

**AGGRAVATED SEXUAL ABUSE
SECOND DEGREE
(C Felony)
(Insertion of Finger;
Complainant Physically Helpless)
Penal Law 130.67(1)(b)
(Committed on or after Nov. 1, 1988)**

The ____ count is Aggravated Sexual Abuse in the Second Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the Second Degree when he or she inserts a finger in the vagina [*or urethra*] [*or penis*] [*or rectum*] of another person causing physical injury to such person and when the other person is incapable of consent by reason of being physically helpless. Conduct performed for a valid medical purpose does not violate the provisions of this law.

I will now give you the meaning of the following terms used in that definition: “incapable of consent,” “physically helpless,” and “physical injury.”

Under our law, A person is INCAPABLE OF CONSENTING to the insertion of a finger in the vagina [*or urethra*] [*or penis*] [*or rectum*] when that person is physically helpless.¹

PHYSICALLY HELPLESS means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.²

PHYSICAL INJURY means impairment of physical condition

¹See Penal Law § 130.05(3)(d).

²See Penal Law § 130.00(7).

or substantial pain.³

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), without a valid medical purpose, inserted a finger in the vagina [or urethra] [or penis] [or rectum] of (name of complainant), causing him/her physical injury; and
2. That (name of complainant) was incapable of consent because he/she was physically helpless.

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 Aggravated Sexual Abuse in the Second 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 Aggravated Sexual Abuse in the Second Degree as charged in the _____ count.

NOTE: If the affirmative defense set forth in Penal Law § 130.10 (1) applies, omit the final two paragraphs of the above charge, and substitute the applicable charge in the “additional charges” section from the end of this article.

³ Penal Law § 10.00(9).