

**PATRONIZING A PERSON FOR PROSTITUTION
IN A SCHOOL ZONE**

Penal Law § 230.08

(Committed on or after Jan. 19, 2016)¹

(Revised Jan 2016 & Nov 2020)

The (specify) count is Patronizing a Person for Prostitution in a School Zone.

Under our law, a person is guilty of Patronizing a Person for Prostitution in a School Zone when, being twenty-one years old or more, he or she patronizes a person for prostitution and the person patronized is less than eighteen years old, at a place that he or she knows, or reasonably should know, is in a school zone.

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

¹ Effective January 19, 2016, this 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 November 1, 2007 and before January 19, 2016, this charge may be used provided the term “prostitute” is substituted for the term “person for prostitution.”

In November 2020, this instruction was revised to include the definition of “person patronized” and to include that term in element (4).

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.³

"PERSON 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]

who was solicited or requested by the defendant to engage in sexual conduct.⁴

² 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)].

³ Penal Law § 230.02 (1).

SCHOOL ZONE means (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any public sidewalk, street, parking lot, park, playground or private land, located immediately adjacent to the boundary line of such school.⁵

[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.⁶]

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, the following four elements:

1. That on or about (date) , in the County of (County), the defendant, (defendant's name), patronized a person for prostitution;
2. That the defendant did so at a place that the defendant knew, or reasonably should have known, was a school zone;
3. That the defendant was twenty-one (21) years old or more, and
4. That the person patronized was less than eighteen (18) years old.

⁴ Penal Law § 230.02 (2).

⁵ Penal Law § 230.08 and § 230.03.

⁶ Penal Law § 230.10.

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

If you find that 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.