

RAPE FIRST DEGREE
(B Felony)
(Forcible Compulsion)
PENAL LAW 130.35(1)
(Committed on or after Jan. 15, 1984)¹

The ____ count is Rape in the First Degree.

Under our law, a person is guilty of Rape in the First Degree when he or she engages in sexual intercourse with another person without that person's consent by means of forcible compulsion.

I will now give you the meaning of the following terms used in that definition: "sexual intercourse," "without a person's consent," and "forcible compulsion."

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

Sexual intercourse takes place **WITHOUT A PERSON'S CONSENT** when it results from forcible compulsion.³

FORCIBLE COMPULSION means to intentionally compel either:

(1) by the use of physical force;

or

(2) by a threat, express or implied, which places a person in fear of immediate death or physical injury to himself or herself [*or* another person] or in fear that he or she [*or* another person] will immediately be kidnapped.⁴

In order for you to find the defendant guilty of this crime, the People are required to

¹*People v. Liberta*, 64 NY2d 152 (1984), decided December 20, 1984, eliminated the marital and gender exemptions for forcible rape and sodomy. Therefore, if a female or the spouse of a victim is charged as a principal, the effective date of the statute is December 20, 1984. The definition of the crime has been modified accordingly, as well as to incorporate specifically the requirement of lack of consent. See, Penal Law § 130.05(1).

²See, Penal Law § 130.05(2)(a).

³See, Penal Law § 130.05(2)(a).

⁴See, Penal Law § 130.00(8); Penal Law §15.05(1). The definition has been modified to reflect the holding of *People v. Williams*, 81 NY2d 303 (1993).

prove, from all the evidence in this 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); and
2. That the defendant did so without (name of complainant)'s consent as a result of the defendant's use of forcible compulsion.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of Rape in the First 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 First Degree as charged in the _____ count.