

**SEX TRAFFICKING**  
**(B Felony)**  
**PENAL LAW 230.34(5)**  
**(Committed on or after Nov. 1, 2007)**

The \_\_\_\_\_ count is Sex Trafficking.

Under our law, a person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:

*Select appropriate alternative(s):*

Cause physical injury, serious physical injury, or death to a person;

Cause damage to property, other than the property of the actor;

Engage in other conduct constituting a felony [or unlawful imprisonment in the second degree<sup>1</sup>];

Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;<sup>2</sup>

Expose a secret or publicize and asserted fact, whether true

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<sup>1</sup> The statute here adds “in violation of section 135.05 of this chapter.” If applicable, the crime of “unlawful imprisonment in the second degree” should be defined.

<sup>2</sup> The statute here contains an affirmative defense that only applies to this subdivision. The statutory language is omitted here but provided for in the charge below in accordance with the standard CJI2d affirmative defense format.

or false, tending to subject some person to hatred, contempt or ridicule;

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

Perform any other act which would not in itself materially benefit<sup>3</sup> the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

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 : "prostitution," "advances prostitution," "profits from prostitution," "person being patronized," ["physical injury"], ["serious physical injury"], ["felony"], ["crime"], ["public servant"], and "intentionally."

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>4</sup>

A person ADVANCES PROSTITUTION when, acting other than as a prostitute 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

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<sup>3</sup> If necessary "benefit" is defined as follows: " 'Benefit' means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary." Penal Law § 10.00(17).

<sup>4</sup> Penal Law § 230.00.

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>5</sup>

A person PROFITS FROM PROSTITUTION when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.<sup>6</sup>

PERSON BEING PATRONIZED includes the person who was solicited or requested to engage in sexual conduct.<sup>7</sup>

[PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>8</sup>]

[SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.<sup>9</sup>]

[Under our law, (*specify*) is a FELONY. *If appropriate, define*

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<sup>5</sup> Penal Law § 230.15(1).

<sup>6</sup> Penal Law § 230.15(2).

<sup>7</sup> The term "person who is patronized" is defined in Penal Law § 230.02. That section is entitled as "patronizing a prostitute; definitions" and was initially written for the patronizing a prostitute crimes. To what extent that definition would apply to this crime remains to be determined. A portion of that definition is incorporated here.

<sup>8</sup> Penal Law § 10.10(9).

<sup>9</sup> Penal Law § 10.10(10).

*the felony.*]

[CRIME means a misdemeanor or a felony.<sup>10</sup> (*Specify*) is a crime.]

[PUBLIC SERVANT means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.<sup>11</sup>]

INTENT means conscious objective or purpose. Thus, a person INTENTIONALLY advances or profits from prostitution when it is his or her conscious objective or purpose is to do so.

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), advanced or profited from prostitution;
2. That the defendant did so by using force or engaging in any scheme, plan or pattern to compel or induce (specify), to engage in or continue to engage in prostitution activity by means of instilling a fear in (specify), that, if the demand was not complied with, the defendant<sup>12</sup> or another would do one or more of the following:

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<sup>10</sup> Penal Law § 10.10(6).

<sup>11</sup> Penal Law § 10.00(15).

<sup>12</sup> The word defendant has been substituted for the statutory term “actor.”

*Select appropriate alternative(s):*

Cause physical injury, serious physical injury, or death to a person; or

Cause damage to property, other than the property of the actor; or

Engage in other conduct constituting a felony or unlawful imprisonment in the second degree; or

Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided; or

Expose a secret or publicize and asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

Perform any other act which would not in itself materially benefit<sup>13</sup> the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration

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<sup>13</sup> If necessary "benefit" may defined as follows: " 'Benefit' means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary." Penal Law § 10.00(17).

status; and

3. That the defendant did so intentionally.

*[Note: If the affirmative defense does not apply, conclude as follows:*

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 Sex Trafficking 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 Sex Trafficking as charged in the \_\_\_\_\_ count.

*[NOTE: If the affirmative defense does apply, continue as follows:*

If you find that the People have not proven beyond a reasonable doubt each of those elements, you must find the defendant not guilty of Sex Trafficking as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt each of the elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Sex Trafficking, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to the charge of Sex Trafficking [committed by using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will accuse some person of a crime or causing criminal charges or

deportation proceedings to be instituted against some person]<sup>14</sup> that the defendant reasonably believed the threatened charge to be true and that his/her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.<sup>15</sup>

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable doubt the elements of Sex Trafficking, you must find the defendant guilty of that crime as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Sex Trafficking as

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<sup>14</sup> The bracketed language is necessary only where more than one subdivision of sex trafficking is charged, as the defense applies only to the specified subdivision (PL § 230.34[5][d]).

<sup>15</sup> Penal Law § 230.34(5)(d).

charged in the \_\_\_\_\_ count.]