

RAPE IN THE FIRST DEGREE
(Oral contact; complainant < 13; defendant 18 >)
Penal Law § 130.35 (2)(d)
(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 who is less than thirteen (13) years old and the actor is eighteen (18) years old or more.

Under our law, it is also an element of this offense that the oral sexual contact was committed without the consent of that other person.¹ Oral sexual contact takes place without a person's consent when that person is deemed by law to be incapable of consent.

The following term used in that definition has 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.²

Under our law, a person is deemed incapable of consenting to oral sexual contact when he or she is less than thirteen (13) years old.³ Thus, the law deems oral 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 oral sexual contact was less than thirteen (13) years old, or that the actor believed that

¹ See Penal Law § 130.05 (1).

² Penal Law § 130.00(2)(a).

³ Penal Law § 130.05 (3) (a).

such person was thirteen (13) years old or more on the date of the crime. ⁴

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 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);
2. That (name of complainant) was less than thirteen (13) years old; and
3. That the defendant was eighteen (18) years old or more.

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.

⁴ See Penal Law § 15.20 (3).