

RAPE THIRD DEGREE
(E Felony)
(Complainant Mentally Defective; Mentally
Incapacitated; Physically Helpless)
PENAL LAW 130.25(1)
(Committed on or after Nov. 1, 1987)

The count is Rape in the Third Degree.

Under our law, a person is guilty of Rape in the Third Degree when he or she engages in sexual intercourse with another person, to whom he or she is not married, and that person is incapable of consent by reason of being mentally defective [*or* mentally incapacitated] [*or* physically helpless].¹

I will now give you the meaning of the following terms used in that definition: "sexual intercourse," "incapable of consent," and ["mentally defective."] ["mentally incapacitated."] ["physically helpless."]

SEXUAL INTERCOURSE has its ordinary meaning, and occurs upon any penetration, however slight.²

Under our law, a person is **INCAPABLE OF CONSENTING** to sexual intercourse when that person is

[*NOTE: Select appropriate alternative:*

mentally defective.³ **MENTALLY DEFECTIVE** means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.⁴

or mentally incapacitated.⁵ **MENTALLY INCAPACITATED** means that a person is rendered temporarily incapable of appraising or controlling his or her conduct owing to the

¹For the definition of "not married," see Penal Law § 130.00(4).

²*See*, Penal Law § 130.05(2)(a).

³*See*, Penal Law § 130.05(3)(b).

⁴*See*, Penal Law § 130.00(5).

⁵*See*, Penal Law § 130.05(3)(c).

influence of a narcotic or intoxicating substance administered to him or her without his or her consent (*or* to any other act committed upon him or her without his or her consent).⁶

or physically helpless.⁷ **PHYSICALLY HELPLESS** means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.⁸]

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, (name of defendant), engaged in sexual intercourse with (name of complainant), to whom the defendant was not married; and
2. That (name of complainant) was incapable of consent because he/she was mentally defective [*or* mentally incapacitated] [*or* 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 Rape in the Third 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 Rape in the Third Degree as charged in the _____ count.

⁶See, Penal Law § 130.00(6).

⁷See, Penal Law § 130.05(3)(d).

⁸See, Penal Law § 130.00(7).