

**COURSE OF SEXUAL CONDUCT
AGAINST A CHILD
SECOND DEGREE
(D Felony)
PENAL LAW 130.80
(Committed on or after August 1, 1996)**

The _____ count is Course of Sexual Conduct Against a Child in the Second Degree.

Under our law, a person is guilty of Course of Sexual Conduct Against a Child in the Second Degree when, over a period of time not less than three months in duration, he or she engages in two or more acts of sexual conduct with a child 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: "sexual conduct" and "incapable of consent."

SEXUAL CONDUCT means sexual intercourse, deviate sexual intercourse, aggravated sexual contact, or sexual contact.¹

Sexual intercourse has its ordinary meaning and occurs upon any penetration, however slight.²

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 penis, or the mouth and the vulva.³

Aggravated sexual contact means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or rectum of a child, thereby causing physical injury to such child.⁴ Physical injury means impairment of physical condition or substantial pain.⁵

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 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

¹ Penal Law § 130.00(10).

² Penal Law § 130.00(1).

³ Penal Law § 130.00(2). For the definition of "not married," *see* Penal Law § 130.00(4).

⁴ Penal Law § 130.00(11).

⁵ Penal Law 10.00(9).

clothing.⁶

Under New York law, a person is INCAPABLE OF CONSENTING to sexual conduct when that person is less than eleven (11) years old.⁷

It is not a defense to a charge of Course of Sexual Conduct Against a Child in the Second Degree that the actor did not know that the person with whom the actor engaged in sexual conduct 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.⁸

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 over a period of time not less than three months in duration, namely, on or about and between (dates) , in the County of (county) , the defendant, (name of defendant), engaged in two or more acts of sexual conduct 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 Course of Sexual Conduct Against a Child in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either of those elements, you must find the defendant not guilty of the crime of Course of Sexual Conduct Against a Child in the Second Degree as charged in the _____ count.

⁶ Penal Law § 130.00(3).

⁷ Penal Law § 130.05(3)(a).

⁸ Penal Law § 15.20(3).