

DERIVING SUPPORT FROM EARNINGS OF A PROSTITUTE

G.L. c. 272, § 7

The defendant is charged with knowingly (deriving support from) (sharing in) the earnings of a prostitute. This statute makes it a crime to engage in “pimping,” that is, “knowingly and intentionally profiting from the prostitution of another.”

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

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

***Second:* That the defendant had knowledge of, and intended to profit from, this person’s prostitution;**

See Instruction 3.140 (Knowledge).

(and)

***Third:* That the defendant shared in some way in the earnings or proceeds from that person’s prostitution.**

Note that this statute requires a mandatory minimum sentence of two years. *Commonwealth v. Lightfoot*, 391 Mass. 718, 721 (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 (1983);

Commonwealth v. Dupree, 16 Mass. App. Ct. 600, 605 (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 appropriate adapted.

Commonwealth v. Bracy, 313 Mass. 121 (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 (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 (1977) (statute is constitutional). The defendant must intend to profit from the prostitution’s activities. *Commonwealth v. Brown*, 481 Mass. 77, 87-89 (2018).

NOTES:

1. **Deriving support from earnings of a minor prostitute.** General Laws 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 (1983). The District Court does not have final jurisdiction over the aggravated offense, since it is a life felony, *id.* at 41 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 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, 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.