

**CRIMINAL SEXUAL ACT IN THE FIRST DEGREE  
(Complainant Less Than 11 Years Old)  
Penal Law § 130.50 (3)  
(Committed on or after Nov. 1, 2003)**

The (*specify*) count is Criminal Sexual Act in the First Degree.

Under our law, a person is guilty of Criminal Sexual Act in the First Degree when he or she engages in

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

with another person who is less than eleven (11) years old.

Under our law, it is also an element of this offense that the [oral (or) anal] sexual conduct was committed without the consent of that other person. [Oral (or) anal] sexual conduct 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 [oral (or) anal] sexual conduct when he or she is less than eleven (11) years old.<sup>1</sup> Thus, the law deems [oral (or) anal] sexual conduct 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 [oral (or) anal] sexual conduct was less than eleven (11) years old, or that the actor believed that such person was eleven (11) years old or more on the date of the crime.<sup>2</sup>

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<sup>1</sup> Penal Law § 130.05 (3) (a).

<sup>2</sup> See Penal Law § 15.20 (3).

The following term(s) used in that definition has/have a special meaning:

[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.<sup>3</sup>]

[ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.<sup>4</sup> ]

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, both of the following two elements:

1. That on or about (date), in the county of (County), the defendant, (name of defendant), engaged

*Select applicable alternative(s):*

oral sexual conduct [or]

anal sexual conduct

with (name of complainant); and

2. That (complainant's name) was less than eleven (11) years old.

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

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.

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<sup>3</sup> Penal Law § 130.00 (2) (a).

<sup>4</sup> Penal Law § 130.00 (2) (b).