

6037A KEEPING OR MAINTAINING A PLACE RESORTED TO BY PERSONS USING CONTROLLED SUBSTANCES IN VIOLATION OF CHAPTER 961 FOR THE PURPOSE OF USING CONTROLLED SUBSTANCES — § 961.42¹

Statutory Definition of the Crime

Section 961.42 of the Wisconsin Statutes provides that it is unlawful for any person knowingly to keep or maintain any structure or place² which is resorted to by persons using controlled substances in violation of Chapter 961 for the purpose of using controlled substances.

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 kept or maintained a structure or place.³

To keep or maintain a place is to exercise management or control over the place.

This element does not require that the defendant owned (name of place), but it does require that the defendant exercised management or control of the place in question.⁴

2. The place was resorted to by persons using controlled substances in violation of Chapter 961 for the purpose of using controlled substances.

(Name substance) is a controlled substance, the use of which violates Chapter 961.⁵

3. The defendant kept or maintained the place knowingly.

"Knowingly" requires that the defendant knew that the place was resorted to by persons using controlled substances for the purpose of using controlled substances.⁶

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. 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 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 6037A was originally published in 1993 and revised in 1996. This revision was approved by the Committee in August 2007 and involved adoption of a new format and nonsubstantive changes to the text.

Chapter 161 was renumbered Chapter 961 by 1995 Wisconsin Act 448. Effective date: July 9, 1996.

1. Section 961.42 applies to keeping or maintaining a structure or place for two different illicit purposes: for use by persons using controlled substances in violation of Chapter 961; and for manufacturing, keeping, or delivering controlled substances in violation of Chapter 961. The latter alternative is addressed by Wis JI-Criminal 6037B.

The penalty is a fine of not more than \$25,000 or imprisonment for not more than one year, or both.

2. The instruction refers to "structure or place," but § 961.42 provides a more extensive list: ". . . any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place." The rest of the instruction uses the general term, "place." If one of the more specific terms is identified by the charge or the evidence, it should be used in the instruction as well.

For a case involving a vehicle, see State v. Slagle, 2007 WI App 117, 300 Wis.2d 662, 731 N.W.2d 284, where the court found the evidence insufficient to establish that the use of a vehicle on a single occasion was for "keeping" cocaine. See Wis JI-Criminal 6037B.

3. See note 2, supra.

4. "Keep" is not defined in statutes or case law. The Committee concluded that it implies the exercise of management or control over the operation of the place. See Wis JI-Criminal 1570, Keeping a Place of Prostitution.

5. Section 961.42 refers to "using controlled substances in violation of Chapter 961." Literally speaking, Chapter 961 does not prohibit the "use" of controlled substances. Rather, it prohibits possession, delivery, manufacture, etc. As a practical matter, of course, any "use" of a controlled substance would inevitably involve at least possession and thus would be "in violation of Chapter 961."

6. Section 961.42(1) specifically requires that the violation be committed "knowingly." This requires knowledge that the place was used in connection with controlled substances. For a discussion of various issues relating to the knowledge requirement in controlled substance cases, see Wis JI-Criminal 6000.