

1919 SWATTING — § 947.014**Statutory Definition of the Crime**

Swatting, as defined in section 947.014 of the Criminal Code of Wisconsin, is committed by one who intentionally conveys or causes to be conveyed any false information that an emergency exists, which elicited, or could elicit a response from a specialized tactical team, knowing such information to be false.

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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant intentionally (conveyed) (caused to be conveyed) information concerning the existence of an emergency.

“Emergency” means [Specify type of emergency as provided in 947.014(1)(b)].¹

“Intentionally” means that the defendant must have had the mental purpose to (convey) or (cause to be conveyed) information that an emergency exists.²

2. The information was false.
3. The defendant knew that the information was false. This requires only that the defendant believed that the information was false.³

4. The information (elicited) (could have elicited) a response from a specialized tactical team.

A “specialized tactical team” means a special weapons and tactics team or tactical response team that is designated by a law enforcement agency and whose members are recruited, selected, trained, equipped, and assigned to resolve critical incidents that involve a threat to public safety.⁴

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury’s Decision

If you are satisfied beyond a reasonable doubt that all four 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.

ADD ONE OF THE FOLLOWING IF THE OFFENSE WAS CHARGED AS A CLASS H OR E FELONY AND THERE IS EVIDENCE THAT THE PENALTY-INCREASING FACT IS PRESENT⁵

[If you find the defendant guilty, you must answer the following question:

(Did the violation result in bodily harm to any person?)

(Did the violation result in great bodily harm to any person?)

Before you may answer the question “yes,” you must be satisfied beyond a reasonable doubt that the answer is “yes.”

If you are not so satisfied, you must answer the question “no.”]

COMMENT

Wis JI-Criminal 1919 approved by the Committee in June 2020.

This instruction is drafted for violations of § 947.014, created by 2019 Wisconsin Act 132 [effective date: March 5, 2020].

The offense is a Class I felony, unless the violation “resulted in bodily harm to any person,” in which case the penalty increases to a Class H felony. If the violation “resulted in great bodily harm to any person,” the penalty increases to a Class E felony. § 947.014(3).

1. Section 947.014(1)(b) provides: “Emergency” means any of the following:

1. A condition that results in or could result in the response of a law enforcement officer, tribal law enforcement officer, state-certified commission warden, fire fighter, emergency medical responder, or emergency medical services practitioner in an authorized emergency vehicle, aircraft, or vessel.
2. A condition that jeopardizes or could jeopardize public safety and results in or could result in the evacuation of any area, building, structure, or vehicle.

2. “Intentionally” means that the actor has the mental purpose to cause the result specified or “is aware that his or her conduct is practically certain to cause that result.” § 939.23(3) The “mental purpose” alternative is most likely to apply to this offense. For discussion of the “practically certain” alternative, see Wis JI-Criminal 923B.

3. Section 939.23(3) provides that when the word “intentionally” is used in a criminal statute, it requires “knowledge of those facts which are necessary to make [the] conduct criminal and which are set forth after the word ‘intentionally.’”

4. Section 947.014(1)(h).

5. The special question addresses the penalty-increasing facts that are provided in § 947.014(3). A violation resulting in bodily harm to any person is a Class H felony. An offense resulting in great bodily harm to any person is a Class E felony.