

**1279 BENEFITING FROM HUMAN TRAFFICKING — § 940.302(2)(b)****Statutory Definition of the Crime**

Benefiting from human trafficking, as defined in § 940.302(2)(b) of the Criminal Code of Wisconsin, is committed by one who benefits in any manner from a violation of § 940.302(2)(a) and knows or reasonably should have known that the benefits come from or are derived from an act or scheme described in § 940.302(2)(a).

A violation of § 940.302(2)(a) occurs when a person knowingly engages in trafficking<sup>1</sup> for the purpose of (labor or services) (a commercial sex act) and does so by [CHOOSE ONE OF THE FOLLOWING]<sup>2</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>3</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 five elements were present.

### **Elements of the Crime That the State Must Prove**

1. A person<sup>4</sup> knowingly engaged in trafficking.

“Trafficking” means that (trafficker) [(recruited) (enticed) (harbored) (transported) (provided) (obtained)] [attempted to (recruit) (entice) (harbor) (transport) (provide) (obtain)] (name of victim).<sup>5</sup>

2. The trafficking was for the purpose of (labor or services) (a commercial sex act).<sup>6</sup>

[“Services” means activities performed by one individual at the request, under the supervision, or for the benefit of another person.]<sup>7</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>8</sup>

3. The trafficking was accomplished by (use the term or terms selected in the introductory paragraph).<sup>9</sup>
4. The defendant benefited from the (name the violation of § 940.302(2)(a)).
5. The defendant knew or reasonably should have known that the benefits came from or were derived from an act or scheme of trafficking.

### **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 five 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**

This instruction was approved by the Committee in August 2025.

1. It is not required that a defendant charged under § 940.302(2)(b) be the same individual alleged to have committed the underlying trafficking offense described in § 940.302(2)(a).

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

3. 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.”

4. The Committee elected to use only the term “person” to align with the structure of § 940.302(2)(b), which penalizes derivative conduct—specifically, “benefit[ing] in any manner from a violation of par. (a).” Under this provision, the State’s burden is to establish that a qualifying act of trafficking occurred, rather than to prove the identity, arrest, or conviction of a particular trafficker.

This approach does not reduce the State’s burden of proof. The prosecution must still demonstrate beyond a reasonable doubt that a trafficking offense, as defined by § 940.302(2)(a), was committed. However, the jury is not tasked with determining who perpetrated the trafficking; it need only be satisfied that the underlying offense occurred.

The Committee believes that in most cases, the trafficker will be a person other than the defendant charged with benefiting from human trafficking. This interpretation is supported by the statutory structure: both § 940.302(2)(a) and § 940.302(2)(b) classify the offenses as Class D felonies. If the same individual were alleged to be both the trafficker under subsection (a) and the beneficiary under subsection (b), the trafficking offense would be a lesser-included offense of the benefiting offense. In such a circumstance, the defendant could be convicted of only one of the offenses—not both.

Nevertheless, the statute does not prohibit the State from charging both offenses simultaneously, as it is both legally and factually possible for a single individual to commit both acts. In such instances, the trial court may need to clarify to the jury that the knowledge element in the underlying trafficking offense (element one) applies specifically to the defendant, rather than another individual, and is distinct from the knowledge element in element five, which concerns the defendant’s awareness of the source of the benefits.

5. 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).

6. 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.”

7. This is the definition of “services” provided in § 940.302(1)(c).

8. 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.

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