

RAPE IN THE FIRST DEGREE
(Oral Sexual Contact - Forcible Compulsion)
Penal Law § 130.35(2)(a)
Committed on or after Sept 1, 2024)

The (specify) count is Rape in the First Degree.

Under our law, a person is guilty of Rape in the First Degree when he or she engages in oral sexual contact with another person by forcible compulsion.

Under our law, it is also an element of this offense that the sexual act was committed without consent.¹ Oral sexual contact takes place without a person's consent when the lack of consent results from forcible compulsion.²

The following terms used in that definition have a special meaning:

ORAL SEXUAL CONTACT 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.³

FORCIBLE COMPULSION⁴ means to intentionally⁵ compel⁶:

by the use of physical force;

[or]

¹ See Penal Law § 130.05(1).

² Penal Law § 130.05(2)(a).

³ Penal Law § 130.00(2)(a).

⁴ Penal Law § 130.00(8).

⁵ Penal Law §15.05(1). The definition has been modified by adding the term “intentionally” to reflect the holding of *People v. Williams*, 81 NY2d 303 (1993).

⁶ See *People v. Grega*, 72 N.Y.2d 489 (1988) directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions.

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.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in this 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), engaged in oral sexual contact with (name of complainant); and
2. That the defendant did so without (name of complainant)'s consent by the use of forcible compulsion.

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.