

**6047 SOLICITING A CHILD FOR THE PURPOSE OF DELIVERING A
CONTROLLED SUBSTANCE¹ — § 961.455**

Statutory Definition of the Crime

The Wisconsin Statutes make it a crime for a person who has attained the age of 17 years to knowingly solicit a child² for the purpose of delivering a controlled substance.

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 four elements were present.

Elements of the Crime That the State Must Prove

1. The defendant knowingly solicited (name of child) for the purpose of³ delivering⁴ a substance.

"Deliver" means to transfer or attempt to transfer something from one person to another.⁵

"Solicit" means to advise another person to commit a crime under circumstances that indicate, unequivocally, that the person intends that the crime be committed.⁶

"Unequivocally" means that no other inference or conclusion can reasonably and fairly be drawn from the defendant's conduct, under the circumstances.⁷

Before you may find the defendant guilty, you must be satisfied beyond a reasonable doubt that the defendant advised (name of child) to deliver (name

controlled substance) and intended that (name of child) deliver (name controlled substance). However, it is not required that any delivery actually took place. It is sufficient if the defendant solicited (name of child) for the purpose of delivering.⁸

2. The substance was (name controlled substance). (Name controlled substance) is a controlled substance whose possession is prohibited by law.
3. (Name of child) was a child, that is, had not attained the age of 18 years at the time of the alleged delivery.

Knowledge of (name of child)'s age by the defendant is not required and mistake regarding (name of child)'s age is not a defense.

4. The defendant had attained the age of 17 years at the time of the alleged delivery.

Deciding About Knowledge and Purpose

You cannot look into a person's mind to find knowledge and purpose. Knowledge and purpose 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 and purpose.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four 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 6047 was originally published in 1990 and revised in 1996. This revision involved a nonsubstantive editorial correction and was approved by the Committee in February 2010.

This instruction is for a violation of § 961.455, created by 1989 Wisconsin Act 121 (effective date: January 31, 1990.)

Chapter 161 was renumbered Chapter 961 by 1995 Wisconsin Act 448. Effective date: July 9, 1996. Act 448 also extended the coverage of controlled substance offenses to include "controlled substance analogs." See Wis JI-Criminal 6005 and 6020A.

1. This instruction is for a violation of § 961.455 which involves soliciting a child for the purpose of delivering a controlled substance. There are several other variations of conduct that may violate this statute. Wis JI-Criminal 6046 is drafted for a case where a defendant uses a child to make an actual delivery. This instruction does not require a delivery; the offense is committed if one solicits a child for the purpose of making a delivery. See the Comment to Wis JI-Criminal 6046 for a discussion of § 961.455.

2. The instruction uses "child" as the more understandable equivalent of the statute's reference to persons who "is 17 years of age or under." The third element defines "child" in the more common way – as one who "has not attained the age of 18 years."

3. This instruction is drafted for a case where the defendant is charged with soliciting a child for the purpose of delivering a controlled substance and a delivery has not necessarily taken place. That this conduct is prohibited by § 961.455(1) is apparently clear from the plain meaning of the statute, which includes the "for the purpose of" language. The conclusion is supported by subsection (4) of § 961.455 which provides: "If the conduct described under sub. (1) results in a violation under § 961.41(1), the actor is subject to prosecution and conviction under § 961.41(1) or this section or both."

4. See note 1, supra.

5. This definition was adapted from that found in § 961.01(6), which reads as follows:

"Deliver" or "delivery," unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is any agency relationship.

6. The definition of "solicit" is based on § 939.30, which defines the inchoate crime of solicitation as advising another to commit a felony under circumstances which indicate unequivocally that the person intends that such crime be committed. Subsection (3) of § 961.455 provides that "solicitation under sub. (1) occurs in the manner described under § 939.30. . . ." See Wis JI-Criminal 550, Solicitation As A Crime.

7. The definition of "unequivocally" is based on the one used in Wis JI-Criminal 580, Attempt.

8. See note 4, supra.