

1271 EXAMPLE ABUSE OF PATIENTS AND RESIDENTS: RECKLESS PHYSICAL ABUSE CAUSING GREAT BODILY HARM TO AN INDIVIDUAL AT RISK — § 940.295(3)(b)1m.

Statutory Definition of the Crime

Abuse of patients and residents, as defined in § 940.295 of the Criminal Code of Wisconsin, is committed by one employed in an adult care center who recklessly abuses a resident of that facility under circumstances that cause great bodily harm.

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 was employed in The Fairview Care Center.
2. (Name of victim) was a resident The Fairview Care Center.
3. The Fairview Care Center was an adult day care center.¹
4. The defendant subjected (name of victim) to physical abuse.

"Physical abuse" means the intentional or reckless infliction of bodily harm.

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

5. The defendant acted recklessly.

"Recklessly" means conduct that creates a situation of unreasonable risk of death or harm to and demonstrates a conscious disregard for the safety of the resident.

6. The defendant recklessly abused (name of victim) under circumstances that caused great bodily harm.

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

"Great bodily harm" means serious bodily injury.

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.

If you find the defendant guilty, you must answer the following question:

Was (name of victim) an individual at risk?

"Individual at risk" means an adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs and who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, self-neglect, or financial exploitation.

COMMENT

Wis JI-Criminal 1271 EXAMPLE was originally published in 1999 and revised in 2003. This revision was approved by the Committee in December 2006; it reflected changes made by 2005 Wisconsin Acts 264 and 388.

This instruction attempts to illustrate how the general model provided in Wis JI-Criminal 1271 would be applied to a violation of § 940.295 involving reckless abuse under circumstances causing great bodily harm to an individual at risk. This offense is a Class E felony – see § 940.295(3)(a)2. and (3)(b)1m. Reducing the general model to this example required electing the appropriate material from the many alternatives set forth in brackets and parentheses in the model instruction.

1. There is not a cross-reference in s. 940.295 to a definition of "adult day care center." However, a definition of that term is provided in s. 49.45(4).