

INCEST
(Class E felony)
PENAL LAW 255.25
(Committed on or after November 1, 2003¹)

The _____ count is Incest.

Under our law, a person is guilty of incest when he or she marries [or engages in sexual intercourse or oral sexual conduct or anal sexual conduct with] a person whom he or she knows to be related to him or her, either legitimately or out of wedlock, as

Select appropriate relationship:

an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

[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, “sexual intercourse,” “oral sexual conduct,” and “anal sexual conduct.”

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

ORAL SEXUAL CONDUCT means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.²

ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.³

¹ For the charge for this crime which was in effect prior to Nov. 1, 2003, see the Former Crimes section.

² Penal Law § 130.00(2)(a).

³ Penal Law § 130.00(2)(b).

Under our law, a person shall not be convicted of incest (or of an attempt to commit incest) solely upon the testimony of the other party unsupported by other evidence tending to establish that the defendant married the other party, or that the defendant was related to the other party, either legitimately or out of wedlock, as

Select appropriate relationship:

an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (county), the defendant, (defendant's name), married [or engaged in sexual intercourse or oral sexual conduct or anal sexual conduct with] (specify);
2. That (specify) was related to the defendant, either legitimately or out of wedlock, as

Select appropriate relationship:

an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece;
and

3. That the defendant knew (specify) was so related to him/her.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Incest as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Incest as charged in the _____ count.