

SEXUAL ABUSE THIRD DEGREE
(B Misdemeanor)
(No Acquiescence)
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, not married to the actor, 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 it results from any circumstances in which a person does not expressly or impliedly acquiesce in the actor's conduct.²

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 See, Penal Law § 130.00(3). If in issue, see Penal Law § 130.00(4), for the definition of "not married."

² Penal Law § 130.05(2)(c).

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 the consent of (name of complainant) in that he/she did not expressly or impliedly acquiesce to the defendant's conduct.

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.