 and 2016. The 2016 revision reflected changes made by 2015 Wisconsin Act 78. This revision was approved by the Committee in October 2025. It amended the instruction to incorporate the recodification and reorganization of the battery statutes enacted

by 2025 Wisconsin Act 24 (effective date: August 10, 2025.)

Section 940.20(2) [now § 940.62(2)(d)] was amended by 2015 Wisconsin Act 78 [effective date: November 13, 2015]. "Law enforcement officer" was deleted and moved to § 940.203 [now § 940.62(1)(a)] which, as amended, applies to battery or threat to a judge, prosecutor, or law enforcement officer. See Wis JI-Criminal 1240C and 1240D for offenses involving battery and threat to prosecutors or law enforcement officers.

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 more persons might jointly produce it.

Also see Wis JI-Criminal 901, Cause.

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

3. Section 940.51(11) provides that the definition of "firefighter" in § 102.475(8)(b) applies:

> (b)"Firefighter" means any person employed by the state or any political subdivision as a member or officer of a fire department or a member of a volunteer department, including the state fire marshal and deputies.

4. 2007 Wisconsin Act 27 [effective date: November 27, 2007] amended § 940.2(2) [now § 940.62(2)(d)] to include "commission warden" and created § 939.22(5) to define the term: "'Commission warden' means a conservation warden employed by the Great Lakes Indian Fish and Wildlife Commission."

5. "Employed" is used here in the general sense of being engaged in the performance of a duty.

6. The definition of "official capacity" is taken from Wis JI-Criminal 915. See the Comment to that instruction for further discussion.

7. The duties, powers, or responsibilities of some public officers, officials, and employees are set forth in the Wisconsin Statutes or Administrative Code. When that is the case, the Committee suggests using the sentence in brackets and describing the duties in the blank. The Committee has concluded that the jury may be informed of the law that declares what a person's official duties are without running the risk of directing a verdict on an element of the crime. It is still for the jury to determine whether the person was performing the duty in the particular case. But see, State v. Jensen, 2007 WI App 256, 306 Wis.2d 572, 743 N.W.2d 468; and, State v. Schultz, 2007 WI App 257, 306 Wis.2d 598, 743 N.W.2d 823.

8. The "knew or had reason to know" requirement is taken directly from § 940.62(2)(d). It is treated as a separate element rather than being combined with the sixth element where knowledge of lack of consent is addressed. This is because the "reason to know" standard differs from the actual knowledge that is required when the word "intentionally" is used in a criminal statute. See § 939.23(3).

The instruction applies the "reason to know" standard to the victim's status as a firefighter or

commission warden and to "acting in official capacity." The statute expressly applies "reason to know" only to status as a firefighter or commission warden. But the two requirements are so closely connected that the Committee concluded the same knowledge standard has to apply to each.

9. 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.

10. For further definition of "intentionally," including the alternative referring to being "aware that his or her conduct is practically certain to cause the result," see Wis JI-Criminal 923A and 923B.

The requirement that the defendant know there is no consent 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."