

**1601 COMMERCIAL GAMBLING: OPERATING A GAMBLING PLACE  
FOR GAIN — § 945.03(1m)(a)**

**Statutory Definition of the Crime**

Commercial gambling, as defined in § 945.03(1m)(a) of the Criminal Code of Wisconsin, is committed by one who intentionally operates a gambling place for gain.

**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. (Name of place) was a gambling place.

A "gambling place" is any building<sup>1</sup> or any room within it, one of whose principal uses is any of the following: making and settling bets; receiving, holding, recording, or forwarding bets or offers to bet.<sup>2</sup>

2. The defendant intentionally operated a gambling place for gain.

"Intentionally" requires that the defendant had the mental purpose<sup>3</sup> to operate a gambling place and to operate that gambling place for gain.

**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 1601 was originally published in 1985 and revised in 1995. This revision was approved by the Committee in March 2002 and involved adoption of a new format and nonsubstantive editorial changes.

1. The instruction uses the term "building," but the statutory definition covers other areas as well. Section 945.01(4) defines "gambling place" as follows:

(4) Gambling place. (a) A gambling place is any building or tent, any vehicle (whether self-propelled or not) or any room within any of them, one of whose principal uses is any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling machines.

(am) "Gambling place" does not include a place where bingo or raffle is conducted under ch. 563, where a lottery is conducted under ch. 565, or where a race is conducted under ch. 562.

Prior gambling activity is necessary to establish a "gambling place." State v. Nixa, 121 Wis.2d 160, 360 N.W.2d 52 (Ct. App. 1984). Also see State v. Dahlk, 111 Wis.2d 287, 330 N.W.2d 611 (Ct. App. 1983), and State v. Morrissy, 25 Wis.2d 638, 131 N.W.2d 366 (1964).

2. "Bet" is defined as follows in § 945.01(1):

(1) Bet. A bet is a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement. But a bet does not include:

(a) Bona fide business transactions which are valid under the law of contracts including without limitation:

1. Contracts for the purchase or sale at a future date of securities or other commodities, and

2. Agreements to compensate for loss caused by the happening of the chance including without limitation contracts of indemnity or guaranty and life or health and accident insurance;

(b) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such contest;

(cm) Participation in bingo or a raffle conducted under Ch. 563.

(d) Pari mutuel wagering subject to Ch. 562.

(e) Participation in a lottery conducted under Ch. 565.

3. The instruction uses the "mental purpose" alternative for the definition of "intentionally." A second alternative is that the defendant be "aware that his or her conduct is practically certain to cause" the result. See § 939.23(3) and Wis JI-Criminal 923.1 and 923.2.