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\*\*\* ARCHIVE \*\*\*

\*\*\* THIS SECTION IS CURRENT THROUGH THE 2005 SESSION \*\*\*

PENAL LAW  
 PART THREE. SPECIFIC OFFENSES  
 TITLE M. OFFENSES AGAINST PUBLIC HEALTH AND MORALS  
 ARTICLE 230. PROSTITUTION OFFENSES

*NY CLS Penal § 230.05 (2005)*

§ 230.05. Patronizing a prostitute in the second degree

A person is guilty of patronizing a prostitute in the second degree when, being over eighteen years of age, he patronizes a prostitute and the person patronized is less than fourteen years of age.

Patronizing a prostitute in the second degree is a class E felony.

**HISTORY:** Add, L 1978, ch 627, § 2, eff Sept 1, 1978.

Former § 230.05, add, L 1965, ch 1030, § 1; renumbered § 230.02, L 1978, ch 627, § 1, eff Sept 1, 1978.

**NOTES:**

Commission Staff Notes

In substance, this section, which is new, makes it a violation for a person to hire or attempt to hire a prostitute or anyone else to engage in sexual conduct with him.

Though not formerly an offense in New York, such "patronizing" conduct is proscribed in various forms by the penal codes of several other jurisdictions, including the recently revised codes of Illinois and Wisconsin and it is included as an offense in the American Law Institute's Model Penal Code (§ 251.1[5]).

At the public hearings held by the Commission with respect to the new Penal Law, and in conferences and correspondence with the Commission and its staff, a number of persons and organizations have strongly urged the inclusion of a "patronizing" offense. The reasons most vigorously advanced are: (1) that criminal sanctions against the patron as well as the prostitute should aid in the curtailment of prostitution; and (2) that to penalize the prostitute and exempt the equally culpable patron is inherently unjust.

After consideration of these contentions, the Commission decided to include the indicated patronizing offense in the new law (§ 230.05) as a proper corollary to "prostitution" (§ 230.00).

Following these two sections, it may be observed, a "no defense" provision has been added (§ 230.10): this makes it perfectly clear that both the "prostitution" and the "patronizing" offenses apply not only to the usual situation where a female is hired by a male, but also to those where a male is hired by a male, a female by a female, and male by a female.

## New York References:

This section referred to in § 240.37; CLS *Pub Health* § 2324-a; CLS Real P Actions & Pr § 715; CLS *Real P* § 231

## Research References &amp; Practice Aids:

35B NY Jur 2d, Criminal Law §§ 4931, 4977

## Annotations:

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation-modern cases. 77 ALR3d 519

## Texts:

4 Frumer & Biskind, *Bender's New York Evidence--CPLR* § 11.04  
New York Criminal Practice Ch. 77

## Criminal Jury Instructions, New York:

Patronizing a prostitute, second degree. CJI2d [NY] *Penal Law* § 230.05

## Case Notes:

In order to prevail on a claim for malicious prosecution, one must establish the commencement or continuation of a criminal proceeding by the defendant against the plaintiff, the termination of the proceeding in favor of the accused, the absence of probable cause for the criminal proceeding, and actual malice. The trial court reversibly erred in omitting the statutory definition of advancing prostitution and, although the defendant's failure to object to the charge would ordinarily be deemed a waiver, the error was fundamental where it related to the key factual issue of whether there had been probable cause for the prosecution of defendant for advancing prostitution. *Antonucci v Irondequoit* (1981, 4th Dept) 81 App Div 2d 743, 438 NYS2d 417.

*Penal Law* § 230.05 is violated when one person solicits another to engage in sexual contact in return for fee; it was immaterial that person whom defendant patronized was not a prostitute, but a policewoman. *People v Bronski* (1973) 76 Misc 2d 341, 351 NYS2d 73.