

DERIVING SUPPORT FROM EARNINGS OF A PROSTITUTE

The defendant is charged with knowingly (deriving support from) (sharing in) the earnings of a prostitute.

Chapter 7 of section 272 of our General Laws provides as follows:

“Whoever,
knowing a person to be a prostitute,
shall live or derive support or maintenance, in whole or in part,
from the earnings or proceeds of his prostitution . . .
or shall share in such earnings [or] proceeds . . .
shall be punished”

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That a particular person was engaged in prostitution. A prostitute is a person who engages in common, indiscriminate sexual activity for hire.

Second: The Commonwealth must prove beyond a reasonable doubt that the defendant *knew* that such person was a prostitute; and

Third: The Commonwealth must prove beyond a reasonable doubt

that the defendant shared in some way in the earnings or proceeds from that person's prostitution.

See Instruction 3.140 (Knowledge).

Note that this statute requires a mandatory minimum sentence of two years. *Commonwealth v. Lightfoot*, 391 Mass. 718, 721, 463 N.E.2d 545, 547 (1984). While the statute does not provide for a house of correction sentence, any District Court sentence must be to the house of correction. See *Id.*; *Commonwealth v. Graham*, 388 Mass. 115, 445 N.E.2d 1043 (1983); *Commonwealth v. Dupree*, 16 Mass. App. Ct. 600, 605, 453 N.E.2d 1071, 1075 (1983) ("The reference to State prison may well indicate the Legislature's use of the statutory shorthand for a felony, rather than an intent to preclude a . . . sentence [elsewhere]. It did not compel a sentence to State prison").

The statute also punishes anyone who lives or derives support "from monies loaned, advanced to or charged against him by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed." The model instruction may be appropriately adapted.

Commonwealth v. Bracy, 313 Mass. 121, 46 N.E.2d 580 (1943) (defendant can be charged and convicted solely for "shar[ing] in such earnings, proceeds or monies," but complaint that omits any antecedent for word "such" charges no crime); *Commonwealth v. Thetonia*, 27 Mass. App. Ct. 783, 543 N.E.2d 700 (1989) (friend chauffeuring prostitute in exchange for occasional gas money and drugs is insufficient; since statute is aimed at pimping, a minor indirect financial benefit not sufficient); *Commonwealth v. Roberts*, 5 Mass. App. Ct. 881, 882, 368 N.E.2d 829, 829 (1977) (statute is constitutional). The definition of prostitution is drawn from *Commonwealth v. King*, 374 Mass. 5, 12, 372 N.E.2d 196, 202 (1977).

NOTES:

1. **Deriving support from earnings of a minor prostitute** (G.L. c. 272, § 4B) is an aggravated form of § 7. It does not require that the defendant knew or should have known that the prostitute was a minor. *Commonwealth v. Baker*, 17 Mass. App. Ct. 40, 43, 455 N.E.2d 642, 643 (1983). The District Court does not have final jurisdiction over the aggravated offense, since it is a life felony, *Id.*, 17 Mass. App. Ct. at 41 n.2, 455 N.E.2d at 642 n.2, and is not listed in G.L. c. 218, § 26.

2. **Knowingly permitting premises to be used for prostitution.** The related offense of knowingly permitting a person to use premises under the defendant's control for prostitution (G.L. c. 272, § 6) requires proof: (1) that the defendant owned, managed or assisted in the management or control of certain premises; (2) that a person was present on those premises for the purpose of unlawfully having sexual intercourse; and (3) that the defendant induced or knowingly permitted the person's presence on the premises for that purpose. *Commonwealth v. Bucaulis*, 6 Mass. App. Ct. 59, 62, 373 N.E.2d 221, 224, cert. denied, 439 U.S. 827 (1978). A conviction under § 6 may not rest on the testimony of only one witness unless it is corroborated in a "material particular." G.L. c. 272, § 11. *Bucaulis*, 6 Mass. App. Ct. at 64, 373 N.E.2d at 225.