

SEXUAL MISCONDUCT
(A Misdemeanor)
(Sexual Intercourse Without Consent;
Forcible Compulsion)
PENAL LAW 130.20(1)
(Committed on or after July 27, 1984)¹

The ____ count is Sexual Misconduct.

Under our law, a person is guilty of Sexual Misconduct when he or she engages in sexual intercourse with another person, without that person's consent.

I will now give you the meaning of the following terms used in that definition: "sexual intercourse" and "without a person's consent."

SEXUAL INTERCOURSE has its ordinary meaning, and occurs upon any penetration, however slight.²

Sexual intercourse takes place WITHOUT A PERSON'S CONSENT when it results from forcible compulsion.³

FORCIBLE COMPULSION means to intentionally compel either:

(1) by the use of physical force;

or

(2) 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*Matter of Jessie C.*, 164 AD2d 731 (1991), decided February 1, 1991, eliminated the gender exemption for sexual misconduct. Accordingly, if a female is charged as a principal, the effective date of the statute is February 1, 1991. The definition of the crime has been modified to make it gender neutral in accordance with *Matter of Jessie C.*, as well as to eliminate the marital exemption, which was stricken from the forcible rape and sodomy statutes by *People v Liberta*, 64 NY2d 152 (1984).

²*See*, Penal Law § 130.05(2)(a).

³*See*, Penal Law § 130.05(2)(a).

⁴*See*, Penal Law § 130.00(8); Penal Law § 15.05(1). The definition has been modified to reflect the holding of *People v. Williams*, 81 NY2d 303 (1993).

1. That on or about (date), in the county of (county), the defendant, (name of defendant), engaged in sexual intercourse with (name of complainant); and
2. That the defendant did so without (name of complainant)'s consent as a result of the defendant's use of forcible compulsion.

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 Sexual Misconduct 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 Sexual Misconduct as charged in the _____ count.