

**COURSE OF SEXUAL CONDUCT AGAINST A CHILD  
IN THE SECOND DEGREE  
Penal Law § 130.80 (1) (b)  
(Committed on or after November 1, 2003)  
(Revised May 2018)<sup>1</sup>**

The (*specify*) count is Course of Sexual Conduct Against a Child in the Second Degree.

Under our law, a person is guilty of Course of Sexual Conduct Against a Child in the Second Degree when, over a period of time not less than three months in duration, he or she, being eighteen years or more, engages in two or more acts of sexual conduct with a child less than thirteen (13) years old.

Under our law, it is also an element of this offense that the sexual conduct was committed without the consent of such child.<sup>2</sup> Sexual conduct takes place without a child's consent when that child is deemed by law to be incapable of consent. Under our law, a child is deemed incapable of consenting to sexual conduct when he or she is less than thirteen (13) years old.<sup>3</sup> Thus, the law deems sexual conduct with such child to be without that child's consent, even if in fact that child did consent.

It is not a defense to this charge that the actor did not know that the person with whom the actor engaged in sexual conduct

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<sup>1</sup> The 2018 revision was to amend the definition of "sexual contact" as it was amended by L. 2010, c. 193, § 1, eff. Oct. 13, 2010 to delete element of the victim being "not married to the actor", and inserted the phrase", as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed." The revised definition is effective for violations occurring on or after the effective date of October 13, 2010.

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

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

was less than thirteen (13) years old, or that the actor believed that such person was thirteen (13) years old or more on the date of the crime.<sup>4</sup>

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

**SEXUAL CONDUCT** means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.<sup>5</sup>

**SEXUAL INTERCOURSE** means any penetration, however slight, of the penis into the vaginal opening. In other words, any penetration of the penis into the vaginal opening, regardless of the distance of penetration, constitutes an act of sexual intercourse. Sexual intercourse does not necessarily require erection of the penis, emission, or orgasm.<sup>6</sup>

**ORAL SEXUAL CONDUCT** means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.<sup>7</sup>

**ANAL SEXUAL CONDUCT** means conduct between persons consisting of contact between the penis and anus.<sup>8</sup>

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

<sup>5</sup> Penal Law § 130.00 (10).

<sup>6</sup> The statutory definition has been amplified in accord with case law (see Penal Law § 130.00 [1]; *People v Liberta*, 64 NY2d 152, 169 [1984]; *People v Williams*, 259 AD2d 509 [2d Dept 1999]; *People v White*, 185 AD2d 472 [3d Dept 1992]; *People v Berardicurti*, 167 AD2d 840 [4th Dept 1990]; *People v Edwards*, 173 AD 375 [2d Dept 1916]).

<sup>7</sup> Penal Law § 130.00 (2) (a).

<sup>8</sup> Penal Law § 130.00 (2) (b).

AGGRAVATED SEXUAL CONTACT means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus of a child, thereby causing physical injury to such child.<sup>9</sup> Physical injury means impairment of physical condition or substantial pain.<sup>10</sup>

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, [as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed].<sup>11</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 over a period of time not less than three months in duration, namely, on or about and between (dates), in the county of (County), the defendant, (name of defendant), being eighteen (18) years old or more, engaged in two or more acts of sexual conduct with (name of complainant); and
2. That (name of complainant) was less than thirteen (13) years old.

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty

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<sup>9</sup> Penal Law § 130.00 (11).

<sup>10</sup> Penal Law § 10.00 (9).

<sup>11</sup> Penal Law § 130.00 (3). See footnote one.

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.