

**1904 UNLAWFUL USE OF TELEPHONE — § 947.012(1)(c)****Statutory Definition of the Crime**

Unlawful use of telephone, as defined in § 947.012(1)(c) of the Criminal Code of Wisconsin, is committed by one who makes a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to abuse<sup>1</sup> or threaten any person at the called number.

**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.

This does not require that any conversation took place.

2. In making the telephone call the defendant did not disclose (his) (her) identity.
3. The defendant made the telephone call to with intent to<sup>2</sup> (abuse) (threaten) any person at the called number.

"With intent to (abuse) (threaten)" means that the defendant acted with the mental purpose to (abuse) (threaten) another person or was aware that his or her conduct was practically certain to cause that result.<sup>3</sup>

**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 1904 was originally published 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. This instruction was for an offense under subsection (5) of the original statute. The section was renumbered subsec. (1)(c) by 1991 Wisconsin Act 39, effective date August 15, 1991. 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. But see note 1, below.

1. The former statute also prohibited calls made with intent to "harass." The 1991 revision recreated the "harass" version of the offense in subsec. (2)(d) where it is punished as a Class B forfeiture.

2. 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).

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