

**1908 UNLAWFUL USE OF A COMPUTERIZED COMMUNICATION SYSTEM — § 947.0125(2)(a)****Statutory Definition of the Crime**

Unlawful use of [an electronic mail] [a computerized communication] system, as defined in § 947.0125(2)(a) of the Criminal Code of Wisconsin, is committed by one who with intent to frighten, intimidate, threaten, abuse or harass another person, sends a message to the person on [an electronic mail] [a computerized communication] system, and threatens to inflict injury or physical harm to any person or the property of any person

**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 sent a message<sup>1</sup> to (name of victim) on [an electronic mail] [a computerized communication] system.
2. The defendant sent the message to (name of victim) with intent to<sup>2</sup> (frighten) (intimidate) (threaten) (abuse) (harass)<sup>3</sup> (name of victim).

"With intent to (frighten) (intimidate) (threaten) (abuse) (harass)" means that the defendant acted with the mental purpose to (frighten) (intimidate) (threaten)

(abuse) (harass) another person or was aware that the conduct was practically certain to cause that result.<sup>4</sup>

3. In the message, the defendant threatened<sup>5</sup> to inflict [physical harm to] [damage to the property of] any person.

It is not necessary that the person making the threat have the ability to carry out the threat.

### 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 1908 was originally published in 1996. This revision was approved by the Committee in February 2008 and involved adoption of a new format.

Section 947.0125, Unlawful Use Of Computerized Communication Systems, was created by 1995 Wisconsin Act 353. Effective date: June 7, 1996. Violations of subsec. (2) are Class B misdemeanors.

1. "Message" is defined as follows in § 947.0125(1): "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, or any transfer of a computer program." The definition also provides that "computer program" is as defined in § 943.70.

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. "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.

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

5. Wisconsin appellate courts have held that some criminal statutes prohibiting threats must be read to apply only to "true threats." For example, in State v. Robert T., 2008 WI App 22, \_\_\_ Wis.2d \_\_\_, \_\_\_ N.W.2d \_\_\_ [2006 AP 2206], the court of appeals held that "§ 947.015 must be read with the limitation that only a false bomb scare that constitutes a 'true threat' can be charged." ¶12. State v. Perkins, 2001 WI 46, ¶28, 243 Wis.2d 141, 626 N.W.2d 762, reached the same conclusion for violations of § 940.203, Threat to a judge. Also see, State v. A.S., 2001 WI 48, 243 Wis.2d 173, 626 N.W.2d 712, holding that a "true threat" is required for disorderly conduct charges based on threats.

The Committee concluded that a separate definition of "true threat" is not necessary in this instruction, because its substance is covered by the second element, which requires that the defendant "intended to frighten, intimidate, threaten, abuse, or harass" the victim.

The following is the most complete definition of "true threat" offered by the court in State v. Perkins:

A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. In determining whether a statement is a true threat, the totality of the circumstances must be considered. 2001 WI 46, ¶29.