

1925B RECKLESS TERRORIST THREATS — § 947.019(1)(e)**Statutory Definition of the Crime**

The making of terrorist threats, as defined in § 947.019 of the Criminal Code of Wisconsin, is committed by any person who threatens to cause the death of or bodily harm to any person or to damage any person's property and creates an unreasonable and substantial risk of (preventing the occupation of or causing the evacuation of a building)¹ (causing public inconvenience) (causing public panic or fear) (causing an interruption or impairment of governmental operations)² and is aware of that risk.

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 threatened to cause the death of or bodily harm to any person or to damage any person's property.

A "threat" is an expression of intention to do harm and may be communicated orally, in writing, or by conduct. This requires a true threat. "True threat" means that a reasonable person would interpret the threat as a serious expression of intent to do harm, and the person making the statement is aware that others could regard the statement as a threat and delivers it anyway. It is not necessary that the person

making the threat have the ability to carry out the threat. You must consider all the circumstances in determining whether a threat is a true threat.³

2. The defendant created an unreasonable and substantial risk of (preventing the occupation of or causing the evacuation of a building) (causing public inconvenience) (causing public panic or fear) (causing an interruption or impairment of governmental operations).
3. The defendant was aware of that risk.

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 1925B was approved by the Committee in December 2016. This revision was approved by the Committee in October 2023. It amended the definition of a “true threat” according to Counterman v. Colorado, 600 US --- (2023), to clarify that the assessment of the threat requires consideration of both the speaker’s perspective (recklessness standard) and the victim’s perspective (reasonable person standard).

This instruction is drafted for violations of sec. 947.019(1)(e), created by 2015 Wisconsin Act 311 [effective date: April 1, 2016]. Subsection (1)(e) requires creating “an unreasonable and substantial risk” that one of the specified harms will occur and being “aware of that risk,” a standard equivalent to criminal recklessness under § 939.25. Violations of sub. (1)(a) - (d), which involve intent instead of recklessness, are addressed by Wis JI-Criminal 1925A.

The offense is a Class I felony unless the violation “contributes to any individual’s death,” in which case the penalty increases to a Class G felony. Sec. 947.019(2).

1. In addition to applying to a “building,” the statute also applies to “dwelling, school premises, vehicle, facility of public transportation, or place of public assembly or any room within a building, dwelling, or school.” The instruction is drafted for “building” because that appears to be the most comprehensive term. If one of the more specific terms applies, it should be substituted here and in the second element.

2. The statute also applies to causing an interruption or impairment of “public communication, of transportation, or of a supply of water, gas, or other public service.” The instruction is drafted for impairment of “governmental operations” because that appears to be the most comprehensive term. If one of the more specific terms applies, it should be substituted here and in the second element.

3. Other Wisconsin statutes prohibiting a “threat” have been interpreted to require a “true threat.” The definition of “true threat” is based on the one used for the other criminal offenses involving threats and is derived from State v. Perkins, 2001 WI 46, ¶28, 243 Wis.2d 141, 626 N.W.2d 762. For a complete explanation of the definition, see footnote 3, Wis JI-Criminal 1240B Threat To A Judge.