

**1402A CRIMINAL DAMAGE OR THREAT TO PROPERTY OF A JUDGE —  
§ 943.013****Statutory Definition of the Crime**

Section 943.013 of the Criminal Code of Wisconsin is violated by one who intentionally (causes) (threatens to cause) damage to any physical property that belongs to a (judge) (family member of a judge) where at the time of the (act) (threat), the person knows<sup>1</sup> that the person whose property is (damaged) (threatened) is a (judge) (family member of a judge), [the judge is acting in an official capacity] [the (act) (threat) is in response to an action taken in the judge's official capacity],<sup>2</sup> and there is no consent by the person whose property is (damaged) (threatened).

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence that 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 (caused) (threatened to cause) damage to physical property that belonged to (name of victim).

The word "damage" includes anything from mere defacement to total destruction.<sup>3</sup>

IF THE CASE INVOLVES A THREAT, ADD THE FOLLOWING:

[A "threat" is an expression of intention to do harm and may be communicated

orally, in writing, or by conduct. This element requires a true threat. “True threat” means that a reasonable person would interpret the threat as a serious expression of intent to do harm, and the person making the statement is aware that others could regard the statement as a threat and delivers it anyway. 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.]<sup>4</sup>

2. (Name of victim) was a (judge) (family member of a judge).

[For the purpose of this offense, a (e.g., circuit court judge) is a judge.]<sup>5</sup>

[For the purpose of this offense, a (e.g., child) is a family member.]<sup>6</sup>

3. At the time of the (act) (threat), the defendant knew<sup>7</sup> that (name of victim) was a (judge) (family member of a judge).

4. [The judge was acting in an official capacity at the time of the (act) (threat).] [The (act) (threat) was in response to an action taken in the judge’s official capacity.]<sup>8</sup>

Judges act in an official capacity if they perform duties that they are employed<sup>9</sup> to perform. A judge who performs acts that are not within the responsibilities of a judge does not act in an official capacity.<sup>10</sup> (The duties of a judge include:

\_\_\_\_\_.)<sup>11</sup>

5. The defendant (caused) (threatened to cause) damage to the property without the consent<sup>12</sup> of (name of victim).
6. The defendant acted intentionally.<sup>13</sup> This requires that the defendant acted with the mental purpose to (cause) (threaten to cause) damage to property owned by

(name of victim), or was aware that his or her conduct was practically certain to cause that result and knew that (name of victim) did not consent.<sup>14</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 and knowledge.

### **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.

### **COMMENT**

This instruction was originally published as Wis JI-Criminal 1403.1 in 1994. It was renumbered Wis JI-Criminal 1402A and revised in 1995, 2003, and 2004. The 2004 revision amended the definition of "true threat." This revision was approved by the Committee in October 2023. It amended the definition of a "true threat" according to Counterman v. Colorado, 600 US --- (2023), to clarify that the assessment of the threat requires consideration of both the speaker's perspective (recklessness standard) and the victim's perspective (reasonable person standard).

Section 943.013 was created by 1993 Wisconsin Act 50 (effective date: November 25, 1993).

1. Neither the summary of the offense here nor the third element contains the alternative "or should have known" that is provided in the statute [see subsec. (2)(a)]. The Committee believed the phrase would be inapplicable in virtually all cases because a connection is required between the act or threat and the judge's official capacity. That is, the threat or act must be committed either when the judge is acting in an official capacity or in response to an action taken in the judge's official capacity. 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.

2. One of the alternatives in brackets should be selected.
3. See Vol. V 1953 Judiciary Report on the Criminal Code, Wisconsin Legislative Council, page 97 (February 1953).
4. This definition is 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 a statute criminalizing threatening language is much narrower.” 2001 WI 46, ¶43.

The following is the most complete definition of “true threat” offered by the court in Perkins:

A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. In determining whether a statement is a true threat, the totality of the circumstances must be considered. 2001 WI 46, ¶29.

The Committee concluded that the definition in the instruction is equivalent in content and will be more understandable to the jury. In a case decided at the same time as Perkins, the court used a definition much like the one used in the instruction. See State v. A.S., 2001 WI 48, ¶23, 243 Wis.2d 173, 626 N.W.2d 712.

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.

5. Section 943.013(1)(b), as amended by 2001 Wisconsin Act 61, provides:

“Judge” means a supreme court justice, court of appeals judge, circuit court judge, municipal judge, temporary or permanent reserve judge or circuit, supplemental, or municipal court commissioner.

The applicable term should be inserted in the blank.

6. Section 943.013(1)(a) provides:

“Family member” means a parent, spouse, sibling, child, stepchild, foster child or treatment foster child.

The applicable term should be inserted in the blank.

7. See note 1, supra.
8. One of the alternatives in brackets should be selected.
9. “Employed” is used here in the general sense of being engaged in the performance of a duty.
10. The definition of “official capacity” is taken from Wis JI-Criminal 915. See the Comment to that instruction for further discussion.
11. It may be helpful to set forth the applicable duty or responsibility here, which may be specifically set forth in statutes or case law.
12. 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.
13. “Intentionally” requires either a 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 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 § 943.013, 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 three facts set forth in (2)(a), through (b) and (c). Sub. (2)(a) has its own mental state – “knows or should know” – and thereby breaks the connection between “intentionally” used in sub. (2) proper and the other facts that follow.
14. The requirement that the defendant know there is no consent is based on the definition of “intentionally” in § 939.23(3): “. . . the actor must have knowledge of those facts which are necessary to make his conduct criminal and which are set forth after the word intentionally.