

AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE
(Inserts a Foreign Object; Forcible Compulsion)
Penal Law § 130.70 (1) (a)
(Committed on or after November 1, 1988)¹

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

Under our law, a person is guilty of Aggravated Sexual Abuse in the First Degree when he or she inserts a foreign object 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 foreign object was without consent. Such conduct takes place without a person's consent when the lack of consent results from forcible compulsion.²

Conduct performed for a valid medical purpose does not violate the provisions of this law.³

The following term used in the definition of the crime has a special meaning:

FOREIGN OBJECT means any instrument or article which, when inserted in the vagina [*or urethra*] [*or penis*] [*or rectum*] [*or anus*], is capable of causing physical injury.⁴

¹ The terminology “or anus” was added to the definition of this crime in 2010. Thus, the definition, with that term included, is effective for a crime committed on or after January 7, 2010. L 2009, ch 45. For crimes committed on or after November 1, 1988 and before January 7, 2010, omit that terminology.

² Penal Law § 130.05 (2) (a).

³ Penal Law § 130.70 (2).

⁴ Penal Law § 130.00 (9).

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

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.⁶

In order for you to find the defendant guilty of this crime, the People are required to prove, from all 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, to wit, a (specify), into 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 without (name of complainant)'s consent by the use of forcible compulsion.

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

⁶ 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).

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.