

1907 UNLAWFUL USE OF TELEPHONE — § 947.012(2)(c)**Statutory Definition of the Crime**

Unlawful use of telephone, as defined in § 947.012(2)(c) of the Criminal Code of Wisconsin, is committed by one who makes repeated telephone calls, whether or not conversation ensues, with intent solely to harass 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 to a reasonable certainty by evidence that is clear, satisfactory and convincing that the following two elements were present.

Elements of the Offense That Must Be Proved

1. The defendant made repeated telephone calls.

This does not require that any conversation took place.

2. The defendant made repeated telephone calls with intent solely to harass¹ any person at the called number.

"With intent solely to harass" means that the defendant acted with the mental purpose to harass another person or was aware that his or her conduct was practically certain to cause that result.²

Jury's Decision

If you are satisfied by evidence that is clear, satisfactory and convincing 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 1907 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. The statute was revised by 1991 Wisconsin Act 39, effective August 15, 1991. This instruction is for an offense under subsection (2)(c), punished as a Class B forfeiture. The conduct was formerly punished as a Class B misdemeanor under § 947.012(4) 1989 90 Wis. Stats.

1. "Harassment" is referred to in § 947.013(1m)(b), which identifies one type of harassment penalized by that statute:

(b) Engages in a course of conduct or repeatedly commits acts which harass or intimidate the person and which serve no legitimate purpose.

The § 947.013(1m)(b) reference is the same as the one used in the harassment restraining order statute, § 813.125(1)(b). The restraining order statute, and its definition of harassment, were found to be constitutional by the Wisconsin Supreme Court in Bachowski v. Salamone, 139 Wis.2d 397, 407 N.W.2d 533 (1987), where the court found the meaning of harassment readily ascertainable by reference to a dictionary: "'Harass' means to worry or impede by repeated attacks, to vex, trouble or annoy continually or chronically, to plague, bedevil, or badger." 139 Wis.2d 397, 407, citing Webster's Third New International Dictionary 1031 (1961).

"Harass" is defined as "to annoy persistently" in Webster's New Collegiate Dictionary.

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