

1231A THREAT TO A PROBATION, EXTENDED SUPERVISION, OR PAROLE AGENT, COMMUNITY SUPERVISION AGENT, AN AFTERCARE AGENT, OR THEIR FAMILY MEMBER — § 947.016(2)

Statutory Definition of the Crime

Section 947.016(2) of the Criminal Code of Wisconsin is violated by one who threatens to cause bodily harm to the (person) (family member) of (a probation, extended supervision, or parole agent) (a community supervision agent) (an aftercare agent) where, at the time of the threat, the defendant knows or has reason to know that the victim is (a probation, extended supervision, or parole agent) (a community supervision agent) (an aftercare agent) (a family member of (a probation, extended supervision, or parole agent) (a community supervision agent) (an aftercare agent)), the threat is in response to an action by the agent acting in (his) (her) official capacity, and there is no consent by the person threatened.

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. (Name of victim) was ((a probation, extended supervision, or parole agent)¹ (a community supervision agent)² (an aftercare agent)³) (a family member of (a probation, extended supervision, or parole agent) (a community supervision agent)

(an aftercare agent)).

[For the purpose of this offense, a (e.g., child) is a family member.]⁴

2. At the time of the threat, the defendant knew, or had reason to know, that (name of victim) was ((a probation, extended supervision, or parole agent) (a community supervision agent) (an aftercare agent) (a family member of (a probation, extended supervision, or parole agent) (a community supervision agent) (an aftercare agent))).

[This element may be satisfied by proving either that the defendant actually knew the victim's status, or that a reasonable person in the defendant's circumstances would have known the victim's status as (a probation, extended supervision, or parole agent) (a community supervision agent) (an aftercare agent) (a family member of (a probation, extended supervision, or parole agent) (a community supervision agent) (an aftercare agent))).]

3. The defendant threatened to cause bodily harm to (name of victim).

A threat requires a true threat. It may be communicated orally, in writing, or by conduct. "True threat" means that a reasonable person would interpret the threat as a serious expression that the speaker will inflict imminent or future bodily harm. It must convey a real possibility that bodily harm will follow.⁵ It is not necessary that the person making the threat have the ability to carry out the threat.

You must consider all the circumstances in determining whether a threat is a true

threat.⁶

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.⁷

4. The threat was in response to an action taken by the agent acting in an official capacity.

(Probation, extended supervision, or parole agents) (community supervision agents) (aftercare agents) act in an official capacity when they perform duties that they are employed⁸ to perform.⁹ [These duties include: _____.]¹⁰

5. The defendant consciously disregarded¹¹ a substantial risk that others would view the statement as a true threat to cause bodily harm.

[This means the defendant is aware that others could regard the statement(s) as threatening violence and delivers (it) (them) anyway.]¹²

6. The defendant threatened to cause bodily harm without the consent¹³ of (name of victim).

Deciding About Knowledge

You cannot look into a person’s mind to find knowledge. 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 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 1231A was approved by the Committee in June 2026. It was drafted as part of the recodification and reorganization of the battery statutes enacted by 2025 Wisconsin Act 24 (effective date: August 10, 2025), which created a separate statutory section for threatening to cause bodily harm to agents or their family members.

Before the enactment of 2025 Wisconsin Act 24, threats directed at a probation, extended supervision, or parole agent, as well as a community supervision agent, aftercare agent, or their family member, were addressed under Wis JI–Criminal 1231.

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]. § 940.20(2m)(b) was amended by 2021 Wisconsin Act 187 to provide that it is a Class H felony to commit, or threaten to commit, battery against an agent or the family member of an agent, and amended the definitions of “aftercare agent” and “community supervision agent” [Effective date: March 19, 2022]. 2025 Wisconsin Act 24 repealed § 940.20(2m)(b) and split its provisions: battery to agents or their family members is now codified at § 940.62(2)(b), and threatening to cause bodily harm to agents or their family members is now codified at § 947.016(2).

Battery causing bodily harm to these agents or their family members is addressed in § 940.62(2)(b). See Wis JI–Criminal 1231.

Note: § 947.016(2) does not use the word “intentionally” in connection with the threat. Prior to the enactment of 2025 Wisconsin Act 24 many Wisconsin threat statutes required that the defendant “intentionally threatened.” Under those statutes, the statutory mens rea (intentional purpose) exceeded the constitutional minimum (recklessness) established by Counterman v. Colorado, 600 U.S. 66. By contrast, because § 947.016(2) does not impose an intent requirement for the threat element, Element 5 of this instruction—the Counterman/Kindschy recklessness standard—functions both as the constitutional minimum and as the operative mens rea for true-threat prosecutions under the statute.

1. Section 940.51 (17) 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 or authorized by a federally recognized American Indian tribe or band to exercise

control over a probationer, parolee, or person on extended supervision or a comparable program that is authorized by the tribe or band.”

2. “Community supervision agent” is defined as follows in § 940.51 (4): “. . . any person authorized by the department of corrections to exercise control over a juvenile on community supervision or authorized by a federally recognized American Indian tribe or band to exercise control over a juvenile on community supervision or a comparable program that is authorized by the tribe or band.”

3. “Aftercare agent” is defined as follows in § 940.51(2): “. . . any person authorized by the department of corrections to exercise control over a juvenile on aftercare or authorized by a federally recognized American Indian tribe or band to exercise control over a juvenile on aftercare or a comparable program that is authorized by the tribe or band.”

4. Section 940.51 (10) provides:

“‘Family member’ means a spouse, child, stepchild, foster child, parent, legal guardian, sibling, grandparent, or grandchild.”

5. See Counterman v. Colorado, 600 U.S. 66, 74, 143 S. Ct. 2106 (2023). Justice Bradley’s concurrence in Kindschy v. Aish, 2024 WI 27, ¶44, 412 Wis. 2d 319, 8 N.W.3d 1, acknowledges Counterman’s recklessness standard. Element 5 reflects the Counterman standard as the constitutionally required minimum mens rea for true-threat prosecutions.

6. This definition was originally based on one of the descriptions of “true threat” in State v. Perkins, 2001 WI 46, ¶28, 243 Wis. 2d 141, 626 N.W.2d 762. Perkins held that a jury instruction for a threat to a judge in violation of § 940.203 was an incomplete statement of the law because it did not define “threat” as “true threat.” This created an unacceptable risk that “the jury may have used the common definition of ‘threat,’ thereby violating the defendant’s constitutional right to freedom of speech.” 2001 WI 46, ¶43. The court stated: “The common definition of threat is an expression of an intention to inflict injury on another. The definition of threat for the purposes of the statute criminalizing language is much narrower.” 2001 WI 46, ¶43.

In Counterman v. Colorado, 600 U.S. 66, ¶79, 143 S. Ct. 2106 (2023), the U.S. Supreme Court clarified that true threats must be evaluated based on their objective content—how a reasonable listener would perceive them—and that criminal liability requires a mens rea of at least recklessness, meaning the speaker must have “consciously disregarded a substantial risk that [the communications] would be viewed as threatening violence.” The Wisconsin Supreme Court adopted the Counterman recklessness standard in Kindschy v. Aish, supra, at ¶¶14–15, abrogating the purely speaker-focused objective test previously employed under Perkins. Accordingly, the Committee revised the former Perkins–based definition to reflect the Counterman/Kindschy approach.

When deciding whether a statement is a true threat, the jury should consider the totality of circumstances. Relevant factors may include whether the threat was conditional; whether it was made directly to a specific person; how the recipient and others reacted; and whether the defendant had made similar statements or had the means to carry out the threat. The jury may also consider all other facts and context to determine if a statement was a true threat. See Perkins, supra, at ¶ 31, citing United States v. Hart, 212 F.3d 1067, 1071 (8th Cir. 2000).

Perkins involved an orally communicated threat. The instruction is drafted more broadly to be applicable whether the threat is communicated orally, in writing, or by conduct.

In Elonis v. United States, 575 U.S. 723, 135 S. Ct. 2001 (2015), the United States Supreme Court interpreted a federal statute making it a crime to transmit in interstate commerce “any communication containing any threat ... to injure the person of another.” 18 U.S.C. § 875(c). Because the statute was not clear as to what mental state was required, there was a split in the federal circuits on that issue. Elonis was convicted under instructions that required the jury to find that he communicated what a reasonable person would regard as a threat. The Supreme Court concluded that this was not sufficient: “Federal criminal liability generally does not turn solely on the results of an act without considering the defendant’s mental state.” The decision did not specify what mental state is required. Although Elonis was decided as a matter of federal statutory interpretation, it underscores that criminal “threat” liability should not rest solely on an objective reasonable-person standard. This instruction’s definition of “true threat” includes both an objective reasonable-listener component and the mens rea floor required by the First Amendment under Counterman and Kindschy—that the defendant consciously disregarded a substantial risk that others would view the statement as threatening violence.

7. This is the definition of “bodily harm” provided in § 939.22(4).
8. “Employed” is used here in the general sense of being engaged in the performance of a duty.
9. The definition of “official capacity” is taken from Wis JI–Criminal 915. See the Comment to that instruction for further discussion.
10. 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 § 947.016(2) must be “authorized by the department to exercise control” over specific categories of persons who are being supervised. See the definitions quoted in footnotes 1, 2, and 3 above. Thus, it appears that all would be subject to the standards and grants of authority in DOC 328.

11. Recklessness requires a subjective mental state: the defendant must actually (in his or her own mind) be aware of the risk created by the conduct. The statutory definition of “recklessness” clarifies that subjective awareness of the risk is required. See Wis. Stat. § 939.24.

12. See Counterman v. Colorado, See 600 U.S. 66, *supra*, at 79.

13. If the 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 Wisconsin Court System, 7/2026

(Release No. 71)

“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.