

**AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE**  
**(Object or Finger - Complainant Less Than 11)**  
**Penal Law § 130.66 (1) (c)**  
**(Committed on or after Jan 22, 2023)<sup>1</sup>**

(Revised)<sup>1</sup>

The (specify) 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

Select appropriate alternative(s):

foreign object  
[or] a finger

in the

Select appropriate alternative(s):

vagina  
[or] urethra  
[or] penis  
[or] rectum  
[or] anus

of another person when that person is less than eleven (11) years old.

Under our law, it is also an element of this offense that the insertion take place without consent.<sup>2</sup> Such insertion takes place without a person's consent when that person is deemed

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<sup>1</sup> The first revision was for the purpose of adding "or anus" to the definition as required by the L. 2009, c. 485, effective January 7, 2010. Thus, the definition, with that term included, is applicable to a crime committed on or after January 7, 2010. For a crime committed on or after November 1, 1996 and before January 7, 2010, omit "anus."

The second revision was for the purpose of adding "or a finger" to the definition as required by the L. 2022, c. 645, effective January 22, 2023. Thus, the definition, with that term included, is applicable to a crime committed on or after January 22, 2023. For a crime committed on or after November 1, 1996 and before January 22, 2023, omit "or a finger."

<sup>2</sup> Penal Law § 130.05 (1).

incapable of consent. A person is deemed incapable of consent when he or she is less than eleven (11) years old.<sup>3</sup> Thus, the law deems such insertion 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 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>

Conduct performed for a valid medical purpose does not violate the provisions of this law.<sup>5</sup>

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

FOREIGN OBJECT means any instrument or article which, when inserted in the (specify), is capable of causing physical injury.<sup>6</sup>

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>7</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), without a valid medical purpose, inserted a

Select appropriate alternative(s):

foreign object  
[or] a finger

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

<sup>4</sup> See Penal Law § 15.20 (3).

<sup>5</sup> Penal Law § 130.65-a (2).

<sup>6</sup> Penal Law § 130.00 (9).

<sup>7</sup> Penal Law § 10.00 (9); see *People v Chiddick*, 8 NY3d 445 (2007).

in the (*specify*) of (*complainant's name*); 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.