

PROMOTES PROSTITUTION
N.J.S.A. 2C:34-1(b)(2)

Count ____ of the indictment charges the defendant with promoting prostitution.

(Read pertinent count of the indictment)

The defendant is accused of violating a section of our statutes, which reads as follows:

A person commits an offense if the actor promotes prostitution.¹

In order for you to find the defendant guilty of this offense, you must find the State has proved beyond a reasonable doubt each of the following elements:

1. The defendant promoted prostitution; and
2. The defendant acted knowingly.²

The first element the State must prove beyond a reasonable doubt is that the defendant promoted prostitution.

Prostitution is sexual activity with another person in exchange for something of economic value, or the offer or acceptance of an offer to engage in sexual activity in exchange for something of economic value.³

Sexual activity includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; sadistic or masochistic abuse and other deviate sexual relations.⁴

Promoting Prostitution is defined as follows **(read appropriate section(s))**:

1. Owning, controlling, managing, supervising or otherwise keeping alone or in association with another, a house of prostitution or a prostitution business;
2. Procuring an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

¹ N.J.S.A. 2C:34-1(b)(2).

² N.J.S.A. 2C:2-2(c)(3).

³ N.J.S.A. 2C:34-1(a)(1).

⁴ N.J.S.A. 2C:34-1(a)(2).

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3. Encouraging, inducing, or otherwise purposely causing another to become or remain a prostitute;
4. Soliciting a person to patronize a prostitute;
5. Procuring a prostitute for a patron;
6. Transporting a person into or within the State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose; or
7. Knowingly leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

(Read if appropriate)

A house of prostitution is any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another.⁵

To engage means to employ or involve one's self, to take part in, to embark on, to arrange for the services of, to arrange for the use of, to draw into, involve, to undertake or agree, to be active.⁶

[Permissive inference⁷]

(Read if appropriate)

If a person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, is supported in whole or substantial part by the proceeds of prostitution, you may infer he/she knowingly promoted prostitution. However, you are never required or compelled to draw this inference. It is your exclusive province to determine whether the facts and circumstances shown by the evidence support any inference and you are always free to accept the inference or reject it if you wish.

(Read in all cases)

⁵ N.J.S.A. 2C:34-1(a)(3).

⁶ See Black's Law Dictionary (Revised 4th Edition 1968); Webster's New World College Dictionary (4th Edition 1985).

⁷ N.J.S.A. 2C:34-1(d). Please note that care should be taken to avoid the use of the term "presumption" and it should be clearly stated that the inference is only permissive in nature.

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The second element that the State must prove beyond a reasonable doubt is that the defendant acted knowingly to promote prostitution.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that the conduct is of that nature or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of the conduct if he/she is aware that it is practically certain that the conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.

Knowingly is the state of mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that the State produce witnesses to testify that a defendant said that he/she knowingly did something. His/Her knowledge may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and evidence adduced at trial].

(Read if N.J.S.A. 2C:34-1(a)(4)(c) or (f) are charged)

A person promotes prostitution if he/she [encourages, induces or otherwise purposely causes another to become or remain a prostitute] [transports a person into or within this State with purpose to promote that person’s engaging in prostitution or procuring or paying for transportation with that purpose.]

A person acts purposely with respect to the nature of his/her conduct or the result of that conduct if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the person is aware of the existence of such circumstances or believes or hopes that they exist. “With purpose,” “designed,” “with design,” or equivalent terms have the same meaning.

Purposely is a state of mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that the State produce witnesses to testify that the defendant said that he/she purposely did something. His/Her purpose may be gathered from his/her acts and conduct, from all that he/she said and did at the particular time and place, and from all the surrounding circumstances reflected in the testimony [and evidence adduced at trial].

(Read if appropriate)

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It is an affirmative defense to prosecution for a violation of this statute that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking pursuant to a section of our laws⁸ or compelled by another to engage in sexual activity, regardless of the defendant's age.⁹

In this matter, the defendant has alleged the following: _____. The State counters as follows: _____. The State must disprove this affirmative defense beyond a reasonable doubt.¹⁰

(Read in all cases)

If you find that the State has proved each element of the offense beyond a reasonable doubt (**charge if appropriate:** and the State has disproved the affirmative defense beyond a reasonable doubt), then you must find the defendant guilty.

If you find that the State has failed to prove any element of the offense beyond a reasonable doubt (**charge if appropriate:** or if the State has failed to disprove the affirmative defense beyond a reasonable doubt), then you must find the defendant not guilty.

(Grading Section)

If you find that the State has proved each element of the offense beyond a reasonable doubt (**charge if appropriate:** and the State has disproved the affirmative defense beyond a reasonable doubt), then you must go on to determine the following:

You must determine if the State has proved beyond a reasonable doubt that (**choose appropriate section(s):**

⁸ N.J.S.A. 2C:13-8. The statute does not define the term "victim of human trafficking." See Model Jury Charge, Criminal, "Human Trafficking: To engage in Sexual Activity And/Or To Provide Labor Or Services (N.J.S.A. 2C:13-8(a)(1)) (Approved 1/11/16) n.29. Other states' statutes provide varying definitions. See Colo. Rev. Stat. Ann. §18-3-502 ("Victim" means a person who is alleged to have been, or who has been, subjected to human trafficking, as described in section 18-3-503 or section 18-3-504); Iowa Code Ann. §710A.1 ("person subjected to human trafficking"); §.529.010 ("Victim of human trafficking" is a person who has been the subject to human trafficking"); Md. Code Ann., State Gov't § 7-301(f) ("Victim of human trafficking" means an individual who has been recruited, harbored, transported, provided or obtained for labor, services or sexual act through the use of force, fraud, or coercion"); Mass. Gen. Laws. Ann. Ch. 233, § 20M ("Human Trafficking victim" or 'victim,' a person who is subjected to the conduct prohibited under sections 50 or 51 of chapter 265"). It will be up to the parties, and ultimately the Court, to determine the appropriate definition.

⁹ N.J.S.A. 2C:34-1(e).

¹⁰ N.J.S.A. 2C:1-13(b)(1). State v. Kelly, 97 N.J. 178, 200 (1984); State v. Holmes, 208 N.J. Super. 480, 488 (App. Div. 1986). See also State v. Smith, 322 N.J. Super. 385, 395-96 (App. Div.) certif. denied, 162 N.J. 489 (1999).

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(a) the defendant owned, controlled, managed, supervised or otherwise kept, alone or in association with another, a house of prostitution or a prostitution business;

(b) the defendant procured an inmate for the house of prostitution for one who would be an inmate;

(c) the defendant encouraged, induced or otherwise purposely caused another to become or remain a prostitute;

(f) the defendant transported a person into or within this State with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose;

(g) the defendant knowingly leased or otherwise permitted a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or promotion of prostitution, or failure to make a reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means.

If the State has failed to prove any of the above sections beyond a reasonable doubt, then you must go on to determine if the State has proved the following beyond a reasonable doubt **(choose the appropriate section(s))**:

(d) The defendant solicited a person to patronize the prostitute;

(e) The defendant procured a prostitute for a patron.