

**COERCION IN THE SECOND DEGREE**  
**Penal Law § 135.61 <sup>1</sup>**  
**(Committed on or after Nov. 1, 2018)**

The (*specify*) count is Coercion in the Second Degree.<sup>2</sup>

Under our law, a person is guilty of coercion in the second degree when he or she compels or induces a person to engage in sexual intercourse, oral sexual conduct or anal sexual conduct by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

*Select appropriate alternative(s):*

Cause physical injury to a person.

Cause damage to property.

Engage in [other] conduct constituting a crime.

Accuse some person of a crime or cause criminal charges to be instituted against him or her.

Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.

Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act.

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<sup>1</sup> This crime was added by the L. 2018, c. 55.

<sup>2</sup> The definition of the crime incorporates the crime of coercion in the third degree, as follows: "A person is guilty of coercion in the second degree when he or she commits the crime of coercion in the third degree as defined in section 135.60 of this article and thereby compels or induces a person to engage in sexual intercourse, oral sexual conduct or anal sexual conduct as such terms are defined in section 130 of the penal law." This charge accordingly incorporates the applicable portion of the third-degree crime.

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

Use or abuse his position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Perform any (other) act which would not in itself materially benefit<sup>3</sup> the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

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

*Select appropriate definition(s):*

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>4</sup>

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

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<sup>3</sup> If necessary "benefit" may defined as follows: " 'Benefit' means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary." Penal Law § 10.00(17).

<sup>4</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).

or vagina.<sup>5</sup>

ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.<sup>6</sup>

PHYSICAL INJURY means impairment of physical condition or substantial pain.<sup>7</sup>

PUBLIC SERVANT means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.<sup>8</sup>

CRIME means a violation of law that is classified as a misdemeanor or a felony.<sup>9</sup> \_\_\_\_\_ is a crime.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following two elements:

1. That on or about (date), in the County of (county), the defendant, (defendant's name), compelled or induced a person to engage in sexual intercourse, [oral sexual conduct or anal sexual conduct], and
2. That the defendant did so by means of instilling in (specify) a fear that, if the demand were not complied with, the defendant or another would:

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<sup>5</sup> Penal Law § 130.00(2)(a).

<sup>6</sup> Penal Law § 130.00(2)(b).

<sup>7</sup> Penal Law § 10.00(9); See *People v. Chiddick*, 8 NY3d 445 (2007).

<sup>8</sup> Penal Law § 10.00(15).

<sup>9</sup> Penal Law § 10.00(6).

*Select appropriate alternative(s):*

Cause physical injury to a person.

Cause damage to property.

Engage in [other] conduct constituting a crime.

Accuse some person of a crime or cause criminal charges to be instituted against him/her.

Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.

Cause a strike, boycott or other collective labor group action injurious to some person's business when the act or omission compelled was not for the benefit of the group in whose interest the actor purported to act.

Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

Use or abuse his position as a public servant by performing some act within or related to his/her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Perform any (other) act which would not in itself materially benefit the defendant but which is calculated to harm another person materially with respect to his/her health, safety, business, calling, career, financial condition, reputation or personal relationships.

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

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.