

1544A LEWD AND LASCIVIOUS BEHAVIOR: INDECENT ACT OF SEXUAL GRATIFICATION WITH ANOTHER — § 944.20(1)(a)**Statutory Definition of the Crime**

Lewd and lascivious behavior, as defined in § 944.20(1)(a) of the Criminal Code of Wisconsin, is committed by one who commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others.

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 committed an act of indecent sexual gratification¹.

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. The defendant committed the act with another person.
3. The defendant committed the act with knowledge they were in the presence of others.

This requires that the defendant knew or believed the act occurred in the presence of other persons.²

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 1544A was approved by the Committee in December 2023.

This instruction is for the offense defined by § 944.20(1) — lewd and lascivious behavior — committing an indecent act of sexual gratification with another with knowledge that they are in the presence of others. For lewd and lascivious behavior — exposing genitals or pubic area, See Wis JI Criminal 1544B.

1. “Sexual gratification” is not defined in the instruction or in the Wisconsin Criminal Code. Guidance as to its meaning may be gained from the context in which it is used in other statutes. See, for example, §§ 940.225 and 944.31.

For the purposes of this offense, it should not be relevant for whose “sexual gratification” the act was committed.

2. This definition is adapted from the one provided for “in public” provided 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.