

**RAPE IN THE THIRD DEGREE**  
**(Anal Sexual Contact;**  
**Defendant 21 >; complainant < 17)**  
**Penal Law § 130.25 (6)**  
**(Committed on or after Sept 1, 2024)**

The (*specify*) count is Rape in the Third Degree.

Under our law, a person is guilty of Rape in the Third Degree, when being twenty-one (21) years old or more, he or she engages in anal sexual contact with another person less than seventeen (17) years old.

The following term used in that definition has a special meaning:

**ANAL SEXUAL CONTACT** means conduct between persons consisting of contact between the penis and anus.<sup>1</sup>

Under our law, it is also an element of this offense that the anal sexual contact was committed without the consent of that other person.<sup>2</sup> Anal sexual contact takes place without a person's consent when that person is deemed by law to be incapable of consent.

Under our law, a person is deemed incapable of consenting to anal sexual contact when he or she is less than seventeen (17) years old.<sup>3</sup> Thus, the law deems anal sexual contact 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 anal sexual contact was less than seventeen (17) years old, or that the actor believed that

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<sup>1</sup> Penal Law § 130.00(2)(b).

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

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

such person was seventeen (17) years old or more on the date of the crime.<sup>4</sup>

*[Add If Applicable:*

It is a defense to this charge that the defendant was married to the victim.<sup>5</sup> “Married” means the existence of the relationship between the defendant and the victim as spouses which was recognized by law at the time of the alleged commission of this crime.<sup>6</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, each of the following (three/four) elements:

1. That on or about (date), in the county of (County) the defendant (defendant's name), engaged in anal sexual contact with (complainant's name); and,
2. That the defendant was twenty-one (21) years old or more; [and]
3. That (name of complainant) was less than seventeen (17) years old [and]

*[Add if applicable:*

4. That the defendant was not married to (name of complainant).]

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

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

<sup>5</sup> See Penal Law § 130.10(4).

<sup>6</sup> See Penal Law § 130.00 (4). See Domestic Relations Law §§ 15 and 15-a.