

**AGGRAVATED SEXUAL ABUSE
FIRST DEGREE
(B Felony)
(Inserts a Foreign Object;
Physical Helplessness)
PENAL LAW 130.70(1)(b)
(Committed on or after Nov. 1, 1988)**

The _____ count is Aggravated Sexual Abuse in the First Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the First Degree when he or she inserts a foreign object 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. ¹

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 used in that definition: "foreign object," "physical injury," "incapable of consent," and "physically helpless."

FOREIGN OBJECT means any instrument or article which, when inserted in the vagina [or urethra] [or penis] [or rectum], is capable of causing physical injury. ²

PHYSICAL INJURY means impairment of physical condition or substantial pain. ³

A person is INCAPABLE OF CONSENT when that person

¹ Penal Law § 130.65-a(2).

² Penal Law § 130.00(9).

³ Penal Law § 10.00(9).

is physically helpless.⁴

PHYSICALLY HELPLESS means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.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)*, without a valid medical purpose, inserted a foreign object into 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 by reason of being 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 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 Aggravated Sexual Abuse in the First 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

⁴ Penal Law § 130.05(3)(d).

⁵ Penal Law § 130.00(7).

charges” section from the end of this article.