

22.3 PERMITTING GAMBLING

§ 849.01-B, Fla. Stat. (849.02)

§ 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 Permitting Gambling, 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,] had direct or indirect charge, control, or management of (place or premises alleged).

2. (Defendant) **habitually solicited or knowingly permitted gambling at that place.**

The word "knowingly" is implied in "permit" or "allow" but is added here to make this fact clear to the jury. In this definition the word "gambling" has been added to effectuate the obvious legislative intent.

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

It is not necessary that the defendant have the sole and exclusive control or management of the place. It is sufficient if the control or management was exercised jointly with others. But a person would not be guilty of this crime unless that person had sufficient control or management of the place to carry with it the authority to deny or forbid that use of the place.

It is not necessary that the defendant have any personal interest in the gambling or in the use of the place for gambling.

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, Fla. Stat., an appropriate instruction should be given.

Lesser Included Offenses

PERMITTING GAMBLING — 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	

AGENTS, SERVANTS, ETC., OF KEEPER OF GAMBLING HOUSE — 849.02

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

RENTING HOUSE FOR GAMBLING PURPOSES — 849.02

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	None		

Comment

This instruction was adopted in 1981.