**SEXUAL MISCONDUCT

(Oral or Anal Sexual Conduct;

Forcible Compulsion)

Penal Law § 130.20(2)

(Committed on or after Nov. 1, 2003)**

The (*specify*) count is Sexual Misconduct.

Under our law, a person is guilty of Sexual Misconduct when he or she engages in

*Select applicable alternative(s):*

oral sexual conduct [or]

anal sexual conduct

with another person without such person's consent.

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

*Select applicable alternative(s):*

[ORAL SEXUAL CONDUCT means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.1]

[ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.2]

[Oral (or) anal] sexual conduct takes place WITHOUT A PERSON'S CONSENT when there is a lack of consent to the [oral (or) anal] sexual conduct as a result of forcible compulsion.3

1 Penal Law § 130.00(2)(a).

2 Penal Law § 130.00(2)(b).

3 *See* Penal Law § 130.05(2)(a).

FORCIBLE COMPULSION means to intentionally compel either:

1. by the use of physical force;

or

1. by a threat, express or implied, which places a person in fear of immediate death or physical injury to himself or herself [*or* another person] or in fear that he or she [*or* another person] will immediately be kidnapped.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

*Select applicable alternative(s):*

oral sexual conduct [or]

anal sexual conduct

with (*name of complainant*) ; and

1. That the defendant did so without  *(name of complainant)'s* consent by the use of 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.

4 *See* Penal Law § 130.00(8); Penal Law §15.05(1). The definition has been modified by adding the term “intentionally” in the first line to reflect the holding of *People v. Williams*, 81 NY2d 303 (1993). *See also*, *People v. Grega*, 72 N.Y.2d 489 (1988) directing the trial court not to charge both definitions of forcible compulsion when the indictment alleges only one of the two definitions.

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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.

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