

**PATRONIZING A PROSTITUTE  
SECOND DEGREE  
(E Felony)  
(Defendant over 18; Prostitute less than 14)  
PENAL LAW 230.05  
(Committed on or after September 1, 1978)**

The \_\_\_\_\_ count is Patronizing a Prostitute in the Second Degree.

Under our law, a person is guilty of Patronizing a Prostitute in the Second Degree when, being over eighteen years of age, that person patronizes a prostitute and the person who is patronized is less than fourteen years of age.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: “patronizes a prostitute,” and “the person patronized.”

A person PATRONIZES A PROSTITUTE 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 conduct<sup>1</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

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<sup>1</sup> There is no statutory definition of the term “sexual conduct” that is applicable to the statutes contained in Penal Law article 230. For case law interpretations of that term, see *People v. Costello*, 90 Misc.2d 431 (1977) (defining the term to include sexual intercourse, deviate sexual intercourse, and masturbation); *People v. Hinzmann*, 177 Misc.2d 531 (1998)(defining the term to include “lap dancing”);

He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.<sup>2</sup>

"PERSON WHO IS PATRONIZED" means the person with whom the defendant

*Select appropriate alternative(s):*

engaged in sexual conduct or

was to have engaged in sexual conduct pursuant to the understanding, or

the person who was solicited or requested by the defendant to engage in sexual conduct.<sup>3</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 fourteen years of age.<sup>4</sup>]

*[Add if applicable:*

In any prosecution for patronizing a 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

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<sup>2</sup>Penal Law § 230.02(1).

<sup>3</sup>Penal Law § 230.02(2).

<sup>4</sup> Penal Law § 230.07.

agreed or offered to pay such fee was a female.<sup>5]</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, each of the following three [four] elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), patronized a prostitute;
2. That on that date, the defendant was over eighteen years of age; [and]
3. That on that date, the person who was patronized was less than fourteen years of age [and]

*[Add if applicable:*

4. That the defendant had reasonable grounds to believe that the person who was patronized was less than fourteen years of age.<sup>6]</sup>

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Patronizing a Prostitute in the Second Degree as charged in the \_\_\_\_\_ count.

On the other hand, 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 the crime of Patronizing a Prostitute in the Second Degree as charged in the \_\_\_\_\_ count.

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<sup>5</sup> Penal Law § 230.10.

<sup>6</sup> Penal Law § 230.07.