

**COURSE OF SEXUAL CONDUCT AGAINST A CHILD  
SECOND DEGREE  
(D Felony)  
PENAL LAW 130.80(1)(b)  
(Committed on or after November 1, 2003)**

The \_\_\_\_\_ count is Course of Sexual Conduct Against a Child in the Second Degree.

Under our law, a person is guilty of Course of Sexual Conduct Against a Child in the Second Degree when, over a period of time not less than three months in duration, he or she, being eighteen years or more, engages in two or more acts of sexual conduct with a child less than thirteen (13) years old.

Under our law, it is also an element of this offense that the sexual conduct was committed without the consent of such child.<sup>1</sup> Sexual conduct takes place without a child's consent when that child is deemed by law to be incapable of consent. Under our law, a child is deemed incapable of consenting to sexual conduct when he or she is less than thirteen (13) years old.<sup>2</sup> Thus, sexual conduct with such child is always deemed to be without that child's consent, even if in fact that child did consent.

It is not a defense to this charge that the actor did not know that the person with whom the actor engaged in sexual conduct was less than thirteen (13) years old, or that the actor believed that such person was thirteen (13) years old or more on the date of the crime.<sup>3</sup>

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

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

<sup>2</sup> See Penal Law § 130.05(3)(a).

<sup>3</sup> See Penal Law § 15.20(3).

SEXUAL CONDUCT means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.<sup>4</sup>

SEXUAL INTERCOURSE means any penetration, however slight, of the penis into the vaginal opening. In other words, any penetration of the penis into the vaginal opening, regardless of the distance of penetration, constitutes an act of sexual intercourse. Sexual intercourse does not necessarily require erection of the penis, emission, or orgasm.<sup>5</sup>

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>6</sup>

ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.<sup>7</sup>

AGGRAVATED SEXUAL CONTACT means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or rectum of a child, thereby causing physical injury to such child.<sup>8</sup> Physical injury

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<sup>4</sup> Penal Law § 130.00(10).

<sup>5</sup> The statutory definition has been amplified in accord with case law. See Penal Law § 130.00(1) and *People v Liberta*, 64 NY2d 152, 169 (1984); *People v Edwards*, 173 AD 375 (2<sup>nd</sup> Dept. 1916); *People v Berardicurti*, 167 Ad2d 840 (4<sup>th</sup> Dept. 1990); *People v White*, 185 AD2d 472 (3<sup>rd</sup> Dept. 1992); *People v Williams*, 259 AD2d 509 (2<sup>nd</sup> Dept. 1999).

<sup>6</sup> Penal Law § 130.00(2)(a).

<sup>7</sup> Penal Law § 130.00(2)(b).

<sup>8</sup> Penal Law § 130.00(11).

means impairment of physical condition or substantial pain.<sup>9</sup>

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying 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.<sup>10</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 over a period of time not less than three months in duration, namely, on or about and between *(dates)*, in the county of *(county)*, the defendant, *(name of defendant)*, being eighteen (18) years old or more, engaged in two or more acts of sexual conduct with *(name of complainant)*; and
2. That *(name of complainant)* was less than thirteen (13) 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 Course of Sexual Conduct Against a Child 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 Course of Sexual Conduct Against a Child in the Second Degree as charged in the \_\_\_\_\_ count.

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<sup>9</sup> Penal Law § 10.00(9).

<sup>10</sup> See Penal Law § 130.00(3). For a definition of “marriage,” see Penal Law § 130.00(4).

