

AGGRAVATED SEXUAL ABUSE IN THE SECOND DEGREE
(Insertion of Finger; Forcible Compulsion)
Penal Law § 130.67 (1) (a)
(Committed on or after Jan. 7, 2010)¹
(Revised June 2019)²

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

Under our law, a person is guilty of Aggravated Sexual Abuse in the Second Degree when he or she inserts a finger in the vagina [*or urethra*] [*or penis*] [*or rectum*] [*or anus*] of another person causing physical injury to such person by forcible compulsion.

Under our law, it is also an element of this offense that the insertion of a finger was without consent. 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

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

FORCIBLE COMPULSION means to intentionally compel either:

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 The 2019 revision was to add the text that is the subject of footnote 3 in order to conform this instruction with the same instruction for the first degree crime. While “without consent” is an element of the crime, the definition of “forcible compulsion” makes that clear even without this addition.

³ Penal Law § 130.05 (2) (a).

⁴ Penal Law § 130.67(2).

(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.⁵

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁶

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 finger in the vagina [*or* urethra] [*or* penis] [*or* rectum] [*or* anus] of (name of complainant), causing him/her physical injury; and
2. That the defendant did so by forcible compulsion.

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.

³ 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 Gega*, 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).

⁴ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).