

**SEXUAL ABUSE IN THE FIRST DEGREE  
(Complainant Less Than 11 Years Old)  
Penal Law § 130.65 (3)  
(Committed on or after Oct. 13, 2010)<sup>1</sup>**

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

Under our law, a person is guilty of Sexual Abuse in the First Degree when he or she subjects another person to sexual contact when the other person is less than eleven (11) years old.

Under our law, it is also an element of this offense that the sexual contact was committed without the consent of that other person.<sup>2</sup> Sexual contact 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 contact when he or she is less than eleven (11) years old.<sup>3</sup> Thus, the law deems sexual contact 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 contact 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>4</sup>

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<sup>1</sup> Except for the amendment to the definition of "sexual contact," effective October 13, 2010, as explained in the footnote to that definition, this charge is applicable to crimes committed on or after November 1, 2003.

<sup>2</sup> Penal Law § 130.05 (1).

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

<sup>4</sup> Penal Law § 15.20 (3).

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

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person for the purpose of gratifying the sexual desire of either party. It includes the touching of the actor by the victim as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.<sup>5</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), subjected (name of complainant) to sexual contact; 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>5</sup> Penal Law § 130.00 (3), as amended by the laws of 2010, chapter 193, effective October 13, 2010, which struck the phrase "not married to the actor" after the word "person," and added the concluding phrase "as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed."