

1241A BATTERY TO GUARDIAN AD LITEM, CORPORATION COUNSEL, TRIBAL COURT ADVOCATE, OR ATTORNEY — § 940.203(3)**Statutory Definition of the Crime**

Section 940.203(3) of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to the (person) (family member) of (a guardian ad litem) (a corporation counsel) (a tribal court advocate) (an attorney) where at the time of the act the person knows¹ that the victim is [(a guardian ad litem) (a corporation counsel) (a tribal court advocate) (an attorney)] [a family member of (a guardian ad litem) (a corporation counsel) (a tribal court advocate) (an attorney)], the act is in response to an action taken in the (guardian ad litem's) (corporation counsel's) (tribal court advocate's) (attorney'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 [current or former (guardian ad litem)⁴ (corporation counsel)⁵ (tribal court advocate)⁶ (attorney)⁷] [family member of a current or former (guardian ad litem) (corporation counsel) (tribal court advocate) (attorney)].

[For the purpose of this offense, a (e.g., child) is a family member.]⁸

3. The defendant knew⁹ that (name of victim) was [(a guardian ad litem) (a corporation counsel) (a tribal court advocate) (an attorney)] [a family member of (a guardian ad litem) (a corporation counsel) (a tribal court advocate) (an attorney)].
4. The defendant caused bodily harm in response to an action taken in the (guardian ad litem's) (corporation counsel's) (tribal court advocate's) (attorney's) official capacity in a [specify the proceeding under Wisconsin statutes chapter ____] [specify the proceeding in a tribal court similar to Wisconsin statutes chapter ____].¹⁰

(Guardians ad litem) (Corporation counsel) (Tribal court advocates) (Attorneys) act in an official capacity when they perform duties that they are employed¹¹ to perform.¹² [The duties of (a guardian ad litem) (a corporation counsel) (a tribal court advocate) (an attorney) include: ____].¹³

[A _____ is a proceeding under chapter (specify the Wisconsin

Statutes chapter).¹⁴

[A _____ is a proceeding in a tribal court.]¹⁵

5. The defendant caused bodily harm to (name of victim) without the consent¹⁶ 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).¹⁷

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 1241A was approved by the Committee in July 2018. This revision was approved by the Committee in June 2022; it amended the body of the instruction and the comment based on 2021 Wisconsin Act 191 [effective date: March 19, 2022].

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 [effective date: April 13, 2018]. The title of § 940.203 was amended to read as “Battery or threat to a judge, prosecutor, an officer of the court or law enforcement officer.” “Advocate” was added by 2021 Wisconsin Act 191 [effective date: March 19, 2022].

This instruction is drafted for violations under § 940.203(3) involving battery to a current or former guardian ad litem, corporation counsel, advocate, or attorney; for violations based on threats to a current or former guardian ad litem, corporation counsel, advocate, or attorney, see Wis JI-Criminal 1241B. For battery and threats to a judge, see Wis JI-Criminal 1240A and 1240B. For battery and threats to a prosecutor or law enforcement officer, see Wis JI-Criminal 1240C and 1240D.

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 guardian ad litem’s, corporation counsel’s, advocate’s, attorney’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 persons 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. Section 54.40(2) provides the duties of “guardian ad litem.”
5. Section 59.42 provides the duties of “corporation counsel.”
6. Section 940.203 (1)(ab) provides that “Advocate” means an individual who is representing the interests of a child, the tribe, or another party in a tribal court proceeding.
7. Section 940.203(1)(ac) provides that “attorney” means a legal professional practicing law as defined in SCR 23.01. The practice of law in Wisconsin is defined in SCR 23.01 as “[t]he application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s) where there is a client relationship of trust or reliance and which require the knowledge, judgment, and skill of a person trained as a lawyer. The practice of law includes but is not limited to:

1. Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
2. Selection, drafting, or completion for another entity or person of legal documents or agreements which affect the legal rights of the other entity or person(s).

3. Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
4. Negotiation of legal rights or responsibilities on behalf of another entity or person(s).
5. Any other activity determined to be the practice of law by the Wisconsin Supreme Court.

8. 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.

9. See note 1, supra.

10. Section 940.203(3)(b) specifies that the act be in response to “an action taken by the current or former guardian ad litem, corporation counsel, advocate, or attorney in his or her official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938 or in a similar proceeding in a tribal court.”

11. “Employed” is used here in the general sense of being engaged in the performance of a duty.

12. The definition of “official capacity” is taken from Wis JI-Criminal 915. See the Comment to that instruction for further discussion.

13. 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.

14. Wisconsin Statutes ch. 48, 51, 54, 55, 767, 813, or 938.

15. One of the alternatives in brackets should be selected.

16. 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.

17. “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.