

**AGGRAVATED SEXUAL ABUSE
FIRST DEGREE
(B Felony)
(Inserts a Foreign Object; Complainant Less Than 11)
PENAL LAW 130.70 (1) (c)
(Committed on or after November 1, 1988)¹**

The _____ 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.² 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.³ 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.⁴

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 See Penal Law § 130.05 (1).

³ See Penal Law § 130.05 (3) (a).

⁴ See Penal Law § 15.20 (3).

Conduct performed for a valid medical purpose does not violate the provisions of this law.⁵

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 used in that definition: "foreign object," "physical injury" and "incapable of consent."

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.⁶

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

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 First Degree as charged in the _____ count.

⁵ Penal Law § 130.65-a (2).

⁶ Penal Law § 130.00 (9).

⁷ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

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 First Degree as charged in the _____ count.