

SEXUAL ABUSE THIRD DEGREE
(B Misdemeanor)
(Sexual Contact Without Consent;
Forcible Compulsion)
PENAL LAW 130.55
(Committed on or after July 27, 1984)¹

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 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.²

Sexual contact 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*

¹*People v. Liberta*, 64 NY2d 152 (1984), decided December 20, 1984, eliminated the marital and gender exemptions for forcible rape and sodomy. Therefore, if a female or the spouse of a victim is charged as a principal, the effective date of the statute is December 20, 1984. The definition of the crime has been modified accordingly.

²*See*, Penal Law § 130.00(2). The definition of "sexual contact" has been modified, in accordance with *People v Liberta*, 64 NY2d 152 (1984), to eliminate the words "not married to the actor." When the jury will also hear the unmodified definition of "sexual contact" 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).

another person] will immediately be kidnapped.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 elements:

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

⁴See, 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).