

2136 SOLICITING A CHILD FOR PROSTITUTION — § 948.08**Statutory Definition of the Crime**

Soliciting a child for prostitution, as defined in § 948.08 of the Criminal Code of Wisconsin, is committed by one who intentionally solicits any child to engage in an act of prostitution.¹

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 were present.

Elements of the Crime That the State Must Prove

1. The defendant solicited (name of victim) to engage in an act of prostitution.

"To solicit" means to command, encourage, or request another person to engage in specific conduct that constitutes an act of prostitution.²

"An act of prostitution" means engaging in [sexual intercourse]³ [(specify act that would constitute prostitution under § 944.30)]⁴ for anything of value.

2. The defendant solicited (name of victim) intending that an act of prostitution be committed.
3. (Name of victim) had not attained the age of 18 years at the time of the alleged offense.

Knowledge of (name of victim)'s age by the defendant is not required⁵ and mistake regarding (name of victim)'s age is not a defense.⁶

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 2136 was originally published in 1989 and revised in 1986. This revision was approved by the Committee in December 2008. It updated the text to reflect changes made by 2007 Wisconsin Act 80 and adopted a new format.

This instruction is for a violation of § 948.08, created by 1987 Wisconsin Act 332 as part of the revision of the criminal statutes relating to crimes against children. Section 948.08 replaced § 944.32, Soliciting Prostitutes, for offenses involving children. Soliciting a person under the age of 18 years was specified as a fact that increased the penalty under that statute. Section 944.32 is retained but amended to provide that it applies "except as provided under s. 948.08." See Wis JI-Criminal 1566 for violations of § 944.32.

Section 948.08 was amended by 2007 Wisconsin Act 80 to refer to "engage in an act of prostitution" in place of "to practice prostitution." [Effective date: March 27, 2008.] "To practice prostitution" was interpreted to require engaging in acts of prostitution on an ongoing basis. See State v. Johnson, 108 Wis.2d 703, 324 N.W.2d 447 (Ct. App. 1982), interpreting § 944.32.

1. Section 948.08 refers to "solicits or causes any child to engage in an act of prostitution or establishes any child in a place of prostitution." The instruction is drafted for what is believed to be the most common offense – soliciting a child to engage in an act of prostitution.

2. The definition of "solicit" is adapted from the one used in § 5.02(1), Model Penal Code. Also see § 939.30, defining the inchoate crime of solicitation as "advising" another to commit a crime. Also see § 939.05(2)(c), defining party to a crime liability in terms of "advises, hires, counsels or procures another to commit a crime."

3. If a definition of "sexual intercourse" is needed, see Wis JI-Criminal 2101B.

4. The committee concluded that "act of prostitution" as used in § 948.08 must refer to those acts that could be the basis for a charge of prostitution under § 944.30: sexual intercourse, acts of sexual gratification, masturbation, and sexual contact.

5. Section 939.23(6).

6. Section 939.43(2).