

AFFIRMATIVE DEFENSE [Penal Law § 230.01]

Note: This affirmative defense is applicable to the following Penal Law sections, with the following effective dates:

Jan. 19, 2016:

§ 230.00 (Prostitution)

§ 230.03 (Prostitution in a school zone)

Nov. 13, 2018:

§ 230.19 (Promoting prostitution in a school zone)

§ 230.20 (Promoting prostitution in the fourth degree)

§ 230.25(2) (Promoting prostitution in the third degree)

§ 230.30(2) (Promoting prostitution in the second degree)

§ 230.34-a (Sex trafficking of a child)

Note: If applicable, omit the final two paragraphs of the instructions of the crime charged, and substitute the following:

If you find that the People have not proven beyond a reasonable doubt (that element / one or more of those elements), you must find the defendant not guilty of (specify).

If you find that the People have proven beyond a reasonable doubt (that element / each of those elements), you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of (specify), you will not consider the affirmative defense.

Under our law, it is an affirmative defense to this charge of (*specify*) that the defendant's participation in the offense was a result of having been:

Select appropriate alternative(s): ¹

a victim of compelling prostitution,²

a victim of sex trafficking,³

a victim of trafficking in persons,⁴ or

a victim of sex trafficking of a child.⁵

Note: Here, the court must set forth for the jury the appropriate statutory definition of what constitutes a victim of the applicable crime.

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number

¹ The first three alternatives were enacted with the statute, effective Jan. 19, 2016. The last alternative was added, effective Nov.13, 2018.

² At this point, the statute continues: "under section 230.33."

³ At this point, the statute continues: "under section 230.34 of this article."

⁴ At this point, the statute continues: "under the trafficking victims protection act (United States Code, Title 22, Chapter 78)."

⁵ At this point, the statute continues: "under section 230.34-a of this article."

of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable doubt the elements of (specify), you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of (specify).