

1231 BATTERY TO A PROBATION, EXTENDED SUPERVISION AND PAROLE AGENT, COMMUNITY SUPERVISION AGENT, OR AN AFTERCARE AGENT — § 940.20(2m)

Statutory Definition of the Crime

Section 940.20(2m) of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to [a probation, extended supervision and parole agent] [a community supervision agent] [an aftercare agent] where at the time of the act the defendant knows or has reason to know that the victim is [a probation, extended supervision and parole agent] [a community supervision agent] [an aftercare agent] acting in an official capacity and there is no consent by the victim harmed.

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.

Elements of the Crime That the State Must Prove

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

“Cause” means that the defendant’s conduct was a substantial factor in producing the bodily harm.¹

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.²

2. (Name of victim) was [a probation, extended supervision and parole agent]³ [a community supervision agent]⁴ [an aftercare agent].⁵

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

[Probation, extended supervision and parole agents] [community supervision agents] [aftercare agents] act in an official capacity when they perform duties that they are employed to perform.⁶ [These duties include: _____.]⁷

4. The defendant knew, or had reason to know, that (name of victim) was [a probation, extended supervision and parole agent] [a community supervision agent] [an aftercare agent] acting in an official capacity.⁸
5. (Name of victim) did not consent to the causing of bodily harm.
6. The defendant acted intentionally.

This requires that the defendant intended to cause bodily harm to (name of victim) and knew that (name of victim) did not consent to the causing of bodily harm.⁹

Meaning of “Intentionally”

Intent to cause bodily harm means that the defendant had the mental purpose to cause bodily harm to another human being or was aware that (his) (her) conduct was practically certain to cause bodily harm to another.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 1231 was originally published in 1994 and revised in 1996, 2005, and 2008. This revision was approved by the Committee in April 2019; it added reference to extended supervision and community supervision agents.

Section 940.20(2m) was created by 1989 Wisconsin Act 336 and originally applied to battery of probation and parole agents. It was amended by 1995 Wisconsin Act 77 to include battery to “aftercare agents.” [Effective date: July 1, 1996]. “Extended supervision agents” were added by 1997 Wisconsin Act 283. [Effective date: June 24, 1998]. 2015 Wisconsin Act 55 added “community supervision agents” [with a delayed effective date of September 24, 2017].

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.

Also see Wis JI-Criminal 901 Cause.

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

3. Section 940.20(2m)(a)2. provides that “‘probation, extended supervision and parole agent’ means any person authorized by the department of corrections to exercise control over a probationer, parolee, or person on extended supervision.”

4. “Community supervision agent” is defined as follows in § 940.20(2m)(a)1m.: “. . . any person authorized by the department of corrections to exercise control over a juvenile on community supervision.”

5. “Aftercare agent” is defined as follows in § 940.20(2m)(a)1.: “. . . any person authorized by the department of corrections to exercise control over a juvenile on aftercare.”

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.

Wisconsin Administrative Code, Chapter DOC 328, Community Supervision Of Offenders, provides “rules, services, and programs for offenders who are under the supervision of the department.” DOC 328.04(2) extensively describes the duties of agents who provide community supervision. All the agents specified in § 940.20(2m) must be “authorized by the department to exercise control” over specific categories of persons who are being supervised. See the definitions quoted in footnotes 3, 4, and 5 above. Thus, it appears that all would be subject to the standards and grants of authority in DOC 328.

8. The “knew or had reason to know” requirement is taken directly from § 940.20(2m). 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 probation or parole officer and to “acting in official capacity.” The statute expressly applies “reason to know” only to status as a probation or parole officer. But the two requirements are so closely connected that the Committee concluded the same knowledge standard has to apply to each.

9. Knowledge that the victim was acting in an official capacity and that the victim did not consent is required because the word “intentionally” is used in the statute. That requires not only intent to cause bodily harm but also “knowledge of those facts necessary to make his or her conduct criminal and which are set forth after the word ‘intentionally’.” § 939.23(3).

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