

**COURSE OF SEXUAL CONDUCT
AGAINST A CHILD
FIRST DEGREE
(B Felony)
PENAL LAW 130.75
(Committed on or after August 1, 1996)**

The _____ count is Course of Sexual Conduct Against a Child in the First Degree.

Under our law, a person is guilty of Course of Sexual Conduct Against a Child in the First Degree when, over a period of time not less than three months in duration, he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, deviate sexual intercourse or aggravated sexual contact, with a child who is incapable of consent by reason of being less than eleven (11) years old.

I will now give you the meaning of the following terms : “sexual conduct,” “sexual intercourse,” “deviate sexual intercourse,” “aggravated sexual contact,” "sexual contact," and “incapable of consent.”

SEXUAL CONDUCT means sexual intercourse, deviate sexual intercourse, aggravated sexual contact, or sexual contact.¹

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

DEVIATE SEXUAL INTERCOURSE means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva.³

AGGRAVATED SEXUAL CONTACT means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or rectum of a child, thereby causing physical injury to such child.⁴ Physical injury means impairment of physical condition or

¹ Penal Law § 130.00(10).

² Penal Law § 130.00(1).

³ Penal Law § 130.00(2). For the definition of "not married," see Penal Law § 130.00(4).

⁴ Penal Law § 130.00(11).

substantial pain.⁵

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.⁶

Under New York law, a person is **INCAPABLE OF CONSENTING** to sexual conduct when that person is less than eleven (11) years old.⁷

It is not a defense to a charge of Course of Sexual Conduct Against a Child in the First Degree that the actor did not know that the person with whom the actor engaged in sexual conduct was less than eleven (11) years old, or that the actor believed that such person was eleven (11) years old or more on the date of the crime.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, each of the following three elements:

1. That over a period of time not less than three months in duration, namely, on or about and between (dates), in the County of (county), the defendant, (name of defendant), engaged in two or more acts of sexual conduct with (name of complainant);
2. That such sexual conduct included at least one act of sexual intercourse, deviate sexual intercourse or aggravated sexual contact; and
3. That (name of complainant) was incapable of consent because he/she was less than eleven (11) years old.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of Course of Sexual Conduct Against a Child 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

⁵ Penal Law § 10.00(9).

⁶ Penal Law § 130.00(3).

⁷ Penal Law § 130.05(3)(a).

⁸ Penal Law § 15.20(3).

doubt any one or more of those elements, you must find the defendant not guilty of the crime of Course of Sexual Conduct Against a Child in the First Degree as charged in the _____ count.