

**SEXUAL ABUSE FIRST DEGREE
(D Felony)
(Forcible Compulsion)
PENAL LAW 130.65(1)
(Committed on or after Oct. 13, 2010 ¹)**

The _____ count is Sexual Abuse in the First Degree.

Under our law, a person is guilty of Sexual Abuse in the First Degree when he or she subjects another person to sexual contact by forcible compulsion.

Under our law, it is also an element of this offense that the sexual act was committed without consent.² Sexual contact takes place without a person's consent when the lack of consent results from forcible compulsion.³

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "sexual contact," "without a person's consent," and "forcible compulsion."

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party. It includes the touching of the actor by the victim as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.⁴

¹ Except for the amendment to the definition of "sexual contact," effective October 13, 2010, as explained in the footnote to that definition, this charge is effective for crimes committed on or after February 1, 2001.

² Penal Law § 130.05(1).

³ Penal Law § 130.05(2)(a).

⁴ Penal Law § 130.00(3), as amended by the L.2010, c. 193, effective October 13, 2010, which struck the phrase "not married to the actor" after the word "person," and added the concluding phrase "as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed."

FORCIBLE COMPULSION means to intentionally compel either:

(1) by the use of physical force;

or

(2) by a threat, express or implied, which places a person in fear of immediate death or physical injury to himself or herself [or another person] or in fear that he or she [or another person] will immediately be kidnapped.⁵

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), subjected (name of complainant) to sexual contact; and
2. That the defendant did so without (name of complainant)'s consent by use of forcible compulsion.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Sexual Abuse 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

⁵ Penal Law §§ 15.05(1), 130.00(8). The definition has been modified by adding the term “intentionally” in the first line to reflect the holding of *People v. Williams*, 81 N.Y.2d 303 (1993). See also *People v. Grega*, 72 N.Y.2d 489 (1988), directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions.

Sexual Abuse in the First Degree as charged in the _____
count.