

**SEXUAL ABUSE FIRST DEGREE
(D Felony)
(Complainant Less Than 11 Years Old)
PENAL LAW 130.65(3)
(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 when the other person is less than eleven (11) years old.

Under our law, it is also an element of this offense that the sexual contact was committed without the consent of that other person.² Sexual contact 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 sexual contact when he or she is less than eleven (11) years old.³ Thus, sexual contact 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 sexual contact 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.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 Nov. 1, 2003.

²Penal Law § 130.05(1).

³Penal Law § 130.05(3)(a).

⁴Penal Law §15.20(3).

The term "sexual contact" used in the definition of this crime has its own special meaning in our law. I will now give you the meaning of that term.

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

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

⁵Penal 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."