

**PROMOTING GAMBLING IN THE FIRST DEGREE**  
**Penal Law § 225.10(2)**  
**(Committed on or after September 1, 1967)**

The (*specify*) count is Promoting Gambling in the First Degree.

Under our law, a person is guilty of Promoting Gambling in the First Degree when he or she knowingly advances or profits from unlawful gambling activity by receiving, in connection with a lottery or policy scheme or enterprise,

*Select appropriate alternative:*

money or written records from a person other than a player whose chances or plays are represented by such money or records.

more than five hundred dollars in any one day of money played in such scheme or enterprise.

The following terms used in that definition have a special meaning: <sup>1</sup>

---

<sup>1</sup> Depending on the facts and issues of the case, the terms, Gambling, Something of Value, and Contest of Chance, as defined in Penal Law § 225.00, may have to be explained as follows:

A person engages in GAMBLING when that person stakes or risks "something of value" upon the outcome of a "contest of chance" or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome. Penal Law § 225.00(2).

SOMETHING OF VALUE means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge. Penal Law § 225.00(6).

CONTEST OF CHANCE means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. Penal Law § 225.00(1).

A person ADVANCES GAMBLING ACTIVITY when, acting other than as a player, that person engages in conduct which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation.

*[Add if appropriate:*

One advances gambling activity when, having substantial proprietary or other authoritative control over premises being used with his or her knowledge for purposes of gambling activity, he or she permits such to occur or continue or makes no effort to prevent its occurrence or continuation.] <sup>2</sup>

A person PROFITS FROM GAMBLING ACTIVITY when, other than as a player, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity. <sup>3</sup>

"Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of

---

<sup>2</sup> Penal Law § 225.00(4).

<sup>3</sup> Penal Law § 225.00(5).

the particular gambling activity. <sup>4</sup>

LOTTERY means an unlawful gambling scheme in which (a) the players pay or agree to pay something of value<sup>5</sup> for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value. <sup>6</sup>

POLICY or "the numbers game" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.<sup>7</sup>

A person KNOWINGLY advances or profits from unlawful gambling activity when that person is aware that he or she is

---

<sup>4</sup> Penal Law § 225.00(3). The definition continues to state: "A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking," as defined in this section is not a 'player.'

<sup>5</sup> "Something of value" is defined in Penal Law § 225.00(6) and is set forth in footnote one.

<sup>6</sup> Penal Law § 225.00(10). The definition continues with the following proviso: "provided, however, that in no event shall the provisions of this subdivision be construed to include a raffle as such term is defined in subdivision three-b of section one hundred eighty-six of the general municipal law."

<sup>7</sup> Penal Law § 225.00(11).

advancing or profiting from unlawful gambling activity.<sup>8</sup>

UNLAWFUL means not specifically authorized by law.<sup>9</sup> Under our law, with certain exceptions not applicable here, gambling activity is not authorized by law.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following two elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), advanced or profited from unlawful gambling activity by receiving, in connection with a lottery or policy scheme or enterprise,

*Select appropriate alternative:*

money or written records from a person other than a player whose chances or plays are represented by such money or records, and

more than five hundred dollars in any one day of money played in such scheme or enterprise, and

2. That the defendant did so knowingly.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

---

<sup>8</sup> Penal Law § 15.05(2).

<sup>9</sup> Penal Law § 225.00(12).