

**1901    DISRUPTING A FUNERAL OR MEMORIAL SERVICE —  
§ 947.011(2)(a)1.**

**Statutory Definition of the Crime**

Disrupting a funeral or memorial service, as defined in § 947.011(2)(a)1. of the Criminal Code of Wisconsin, is committed by a person who engages in disorderly conduct (during a funeral or memorial service) (during the 60 minutes immediately preceding the scheduled starting time of a funeral or memorial service) (during the 60 minutes immediately following a funeral or memorial service),<sup>1</sup> within 500 feet of any entrance to a facility being used for the service, and with intent to disrupt the service.

**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 five elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant engaged in (violent) (abusive) (indecent) (profane) (boisterous) (unreasonably loud) (or otherwise disorderly) conduct.<sup>2</sup>
2. The conduct of the defendant, under the circumstances as they then existed, tended to cause or provoke a disturbance.
3. The conduct of the defendant occurred (during a funeral or memorial service) (during the 60 minutes immediately preceding the scheduled starting time of a

funeral or memorial service) (during the 60 minutes immediately following a funeral or memorial service).<sup>3</sup>

4. The conduct of the defendant occurred within 500 feet of any entrance to a facility being used for the service.
5. The defendant engaged in the conduct with intent to disrupt the service.

### **Meaning of "Disorderly Conduct"**

"Disorderly conduct" may include physical acts or language or both.<sup>4</sup>

[The general phrase "otherwise disorderly conduct" means conduct having a tendency to disrupt good order and provoke a disturbance.<sup>5</sup> It includes all acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or acts. Conduct is disorderly although it may not be violent, abusive, indecent, profane, boisterous, or unreasonably loud if it is of a type which tends to disrupt good order and provoke a disturbance.]<sup>6</sup>

The principle upon which this offense is based is that in an organized society a person should not unreasonably offend others in the community.<sup>7</sup> This does not mean that all conduct that tends to disturb another is disorderly conduct. Only conduct that unreasonably offends the sense of decency or propriety of the community is included. It does not include conduct that is generally tolerated by the community at large but that might disturb an oversensitive person.

### **Meaning of "Tend to Cause or Provoke a Disturbance"**

It is not necessary that an actual disturbance must have resulted from the defendant's conduct. The law requires only that the conduct be of a type that tends to cause or provoke a disturbance, under the circumstances as they then existed.<sup>8</sup> You must consider not only the nature of the conduct but also the circumstances surrounding that conduct. What is proper under one set of circumstances may be improper under other circumstances. This element requires that the conduct of the defendant, under the circumstances as they then existed, tended to cause or provoke a disturbance.

### **Deciding About Intent To Disrupt**

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 five 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 1901 was approved by the Committee in June 2006.

This instruction is drafted for violations of § 947.011(2)(a)1. Section 947.011 was created by 2005 Wisconsin Act 114; effective date: March 1, 2006.

Act 114 created six offenses. Subsection (2)(a) defines two offenses: subd. 1. prohibits engaging in disorderly conduct within 500 feet and 60 minutes of a funeral service with intent to disrupt the service. This is the offense addressed by this instruction. Subsection (2)(a)2. prohibits intentionally blocking access to a facility being used for a service; an instruction has not been drafted for this violation.

Subsection (2)(b) prohibits impeding vehicles with intent to disrupt a funeral process; see Wis JI Criminal 1901A. Subsections (2)(c) and (d) define offenses that are the same as subs. (2)(a) and (b), respectively, except that they do not include an intent element. Wis JI Criminal 1901 or 1901A could be adapted for use for those offenses by deleting the intent elements.

Violations of § 947.011 are Class A misdemeanors except that: "Any person who violates sub. (2)(a) or (b) after having been convicted of a violation of this section is guilty of a Class I felony." See sub. (3). Thus, only second offenses charged under sub. (2)(a) or (b) become felonies if the defendant has a prior conviction under any subsection of § 947.011.

1. The Committee recommends selecting the alternative supported by the evidence.

2. Speech alone in certain contexts can constitute disorderly conduct. State v. A.S., 2001 WI 48, ¶1, 243 Wis.2d 173, 626 N.W.2d 712. Also see, State v. Douglas D., 2001 WI 47, ¶3, 243 Wis.2d 204, 626 N.W.2d 725. Verbal or written statements may constitute "abusive conduct" if they "tended to provoke retaliatory conduct on the part of the person or persons to whom the statements were addressed." A.S., ¶29. Also see Douglas D., ¶32. Speech can be considered "otherwise disorderly" if it is of a type that tends to disrupt good order. A.S., ¶33. If the statements constitute threats, they must be "true threats." Douglas D., ¶32; A.S., ¶22. Both A.S. and Douglas D. applied a definition of "true threat" announced in State v. Perkins, 2001 WI 46, ¶29, 243 Wis.2d 141, 626 N.W.2d 762. Perkins involved a charge under § 940.203, which prohibits threats to a judge. Wis JI-Criminal 1240B, Threat To A Judge, offers the following definition of "true threat," based on Perkins:

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 making the threat would foresee that a reasonable person would interpret the threat as a serious expression of intent to do harm. 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.

3. The Committee recommends selecting the alternative supported by the evidence.

4. Teske v. State, 256 Wis. 440, 444, 41 N.W.2d 642 (1950).

A common disorderly conduct situation involves directing abusive language to police officers. The Wisconsin Supreme Court has discussed the general principles applicable to this situation in a civil case where a person arrested for disorderly conduct sued the arresting officer for false imprisonment:

The fact that the abusive language is directed to a policeman or other law enforcement officer and is not overheard by others does not prevent it from being a violation . . . [of a disorderly conduct statute or ordinance].

However, a police officer cannot provoke a person into a breach of the peace, such as directing abusive language to the police officer, and then arrest him without a warrant. Lane v. Collins, 29 Wis.2d 66, 72, 138 N.W.2d 264 (1965) (footnote omitted).

5. In State v. Givens, 28 Wis.2d 109, 115, 135 N.W.2d 780 (1965), the court held that the phrase "otherwise disorderly conduct" which tends to provoke a disturbance means conduct of a type not previously enumerated in the statute but similar thereto in having a tendency to disrupt good order and to

provoke a disturbance. Such interpretation rests upon the rule of eiusdem generis. The statute is not unconstitutionally vague.

In State v. Schwebke, 2002 WI 55, 253 Wis.2d 1, 644 N.W.2d 666, the court upheld the application of the disorderly conduct statute to mailings sent by the defendant to three different victims. The conduct can be considered "otherwise disorderly conduct" under § 947.01:

. . . [T]he disorderly conduct statute does not necessarily require disruptions or disturbances that implicate the public directly. The statute encompasses conduct that tends to cause a disturbance or disruption that is personal or private in nature, as long as there exists the real possibility that this disturbance or disruption will spill over and disrupt the peace, order or safety of the surrounding community as well. Conduct is not punishable under the statute when it tends to cause only personal annoyance to a person. See Douglas D., 2001 WI 47, ¶27. An examination of the circumstances in which the conduct occurred must take place, considering such factors as the location of the conduct, the parties involved, and the manner of the conduct. 2002 WI 55, ¶30.

. . . [T]he disorderly conduct statute requires, at a minimum, that, when the conduct tends to cause or provoke a disturbance that is private or personal in nature, there must exist the real possibility that this disturbance will spill over and cause a threat to the surrounding community as well. 2002 WI 55, ¶31.

. . . [W]e conclude that the disorderly conduct statute was appropriately applied to Schwebke's conduct in this case. In each instance, the conduct at issue, in light of the circumstances, went beyond conduct that merely tended to annoy or cause personal discomfort in another person. In each instance, the mailings constituted conduct that not only caused disturbances to the lives of the recipients, but the conduct was of the type that would be disruptive to peace and good order in the community. 2002 WI 55, ¶32.

6. The paragraph in brackets is intended for use primarily where the "otherwise disorderly conduct" alternative is used. In Teske v. State, supra, the court quotes this definition from 17 Am. Jur. Disorderly Conduct § 1 (1957), which is also adopted by the court in State v. Givens, supra.

In City of Oak Creek v. King, 148 Wis.2d 532, 436 N.W.2d 285 (1989), the Wisconsin Supreme Court reviewed the application of a disorderly conduct ordinance (modeled after § 947.01) to a television reporter who refused to obey police orders to leave the scene of the 1985 Midwest Express airplane crash. The court held that the defendant's conduct violated the statute under the "otherwise disorderly" provision. There was a legitimate need to maintain control at the crash site which was threatened by the defendant's refusal to obey the police order to stay out of the restricted area. The conduct tended to cause a disturbance because others may have followed the defendant if he had been allowed to disobey the officer.

7. This statement is based on the decision in State v. Givens, supra, where the court quoted from the comment to a proposed disorderly conduct section contained in Volume V, 1953 Judiciary Committee Report on the Criminal Code, p. 208 (Wis. Legislative Council, February 1953). The 1999 revision made minor changes in this statement in the interest of clarity; no change in meaning was intended.

Deciding whether conduct "unreasonably" offends the sense of decency or propriety of the community may be aided by comparing the harm to the public and the social value of the defendant's conduct.

An instruction attempting to explain this comparison might read as follows:

In determining whether the conduct "unreasonably" offends the public sense of decency and propriety, you should weigh the degree to which decency and propriety were offended by the conduct against any contribution to the public interest made by the conduct. In this case, (here specify the reason the conduct was engaged in). [EXAMPLE: In this case the defendant has testified that he engaged in the conduct in order to protest the Viet Nam War.] Conduct unreasonably offends the public sense of decency and propriety if, but only if, the harm to the public outweighs the social value achieved by the defendant's conduct.

8. This statement is found in the comment to proposed § 347.01 in Volume V, 1953 Judiciary Committee Report on the Criminal Code, p. 208 (Wis. Legislative Council, February 1953). The phrase "tending to create or provoke a breach of the peace," as found in § 943.145, Criminal Trespass To A Medical Facility, was discussed in State v. Migliorino, 150 Wis.2d 513, 442 N.W.2d 36 (1989).