

1365 THROWING OR EXPELLING A BODILY SUBSTANCE AT A PUBLIC SAFETY WORKER OR PROSECUTOR — § 941.375**Statutory Definition of the Crime**

Section 941.375 of the Criminal Code of Wisconsin, is violated by one who throws or expels a bodily substance¹ at or toward a (public safety worker) (prosecutor) under the following circumstances:

- § the person intends that the bodily substance come into contact with the (public safety worker) (prosecutor); and,
- § the (public safety worker) (prosecutor) does not consent to the substance being thrown or expelled at or toward (him) (her).

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 three elements were present.

Elements of the Crime That the State Must Prove

1. (Name of victim) was a (public safety worker)² (prosecutor).³

["Public safety worker" means (an emergency medical services practitioner licensed under § 256.15) (an emergency medical responder certified under § 256.15(8)) (a peace officer) (a fire fighter) (a person operating or staffing an ambulance).⁴]

[A (e.g. district attorney) is a prosecutor.⁵]

2. The defendant threw or expelled a bodily substance at or toward (name of victim) with intent that the bodily substance come into contact with (name of victim).⁶
(Identify substance) is a bodily substance.⁷
3. (Name of victim) did not consent to the substance being thrown or expelled at or toward (him) (her).⁸

Deciding About Intent

You cannot look into a person's mind to find intent. Intent 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.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 1365 was originally published in 2007 and revised in 2012 and 2017. This revision was approved by the Committee in June 2018; it reflects changes made by 2015 Wisconsin Act 340 and 2017 Wisconsin Act 12.

Section 941.375 was created by 2003 Wisconsin Act 190 [effective date: April 22, 2004]. 2011 Wisconsin Act 72 [effective date: December 2, 2011] amended § 941.375 by repealing former subsection (2)(b). That subsection required that the defendant throw the substance with the intent to cause bodily harm to the public safety worker. The change is reflected in the instruction by striking what was the third element, reducing the number of elements from four to three.

2015 Wisconsin Act 340 amended § 941.375 to include "prosecutor." [Effective date: April 1, 2016.]

2017 Wisconsin Act 12 [effective date: June 23, 2017] changed the terminology used in § 941.375 from "emergency medical technician" to "emergency medical services practitioner" and from "first responder" to "emergency medical responder."

1. "Bodily substance" is used in place of the following phrase in the statute: ". . . blood, semen, vomit, saliva, urine, feces or other bodily substance . . ." The instruction recommends naming the substance in element 2. See footnote 7.

2. These elements do not require that the public safety worker was acting in an official capacity or that the defendant knew that the victim was a public safety worker. However reasonable these elements might seem, the statute does not specify them and the Committee considered that the legislature did specify these elements in § 941.20(1m)(b), which criminalizes pointing a firearm at a very similar group of public workers: "Whoever intentionally points a firearm at or towards a law enforcement officer. . ." The inference that the legislature did not intend to include these elements in § 941.375(2) is particularly strong because both of these crimes were enacted in 2003 Wisconsin Act 190. The Committee recognizes that under the recommended elements, the law could be applied to circumstances in which a covered safety worker was not on duty and in which the defendant had no reason to be aware of the employment status of the victim. This could include an "emergency medical technician" or a "first responder" who was licensed but not then employed in that capacity.

3. See note 2, *supra*. The Committee reached the same conclusions with regard to the victim's status as a prosecutor. Prosecutors were added to the statute by 2015 Wisconsin Act 340.

4. The alternatives in brackets are those provided in § 941.375(1)(b). Section 941.375(1)(a) provides: "'Ambulance' has the meaning specified in s. 256.01(1t)."

"Emergency medical services practitioner" is defined in § 256.01(5). "Emergency medical responder" is defined in § 256.01(4p). Section 939.22(22) provides a definition of "peace officer."

5. In the Committee's judgment, the jury may be told, for example, that a 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 941.375(1)(am) provides:

"Prosecutor" means any of the following:

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

The applicable term should be inserted in the blank.

6. Section 941.375(2)(a).

7. Section 941.375 applies to the following: "blood, semen, vomit, saliva, urine, feces or other bodily substance." Because the statute specifies certain substances as "bodily substances," the Committee concluded that the jury may be told, for example, that "blood is a bodily substance."

8. If a 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.