

COERCION IN THE THIRD DEGREE
Penal Law § 135.60
(Committed on or after date specified in footnote [1])¹

The (*specify*) count is Coercion in the Third Degree.

Under our law, a person is guilty of coercion in the third degree when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage,

Add as appropriate:

or compels or induces a person to join a group, organization or criminal enterprise which such latter person has a right to abstain from joining,

or compels or induces a person to produce, disseminate, or otherwise display an image or images depicting nudity of such person or depicting such person engaged in sexual conduct ²

by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

¹ In 2008, this crime was labeled “coercion in the second degree,” and the charge for that crime was then revised to incorporate legislative enactments added by L. 2008, ch. 426, § 1, eff. Nov. 1, 2008. Effective November 1, 2018 the crime was relabeled from “coercion in the second degree” to “coercion in the third degree” and a new “coercion in the second degree” was added. L. 2018, c. 55. No other amendments were made. This charge therefore remains applicable to an accusation of “coercion in the second degree” committed between November 1, 2008 and November 1, 2018 (albeit with a reversion to the third-degree label).

In 2021, this statute was amended twice. Chapter 484 (effective December 19, 2021) added the alternative in the definition of the crime that relates to images of sexual conduct. Chapter 447 (effective November 7, 2021) added subdivision (10) relating to the reporting of a person’s immigration status.

² At this point, the statute states “sexual conduct as defined in subdivisions two and three of section 235.20 of this chapter.” Subdivision (2) of that section defines “nudity” and subdivision (3) defines “sexual conduct.” Both definitions are set forth in the definitional section of this instruction and “nudity” per the statute is included in the definition of “sexual conduct.”

Select appropriate alternative(s):

Cause physical injury to a person [or]

Cause damage to property [or]

Cause damage to property [or]

Engage in [other] conduct constituting a crime [or]

Accuse some person of a crime or cause criminal charges to be instituted against him or her [or]

Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule [or]

Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act [or]

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense [or]

Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely [or]

Report his or her immigration status or suspected immigration status [or]

Perform any other act which would not in itself materially benefit³ the actor but which is calculated to harm another person materially with respect to his or her health, safety,

³ If necessary "benefit" may be defined as follows: "Benefit" means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary." Penal Law § 10.00(17).

business, calling, career, financial condition, reputation or personal relationships.

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

Select appropriate definition(s):

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁴

PUBLIC SERVANT means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.⁵

CRIME means a violation of law that is classified as a misdemeanor or a felony.⁶ (*Specify*) is a crime.

"Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.⁷

SEXUAL CONDUCT means acts of nudity, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.⁸

⁴ Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

⁵ Penal Law § 10.00(15).

⁶ Penal Law § 10.00(6).

⁷ Penal Law § 235.20(2).

⁸ Penal Law § 235.20(3) with the addition of "Nudity" are required by the definition of the instant crime.

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, each of the following two elements:

1. That on or about (date), in the County of (county), the defendant, (defendant's name),

Select appropriate alternative(s):

compelled or induced (specify) to engage in conduct which he/she had a legal right to abstain from engaging in,

compelled or induced (specify) to abstain from engaging in conduct in which he/she had a legal right to engage;

compelled or induced (specify) to join a group, organization or criminal enterprise which (specify) had a right to abstain from joining,

or compelled or induced (specify) to produce, disseminate, or otherwise display an image or images depicting nudity of such person or depicting such person engaged in sexual conduct

and

2. That the defendant did so by means of instilling in (specify) a fear that, if the demand were not complied with, the defendant or another would:

Select appropriate alternative(s) from the list above in the definition of the crime.

Note: If the affirmative defense does not apply, conclude as follows:

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 does apply, continue as follows:

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.

If you find that the People have proven beyond a reasonable doubt both of the elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Coercion in the Third Degree, you will not consider the affirmative defense.

Under our law, it is an affirmative defense to the charge of Coercion committed by instilling in the victim a fear that he/she or another person would be charged with a crime, that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.⁹⁷

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

⁹ Penal Law § 135.75.

If you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable doubt the elements of Coercion in the Third Degree, you must find the defendant guilty of that crime.

If you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of that crime.