

1566 SOLICITING TO PRACTICE PROSTITUTION — § 944.32)**Statutory Definition of the Crime**

Soliciting to practice prostitution, as defined in § 944.32 of the Criminal Code of Wisconsin, is committed by one who intentionally solicits or causes any person to practice prostitution.

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 solicited or caused a person to practice prostitution.

"To solicit" means to command, encourage, or request another person to engage in specific conduct that constitutes the practice of prostitution.¹

"To practice" prostitution means intentionally engaging in sexual intercourse² or other sexual acts for anything of value on an ongoing basis.³

2. The defendant acted intentionally.

This requires that the defendant engaged in solicitation intending that the crime of prostitution be committed.

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 1566 was originally published in 1986 and was revised in 1989 and 2006. This revision was approved by the Committee in July 2015; it involved adoption of a new footnote 2.

Wis JI Criminal 1566 is drafted for a violation of § 944.32, which prohibits soliciting the practice of prostitution. Also see § 948.08, Soliciting A Child For Prostitution, and Wis JI Criminal 2136.

Section 944.32 begins: "Except as provided in s. 948.08 . . ." This is not a reference to a real exception to the coverage of the statute; it refers to a separate statute that prohibits soliciting a child for prostitution. The Committee concluded that it need not be addressed in the instruction.

Section 944.32 applies to a person who solicits two other people to engage in acts of sexual intercourse for money on multiple occasions. The defendant need not be a direct participant in the sexual acts. State v. Kittilstad, 231 Wis.2d 245, 603 N.W.2d 732 (1999).

1. The definition of "solicit" is adapted from the one used in § 5.02(1), Model Penal Code.
2. If a definition of sexual intercourse is necessary, the following definition provided in § 939.22(36) is suggested:

Sexual intercourse requires only vulvar penetration and does not require emission.

The definition of "sexual intercourse" in § 940.225(5)(c) applies only to sexual assaults under § 940.225; it does not apply to crimes defined in Chapter 944. Likewise, the definition of "sexual intercourse" in § 948.01(6) applies only to offenses in Chapter 948.

3. In State v. Johnson, 108 Wis.2d 703, 324 N.W.2d 447 (Ct. App. 1982), the court distinguishes the offense defined by § 944.32 from other prostitution crimes where "solicitation" may be involved:

Section 944.32, Stats., therefore, proscribes solicitation of ongoing criminal conduct. By contrast, sec. 944.30, Stats., punishes a single act of prostitution, and sec. 939.30, Stats., punishes solicitation of a single felony. It is reasonable for the state to punish solicitation of repeated acts of prostitution more severely than it punishes one act of prostitution.

The definition of "practice prostitution" in the instruction attempts to explain this distinction.