

**PATRONIZING A PERSON FOR PROSTITUTION
IN THE SECOND DEGREE
(Defendant over 18; Person less than 15)
Penal Law § 230.05
(Committed on or after Jan. 19, 2016)¹**

The (specify) count is Patronizing a Person for Prostitution in the Second Degree.

Under our law, a person is guilty of Patronizing a Person for Prostitution in the Second Degree when, being eighteen years old or more, he or she patronizes a person for prostitution and the person who is patronized is less than fifteen years old.

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

A person PATRONIZES a person for prostitution when:

Select appropriate alternative(s):

he or she pays a fee to another person, pursuant to a prior understanding, as compensation for such

¹ Prior to January 19, 2016, this section read: "A person is guilty of patronizing a prostitute in the second degree when, being **over** eighteen years of age, he patronizes a **prostitute** and the person who is patronized is less than **fourteen** years of age" (emphasis added). Effective January 19, 2016, the words in bold face were amended as follows: "being over eighteen years of age" was changed to "being eighteen years old or more"; the term "prostitute" was changed to "person for prostitution"; and the age "fourteen" was changed to "fifteen." L 2015, ch. 368. For crimes committed on or after September 1, 1978 and before the revision of January 19, 2016, the instant charge may be utilized with appropriate substitution of: "over eighteen years of age" for "eighteen years of age or more"; and "prostitute" for "person for prostitution"; and of "less than fourteen years of age" for "less than fifteen years old."

person or a third person having engaged in sexual conduct² with him or her; or

He or she pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him or her; or

He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.²

(The) PERSON WHO IS PATRONIZED means the person

Select appropriate alternative(s):

with whom the defendant engaged in sexual conduct
or

with whom the defendant was to have engaged in

¹ Except for the definition of the crimes of “aggravated patronizing a minor for prostitution” [Penal Law §§ 230.11; 230.12; and 230.13], there is no statutory definition of the term “sexual conduct” that is expressly applicable to the statutes contained in Penal Law article 230. (The term is defined in Penal Law 130.00(10) for purposes of Penal Law article 130 [sex offenses]). See *Prus v. Holder*, 660 F.3d 144 (2d Cir. 2011) (“Although ‘sexual conduct’ is not defined in Article 230, the plain language of the statute makes clear that prostitution in New York encompasses accepting payment for sexual acts beyond . . . “sexual intercourse”). For New York decisional law interpretations of the term for prostitution, see *In re Marco M.*, 158 A.D.2d 342, 342–43 (1990) (the required element of sexual conduct was satisfied where the defendant said he wanted “to get laid but [not] shortchanged”); *People v. Medina*, 179 Misc.2d 617 (Cr Ct, NY County 1999) (“sexual conduct” includes a sex act between men); *People v. Hinzmann*, 177 Misc.2d 531 (Cr Ct, Bronx County, 1998) (the term includes “lap dancing” with physical contact); *People v. Costello*, 90 Misc.2d 431 (Sup Ct, NY County, 1977) (the term includes sexual intercourse, oral and anal sexual conduct, and masturbation). But see *People v. Greene*, 110 Misc.2d 40 (Cr Ct, NY County, 1981) (the term does not include “autoerotic performance” without physical contact). The term “deviate sexual intercourse” used in *Costello* has since been repealed and under the current statutes refers to “oral” or “anal” sexual conduct [Penal Law § 130.00 (2) (a) and (b)].

² Penal Law § 230.02 (1).

sexual conduct pursuant to the understanding, or
who was solicited or requested by the defendant to
engage in sexual conduct. ³

[Add if applicable:

It is a defense to this charge that the defendant did not have reasonable grounds to believe that the person who was patronized was less than fifteen years old.^{4]}

[Add if applicable:

In any prosecution for patronizing a person for prostitution, the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated, or solicited is immaterial, and it is no defense that:

1. Such persons were of the same sex; or

2. The person who received, agreed to receive or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was a female.^{5]}

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 three [four] elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name), patronized a

³ Penal Law § 230.02 (2).

⁴ Penal Law § 230.07.

⁵ Penal Law § 230.10.

person for prostitution;

2. That the defendant was eighteen years old or more;
3. That the person who was patronized was less than fifteen years old [and;]

[Add if applicable:

4. That the defendant had reasonable grounds to believe that the person who was patronized was less than fifteen years old.⁶]

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

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

⁶ Penal Law § 230.07.