

RAPE FIRST DEGREE
(Complainant Less Than 11 Years Old)
Penal Law § 130.35 (3)
(Committed on or after Feb. 1, 2001)

The (*specify*) count is Rape in the First Degree.

Under our law, a person is guilty of Rape in the First Degree when he or she engages in sexual intercourse with another person who is less than eleven (11) years old.

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

The following term used in that definition has a special meaning:

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

¹ See Penal Law § 130.05 (1).

² Penal Law § 130.05 (3) (a).

³ See Penal Law § 15.20 (3).

intercourse. Sexual intercourse does not necessarily require erection of the penis, emission, or orgasm.⁴

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of 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), engaged in sexual intercourse with (name of complainant); and
2. That (complainant's name) was less than eleven (11) years old.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

⁴ The statutory definition has been amplified in accord with case law (see Penal Law § 130.00 [1]; *People v Liberta*, 64 NY2d 152, 169 [1984]; *People v Williams*, 259 AD2d 509 [2d Dept 1999]; *People v White*, 185 AD2d 472 [3d Dept 1992]; *People v Berardicurti*, 167 AD2d 840 [4th Dept 1990]; *People v Edwards*, 173 AD 375 [2d Dept 1916]).