

**AGGRAVATED SEXUAL ABUSE  
THIRD DEGREE  
(D Felony)  
(Inserts a Foreign Object;  
Complainant Physically Helpless)  
PENAL LAW 130.66(1)(b)  
(Committed on or after November 1, 1996)**

The \_\_\_\_\_ count is Aggravated Sexual Abuse in the Third Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the Third Degree when he or she inserts a foreign object in the vagina [or urethra] [or penis] [or rectum] of another person when that person is incapable of consent by reason of being physically helpless.

Conduct performed for a valid medical purpose does not violate the provisions of this law. <sup>1</sup>

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: "foreign object," "physically helpless," "incapable of consent."

FOREIGN OBJECT means any instrument or article which, when inserted in the vagina [or urethra] [or penis] [or rectum], is capable of causing physical injury.<sup>2</sup> PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>3</sup>

A person is INCAPABLE OF CONSENT when that person

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<sup>1</sup> Penal Law § 130.65-a(2).

<sup>2</sup> Penal Law §130.00(9).

<sup>3</sup> Penal Law §10.00(9).

is physically helpless.<sup>4</sup>

PHYSICALLY HELPLESS means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.<sup>5</sup>

Thus, insertion of a foreign object in the the vagina [*or* urethra] [*or* penis] [*or* rectum] of such a person is always deemed to be without that person's consent.

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), without a valid medical purpose, inserted, a foreign object into the vagina [*or* urethra] [*or* penis] [*or* rectum] of (specify); and
2. That (complainant's name) was incapable of consenting to the insertion by reason of being physically helpless.

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 Aggravated 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 Aggravated Sexual Abuse in the Third Degree as charged in

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<sup>4</sup> Penal Law § 130.05(3)(d).

<sup>5</sup> Penal Law §130.00(7).

the \_\_\_\_\_ count.

*[NOTE: If the affirmative defense set forth in Penal Law § 130.10 applies, omit the final two paragraphs of the above charge, and substitute the charge at the end of this article.]*