

1909 UNLAWFUL USE OF A COMPUTERIZED COMMUNICATION SYSTEM: USE OF OBSCENE LANGUAGE — § 947.0125(2)(c)

Statutory Definition of the Crime

Unlawful use of [an electronic mail] [a computerized communication] system, as defined in § 947.0125(2)(c) of the Criminal Code of Wisconsin, is committed by one who with intent to frighten, intimidate, threaten, or abuse another person, sends a message to the person on [an electronic mail] [a computerized communication] system, and uses any obscene, lewd, or profane language or suggests any lewd or lascivious act.

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 message¹ to (name of victim) on [an electronic mail] [a computerized communication] system.
2. The defendant sent the message to (name of victim) with intent to² (frighten) (intimidate) (threaten) (abuse) (name of victim).

"With intent to (frighten) (intimidate) (threaten) (abuse)" 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.³

3. In sending the message, the defendant used any obscene, lewd, or profane language or suggested any lewd or lascivious act.

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 1909 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. See § 939.23(4) and Wis JI-Criminal 923A and 923B.