

**RAPE THIRD DEGREE
(E Felony)
(Incapacity to Consent :
Mental Disability or Incapacity, or
Physical Helplessness)
PENAL LAW 130.25(1)
(Committed on or after Nov. 1, 2003)**

A charge for “mentally disabled” and “mentally incapacitated” have been omitted here because they are also separately included in the crime of Rape in the Second Degree [Penal Law § 130.30(2)]. Thus, if necessary, the charge for Rape in the Second Degree can be modified to charge the instant crime as applied to a person who is “mentally disabled” or “mentally incapacitated.”

Likewise, a charge for “physically helpless” has been omitted here because it is also separately included in the crime of Rape in the First Degree [Penal Law § 130.35(2)]. Thus, if necessary the charge for Rape in the First Degree can be modified to charge the instant crime as applied to a person who is “physically helpless.”