

**1245 BATTERY TO A COUNTY, CITY, VILLAGE, OR TOWN EMPLOYEE —
§ 940.208**

Statutory Definition of the Crime

Section 940.208 of the Criminal Code of Wisconsin is violated by one who intentionally causes bodily harm to an employee of a city¹ where at the time of the act, the person knows² that the victim is a city employee, the employee is enforcing³ a city⁴ zoning ordinance, building code, or other construction law, rule, standard, or plan at the time of the act, the enforcement activity complies with any applicable law, ordinance, rule or notice requirement, 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 seven elements were present.

Elements of the Crime That the State Must Prove

1. The defendant caused bodily harm to (name of victim).

"Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.⁵

"Cause" means that the defendant's act was a substantial factor in producing the bodily harm.⁶

2. (Name of victim) was an employee of a city.

3. At the time of the act the defendant knew⁷ that (name of victim) was an employee of a city.
4. (Name of victim) was enforcing a city zoning ordinance, building code, or other construction law, rule, standard, or plan.
5. The enforcement complied with any applicable law, ordinance, rule or notice requirement.
6. The defendant caused bodily harm without the consent⁸ of (name of victim).
7. The defendant acted intentionally. This requires that the defendant acted with the mental purpose to cause bodily harm.⁹

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and 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 seven 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 1245 was approved by the Committee in July 2008.

Section 940.208 was created by 2007 Wisconsin Act 193 [effective date: April 11, 2008].

The statute applies to harm caused to an employee of a county, city, village, or town, but the instruction is drafted for offenses against city employees in an effort to make a very long statute more manageable. The statute also applies where the act is in response to activity undertaken to enforce, or to inspect for the purpose of enforcing, a state, county, city, village, or town zoning ordinance, building code, or other construction law, rule, standard, or plan. Again, the instruction is drafted for offenses related to enforcement activities. If any of the other options are involved, the standard instruction will need to be modified.

1. The instruction is drafted for offenses against city employees, but the statute also applies to harm caused to an employee of a county, village, or town. If any of the other options are involved, the standard instruction will need to be modified.

2. Neither the summary of the offense here nor the third element contain the alternative "or should have known" that is provided in the statute [see sec. 940.208(1)]. The Committee believed the phrase would be inapplicable in virtually all cases because a connection is required between the act and the employee being engaged in enforcement or inspection activity. That is, the act must be committed either when the employee is engaged in enforcement or inspection activity or in response to enforcement or inspection activity. In either situation, 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.

3. The instruction is drafted for cases involving bodily harm caused during enforcement activity, but the statute also applies where the harm is caused during an inspection for the purpose of enforcement or where harm is caused in response to activity undertaken to enforce. If any of the other options are involved, the standard instruction will need to be modified.

4. The instruction is drafted for enforcement of a city zoning ordinance, building code, etc., but the statute also applies to a state, county, village, or town zoning ordinance, building code, or other construction law, rule, standard, or plan. If any of the other options are involved, the standard instruction will need to be modified.

5. This is the definition provided in § 939.22(4).

6. 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 more persons might jointly produce it.

Also see Wis JI-Criminal 901, Cause.

7. See note 2, supra.

8. If 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.

9. "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 § 940.208 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 element set forth in (1). Sub. (1) has its own mental state – "knows or should know" – and thereby breaks the connection between "intentionally" used in the introductory sentence of the statute.