

## **9.10 Issue In Prostitution**

To sustain the charge of prostitution, the State must prove the following proposition:

That the defendant [ (intentionally) (knowingly) ] [ (performed) (offered to perform) (agreed to perform) ] [ (any act of sexual penetration) (any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification) ] for any money, property, token, object, or article or anything of value.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

### **Committee Note**

720 ILCS 5/11-14 (West 1992) (formerly Ill.Rev.Stat. ch. 38, §11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.09.

When sexual penetration is an issue, give Instruction 11.65E.

Because Section 11-14 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 591 N.E.2d 461, 169 Ill.Dec. 288 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In *People v. Gean*, 143 Ill.2d 281, 573 N.E.2d 818, 158 Ill.Dec. 5 (1991), *People v. Tolliver*, 147 Ill.2d 397, 589 N.E.2d 527, 168 Ill.Dec. 127 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 433 N.E.2d 629, 60 Ill.Dec. 587 (1982), the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" committing prostitution under Section 11-14, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

This instruction has been revised to conform to the interpretation placed upon the prostitution statute by the Appellate Court in *People v. Pettigrew*, 215 Ill.App.3d 393, 574 N.E.2d 1282, 158 Ill.Dec. 889 (4th Dist.1991). See Committee Note to Instruction 9.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he

is legally responsible” after the word “defendant” in the proposition. See Instruction 5.03.