**AGGRAVATED SEXUAL ABUSE IN THE FIRST DEGREE

(Inserts a Foreign Object; Forcible Compulsion)

Penal Law § 130.70 (1) (a)

(Committed on or after November 1, 1988)**1

The (*specify*) count is Aggravated Sexual Abuse in the First Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the First Degree when he or she inserts a foreign object in the vagina [*or* urethra] [*or* penis] [*or* rectum] [*or* anus] of another person causing physical injury to such person by forcible compulsion.

Under our law, it is also an element of this offense that the insertion of a foreign object was without consent. Such conduct takes place without a person's consent when the lack of consent results from forcible compulsion.2

Conduct performed for a valid medical purpose does not violate the provisions of this law. 3

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

FOREIGN OBJECT means any instrument or article which, when inserted in the vagina [*or* urethra] [*or* penis] [*or* rectum] [*or* anus], is capable of causing physical injury.4

1 The terminology “or anus” was added to the definition of this crime in 2010. Thus, the definition, with that term included, is effective for a crime committed on or after January 7, 2010. L 2009, ch 45. For crimes committed on or after November 1, 1988 and before January 7, 2010, omit that terminology.

2 Penal Law § 130.05 (2) (a).

3 Penal Law § 130.70 (2).

4 Penal Law § 130.00 (9).

PHYSICAL INJURY means impairment of physical condition or substantial pain.5

FORCIBLE COMPULSION means to intentionally compel either:

1. by the use of physical force;

or

1. 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.6

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the 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)*  , without a valid medical purpose, inserted a foreign object, to wit, a *(specify)*, into the vagina [*or* urethra] [*or* penis] [*or* rectum] [*or* anus] of *(name of complainant)*, causing him/her physical injury; and
2. That the defendant did so without *(name of complainant)'s* consent by the use of forcible compulsion.

5 Penal Law § 10.00 (9); *See People v Chiddick*, 8 NY3d 445 (2007).

6 *See* Penal Law § 130.00 (8); Penal Law § 15.05 (1). The definition has been modified by adding the term “intentionally” in the first line to reflect the holding of *People v Williams*, 81 NY2d 303 (1993). *See also People v Grega*, 72 NY2d 489 (1988) (directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions).

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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.

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