

State Attorney's Guidelines	Guideline no. 2.2 – Enforcement policy in offenses associated with prostitution
July 25, 1990; January 2, 1994; August 1, 2002; January 1, 2003; January 10, 2006; May 3, 2012; June 23, 2014; April 2, 2019	Last updated: May 6, 2019

2.2 Enforcement policy in offenses associated with prostitution

The purpose of this guideline is to outline the enforcement and prosecution policies of common criminal cases associated with prostitution and related to prostitution: human trafficking and procurement; Sexual services provided at strip clubs; And advertising prostitution services or offers to engage in prostitution.

This guideline will include the following subsections:

- a. General
- b. Defining an "act of prostitution"
- c. Providing sexual services in strip clubs or other settings
- d. Offenses related to prostitution
- e. Advertising prostitution services and offers to engage in prostitution
- f. Economic enforcement

a. **General:**

"The State of Israel, as a society that wishes to be enlightened, is at war with the shameful industry that has developed among us over the past decade in the field of prostitution, including the revelations of trafficking in women, traffickers and their assistants, brothel holders, modern-day slave masters, who degrade human dignity to the ultimate low, giving a bad name for all humanity...";¹

1. The phenomenon of managing massage parlors, offices for providing escort services or strip clubs, which are often a front for engaging in prostitution, is a very common phenomenon. Often, in the framework of operating massage parlors, escort offices or various clubs, the most serious offenses are committed, such as human trafficking, prostitution, brokerage in human trafficking, procurement, drug trafficking, extortion, and money laundering offences, etc.
2. Prostitution is a phenomenon that expresses distress, and committing offenses associated with prostitution constitutes an ugly exploitation of that distress. Treating a person's body as a sexual object for sale and exploiting this outlook for material profits, severely affect that person's dignity, and the value of human dignity in general. Given the severity of the phenomena mentioned, their severe infringement of social basic values and the international obligations of the State of Israel in this area,² it is appropriate that the enforcement policy in the area of offenses

¹ Criminal Appeal 419/50 **Nikolai Vodovichenko v. the State of Israel** (unpublished, June 15th 2005).

² In July 2008, the State of Israel ratified the protocol on the prevention, suppression and punishment of human trafficking, especially women and children, supplementing the United

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relating to prostitution be stricter and effective. The law enforcement system must strive to eradicate the phenomenon of human trafficking or mediation in human trafficking for the purpose of prostitution and other serious offenses associated with prostitution, including inducing a person to an act/ to engaging in prostitution, procurement – living off prostitution, and offenses associated with prostitution in general. This is based on the recognition of human dignity and the basic principles of the Israeli legal system.³

3. The phenomenon of prostitution is not unique to a specific gender and is common among women, men and transgender people. The use of the male or female form in these guidelines is therefore not aimed at a particular gender.

b. **Defining an "act of prostitution":**

4. The normative foundations in law and case law:
 - (a) The practice of prostitution in itself is not prohibited in criminal law in Israel, although the use of prostitution services has recently been banned.⁴
 - (b) Alongside this, Article 10 of the Law lists a series of offenses relating to prohibited acts that are associated with the act of prostitution or the engagement in prostitution, such as procurement for the purpose of prostitution (section 199 of the Law); Inducement of a person to an act of prostitution or to engage in prostitution (sections 201-202 of the Law); Exploitation of minors for prostitution (section 203B of the Law); Liability of a minor's customer (section 203C); Maintaining and renting a place

Nations Convention on Transnational Organized Crime (2000), and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000). The State of Israel is also a member of a number of other treaties relevant to the subject, including the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950), and the World Labor Organization Protocol to the Convention on Forced Labor (2014).

³ This guideline does not lessen the aspiration to mitigate the extent possible, the phenomenon of prostitution in general which is itself a violation of human dignity and also provides a convenient infrastructure for the development of trafficking offenses for the purpose of prostitution. However, it should be emphasized that the overall solution to the problem of women and men engaged in prostitution (which is not prohibited per se), exceeds the responsibilities of law enforcement agencies and requires public discussion and interdisciplinary treatment by all relevant bodies, including rehabilitation frameworks.

⁴ The Prohibition of Consumption of Prostitution Services (Temporary Provision and Legislative Amendment) Law, 5779 – 2019, regarding adults. In the case of minors, consumption of prostitution services is prohibited (has been for a long time) under section 203C of the Penal Law (Liability of a minor's customer) and the punishment prescribed for it standing at five years of imprisonment.

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for purposes of prostitution (sections 204-205 of the Law); Advertising prostitution services or offer to engage in prostitution (sections 205C and 205D of the Law); And more (hereinafter: "**Offenses relating to prostitution**"). In addition to these offenses, section 377A (a) (5) sets an offense of trafficking in human beings for the purpose of inducing them to an act of prostitution or putting them at risk of their inducement into an act of prostitution (hereinafter: "**Human trafficking for purposes of prostitution**").

- (c) Notwithstanding the repeated use of the term "prostitution" in the various offenses listed in Article 10 of Chapter H of the Law, the legislature refrained from defining in the law what "prostitution" is, and proposals previously made to define prostitution did not pass the legislative process.⁵
- (d) In a Supreme Court ruling, a number of definitions were proposed for the term "prostitution". In one case it was stated that it was having intercourse with a woman in exchange for payment,⁶ but in a later case it was stated that reaching sexual gratification in another way not through intercourse, in return for payment, is included in this definition.⁷ In another case, the employment of women in a massage parlor was discussed where they were

⁵ Bill for the amendment of the Penal Code (Prostitution Offenses), 5722 – 1962. The bill in section 4 states that "sexual contact with a woman for which something is given in return is regarded... as an act of prostitution of the woman, unless proven otherwise". This bill was finally adopted, but without the definition as quoted. Another definition was proposed by the Committee for the examination of Prostitution Problems headed by Justice (Retired) Hadassah Ben Ito, in 1975. The Committee's proposal was to define prostitution as "a physical act between two or more, including contact using auxiliary devices, intended to bring about sexual gratification, in exchange for payment". This proposal was not adopted in legislation. On the complexity and difficulty of defining the term prostitution, see also the inter-ministerial staff report on the examination of the tools for reducing use of prostitution services, December 2017.

⁶ Criminal Appeal 236/65 **Ibrahim Al Bana v. the Attorney General**, Supreme Court Rulings 19 (2), 459 (1965). In this case, Judge Zilberg referred to the term "prostitute" and stated that it is a woman "willing to have intercourse with anyone who wishes to give her compensation".

⁷ Serious Criminal Case (Tel Aviv) 112/66 the **State of Israel v. Said bin Suleiman Okashi**, District Court Rulings 61 137 (1967), where the district court held that "there may be acts on the border, and not every physical act constitutes an act of prostitution, such as kissing, but here the two clients rubbed their genitals between the complainant's legs until ejaculating. We believe that this is indubitably an act of prostitution just as an act of sodomy with a prostitute will be included in this definition" (ibid, page 142). This determination was held by the Supreme Court in 72/68 **Okashi v. the State of Israel** (unpublished), where it was determined that the act of prostitution is "the use of a woman's body in return for payment, for the satisfaction of sexual desire. In this respect, it does not matter... how the man come reached satisfaction, did he approach her in an ordinary manner or not in an ordinary manner or otherwise."

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required to bring men, in the course of the massage, to ejaculate, when dressed and when prohibited from having sexual contact with clients or allowing them to touch their bodies. In this case it was determined as follows:

"It is clear that in this area, as in any other area, borderline cases may arise. The question was raised as to what happens when all that a woman is employed to do for payment is undress in front of men, and the state's representative replied that this should not be seen as a prostitution, since in this case there is no contact at all between the male body and any part of her body. In the case before us there was such contact and as stated in all case law, the law does not require "ordinary" sexual contact... The law came to protect a woman from exploitation for sex businesses, and it seems obvious that the case before us also falls within its purview."⁸

- (e) In another case, the Supreme Court has ruled that "prostitution itself is not an offense; however, the meaning of the term was always clear, and is that it is a person who has sexual contact for payment".⁹ However, even in this case, the question of what is the minimal sexual contact sufficient to be considered prostitution was not discussed, and in any event, this case discussed acts of full or partial sexual contact of girls whose services were hired as escort girls for the satisfaction of sexual needs.
- (f) It follows that the definition of an "act of prostitution" in case law requires the formation of two clear, cumulative factual elements: (1) the existence of **sexual contact** with a person's body; (2) in exchange for **payment**. However, case law does not specify precisely what acts will constitute the required sexual contact. Also, the cases discussed in case law indicate that they included, at the very least, intimate genital contact, or distinct mutual sexual activity between a man and a woman. On the other hand, striptease shows or activities of a sexual nature that do not include contact are not considered prostitution as defined by case law.¹⁰ It is clear, however, that there are also borderline situations between the sexual activity with the absence of intimate genital contact or

⁸ Criminal Appeal 531/75 **David Avital v. the State of Israel**, Supreme Court Rulings 30 (2) 579, 582 (1976). A similar case was also discussed in Criminal Appeal 538/75 Lillian Lavan v. the State of Israel, Supreme Court Rulings 30 (2) 583 (1976).

⁹ Criminal Appeal 2885/93, **Dan Tomer v. the State of Israel**, Supreme Court Rulings 48 (1) 635, 637 (1994).

¹⁰ In this matter, see, for example, the ruling of the Tel Aviv District Court in Criminal Case (Tel Aviv) 3635/02 **the State of Israel v. the Schocken Chain et al.**, Takdin – Magistrates Court 2004 (3) (35) 35869 (2004), where publications of an erotic call service that did not include physical contact were discussed. With regards to strip-teasing, see also the Avital case, footnote 8 above.

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distinct sexual activity, to which no concrete reference was made in case law or which has not yet been brought before the courts for a decision.

5. The prosecution policy regarding the definition of "act of prostitution":

- (a) As stated above, case law indicates that the term "prostitution" includes two **cumulative** factual components: **one** – sexual contact; **the other** – compensation. However, although these are necessary conditions, they do not appear to be sufficient conditions, and the element of "contact" must be of a very **intimate** and **real** nature.
- (b) Given the foregoing, for the purpose of deciding whether this is sexual contact tantamount to an act of **prostitution** (and alongside the existence of compensation – which is a necessary element), the prosecutor will consider the following parameters – together and separately:
 - (1) As far as contact with a person's genitals is concerned, the scales will tend to regard it as sexual contact that is tantamount to prostitution. All the more so when it comes to contact of the kind mentioned, under clothing, or direct contact.
 - (2) Insofar as it is contact whose purpose is to bring about sexual gratification (as distinct from mere sexual stimulation), such contact shall be regarded as sexual contact that is tantamount to prostitution.
 - (3) Insofar as distinct mutual sexual activity is concerned – it will satisfy the requisite contact requirement for the formation of an act of prostitution.
 - (4) In this context it is possible to examine how continuous, close, extensive, intimate the physical the contact was, and its duration.
 - (5) To the extent that those involved in sexual activity have disrobed their clothing, or the more minimal their attire is – so will the contact be considered to be such that is tantamount to prostitution.
- (c) As to the element of "compensation" – it is not necessary that the consideration for sexual contact a monetary payment and money equivalent or another kind of benefit may suffice, provided that the consideration is in direct relation to and for the sexual contact, and not incidental or secondary to it.

c. **Providing sexual services in strip clubs or other settings:**

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6. General:

- (a) In the State of Israel there are strip clubs where shows of nude women are presented to the club's clientele. Stripping – to the extent that it does not include physical contact between the bodies of the women employed by the club and the body of the club's customers – is not prostitution (as stated in the above review of case law). However, there may be a slippery slope between stripping and prostitution, and often both phenomena can reside under one roof.
- (b) In certain strip clubs in Israel, activity known as lap dance takes place (hereinafter: **Lap Dance**), in which, in exchange for the purchase of a voucher sold to the club's customers, the customer receives a "service", where a woman working in the club dressed in minimal attire, performs a lap dance on his thighs while grinding the intimate organs of the two. During this "dance," the woman at the club, sometimes, also removes her top, and the customer on his part, often, gropes her body. Moreover, sometimes, the lap dance, held at the club's open public space, is merely a "preview" to the customer's transition to private booths or to the interior of the club where he is given a similar "service". In many cases, the service is given for a long period of time, often with the woman fully naked, and often with mutual contact of intimate organs or with mutual significant sexual activity between him and the woman at the club, and sometimes even with full sexual intercourse. For the provision of this "advanced service", the club sometimes also charges a higher amount than the one charged for the "lap dance" in the club's public space.
- (c) On the one hand, it is clear that the lap dance, or other similar sex services, may very well fall within the definition of "prostitution," as interpreted and defined in the Supreme Court ruling and presented in Chapter B above. On the other hand, it is also clear that striptease shows, in and of themselves, do not fall within the scope of this definition, and there are borderline acts that may challenge law enforcement and prosecution as to whether or not this is an act of prostitution for which the club owners or its operators can be attributed with accompanying offenses.

7. Normative framework:

- (a) The offenses that can be attributed to club operators where sexual services that are tantamount to "prostitution" are provided (in accordance with the policy tests presented below) are the following:
 - (1) Section 199 of the Law:
"199. Procurement

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(a) The following are liable to five years imprisonment:

(1) a person who wholly or in part, permanently or for any period of time lives on the earnings of a person engaged in prostitution;

(2) a person who knowingly receives something that was given for a person's act of prostitution, or a part of what was so given.

(b) If a person committed an offense under this section in connection with his spouse, child or stepchild, or if he committed the offense by exploiting a relationship of authority, dependence, education or supervision, then he shall be liable to seven years imprisonment.

(c) For purposes of this section, it is immaterial –

(1) whether what the offender received was money, valuable consideration, a service or some other benefit;

(2) whether he received it from a person who engages in prostitution or from some other person;

(3) whether he receives what was given for an act of prostitution or a substitute for what was so given."

(2) Section 204 of the Law:

"204. Maintaining a place for purposes of prostitution

If a person maintains or operates a place – including a vehicle or a vessel – for the practice of prostitution, then he is liable to five years imprisonment."

(3) Section 205 of the Law:

"205. Renting a place for prostitution

If a person rents out or renews the rental of a place, including a vehicle or a vessel, knowing that it is or will be used by a person for acts of prostitution, then he is liable to six months imprisonment the same applies if after he learned that the place is used as aforesaid does not terminate the rental even though he has the right to terminate it and to sue for eviction for that reason."

(b) Needless to say, in strip clubs or other frameworks referred to in this subchapter, the offenses listed in Chapter D may also be carried out. It is understood that the reference to the aforementioned offenses, when carried out in strip clubs or elsewhere, will be as specified in said chapter.

8. **Outlining the enforcement and prosecution policies:**

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- (a) A condition for the application of criminal enforcement measures for offenses accompanying prostitution, including the prosecution of stripper club operators or other entertainment venues where "sexual services" are provided, is that as part of the operation of the club or the entertainment venue, activity that falls under the term "prostitution" is taking place. For this purpose, the police and the general prosecution system shall apply the tests prescribed in these guidelines regarding the definition of the term "prostitution" as set out in Chapter B of the guidelines, section 5 (b).
- (b) Furthermore, and in addition to the tests mentioned above concerning the extent of the contact, the nature of the contact, the purpose of the contact, the duration of the contact, etc., the police and the general enforcement system will also consider the following:
- (1) It is necessary to examine whether the sexual activity is of an **interactive nature** between the club's customers and the woman/ women employed by the club, or whether the behavior of the club's customer is more characterized as passive viewing of the woman's dance at the club, when it is not an act of prostitution.
 - (2) The fewer the woman's women's attire in the club, or that of the club's clientele, the closer it is to be considered an act of prostitution. As a rule, exposing the genital area of the club's customer/s or of the woman/ women in the club, together with the touching of the woman/ women in the club of the customers' genitalia, or vice versa, would be considered an act of prostitution.
 - (3) As a rule, and as a **general auxiliary test**, one must consider whether this activity is of a mutual nature, in which the club's customer/ customers take a significant part (even if passive), or whether it is an activity which is essentially closer to a personal stripping show provided to the customer/ customers. To the extent that this is activity with the nature of a personal stripping show, the fact that some contact occurred between the woman/ women employed at the club and the customer, will not bring the enforcement and prosecution authorities to view this act as "prostitution".
 - (4) As far as the payment component is concerned, it will be clarified that it does not matter whether the club's customer is required to pay for the lap dance "service" (or other similar services) separately from the payment for entry into the club, or separately from the payment made for other products or services provided the club, or as part of the payment for all services provided for entry into the club, provided that the

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"sexual services" of the type referred to constitute part of the services included in the fee paid by the customer to the club.

- (c) As a rule, where the element of "prostitution" exists in a club's activities, and the remaining elements of an offense from the above-mentioned offenses, the club's owners, its managers or its chief operators (hereinafter: **The Club Operators**) shall be prosecuted. As a rule, no junior salaried employees shall be prosecuted, unless it was shown that they had a real and active part in the organization of the "sex services" provided at the club, or in recruiting women to engage in this activity at the club, and the other elements of the offense were met.
- (d) With regard to the nature of the offense to be attributed to the club's operators upon the fulfilment of the "prostitution" component, the prosecutor shall contemplate the following considerations:
- (1) Insofar as it has been proven that payment for the lap dance (or other similar sexual services) is paid directly to the club's operators or through the club's collection mechanism, the offense of procurement – living off prostitution, under section 199 (a)(1) of the Law, shall be attributed to its operators, alongside the offense of maintaining a place for prostitution, under section 204 of the Law.
 - (2) Insofar as it has been proven that the women employed in the club charge the payment for sex services directly from the customers and transfer some of it to the club operators, the operators shall be prosecuted for one of the following offenses – in accordance with the following rules:
 - (a) It has been proven that the remuneration of the women employed in the club are derived from the number or scope of the "sex services" rendered by them, the offense of procurement, pursuant to section 199 (a)(1) of the Law (living off prostitution earnings) shall be attributed to the operators, in addition to the offense of maintaining a place for prostitution, under section 204 of the Law.
 - (b) It has been proven that the remuneration of the women employed in the club does not depend on the scope or number of "sex services" rendered by them, the offense of procurement, pursuant to section 199 (a)(2) of the Law (knowingly receiving what is given for prostitution) shall be attributed to the operators, in addition to the offense of maintaining a place for prostitution, under section 204 of the Law.

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- (3) In the circumstances of renting a place to a person, or to a group of people, for the purpose of operating a club providing such sexual services, the offense of renting a place for prostitution, under section 205 of the Law, shall be attributed to the lessor (subject to proof of his awareness of the elements of the offense).
 - (4) The foregoing shall not preclude the possibility of prosecuting the club's operators or employees at the club for any other offense whose elements have formed through their actions, including –offenses of inducement to act of prostitution or inducement to engage in prostitution, under sections 201 – 202 of the Law.
 - (e) As stated below in section 15 – 16 of these guidelines, the Restriction of the Use of Premises to Prevent the Committal of an Offense Law¹¹ and the Planning and Building Law, 5725 – 1965, permit the issuance of an order to cease the activities of places used to commit such offenses. Therefore, in the case where an investigation has been opened on suspicion of the committing of offenses related to prostitution, the issue of an order limiting the use of the place of engagement in prostitution should be considered.
 - (f) At the same time, in cases of trafficking and brokering in human trafficking for the purpose of prostitution, the Attorney General, in appropriate cases, shall take steps to take early testimony from the women engaged in prostitution. In addition, the Attorney General, in the appropriate cases, will use the authority granted in section 2B of the Civil Precures Amendment (Witness Questioning) Law,¹² which allows victims of human trafficking to give testimony not before the defendants.
 - (g) It is also necessary to consider the possibility of taking action in any of the relevant integrated enforcement measures mentioned above.
- d. **Offenses accompanying prostitution – human trafficking for prostitution purposes, bringing a person into prostitution under aggravating circumstances, and exploiting minors for prostitution:**
9. **The normative framework:**
- (a) Increasing crime in the field of human trafficking for prostitution

¹¹ The Restriction of the Use of Premises to Prevent the Committal of an Offense Law, 5765 – 2005, Book of Statutes 426.

¹² The Civil Precures Amendment (Witness Questioning) Law, 5718 – 1957, Book of Statutes 16.

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purposes in the State of Israel¹³ has, over the years, resulted in the enactment of a number of statutory provisions designed to fight this phenomenon more effectively – section 377A (a)(5) of the Law (offense of human trafficking for the purpose of prostitution), section 376B of the Law (causing a person to leave a state for prostitution or slavery), and the amendment to section 203 of the Law (aggravated punishment for offenses of bringing a person to an act of prostitution or to engage in prostitution under aggravated circumstances). Furthermore, an offense of exploiting minors for prostitution was also enacted, under section 203B of the Law.

(b) Section 376B of the Law provides:

"376B. Causing a person to leave a state for prostitution or slavery

(a) If a person causes a person to leave the state in which he lives in order to employ him in prostitution or to hold him under conditions of slavery, then he shall be liable to ten years imprisonment.

(b) If an offense under subsection (a) was committed on a minor, then the person who committed the offense shall be liable to fifteen years imprisonment."

(c) Section 377A of the Law provides:

"377A. Human Trafficking

(a) If a person traffics in human beings for one of the following purposes or if he traffics in a human being and thereby exposes him to the danger of one of these, then he shall be liable to sixteen years imprisonment:

...

(5) causing him to engage in prostitution;

(b) If an offense under subsection (a) was committed on a minor, then the person who committed the offense shall be liable to twenty years imprisonment.

(c) If a person brokers trafficking in human beings, as said in subsection (a), whether or not for consideration, then he shall be liable to the same penalty as the person who traffics in that human being.

¹³ In the 1990s and the first five years of the current century, the State of Israel became a target for human trafficking for prostitution purposes. Following the enacted legislation and increased enforcement efforts in this area, the phenomenon in Israel has been greatly reduced since 2006. However, it cannot be said that the phenomenon has completely disappeared, and often, even when the victims of the offense are being held in better conditions than before, the elements of the offense under section 377A or the aggravating circumstances under section 203 of the Penal Law, still exist.

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(d) In this matter, "trafficking in human beings" – selling or buying a person or performing some other transaction regarding a person, whether or not for consideration."

(d) Sections 201 – 202 of the Law provide:

"201. Inducement to an act of prostitution

If a person induces another to perform an act of prostitution with another person, then he shall be liable to five years imprisonment.

202. Inducement to engage in prostitution

If a person induces a person to engage in prostitution, then he is liable to seven years imprisonment."

(e) Section 203 of the Law provides:

"203. Aggravating circumstances

(a) If an offense under sections 201 or 203 was committed by exploiting a relationship of authority, dependence, education or supervision, or by exploiting the economic or mental distress of the person who was induced to perform an act of prostitution or to engage in prostitution, then the person guilty of the act shall be liable to ten years imprisonment.

(b) If an offense under sections 201 or 203 was committed under one of the following circumstances, then the person guilty of the offense shall be liable to sixteen years imprisonment:

(1) by use of force or by use of other means of pressure, or by threat of one of these, and it is immaterial whether it was done against the person who was induced to commit an act of prostitution or to engage in prostitution or against some other person;

(2) by exploiting a situation that prevents opposition by the person induced to commit an act of prostitution or to engage in prostitution, or by the exploiting the fact that he is mentally ill or mentally incompetent;

(3) by agreement obtained by deception of the person induced to commit an act of prostitution or to engage in prostitution."

(f) Section 203B of the Law provides:

"203B. Exploitation of minors for prostitution

(a) If an offense was committed under sections 199, 201, 202 or 203 against a minor who has reached the age of 14, then the person who committed the offense –

(1) if for that offense a penalty of five years was set – shall

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be liable to seven years imprisonment;

(2) if for the offense a penalty of seven years was set – shall be liable to ten years imprisonment;

(3) if for the offense a penalty of ten years was set – shall be liable to fifteen years imprisonment;

(4) if for the offense a penalty of sixteen years was set – shall be liable to twenty years imprisonment;

(b) If an offense was committed under sections 199, 201, 202 or 203 against a minor who has not yet reached the age of 14, or if he reached the age of 14 and the person who committed the offense is responsible for the minor, then the person who committed the offense shall be liable to double the penalty set, but not more than twenty years.

(c) In this section, "**responsible for the minor**" – as defined in section 368A."

(g) On the legislation enacted in the era of human trafficking for prostitution purposes, the Supreme Court said the following:

"... in the new legislation that introduced the offense of trafficking in women... the penalties for prostitution were reinstated, the penalties for the offense of procurement were aggravated and offenses for procurement under aggravated circumstances were prescribed, including offenses increasing punishment with the offender so that the maximum penalty is the same to the penalty prescribed for human trafficking (see sections 201 – 203 of the Law)... The phenomenon of prostitution and "escort services" that has spread and increased in our audience is no longer similar to procurement for prostitution of past days... ".¹⁴

And:

"Insofar as procurement is derived from the trafficking in women and the pimp constitutes an essential link in the chain of the trafficking when he operates under circumstances to which the legislature ascribed special severity, the fact that he does not a partner in practice in the trafficking itself does not reduce the danger he poses to the public."¹⁵

(h) In the past decade, the phenomenon of human trafficking for the purpose of prostitution in Israel has greatly diminished, but it appears that at the same time, the phenomenon has changed,

¹⁴ Various Criminal Motions 7544/03 **Rachimov v. the State of Israel**, Supreme Court Rulings 58(3) 193 (2003).

¹⁵ Ibid.

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among other things, in the rise in the corresponding phenomenon of causing a person to leave a state for prostitution. However, there are sometimes circumstances that give rise to suspicion that the elements of a trafficking offense exist even when the victims of the offense are held in better conditions than in the past and also when they are Israeli victims. Furthermore, it is the nature of delinquent phenomena to be dynamic and the situation may therefore change for the worse. Therefore, the enforcement authorities must continue to make great efforts to eradicate these delinquent phenomena, both to prevent a recurrence of the situation that existed in the past and to prevent the development of new patterns of human trafficking for prostitution purposes.

10. **Enforcement policy:**

- (a) In view of the need to **focus significant resources** on eradicating the serious phenomena associated with prostitution, the enforcement policy requires prioritizing the offenses associated with prostitution where there is a suspected **human trafficking** offense, a suspected offense of **inducing a person to an act or engaging in prostitution under aggravated circumstances**, or the **exploitation of minors for the purpose of prostitution**, or offenses associated with **other aggravated circumstances** related to engaging in prostitution or the exploitation of people in prostitution (hereinafter: **the serious offenses associated with prostitution**), all while continuing enforcement actions against all offenses associated with prostitution, even if less serious.
- (b) Therefore, the investigative aspect (intelligence or visible, as applicable) must be examined with regards to the nature of the activity involved in the provision of prostitution services, lest it is founded on activity involved in committing serious offenses associated with prostitution (listed in subsection (a) above), while noting the following:
 - (1) As mentioned above, serious offenses can be committed both on foreign residents and on Israeli residents. Where there are women who are not residents of the country in the place of engagement, the inquiry into their presence in Israel must be exhausted, with a careful examination of their possession of their passport, the validity of their passports, and the manner of their entry into Israel, with the aim of understanding whether these are women who have been trafficked in general, and for prostitution purposes in particular. Needless to say, this investigation will be carried out with the proper sensitivity, and with the understanding that, as a rule, these

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are not suspects.¹⁶

- (2) Where there is a suspicion of trafficking or serious offenses associated with prostitution, the fact that the women have expressed a desire to engage in prostitution is of no significance, in view of the inherent exploitation and coercion of such offenses.¹⁷ Furthermore, although the elements of the trafficking offense do not require the use of improper means, these can be used as circumstantial evidence as to the perpetration of the offenses. Therefore, an investigation must be conducted to examine whether the women are subjected to any means of pressure, if for some reason they are prevented from leaving or are otherwise exploited.
- (3) Where there is a suspicion that these are women who are employed in prostitution as part of the trafficking activity, the holders of the premises must be questioned as suspects, as well as any of the employees of a place allegedly involved in the offense. In addition, offenses associated with prostitution must be investigated in their entirety. The investigation of all of the elements involved is sometimes required for the purpose of exposing "predicate offenses" regarding the **Prohibition on Money Laundering Law**¹⁸ and the **Combating Criminal Organizations Law**,¹⁹ and also for the purpose of tracing the financial scope and track of the transfer of funds originating from human trafficking activities and employment in prostitution.
- (4) The investigation of a trafficking offense does not obviate the investigation of any violence offense or other offense associated with employment in prostitution (such as sexual offenses, false imprisonment, withholding a passport, money laundering, tax offenses, belonging to a criminal organization, etc.) and, if necessary, these are to be investigated accordingly.
- (5) Where these are illegal residents or foreign residents, it is necessary to examine whether these are victims of human trafficking or other serious offenses (in accordance with police guidelines on this matter). Due to the sensitive status

¹⁶ To the extent that there is a suspicion of an offense being committed by victims of human trafficking, subsection (5) below will be implemented as well as the State Attorney's Guideline 2.32 – Prosecution policy for victims of human trafficking, holding under conditions of slavery and forced labor.

¹⁷ See Various Criminal Motions 291/01 **Rabbanai v. the State of Israel** (unpublished, January 22nd 2001).

¹⁸ Prohibition on Money Laundering Law, 5760 – 2000, Book of Statutes 293.

¹⁹ Combating Criminal Organizations Law, 5763 – 2003, Book of Statutes 502.

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of the victims of the trafficking and the need for their testimony, when possible, as a rule, their questioning under caution should be avoided, and their prosecution should be avoided as well, except when their criminal conduct does not, by its very nature, relate to them being victims of human trafficking offenses (in this regard, the provisions of the State Attorney's Guideline 2.32 – Prosecution policy for victims of human trafficking, holding under conditions of slavery and forced labor, must be implemented).

- (6) Where an offense is committed under section 203B of the Law (exploitation of minors for prostitution) attention must be given to the possibility (and usually, the need) of involving the relevant welfare authorities.
- (c) Even when the information collected by the police does not raise suspicion of human trafficking for the purposes of prostitution or other serious offenses associated with prostitution, there is considerable public interest in vigorous enforcement activities, when suspicion of one of the following arises:
 - (1) Involvement of minors in the prostitution business as employees in the premises only (as distinct from the practice of prostitution itself). In these circumstances, the prosecution of those involved for the offense under section 208 of the Law (which permits a minor to reside in a brothel) should also be considered.²⁰
 - (2) Additional criminal activity, such as drug dealing in a place used for prostitution.
 - (3) Serious crime phenomena associated with operating a place where prostitution is practiced.
 - (4) The place of engaging in prostitution or its offices also serves as a meeting place for criminals ("locator").
- (d) A growing need for additional and other enforcement – although for different reasons – even when there is a suspicion of one of the following:
 - (1) Those engaging in prostitution are illegal residents or foreign residents (in addition to the provisions of section 10 (b)(5) above), due to an inherent concern for the exploitation of women in this situation.
 - (2) There are indications that the place of prostitution is a

²⁰ In the wording of the offense: "If a person permitted a minor between age two and age seventeen, of whom he has custody, to reside in a brothel or to visit it frequently, then he is liable to three years imprisonment".

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nuisance to neighboring tenants or a nuisance in any other way.

- (3) The operation of the place of prostitution is large in scope. In such a case, the assumption that the place is managed by a pimp living off the profits of the place is reinforced, even if the pimp's activities are behind the scenes. Needless to say, it does not matter whether the pimp is male or female.
- (e) As mentioned above, as a rule, prostitution expresses distress; procurement for prostitution is exploitation. However, where information on premises where prostitution is practiced indicates activity among adults who know what is in front of them, without a relationship of dependence or authority, where payment is given directly to the person engaging in prostitution, this is not a case of a large scope of activity, and there is no suspicion of committing serious offenses associated with prostitution or the existence of aggravated circumstance listed in section 10 (c)-(d) of this guideline,²¹ the enforcement activity in such a matter will be a lower priority.

The foregoing concerns, for example, the circumstances in which it is an independent organization of a limited number of women engaged in prostitution, who rent premises together to carry out their activities; Or when one of the women who engages herself in prostitution leases premises and offers to her friends (who engage in prostitution) to work in her premises for reasonable monetary consideration, when there is no dependency or authority in this relationship.

It should be emphasized that the provisions of this section do not reduce the concern that the activity in question is merely an external cover for delinquent activity, that exploits the adversity of those engaged in prostitution, or the serious delinquent infrastructure as specified in this guideline, which requires effective enforcement. Each case must be examined according to its individual circumstances.

It will also be clarified that the above refers to enforcement activity in offenses associated with prostitution but not to enforcement activity in the matter of "consumption of prostitution".²²

11. Additional guidelines for prosecution of serious offenses associated with prostitution:

- (a) With regard to the Attorney General's work in this area, the

²¹ Compare with the minority opinion in 3520/91 **Helena Turgeman v. the State of Israel**, Supreme Court Rulings 48(1) 441 (1993).

²² Above, footnote 4.

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following highlights must also be noted in addition to the above:

- (1) Taking into account the gravity and nature of the offense, the State Prosecutor's Office will consider, according to the circumstances, whether to request the arrest of the suspects until the end of the proceedings.²³ In human trafficking offenses for the purpose of prostitution and other serious offenses associated with prostitution, a cause of arrest has arisen and, as a rule, the nature of the offenses and their circumstances does not permit release as an alternative to detention.
- (2) At the same time, in human trafficking offenses and brokering for human trafficking for the purposes of prostitution, the State Prosecutor's Office shall act in accordance with the provisions of section 8 (f) above (early testimony and giving testimony by victims of the offense not before the defendants).

In this context, it should be noted that the Courts Law [Consolidated Version], 5744 – 1984, provides that offenses under sections 377A (5) (human trafficking for the purpose of prostitution), 376B (Causing a person to leave a state for prostitution) and 203 (bringing a person to an act of prostitution or to engage in prostitution under aggravated circumstances) of the Penal Law, will be discussed before a single judge. This provision is intended to allow early testimony of women in prostitution before leaving the country back to their countries of origin.²⁴

- (3) It should be borne in mind that in the past there were many cases in which the representation of women was financed by the suspects of the trafficking offense. If there is any concern that this is the case, then in appropriate cases, after consulting the District Attorney, the court's attention should be drawn to the fact, or other measures should be taken, depending on the circumstances.
- (4) At the stage of the arguments for sentencing in the offense of human trafficking, the court should be referred to the minimum penalty set for this offense in section 377B of the Law, as well as to its duty to explain any deviation from this penalty for "special reasons to be recorded", in accordance

²³ See, for example Various Criminal Motions 1524/01 **the State of Israel v. Ackerman** (unpublished, February 25th 2001); Various Criminal Motions 1717/19 **the State of Israel v. Anonymous** (published in Nevo) (March 8th 2019).

²⁴ The Courts (Amendment 94) Law, 5778 – 2018, Book of Statutes 2017; see Minutes of the Constitution, Law and Justice Committee, No. 582 (March 12th 2018) page 5.

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with said section.

- (5) At the stage of the arguments for sentencing in human trafficking offense and the aforementioned serious offenses associated with the prostitution, and taking into account the circumstances of the case, the court must be asked to give consideration, pursuant to section 77 of the Law, to impose on the defendant the payment of damages to the victims of the offense for the damage or suffering sustained. The court should also be referred to section 377C of the Law, which states the **obligation for justification** for not awarding compensation in the offense of human trafficking for the purpose of prostitution. In addition, it must be borne in mind that a imposing damages is akin to a judgment that can be appealed.²⁵ Therefore, in view of the complexity of the trafficking cases and offenses associated with prostitution and the fact that these are sometimes complainants that are illegal residents in Israel or foreign residents who are about to leave the country soon, it is important to emphasize to the complainants that their entitlement to damages is not final and they should consider the possibility they will be required to return the damages paid if an appeal is filed and accepted on the judgment. In cases where plea bargains are concerned, advance depositing of the damages must be considered as a condition for the plea bargain.
- (6) In a case on human trafficking for the purpose of prostitution, the court must also be referred to the fact that a fine imposed following a conviction for human trafficking offenses is to be deposited in a designated fund as provided in section 377E of the Law.

e. **Advertising prostitution services and proposing to engage in prostitution:**

12. **The normative framework:**

- (a) Section 205A of the Law provides:

"205A. Prohibition on advertising or providing information of a minor's prostitution

If person provides information or publishes any publication about the provision of a service that is an act of prostitution, when the person who provides the service is a minor, then he shall be liable to five years imprisonment or a fine as prescribed in section 61 (a)(4), and if the offense was perpetrated by a corporation, double

²⁵ Section 78 of the Penal Law, 5737 – 1977.

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said fine; For purposes of an offense under this section, it does not matter whether the prostitution service is provided in Israel or abroad, whether the information refers to a specific minor, or whether the publication states that the person who provides the service is a minor."

(b) Section 205C of the Law provides:

"205C. Prohibition on advertising on prostitution services by an adult

(a) If a person publishes anything on the provision of prostitution services, when the person who provides the service is not a minor, then he shall be liable to six months imprisonment or a fine as prescribed in section 61 (a)(a), and if the offense was perpetrated by a corporation, double said fine."

(c) Section 205D of the Law provides:

"205D. Prohibition on advertising a proposal to engage in prostitution

A person publishing a proposal to engage in prostitution, shall be liable to a three years imprisonment or a fine as prescribed in section 61 (a)(4), and if the proposal to engage in prostitution is to a minor, five years imprisonment or such fine; If the offense was perpetrated by a corporation, double said fine."

13. Enforcement and prosecution policy

(a) Publishing information about prostitution services or a proposal to engage prostitution may be done, *inter alia*, by way of: Distribution of publications in newspapers that publish sex services, distributed to the public for free, containing nude or other provocative images; Distribution of leaflets or business cards distributed on parked cars, in private mailboxes, or in the street; Advertising on the Internet, or advertising on dedicated websites; And the like. Often, dating sites also serve as a disguise for publication of information about prostitution services, and proposals to engage in prostitution.

(b) In light of the apparent connection between prostitution services and their publication and the commission of criminal offenses associated with prostitution, it is appropriate, as a rule, to enforce the offenses under sections 205A, 205C, and 205D of the Law.

(c) With regard to the advertising of sex services in the national press, the phenomenon has diminished due to the legal proceedings against the major daily newspapers for the violation of section 205C of the Penal Law, which prohibits the advertising of prostitution services, in the **Schocken** case (2002).²⁶

²⁶ Criminal Case (Tel Aviv Magistrate's Court) 3635/02 **the State of Israel v. Schocken**

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- (d) As a result of the commitment to eradicate the phenomenon of human trafficking, serious offenses associated with prostitution, and offenses associated with prostitution in general, the expanding of the enforcement activity as follows is required:
- (1) Advertising bans on prostitution services and proposals to engage in prostitution should be enforced in the local press as well, as is done in the national press, as well as on the websites.
 - (2) Steps should be taken to promote the implementation of proactive police actions to deal with the phenomenon of distributing leaflets on parked cars and mailboxes, and to deal with the distribution of brochures or leaflets advertising prostitution services or proposing to engage in prostitution, as well as promoting proactive police enforcement actions against website operators who advertise prohibited publications, or offer prostitution services openly or covertly.
 - (3) As part of the investigation of these cases, it is necessary to examine whether the behind the publication there is also a suspicion of the committing of serious offenses associated with prostitution, or an activity of the type specified in section 10 (c)-(d) of this guideline, and investigative activity in this matter must be initiated (at the intelligence or overt level, as applicable).
 - (4) The possibility of blocking access to telephone subscribers appearing in the advertising material as a means of communicating with advertisers or those engaged in prostitution must be considered. This is in accordance with the Blocking a Telephone Number for Prevention of Committing Offenses Law, 5777 – 2017, which grants authority to a police officer to give such a blocking order, if there is reasonable suspicion that the telephone subscription is used for advertising prostitution services. Also, the possibility of blocking access to websites that advertise prostitution publications should be considered, in accordance with the powers and rules set out in this regard in the Powers to Prevent the Committing of Offenses by Means of a Website Law, 5777 – 2017.
 - (5) The use of the combined enforcement tools mentioned above should be considered subject to their suitability to the circumstances.
- (e) The prohibition on advertising the provision of prostitution services

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or proposing to engage in prostitution is intended to protect persons who engage in prostitution or may do so. Therefore, most of the enforcement efforts should be directed against those behind the advertising and distribution, who are sometimes used as intermediaries or pimps for the person engaged in prostitution, and against those who own the advertising medium, such as a website, newspaper, advertising company. This, because through advertising, they motivate the prostitution industry and encourage the consumption of prostitution.

- (f) Under appropriate circumstances, consideration may also be given to the prosecution of parties in the second circle of the advertising of prostitution services, such as printing houses who printed the materials, as well as the website publishers on which the advertising was published, under the circumstances in which their involvement and awareness of the offenses associated with prostitution in these settings were proven. The prosecution of all of these may be considered, for aiding an advertiser or as a principal/joint perpetrator – if all the elements required to prove an advertiser's assistance or the principal/ joint perpetration, are met. As a rule, salaried employees who participated in such activity will not be prosecuted for such offenses, except under exceptional circumstances.

f. **Integrated (economic, administrative, civil) enforcement:**

14. In order to cope with the phenomenon of prostitution and its associated criminal phenomena in a more efficient and effective manner, the appropriate enforcement tools should be employed, including economic, administrative and civilian tools, so that, alongside conventional criminal enforcement, other enforcement measures will be included that will affect the finances of offenders in this field and make committing the relevant offenses unprofitable.
15. The Restriction of the Use of Premises to Prevent the Committal of an Offense Law,²⁷ allows the issuance of an order to cease the operation of places used to commit offenses. Therefore, in the case where an investigation has been initiated on suspicion of committing serious offenses associated with prostitution, an order should be considered to limit the use of the premises used for prostitution.
16. In addition, in the appropriate cases, additional judicial tools may be considered, such as the Planning and Building Law, 5725 – 1965, allowing the **issuance of an administrative or judicial cessation order for the prohibited use, imposing an administrative fine**

²⁷ Above, footnote 11.

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until the prohibited use ceases and more. In such a case, the attorney in charge must approach the Prosecutor's Guidance Department so that it will examine the matter with the local committee prosecutor and instruct him accordingly.

17. Furthermore, when there are reasonable grounds to assume that such offenses took place and in the search of the premises where the offense was perpetrated, objects or funds related to the commission of these offenses or arising therefrom are discovered, it is appropriate to examine, according to the circumstances of the case, the possibility of exercising the police's authority for seizure as provided in section 32 of the Criminal Procedure Ordinance²⁸ and later on consider asking the court to issue an order for forfeiture of the property in accordance with section 39 of the Ordinance. To the extent that funds related to the offense are seized, given that they may also raise suspicion of the commission of tax offenses, consideration should be given to notifying the Tax Authority of their seizure.
18. In the context of a human trafficking offense, it is also fitting to consider, in the appropriate cases, the unique forfeiture measures prescribed for this offense in section 377D of the Law.
19. In cases where there is a suspicion of committing offenses under the tax laws, the State Attorney's Guideline 2.31 – "Investigation of tax offenses together with "ordinary" criminal offenses and their combination together in the indictment – temporary order" should be followed.

²⁸ The Criminal Procedure Ordinance (Arrest and Search) [New Version], 5729 – 1969, the Laws of the State of Israel – New Version.