

PREDATORY SEXUAL ASSAULT
(A-II Felony)
PENAL LAW 130.95(1)(a)
(Committed on or after June 23, 2006)

The _____ count is Predatory Sexual Assault.

Under our law, a person is guilty of Predatory Sexual Assault when, he or she commits the crime of

Select appropriate alternative:

Rape in the first degree

Criminal sexual act in the first degree

Aggravated sexual abuse in the first degree

Course of sexual conduct against a child in the first degree,

and when in the course of the commission of the crime or the immediate flight therefrom, he or she causes serious physical injury to the victim of such crime.

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: "(name of underlying crime)," "serious physical injury."

(Specify name and definition of underlying crime)¹

SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.²

¹ With respect to defining the underlying crime, if the underlying crime is a separate count within the indictment, reference to the crime or count is sufficient.

² See Penal Law § 10.00(10).

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 on or about (date), in the county of (county), the defendant, (defendant's name), committed (name of underlying crime); and
2. That, in the course of and in furtherance of the commission of such (name of underlying crime) [or the immediate flight therefrom], the defendant caused serious physical injury to the victim of such (name of underlying crime).

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 Predatory Sexual Assault 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 Predatory Sexual Assault as charged in the _____ count.