PERMITTING PROSTITUTION
(Possession of Premises)
Penal Law § 230.40
(Committed on or after Sept. 1, 1967)

The (*specify*) count is Permitting Prostitution.

Under our law, a person is guilty of Permitting Prostitution when, having possession or control of premises which that person knows are being used for prostitution purposes, he or she fails to make reasonable effort to halt or abate such use.

The following term used in that definition has 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.[1]

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 elements:

1. That on or about (date) , in the county of (county) , the defendant, (defendant's name), had possession or control of (*specify*);

2. That the defendant knew that (*specify*) was being used for prostitution purposes; and

3. That the defendant failed to make reasonable effort to halt or abate such use.

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.

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[1] Penal Law § 230.00. 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)].

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.