

**PROSTITUTION**  
**Penal Law § 230.00**  
**(Committed on or after Sept. 1, 1967)**

The (*specify*) count is Prostitution.

Under our law, a person is guilty of Prostitution when such person engages, or agrees or offers to engage, in sexual conduct<sup>1</sup> with another person in return for a fee.

[*Add if applicable:*

In any prosecution for prostitution, 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

---

<sup>1</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 a male agreed to a male officer’s request “to get laid but [not] shortchanged”); *People v. Medina*, 179 Misc.2d 617 (N.Y. City Crim. Court, 1999) (“sexual conduct” includes a sex act between men); *People v. Hinzmann*, 177 Misc.2d 531 (Criminal Court, Bronx County, 1998) (the term includes “lap dancing” with physical contact); *People v. Costello*, 90 Misc.2d 431 (Supreme Court, N.Y. County, 1977) (the term includes sexual intercourse, oral and anal sexual conduct, and masturbation). *But see People v. Greene*, 110 Misc.2d 40 (Criminal Court, N.Y. County, 1981) (the term does not include “autoerotic performance” without physical contact).

agreed or offered to pay such fee was a female.<sup>2]</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, the following element:

That on or about (date), in the County of (County), the defendant, (defendant's name), engaged, or agreed or offered to engage, in sexual conduct with another person in return for a fee.

*[NOTE: If the affirmative defense set forth in Penal Law § 230.01 does not apply, conclude as follows:*

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

If you find the People have not proven that element beyond a reasonable doubt, you must find the defendant not guilty of this crime.

*[NOTE: If the affirmative defense set forth in Penal Law § 230.01 applies, conclude as set forth in the Affirmative Defense charge set forth in the Additional Charges section of these charges on Prostitution.]*

---

<sup>2</sup> Penal Law § 230.10.