

SEXUAL ABUSE THIRD DEGREE
(B Misdemeanor)
(Forcible Compulsion)
PENAL LAW 130.55
(Committed on or after February 1, 2001)

The _____ count is Sexual Abuse in the Third Degree.

Under our law, a person is guilty of Sexual Abuse in the Third Degree when he or she subjects another person to sexual contact without that 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: "sexual contact" and "without a person's consent."

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party. It includes the touching of the actor by that person as well as the touching of that person by the actor, whether directly or through clothing.¹

Sexual contact takes place WITHOUT A PERSON'S CONSENT when the lack of consent results from forcible compulsion.²

FORCIBLE COMPULSION means to intentionally compel either:

(1) by the use of physical force;

or

¹ See, Penal Law § 130.00(3). The definition of "sexual contact" has been modified, in accordance with *People v Liberta*, 64 NY2d 152 (1984), to eliminate for the crime of sexual abuse by forcible compulsion the words "not married to the actor."

² See Penal Law § 130.05(2)(a).

(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.³

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), subjected (name of complainant) to sexual contact; 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 Abuse in the Third 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 Sexual Abuse in the Third Degree as charged in the _____ count.

³ 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.