

**AGGRAVATED SEXUAL ABUSE  
FIRST DEGREE  
(B Felony)  
(Inserts a Foreign Object;  
Forcible Compulsion)  
PENAL LAW 130.70(1)(a)  
(Committed on or after November 1, 1988)**

The \_\_\_\_\_ count is Aggravated Sexual Abuse in the First Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the First Degree when he or she inserts a foreign object in the vagina [or urethra] [or penis] [or rectum] of another person causing physical injury to such person by forcible compulsion.

Under our law, it is also an element of this offense that the insertion of a foreign object was without consent. Such conduct takes place without a person's consent when the lack of consent results from forcible compulsion.<sup>1</sup>

Conduct performed for a valid medical purpose does not violate the provisions of this law.<sup>2</sup>

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "foreign object," "physical injury," and "forcible compulsion."

**FOREIGN OBJECT** means any instrument or article which, when inserted in the vagina [or urethra] [or penis] [or rectum], is capable of causing physical injury.<sup>3</sup>

**PHYSICAL INJURY** means impairment of physical condition

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<sup>1</sup> Penal Law § 130.05(2)(a).

<sup>2</sup> Penal Law § 130.65-a(2).

<sup>3</sup> Penal Law §130.00(9).

or substantial pain.<sup>4</sup>

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.<sup>5</sup>

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 foreign object, to wit, a (specify), into the vagina [*or* urethra] [*or* penis] [*or* rectum] of (name of complainant), causing him/her physical injury; and

2. That the defendant did so without (name of complainant)'s consent by the 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 the crime of Aggravated Sexual Abuse in the

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<sup>4</sup> Penal Law §10.00(9).

<sup>5</sup> See, Penal Law § 130.00(8); Penal Law §15.05(1). The definition has been modified by adding the term “intentionally” in the first line to reflect the holding of *People v. Williams*, 81 NY2d 303 (1993). See also, *People v. Grega*, 72 N.Y.2d 489 (1988) directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions.

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 Aggravated Sexual Abuse in the First Degree as charged in the count.