1 of 100 DOCUMENTS

*** 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 ß 230.20 (2005)

ß 230.20. Promoting prostitution in the fourth degree

A person is guilty of promoting prostitution in the fourth degree when he knowingly advances or profits from prostitution.

Promoting prostitution in the fourth degree is a class A misdemeanor.

HISTORY: Add, L 1965, ch 1030, ß 1, with substance derived from ßß 70(2), 1090, 1148, 2460; amd, L 1978, ch 627, ß 3, eff Sept 1, 1978.
Section heading, amd, L 1978, ch 627, ß 3, eff Sept 1, 1978.

NOTES:

Commission Staff Notes
See Commission Staff Notes under ß 230.15.

New York References:
This section referred to in CLS *Al Bev ß 126*; CLS *Pub Health ß 2324-a*; CLS Real P Actions & Pr ß 715; CLS *Real P ß 231*

Research References & Practice Aids:
3 NY Jur 2d, Alcoholic Beverages ß 56
35B NY Jur 2d, Criminal Law ß 4936
47A NY Jur 2d, Domestic Relations ß 1675
63C Am Jur 2d, Prostitution ßß 5, 12-14

Matthew Bender's New York Practice Guides:
4 *New York Practice Guide: Business and Commercial ß 30.14*

Annotations:
Separate acts of taking earnings of or support from prostitute as separate or continuing offenses of pimping.3 ALR4th 1195

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

Criminal Jury Instructions, New York:
Promoting prostitution, fourth degree. CJI2d [NY] *Penal Law ß 230.20*

Case Notes: 1. In general 2.--8. [Reserved for future use.] 9. Under former ß 70 10. Under former ß 1090 11. Under former ß 1148 12. Under former ß 2460; in general 13. --Constitutionality 14. --Construction 15. --Practice and procedure, generally 16. --Indictment 17. --Evidence 18. --Particular acts as constituting offense 19. Under former Code of Criminal Procedure ß 887; in general 20. --Evidence 21. --Double jeopardy 22. --Particular acts as constituting offense

1. In general

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.*

Prostitutes are accomplices of their promoter within the meaning of *CPL ß 60.22*. Therefore a defendant may not be convicted of promoting prostitution unless the prostitute's testimony is supported by corroborative evidence "tending to connect the defendant with the commission" of the crime. *People v Griffin (1981, 4th Dept) 83 App Div 2d 180, 443 NYS2d 935.*

In a prosecution for promoting prostitution in the third degree, in which defendant contended that there was an absence of proof that he personally discussed price with anyone or that he owned or leased the premises in question, and alleged that all the People proved was that defendant was a doorman for the building involved, failure to charge promoting prostitution in the fourth degree as an alternate, lesser included offense was error where, notwithstanding that a prima facie case of the felony may have been made out, there existed a reasonable view that defendant committed the lessor included offense. *People v Rodriguez (1984, 1st Dept) 104 App Div 2d 547, 480 NYS2d 214.*

Defendant, hotel desk clerk who rented room to 2 police officers posing as prostitute and her "john," could not be charged with permitting prostitution since there could be no actual agreement, offer, solicitation, or other understanding between officers to engage in sexual conduct for fee, and thus there could be neither "prostitution" nor use of hotel premises "for prostitution purposes" as required under CLS *Penal ß 230.40*; likewise, defendant could not be charged

with fourth degree promoting prostitution since there was no actual prostitution relationship between officers. *People v Behncke (1988, Crim) 141 Misc 2d 630, 534 NYS2d 79.*

Defendant, hotel desk clerk who rented room to 2 police officers posing as prostitute and her "john," engaged in conduct which, but for lack of actual prostitution relationship between officers, amounted to violation of CLS *Penal ßß 230.40* and *230.20*: thus, although defendant could not be charged with completed crimes of permitting prostitution and fourth degree promoting prostitution, he could be charged with attempt to commit those crimes under CLS *Penal ß 110.10. People v Behncke (1988, Crim) 141 Misc 2d 630, 534 NYS2d 79.*

Defendant, hotel desk clerk who rented room to 2 police officers posing as prostitute and her "john," was not entitled, in interest of justice, to dismissal of information charging him with attempted fourth degree promoting prostitution and attempted permitting prostitution, notwithstanding that he had no prior criminal record, and despite his assertions that no harm resulted and that dismissal would not have negative impact on public's confidence in criminal justice system, since (1) prostitution is not "victimless" crime and tends to supplement related and more serious criminal activity, (2) public policy of city, as evidenced by consistently large numbers of prostitution arrests and by People's unwillingness to forego even first-arrest prosecution cases, reflected both underlying public concern for seriousness of offense itself, and desire to stem increase of prostitution-related criminal activity, and (3) defendant's conduct, by providing premises for fee, had effect of encouraging repeated acts of prostitution to occur. *People v Behncke (1988, Crim) 141 Misc 2d 630, 534 NYS2d 79.*

Felony charge of third degree attempted promoting prostitution would be reduced to lesser included offense of fourth degree attempted promoting prostitution, where grand jury evidence established that defendant real estate agents attempted to provide undercover officers with house that purportedly would be used for prostitution purposes, but there was no showing that defendants attempted to advance or profit from prostitution by managing, supervising, controlling or owning house of prostitution. *People v Mejia Real Estate (1998, Sup) 176 Misc 2d 316, 672 NYS2d 645.*

Allegation that defendant was observed managing, and was in possession of keys to, premises where prostitution activity plainly occurred was sufficient to support fourth degree promoting prostitution charge. *People v Hinzmann (1998, City Crim Ct) 177 Misc 2d 531, 677 NYS2d 440.*

2.--8. [Reserved for future use.]

9. Under former ß 70

Charge of abduction is not supported by evidence of inveigling or enticing a woman to unfrequented roadside and there attempting to have single act of intercourse with her. Test of guilt is not necessarily character of place to which woman is taken, but whether she is enticed into some place for purposes of common prostitution, as generally understood. *People ex rel. Howey v Warden of City Prison (1913) 207 NY 354, 101 NE 167,* reh den *(1913) 208 NY 606, 102 NE 1110.*

10. Under former ß 1090

Violation of this section being punishable by maximum term of ten years, while for offenses defined by six of subdivisions of (former) ß 2460 maximum is twenty years and in one subdivision twenty-five years, and sentence in excess of ten years having been imposed in trial for violations of both sections, contention that discretion of court was limited by this section, was not available on habeas corpus, maximum term of ten years not having yet expired. *People ex rel. Sabatina v Jennings (1919) 108 Misc 93, 177 NYS 210,* affd *(1920) 194 App Div 950, 185 NYS 949.*

11. Under former ß 1148

On the trial of charges of compulsory prostitution and other offenses of like character, it was reversible error for the trial court to exclude, over defendant's objection, the general public and press from the court room during the presentation of the People's case. *People v Jelke (1954) 308 NY 56, 123 NE2d 769, 1 Media L R 2391,* 48 ALR2d 1425.

Press associations have no standing to restrain a trial judge from carrying out an order excluding the press from a trial of charges of compulsory prostitution. *United Press Assos. v Valente (1954) 308 NY 71, 123 NE2d 777.*

12. Under former ß 2460; in general

The prinicipal object of this section is to reach the tycoons of organized vice who "make merchandise of the passions of men." *People v Fiore (1962) 12 NY2d 188, 237 NYS2d 698, 188 NE2d 130.*

This section is directed against the system, the permanent conditions, and not against individual and voluntary associations. *People v Draper (1915) 169 App Div 479, 154 NYS 1034.*

It is slanderous per se to say of another person that he is "a pimp," because the word charges the person, in reference to whom it is used, with the commission of a crime defined by subd. 6. *Lander v Wald (1926) 218 App Div 514, 219 NYS 57,* affd *(1927) 245 NY 590, 157 NE 870.*

This section stamps as criminal not the immoral conduct of female as prostitute, which is otherwise banned by different provisions of law, but condemns rather the act of inducement, enticement or procurement by any other individual purporting to lead said female into life of commercialized vice. *People v Guardino (1941) 177 Misc 402, 30 NYS2d 729,* affd *(1942) 265 App Div 872, 37 NYS2d 981,* affd *(1943) 290 NY 749, 50 NE2d 98.*

A proposal of sexual intercourse by a motorist to a girl riding in a car with him, whereupon she jumped from the moving car and was killed, was sufficient to sustain a charge of manslaughter first degree. *People v Goodman (1944) 182 Misc 585, 44 NYS2d 715.*

13. --Constitutionality

The provisions of this section, designed to stop all forms of money-making from earnings by prostitution, are constitutional. *People v Fegelli (1914) 163 App Div 576, 148 NYS 979,* affd *(1915) 214 NY 670, 108 NE 1103.*

14. --Construction

The word "knowingly," as used in subd. 4 is limited to receipt of money, to procuring and to immoral purposes for which women were procured; that is to say, relates to intent and purpose of defendant. *People v Moore (1911) 142 App Div 402, 127 NYS 98,* affd *(1911) 201 NY 570, 95 NE 1136.*

The fact that the title of this section refers to "compulsory prostitution" does not limit the statute to acts against the will and consent of women, since voluntary acts are therein plainly defined. *People v Fegelli (1914) 163 App Div 576, 148 NYS 979,* affd *(1915) 214 NY 670, 108 NE 1103.*

Subd. 3 should be construed with the last word "or" in the 3d line omitted. *People v Draper (1915) 169 App Div 479, 154 NYS 1034.*

Subd. 3 of this section making it a crime to "induce" woman for immoral purposes lack clarity which is essential to a valid criminal statute. By eliminating the word "or" before words "to enter any house of prostitution" said subd. 3 may be freed from obscurity and show intention on part of legislature only to make it crime to induce, entice or procure woman for immoral purposes to enter house of prostitution. *People v Rogers (1918) 183 App Div 604, 170 NYS 825.*

15. --Practice and procedure, generally

Press associations have no standing to restrain a trial judge from carrying out an order excluding the press from a trial of charges of compulsory prostitution. *United Press Assos. v Valente (1954) 308 NY 71, 123 NE2d 777.*

A person may be convicted of a violation of subd. 4, in procuring and placing women in custody of another for immoral purposes for a consideration received, although a trap was laid for defendant and persons receiving custody of women did not intend to use them for immoral purposes. *People v Moore (1911) 142 App Div 402, 127 NYS 98,* affd *(1911) 201 NY 570, 95 NE 1136.*

Habeas corpus was not the proper remedy of defendant (he was indicted under this section, pleaded guilty and was sentenced) to determine whether this section was properly applied in his case. *People ex rel. Calderone v Jackson (1957, 3d Dept) 4 App Div 2d 914, 167 NYS2d 48.*

Where a defendant had been convicted and sentenced under this section as a first offender, a writ of error or coram nobis was not available to him to challenge such conviction on the ground that he should have been sentenced as a second offender. *People v Betillo (1952, Sup) 119 NYS2d 610.*

16. --Indictment

An indictment, which charged a violation of subdivision 2 of this section, in that the defendant attempted to induce a woman to live a life of prostitution, stated a crime even though the subdivision makes only the attempt and not the successful accomplishment of the attempt a criminal act. *People v Jelke (1956) 1 NY2d 321, 152 NYS2d 479, 135 NE2d 213.*

An indictment which alleges defendant feloniously enticed certain woman to reside with him for immoral purposes, she being his kept mistress and not his wife, charges a crime within subd. 2. *People v Rogers (1918) 183 App Div 604, 170 NYS 825.*

A count in an indictment which charges defendant with feloniously inducing and enticing said woman for purpose of concubinage with him, and further count which charges him with feloniously inducing said woman for immoral purposes to have sexual intercourse with him, do not state crime within subd. 3. *People v Rogers (1918) 183 App Div 604, 170 NYS 825.*

17. --Evidence

There was sufficient evidence to sustain a conviction for a violation of this section. *People v Luciano (1938) 277 NY 348, 14 NE2d 433,* reh den *(1938) 278 NY 624, 16 NE2d 129* and cert den *(1938) 305 US 620, 83 L Ed 396, 59 S Ct 81.*

On trial of a defendant indicted for violation of subd. 6 of this section in that on certain date he knowingly received money for and on account of procuring and placing certain woman in custody of another for immoral purposes, it was reversible error to receive evidence of acts of defendant subsequent to date of crime alleged charged for purpose of proving either motive or intent or common plan or scheme. *People v Montana (1937) 252 App Div 109, 297 NYS 801.*

18. --Particular acts as constituting offense

An attempt is not made to induce a woman to lead a life of prostitution if under all the circumstances, including the previous life of the woman, it is apparent that nothing which the defendant has done would have tended to alter the course of her life in this respect. *People v Jelke (1956) 1 NY2d 321, 152 NYS2d 479, 135 NE2d 213.*

A manager of a house of prostitution who engaged voluntary inmates thereof, directed their activities and shared in their earnings, may be convicted of the crime of knowingly receiving proceeds of prostitution under provisions of subd. 8. *People v Fegelli (1914) 163 App Div 576, 148 NYS 979,* affd *(1915) 214 NY 670, 108 NE 1103.*

A defendant was properly convicted under this section of an attempt to induce a woman to go to Florida for purposes of prostitution, where he fraudulently represented himself as connected with motion picture corporation and offered woman contract to act in motion pictures if she would go with him to Florida. *People v Kramer (1924) 208 App Div 258, 203 NYS 156.*

A defendant may not be indicted under subd. 2 for compulsory prostitution where the record shows that acts of intercourse were not committed in connection with any systemization of prostitution on a commercial basis but were acts of two immoral individuals. *People v Odierno (1938) 166 Misc 108, 2 NYS2d 99.*

19. Under former Code of Criminal Procedure ß 887; in general

A complaint charging defendant aided and abetted certain females in act of prostitution, giving time and place and praying that he be adjudged vagrant under this section subd 4(f), was sufficient to charge vagrancy. *People ex rel. Traino v Slattery (1942) 179 Misc 206, 38 NYS2d 553.*

Where defendant is not the solicitor of the lewd and indecent acts, he may not be convicted of vagrancy. *People v Anonymous (1952) 202 Misc 569, 114 NYS2d 248,* affd *(1953) 304 NY 927, 110 NE2d 742.*

The word "another" in subd 4(b) includes males as well as females. *People v Gould (1952, Mag Ct) 111 NYS2d 742,* revd on other grounds *(1954) 306 NY 352, 118 NE2d 553.*

20. --Evidence

Conviction under subd 4, clause b, reversed where based on statement of third parties. *People v Silverman (1930) 138 Misc 130, 245 NYS 568,* affd *(1932) 236 App Div 785, 258 NYS 1049.*

During trial for keeping a disorderly house and vagrancy, People's alleged use of evidence obtained directly or indirectly through illegal wiretaps afforded no basis for invalidating convictions bottomed upon personal observations of eyewitnesses who testified. *People v De Curtis (1970) 63 Misc 2d 246, 311 NYS2d 214,* affd *(1971) 29 NY2d 608, 324 NYS2d 406, 273 NE2d 136,* cert den *(1971) 404 US 940, 30 L Ed 2d 253, 92 S Ct 277.*

21. --Double jeopardy

An acquittal by magistrate of hack driver of charge of violating subd 4(b) bars trial by police commissioner for same offense. *Abraham v Valentine (1938) 166 Misc 447, 300 NYS 796.*

A taxicab driver against whom a charge of solicitation for the purposes of prostitution had been dismissed, could not thereafter be tried again for the charge in a hearing before the police commissioner. *Deitchman v Kennedy (1957) 5 Misc 2d 680, 162 NYS2d 127.*

22. --Particular acts as constituting offense

Conviction of one who offered two other persons for lewd and indecent act to named police officers affirmed. *People v Vatides (1940) 284 NY 731, 31 NE2d 201.*

Under the broad language of this section, vagrancy is not proven unless the defendant has actually acted as a pimp or prostitute, and has gone beyond tentative steps toward entering the business. Hence, vagrancy was not established by proof that defendant suggested to a woman of good character that she become a prostitute under his management and she rejected the proposal. Defendant did not offer services of another for purposes of prostitution or offer to secure services of another for those purposes. *People v Gould (1954) 306 NY 352, 118 NE2d 553.*

The defendant was convicted of "vagrancy" under subd 4, par (d) of this section in that he induced the complainant to have sexual intercourse and perform indecent acts with him. Conviction was reversed because this section is aimed primarily at general prostitution and because of the unreasonableness of assumption that legislature intended that a defendant could be dealt with under this section when, because there was no corroboration of the testimony of the complainant, he could not be convicted of adultery, rape, or sodomy. *People v Moss (1956) 309 NY 429, 131 NE2d 717.*

A defendant could be properly convicted under clause [c] of subd 4 of this section, for loitering in or near a public place for the purpose of inducing, enticing or procuring another to commit lewdness or "any other indecent act," where the evidence showed that, while standing about a bus terminal, he made indecent, lewd and homosexual proposals to a police officer. *People v Hale (1960) 8 NY2d 162, 203 NYS2d 71, 168 NE2d 518.*

An employment office, which the public is entitled to enter for purposes of seeking employment, is not in the same category as a private residence, and one conducting such an agency may be considered as "loitering" therein where it is shown that, on a number of occasions, he has tried to induce females seeking employment to accept employment of a lewd and indecent kind. *People ex rel. Cirile v Catalano (1960) 25 Misc 2d 342, 205 NYS2d 618.*

A man who induces, entices, or procures woman to commit prostitution, either with himself or with another is vagrant, and man who aids or abets or participates in commission of prostitution by a woman is vagrant, and in either case is equally guilty as woman. *People v Edwards (1920, Gen Sess) 180 NYS 631.*