

**SEXUAL MISCONDUCT**  
**(A Misdemeanor)**  
**(Deviate Sexual Intercourse; Forcible Compulsion)**  
**PENAL LAW 130.20(2)**  
**(Committed on or after February 1, 2001)**

The \_\_\_\_\_ count is Sexual Misconduct.

Under our law, a person is guilty of Sexual Misconduct when he or she engages in deviate sexual intercourse with another person without such person's consent.

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "deviate sexual intercourse" and "without a person's consent."

DEVIATE SEXUAL INTERCOURSE means sexual conduct between persons consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.<sup>1</sup>

Deviate sexual intercourse takes place WITHOUT A PERSON'S CONSENT when there is a lack of consent to the deviate sexual intercourse as a result of forcible compulsion.<sup>2</sup>

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* another person] will

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<sup>1</sup> Penal Law § 130.00(2). The provision, "not married to each other" is omitted pursuant to the dictates of *People v Liberta*, 64 NY2d 152 (1984).

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

immediately be kidnapped.<sup>3</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), engaged in deviate sexual intercourse with (name of complainant); and
2. That the defendant did so without (name of complainant)'s consent by the 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 Misconduct 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 Misconduct as charged in the \_\_\_\_\_ count.

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<sup>3</sup> See, Penal Law § 130.00(8); Penal Law §15.05(1). The definition has been modified by adding the term “intentionally” in the first line to reflect the holding of *People v. Williams*, 81 NY2d 303 (1993). See also, *People v. Grega*, 72 N.Y.2d 489 (1988) directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions.