

**PROMOTING PROSTITUTION IN THE THIRD DEGREE**  
**(Manage Prostitution Business)**  
**Penal Law § 230.25(1)**

(Committed on or after Nov. 1, 2007)<sup>1</sup>

The (specify) count is Promoting Prostitution in the Third Degree.

Under our law, a person is guilty of Promoting Prostitution in the Third Degree when that person knowingly advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others,

*Select appropriate alternative(s):*

a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more persons in prostitution; or

a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a person for prostitution, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction.

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<sup>1</sup> This charge was first revised, effective November 1, 2007, to include an amendment by the Laws of 2007, chapter 74, adding the words “or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction.”

This charge was next revised, effective January 19, 2016, to include amendments made by the Laws of 2015, chapter 368. Those amendments in the definition of the crime substituted the words: “persons in prostitution” for “prostitutes” in the phrase “two or more...”; and substituted the words “person for prostitution” for the word “prostitute” in the phrase “patronizing a ...” Also, the definitions of “advances prostitution” and “profits from prostitution” were amended to substitute “person in prostitution” for the word: “prostitute.”

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

PROSTITUTION means the act or practice of engaging or agreeing or offering to engage in sexual conduct with another person in return for a fee.<sup>2</sup>

A person ADVANCES PROSTITUTION when, acting other than as a person in prostitution or as a patron thereof, he or she knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.<sup>3</sup>

A person PROFITS FROM PROSTITUTION when, acting other than as a person in prostitution receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity.<sup>4</sup>

[A person PATRONIZES A PERSON FOR PROSTITUTE<sup>5</sup> when:

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<sup>2</sup> Penal Law § 230.00.

<sup>3</sup> Penal Law 230.15(1).

<sup>4</sup> Penal Law § 230.15(2).

<sup>5</sup> This instruction was first revised to include the definition of the term “patronizes a prostitute” [Penal Law § 230.02, as required by a statutory amendment, effective November 1, 2007. L 2007, ch. 74. Effective January 19, 2016, the term “patronizes a prostitute” was changed to “patronizes a person for prostitution.”

*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 conduct<sup>6</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>7]</sup>

A person KNOWINGLY advances or profits from prostitution when that person is aware that he or she is advancing or profiting from prostitution.<sup>8</sup>

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<sup>6</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>7</sup> Penal Law § 230.02(1).

<sup>8</sup> See Penal Law § 15.05(2). An expanded definition of “knowingly,” is set forth in the

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 of the following two elements:

1. That on or about   (date)  , in the County of   (County)  , the defendant,   (defendant's name)  , advanced or profited from prostitution by managing, supervising, controlling, or owning, either alone or in association with others,

*Select appropriate alternative(s):*

[a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more persons in prostitution]

[a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a person for prostitution, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction];  
and

2. That the defendant did so knowingly.

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

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General charges in the “Culpable Mental States” section.

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