

1397 SEXUAL EXTORTION – § 942.095**Statutory Definition of the Crime**

Section 942.095 of the Criminal Code of Wisconsin is violated by a person who threatens to [(injure the property or reputation of another person) (commit violence against another person) with the intent to coerce that person to (engage in sexual conduct) (produce an intimate representation of that person).] [distribute an intimate representation of another person with the intent to coerce that person to (engage in sexual conduct) (produce another intimate representation of that person) (provide the payment of money, property, services, or any other thing of value to the actor) (to do or refrain from doing any act against that person's will).]

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. The defendant threatened (to injure the property or reputation of (name of victim)) (to commit violence against (name of victim)) (to distribute an intimate representation of (name of victim)).

A "threat" requires a true threat. It may be communicated orally, in writing, or by conduct. "True threat" means that a reasonable person would interpret the

threat as a serious expression that the speaker will imminently or in the future (insert the applicable threat alleged in Element 1). It must convey a real possibility that the threatened harm will follow.¹ It is not necessary that the person making the threat have the ability to carry out the threat. You must consider all the circumstances in determining whether a threat is a true threat.²

2. The defendant made the threat for the purpose of causing (name of victim) to believe the defendant intended to carry out the threatened harm.

“For the purpose of” means that the defendant’s conscious objective was to cause (name of victim) to understand the communication as a genuine expression of the defendant’s intent to (injure the property or reputation of (name of victim).) (commit violence against (name of victim).) (distribute an intimate representation of (name of victim).)³

3. The defendant acted with intent to coerce (name of victim) to (engage in sexual conduct) (produce an intimate representation of (name of victim)) (produce another intimate representation of (name of victim)) (provide the payment of money, property, services, or any other thing of value to the defendant) (do an act against (name of victim)’s will) (refrain from doing an act that (name of victim) would otherwise have done).

[“Sexual conduct” means the commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus, or a lewd exhibition of human genitals.⁴]

[“Intimate representation” means (a representation of a nude or partially nude person) (a representation of a clothed, covered, or partially clothed or covered genitalia or buttock that is not otherwise visible to the public) (a representation of a person urinating, defecating, or using a feminine hygiene product) (a representation of a person engaged in sexual intercourse or sexual contact)⁵.]⁶

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.

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS H FELONY AND THERE IS EVIDENCE THAT THE VICTIM ENGAGED IN SEXUAL CONDUCT AS A RESULT OF THE VIOLATION.⁷

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

Did (name of victim) engage in sexual conduct⁸ as a result of the defendant’s threat?

Before you may answer the question “yes,” you must be satisfied beyond a reasonable doubt that the answer is “yes.”

If you are not so satisfied, you must answer “no.”]

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS H FELONY AND THERE IS EVIDENCE THAT THE VICTIM PRODUCED AN INTIMATE REPRESENTATION AS A RESULT OF THE VIOLATION.⁹

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

Did (name of victim) produce an intimate representation¹⁰ as a result of the defendant's threat?

Before you may answer the question "yes," you must be satisfied beyond a reasonable doubt that the answer is "yes."

If you are not so satisfied, you must answer "no."]

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS H FELONY AND THERE IS EVIDENCE THAT THE VICTIM PROVIDED PAYMENT OF MONEY, PROPERTY, SERVICES, OR ANYTHING OF VALUE TO THE DEFENDANT AS A RESULT OF THE VIOLATION.¹¹

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

Did (name of victim) provide the payment of money, property, services, or any other thing of value to the defendant as a result of the defendant's threat?

Before you may answer the question "yes," you must be satisfied beyond a reasonable doubt that the answer is "yes."

If you are not so satisfied, you must answer "no."]

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS H FELONY AND THERE IS EVIDENCE THAT THE VICTIM SUFFERED GREAT BODILY HARM AS A RESULT OF THE VIOLATION.¹²

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

Did (name of victim) suffer great bodily harm as a result of the defendant's threat?

Great bodily harm means injury which creates a substantial risk of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.¹³

Before you may answer the question "yes," you must be satisfied beyond a reasonable doubt that the answer is "yes."

If you are not so satisfied, you must answer "no."]

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS H FELONY AND THERE IS EVIDENCE THAT THE VICTIM HAD NOT ATTAINED THE AGE OF 18 YEARS AT THE TIME OF THE OFFENSE, AND THE DEFENDANT IS NOT MORE THAN 48 MONTHS OLDER THAN THE VICTIM.¹⁴

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

Question 1: Was (name of victim) under the age of 18 years at the time of the offense?

Knowledge of (name of victim)'s age is not required¹⁵ and mistake regarding (name of victim)'s age is not a defense.¹⁶

Before you may answer the question "yes," you must be satisfied beyond a reasonable doubt that the answer is "yes."

If you are not so satisfied, you must answer "no."

If you answered “yes” to Question 1, answer Question 2. If you answered “no,” do not answer Question 2.

Question 2: Was the defendant not more than 48 months older than (name of victim) at the time of the offense?

Before you may answer the question “yes,” you must be satisfied beyond a reasonable doubt that the answer is “yes.”

If you are not so satisfied, you must answer “no.”]

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS G FELONY AND THERE IS EVIDENCE THAT THE VICTIM HAD NOT ATTAINED THE AGE OF 18 YEARS AT THE TIME OF THE OFFENSE, AND THE DEFENDANT IS MORE THAN 48 MONTHS OLDER THAN THE VICTIM.¹⁷

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

Question 1: Was (name of victim) under the age of 18 years at the time of the offense?

Knowledge of (name of victim)’s age is not required¹⁸ and mistake regarding (name of victim)’s age is not a defense.¹⁹

Before you may answer the question “yes,” you must be satisfied beyond a reasonable doubt that the answer is “yes.”

If you are not so satisfied, you must answer “no.”

If you answered “yes” to Question 1, answer Question 2. If you answered “no,” do not answer Question 2.

Question 2: Was the defendant more than 48 months older than (name of victim) at the time of the offense?

Before you may answer the question “yes,” you must be satisfied beyond a reasonable doubt that the answer is “yes.”

If you are not so satisfied, you must answer “no.”]

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS G FELONY AND THERE IS EVIDENCE THAT THE VIOLATION WAS COMMITTED DURING THE COURSE OF A CHILD ABDUCTION IN VIOLATION OF § 948.30.²⁰

IF THE CHILD ABDUCTION OFFENSE IS NOT CHARGED IN CONJUNCTION WITH THE SEXUAL EXTORTION OFFENSE, INCLUDE THE ELEMENTS OF THAT OFFENSE BEFORE ASKING THE FOLLOWING QUESTION.²¹

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

Was the violation committed during the course of a child abduction in violation of § 948.30?

Before you may answer the question “yes,” you must be satisfied beyond a reasonable doubt that the answer is “yes.”

If you are not so satisfied, you must answer “no.”]

[ADD THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS B FELONY AND THERE IS EVIDENCE THAT THE VICTIM DIED AS A DIRECT RESULT²² OF THE VIOLATION.²³

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

Did (name of victim) die as a direct result of the defendant’s commission of this offense?

Before you may answer the question “yes,” you must be satisfied beyond a reasonable doubt that the answer is “yes.”

If you are not so satisfied, you must answer “no.”]

COMMENT

Wis JI–Criminal 1397 was approved by the Committee in June 2026.

This instruction is drafted for violations of Wis. Stat. § 942.095 (Sexual Extortion), created by 2025 Wisconsin Act 48 (effective date: Dec. 10, 2025). Section 942.095 is a specialized extortion provision focusing on coercion of sexual acts, intimate representations, or other concessions through threats. It supplements the general extortion statute (Wis. Stat. § 943.30) by addressing threats of a sexual or reputational nature.

The offense in general is punishable as a Class I felony.

Intent Standard: Element 2 requires that the defendant acted “for the purpose of” causing the victim to perceive the communication as a serious expression of intent to carry out the threatened harm. This purposeful/intentional standard derives from and tracks the statute’s own mens rea requirement: § 942.095(2) requires that each threat be made “with intent to coerce.” Under Wis. Stat. § 939.23, “with intent to” means that the defendant had a conscious purpose to bring about that result. A defendant who purposefully employs a threat as an instrument of coercion necessarily understands that the communication will be received as threatening; the statutory intent-to-coerce requirement thus functionally subsumes and surpasses the constitutional recklessness floor established by Counterman v. Colorado, 600 U.S. 66, 143 S. Ct. 2106 (2023), and adopted by the Wisconsin Supreme Court in Kindschy v. Aish, 2024 WI 27, 412 Wis. 2d 319, 8 N.W.3d 1.

The Committee notes that the intent standard in Element 2 exceeds the constitutional minimum and is not subject to First Amendment challenge under Counterman or Kindschy. If a future court concludes that the constitutional floor requires no more than recklessness, the intentional standard in Element 2 remains valid as a matter of state statutory construction, since § 942.095(2)’s “with intent to coerce” language independently compels it.

Class H Felony (Sub. (3)): If the State proves that, as a result of the defendant’s violation, the victim (a) engaged in sexual conduct, (b) produced an intimate representation, (c) provided money/property/services/anything of value to the actor, (d) suffered great bodily harm, or (e) (if the victim was under 18) the actor was not more than 48 months older than the victim, then the offense is punishable as a Class H felony.

Class G Felony (Sub. (4)) Age: If the victim is under 18 and the defendant is more than 4 years older, the offense escalates to Class G. The instruction provides two special verdict questions to address this: one to establish the victim’s age (under 18) and, if so, a second to establish the age differential beyond 48 months. Absent a stipulation, these questions must be answered by the jury.

Class G Felony (Sub. (4)) Child Abduction: If the sexual extortion was committed in the course of a child abduction in violation of § 948.30, the offense is elevated to a Class G felony. The instruction includes a special verdict question to address these aggravating circumstances.

Class G Felony (Sub. (4)) Prior Conviction: If the defendant has a prior conviction for a “sexually violent offense,” as defined in Wis. Stat. § 980.01(6), the offense is elevated to a Class G felony. Because that determination is a factual question for the trial court, it operates as a penalty enhancer rather than an element of the offense. Accordingly, this portion of sub. (4) is omitted from the instruction.

Class B Felony (Sub. (5)): If “the victim, as a direct result of the violation, dies”, the offense is a Class B felony. The instruction provides a special verdict question to address this.

Alternative Modes of Commission (Sub. (2)(a)–(c)): Section 942.095(2) provides three alternative ways of committing sexual extortion: (a) threatening to injure someone’s property or reputation, (b) threatening to commit violence against someone, or (c) threatening to distribute an intimate representation of someone. These alternatives are presented in the instruction as bracketed options for the first element. Only one mode should be selected for a given verdict question unless the evidence and charging document clearly indicate that multiple types of threat were used as part of a single cohesive extortion scheme. If more than one threat-type alternative is submitted to the jury in a single count, the jury should be instructed that it must unanimously agree on at least one particular threat (to avoid a non-unanimous verdict where some jurors base guilt on a different threat than others).

The Committee generally recommends selecting the single alternative that reflects the theory of the case or using separate counts for distinct threats, rather than a disjunctive submission. In this instruction, “threatens to injure the property or reputation of another person” is treated as one alternative (tracking the statutory language of sub. (2)(a)). If the case involves only injury to reputation (and not property) or vice versa, the instruction may be modified to specify the particular type of threat proven – though the statute does not require distinguishing between property and reputation as separate elements. The same principle applies to threats involving intimate representations: the statute speaks generally of “threatens to distribute an intimate representation of another person” (sub. (2)(c)), so the instruction uses that phrasing.

1. See Counterman v. Colorado, 600 U.S. at 79, 143 S. Ct. 2106 (2023). Justice Bradley’s concurrence in Kindschy v. Aish, 2024 WI 27, ¶44, 412 Wis. 2d 319, 8 N.W.3d 1, acknowledges Counterman’s recklessness standard. Element 2 reflects the Counterman standard as the constitutionally required minimum mens rea for true-threat prosecutions.

2. This definition was originally based on one of the descriptions of “true threat” in State v. Perkins, 2001 WI 46, ¶28, 243 Wis. 2d 141, 626 N.W.2d 762. Perkins held that a jury instruction for a threat to a judge in violation of § 940.203 was an incomplete statement of the law because it did not define “threat” as “true threat.” This created an unacceptable risk that “the jury may have used the common definition of

‘threat,’ thereby violating the defendant’s constitutional right to freedom of speech.” 2001 WI 46, ¶43. The court stated: “The common definition of threat is an expression of an intention to inflict injury on another. The definition of threat for the purposes of the statute criminalizing language is much narrower.” 2001 WI 46, ¶43.

In Counterman v. Colorado, 600 U.S. 66, ¶79, 143 S. Ct. 2106 (2023), the U.S. Supreme Court clarified that true threats must be evaluated based on their objective content—how a reasonable listener would perceive them—and that criminal liability requires a mens rea of at least recklessness, meaning the speaker must have “consciously disregarded a substantial risk that [the communications] would be viewed as threatening violence.” The Wisconsin Supreme Court adopted the Counterman recklessness standard in Kindschy v. Aish, *supra*, at ¶¶14–15, abrogating the purely speaker-focused objective test previously employed under Perkins. Accordingly, the Committee revised the former Perkins–based definition to reflect the Counterman/Kindschy approach.

When deciding whether a statement is a true threat, the jury should consider the totality of circumstances. Relevant factors may include whether the threat was conditional; whether it was made directly to a specific person; how the recipient and others reacted; and whether the defendant had made similar statements or had the means to carry out the threat. The jury may also consider all other facts and context to determine if a statement was a true threat. See Perkins, *supra*, at ¶31, citing United States v. Hart, 212 F.3d 1067, 1071 (8th Cir. 2000).

Perkins involved an orally communicated threat. The instruction is drafted more broadly to be applicable whether the threat is communicated orally, in writing, or by conduct.

In Elonis v. United States, 575 U.S. 723, 135 S. Ct. 2001 (2015), the United States Supreme Court interpreted a federal statute making it a crime to transmit in interstate commerce “any communication containing any threat ... to injure the person of another.” 18 U.S.C. § 875(c). Because the statute was not clear as to what mental state was required, there was a split in the federal circuits on that issue. Elonis was convicted under instructions that required the jury to find that he communicated what a reasonable person would regard as a threat. The Supreme Court concluded that this was not sufficient: “Federal criminal liability generally does not turn solely on the results of an act without considering the defendant’s mental state.” The decision did not specify what mental state is required. Although Elonis was decided as a matter of federal statutory interpretation, it underscores that criminal “threat” liability should not rest solely on an objective reasonable-person standard. This instruction’s definition of “true threat” includes both an objective reasonable-listener component and the mens rea floor required by the First Amendment under Counterman and Kindschy—that the defendant consciously disregarded a substantial risk that others would view the statement as threatening violence.

3. Element 2 requires proof that the defendant acted “for the purpose of” causing the victim to believe the defendant intended to carry out the threatened harm. This intentional standard derives from the statute’s “with intent to coerce” language (§ 942.095(2)) and exceeds the constitutional recklessness floor established by Counterman v. Colorado, 600 U.S. 66, 143 S. Ct. 2106 (2023), and Kindschy v. Aish, 2024 WI 27, 412 Wis. 2d 319, 8 N.W.3d 1. Because intentional conduct necessarily encompasses recklessness, this instruction satisfies the First Amendment minimum while accurately reflecting the statute’s heightened mens rea demand. A defendant cannot harbor the conscious purpose of coercing another person through a threat while simultaneously being unaware that the communication will be perceived as threatening. Accordingly, proof of Element 2 (purpose) will in every case satisfy the Counterman floor, and no separate recklessness finding is required. See Comment, “Intent Standard,” *supra*.

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4. This is the definition of “sexual conduct” provided in § 944.21(2)(e).
 5. For the purposes of this option, sexual contact is defined in § 940.225 (5) (b) or (c).
 6. This is the definition of “intimate representation” provided in §942.09(1)(ag).
 7. This special question should be used where the Class H felony is charged. If the Class H felony is not charged, the instruction should be used without the special question.
 8. See Note 4, supra.
 9. This special question should be used when the Class H felony under § 942.095(3)(b) is charged. If the Class H felony is not charged, the instruction should be used without the special question. See Note 10, *infra*, regarding the definition of “intimate representation.”
 10. See Note 6, supra.
 11. This special question should be used when the Class H felony under § 942.095(3)(c) is charged. If the Class H felony is not charged, the instruction should be used without the special question.
 12. This special question should be used when the Class H felony under § 942.095(3)(d) is charged. If the Class H felony is not charged, the instruction should be used without the special question. See Note 13, *infra*, regarding the definition of “great bodily harm.”
 13. This is the definition of “great bodily harm” taken from Wis JI–Criminal 914. For additional guidance on the term, see that instruction.
 14. This special question should be used when the Class H felony under § 942.095(3)(e) is charged. If the Class H felony is not charged, the instruction should be used without the special questions. See Notes 15 and 16, *infra*, regarding knowledge of and mistake as to the victim’s age.
 15. See § 939.23(6). “Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.”
 16. See § 939.43(2). “A mistake as to the age of a minor or as to the existence or constitutionality of the section under which the actor is prosecuted or the scope or meaning of the terms used in that section is not a defense.”
 17. This special question should be used where the Class G felony is charged. If the Class G felony is not charged, the instruction should be used without the special question.
 18. See note 15, supra.
 19. See note 16, supra.
 20. See Note 9, supra.

21. See Wis JI–Criminal 2160 through 2163 for model instructions concerning the offense of “Abduction of Another’s Child.”

22. In State v. Kizer, 2022 WI 58, ¶¶15, 20, 403 Wis. 2d 142, 976 N.W.2d 356, the Wisconsin Supreme Court interpreted the phrase “direct result” in the human-trafficking affirmative defense, Wis. Stat. § 939.46(1m), and explained how that phrase should be understood when it appears in a statute. Because “direct result” is not defined in § 939.46(1m), the Court applied its common and ordinary meaning. It construed “result” to mean a consequence or effect, and explained that the legislature narrowed that concept by adding “direct,” meaning without interruption, diversion, or an intervening agency or influence. Id. at ¶13.

Using that ordinary-meaning framework, the Court concluded that an offense is committed “as a direct result” of trafficking when there is a logical, causal connection between the offense and the trafficking such that the offense is not, in significant part, the product of other events, circumstances, or considerations apart from the trafficking violation. Id. at ¶15. The Court also noted that a consequence may be the direct result of more than one prior act, but emphasized that “direct result” requires a tighter causal relationship than mere “but for” causation. Id. at ¶14. Finally, the Court clarified that “direct result” does not require foreseeability or temporal immediacy. Id. at ¶15.

The Committee believes Kizer’s statutory-construction analysis may provide useful guidance if a question arises about the meaning of “direct result” in applying this instruction.

23. This special question should be used where the Class B felony is charged. If the Class B felony is not charged, the instruction should be used without the special question.