

**AGGRAVATED SEXUAL ABUSE
FIRST DEGREE
(B Felony)
(Insertion of Foreign Object;
Complainant Less Than
Eleven [11] Years Old)
PENAL LAW 130.70(1)(c)
(Committed on or after July 21, 1981)¹**

The ____ count is Aggravated Sexual Abuse in the First Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the First Degree when he or she inserts a foreign object in the vagina [*or urethra*] [*or penis*] [*or rectum*] of another person causing physical injury to such person and when the other person is incapable of consent by reason of being less than eleven (11) years old. Conduct performed for a valid medical purpose does not violate the provisions of this law.

I will now give you the meaning of the following terms used in that definition: "foreign object," "physical injury" and "incapable of consent."

FOREIGN OBJECT means any instrument or article which, when inserted in the vagina [*or urethra*] [*or penis*] [*or rectum*], is capable of causing physical injury.²

PHYSICAL INJURY means impairment of physical condition or substantial pain.³

Under New York law, a person is **INCAPABLE OF CONSENTING** to the insertion of a foreign object in the vagina [*or urethra*] [*or penis*] [*or rectum*] when that person is less than eleven (11) years old.⁴

[NOTE: Add where appropriate:

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).

²*See*, Penal Law § 130.00(9).

³*See*, Penal Law § 10.00(9).

⁴*See*, Penal Law § 130.05(3)(a).

It is not a defense to a charge of Aggravated Sexual Abuse in the First Degree that the actor did not know that the person with whom the actor had 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.⁵

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)*, without a valid medical purpose, inserted a foreign object, to wit a *(specify)*, into the vagina [*or urethra*] [*or penis*] [*or rectum*] of *(name of complainant)*, causing him/her physical injury; 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 Aggravated 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 Aggravated Sexual Abuse in the First Degree as charged in the _____ count.

⁵See, Penal Law § 15.20(3).