

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 degree¹

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 degree²

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.

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 Reference to the repealed law should be unnecessary when Rape is charged and is therefore not included in the text.

² *Id.*

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

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 complainant's 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. aggravated sexual abuse in the first degree) in that he/she *(insert element(s) of underlying crime and complainant's 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.

³ See *People v. Cruciani*, 63 Misc.3d 858 (2019).

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.