

**AGGRAVATED SEXUAL ABUSE
THIRD DEGREE
(D Felony)
(Inserts a Foreign Object;
Forcible Compulsion)
PENAL LAW 130.66 (1) (a)
(Committed on or after Nov. 1, 1996)¹**

The _____ 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 foreign object in the vagina [or urethra] [or penis] [or rectum] [or anus] of another person by forcible compulsion.

Under our law, it is also an element of this offense that the insertion of a foreign object was without consent.² Such conduct takes place without a person's consent when the lack of consent results from forcible compulsion.³

Conduct performed for a valid medical purpose does not violate the provisions of this law.⁴

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "foreign object," and "forcible compulsion."

FOREIGN OBJECT means any instrument or article which,

¹ The terminology "or anus" was added to the definition of this crime in 2010. Thus, the definition, with that term included, is applicable to a crime committed on or after January 7, 2010, pursuant to the laws of 2009, chapter 45. For crimes committed on or after November 1, 1988 and before January 7, 2010, omit that terminology.

² Penal Law § 130.05 (1).

³ Penal Law § 130.05 (2) (a).

⁴ Penal Law § 130.65-a (2).

when inserted in the vagina [or urethra] [or penis] [or rectum] [or anus], is capable of causing physical injury.⁵ PHYSICAL INJURY means impairment of physical condition or substantial pain.⁶

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.⁷

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 foreign object, namely, a (specify), into the vagina [or urethra] [or penis] [or rectum] [or anus] of (complainant's name); and
2. That the defendant did so without (complainant's name)'s consent by the use of forcible compulsion.

⁵ Penal Law § 130.00 (9).

⁶ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

⁷ 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 NY2d 489 (1988) (directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions).

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime of Aggravated Sexual Abuse in the Third Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Aggravated Sexual Abuse in the Third Degree as charged in the _____ count.