

9.09
Definition Of Prostitution

A person commits the offense of prostitution when [(he) (she)] [(intentionally) (knowingly)] [(performs) (offers to perform) (agrees 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.

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 9.10.

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, 395, 574 N.E.2d 1282, 1283-84, 158 Ill.Dec. 889, 890-91 (4th Dist.1991). In *Pettigrew*, the court found that a "purpose of sexual arousal or gratification" is an element of the offense only when an offer, agreement, or act of *touching or fondling* is alleged. The court held that proof of a "purpose of sexual arousal or gratification" is not required where an offer, agreement, or act of *sexual penetration* is alleged.

Use applicable bracketed material.