

**1322A ENDANGERING SAFETY BY USE OF A DANGEROUS WEAPON:  
INTENTIONALLY POINTING A FIREARM AT A LAW  
ENFORCEMENT OFFICER, FIRE FIGHTER, ETC. — § 941.20(lm)**

THIS INSTRUCTION IS DRAFTED FOR A CASE WHERE THE ALLEGED VICTIM IS A LAW ENFORCEMENT OFFICER. THE STATUTE ALSO APPLIES TO OFFENSES AGAINST FIRE FIGHTERS, EMERGENCY MEDICAL SERVICES PRACTITIONERS,<sup>1</sup> EMERGENCY MEDICAL RESPONDERS,<sup>2</sup> AMBULANCE DRIVERS,<sup>3</sup> AND COMMISSION WARDENS.<sup>4</sup> SUBSTITUTE THE APPROPRIATE TERM AS REQUIRED.

**Statutory Definition of the Crime**

Endangering safety by use of a dangerous weapon, as defined in § 941.20(1m) of the Criminal Code of Wisconsin, is committed by one who intentionally points a firearm at or toward a law enforcement officer who is acting in an official capacity and who the person knows or has reason to know is a law enforcement officer.

**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 five elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant pointed a firearm at or toward (name of victim).

The term "firearm" means a weapon that acts by the force of gunpowder.<sup>5</sup> It is not necessary that the firearm was loaded or capable of being fired.<sup>6</sup>

2. The defendant pointed the firearm at or toward (name of victim) intentionally.

"Intentionally" means that the defendant was aware that (he) (she) was holding a firearm and was aware that (he) (she) was pointing it at or toward another person.<sup>7</sup>

3. (Name of victim) was a law enforcement officer.

[A (insert title, e.g., sheriff) is a law enforcement officer.]<sup>8</sup>

4. (Name of victim) was acting in an official capacity.

(Insert title, e.g., sheriffs) act in an official capacity if they perform duties that they are employed to perform. A (insert title, e.g., sheriff) who performs acts for personal reasons that are not within the responsibilities of a (insert title, e.g., sheriff) does not act in an official capacity.<sup>9</sup> (The responsibilities of a (insert title, e.g., sheriff) include: \_\_\_\_\_.)<sup>10</sup>

5. The defendant knew or had reason to know that (name of victim) was a law enforcement officer.<sup>11</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 or knowledge.

### **Jury's Decision**

If you are satisfied beyond a reasonable doubt that all five 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 1322A was originally published in 2005. This revision was approved by the Committee in December 2017; it reflects changes in terminology made by 2017 Wisconsin Act 12.

This instruction is for the felony offense defined by § 941.20(1m), which was created by 2003 Wisconsin Act 190. [Effective date: April 22, 2004.]

2017 Wisconsin Act 12 [effective date: June 23, 2017] changed the terminology used in the statute from "emergency medical technician" to "emergency medical services practitioner" and from "first responder" to "emergency medical responder."

The instruction is drafted for a case where a law enforcement officer is the alleged victim. The statute also applies to offenses against fire fighters, emergency medical services practitioners, emergency medical responders, ambulance drivers, and commission wardens. For cases involving alleged victims other than law enforcement officers, the appropriate term should be substituted throughout.

1. Section 941.20(1m)(a)2. provides: "'Emergency medical services practitioner' has the meaning given in s. 256.01(5)."

2. Section 941.20(1m)(a)1t. provides: "'Emergency medical responder' has the meaning given in s. 256.01(4p)."

3. Section 941.20(1m)(a)1. provides: "'Ambulance' has the meaning given in s. 256.01(1t)."

4. Section 939.22(5) provides: "'Commission warden' means a conservation warden employed by the Great Lakes Indian Fish and Wildlife Commission."

5. The term "firearm" is considered to mean a weapon that acts by the force of gunpowder. See, for example, Harris v. Cameron, 81 Wis. 239, 51 N.W. 437 (1892). This definition excludes air guns.

6. Volume V. 1953 Judiciary Committee Report on the Criminal Code, Wisconsin Legislative Council, page 83 (February 1953).

7. This is the explanation of the meaning of "intentionally" with regard to the offense defined in § 941.20(1)(c). See note 3, Wis JI-Criminal 1322.

8. The bracketed sentence is to be used only when a law enforcement officer is the alleged victim.

In the Committee's 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, for example, the victim was a sheriff.

"Law enforcement officer" is defined in § 102.475(8)(c):

(c) "Law enforcement officer" means any person employed by the state or any political subdivision 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.

See notes 1-3, supra, for references to statutory definitions for victims other than law enforcement officers.

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, 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. The mental element – "knows or has reason to know" – is set forth in the definition of the offense in § 941.20(1m)(b).