

SODOMY FIRST DEGREE
(B Felony)
(Complainant Less Than
Eleven [11] Years Old)
PENAL LAW 130.50(3)
(Committed on or after July 27, 1984)¹

The ____ count is Sodomy in the First Degree.

Under our law, a person is guilty of Sodomy in the First Degree when he or she engages in deviate sexual intercourse with a person who is incapable of consent by reason of being less than eleven (11) years old.

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

DEVIATE SEXUAL INTERCOURSE means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.²

Under New York law, a person is **INCAPABLE OF CONSENTING** to deviate sexual intercourse when that person is less than eleven (11) years old.³

[NOTE: Add where appropriate:

It is not a defense to a charge of Sodomy in the First Degree that the actor did not know that the person with whom the actor had deviate sexual intercourse was less than eleven (11) years old, or that the actor believed that such person was eleven (11) years old or more on the date of the crime.]⁴

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

¹*People v. Liberta*, 64 NY2d 152 (1984), decided December 20, 1984, eliminated the gender exemption for rape and sodomy. Therefore, if a female is charged as a principal, the effective date of the statute is December 20, 1984. The definition of the crime has been modified accordingly, as well as to incorporate specifically the requirement of incapacity to consent. *See*, Penal Law § 130.05(1), (2)(b).

²For the definition of "not married," see Penal Law § 130.00(4).

³*See*, Penal Law § 130.05(3)(a).

⁴*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 deviate sexual intercourse with (name of complainant); and
2. That (name of complainant) was incapable of consent because he/she was less than eleven (11) years old.

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 Sodomy in the 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 Sodomy in the First Degree as charged in the _____ count.