

RAPE SECOND DEGREE
(D Felony)
(Complainant Less Than Fourteen [14];
Defendant Eighteen [18] or More)
PENAL LAW 130.30
(Committed on or after Jan. 1, 1987)

The ____ count is Rape in the Second Degree.

Under our law, a person is guilty of Rape in the Second Degree when, being eighteen (18) 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 fourteen (14) years old.¹

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.²

Under New York law, a person is **INCAPABLE OF CONSENTING** to sexual intercourse when that person is less than fourteen (14) years old.³

[NOTE: Add where appropriate:

It is not a defense to a charge of Rape in the Second Degree that the actor did not know that the person with whom the actor had sexual intercourse was less than fourteen (14) years old, or that the actor believed that such person was fourteen (14) years old or more on the date of the crime.⁴

¹The 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).

²See, Penal Law § 130.05(2)(a).

³See, Penal Law § 130.05(3)(a).

⁴See, Penal Law § 15.20(3).

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 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 eighteen (18) years old or more at that time; and
3. That (name of complainant) was incapable of consent because he/she was less than fourteen (14) 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 Second 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 Second Degree as charged in the _____ count.