1827 POSTING OR DISPLAYING THE PERSONAL INFORMATION OF A JUDICIAL OFFICER TO CREATE OR INCREASE A THREAT TO THE HEALTH AND SAFETY OF THE JUDICIAL OFFICER – § 757.07(5)(C)

Statutory Definition of the Crime

Section 757.07(5)(c) of the Criminal Code of Wisconsin, is violated by one who knowingly publicly posts or displays on the internet the personal information of a (judicial officer) (judicial officer's immediate family) with the intent to create or increase a threat to the health and safety of the (judicial officer) (judicial officer's immediate family) and, under the circumstances, bodily injury or death of the (judicial officer) (member of the judicial officer's immediate family) is a natural and probable consequence of the posting or display.

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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant knowingly publicly posted or displayed on the internet the personal information of (name of victim).

   "Personal information" means (insert the applicable information)[1].

2. (Name of victim) was a (judicial officer) (a judicial officer's immediate family member).

   [For the purpose of this offense, a (e.g., circuit court judge) is a judicial

officer.[2]]

[For the purpose of this offense, a (e.g., judicial officer's spouse) is a judicial officer's immediate family member.[3]]

3. The defendant intended that the public posting or displaying of (name of victim)'s personal information (create) (increase) a threat to the health and safety of (name of victim).[4]

"Intended" means that the defendant acted with the purpose to (create) (increase) a threat to the health and safety of (name of victim) or was aware that (his) (her) conduct was practically certain to cause that result.[5]

4. Under the circumstances, bodily injury or death of (name of victim) was a natural and probable consequence[6] of the posting or displaying of their personal information.

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.[7]

Natural and Probable Consequences

Bodily injury or death is a natural and probable consequence of publicly posting or displaying the victim's personal information on the internet if, in the light of ordinary experience, it was a result to be expected, not an extraordinary or surprising result. The probability that bodily injury or death would result from the posting or displaying should

be judged by the facts and circumstances known to the defendant at the time the events occurred. If the defendant knew, or if a reasonable person in the defendant's position would have known, that bodily injury or death was likely to result from the commission of the offense, then you may find that under the circumstances bodily injury or death was a natural and probable consequence of publicly posting or displaying the victim's personal information on the internet.[8]

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four 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 1827 was approved by the Committee in October 2024.

This instruction is for a violation of sub. (5)(C) of § § 757.07, which was created by 2023 Wisconsin Act 235 [effective date: March 29, 2024]. The offense is a Class G felony.

1. "Personal information" is defined as follows in § 757.07(1)(g):

"Personal information" means any of the following with regard to a judicial officer or any immediate family member of a judicial officer, but does not include information regarding employment with a government agency:

- A home address.
- A home or personal mobile telephone number.
- A personal email address.
- A social security number, driver's license number, federal tax identification number, or state tax identification number.
- Except as required under ch. 11, a bank account or credit or debit card information.
- A license plate number or other unique identifiers of a vehicle owned, leased, or regularly used by a judicial officer or an immediate family member of a judicial officer.

- The identification of children under the age of 18 of a judicial officer or an immediate family member of a judicial officer.
- The full date of birth.
- Marital status.

2. Section § 757.07(1)(e) provides the following definition of "judicial officer" for the purpose of this offense:

"Judicial officer" means a person who currently is or who formerly was any of the following:

- A supreme court justice.
- A court of appeals judge.
- A circuit court judge.
- A municipal judge.
- A tribal judge.
- A temporary or permanent reserve judge.
- A circuit, supplemental, or municipal court commissioner.

3. Section § 757.07(1)(d) provides the following definition of "immediate family member" for the purpose of this offense:

"Immediate family" includes any of the following:

- A judicial officer's spouse.
- A minor child of the judicial officer or of the judicial officer's spouse, including a foster child, or an adult child of the judicial officer or of the judicial officer's spouse whose permanent residence is with the judicial officer.
- A parent of the judicial officer or the judicial officer's spouse.
- Any other person who resides at the judicial officer's residence.

4. The Committee has not defined the term "threat" here because, in the context of the third element, "create or increase a threat" does not refer to the act of making a threat. Instead, it denotes the act of increasing the risk of a threat to the health or safety of the victim.

5. Section 939.23(3) provides the following:

> "Intentionally" means that the actor either has a purpose to do the thing or cause the result specified, or is aware that his or her conduct is practically certain to cause that result. In addition, except as provided in sub. (6), the actor must have knowledge of those facts which are necessary to make his or her conduct criminal and which are set forth after the word "intentionally".

See Wis JI-Criminal 923A and B.

6. The Committee believes that the statutory requirement for a defendant to intend to create or increase a threat implies that the threat must be a "true threat." A "true threat" is one in which a reasonable person making the threat would foresee 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 for the person making the threat to have the actual ability to carry it out. See State v. Perkins, 2001 WI 46, 243 Wis.2d 141, 626 N.W.2d 762.

The Supreme Court of the United States has held that, consistent with First Amendment protections, recklessness is the minimum mens rea required for a criminal conviction based on communications constituting a true threat. See Counterman v. Colorado, 600 U.S. 66, 143 S.Ct. 2106..

The Committee believes that the instruction, by incorporating language and standards related to natural and probable consequences, is sufficiently tailored to meet the proof requirements for a criminal action concerning a true threat.

7. This is the shorter version used to describe the process of finding intent. The Committee concluded that it is suitable for use in most cases. For the longer description of the intent-finding process, see Wis JI-Criminal 923A.

8. The Committee concluded that whether bodily injury or death is a "natural and probable consequence of publicly posting or displaying the victim's personal information on the internet is an issue of fact to be determined by reference to the circumstances of each case. This is consistent with the approach of the Wisconsin Supreme Court in State v. Ivy, 119 Wis.2d 591, 350 N.W.2d 622 (1984) (reversing 115 Wis.2d 645, 341 N.W.2d 408 (Ct. App. 1983)). Neither Ivy nor the other decisions dealing with the "natural and probable consequences" theory provide a definition of that term. The definition in the instruction was developed after extensive deliberation and review. It equates "natural and probable consequences" with foreseeability, evaluated from the point of view of one in the defendant's position at the time of the alleged offense. This type of definition is consistent with the use of the term in tort law:

> Natural and probable consequences. To some extent there are difficulties of language. Many courts have said that the defendant is liable only if the harm suffered is the "natural and probable" consequence of his act. These words frequently appear to have been given no more definite meaning than "proximate" itself. Strictly speaking, all consequences are "natural" which occur through the operation of forces of nature, without human intervention. But the word, as used, obviously appears not to be intended to mean this at all, but to refer to consequences which are normal, not extraordinary, not surprising in the light of ordinary experience. "Probable," if it is to add anything to this, must refer to consequences which were to be anticipated at the time of the defendant's conduct. The phrase therefore appears to come out as the equivalent of the test of foreseeability, of consequences within the scope of the original risk, so that the likelihood of their occurrence was a factor in making the defendant negligent in the first instance.

Prosser, The Law of Torts, 4th ed., p. 252 (West 1971).

If foreseeability is required in the context of negligence, the Committee reasoned that its equivalent, at a minimum, must be applicable in criminal cases employing the "natural and probable consequence" theory.