

**AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE**  
**(Inserts a Foreign Object; Complainant Less Than 11)**  
**PENAL LAW 130.70 (1) (c)**  
**(Committed on or after November 1, 1988)<sup>1</sup>**

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 and when the other 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 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 with such a person 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

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<sup>1</sup> 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.

<sup>2</sup> See Penal Law § 130.05 (1).

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

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

violate the provisions of this law.<sup>5</sup>

The following terms used in the definition of the crime have 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.<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 foreign object into 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 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.

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<sup>5</sup> Penal Law § 130.70 (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).