

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

Section 943.30(1) of the Criminal Code of Wisconsin is violated by one who [injures] [(verbally) (by written communication) (by printed communication) threatens to injure] the person, property, or business of another, 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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant (injured) (threatened to injure) the person, property,² or business of another person.

["Threaten" means³ to express (verbally) (by written communication) (by printed communication) an intention to inflict pain, injury, or other harm.]

[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.]⁴

2. 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 both 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 1473B was originally published in 1974 and revised in 1977, 1994, and 2004. This revision involved a minor editorial correction.

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

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 a threat or injury to the "person, property, or business," omitting the following that is included in the statute: ". . . calling or trade, or the profits and income of any business, profession, calling or trade . . ." It also refers to "intent to extort money," deleting the statute's "or any pecuniary advantage whatever." The instruction must be modified if the omitted alternatives are involved.

Finally, the word "maliciously" is not used in this instruction. The Committee reads the statute as connecting "maliciously" only with the "threatens to accuse or accuses another of any crime or offense" alternative. The Committee concluded that two alternatives are possible under the statute: "maliciously threatening to accuse or accusing of crime" and "threatening or committing any injury. . . ." The blameworthiness of the conduct covered by this instruction is provided by the requirement that the threat

or injury to be done with the intent to extort money or to make the person do an act against the person's will.

2. In State v. Manthey, 169 Wis.2d 673, 689, 487 N.W.2d 44 (Ct. App. 1992), the court held that "property" under § 943.30(1) is "broad enough to encompass an interest in a lawsuit." Thus, a complaint charging extortion was sufficient where it alleged that the defendant threatened to testify falsely unless paid.

Threats "to do everything he could to ensure that the student would have to end his studies in the United States and return to Panama" could constitute threats to the student's profession or to the student's "calling." State v. Kittilstad, 231 Wis.2d 245, ¶ 49-51, 603 N.W.2d 732 (1999).

3. This definition of "threat" is based on the following: "An expression of an intention to inflict pain, injury, evil, or punishment." The American Heritage Dictionary of the English Language (3rd Edition (1992)).

4. 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.

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