

**1240C BATTERY TO A PROSECUTOR OR LAW ENFORCEMENT OFFICER
— § 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 a (prosecutor) (law enforcement officer) where at the time of the act the person knows¹ that the victim is a [(prosecutor) (law enforcement officer)] [family member of a (prosecutor) (law enforcement officer)], the act is in response to an action taken in the (prosecutor's) (law enforcement officer's) official capacity 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.²

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.³

2. (Name of victim) was a [(prosecutor) (law enforcement officer)] [family member of a (prosecutor) (law enforcement officer)].

[A (e.g., district attorney) is a prosecutor.]⁴

[A (insert title, e.g., sheriff) is a law enforcement officer.]⁵

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

3. The defendant knew⁷ that (name of victim) was a [(prosecutor) (law enforcement officer)] [family member of a (prosecutor) (law enforcement officer)].
4. The defendant caused bodily harm in response to an action taken in the (prosecutor's) (law enforcement officer's) official capacity.

(Prosecutors) (law enforcement officers) act in an official capacity when they perform duties that they are employed⁸ to perform.⁹ [The duties of a (prosecutor) (law enforcement officer) include: _____].¹⁰

5. The defendant caused bodily harm to (name of victim) without the consent¹¹ 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).¹²

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 1240C was originally published in 2016 and revised in 2017, 2018, and 2019. 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]. The 2019 revision corrects a typographical error in element one.

Section 940.203 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 prosecutor or law enforcement officer; for violations based on threats to a prosecutor or law enforcement officer, see Wis-JI Criminal 1240D. For battery and threats to a judge, see Wis JI-Criminal 1240A and 1240B. 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. 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.

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

4. In the Committee’s judgement, the jury may be told, for example, that district attorney is a prosecutor. It is still for the jury to be satisfied that, in the example, the victim was a district attorney. Section 940.203(d) provides a definition of “prosecutor” for the purposes of this offense:

“Prosecutor” means a person who currently is or formerly was any of the following:

1. A district attorney, a deputy district attorney, an assistant district attorney, or a special prosecutor under s. 978.045 or 978.05(8)(b).
2. The attorney general, a deputy attorney general, or an assistant attorney general.
3. A tribal prosecutor.

The applicable term should be inserted in the blank.

5. In the Committees judgment, the jury may be told, for example, that a sheriff is a law enforcement officer. It is still for the jury to be satisfied that, in the example, the victim was sheriff.

Section 940.203(1)(c) as amended by 2017 Wisconsin Act 352 provides the following definition of “law enforcement officer”:

(c) “Law enforcement officer” means any person who currently is or was employed by the state, by any political subdivision, or as a tribal law enforcement officer for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce, whether that enforcement authority extends to all laws or ordinances or is limited to specific laws or ordinances.

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.

Referring to this offense as defined under § 940.20(2), 2005-2006 Wis. Stats., the Wisconsin Court of Appeals clarified that “acting with lawful authority” – an element of resisting or obstructing an officer under § 946.41 – is not an element of battery to a law enforcement officer: “...a law enforcement officer need not be acting ‘lawfully’ for what he or she does to be done in the officer’s ‘official capacity.’ Rather the officer need only be acting within his or her jurisdiction as an officer and not on some ‘personal frolic’ unrelated to the officer’s law-enforcement responsibilities.” State v. Haywood, 2009 WI App 178, 11, 322 Wis.2d 691, 777 N.W.2d 921.

In State v. Rowan, 2012 WI 60, 341 Wis.2d 281, 814 N.W.2d 854, the supreme court found the evidence sufficient to satisfy the “acting in an official capacity” requirement where a police officer was called to a hospital to assist in restraining a combative suspect who was under arrest.

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.

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.