

1277 HUMAN TRAFFICKING — § 940.302(2)(c)**Statutory Definition of the Crime**

Human trafficking, as defined in § 940.302(2)(c) of the Criminal Code of Wisconsin, is committed by one who knowingly receives compensation from the earnings of debt bondage, a prostitute, or a commercial sex 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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant received compensation from the earnings of [debt bondage] [a prostitute] [a commercial sex act].

["Debt bondage" means 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.]¹

["Prostitute" means a person who intentionally engages in sexual intercourse or other sexual acts for anything of value.]²

["Commercial sex act" means (sexual contact) (sexual intercourse) for which anything of value is given to, promised, or received, directly or indirectly, by any person.]³

2. The defendant received that compensation knowingly. This requires that the defendant knew that the compensation was from the earnings of [debt bondage] [a prostitute] [a commercial sex act].

Deciding About Knowledge

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that both 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 1277 was approved by the Committee in June 2015.

This instruction is drafted for violations of sub. (2)(c) of § 940.302, Human trafficking, which are Class F felonies. The substance of subsection (2)(c) formerly appeared at § 944.30(2); it was amended and moved to § 940.302 by 2013 Wisconsin Act 362 [effective date: April 25, 2014].

For violations of sub. (2)(a) of § 940.302 see Wis JI-Criminal 1276 and 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)." An instruction has not been drafted to address this means of violating the statute.

Section 939.46(1m) provides an affirmative defense for any offense committed by a trafficking victim as a direct result of the violation of the trafficking statute.

For violations of § 948.051, Trafficking of a child, see Wis JI-Criminal 2124.

1. This is the definition provided in § 940.302(1)(b).
2. This is based on part of the definition of "practice prostitution" in Wis JI-Criminal 1562.

3. This is based on the definition provided in § 940.302(1)(a), as amended by 2013 Wisconsin Act 362. The portions of that definition relating to "sexually explicit performance" and "any conduct done for the purpose of sexual humiliation, degradation, arousal, or gratification" are excluded – see § 940.302(1)(a)3. 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.