

1473A EXTORTION: ACCUSE OR THREATEN TO ACCUSE — § 943.30(1)**Statutory Definition of the Crime**

Section 943.30(1) of the Criminal Code of Wisconsin is violated by one who (verbally) (by written communication) (by printed communication) maliciously (accuses) (threatens to accuse) (accuses) another of any crime or offense with intent thereby [to extort money] [to compel the person to (do any act against the person's will) (omit to do any lawful act)].¹

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 (verbally) (by written communication) (by printed communication) (accused) (threatened to accuse) another of a crime or offense.²

[The person threatened need not be the one from whom (money) (the doing of an act) (the failure to do a lawful act) is being sought.]³

2. The defendant made the (accusation) (threat) maliciously.

This does not mean that the person (accusing) (threatening) must have a feeling of ill will towards the person (accused) (threatened). (An accusation) (A threat) is made "maliciously" if it is made willfully and with an illegal intent.⁴

3. The defendant acted with intent [to extort money] [to compel (name of person) to do any act against the person's will] [to compel (name of person) to omit to do any lawful act].

["To extort" means to obtain from another by coercion or intimidation.]⁵

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 1473A was originally published in 1974 and revised in 1977 and 1994. This revision was approved by the Committee in April 2004 and involved adoption of a new format.

This instruction is drafted for violations of § 943.30(1) involving threats or accusations that another committed a crime. For violations involving injury or threats to injure the person, property, or business of another, see Wis JI-Criminal 1473B.

In State v. Dauer, 174 Wis.2d 418, 497 N.W.2d 766 (Ct. App. 1993), the court of appeals held that extortion is not a lesser included offense robbery because it requires proof of facts in addition to those required for robbery: proof of a threat made by verbal, printed, or written communication.

1. This summary of the offense is a substantial shortening of the full statutory definition. The instruction refers to "intent to extort money," deleting the statute's "or any pecuniary advantage whatever," and would need to be modified if money was not involved.

2. The terms "crime" and "offense" are synonymous. State v. Slowe, 230 Wis. 406, 410, 284 N.W. 4 (1939). If the definition of crime is at issue, § 939.12 should be consulted. It provides:

A crime is conduct which is prohibited by state law and punishable by fine or imprisonment or both. Conduct punishable only by forfeiture is not a crime.

3. The Committee concluded that threats to do harm to a third person are covered by the statute. Thus, for example, if the defendant has threatened injury to John Smith's son if John Smith does not perform a certain act, the defendant's conduct falls within the statute.

This result is consistent with the conclusion reached in the previously published versions of this instruction, which cited the following as authority: Baldwin, "Criminal Misappropriations in Wisconsin – Part II," 44 Marq. L. Rev. 430, 443 (1961). This article referred to the version of the extortion statute in effect in 1961, describing it as a codification of the common law version of the crime, in roughly the same terms used in Wisconsin dating back to 1849. The article concluded, without citation to other authority, that "it is not required that the threat be to injure the person from whom the property, advantage or other action is demanded."

The statute was revised in 1969, 1977, 1979, and 1981. The 1977 changes came as part of the legislation which created the criminal penalty classification system and amended the statute to read essentially as it does today. The revisions at one time clarified the threat to harm others issue by treating it in a separate subsection. See § 943.30(2), 1969 Wis. Stats. But that section was merged with present sub. (1) by Chapter 173, Laws of 1977, leaving the matter unclear.

The Committee concluded that the present statute is very much like the 1961 version, which had been interpreted to cover threats to harm third persons. In the absence of any indication of legislative intent to change that interpretation, the present version of the instruction preserves the statement that the person threatened with harm need not be the person from whom the doing of an act or the payment of money is being sought.

4. State v. Compton, 77 Wis. 460, 466, 46 N.W. 535 (1890).

Historically, the meaning of the word "maliciously" was unclear: "Maliciously" . . . hardly ever means what it seems to say, i.e., spite or ill-will, yet it continues to clutter up many penal statutes. . . ." Remington and Helstad, "The Mental Element in Crime – A Legislative Problem," 1952 Wis Law Review 644, 667. Use of the term was generally avoided in the 1956 Criminal Code Revision, but the extortion statute was recodified using its common law terminology. The Committee believes that the essence of the offense is making a threat to get something to which the person is not lawfully entitled. This point is clarified in the definitions of some other offenses. See, for example, § 946.67, Compounding Crime, where subsec. (2) provides that the criminal prohibition does not apply of the person "reasonably believes that he is legally entitled to the property received."

5. This is the definition provided in the American Heritage Dictionary of the English Language (3rd Edition 1992).