

22.2 MAINTAINING A GAMBLING ESTABLISHMENT

§ 849.01-A (849.02) Fla. Stat.

§ 849.01, Fla. Stat., covers both the maintaining of a gambling establishment and the permitting of gambling. Accordingly, separate instructions have been prepared for these offenses with the designations "A" and "B" § 849.02, Fla. Stat., proscribes the same conduct when one is acting as a servant, clerk, agent, or employee. Therefore, the instructions for § 849.01, Fla. Stat., may be given for charges under § 849.02, Fla. Stat., by using appropriate language as indicated.

To prove the crime of Maintaining a Gambling Establishment, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant),

a. [in person or by a servant, clerk, or agent,]

Give 1b if applicable under § 849.02, Fla. Stat.

b. [acting as servant, clerk, agent, or employee of another,] had a substantial degree of control over and kept or maintained (place or articles alleged).

2. The [place was] [articles were] habitually kept or maintained for the purpose of gambling.

A single instance or rare and isolated instances of placing bets or gambling would be insufficient to constitute the crime. But if the property was used at frequent intervals as a place or means for betting, gaming, or gambling, the crime has been committed even if the principal use of the property is for some other lawful purpose.

It is not necessary to prove that the defendant gambled, or received any profit from the gambling, or that [he] [she] wholly owned or controlled the property.

It is not necessary to a conviction of this offense that there be direct and positive evidence of gambling. It is sufficient if implements, devices, or apparatus commonly used by gambling houses or by gamblers are found under circumstances that convince you that the premises were kept or maintained for the purpose of gambling.

Give if applicable under § 849.02, Fla. Stat.

A servant, clerk, agent, or employee of another who keeps or maintains property for the purpose of gambling is equally guilty with [his] [her] employer.

Definition

"Gambling" is a game of chance in which the participant risks money or property on the outcome with the expectation of gaining or losing as a result of the game.

If there is evidence of the exception referred to in § 849.093 and 849.085, Fla. Stat., an appropriate instruction should be given.

Lesser Included Offenses

MAINTAINING A GAMBLING ESTABLISHMENT — 849.01 (849.02)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(k)	22.11
	Lottery	849.11	

Comment

This instruction was adopted in 1981 and amended in 1992.