



1 of 100 DOCUMENTS

NEW YORK CONSOLIDATED **LAW** SERVICE
Copyright (c) 2005 Matthew Bender & Company, Inc.,
one of the LEXIS Publishing (TM) companies
All rights reserved

*** 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** § 230.30 (2005)*

§ **230.30**. Promoting prostitution in the second degree

A person is guilty of promoting prostitution in the second degree when he knowingly:

1. Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or
2. Advances or profits from prostitution of a person less than sixteen years old.

Promoting prostitution in the second degree is a class C felony.

HISTORY: Add, L 1965, ch 1030, § 1, with substance derived from §§ 70 in part, 1090, 2460; amd, L 1978, ch 627, § 3, eff Sept 1, 1978.
Section heading, amd, L 1978, ch 627, § 3, eff Sept 1, 1978.

NOTES:

Commission Staff Notes

See Commission Staff Notes under § 230.15.

New York References:

This section referred to in §§ 60.05, 460.10; CLS *CPL* § 700.05; CLS *Pub Health* § 2324-a; CLS Real P Actions & Pr § 715; CLS *Real P* § 231

Research References & Practice Aids:

- 35 NY Jur 2d, Criminal **Law** § 3668
- 35B NY Jur 2d, Criminal **Law** § 4938

47A NY Jur 2d, Domestic Relations § 1675
 63C Am Jur 2d, Prostitution §§ 5, 12-14
 1 Am Jur Proof of Facts 315, Age

Matthew Bender's New York Civil Practice:

2 Carrieri, Lansner, *New York Civil Practice: Family Court Proceedings* § 31.07; 3 Carrieri, Lansner, *New York Civil Practice: Family Court Proceedings* § 38A.07

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* § 11.04; 6 Frumer & Biskind, *Bender's New York Evidence--CPLR* § 25.05

Criminal Jury Instructions, New York:

Promoting prostitution, second degree (coercion). CJI2d [NY] [Penal Law § 230.30\(1\)](#)

Promoting prostitution, second degree (prostitute less than 16). CJI2d [NY] [Penal Law § 230.30\(2\)](#)

Case Notes: 1. Generally; jurisdiction 2. Age of victim 3. Admissibility of evidence 4. Need for corroboration of victim's testimony 5. Sufficiency of evidence 6. Verdict 7, 8. [Reserved for future use.] 9. Under former § 70; in general 10. --Nature and elements of offense 11. --Indictment 12. --Admissibility of evidence 13. --Particular acts as constituting abduction 14. Under former § 2460

1. Generally; jurisdiction

Under CLS *CPL* § 20.40, geographic jurisdiction over an offense is conferred on county when conduct making up element of offense occurs within county; engaging of prostitution is essential element of [Penal Law § 230.30](#), and is committed within county where defendant compels women to engage in prostitution at motels within county. *People v Sanders* (1985, 3d Dept) 112 App Div 2d 648, 491 NYS2d 851.

County had geographical jurisdiction to prosecute defendant for promoting prostitution in second and third degrees since there was evidence that county was place where defendant engaged in some management activities of his prostitutes and provided young girl with materials for use in her work as prostitute, and where he received some proceeds from prostitution activities. *People v Johnson* (1987, 3d Dept) 128 App Div 2d 915, 512 NYS2d 724.

Defendant's guilt, on theory of acting in concert, of second degree promotion of prostitution was supported by evidence that (1) coercion against victim began in defendant's apartment, in which victim was kept under guard and forced to engage in acts of prostitution for extended period, (2) defendant exercised control over activities in his apartment, and (3) he transported victim at direction of person who initiated coercion and directed continuation of forced prostitution. *People v Pan* (1997, 1st Dept) 245 App Div 2d 149, 666 NYS2d 154, app den (1998) 91 NY2d 977, 672 NYS2d 857, 695 NE2d 726.

In prosecution for second degree promotion of prostitution, testimony regarding uncharged violent crimes committed by codefendant against present victims was admissible to prove element of coercion where probative value

of such evidence outweighed its potential for prejudice. *People v Pan* (1997, 1st Dept) 245 App Div 2d 149, 666 NYS2d 154, app den (1998) 91 NY2d 977, 672 NYS2d 857, 695 NE2d 726.

2. Age of victim

When the age of the victim is an element of the crime, it is age at the time of the crime, and not at the time of trial, which controls. *People v Hinton* (1976) 40 NY2d 345, 386 NYS2d 703, 353 NE2d 617.

Defendant's mistake as to true age of undercover officer should not negate his culpability for attempted second degree promoting prostitution, even though completed offense was factually impossible for defendant to commit, where defendant did all that was necessary to complete target offense, and he would have been guilty of target offense if attendant circumstances had been as he believed them to be--that is, if officer had been 15 years old instead of 24. *People v Coleman* (1989) 74 NY2d 381, 547 NYS2d 814, 547 NE2d 69.

Attempted second degree promoting prostitution is not nonexistent crime, even though CLS **Penal** § 15.20(3) makes knowledge of victim's age irrelevant when considering liability for completed crime and conviction for attempt may be predicated on defendant's mistaken belief as to victim's age, since statute defining completed crime contains strict liability element which attaches not to proscribed result of criminal conduct (promoting prostitution) but to aggravating circumstance that makes defendant's conduct felonious (age of victim); where defendant's mistake as to victim's age relates to aggravating element of offense, and not to core conduct that is proscribed by statute, mistake does not affect defendant's ability to act with mental culpability required to complete underlying offense, and thus is no obstacle to his conviction for attempt of that offense. *People v Coleman* (1989) 74 NY2d 381, 547 NYS2d 814, 547 NE2d 69.

Defendant could not be prosecuted for second degree promoting prostitution based on his belief that decoy police officer whom he tried to talk into becoming prostitute was age 15 where officer was in fact not under age 16; promoting prostitution is "strict liability offense" in that guilt depends only on fact of age and not on defendant's knowledge thereof. *People v Coleman* (1988, 1st Dept) 143 App Div 2d 552, 532 NYS2d 862, app gr (1988) 73 NY2d 861, 537 NYS2d 508, 534 NE2d 346 and affd (1989) 74 NY2d 381, 547 NYS2d 814, 547 NE2d 69.

Defendant was properly convicted of attempted second degree promoting prostitution, even though his erroneous belief that decoy police officer whom he tried to talk into becoming prostitute was under age 16 precluded prosecution for target offense of promoting prostitution, since defendant's belief concerning officer's age served to define degree of his criminality for attempting to promote her prostitution and thus was crucial element of attempt crime. *People v Coleman* (1988, 1st Dept) 143 App Div 2d 552, 532 NYS2d 862, app gr (1988) 73 NY2d 861, 537 NYS2d 508, 534 NE2d 346 and affd (1989) 74 NY2d 381, 547 NYS2d 814, 547 NE2d 69.

3. Admissibility of evidence

Court committed reversible error in receiving into evidence, at trial on charges of second degree promoting prostitution and other offenses, tape-recorded interview of defendant without redaction where substantial portions of tape contained statements about unconnected, uncharged prior criminal and bad acts or unsavory associations concerning defendant's involvement with prostitutes; unredacted tape was not relevant to show (1) intent, since intent could be inferred by very act of promoting prostitution, (2) motive, since motive for promoting prostitution was obviously financial reward, (3) knowledge, since one could not promote prostitution by mistake or accident, (4) common plan or scheme, since there was no evidence of common plan to commit series of crimes including ones for which defendant was being charged, or (5) identity, since identity was not in issue. *People v Richardson* (1988, 3d Dept) 137 App Div 2d 105, 528 NYS2d 431.

Tape-recorded interview of defendant which contained statements about unconnected, uncharged prior criminal and bad acts or unsavory associations concerning defendant's involvement with prostitutes should have been excluded, even if it were relevant to prove some element of second degree promoting prostitution and other crimes with which defendant was charged, since it had limited probative value when compared to its potential for prejudice and unacceptable danger that jury might condemn defendant because of his past criminal behavior and associates. *People v Richardson* (1988, 3d Dept) 137 App Div 2d 105, 528 NYS2d 431.

In prosecution for promoting prostitution in second degree, court properly admitted evidence of uncharged sexual acts between defendant and young girls he attempted to recruit as prostitutes. *People v Felder* (1988, 4th Dept) 138 App

NY CLS Penal § 230.30

Div 2d 967, 526 NYS2d 299, app den (1988) 71 NY2d 1026, 530 NYS2d 561, 526 NE2d 53 and app den (1988) 71 NY2d 1026, 530 NYS2d 561, 526 NE2d 53.

Convictions for promoting prostitution in second degree and endangering welfare of child would be reversed where (1) court made pretrial rulings that child prostitution was not area appropriate for expert testimony and that particular witness did not qualify as expert, while permitting witness to testify as to her observations of complainant, but (2) during trial, witness was permitted to give testimony regarding nature of relationships between child prostitutes and their pimps and behavioral characteristics of child prostitutes in general. *People v Falzone (1989, 1st Dept) 150 App Div 2d 249, 541 NYS2d 415, app den (1989) 74 NY2d 739, 545 NYS2d 113, 543 NE2d 756 and app den (1989) 74 NY2d 739, 545 NYS2d 113, 543 NE2d 756 and app den (1989) 74 NY2d 746, 545 NYS2d 120, 543 NE2d 763 and app den (1989) 74 NY2d 746, 545 NYS2d 120, 543 NE2d 763.*

4. Need for corroboration of victim's testimony

In prosecution for aiding prostitution of minor, minor is not accomplice by operation of CLS **Penal § 230.30**, and accordingly minor is not accomplice whose testimony requires corroboration. *People v Carey (1985, 3d Dept) 109 App Div 2d 982, 486 NYS2d 797.*

Although prostitutes may be considered accomplices, as term is defined in CPL § 60.22, of defendant accused of promoting prostitution in second degree, those accomplices under 17 years of age at time they became involved with defendant are not accomplices whose testimony need be corroborated. *People v Pasini (1985, 2d Dept) 112 App Div 2d 1013, 492 NYS2d 819.*

In trial for promoting prostitution in violation of CLS **Penal § 230.30(1)**, testimony of complaining witness need not be corroborated, since one who is compelled by force or intimidation to engage in criminal conduct is victim of criminal conduct rather than accomplice. *People v Bennett (1988, 4th Dept) 144 App Div 2d 942, 534 NYS2d 609, app den (1989) 74 NY2d 736, 545 NYS2d 110, 543 NE2d 753.*

5. Sufficiency of evidence

At trial for attempted second degree promoting prostitution, jury reasonably concluded that defendant had intended to encourage undercover officer to engage in prostitution where defendant had approached officer who he believed to be runaway, he encouraged her to engage in prostitution, and he proposed to act as her pimp. *People v Coleman (1989) 74 NY2d 381, 547 NYS2d 814, 547 NE2d 69.*

Defendant was properly convicted of attempted second degree promotion of prostitution in violation of CLS **Penal § 110.00 and 230.30(2)** based on evidence showing that he endeavored to persuade 25-year-old decoy police officer to become prostitute after she represented that she was less than 16 years old. *People v Liggins (1989, 1st Dept) 156 App Div 2d 125, 548 NYS2d 28, app den (1990) 75 NY2d 921, 555 NYS2d 39, 554 NE2d 76.*

6. Verdict

Conviction of attempted promoting prostitution in second degree and attempted coercion in second degree was not repugnant to acquittal on charges of first degree rape and sodomy, since jury could have reasonably found that defendant did not use forcible compulsion to make victim engage in sexual intercourse and deviate sexual intercourse with him, but that he did use nude photographs of her in attempt to blackmail and coerce her into working for him as prostitute. *People v Williams (1986, 4th Dept) 124 App Div 2d 993, 508 NYS2d 797.*

7, 8. [Reserved for future use.]

9. Under former § 70; in general

The theory of the **law** is that a girl under eighteen years of age is incapable of consenting to the act. *Boyles v Blankenhorn (1915) 168 App Div 388, 153 NYS 466, affd (1917) 220 NY 624, 115 NE 443.*

10. --Nature and elements of offense

To constitute a violation under subd. 3 of this section, it is not essential that personal violence be used in the unlawful taking, since the statute embraces a case where the woman did not consent to be taken away for her own defilement but contrary to her wishes and intention in this particular and without her knowledge of the purpose

contemplated, was induced to go with another for what was represented to her, by the latter, to be a lawful object, and was afterward, in accordance with the original intention of that other person, by force, menace, or duress unlawfully defiled. *Beyer v People (1881) 86 NY 369.*

The word "take," as used in this section, does not imply an actual manual capture of the female, nor need she be taken against her will. *People v Plath (1885) 100 NY 590, 3 NE 790.*

Essence of crime of abduction under subd. 1 of this section is receiving and harboring female for purpose of intercourse. *People v Deckenbrock (1913) 157 App Div 379, 142 NYS 278, affd (1913) 209 NY 604, 103 NE 1128.*

11. --Indictment

Where indictment for abduction was drawn under this section but court in charge to jury treated case as if indictment had been drawn under another subdivision of said section, and no objection or exception was taken to charge in this particular and attention of justice was not called in any way to form of indictment or provision of statute under which it was drawn, defendant is not in position to insist, as matter of right, that judgment should be reversed upon ground that he was convicted of crime different from that for which he was indicted. *People v Turley (1912) 153 App Div 671, 138 NYS 651.*

Conviction under a later indictment for rape and abduction did not show conviction for superseding indictment where earlier indictment for rape was never moved for trial. *People v Hosier (1945) 268 App Div 1075, 52 NYS2d 394, affd (1947, NY) 72 NE2d 607.*

12. --Admissibility of evidence

To sustain an indictment under subd 2 of this section, actual chastity of the complainant must be shown; evidence as to her general reputation in that respect is admissible, and her lack of chastity can only be shown by proof of specific acts. *Kenyon v People (1863) 26 NY 203.*

Evidence of defendant's conduct previous to the time alleged in the indictment, tending to show that he had the intention to make use of the complainant for purposes prohibited by this section, is competent. *People v Spriggs (1907) 119 App Div 236, 104 NYS 539, app dismd (1909) 194 NY 556, 87 NE 1124.*

13. --Particular acts as constituting abduction

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 rather 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.*

Where the four defendants, acting in concert, had inveigled a woman into an automobile, forcibly confined her there, drove her to an isolated place and then raped her, they were properly charged with kidnapping, although they could also have been charged with the more specific crime of abduction with intent to defile. *People v Florio (1950) 301 NY 46, 92 NE2d 881, 17 ALR2d 993 (ovrld in part on other grounds by People v Levy (1965) 15 NY2d 159, 256 NYS2d 793, 204 NE2d 842).*

Hotel clerk who lets room to woman under eighteen years of age accompanied by man, not her husband, for purpose of sexual intercourse, may be convicted of the crime of abduction under subd. 1 of this section. *People v Deckenbrock (1913) 157 App Div 379, 142 NYS 278, affd (1913) 209 NY 604, 103 NE 1128.*

One who induces a girl less than sixteen years of age to leave her home without her parents' consent and takes her for the purpose of marriage may be charged with the crime of abduction. *Nealon v Nealon (1921) 195 App Div 694, 187 NYS 295.*

14. Under former § 2460

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.*

NY CLS Penal § 230.30

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.*

Where an indictment has 90 counts, charging separate transactions relating to compulsory prostitution, the defendant cannot on habeas corpus contend that an amendment permitting trial of all counts simultaneously was ex post facto and unconstitutional, as such an application of the amendment should be resolved upon appeal. *People ex rel. Luciano v Murphy (1937) 249 App Div 879, 292 NYS 844.*

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 the acts of two immoral individuals. *People v Odierno (1938) 166 Misc 108, 2 NYS2d 99.*