

1903 UNLAWFUL USE OF TELEPHONE — § 947.012(1)(b)**Statutory Definition of the Crime**

Unlawful use of telephone, as defined in § 947.012(1)(b) of the Criminal Code of Wisconsin, is committed by one who telephones another and uses any obscene, lewd, or profane language¹ with intent to frighten, intimidate, threaten, or abuse or suggests any lewd or lascivious act.²

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 made a telephone call to _____.
2. In making the telephone call to _____, the defendant [used obscene, lewd, or profane language] [suggested any lewd or lascivious act].
3. The defendant made the telephone call to _____ with intent to³ (frighten) (intimidate) (threaten) (abuse) any person at the called number.

"With intent to (frighten) (intimidate) (threaten) (abuse)" means that the defendant acted with the mental purpose to (frighten) (intimidate) (threaten) (abuse) another person or was aware that his or her conduct was practically certain to cause that result.⁴

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 1903 was originally published in 1987 and revised in 1992. This revision was approved by the Committee in February 2008 and involved adoption of a new format.

Section 947.012, Unlawful Use Of Telephone, was created by Chapter 131, Laws of 1979. The original statute contained six subsections and was apparently modeled after a federal statute, 47 U.S.C. § 223. The statute was revised by 1991 Wisconsin Act 39, effective August 15, 1991. This instruction is for an offense under subsection (1)(a) of the revised statute; the offense was previously defined in § 947.012(1), 1989 90 Wis. Stats. 1991 Wisconsin Act 39 changed some violations of § 947.012 from crimes to forfeitures. The penalty for this offense was not affected; it is a Class B misdemeanor.

1. The statute also applies to one who "suggests any lewd or lascivious act." That alternative is not included in this instruction.

2. 1991 Wisconsin Act 39 revised the statute to eliminate two alternatives from this subsection ("harass" and "offend") and created new § 947.012(2) which punishes that conduct as a Class B forfeiture.

3. The Committee recommends that one of the alternatives in parentheses should be elected if possible because it clarifies the issue for the jury. The Committee does not conclude that an instruction joining one or more alternatives in the disjunctive would be error. See Holland v. State, 91 Wis.2d 134, 280 N.W.2d 288 (1979); Manson v. State, 92 Wis.2d 40, 284 N.W.2d 703 (Ct. App. 1979); and United States v. Gipson, 553 F.2d 453 (5th Cir. 1977).

4. See § 939.23(4) and Wis JI-Criminal 923A and 923B.