

**CRIMINAL SEXUAL ACT IN THE FIRST DEGREE
(Physical Helplessness)
Penal Law § 130.50 (2)
(Committed on or after Nov. 1, 2003)**

The (*specify*) count is Criminal Sexual Act in the First Degree.

Under our law, a person is guilty of Criminal Sexual Act in the First Degree when he or she engages in

Select applicable alternative(s):
oral sexual conduct [or]
anal sexual conduct

with another person who is incapable of consent by reason of being physically helpless.

The following terms used in that definition have a special meaning:

Select applicable alternative(s):
[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.¹]

[ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.²]

A person is INCAPABLE OF CONSENT when that person is physically helpless.³

¹ Penal Law § 130.00 (2) (a).

² Penal Law § 130.00 (2) (b).

³ Penal Law § 130.05 (3) (d).

PHYSICALLY HELPLESS means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.⁴

Thus, the law deems [oral (or) anal] sexual conduct with such a person to be without that person's consent, even if in fact that person did consent.

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

Select applicable alternative(s):

oral sexual conduct [or]

anal sexual conduct

with (name of complainant); and

2. That (name of complainant) was incapable of consent by reason of being physically helpless.

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.

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.

⁴ Penal Law § 130.00 (7).