



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 § 230.25 (2005)

§ 230.25. Promoting prostitution in the third degree

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

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or
2. Advances or profits from prostitution of a person less than nineteen years old.

Promoting prostitution in the third degree is a class D felony.

HISTORY: Add, L 1965, ch 1030, § 1, with substance derived from §§ 70 in part, 1146, 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 § 460.10; *CLS Mult D § 353*; *CLS Pub Health § 2324-a*; *CLS Real P Actions & Pr § 715*; *CLS Real P § 231*

Research References & Practice Aids:

3 NY Jur 2d, Alcoholic Beverages §§ 56-58

35 NY Jur 2d, Criminal Law § 3668
 35B NY Jur 2d, Criminal Law § 4937
 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
 New York Criminal Practice Ch. 77

Criminal Jury Instructions, New York:

Promoting prostitution, third degree (manage prostitution business). CJI2d [NY] *Penal Law* § 230.25(1)
 Promoting prostitution, third degree (prostitute less than 19). CJI2d [NY] *Penal Law* § 230.25(2)

Case Notes:

As the crime to which defendant pled guilty, promoting prostitution in the second (now third) degree, requires "prostitution activity by two or more prostitutes," as the trial court, in questioning defendant, failed to apprise her of that element of the crime, and as, during subsequent questioning, defendant stated on four separate occasions that she only had one woman working for her, the acceptance of her guilty plea under these circumstances constituted an abuse of discretion. *People v Etoll* (1977, 3d Dept) 57 App Div 2d 973, 394 NYS2d 112.

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 lesser included offense. *People v Rodriguez* (1984, 1st Dept) 104 App Div 2d 547, 480 NYS2d 214.

A judgment convicting defendant of promoting prostitution in the third degree (*Penal Law* § 230.25) and permitting prostitution would be affirmed. The trial court did not err in declining defendant's request to instruct the jury that a conviction for promoting prostitution could not be sustained absent proof that she was operating a house of prostitution on a systematic and continuous basis. The Legislature has made the commercial nature of the enterprise, not the number of times that prostitution is promoted, the controlling element, and the record established that defendant owned a social club, that she procured prostitutes for a bachelor party as part of her regular catering basis, that prostitution activity took place on the premises and that defendant was paid a deposit and was to collect a fee for the services. The testimony at trial plainly established the promotion of prostitution in a commercial and organized manner. The trial court's charge correctly focused the jury on the pertinent issues in the case and, inasmuch as the jury was adequately apprised of the

governing legal principles, the trial court was not bound to employ the specific language requested by defense counsel. *People v Freaney* (1985, 2d Dept) 108 App Div 2d 228, 488 NYS2d 759.

At trial for promoting prostitution in third degree, defendant was not deprived of fair trial by trial court's ruling during summation that defense counsel could not comment that alleged prostitute was not called as prosecution witness. *People v Williams* (1987, 4th Dept) 126 App Div 2d 975, 511 NYS2d 749.

Evidence that defendant offered prostitute's services to 2 experienced police officers for stated price was sufficient to prove that defendant was guilty of promoting prostitution in third degree. *People v Williams* (1987, 4th Dept) 126 App Div 2d 975, 511 NYS2d 749.

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.

Evidence was sufficient to support conviction for promoting prostitution in third degree where evidence showed that defendant solicited 17-year-old girls to work for him as prostitutes, even though each girl refused to do so. *People v Simone-Taylor* (1989, 4th Dept) 148 App Div 2d 933, 539 NYS2d 171, app den (1989) 74 NY2d 669, 543 NYS2d 412, 541 NE2d 441.

Even though statute which defines "prostitution" as engaging or agreeing or offering to engage in sexual conduct with another person in return for a fee did not contain explicit definition of "sexual conduct," where proof at trial on charge of promoting prostitution in the second (now third) degree established acts of prostitution involving sexual intercourse and fellatio, defendant was within purview of statute. *People v Costello* (1977, Sup) 90 Misc 2d 431, 395 NYS2d 139.

The hiring of actors and actresses for the purpose of engaging in filmed sexual conduct constitutes prostitution (*Penal Law*, §§ 230.00, 230.15, 230.25); the availability of other prosecutorial alternatives does not preclude the use of the prostitution laws to curb the production of pornography. *People v Kovner* (1978) 96 Misc 2d 414, 409 NYS2d 349.

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.

Defendant was not entitled to hearing on her motion to dismiss indictment charging her with third degree promoting prostitution for running escort service, on ground that she was victim of selective prosecution, although many escort services may go unprosecuted and complainant (who was defendant's former boyfriend) may have acted for personal motives and may have bribed police officer to initiate investigation, where (1) there was no showing that defendant was prosecuted for conduct overlooked in others because of her race, religion or gender, and (2) there was no factual allegation that, once district attorney's office became involved, People acted other than according to their normal practices. *People v Keller* (1998, Sup) 176 Misc 2d 466, 673 NYS2d 563.

Defendants were not entitled to interest of justice dismissal of indictment charging third degree promoting prosecution for running escort service, on ground that their crime was petty and essentially victimless, because, to extent guilt was proved, they knew that their activity was illegal and deliberately chose to pursue it on large scale for enormous profits. *People v Keller* (1998, Sup) 176 Misc 2d 466, 673 NYS2d 563.