

**AGGRAVATED SEXUAL ABUSE
SECOND DEGREE
(C Felony)
(Insertion of Finger;
Forcible Compulsion)
PENAL LAW 130.67(1)(a)
(Committed on or after Nov. 1, 1988)**

The ____ count is Aggravated Sexual Abuse in the Second Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the Second Degree when he or she inserts a finger in the vagina [or urethra] [or penis] [or rectum] of another person causing physical injury to such person by forcible compulsion. Conduct performed for a valid medical purpose does not violate the provisions of this law.

I will now give you the meaning of the following terms used in that definition: “forcible compulsion” and “physical injury.”

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.¹

PHYSICAL INJURY means impairment of physical condition or substantial pain.²

¹See 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).

²See Penal Law § 10.00(9).

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), without a valid medical purpose, inserted a finger in the vagina [or urethra] [or penis] [or rectum] of (name of complainant), causing him/her physical injury; and
2. That the defendant did so by 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 the crime of Aggravated Sexual Abuse in the Second 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 Aggravated Sexual Abuse in the Second Degree as charged in the _____ count.