

**COURSE OF SEXUAL CONDUCT AGAINST A CHILD  
FIRST DEGREE  
(B Felony)  
PENAL LAW 130.75 (1)(a)  
(Committed on or after August 1, 1996) <sup>1</sup>**

The \_\_\_\_\_ count is Course of Sexual Conduct Against a Child in the First Degree.

Under our law, a person is guilty of Course of Sexual Conduct Against a Child in the First Degree when, over a period of time not less than three months in duration, he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, deviate sexual intercourse or aggravated sexual contact, with a child less than eleven (11) years old.

Under our law, it is also an element of this offense that the sexual conduct was committed without the consent of such child.<sup>2</sup> Sexual conduct takes place without a child's consent when that child is deemed by law to be incapable of consent. Under our law, a child is deemed incapable of consenting to sexual conduct when he or she is less than seventeen (17) years old.<sup>3</sup> Thus, sexual conduct with such child is always deemed to be without that child's consent, even if in fact that child did consent.

It is not a defense to this charge that the actor did not know that the person with whom the actor engaged in sexual conduct 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.<sup>4</sup>

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<sup>1</sup>The statute, formerly Penal Law § 130.75(a), was renumbered, effective February 1, 2001.

<sup>2</sup> See Penal Law § 130.05(1).

<sup>3</sup> See Penal Law § 130.05(3)(a).

<sup>4</sup> See Penal Law §15.20(3).

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

SEXUAL CONDUCT means sexual intercourse, deviate sexual intercourse, aggravated sexual contact, or sexual contact.<sup>5</sup>

SEXUAL INTERCOURSE means any penetration, however slight, of the penis into the vaginal opening. In other words, any penetration of the penis into the vaginal opening, regardless of the distance of penetration, constitutes an act of sexual intercourse. Sexual intercourse does not necessarily require erection of the penis, emission, or orgasm.<sup>6</sup>

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 penis, or the mouth and the vulva.<sup>7</sup>

AGGRAVATED SEXUAL CONTACT means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or rectum of a child, thereby causing physical injury to such child.<sup>8</sup> Physical injury means

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<sup>5</sup> Penal Law § 130.00(10).

<sup>6</sup> The statutory definition has been amplified in accord with case law. See Penal Law § 130.00(1) and *People v. Liberta*, 64 NY2d 152, 169 (1984); *People v. Edwards*, 173 A.D. 375 (2d Dept. 1916); *People v. Berardicurti*, 167 A.D.2d 840 (4<sup>th</sup> Dept. 1990); *People v. White*, 185 A.D.2d 472 (3<sup>rd</sup> Dept. 1992); *People v. Williams*, 259 A.D.2d 509 (2d Dept. 1999).

<sup>7</sup> Penal Law § 130.00(2). For the definition of "not married," see Penal Law § 130.00(4).

<sup>8</sup> Penal Law § 130.00(11).

impairment of physical condition or substantial pain.<sup>9</sup>

SEXUAL CONTACT means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.<sup>10</sup>

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, each of the following three elements:

1. That over a period of time not less than three months in duration, namely, on or about and between (dates), in the County of (county), the defendant, (name of defendant), engaged in two or more acts of sexual conduct with (name of complainant);
2. That such sexual conduct included at least one act of sexual intercourse, deviate sexual intercourse or aggravated sexual contact; and
3. That (name of complainant) was less than eleven (11) years old.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Course of Sexual Conduct Against a Child 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 any one or more of those

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<sup>9</sup> Penal Law 10.00(9).

<sup>10</sup> Penal Law § 130.00(3). For the definition of "not married," see Penal Law § 130.00(4).

elements, you must find the defendant not guilty of the crime of Course of Sexual Conduct Against a Child in the First Degree as charged in the \_\_\_\_\_ count.