

**SEXUAL ABUSE THIRD DEGREE**  
**(B Misdemeanor)**  
**(Sexual Contact Without Consent;**  
**Complainant Mentally Defective,**  
**Mentally Incapacitated, Physically**  
**Helpless, or Did Not Acquiesce)**  
**PENAL LAW 130.55**  
**(Committed on or after July 27, 1984)<sup>1</sup>**

The \_\_\_\_ count is Sexual Abuse in the Third Degree.

Under our law, a person is guilty of Sexual Abuse in the Third Degree when he or she subjects another person to sexual contact without the latter's consent.

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

**SEXUAL CONTACT** means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying the sexual desire of either party. It includes the touching of the actor by the victim as well as the touching of the victim by the actor, whether directly or through clothing.<sup>2</sup>

Sexual contact takes place **WITHOUT A PERSON'S CONSENT** when that person is incapable of consenting. Under our law, a person is incapable of consenting when he or she is

[*NOTE: Select appropriate alternative:*

mentally defective.<sup>3</sup> **MENTALLY DEFECTIVE** means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.<sup>4</sup>

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<sup>1</sup>*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.

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

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

<sup>4</sup>*See*, Penal Law § 130.00(5).

*or* mentally incapacitated.<sup>5</sup> **MENTALLY INCAPACITATED** means that a person is rendered temporarily incapable of appraising or controlling his or her conduct owing to the influence of a narcotic or intoxicating substance administered to him or her without his or her consent (*or* to any other act committed upon him or her without his or her consent).<sup>6</sup>

*or* physically helpless.<sup>7</sup> **PHYSICALLY HELPLESS** means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.<sup>8</sup>]

Sexual contact also takes place **WITHOUT A PERSON'S CONSENT** when it results from any other circumstances in which a person does not expressly or impliedly acquiesce in the actor's conduct.<sup>9</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, both of the following two elements:

1. That on or about *(date)*, in the county of *(county)*, the defendant, *(name of defendant)*, intentionally subjected *(name of complainant)* to sexual contact, in that he/she *(specify nature of contact)* for the purpose of sexual gratification; and

[NOTE: select appropriate alternative:

2. That *(name of complainant)* was incapable of consent because he/she was mentally defective [*or* mentally incapacitated] [*or* physically helpless].
- or* 2. That the defendant did so without *(name of complainant)*'s consent in that *(name of complainant)* did not expressly or impliedly acquiesce in the defendant's conduct.]

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 Abuse 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

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<sup>5</sup>See, Penal Law § 130.05(3)(c).

<sup>6</sup>See, Penal Law § 130.00(6).

<sup>7</sup>See, Penal Law § 130.05(3)(d).

<sup>8</sup>See, Penal Law § 130.00(7).

<sup>9</sup>See, Penal Law § 130.05(2)(c).

**doubt either one or both of those elements, you must find the defendant not guilty of the crime of Sexual Abuse in the Third Degree as charged in the \_\_\_\_\_ count.**