

**CRIMINAL SEXUAL ACT  
FIRST DEGREE  
(B Felony)  
(Complainant Less Than 11 Years Old)  
PENAL LAW 130.50(3)  
(Committed on or after Nov. 1, 2003)**

The \_\_\_\_\_ count is Criminal Sexual Act in the First Degree.

Under our law, a person is guilty of Criminal Sexual Act in the First Degree when he or she engages in

*Select applicable alternative(s):*

oral sexual conduct [or]

anal sexual conduct

with another person who is less than eleven (11) years old.

Under our law, it is also an element of this offense that the [oral (or) anal] sexual conduct was committed without the consent of that other person. [Oral (or) anal] sexual conduct takes place without a person's consent when that person is deemed by law to be incapable of consent. Under our law, a person is deemed incapable of consenting to [oral (or) anal] sexual conduct when he or she is less than eleven (11) years old.<sup>1</sup> 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 this charge that the actor did not know that the person with whom the actor had [oral (or) anal] sexual conduct was less than eleven (11) years old, or that the actor believed that such person was eleven (11) years old or more on the date of the crime.<sup>2</sup>

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<sup>1</sup> Penal Law § 130.05(3)(a).

<sup>2</sup> See Penal Law §15.20(3).

The term(s),

*Select applicable alternative(s):*

“oral sexual conduct” [or]

“anal sexual conduct”

used in the definition of this crime have their own special meaning in our law. I will now give you the meaning of these terms.

[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.<sup>3</sup>]

[ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.<sup>4</sup> ]

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, both of the following two elements:

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

*Select applicable alternative(s):*

oral sexual conduct [or]

anal sexual conduct

with (name of complainant); and

2. That (complainant's name) was less than eleven (11) years old.

Therefore, if you find that the People have proven beyond

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<sup>3</sup> Penal Law § 130.00(2)(a).

<sup>4</sup> Penal Law § 130.00(2)(b).

a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Criminal Sexual Act in the First Degree as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Criminal Sexual Act in the First Degree as charged in the \_\_\_\_\_ count.