

**SEXUAL ABUSE FIRST DEGREE**  
**(D Felony)**  
**(Complainant Less Than**  
**Eleven [11] Years Old)**  
**PENAL LAW 130.65(3)**  
**(Committed on or after July 27, 1984)<sup>1</sup>**

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

Under our law, a person is guilty of Sexual Abuse in the First Degree when he or she subjects another person to sexual contact and that person 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: "sexual contact" and "incapable of consent."

**SEXUAL CONTACT** means any touching of the sexual or other intimate parts of another 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>

Under New York law, a person is **INCAPABLE OF CONSENTING** to sexual contact when that person is less than eleven (11) years old.<sup>3</sup>

*[NOTE: Add where appropriate:*

**It is not a defense to a charge of Sexual Abuse in the First Degree that the actor did not know that the person with whom the actor had sexual contact 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.<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, as well as to incorporate specifically the requirement of incapacity to consent. *See*, Penal Law § 130.05(1), (2)(b).

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

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

<sup>4</sup>*See*, 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, 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 *(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 Sexual Abuse 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 Sexual Abuse in the First Degree as charged in the \_\_\_\_\_ count.