

SEXUAL MISCONDUCT
(Oral or Anal Sexual Conduct;
Forcible Compulsion)
Penal Law § 130.20(2)
(Committed on or after Nov. 1, 2003)

The (*specify*) count is Sexual Misconduct.

Under our law, a person is guilty of Sexual Misconduct when he or she engages in

Select applicable alternative(s):
oral sexual conduct [or]
anal sexual conduct

with another person without such person's consent.

The following terms used in that definition have a special meaning:

Select applicable alternative(s):
[ORAL SEXUAL CONDUCT means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.¹]

[ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.²]

[Oral (or) anal] sexual conduct takes place WITHOUT A PERSON'S CONSENT when there is a lack of consent to the [oral (or) anal] sexual conduct as a result of forcible compulsion.³

¹ Penal Law § 130.00(2)(a).

² Penal Law § 130.00(2)(b).

³ See Penal Law § 130.05(2)(a).

FORCIBLE COMPULSION means to intentionally compel 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 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), engaged in

Select applicable alternative(s):

oral sexual conduct [or]
anal sexual conduct

with (name of complainant); and

2. That the defendant did so without (name of complainant)'s consent by the use of forcible compulsion.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

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.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.