

**RAPE THIRD DEGREE**  
**(E Felony)**  
**(Complainant Less Than Seventeen [17];**  
**Defendant Twenty-one [21] or More)**  
**PENAL LAW 130.25(2)**  
**(Committed on or after Jan. 1, 1987)**

The \_\_\_\_\_ count is Rape in the Third Degree.

Under our law, a person is guilty of Rape in the Third Degree when, being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person, to whom he or she is not married, and that person is incapable of consent by reason of being less than seventeen (17) years old.<sup>1</sup>

I will now give you the meaning of the following terms used in that definition: "sexual intercourse" and "incapable of consent."

**SEXUAL INTERCOURSE** has its ordinary meaning, and occurs upon any penetration, however slight.<sup>2</sup>

Under New York law, a person is **INCAPABLE OF CONSENTING** to sexual intercourse when that person is less than seventeen (17) years old.<sup>3</sup>

*[NOTE: Add where appropriate:*

**It is not a defense to a charge of Rape in the Third Degree that the actor did not know that the person with whom the actor had sexual intercourse was less than seventeen (17) years old, or that the actor believed that such person was seventeen (17) years old or more on the date of the crime.<sup>4]</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, each of the following three**

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<sup>1</sup>The statutory language has been modified to incorporate specifically the requirement of incapacity to consent. *See*, Penal Law § 130.05(1), (2)(b).

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

<sup>2</sup>*See*, Penal Law § 130.05(2)(a).

<sup>3</sup>*See*, Penal Law § 130.05(3)(a).

<sup>4</sup>*See*, Penal Law § 15.20(3).

elements:

1. That on or about (date), in the county of (county), the defendant, (name of defendant), engaged in sexual intercourse with (name of complainant), to whom the defendant was not married;
2. That the defendant was twenty-one (21) years old or more at that time; and
3. That (name of complainant) was incapable of consent because he/she was less than seventeen (17) 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 Rape in the Third Degree 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 Rape in the Third Degree as charged in the \_\_\_\_\_ count.