

1535 PUBLIC FORNICATION: SEXUAL INTERCOURSE IN PUBLIC — § 944.15**Statutory Definition of the Crime**

Public fornication, as defined in § 944.15 of the Criminal Code of Wisconsin, is committed by one who has sexual intercourse in public.

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 had sexual intercourse with (name other person).

“Sexual intercourse” means the penetration of the penis of the male into the genital organ of the female. Only vulvar penetration, however slight, is required. Emission of semen is not required.¹

2. The alleged act of sexual intercourse took place in public.

“In public” means in a place where other people are present or where other people can observe the act.²

3. The defendant knew or had reason to know the alleged act was observable by or in the presence of others.³

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 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 1535 was originally published in 1983 and revised in 1996, 2008, and 2016. The 2008 revision involved adoption of a new format and nonsubstantive changes to the text. This revision was approved by the Committee in December 2023; it added the paragraph "Deciding About Knowledge" to the main text of the instruction.

This instruction is for the only remaining offense defined by § 944.15(2) sexual intercourse in public. An offense formerly covered by the same statute, sexual intercourse with a person 16 years old or older but younger than 18, is now defined in § 948.09, see Wis JI Criminal 2138.

Section 944.15 was created in roughly its present form by 1983 Wisconsin Act 17. The statute was revised by 1987 Wisconsin Act 332 to remove the offense involving minors to § 948.09. The statute reads as follows:

944.15 Public fornication.

- (1) In this section, "in public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual intercourse.
- (2) Whoever has sexual intercourse in public is guilty of a Class A misdemeanor.

1. The definition of "sexual intercourse" is adapted from that found in § 939.22(36). The definition of "sexual intercourse" in § 940.225(5)(b) applies only to sexual assaults under § 940.225; it does not apply to crimes defined in Chapter 944.

2. The definition of "in public" found in subsec. (1) of § 944.15, see above, appears to create two elements of this offense. One element is that the act take place in the presence of others or where observable by others. The second element is that the defendant know or have reason to know that the act is in the presence of or observable by others. Rather than lump the knowledge requirement in with the definition of "in public," the Committee decided it was preferable to treat it as a separate element.

The definition of “in public” used in the instruction is adapted from the statutory definition. No change in meaning is intended.

3. See note 2, supra.