

1544 LEWD AND LASCIVIOUS BEHAVIOR C EXPOSING GENITALS OR PUBIC AREA — § 944.20(1)(b)**Statutory Definition of the Crime**

Lewd and lascivious behavior, as defined in § 944.20(1)(b) of the Criminal Code of Wisconsin, is committed by one who publicly and indecently exposes genitals or pubic area.

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 exposed (genitals) (pubic area).

"Expose" means to exhibit to the view of another person or persons.

2. The defendant exposed (genitals) (pubic area) publicly, that is, not in a hidden manner, but open to view.

["Publicly" means in such a place or manner that the person knows or has reason to know that the conduct is observable by or in the presence of other persons.]¹

3. The defendant exposed (genitals) (pubic area) indecently.

IF THE COURT FINDS IT IS NECESSARY TO DEFINE "INDECENTLY," ADD THE FOLLOWING

[This requires that the defendant's conduct offends the sense of decency of the community. It does not include conduct that is generally tolerated by the community at large but that might disturb an overly sensitive person.]²

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 1544 was originally published in 1987 and revised in 1989 and 1998. This revision was approved by the Committee in February 2007.

This instruction was revised in 1989 to reflect a change made in § 944.20 by 1989 Wisconsin Act 31, (section 2828m). The terms "genitals or pubic area" were substituted for "sex organ." The effective date of the change was August 9, 1989.

Section 944.20(2) was created by 1995 Wisconsin Act 165 to read: "Subsection (1) does not apply to a mother's breast-feeding of her child." [Effective date: April 6, 1996.]

1. The definition of "publicly" is adapted from the one provided for "in public" in §§ 944.15(1) and 944.17(1). Though that definition is not directly applicable to § 944.20, the Committee concluded that it was appropriate to refer to statutes in pari materia to define the common term.

2. The Committee concluded that a dictionary definition of "indecently" would not be helpful. If description of what "indecently" requires is believed to be necessary, the Committee concluded that the jury should be guided in applying a community standard. The material suggested is adapted from the description of "otherwise disorderly conduct" in Wis JI-Criminal 1900.