

**1240A BATTERY TO A JUDGE — § 940.203(2)****Statutory Definition of the Crime**

Section 940.203 of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to the (person) (family member) of any judge where at the time of the act the person knows<sup>1</sup> that the victim is a (judge) (family member of a judge), the act is in response to an action taken in the judge's official capacity,<sup>2</sup> and there is no consent by the person 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 bodily harm.<sup>3</sup>

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

2. (Name of victim) was a (judge) (family member of a judge).

[For the purpose of this offense, a (e.g., circuit court judge) is a judge.]<sup>5</sup>

[For the purpose of this offense, a (e.g., child) is a family member.]<sup>6</sup>

3. The defendant knew<sup>7</sup> that (name of victim) was a (judge) (family member of a judge).
4. The defendant caused bodily harm in response to an action taken in the judge's official capacity.

Judges act in an official capacity when they perform duties that they are employed<sup>8</sup> to perform.<sup>9</sup> [The duties of a judge include: \_\_\_\_\_].<sup>10</sup>

5. The defendant caused bodily harm to (name of victim) without the consent<sup>11</sup> 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).<sup>12</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 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 1240A was originally published in 1994. The 2002 revision divided the single instruction into two instructions, WI JI-Criminal 1240A and 1240B. Wis JI-Criminal 1240A was revised in 2008 to change the definition of “official capacity.” The 2016 revision updated the Comment to reflect changes made by the 2015 Wisconsin Act 78. The 2018 revision reflected changes made by 2017 Wisconsin Act 272 [effective date: April 13, 2018] and 2017 Wisconsin Act 352 [effective date: April 18, 2018]. This instruction was revised in 2019 to correct a typographical error in element one.

Section 940.203 was created by 1993 Wisconsin Act 50 [effective date: November 25, 1993] and originally applied only to the offenses against judges and their family members. It was amended by 2015 Wisconsin Act 78 [effective date: November 13, 2015] to add prosecutors and law enforcement officers. Section 940.203 was amended again by 2017 Wisconsin Act 272 to include officers of the court. This instruction is drafted for violations under § 940.203 involving battery to a judge; for violations based on threats to a judge, see Wis JI-Criminal 1240B. For battery and threats to prosecutors and law enforcement officers, see Wis JI-Criminal 1240C and 1240D. For battery and threats to a current or former guardian ad litem, corporation counsel, or attorney, see Wis JI-Criminal 1241A and 1241B.

1. Neither the summary of the offenses here nor the third element contain the alternative “or should have known” found as part of the offense definition in sec. 940.203(2)(a). The Committee believed the phrase would be inapplicable in virtually all cases because a connection is required between the act or threat and the prosecutor’s or law enforcement officer’s official capacity. That is, the act or threat must be committed in response to an action taken in the person’s official capacity. Therefore, it may be confusing to instruct the jury on the “should have known” alternative. Of course, if that alternative fits the facts of the case, it should be added to the instruction.

2. 2015 Wisconsin Act 109 amended § 940.203 to delete what was previously an alternative for this aspect of the offense definition: “... the judge is acting in an official capacity at the time of the act or threat...”

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 or more person’s might jointly produce it.

Also see Wis JI-Criminal 901, Cause.

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

5. Section 940.203(1)(b) provides a definition of “judge” for the purpose of this offense. As amended by 2017 Wisconsin Act 352 that definition provides: “‘Judge’ means a person who currently is or who formerly was a supreme court justice, court of appeals judge, circuit court judge, municipal judge, tribal judge, temporary or permanent reserve judge or circuit, supplemental, or municipal court commissioner.”

The applicable term should be inserted in the blank.

6. Section 940.203(1)(a) provides a definition of “family member” for the purpose of this offense: “‘Family member’ means a parent, spouse, sibling, child, stepchild, or foster child.”

The applicable term should be inserted in the blank.

7. See note 1, supra.

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 of judges may be set forth in the Wisconsin Statutes. 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.

11. 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 “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.

12. “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). This general rule appears to be countered by the drafting style of § 940.203 which divides the facts necessary to constitute the crime among several subsections of the statute. The Committee concluded that the knowledge requirement that usually accompanies the use of “intentionally” does not carry over to the three facts set forth in (2)(a), through (b) and (c). Sub. (2)(a) has its own mental state – “knows or should have known” and thereby breaks the connections between “intentionally” used in sub. (2) proper and the other facts that follow.