

SODOMY FIRST DEGREE
(B Felony)
(Complainant Physically Helpless)
PENAL LAW 130.50(2)
(Committed on or after July 27, 1984)¹

The ____ count is Sodomy in the First Degree.

Under our law, a person is guilty of Sodomy in the First Degree when he or she engages in deviate sexual intercourse with another person who is incapable of consent by reason of being physically helpless.

I will now give you the meaning of the following terms used in that definition: "deviate sexual intercourse," "incapable of consent" and "physically helpless."

DEVIATE SEXUAL INTERCOURSE means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.²

Under our law, a person is **INCAPABLE OF CONSENTING** to deviate sexual intercourse when that person is physically helpless.³

PHYSICALLY HELPLESS means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.⁴

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), engaged in deviate sexual intercourse with (name of complainant); and

¹*People v. Liberta*, 64 NY2d 152 (1984), decided December 20, 1984, eliminated the gender exemption for rape and sodomy. Therefore, if a female is charged as a principal, the effective date of the statute is December 20, 1984. The definition of the crime has been modified accordingly.

²For the definition of "not married," see Penal Law § 130.00(4).

³See, Penal Law § 130.05(3)(d).

⁴See, Penal Law § 130.00(7).

2. That (name of complainant) was incapable of consent because he/she was physically helpless.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of Sodomy in the First Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of the crime of Sodomy in the First Degree as charged in the _____ count.