**PREDATORY SEXUAL ASSAULT**

**Penal Law 130.95(2)**

**(Committed on or after Sept 1, 2024)**

The (*specify*) count is Predatory Sexual Assault.

Under our law, a person is guilty of Predatory Sexual Assault when that person commits the crime of

*Select appropriate alternative:*

Rape in the first degree[[1]](#footnote-1)

Aggravated sexual abuse in the first degree

Course of sexual conduct against a child in the first degree,

and when he or she has engaged in conduct constituting the crime(s) of

*Select appropriate alternative(s):*

Rape in the first degree[[2]](#footnote-2)

Aggravated sexual abuse in the first degree

Course of sexual conduct against a child in the first degree,

against one or more additional persons.

The following term(s) used in that definition (has/have) a special meaning:

A person is guilty of (*specify name and definition of underlying crime*)

*Note: if the underlying crime is a separate count within the indictment, reference to the crime or count and its instruction is sufficient.*

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 elements:

*NOTE: This crime requires the commission of separate sex acts, identified below for purposes of this Note and charge, as Sex Act I and Sex Act II.[[3]](#footnote-3)*

*The Court may in lieu of the following element for each Sex Act substitute the elements of the applicable crime as set forth in the CJI2d charge for that crime.*

[SEXUAL ACT I]

1. That on or about  *(date)* , in the County of  *(County)*, the defendant, *(defendant's name)*, committed *(name of underlying crime, e.g., rape in the first degree)* in that he/she (*insert element(s) of underlying crime and complainants name; e.g., in that he engaged in vaginal sexual contact with (complainant) by forcible compulsion*); and

[SEXUAL ACT II]

2. That, on or about  *(date)* , in the County of  *(County)* , the defendant, *(defendant's name)*, committed *(name of underlying crime e.g. a*ggravated sexual abuse in the first degree*)* in that he/she (*insert element(s) of underlying crime and complainants name; e.g., in that he engaged in oral sexual contact with (complainant) by 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.

1. Although Rape includes oral and anal sexual contact, the L. 2024, c. 23 added: “a crime formerly defined in section 130.50 of this title.” Penal Law former § 130.50 defined “criminal sexual act in the first degree.” Reference to the repealed law should be unnecessary when Rape is charged and is therefore not included in the text. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. *See* *People v. Cruciani*, 63 Misc.3d 858 (2019). [↑](#footnote-ref-3)