

SEXUAL MISCONDUCT
(A Misdemeanor)
(Deviate Sexual Intercourse Without Consent; Forcible Compulsion)
PENAL LAW 130.20(2)
(Committed on or after July 27, 1984)¹

The ____ count is Sexual Misconduct.

Under our law, a person is guilty of Sexual Misconduct when he or she engages in deviate sexual intercourse with another person, without that person's consent.

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

DEVIATE SEXUAL INTERCOURSE means sexual conduct between persons consisting of contact between the penis and the anus, the mouth and the penis or the mouth and the vulva.²

Deviate 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

¹*Matter of Jessie C.*, 164 AD2d 731 (1991), decided February 1, 1991, eliminated the gender exemption for sexual misconduct. Accordingly, if a female is charged as a principal, the effective date of the statute is February 1, 1991. The definition of the crime has been modified to make it gender neutral in accordance with *Matter of Jessie C.*, as well as to eliminate the marital exemption, which was stricken from the forcible rape and sodomy statutes by *People v Liberta*, 64 NY2d 152 (1984).

²*See*, Penal Law § 130.00(2). The definition of "deviate sexual intercourse" has been modified, in accordance with *People v Liberta*, 64 NY2d 152 (1984), to eliminate the words "not married to each other." When the jury will also hear the unmodified definition of "deviate sexual intercourse" which applies to crimes not involving forcible compulsion, the court should emphasize and explain the difference between the two definitions.

³*See*, Penal Law § 130.05(2)(a).

⁴*See*, 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).

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), engaged in deviate 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 the crime of Sexual Misconduct 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 Sexual Misconduct as charged in the _____ count.