

RAPE IN THE FIRST DEGREE
(Complainant Less Than 13; Defendant 18 or More)
Penal Law § 130.35 (4)
(Committed on or after Feb. 1, 2001)

The (*specify*) count is Rape in the First Degree.

Under our law, a person is guilty of Rape in the First Degree when he or she engages in sexual intercourse with another person who is less than thirteen (13) years old and the actor is eighteen (18) years old or more.

Under our law, it is also an element of this offense that the sexual intercourse was committed without the consent of that other person.¹ Sexual intercourse takes place without a person's consent when that person is deemed by law to be incapable of consent. Under our law, a person is deemed incapable of consenting to sexual intercourse when he or she is less than thirteen (13) years old.² Thus, the law deems sexual intercourse with such a person to be without that person's consent, even if in fact that person did consent.

It is not a defense to this charge that the actor did not know that the person with whom the actor had sexual intercourse was less than thirteen (13) years old, or that the actor believed that such person was thirteen (13) years old or more on the date of the crime.³

The following term used in that definition has a special meaning:

SEXUAL INTERCOURSE means any penetration, however slight, of the penis into the vaginal opening. In other words, any

¹ See Penal Law § 130.05 (1).

² Penal Law § 130.05 (3) (a).

³ See Penal Law § 15.20 (3).

penetration of the penis into the vaginal opening, regardless of the distance of penetration, constitutes an act of sexual intercourse. Sexual intercourse does not necessarily require erection of the penis, emission, or orgasm.⁴

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date), in the county of (County), the defendant, (name of defendant), engaged in sexual intercourse with (name of complainant);
2. That (name of complainant) was less than thirteen (13) years old; and
3. That the defendant was eighteen (18) years old or more.

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

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

⁴ The statutory definition has been amplified in accord with case law (see Penal Law § 130.00 [1]; *People v Liberta*, 64 NY2d 152, 169 [1984]; *People v Williams*, 259 AD2d 509 [2d Dept 1999]; *People v White*, 185 AD2d 472 [3d Dept 1992]; *People v Berardicurti*, 167 AD2d 840 [4th Dept 1990]; *People v Edwards*, 173 AD 375 [2d Dept 1916]).