

**CRIMINAL SEXUAL ACT  
FIRST DEGREE  
(B Felony)  
(Physical Helplessness)  
PENAL LAW 130.50 (2)  
(Committed on or after Nov. 1, 2003)**

The \_\_\_\_\_ 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.

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:

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

"incapable of consent" and "physically helpless."

[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>1</sup>]

[ANAL SEXUAL CONDUCT means conduct between

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<sup>1</sup> Penal Law § 130.00 (2) (a).

persons consisting of contact between the penis and anus.<sup>2</sup> ]

A person is INCAPABLE OF CONSENT when that person is physically helpless.<sup>3</sup>

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

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.

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 Criminal Sexual Act in the First

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

<sup>3</sup> Penal Law § 130.05 (3) (d).

<sup>4</sup> Penal Law § 130.00 (7).

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 Criminal Sexual Act 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 charges” section from the end of this article.*