

**RAPE FIRST DEGREE
(B Felony)
(Forcible Compulsion)
PENAL LAW 130.35(1)
(Committed on or after February 1, 2001)**

The _____ count is Rape in the First Degree.

Under our law, a person is guilty of Rape in the First Degree when he or she engages in sexual intercourse with another person by forcible compulsion.

Under our law, it is also an element of this offense that the sexual act was committed without consent.¹ Sexual intercourse takes place without a person's consent when the lack of consent results from forcible compulsion.²

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 used in that definition: "sexual intercourse," and "forcible compulsion."

SEXUAL INTERCOURSE means any penetration, however slight, of the penis into the vaginal opening. In other words, any penetration of the penis into the vaginal opening, regardless of the distance of penetration, constitutes an act of sexual intercourse. Sexual intercourse does not necessarily require erection of the penis, emission, or orgasm.³

FORCIBLE COMPULSION means to intentionally compel

¹ See Penal Law § 130.05(1).

² Penal Law § 130.05(2)(a).

³ The statutory definition has been amplified in accord with case law. See Penal Law § 130.00(1) and *People v. Liberta*, 64 NY2d 152, 169 (1984); *People v. Edwards*, 173 A.D. 375 (2d Dept. 1916); *People v. Berardicurti*, 167 A.D.2d 840 (4th Dept. 1990); *People v. White*, 185 A.D.2d 472 (3rd Dept. 1992); *People v. Williams*, 259 A.D.2d 509 (2d Dept. 1999)..

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 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 this 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 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 Rape 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

⁴ 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.

elements, you must find the defendant not guilty of the crime of Rape in the First Degree as charged in the _____ count.