

**PATRONIZING A PERSON FOR PROSTITUTION  
IN THE FIRST DEGREE  
(Person less than 11)  
Penal Law § 230.06 (1)  
(Committed on or after January 19, 2016)<sup>1</sup>**

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

Under our law, a person is guilty of Patronizing a Person for Prostitution in the First Degree when that person patronizes a person for prostitution and the person who is<sup>2</sup> patronized is less than eleven years of age.

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

A person PATRONIZES A PERSON FOR PROSTITUTION when:

Select appropriate alternative(s):

Pursuant to a prior understanding, he or she pays a fee to another person as compensation for such person or a third person having engaged in sexual

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<sup>1</sup> Effective January 19, 2016, the statute defining the instant crime was designated subdivision one of Penal Law § 230.06 and a new subdivision two was added. Further, the statute was amended and the term “person for prostitution” was substituted for the term “prostitute”. L 2015, ch 368. For crimes committed on or after September 1, 1978 and before January 19, 2016, this charge may be used provided the term “prostitute” is substituted for the term “person for prostitution.”

<sup>2</sup> The words “who is” has been inserted for clarity’s sake.

conduct<sup>3</sup> 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.<sup>4</sup>

"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  
sexual conduct pursuant to the understanding, or

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<sup>3</sup> 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 Court, 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)].

<sup>4</sup> Penal Law § 230.02 (1).

who was solicited or requested by the defendant to engage in sexual conduct.<sup>5</sup>

*[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 eleven years of age.<sup>6</sup>]

*[Add if applicable:*

In any prosecution for patronizing a person for prostitute, 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.<sup>7</sup>]

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, (both/each) of the following (two/three) elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name), patronized a person for prostitution; [and]
2. That on that date, the person who was patronized

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<sup>5</sup> Penal Law § 230.02 (2).

<sup>6</sup> Penal Law § 230.07.

<sup>7</sup> Penal Law § 230.10.

was less than eleven years of age; [and]

*[Add if applicable:*

3. That the defendant had reasonable grounds to believe that the person who was patronized was less than eleven years of age.<sup>8]</sup>

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

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8 Penal Law § 230.07.