# 1347 SECOND DEGREE RECKLESSLY ENDANGERING SAFETY — § 941.30(2)[1]

## Statutory Definition of the Crime

Second degree recklessly endangering safety, as defined in § 941.30(2) of the Criminal Code of Wisconsin, is committed by one who recklessly endangers the safety of another human being.

## State's Burden of Proof

Before you may find the defendant guilty of second degree recklessly endangering safety, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

## Elements of the Crime That the State Must Prove

1. The defendant endangered the safety of another human being.

2. The defendant endangered the safety of another by criminally reckless conduct.

"Criminally reckless conduct" means:[2]

- the conduct created a risk of death or great bodily harm to another person; and
- the risk of death or great bodily harm was unreasonable and substantial; and
- the defendant was aware that (his) (her) conduct created the unreasonable and substantial risk of death or great bodily harm.[3]

"Great bodily harm" means serious bodily injury.[4] [Injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or

 

which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily injury is great bodily harm.]

**Jury's Decision**

If you are satisfied beyond a reasonable doubt that both elements of this offense were present, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

**COMMENT**

Wis JI-Criminal 1347 was originally published in 1988 and revised in 1993 and 2003. This revision was approved by the Committee in March 2015; it revised footnote 3 to reflect 2013 Wisconsin Act 307.

This instruction is for a violation of § 941.30(2), created by 1987 Wisconsin Act 399 as part of the revision of the homicide statutes. The amended statute applies to offenses committed on or after January 1, 1989. For a brief overview of the homicide revision generally, see the Introductory Comment at Wis JI-Criminal 1000. A comprehensive outline and discussion of the changes can be found in "The Importance of Clarity in the Law of Homicide: The Wisconsin Revision," by Walter Dickey, David Schultz, and James L. Fullin, Jr., 1989 Wisconsin Law Review 1325.

1. This offense was created by the 1989 homicide revision.

2. "Criminal recklessness" is defined as follows in § 939.24(1):

> . . . 'criminal recklessness' means that the actor creates an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk.

The Judicial Council Note to § 939.24, 1987 Senate Bill 191, explains that "[r]ecklessness requires both the creation of an objectively unreasonable and substantial risk of human death or great bodily harm and the actor's subjective awareness of that risk."

3. The statutory definition of "recklessness" clarifies that subjective awareness of the risk is required. That raises the possibility that intoxication could, as a factual matter, negate awareness of the risk. For that reason, the original definition of recklessness provided that if voluntary intoxication prevented the actor from being aware of the risk, it was not a defense. This rule was set forth in § 939.24(3):

> (3) A voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness if, had the actor not been in that condition, he or she would have been aware of creating an unreasonable and substantial risk of death or great bodily harm to another human being.

 

The Judicial Council Note to subsection (3) explains it as follows:

> Subsection (3) continues the present rule that a voluntarily produced intoxicated or drugged condition is not a defense to liability for criminal recklessness. Ameen v. State, 51 Wis.2d 175, 185, 186 N.W.2d 206 (1971). Patterned on s. 2.08 of the model penal code, it premises liability on whether the actor would have been aware if not in such condition of the risk of death or great bodily harm. The commentaries to s. 2.08, model penal code, state the rationale of this rule in extended fashion.

Note to § 939.24(3), 1987 Senate Bill 191.

Section 939.42, the statute codifying both voluntary and involuntary intoxication defenses, was revised by 2013 Wisconsin Act 307 [effective date: April 18, 2014]. Reference to voluntary intoxication was eliminated; as amended, the statute refers only to involuntary intoxication. Act 307 also repealed former sub. (3) of § 939.24, thus getting rid of the special rule excluding voluntary intoxication as a defense to the "aware of the risk" element. For cases arising before the effective date of Act 307, the suggestion included in the previous version of this Comment would still apply: "In a case where there is evidence of intoxication, it may be helpful to advise the jury of the rule provided in subsection (3). The Committee concluded that simply reading the statute is the best way to provide the necessary information.

4. The Committee has concluded that defining great bodily harm as "serious bodily injury" is sufficient in most cases. The material in brackets is the remainder of the definition found in § 939.22(14) and should be used as needed. The definition was changed by 1987 Wisconsin Act 399 to substitute "substantial risk" for "high probability" in the phrase "substantial risk of death." See Wis JI-Criminal 914.

Whether or not an injury suffered amounts to "great bodily harm" is an issue of fact for the jury to resolve. See Flores v. State, 76 Wis.2d 50, 250 N.W.2d 227 720 (1976).

 