

**AGGRAVATED SEXUAL ABUSE
SECOND DEGREE
(C Felony)
(Insertion of Finger;
Complainant Less Than
Eleven [11] Years Old)
PENAL LAW 130.67 (1) (c)
(Committed on or after Nov. 1, 1988)¹**

The _____ 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 and when the other person is incapable of consent by reason of being less than eleven (11) years old. Conduct performed for a valid medical purpose does not violate the provisions of this law.²

I will now give you the meaning of the following terms used in that definition: “incapable of consent” and “physical injury.”

Under our law, a person is INCAPABLE OF CONSENTING to the insertion of a finger in the vagina [*or urethra*] [*or penis*] [*or rectum*] [*or anus*] when that person is less than eleven (11) years old.³ Thus, the law deems such insertion with such a person to

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 definition of the crime has been modified to incorporate specifically the requirement of incapacity to consent (see Penal Law § 130.05 [1], [2] [b]).

³ See Penal Law § 130.05 (3) (a).

be without that person's consent, even if in fact that person did consent.

[NOTE: Add where appropriate:

It is not a defense to a charge of Aggravated Sexual Abuse in the Second Degree 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.^{4]}

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁵

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 (name of complainant) was incapable of consent because he/she was less than eleven (11) years old.

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 Second 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

⁴ See Penal Law § 15.20 (3).

⁵ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

elements, you must find the defendant not guilty of the crime of Aggravated Sexual Abuse in the Second Degree as charged in the _____ count.