

**1276 HUMAN TRAFFICKING — § 940.302(2)(a)****Statutory Definition of the Crime**

Human trafficking, as defined in § 940.302 of the Criminal Code of Wisconsin, is committed by one who knowingly engages in trafficking for the purpose of [labor or services] [a commercial sex act] and does so by [CHOOSE ONE OF THE FOLLOWING]<sup>1</sup>

[causing or threatening to cause bodily harm to any individual.]

[causing or threatening to cause financial harm to any individual.]

[restraining or threatening to restrain any individual.]

[violating or threatening to violate a law.]

[destroying, concealing, removing, confiscating, or possessing, or threatening to destroy, conceal, remove, confiscate, or possess, any actual or purported passport or any other actual or purported official identification document of any individual.]

[extortion.]

[fraud or deception.]

[debt bondage.]<sup>2</sup>

[controlling or threatening to control any individual's access to an addictive controlled substance.]

[using any scheme or pattern or other means to directly or indirectly coerce, threaten, or intimidate any individual.]

[using or threatening to use force or violence on any individual.]

[causing or threatening to cause any individual to do any act against the individual's will or without the individual's consent.]

### **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 knowingly engaged in trafficking.

"Trafficking" means that the defendant [(recruited) (enticed) (harbored) (transported) (provided) (obtained)] [attempted to (recruit) (entice) (harbor) (transport) (provide) (obtain)] (name of victim).<sup>3</sup>

2. The defendant (use the term selected in element 1.) (name of victim) for the purpose of [labor or services] [a commercial sex act].<sup>4</sup>

["Services" means activities performed by one individual at the request, under the supervision, or for the benefit of another person.]<sup>5</sup>

["Commercial sex act" means (sexual contact) (sexual intercourse) (sexually explicit performance) (any conduct done for the purpose of sexual humiliation, degradation, arousal, or gratification) for which anything of value is given to, promised, or received, directly or indirectly, by any person.]<sup>6</sup>

3. The defendant engaged in trafficking by (use the term or terms selected in the introductory paragraph).<sup>7</sup>

### **Deciding About Knowledge and Purpose**

You cannot look into a person's mind to find out knowledge and purpose. Knowledge and purpose 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 knowledge and purpose.

### **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 1276 was originally published in 2011. This revision was approved by the Committee in October 2014; it reflects changes made by 2013 Wisconsin Act 362.

This instruction is drafted for violations of § 940.302, Human trafficking, which was created by 2007 Wisconsin Act 116 [effective date: April 3, 2008]. The statute was amended by 2013 Wisconsin Act 362 [effective date April 25, 2014]. For an example showing how the instruction would read when typical alternatives are selected, see Wis JI-Criminal 1276 EXAMPLE.

Subsection (2)(b) of § 940.302 provides: "Whoever benefits in any manner from a violation of par. (a) is guilty of a Class D felony if the person knows or reasonably should have known that the benefits come from or are derived from an act or scheme described in par. (a)." This instruction does not address this means of violating the statute.

Subsection (2)(c) of sec. § 940.302 was created by 2013 Wisconsin Act 362, by renumbering and revising what formerly was sub. (2) of § 944.33. An instruction is being drafted for violations of sub. (2)(c).

2007 Wisconsin Act 116 also created § 939.46(1m) which provides an affirmative defense for any offense committed by a trafficking victim as a direct result of the violation of the trafficking statute.

2007 Wisconsin Act 116 also created § 948.051, Trafficking of a child – see Wis JI-Criminal 2124.

1. The applicable term should be selected. The alternatives are those provided in sub. (2)(a)2.a. - L. of § 940.302.

2. Section 940.302(1)(b) defines "debt bondage" as follows: "the condition of a debtor arising from the debtor's pledge of services as a security for debt if the reasonable value of those services is not applied toward repaying the debt or if the length and nature of the services are not defined."

3. The Committee recommends selecting the applicable alternative from the choices in the brackets and parentheses. The choices are those provided in the definition of "trafficking" provided in § 940.302(1)(d).

4. For example, if element 1. involved selecting the "entice" alternative, the second element should read as follows: "The defendant enticed (name of victim) for the purpose of labor or services."

5. This is the definition of "services" provided in § 940.302(1)(c).

6. This is the definition provided in § 940.302(1)(a), as amended by 2013 Wisconsin Act 362. For a definition of "sexual contact" see Wis JI-Criminal 934 and § 939.22(34). The definition in § 939.22(34) applies to this offense; the other "sexual contact" definitions in § 940.225(5)(c) and § 948.01(5) apply to violations of § 940.225 and Chapter 948, respectively.

7. The applicable term should be selected. The alternatives are those provided in sub. (2)(a)2.a. - L. of § 940.302.