

PROMOTING GAMBLING IN THE SECOND DEGREE
Penal Law § 225.05
(Committed on or after September 1, 1967)

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

Under our law, a person is guilty of Promoting Gambling in the Second Degree when he or she knowingly advances or profits from unlawful gambling activity.

The following terms used in that definition have a special meaning: 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.

¹ 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).

[Note: add if appropriate:

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.]

[Note: 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.]²

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.³

"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 the particular gambling activity.

[Note: add if appropriate:

A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise

² Penal Law § 225.00(4).

³ Penal Law § 225.00(5).

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" is not a "player." "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.⁴⁾ ⁵

A person KNOWINGLY advances or profits from unlawful gambling activity when that person is aware that he or she is advancing or profiting from unlawful gambling activity. ⁶

UNLAWFUL means not specifically authorized by law. ⁷ 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, and

2. That the defendant did so knowingly.

⁴ Penal Law § 225.00(9).

⁵ Penal Law § 225.00(3).

⁶ Penal Law § 15.05(2).

⁷ Penal Law § 225.00(12).

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.