

1564 PATRONIZING PROSTITUTES — § 944.31**Statutory Definition of the Crime**

Section 944.31 of the Criminal Code of Wisconsin is violated by one who enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute.

State's Burden of Proof

Before the defendant may be found 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 entered or remained in a place of prostitution.

"Place of prostitution" means any place where persons habitually engage in or offer to engage in nonmarital acts of sexual intercourse or sexual contact for anything of value.¹

2. The defendant entered or remained in the place with intent to (have nonmarital sexual intercourse) (commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another) (commit an act of masturbation) (to have sexual contact) with a prostitute.

A prostitute is a person who intentionally engages in sexual intercourse or other sexual acts for anything of value.²

Deciding About Intent

You cannot look into a person's mind to find intent. Intent 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 intent.

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 1564 was approved by the Committee in February 2018.

Wis JI Criminal 1564 is drafted for a violation of § 944.31, created by 2017 Wisconsin Act 131 [effective date: December 10, 2017]. First and second violations are Class A misdemeanors; third and subsequent violations are Class I felonies. In the Committee's judgment, the fact that the case involves a third or subsequent violation need not be submitted to the jury, even though it increases the penalty. "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt." *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (emphasis added).

1. "Place of prostitution" is defined in § 939.22(24) as "a place where a person habitually engages, in public or in private, in nonmarital acts of sexual intercourse, sexual gratification . . . , masturbation, or sexual contact for anything of value." The Committee concluded that referring to "acts of sexual intercourse or sexual contact" would make the instruction more understandable to the jury.

If further explanation is required, see § 939.22(36) for a definition of "sexual intercourse" and § 939.22(34) for a definition of "sexual contact."

While the "state must . . . prove 'habitual use' of the premises [as a place of prostitution] beyond a reasonable doubt . . . [it] need not be established by specifically proving a number of incidents beyond a

reasonable doubt. Rather, what is required is that evidence be adduced at trial from which the jury can infer 'habitual use.'" Johnson v. State, 76 Wis.2d 672, 678, 251 N.W.2d 834 (1977).

"Habitual" is defined as "customary . . . resorted to on a regular basis." Webster's New Collegiate Dictionary.

2. The definition of "prostitute" is the one used in Wis JI-Criminal 1568A, which is in turn derived from the definition of "practice prostitution" in Wis JI-Criminal 1562.