

SODOMY FIRST DEGREE
(B Felony)
(Complainant Less Than 11 Years Old)
PENAL LAW 130.50(3)
(Committed on or after February 1, 2001)

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 less than eleven (11) years old.

Under our law, it is also an element of this offense that the deviate sexual intercourse was committed without the consent of that other person. Deviate sexual intercourse takes place without a person's consent when that person is deemed by law to be incapable of consent. Under our law, a person is deemed incapable of consenting to deviate sexual intercourse when he or she is less than seventeen (17) years old.¹ Thus, deviate sexual intercourse with such a person is always deemed to be without that person's consent, even if in fact that person did consent.

It is not a defense to this charge that the actor did not know that the person with whom the actor had deviate sexual intercourse was less than eleven (11) years old, or that the actor believed that such person was eleven (11) years old or more on the date of the crime.²

The term, "deviate sexual intercourse," used in the definition of this crime has its own special meaning in our law. I will now give you the meaning of that term.

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

¹ Penal Law § 130.05(3)(a).

² See Penal Law §15.20(3).

mouth and the vulva.³

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
2. That (complainant's name) was less than eleven (11) years old.

Therefore, if you find that the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of the crime 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.

³ Penal Law § 130.00(2). For the definition of "not married," see Penal Law § 130.00(4).