

**1235 BATTERY TO A TECHNICAL COLLEGE DISTRICT OR SCHOOL  
DISTRICT OFFICER OR EMPLOYEE — § 940.20(5)**

**Statutory Definition of the Crime**

Section 940.20(5) of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to a school district officer or employee<sup>1</sup> where at the time of the act the defendant knows or has reason to know that the victim is a school district officer or employee acting in that 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.<sup>2</sup>

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.<sup>3</sup>

2. (Name of victim) was a school district (officer) (employee).<sup>4</sup>

3. (Name of victim) was acting in the capacity of a school district (officer) (employee).<sup>5</sup>

This means the (officer) (employee) was performing duties that (he) (she) was employed<sup>6</sup> to perform.<sup>7</sup>

4. The defendant knew, or had reason to know, that (name of victim) was a school district (officer) (employee) acting in the capacity of a school district (officer) (employee).<sup>8</sup>
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.<sup>9</sup>

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 conduct was practically certain to cause bodily harm to another.<sup>10</sup>

### **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 1235 was originally published in 1994 and revised in 2004. This revision was approved by the Committee in February 2008; it revised the definition of "capacity."

Section 940.20(5) was created by 1993 Wisconsin Act 54 (effective date: November 30, 1993).

1. The instruction is drafted for a case involving a "school district officer or employee." The statute also applies to offenses against "technical college district officers or employees." For that case, the instruction would have to be changed to refer to the appropriate type of victim.

2. 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.

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

4. Section 940.20(5)(a)1 provides that "school district" has the meaning given in § 115.01(3). That definition reads as follows:

(3) School Districts. The school district is the territorial unit for school administration. School districts are classified as common, union high, unified and 1st class city school districts. A joint school district is one the territory of which is not wholly in one municipality.

Section 940.20(5)(a)2. Provides that "'technical college district' means a district established under ch. 38."

5. The appropriate alternative should be selected. The Committee concluded that "officer" refers to an appointed or elected position, such as school board member, while "employee" refers to anyone who is paid by the district for performing functions on behalf of the district. See § 939.22(30) for similar distinctions between the terms "public officer" and "public employee."

6. "Employed" is used here in the general sense of being engaged or involved in performing a duty or service. The statute applies to both officer and employees, the former being elected or appointed. See note 5, supra. If the use of "employed" is thought to be confusing if used to refer to "officers," "elected" or "appointed" could be substituted.

7. Unlike statutes dealing with closely related offenses (see subsec. (2), (2m), and (4) of § 940.20), § 940.20(5) refers not to "in an official capacity" but to "acting in that capacity." In defining this element, the Committee concluded that it was appropriate to define the term as "official capacity" is defined for the closely related offenses. The definition is taken from Wis JI-Criminal 915. See the Comment to that instruction for further discussion.

8. The "knew or had reason to know" requirement is taken directly from § 940.20(5)(b). 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 school district officer or employee and to "acting in that capacity." The statute expressly applies "reason to know" only to status as an officer or employee. 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.