

**PATRONIZING A PROSTITUTE  
FOURTH DEGREE  
(B misdemeanor)  
(Patronizing Prostitute)  
PENAL LAW 230.03  
(Committed on or after Sept. 1, 1978)**

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

Under our law, a person is guilty of Patronizing a Prostitute in the Fourth Degree when that person patronizes a prostitute.

The term, "Patronizing a Prostitute," used in this definition has its own special meaning in our law. I will now give you the meaning of that term.

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

He or she solicits or requests another person to engage in sexual conduct with him or her in return for

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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");

a fee.<sup>2</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 agreed or offered to pay such fee was a female.<sup>3]</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), patronized a prostitute.

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

On the other hand, if you find that the People have not proven beyond a reasonable doubt that element, you must find the defendant not guilty of the crime of Patronizing a Prostitute in the Fourth Degree as charged in the \_\_\_\_\_ count.

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<sup>2</sup>Penal Law § 230.02(1).

<sup>3</sup> Penal Law § 230.10.