

**PREDATORY SEXUAL ASSAULT**  
**(A-II Felony)**  
**PENAL LAW 130.95 (1) (b)**  
**(Committed on or after June 23, 2006)**  
**(Revised June, 2013)<sup>1</sup>**

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 uses or threatens the immediate use of a dangerous instrument.

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)” and “dangerous instrument.”

(Specify name and definition of underlying crime)<sup>2</sup>

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<sup>1</sup> The revision was for the purpose of updating the elements to accord with decisional law. That law requires that where the defendant “threatens” the immediate use of a dangerous instrument, the People must prove that the defendant possessed that dangerous instrument at the time of the crime. See *People v Grant*, 17 NY3d 613, 617-618 (2011); *People v Ford*, 11 NY3d 875, 878 (2008); *People v Pena*, 50 NY2d 400, 407 (1980).

<sup>2</sup> 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.

DANGEROUS INSTRUMENT means any instrument, article or substance (including a vehicle) which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury,<sup>3</sup> that is, serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

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, (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 possessed a dangerous instrument and used or threatened the immediate use of that dangerous instrument.

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.

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<sup>3</sup> See Penal Law § 10.00 (13).