

**PATRONIZING A PERSON FOR PROSTITUTION
IN THE THIRD DEGREE
Penal Law § 230.04
(Committed on or after Jan. 19, 2016)¹**

The (*specify*) count is Patronizing a Person for Prostitution in the Third Degree.

Under our law, a person is guilty of Patronizing a Person for Prostitution in the Third Degree when he or she patronizes a person for prostitution.

A person PATRONIZES A PERSON FOR PROSTITUTION when:

Select appropriate alternative(s):

he or she pays a fee to another person pursuant to a prior understanding, as compensation for such person or a third person having engaged in sexual conduct² with him or her; or

¹ Effective January 19, 2016, this statute was amended and the term “person for prostitution” was substituted for the term “prostitute”. L 2015, ch. 368. For crimes committed on or after November 1, 2007 and before January 19, 2016, this charge may be used provided the term “prostitute” is substituted for the term “person for prostitution.”

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 The term “deviate sexual intercourse” used in *Costello* has since been repealed and under the current statutes refers to “oral” or “anal” sexual conduct [Penal Law § 130.00 (2) (a) and (b)].

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

he or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.³

[Add if applicable:

In any prosecution for patronizing a person 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 agreed or offered to pay such fee was a female.^{4]}

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), patronized a person for prostitution.

³ Penal Law § 230.02 (1).

⁴ Penal Law § 230.10.

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.