

SODOMY THIRD DEGREE
(E Felony)
(Incapacity to Consent :
Mental Disability or Incapacity, or Physical Helplessness)
PENAL LAW 130.40(1)
(Committed on or after February 1, 2001)

A charge for “mentally disabled” and “mentally incapacitated” have been omitted here because they are also separately included in the crime of Sodomy in the Second Degree [Penal Law § 130.45(2)]. Thus, if necessary, the charge for Sodomy in the Second Degree can be modified to charge the instant crime as applied to a person who is “mentally disabled” or “mentally incapacitated.”

Likewise, “physically helpless” has been omitted here because it is also separately included in the crime of Sodomy in the First Degree [Penal Law § 130.50(2)]. Thus, if necessary, the charge for Sodomy in the First Degree can be modified to charge the instant crime as applied to a person who is “physically helpless.”