

1571 GRANTING THE USE¹ OF A PLACE AS A PLACE OF PROSTITUTION — § 944.34(2)**Statutory Definition of the Crime**

Section 944.34(2) of the Criminal Code of Wisconsin is violated by one who intentionally grants the use of a place as a place of 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 three elements were present.

Elements of the Crime That the State Must Prove

1. (Name of place) was 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.²

2. The defendant granted the use of (name of place) as a place of prostitution.

To grant the use of a place of prostitution means to give permission to another person to use a place for prostitution.³

3. The defendant intentionally granted the use of (name of place) as a place of prostitution.

This requires that the defendant acted with the purpose to grant the use of a place of prostitution and knew that (name of place) was a place of prostitution.⁴

Deciding About Intent and Knowledge

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

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three 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 1571 was originally published in 1990. This revision involved adoption of a new format and was approved by the Committee in August 2005.

Wis JI Criminal 1571 is drafted for a violation of subsec. (2) of § 944.34, which applies to one who "grants the use or allows the continued use" of a place of prostitution. Subsection (1) of the statute applies to one who "keeps" a place of prostitution. See Wis JI Criminal 1570.

1. Subsection (2) of § 944.34 prohibits "granting the use" or "allowing the continued use" of a place of prostitution. This instruction is drafted for "granting the use" because the Committee concluded that would be the more common charge.

The Wisconsin Supreme Court discussed the difference between the two alternatives in *Johnson v. State*, 76 Wis.2d 672, 251 N.W.2d 834 (1977). The court concluded that "grants" requires "affirmative approval of the use of the premises for the purpose of prostitution on a single occasion," while "allows the continued use" requires "intentional but passive acquiescence or toleration of the use of the premises for prostitution purposes on more than one occasion." 76 Wis.2d at 677.

2. "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.

3. The definition of "grant" is based on the discussion of that term in Johnson v. State, 76 Wis.2d 672, 251 N.W.2d 834 (1977). See note 1, supra.

4. Section 939.23(3) provides that when the word "intentionally" is used, it requires knowledge of all the facts which make the conduct criminal and which appear after the word "intentionally" in the statute.