

PROSTITUTION IN A SCHOOL ZONE
Penal Law § 230.03
(Committed on or after Jan. 19, 2016)

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

Under our law, a person is guilty of prostitution in a school zone when, being nineteen years of age or older, and acting during the hours that school is in session, he or she commits the crime of prostitution¹ at a place that he or she knows, or reasonably should know, is in a school zone, and he or she knows, or reasonably should know, that such act of prostitution is within the direct view of children attending such school.

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 conduct² with another

¹ At this point, the statute continues: “in violation of section 230.00 of this article.” The definition of prostitution in that section is included in the definitional section of this charge.

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 The term “deviate sexual intercourse” used in *Costello* has since been repealed and under the current statutes refers to “oral” or “anal” sexual conduct [Penal Law § 130.00 (2) (a) and (b)].

person in return for a fee.

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.

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, each of the following four elements:

1. That on or about (date), in the County of (County) , the defendant, (defendant's name), acting during the hours that school is in session, committed the crime of prostitution;

2. That the defendant did so at a place that he/she knew, or reasonably should have known, was in a school zone;

3. That the defendant knew, or reasonably should have known, that such act of prostitution was within the direct view of children attending such school; and

4. That the defendant was nineteen (19) years old or more.

[NOTE: If an affirmative defense in Penal Law § 230.01 does not apply, then conclude with the following two paragraphs. If the affirmative defense does apply, then omit the following two paragraphs, and insert here the affirmative defense charge in the Additional Charges section to this article.]

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.