

1568A PANDERING — § 944.33(1)**Statutory Definition of the Crime**

Pandering, as defined in § 944.33(1) of the Criminal Code of Wisconsin, is committed by a person who solicits another 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) (or) (masturbation) (or) (sexual contact)] with a person the actor knows is a prostitute.

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 solicited (name of person) 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) (or) (masturbation) (or) (sexual contact)] with (name of alleged prostitute).

"Solicit" means to command, encourage, or request another person to engage in conduct that constitutes a crime.¹

2. The defendant knew that (name of alleged prostitute) was a prostitute.

A prostitute is a person who intentionally engages in sexual intercourse² or other sexual acts for anything of value.³

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 1568A was approved by the Committee in July 2015.

Wis JI Criminal 1568A is drafted for a violation of § 944.33(1) – a Class A misdemeanor. For violations of § 944.33(2) see Wis JI Criminal 1568B.

1. The definition of "solicit" is the one used in Wis JI-Criminal 1566, Soliciting To Practice Prostitution, which is based on the definition 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. This is based on part of the definition of "practice prostitution" in Wis JI-Criminal 1562.