

PREDATORY SEXUAL ASSAULT
Penal Law § 130.95(3)
(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 he or she 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 previously been subjected to a conviction for (*specify: a felony defined in Penal Law article 130, incest as defined in Penal Law section 255.25 or use of a child in a sexual performance as defined in Penal Law section 263.05*).]¹

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

[*Specify name and definition of underlying crime(s)* and any necessary definitions of terms used in that definition]²

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, the following element(s):

[1] That on or about (date) , in the County of (County), the defendant, defendant's name ,

¹ The prior conviction must be charged by a separate information and the defendant must be given an opportunity to admit the prior conviction and

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 Reference to the repealed law should be unnecessary when Rape is charged and is therefore not included in the text.

thereby preclude having this element charged to the jury pursuant to CPL 200.60. See *People v. Cooper*, 78 NY2d 476 (1991).

²With respect to defining the underlying crime, if the underlying crime is a separate count within the indictment, incorporation by reference to that crime or count is sufficient.

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 sexual intercourse with (complainant) by forcible compulsion); [and]

Note: If the defendant admitted the prior conviction pursuant to CPL 200.60, do not read element two.

[2. That, on or about (date) , in the County of (County) , the defendant, (defendant's name) , was previously convicted of (specify: a felony defined in Penal Law article 130, incest as defined in Penal Law section 255.25 or use of a child in a sexual performance as defined in Penal Law section 263.05).]

If you find the People have proven beyond a reasonable doubt (that element / each element), you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt (that element / either one or both of those elements), you must find the defendant not guilty of this crime.