

**FORCIBLE TOUCHING**  
**Penal Law § 130.52 (1)**  
**(Committed on or after Nov. 1, 2003)**  
**(Revised Dec. 2013 and June 2014)<sup>1</sup>**

The (specify) count is Forcible Touching.

Under our law, a person is guilty of Forcible Touching when he or she intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person or for the purpose of gratifying the actor's sexual desire.

Under our law, it is also an element of this offense that the sexual act was committed without consent.<sup>2</sup> Forcible touching takes place without a person's consent when it results from any circumstances in which a person does not expressly or impliedly acquiesce to the actor's conduct.<sup>3</sup>

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

**FORCIBLY TOUCHING** another includes squeezing, grabbing, pinching, rubbing, or other bodily contact involving the application

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<sup>1</sup> The 2013 revision was for the purpose of adding an explanation of "lack of consent" and adding the third element. The 2014 revision was for the purpose of including the definition of "forcibly touching" set forth in *People v Guaman*, 22 NY3d 678 (2014).

<sup>2</sup> Penal Law § 130.05 (1).

<sup>3</sup> Penal Law § 130.05 (2) (c). Lack of consent can also result from forcible compulsion or incapacity to consent (see Penal Law § 130.05 [2]). For definition of forcible compulsion, see Penal Law § 130.00 (8). For definition of incapacity to consent, see Penal Law § 130.05 (3).

of some level of pressure to the victim's sexual or intimate parts.<sup>4</sup>

Intent means conscious objective or purpose. Thus, a person INTENTIONALLY forcibly touches the sexual or other intimate parts of another person when that person's conscious objective or purpose is to do so.<sup>5</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 elements:

1. That on or about (date), in the county of (County), the defendant (defendant's name), forcibly touched the sexual or other intimate parts of (complainant's name) for the purpose of degrading or abusing him/her, or for the purpose of gratifying the defendant's sexual desire;
2. That the defendant did so intentionally and for no legitimate purpose; and

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<sup>4</sup> See Penal Law § 130.52; *People v Guaman*, 22 NY3d 678, 683-684 (2014) (“any bodily contact involving the application of some level of pressure to the victim’s sexual or intimate parts qualifies as a forcible touch”); See also *People v Sene*, 66 AD3d 427, 427-428 (1st Dept 2009) (“We conclude that, under general societal norms, the neck qualifies as an intimate part because it is sufficiently personal or private that it would not be touched in the absence of a close relationship between the parties. Moreover, since ‘intimacy is a function of behavior and not merely anatomy,’ the manner and circumstances of the touching should also be considered, and we reject defendant’s argument that to do so would conflate the sexual gratification element with the issue of whether a body part is an intimate part. Here, defendant stripped naked, climbed onto the sleeping victim, and licked her neck. This conduct clearly fell within ‘the plain, natural meaning’ of the statute” [internal citations omitted].)

<sup>5</sup> Penal Law § 15.05 (1).

3. That the defendant did so without the consent of (complainant's name) in that he/she did not expressly or impliedly acquiesce to the defendant's conduct.

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.