

**1607 COMMERCIAL GAMBLING: USING WIRE COMMUNICATION TO PLACE A BET — § 945.03(1m)(g)**

**Statutory Definition of the Crime**

Commercial gambling, as defined in § 945.03(1m)(g) of the Criminal Code of Wisconsin, is committed by one who intentionally, for gain, uses a wire communication facility for the transmission or receipt of information assisting in the placing of a bet on a sporting event.

**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 three elements are present.

**Elements of the Crime That the State Must Prove**

1. The defendant used a wire communication facility<sup>1</sup> for the transmission or receipt of information.
2. The information transmitted or received assisted the placing of a bet on a sporting event.

A bet is an agreement in which one stands to win or lose something of value dependent upon chance even though accompanied by some skill.<sup>2</sup>

A sporting event is any contest of skill, speed, strength, or endurance.

3. The defendant acted intentionally, for gain.

"Intentionally" requires that the defendant had the mental purpose<sup>3</sup> to use a wire communication facility to transmit or receive information to assist in the placing of a bet on a sporting event 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 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 1607 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 statutory definition of "wire communication facility" is found in § 945.01(6) and reads as follows:

"Wire communication facility" means any and all instrumentalities, personnel and services, and among other things the receipt, forwarding or delivery of communications used or useful in the transmission of writings, signs, pictures and sounds of all kinds by means of wire, cable, microwave or other like connection between the points of origin and reception of such transmission.

2. The definition of "bet" is adapted from the lengthy statutory definition found in § 945.01(1). See note 2, Wis JI-Criminal 1601.

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.