

1568 PANDERING — § 944.33(2)**Statutory Definition of the Crime**

Pandering, as defined in § 944.33(2) of the Criminal Code of Wisconsin, is committed by a person who, with intent to facilitate another in [having nonmarital sexual intercourse] [or] [committing an act of (sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another) (or) (masturbation) (or) (sexual contact)] with a prostitute, directs or transports the person to a prostitute or directs or transports a prostitute to the person.

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 two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant [directed or transported a person to a prostitute] [or] [directed or transported a prostitute to a person].

A prostitute is a person who intentionally engages in sexual intercourse¹ or other sexual acts for anything of value.²

2. The defendant [directed or transported a person to a prostitute] [or] [directed or transported a prostitute to a person] with intent to facilitate the person in [having nonmarital intercourse] [or] [committing an act of (sexual gratification involving

the sex organ of one person and the mouth or anus of another) (or) (masturbation) (or) (sexual contact³)] with a prostitute.

"With intent to facilitate" requires that the defendant acted with the mental purpose⁴ to assist the person in (use the term selected for element 2.).⁵

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 1568 was originally published in 2012. This revision was approved by the Committee in March 2015; it reflects changes made by 2013 Wisconsin Act 362.

Wis JI Criminal 1568 is drafted for a violation of sub. (2) of § 944.33 which are Class A misdemeanors. Before 2013 Wisconsin Act 362 [effective date: April 25, 2014] sub. (2) of § 944.33 provided that the offense was a Class F felony if the defendant received compensation from the earnings of the prostitute. Act 362 revised that provision and moved it to § 940.302(2)(c), the statute addressing human trafficking. See Wis JI Criminal 1276.

1. If a definition of sexual intercourse is necessary, the following is suggested.

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.

The above is based on the definition provided in § 939.22(36). 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.

2. This is based on part of the definition of "practice prostitution" in Wis JI-Criminal 1562.

3. If a definition of sexual contact is necessary, see § 939.22(34) and Wis JI-Criminal 934. The definition of "sexual contact" in § 940.225(5)(b) applies only to sexual assaults under § 940.225; it does not apply to crimes defined in Chapter 944.

4. "With intent to" requires either mental purpose to cause the result specified or being aware that his or her conduct is practically certain to cause that result. § 939.23(3). The Committee concluded that the mental purpose alternative is most likely to apply to this offense. See Wis JI-Criminal 923A and 923B for elaboration on the two alternatives.

5. Select the term used in element 2. For example: "'With intent to facilitate' requires that the defendant acted with the mental purpose to assist the person in having nonmarital sexual intercourse with a prostitute."