

1568B 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 and revised in 2015 to reflect changes made by 2013 Wisconsin Act 362. This revision was approved by the Committee in 2016; it renumbered the instruction Wis JI Criminal 1568B and revised the Comment.

Wis JI Criminal 1568B is drafted for violations 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.

For violations of sub. (1) of § 944.33, see Wis JI Criminal 1568A.

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. 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."