

CRIMINAL SEXUAL ACT THIRD DEGREE
(E Felony)
(Defendant 21 or More
Complainant Less Than 17)
PENAL LAW 130.40(2)
(Committed on or after Nov. 1, 2003)

The _____ count is Criminal Sexual Act in the Third Degree.

Under our law, a person is guilty of Criminal Sexual Act in the Third Degree when, being twenty-one (21) years old or more, he or she engages in

Select applicable alternative(s):
oral sexual conduct [or]
anal sexual conduct

with a person who is incapable of consent by reason of being less than seventeen (17) years old. ¹

I will now give you the meaning of the following terms used in that definition:

Select applicable alternative(s):
"oral sexual conduct" [or]
"anal sexual conduct,"

and "incapable of consent."

[ORAL SEXUAL CONDUCT means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus or the mouth and the vulva or vagina.²]

[ANAL SEXUAL CONDUCT means conduct between

¹ The definition of the crime has been modified to incorporate specifically the requirement of incapacity to consent. See Penal Law § 130.05(1), (2)(b).

² Penal Law § 130.00(2)(a).

persons consisting of contact between the penis and the anus.^{3]}

Under our law, a person is INCAPABLE OF CONSENTING to [oral (or) anal] sexual conduct when that person is less than seventeen (17) years old.⁴ Thus, [oral (or) anal] sexual conduct with such a person is always deemed to be without that person's consent, even if in fact that person did consent.

It is not a defense to a charge of Criminal Sexual Act in the Third Degree that the actor did not know that the person with whom the actor had [oral (or) anal] sexual conduct was less than seventeen (17) years old, or that the actor believed that such person was seventeen (17) years old or more on the date of the crime.^{5]}

[Add it applicable:

It is a defense to this charge that the defendant was married to the victim. "Married" means the existence of the relationship between the defendant and the complainant as spouses which was recognized by law at the time of the alleged commission of this charge crime.^{6]}

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (name of defendant), engaged in

³ Penal Law § 130.00(2)(b).

⁴ See Penal Law § 130.05(3)(a).

⁵ See Penal Law § 15.20(3).

⁶ See Penal Law § 130.00(4). See Domestic Relations Law § § 15 and 15-a.

Select applicable alternative(s):
oral sexual conduct [or]
anal sexual conduct

with (name of complainant); and

2. That the defendant was twenty-one (21) years old or more at that time; and
3. That (name of complainant) was incapable of consent because he/she was less than seventeen (17) years old.

[Add if applicable:

4. That the defendant was not married to (name of complainant).]

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Criminal Sexual Act in the Third Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Criminal Sexual Act in the Third Degree as charged in the _____ count.